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Legal developments regarding debt adjustment in Greece – Law 3869/2010 on debt adjustment and discharge

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Introduction

Greece is currently going through a very violent, a massive economic crisis that hits all social layers, but mostly low income and middle class households. Income has been seriously cut down, hundreds of thousands of people have lost their jobs within months, the cost of life remains high as new taxes are announced and imposed as the state tries to “feed” its accruing debt. Households have run into serious difficulties because of home mortgages, small business loans, personal guarantees of business and private loans, and consumer debt. Over-indebtedness is today one of the most important social problems in Greece.

Over-indebtedness in Greece is related to the unreasonable credit expansion that preceded the economic crisis. Credit to households rose from 24 billion euros in 2001 to 117 billion euros in 2008. Consumer credit is even more impressive : from 12 billion euros in 2003 it rose to 35 billion euros in 2008. Greece has the biggest proportion of consumer credit (loans and credit cards) in relation to GDP in the eurozone countries : 15,1% in 2008, although the average percentage of all kind of credit is less than the

respective average percentage of the euro zone. Moreover consumer credit interest rates have been and still are the most expensive in the euro zone. Greek consumers have been largely using the most expensive credit product.

It is clear that credit expansion took place without any policy for the prevention of over-indebtedness. No laws or measures that would oblige creditors to provide information and respect debtor's interests, no institutions providing debt advice, no regulation on responsible credit. On the contrary, where consumer credit is concerned, we have seen misleading advertising, poor competition, lack of transparency, and all kind of profit driven and improvident credit extension by unskilled and scrupulous personnel.

Over-indebtedness of Greek consumers was, under these circumstances, inevitable. Credit euphoria led to over-estimating of one's ability to pay back, or to underestimating of the credit obligations. Restrictions of income, then, did not leave any resources left for paying these obligations. The credit institutions, showing no flexibility whatsoever, were defending the credit contracts and were not willing to proceed to adjustments of the loans.

In this situation we have had a notable development- the voting of a consumer debt adjustment law (Law 3869/2010). It is a very positive development- that our government realized the catastrophic consequences of over-indebtedness to both households but also to the overall economy and the social cohesion. This law tries to give a perspective of a way out of over-indebted consumers and professionals. It is the most recent of consumer bankruptcy laws in Europe and has tried to make a good use of the experience of other countries, whereas adopting some new ideas.

Main features of the law

It is the over-indebted citizens who have a proven and permanent inability to serve their debts that fall into the field of application of law. These persons may adjust their payments and get a release of a significant part of their debts, provided that they serve their debts for a period of 48 months (4 years) paying according to their income the amount of debt, defined by the court.

The Greek law follows the European tradition : discharge of debts, the new start is not offered, the over-indebted applicant has to “earn” such discharge. He has to follow a demanding debt payment plan, which is set by the court for a long period, during which the debtor will only maintain a decent way of living, for himself and his dependants, i.e. the necessary living expenses, and will pay the rest of his income to keep with this payment plan. It is only after this period, and if he has followed this plan, that he will get a release through a second judgment. It worths noting that, instead the use of the word “consumer bankruptcy”, the law uses the wording “debt adjustment” in order to express the fact that the law demands, not only the liquidation of any eventual property, but also the following of a payment plan for a part of the debts as a prerequisite for release from the rest of it.

The period is 4 years, it is a period of time not too long as to discourage the debtor, but long enough to test him.

Both consumers and professionals can apply. Only traders cannot, as they can make use of the bankruptcy procedures. Nevertheless, even ex-traders who have changed profession, can apply.

There is no minimum amount of debt which should be repaid, in order that the debtor gets the release. It depends on the income and the need of the over-indebted person and his family. The debtor has to pay what is left from his income, after paying his family basic needs for a living. In this way, exempting the basic necessities of life,

placing these goods outside from the reach of the creditors, the debtor's family is protected from living at an unacceptable standard of living.

The law allows also a zero payment, if the debtor is unemployed, or suffers from severe health problems, or his income is so small that there is nothing left for any payments. But in this case, the court must review the situation in periods, not smaller than five months, in order to check whether the financial situation of the applicant has ameliorated or not.

- Extent of discharge : Debts to credit institutions and any third person, except debt to the state (taxes, debts related to state insurance premiums and debts arising from fraud and wrongful act.
- How many discharges? Whereas other legislations allow several discharges after a certain waiting period (e.g. 10 years), the Greek law provides for the possibility of use of the law only once in a lifetime.

A novelty- Exemption from liquidation of the home of the debtor

While traditional bankruptcy laws aim at a liquidation of all assets, including the home of the debtor, in order to have debts paid, the Greek law introduces a novelty in this respect. The Greek law allows the debtor to ask from the court the exemption of liquidation of this home of residence, if he has only one and if its value does not exceed the amount of 300.000 euros (varying according to the family circumstances of the debtor), provided that he pays a part of his debts amounting to the 85% of the value of the house. This is an extra payment plan, of a duration up to 20 years and on an interest rate connected to the European Central Bank's interest rates for mortgages.

This provision gives a bigger protection to the debtor and to his dependents as to maintain his standard of living. It is, also, not against the interest of the creditors neither, especially those banks that have a mortgage. Would the property be liquidated, in the procedure of a public auction, the creditors would not come up with a value of as much as 85% of the value of the property.

Extra-judicial proceedings- A Two phases Effort

The law empowers over-indebted persons and households to negotiate and ask for an adjustment of their debts in a way that reflects their potential. Creditors are informed of the overall financial situation of the debtor, the risks and the problems of the debtor to serve his debts and are in a position – in view of the possibility of the debtor to apply for the legal proceeding for debt adjustment- to adopt a softer and more realistic expectations and to form a friendlier (extra-judicial) payment plan.

There are clear advantages for both creditors and debtors : it would take less time than the legal proceedings, less expensive etc.

The law gives a motive to both parties, creditors and the debtor, to come into a compromise. It provides two phases, two chances to the parties to come to a compromise.

One phase is taking place before the legal proceedings. This attempt to come to a compromise is taking place by the Consumer Ombudsman (but in practice this has not worked well so far) or a consumer association(this works well regarding certain consumer associations which employ staff that is well informed on the new law and provide a rather good debt advice- but this not always the case, as some consumer associations provide poor and inefficient advice) or an attorney at law. The procedure is very simple and at no cost (in the case of the Consumer Ombudsman) or at a low

cost (in the case of the involvement of consumer associations). It is compulsory that this effort is being made to effect an out-of-court settlement before court proceedings will start. The debtor is not allowed to enter into a insolvency procedure leading to discharge, unless he shows to the satisfaction of the court that an out-of-court settlement could not be obtained. What is required, is a unanimous approval of the out-of-court proposed payment plan by the creditors. This is perhaps the reason why up to now very few, if any, extra-judicial plans have been agreed by the parties.

The second phase of an attempt to come to a compromise takes place two months after the submission of the petitions of the debtor to the court. According to the law, creditors should submit their comments, within two months. If they do not, it is automatically being concluded that they agree with the payment plan as introduced by the debtor in his petition. The debtor has the possibility to reply to the creditor's comments within 15 days. If, through this written exchanges of proposals as to the payment plan, creditors representing a debt of 51% of the total amount of debt do come to an agreement with the debtor, then the court can substitute the consent of the rest of the debtors and the agreement is ratified by it.

Other provisions

The courts that have been assigned with the competence for the debt adjustment law is the Court of Peace, the one on the residence of the debtor. It is a procedure of very low cost, as far as the judicial cost is concerned. According to the law, no judicial cost will be charged to the debtor whatever the result of the proceeding may be. Nevertheless, because of the lack of free legal advice and free debt advice, the cost of the applicant, especially the fees for legal counselling and representation in court, are considerable.

A trustee may be appointed by the court.

The decision may be appealed. But appeal will not hold the application and enforcement power of the judgment. So the life of the debtor, even in case of appeal, gains some peace.

Stay of action

Because of fear of abuse of the law provision, creditors are not automatically prohibited from pursuing the debtor during the insolvency process. The debtor has to ask from the court, in an intermediate rapid procedure before the judge, for this stay of action.

Duration of proceedings

The Legislator has chosen the quickest procedure available in our civil procedure code. Nevertheless, because of lack in the number of judges, the hearings are set in date of about one year, or even more from the filing of the petition of the debtor. A decision should be expected after several months, and an appeal is always a possibility.

Anti-abuse provisions

The law has several provisions aiming at preventing an eventual abuse to the harm of the creditors.

The procedure can be applied only once in the lifetime of the debtor.

Serious penal sanctions and consequences are provided in the case of a non-honest declaration of one's income and assets, even an annulment of the discharge, in case

it is found out that the debtor did not declare in court all his assets. The obligation of honesty is valid at the time of filing the petition, but also during the 4 year period of the payment plan. The debtor is obliged to declare to the court an significant amelioration of his income. The unemployed is obliged to try to find a job. Any default in payment during the 4 year period for more than 4 months results in cancellation of the procedure. Creditors are allowed to have access to the taxation office or to the employer of the debtor in order to know his income.

Statistical data

The law being voted very recently, in 2010, provided for its application in two phases : the extra-judicial since September 2001 and the legal proceedings since 1st January 2011.

According to the data published by the General Secretariat for Consumer Issues last October (2011), more than 12.000 extra-judicial payment plans had been received by creditors.

The number of people submitting petitions under the law on debt adjustment is rising on a daily basis. During the first six months of 2011 (which is the first 6 months of application of the law) 3.200 petitions for legal proceedings have been submitted. But, it is being estimated that by the end of the year this number will be more than 10.000 people.

Several hundreds of decisions have been issued by now. An estimated percentage of 60% of the decisions accepts the petition of the debtor, whereas the rest rejects it. The rejection, nevertheless, in most cases regards formal errors of the petition (not keeping with certain formalities of the procedures) and has to do with the fact that the law is new and the legal practitioners are not yet familiar with it.

Stay of action

All procedures leading to auctions of property for debts to credit institution of an amount of up to 200.000 euros are suspended. Moreover, all auctions, notwithstanding the amount of debt and irrelevant of whether the creditor is a bank or not, are suspended with regard to the house of the debtor. This suspension, which was initially valid till last December (2010), then had a prolongation of 6 months (June 2011) and then a prolongation of another 6 months period, ends this December (2011). To my mind, and this is what several social organizations and consumer associations ask for from the competent government departments, there is a clear and urgent need for a further prolongation of at least 9 months – till September 2012. It is the only way households that are in such difficult financial situation, can have the chance to re-organize themselves as to go through the current situation and pursue the best arrangement and adjustment of their debts.

Issues that need to be tackled

- Consumer debtors are in very weak and vulnerable social position. They easily become victims of unprofessional or even corrupt debt counsellors. There is a clear need for professional independent debt counselling, provided by persons who are specialised in negotiating arrangements with creditors and knowledgeable about the specific problems of consumer debtors (legal and socio-psychological nature) and also able to give information and advice on all

aspects of budgeting-assistance and debt settlement laws. There is a need also for licensing and supervision of these professionals.

- Results of the extra-judicial efforts to come to agreed payment plans are very poor.
- There are no standard budgets provided by a specialized authority for the courts to adopt.
- Over-indebted persons that lack of any resources should have free debt and legal advice and representation in court, which is not the case in Greece. Legal aid has always being extremely poor.
- Justice in Greece suffers from structural problems, that result in inefficiency and long procedures. This will impede the achievement of the goals as set in the Law.
- The application of the law need to be monitored, so as to be able to ameliorate it and adjust it in the future. No institution is charged with this mission or has taken any initiative in this respect.

Closing remarks

Taking into account the hardship that has hit, hits or is about to hit almost all households in Greece, I can say that I feel we are very lucky to have the law on debt adjustment and discharge of over-indebted persons, voted in 2010 –when the consequences of the crisis on our every day life had just began to show. The law is friendly for the interests of the debtors, while taking into account the interests of the creditors too- in a longer perspective. Nevertheless, as we are just in the beginning of the application of the law, it is too early to draw conclusions. We have to monitor the application of the law in order to see its eventual

weaknesses or issues that will arise and should be regulated : if the procedures prove too long for the need of the debtors, or too costly, if the debtors will be able to keep up the payment plans, if rehabilitation will be the case for the debtors and to what extent. Parallel measures for the prevention of over-indebtedness should also be taken and with now delay (financial education, good quality debt and budgeting advice, other structures for the psychological support of the debtors).
