

## Enforcement of Franchise agreements in Greece

### Introduction

In Greece franchising has begun to penetrate in recent years and it has developed rapidly from 1993 until today. Greek law does not contain any legislative or other specific provisions regarding franchising, nor is any proposed at the present. The singularity and complexity of franchise contracts create several problems regarding the legal system, which does not contain specific and detailed laws and regulations for such agreements. Under Greek legal system, franchise contracts are subject to the laws and regulations of different legal fields (i.e. Intellectual and Industrial Property Law, Competition law etc) and their implementation is seldom uncomplicated.

As far as case law is concerned, in Greece until today there is not much of it regarding franchise contracts. This is especially due to two reasons: Firstly, the development of franchising is still very new in Greece. Secondly, franchising, as a new method of business co-operation and development, has turned to be so successful, that there are rare disputes between the contracting parties.

In this chapter we will present a brief outcome of the existing Greek case law, which includes decisions of the Greek Courts.

### Case law of the Greek Courts

#### *1. Athens Court of First Instance 13118/1995*

This is the first case concerning a franchise agreement that was ruled by the Greek Courts. It was about a service franchise agreement and particularly a business activity concerning the rendering of agency services (real estate agency) from the members of a franchise system. In order to rule the case the Court was correctly based on the Regulation 4087/88 “on the application of Article 81(3) -ex Art. 85(3)- of the Treaty to categories of franchise agreements”, as well as on the case law of the ECJ (the “Pronuptia” case). It was held that the imposition by the franchisor to the franchisees of a common and unified invoice of salaries and commissions, which is also decided by the franchisor, constitutes a direct breach of both the Regulation (Art. 5(e)) and the Act 703/1977 (Art. 1(a)), as well as breach of Art. 81(1) -ex 85(1)- of the EC Treaty, because by this way the franchisor imposes to the franchisees fixed prices of rendering of the contractual services. Moreover, the Court correctly considered null and void -as extremely restrictive to the freedom of contracts and contrary to good faith and moral standards (Art.57, 178 and 179 of the Civil Code)- the contractual terms which provided for an obligation of the franchisees to inform the franchisor about their clients (restrictive term of the competition falling within the prohibition of Art.1(1) of the Act 703/77), to give compensation in case of termination of contract and excessive compensation in case of notice of termination of contract and to achieve extremely difficult financial goals. Finally, the Court considered null and void the contractual term, which was binding the franchisees’ heirs.

However, it is argued that the Court held incorrectly that the contractual term according to which the franchisees have an obligation to participate with financial means to the advertising expenses of the franchising system restricts competition, because the Regulation does not consider the imposition of a certain obligation to the franchisee as restrictive of competition, if this is necessary for the maintenance of the common identity and fame of the system and if, furthermore, the demanded approval about the franchisee's independent advertisements concerns the nature of the advertisement and not its content.

The Court also held that the terms of the particular contract, which provide for the franchisee, in order to notify an early termination of contract, to find and point out to the franchisor a third person, who will accept to enter into a franchise agreement with the same terms, fall into the general meaning of transactions called "boule de neige" and are contrary to good morals. According to the Court's decision, in this case there is an analogous application of Art. 1(1), 2 and 3(1)(2) of the Legislative Decree of 16/09/1926. Nevertheless, it is doubtful whether this analogous application is correct.

The Court considered the contract void, providing that the nullity of the particular terms entailed the nullity of the contract as a whole, because the contracting parties were primarily based on these terms in order to conclude the contract. However, according to another view, the nullity of an agreement, which falls within the prohibition of Art. 1(1) of the Act 703/77 -which, in other words, restricts competition- is partial, which means that it is limited only to the parts of the contract which fall within the above prohibition. Thus, the application of Art.181 of the Civil Code is excluded.

Finally, the Court did not take into consideration the application of the "De minimis" rule in the particular franchise agreement, since by this agreement a co-operation of minor importance is created, given the insignificant share of the franchisor in the relevant market. Consequently, the above agreement falls out of the scope of Art. 1(1), Act 703/77, because it does not restrict or seriously distort competition in the relevant market. This was the ruling of the Competition Committee in the same case.

## *2. Corfu Court of First Instance 551/1996*

The decision of the Court concerned a case where the franchisee (the applicant) was seeking an injunction against the franchisor, demanding the provisory continuance of their contractual relationship (provisory measures). The franchisor considered their legal relationship terminated, as he had already proceeded to an extraordinary notice of termination of the service franchise agreement, based on the franchisee's faulty anti-contractual behavior. The Court accepted the applicant's demand ruling correctly that, when a long-term obligation is concerned and there is a demand for provisory continuance of its performance, the granting of an injunction as a provisory measure is not prohibited. In this case there is no risk of creating irrevocable situations and, as a result, there is no conflict with the prohibition of Art. 692(4) of the Code of Civil Procedure, since it is about provisory performance of the contractual relationship. On the other hand, the granting of an injunction by which the performance of the legal relationship between the contracting parties is provisionally prohibited leads definitely to fulfillment of the right (argumentum a contrario). Furthermore, the Court

thought likely that the aforementioned franchise agreement was not cancelled, as it was held that the franchisee fulfilled in due time the terms that the franchisor set in order to continue the performance of the contract.

### *3. Athens Court of First Instance 6787/1998*

In this case it was the franchisor who was seeking for an injunction against the franchisee. However, the Court ruled exactly the opposite from the previous case, dismissing the application. The franchisee had proceeded to an extraordinary notice of termination of the service franchise agreement due to faulty important reasons from the franchisor's part. The franchisor applied for an injunction, seeking primarily for the provisory continuance of performance of their contractual relationship and additionally for the return by the franchisee of all the things that were surrendered to him in use in order to run successfully his business within the framework of the franchise system.

The Court dismissed both claims. As far as the first claim is concerned, it was held that, even if the extraordinary notice of termination of the franchise agreement was null and, as a consequence, the contract was not cancelled, the recurring payments arisen from the contract (long-term rights), which will be paid from the franchisee to the franchisor (in case of temporary continuance of the contract's performance), consist fulfillment of the obligation, and consequently the provisional granting of them is not permitted.

However, the above ruling of the Court led to the complete fulfillment of the franchisee's right. The fact that the franchisor will continue to collect the agreed amount of money coming from his long-terms rights does not necessarily mean that his right is fulfilled, since for these amounts he should render constant support to the franchisee. On the other hand, the cancellation of the franchise agreement creates irrevocable situations, as it is well known that the issue of a definite verdict, which will probably consider the extraordinary notice of termination of contract void, will be delayed.

The franchisor's additional claim for injunction was also dismissed on the grounds that its granting was also leading to complete and definite fulfillment of his right, therefore it was not falling within the exception of Art. 728(1) of the Code of Civil Procedure. However, the franchisee's major obligation is, in parallel with the termination of the franchise agreement, to give back to the franchisor all the things that took from him in order to use them to run his business within the framework of the system (analogous implementation of Art. 719 of the Civil Code). Since, therefore, the Court dismissed the franchisor's main claim for provisory continuance of the agreement's performance, it should have granted the return of the aforementioned objects by the franchisee.

### *4. Athens Court of First Instance 1300/2002*

A very recent decision which dealt with the same legal problem and concluded to the same resolution as above is the decision *1300/2002* of the Athens Court of First Instance (provisory measures). This case concerned an application for injunction by

the franchisor, a famous Greek enterprise which sells sandwiches and coffees, against the franchisee. The two parties had concluded a franchise agreement which surrendered to the franchisee the right to sell the franchisor's products under the trade mark and trade name of his system. According to the franchisor's claims, due to anti-contractual behavior of the franchisee which caused damages to the system's fame, he proceeded to a notice of termination of the franchise agreement, making use of the relevant clause of the contract. However, the franchisee continued to sell in the same store same products to those belonging to the system, although it had been agreed that in case of termination of the agreement the franchisee would not run for one year any competitive business in the same store. As a result, the franchisor applied for an injunction, asking from the Court a) to order the franchisee to provisionally stop running any business activity in the same store without his previous written consent, otherwise to stop running any business activity in the same place until the definite arrangement of the case, and in any case until the 4th of September, 2002, when one year of the termination of the contract will be completed b) to oblige the franchisee not to run for one year after the termination of the franchise agreement any direct or indirect competitive business activity in any of his franchise system's stores.

However the Court dismissed all the claims of the applicant. It was particularly held that the fulfillment of his claims constitutes a complete fulfillment of his rights arising from the franchise agreement, consequently the granting of an injunction is prohibited according to Art. 692(4) of the Code of Civil Procedure, which provides that "the provisory measures cannot constitute fulfillment of the rights whose securing or maintenance is asked". The Court further held that the judicial discretion of Art. 732 of the Code of Civil Procedure does not constitute an exemption to the prohibition of Art. 692(4). Therefore, as the litigation of the two contracting parties was based on the observance by the part of the franchisee of the contractual terms, it could not be the object of granting provisory measures.

##### *5. Thessaloniki Court of Appeal 1043/1998*

This decision was also clearly referred to the Regulation 4087/88 and stated that franchise agreements are mixed agreements, which include elements of various types of contracts. Moreover, it stated that they are governed by the rules that govern the part which dominates in the contractual relationship. Based on this consideration the Court held that, in the examined franchise agreement, dominant part constitute the successive sale contracts of the franchisor's products. Nevertheless, the sale contracts, which are concluded by the contracting parties within the framework of the franchise agreement, are not identified with it but they are only drawn up in order to facilitate the performance of the franchise agreement (executive agreements) and they are always legally independent towards it. Consequently, these executive sale contracts cannot give to the franchise agreement the nature of a purchase and sale contract on the grounds that they constitute the dominant part of the agreement.

##### *6. Athens Court of First Instance 7869/2001*

In this case the franchisor applied for an injunction against the franchisees on grounds of unfair competition. He claimed that notwithstanding the fact that the franchisees

had proceeded to a notice of termination of the franchise agreement, they continued to run and exploit their stores under the name of his business, breaching the relevant term of the agreement and cause him loss. His claim was for the franchisees to be provisionally obliged to stop every business activity under his own business's name and to change all the internal and external features of their stores so as to be totally different from those of his business system. The Court accepted both franchisor's claims. More specifically, it was held that the franchisees' business activities after the notice of termination of the franchise agreement constitute actions of unfair competition, because they create confusion to consumers, who may think that their stores belong to the applicant's franchise system. Moreover, it was held that the breach by the franchisees of the contract's term, which provided that the franchisees would not run the same as the franchisor business for one year after the termination of the contract, constitute action of unfair competition and therefore breaches Art. 1 of the Act 146/1914.

#### *7. Athens Court of First Instance 4294/2001*

Similar to the above case is the case ruled by the decision 4294/200 of the Athens Court of First Instance. In this case the applicant (the franchisor), a well-known Greek company which sells batteries, electric and electronic products, had entered into a franchise agreement with the defendant (the franchisee). By this agreement the franchisee obtained the right to use and exploit the franchisor's trade mark as well as the rest of his industrial and intellectual property rights in order to sell the system's products. However, the defendant breached the contract, so the applicant proceeded to a notice of termination of the franchise agreement due to important reasons. Nevertheless, the defendant after the termination of the contract still continued to use the franchisor's trade mark and the rest of his rights which constituted the franchise package and generally was appearing in the transactions as he was still in the franchisor's system, causing to the franchisor great loss. The franchisor claimed that the franchisee should be obliged to stop the above actions and that the Court should order the arrest of the advertising material as well as the rest of the documents with his business's trade name which were in hands of the franchisee.

The Court accepted the applicant's claims. More specifically, it was held that the defendant did breached the terms of the examined franchise agreement, consequently the notice of termination of the agreement by the franchisor cancelled the contract. The franchisor had that right, provided by the agreement. The Court dismissed the defendant's claim of abuse of right by the franchisor. The Court further held that the behavior of the defendant to continue to use the trade name of the franchisor's system after the termination of the agreement breached the franchisor's exclusive right over this trade mark, was deceiving the consumers and was slandering the franchisor's system. As a consequence, the defendant breached the Act 2239/1994 about trade marks and proceeded to activity which constitutes unfair competition against the applicant.

The same legal matter was also considered in two more applications for injunction, both ruled by the Athens Court of First Instance (no of decisions 23373/1998 and 3174/2001).

#### *8. Athens Court of First Instance 1733/2000*

This decision concerns again the granting of an injunction. The applicant (the franchisor), which is a company that provides services related to the learning of foreign languages, had entered into a franchise agreement with the defendant (the franchisee) by which the franchisor undertook the obligation to surrender to the franchisee the use and exploitation of its system and programs. As a consideration for that, the franchisee was obliged to pay to the franchisor 1.500.000 drc. as well as a percentage of 7% of the money that he would collect every month. This amount of money would arise from the financial documents of the franchisee's private school as well as from the school register. Due to financial differences between the contracting parties, the franchisor brought an action against the franchisee. With this application the franchisor was asking from the Court to oblige the franchisee to hand in to him both the financial documents and the school register. The defendant did not deny that he possessed the aforementioned documents, but he claimed that the franchise agreement between the two parties was void and as a result he did not have any obligation to hand them in.

The Court accepted the applicant's claim. It held that the examined franchise agreement between the two contracting parties was not void, as the franchisee not only had he not proceeded to a notice of termination of contract, but he had also made use of the franchise agreement's terms. Consequently, the franchisee's claim about nullity of the agreement was contrary to good faith as well as to good morals of transactions. Finally, concerning the franchisee's claim that the use of foreign languages' words as trade names by private schools of foreign languages is prohibited, the Court held that this is now permitted, according to Art. 2 of the Presidential Decree 372/13.11.1998.

#### *9. Athens Court of First Instance 3207/2001*

In this case the franchisor claimed that although he had proceeded to a notice of termination of the franchise agreement, the franchisees were continuing to use the trade name of his company, refused to give back the advertising material, threatened to proceed to winding-up of their products, if the franchisor (the applicant) would not accept to buy them, and generally were behaving like the contract was still in force. The franchisor asked from the Court to order the franchisees to stop the aforementioned actions. The Court held that, based on the facts that the two parties brought in front of it, the notice of termination of the franchise agreement from the part of the applicant was void, consequently the examined agreement was still in force. Therefore, all the rights and obligations arising from the above agreement were still existing for both contracting parties.

#### *10. Athens Court of First Instance 9526/2001*

In this case the applicant (the franchisor) and the defendant (the franchisee) had concluded a franchise agreement by which the defendant was given the right to use and exploit the applicant's franchise package in order to run a pizza restaurant. As a consideration, the two parties had agreed that the defendant would pay the applicant a

percentage of 4% of his collection. The franchise agreement operated successfully for two years and then the defendant proceeded to a notice of termination of contract in order to be unbound. The applicant asked for an injunction against the franchisee, claiming that the above agreement should continue to stay in force until the final ruling upon the validity of the agreement's termination notice and that the defendant should be convicted to financial penalty as well as to detention in case of non-complying with the Court's decision.

The Court held that the defendant's notice of termination of the examined franchise agreement was not likely to have been based on the reasons mentioned in it. On the contrary, the defendant proceeded to it deliberately, so as to stop paying to the applicant the agreed amount of money. It was also mentioned that the defendant, after the notice of termination of the contract, although he changed the trade name of his business and painted differently the internal of his store, he basically continued the same business activity with the franchisor's system, using the same machinery, the same cooking ways and the same pizza tastes with the franchisor's stores. The Court accepted all the applicant's claims.

#### *11. Athens Court of First Instance 16568/1998*

This decision considered for the first time in the Greek case law the very important legal matter of the imitation of a franchise system and, through this, the matter of unfair exploitation of one's reputation. Although the term "franchising" was nowhere mentioned in the aforementioned decision, yet it arises from both the examined case and the Court's decision that the system under the name "THE CLUB BY N." or "W.C." -which concerned a methodology about how to organise and run a gymnasium- was a franchise system.

The Court held that the particular franchise system was probably an original invention and that its parts had been originally and systematically codified, given the form of a written text (handbook), which can be registered as an intellectual work. Based on the above thought, the Court held that the examined imitation of the aforementioned system constituted an infringement of its creator's copyright and therefore accepted the applicant's claim for injunction.

To the same resolution also concluded the decision 30171/1998, ruled again by the Athens Court of First Instance.

#### *12. Patra Court of Appeal 150/2000*

In this case the appellants were asking the cancellation of an order of payment on the grounds that the concluded franchise agreement between the first of the appellants and the appellee was void. The appellants claimed that the agreement was concluded due to inexperience of the legal representatives of the first appellant, of which the appellee took advantage.

In order to rule the case the Court of Appeal was based on Articles 178 and 179 of the Civil Code. It was particularly held that a person who claims the nullity of a contract

on grounds of unlawful profit due to his inexperience should also provide in a definite and clear way the value of considerations of both contracting parties. Moreover, he should provide that the other contracting party was aware of his inexperience during the time of conclusion of the agreement, that he proceeded to the conclusion of the agreement taking advantage of his lack of experience and that the consideration given to him was obviously out of proportion comparing to the consideration that he offered. However, the Court held that the appellants did not invoke that the appellee knew about the legal representatives' inexperience at the time of conclusion of the franchise agreement. It was further held that the appellants did not state the value of the appellee's consideration in their application against the aforementioned order of payment so as -comparing both considerations- to be judged if those were obviously out of proportion. Consequently, the Court of Appeal dismissed the appellants' claims on grounds of vagueness.

### Decisions of the Competition Committee

#### *C.C. 50/1986*

The first franchise agreement that the Competition Committee dealt with, was that of "PIGI Ltd." Although the particular agreement was not characterised by the contracting parties as a franchise agreement, yet from the examination of its terms it was concluded that it had the features of a franchise agreement. Considering this case the CC correctly held that the included contract terms about surrendering of protected geographical area to the franchisee, imposing to the franchisee the obligation to be exclusively provided with the contractual products by a person suggested by the franchisor (even if the franchisee could obtain the particular products by another source with better terms) and the obligation not to sell other products except of the contractual ones, as well as imposing to the franchisee fixed prices of the contractual products were falling within the prohibition of Art. 1(1) of the Act 703/77 and were therefore void. Especially concerning the term about geographical protection of the franchisee, this could have been excluded from the prohibition, but it did not happen because the particular agreement was not notified to the CC.

The CC has also considered more cases (252/1995, 15/1995, 51/1997), in most of which it has concluded to correct resolutions.