Condominium Regimes in Japan and Greece: A Comparative Study

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I Introduction

Two of the co-authors of this paper, Kuniki Kamano and Antonios Karaiskos, visited Athens from the end of August to the beginning of September 2018 and conducted a research on condominium law in Greece[1]. During this research trip, meetings with Dr. Ioannis Spyridakis (Professor Emeritus, Faculty of Law, Athens University), Dr. Kalliopi Christakakou-Fotiadi (Professor and Dean, Faculty of Law, Athens University, co-author of this paper), Mr. Stratos Paradias (lawyer, president of the International Union of Property Owners (UIPI) and the Hellenic Property Federation (POMIDA), Mrs. Lida Tsakiroglou (notary public) and other professionals of condominium law were held[2]. Further, three typical condominiums in Athens were visited, and discussions with managers and inhabitants were held.

The origins of this research can be traced back to the translation of the

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[1] This research forms part of the research project "Reconstruction of the Condominium Law System: Taking into Account the Results of an International Comparative Study of Condominium Law Systems" (2018-2020, principal researcher: Kuniki Kamano, Grant-in-Aid for Scientific Research (C) of the Japan Society for the Promotion of Science.

[2] Kamano and Karaiskos would like to thank once again all persons who kindly accepted them and provided them with invaluable information. During the visit at the Faculty of Law, Athens University, professors. Paraskevi Paparseniou, Antonios Karabatzos and Ioannis Skandalis (all Faculty of Law, Athens University), as well as professor. Karl Riesenhuber (Faculty of Law, Bochum University) also kindly participated to the meetings and exchanged information and opinions. Our deepest gratitude goes to them too.

two basic condominium laws in Greece (Law 3741/1929 and Law 1024/1971)[3]. Law 3741/1929 is the earliest separate piece of legislation on condominium law in Europe and has been in effect almost without changes for 90 years since its establishment, except for the deletion of one provision. The purpose of the research was to deepen understanding about the development and use in practice of Greek condominium law. The above-mentioned meetings with leading scholars and practitioners, discussions about Greek condominium law, which can be positioned as being the "origin of modern condominium law", and exchange of opinions about Greek and Japanese condominium law from a comparative law viewpoint have been extremely fruitful. This research has offered an opportunity for philosophical consideration of what condominium ownership is in the first place and where it derives from.

This paper is a step to further academic exchange between Greece and Japan in the field of condominium law as a beginning. In the following two chapters (chapters II and III) Kamano and Christakakou-Fotiadi will present an outline of the condominium law systems in Japan and Greece respectively. Then, Karaiskos will make some general considerations (which will hopefully be followed by more detailed considerations in a future paper) from a comparative law perspective (chapter IV)[4].

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[3] Antonios Karaiskos and Kuniki Kamano, *Girisha - Manshonho no Hoyaku* [Japanese Translation of Greek Condominium Law], in: *Hikakuhogaku* [Comparative Law Review], vol. 44 (2010), no. 1, p. 59 ff. Further, for a presentation of the outline of Greek condominium law in Japanese, see Antonios Karaiskos, *Girisha Manshonho no Gaikan* [An Outline of Condominium Law in Greece], in: *Manshongaku* [Condominium Studies], no. 51 (2015), p. 166 ff, as well as Kuniki Kamano and Antonios Karaiskos, *Girisha no Manshonho* [Condominium Law in Greece], in: *Manshonkanrisenta Tsushin* [Condominium Management Center Reports], no. 396 (2018), p. 20 ff.

[4] Since the chapters were written individually, some inconsistencies in the terms used and the numbering as well as repetitions of bibliography might exist. The authors have decided to respect the original form chosen by each author and not to necessarily unify these aspects.

II The condominium regime in Japan

1. Historical development

The Act on Building Unit Ownership (建物の区分所有等に関する法律. Hereinafter referred to as "ABUO")[5] was established in 1962, and significantly revised in 1983 and 2002. During this period, the number of dwelling units (exclusive elements 専有部分) of apartments (condominiums principally used for residential purposes) has grown from around 10,000 at the time ABUO was established to around 654,700 at the end of 2018. This means that 1 out of 8 people in Japan (1 out of 2 people in urban areas) live in apartments. Before the establishment of the ABUO, there was only one provision related to condominium ownership in the Civil Code, stipulating that boundary walls of continuous buildings are co-owned. In anticipation of the future increase of apartments, the ABUO was established taking as reference legislation in Germany, France and other countries.

2. Dogmatic basis of the condominium regime

Unlike the law of western countries, under Japanese law, land and the building upon it are not one united but separate real properties. However, under the ABUO, (i) unit ownership (区分所有権) on the exclusive elements of the building, (ii) co-ownership interests on the common elements (共用部分) of the building, and (iii) co-ownership interests on the land, are in principle treated integrally (art. 15, 22 para. 1 ABUO). It is also provided that all the unit owners (区分所有者) together form an association to manage the building and the land (art. 3 ABUO). Furthermore, the ABUO permits sole ownership (unit ownership) on the exclusive elements of a single building and provides that building portions other than exclusive elements are common elements co-owned by unit owners (art. 1, 2 ABUO). Thus, a dualistic system is adopted.

3. Various types of condominiums

The ABUO caters for condominiums of various usages, such as residential, commercial and complex condominiums, and does not distinguish between them. However, in fact, most condominiums are

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[5] Law 69 of 4 April 1962.

residential. Therefore, legislation (Act on Advancement of Proper Condominium Management マンション管理適正化法[6], Act on Facilitation of Condominium Reconstruction マンション建て替え円滑化法)[7] and policies (for example, the Condominium Management Standard By-Law マンション標準管理規約 which does not have legally binding force[8]; hereinafter referred to as "SBL") restricted to residential condominiums have been established. There also exist resort (villa) type condominiums and small-scale condominiums for letting in city center areas for investment purposes, but in small numbers.

4. Purchasing an apartment off building plans

In Japan, condominiums are often sold before completion of construction. In most occasions, purchasers conclude a sale contract after having examined pamphlets and provisional model rooms. Cases where the developer goes bankrupt before completion of the condominium exist, but in small numbers. Furthermore, it could be said that cases where consumers suffer disadvantage due to this sale method are very few in fact. Most cases where consumers suffer disadvantage do not have to do with this sale method, but with structural defects of condominiums that become evident after the sale. Therefore, the Act on Promotion of Housing Quality Assurance[9] (住宅品質確保促進法. This Act provides that in cases of certain structural defects of newly constructed residences including residential condominiums, the seller bears a strict liability for repair, termination and compensation for a period of 10 years after delivery) and the Act on Assurance of Performance of Specified Housing Defect Warranty[10] (住宅瑕疵担保履行法. This Act requires that distributors have insurance coverage to maintain financial security) were established.

5. Restrictions on sale and letting of apartments

The ABUO does not provide any restrictions on the transferring or

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[6] Law 149 of 8 December 2000.
[7] Law 78 of 19 June 2002.
[8] This By-Law is not legally binding but its provisions may be adopted by the developers or general meetings of condominiums.
[9] Law 81 of 23 June 1999.
[10] Law 66 of 30 May 2007.

letting of exclusive elements. However, many cases can be seen where pet-keeping is restricted by by-laws（規約. In general, by-laws are prepared and presented by the developer at the time of sale, and unit owners purchase the condominium after having agreed to them. By-laws are sometimes amended at general meetings（集会）after purchase）. Nowadays, there can also be seen condominiums whose by-laws at the time of sale allow pet-keeping. The SBL includes a provision allowing pet-keeping and a provision prohibiting it, so that a choice between them can be made according to the actual situation of each condominium（according to the comment under art. 18 SBL）. Furthermore, there exist few condominiums whose by-laws prohibit usage as an office or transferring and letting to organized crime groups or cult religion groups.

6. Exclusive and common elements, etc.

6.1 As mentioned above under section 2., condominium buildings are composed of（i）exclusive elements and（ii）common elements. The former are structurally and functionally independent parts of the building, such as residences, offices, stores, etc. and are object of unit ownership（art. 1, 2 para. 3 ABUO）. The latter are building parts other than exclusive elements that are placed at the disposal of all unit owners, such as corridors, stairs, etc.（art. 2 para. 4, art. 4 para. 1 ABUO）. These divisions are to be determined naturally from the structure of the building, and not decided by by-law provisions or general meeting resolutions. Furthermore, the verandas and balconies that are connected to each exclusive element and the partitioned gardens located in front of exclusive elements on the ground floor are regarded as being either common elements of the building or a co-owned land. However, in general, a right to exclusive usage is granted to the owner of each exclusive element by by-law provisions（art. 14 SBL）. Moreover, although these parts are co-owned by all unit owners, their ordinary management is to be done by the owner of each exclusive element（art. 21 para. 1 SBL）.

6.2 The ABUO does not include any special provision on parking spaces on the land but provides that the management of the land which is co-owned by all unit owners shall be done according to by-law provisions or general meeting resolutions（art. 21, 30 para. 1 ABUO）. In fact, specific lots are usually allotted as parking spaces to each unit owner by by-law

provisions, and fees for such usage are paid to the management association (art. 15 SBL).

6.3 Window frames and windows are common elements, but the owner of each exclusive element has a right to exclusive usage, and their ordinary management is done by the owner of each exclusive element (art. 21 para. 1 SBL). However, improvements to them are in principle done by the management association (art. 22 SBL). Therefore, damages to window glasses due to accidents or typhoons, etc., that appear a few times every year in Japan, are dealt with at the responsibility and expense of the owner of each exclusive element.

7. Proportion of co-owners' shares

In Japan, the proportion of co-owners' land shares is provided in the contract between the developer (seller) and the purchaser (each unit owner) at the time of purchase of the condominium and cannot be changed afterwards by a majority resolution of the unit owners. On the contrary, the proportion of common elements of the building is provided in by-laws, and if no by-law exists, it is proportional to the space of each exclusive element (art. 14 ABUO). In fact, by-laws in the majority of condominiums provide that the proportion of shares on common elements of buildings is based on the proportion of space of each exclusive element, and developers accord the proportion of land shares to such space at the time of sale.

By-laws may include provisions about the proportion of cost allocation or votes. If no provision exists, such proportions are based on the proportion of co-owner's share on common elements (art. 19, 38 ABUO). In fact, these proportions are in general accorded by by-law provisions. Therefore, although proportions other than those of co-owner's land shares can be changed with by-law amendments (a special majority of three-fourths or more is required for this), such changes in fact almost do not exist.

8. Sanctions on defaulters

Against persons who act in contrast to the common benefit of unit owners, the following demands can be made with a resolution by special majority: demand for the discontinuance of such conduct (art. 57 ABUO),

and demands for prohibition on use (art. 58 ABUO) and the auction of unit ownership (art. 59 ABUO) in cases of severe breaches. The same goes with cases of non-payment of management fees (according to case law).

9. By-laws

The ABUO provides that by-laws may be established with a general meeting resolution by a special majority of three-fourths or more (art. 30 para. 1 ABUO). Although establishing by-laws is not a legal duty, they are in fact established in most condominiums (as already mentioned under section 5. above, in most cases developers prepare a by-law draft, unit owners agree to it and as such it becomes the original by-law). No registration system for by-laws exists in Japan. According to the ABUO, by-law provisions and general meeting resolutions have effect against specific successors (future unit owners) and possessors (lessees, etc.) (art. 46 ABUO).

By-laws may be established, amended or repealed with a general meeting resolution by a special majority of three-fourths or more (art. 31 para. 1 ABUO). However, in cases where such an establishment or amendment, etc. has special influence on interests of specific unit owners, the consent of such unit owners must be obtained (art. 31 para. 2 ABUO). By-laws may provide that more detailed rules (細則) will be established (with a majority resolution at a general meeting) regarding the concrete usage, etc. of the building or the land (art. 18 SBL). In fact, more detailed rules regarding pet-keeping, the usage of car parking, bicycle parking spaces, etc. are usually established.

10. Legal nature of management association

The ABUO provides that all unit owners in a condominium naturally form a "unit owners' association (区分所有者の団体)" (art. 3 ABUO) but does not grant juristic personality to the association. However, the association can obtain juristic personality with a general meeting resolution by a special majority of three-fourths or more. It seems that around 20% of associations have in fact obtained juristic personality. In cases of associations without juristic personality, all unit owners are represented by the manager, and the association's claims and obligations eventually pertain to each unit owner in proportion to his/her shares (art.

29 para. 1 ABUO). The standing to sue and to be sued in an action related to associations without juristic personality belongs in principle to the manager (art. 26 para. 4 ABUO), but under the law of proceedings and according to practice, such standing is admitted also to the association itself.

11. Daily management and manager

The ABUO provides that management activities shall be performed by the manager, according to by-law provisions or general meeting resolutions (art. 26 para. 1 ABUO). The manager is appointed at a general meeting without qualification restrictions (art. 25 para. 1 ABUO). However, in fact, in most management associations (管理組合. Unit owners associations), unit owners are successively appointed as directors (理事) at general meetings and form a board of directors (理事会), which appoints (by internal vote) a chair of the board (理事長), who is deemed to be the manager provided in the ABUO (art. 35, 38 SBL). Management activities that are to be performed according to by-law provisions or general meeting resolutions, are performed with majority resolutions of the board. Management activities are divided among directors, and the chair presides the directors and represents the management association. In fact, the whole or specific and concrete management activities (accounting activities, caretaker activities, maintenance checkup activities, cleaning activities, etc.) are put in the charge of management companies (管理会社).

12. General meetings

General meetings are composed of all unit owners, and unless otherwise provided in by-laws, ordinary resolutions are taken by the majority of the unit owners and of the votes (as mentioned above under section 7., votes are normally based on the shares on common elements) (art. 39 para. 1 ABUO). In fact, by-laws usually provide that resolutions shall be taken at general meetings with the participation of half or more of the total votes, with a majority of the participants (art. 47 para. 1 and 2 SBL).

Resolutions with special majority are taken with a majority of three-fourths or more of the number of unit owners and of the votes, and it

cannot be provided otherwise in by-laws. Items requiring a resolution with special majority are changes to common elements or the land (art. 17 para. 1, art. 21 ABUO), demands against defaulters (see section 8. above), acquisition of juridical personality (see section 10. above), and restoration in cases of large-scale partial destructions (art. 61 para. 5 ABUO). In cases of demolishment and reconstruction of a building, a resolution with four-fifths or more of the number of unit owners and the votes is required (art. 62 ABUO). Possessors such as lessees do not have voting rights but are allowed to attend general meetings and state their opinion regarding items related to their interests (art. 44 para. 1 ABUO).

13. Management in a multi-building scheme

The ABUO provides that common elements provided for the common use of only some of the unit owners shall be in principle managed only by those unit owners who co-own them (art. 3, 16 ABUO). For example, in case of a condominium where the first and second floor are stores and the floors from the third and upwards are residential, the common elements that are structurally and functionally provided for the common use of only the stores (e.g. stairs and corridors that do not communicate with the third floor and upwards) will be managed only by the unit owners of the first and second floor stores, and common elements of the residential floors (corridors and elevators leading from the entrance to the third floor and upwards, corridors on those floors) will be managed only by the unit owners of those floors. However, by-laws may provide that these shall be managed altogether (art. 16 , 30 para.2, 31 para.2 ABUO).

Regarding cases where there exist multiple condominiums on a land, since under Japanese law buildings and land are in principle separate and independent real properties, the land will be managed by all condominium unit owners if it is co-owned by them, but each condominium will in principle be managed by its unit owners. However, by-laws may provide that all condominiums shall be managed by all unit owners, same as the land (art. 65, 68 ABUO).

14. Termination

The ABUO does not include provisions on the termination of the condominium regime. However, it is understood that the condominium

regime is terminated if all unit owners consent to it, or the condominium building has been totally destroyed. A demand by the co-owners for partition of the co-owned building and land in the former case, and of the co-owned land in the latter case will be possible under the provisions of the Civil Code (art. 256 etc.).

On the other hand, the ABUO provides that in cases a of a partial large-scale destruction of the condominium building (destruction of a part of the building equivalent to half of its cost or more), restoration can be done with a resolution by a special majority (three-fourths or more) (art. 61 para. 5 ABUO). Furthermore, in all cases, reconstruction can be done with a resolution by a special majority of four-fifths, regardless of reason (art. 62 ABUO).

In addition to the above, a special act provides that in cases where large-scale damage has been incurred due to specific disasters as designated by the government (the Great Hanshin Earthquake of 1995, the Tohoku Earthquake and Tsunami of 2011, etc.), the building and the land may be sold to third parties, etc. with a resolution by a special majority of four-fifths or more (revision of the relevant act in 2013)[11], and establishes a similar system for condominium buildings that do not fulfill certain earthquake resistance standards at the moment (revision of the relevant act in 2014)[12].

15. Dispute resolution bodies

In Japan there are no special resolution bodies for disputes related to condominiums (apartment buildings). However, there is discussion about the need to establish such.

16. Evaluation of the Japanese condominium law

The ABUO was established in 1962, before the spread of condominiums in general, and has been revised twice since then. It seems that its provisions have prevented various disputes related to condominiums the number of which has increased considerably. This aspect can be appreciated.

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[11] Law 62 of 26 June 2013 revising Law 43 of 24 March 1995.
[12] Law 80 of 25 June 2014 revising Law 78 of 19 June 2002.

However, nowadays, condominium buildings have aged and the resistance of aged buildings to earthquakes is not sufficient (there are not less than 1.000.000 condominium buildings of around 40 years after construction, whose resistance to earthquakes is insufficient). On the other hand, as Japanese society's birthrate is declining and population aging increasingly, how buildings should be maintained and managed is becoming a critical issue. Repairs or improvements of aged buildings require considerable expenses, which aged people (people of an age of 60 years old or over) who account for a considerable percentage of unit owners (around 50% in average) tend not to desire to expend. Furthermore, a reconstruction (art. 62 ABUO) that would resolve both degradation over time and safety issues of buildings at once requires still more enormous expenses (the number of reconstruction cases in Japan is around 300 to date, apart from the 100 cases resulting from the Great Hanshin Earthquake), and when unit owners wish to utilize the building and land sale system with resolution by special majority for condominiums with inferior resistance to earthquakes (see section 14. above), it seems difficult to achieve a resolution by special majority in cases where no sufficient proceeds from the sale (dividends) can be expected. The fact that the existing legal system and policies do not adequately deal with the aforementioned issues seems to be creating a pressing issue.

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III The condominium regime in Greece[13]

The present chapter refers to the condominium regime in Greece and the analysis proceeds as follows: After the general outline of this issue (*section A*), the definition of condominium, as well as the conditions for its establishment and management are analysed (*sections B, C and D*). In *section E* the paper proceeds with the discussion of some practical issues frequently arising in condominiums relating indicatively to their

[13] The present paper is based to a significant extent to the research that has been undertaken for the publication of the project "condominium law" (Common Core of the European Private Law, editor: Cornelius Van Der Merwe, Cambridge University Press 2015). However, the present work has been updated and cover a wider spectrum of aspects being related to the condominium regime in Greece.

maintenance, sub-division of units and their dissolution, followed by some brief concluding remarks (*section F*).

A. A general outline

Lease of apartments is a very common form of housing in Greece. In terms of this contractual arrangement the right to live in an apartment is transferred to the tenant, while the landlord remains the owner of all the apartments in the building. In Greece the duration of initial lease agreements rarely exceeds eight to ten years; whilst, leases are usually renewed periodically[14]. For the long-term exploitation of an apartment, Greeks prefer to buy an apartment in a building structured as a condominium rather than to lease a flat in a rental building.

It is also clarified that the leasing of condominiums for commercial purposes (e.g. through the establishment of a shop) is governed by a specific legal regime (Law 4242/2014 on commercial leases). However, the commercial exploitation of condominiums falls outside the scope of the present work, which deals exclusively with the residential utilisation of condominiums.

Real estate cooperatives (which are also referred to as "share block companies"), where the company owns the building and shareholders are entitled to reside in a unit by virtue of their shareholding, is a legal institution that is unknown in Greece. Additionally, Greek legal system is not familiar with planned unit developments (gated (security) villages, multi-unit schemes governed by home-owners' associations). However, many community welfare housing schemes exist, which were developed under the patronage of the Workers' Housing Organisation[15].

Workers' Housing Organisation[16], which was abolished in 2012, was

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[14] The legal regime related to the lease of flats is formulated by art. 574-618 of GCC, concerning mainly the contractual terms of the lease, as well as Law on Lease 1703/1987 (art. 2 par. 1, as amended by Law 2235/1994, art. 1 par. 5) which defines its duration (3 years).

[15] In Greek: Organismos Ergatikis Katoikias (= OEK).

[16] The Organisation was a public legal entity, operating under the auspices of the Ministry of Employment and Social Protection. However, at the same time it enjoyed complete financial autonomy, since it drew its funding from the Greek labour force with the employees contributing 1% of their salaries and their employers 0.75% of their employees' earnings. The Organisation was managed

the main agency that implemented social housing policies and the largest developer of residential housing in Greece. This is indicated by the fact that the residential schemes designed and constructed by the abovementioned Organisation throughout Greece until 2011 (namely a year prior to its dissolution) represented about 95% of the total annual building activity of the public sector.

In order to receive housing assistance from the Workers' Housing Organisation, the beneficiaries should:

(a) not own a house or other accommodation adequate to their housing needs;

(b) have completed a certain number of working days;[17] and

(c) have complied with additional provisions for special programmes.

The Workers' Housing Organisation, during its 57 years of operation (it was established in 1954), has offered privately-owned houses in unit (i.e. houses or apartments) to approximately 700,000 families. Approximately 50,000 of those families were provided with a completed new house in a residential township; 380,000 were granted a loan for the purchase or construction of their first home; and about 270,000 received a loan for the repair, enlargement or completion of their own houses. It is also worth mentioning that 49.623 houses in unit (i.e. houses or apartments) have been constructed by the Workers' Housing Organisation[18]. As already mentioned, Workers' Housing Organisation was abolished in 2012. Its role regarding housing policies has been partially undertaken -to a more limited extent- by Manpower Employment Organisation[19], which was

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by a 15-member board of directors, composed of representatives of the labour force that funded the Organisation, as well as representatives of the Local Administration, the Technical Sector, the supervising Ministry of Employment, and the employees of the Organisation.

[17] The requisite number of working days varied, depending on the number of members of the employee's family. If the employee has been married without children the completion of 2,000 working days was required; if he/she had two children, completion of 1,600 working days was required; if he/she had three children, completion of 1,400 working days was necessary; and if he/she had four children, completion of 1,300 working days was required. More lenient preconditions have been set for disabled individuals, single-parent families, residents of border regions, newly married couples, and other population groups covered by special programmes.

[18] Ibid.

appointed as its substitute (Law 4144/2013 art. 25 and 26 par. 1).

B. Definition of condominium

In Greece, a condominium is defined as the form of housing tenure which caters for individual ownership of apartments in an apartment building, combined with an obligatory co-ownership share in the common facilities on the land and in the building (such as the hallways, heating system, elevators, exterior walls and the roof)[20]. There are earlier references to condominium regimes in Samiakos Code and Ionios Code, which governed specific parts of Greece[21]. However, the institution of condominium was, for the first time, formally introduced in Greece in 1929 through Law 741/1929, which abolished the relevant provisions of the previous Codes. Other provisions regulating the condominium are included in articles 1002 and 1117 of the Greek Civil Code (GCC) of 1946 as well as in Law 1024/1971 on "Divided Ownership of Buildings Erected on Common Land". The latter law is still in force, although it was amended extensively by Law 1562/1985 on "The Construction of Co-owned Immovable Property, the Modification of Articles of the Code of Civil Procedure (CCPr) Regarding Partition and other Provisions" and Law 2052/1992, which regulates some aspects regarding the construction of co-owned property.

The reason for the introduction of condominiums in Greece was to offer individuals the opportunity to obtain ownership of an apartment at considerably lower cost compared to a free-standing houses[22]. There was

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[19] In Greek: Organismos Apasxolisis Ergatikou Dynamikou (= OAED).

[20] Areios Pagos (= Hellenic Supreme Court of Civil and Penal Law) 746/2018 ChrID (Chronika Idiotikou Dikaiou, Greek Review) 2019, 113; Areios Pagos 273/2018 NOMOS (= Greek law data base); Areios Pagos 92/2017 NOMOS; Areios Pagos 1070/2013 NOMOS.

[21] See further, *I. Spyridakis*, Law of Condominium (Athens 1996), 11; *P. Zepos*, The horizontal ownership (Athens 1931), 43; *P. Konstadopoulos*, Law of Condominium in Greece, Athens, 1974, 9, 17 et seq.; *F. Tsetsekos*, The Individual Ownership (horizontal and vertical) (Athens 2002), 41 et seq; *Ch. Kanellos*, Law of Condominium, Athens, 1986, 38 et seq; Areios Pagos 101/1996 EDP (= Epitherorissi Dikaiou Polykatoikias, Greek Review) 1996, 19.

[22] See Areios Pagos 2115/2014 EllDni (= Elliniki Dikaiosyni, Greek Review) 2016, 1670.

an urgent need for such a change, especially following the devastating defeat suffered by Greece in the Greco-Turkish war in 1922. This catastrophe known, as the "catastrophe of Smyrna", resulted in hundreds of thousands of refugees fleeing to Greece, a fact which combined with the return of Greek soldiers, caused an acute shortage of homes:

> "The frightful catastrophe at Smyrna in 1922, when the victorious Turks killed Greeks by the uncounted tens of thousands, and forced the surviving hundreds of thousands to proceed at once to Old Greece, created in that tiny nation of five million people just such an emergency as we have imagined for America — the sudden influx of a 25 per cent, addition to its native population, requiring instant relief and eventual permanent rehabilitation"[23].

The widespread implementation of the institution of condominium eighty years after its first introduction indicates the great effectiveness of the institution. Furthermore, the efficiency of the relevant legislation, in particular Law 3741/1929, is illustrated by the fact that the latter remains still in force without major amendments. In this regard, according to Law 3741/1929[24], the condominium regime in Greece represents a two-fold relationship consisting of a combination of (i) private ownership of an apartment and (ii) co-ownership of the common property. Some commentators suggest that the condominium regime also includes the membership in a management body formed by all the owners of individual apartments. However, this is not the prevailing view in Greece, given also that, as will be mentioned below, the management of the condominium might be assigned to a third party.

The Greek legislation does not adopt a unitary or dualistic system of condominium. More precisely, the private ownership of an apartment is the principal right, whereas the co-ownership of the common property is secondary to the private ownership of the apartment[25]. The secondary

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[23] *H. Morgenthau*, I was sent to Athens, Doubleday/Doran & Co, NY 1929.

[24] Art. 1, 2, 3, 9, 10, 13 of Law 3741 of 1929. On the legal nature of the condominium regime see, inter alia, Areios Pagos 135/2009 ChrID 2009, 717, 720 commented by Christakakou-Fotiadi; Areios Pagos 1832/2014 NOMOS.

[25] See further *I. Spyridakis* (n. 21), 18 et seq; *Ap. Georgiades*, Property Law, 2.ed., 2010, § 66 nr. 3-4; Areios Pagos 746/2018 ChrID (Chronika Idiotikou Dikaiou, Greek Review) 2019, 113; Areios Pagos 273/2018 NOMOS (= Greek law data

character of the right of co-ownership of the common property is indicated by the fact that the transfer of the share of the common property automatically follows the transfer of the private ownership of any apartment and cannot take place separately[26]. In other words, the right of co-ownership of the common property is subordinated to the individual ownership of an apartment.

C. The establishment and basic principles of condominium regime

The main type of condominium provided by Greek legislation is the residential condominium. The legislation does not exclude other types of condominium, such as commercial, industrial, office and resort (tourist) condominiums; however, these types of condominium are not regulated by existing legislation. The development of such types of condominium can be based on the accumulative application of Law 3741/1929 together with the general provisions of Greek Civil Code on lease (art. 574 ss). Theoretically, mooring spaces for boats and yachts, hotel condominiums, graveyard condominiums, airspace condominiums and so-called bare-land or caravan sites can be structured as condominiums on the basis of the abovementioned general provisions; nevertheless, they are still unknown in Greek legal practice.

Due to the fact that the development of condominium leads to the acquisition of individual ownership of a unit, only freehold owners are entitled to establish condominium according to the Greek legislation[27]. There are no general limits regarding the types of buildings which may be subjected to the condominium regime, except that the buildings must be of a fairly permanent character. One of the characteristics of ownership is that each owner is free to dispose its right at will (art. 1000 of Greek Civil Code), without prejudice to the existing legal restrictions, such as the

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base); Areios Pagos 92/2017 NOMOS; Areios Pagos 128/2009 NOMOS; Areios Pagos 1633/2003 EllDni (= Elliniki Dikaiosyni, Greek Review) 2004, 791; Areios Pagos 650/1999 EllDni 2000, 430; Areios Pagos 619/1999 EllDni 2000, 37; Areios Pagos 922/1998 EllDni 1998, 1607; Areios Pagos 21/1997 EllDni 1997, 184; for the various views see *Kotsakis*, The Horizontal and Vertical Ownership, 2006, p. 187 et seq.

[26] See Law 3741 of 1929, art. 10 par. 1.

[27] This derives from art. 1002 GCC.

ones arising from the Law 1577/1985 on "General Building Regulation"[28]. Moreover, there is no condition that the condominium building must be divided into a minimum or maximum number of units.

Additionally, the fact that the establishment of a condominium leads to the acquisition of ownership over the condominium units entails that the conditions of the Greek Civil Code concerning the transfer of immovable property must be also complied with (see art. 1033 GCC). One primary condition is that the condominium agreement is registered with the Land Registry[29]. The Land Registry is a state agency designated by the law as the custodian of all deeds concerning real property (namely contracts and any other legal acts affecting the legal status of land, including condominiums)[30]. No special register concerning exclusively transactions involving condominium units exists in Greece; all deeds related to condominiums are registered with the Land Registry.

The legal requirements for the valid establishment of condominium are stipulated by Law 3741/1929 (artircle 1). First and foremost, the ownership (freehold) of the land, on which the scheme is developed, must be vested with the developer[31]. As far as the status of the building is concerned, it is not necessary for the construction to have commenced or to have been completed. Even building plans may be registered, as long as there are detailed architectural plans indicating the various units in the scheme[32].

The common property of the condominium consists of the land, the foundations of the building, the structural walls, the roof, the chimneys, the courtyard, the wells, the elevators, the sewerage works and the heating system(s), according to article 2 § 1 of Law 3741/1929. On the other hand, article 1117 of GCC refers to the land, the foundations of the building, the structural walls, the roof and the courtyard as examples of

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[28] As amended and supplemented by Laws 1772/1988 and 2831/2000.
[29] See also art. 13 of the Law 3741/1929; Areios Pagos 203/2016 NOMOS; Areios Pagos 24/2015 NOMOS; Areios Pagos 2115/2014 EllDni (= Elliniki Dikaiosyni, Greek Review) 2016, 1670; Areios Pagos 615/2006 NoV (= Nomiko Vima, Greek Review) 2006, 1023.
[30] See GCC art. 1192 ss.
[31] This derives from art. 1002 GCC.
[32] Areios Pagos 2115/2014 EllDni 2016, 1670.

common property. The fact that article 1117 of GCC mentions fewer objects as obligatory common property compared to Law 3741/1929 does not imply that the legislator intended to limit down the parts forming the common property of the condominium scheme exclusively to the objects listed. This interpretation emanates from article 54 of the Introduction to the Greek Civil Code, according to which Law 3741/1929 "*continues to apply after the adoption of the GCC*" and thus both provisions apply at the same time[33]. Therefore, the shorter list of common objects contained in article 1117 of GCC shall be approached as non-exhaustive[34].

The common property of the condominium may also be defined thoroughly in the constitutive instrument, on the basis of which the condominium is established, or even in the by-laws of the condominium[35]. According to Greek case law, co-owned objects and objects of common use are those parts of the condominium that were initially constructed for common use, irrespective of their actual use by the co-owners or their suitability for this purpose[36]. In this context, the compulsory co-ownership may also include: drainage and water supply facilities[37], electric current, telephone connections, a common television antenna, an intercom system, laundry facilities, skylights and ventilators, the entrance doors to the building, to the garden and to the common areas of the condominium, the building facade and in general the architectural form of the building, various other movable objects[38].

As already mentioned above, according to Greek Civil Code (articles 1002 and 1117) exclusive ownership of the apartment is the principal right associated with the membership of a condominium; whilst, the share in the common property is secondary to the private ownership of the apartments. In this sense, all the owners of the apartments have 'exclusive use rights'

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[33] *I. Spyridakis* (n. 21), par. 14.1., 40 et seq.
[34] Areios Pagos 1207/2011 NOMOS.
[35] Areios Pagos 273/2018 NOMOS (= Greek law data base); Areios Pagos 92/2017 NOMOS.
[36] Peiraius Court of Appeals 1227/2005 PeirN (= Peiraiki Nomologia, Greek Review) 2006, 29; see also Areios Pagos 1143/1976 NoV 25, 543; Athens Court of Appeals 836/1996 EDP 1998, 295; Athens Court of Appeals 702/2001 EllDni 42, 1671.
[37] Areios Pagos 462/2017 ChrID 2017, 577.
[38] *I. Spyridakis* (n. 21), par. 26, 56 et seq.

over the common property, which cannot be transferred to a third party without the simultaneous transfer of the ownership or the lease of an apartment. However, the use of common property can be arranged through specific provisions included in the constitutive instrument or the by-laws of the condominium. These provisions must be contained in a notarial deed registered with the Land Registry. The same applies also to every other contractual agreement being related with the use of the common property[39]. It is possible, thus, the co-owners to agree that one individual co-owner (or a number of co-owners) will be granted with the exclusive use of a common object[40], such as a common store or uncovered space in the condominium. In this regard, one particular owner might be granted, for example, with the right of exclusive use of the roof-top or a part of the unimproved land of the condominium[41].

On the issue of the quotas allocation, Greek legislation provides that[42], unless otherwise stated in an agreement among the owners[43], the quotas allocated to each unit are determined according to the value of each floor or apartment in the building. Consequently, the owners may provide in the by-laws that the maintenance and management charges are paid equally by all the owners, and not proportionally according to their quotas. It could also be agreed that some charges will be borne by tenants, who will pay the relevant amount directly to the professional manager or the management board. In practice, the usual form of agreement is that tenants bear any costs relating to maintenance due to normal use; whilst, the owners bear costs relating to maintenance, which is not related to normal use of the condominium. With regard to the allocation of expenses

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[39] *I. Spyridakis* (n. 21), par. 66.5; furthermore see Areios Pagos 273/2018 NOMOS; Areios Pagos 92/2017 NOMOS.

[40] See, for example, Areios Pagos 273/2018 NOMOS; Areios Pagos 92/2017 NOMOS; Areios Pagos 902/1990 EDP 1991, 257; Areios Pagos 919/1992 EDP 1993, 166; Athens Court of Appeals 10211/1984 EDP 1984, 272; Athens Court of Appeals 2873/1985 EDP 1986, 102; Athens Court of Appeals 9797/1992 EDP 1993, 187.

[41] Areios Pagos 1002/2014 EllDni (= Elliniki Dikaiosyni, Greek Review) 2016, 1666 (roof top).

[42] See art. 5 case b of the Law 3741/1929.

[43] Areios pagos 241/2016 EllDni 2017, 822; Areios Pagos 280/1981 NoV 1981, 1495.

between owners and tenants, it is crucial to be defined whether said expenses are necessary or not.

With regard to the creation of parking spaces in the basement of the building, such parking spaces must be depicted on the condominium plans prepared by an architect and approved by the Department of Urban Planning. Furthermore, according to article 1 § 1 of Law 3741/1929 and article 1002 of GCC, the basements are also considered as floors in a building[44]. Thus, as long as the constitutive agreement of the condominium provides that the basement is considered as an area of separate ownership, parking spaces (together with a certain undivided share of the common property) may be established in the basement, in which case the parking spaces are excluded from the common property[45]. That means also that a parking space in the basement can be structured as part of an apartment and have the same number as the apartment on the condominium plan. The co-owners, however, are not entitled to structure the parking spaces in the basement as part of the common property[46], where all owners have a right to park on a first come - first served basis[47].

As far as the unimproved land of the condominium is concerned, namely the area uncovered by the building, article 953 of GCC provides that it constitutes part of the common property, as an element of the land on which the building has been erected. Consequently, this area is free from individual ownership[48] and no such ownership can be established on parking spaces situated on the unimproved land[49]. On this basis, any

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[44] Areios Pagos 731/2000 ChrID (= Chronika Idiotikou Dikaiou, Greek Review) 2001, 610; Areios Pagos 1699/1995 EllDni 1998, 374; *F. Tsetsekos* (n. 21) p. 127; see also art. 2 par. 24 of the Law No 1577/1985 "On Divided Ownership on Buildings Erected on Uniform Land".

[45] Thessaloniki Court of Appeals 2588/1990 Arm (= Armenopoulos, Greek Review) 1990, 1182.

[46] Ibid.

[47] From a practical point of view this is rather unusual.

[48] Areios Pagos 238/1990 EDP 1990, 175; Peiraius Court of Appeals 986/1998 EDP 1999, 36; Athens Court of Appeals 3932/2002 ArchN (= Archeio Nomologias, Greek Review), 2003, 354.

[49] Inter alia: Areios Pagos 2115/2014 EllDni 2016, 1670; Areios Pagos 818/2003 EllDni 2003, 1632; Areios Pagos 1311/2001 NoV 2002, 1456; Athens Court of Appeals 2680/1998 EllDni 1998, 921; Athens Court of Appeals 1426/1998 EDP 1998, 197.

agreements regarding the exclusive transfer of ownership of parking spaces situated on the unimproved land are null and void (i.e. do not produce any legal effect)[50]. Furthermore, as long as the parking spaces on the unimproved land are described as parts of the common property by the condominium's regulation or the by-laws (see Law 960/1979 article 1 par. 5, last section, as supplemented by the Law 1221/1981, article 1)[51], all the owners are entitled to use them on a first come — first served basis. From the abovementioned provisions, it emerges that only consent to the exclusive use of parking spaces existing in the unimproved land is permitted[52] and only in favor of one or more unit owners.

D. Management of condominium

The condominium is governed according to its by-laws constituting the internal rules of management of the condominium, which regulate every issue concerning life in the condominium, including both significant matters and trivial everyday activities in the scheme. The by-laws are formulated on the basis of a unanimous agreement of all the owners incorporated in a notarial deed and registered with the Land Register of the area where the condominium is located[53]. The legal nature of the by-laws is similar to a contractual agreement, which means that the by-law must be in conformity with the statutes that regulate the condominium, as well as general provisions of Civil Law, such as those included in Greek Civil Code[54]. The provisions of the by-laws are legally binding on existing and future owners[55].

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[50] Areios Pagos 454/2017 Nomos; Areios Pagos 818/2003, ibid; Areios Pagos 1311/2001 NoV 2002, 1456; see also Areios Pagos (Plenary session) 23/2000 EllDni 2001, 58.

[51] Areios Pagos 333/2002 ChrID 2002, 520; Areios Pagos 1253/2001 EllDni 2002, 152; Areios Pagos 725/2002 EllDni 2002, 1681; Athens Court of Appeals 4318/2001 EllDni 2002, 498.

[52] Areios Pagos 31/2001 EllDni 2001, 937; Athens Court of Appeals 227/2000 EllDni 2000, 116.

[53] See art. 13 par. 1, 2 of Law 3741/1929; Areios Pagos 128/1986 EEN (= Efimerida Ellinon Nomikon, Greek Review) 1987, 436.

[54] Areios Pagos 771/1994 EDP 1994, 169; Athens Court of Appeals 3306/2000 ArchN 2001, 182.

[55] Areios Pagos 1713/1991 EllDni 1993, 339; Athens Court of Appeals 3950/1994

The management body, which consists of all owners in the condominium scheme[56], is not equipped with a legal personality[57]; therefore, it is not considered to be a legal person but rather an unincorporated association of persons[58]. The management body acts on the basis of an explicit or even implicit agency contract among the individual co-owners. If so authorised by the owners, the management body may act as plaintiff and defendant in litigation[59].

The daily management of the condominium might either be entrusted to a management board (executive council) consisting mostly of co-owners, or to a professional manager[60] and this is a matter to be decided upon by the assembly of co-owners. This issue is also frequently provided for in the memorandum of the condominium. There are no legislative limitations on this issue, and both solutions appear in practice[61]. Unless a manager or a management body is appointed in the constitutive instrument or the by-laws, articles 4 par. 1 and 2 of Law 3741/1929 provides that the condominium must be managed and administered by all the co-owners collectively. However, as provide by articles 3 par. 2 and 5a of Law 3741/1929 provides, certain administrative acts may be performed by a co-owner individually or in collaboration with another[62].

When the scheme is managed by a professional manager, the scope of his administrative duties is specified by the initial or amended terms of his contract of appointment. As representative of the co-owners, the manager must perform his duties in a way that serves the common interests of all the owners[63]. Article 4 par. 3 of Law 3741/1929 provides that the court may dismiss a manager only if he is found 'guilty of a breach of a fiduciary duty or of gross negligence'. In this regard, it has been argued that the reasons

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ArchN 1994, 656; Athens Court of Appeals 2439/1994 EDP 1994, 227.
[56] See art. 4 of the Law 3741/1929.
[57] *I. Spyridakis* (n. 21), par. 84.2, 240 et seq.
[58] Areios Pagos 1997/2013 ChrID 2014, 587; Areios Pagos 1592/2008 ChrID 2009, 438.
[59] Areios Pagos 1592/2008 ChrID 2009, 438.
[60] See *V. Tsoumas*, The horizontal and vertical ownership, 2009, par. 436; Athens Court of Appeals 5192/1987 EDP 1987, 108.
[61] See art. 4 par. 1, 2 and art. 3 par. 2, 5a of Law 3741/1929.
[62] *I. Spyridakis* (n. 21), 223.
[63] Ibid, 275.

for judicial dismissal of a manager are very limited[64]. On the other hand, however, if the law provided that every owner is unrestrictedly entitled to revoke the appointment of a managing agent of the condominium, the ordinary functioning of the condominium scheme would be endangered. In such a case, lack of confidence, discontinuity and uncertainty would prevail, factors which may well result to the detriment of the owners. In any case, the condominium association may also dismiss the manager, regardless of the reason, as long as the relevant decision is adopted by the required majority vote (article 4 par. 3 of Law 3741/1929)[65].

The context of the decisions taken at the general meetings of the condominium association is defined in the memorandum (no legislative restrictions exist in this context). Usually the agreement of the owners, which is embodied in the by-law, determines the majority required for the adoption of decisions regarding every aspect of the condominium's management, even the most significant ones. If no such clause is included in the by-law, then the majority or unanimity provided for by the law applies, depending on each matter[66]. In particular, matters requiring unanimity are the following:[67]

— Decision for the conclusion or amendment[68] of the by-1aw (article 4 par. 1 of Law 3741/1929).
— Decision for the appointment of a manager (article 4 par. 2, 3 of Law 3741/1929)[69].
— Regulation of the rights and obligations of the co-owners diverging from the one provided for in article 5 of Law 3741/1929[70].

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[64] *Spyridakis* (n. 21), 284.
[65] Areios Pagos 1997/2013 ChriD 2014, 587.
[66] *I. Spyridakis* (n. 21), 263; *F. Tsetsekos* (n. 21), p. 170.
[67] *I. Spyridakis* (n. 21), 263-264.
[68] Areios Pagos 216/1981 NoV 1981, 1484; Areios Pagos 1035/1989 EDP 1990, 108; Athens Court of Appeals 4474/1996 EllDni 1997, 1919; Athens Court of Appeals 3615/1996 EDP 1998, 126; Athens Court of Appeals 385/1993 EDP 1993, 247; Athens Court of Appeals 366/1995 EDP 1995, 74.
[69] On the contrary, a simple majority decision is required for the replacement of the manager (article 4 par. 3 of law 3741/1929); see Areios Pagos 1997/2013 EllDni 2014, 1390.
[70] See e.g. Athens Court of Appeals 1068/1985 EDP 1985, 31; Athens Court of Appeals 6790/1986 EDP 1986, 187; Athens Court of Appeals 4474/1996 EllDni

— Decision for the expansion of the condominium (article 8 par. 1 of Law 3741/1929).
— Decisions concerning the rebuilding of the condominium that are not in compliance with the provisions of article 9 par. 2 of Law 3741/1929.
— Decision for the termination of the condominium.
— Decision for the issues mentioned in article 792 GCC[71].

In the majority of cases, a simple majority decision is adequate for the settlement of ordinary matters, especially for the execution of works concerning the maintenance and improvement of the common property (e.g. the repainting of the building, the replacement of the old lift with a new safer one, etc). Substantial alterations of the common property or expensive additions, on the other hand, cannot be authorized on the basis of a simple majority decision or pursued in a civil court (GCC art. 792 par. 1), but a unanimous approval is usually demanded thereon[72].

The owners of each apartment have one vote at the assembly of co-owners. In the case that an apartment being co-owned by more than one persons, the co-owners of the same apartment must reach an agreement regarding the right to vote at the assembly of owners. However, the legislation does not regulate what happens in the case of disagreement between the co-owners of the same apartment.

Greek legislation[73] does not impose an explicit obligation on the management board to insure the building against damages. Therefore, the unit owners are allowed to insure the building (usually against the risk of fire) at will, without being subjected to any kind of restrictions arising from the condominium legislation. Furthermore, the owners are not burdened with a general duty to keep their units in good state[74]. Nevertheless, in the event of inappropriate maintenance of one unit, the owners of other flats who might suffer damage, due to such improper maintenance, are entitled to demand from the negligent owner to repair

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38, 1919.
[71] The above mentioned article applies in case of substantial alterations and additions to the common thing.
[72] *P. Konstantopoulos* (n. 21), 253; *Tsetsekos* (n. 21), 220.
[73] Law 3741/1929 and GCC.
[74] Areios Pagos 462/2017 ChrID 2017, 577.

their damaged units, as well as to claim additional compensation for any other loss suffered. In this case the general principles of Greek Civil Code on tort apply (GCC art. 914 ss.)[75].

On a final note, it is pointed out that according to article 182 par. 1a of the recent Law 4512/2018 any potential disputes between the building's management body/manager and a co-owner or between the co-owners are henceforth submitted to compulsory extrajudicial mediation. Unless an attempt for a prior out-of-court settlement is undertaken, any action brought before the courts relevant to the aforementioned matters would be dismissed as inadmissible. If, however, the parties do not reach a settlement and bring their case before the courts, then the following key provisions of Greek Code of Civil Procedure (CCPr) will be applicable:

1) Article 14 par. 1c, 16 nr. 8 and 17 nr. 3 CCPr, which specify the jurisdiction of the courts;

2) article 614 par. 1 CCPr, which expressly defines that all cases concerning the regime of horizontal property (namely, as cited in nr. 2 and 5 of the aforementioned article, all matters between the management body and a co-owner or among the co-owners or between the co-owners and the appointed manager regarding his remuneration) are decided under the special procedure described in art. 614 ss CCPr[76].

E. Special issues frequently arising in the legal practice

1. Establishment of condominium over a building under construction

If the building to be placed under the condominium regime is still to be erected, all the essential characteristics of the building (including size, division into units, common property, etc.) must be clearly specified in the condominium plan prepared by an architect; the latter forms part of the constitutive instrument of the condominium[77]. This is the prevailing view in terms of Greek legal theory and case-law, which is based on the provisions of Law 3741/1929 (article 10 par. 2), Law 1562/1985 (article 1 ss), as well as case law regarding option agreements[78]. The opposite view

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[75] Areios Pagos 462/2017 ChrID 2017, 577.

[76] On this issue see furthermore *V. Tsoumas*, Horizontal and Vertical Ownership, 2009, par. 548-571, where several cases are cited.

[77] *I. Spyridakis*, Law of Condominium, 86 and 145 et seq.; see also Court of First Instance of Ioannina 1539/1998 N *o* V (= Nomiko Vima, Greek Review) 47, 289.

that condominium cannot be established over buildings which do not yet exist is not strongly supported in Greek legal theory or case-law[79]. Consequently, according to the prevailing view, the sale and transfer of condominium units based on building plans is possible and legally valid, provided that the sold unit is thoroughly specified, as described above.

2. Restrictions on sale and letting of apartments in the condominium - The limits of the free formulation of by-laws

The constitutive deed establishing the condominium regime, the by-laws or other agreements among the owners of the condominium may contain clauses restricting the right of lawful disposal of units in the condominium[80]. The validity of such clauses is still under dispute. In particular, on the basis of article 177 of Greek Civil Code some authors argue that the restrictive clauses have contractual effect only[81]. However, other authors support that these clauses form part of property law[82] and thus disposals which take place in violation thereof are invalid. The latter argument emanates from Law 3741/1929. More precisely, it has been suggested that article 13 par. 3 of law 3741/1929 introduces an exception to article 177 of GCC[83].

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[78] See further, *I. Spyridakis*, ibid., 51.2-5.1.7.2; P. Zepos, The horizontal ownership (Athens 1931), 66; A. Bournias, EDP (= Epitheorissi Dikaiou Polykatoikias, Greek Review) 1974, 301; *N. Livanis*, Floor Ownership (Athens 1973), 65; *A. Patsourakos*, The horizontal ownership (Athens 1973), 30; *G. Balis*, Property Law (4th ed., Athens 1961) par. 121, 126; *Ap. Georgiades*, Property Law (Athens 2010), 830; *Ap. Georgiades*, 'Constitution and termination of horizontal ownership over a building being under construction' (opinion), NoV 1984, 465; Areios Pagos 559/1967 NoV 16, 163; Areios Pagos 1646/1987 EPD 1988, 182; Athens Court of Appeals 1440/1968 NoV 17, 148; Athens Court of Appeals 8227/1990 EllDni 1991, 1057; Athens Court of Appeals 9817/1990 EllDni 1991, 1665. For the opposite view see *A. Matos*, 'Constitution of floor ownership on a part of a building under construction', Neon Dikaion (= NDik, Greek Review) 15, 216 and *A. Floros*, Interpretation of Greek Civil Code, Introductory Law, 54 n. 8.

[79] In favor: *Matos*, ibid., 216; *A. Floros*, Interpretation of Greek Civil Code, Introductory Law, 54 n. 8.

[80] *M. Kallimopoulos*, Interpretation of Greek Civil Code, Introduction, art. 208 et seq.

[81] *N. Livanis* (n. 78), 121.

[82] *P. Zepos* (n. 21), 109 et seq.; *F. Tsetsekos* (n. 6), 76.

[83] *L. Kitsaras*, Contractual Prohibitions of the Right of Disposal (Athens 1994),

Notwithstanding the above, the prevailing view is that agreements among condominium owners containing clauses restricting or prohibiting the disposal of units constitute an example of horizontal effect (namely among co-owners) of contractual obligations and therefore bind third parties, only if they are properly registered (in the sense of being publicly known)[84]. Thus, a registered agreement granting an automatic right of pre-emption to condominium owners will be enforceable against third parties, if it provides that all third parties are bound by such restriction. In such a case, it is deemed that the owner's right of lawful disposal of his/hers unit is not actually infringed[85]. According to *Spyridakis*, the validity of such restrictive clauses should be examined on a case-by-case basis, depending on the nature, scope and extent of the restriction introduced.

It should additionally be noted that by-laws of the condominium are subjected to all restrictions of contractual freedom deriving from the general provisions of the GCC. This arises from their legal nature, which as already mentioned, is that of contractual agreements. Thus, their content must conform, among others, to two principal requirements: (i) the by-law must regulate the relationship between co-owners in the condominium and (ii) the by-law must not contain clauses, which might be in conflict with mandatory legislative provisions or the moral values of the community.

By-laws mainly contain provisions on the rights and obligations of the co-owners regarding the common parts of the condominium, as well as their individual apartments. The legal framework of Law 3741/1929 allow sufficient ground for autonomy on the part of owners; whilst, abusive exercise of this autonomy is avoided through the principles of good faith and bona fides that should characterize the behavior of the co-owners in the interests of the smooth functioning of the condominium. For example, the by-laws may prohibit the installment of notices or other signs on the outside walls of an apartment without the consent of the management[86] or

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[84] *E. Poulou*, Contractual Prohibition of Disposal (Athens 2009), 95 et seq.

[85] Ibid.

[86] Areios Pagos 179/1980 NoV 179/1980 NoV 28, 1472; Areios Pagos 997/1980 NoV 29, 327; Areios Pagos 1271/1989 EDP 1991, 158; Athens Court of Appeals 412/1989 EDP 1989, 178; Athens Court of Appeals 7236/1984 NoV 32, 1563;

the keeping of pets[87].

3. Maintenance of the condominium

It should preliminary be determined which parts of the condominium building are elements of the individual apartments and which compose the common property or common facilities (e.g. land, hallways, the heating system, elevators, and exterior walls). The cost of maintenance and repair of the former category is borne exclusively by the owners of the apartments in question[88], whereas, the cost of the latter category is borne by all co-owners collectively.

The common property is regulated by Law 3741/1929 (art. 5 (b) and (c), art. 6 par. 2, art. 7 par. 2) and GCC (art. 794)[89]. In particular, art 5 (c) of law 3741/1929 provides that: "*Common burdens consist of the maintenance and repair ... of the parts of the condominium, which fall under the obligatory co-ownership among co-owners, and all kinds of rates and taxes...*". All co-owners are therefore obliged to contribute to the maintenance and repair[90], alterations, refurbishment and attachments made to the common property, as well as the rates and taxes levied on the condominium [see also article 5 (a) and article 3 par. 2 of Law 3741/1929][91].

In the above context, only costs for necessary repairs (for example, the painting of the building or the repair of the roof) are practically considered to be 'common burdens' and consequently are charged on the co-owners. This is accepted, despite the fact that neither Law 3741/1929 nor the Greek CC mention such a criterion. The necessity of the expense in question is evaluated on the basis of the particular conditions of each case, as well as

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Athens Court of Appeals 8315/1984 EDP 1985, 183; Athens Court of Appeals 4006/1986 EDP 1988, 2, as cited in *I. Spyridakis* (n. 21), 397.

[87] Ibid.

[88] Athens Court of Appeals 6314/1988 EDP 1991, 8; Athens Court of Appeals 8516/1986 EDP 1986, 192

[89] *I. Spyridakis* (n. 21), 289; *P. Konstantopoulos* (n. 21), 260.

[90] See, inter alia, Areios Pagos 462/2017 ChrID 2017, 577; Areios Pagos 23/2000 NoV 49, 604; Athens Court of Appeals 5736/1996 EDP 1998, 122; Athens Court of Appeals 1313/2007 EllDni 2007, 928.

[91] *I. Spyridakis* (n. 21), 290; Athens Court of Appeals 2121/86 EDP 1986, 246; Athens Court of Appeals 7090/1986 EDP 1987, 29; Athens Court of Appeals 2212/1989 EDP 1992, 22; Athens Court of Appeals 6078/1990 EDP 1993, 8.

the principles of good faith and local customs.

The repair of defects and damages attributed to the passage of time or ordinary use of objects or damages caused by one of the co-owners or a third party are included in the so-called 'common burdens'. According to case-law, the co-owners are obliged to contribute to these expenses, irrespective of the cause of the defect or damage[92]. Although a dissenting opinion suggest that if damage is caused by one of the co-owners, then the cost of repairs should be directly borne by said co-owner exclusively, it should rather be accepted even in such a scenario all owners must initially contribute personally to the costs of repair, having then a right of recourse against the negligent co-owner, who caused the damage.

4. Subdivision, consolidation, extension and reorganization of units

Article 3 par. 1 of Law 3741/1929 provides that: "*The owner of each apartment or part of it has the same rights as any other owner and thus the power of legal and actual disposal of the unit*". Consequently, every owner has the power to subdivide his unit into two or more units, if technical conditions are complied with. For example, if A is the owner of the ground floor, which equals to 1/3 co-ownership share of the common property of the condominium, A can subdivide the ground floor into three new condominium units (the first with 1/12 co-ownership share, the second with 2/12 co-ownership share and the third again with 1/12 ownership share). Since such a subdivision constitutes an amendment to the registered condominium plan, a notarial deed and registration with the land register are also required.

Notwithstanding the above, controversy exists over the consent of co-owners to the subdivision of one particular unit. Certain Greek academics consider that their consent is necessary, unless the possibility for unilateral subdivision is provided by the constitutive deed or unanimously agreed by the owners in the by-laws. The main argument in favor of this view is that the subdivision results in the substitution of the subdivided unit in the condominium plan and such an action requires the amendment of the constitutive deed, which requires unanimous agreement[93]. According to a

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[92] Athens Court of First Instance 6516/1990 EDP 1991, 41.
[93] *M. Kallimopoulos*, Interpretation of Greek Civil Code: Introduction, 208 et seq.

different approach, the approval of the co-owners should not be considered necessary, since the right to subdivide a particular unit is an integral part of the owner's right of disposal of the condominium unit. The latter approach also supports that the interests of other owners are protected adequately through restrictions contained in articles 3 and 5 of Law 3741/1929[94].

The above also applies when two or more condominium units are consolidated[95]. On the contrary, for the purpose of total reorganization of the condominium's units a unanimous agreement for the reconstruction of the scheme, according to a new condominium plan is required. This agreement should be accompanied by the necessary transfers and exchanges of property quotas among the owners, the preparation and registration of the necessary notarial deeds, as well as the eventual amendment and registration of the constitutive deed.

5. Protection against disturbances of the co-ownership coming from a co-owner

As already mentioned above the condominium regime consists from individual ownership of apartments, as well as from an abstract share of the obligatory co-ownership of the common areas of the condominium (including land, exterior walls, hallways, any heating system, elevators and exterior areas). If one or more of the co-owners disturb the harmonious co-possession as well as the co-ownership of the common areas in the scheme, measures (self-imposed or judicial) for the protection of possession (art. 994 GCC) and ownership (art. 1094 ss and 1108 GCC) might be adopred[96]. The co-owners are entitled, among other remedies, to apply to court for an interdiction or injunction (*actio negatoria*) in order to face the ongoing disturbance and prevent any future disturbances (GCC article 1108)[97].

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[94] Athens Court of Appeals 4004/1986 EDP 1986, 250; Athens Court of Appeals 5120/1991 EDP 1993, 23; Athens Court of Appeals 2405/1994 EDP 1994, 20, as cited in *I. Spyridakis* (n. 21), 211.
[95] Ibid., 212.
[96] Areios Pagos 49/1998 EllDni 39, 1271.
[97] Areios Pagos 1450/1983 NoV 32, 1201; Areios Pagos 881/1984 NoV 33, 621; Areios Pagos 1140/1985 NoV 34, 1048.

6. Functioning of the co-owners' association

Articles 4 par. 1 and 3 of Law 3741/1929 describe the association of the co-owners of a condominium as an organ serving a common interest and a common purpose. In parallel, condominium by-laws usually contain provisions regarding all matters related to the convention of its general meetings, the required quorum and the valid adoption of resolutions.

However, in absence of such clauses in the by-laws, the exact regime governing the above matters remains a highly controversial issue in Greek legal theory. According to one view[98], all the relevant issues (e.g. convention of meetings, quorum, proceedings and adoption of resolutions) are governed by the provisions applying to the associations of persons equipped with a legal personality (namely art. 78-106 of GCC, which should be applied by way of analogy). The opposite view[99] argues that the provisions relating to associations are not, in principle, applicable and that the above mentioned matters should be dealt on a case by case basis in accordance with the general provisions of Greek law. On the other hand, supporters of the latter opinion concede that some of the provisions applying to associations may contain the essential principles, on the basis of which the general meeting of the owners should operate.

Minimum quorum and majority for valid convention of general meetings and resolutions' approval vary depending on the significance and the urgency of the matter decided upon (see the list cited above, under IV). The majority is calculated proportionately to the quotas of the unit owners attending the general meeting (article 4 par. 3 of law 3741/1929). The owners may be legally represented in the general meeting by a proxy. Actually, even the manager or the chairman of the board can be appointed as a proxy. Any member of the board of the co-owners claiming that the decision taken does not comply with the law, the by-laws or an existing agreement between the owners has the right to challenge it under the condition that he dissented from the decision challenged or has a legal interest correlated to it. The challenge must be launched in court within six months after the resolution was adopted (art. 101 of GCC)[100].

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[98] *N. Livanis* (n. 78), 153, 157.
[99] *A. Bournias*, Functioning of the Horizontal Ownership, issues A-C (Athens, 1980-1983); *F. Tsetsekos* (n. 21), 229.
[100] Ibid., 262.

By-laws usually provide that general meetings should be convened in the most convenient way, for example by written notification to the co-owners, by telephone call, or by posting a notification on the notice board of the condominium. In any case, the notification must be addressed to all the members of the general meeting and must reach the members before the meeting is held[101].

On a final note, only owners are allowed to participate in the general meetings of the condominium. Tenants are not allowed to attend or vote at the general meeting, unless they are appointed as proxies. Nevertheless, under special circumstances tenants may have a contractual claim against their landlords arising from their lease in case they are seriously affected by a decision taken at the general meeting.

7. Termination of the condominium regime

Article 9 par. 1 of Law 3741/1929 provides that if the condominium building is destroyed completely or damaged to an extent equal or exceeding three-quarters of its value, then the condominium is terminated. The law refers to destruction due to natural disasters and not to devaluation caused by obsolescence[102]. Termination of the condominium does not, however, lead directly to the dissolution of the co-ownership relationship among the former owners of the units. On the contrary, following the termination of the condominium, co-ownership (according to relevant quotas) continue to exist on the land and the remaining of the building[103]. The latter form of co-ownership is governed by the general provisions of Greek Civil Code (art. 785 ss and 1113 ss). This entails that each co-owner is entitled to request the judicial distribution of the common assets[104].

The termination of the condominium might also be grounded on article 9 par. 4 of Law 3741/1929. According to the abovementioned provision, if the condominium building is damaged, to an extent less than

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[101] Ibid.
[102] *P. Konstantopoulos* (n. 21), 476; *I. Spyridakis* (n. 21), 366; Areios Pagos 986/2017 ChrID 2018, 27; Areios Pagos 138/1995 EDP 1995, 19; Crete Court of Appeals 412/1990 EDP 1992, 80.
[103] Areios Pagos 986/2017 ChriD 2018, 27.
[104] Areios Pagos 986/2017 ChriD 2018, 27.

three quarters of its value, then the entire property can be disposed, as long as none of the co-owners is willing to rebuild. In other words, the owners may decide unanimously to sell the property instead of reconstructing the building and thus terminate the condominium regime. It must be underlined that the reasons for termination are explicitly and strictly provided by Greek legislation. The simple common intention of a group of co-owners does not constitute a sufficient basis for termination of the condominium regime.

F. Concluding remarks on Greek condominium regime

The preceding analysis has indicated that the function of condominiums in Greece has been, in general terms, rather successful. In particular, the role of condominiums has been significant in offering housing to a considerable number of individuals, especially in cities, where there is an ongoing increase of population density[105]. However, the current challenge for condominiums arises mainly from the expansion of Airbnb[106], the use of which becomes increasingly popular, given the touristic interest that Greece traditionally attracts.

In the above context, particular cases have been brought before Greek courts regarding complaints of co-owners for disturbance (e.g. extensive noise etc.) suffered, due to the frequent change of tenants characterising Airbnb[107]. Although the number of cases is limited, the emerging case-law indicates that it is dubious whether the traditional regime on leasing of condominiums, which serves a different purpose compared to short-term leases being characteristic for Airbnb platforms, might respond adequately to the challenges arising from this new form of economic exploitation of

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[105] It is characteristic that according to relevant statistical data, population in Athens amounts at 3.154.152 residents in 2019 (from the overall Greek population of 11.142.161) and has a population density of 44,140 people per square mile (17,040/square kilometer), see http://worldpopulationreview.com/world-cities/athens-population/

[106] Airbnb is an online platform that connects persons who want to rent out their apartments with people who are looking for accommodation, especially for cases of short-term leases. The frequent change of tenants raises issues to co-owners in condominiums.

[107] See indicatively case no. 16158/2018 of Court of First Instance of Thessaloniki.

condominiums.

(Kalliopi CHRISTAKAKOU-FOTIADI)

IV Some General Thoughts from a Comparative Law Perspective

Although separated by a far distance geographically and being characterized by different historical, cultural, religious and social backgrounds, Greece and Japan also share many common elements. One such element in the field of law is for example the strong influence of German law and Civil Law tradition on both legal systems[108]. Due to the existence of such common elements in the field of law, attempts to compare the Greek and Japanese legal system are tempting, but such a comparison remains a big challenge. In the following, an attempt to present some general thoughts about Greek and Japanese condominium law from a comparative law perspective will be made. These comparative law thoughts will mostly be of a macrocomparison level, comparing both systems on a large scale. On the contrary, microcomparison level analysis will be limited only to some specific issues, also due to space restrictions.

1. Statistical viewpoint

In Japan, comparative law analysis has traditionally focused on legal systems such as those of Germany, France, United Kingdom and United States of America. The same can be said for the field of condominium law.

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[108] Regarding the influence of German law on Greek law, see for example Konstantinos D. Kerameus and Phaedon J. Kozyris, *Introduction to Greek Law*, Kluwer Publishers. 1988; Panayotis J. Zepos, *The New Greek Civil Code of 1946*, Journal of Comparative Legislation and International Law, vol. 28, no. 3/4 (1946), p. 56 ff; Aristides N. Hatzis, *The Short-Lived Influence of the Napoleonic Civil Code in 19th Century Greece*, European Journal of Law and Economics, vol. 14, issue 3 (2002), p. 253 ff. Further, regarding the influence of German law on Japanese law, see for example Shusei Ono, *Comparative Law and the Civil Code of Japan (1)*, Hitotsubashi Journal of Law and Politics, no. 24 (1996), p. 27 ff.; Shusei Ono, *Comparative Law and the Civil Code of Japan (2)*, Hitotsubashi Journal of Law and Politics, no. 25 (1997), p. 29 ff.; Zentaro Kitagawa and Karl Riesenhuber, *The Identity of German and Japanese Civil Law in Comparative Perspectives*, De Gruyter, 2011; Shigenari Kanamori, *German Influences on Japanese Pre-war Constitution and Civil Code*, European Journal of Law and Economics, vol. 7, issue 1 (1999), p. 93 ff.

However, especially recently, a change in this trend can be seen. For example, at a mini-symposium held during the 2019 annual meeting of the Japan Society of Comparative Law, the research group on comparative condominium law led by the co-author of this paper professor Kamano Kuniki presented some aspects and recent developments of condominium law in various countries, including countries on which Japanese comparative condominium law research had not focused so much in the past, such as Belgium, Switzerland, Australia and Greece. This could perhaps be positioned as one of the numerous signs of change in the current state of comparative law in Japan.

One of the issues that have to be taken into consideration when comparing the condominium law regimes of Greece and Japan seems to be the different demographics and statistical features of condominiums. Greece has a relatively small population of around 10.816.000 people[109], whereas Japan has a large population of 127.094.000 people[110]. Further, according to the statistics for year 2011, Greece was having a total number of 4.105.637 buildings, out of which only 9.895 include 20 or more residences[111]. This is indicative of the fact that small and medium size condominiums form the majority in Greece. On the contrary again, out of 6.547.000 condominiums in Japan at the end of year 2018, around 23% have 101 residences or more, and around 54.5% 51 residences or more[112]. This shows a difference in the typical condominium size in these two countries: mainly small to medium sized in Greece, mainly large sized in Japan.

At first sight, these differences make a comparison of the condominium law systems in the two countries quite difficult. However, a closer look shows that such characteristics give opportunities for fruitful comparisons. In relation to the statistics, it must be pointed out that the experience and

[109] As of 2011, according to Hellenic Statistical Authority, *Greece in Figures*, April - June 2019, available on the website of the Authority (in English).
[110] As of October 1, 2015, according to the Population and Households of Japan statistics published by the Statistics Bureau of Japan and available on its website (in English).
[111] 2011 Building Census published by the Hellenic Statistical Authority and available on its website (in English).
[112] According to the statistics released by the Ministry of Land, Infrastructure, Transport and Tourism and available on its website (in Japanese).

current state of Greek condominium law can provide Japan with a lot of lessons, regarding the legislative regulation and management in practice of small and medium sized condominiums. Returning to statistics, around 18.5% of Japanese condominiums consist of 30 residences or less. Considering the size of the Japanese population and total number of condominiums, this portion represents a number which is not small from a comparative perspective. Therefore, the experience of and solutions given by Greek law and practice are noteworthy when dealing with small and medium size condominiums in Japan. Respectively, Greece can learn from the Japanese experience in large size condominiums.

2. Ownership and rental in condominiums

As mentioned at the beginning of this paper, one of the meetings during the research trip to Athens in 2018 was held at the offices of POMIDA (Hellenic Property Federation). On the Greek version of its website, one can read the motto "because... property is also a human right". This is perhaps a representative example of the special position given to property in Greece. In Greece, the biggest part (73.2%) of occupied conventional dwellings is owner-occupied, and 21.7% is rented[113]. In Japan, the respective percentage is considerably lower, being 61.7% [114]. Further, in Greece, one cannot find condominiums owned by companies which lease all residences as a business activity. Rental is usually performed by individuals who own each residence. On the contrary, in Japan, the main form of condominium residence rental is the former, with companies owning or managing condominiums as a whole ("rental apartments") and renting residences in them as a business activity.

A corresponding difference can be seen in the method used when constructing condominiums. In Greece, condominiums are in their vast majority built via the system of "antiparochi" (which could be translated in English as "contractual consideration" or "land-for-apartment exchange system". The former translation option will be used in the following). Under this system of contractual consideration, the landowner assigns the

[113] See footnote 109 above.
[114] Social Indicators by Prefecture, published by the Statistics Bureau of Japan in 2019 (relevant data referring to 2013) and available on its website (in Japanese).

construction of a condominium to a constructor, without making any payment to the constructor for such construction works. An agreement is instead made between the landowner and the constructor, according to which the constructor acquires the right to indicate the person to whom the landowner (who is also the owner of the newly built condominium) will sell each residence, and receive the sale price instead of the landowner. The benefit of this system for the landowner is that he does not need to possess financial means allowing for the payment of the construction, and that he acquires ownership to one or more residences in the newly built condominium. Accordingly, the constructor does not need to make an investment before starting construction works by acquiring ownership of land. It suffices for him to take care for the construction works and the sale of the residences in the newly built condominium.

In Japan, the constructing company usually acquires a right of superficies (a right to use the land of the landowner in order to own structures etc. on that land, art. 265 of the Japanese Civil Code, hereinafter "JCC"), or leases such land[115]. The constructing company then constructs the building, rents the residences in it, usually also manages the building, and pays part of the rent to the landowner according to their agreement. Therefore, cases where the lessor is an individual owner as is usual in Greece are comparatively rare, with the majority of lessors being companies. Also due to this reason, one cannot find in Japan organisations equivalent to POMIDA in Greece, with individual owners being members. In Japan, organisations with similar functions are in principle formed by companies[116].

3. Legislative intervention and unit owners' autonomy

A characteristic of the major law regulating relations between condominium unit owners (Law 3741/1929) in Greece is the small number of its provisions. Composed of only 15 articles (16 in number with one being deleted), this Law leaves in principle the organisation of the unit

[115] Unofficial translations of Japanese legislation to English can be found at the website "Japanese Law Translation" (http://www.japaneselawtranslation.go.jp/) offered by the Japanese Ministry of Justice.
[116] For example, the Japan Building Owners and Managers Association, and the Japan Property Management Association.

owners' relations to regulations made by unit owners' agreement, i.e. by-laws. This approach of "minimum intervention" to the condominium relations is perhaps one of the main reasons why this Law has managed to survive unchanged (except for the above-mentioned deletion of one provision) for 90 years. The recognition of a "by-law autonomy" to the maximum extent, allows for a flexible regulation adapted to the actual needs of each condominium. At the same time, this minimum intervention approach is, at least theoretically, prone to inducing disputes when regulation via by-laws is not functioning effectively. On the other hand, the respective piece of legislation in Japan (Act on Building Unit Ownership, hereinafter "ABUO")[117], composed of 72 articles, provides for a rather detailed regulation of condominium regimes. Regarding this point, it could be said that the Greek approach giving importance to "by-law autonomy" contributes to a sustainable and comfortable life for unit owners in condominiums, whereas the Japanese system ensures a high level of legal stability regardless of the existence and content of by-laws.

4. Unit ownership and common benefit

When comparing Greek and Japanese condominium law, a difference can also be seen in the weight and importance put on "unit ownership rights". In general, it can be said that the Greek law attributes a larger importance and grants stronger protection to the individual unit ownership rights. On the contrary, the Japanese condominium legislation creates the impression of giving priority to the collective protection of the association of the unit owners. A representative example in this aspect is the regulation of measures that can be taken against persons who violate their obligations, i.e. engage in conduct that is contrary to the common benefit of the unit owners, in these two countries.

Greek condominium law contains no special provision regulating such measures. This means that such cases will be dealt with under the provisions of general civil and civil procedural law. Japanese law on the other hand includes special provisions on this issue in the ABUO. The relevant rules provide not only for the possibility to demand for the discontinuance of such conduct contrary to common benefit (Art. 57) or a

[117] Act No. 69 of April 4, 1962.

prohibition of use (Art. 58), but even for the auction of unit ownership if such conduct "significantly impedes the unit owners' community life and when there is difficulty in removing such impediment and securing the use of a common element or preserving the other unit owners' community life" solely by making a demand for a prohibition to use (Art. 59). Compared to Greek law, this seems to be a rather strong restriction on unit ownership, for the benefit of unit owners' community life. At the same time, it is an ultimate means to effectively ensure a peaceful community life for the remaining unit owners.

5. Legal certainty: the function of notaries public

Under Japanese law, the intervention of notaries public to condominium law issues is in principle not anticipated. A small exception is set by some provisions of the ABUO providing for the possibility of establishment of by-laws by notarial deeds. The participation of a notary public is not foreseen in Japan also in cases of sales of real property; such sale contracts can be made directly between the contracting parties and registration does not also require the participation of a public notary.

In Greece on the contrary, notaries public play an important role in the condominium law regime. Firstly, the sale contract of real estate must be made with notarial document which needs to be registered, so that the sale has legal effects and ownership is transferred to the buyer (Art. 1033, 1192 etc. of the Greek Civil Code, hereinafter "GCC"[118])[119]. Secondly, establishment of unit ownership must be done with notarial document which needs to be registered (Art. 369, 1033, 1192 and 1198 GCC). Thirdly, when by-laws are established, this needs to be done with notarial document which must also be registered (Law 3741/1929 Art. 13)[120]. It is worth pointing out here that

[118] For an English translation of the Greek Civil Code (not however of the version currently in force), see Contantin Taliadoros, *Greek Civil Code*, Ant. N. Sakkoulas Publishers, 2000.

[119] Unless if the establishment of unit ownership is made by the court according to the provisions of Law 1562/1985.

[120] Contrary to Japan where a Condominium Management Standard By-law has been prepared by the Ministry of Land, Infrastructure, Transport and Tourism, in Greece there exist model rules (draft rules) shared among notaries public from generation to generation, but no model by-laws prepared by public authorities.

such participation of notaries public in these procedures enhances legal certainty and contributes to the prevention of legal issues arising in relation to them.

The status of the profession of notary public in Greece and Japan is also different. In Greece, in order to become a notary public, one needs to have graduated from a faculty of law of a university in Greece (or a faculty of law of a foreign university recognized as equivalent), practiced as a lawyer, judge, public prosecutor etc. for at least 2 years, be 28 years or more and pass the notary public exams. The social status of notaries public is in general high. In Japan, notaries public are appointed by the Minister of Justice. In order to be appointed, one needs to be a Japanese citizen, and to have either passed the notaries public exams (in practice however, no such exams have ever taken place), or been a former lawyer, judge, public prosecutor or academic expert. Due to this system, notaries public in Japan are sometimes characterized as being a "second life career", and not as much of a career for young law specialists.

6. Some specific issues

Finally, in the following, two specific issues will be briefly treated. The first is that of restoration and reconstruction of condominium buildings. Both in Japan and Greece, the period has come where many buildings are facing the necessity to be reconstructed due to aging. The necessity to prepare a legal system which allows for a smooth decision making for unit owners' associations and regeneration of buildings is urgent in both countries. The second is that of pet-keeping in condominiums. In Japan, this issue is often discussed, and a considerable number of case-law related to it exists.

A. Restoration and reconstruction of condominium buildings

Under the Japanese system, in general, the regulation of restoration and reconstruction of condominium buildings has as follows. Regarding restoration, (1) in case of a total destruction, in principle an agreement of all unit owners is required for reconstruction according to the provisions of the JCC, unless the requirements of special legislation (Act for Special Measures on Reconstruction etc. of Damaged Unit Ownership Buildings)[121] are met, in which case a special majority of 4/5 is sufficient for this

purpose; (2) in case of a destruction of 1/2 or less of the building price, a majority decision is necessary for restoration (Art. 61 para. 1 and 3 ABUO), and (3) in case of a destruction exceeding 1/2 of the building price, a decision taken with a special majority of 3/4 is required (Art. 61 para. 5 ABUO). Reconstruction can be made with a special majority of 4/5 (Art. 62 ABUO)[122].

In Greece, restoration is dealt based on the following classification. In case of small scale destructions (destructions of less than 3/4 of the building price), all unit owners bear expenses for restoration of common elements, and unit owners who cannot or do not wish to do so need to transfer their unit ownership to other unit owners or third parties. If no unit owners wish for restoration, the property is sold and the price distributed among unit owners (Art. 9 paras. 2, 3 and 4 of Law 3741/1929). In case of a large-scale destruction (destruction of 3/4 or more of the building price, or total destruction), unit ownership disappears and distribution of the property etc. according to the provisions of the GCC is made, unless there is different agreement among the unit owners. Further, Law 1562/1985 mitigates requirements for restoration, by stipulating that if the condominium building has been designated as dangerous etc. or if it does not meet the interests of unit owners because of ageing or considerable damage etc., unit owners possessing a proportion of 65% or more of shares can demand restoration to the court (Art. 1 para. 2). This method of mitigation provides material for further consideration about future measures in Japanese law.

B. Pets in condominiums

As already mentioned, in Japan, whether pet-keeping in exclusive elements (or verandas) is allowed, is an issue often discussed. According to one opinion, pet-keeping is protected as part of the right to pursuit happiness under Article 13 of the Japanese Constitution[123]. In practice,

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[121] Act No. 43 of March 24, 1962.

[122] For details, see Kuniki Kamano, *Manshonho Annai* [Guidance on Condominium Law], Keisoshobo, 2010, p. 211 ff.

[123] Art. 13 stipulates as follows: "All of the people shall be respected as individuals. Their right to life, liberty, and the pursuit of happiness shall, to the extent that it does not interfere with the public welfare, be the supreme

there exist condominiums which clearly state at the time of sale and in their by-laws that pet-keeping is allowed. Issues usually occur with condominiums where this issue is not made clear at the time of sale. The Condominium Management Standard By-law of the Ministry of Land, Infrastructure, Transport and Tourism mentions that this issue is to be determined by by-laws and provides examples of provisions which can be included in by-laws when allowing or prohibiting petkeeping[124].

In Greek condominium law, this issue is dealt with special legislation. More specifically, Law 4039/2012 specifies the conditions under which pet-keeping in condominiums is allowed. According to Art. 8 of the Law, pet-keeping in condominiums is allowed on condition that, (1) pets are kept in the same residence as the owner, (2) they are not permanently kept in outdoor spaces such as verandas, (3) legislation concerning noise and hygiene is observed, and (4) pets are registered and granted with a health record book. According to this provision, if these requirements are fulfilled, pet-keeping in condominiums cannot be prohibited, but a maximum number of two dogs and cats in total can be included in the by-laws. This legislative measure also provides material for thought for the Japanese legislator.

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consideration in legislation and in other governmental affairs."

[124] According to the Condominium Management Standard By-law, when pet-keeping is to be allowed, the provisions of the Detailed Rules on Usage, which are in general established separately from the by-laws and provide the details of rules to be observed in condominiums, must be complied with. The Model Detailed Rules on Usage prepared by the Condominium Management Center (a public interest incorporated foundation) provide that the person who wishes to keep pets submits a specific application form to the chair of the board of directors and obtains his/her approval.