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Which country's law applies?

Greece

Where a legal relationship between individuals has elements which connect it with more than one state (an international element) and a dispute arises, the Greek courts do not necessarily apply Greek law and will investigate which law must be applied (the applicable law) on the basis of private international law. Private international law is a mechanism which operates on the basis of connecting factor rules in order to determine the applicable law (i.e. the provisions of the law of one country), which may be the law of the court in question or of another country. One or more connecting factors are used to determine the applicable law on the basis of the connecting factor rules. The connecting factor is the factor of a dispute with an international element that activates a specific rule of private international law in order to determine the applicable law in the case in question, i.e. the law of Greece or the law of a foreign state (conflict of laws).

1 Sources of the rules in force

Greek laws are the basic source for determining the applicable law. The concept of law also includes bilateral and multilateral international conventions ratified by Greece which, once they have been ratified, apply in the same way as Greek national law. The concept of law also encompasses the law produced by the European Union, regulations in particular. Given the ongoing increase in private transactions effected at an international level, both in terms of number and type, Greek case law and the Court of Justice of the European Union, despite not being a formal source, play an essential role in filling gaps in private international law, which is used to determine the applicable law.

1.1 National rules

The key provisions are laid down in Articles 4-33 of the Civil Code as well as in other legislation, e.g. Articles 90-96 of Law 5325/1932 on bills of exchange and promissory notes and Articles 70-76 of Law 5960/1933 on cheques.

1.2 Multilateral international conventions

The following are some of the multilateral international conventions:

The Geneva Convention of 19 May 1956 on the Contract for the International Carriage of Goods by Road, ratified by Greece by Law 559/1977.

The Hague Convention of 5 October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions, ratified by Greece by Law 1325/1983.

The Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, ratified by Greece by Law 1334/1983.

The Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children, ratified by Greece by Law 4020/2011.

1.3 Principal bilateral conventions

The following are some of the bilateral international conventions:

Convention of 17 May 1993 on Judicial Assistance in Civil and Criminal Matters between the Hellenic Republic and the Republic of Albania, ratified by Greece by Law 2311/1995.

Convention-Treaty of 3 August 1951 on Friendship, Commerce and Shipping between Greece and the USA, ratified by Greece by Law 2893/1954.

2 Implementation of conflict of law rules

2.1 Obligation of the judge to apply conflict of law rules on his own initiative

When, under the connecting factor rules in Greek private international law, the law of another country is the applicable law, the Greek judge takes this into account on his/her own initiative, i.e. without the need for the litigants to cite it, and has to investigate which provisions of foreign law apply (Article 337 of the Code of Civil Procedure).

2.2 Renvoi

Where the rules of Greek private international law stipulate that the law of another country applies, the provisions of its substantive law apply, i.e. reference is made only to them instead of the provisions of that country's private international law (Article 32 of the Civil Code), which in turn might stipulate that Greek law or the law of some third state applies.

2.3 Change of connecting factor

The connecting factor of a legal relationship often changes during the course of the relationship, e.g. the domicile of a company is transferred from one country to another, in which case the applicable law also changes. There are rules which explicitly provide a solution as to which law ultimately applies; otherwise the court applies the applicable law which applied initially, before the change of connecting factor, or subsequently, or a combination of the two, depending on the actual circumstances of the case.

2.4 Exceptions to the normal application of conflict rules

If Greek private international law (connecting factor rules) stipulates that foreign law applies but its application clashes with the fundamental moral or legal perceptions that inform Greek public policy (Article 33 of the Civil Code), when the case in question is heard, the Greek court will not apply the relevant provision of foreign law but will apply the other foreign provisions (negative function). If, however, once its application has been precluded there is a legal vacuum in the foreign law, this will be bridged by applying Greek law (positive function).

One way of protecting the interests of the Greek legal system is to enact rules that apply directly. These rules regulate particularly important matters in the internal legal relationships of the state and are also applied directly by the Greek courts in cases with an international element that are not resolved by the operation of Greek private international law.

2.5 Proof of foreign law

The Greek judge may use any means they consider appropriate to find which foreign law to apply. Such knowledge may be based on legal information they personally know, or the judge may search for it within (multilateral and bilateral) international conventions — under which the member states have undertaken the mutual obligation to provide information — or from domestic or foreign scientific organisations. Where determining the applicable foreign law is difficult or proves impossible, the Greek judge may even ask for the litigants' assistance without, however, being restricted to the evidence they provide (Article 337 of the Code of Civil Procedure).

By way of exception, a Greek judge will apply Greek law instead of applicable foreign law if, despite making all possible effort to find the provisions of foreign law, this has proved impossible.

3 Conflict of law rules

3.1 Contractual obligations and legal acts

The Greek judge will determine the applicable law in most contracts and legal acts entered into on or after 17 December 2009 on the basis of Regulation (EC) No 593/2008, known as Rome I. As a general rule, the law chosen by the parties will apply.

As regards contracts and legal acts entered into from 1 April 1991 to 16 December 2009, the applicable law is identified on the basis of the Community's Rome Convention of 19 June 1980, which sets out the same general rule as that referred to above.

As regards all categories of contractual obligations and legal acts which are explicitly excluded from the scope of the above Regulation and Convention, as well as those entered into before 1 April 1991, the applicable law is identified on the basis of Article 25 of the Civil Code, which sets out the same general rule as that laid down in the Regulation.

3.2 Non-contractual obligations

The Greek judge will determine the law which applies to obligations arising from tort and to obligations arising from unjust enrichment, negotiorum gestio and culpa in contrahendo, on or after 11 January 2009, on the basis of Regulation (EC) No 864/2007, known as Rome II. As a general rule, the law of the state in which the wrong was committed will apply.

As regards tort which does not fall under the scope of the above Regulation and tort committed before 11 January 2009, the applicable law is determined on the basis of Article 26 of the Civil Code, which sets out the same general rule as that laid down in the Regulation.

According to Greek case law, the law which applies to culpability arising from unjust enrichment before 11 January 2009 is the law of the state which is most appropriate in the overall specific circumstances.

3.3 The personal status, its aspects relating to the civil status (name, domicile, capacity)

- Natural persons

Name, domicile

As a name and domicile are used to identify a natural person individually, the law which applies to them is determined each time in the context of the specific legal relationship that needs to be regulated. Thus, the name and domicile of spouses are regulated by the law which governs their personal relationships in accordance with Article 14 of the Civil Code; in respect of minor children, they are governed by the law on the parent-child relationship in accordance with Articles 18-21 of the Civil Code.

Capacity

In respect of matters relating to the capacity of any person, whether a Greek or an alien, to become the subject of rights and obligations, to carry out legal acts and to be party to a court case and participate in a trial in person, the law of the state of which the person is a national will apply (Articles 5 and 7 of the Civil Code; Articles 62(a) and 63(1) of the Code of Civil Procedure). Where an alien does not have the capacity to carry out legal acts or participate in a trial in person under the law of the state of which he/she is a national, but the law of Greece provides that he/she does have the above capacities (except for legal acts falling under the scope of family law, law of succession, and property law for properties outside Greece), the law of Greece will apply (Article 9 of the Civil Code and Article 66 of the Code of Civil Procedure).

- Legal persons

In respect of matters relating to the legal capacity of legal persons, the law of the place where the legal person has its domicile will apply in accordance with Article 10 of the Civil Code. According to Greek case law, the term 'domicile' means the actual, not the statutory, domicile.

3.4 Establishment of parent-child relationship, including adoption

3.4.1 Establishment of parent-child relationship

Parent-child relationship issues relate to the family ties between parents and children and the associated rights and obligations arising from them.

When deciding if a child qualifies as having been born in or out of wedlock (Article 17 of the Civil Code), the applicable law is:

the law of the state which regulated the personal relationship between the child's mother and her spouse when the child was born, as defined in Article 14 of the Civil Code;

where the marriage was dissolved before the child was born, the law of the state which regulated the personal relationship between the child's mother and her spouse when the marriage was dissolved, as defined in Article 14 of the Civil Code.

The applicable law for the parent-child relationship for children born in wedlock, even if the marriage is dissolved:

the Greek judge will determine the applicable law in accordance with the Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children, ratified by Greece by Law 4020/2011, in respect of parental responsibility and child protection measures, in the event of the law of a state which is a member of the above Convention.

Applicable law for a state which is not a signatory to the above Convention or in respect of matters which are not regulated by the above Convention, in accordance with Article 18 of the Civil Code:

where they are nationals of the same state — the law of that state;

where they have acquired a new common nationality after the birth — the law of the state of their most recent common nationality;

where they are nationals of different states before the birth and their nationality does not change after the birth or where they are nationals of the same state before the birth but the parents' or the child's nationality changes after the birth — the law of the state in which they had their most recent joint habitual residence at the time of the birth;

where they have no joint habitual residence — the law of the state of which the child is a national.

Applicable law for relationships between the mother and father and a child born out of wedlock (Articles 19 and 20 of the Civil Code):

where they are nationals of the same state — the law of that state;

where they have acquired a new common nationality after the birth — the law of the state of their most recent common nationality;

where they are nationals of different states before the birth and their nationality does not change after the birth or where they are nationals of the same state before the birth but the parents' or the child's nationality changes after the birth — the law of the state in which they had their most recent joint habitual residence at the time of the birth;

where they have no joint habitual residence — the law of the state of which the father or the mother is a national.

Applicable law for the parent's maintenance obligations to the child:

The Greek judge will determine the applicable law, on or after 18 June 2011, on the basis of Regulation (EC) No 4/2009, as specified by the Hague Protocol of 23 November 2007. As a general rule, the law of the state in which the obligated party has his/her habitual residence will apply.

3.4.2 Adoption

The applicable law for the conditions of adoption and termination of adoption with an international element is the law of the state of which each person involved in the adoption is a national (Article 23 of the Civil Code). The applicable law for the form of adoption is the law provided for in Article 11 of the Civil Code, i.e. either the law which governs its content, or the law of the place in which it was drawn up, or the law of the state of which all parties are nationals. Where the persons involved in the adoption are nationals of different states, the conditions under all the laws of the corresponding states must be met and there must be no impediments under those laws in order for the adoption to be valid.

Applicable law for relationships between the adoptive parents and the child being adopted:

where they are nationals of the same state after the adoption — the law of that state;

where they acquire a new common nationality at the time of the adoption — the law of the state of their most recent common nationality;

where they are nationals of different states before the adoption and their nationality does not change after the adoption or where they are nationals of the same state before the adoption but the nationality of one of the persons involved in the adoption changes on completion of the adoption — the law of the state of their most recent joint habitual residence at the time of the adoption;

where they have no joint habitual residence — the law of the state of which the adoptive parent is a national or, if spouses are adopting, the law which regulates their personal relationship.

3.5 Marriage, unmarried/cohabiting couples, partnerships, divorce, judicial separation, maintenance obligations

3.5.1 Marriage

Substantive conditions

The applicable law for the conditions which must be met by and the impediments in the way of persons wishing to marry is the law of the state of which they are nationals if they are nationals of the same state or, if they are nationals of different states, the law of either state (Article 13(1)(a) of the Civil Code).

Procedural conditions

In order for the marriage to be formally valid, the applicable law is the law of the state of which the persons to be married are nationals, where they are nationals of the same state or, if they are nationals of different states, the law of either of the states of which they are nationals or the law of the state in which the marriage is celebrated (Article 13(1)(b) of the Civil Code). The Greek legal system requires certain formalities to be adhered to in order to celebrate a marriage; the unions of couples who cohabit but who have not been formally married are recognised as valid in Greece provided that they are recognised as valid under foreign law and the persons cohabiting are not Greek.

Personal relationships between spouses

The personal relationships between spouses are those based on their marriage, which have nothing to do with property, such as cohabitation and rights and obligations, including maintenance.

Applicable law for personal relationships between spouses (Article 14 of the Civil Code), other than maintenance:

where the spouses are nationals of the same state after the marriage — the law of that state;

where the spouses have acquired a new common nationality during the marriage — the law of the state of their most recent common nationality;

where the spouses were nationals of the same state during the marriage and one later became a national of another state — the law of the state of their most recent common nationality, provided the other spouse is still a national of that state;

where the spouses were nationals of different states before the marriage and their nationality does not change after the marriage or where they were nationals of the same state before the marriage but the nationality of one of them changes on marriage — the law of the state of their most recent joint habitual residence;

where they do not have a joint habitual residence during the marriage — the law of the state with which the spouses are most closely connected.

Maintenance obligations

The applicable law is determined in accordance with Article 4 of the Hague Convention of 2 October 1973, ratified by Greece by Law 3137/2003, i.e. it is the law of the state in which the beneficiary has his/her habitual residence.

Matrimonial property regimes

The matrimonial property regime applies to the property rights and corresponding obligations created by reason of the marriage.

The applicable law is the law regulating the spouses' personal relationship immediately after the marriage is celebrated (Article 15 of the Civil Code).

3.5.2 Unmarried/Cohabiting couples and partnerships

The Greek legal system also recognises a form of cohabitation other than marriage, as provided for by Law 3719/2008. On the basis of an explicit provision laid down in the above Law, the said Law applies to all civil partnerships established in Greece or before the Greek consular authorities, irrespective of whether the parties are Greeks or aliens, both in terms of form and of the overall relations of the parties. Where a civil partnership is established abroad, the applicable law in respect of the form thereof is the law specified in Article 11 of the Civil Code, i.e. it is either the law that governs its content, or the law of the state in which it is established, or the law of the state of which all the parties are nationals; the applicable law in respect of the relations of the parties is the law of the state in which the partnership was established.

3.5.3 Divorce and judicial separation

The applicable law for matters concerning divorce or any other form of judicial separation is determined on the basis of Regulation (EC) No 1259/2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation, known as Rome III. As a key rule, the spouses may agree to choose the law applicable to divorce and legal separation provided that it is one of the following laws: (a) the law of the state where the spouses are habitually resident at the time the agreement is concluded; or (b) the law of the state where the spouses were last habitually resident, in so far as one of them still resides there at the time the agreement is concluded; or (c) the law of the state of nationality of either spouse at the time the agreement is concluded; or (d) the law of the presiding court.

3.5.4 Maintenance obligations

The above Regulation provides explicitly that it does not apply to maintenance obligations for ex-spouses, as this matter is regulated by Article 8 of the Hague Convention of 2 October 1973, ratified by Greece by Law 3137/2003, which specifies that the applicable law is the law of the state in which the divorce or separation procedure was carried out.

3.6 Matrimonial property regimes

See the last paragraph of section 3.5.1 above.

3.7 Wills and successions

In respect of all matters relating to inheritance, except for the form used to draw up and revoke a will, the applicable law is determined on the basis of Regulation (EU) No 650/2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession.

Where there is a will, it will be deemed to be valid if made in the form provided for under any of the following laws (Article 1 of the Hague Convention of 5 October 1961 on the Conflicts of Laws relating to the Form of Testamentary Dispositions):

the law of the state in which the deceased made his/her will;
the law of the state of which the deceased was a national when he/she made his/her will or when he/she died;
the law of the state in which the deceased was resident or domiciled when he/she made his/her will or when he/she died;
where the will relates to property: the law of the state in which the property is located.

3.8 Real property

The applicable law for relationships in rem pertaining to real estate is determined by Article 27 of the Civil Code, i.e. it is the law of the state in which it is located.

The applicable law for culpable relationships under the law of obligations pertaining to real estate is determined on the basis of Regulation (EC) No 593/2008, known as Rome I, the general rule being that the law chosen by the parties will apply.

The applicable law for the form of the above transactions is the law of the state in which the real estate is located (Article 12 of the Civil Code).

3.9 Insolvency

The applicable law for insolvency and its results is determined on the basis of Regulation (EC) No 1346/2000 on insolvency proceedings, i.e. it is the law of the state in which the relevant proceedings were opened.

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