



23 February 2022



[s.foteas@aklawfirm.gr](mailto:s.foteas@aklawfirm.gr)

## LEGAL BRIEFING – Dispute Resolution & Restructuring

by [Sotiris Foteas](#) – Partner &

[Myrto Amaryllis Lappa](#) -Associate

### The doctrine of “unjust enrichment”: The Supreme Court in the pathway of a new perception? \*

I. Market rules are imperative: For a provision of market value X, a consideration (exchange) of market value Z is required (subject to the assumption that  $X=Z$ ). The mutual transfer of the provisions and the exchange of the values reflected therein (X, Z) is often (not to say, always) the object and the result of a *legal cause*, amongst which the most frequent is the concept of the *contract*<sup>1</sup>.

Contracts and other legal causes provide relevant remedies when things go wrong in the framework of their implementation.

But what happens when such cause does not exist or has proven to be void or invalidated? Facts often override legal concepts.

Examples are illustrative:

- An employee is providing the agreed work, but the executed employment contract between the

<sup>1</sup> Other legal causes appear to be statutory law provisions, transfer of the enrichment to a third party without exchange, loss of the enrichment due to force majeure etc.

parties is null due to discrepancies of required form.

- The passenger of a boat enjoys the trip without paying a ticket.
- The lessee continues to use the rental after the expiry of the lease agreement.

How are the providers of the above pecuniary facilities (employee/ship company/lessor) supposed to seek a reasonable counter-provision in the absence of contract?

**II.** Both domestic and international case-law have dealt with doctrinal concepts of “corrective” and “distributive” justice aiming at restoring the balance within a transactional relationship through the mechanism of the so-called “unjust enrichment” (αδικαιολόγητος πλουτισμός). The scheme is well-known: when a transfer of pecuniary nature is deprived from a legal basis (*causa*), it is then subject to rescission or correction. More concretely, the receiver of such provision is obliged to return it as is (*in natura*) or in money to the person having suffered a relevant pecuniary loss causally linked with the baseless profit. To have the transfer or the profit survive, the receiver is expected to invoke a legal cause: the payment of an equal market exchange (“consideration”) is doctrinally accepted as sufficient basis even in the absence of explicit contract.

**III.** The Supreme Court in its Plenary Session (4/2021) is not away from this conceptual approach, thus reconfirming the structural elements of the mechanism in the Greek legal order<sup>2</sup>. However, there is an underlying difference in the method of perception/calculation of the transfer value, perceived as a two-sided coin (enrichment/loss).

The Court has pronounced on the case of an apprentice to an entity of the public sector in the light of the normative *interna corporis* and the applicable laws of the entity. While the apprenticeship was admissible, the Claimant has proved to have been executing duties of a purely employment contract. The parties have not entered to any written employment contract stipulating such duties. An additional parameter was though crucial: according to said legislation, the entity was not able to hire an employee of equivalent skills and professional experience. An employment contract was by definition excluded due to the statutory regime of the entity. In other words, the employee has indeed offered his work but was not eligible to have legally obtained the position due to circumstances outside of his sphere of influence.

Two methods of conceptualization of the values at stake could apply:

- a) The *savings* made by the entity. The entity received concrete services of market value X, but did not pay a concrete amount of Z (where X=Z).

---

<sup>2</sup> The Court reaffirms the subsidiarity of the remedy vis-à-vis other causes (=to invoke unjust enrichment, the Claimant must allege inexistence or nullity of the contractual basis) and the directness as an elementary quality of the transfer (triangular or other escalated types of transfer do not meet the requirements, as long as there is no direct relationship/transfer between the Claimant and the Defendant).



- b) The market value of the work offered *per se* (an abstract Y, equal to X, Z, where X is the standard value of the work usually offered from employees of similar skills and Z the salary usually offered for such volume of work to such employees).

One could argue that the difference is invisible.

However, the importance emerges when the legal regime of the entity, prohibiting an employment contract of equivalent characteristics, is taken into consideration.

Versions a) and b) result then in different conclusions:

- Under the first (a.) concept of concrete approach, the entity did not make any savings, given the fact that there was no legal option for relevant expenses (saving presupposes legal ability to spend). No enrichment is fulfilled.
- Under the second (b.) concept of abstract approach, the entity has profited from the *per se* value of the services received regardless of the inherent inability to include the offer into a legal cause. Enrichment is fulfilled.

The Supreme Court opted for the second approach. Special circumstances (hereby attributed to the receiver of the enrichment and modifying the abstract status of interests) may not affect the need to restore the transactional balance. Regardless of the ability of the Court to have reached the same result through the principle of good faith and other special provisions (reflected in Sections 908, 909, 911 Greek Civil Code)<sup>3</sup>, this amended notional approach in the concept of the “enrichment” increases the standards of legal clarity and assures similar judgment of analogous facts.



---

<sup>3</sup> For an overall approach, refer to Α.Βαλτούδης, *Η εξοικονόμηση δαπάνης στο δίκαιο του αδικαιολόγητου πλουτισμού (με αφορμή την ΟΛΑΠ 4/2021)*, ΕλΔνη (5/2021), σ. 1281.

