

GREECE

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1. National court system

According to the Constitution there are three categories of courts: civil courts, penal courts and administrative courts. The highest court of the civil and penal justice is the Supreme Court (Court of Cassation), while the highest court of the administrative justice is the Council of State (Supreme Administrative Court-STE). There are two categories of judges: 1) civil judges (hearing civil and penal cases) and 2) administrative judges (hearing administrative cases). Consequently, an administrative judge is not entitled to judge a penal or civil case, while a civil judge is entitled to judge a civil or penal case but not an administrative one.

The civil justice: Civil cases are heard at first instance, by the District Courts or the Courts of First Instance, according to the estimated value of the matter disputed; at second instance, by the Courts of First Instance or the Courts of Appeal, according to the estimated value of the matter disputed; by the Supreme Court (Court of Cassation), when a writ of certiorari is filed against a final decision of the Court of Appeal. The decisions of the Court of Cassation are irrevocable. If the Court of Cassation concludes that a lower court violated the law or the principles of the procedure, then it can order the rehearing of the case by the lower court.

The administrative Justice: The judicial control of an administrative act goes either on its merits or is restricted only to the control of legality. The administrative acts of first instance are appealed against with the legal remedies of the recourse or of the suit and fall under the jurisdiction of the Administrative Courts (of First Instance and of Appeal), while all other administrative acts are appealed against with the legal remedy of the writ of annulment and they belong to the jurisdiction either of the Council of State or of the Administrative Court of Appeal. The control of these acts relates to matters of legality, namely whether they are issued in accordance with the Constitution and the laws. At second and final instance, the Council of State is always competent to judge these acts with few exceptions. The decisions of all the administrative courts may be appealed against with a writ of certiorari, which is judged by the Council of State. The Chamber of Accounts (Court of Audit) is also a supreme administrative court, whose jurisdiction is limited to certain particular areas (e.g. disputes between the state and civil servants concerning their pensions). The decisions of its Plenary are irrevocable and not subject to the control of the Council of State.

Along with the courts, the rights enshrined by European and the national law are being protected in Greece by independent authorities as well. Five of them are constitutionally consolidated (Art. 101a of the Greek Constitution): 1) the Hellenic Data Protection Authority, 2) the Greek National Council for Radio and Television, 3) the Supreme Council for Civil Personnel Selection, 4) the Hellenic Authority for Communication Security and Privacy and 5) the Greek Ombudsman. They largely contribute within the fields of their competence to the real and effective access to justice.

The Greek Ombudsman (GO)¹ is, within the public sector, the specialized constitutionally independent administrative authority (founded in October 1998 and operates under the provisions of Law 3094/2003) for the promotion of the principle of equal treatment regardless of race or national origin, religion or other beliefs, disability, age or sexual orientation (article 19 par. 1 of law 3304/2005). The Ombudsman provides its services to the public free of charge, and receives every year more than 11.000 complaints. The Greek Ombudsman investigates individual administrative actions or omissions of material actions taken by government departments or public services that infringe upon the personal rights or violate the legal interests of individuals or legal entities. Before submitting a complaint to the Greek Ombudsman, the complainant should first come into contact with the public service involved with his or her case. Only if the problem is not resolved by the service concerned should a complaint be submitted to the Ombudsman. The Greek Ombudsman is structured in 6 Departments. One of them specializes in Gender Equality².

The Supreme Special Court (Highest Special Court) is not a "regular" and "permanent" court, namely it sits only when a case belonging to its jurisdiction arises, and its role is mainly: a) to resolve disputes between the Supreme Courts or between the courts and the administration, b) to take an irrevocable decision, when contradictory decisions of the Supreme Courts, concerning the true meaning or the constitutionality of a legal provision, are issued, c) to judge the pleas against the validity of the result of the parliamentary elections. Consequently, it is the only court that can declare an unconstitutional legal provision "powerless" (not "null and void") and expel it from the Greek legal system. All the other Courts can only declare it as "inapplicable" for the particular case. The decisions of the Supreme Special Court (Highest Special Court) are binding for all courts, including the Supreme Courts.

¹ http://www.synigoros.gr/en_what_is.htm

² http://www.synigoros.gr/en_index.htm

There is a right of regular appeal in both civil and administrative cases. Only final judgments can be appealed. Regular appeals may be heard through two stages. The regular appeal of first instance judgments is called *efesis* and the regular appeal of second instance judgments (cassation) is called *anairesis* in both civil and administrative law. The *efesis* is regulated in Articles 511f. of the Code of Civil Procedure. The appellate court has the power to review the first instance judgment on the law and on the facts. Grounds for appeal may refer to questions of fact, e.g. the evaluation of evidence, to questions of substantive or procedural law or to procedural mistakes of the lower court. The cassation in civil cases is heard by the Supreme Court. It is regulated in Articles 559ff of the Code of Civil Procedure. The Supreme Court (Court of Cassation) is competent to review the judgment only on grounds of the violation of a rule of substantive law or of some specified rule of procedure. *Efesis* and *anairesis* (cassation) are similarly regulated in administrative law as well (art. 92f. of law 2721/1999 and 53 of the p.d. 18/1989).

2. Restrictions regarding access to justice

Concerning the restrictions of the right of access to justice, the question of impediments to access to justice because of not fulfilling existing procedural prerequisites (reasons, for which access to justice should be admitted) and the question of the lack of substantial capacity to access justice due to the time-bar of the right are being raised. These are legitimate restrictions of access to justice.

In Greek courts, the basic legitimate restriction to access to justice is the substantiation of a direct, present and personal legal interest before the Court. This legitimate restriction exists in both civil (Art. 68 of the Code of Civil Procedure) and administrative justice. Greek procedural law does not allow access to justice to third parties having only a remote interest, or fighting merely *pro bono publico*. That prerequisite may be bent only when it comes to environmental protection matters, where a kind of *actio popularis* has become accepted by the Courts' rulings.

There are also time limits to access to justice, especially as far as regular appeal and cassation of civil and administrative judgments are concerned. For example, in civil justice the time for appeal is 30 days from the date of service of the judgment to be attacked, and 60 days if the appellant resides abroad (art. 518 of the Code of Civil Procedure). In administrative cases, there exist time limits regarding the adjudication at first instance, as well. A precondition of the admissibility of the application of annulment against an administrative act is its exercise within 60 days (or sometimes 30 days) starting from the notification of the act to the applicant.

There are, furthermore, restrictions/ exceptions to the broad right of access to Greek justice and related restrictions. The existing legal system of administrative procedure excludes from judicial protection: 1) governmental acts (article 45 par. 5 of Presidential Decree 18/1989) and 2) non-executory administrative acts (article 45 par. 1 of the Presidential Decree 18/1989). It is not entirely clear within Greek theory and based on the rulings, which are the governmental acts. They are serious political decisions that evade judicial control, such as the decision of premature dissolution of the Parliament due to a serious national matter. Moreover, the acts of promotion of judges into the positions of President or Vice-President of the Highest Courts of the State are exempted from judicial protection explicitly by the Constitution (article 90 par.6 Constitution 1975/1986/2001/2008).

It must be noted that, as far as the non-judicially controllable acts of the executive power are concerned, administrative control is provided on the basis of administrative process. The latter is established in article 10 of the Constitution and more particularly in article 27 of the Code of Administrative Procedure. Governmental acts escape the controlling-mediatory part of the Ombudsman (according to article 3, par. 2 of Law No. 3094, 22 January 2003, the Ombudsman shall not have any jurisdiction over government ministers and deputy ministers for acts pertaining to their political function), but the non-executory administrative acts come under it. What is crucial at this point is that the acts-suggestions of the Ombudsman are non-executory administrative acts as well.

3. Length of judicial proceedings

There is no official statistical data in Greece defining the average time required for the trial of a case before the civil courts. It can be concluded on the basis of the research that the average time elapsing between the initiation of a case to the publication of an irrevocable judgement of a civil case fluctuates, depending on the local competence of the courts, from two to four years. Most of the answers provided from civil courts coincide that the average time of hearing ranges from three to four years. The average time of hearing of a civil case at first instance is defined between 5 months and 1 year. The average time required for the hearing of an appeal varies between 8 months and three years, the data being insufficient to safely determine a more concrete time period. The average time required for defining a date of hearing in the Supreme Court varies from 10 to 19 months. The average time of adjudication of a cassation from the Supreme Court is defined between 14 to 26 months. Finally, the average time required for the publication of the judgment after the hearing of the case in the Supreme Court reaches the period of 2 to 4 months.

There is a potential of granting interim measures on behalf of the civil and courts, after the relevant remedy of the parties. The procedure is known as procedure of precautionary measures and is multiply expressed. From the official data available, the average time of publication of a judgment on precautionary measures from the civil courts fluctuates from 1 to 5 months. Given that the average time of a regular trial at first instance varies from 5 months to 1 year, it makes a difference for urgent judicial protection to have the orders for precautionary measures published in 1,2 or 5 months.

Before the civil courts, there is the potential of filing an appeal or a request for cassation, but with exceptions. From the limited data available, it is deduced that 20-41% of the judgments of first instance are questioned and appeals are lodged against them. The average time of adjudication of a private dispute at second instance is defined between 8 months and 2 years.

4. Are procedures concluded within a reasonable time?

In general, procedures are not concluded within a reasonable time. There seems to exist a general problem of unreasonable delay within the trial of a case that runs through every stage and kind of a trial. 1) the average time of seven years until the issuance of an irrevocable judgment from the administrative justice, 2) the delay in fixing a hearing date in the courts of first instance of the

larger districts of the country, and 3) the lapse of significant time between the hearing of a case until the issuance of a judgment.

5. Does provision exist for speedy resolution of particular cases?

Speedy resolution is available in all cases tried within the framework of the Greek civil and administrative justice. In practice, whenever the proceedings of speedy resolution are being called for, quick and efficient access to justice is provided. Nevertheless, the final adjudication of the cases continues to be in enormous delay.

In civil cases speedy resolution is regulated in Articles 682-738 of the Code of Civil Procedure. Speedy resolution proceedings provide for the possibility of provisional relief on every claim under the provision of an urgent need or to avoid an imminent danger. Such measures are available as soon as two requirements are met: 1) the proven probability of an urgent case and 2) the existence of an underlying substantive right needing probably provisional protection. In Greece, they are of great practical importance because ordinary proceedings progress very slowly.

6. Is it possible to waive the right of access to a judicial body?

In the field of non-discrimination, it is not possible to waive the right to access to a judicial body.

7. Access to non-judicial procedures

Law 3304/2005 provides for three distinct equality bodies all competent to hear and handle complaints; the Greek Ombudsman, the Equal Treatment Committee annexed to the Ministry of Justice and the Employment Inspection Body.

The three equality bodies differ substantially in status and activity. When the source of discrimination is a public authority, competence lies with the Greek Ombudsman, for discrimination in the field of employment competence lies with the Employment Inspection Body and for all other forms of discrimination competence lies with the Equal Treatment Committee.

The Greek Ombudsman is a well - known and respected independent body active in many areas related to human rights issues. Its function is constitutionally entrenched, in art. 103 par.9 and 101 of the Greek Constitution and it operates under the provisions of Law 3093/2003. The Greek Ombudsman seems to be the only active equality body involved in the fight against discrimination that has had a real impact on the actual implementation of the anti-discrimination directive.

Law 3304/2005 on the implementation of the principle of equal treatment strengthened the position of the Greek Ombudsman, the body already responsible for the protection of citizens from

mal-administration, widened its competences and mandated it to be the official Equality Body responsible for the implementation of equal treatment in the public sphere. The new competences conferred by the law allow the Greek Ombudsman to receive complaints, investigate and mediate in individual cases, draw up reports and intervene actively in raising awareness of both civil authorities and civil society. However, the stronger weapon that the Greek Ombudsman possesses, if a violation is detected after receiving and investigating a complaint, is to write an opinion and forward it to the administration, while also making it public. However, the decisions of the Ombudsman are not binding upon administrative authorities, so the publicity of opinions and reports is a means to counterbalance this deficiency and exert pressure to the authorities to abide by recommendations and opinions. The non-binding nature of the recommendations as well as the lack of competence to impose sanctions influence the effectiveness of the protection. Furthermore, neither the Greek Ombudsman nor the other equality bodies may participate in court hearings as parties, due to the fact that they are not legal persons. Nevertheless, equality bodies may assist the parties through their reports, that if submitted to the court may have a strong influence on the outcome of the trial. Although ability to take action is under this limitation and despite the fact that the small number of complaints submitted does not correspond to the true number of discrimination cases, the Greek Ombudsman uses all its competences, in order to further equal treatment. Its activities are published regularly in its user friendly website. Also, the Greek Ombudsman draws Annual Reports including a report under its capacity as an equality body. Thus, the Greek Ombudsman pursues its mandate by investigating complaints, mediating between parties, building public awareness, fostering public debate, and structuring networks of communication with civil society and NGOs.

The Greek Ombudsman has competence to initiate investigations according to par.2 article 4 of Law 3094/2003. Furthermore, The Greek Ombudsman does not have the obligation to reveal the name or any other personal information regarding the complainants. This competence is of particular importance in the context of the investigation of violations of the principle of equal treatment in its capacity as an equality body, due to the vulnerability of the victims of discrimination. The increasing activity of the Greek Ombudsman in the promotion of the non-discrimination principle indicates the determination to make full use of the competence to initiate investigations.

Furthermore, the Ombudsman seeks ways to mediate even if a complaint is not in direct violation of the legislation and yet raises serious discrimination issues that have to be faced by public authorities. Recent mediation³ of the Greek Ombudsman based on complaints shows that the application of the anti-discrimination principle has started to reveal its potential. The following example demonstrate this potential: The Greek Ombudsman after examining a complaint concerning the refusal of the State Scholarships Foundation to award a scholarship to an Albanian student mediated to the Ministry of Education recommending that according to the provisions of Law 3386/2005, concerning the social integration of alien citizens, the application of the principle of equal treatment dictates granting rights that will ensure their proportional participation in the economic, social and cultural life of the country. According to the Greek Ombudsman, refusal to grant scholarships and awards to alien students who were born and raised in Greece, graduated from Greek schools and studied at Greek Universities, based on the reason that they are not Greek citizens, strongly implies unacceptable discrimination on the grounds of ethnic origin. Thus, the Ombudsman recommended to the Ministry of Education that the Greek state is under the obligation to change the regulatory framework for granting scholarships and awards, in order to

³ See the Greek Ombudsman Annual Reports 2006 and 2007 at <http://www.synigoros.gr/diakriseis/reports.htm> accessed on 05/03/2009.

meet equal treatment criteria. This change will be of particular importance to alien students born in Greece and having long - term residence permits.

The Greek Ombudsman has no authority to force the administration to change its decisions or its practices. When engaged in mediation, its basic weapon is to inform the Ministries and to make its opinion public, thus exerting pressure on the administration. Also, it draws special reports on important issues that come up during the investigation of complaints and mediation. These issues may be wider than the actual complaint, leading the Ombudsman to make interventions on a larger scale. Furthermore, it uses publicity and its status as a constitutionally entrenched independent body as tools to influence public decision making.

Greek Ombudsman is the equality body, which is better off in terms of resources. Its staff consists of 192 highly qualified individuals, including the ombudsman, the deputy ombudsmen, investigators and administrative support staff. Its budget for the year 2008 amounted to approximately 9,4 million euro. The budget is included in the annual state budget and approved by Parliament. There is no specific budget for the Ombudsman as an equality body. Resources are allocated to the functions of the equality body in accordance to the emerging needs. The staff dealing with discrimination issues consists of a permanent team of experts, primarily specializing in human rights, but also of experts who work in the various areas of expertise of the Greek Ombudsman. When necessary, other specialized staff members co-operate with the discrimination team in specific issues.

The equality body competent to investigate cases of discrimination in employment is the Employment Inspection Body. This Body, already responsible for inspecting the application of labour law rules in the workplace, may mediate between parties in order to achieve conciliation and issue relevant reports, give opinions on issues connected with the application of Law 3304/2005 and draw reports on anti-discrimination and equal treatment.

The third equality body is the Equal Treatment Committee which was created by Law 3304/2005 to deal with all cases of discrimination not covered by the other two bodies and has the same competences, as an equality body, with the Employment Inspection Body. Thus, it may investigate cases of discrimination arising from individual disputes, mediate and draw reports. However, the Equal Treatment Committee does not seem to make use of these competences remaining invisible as an equality body. However, both these bodies remain in practice inactive as equality bodies, not making use of the above-mentioned competences.

Both the Employment Inspection Body and the Equal Treatment Committee

have no specific resources as equality bodies other than the general budget of the respective institutions. The Employment Inspection Body must be staffed by 449 Social Inspectors and its' staff actually consists of 500 Social Inspectors. 153 of these Inspectors are appointed as Social Inspectors of Labour, while no special staff for the operation of the Body, in its capacity as equality body, exists.⁴ The Equal Treatment Committee, established by Ministerial Decision 98623/10-10-2005, is chaired by the Secretary General of the Ministry of Justice and consists of four regular members and two substitute members. Its secretarial needs are covered by the Section of Equal Treatment and Human Rights of the Ministry of Justice, which has two employees.

⁴ According to letter of 04/04/2009, Prot. No 31529.

In Greece there exists no general mediation act, nevertheless specific civil, criminal and administrative provisions provide for mediation processes for extrajudicial dispute resolution. Thus the Civil Legal Procedure Code (art. 214A) sets an obligation to pursue extra-judicial resolution for private law cases before trial. In the light of the delays in the administration of justice, which may discourage the pursuance of rights through litigation, mediation could be a good alternative in the fight against discrimination. However, not only there exists no official data on extrajudicial resolution of discrimination cases but also this tool does not seem to be used to protect the victims. One of the fundamental mandates of the Greek Ombudsman is mediation. The Ombudsman in its capacity as an equality body uses mediation, however not as a typical mediation process but more as an instrument integrated and used in the procedure of investigation of complaints rather than a separate process. There are however some concerns as regards the mediation role of the Ombudsman; in specific, the Ombudsman does not have the authority to have any intervention while a case is pending in Court. This means that the mediation process must take place and reach a final outcome in a very limited time. This factor adds pressure to all parties involved. The decisions of the Ombudsman are not binding thus there is a risk factor involved in the mediation procedure. Parties may use it to avoid Court proceedings and stall the resolution of the problem. Thus, the Greek Ombudsman does not in practice use mediation as a means of extrajudicial resolution of disputes but rather more informally as a negotiation tool in the procedure of investigating a complaint.⁵

The competences of the only active equality body, the Greek Ombudsman may contribute to the analysis of the reasons for the absence of sanctions. The Greek Ombudsman deals only with complaints against public bodies and public authorities and in that field it has only the competence to issue recommendations and opinions that are not legally binding for the authorities. Furthermore, it is not empowered to impose sanctions or to support complainants in judicial proceedings. Thus, in court proceedings it may assist victims of discrimination only indirectly by making available for use in court its opinion on the specific case.

8. Legal aid

Legal aid is regulated in articles 194-204 of the Code of Civil Legal Procedures. The availability of legal aid depends on proven need. The provision of legal aid is further regulated within the Greek legal order by special law, law 3226/2004. The principle prerequisite for granting legal aid is the low income of the citizens (more specifically, the family income must not overcome 2/3 of the annual personal income specified by the general collective labour convention). Law 3226/2004 stipulates legal aid in cases of private law and penal law. Legal aid, in these cases, is not only confined to judicial expenses (fiscal stamps), but it also expands to provision for legal attendance (a lawyer). The latter is granted following a petition. Legal aid is provided separately for every trial, it is valid throughout one and each level of jurisdiction and is related to the enforcement of the judgment. Legal aid is provided under the presupposition that the submitted judicial remedies are admissible and not obviously unfounded or disadvantageous. The significance of the case to the applicant is also taken into consideration. More specifically, this law amended articles 194-204 of the Code of Civil Procedure.

⁵ For further analysis of the way the Ombudsman uses mediation as an equality body see the analysis of the Senior Investigator at the Greek Ombudsman's office K. Lykovradi, "Strategic Enforcement – The Greek Ombudsman's Contribution to the Report on Mediation", at [http:// www.synigoros.gr/diakriseis/arthra.htm](http://www.synigoros.gr/diakriseis/arthra.htm), accessed on 13/3/2009.

In discrimination cases, the procedural role of NGOs does not go beyond the minimum requirements under Article 7 par. 2 of Directive 2000/43. It must be stressed that the condition of power of attorney for supporting persons who are victims of discrimination is far more restrictive than the “consent” requirement provided for by article 7, par. 2 of Directive 2000/43. Considering the fact that victims of discrimination often belong to vulnerable groups, this condition may have a negative impact on the possibility of their representation by NGOs. Furthermore, legal entities are required to have as a constitutive aim to uphold anti-discrimination. This prerequisite also may limit the scope of civil society organizations which may represent discrimination victims. It must be noted that support by the NGOs is of crucial importance since they are the best-informed part of civil society in the field of developments in the anti-discrimination legislation.

Any legal entity, association, union or group of persons may submit a complaint to the Greek Ombudsman. Associations and organizations that have legal personality may participate in court proceedings. According to the Hellenic League of Human Rights Annual Report⁶ civil society organizations and agencies are engaged in “strong anti-discrimination and pro-integration activity”. Nevertheless, in practice NGOs and other civil society bodies are more engaged in activities such as raising rights awareness, networking and disseminating information, rather than engaging in mediation or taking part in court proceedings. The Greek Ombudsman has built a communication network with NGOs active in the field of anti-discrimination, in issues such as the protection of Roma. It is noteworthy that NGOs have started to file complaints with the Greek Ombudsman, that may have an impact, not only in specific discrimination cases, but also trigger a change of discriminatory practices. For example, the Pan-Hellenic Migrants Network and the United African Women’s Organization filed a complaint for racial discrimination to immigrant children born in Greece on the grounds that the competent Departments do not issue birth certificates but only birth registrations to children born in Greece, by parents who are foreign citizens. Although the Greek Ombudsman did not identify a violation of Law 3304/2005, since the practice is technically legal being a differentiation due to citizenship, the complaint triggered the Ombudsman to collect information in order to initiate mediation in the light of the impact this practice has in social co-existence.

9. Forms of satisfaction available to a vindicated party

In the Greek law, compensation is available to a vindicated party. Reparation in money is the principal means of offering restitution for breach of rights in the Greek legal order. The main remedy in the Greek Civil law is that the plaintiff is entitled to claim reparations in money of damages 1) for pecuniary injury (Art. 914, 919 of the Greek Civil Code) and 2) for moral or non pecuniary harm (Art. 932 of the Greek Civil Code).

Once an unlawful infringement of a right has been established, the plaintiff additionally to 1) the right to compensation in money is 2) entitled to have the infringement undone and 3) has the right to demand that it will not be repeated in the future.

⁶ See at www.hlhr.gr/hlhr-kemo/docs/HLHR-KEMO%20AR2007.pdf

10. Adequacy of compensation

In the special area of non-discriminations where the question of damages is raised there are no judgments available (no compensation was requested in the cases presented in the report). Therefore, no valid conclusions can be drawn on this issue.

11. Rules relating to the payment of legal costs

Legal costs are allocated by the judgment according to the "defeat principle" that is regulated in Articles 176 and 189 of the Code of Civil Procedure: the loser pays the other party's court expenses including a moderate lawyer fee.

There are two exceptions to this principle, the first being in cases of partial victory and partial defeat of both parties, where no recovery of expenses is allowed. Secondly, if the court judges that the interpretation of the relevant rules was particularly difficult, it may deviate from the "defeat principle" and allow no recovery expenses (Art. 179 of the Code of Civil Procedure). Legal costs in administrative justice are regulated in art. 273f of law 2721/1999. The rules relating to the payment of legal costs seem to be equivalent. They do not prevent the parties from access to justice.

12. Rules on burden of proof

The shift of the burden of proof provided by Article 8 of Directive 2000/43, established by art. 14 of Law 3304/2005 is probably the innovation that has the potential of having a crucial impact on the application of the Law. Nevertheless, this impact remains a probability since not only there exists no available data to allow the evaluation of any impact, but also such an impact can only become visible when a system of effective imposition of sanctions through the judicial system is in operation, in combination with access to necessary documentation. Furthermore, it must be included in the Procedural Codes. Despite the above, this redistribution of the burden of proof between the party offended by discrimination and the offender may eventually have the impact of encouraging victims of discrimination to use legal remedies.