XIII. Greece

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1. Greek Supreme Court (Areios Pagos) 1227/2007

The decision was the judgment of the Greek Supreme Court which clarified the issues related to medical error as a condition for the establishment of the tortious liability of a doctor. Its reasoning has been followed since by a series of decisions by the Supreme Court.[1] The patient, a 36-year-old woman, was admitted to a surgical clinic for a scheduled surgical procedure. During the administration of anaesthesia, the anaesthesiologist caused a three-centimetre rupture of her trachea, resulting in her death.

The Supreme Court held that:

(a) For the establishment of tortious medical liability, an unlawful and faulty causation of damage is required. These prerequisites (unlawfulness and fault) are fulfilled simultaneously on the basis that negligence is considered both as a form of unlawful conduct and as conduct at fault (*the dual function of negligence*). Therefore, if, in the process of a medical procedure, the rules and principles of medical science are infringed and/or the duties of care, which arise from the general duty of providence and safety and are incumbent upon the average prudent physician of the tortfeasor's specialty, are breached, such conduct is unlawful and, at the same time, culpable.

(b) Medical services fall within the scope of art 8 of Law 2251/1994, which establishes liability of the provider of services, as physicians act independently, without being subject to specific instructions or directions from the recipient of the services (the patient), and has the discretion to determine the manner in which their services are offered. As a result of the application of art 8, the injured party (the patient) only bears the burden of proving the provision of the services, the damage sustained, and the causal link between that damage and the overall provision of the services, but not the

[1] Indicatively Areios Pagos (Greek Supreme Court, henceforth AP) 693/2020; 655/2019; 1478/2018; 853/2017; 427/2015; 974/2014; 1693/2013; 726/2012.

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specific act or omission that produced the harmful result. Conversely, in order to be discharged from liability, the service provider (the physician) must prove either the absence of any unlawful and faulty act on their part, or the lack of a causal link between such act and the damage, or the existence of a ground leading to the exclusion or reduction of their liability.

Until decision 1227/2007, it was unclear under which conditions a doctor should be held liable in tort and to what extent a violation of the principles of medical science fulfill the prerequisite of illegality, fault, or both. The decision clarified that if, during the performance of a medical act, the rules and principles of medical science, or the obligations arising from the general duty of care and safety of the average prudent doctor in the doctor's specialty are infringed, such conduct is unlawful and, at the same time, culpable.[2] The definition of diligent behaviour is based on the fundamental principles of medical science. A doctor is liable if they failed to act in a *lege artis* manner, and, in particular, as an average, prudent and diligent doctor would have done under the same conditions and circumstances and with the same medical equipment and devices at their disposal. The first stage of the examination of medical liability is, therefore, whether the doctor acted in a *lege artis* manner, that is to say, whether they complied with medical standards as regards the diagnosis of the disease, the choice of the treatment method, and the performance of the treatment. The standard is determined by the objective circumstances, the rules of science and the findings of experience at the time of medical treatment.

The provision of medical services falls within the concept of 'service' provided for in art 8 of Law 2251/1994, and allows for the application of this rule, which reverses the burden of proof of unlawful and culpable conduct on the part of the service provider in favour of the service recipient. The application of this rule to medical liability is of great importance, because in this field it is particularly difficult for a patient to invoke in a specific manner and prove the doctor's error that caused damage to the patient's health.

2. Areios Pagos 1768/2009

The Supreme Court ruling accepted the establishment of tort liability on the part of a bank due to a breach of its duty of care, because the bank

[2] See *K Fountedaki/M Gerasopoulou/V Maroudas*, Civil Medical Liability (in Greek) (2023) 200 f.

failed to check the solvency of its customer who requested the issuance of a cheque book. The decision, which was criticised as it was considered to expand banks' duty of care beyond a reasonable limit, sparked a renewed theoretical debate on the limits of duties of care and of tort liability in general.

A, who presented himself as the representative of company B, issued four cheques drawn on a cheque book that had been provided to B by bank T. The cheques were not covered by sufficient funds, thereby causing loss to the bearer, who could not cash it. The bearer filed a claim against the bank for failing to properly evaluate the creditworthiness of A and B before issuing a cheque book.

The Supreme Court held that the agreement for the issuance of a cheque book between the bank and its customer is intended to protect the legitimate interest of the lawful bearer of the cheque to receive the amount due from the drawee bank upon the cheque's lawful presentation for payment. The bank is obliged, in accordance with the principles of good faith and fair dealing, to verify the reliability and creditworthiness of a customer prior to issuing a cheque book, given that such issuance constitutes a potential source of risk for the legitimate interests of the bearers of cheques. Therefore, the negligent omission by the bank's agents to ascertain, prior to the issuance of a cheque book, the customer's creditworthiness and reliability, followed by the subsequent drawing of cheques by the recipient of that cheque book, which were not honoured upon their lawful presentation, constitutes a tort. Accordingly, the bank is liable to compensate for damage and/or to pay monetary satisfaction to the bearer of the cheques.

In the Greek legal order, 'unlawful' conduct within the meaning of art 914 of the Greek Civil Code (henceforth GrCC) is any conduct that violates a prohibitive rule of law, or a rule that establishes an absolute right or protects a private legal interest. At the same time, the scope of tort liability has been broadened since the 1970s with the recognition of a duty of care based on the principle of good faith (art 288 GrCC), ie a duty of every person to exercise diligence and care for the safety and protection of persons and property with whom they come into contact.[3] Case law tends to recognise extensive duties and often refers to a general duty to 'not culpably cause harm to others (*neminem laedere*)'.[4] However, the prevailing view in legal theory argues that such a general duty cannot be recognised towards everyone, since in fact in this way the condition of

[3] See *M Stathopoulos,* Law of Obligations, General Part (5th edn 2018) (in Greek) § 15 no 39 ff.

[4] See already AP 967/1973.

the 'unlawful' occurrence of damage, which is expressly provided for in art 914 GrCC, is overlooked.[5] The duty of care must be specified with obligations related to the facts of each case under consideration. The scope and extent of the requirements of good faith must be proportionate to the risks arising from the activities of the parties. The position of the parties, their previous relationship, the type of activity carried out, and the risks inherent in it must also be taken into account.

The decision in question revived the debate on the scope of these duties, based on the observation that, in this case, the Court's judgment may have resulted in an excessive extension of the bank's obligations towards any potential bearer of the cheque.[6] The case law of the Supreme Court continues to refer to a duty to 'not culpably cause harm to others'.[7] However, the limits of duties of care still remain debated.

3. Areios Pagos (Plenary Session) 9/2015

The plaintiff company had entered into a commercial agency agreement with the defendant company, which was terminated by the latter. This termination was found to be untimely, unjustified, and abusive, thus constituting an illegal act under Greek law, and the Court awarded the plaintiff company € 70,000 in damages and € 30,000 as monetary satisfaction for moral harm. The defendant company appealed to the Supreme Court, asserting that the amount of monetary compensation awarded infringed the principle of proportionality.

The Plenary Session of the Supreme Court, by a majority of 29 votes to 11, held that, according to para 1 of art 25 of the Constitution of Greece: 'Restrictions of any kind which …. may be imposed upon [fundamental] rights…. should respect the principle of proportionality'.

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[5] See indicatively *K Christodoulou,* The tendency toward expansion of illegality and its practical implications for the Greek liability system, Essays in Honour of K. Beys, V (2003) 4257 ff, 4270 ff; *A Karabatzo*s, Compensation for damage suffered by a third party, in particular, liability of specialists towards third parties, Chronicles of Private Law (Chronika Idiotikou Dikaiou, Journal in Greek) 2018, 409 ff; *Z Tsolakidis*, Illegality as a prerequisite for tortious liability in case of an infringement of environmental goods, Chronicles of Private Law 2016, 96 ff.

[6] Regarding this decision, see *M Stathopoulos*, The illegality in art 914 GRCC and the specification of good faith (on the occasion of a critical commentary of AP 1768/2009), Essays in honour of E. Kounougeri-Manoledaki (2016) 825 ff; *K Karagiannis*, The granting of a block of cheques by a credit institution to an 'untrustworthy-insolvent' person as a 'source of risk' giving rise to tortious liability? Applications of Civil Law (Efarmoges Astikou Dikaiou, Journal in Greek) 2014, 443 ff.

[7] Indicatively AP 91/2025; 1924/2024; 1027/2024; 1135/2021.

The principle of proportionality, understood as the requirement of maintaining a reasonable balance between the burden imposed and the benefit pursued, applies to every form of State activity, as well as in cases of conflicting interests within the field of private law, since the scope of this principle is not confined to specific areas of law. This principle must be taken into account in the interpretation and application of any rule of law. Moreover, pursuant to the explicit wording of art 25 para 1 of the Constitution, the protection of human rights established therein 'applies also to the relations between individuals to which they are appropriate'. Consequently, the courts are likewise under an obligation, when called upon to resolve private disputes, to settle them in such a manner as to ensure a fair balance between the conflicting interests, while simultaneously safeguarding fundamental rights. Considering the above, the aforementioned constitutional provision, even though it does not expressly refer to the judiciary, is likewise directed towards it as well.

The purpose of art 932 GrCC, as indicated by its wording, is to secure, in a broad sense, the restoration of the injured party for the moral harm suffered as a result of the tort, so that they may receive fair and adequate relief and comfort, while at the same time ensuring both that the morally protected value is not commercialised by the injured party, and that the amount awarded for moral harm, which cannot be precisely assessed in monetary terms, is not expanded to an excessive degree. The assessment of the court must, in every case, adhere to the principle of proportionality in the sense that the amount awarded must not exceed the limits established by common experience and the prevailing sense of justice at a given place and time, as reflected in the customary practice of the courts. This is because a judgment awarding either a trivial or an excessively high amount as reasonable monetary relief for moral harm undermines either the respect for human dignity of the victim, or the right to property of the tortfeasor respectively.

In view of all the foregoing, the assessment of the court concerning the amount of monetary satisfaction awarded must be subject to review by the Supreme Court, both as to whether the principle of proportionality has been infringed and as to whether the court has exceeded the outer limits of its discretionary power.

The decision of the plenary session of the Greek Supreme Court was the conclusion of a lengthy debate, lasting approximately 15 years, during which a series of decisions were issued by the Supreme Court on whether the amount of monetary compensation awarded for moral harm could be reviewed after a cassation before the Supreme Court, based on the principle of proportionality.

Initially, the case law of the Supreme Court accepted that the principle of proportionality is to be applied not only by the legislator but also by a judge, who has the power to enforce the principle of proportionality directly.[8] Subsequently, the case law shifted and the Supreme Court ruled that the principle of proportionality is only addressed to the legislator. Therefore, the judge is not entitled to invoke the principle. This position was also adopted by the plenary session of the Supreme Court in 2009, 2010, and 2011.[9] However, decisions by divisions of the Supreme Court continued to accept that the principle of proportionality could also be directly applied by courts.[10] In view of this, the issue was brought back before the full plenary session of the Supreme Court, which, in the judgment under discussion, accepted that the principle of proportionality may also be applied by courts and, specifically, by the Supreme Court, when revising decisions. Therefore, the Supreme Court may, after a cassation has been filed, review whether the monetary compensation awarded for moral harm complies with the principle of proportionality and, if not, overturn the decision and refer the case to the Court of Appeal for a new judgment.

4. Areios Pagos 1159/2022

With decision no 1159/2022, the Greek Supreme Court changed its established case law by recognising the right to monetary compensation for emotional distress to a person with whom the deceased had lived in a free union. In a traffic accident, the truck driven by the defendant collided with the plaintiff's car, resulting in the injury of the plaintiff and the death of his co-driver, with whom the plaintiff lived in a long-term partnership and had three children.

The main parts of the judgment of the Supreme Court are as follows:

(a) The European Court of Human Rights (ECtHR) has repeatedly held that art 8 European Convention on Human Rights (ECHR) does not distinguish between 'legal' and 'de facto' families, stating that the notion of 'family life' protected under this provision is not limited to marriage-based relationships, but extends to other de facto relationships of cohabitation, which also create family ties.

[8] AP (plenary session) 43/2005; AP 132/2006; 1662/2005; 1020/2004; 1043/2001; 899/2001.

[9] AP (plenary session) 6/2011; 5/2010; 6/2009; AP 606/2015; 139/2014; 79/2010; 1220/2008; 769/2007.

[10] AP 491/2015; 265/2015; 531/2014; 78/2014.

(b) According to the prevailing opinion in jurisprudence, the application of art 932 GrCC in the case of a person living in a free union with the deceased is not permitted, neither by the wording of the article (which mentions the 'family' of the deceased) nor by its purpose. Therefore, the possibility of granting monetary compensation for emotional distress caused to the surviving partner by the death of their companion is not provided for by law.

(c) The prevailing view is considered to refer only to free unions within which no children have been born. Regarding free unions which include children as well, art 21 of the Greek Constitution, which establishes the 'family' as a constitutionally protected institution, urges the legislator to adopt positive measures for its protection. The legislator is not prevented by the above constitutional provision from recognising, within the framework of the principles of freedom of personal development, equality, and protection of private life, alternative forms of cohabitation and the creation of family ties through them.

(d) In light of the above, taking into account not only modern social perceptions, which recognise free unions as an alternative form of common life, but also the reforms that family law has undergone in recent years, it is clear that the national legislator, following the example of almost all European legal systems, is moving away from the narrow, traditional view that a 'family' is formed solely through marriage. As a result, individuals who have neither been married nor entered into a civil partnership, but live in a free union from which they have had children should be accepted to fall within the concept of 'family' and are included in the protective scope of art 932 GrCC and art 8 ECHR.

Article 932 GrCC provides that, in the case of death, monetary compensation for emotional distress is granted to the 'family' of the victim. Regarding individuals living in a free union without having entered into a civil partnership, the Greek Supreme Court has consistently ruled that they are not considered a 'family' within the meaning of art 932 GrCC and, consequently, are not entitled to monetary compensation.[11] The Court's primary argument has been that the legislator, despite being aware of the institution of free union and having regulated other aspects of family law over time, did not grant rights to individuals cohabiting in a free union.

[11] AP 51/2018; 775/2011; 1541/2009;1735/2006; 434/2005.

The jurisprudence of the Greek Supreme Court shifted in 2022 with the judgment under discussion. The Court acknowledged that free unions should fall within the notion of 'family', provided that children have been born within such unions and there is evidence of a serious and stable intention for cohabitation between the partners to continue in the future. The Supreme Court's primary argument relied on the case law of the ECtHR, according to which, de facto cohabitation relationships, not based on marriage or civil partnerships, also fall under the protection of 'family life'. Additionally, it referred to specific legislative provisions through which the Greek legislator has recognised legal consequences for free unions. Decision no 1194/2023 of the Supreme Court followed the same direction, adopting similar reasoning.

The Greek Supreme Court, in both cases, accepted that 'the notion of family' includes cases where two individuals cohabit, without having entered into a legal marriage or civil partnership, provided that close personal ties between them existed and their cohabitation is the result of love, devotion, and a serious and stable intention for companionship and togetherness. However, it is unclear why the Supreme Court imposed the additional requirement that children must be born from such cohabitation, as it is evident that close ties could also exist where partners cohabit but no children have been born. This additional condition may be considered as a transitional step for courts to deviate from the established case law of recent decades.

5. Areios Pagos 1904/2022

In the decision under discussion, the Supreme Court accepted that a general rule establishing strict (risk-based) liability could exist in Greek law, even though legislative provisions only regulate specific cases. Another section of the Court issued a decision in 2025 in the opposite direction, and the debate on the limits of strict liability remains open in Greek academia.

The plaintiff companies filed a lawsuit against the main electricity supplier in the country, seeking compensation because, due to a fire at the defendant's substation, the power supply to their businesses was interrupted.

The main parts of the judgment of the Supreme Court are as follows:

(a) Damage caused by a source of increased risk places the injured party in a difficult position to recover their loss, as the principle of subjective liability (fault-based liability), governing the rules of non-contractual liability, excludes compensation when the dam-

age cannot be attributed to fault. A different legal approach to liability for damage caused by such sources of increased risk is therefore required, commonly referred to as 'risk-based liability'. This is the recognition of an obligation to compensate regardless of fault when the damage is associated with sources from which an 'increased risk' emanates. The person liable for compensation is the owner or controller of the source of particular risks.

(b) The legislator did not establish a general rule for strict liability but instead regulated it on a case-by-case basis. In cases not regulated by law, such as liability for damage caused by electricity generation facilities and distribution networks, the obligation of the owner or the controller of the source of 'increased' risk is directly grounded in constitutional provisions, which impose on private individuals the duty to respect and protect the rights of others. In any case, the aforementioned legislative 'imperfection', consisting in the absence of relevant regulation, which is deemed necessary based on the principle of equal treatment of similar situations, can be addressed through the application by analogy of the provisions governing the already regulated cases. The legislator, by regulating only certain cases in this manner, did not intend (given the universality of the aforementioned constitutional provisions) to regulate only those exceptional cases and exclude others from similar provisions, but rather, due to the case-by-case regulation that was adopted, articulated the scope of the law more narrowly than was ultimately intended.

In the Greek legal system, the general principle is that liability for compensation presupposes the fault of the wrongdoer. By exception, the law obliges, in specific cases, the individual who caused damage to compensate the victim, even if they were not at fault (strict liability).

Risk-based liability has not been established by the legislator as a general basis of liability. While tortious liability is regulated by a general provision (art 914 GrCC), the legislator has chosen to regulate specific cases of strict liability on a case-by-case basis (liability for cars, aeroplanes, defective products, etc). Many sources of risk still remain unregulated. In Greek legal theory, following an international debate dating back to the 1940s, the introduction of a general clause on strict liability has been proposed *de lege ferenda.*[12]

[12] *P Kornilakis,* Law of Obligations, Special Part (3rd edn 2023) (in Greek) § 240 no 14; *Stathopoulos* (fn 3) § 15 no 93.

Decision 1904/2022 of the Greek Supreme Court ruled that even in unregulated cases, when 'the damage is associated with a source of increased risk', the owner of that source should have an obligation to compensate any damage resulting from such source. This judgment contradicts the clear legislative choice to limit strict liability only to cases explicitly provided by law and to refrain from establishing a general clause that would encompass all activities creating a specific source of risk.

The reasoning of the Court is supported by two main arguments. First, it follows the path of analogy. However, taking into account that the debate on this issue has been ongoing for decades and the legislator continues, even recently, to regulate only specific sources of risk, no legislative intent for a general establishment of risk-based liability could be inferred. Thus, an application by analogy is not possible.

The second argument relies on constitutional provisions. According to this reasoning, an application by analogy is mandated by the Constitution, which imposes an obligation to protect certain legal interests, such as health and property. However, this argument does not appear convincing either. The Constitution may safeguard specific goods, however, it is up to the legislator to balance this protection with other constitutionally protected rights, such as individual freedom of action. This balancing act cannot be argued to have been directly entrusted to the judge by constitutional provisions.

As has already been mentioned, a different approach was adopted by another section of the Supreme Court under decisions nos 110–111/2025. The Court held that the legislator provided for the liability of electricity suppliers and distributors for their fault in the operation and maintenance of the electricity network, where it considered it necessary to do so and therefore there is no unintended legal vacuum that would make it possible to establish liability based on risk by analogy to the specific provisions. Furthermore, it ruled that such liability may not arise even by reference to the constitutional provisions, as the legislator, implementing those provisions, has regulated certain cases of liability for risk on a case-by-case basis.

Due to the disagreement between the two sections of the Court, the issue may be referred to the plenary session. In any case, the issuance of the decisions has reignited the debate on whether it is appropriate and feasible to establish a general provision on strict liability.