

SUMMARY Of The REPORT ON TENANCY LAW IN GREECE

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FIRST SECTION: GENERAL REMARKS

I: SOCIAL CONDITIONS Regarding HOUSING And PUBLIC INTERVENTION To The HOUSING MARKET

(specific and accurate data as regards social conditions, percentage of citizens owning their residence and black market expected from the Greek Statistical Office)

It is very difficult to give an overview of the Greek State's housing policy, if there is a well defined and coherent one. For the most part, it consists of specific measures in separate fields, which do not form part of a whole. Provisions on loans or tax incentives to young people, to public officers, to officials of the Military etc. For the purpose of buying house constitute a labyrinth difficult to unravel. Public housing programs were created in different times to serve different purposes. A significant public housing program was launched in the 20s and the 30s to meet the needs of the refugees after the so called Minor Asian disaster. Public housing programs were also developed in the 60s and 70s to cope with the internal migration movement from the provinces to the big urban centres, especially Athens. Moreover, there is the Institute of Labour Housing, charged with the task to build apartments to be used as residence for labour class members. Particular mention should be also made to special public housing offers for Army Officers and their families. In all these instances, the inhabitants either become owners and they pay the price in cheap monthly long term rates (something like a rent substitute) or they remain tenants, but they have to pay a very low rent and they are "kicked out" very rarely.

These initiatives notwithstanding, public housing does still represent only a neglectible percentage if compared to the private market of houses.

II. LEGAL FRAMEWORK

A. The Constitutional Framework

The Greek Constitution stems from 1975, after the fall of the Colonels dictatorship and the restoration of Democracy; it has been amended in 1986 and in 2001. It is influenced at least in the structure from the German Fundamental Law (Grundgesetz) – the content less so, especially as regards the part regarding the organisation of the State, as Greece is not a federal state.

The provisions of the Greek Constitution pertinent to tenancy law disputes are the following:

- i. Art. 5 §§ 1 and 3. These provisions enshrine the individual right to free development of personality and to free movement. The scope of the rule is very broad; it includes, among others, the economic freedom, which in turn encompasses the contractual freedom, enshrined as a general principle in art. 361 Greek CC (AK). The infringement of the Constitution and of the good morals constitutes the limit to the exercise of the right.
- ii. Art. 17 § 1. This norm guarantees the right to private property and at the same time provides that it cannot be exercised at the cost of the general interest. (The rest of art. 17, §§ 2-7, regulate in detail substantive and procedural aspects with regard to eminent domain).
- iii. Art. 21 § 1, which foresees that the family characterised as a Fundament for the preservation and development of the Nation, the marriage, the motherhood and the childhood are protected by the State, and § 4, providing that the acquisition of housing by those who do not have it or whose residence conditions are insufficient is the object of

special care by the State. Art. 612 § 2 and art. 612 A of the Greek CC (AK), reserving a favourable legal treatment to the tenant's husband in case that the real estate was used as a family residence, implement the constitutional order to protect the family in the field of tenancy law.

- iv. To these provisions one may add art. 106, which foresees in § 1 that the State plans and coordinates the economic activity of the country, with the objective to guarantee the economic development of all sectors of the National Economy for the establishment of social peace and the protection of the general interest, and that it takes the necessary steps for the management of the National Wealth. The same article provides, in § 2, that individual economic initiatives should not be developed at the cost of liberty and human dignity or to the harm of the National Economy. Art. 106 has been proved to be of practical value as regards State intervention to private companies of paramount importance for the national economy (banking sector, big industries, health services). Nevertheless, it is applied according to its letter, to all kinds of economic activity and it is therefore pertinent to tenancy law.

It is clear that the Greek Constitution aims at striking an extremely difficult balance between the imperatives of a free market economy and the need for public intervention to the economic life: landlords and tenants are entitled to shape the content of the tenancy contract in a variety of ways, but the State avails of wide margins to regulate imperatively various aspects of the housing market, if it considers it useful to do so; nevertheless, it cannot cancel out totally the contractual freedom and institute for instance a system of public attribution of real estates to will be tenants under conditions fully determined by it.

The enumeration of the Constitutional provisions should be complemented by reference to art. 25. Its significance is twofold. First, it prohibits the abuse of constitutional rights by individual citizens. Second, it foresees that the rights guaranteed by the Greek constitution are applicable also to the relationships between private persons, to which their application is deemed to be appropriate. In this way, the Greek Constitution recognises the principle of horizontal effect.

B. The Regulation of Tenancy Contracts in the Greek Civil Code (Astikos Kwdikas, AK)

a. Some preliminary Remarks on the Greek Civil Code

The Greek Civil Code (hereinafter: AK) has been enacted in 1945. It is the fruit of preparatory works conducted in the early 30s by a Five Member Steering Committee. The final version is a more conservative one than the first drafts. This is due to the fact that there was a split among the Framers and the conservative line prevailed at the end over the progressive one. The division between Progressives and Conservatives cannot be said to be so profound as the known division in German scholarship between (the formalist) Windscheid and (the progressive) Jhering, or between romanists and germanists. It relates for the most part to the regulation of inter-personal relationships, namely Family Law and Law of Succession.

The influence of the German BGB on the Greek AK is more than obvious; the structure of the AK follows that of the BGB. The Greek Civil Code consists, consequently, of 5 Books; The first Book contains the so called General Principles, applicable to all other areas of private law – and not only. Of interest for the law of contracts is the fact that they contain, among others, the general rules on the conclusion of contracts. The Second Book contains the law of obligations, which is itself divided into two parts: the General Part, including the general rules on the evolution of Obligations, and the Specific Part, which regulates specific types of contracts and the non contractual

obligations (unjust enrichment, torts etc). The third Book is devoted to Property Law; the Fourth and the Fifth Book contain the Family Law and the Law of Successions, respectively.

The German influence is evident also at the level of legal doctrine. Greek lawyers argue normally in terms of the abstract doctrinal categories of German origin; legal reasoning is based mainly on rules and less on cases, it is doctrinal/formalistic and follows a deductive scheme of thought. Equally, court decisions are rather brief, quite formal, and insisting more on the legal aspects than on the factual background of the case.

B. The Regulation of the Tenancy Contract

In accordance with this structure, tenancy law is regulated in the law of obligations, specific part. To be more precise, art. 574-618 regarded Tenancy of Goods in general. The subsequent chapters (art. 619-637) regulate tenancies of real estates used for agricultural purposes.

Art. 574-618 of AK regulate a standard tenancy type; without distinction among Real Estates and Movable Goods or between tenancies involving different uses of Goods. To be sure, there are some provisions which either apply explicitly or whose subject matter fits only into a particular tenancy type. For instance, the norms protecting the tenant's husband (612 A) or providing for the right to terminate the tenancy in case that the tenant's health is seriously in danger (588) apply in particular to residence tenancies. Equally, art. 609, which deals with the right to terminate a tenancy limited in time differentiates between Movables and Immovables. Nevertheless, the regulation contained in the above mentioned provisions is in principle common for all types of tenancies.

The structure of the AK provides the key to understand why mere recourse to the specific provisions on tenancy contracts does not suffice to provide for complete answers on tenancy law. Indeed, the regulation of tenancy contracts, like that of all special contractual forms, is the result of the coordinated application of the general provisions on the conclusion of legal acts, the general provisions on the evolution of obligations and the specific provisions on tenancy law – sometimes legal doctrine comes into play as well.

The provisions of the AK on tenancy law focus mainly on the obligations of parties and on the remedies for breach of duties at the performance stage (with an emphasis on the tenant's remedies for factual or legal defects or lack of agreed capacities and on the landlord's remedies for delayed rents). Moreover they regulate the termination of contract in tenancies concluded for definite or indefinite time period, the legal situation in case of the tenant's death and of transfer of ownership of the real estate. By contrast, they do not address the rent level or rent re adjustment nor do they fix a minimal duration of contract. Protection as regards the rent level and rent re adjustment is afforded only by the general provisions on invalidity of contracts or on the general clause on change of circumstances.

The tenant is considered to be in legal possession of the real estate. She may therefore exercise the powers foreseen by the Property Law towards third persons.

C. Special Legislation on Tenancy Contracts

The provisions of the AK are supplemented by special pieces of legislation which regard particular issues of residence tenancies, on the one hand, and commercial and professional tenancies, on the other hand. These two tenancy types are not subject to common legislation, but each is regulated separately by different Statutes.

The special regime on residence tenancies is, nonetheless, reduced nowadays to a few, rather fundamental, norms. This is due to the fact that Statute 1703/87, which codified the legislative efforts made during the 80s, was "limited in time". Its validity has been extended various times till June, 30th, 1997, when it expired due to legislative inaction. Only two specific provisions have "survived" today. Nevertheless the presentation of the legislative history with respect to residence tenancies is important for the comprehension of the dynamics of tenancy law, for facilitating comparisons with the regime of the AK and for being able to face probable reform in the future (no one can know whether the need to supplement the provisions of the AK with special will emerge again in the future).

Special legislation supplements the provisions of the AK; it does not substitute them. This is in conformity with doctrine, according to which the provisions of AK include general principles applying to all other private law legislation and, if appropriate, also to public law. In addition, no other solutions could be imaginable, given the fact that there are entire areas of tenancy law not dealt with by special regimes.

a. Residence Tenancies

Special legislation regarding residence tenancies was introduced for the first time at the beginning of the 80s. This legislation reflected a well known –rather negative – characteristic of modern Greek law known as *polynomia*. Five laws were promulgated for the regulation of residence tenancies from 1982 till 1987, the one amending the other in major or minor points; the result of this process was a rather confusing and complex legal regime. This regime has been finally crystallised in Statute 1703/87. To be sure, residence tenancies have been subject to further reforms. Nevertheless, Statute 1703/87 provided a rather clear legislative framework, into which further reforms were integrated.

The legislative intention was not one sided. The mere desire to offer a better protection to the tenant was not the sole driving force. Special legislation was introduced to accommodate the interests of the one or the other side, which could not be satisfied by the provisions of the AK.

The objective was to perform this accommodation in a commonly acceptable way that guaranteed social peace. Seen in this light, legislative intervention was necessary, first, to establish a minimal duration of the contract: the AK left the tenant at the landlord's mercy. The latter could just lease the apartment for an indefinite time period and then give notice of termination either for "revenge" reasons –assuming that personal rivalries emerged – or to achieve a higher rent in the market. Moreover, continuous changes of residence entailed a waste of resources and disrupted the tenant's professional and family life. Second, there was a pressing need to foresee a way, lacking in the AK, to re adjust the rent in regular time periods and to allow the landlord to terminate the contract in case that she needed the house for proper use.

In accordance with these remarks, the special legislation on residence tenancies fixed a minimal duration of the tenancy contract. In some occasions it fixed a maximum rent level – in others it provided for rent liberalisation for certain residence groups or a progressive rent increase. Moreover, it included rules on deposits. It entitled the landlord to terminate the contract to use the house for her self or to perform a re structuration according to the pertinent legislation. Last, it included specific rules with regard to procedure. What has survived from this legislation are minimal rules on duration - at least 3 years, but there is a way to shorten this time period - and on rent re adjustment.

In view of the objectives pursued by the legislative intervention, the final developments in the field of residence tenancies do not appear to be deprived of explanation. Once the rent of old tenancies has been re adjusted to reasonable levels according to actual standards, what is needed is a definitive legislation to provide a minimal duration of the contract and a regular method for calculating a regular re adjustment – indeed, this is the content of the provisions which are still in force. This is not to say, however, that other developments would not constitute better alternatives than the actual ones.

b. Commercial and Professional Tenancies

The first pieces of special legislation emerge in the late 60s and early 70s. Previous legislation has nevertheless been abolished by means of Statute 813/78, which does still constitute the basic corpus of the pertinent legislation. This is not to deny the fact that the previously mentioned phenomenon of polynomia appears in this area as well; laws regarding in one way or the other commercial or professional tenancies were promulgated almost every year during the 80s. Nevertheless, the effects are less felt in this area than with respect to residence tenancies. This is mainly due to the fact that Statute 813/78, which replaced all previously existing legislation, contained a rather comprehensive regulation of the subject. The majority of the subsequent Statutes addresses details or special cases; the main subject matters of regulation remain the same and the laws which amended the main body of the Statute's provisions respected somehow its structure - the fragmented and piecemeal legislation governing residence tenancies has been avoided. In addition, legal clarity has been achieved because the special regime on commercial and professional tenancies has been codified in the presidential decree (p.d.) 34/95. Even though the presidential decree has not remained intact –subsequent Statutes, e.g. Statute 2741/99, have amended it in some respects-, the legal regime it introduces is still much more comprehensible than the special regime on residence tenancies was.

Besides the reasons necessitating the special legislation on residence tenancies, the special legislation on commercial and professional tenancies was dictated by some additional considerations, fitting only into the nature of such activities. A commercial activity needs time to develop and to draw economic benefits, which exceed in total the initial expenses made for its operation. The real estate gains an added value due to the operation of a commercial enterprise in it, so that it would be unfair to prevent the tenant, who is to be credited for this added value, to take advantage of it, for at least a certain time period. By the same token, liberal professions need a stable location where the clients may trust that they will find them. Moreover, there is scarcity of space. This fact renders a continuous change of housing extremely onerous: commercial activities are concentrated in the city centre, some professional activities in well entrenched areas (for instance, a solicitor's office needs to be located in the vicinity of the court building) and operations like schools, hospitals etc. can be located only in very specific places and must be distributed evenly among a city's neighbourhoods. At the same time, scarcity of space militates against the need to provide for an eternal protection of tenancies for commercial and professional use; otherwise "new entrants" would very rarely be able to find a real estate to install their activities.

From this follows that the special legislation fixes a minimal duration for the pertinent tenancy contracts (12 years), contains rules on rent increase, on notice of termination for proper use - this domain is subject to extensive regulation, as the special laws enumerate the reason for which such a notice must be given, fix form, procedure, delays and the legal consequences -, and on the compensation owed to the tenant due to termination of the contract for the value added to the real estate.

Statute 813/78 addressed professional tenancies in art. 28: on the one hand, it included some special rules for this kind of tenancies and, on the other hand, it foresaw that the rest of the Statute's provisions apply to professional tenancies as well. The special rules on professional tenancies were abolished by Statute 2741/99, art. 7 § 7; as a result, professional tenancies are nowadays subject to the same legal treatment as commercial ones.

C. The Role of Transitional Provisions

Given the frequency of legislative interventions in residence and commercial and professional tenancies, the fact that special laws include transitional provisions should not take us by surprise. There is, nevertheless, a category of transitional provisions, which deserves particular attention. They are the ones which foresee the automatic (legal) extension of the duration of tenancy contracts up to a certain date, the suspension of the enforcement of court decisions and the abolition of pending processes. At the same time, they fix very often rules for rent re adjustment till a certain time period.

These provisions are the expression of equity towards tenants who could not take advantage of the more favourable provisions of the last legislative initiative or measures taken as a "counter performance" to legal re adjustments with the aim to preserve the balance of interests.

D. Procedural Issues

There is a special procedure for disputes arising out of tenancy contracts, included in art. 647-661 of the Greek Code of Civil Procedure (Kwdikas Politikhs Dikonomias, hereinafter: KPolD). The procedure applies to disputes flowing from every kind of tenancy contract (art. 647).

Like all special procedures foreseen in the KPolD, the special procedure for tenancy law disputes is rather simple, informal and rapid.

In 1997, a special procedure was introduced for the restitution of the use of real estates in case that the tenant refused to pay past rents due to unjustified unwillingness to do so. The judge issues an order in that case, and not a judgement; an order is issued immediately and without oral hearing. The landlord shall ask first in written form the tenant to pay the delayed rents at least one month before the issue of the order. The order may be enforced 20 days after service. Legal recourse against the order and the possibility of suspension of its enforcement is foreseen (art. 662 A-H).

Unlike labour law disputes (art. 669 KPolD), group actions or intervention right are not foreseen for tenancy disputes. It follows that landlords' and tenants' associations can exert their influence only as pressure groups at political-legislative level.

The KPolD attributes particular importance to the enforcement of judgement ordering the restitution off the house or condemnation to pay delayed rents. The first instance court is obliged to declare these judgements as temporarily enforceable, even regular legal recourse against them, which inhibits enforceability, is still viable. The suspension of enforcement is impossible even in this case. At the same time, art. 658 KPolD entitles the court to give a delay of maximum 30 days for the enforcement of judgements ordering the restitution of the house or its placement at the tenant's disposal. The special legislation on residence tenancies included similar rules, albeit for the tenant's protection only.¹

¹ See art. 7 of Statute 1953/91.

