WORLD
LAW GROUP

Spring Conference 2008

Athens, Greece

May 7 - 10, 2008

WLG Practice Group Meeting

Litigation Arbitration & Dispute Resolution

"Defining Success in Litigation & Arbitration"

Athens

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10:30am to 12:00m

Greece

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BAHAS GRAMATIDIS & PARTNERS

Courts :

- Noisy courtrooms,
- stressful time,
- aggressive feelings and
- unfair outcomes.

Still there are few things more dreadful than litigation, such as :

- damaged relationship with clients,
- bad reputation and
- waste of time and money.

LITIGATION CONSTANTLY INCREASES IN GREECE

Number of lawsuits filed **only before the Athens First Instance Court** in 2005, 2006 & 2007.

- 2005: **215,970**
- 2006: **229,972** and in
- 2007: **248,653**

Questions:

- How often are both sides' interests satisfied?
- How can courts solve disputes in the most beneficial way if the judge has limited options?
- How can lawyers "survive" an adverse trial judgment?

IS A NEWLY ORIENTED LEGAL MARKET BETTER THAN AN OLD LIMITED ONE?

The Adversarial system (the "win – lose" method)

- Are we producing winners and losers – or solution to common problems? Everyday practice in the Greek courts reveals that the parties need to satisfy other interests than their actual position.
- The "good" lawyer : Fighting and yelling in the courtroom or presenting concrete arguments around the negotiations table? Even though negotiation skills are considered merely a "prerequisite" for the court hearing, the hearing is probably the easiest means for lawyers to prove their skills and, of course, satisfy their client. It is nowadays a fact that even "new entries" in the legal profession prefer to follow the certain established path of Court hearing.

THE CONSTANTLY INCREASING BUSINESS MARKET HAS CREATED NEW STANDARDS THAT ARE MORE COMPLEX AND REQUIRE QUICKER AND MORE EFFICIENT SOLUTIONS. DO WE NEED TO INVENT PRACTICAL METHODS ALTERNATIVES TO LITIGATION?

Negotiation:

- Negotiation is applicable in almost all kinds of legal cases of civil and commercial law,
- The main idea is to keep disputes out of court,
- The goal is – most of the times – clear, but
- The lost possibility frontier of the Court hearing may result to be the negotiations outcome.

THE GREEK LAW:

Article 6 of L. 2479/1997 and article 18 of L.2743/1999 which amended article 214A of the Code of Civil Procedure (and took effect in September of 2000) indicates an obligatory negotiation in the pre-trial stage of contested cases. The purpose was to discharge the load of the court hearings, as the dockets are “full”. Here the parties and their representatives are expected to enter into an essential negotiation before the court hearing and attempt to solve their dispute before the case enters the court. The law can be applied in civil cases subject to the Three-Member District Court (except for cases of divorce, annulment of marriage and labour law disputes). It is known that most civil law cases brought before the Three-Member District Court deal with disputes of high amounts, where great business interests are at stake. The legislator wants to leave the opponents the last chance to overcome their disputes within a reasonable period before the first hearing. Accordingly, the legal process results in an agreement reached by the parties alone and confirmed by the judge, making the agreement both binding and enforceable.

Benefits:

- The weight of resolution is transferred outside the courts,
- Public costs are reduced,
- Litigants are offered the opportunity to save time and money,

- Litigants may exchange information directly and control the situation, while
- Lawyers may collect more information, expand knowledge to the maximum by interviewing clients, earn time to research and read, although
- Negotiation does not reduce lawyer's obligations.

UNLIKE RELEVANT PROCEDURES IN OTHER COUNTRIES, THE GREEK LAW DOES NOT FORESEE THE INVOLVEMENT OF A JUDGE AT THIS STAGE. AS A RESULT, LAWYERS WHO PARTICIPATE IN NEGOTIATIONS SHOULDER THE TASK OF AN "EARLY JUDGE" ROLE. OUT-OF-COURT SETTLEMENT ALLOWS NEGOTIATORS TO REFORM THEIR POSITIONS. IN CASES OF LAWSUITS, PARTIES ARE BOUND BY THEIR POSITIONS AS STATED IN THE TEXT, ONCE THE ACTION IS FILED. ON THE CONTRARY, WHEN PARTIES CHOOSE TO NEGOTIATE THEY CAN ADJUST POSITIONS TO THE NEW FACTS, POINT OUT MORE THAN ONE PROMISING IDEAS, MAKE NEW OFFERS AND EVALUATE OFFERS.

Obstacles:

- The law enforces no legal "penalty" against the party that did not appear in the negotiations and
- the fact is not negatively estimated and does not produce evidence against him.
- As a result, the value of the negotiation pre-stage is disabled and remains of no importance to the main procedure.

- The court simply ratifies the minutes and continues with the hearing (art. 214A par. 8b). Furthermore, the reasons of the settlement's failure are not discussed or mentioned in the court's ruling. It might be helpful if the court were to consider them and include them in its ruling, so that each side feels the pressure of responsibility or the guilt of low efforts (art. 214A par. 7).

- The number of lawyers specialized in consultancy services are relatively small compared to the lawyers practicing litigation exclusively. In the U.S., the rate is 90/10. American legal practitioners follow dispute resolution techniques, which leaves 90% of all lawsuits settled out of court. In Greece most lawyers are taught to exercise their legal knowledge on a static basis that they consider as safe. Although legal consultancy is gaining supporters over the last few years, everyday practice has shown quite a lack of expertise in the negotiation battle and, therefore, a lack of clients' trust to settle disputes out of court, but on the other hand

- European clients seem to seek for the traditional court solution to their cases.

The "client factor"

- If plaintiff: "We could get more if attending the hearing. Why settle?"

- If defendant: "We did nothing wrong to pay that money. Why settle?"

ARBITRATION

Litigation has always been popular in Greece and bringing proceedings to court is a relatively easy and cost-efficient process. Systems of alternative dispute resolution presenting many similarities to arbitration can be tracked back to ancient Greece. The Greek Code of Civil Procedure treats arbitrations as a method of settling private law disputes. However, since the court procedure remains a lengthy process, arbitration is gradually being seen as a viable alternative method of dispute resolution mostly by major commercial companies. The Greek law offers the foreign investor with a satisfying set of arbitration rules, in line with international standards.

CONCLUSION

The Greek system, conforming to the Greek culture, does not seem to promote “the mutually acceptable resolution of dispute” and insists on the traditional paths, although there are (limited) signs willing to establish negotiation practices. Unfortunately, the relevant legislative provisions remain largely ineffective. Phrasal gaps that weaken legal validity impede alternative dispute resolution mechanisms.

Although and since it is a fact that disputes will constantly arise whenever different interests are at stake in a society, changes in our way of thinking should take place in early steps of every activity. Negotiation is at the bottom line a technique and as such, it can be taught and practiced, but per the Greek practice satisfaction of winning before the Court is unsurpassed.

But still the essence of success remains undefined.