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COLLECTIVE REDRESS
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Mission Statement

The British Institute of International and Comparative Law exists to advance the understanding of international and comparative law, and to promote the rule of law in international affairs.

Vision

To be a leading research institute of international and comparative law and to promote its practical application by the dissemination of research through publications, conferences and discussion.

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I. General Collective Redress Mechanisms

Absent a general collective redress mechanism under Greek law, any collective claims which are joined pursuant to the mechanisms examined in this section, will follow the ordinary procedural rules of the CCP. The CPP does contain a series of provisions allowing the participation of more persons in the same trial. The most important of these provisions are those concerning the joinder of parties (articles 74-77).

1. Scope/Type

a. The 'Ordinary Joinder of Parties'

Under article 74 CCP, more persons can sue or be sued collectively when:

- They have a joint right or obligation in respect to the dispute at issue, or when their rights or obligations are based on the same factual or legal grounds; or
- The dispute concerns similar claims or obligations which are based on similar factual and legal grounds. In this case, the court must be competent to adjudicate the dispute for every defendant.

The 'ordinary joinder of parties' allows the joining of multiple parties in a common procedure, so as a single judgment can be issued vis-à-vis all the parties.[1] However, the existence of a single judgment does not necessarily imply that the content of the ruling will be the same for all parties. In the procedure, multiple individual suits are kept and are independent from each other.[2] This is reflected in the course of proceedings, as the CCP provides that the actions of one of the joined parties will neither benefit the other joined party nor place it at a disadvantage (article 75 CCP).3 When the requirements of the ordinary joinder of parties are satisfied, the parties to a trial may choose to sue or be sued collectively through the ordinary joinder of parties, but there is no obligation therero.[4]

b. 'Compulsory Joinder of Parties'

The other type of joinder of parties under the CCP is the so-called 'compulsory joinder of parties' (articles 76f CCP). In this case, the joinder of parties is necessary and not merely at the discretion of the parties. The joinder of parties is necessary when: a) the dispute can only be adjudicated uniformly vis-à-vis all the parties; b) the force of res judicata will extend to other parties; c) a legal provision (procedural or substantive) requires the joint standing of the parties, failing which it shall be inadmissible and; d) there can be no contradictory judgments vis-à-vis the parties.

In the case of the compulsory joinder of parties, one or both sides to the dispute constitute a single entity comprising of multiple persons.[5] A number of exceptions to that rule are set out in article 76(2) CCP, which provides that the parties are not bound by the actions of their co-litigants as regards settlement, admission of the claim, withdrawal of litigation and agreement to resort to arbitration. Secondly, when a party to a compulsory joinder of parties challenges a court decision, the legal effect is extended to other co-litigants, who are considered to have also filed an appeal.[6]

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[1] Ev Mpalogianni/M Georgiadou in Charoula Apalagaki (ed), *Code of Civil Procedure: Interpretation of the Articles* (3rd edn, Nomiki Vivliothiki 2016), art 74.

[2] Areios Pagos (Supreme Court) 505/2011 (NOMOS Legal Database); Ev Mpalogianni/M Georgiadou in Ch Apalagaki (ed), Code of Civil Procedure: Interpretation of the Articles (4rd edn, Nomiki Vivliothiki 2016), art 75 (in Greek)

[3] Ev Mpalogianni/M Georgiadou in Ch Apalagaki (ed), Code of Civil Procedure: Interpretation of the Articles (3rd edn, Nomiki Vivliothiki 2016), art 75.

[4] K Kerameys, D Kondylis and N Nikas (eds), *Interpretation of the Code of Civil Procedure* (Sakkoulas Publications Athens-Thesasaloniki 2000) vol 1, art 74

[5] K Beis, K Kalavros and S Stamatopoulos (eds), *Procedure Law of Private Disputes* (Ant N Sakkoulas 1999) 325

[6] Areios Pagos (Supreme Court, Plenary Session) 63/1981 (NOMOS Legal Database); Areios Pagos (Supreme Court) 770/2009 (NOMOS Legal Database); Areios Pagos (Supreme Court) 1130/2011 (NOMOS Legal Database); Areios Pagos (Supreme Court) 1681/2013 (NOMOS Legal Database); Areios Pagos (Supreme Court) 1382/2014 (NOMOS Legal Database); Areios Pagos (Supreme Court) 241/2015 (NOMOS Legal Database); Areios Pagos (Supreme Court) 855/2015 (NOMOS Legal Database)

c. 'Third Party Intervention'

The CCP contains a chapter laying out rules for third party intervention (articles 79ff CCP). Greek Law distinguishes between two types of intervention:

a) The first type, concerns a third party who asserts a claim to the object or the right of the proceedings pending between other persons (Artice 79 CCP). The third party may only intervene in the first instance, pursuant to recent reforms introduced in civil procedure, as part of the ESM Programme for Greece.[7] This kind of intervention serves judicial economy and will not be explored further, as it is of little relevance for collective claims.

b) The second type, provides for a third-party intervention in support of a party to pending proceedings (article 80 CCP). The CCP sets out specific conditions that need to be satisfied: the intervening party must be a third person to the dispute and have a legitimate interest in one party prevailing over the other. The third party may intervene at any stage of the legal dispute until a final judgment is issued. The intervening party does not acquire the status of plaintiff or defendant but is merely given the chance to support either party to the proceedings, in order to avoid potential negative consequences from the court's decision. That would be the case if a creditor in a mortgage loan would intervene in support of its debtor in a trial concerning the ownership of the secured property.[8] It is evident that the provision is ill-suited for collective claims.

d. Consolidation

Under Greek Law, individual claims can also be joined upon order of the courts, provided that the proceedings are subject to the same set of procedural rules (article 246 CCP). However, the separate claims retain their independence.[9] As a consequence, the court might issue a decision only for some of the consolidated claims and not for the others.10

Contrary to other legal orders, in Greece there is no mechanisms for screening inadmissible or unfounded claims prior to the hearing date. When a plaintiff submits a claim at the courts' secretariat, a hearing date is fixed in any case, even when the conditions for a claim are obviously not met. The assessment of whether the conditions for a claim are met, is a matter of judicial evaluation. As civil trials in Greece are completed after only one hearing session, the court will rule on the question of whether the conditions for a claim are met in its final decision, whilst also ruling on the substance of the case.

2. Impact of the Recommendation/Critiques

There have been no concrete attempts for the introduction of a general collective redress mechanism, following the publication of the Commission Recommendation 2013/396/EU (hereafter 'Commission Recommendation'), as the Greek legislator does not seem to consider the introduction of collective redress mechanisms as a priority.

Although the compulsory joinder of parties seems prima facie suitable for collective redress, it will rarely be applicable in mass harm situations. The cases in which individual claims need to be joined necessarily are specific and are defined exhaustively in the CCP. Therefore, collective claims pursuant to mass harm situations will usually be brought under the procedural mechanism of the ordinary joinder of parties.

Under Greek law, collective claims pursuant to mass harm situations, within the meaning of the Commission Recommendation, will usually be brought under the procedural mechanism of the ordinary joinder of parties. This mechanism, however, cannot ensure access to justice and fairness of proceedings in accordance with the

[7] Law 4335/2015 (Government Gazette A/87 23 July 2015). See further Ev Mapalogianni/M Georgiadou in Charoula Apalagaki (ed.), Code of Civil Procedure: Interpretation of the Articles (3rd edn, Nomiki Vivliothiki 2016), art 79 (in Greek)

[8] K Kerameys/D Kondylis/ N Nikas (eds), Interpretation of the Code of Civil Procedure (Sakkoulas Publications Athens-Thesasaloniki 2000) vol1, art 80 (in Greek); Ev Mapalogianni/M Georgiadou in Charoula Apalagaki (ed.), Code of Civil Procedure: Interpretation of the Articles (4th edn, Nomiki Vivliothiki 2016), art 80(in Greek)

[9] Areios Pagos (Supreme Court) 1270/2015 (NOMOS Legal Database)

[10] Ch Triantafillidis/P Rentoulis in Ch Apalagaki (ed), Code of Civil Procedure: Interpretation of the Articles (3rd edn, Nomiki Vivliothiki 2016), art 246.

Commission Recommendation, in light of the fact that the multiple claimants are not treated as a single entity and their joined claims remain individual vis-à-vis each other.

In one case, a group of claimants brought forward an action, on the grounds of the alleged violation of the Directive 75/129/EEC regarding collective redundancies.[11] In that case, the multiple claims were joined under the provisions regarding the ordinary joinder of parties. This created significant procedural difficulties, as it meant that various court documents submitted by the defendant should be serviced to each one of the claimants, instead to a single (representative) entity. This requirement significantly raised the cost of litigation and consequently mitigated the chances for an out-of-court settlement, as the high costs borne by the defendant, effectively reduced the amount that could be paid in settlements. Furthermore, the applicable procedural rules on the ordinary joinder of parties, cannot ensure transparency of proceedings. Namely, the defendant might not be duly informed about the composition of the group of claimants and any changes therein, as the CCP does not contain any provisions requiring a group of claimants to provide relevant information to the defendant.

[11] In the context of this case, the CJEU issued a preliminary ruling, clarifying the applicable legal rules, see Joined cases C-187/05 to C-190/05 *Agorastoudis and Others* ECLI:EU:C:2006:535, [2006] I-07775

II. Sectoral Collective Redress Mechanisms

The only genuine collective redress mechanism under Greek law, is provided in the area of Consumer Protection (Law 2251/1994). Consumer associations which fulfil certain criteria can bring representative actions, pursuing either injunctive collective redress or compensatory collective redress. There is no sectoral mechanism in place in the area of competition law. However, the broad wording of the provisions regarding consumer protection, makes it possible for a consumer association to bring a representative action against a producer or supplier who has violated competition law provisions, as the Consumer Act merely contains indicative examples of violations that may give rise to a representative action. In the field of Labour Law, the CCP contains provisions which allow the limited participation of trade unions to court proceedings in relation to labour disputes.

A. Consumer Law

1. Consumer Associations

Under Greek law, consumer associations may initiate court proceedings for the protection of consumers.[12] The establishment and function of consumer associations is regulated by the Law on Consumer protection and the provisions of the Greek Civil Code (GCC) regarding associations. According to the law, the sole purpose of consumer associations is the protection of consumers' rights and interests.[13]

The law does not provide a stipulation as to what rights and interests are deemed to be in need of protection by consumer associations. It is accepted that a wide scope of rights and interests fall within the purpose of consumer associations. However, these rights and interest must be genuinely 'collective', namely relating to the general interests of consumers as a group. This is evidenced by Article 10(16)(a) of the Consumer Act, which provides a non-exhaustive listing of examples which can give rise to a Representative Action (discussed below). Thus, a consumer association may bring a Representative Action against a supplier who is in violation of various provisions of the Consumer Act, as well as rules on consumer credit; package travels; time-sharing; e-commerce; advertising; regulations governing the production, distribution, and use of medicinal products; legislation regarding television and radio etc. As a leading scholar has accurately noted, this indicative listing of examples covers the entire spectrum of contemporary transactions. Therefore there is practically no area of action by suppliers, falling outside the reach of the Representative Action.14

Consumer associations can be either 'first-level' or 'second-level'.[15] Only natural persons may be members of a first-level consumer association. The law stipulates that at least a hundred (100) persons are required for the establishment of a first-level consumer association, except in the case of small municipalities (with a population under 5000), where fifty (50) members suffice. First-level consumer associations may become members of a second-level consumer association. At least five (5) first-level consumer associations are required for the establishment of a second-level consumer association.[16] Both types of consumer associations obtain legal personality when they are registered to the 'Registry of Consumer Associations', which is kept at the General

[12] Law 2251/1994 (Government Gazette A/191 16 November 1994, as amended) (hereafter referred to as 'Law on Consumer Protection'). See also European Parliament: Directorate General For Internal Policies, 'Overview of existing collective redress schemes in EU Member States' <http://www.europarl.europa.eu/document/activities/cont/201107/20110715ATT24242/20110715ATT24242EN.pdf>. See also *D. Papadopoulou-Klamari/ Al Dimitra/Mikroulea Alexandra,* Private Enforcement and Collective Redress, FIDE XXVII, Congress Budapest, 2016 , Vol. 2 (Greece National Report), L Athanassiou , Collective Redress and Competition Policy, in A Nuyts and N. E. Hatzimihail (ed.), Cross Border and Class Actions, 2014, p. 145, *I Symplis*, Damages Actions, Greek Report, in B. Cortese (ed.), EU Competition Law between public and private enforcement, 2013, p.269. P Paparseniou, Griechisches Verbrauchervertragsrecht (Selier European Law Publishers 2008), p. 71.

[13] Article 10(1), Law on Consumer Protection

[14] E Alexandridou/Ch Apalagaki in E Alexandridou (ed), Consumer Protection Law (Nomiki Vivliothiki 2015) p. 682 (in Greek)

[15] Article 10(2), Law on Consumer Protection

[16] See also Article 10(2), Law on Consumer Protection, which states that 'Consumer associations may be organised beyond the second level', meaning that five (5) or more second-level consumer association, may become members of an overarching association.

Secretariat of Consumers (Ministry of Economy & Development).[17] The collective redress mechanism in the field of consumer law follows the opt-in approach.

The Law on Consumer Protection identifies three distinct types of actions that consumer associations may undertake:

1. First, 'every' consumer association may seek judicial protection for the individual rights of their members qua consumers.[18] This is an exceptional form of standing, whereby consumer associations initiate proceedings for the protection of rights belonging to third parties (i.e. consumers qua individuals). This type of judicial action does not deprive individual consumers of access to court, meaning that they could still file an individual action. However, if a consumer does file an individual action, then there will be no legitimate reason for the consumer association to initiate proceedings. It will be able, nonetheless, to intervene in support of the plaintiff consumer, in accordance with the rules on third party intervention (Article 80 CCP).

2. Furthermore, under certain conditions, consumer associations may file an action for declaration of the consumers' right to seek damages due to the illegal behaviour of suppliers or producers.[19] According to the Law on Consumer Protection, this action can be filed by a consumer association which has at least five hundred (500) active members and was registered in the Registry of Consumer Associations at least one year before the filing of the action.[20] Alternatively, the law stipulates that this action can be filed by a consumer association 'when the illegal behaviour harms the interests of at least thirty (30) consumers'. The court decision, which upholds this declaratory action, has the force of res judicata vis-à-vis the injured consumers, even when the latter did not participate in the proceedings.[21] The practical significance of this declaratory action is that it seeks to create the preconditions, which will allow a specific consumer (or consumers) to be compensated. However, the consumers' right to seek damages will be dependent on their ability to prove the exact amount of the damages that they suffered. Therefore, pursuant to a (collective) declaratory judgment, an injured consumer could file an individual claim, solely for the purpose of quantifying the exact amount of the injury. The issue of the supplier's liability will be covered by the res judicata of the judgment issued on the declaratory action. However, if the specific amount of an individual claim is certain or can be easily calculated, then the consumer concerned may submit an application for a payment order against a supplier which was found liable for damages, provided that the judgment which upholds the declaratory action has become 'irrevocable'.[22] A judgment becomes 'irrevocable' ('ametakliti') under Greek law, when it can no longer be reviewed by means of the so-called 'exceptional' legal remedies ('anapsilafisi' and 'anairesi').

3. Finally, consumer associations fulfilling certain conditions may file a representative action for the protection of consumers, under Article 10(16) of the Law on Consumer Protection (hereafter 'Representative Action').[23] A Representative Action may be filed by a consumer association having at least five hundred (500) active members, which has been registered in the Registry of Consumer Associations at least one year before the filing of the action. Alternatively, a Representative Action may be filed by a consumer association 'when the illegal behaviour harms the interests of at least thirty (30) consumers'. A consumer association may bring a Representative Action against a supplier who is in violation of various provisions of the Consumer Act, as well as rules on consumer credit; package travels; time-sharing; e-commerce; advertising; regulations governing the production, distribution, and use of medicinal products; legislation regarding television and radio etc. As a leading scholar has

[17] Article 10(3), Law on Consumer Protection. See also General Secretariat of Consumers, 'Registry of Consumer Associations' <http://www.efpolis.gr/el/synergasia-koinonikoi-etairoi/83-enoseis-katanaloton.html>

[18] Article 10(15), Law on Consumer Protection. This type has been classified as *'group action – lato sensu',* see P Kolotouros, 'The Subject-Matter of the Stricto Sensu Group Action' (opinion) [2015] DEE (Business and Company Law Review) p. 1189 (in Greek)

[19] Article 10(16)(d), Law on Consumer Protection

[20] Article 10(16), Law on Consumer Protection

[21] Article 10(20), Law on Consumer Protection

[22] Ibid

[23] P Kolotouros, The Subject-Matter of the Stricto Sensu Group Action, refers to this action as a 'group action- stricto sensu'

accurately noted, this indicative listing of examples covers the entire spectrum of contemporary transactions. Therefore there is practically no area of action by suppliers, falling outside the reach of the Representative Action.[24] This judicial remedy, which constitutes the only genuine collective redress mechanism in the Greek legal order, will be explored in the following subsection.

2. Representative Action in Consumer Protection

The report of the Hellenic Parliament's Scientific Service clarifies that the Representative Action is based on the continental model of actions brought by associations, such as the *'action associationnelle'* in French law or *'Verbandsklage'* in German law. The legal nature of the Representative Action is debated in the literature. According to one opinion[25], when a consumer association files a representative Action, it exercises a (substantive) right belonging to it; therefore the consumer association is both plaintiff and the (legal) person entitled to the right, the protection of which is sought before a court. According to a different opinion, a consumer association which files a Representative Action, does not seek the protection of a right belonging to it; rather it has an exceptional form of legal standing, but this standing *'does not correspond to a right, interest or a claim belonging to it'*.[26] This theoretical debate will not be explore further, but it should be noted that both views have strong arguments, which cannot be discredited easily

a. Competent Court

Representative Actions are adjudicated by the Court of First Instance (multi-judge formation or 'Polimeles Protodikio'), which has jurisdiction for the place of residence or establishment of the defendant.[27]

b. Procedural Framework

According to Article 10(16) of the Law on Consumer Protection, consumer associations may file 'any' Representative Action for the 'protection of the general interests of consumers'. Thereafter, this provision states that a Representative Action may have the following (indicative) claims:

1. The cessation of illegal behaviour of a supplier;[28]
2. Non-pecuniary damages, namely monetary compensation for 'moral damages';[29] or
3. A claim for interim measures (for the cessation of illegal behaviour or a claim for damages) until an enforceable judgment is issued.[30] This can include a claim for seizure of defective products, when the latter constitute a public health or safety hazard.

It should be noted that Representative Actions falling within the first two categories mentioned above, are subject to a special set of procedural rules, namely the rules for 'non-adversarial proceedings'.[31] This has a number of procedural consequences, the most important of which is the fact that the adjudicating court may order any measure necessary for determining the crucial facts of the case, as opposed to ordinary proceedings, where the court can only take into account the claims and allegations put forward by the parties. Finally, the Law on Consumer Protection states that the Representative Action must be filed within six (6) months from the illegal behaviour of the supplier.[32]

c. Standing

In respect to the conditions laid down in para. 4 points (a)-(c) of the Recommendation, consumer associations, under Greek law, have as their exclusive aim the protection of rights and interests of consumers as a group.

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[24] E Alexandridou/Ch Apalagaki in E Alexandridou (ed), Consumer Protection Law (Nomiki Vivliothiki 2015) p. 682 (in Greek)
[25] See E Alexandridou/Ch Apalagaki in E Alexandridou (ed), Consumer Protection Law (Nomiki Vivliothiki 2015) p675ff(in Greek)
[26] See P Kolotouris, The Subject Matter of the Stricto Sensu Group Action, ibid (n 24), p.1194 and the literature cited therein.
27 Article 10(19), Law on Consumer Protection
[28] Article 10(16)(a), Law on Consumer Protection
[29] Article 10(16)(b), Law on Consumer Protection; Mikroulea, Verbandsklage auf Schadenersatz im griechischen Verbraucherschutzgesetz, in Hopt/Tzouganatos, Euopaeisierung des Wirtschaftsrechts, 2006, p. 309.
[30] Article 10(16)(c), Law on Consumer Protection
[31] Article 10(20), Law on Consumer Protection. See also Article 739ff CCP.
[32] Article 10(18), Law on Consumer Protection

They, therefore, satisfy the criteria of points (a) and (b) of para 4 of the Recommendation regarding their non-profit making character and the existence of a direct relationship between their main objectives and the rights that are claimed to have been violated in respect of which the action is brought.

As regards point (c) of para 4 of the Recommendation, there are no requirements in respect to the entities' capacity in terms of financial and human resources, and legal expertise. The only requirement for bringing a Representative Action is that the entity must have at least five hundred (500) active members, meaning that they have fulfilled their financial obligations by having paid their membership fees. This requirement ensures a certain degree of financial capacity for the entity. However, in case that a Representative Action is brought on the grounds that at least thirty (30) consumers have been harmed by the alleged illegal behaviour of a supplier, the plaintiff entity is not required to satisfy the aforementioned requirement.

Besides the aforementioned requirements, consumer associations don't face any other duty to prove that they have the administrative and financial capacity to bring the claim.

The Consumer Act also stipulates that the certified status of consumer associations is revoked, when they don't demonstrate any activity for two years or violate certain provisions of the Consumer Act (e.g. the prohibition to accept donations from suppliers or political parties; the prohibition of using as their facilities the homes or headquarters of the natural or legal persons that participate in them; the prohibition of advertising in any way businesses of suppliers; the prohibition of having in their administrative board persons convicted for a series of offenses; the prohibition of providing remuneration to the members of their administrative board for their services).[33]

If the legal requirements for filing a Representative Action are not satisfied, then the consumer association is simply not entitled to bring it and the relevant application must be dismissed.

d. Injunctive Relief and Expediency

When there is need for a quick grant of an injunctive order, consumer associations may request the court to order interim measures. Under the Code of Civil Procedure,[34] the court may order interim measures when there is a 'case of emergency' or 'imminent danger'. Such an example would be the case of defective products which pose a risk to the safety or health of consumers. In that case, the Consumer Act states that the court may order the seizure of the said products.[35] Furthermore, under the procedural rules which apply to interim measures, the court may issue a 'provisional order' until it reaches a decision on the applications for interim measures.[36] Under a provisional order - which may be revoked by the court at any time[37] - the court may order any measure which it considers to be necessary.

Consumer associations will, however, face procedural difficulties to invoke and prove that there are circumstances which justify the granting of interim measures. Under the Consumer Act, when a consumer association files a Representative Action seeking injunctive collective redress, the claim will be adjudicated under a special set of procedural rules, namely the rules for 'non-adversarial proceedings', at the 'earliest possible hearing date'.[38] The adjudicating court may order any measure necessary for determining the crucial facts of the case, even those facts which have not been invoked by the parties, without being bound by the ordinary procedural rules regarding evidence (articles 744 and 759(3) CCP). There is no time limit for the full adjudication of claim. However, when a consumer association files a Representative Action, the claim is fixed to be examined at the 'earliest possible hearing date' (article 10(20) of the Consumer Act). Usually there will only be one hearing and the court will thereafter issue its judgment, the exact timing depending on the difficulty of the case and the volume of the evidence.

[33] Article 10(12) of the Consumer Act
[34] Article 682 Code of Civil Procedure
[35] Article 10(16)(c) of the Consumer Act
[36] Article 781 Code of Civil Procedure
[37] Article 781(2) Code of Civil Procedure
[38] Article 10(16)(a) and Article 10(20) of the Consumer Act; See Article 739ff Code of Civil Procedure

Therefore, the quick adjudication of cases under the rules for 'non-adversarial proceedings', will often impede the plaintiff representative entity from arguing that there is a 'case of emergency' or 'imminent danger', which justify the granting of interim measures.

Arguably, the subject matter of the Representative Action is not the resolution of a private dispute between the parties to the proceedings, but 'the determination of a legal fact or the creation of a new legal situation'.[39] This corresponds to the choice of the Greek legislature to select the rules on 'non-adversarial proceedings' for the adjudication of the Representative Action, as opposed to the ordinary rules on adversarial proceedings.

e. Res Judicata of the Representative Action

One of the most interesting legal question regarding Representative Actions, relates to the force of res judicata. Article 10(20) of the Law on Consumer Protection states that the court decision that is issued following a Representative Action (for damages or for the cessation of illegal behaviour) *'has force erga omnes, even if they were not parties to the proceedings'*.

Article 10(21) of the Law on Consumer Protection, grants the power to the Minister of Development to issue a ministerial order, obliging suppliers to abide to a court decision issued on a Representative Action. The Supreme Administrative Court (Council of State), in its decision 1210/2010 (plenary session) - which upheld the constitutionality of this legislative provision - seemed to confirm the opinion of those who adopt the broad interpretation of res judicata, according to which the force of res judicata of a Representative Action extends to suppliers who did not participate in the court proceedings. According to this provision, the Minister of Development may issue a ministerial order, specifying the terms and conditions for the compliance of suppliers' commercial behaviour to the res judicata of irrevocable court decisions on actions brought by consumers and consumer associations (Representative Actions). The law states that this power is exercised by the Minister, insofar as the consequences of the force of res judicata are of a 'broader public interest for the proper functioning of the market and the protection of consumers'. Envisaged are situations in which a consumer or a consumer association brings an action against a supplier regarding a general term or some form of standard practice followed by several suppliers. In order to ensure timely compliance with the decision, even by suppliers who were not parties to those proceedings, and in order to resolve a problem which impeded the normal function of the market, the Minister may clarify and codify in the above decision how suppliers are to behave in the future.

The Minister of Development has exercised the power awarded to him by the aforementioned provision, in the area of the general terms used by banks. Following several 'irrevocable' decisions issued by courts on actions by consumers and consumer associations, which had ruled that certain general terms of loan, credit card and deposit account agreements were abusive and thus void, the Minister issued a ministerial order in 2008, codifying all the abusive general terms and prohibiting their further use (as well as the use of any amended but equally abusive terms). The banks appealed against the ministerial decision before the Supreme Administrative Court (Council of State), which in plenary session ruled on the interpretation of art. 10 (21) law 2251/1994.[40] The Court, upholding the Ministerial Decision, clarified that the Minister has the power to specify the application of court decisions, without expressing any own judgment beyond that of the courts. In other words, the Minister does not assume the function of the courts, by ruling on individual cases, but merely specifies the terms under which suppliers shall abide to the res judicata of court judgments. The ministerial decision is based on court decisions, which are anyway binding erga omnes. Suppliers who were not parties to the proceedings, on which the court decisions were issued, are always entitled according to the Constitution and the ECHR to oppose to those erga omnes binding court decisions by means of third party opposition, as foreseen in the Greek Code of Civil Procedure. The banks that participated in the proceedings, argued that there was no reason of public interest which justified the adoption of the measure, as required under Greek law for issuing a ministerial decision. The Court rejected this argument since consumer protection authorities had received more than 1,500 complaints against those terms. Furthermore, the Court affirmed the Minister's power to additionally forbid terms essentially similar to those contained in the court decisions, in order to avoid circumvention of the

[39] See E Alexandridou/ Ch Apalagaki in E Alexandridou (ed), Consumer Protection Law (2015) p. 675 and the case law cited therein

[40] Council of State (Plenary session) 1210/2010 (NOMOS Legal Database); Rokas/ Gortsos/ Mikroulea/ Livada, Elements of Banking Law, 2016, p. 498 (in greek).

ministerial decision by the suppliers and because it would be impossible for the Minister to include all possible variations of the forbidden terms.

It should be noted, that after the Council of State delivered its judgment in the aforementioned case, the 2008 Ministerial order was amended twice.[41] Pursuant to these amendments, insurance companies are prohibited from using general terms and conditions, which have been declared unfair by courts, ruling on Representative Actions.

f. Protection of Consumers in Different EU Member States

The Law on Consumer Protection, which transposed the Directive 2009/22/EC on injunctions for the protection of consumers' interests, qualified entities from another Member State are entitled to bring an action for the collective interests of the consumers before the Greek courts.[42]

According to Article 10(30) of the Law on Consumer Protection, in the case of an infringement falling within the scope of Article 10(16) of the Law on Consumer Protection, 'any qualified entity from another Member State where the interests protected by that qualified entity are affected by an infringement' may seek judicial protection. Specifically, the qualified entity may file a Representative Action requesting the cessation of illegal behaviour of a supplier or it may submit a claim for interim measures.

As far as the question of legal standing is concerned, Article 10(30) of the Law on Consumer Protection states that the Greek courts and administrative authorities shall accept the list compiled by the European Commission pursuant to Article 4 of Directive 2009/22/EC, as proof of the legal capacity of the qualified entity to seek judicial protection. This is without prejudice to the right of courts and administrative authorities to examine whether the purpose of the qualified entity justifies its taking action in a specific case.

g. Funding

The Law on Consumer Protection does not contain provisions regarding the funding of a Representative Action. Under article 10(6) the resources of consumers' associations are exclusively: Registration fees, contributions and voluntary contributions from their members; income generated from their property; inheritance or bequest (legacy); grants from municipal or regional authorities; subsidies from the European Union, international organizations and international consumer associations; the amount of compensation for non-pecuniary damages that is awarded pursuant to a Representative Action (minus a percentage of 20% which is directed to the General Secretariat of Consumers for consumer protection purposes);[43] income generated from the distribution of publications and public events.

Others forms of private funding are not allowed. Every grant-decision by local or regional authorities, the EU, international organizations, and international consumer associations has to be notified to the General Secretariat of Consumer.[44] If a consumer association violates this provision of private funding then it will be subject to different penalties, as explained in detail in the next subsection (article 10 par. 27 of the Law on Consumer Protection). According to article 10(8), consumer associations are forbidden to accept donations, contributions and other forms of support from political parties or suppliers. Furthermore, consumer associations are forbidden to accept remuneration from its members, for the legal remedies (individual or collective) that were filed by the former for the protection of consumers.[45] Consumer associations are not required to declare the origin of any funding (e.g. membership fees etc) to the court at the outset of proceedings.

h. Out of Court settlements

In Greece out-of-court settlements are not common. Other forms of alternative dispute resolution are also available but - according to Greek Law - contrary to arbitration, a decision through an alternative dispute resolution mechanism is not binding on the parties.

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[41] See Ministerial Orders YA Z1-21/2011 (Government Gazette 21/B 18 January 2011) and Z1 -74/2011 (Government Gazette 292/B 22 February 2011

[42] Delouka-Igglesi, *Consumer Protection Law* (2014, in Greek), p.344-345. See Article 10(30), Law on Consumer Protection, which was introduced through Article 2(3) of the Ministerial Decision YA Z1-111 (Government Gazette B/627 7 March 2012).

[43] Article 10(22), Law on Consumer Protection

[44] Article 10(7), Law on Consumer Protection

[45] Article 10(25), Law on Consumer Protection

Mediation is one such form. The Law 3898/2010 (Government Gazette A/211 16 December 2010), which transposed the Directive 2008/52/EC into the Greek legal order, applies to mediation processes whereby two or more parties to a dispute attempt by themselves, on a voluntary basis, to reach an amicable agreement on the settlement of their dispute with the assistance of a mediator. Under this law, the mediation process applies in civil and commercial matters. However, the law explicitly states (article 2) that this procedure does not apply to rights and obligations on which the parties are not free to decide themselves under the relevant applicable law. Such rights and obligations are particularly frequent in family law and employment law.

Also of importance is the Hellenic Consumers Ombudsman (L. 3297/2004, Government Gazette A/259 23 December 2004)[46], which is an Independent Authority. It functions as an independent agency of out-of-court dispute resolution in the area of consumer disputes.

Article 11 of the Consumer's Act establishes the institution of 'Committees of Amicable Settlement'. These are responsible to resolve out-of-court disputes between a consumers and suppliers. The initiation of this alternative dispute resolution process is at the discretion of consumers.[47] Pursuant to the Law 3852/2010 [article 94(2)], the powers of the Committees of Amicable Settlement have been transferred to the country's municipalities. The Consumer Ombudsman functions as quasi-Appellate Body having the power to review the reports of the Committees, in order to ensure the consistent application of the law.

The European Consumer Centre of Greece (ECC-Greece) was launched in 2005, under the auspice of the General Secretariat of Consumers. As from 1-1-2012, ECC-Greece has been operating under the auspice and with the support of the Hellenic Consumer Ombudsman, an Independent Authority of the public sector mandated with the out-of-court consensual settlement of consumer disputes.[48] The operation of ECC-Greece is also foreseen in article 22 of Law 3844/2010 (which transposed Directive 2006/123/EC into the Greek legal order) as contact point for providing information to consumers as regards – *inter alia*: information relating to rules on consumer protection; the means of redress available in the case of a dispute between a supplier and a consumer; and the contact details of associations or organizations, from which consumers may obtain practical assistance.

Another institution worth mentioning in the banking and investment sector, is the Hellenic Ombudsman for Banking-Investment Services (HOBIS). This is a private, non-profit entity which was formed in 2005, following the merger of the Banking Ombudsman and the Investment Ombudsman. It examines disputes arising from the provision of banking and investment services, aiming at their amicable settlement.[49]

Of importance is also SOLVIT, which is a service provided by national authorities across the EEA. The Ministry of Finance operates as the national SOLVIT centre in Greece. SOLVIT is free of charge. It is mainly an online service. SOLVIT can provide assistance to businesses or individuals who claim that their EU rights are breached by public authorities.[50] SOLVIT aims to find solutions within 10 weeks, provided that the case has not yet been taken to court.

In consumer law cases, it is highly unlikely that any settlements will be examined by courts. If a settlement is achieved under the auspice of the Hellenic Consumers' Ombudsman, the said settlement will not be examined by a court, whereas the Ombudsman will not express a judgment on the fairness or unfairness of the settlement terms.

Moreover, if the parties reach an amicable agreement on the settlement of their dispute with the assistance of a mediator accredited under Law 3898/2010,[51] the parties may choose to file the original document to the secretariat of the Court of First Instance ('Single-judge formation' or 'Monomeles Protodikeio'), where the mediation was achieved. In these cases, the court will not verify whether the rights and interests of the parties

[46] Papaioannou/Tziva in A*lexandridou, E.,* Consumer Protection Law, p. 715 (in Greek).
[47] Papaioannou/Tziva in A*lexandridou, E.,* Consumer Protection Law, 2015, p. 721 (in Greek)
[48] Papaioannou/Tziva in A*lexandridou, E.,* Consumer Protection Law, p. 742.
[49] Papaioannou/Tziva, in Alexandridou*, E.,* Consumer Protection Law, p. 739, *Karakostas*, I., General Conditions of Transactions, 2001, p.128 (in Greek).
[50] *Papaioannou/Tziva, in Alexandridou, E., p. 743*
[51] Article 11 of the Law 3898/2010 (Government Gazette A/211 16 December 2010)

are protected, as this procedure merely aims to render the minutes of the settlement enforceable,[52] without examining the substance of the mediation.

i. Limitation Periods & ADR

The limitation or prescription periods are suspended in respect to ADR of domestic and cross-border disputes concerning contractual obligations stemming from sales contracts or service contracts between a trader established in the Union and a consumer resident in the Union through the intervention of an ADR entity which proposes or imposes a solution or brings the parties together with the aim of facilitating an amicable solution.[53] The filing of an application for ADR suspends the limitation or prescription periods, throughout the duration of the procedure. After the completion of the procedure, the suspended limitation or prescription periods resume.[54]

Moreover, the limitation or prescription periods are also suspended, in respect to mediation processes under Law 3898/2010.[55]

j. Loser pays principle

According to article 176 of the CCP, the losing party is ordered to pay the litigation costs, which include both the court costs and lawyers' fees. The Greek legislator links the 'loser pays principle' to the principle of fault. The losing party is deemed to be responsible for the court proceedings and for that reason must pay all litigation costs. However, in case of partial winning and partial defeat of each litigant the court may apportion the legal costs in proportion to the extent of the success of each litigant's arguments.[56] In such cases, the Court will also set the lawyers' fees. In case where the 'interpretation of the invoked rule of law' was difficult and, as a result, the outcome of the trial was reasonably uncertain, the Court may set off legal costs between the litigants.[57] In addition, Art. 185 CCP provides that all or part of the expenses may be imposed on the winning party if 1) the judge decides that the winning party has not complied with the 'duty of truth' ; 2) if this party proposed a procedural means of 'offence' or 'defence' or produced a piece of evidence at a late stage of trial, whereas the judge decides that it could have been proposed or produced earlier, 3) this party is responsible fot he invalifity or a procedural action or of the hearing.

k. Remedies

Non-pecuniary damages can be awarded in representative actions. In such cases, these damages take the form of punitive damages that is awarded to the organisation and must be used for further consumer protection purposes. This remedy may also be pursued by the competent chambers of business, commerce and industry.[58] The Greek Legislator expressly imposes this penalty only once on the same person, regardless of the frequency of their illegal actions, in conformity with the basic principle *ne bis in idem.*[59] Finally, according to article 10(22), part of this compensation (20%) is given to the General Secretariat for Consumers, with the aim of financing activities relevant to consumer protection.

l. Enforcement of Injunctive Orders

According to Article 947 of the Code of Civil Procedure, in cases of injunctive relief, the court decision may state that the defendant supplier is liable to pay a monetary penalty up to one hundred thousand euros (€100,000) for any violation of the injunctive order, which is awarded to the plaintiff. Moreover, the injunctive order may impose detention up to one year against the incompliant supplier. If the aforementioned penalties are not

[52] Article 9 of the Law 3898/2010

[53] See Joint Ministerial Decision 70330/30.6.2015 (Government Gazette B/1421 9 July 2015). This Ministerial Decision transposed into the Greek legal order the Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR)

[54] Article 11 of the Joint Ministerial Decision 70330/30.6.2015

[55] Article 11 of the Law 3898/2010 (Government Gazette A/211 16 December 2010)

[56] Article 178 CCP

[57] Article 179 CCP

[58] Article 10(24), Law on Consumer Protection

[59] See St. *Mathias*, Collective Redress (1993) Elliniki Dikaiosini . p. 3 (in Greek). See further Areios Pagos 1219/2001, 589/2001 (2001) DEE (Business and Company Law Review) p.1117, 1128

included in the injunctive order, the consumer association may file an application to the Court of First Instance ('Single-judge formation' or 'Monomeles Protodikeio'), requesting the imposition of the said penalties.[60]

If a supplier does comply with an injunction ordering the recall, seizure, or destruction of defective products, then Article 945 of the Code of Civil Procedure stipulates that the consumer association may enforce the order itself at the cost of the supplier.

There is no formal-judicial mechanism for monitoring compliance with an injunction order. Essentially, the party who filed the injunctive request, will monitor whether the defendant has complied with the court order. If the defendant refuses to comply with the court's decision, the plaintiff will file a request to the Court of First Instance ('Single-judge formation' or 'Monomeles Protodikeio'), for the enforcement of the injunctive order. Finally, under the Greek Criminal Code,[61] a supplier that does not comply with an injunctive order may face a minimum sentence of imprisonment for six (6) months, when the requirements of that provision are satisfied.

B. Competition Law

Greece does not have a sectoral mechanism in place for mass harm situations produced by violations of competition law and the country has yet to transpose Directive 2014/104/EU on antitrust damages actions into national law. In Greek law there is no special provision of private enforcement of competition law. Actions in civil courts are based on the general provision of the Greek Civil Code (GCC) on torts. Article 914 of the GCC provides that any person who has caused illegally and through his fault harm to another shall be liable for compensation'.[62] Furthermore, the Greek lower courts have held that a violation of the 1977 Competition Act[63] can also be classified as an illegality in the sense of art. 914 GCC.[64] The Supreme Civil Court (Areios Pagos) seemed to accept that a violation of the 1977 Competition Act constituted a tort,[65] and later decisions accepted that violations of the new Competition Act which replaced the previous regime (Law 3959/2011) can qualify as torts if the other elements of torts are also fulfilled (fault, prejudice/damage and causality between the unlawful act and the harm).[66] The enactment of Regulation 1/2003 did not bring any changes to the legal status of private enforcement of competition law. Another provision allowing actions for damages in case of antitrust infringements is article 919 GCC, which reads: 'Anyone who willfully causes harm to another person in a manner contrary to bonos mores is liable to [pay] compensation'.

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[60] Article 947 Code of Civil Procedure. The Court of First Instance will follow the procedural rules of Articles 614ff Code of Civil Procedure.

[61] Article 232A(1) of the Greek Criminal Code

[62] *C. Taliadoros,* Translation of Greek Civil Code, 2000 (in Greek). See also *D Papadopoulou-Klamari /A Mikroulea,* Private Enforcement and Collective Redress, FIDE XXVII, Congress Budapest, 2016 , Vol. 2 (Greece National Report), L Athanassiou, Collective Redress and Competition Policy, in A Nuyts and N E. Hatzimihail (ed.), Cross Border and Class Actions, 2014, p. 145, I *Symplis*, Damages Actions, Greek Report, in B. Cortese (ed.), EU Competition Law between public and private enforcement, 2013, p.269.

[63] Law 703/1977 which has been replaced by Law 3959/2011

[64] , D. *Tzouganatos,* Competition Law in Greece, 2015, p. 118=International Encyclopedia of Laws/Competition Law, Volume Greece, 2015, p. 118, *I Soufleros, Regulation 1/2004, 2015 (in Greek), I Soufleros, Directive 2014/104/EU and its relation to Regulation 1/2003, NoB (Legal Tribune)2015, 921 (in Greek), Art.6 (2), M. Marinos,* Unfair Competition (in Greek), 2015, p. 21, L. *Athanasiou,* in Tzouganatos, Free Competition Law, Ch. 24, Civil Claims 9 (in Greek), 2013, p. 1275, G. *Triantafillakis,* Competition Law (in Greek), 2013, p. 132, *C. Iliopoulos,* Verstoß gegen Art. 85, 86 EWGV und Schadensersatz nach griechischem Recht, Europarecht 1986, 292, C. *Iliopoulos*, Die Anwendung des Europäischen Kartellrechts in Griechenland – Die Rechtsprechung der griechischen Gerichte und die Entscheidungspraxis der griechischen Kartellbehörde, 1999, *C. Iliopoulos, , Competition Law in Greece* (1981-2005), 2006 (in Greek), A. Mikroulea, Collective Redress in European Competition Law, ZWeR 2017, A. *Mikroulea ,* Private Enforcement, FIDE XXIV, Congress Madrid, 2010,Vol. 2, p. 231, D.P.*Tzakas*, Collective redress in the Field of EU Competition Law. The Need for an EU Remedy and the Impact of the Recent Commission Recommendation in Legal Issues of Economic Integration, 41 (2014), No. 3, p. 225, 229,

[65] Minority view in the decision 2/1989, 1989 EEmpD (Commercial Law Review), 657 (in Greek).

[66] *A. Delikostopoulou ,* Private Enforcement in favour of consumers (in Greek), in Kokkoris/Lianos, The Reform of Competition Law, 2008, p.434, *E Trouli,* The Green Paper on Damages Actions for Breach of the EC Antitrust Rules (in Greek), 2007 Evropaion Politeia (European State), p. 930, *A Bouhagiar,* Civil liability for EC competition law infringements (in Greek), 2009, p. 35.

In principle pecuniary damages and non-pecuniary (moral) damages are available in these claims. Damages may include restitution in kind (in natura), according to article 297 GCC, at the discretion of the court. Restitution in kind is however the exception. In the case which gave rise to the Decision 6042/2002 of the Athens Court of Appeal, [67] the plaintiff, a pharmaceutical wholesaler, brought an action against the subsidiary of a pharmaceutical company that refused to supply medicinal products, requesting that the defendant be ordered to supply. The plaintiff claimed that the defendant refused to supply it with the requested quantities of medicines, whilst the defendant allegedly satisfied in full orders placed by other wholesalers. The Court of Appeal held that a refusal to supply constituting a breach of Article 1 of Law 703/1977 is an illegal conduct under Article 914 of the Greek Civil Code and, provided that the other requirements of Article 914 CC are fulfilled, any person suffering damage as a result of such illegal conduct has a right of compensation. Such compensation may also be awarded in kind, i.e. by obliging the defendant to continue to supply the plaintiff.

1. Remedies

The remedy of injunction (cease and desist order) in cases of antitrust infringements is disputed in legal theory. Greek law does not foresee a general remedy of injunction. According to the Greek Code of Civil Procedure (CCP) there are two main kinds of actions that are available in civil cases: action for performance/injunction and action for recognition/declaration. Through the latter the plaintiff seeks a judgment confirming the existence or non-existence of a legal relation. Through the former action the plaintiff can seek a judgment obliging the defendant to specific performance/behaviour, an injunction or the adjudication of damages.

Article 25(5) of the Competition Act (Law 3959/2011) stipulates that a grant of interim relief by the HCC does not prejudice the competence of the civil courts. The Hellenic civil courts are allowed to order the general provisions of CCP. Civil courts can give an interim relief order, according to Article 682, when there is a 'case of emergency' or a 'need to avoid an imminent risk'. The Court can order - among other measures - the grant of warranty, the temporary seizure, the temporary adjudication of a claim and the temporary regulation of the situation.[68] It has to be pointed out that the HCC can also order interim measures provided that an imminent danger of irreparable damage to the public interest is substantiated. HCC can order interim measures either on its own or on petition of the Minister of Finance if an antitrust violation is reasonably foreseen.

2. Private Enforcement, stand alone and follow-on claims

Stand-alone actions are possible under Greek law, but they have not been very frequent. Claims of competitors or consumers have not been common until now. The most known cases involving a refusal to deal concerned civil suits that were brought by wholesalers regarding parallel imports. These cases reached the ECJ.[69] An example of refusal to deal can be seen in the case of 'OPAP' (Hellenic Organization for Football Prognostics SA), which was found to have abused its dominant position and consequently damages were awarded.[70] The Supreme Court concluded that, on the facts of the case, the behavior of OPAP constituted both an abuse of dominant position and a common civil tort, under Article 919 GCC and awarded damages equal to the profits realized by the third party who had been offered a contract instead of the plaintiff. Follow-on actions have also not been frequent. One main reason for that is the procedure before the Hellenic Competition Commission (HCC) is usually lengthy and time limitation for private actions under the provisions on torts are five years from the time when the damage and the identity of the tortfeasor were known. Therefore, potential plaintiffs fear that awaiting for a decision of the HCC may cause their claims to become statute-barred. There is no suspension of limitation periods until the HCC reaches its decision. It is expected, however, that the law transposing the antitrust damages directive will include a provision suspending the limitation period.

A case where a complaint to HCC was accompanied by a civil action was *'I. Milopoulos and Co. v. Masterfoods BV and Katastimata Aforologiton Eidon AE (Hellenic Duty Free Shops - HDFS)'*. The complainant (I. Milopoulos and Co.) was the exclusive distributor of Masterfoods BV products for the Greek travel retail market. In 2004 its contract was terminated, as a result of a direct supply agreement between HDFS and Masterfoods BV. The complainant brought a complaint before the HCC, alleging that the two companies entered into an agreement

[67] (2003) DEE (Business and Company Law Review), p.282
[68] Tzouganatos, D., Competition Law in Greece, p. 128.
[69] C 53/03 Syfait and others (2005) and Joined Cases C 468/06 to 478/06 Sot. Lelos kai Sia and others (2008)
[70] Areios Pagos (Supreme Court) 1497/2009 (NOMOS Legal Database)

to terminate the complainant's contract, in violation of article 1 of the 1977 Competition Act (replaced by Law 3959/2011). The complainant also alleged that HDFS abused its dominant position in the Greek travel retail market, with the purpose of excluding the complainant from that market. The complainant subsequently reached a settlement with Masterfoods BV and withdrew the first part of complaint (the terms of the settlement are confidential, therefore no further comments can be made). The complaint against HDFS was rejected by the HCC[71] on the grounds that: (1) there was general policy on the part of HDFS to enter into direct supply contracts with manufactures and refuse to be supplied by resellers and; (2) this policy was objectively justified on efficiency grounds and was beneficial to consumers. An appeal against the HCC decision was rejected by the Administrative Court of Appeal of Athens[72] and the Council of State.73 An application for annulment is currently pending before the Council of State. A civil action against HDFS is also pending at the moment.[74]

Among the hard-core abuses that have been investigated by the HCC, few cases were likely candidates for follow-on actions. This is true of both cartel and abuse of dominance cases. A good example constitutes the milk cartel case.[75] In that particular case, a horizontal price-fixing agreement was complemented by vertical resale price maintenance agreements between dairy producers and supermarket chains. Under the circumstances, even if the cartel overcharge had affected the overall profits of the retailers, by reducing their turnover (something highly unlikely, given the low price elasticity of demand and limited substitutability of the relevant products), it is safe to assume that any disputes between producers and retailers will be amicably settled in the course of their ongoing commercial relationship. At the same time, a collective action by consumers, in such cases was clearly futile even without taking into account any of the other usual and well-documented problems (standing of indirect purchasers, proof of passing-on, cost-effectiveness). Other cases with horizontal price-fixing agreements in markets for non-uniform products or services are less suitable for collective actions.[76] In such cases, in the absence of product uniformity, a separate counterfactual competitive price must be calculated for each individual case, something extremely difficult to do in a cost-effective manner.

There is a strong possibility that the cases that are likely candidates will be either settled out of court or are still pending, as the potential plaintiffs are still waiting for the outcome of the appeals against the decision of the HCC and are not in a hurry to bring a claim before the civil court or to ask for an early date for a trial.

3. Consumer Law Representative Action and Competition mass claims

It should be noted that the Law on Consumer Protection indicates certain provisions, the violation of which may give rise to a collective action. Although the competition law provisions are not laid down, it is unanimously accepted in the legal literature that since the enumeration is not exhaustive, anti-competitive practices by suppliers may trigger collective redress proceedings.[77] However, the provisions of consumer protection law would a very imperfect solution for antitrust violations.[78] Courts have not dealt with actions filed by consumer associations pursuant to violations of Competition Law. However, consumer law might be an inappropriate means for addressing antitrust violations for a number of reasons.[79] First, consumer law does not provide

[71] HCC 364/2007
[72] Administrative Court of Appeal of Athens, 2057/2010
[73] Council of State, 3123/2014.
[74] I Symplis, Damages Action, Greek Report, in B Cortese (ED.), EU Competition Law between public and private enforcement (2013) p. 269
[75] Judgment of the CJEU of 10 February 2004, case C-85/03 *Mavrona & Sia OE v. Delta Etairia Symmetochon AE* [2004] ECR-I1573, 272.
[76] See e.g. HCC 460/V/2009, *Audatex and others*, a case involving an agreement among car insurance companies to impose uniform hour rates for car repairs. The decision was quashed by the Athens Administrative Court of Appeal on technical grounds. See Athens Administrative Court of Appeal n. 2132-5/2010. See also HCC 518/V/2011, a case involving price fixing (uniform fees)
[77] D.Tzouganatos, Competition Law in Greece, ibid, p. 129 (in English), D. Avgitidis, (2015) DEE (Business and Company Law Review) p. 673; A. Delikostopoulou, in I. Kokkoris/I. Lianos, p. 441, (in Greek). L. Athanasiou, in Tzouganatos, Competition Law, 2013, p. 1343 (in Greek); A. Papadelli, 'From the White Paper to the Unofficial Proposal for a Directive' [2010] DEE 662.
[78] See D Avgitidis, 'Actions for Damages for Violations of Competition Law' (2015) DEE (Business and Company Law Review) p. 673; A Delikostopoulou, in I Kokkoris/I Lianos, p. 441, (in Greek); L Athanasiou in Tzouganatos, Competition Law, 2013, p. 1344 (in Greek) A Papadelli, 'From the White Paper to the Unofficial Proposal for a Directive' [2010] DEE (Business and Company Law Review) enp. 662.

guidance to several contentious questions which will arise in proceedings regarding antitrust violations, such as: the precise way of allocating damages which have been adjudicated to a large number of consumers; the way of financing a collective action; the disclosure of evidence etc. These questions are addressed through Directive 2014/104/EU as far as individual actions are concerned, but in the area of collective redress there is a legislative gap. Furthermore, some provisions of Consumer Law are inappropriate for the specific area of Competition Law violations. For instance, under Consumer Law, a Representative Action must be filed within six (6) months from the last demonstration of illegal behaviour by a suppler or producer.[80] This short time frame is inappropriate for antitrust violations, where detection of infringements is extremely difficult. This is particularly the case for cartel violations, as participants in cartels take extreme caution to avoid detection.

4. Unfair Competition

Article 10 of the Law 146/1914 on unfair competition allows individual traders, trade and industry associations, and chambers of commerce to bring an action before the courts seeking an injunction against traders for unfair competition. Such associations may seek injunction against traders violating article 1 of the said law (general clause against unfair competition), article 3 (prohibition of inaccurate statements about price, quality, origin etc. of products), articles 6-8 (exceptional sales and discounts), and article 9 (regulation of sale of specific goods). The legislator, in recognising the right of trade associations to seek an injunction, intended to introduce some sort of 'self-regulation', in cases in which individual traders would be reluctant to bring individual actions against infringers of the law. An action by a trade association presupposes a) that the act, against which the injunction is sought, affects the interests of a member of the association, and b) that the protection of the interests of its members is within the purpose and the scope of the association's articles of association.[81] For example, the association of bus owners is entitled to bring an action against taxi drivers for unfair competition in the form of offering illegal competing transport services.[82] However, a trade union (as opposed to a trade association) does not have standing to bring such action, since it is not directly affected by the action, against which infringement is sought, and trade unions are not included in the persons entitled to bring actions according to art. 10 of law 146/1914.[83]

5. Lawyers' Fees

Lawyers' fees are freely negotiable. In many cases they are determined by reference to the fees set out in the Code of Lawyers (Law 4194/2013), which apply when there is no written agreement between client and lawyer. In particular, the Code of Lawyers provides the remuneration of lawyers for drafting a lawsuit for damages and submitting pleadings before the civil courts equates to a certain percentage of the amount claimed, as follows: 2% claims up to 200.000 euros; 1.5% for claims between 200.001 to 750.000 Euros; 1% for claims between 750.001 to 1.500.000 Euros; 0.5% for claims between 1.500.001 to 3.000.000 Euros; 0.3% for amounts between 3.000.001 to 6.000.000 euros; 0.2% for amounts between 6.000.001 to 12.000.000 euros; 0.1% for amounts between 12.000.001 to 25.000.000 euros; 0.05% for claims exceeding 25.000.000 euros. It is reiterated that these percentages apply if the parties have not agreed otherwise in a written agreement. The law also provides the option of contingency fees

In our opinion, the abusive litigation and/or frivolous litigation can arise based upon the lawyers fees systems due to the way in which lawyers are remunerated on the basis of hourly rates,[84] which is often the case when the defendant is a corporation. This might negatively impact the incentive to litigate, as it will be in the interest of lawyers to increase their billable hours as much as possible.

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[79] See D Avgitidis, 'Actions for Damages for Violations of Competition Law' (2015) DEE (Business and Company Law Review) p. 673; A Delikostopoulou, in I Kokkoris/I Lianos, p. 441, (in Greek); L Athanasiou in Tzouganatos, Competition Law, 2013, p. 1344 (in Greek) A Papadelli, 'From the White Paper to the Unofficial Proposal for a Directive' [2010] DEE (Business and Company Law Review),p. 662.

[80] Article 10(18), Law on Consumer Protection.

[81] Marinos, Unfair Competition, 3rd ed. 2015, p. 398 (in greek).

[82] Court of Appeals of Larissa, 25/2014

[83] Areios Pagos, 1125/2011.

[84] Article 59 of the Lawyers' Code

It is not clear to us how contingency fees affect the incentive to litigate.[85] In some of the cases we have witnessed, contingency fees have facilitated access to justice, especially in high-cost litigation which requires the involvement of specialists. Also, there have been cases of multi-party disputes, in which the choice of contingency fees have facilitated settlements. Namely, in light of the long time required for a judgment to become final in Greece, the lawyers of claimants will often have an incentive to reach a quick out-of-court settlement. However, it is also possible that contingency fees may relate to the problems described above. For instance, we have witnessed cases regarding damages claims pursuant to car accidents, where contingency fees have been associated to the filing of unreasonably high claims. In this line of cases, contingency fees are very common. Since the defendant is almost always an insurance company with significant turnover, this can inflate the amount claimed by plaintiffs. However, since the picture regarding contingency fees is mixed, we hesitate to condemn the use of contingency fees in every case.

6. Funding

Funding regarding actions for damages is not available in Greece. The Greek legislator has not predicted forms of funding for private enforcement litigation in competition law.

C. Labour Law

Article 622 CCP (ex article 669)[86] grants certain procedural rights to professional associations in relation to labour disputes.[87] This provision covers professional associations of both workers (trade unions) and employers, which have acquired legal personality. Professional associations of either workers or employers, are ranked as first, second and third-level trade unions. All levels of professional associations may make use of the procedural rights laid down in Article 662 CPP. On the other hand, according to the widely-held view in the literature, the provision of article 622 should be deemed to have been implicitly repealed in relation to professional chambers, pursuant to the Law 1876/1990.[88]

Article 622(1) CCP recognises the right of professional associations to initiate court proceedings, including applications for interim measures, for the protection of the rights of their members. The member of the professional association, in the interest of whom the latter has filed a law suit, might decide to file an individual suit, without being impeded by the pending law suit filed by the association. A professional association may not initiate proceedings, if the interested member has explicitly expresses their disagreement thereto. Court proceedings initiated under this provision, must arise either from a collective bargaining agreement or from provisions which are equated to a collective bargaining agreement; namely an arbitral award or a ministerial order. Trade unions do not have standing to sue for rights that arise from other sources, such as labour law or an individual employment contract stipulated between an employer and an employee. Should a trade union submit an action under this provision on the grounds of a right arising from an individual employment contract, then the court will issue a ruling of inadmissibility; if it, nevertheless, proceed to examining this action, its judgment can be appealed at the Supreme Court (article 559(14) CCP).

Furthermore, under article 622(2) CCP, professional associations may intervene in a trial between other parties, in support of their members, at any stage of the proceedings until a final judgment is issued. The pending trial in which the professional association intervenes, may relate to any claim and not only to rights arising from a collective bargaining agreement. Thus, a trade union might intervene in proceedings between an employer and an employee, in order to support the claim of its member for the payment of unpaid wages or for the declaration of the illegality of redundancies.

Finally, under article 622(3) CCP, professional associations may intervene in any trial which involves the interpretation and application of a collective bargaining agreement to which the professional association is a party. This right extends to any other provision which is equated to a collective bargaining agreement; i.e. a

[85] Article 58 of the Lawyers' Code

[86] Pursuant to Law 4335/2015 (n 7), the provision of article 669 was renamed to article 622

[87] See articles 614(3) and 621 CCP

[88] See Plevri in Ch Apalagaki (ed), Code of Civil Procedure: Interpretation of the Articles (4rd edn, Nomiki Vivliothiki 2016), art 622 (in Greek); K Kerameys/ D Kondylis /N Nikas (eds), Interpretation of the Code of Civil Procedure, art 669 (in Greek)), both referring to K Papadimitriou 'Locus Standi of Professional Associations Pursuant to the Provision of Article 669(1) CCP' (June 1990) Diki p. 497 (in Greek)

ministerial order which is binding for the intervening association or an arbitral award pursuant to an arbitration procedure wherein the intervening association participated. The procedural right set out in article 622(3) CCP serves the protection of the collective interest which depends on the outcome of the trial.[89] However, scholars have expressed scepticism for the utility of this procedural right, as the res judicata of the judgement is not automatically extended to a wider group of persons but is binding only for the parties to the ad hoc proceedings.[90]

It is obvious that the article 622 cannot qualify as a collective redress mechanism. First, a wide array of rules, such as those contained in individual employment contracts or legislative provisions, fall outside the scope of article 622(1) and 622(3). This seems hardly consistent with the apparent aim of these provision, which is the protection of workers. Thereafter, when mass harm situations arise, trade unions may not bring representative actions pursuant to article 622, but may only intervene in proceedings initiated by their members. This effectively reduces the utility of article 622 CPP as a mechanism for injunctive or compensatory collective redress. In the absence of a collective redress mechanism, the relief of the harmed persons depends on them bringing individual actions, which might or might not be joined under the rules on ordinary joinder of parties (article 74 CCP). In the past decade, Greek courts dealt with two high-profile cases regarding collective redundancies, which involved preliminary references to the Court of Justice of the European Union.[91] Both cases concerned the lawfulness of collective redundancies, which followed the termination of the activities of production units. As there were no collective redress mechanisms available under Greek law, the claims of the employees made redundant, in both cases, were submitted under the rules on ordinary joinder of parties. Moreover, in both cases there was a large number of plaintiffs. However, the law did not provide for a collective representative action, brought by a representative entity, whereas trade unions could only intervene in support of the plaintiffs. The lack of available collective redress mechanisms in those cases, significantly raised the cost of litigation and undermined the effective legal representation of the parties to the dispute.

D. The 'Pilot Trial' in Administrative Procedural Law

In 2008, the Greek Parliament introduced the mechanism of 'pilot trial' into the administrative procedural law.[92] This mechanism, which is based on the German model, provides an important procedural instrument, which facilitates the swift adjudication of administrative cases, whilst countering the risk of conflicting rulings. In particular, when a case pending before an ordinary administrative court relates to an issue of wider public interest, which affects a broad number of persons, the mechanism of pilot trial allows, under certain condition, this case to be referred to the Supreme Administrative Court (Council of State) for adjudication.[93] Should this happen, all trials pending before ordinary administrative courts, which involve the same crucial issue, are automatically suspended and the parties thereto can intervene in the proceedings before the Supreme Administrative Court. After the Supreme Administrative Court has ruled on the crucial issue it examined, it can refer the case back to the competent court. The judgment delivered by the Supreme Administrative Court is binding for the parties of the case which was adjudicated before it, including the intervening parties. Furthermore, this 'pilot' judgment, will pave the way for the subsequent development of the case law. This mechanism can potentially affect the outcome of court proceedings which involve a large number of persons. The judgement delivered by the Supreme Administrative Court ensures that courts faced with a legal issue of general interest will follow a consistent approach. Some Greek scholars, including the first of us, believe that such reform would constitute an effective solution for compensatory collective redress in the field of competition law.

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[89] Areios Pagos (Supreme Court, Plenary Session) 8/2011 (NOMOS Legal Database);

[90] See See Plevri in Ch Apalagaki (ed), Code of Civil Procedure: Interpretation of the Articles (4rd edn, Nomiki Vivliothiki 2016), art 622 (in Greek); K Kerameys/ D Kondylis /N Nikas (eds), Interpretation of the Code of Civil Procedure, art 669 (in Greek).

[91] Joined cases C-187/05 to C-190/05 *Agorastoudis and Others* ECLI:EU:C:2006:535, [2006] I-07775; Case C-270/05 *Athinaïki Chartopoiïa* ECLI:EU:C:2007:101, [2007] I-01499

[92] See Article 39 Law 3659/2008 (Government Gazette A/77 7 May 2008) and subsequent amendments

[93] P D Dagtoglou, *Administrative Procedural Law* (6th edn, Sakkoulas Publications Athens-Thesasaloniki 2014) 323; F Arnaoutoglou, The pilot trial (Nomiki Vivliothiki 2012); E Klouda, The pilot trial (Ant Sakkoulas 2013) (in Greek)

E. Environmental Protection

Greek Law contains a number of provisions in the area of private law for the protection of the environment. The Greek Civil Code (GCC) allows injunctive or compensatory redress through the provisions regarding the protection of personality (article 57 GCC). Claimants may also bring actions based on the provisions of the GCC on torts (article 914 GCC). Property law offers an additional legal basis for protection against 'emissions' (article 1003ff GCC). The legislator has introduced a special legal basis allowing plaintiffs to bring a compensatory claim on damages on the grounds of article 29 of the Law 1650/1986.[94] Finally, under the law on consumer protection, producers may be liable for any damages caused by their defective products, including damages arising from harm to the environment.

1. Standing

Article 57 states that any person whose personality has been violated, has the right to claim that this violation is rectified and not repeated in the future. The term 'personality' encapsulated a wide array of features and values which comprise the essence of human nature. Therefore, the aim of this provision is to protect fundamental aspects of one's personality, such as their name, honour, beliefs etc. The law does not offer an exhaustive description of those aspects which fall within the umbrella of 'personality', as societal developments may render necessary to protect other aspects of one's existence by means of the article 57 GCC.[95]

Greek courts have accepted that this provision can provide the means for the protection of the environment. Is should be noted that the environment is not protected per se under the provisions of the GCC. Nevertheless, it is accepted that the environment is a fundamental factor which affects the personality of individuals, as human beings' survival and development depends on it.[96] The environment is the natural space wherein individuals may participate in societal life.[97]

Moreover, under the provisions of the GCC (articles 966ff) many of the things that constitute the environment are protected as things 'common to all' and 'things destined for public use'. These concepts fall within a wider category of 'things falling outside of commerce'. The law recognises a right of individuals to 'use' (enjoy) collectively the things which are 'common to all' and 'destined for public use'. This right is inextricably connected to the personality of the individual.

The combination of the abovementioned provisions of the GCC ensures an adequate legal basis for the protection of the environment arising from the personality of the individual. According to article 57 GCC, two conditions must be fulfilled in order for an individual to seek judicial protection on the grounds of the violation of their personality: 1) there must be a violation of one's personality; 2) this violation must be illegal. When these conditions are satisfied, a plaintiff may seek judicial protection on the grounds of article 57 GCC requesting that the violation is rectified or that the violation is not repeated in the future. Furthermore the plaintiff may submit a claim for damages, based on the provisions on torts (articles 57, 914 GCC), including a claim for non-pecuniary damages (article 59 GCC).

2. Law 1650/1986 for Environmental Protection

Article 29 of Law 1650/1986 states that any legal or natural person who causes pollution or any other degradation to the environment, is liable to pay compensation for damages. Under this provision, any person who has caused harm to the environment, is liable to pay compensation for damages, even if they are not found to be at fault or negligent (system of strict liability). The system of strict liability constitutes the main advantage of this provision vis-à-vis the traditional rules on torts. The provisions on torts place an excessive burden upon the injured parties, who have to prove that the opponent party was at fault and furthermore that there is a causal link between the damages and the defendant's wrongdoing.

Despite the apparent advantages of this provision, plaintiffs have not yet brought forward any compensatory actions on the grounds of article 29 of Law 1650/1986. The inertia of this provision has to do with its vague

[94] Government Gazette A/160 16 October 1986
[95] Ioannis K Karakostas, *Civil Code: Interpretation – Commentary – Case Law, vol 1* (Nomiki Vivliothiki 2005), art 57
[96] Ioannis K Karakostas, *Environment and Law* (2nd edn, Ant N Sakkoulas 2006) 324
[97] Ioannis K Karakostas, 'Private Law for Environmental Protection' (2010) 58 Nomiko Vima 122, 123

wording, which renders its practical application very difficult. Moreover, it has been noted that the lack of case law is explained in light of the fact that plaintiffs in Greece initiate court proceedings before civil courts either as a precautionary measure to prevent harm to the environment or to seek injunctive relief.[98] On the contrary, compensatory actions in the field of environmental protection are rare.

3. Other Provisions of the GCC

The provisions of the GCC on torts and property law may offer an additional legal basis for compensatory and injunctive relief pursuant to environmental harm. Plaintiffs may bring an action for damages based on the provisions on torts (article 914 GCC), when a harm to the environment violates a right or interest protected by law, such as their personality, property, life and health. Consequently, the claim for compensation will be calculated on the damages inflicted on those individual interests or rights.[99] Therefore, a compensatory action based on the grounds of torts might fail to capture the social cost of a harm to the environment.

In addition, property law includes a series of provisions which constitute the so-called 'neighbouring law', which may provide legal protection against 'emissions' (article 1003ff GCC). Article 1003 GCC sets out the conditions under which the owner of an immovable property has the obligation to tolerate the emission of smoke, soot, effluvia, heat, noise, vibration etc, which originate from a neighbouring property. In particular, these emissions must not unduly affect the first property and secondly they must emanate from an activity which is considered common for the location of the property. When the limits circumscribed by the preceding conditions are exceeded, the owner of a property, which is negatively affected by emissions, may bring forward an action, requesting that this violation of their right to property is rectified and not repeated in the future.[100]

4. Consumer Protection Law and Environmental Protection

Under article 6(1) of the law on consumer protection, producers are liable to pay compensation for 'all' damages caused by their defective products. Furthermore, article 6(6)(b) of the law on consumer protection, states that the producer's liability covers any damage or destruction of any asset or property belonging to the harm consumer, including the 'right to use [enjoy]' the environment.

Moreover, article 8 of the law on consumer protection states that service providers are liable to pay compensation for 'all' pecuniary or non-pecuniary damages suffered by consumers by an act or omission of the former, which took place during the provision of services. In addition, the said action or omission must be illegal and the defendant service provider must be proven to be at fault. The preceding provisions offer a legal basis for consumers to claim compensation for environmental damages caused by producers or service providers for environmental damages.

5. Collective Redress in Environmental Mass Harm Situations

The starting point of the Greek legal order as regards judicial protection is that both administrative and civil courts require that plaintiffs have a concrete legal interest to seek judicial protection. Under the rules of civil procedure, a plaintiff may seek judicial protection before civil courts, insofar as they have a 'direct legal interest' thereto (article 68 CCP). The case law of the Council of State has accepted that a broad category of persons may justify legal interest in cases of environmental protection.[101] Individuals will be considered to have sufficiently demonstrated that they have a legal interest to initiate proceedings, if they can demonstrate proximity to the area which is harmed by the administrative act at issue. Moreover, associations having environmental protection as their objective, will be considered to have sufficient legal interest to initiate proceedings, even if they are not in proximity to the harmed area.[102] Therefore, individuals and associations have very often initiated proceedings before the Council of State, seeking the annulment of administrative acts relating to large projects of infrastructure. Contrary, the case law of civil courts is much more limited, albeit some civil courts have accepted

[98] ibid, p. 1928
[99] I Karakostas, 'Private Law for Environmental Protection' (n 96), p. 1923
[100] ibid, p. 1927
[101] Karakostas, *Environment and Law* (n 96) 664
[102] ibid

that associations whose objective is environmental protection, may intervene in proceedings regarding the environment.

III. Impact of the Recommendation/Critiques

The legal nature of the Representative Action is debated in the literature. According to one opinion,[103] when a consumer association files a representative Action, it exercises a (substantive) right belonging to it; therefore the consumer association is both plaintiff and the (legal) person entitled to the right, the protection of which is sought before a court. According to a different opinion, a consumer association which files a Representative Action, does not seek the protection of a right belonging to it; rather it has an exceptional form of legal standing, but this standing *'does not correspond to a right, interest or a claim belonging to it'*.[104]

1. Abusive litigation in Consumer cases

The announcement of inaccurate information to the consumers by a consumers association, as well as the violation of the stipulations of this law by the union, constitute reason for the: a) revocation of its certification; b) dismissal of its board of directors; c) interruption of its funding; d) removal of the union from the National Council of Consumer and Market ('ESKA') and from collective bodies; e) removal of the union from the Register. The law stipulates that the measures described under a), b), and d) of the above subparagraph can be requested within six (6) months from the date of the most recent violation or from the announcement of inaccurate information, by anyone who is negatively affected, every member of the union, every consumer union, the competent public prosecutor, the Hellenic Consumers' Ombudsman and the General Secretary of Consumers.

It has to be pointed out that consumers associations are held liable and are subject to penalties, when they file unfounded legal remedies against suppliers. When a consumer association has filed an action against a supplier which is clearly unfounded, the supplier is entitled to file an action for damages under article 10(23) of the Law on Consumer Protection against the consumer association and the members of its administrative board. Moreover, the court may order the dissolution of a consumer association if it has -either deliberately or in negligence- repeatedly filed actions for non-pecuniary damages, which have been dismissed by courts as manifestly unfounded. The dissolution may requested by a supplier that has been defendant in an unfounded action, or the public prosecutor.[105]

2. Problems relating to access to justice in Competition claims

Although the current trend is to place emphasis on the horizontal approach of collective redress mechanisms, it is equally true that competition law has particularities that should be taken into account. Substantive law difficulties, such as the passing-on of overcharges, the quantification of damages, the different treatment that different categories of harmed persons warrant (consumers, SMES), other enforcement obstacles and the co-existence of public and private enforcement; all these are factors that require a different approach, which corresponds to the particularities of antitrust collective redress. The decision to promote the 'opt-in' principle, for the sake of private autonomy, does not ensure the effective application of competition law. In an opt-out system private autonomy can be secured either through the consumers' individual notification (with those not objecting being considered to have accepted the filing of the action) and by ensuring that consumers may ask to be excluded at any time, even after the decision has been delivered. In addition, the opt-out mechanism must necessarily be accompanied by strict notification conditions. Instead of prohibiting or ignoring the funding of representative entities, it should be preferable to monitor it. Likewise, if all amounts are not distributed, in the opt-out system case, an indirect restoration measure should be adopted with regard to the sum remaining. The total remaining sum as determined by the judge could be allocated to a group actions support fund for the financing of new proceedings or within a fund, which would provide pro-bono advice on instigating collective legal redress. Furthermore, the National Competition Authority should be empowered to act as a representative entity. This would facilitate the effective application of competition law.106

[103] See E Alexandridou /Ch Apalagaki in E Alexandridou (ed), Consumer Protection Law (2015), p. 675ff
[104] See P Kolotouros, The subject matter of the stricto sensu group action, ibid (n 24) p. 1194 and the literature cited therein
[105] Article 10(29), Law on Consumer Protection
[106] A Mikroulea, Collective Redress in European Competition Law, (2016) ZWeR p.388

3. ADR

The mediation mechanism should be promoted in the Greek legal system. It is compatible to Civil law principles and can constitute an effective and quick form of resolution of civil and commercial disputes. The Ministerial Decision no. 70330/30-6-2015 of the Minister of Economy regulates the alternative dispute resolution on consumers' protection cases. The above decision has implemented into Greek legal order the provisions of Directive 2013/11/EU on Alternative and Online Dispute Resolution. It is worth mentioning that this form of alternative dispute resolution does not bind the parties to the proposed solution. Under article 10(2) of this Ministerial Decision, every party may withdraw from this procedure at any stage of this process. In any case, at any stage of a civil trial the parties may resolve their dispute about compensation. It is at parties' discretion to reach an agreement about compensation before the case is discussed in court. This seems compatible to the sense of principles 25 and 28 of the Recommendation 2013/396/EU. There is no provision in Greek Law for collective alternative dispute resolution but in practice a consumer protection association may attempt to mediate the consumers' dispute.

IV. Information on Collective Redress

The possibility for a representative entity or a group of claimants to disseminate information regarding alleged violations of EU rights faces challenges under Greek law. In particular, such dissemination of information on collective claims may violate the defendants' right to personal data and the right to protection of personality. The Courts decision *ex lege* is published as a public document.

Anyone who will disseminate in public private documents like the document of claim may be liable to compensate the injured party, such as the defendant to a collective claim. The latter may file an action against the violator under 914, 932 and 57, 59 Greek Civil Code on torts. Nevertheless, in certain occasions there might be unofficial channels for dissemination of information on collective claims. For instance, as regards a series of recent Representative Actions brought by consumer associations in respect to loan agreements stipulated in Swiss franc (see Section V), the relevant consumer associations created and managed websites containing information on these claims. Furthermore, these associations encouraged consumers who had received loans in Swiss franc to contact the associations and intervene in the proceedings between the representative entities and the defendant banks, in support of the former.

There is no national registry of representative actions or other forms of collective actions. There is only a 'Registry of Consumer Associations', which is kept at the General Secretariat of Consumers (Ministry of Economy & Development).[107]

[107] Article 10(4) of the Consumer Act

V. Case Summaries

1. Loan Agreements in Swiss Francs

In 2016, the Court of First Instance of Athens (multi-judge formation or 'Polimeles Protodikio') delivered the judgment no. 334/2016, following a Representative Action filed by consumer associations. The plaintiff associations claimed that the defendant, a major Greek bank (Eurobank-Ergasias), concluded loan agreements with consumers, which allegedly contained illegal general terms and conditions. The loan agreements in question were stipulated in Swiss franc (CHF). Consumers were required to repay these loans either in CHF or in euros (€), based on the exchange rate of the day that each instalment was repaid. However, after the significant appreciation of CHF vis-à-vis the euro in recent years, thousands of consumers could not service their borrowing.

The Court of First Instance of Athens, held that the general terms of conditions of these loan agreements, insofar as they stipulated that the loans would be granted in CHF, were not transparent and hence not legal. Therefore, it ordered the defendant to re-calculate the outstanding balance of the loans it granted, based on the exchange rates of the date that each loan was granted. The court didn't apply the 'loser pays principle' in that case, but ordered that each party should cover their own costs (articles 179 and 741 Code Civil Procedure), as it considered the 'interpretation of the invoked rule of law' too be particularly difficult in that case. The defendant has filed an appeal, which is scheduled to be discussed before the Court of Appeal of Athens on 28/9/2017.[108]

On 23/11/2016, the Court of First Instance of Athens (multi-judge formation or 'Polimeles Protodikio') heard another Representative Action, regarding loans stipulated in Swiss franc, which had a similar claim with the aforementioned. This Representative Action was filed by consumer associations against another major bank ('National Bank of Greece SA'). The Court, however, has not yet delivered its judgment on that case.

2. Special Duty on Property

In 2011, as part of the country's efforts to achieve fiscal consolidation in accordance with the Economic Adjustment Programme, the Greek government imposed a special duty on properties which contained built surfaces having electricity supply.[109] The special tax was to be collected through the electricity bills paid by consumers. The law stipulated as a penalty for non-payment of this duty, the termination of electricity supply. Consumer associations filed a Representative Action against the main Greek electricity supplier (Public Power Corporation S.A. or 'DEI') at the Court of First Instance of Athens (multi-judge formation or 'Polimeles Protodikio'). The first instance court held that this law violates Article 4 of the Greek Constitution, which states that tax payers contribute to public charges in proportion to their means.[110] Furthermore, it held that the termination of electricity supply, which was the penalty for non-payment of the duty, unduly affects the private agreement concluded between consumers and electricity providers. Nevertheless, the court didn't apply the 'loser pays principle' but ordered each party to cover their own costs (article 179 Code Civil Procedure), in light of the difficulty of that case. Thereafter, the Greek government adopted legislative measures conforming to this court decision.

3. Supreme Court (Areios Pagos) 652/2010

In the case which gave rise to the decision 652/2010 of the Supreme Court, a consumer association filed a Representative Action against a Greek bank, regarding the alleged illegality of various terms and conditions used by the bank in its transactions with consumers. The Court of First Instance of Athens (multi-judge formation or 'Polimeles Protodikio') and the Court of Appeal of Athens had already delivered their judgment on the Representative Action at issue. The parties to the proceedings both filed an application for the annulment of the

[108] See the website of the 'Association of Borrowers in Swiss Franc' <http://www.daneia-chf.gr/archiki.html>
[109] Law 4021/2011 (Government Gazette A/218 3 October 2011)
[110] Court of First Instance of Athens 1101/2012 (NOMOS Legal Database); See also Areios Pagos (Supreme Court) 293/2014 (NOMOS Legal Database), which upheld the decision of the first instance court.

judgment of the Court of Appeal of Athens (no 3499/2008), on different grounds, which were joined in the same proceedings.

The Supreme Court upheld several of the claims of the representative entity and dismissed others. For instance, one of the terms at issue stipulated that bank accounts with an average monthly balance, below a limit set by the bank, will incur extra charges. The Supreme Court found this term to be illegal and thus void. On the other hand, the Supreme Court held that the term according to which the bank could change the interest rate of credit cards, was legal and hence valid, under certain conditions. In particular, the bank can justifiably change the interest rates of credit cards within a specific margin, when the ECB increases the relevant interest rate. Furthermore, the Supreme Court held that the bank may take account of the risk and the market conditions and choose not to decrease the interest rates of credits cards, when the ECB decreases the relevant interest rate.

Thereafter, the Supreme Court annulled the previous decision of the Court of Appeal (no 3499/2008). The Supreme Court did not apply the 'loser pays principle' but ordered each party to cover their own costs, as it held that both parties partially won and partially lost (articles 178 and 183 Code of Civil Procedure).

In 2011, the Deputy Minister of Labour extended the res judicata of this judgment to all suppliers, therefore banks cannot legally use terms and conditions similar to the ones found to be illegal, pursuant to this judgment of the Supreme Court.[111]

4. Supreme Court (Areios Pagos) 2123/2009

In the case which gave rise to the decision 2123/2009 of the Supreme Court, a consumer association filed a Representative Action against a bank, alleging that the bank used terms and conditions in its transactions with consumers, which were allegedly illegal. The Supreme Court held that the contract term, according to which consumers are liable to pay extra costs for transactions regarding withdrawals or depositing cheques above a certain limit, was illegal. Furthermore, the Supreme Court ruled that the contract term, regarding the payment of interest in loan agreements, was illegal. According to this term, the bank would deposit the amount of the loan in a special account but the consumers would not immediately have access to the entire amount. On the contrary, the amount of the loan would become available to the consumers gradually. Nevertheless, the bank would charge consumers with interest payments for the entire amount since the moment of depositing the loan, even though consumers would use only part of that amount.

The Supreme Court also accepted the pleadings of the bank, insofar as it claimed the Court of Appeal erred in relation to the claim of the consumer association regarding non-pecuniary compensation. In particular, the Court of Appeal issued an order of injunction, whereas the representative entity had filed an order for declaration. Therefore, the Supreme Court annulled the previous judgment of the Court of Appeal and referred the case back to it.

In respect to the costs, as both parties had won and lost to a different extent, the Supreme Court order the parties to pay costs as follows: the consumer association was ordered to pay €2,700 and the bank was ordered to pay €1,300. In 2011, the Deputy Minister of Labour extended the res judicata of this judgment to all suppliers, therefore banks cannot legally use terms and conditions similar to the ones found to be illegal, pursuant to this judgment of the Supreme Court.[112]

5. Supreme Court (Areios Pagos) 430/2005

In the case which gave rise to the decision 430/2005 of the Supreme Court, a consumer association filed a Representative Action against a bank, alleging that the defendant bank used illegal terms and conditions. The Supreme Court ruled that the term according to which the bank would calculate interests based the assumption that the year has 360 days (as opposed to 365) is illegal. Furthermore, it ruled that the contract term, according to which consumers were liable to pay compensation to the bank, if they repaid the entire loan before the stipulated contract duration, is illegal. The aforementioned term, concerned floating rate loans. Finally, it held

[111] See Ministerial Orders YA Z1-21/2011 (Government Gazette 21/B 18 January 2011)
[112] See Ministerial Orders YA Z1-21/2011 (Government Gazette 21/B 18 January 2011)

that any term which made the premature repayment of the loan dependent upon additional cost incurred by consumers, is illegal.

On the other hand, the Supreme Court upheld the contract term according to which the bank could pass a special duty laid down by law (Law 128/1975) to consumers, ruling that this term is legal. However, despite this ruling of the Supreme Court, lower courts which subsequently ruled on individual actions, found that this contract term is illegal.[113]

In relation to costs, as both parties had filed two different applications for annulment, which were joined, and as both applications were partially accepted and partially dismissed, the Supreme Court ordered each party to pay €1,500 as costs.

It should be noted, that the Minister of Development issued a Ministerial order in 2008,[114] pursuant to article 10(21) of the Law on Consumer Protection, specifying the conditions under all suppliers must abide to this judgment of the Supreme Court. Hence, banks are prohibited from using the terms which were found to be illegal with this judgment of the Supreme Court, as well as any other similar terms.

[113] Court of Appeal of Lamia 124/2007; Court of Appeal of Lamia 125/2007; Court of Appeal of Athens 1431/2004; Small Claims Court (Irinodikeio) of Athens 358/2011

[114] Ministerial Order YA Z1-798/25-06-2008 (Government Gazette B/1353 11 July 2008)

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