Contractual liability and compensation for moral harm

Ενδοσυμβατική Ευθύνη και Αποκατάσταση Ηθικής βλάβης

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Abstract: In Greece, the breach of contractual obligation is in principle disapproved by law, it creates, however, only an obligation for the payment of compensation and not an additional obligation for the restoration of moral harm, because the sole non-performance of the contractual obligations cannot cause moral harm. Consequently, according to the Greek legislator, a possibility for the existence of a relevant pecuniary compensation does not exist. Pecuniary compensation for non-pecuniary damage is exceptionally recognized and only in cases defined by law (Art. 299 GCC). For example, it is recognized in the cases of infringement of the personality (Arts. 57, 59 GCC) and of tort, especially for the person who suffered an attack upon his health, honour, or chastity or who was deprived of his liberty (Art. 932 GCC).

In case, however, the violation of the contractual obligation constitutes at the same time - and independently from the existence of the contract - a tort, then it is settled case law in Greece that there is concurrence of contractual and delictual obligation. In that case, the provisions of tort (art. 914 ff. GCC) may apply, in which case, provided that moral harm is sustained, compensation for such moral harm may be sought. Deciding, however, whether the violation of the contractual obligation constitutes at the same time - and independently from the existence of the contract - a tort is not always easy.

The tendency noted in the international texts aiming at the unification of law in Europe is the restoration of moral harm also in cases of breach of a contract. For example, art. 9:501 of the Principles of European Contract Law, PECL and art. 7.4.2 of the Unidroit Principles provide for the possibility of the contracting party to request the restoration of non-pecuniary damage in cases of unjustifiable breach of a contract. Thus, the override of the prohibition set in art. 299 GCC attempted by the Greek doctrine and jurisprudence through the provisions about personality protection and the application of art. 932 GCC, where there is concurrence of contractual and delictual liability, is justified and confirms that art. 299 GCC was rightly criticized almost unanimously by the Greek doctrine already since its introduction as against the tradition of Greek Law and due to the non-lenient situations it causes.

Keywords: Breach of contractual liability, compensation for moral harm, concurrence of contractual and tortious liability, delay of means of transportation, legally protected right, non-pecuniary damage, right of the personality.

Περίληψη: Σύμφωνα με το ελληνικό δίκαιο, κατ' αρχήν, η παράβαση ενοχικής υποχρέωσης αποδοκιμάζεται από το νόμο δημιουργεί όμως μόνο υποχρέωση καταβολής αποζημίωσης και όχι πρόσθετη υποχρέωση για αποκατάσταση ηθικής βλάβης, διότι μόνη η μη εκτέλεση των συμβατικών υποχρεώσεων δεν μπορεί να προξενήσει ηθική βλάβη. Συνεπώς, δεν μπορεί να υπάρξει σχετική χρηματική αποκατάσταση σύμφωνα με τον Έλληνα νομοθέτη, ο οποίος έχει επιλέξει ένα σύστημα σύμφωνα με το οποίο χρηματική ικανοποίηση για μη περιουσιακή ζημία αναγνωρίζεται εξαιρετικά και μόνο στις περιπτώσεις που ορίζει ο νόμος (ΑΚ 299). Αναγνωρίζεται, για παράδειγμα, στην περίπτωση προσβολής της προσωπικότητας (ΑΚ 57, 59) και στην περίπτωση αδικοπραξίας, ιδιαίτερα για το

πρόσωπο που υπέστη προσβολή της υγείας, τιμής ή αγνείας του ή που στερήθηκε την ελευθερία του (ΑΚ 932).

Στην περίπτωση, ωστόσο, που η αθέτηση της συμβατικής υποχρέωσης συνιστά συγχρόνως – και ανεξάρτητα από την ύπαρξη της σύμβασης – αδικοπραξία, τότε γίνεται παγίως δεκτό στη νομολογία μας ότι υπάρχει «συρροή συμβατικής και αδικοπρακτικής ευθύνης». Στην περίπτωση αυτή οι διατάξεις περί αδικοπραξιών (άρθ. 914 επ. ΑΚ) μπορούν να εφαρμοστούν και, υπό την προϋπόθεση ότι προκαλείται ηθική βλάβη, μπορεί να ζητηθεί χρηματικό ποσό για την αποκατάσταση της ηθικής βλάβης. Ωστόσο, η απόφαση για το αν η παράβαση της συμβατικής υποχρέωσης συνιστά την ίδια στιγμή – και ανεξάρτητα από την ύπαρξη της σύμβασης – αδικοπραξία δεν είναι πάντοτε εύκολη.

Η τάση που παρατηρείται στα διεθνή κείμενα που επιδιώκουν την ενοποίηση του δικαίου στην Ευρώπη είναι η αποκατάσταση της ηθικής βλάβης και στην περίπτωση αθέτησης σύμβασης. Π.χ. το άρθρο 9:501 των Θεμελιωδών Αρχών του Ευρωπαϊκού Δικαίου των Συμβάσεων (Principles of European Contract Law, PECL) και το άρθρο 7.4.2 των Αρχών Unidroit προβλέπουν ότι σε περίπτωση αδικαιολόγητης μη εκτέλεσης της σύμβασης μπορεί να ζητηθεί από τον αντισυμβαλλόμενο και η αποκατάσταση της μη περιουσιακής ζημίας. Συνεπώς, η επιχειρηθείσα από την ελληνική θεωρία και νομολογία παράκαμψη της τιθέμενης με την ΑΚ 299 απαγόρευσης με την καταφυγή στις διατάξεις για την προστασία της προσωπικότητας και στην εφαρμογή της ΑΚ 932, όπου υπάρχει συρροή δικαιοπρακτικής και αδικοπρακτικής ευθύνης είναι δικαιολογημένη και επιβεβαιώνει ότι ορθώς η ΑΚ 299 είχε κατακριθεί σχεδόν ομοφώνως στην ελληνική επιστήμη ήδη από την εισαγωγή της στον ΑΚ ως αντίθετη στην παράδοση του ελληνικού δικαίου και λόγω της ανεπιείκειας που δημιουργεί.

Λέξεις- Κλειδιά: αθέτηση συμβατικής υποχρέωσης, αποκατάσταση της ηθικής βλάβης, συρροή ενδοσυμβατικής και αδικοπρακτικής ευθύνης, καθυστέρηση μεταφορικών μέσων, μη περιουσιακά αγαθά, μη περιουσιακή ζημία, προσβολή προσωπικότητας.

Sumario: Introduction. II. Distinction between pecuniary and non-pecuniary damage (moral harm). III. Restoration of moral harm only in cases of infringement of the personality or in cases of tort. IV. The principle of concurrence of contractual and tortious liability. Difficulty in ascertaining the concurrence of contractual and tortious liability. V. Case Law on the restoration of moral harm in case of breach of contract. 1. Loss of wedding video tapes and wedding dress destruction. 2. Delay of means of transportation - Loss of baggage - Loss of pre-paid travel expenses. 3. Undesirable childbearing.. VI. Position of the legal doctrine. VII. The modern international tendency. VIII. Conclusion.

I. Introduction

1. The reason for the selection of the topic of the present essay, which has repeatedly been the object of discussion in the Greek legal doctrine, was provided by the book titled "The Recovery of Non-Pecuniary Loss In European Contract Law", issued by Cambridge University Press in 2015 with editor in chief Professor Vernon Valentine Palmer of the Tulane University of New Orleans, US, where, after research conducted in 12 EU-member states and based on the answers given to 11 hypothetical cases, an effort has been made to categorize the EU member states depending on whether or not they recognize the relevant recovery. France, Italy and Portugal answered positively in 9 out of 11 hypothetical cases, Spain, Bulgaria and Greece in 7 of those cases[1], the Netherlands and UK in 6 and 5 cases respectively , while Germany and Poland in 3, Sweden in 2 and Austria in only 1 of the cases[2].

Accordingly, member states were classified in those (France, Spain, Italy, Bulgaria, Portugal and Greece) who recognize the relevant recovery in most cases (liberal regimes), in those (The Netherlands and the United Kingdom) that, even though they do not exclude such a recovery, they recognize the recovery of moral harm in contractual obligation in some cases and with stricter requirements (mo-

[1] The answers to the cases for Greece were given by the writer, who had the honour to participate in the book as the National Reporter.

[2] See V. Palmer, European Contractual Regimes: The Contemporary Approaches (in English), in V. Palmer (ed.), The Recovery of Non-Pecuniary Loss In European Contract Law, (in English), 2015, p. 96.

derate regimes), and in those (Germany, Poland, Sweden and Austria) that do not recognize in most of the cases or categorically exclude the relevant restitution (conservative regimes). In this survey, Greece is classified in the category of liberal regimes,[3] even though according to art. 299 of the Greek Civil Code (GCC), pecuniary compensation for moral harm is exclusively recognized and only in the cases provided by law. The reasons for that classification are made clear in the following analysis.

II. Distinction between pecuniary and non-pecuniary damage (moral harm).

2. As noted,[4] the terms "non-pecuniary loss" and "moral harm" appeared in international bibliography, in judicial decisions and in legal doctrine almost in the middle of 19th century and the exact origin and meaning of the terms is not exactly known. The term "moral damage" is widely used in legal systems such as the Italian ("danno morale"), the Spanish ("daño moral") and the Belgian ("dommage moral"), which are influenced by the French system ("dommage moral"), while in Germany the term "non-pecuniary damage" is more widely used ("nicht Vermögensschaden"). The term "non-pecuniary damage" is mostly met in the common law countries and, when that damage is restored, it is included in the general compensation. In Greece, both terms are used as synonymous (see arts. 299, 59 and 932 of the Greek Civil Code).

3. In contrast to pecuniary damage, for which art. 298 GCC dictates that it includes both direct loss and lost profits and provides for the relevant definitions, art. 299 GCC does not define what non-pecuniary damage is, leaving the relevant task to legal doctrine. Legal doctrine defines "non-pecuniary damage" or "moral harm" as the damage caused in non-material legally protected rights such as life, health, freedom, honour etc., which derive from the physical, mental or social individuality of the person[5], or, in a different phrasing, the sorrow, sadness or pain caused by the insult of a non-pecuniary legally protected right (such as mainly the legally protected right of the personality) but also of any other legally protected right that has a special psychological value for the beneficiary, apart from its pecuniary value[6]. It is interesting to note how the Mexican Civil Code defines moral harm in its Art. 1916, according to which "As moral harm is considered the harmful consequence a person endures to their appearance, honour, fame, private life, corporal integrity and view or impression other people have for them".

III. Restoration of moral harm only in cases of infringement of the personality or in cases of tort.

4. According to Greek law[7], the breach of contractual obligation is in principle disapproved by law, it creates, however, only an obligation for the payment of compensation and not an additional obligation for the restoration of moral harm, because the sole non-performance of the contractual obligations cannot cause moral harm. Consequently, according to the Greek legislator, a possibility for the existence of a relevant pecuniary compensation does not exist. Pecuniary compensation for non-pecuniary damage is exceptionally recognized and only in cases defined by law (Art. 299 GCC[8]). For example, it is recognized in the cases of infringement of the personality (Arts. 57, 59 GCC[9]) and of tort,

[3] See V. Palmer, (supra), pp. 95 and 104.

[4] V. Palmer, (supra, fn. 2), General Introduction, p. 4, 5

[5] M. Stathopoulos, Law of Obligations, General Part, 5th ed., 2018, § 8, no. 57.

[6] See, among others, P. Kornilakis, Law of Obligations, Special Part I, 2002, § 106 8, p. 647.

[7] See, among others, M. Stathopoulos, (supra, fn. 5), § 8, no. 66.

[8] For the historical origin of the provision, see A. Kornilakis, The Breach of Contract as an Invasion to the Personality, EpiskEmpD (Episkopissi Emporikou Dikaiou = Commercial Law Overview) 2007, 23, note 1 and the references mentioned therein.

[9] See St. Paterakis, Pecuniary Damages for Moral Harm, 2nd ed., 2001, pp. 262, 263· K. Fountedaki, in A. Georgiades SEAK (Short Interpretation of the GCC), Vol. 1, 2010, 577 no. 5. Greek Courts are very sensitive in cases of infringement of the personality and they award a sum for pecuniary compensation of the moral harm sustained to persons when their name, their reputation or their esteem are violated (see indicatively AP (Areios Pagos = Greek Court of Cassation) 1227/1993 EllDni

especially for the person who suffered an attack upon his health, honour, or chastity or who was deprived of his liberty (Art. 932 GCC)[10].

5. At an international level, for the justification of the rule of non-restoration of moral harm in cases of breach of contract, where it applies, the following reasons are invoked[11]:

- The concern that courts will be burdened with relevant lawsuits in a sector such as commercial life, where the danger of breach of contract is not scarce. It is said that every breach of contract could cause a claim for distress or grief, real or invented, resulting in a raise of the expenses for the contracting parties.
- The threat of refutation of safety and predictability in business transactions, where damages in case of breach of contract should be able to be estimated in advance by the contracting parties.

IV. The principle of concurrence of contractual and tortious liability. Difficulty in ascertaining the concurrence of contractual and tortious liability

6. In case, however, the violation of the contractual obligation constitutes at the same time - and independently from the existence of the contract - a tort, then it is settled case law that there is "concurrence of contractual and delictual obligation". In that case, the provisions of tort (art. 914 ff. GCC) may apply, in which case, provided that moral harm is sustained, compensation for such moral harm may be sought. This will happen e.g. if the ill - execution of the prestation of the contract offends other legally protected goods of the creditor (such as his personality) and entails damage, other than the object of the contract.

More specifically, though, it may be argued that the specific provisions governing the violation of contractual obligations (arts. 330, 335 *et seq.*, 362 *et seq*., 382 *et seq.* GCC), as special provisions, prevail over those regarding tortious liability and they do not concur with them (principle of *non cumul*), the Greek jurisprudence adopts the principle of "free concurrence of claims" (principle of *cumul*).[12] According to this principle, when the act or omission which constitutes the contractual non-performance is simultaneously and in itself unlawful, the two liabilities, delictual and contractual, concur;[13] the relevant claims are submitted to different prescription periods depending on the different legal basis.

7. Regarding the presupposition of unlawful behaviour, it must be said that a behaviour is unlawful not only when it contravenes a provision of the law, but also when it is contrary to the unwritten rules of prudence and diligence, to be expected from all members of the society, when acting. Such unwritten rules of behaviour are dictated either by explicit provisions of the GCC (arts. 281 and 288) or by

(Elliniki Dikaiossyni = Greek Justice) 36, 849; Thessaloniki Court of Appeal 2019/1989 Arm 43, 461· Athens Court of Appeal 5155/1998, EllDni 39, 1403· Piraeus Single -Member Court of First Instance 314/1984 NoV (Nomiko Vima = Legal Tribune) 33, 681; Patras Single - Member Court of First Instance 813/1994 ArchN (Archeio Nomologias = Archive of Jurisprudence) 46, 35. See also I. Karakostas, GCC, General principles, Vol. 1, 2005, art. 57, Jurisprudence, nos. 1268, 1275, 1304).

[10] See indicatively M. Stathopoulos, (supra, fn. 5), § 8, no. 65. Especially for the use of art. 932 GCC, see Ch. Kapsalis, Material Damage and Moral Harm, NoV 34, 1515-1518. Art. 932 GCC is inspired by art. 47 of the Swiss Code of Obligations which provides that the judge may, taking special occasions into consideration, award to the person harmed to the body or, in case of death, to the family of the deceased, fair compensation for the restoration of the moral harm sustained.

[11] See V. Palmer, (supra, fn. 2), General Introduction, pp. 16, 17.

[12] For the disadvantages of the free concurrence of claims see, among others, P. Kornilakis, (supra, fn. 6), § 79 4 IIβ, p. 463 f.

[13] See relatively P. Kornilakis, (supra, fn. 6), § 79 4, p. 461 ff., where also (p. 462, fn. 3) reference is made to the abundant relevant jurisprudence; M. Stathopoulos/A. Karampatzos, Contract Law in Greece (in English), 3rd ed., 2014, no. 41; M. Stathopoulos, (supra, fn. 5), § 15 no. 10. See also, among the most recent decisions, AP 1207/2011, published in NOMOS data bank; AP 878/2011 EEmpDik (Epitheorissi Emporikou Dikaiou = Commercial Law Review) 63, 416; AP 737/2011 NoV 59, 2346; AP 1024/2010 NoV 59, 107; AP 1190/2007 EllDni 48, 1106 ff; AP 895/2004 ChrID (Chronika Idiotikou Dikaiou = Chronicles of Private Law) D/2004, 1009; AP 1145/2003 EllDni 45, 458 = DEE (Dikaio Etaireion kai Epichirisseon = Law of Companies and Enterprises) 10, 1179 = EEmpDik 2004, 819 = ChrID 2004, 55 followed by comments of El. Kastrissios; AP 1538/2002, published in NOMOS; 836/2002 DEE 8, 1267= ChrID 2002, 599 f. followed by a note of E. Nezeritou; AP 587/2002 ChrID 2002, 605; AP 555/1999 ArchN 40, 788 = ArchN 41, 502 = EllDni 41, 89 = DEE 6, 190 = EEmpDik 51, 752 with a note of Chr. Chrysanthis, at p. 713.

the general spirit of the legislation and the need of each member of society to expect a minimum standard of care from other members of society. This principle of prudence and diligence obliges the members of society not to provoke damage to somebody else culpably.[14] When a contractual non-performance is not in itself unlawful, i.e. it is not contrary to this general duty of "not culpably damaging another", which is imposed by law, no concurrence of contractual and delictual liability exists; in such a case only the provisions regarding the violation of contractual obligations apply,[15] which means that compensation for moral harm in case of violation of the contract cannot be awarded. Restoration for moral harm can be sought only if the culpable harmful behaviour, which constitutes a breach of contractual obligations, is in itself, i.e. without the contractual relationship, unlawful, because it is contrary to the general duty of "not culpably damaging another" imposed by art. 914 GCC; such is for example the case[16] of an unlawful and invalid formal notification terminating the tenancy, which also generates liability on tort to compensate the party that sustained damage and to restore the moral harm according to Arts. 914 and 932 GCC.

Deciding, however, whether the violation of the contractual obligation constitutes at the same time - and independently from the existence of the contract - a tort is not always easy, as it can be shown from the two following decisions of the Court of Cassation (Areios Pagos). The first case [17] is an example of a breach of contract, where the Court of Cassation held that no concurrence of the contractual and the delictual claim existed; to the contrary, the second case[18] is an example of a breach of contract, where the Court of Cassation held that concurrence of the contractual and the tortious claim existed.

8. More particularly, in the first case, the plaintiff claimed that she had leased a safety-box in the vault of the defendant bank,[19] where she had deposited her jewelry, worth Greek Drachmas (GRD) 408,895,000 (= € 1,199,985. 33). On 21 December 1992 thieves broke into the Bank using the "rififi" method and stole, amongst others, the plaintiff's jewelry. The plaintiff asserted that the theft of her jewelry was owed to the lack of the agreed quality of the lease for which the bank had vouched, namely to the lack to ensure that the jewelry would be safety kept, and to the culpable behaviour of the bank's organs who breached the said contractual obligation. She claimed the above amount as damages according to the provisions on lease and, alternatively, according to the provisions on torts, also GRD 50,000,000 (= € 146,735.14) as moral harm.

According to the Greek Court of Cassation, the contract whereby a bank, in return for money, provides a natural person with the use of a safe for placing jewelry and other valuables bears the character of a lease contract. By virtue of the said contract, the bank undertakes to provide the lessee with the use of an area (safety-box), which, according to business usage, is suitable for safe-keeping valuables against ordinary and daily dangers. This is the sole obligation undertaken by the bank by virtue of the lease contract and, accordingly, the bank's liability is restricted to its fulfillment. The lessee aims at the suitability of the vault and safe for safe-keeping valuables and the lessor vouches for it, having made the said suitability an implied term of the contract. If the said suitability is lacking, the lessee is entitled to exercise the rights provided by art. 577 GCC, including the right to ask for damages for non-performance.

The court also repeated its well-established jurisprudence that when the culpable prejudicial act or omission, which constitutes a violation of the contractual obligations, is in itself, i.e. without the contractual relation, unlawful as contrary to the general duty of "not culpably damaging another" imposed by art. 914 GCC, two liabilities – contractual and tortious – are established. However, the Court concluded that in the present case a delictual liability could not be substantiated, because the culpable behaviour attributed to the organs and employees of the bank, i.e. the alleged violation of the contractual obligation to ensure that the plaintiff's jewelry would be safely kept, would not be unlawful without the

[14] For the general obligation of prudence and diligence see, among others, Ap. Georgiades, in: Ap. Georgiades/M. Stathopoulos (eds.), Civil Code, 1982, art. 914, no. 29; P. Kornilakis, (supra, fn. 6), § 84 3 II, pp. 492 - 494.

[15] See M. Stathopoulos, (supra, fn. 5), § 15 no. 11.

[16] Athens Court of Appeal 24/2011 DEE 11, 589. See also AP 659/2010 ChrID IA/2011, 274.

[17] AP 1123/2006, ChrID ΣΤ/2006, 974.

[18] AP 1190/2007 EllDni 48, 1106 ff.

[19] For the legal nature and characteristics of the lease of a safety-box *in* a bank see P. Papanikolaou, The Exculpatory Clause for the Liability of the Bank in the Case of the Big "Rififi", 1995 = KritE 1995/1 , 131 ff.

contractual relationship from which such obligation stems. According to the Court, in case there had not existed a contractual relationship between the litigants there could have been no discussion of a behaviour contravening the general rule of Art. 914 GCC and thus generating an obligation for damages.

9. In the second case, the plaintiff bought rolls of cloth of several qualities from the defendant at an agreed total price of Italian lira 31,430,000 (= € 15,590.94). However, from the sold and delivered to the plaintiff commodities five rolls (259 meters) of woolen cloth, destined for the fabrication of jackets for men for which the plaintiff had paid to the defendant the amount of Italian lira 6,836,625 (= € 3,418.93), presented substantial defects, due to poor workmanship in fabrication. The plaintiff used 155 metres from the 259 metres of the above-mentioned defective cloth and produced 90 jackets, whereas the rest 104 metres have not been used because of their defectiveness. Sixty from these ninety jackets were sold but they were returned due to their defective cloth. From those jackets only 15 managed to be resold at a price of GRD 10,000 (= €29,35) each. The Court of Appeal decided that due to the negligence of the defendant to submit the cloth, as obliged to, to all necessary controls before giving it to the market, in order to guarantee its fitness for the use for which it was destined, the plaintiff sustained damage amounting to GRD 2,010,000 (= € 5,899) in total and moral harm amounting to GRD 100,000 (= € 293,47). The Court of Appeal reversed the decision of the Court of First Instance which, though it rejected the claim in substance as being time-barred, it had considered the action lawful to what concerned its main ground (contractual liability) and unfounded in law regarding its ancillary ground (tortious liability) and accepted the action partly in substance concerning its auxiliary basis and ruled that the amount of € 6,192.47 should be paid as damages and for her pecuniary satisfaction.

The Greek Court of Cassation held that, as it derives from Art. 561 GCC, as it stood prior to its amendment by art. 1 of L. 3043/2002, and applied to the case because of the year the contract was entered into, and art. 522 § 1 GCC, in case of a sale of a thing described by class, if the thing has a defect of which the seller at the time of its delivery to the purchaser was aware but fraudulently concealed, the purchaser, instead of the remedies of reversal, or reduction of the purchase price or replacement of the defective object, may ask for damages for nonperformance. Furthermore, the Court noted that a breach of contract alone does not constitute a tort. Although it constitutes an unlawful act, the consequences of the breach are regulated not by the provisions on torts, but by the provisions on non-performance of contractual obligations (impossibility of performance, debtor's default, performance unduly performed etc.). Nonetheless, it is possible for a fact to meet the preconditions of both a breach of contract and of a tort, in which case it is subject to multiple evaluation and examined through different aspects. According to the prevailing view in case law, the culpable (out of intent or negligence) prejudicial act or omission which constitutes the contractual non-performance and generates the contractual liability of the debtor may also establish tortious liability, when even without the contractual relationship such act or omission would be in itself unlawful, as being contrary to the general duty of not culpably provoking damage to somebody else, duty imposed by art. 914 GCC. Particularly, in case of a sale of a thing defined by class, which at the time of its delivery to the purchaser has a defect that the seller fraudulently concealed, the purchaser may base his claim for the damage causally linked with the defect in art. 561 GCC as well as in art. 914 GCC. It derives from art. 914 GCC that fault, which is a precondition of tortious liability, encompasses both intent and negligence. The Court concluded from the foregoing that when the two liabilities concur and therefore two different claims are established, the restriction stemming from the law as to the contractual liability, as in art. 561 GCC, which requires fraudulent concealment of the defect in order for the contractual liability of the seller to be established, does not apply to tortious liability, as otherwise the recognition of tortious liability, apart from the contractual liability, would lack its practical significance for the creditor. It thus confirmed the decision of the Court of Appeal, which, based on the provisions of tort, had awarded the amount of GRD 2,010,000 (= € 5,898.75) as pecuniary damage and the amount of GRD 100,000 (= € 293,47) as moral harm for the negligent behaviour of the defendant to submit the fabric to all the necessary controls for its suitability before delivering it in the market.

We are puzzled on whether these decisions of the Court of Appeal and of the Court of Cassation in this last case are in line with the above-mentioned intent of the Greek legislator, who, as a rule, does not grant compensation for moral harm for the mere non execution of the obligations of the contract.

V. Case Law on the restoration of moral harm in case of breach of contract

10. As it occurs from the presentation of the below mentioned cases (under i-iii,) where the Greek courts affirm the award of pecuniary restitution due to moral harm in cases of breach of a contract, they do so either by finding that the breach of the contract also constitutes a tort (concurrence of contractual and delictual liability, which is accepted in the Greek legal system, as already mentioned) or by applying the provisions for the protection of personality, because an infringement of an element of the personality has taken place.

1. Loss of wedding video tapes and wedding dress destruction

11. According to the facts of the case ruled by the Halandri Justice of the Peace Court[20], in January 2000 the plaintiffs, while preparing their marriage, addressed to the defendant and drew up a contract by which the latter undertook the video tape recording and the photo shoot of the ceremony. However, when the plaintiffs saw for the first time the video tapes that were delivered by the defendant on time, they found out that the bride's (second plaintiff's) parents were presented as the best men and reversely the best men were presented as the bride's parents. They immediately contacted the defendant and asked him to correct the videotapes. The defendant agreed to correct the video tapes, however, he did not deliver them. The plaintiffs filed an action claiming for pecuniary satisfaction for moral harm given that their marriage had significant sentimental value for them and the definitive loss of the video tapes of the ceremony caused them a serious sentimental upset and harmed them in a way that could not be restored and pecuniary evaluated.

The Court accepted the action and awarded the amount of € 1,000 to each plaintiff as pecuniary satisfaction for moral harm due to the loss of the video tapes of their marriage ceremony. It held that the marriage consists an uppermost, unique and unrepeatable expression of the social life of the individual. The preservation of souvenirs from that great event not only satisfies deep and true needs of the persons that directly concern their emotions and their mental satisfaction but also consists a kind of tradition. The loss of the videotapes caused significant mental distress to the plaintiffs and deprived them of the possibility to look back to the uppermost celebration for the beginning of their common life and deprived their descendants of a great family souvenir. The said loss cannot be substituted by the photos of the ceremony, given that the value of the video recording, which saves in an exact and lively manner the captured moments, is obviously more important. Given that art. 57 GCC protects the personality abstractly and globally, if it is neither possible to predict every case of infringement nor to exclusively enumerate the expressions of the personality and, given that the infringement in question was against the plaintiffs' personality, the harm caused was moral and could not be priced, requiring pecuniary satisfaction. Thus, the action was accepted and the above amount was awarded.

12. Additionally, the Patras Justice of the Peace Court dealt with a case in which a wedding dress worth € 1.000 was destroyed in a dry cleaner[21], because, even if the suggested cleaning method was dry cleaning, the dress was washed with a special cleaning liquid, resulting in the alteration of the fabric's colour. The amount of € 700 was awarded as compensation and the amount of € 250 as moral harm, as the Court ruled that this unlawful and culpable behaviour against the plaintiff consists a tort even without the existing contractual relationship of the provision of cleaning services, because the culpable destruction of the dress during its cleaning has the elements of a tort. It is unlawful even without the contractual relationship because it contradicts the duty of not provoking damage to the absolute protected right of ownership of the person according to art. 914 GCC. The Court considered the sum of € 250 to be reasonable for the moral harm suffered by the plaintiff by the tort committed against her, taking into consideration, for the estimation of the amount, especially the mental suffering of the plaintiff due to the sentimental value this

[20] Halandri Justice of the Peace Court 266/2003, NoV 51, 1474.
[21] Patras Justice of the Peace Court 4/2008, published in NOMOS.

specific dress had for her, as it was her wedding dress, the extent of the damage, the culpability of the assistants of the defendant company, as well as the property and social situation and status of the parties.

2. Delay of means of transportation - Loss of baggage - Loss of pre-paid travel expenses

13. In 2000, the Nikaia Justice of the Peace Court[22] awarded the plaintiff GRD 120,000 (= € 352) from the Attica Urban Transport Organization for moral harm he suffered as a passenger of a bus because of the delay of the bus without reason for 40 minutes. In particular, according to the facts of the case, as one of the streets of Athens (Patision) was closed due to manifestations, the plaintiff, a passenger on the express bus of the line Athens – Halandri, as well as other passengers, asked from the driver to change the usual itinerary and take instead another street. The driver and the station master first refused to do so; at the end, after an unreasonable delay of 40 minutes, the driver followed, out of his own decision, the instructions of the passengers. As an outcome, according to the Court, the plaintiff was infringed to his personality and in particular in one of its elements which is the free regulation of his free time. This infringement was unlawful, given that the defendant has the legal obligation to take special care of the service of the passengers and of the quality of their life in the areas of its jurisdiction. The Court held that the plaintiff suffered substantial moral harm, as weren't for the said unreasonable delay, the plaintiff would have spent these 40 minutes as he wished with beloved persons at places of his choice and he would have not been deprived of this right to freely dispose of his time. The Court further held that the above-mentioned amount of GRD 120,000 is reasonable and sufficient in view of the good infringed, the particular traffic conditions and the relatively short duration of the infringement[23] and that the plaintiff should be awarded the said amount instead of the amount of GRD 300,000 (= € 880) sought by the plaintiff.

The Athens Multi-Member Court of First Instance[24] held that the travel agent is liable for damages and compensation for the moral harm of the passengers from the delay or non-execution of the transport due to the culpability of the agent or the air carrier and the Athens One-Member Court of First Instance[25] awarded the amount of GRD 200,000 (= € 587) as moral harm to the plaintiff, a Professor of the Dentistry School of the Athens University, who, though he had a ticket and arrived at the airport in time, was, without any convincing excuse, refused boarding at a flight from Heraklion (Crete) to Athens and, as a consequence, lost the next flight to Thessaloniki and his participation to a Congress there. The Court held that the plaintiff, taking into consideration his status as a Professor and the aim of the trip, felt grief, sadness, the reduction of his reputation from the refusal to board, his staying at the Heraklion airport for 8 hours and his arrival at Thessaloniki with delay and in general he suffered enormously and for this reason he was entitled to compensation for moral harm,which, taking into consideration the financial status of the parties, was fixed by the Court to the above mentioned amount of GRD 200,000.

However, according to the Thessaloniki Court of Appeal,[26] there was no tort and, therefore, no sum for moral harm was owed in case of the delay of an air transport (51 hours due to a technical problem in the aircraft), since the delay of the air transport does not constitute a tort on its own and does not exist without the contract between the parties, in the context of which the defendant acted exclusively. Additionally, according to the Athens Court of Appeal[27] no infringement of the personality exists and, thus, no amount for moral harm is due in the case of delayed delivery of baggage.

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[22] Nikaia Justice of the Peace Court 182/2000 NoV 49, 677, with a note by K. Christakakou.

[23] It must be noted here that there are no tables in Greece for the judges to consult or any other methods of calculation of the amount of money to be awarded as monetary compensation.

[24] Athens Multi-member Court of First Instance 5143/1997 EEmpDik 49, 780.

[25] Athens One-Member Court of First Instance 7162/1995, published in NOMOS.

[26] Thessaloniki Court of Appeal 1199/2009, EpiskEmpD 2009, 751 with an Introd. Note of K. Pampoukis, 753.

[27] Athens Court of Appeal 1531/2011 EpiskEmpD 2011, 861 with an Introd. Note of K. Pampoukis = DEE 17, 936. *Contra* Athens Justice of the Peace Court 301/2011, published in NOMOS. *Cf.* the European Court of Justice (ECJ) (3rd department) on the 6th of May 2010 in the decision C-63/09 - Axel Walz VS Clickair SA after a question referred for a preliminary ruling by the court of Barcelona, Spain (Juzgado de lo Mercantil nº 4 de Barcelona), ruled that the term "damage", as used in art. 22 para. 2 of the Convention for the Unification of certain rules for international carriage by air, signed in Montreal on the 28th of May 1999, by which a limit of the liability for the air carrier is set for damage caused, especially, for the loss of baggage includes both pecuniary damage and moral harm.

14. In another issue concerning the loss of the possibility to participate in a trip, the Athens Court of Appeal did not award compensation for moral harm for the loss of the possibility to participate to a programmed trip which was due to the breach of the contract of the other contracting party, though the plaintiff claimed to have suffered great physical and emotional hardship, mental grief and emotional stress and sadness with further consequences and, due to her efforts to make the trip, to deeply violate her personality. According to the Court, the sole breach of contractual obligations does not constitute a tort, so a claim for moral harm does not exist[28]. However, the European Court of Justice (ECJ), concerning Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours, ruled in case C-168/00 - Simone Leitner VS TUI Deutschland GmbH & Co. KG, after a question referred for a preliminary ruling by a Court of Linz, Austria (Landesgericht Linz), that art. 5 of the Directive provides the consumer with a right for the restitution of moral harm, which occurs from the non-performance or the defective performance of the organized trip[29].

15. Finally, the claim of a foreigner who, due to an accident, is forced to end his vacation in Greece early and return to his home country, thereby losing part of his travel expenses that were paid *in advance* is exclusively taken into consideration in the frame of the moral harm that he sustained, according to the provision of Art. 932 GCC, because, as ruled by the Court of Appeal of Thessaloniki[30] only *an already sustained damage,* i.e. a damage occurred at the time period between the harm and the filing of the action, as well as *future* damage, i.e. damage, either positive or consisting in the loss of profit, extending to the period after the filing of the action, can be compensated. The Piraeus Court of Appeal follows a different approach to the issue of the loss of prepaid travel expenses which we find more convincing. Deciding on a similar case[31], it held that the damage was causally related to the damaging event and should, thus, be compensated. According to the Court, the injury of the plaintiff was due to the damaging event and because of this event the plaintiff could not undertake the cruise as planned, the costs for which had been prepaid. The Court of Appeal held that damages should be paid for these prepaid expenses as well.

3. Undesirable childbearing

16. Despite the vivid discussion in the Greek legal doctrine regarding medical malpractice[32] and cases of wrongful birth and wrongful life[33], the Greek courts had only scarcely dealt with some of the issues posed. The decision of the Larissa Court of Appeal 544/2007[34] was the first to affirm the possibility of compensation for moral harm for parents whose right to choose to interrupt the pregnancy was deprived, though in the particular case it did not proceed to award compensation for moral harm in view of the facts which were the following:

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[28] Athens Court of Appeal, 5885/1994 EpiskEmpD 1996, 618 followed by a note of D. Klavanidou, Pecuniary Damages for Moral Harm for The Breach of Contractual Obligations, EpiskEmpD 1996, 618 ff, who claims that the court should have examined if there had been an infringement of the personality that justified pecuniary restoration of the moral harm, in application of arts. 57,59 GCC.

[29] See also the German law, according to which the loss of the enjoyment of annual holidays has been characterised as a pecuniary damage to be restored (see among others *V. Palmer*, (supra, fn. 2), General Introduction, p. 12.

[30] Thessaloniki Court of Appeal 1768/1999, EpSygkD (Episkopissi Sygkoinoniakou Dikaiou = Transport Law Overvue) 1999, 494.

[31] Piraeus Court of Appeal 480/1996 EpSygkD 1999, 42.

[32] See indicatively A. Charalambakis, Medical Liability and Ethics, 1993; K. Fountedaki, Human Reproduction and Civil Medical Liability, 2007; *idem*, Civil Medical Liability, 2003; *idem*, Civil Medical Liability after the L. 2251/1994, KritE (Kritiki Epitheorisi Nomikis Theorias kai Praxis = Critical Review of Legal Theory and Praxis) 1996, 179 f.; *idem*, The Issue of Causation in Medical Liability, EllDni 35, 1226 f.

[33] See K. Fountedaki, Issues of Civil Medical Liability in case of Birth of a Person with Serious Illness or Disability (Wrongful Life), Digesta 2004, 471f.; E. Fragoudaki, The Legal Treatment of Applications of Biogenetic- Especially in Private Law Sector, 2008; M. Stathopoulos, Damages and Protection of the Personality of a Handicapped Child, ChrID Θ/2009, 97; Emm. Trouli, Digesta 4/2008, 384 f.; D. Tsiros, Medical Liability: Damages for a Child Born Invalid because of a Medical Fault which Deprived the Mother from Interrupting the Pregnancy, EllDni 45, 61 f.

[34] EllDni 49, 289.

The plaintiffs, who were married and were already expecting a child, entered into a medical services contract with the defendant doctors, by which the latter undertook the prenatal examination of the foetus. However, the defendants had negligently overlooked the fact that the foetus was suffering from a malformation of the left hand and, accordingly, had not informed the parents of their child's disability. The child was born with the malformation and the parents filed an action against the doctors claiming for pecuniary satisfaction of their moral harm due to the violation of their personality right, alleging that they would have proceeded with the interruption of the pregnancy, if the doctors had not been negligent and had informed them about the disability of their child. The Court of First Instance rejected the action.

The Court of Appeal, confirming the judgment of the Court of First Instance, held that mental health and the emotional world are elements of the personality of an individual. The emotional world is usually derivatively violated because of an unlawful act which primarily offends the person insulted and thus creates the mental pain. If a pregnant woman's legal choice to interrupt the pregnancy is impeded by misinformation as to the health of her foetus, then her personality is unlawfully violated according to the provision of art. 57 GCC. If this violation is culpable, then she is entitled to the right to claim compensation for her moral harm (art. 59 GCC).

17. However, the Court ruled that the lawsuit was legally unfounded due to the fact that the parents' personality right was not violated because they would not have had the right to have an abortion, even if the doctors had notified them of the malformation. The disability in question was not a "serious abnormality" that would lead to the birth of a "pathological child", according to the legal notion of the term; only cases where the unborn child will suffer from a severe illness can be conceptually included in the above notion.

18. In 2009, both the Multi-Member Court of Chania[35] and the Multi-member Court of Piraeus[36] awarded the amount of € 400,000 and € 350,000 respectively to each of the parents for the very severe moral harm they felt from the non-interruption of the pregnancy to which they would have proceeded if the doctor had not failed to detect and inform them about the child's severe disability or the child's incurable illness respectively. The Courts held that the mother was entitled to compensation for moral harm on the basis of arts. 57 and 59 GCC, because her personality was offended from the deprivation of her legal choice to continue or not the pregnancy after detecting the disability of the child which legally allows abortion, under the conditions of art. 304 § 4 of the Greek Penal Code. According to the said Courts, the father also has the same right even if he is not directly offended, on one hand because the decision for the interruption of the pregnancy does not only belong to the pregnant woman but is an issue of their common life as well and, on the other hand, because he is in a close (marital) relation with her, the negative consequences on her personality reflect to him. The Courts held the above-mentioned amount of € 400,000 and € 350,000 respectively for each of the parents as reasonable after having taken into consideration the kind and the consequences of the offense, the conditions under which it took place, the gravity of the fault and the financial and social status of the parties. Specifically concerning the decision of the Piraeus Court of First Instance, the Piraeus Court of Appeal[37] adopted the same reasoning, however it decreased the amount of the compensation awarded to the amount of 250,000 €, which it deemed reasonable. This decision of the Piraeus Court of Appeal was finally confirmed by the decision 10/2013 of Areios Pagos[38].

19. In legal doctrine, there is no agreement about whether the father has a claim for compensation due to moral harm in such cases of undesirable childbearing. It has been argued[39] that in case

[35] Chania Multi-member Court of First Instance 226/2009 ChrID 2011, 182

[36] Piraeus Multi-member Court of First Instance 4591/2009, Digesta 2009, 417.

[37] Piraeus Court of Appeal 22/2011, published in "ISOKRATIS", the legal data bank of the Athens Bar Association.

[38] ChrID 2013, 415 = EllDni 54, 1347 ff, with a commentary by Ath. Kritikos, p. 1352 ff.

[39] M. Kanellopoulou-Boti, The Obligation of Providing Genetic Information during the Prenatal Control. Especially the Position of The Alleged Biological Father, Digesta 2008, 369 ff. and specifically p. 376; L Kitsaras, Wrongful Birth: A Claim of the Parents against the Doctor for Monetary Compensation because of the Loss of the 'Chance' of Interruption of the Pregnancy? (on the Occasion of Larissa Court of Appeal 544/2007, Piraeus Multi-Member Court of First Instance 4591/2009 and Chania Multi-Member Court of First Instance 226/2009), ChrID IA/2011, 166 - 173.

of loss of the chance to interrupt the pregnancy, a claim for monetary compensation for moral harm must be recognized only to the mother and not to the father of the child, even if the child is born within wedlock, as the notion of an 'indirect moral harm' is recognized in Greece only in the frame of art. 932 GCC, and compensation for the 'moral harm' caused to a person not because of a direct offence to the personality but through the offence of the personality of another person with whom said person has a close relation, is completely foreign to Greek law[40]. This opinion has been refuted by arguments deriving from the community of life of spouses during marriage, the equality of spouses, the non-establishment by marriage of a parental relation between the spouses, from which it is deduced, according to this second opinion, that the relation of the child cannot be considered *direct* towards the mother and *indirect* towards the father; thus, also the father has, in case of loss of the chance to interrupt the pregnancy, a claim for monetary compensation for his moral harm because of a direct offence to his personality. [41]

Regarding wrongful conception, there have been, to our knowledge, no decisions in Greece. However, it has been argued in doctrine[42] that in the case of the birth of a healthy, but not desired, child: a) the parents should be compensated for their damage if their financial capacities do not allow them to raise the unwanted child; and b) the mother should be compensated for the moral harm she suffered because of her undesired pregnancy. The legal basis for the compensation is not the contract but the provisions on the protection of the personality.

VI. Position of the legal doctrine

20. The provision of art. 299 GCC has been criticized from part of the Greek doctrine and many solutions have been proposed, mainly through the interpretative use of arts. 59 and 932 GCC[43]. It has been argued, among others,[44] that there is no reason to treat differently the anger and mental disturbance caused to a person outside a contractual bond and the one caused if an existing contractual bond is violated, when - as underlined by the said opinion - many times, the violation of the contract may cause mental situations worse in intensity than the ones caused due to a tort or in general outside the contractual frame; the violation of a contract may offend the emotional world of the creditor, when it completely overrules the programming of his life. This overruling may cause intense anger, grief, mental disturbance or even mental distress. In such cases the offense of the emotional world has as consequence the offense of the creditor's personality; this offense is unlawful, as it is not based on a certain right of the debtor. Consequently, the creditor who has sustained such an offense to his emotional world is entitled according to art. 59 GCC to compensation for moral harm. It has been further argued[45] that art. 59 GCC would have had no reason of existence if it only aimed at covering, in parallel to art. 932 GCC, offenses to the personality deriving from a tortious behaviour; accordingly, art. 59 GCC covers those offenses to the personality that do not have a tortious provenance, i.e. offenses that derive from the violation

[40] See also Athens Multi-member Court of First Instance 2487/2004, Digesta 2008, 475 and Thessaloniki Multi-member Court of First Instance 2839/2008 EllDni 49, 289, according to which *neither* the mother *nor* the father of the child have a claim for compensation for moral damage, as they are both third parties who have suffered indirect damage.

[41] P. Nikolopoulos, 'Wrongful Birth' and Offence to the Parents' Personality, TPCL (Efarmoges Astikou Dikaiou = Theory and Practice of Civil Code) 4, 812-820, following the view already expressed by *K. Fountedaki*, in *Georgiades* SEAK, arts. 57- 60. See also *Kl. Roussos*, Medical Liability Deriving from the Non- Detection of Reasons Suggesting the Interruption of Pregnancy (Thoughts occasioned by AP decision no. 10/2013), ChrID ΙΓ/2013, 466-472, according to whom the infringement of the absolute right of the parents to family planning, as it is expressed through the provisions of family law and especially art. 1387 GCC, justifies compensation claims made by the parents, including the claim for the restoration of moral damage.

[42] I. Androulidaki-Dimitriadi, The Duty to Inform the Patient, 1993, 417; Emm. Trouli**,** Medical Liability for Wrongful Life and Wrongful Birth, Digesta 4/2008, 408, fn. 84.

[43] D. Klavanidou, Protection of Personality and Mental Status, TPCL 2, 1037, where also reference to relevant arts. is made at fns. 58 - 60.

[44] D. Klavanidou, TPCL 2, 1037, 1038; A. Kornilakis, EpiskEmpD 2007, 28, 29; K. Pamboukis, Introd. Note to the Thessaloniki Court of Appeal decision no. 1199/2009, EpiskEmpD 2009, 753.

[45] K. Pamboukis, Pecuniary Compensation due to the Offense of the Personality from the Violation of a Contractual Obligation, Remarks under the Thessaloniki Court of Appeal decision no. 147/2005, EpiskEmpD 2005, 175; *idem*, Introd. Note to the Athens Court of Appeal decision no. 1531/2011 EpiskEmpD 2011, 862, 863.

of a contractual obligation. This view, however, seems not to be the prevailing one in doctrine, as it is said[46] that, if the abovementioned view was adopted, there would be a risk of an extended liability. It is also doubtful if it is in accordance with the system of the Greek Civil Code to accept that arts. 57 and 59 GCC apply every time there is an infringement of a person's emotional world and, therefore, of the personality, even in cases of breach of contract.

VII. The modern international tendency

21. The tendency noted in the international texts aiming at the unification of law in Europe is the restoration of moral harm also in cases of breach of a contract. For example, art. 9:501 of the Principles of European Contract Law, PECL[47] and art. 7.4.2 of the Unidroit Principles[48] provide for the possibility of the contracting party to request the restoration of non-pecuniary damage in cases of unjustifiable breach of a contract. In a national level, there is also a tendency to restore moral harm also in cases of breach of a contract. Therefore, after the Reform of the German Civil Code (BGB) in 2002, the restoration of moral harm is allowed in cases of breach of a contract as well, but only in cases of damage in one's body, health, freedom or sexual self-determination[49].

22. On the contrary, art. 74 of the Vienna Convention on Contracts for the International Sale of Goods (CISG) does not include the restoration of non-pecuniary damage[50] as a claim in cases of breach of a contract.

VIII. Conclusion

23. The override of the prohibition set in art. 299 GCC attempted by doctrine and jurisprudence through the provisions about personality protection and the application of art. 932 GCC, where there is concurrence of contractual and delictual liability, confirms that art. 299 GCC was rightly criticized almost unanimously by the Greek doctrine already since its introduction as against the tradition of Greek Law and due to the non-lenient situations it causes[51]. Taking into consideration the modern tendency of including the restoration of non-pecuniary damage in the claims in case of breach of a contract, we might have to adopt the proposal made by the late Professor of the Law School of the Aristotle University of Thessaloniki Dr. Konstantinos Vavouskos, who wrote in 1955: "The elimination of the said provision through legislative initiation would be advisable, so as to enforce fully the wider system of restoration of moral harm proposed by the drafting committee, which essentially is in force in practise. The same happened with the Civil Code in 1945, where art. 299 was deleted. This action was then fully applauded in doctrine"[52].

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[46] See K. Fountedaki, Georgiades/SEAK art. 59 no. 5 and 12

[47] Art. 9:501 PECL: (1)The aggrieved party is entitled to damages for loss caused by the other party's non- performance which is not excused under art. 8:108.

(2) The loss for which damages are recoverable includes: (a) non-pecuniary loss; and (b) future loss which is reasonably likely to occur.

[48] Art. 7.4.2 Unidroit Principles (Full compensation): (1) The aggrieved party is entitled to full compensation for harm sustained as a result of the non-performance. Such harm includes both any loss which it suffered and any gain of which it was deprived, taking into account any gain to the aggrieved party resulting from its avoidance of cost or harm.

(2) Such harm may be non-pecuniary and includes, for instance, physical suffering or emotional distress.

[49] Restoration of moral damage is not possible in cases where emotions are offended, both on a contractual and on a delictual basis (see, indicatively, V. Palmer, (supra, fn. 2), General Introduction, pp. 17, 18.

[50] Art. 74 CISG: Damages for breach of contract by one party consist of a sum equal to the loss, including loss of profit, suffered by the other party as a consequence of the breach. Such damages may not exceed the loss which the party in breach foresaw or ought to have foreseen at the time of the conclusion of the contract, in the light of the facts and matters of which he then knew or ought to have known, as a possible consequence of the breach of contract.

[51] See K. Vavouskos, The Tort in Cases of Moral Damage in the Greek Civil Code, EEN (Efimeris Ellinon Nomikon = Journal of Greek Jurists) 22, 86 and the therein references.

[52] For the relevant references, see K. Vavouskos, *ibidem*.