



## SINGLE-MEMBER FIRST INSTANCE COURT OF PIRAEUS 3220/2017<sup>1</sup>

Judge: G. Gkintzou, Judge of First Instance  
Attorneys: P. Bouboucheropoulos – A. Tsamis

**I.A.** According to article 5 para. of the [Greek] Constitution, “*1. All persons shall have the right to develop freely their personality and to participate in the social, economic and political life of the country, insofar as they do not infringe the rights of others or violate the Constitution and the principles of morality*”; it is generally acknowledged that the notion of personal freedom and the principle of free development of personality incorporate, among others, the freedom of economic activity, which, as an inextricable element of one’s personality, has the sense that everyone has the right to freely choose and practice a profession (Plenary Session of the [Greek] Council of State 4036/1979).

Moreover, according to article 22 para. 1.1 of the [Greek] Constitution, “*1. Work constitutes a right and shall enjoy the protection of the State, which shall seek to create conditions of employment for all citizens and shall pursue the moral and material advancement of the rural and urban working population. All workers, irrespective of sex or other distinctions, shall be entitled to equal pay for work of equal value*”.

The combination of the two aforementioned provisions implies that the [Greek] Constitution guarantees the employer’s freedom of economic activity, which includes his freedom to terminate an employment contract, while it also guarantees the professional freedom of the employee, meaning, *inter alia*, to keep one’s job by protecting them from being dismissed. The State’s obligation to positively protect professional freedom and the right to work are strengthened via the constitutional enshrinement of the principle of the welfare state in article 25(1.1-2 and 1.2) of the [Greek] Constitution, stating: “*1. The human rights of everybody both individually and*

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<sup>1</sup> Original griego. Traducción realizada por Silvia Pap, Christina Deliyanni, Chronis Tsiboukis y Nikos Gavalas.

*as a member of the society and the principle of the rule of law and the protection of social rights are guaranteed by the State. All agents of the State shall be obliged to ensure the unhindered and effective exercise thereof. 2:2. The recognition and protection of the fundamental and inalienable rights of man by the State aims at the achievement of social progress in freedom and justice”. “...” (D. Zerdelis, Labour Law - Individual employment relations, 3<sup>rd</sup> edition, p. 204 *et sec*, p. 207 *et sec*, p. 1953 *et sec*).*

The human rights are protected not only against the State and its institutions, but also against individuals who challenge them, as it stems from article 25 para. 1.3 of the [Greek] Constitution guaranteeing that “*These rights also apply to the relations between individuals to which they are appropriate...*”. This is the so-called “Drittwirkung” of constitutional rights, under which the employer – employee relation falls *par excellence* (Plenary Session of the [Greek] Cassation Court [Areios Pagos] 1/2017). Particularly, the effect that constitutional provisions on fundamental principles, as well as on individual and social rights, might have on private relations is, in principle, indirect, i.e. it is effectuated via the interpretation of the applicable provisions of private law with a reference to constitutional provisions. One can talk about the direct horizontal effect (unmittelbar Drittwirkung) of constitutional provisions on individual and social rights solely in the case where the regulation of private law system does not lead to a feasible solution corresponding to the fundamental constitutional principles (Areios Pagos 2159/2007 Nomos).

Finally, albeit the European Convention on Human Rights (ECHR), which was ratified by the legislative decree 53/1974 and holds, according to article 28 para. 1 of the [Greek] Constitution, an increased legal force that permits it to prevail over any contrary ordinary legislation, does not comprise a provision protecting employees from unfair dismissals, however the European Court of Human Rights (ECtHR) recognises in its case law that the dismissal of an employee constitutes an invasion on his private and family life, falling, consequently, under the protection of article 8 of the ECHR (N. Gavalas, What changes in labour law following the ratification of the revised European Social Charter, *Epitheorissis Ergatikou Dikaiou [Labour Law Review]*, vol. 75 (2016), p. 130 *et sec*).

Notwithstanding, as explicitly recognised in the [Greek] case law to date, it is assumed from the combination of articles 669 para. 2 of the [Greek] Civil Code (GCC), article 1 of Act 2112/1920 and articles 1 and 5 of Act 3198/1955 that the termination of an open-ended employment contract is an unilateral legal act, the validity of which does not depend on the existence or the invalidity of the ratio (more accurately: the ground) on which it was based (Areios Pagos 123/2016; 251/2016; 674/2014; 12/2014; 460/2013; 247/2012; 497/2011 Nomos). Indeed, as of the prevailing terminology, we can talk about a “non causal” legal act, exactly in the sense mentioned before, namely in the sense of a legal act whose validity does not the existence of a specific ground, and not in the sense of a distinction of legal acts imposed by the theory of the General Principles of the [Greek] Civil Law (and this is so, because the termination of a contract is an unilateral non-performative legal act that cannot be characterized as “non-causal”

because the respective distinction between causal and non-causal legal acts concerns solely the performative acts – see, A. Georgiadis, *General Principles of Civil Law*, 2<sup>nd</sup> edition, p. 294, § 47 *et seq*; M. Karassis, in: A. Georgiadis / M. Stathopoulos, *Civil Code*, Introductory Comments on articles 127-200, § 7.

However, Act 4359/2016 ratified the revised European Social Charter, which, according to article 28 para. 1 of the [Greek] Constitution, prevails over any statutory legislation. According to article 24 of the Revised European Social Charter, “*With a view to ensuring the effective exercise of the right of workers to protection in cases of termination of employment, the Parties undertake to recognize: a the right of all workers not to have their employment terminated without valid reasons for such termination connected with their capacity or conduct or based on the operational requirements of the undertaking, establishment or service; b the right of workers whose employment is terminated without a valid reason to adequate compensation or other appropriate relief. To this end the Parties undertake to ensure that a worker who considers that his employment has been terminated without a valid reason shall have the right to appeal to an impartial body*”.

The aforementioned provision introduces, for the first time into a European human rights legal instrument, a new fundamental right, which protects the employee from being dismissed on the initiative of the employer. The governing perception of the new regulation stipulates that the arbitrary and unjustified removal of the employee from his job position violates his value and dignity. The protection stipulated by article 24 of the Revised European Social Charter is based on three basic elements: 1) termination of an employment contract initiated by the employer must be based on a “legitimate ground” or, more accurately, on a “valid reason” linked to the conduct or the capacity of the employee, or to the operational requirements of the undertaking; 2) the employer is obliged to “adequately compensate” the wrongfully dismissed or to provide him/her another appropriate relief; and 3) sufficient legal protection must be ensured.

Following the ratification of article 24 of the revised European Social Charter it is made clear that the system of the “non-causal” dismissal is not compatible with the dismissal for a valid reason guaranteed by the new article. Consequently, the principle of the justified dismissal has directly been introduced into the Greek legal order, while [Greek] courts shall, henceforth, be obliged to examine whether a dismissal is based on a valid reason or not, and to annul all dismissals not based on such a reason. This may be achieved either via direct reference to article 24, the wording of which is, at least concerning this issue, precise, explicit and unconditional, in direct combination with articles 174 and 180 GCC –a solution considered by this court as the optimum– either hermeneutically via article 281 GCC, pursuant to which any dismissal that does not comply with the terms of article 24 of the revised ESC shall be deemed abusive.

Considering the legal consequences of an unlawful termination of an employment contract –apart from its being invalid pursuant to articles 174 and 180 GCC–, it is stipulated that the employer is obliged to adequately compensate or provide another means of remedy as provided in national law, while the European Committee of

Social Rights' case law stipulates that the nullity of a dismissal, plus entitlement for back salaries and the reinstatement of a victim of an annulled dismissal constitute adequate remedy, thus no pecuniary remedy is to be paid in case of an unlawful dismissal (N. Gavalas, Changes in labour law following the ratification of the revised European Social Charter, *Epitheorissis Ergatikou Dikaiou [Labor Law Review]*, vol. 75 [2016], p. 130 *et sec*).

In view of all the above, it is clear that the hitherto accepted findings of the case law that a dismissal without particular reason is considered to be non-abusive (due to the dismissal's "non causal" character) and the fact that, in order for a dismissal to be considered void as abusive, it is not enough that the reasons invoked by the employer are false or no apparent reason is invoked, rather it is obligatory that the dismissal be based on specific grounds due to which the exercise of the relevant right of the employer will apparently exceed the limits set by article 281 GCC (Areios Pagos 123/2016; Areios Pagos 251/2016; Areios Pagos 674/2014; Areios Pagos 460/2013; Areios Pagos 247/2012; Areios Pagos 497/2011 Nomos), should be considered contrary to the provision of article 24 of the revised ESC, which prohibits the arbitrary and unfair dismissal of an employee.

Moreover, following these concessions, by combining article 338 para. 1 of the [Greek] Code of Civil Procedure (CCP) –according to which each litigant is burdened to provide evidence for the real facts needed to support his autonomous request or counter-request– it is concluded or deduced that the defendant employer's allegation that the dismissal is based on a particular valid reason in order to counteract or rebut the employee's lawsuit that invokes abusive or (even) unjustified dismissal is seen as an objection and he/she is obliged to provide evidence for his/her assertion (see contrary case law based on the assumption of the non-causal dismissal or the termination without cause of the employment contract: Areios Pagos 460/2013 Nomos; 14/2013, Thessaloniki Court of Appeal 1314/1997 Nomos).

**B.** Furthermore, Act 4443/2013/2016 "the principle of equal treatment etc." (Official Gazette, issue A, 232/9.12.2016), which is also applicable to pending cases (article 22 para. 2, *idem*) and which incorporates into the Greek legal order Directive 2000/43/EC on the implementation of equal treatment of persons irrespective of racial or ethnic origin, and Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation, as well as Directive 2014/54/EU on measures facilitating the practicing of the rights conferred on workers in the context of the freedom of movement of workers, provides that:

"Article 1 – Purpose: *The purpose of the provisions of Part A is to promote the principle of equal treatment and the fight against discrimination: (a) by reason of race, color, national or ethnic origin, herd-based payments in accordance with Council Directive 2000/43/EC of 29 June 2000. Article 2 – Concept of discrimination: 1. Any form of discrimination shall be prohibited for one of the grounds referred to in Article 1. 2. For the purposes of the provisions of Part A: (a) "direct discrimination" means a person who, for reasons of race, color, national or ethnic origin, birth, religion or other*

*belief, disability or chronic illness, age, marital or social status, sexual orientation, identity or sex characteristics is, receives a less favourable treatment than that another person in a comparable situation has, had or would have received.* Article 3 – Scope: 1. *Without prejudice to paragraphs 3 and 4 of this Article and to Article 4, the principle of equal treatment irrespective of race, color, national or ethnic origin, birth, religion or other belief, disability or chronic illness, age, family or social status, sexual orientation, gender identity or gender in employment and employment, applies to all persons, in the public and private sectors, as regards: a)... b)... g) the terms and working and employment conditions, in particular with regard to remuneration, dismissal, health and safety at work and, in the event of unemployment, reintegration and re-employment.* Article 9 – Burden of proof: 1. *Where the injured party alleges that the principle of equal treatment has not been complied with and proves to a court or competent administrative authority facts which may lead to direct or indirect discrimination, the party or administrative authority shall have the burden of proving to the court, that there were no circumstances constituting a breach of that principle”*

Similar Regulations contained Act 3304/2005, already abrogated by article 22 para. 1 of Act 4443/2016.

**C.** Nonetheless, article 656 para. 1 GCC, as amended by article 61 of Act 4139/2013, provides that, *“if an employer fails to accept the work provided by the employee, the employee has the right to claim his actual employment as well as the salaries for the period that they had been unemployed”*.

This provision provides that, contrary to the hitherto prevailing case law (Areios Pagos’s Plenary Session 9/2011), in case of the employer’s delay to accept the labour offered by his/her employee, a case which also arises, *inter alia*, when the nullity of the termination of the employment contract has been recognised by the court, the employee acquires the direct right to claim their actual employment without having to invoke and prove, in exercising that right in court, additional circumstances, which, in a particular case, render abusive or insulting the employer’s refusal to accept his/her work after the annulment of the employment contract’s termination or after the declaration of the nullity of the notice (Areios Pagos 769/2016 Nomos).

**D.** Pursuant Act 2112/1920, an employer could terminate an employment relationship without giving a notice period and without paying severance allowance solely during the first two (probationary) months of the employment contract, a timeframe that had then been considered sufficient for the employer to decide whether or not he/she will make a continuous and definite commitment via an employment contract. Subsequently, by virtue of article 17 para. 5 of Act 3899/2010, being part of the the MoU legislation, the period within which an employer could without keeping a notice period and without paying severance allowance was extended, and was stipulated that *“employment under a contract of indefinite duration is considered to be a probationary period for the first twelve months after the entry into force of the contract that can be terminated without prior notice and severance pay, unless otherwise agreed by the parties”*.

Next, by the provision of sub-paragraph IA.12 of Act 4093/2012 the legislator upholds the twelve-month period of employer's right to terminate an employment contract without having to keep a notice period and without having to pay severance allowance; however, the legislator abandoned the legal fiction talking about the probationary period, and directly provided that "*termination of the employment contract of an employee working under an open-ended employment contract that exceeds twelve months, shall not be possible without a prior written notice*".

This regulation has been dictated by the need to introduce flexibility on termination of the employment contract in view of the new socio-economic situation in the framework of the country's engagements set in the MoU. Thus, it serves different targets (i.e. the abolition for a certain period of time of the employer's burdens arising from the labour legislation), and has nothing to do any more with probationary period of employment.

Moreover, the new regulation introduced via Act 4093/2012 neither is it considered unconstitutional, hence inapplicable, nor is it contrary to the article 4 para. 4 of the European Social Charter of 1961 (ratified by Act 1426/1984). Notably, the European Committee of Social Rights in its decision on the merits on the 65/2011 collective complaint of the General Federation of the Employees of the National Electric Power Corporation (GENOP-DEI) / Confederation of [Greek] Civil Servants' Trade Unions (ADEDY) v. Greece (23.5.2012) stipulated that the provision of article 17 para. 5 of Act 3899/2010 is in breach of article 4 para. 4 of the European Social Charter (thoughts 26-28); yet this decision takes it for granted that the period of twelve months is characterised by the above provision as "probationary period".

In conclusion, the protection of an employee from an unlawful dismissal is deemed sufficient, as thoroughly analysed in the above legal thoughts; this protection also covers the employee's initial one-year period of the employment contract (annulment of unlawful termination of the employment contract, entitlement for back salaries, employer's obligation to reinstate the wrongfully dismissed employee).

**E.** Finally, it stems from articles 57, 59, 330, 299, 932, 914, 281, 648 GCC and from article 5 para. 1 of the [Greek] Constitution that, if the termination of the employment contract by the employer has taken place under circumstances of an unlawful and faulty violation of the employees rights on his/her personality (damage to his/her reputation as a working person and to his/her occupational activity, in view of the type of work and the particularly intense interest of the employee in actual employment), or under circumstances of a tort (abusive termination of the employment contract), the employer may be obliged to compensate the employee for non-material damage, the amount of which is determined by the Court *ex aequo et bono* (Areios Pagos 254/2012, Athens Court of Appeal 551/2017 Nomos).

**II.** The plaintiff states in her legal suit that she was hired by the defendant on 14.12.2015 and worked as a salesperson-employee under an open-ended employment contract with a monthly salary stipulated at 770,20 Euros. She also states that the

defendant terminated her employment contract on 6.9.2016, without paying redundancy allowance, for reasons connected to the plaintiff's chronic epilepsy, about which she had previously informed the defendant's legal representative. She also claims that the termination of her employment contract is null and void, on the ground that it is contrary to the principle of non-discrimination and to the principle prohibiting the unjustified termination of an employment contract, or, alternatively, because it was effectuated without a simultaneous payment of the redundancy allowance.

Finally, the plaintiff states that her dismissal, which took place under the circumstances specifically outlined in her law suit, also constitutes an unlawful violation of her personality, hence rendering her entitled to compensation for non-material damages.

In the statement of her attorney at law that has been registered in the minutes of a public hearing of the Court, the plaintiff asked the court a) to recognize the nullity of the 6.9.2016 termination of the employment contract; b) to oblige the defendant, by virtue of a provision that shall be declared temporarily enforceable, to accept the plaintiff's provision of work, with the potential to be held liable to a fine amounting to the sum of 300 Euros for each day of non-compliance; and c) to oblige the defendant to pay her salaries for non-accepted work, *comprising Christmas and Easter bonuses, leave of absence allowances calculated on the basis of her gross salary amounting to 770,20 Euros with the payment of interests set by law once each item became payable, or alternatively from the delivery of the law suit and for the period between 6.9.2016 and the day of court hearing*" (word-by-word phrasing of law suit's page 12); (d) to oblige the defendant to pay to the plaintiff, as provided in article 69 para. 1 of the [Greek] Code of Civil Procedure, default wages for the period between the hearing of the law suit and the termination of the defendant's default, as well as interests thereof from the day of payment of each monthly salary, alternatively, and in addition to the submission of the law suit (as set in page 13 of the law suit in combination with the declaration thereof); (e) to recognize that the defendant is obliged to pay her the sum of 5,000 Euros as a remedy for non-material damages, with the interests set by law starting from the submission of the law suit.

Alternatively, the plaintiff requests that, if the termination of her employment contract is upheld, the defendant be ordered to pay her the amount of 1,797.14 Euros, comprising the interest set by law from 6.9.2016, as a redundancy payment (concerning this request there is no limitation to the conversion from a claim for performance to a declaratory claim), according to article 1 of Act 2112/1920 as stood prior to its amendment by the provisions of article 17 para. 5 of Act 3899/2010, and the subparagraph IA.12 of Act 4093/2012, invoking the fact that her employment contract lasted for more than two months. Finally, the plaintiff requests that the defendant be ordered to bear the trial costs.

With the background above and the aforementioned claims, this law suit is brought to trial before that court, which is the *ratione materiae* and *ratione loci* competent court in order to be heard pursuant to the procedure pertinent to labour

disputes, and has been brought forward within the three-months' limitation period set in article 6 para. 1 of Act 3198/1955 (see the service report no 12000E / 5.12.2016 drawn up by the bailiff of the Athens Court of First Instance).

It is, however, bound to fail as inadmissible on grounds pertaining to ambiguity: a) as it concerns the claim for recognition of the defendant's obligation to pay default wages for the period between the hearing of the claim and the withdrawal of the defendant's delay, since neither is the total claimed amount referred to in the action nor can it be determined by simple mathematical calculations, as the expiration of the relevant time period is not clearly defined and depends, rather, on the defendant's conduct (withdrawal of delay). Notably, as correctly assessed in the proceedings, the plaintiff does not seek that the defendant be generally obliged to pay her default wages; she rather seeks recognition of the defendant's obligation to pay a certain amount, the calculation of which, according to her, can be obtained by simple mathematical methods. And b) as it concerns the claim that the defendant be obliged to pay Christmas and Easter bonuses, holiday pay and allowances, calculated on the basis of the gross salary amounting to 770.20 Euros, which is totally vague and irrelevant for the assessment of the Court, as it fails to indicate the amount claimed for each reason, the years relevant to the claim, or the specific prerequisites for the payment of remuneration and leave of absence allowances.

Concerning the additional claims, the legal action is sufficiently defined; in particular: a) with respect to the claim for default wages for the period between 6.9.2016 until the hearing of the action (2.2.2017), the total amount claimed is obtained by simple mathematical calculation, (Areios Pagos 1682/2000 Nomos); b) similarly, the fact that the plaintiff's net remuneration is not referred to in the claim does not give rise to any ambiguity, because, as recognised, the claim for damages is based on her gross salary (i.e. the amount comprising the statutory social security contributions, income tax, etc., which the employer must deduct from the employee's salary (AP 1131/2015, AP 332/2008, AP 2126/2007, Single-Member Piraeus Court of Appeal 25/2015, Single-Member Piraeus Court of Appeal 82/2015); and c) lastly, claims for payment of redundancy allowance (auxiliary basis of the claim) and the claim for non-material damage are not formulated in the requirements of the action but they are fully and definitely included in the exposure of its facts (p. 1314) in such a way that there is no objective impossibility of the Court to issue a clear and enforceable decision (AP 1174/2007 Nomos) and therefore they are not vague.

Furthermore, the action, insofar as it is admissible, is lawful in its essential basis, relying on the provisions of articles 57, 59, 174, 180, 299, 330, 341, 345, 346, 349, 350, 648 *et sec*, 653, 655, 656, 669, 914, 932 GCC; articles 68, 70, 176, 907, 908 para. 1, 910 para. 4 of the [Greek] Code of Civil Procedure, article 24 of the revised European Social Charter ratified by Act 4359/2016; articles 1, 2, 3 and 9 of Act 4443/2016 and article 5 para. 1 and article 2 para. 1 of the [Greek] Constitution. It is, however, unfounded in law and therefore it should be rejected as it concerns its subsidiary basis of the nullity of the dismissal due to the non-simultaneous payment of the severance



allowance, as well as to its subsidiary basis for payment of redundancy allowance in the event that the dismissal is recognised to be valid, given that as set out in the above legal argumentation (under 1.D.), by the provision of subparagraph IA.12 of Act 4093/2012, the employer was granted a twelve-month period within which the employment contract could be terminated without paying a severance allowance, therefore concerning the termination of the plaintiff's employment contract drawn on 14.12.2015 and terminated on 6.9.2016, no redundancy pay is legally owed.

In the light of the foregoing, the action, insofar as it has been held admissible and lawful, must be further examined as to its material basis, given that following its conversion from a claim for performance to a declaratory claim no appeal fee is required, while as of the provisions of article 61 para. 4 of Act 4194/2013 replaced by article 7 para. 8.2. of Act 4205/2013 in force since 1.11.2013 in accordance with article 165 para. 11 of Act 4194/2013, as added by article 7 para. 13.4 of Act 4205/2013, the attorneys of the parties presented the relevant advance payment notes.

**III.** Under article 656 section 2 GCC the employer, albeit in default of payment, shall however be entitled to deduct from the payable back salaries everything that the employee may have earned due to the non-performance of the work or for providing work elsewhere. The employer's right under this provision is to be challenged against the employee's claim, which, for not to be dismissed as vague, , must include all the facts giving rise to the benefit of the employee during the corresponding time period of the employer's default, the type of work provided and the specific amount earned by the employee (Areios Pagos 363/2015 Nomos).

In its written pleadings the defendant undertaking acknowledges to have concluded an employment contract with the plaintiff, and the amount of her gross monthly remuneration stated, while refusing the rest of the law suit.

It further claims to have terminated the abovementioned employment contract due to the plaintiff's reduced performance stated in the performance reports; that is to say, for reasons relating to her capacity, as well as to the operational requirements of the defendant's undertaking, operated as a franchisee for the franchisor company \*, aiming at high sales targets set out to the defendant. This allegation is considered as an objection, as set out in detail above in the legal rationale of the present decision (I.A), and is indeed lawful on the basis of the provisions of article 24 of the Revised ESC ratified by Act 4359/2016, and must therefore be investigated on the merits.

Furthermore, the defendant requests that the plaintiff provide the Court with information concerning the name of her new employer, her place of work and her monthly (gross and net) remuneration, in order to be deducted from her claim for default wages all what she has benefited from the provision of her labour to another employer under article 656 section 2 GCC. However, the wording of the defendant's relevant argumentation is regarded as vague and inadmissible, as the specific amounts earned by the plaintiff in the particular work are not specified, as also outlined in the legal rationale.

Lastly, and alternatively, in the event that the plaintiff claims to be out of work, the defendant submits a request for documents, and in particular requests that the plaintiff be obliged to produce a certificate issued by the national employment agencies (OAED) documenting her unemployed status and, subsequently, that any amount payable to the plaintiff as unemployment benefit be deducted from the payable amount potentially recognised by the Court. However, this allegation is legally untenable, because, for the purposes of the calculation on the basis of article 656 section 2 GCC, it is necessary that the employee has substantially benefitted from the termination of his/her work or that he/she has provided work with a profit, and that this benefit be in a causal connection with the employer's default. It is, however, in no causal connection with the employer's default and therefore the unemployment allowance is not deducted, since the provision of it is irrelevant to the use of the working time. This is deducted by the employer from the amount of the default wages to be paid to the employee and is attributed to the unemployment services (Single-Member Thessaloniki Court of Appeal 1218/2017, Thessaloniki Court of Appeal 42/2009, Court of Appeal of the Dodekanese Islands 170/2004, Nomos). The defendant's request for documents' production relating to the above claim must be dismissed for the same legal reasons.

**IV.** [...] [T]he following facts have been proven: the defendant company by the trading name “\*\* Public Manufacturing Trading Company” operates, on the basis of a franchise contract, the store of the telecommunication company “\*”, with rather high customer traffic. The plaintiff was hired on 14.12.2015 by the defendant to work as a saleswoman in the store under a full-time open-ended employment contract. Her duties were to provide services and information to customers about programmes of mobile and fixed telephony, internet, as well as the promotion and sale of telecommunication technology products that the defendant trades (mobile phones, accessories etc.).

Furthermore, as it was proven, the plaintiff suffers from the chronic illness of epilepsy. More specifically, according to the medical certification N<sup>o</sup> 9894/14.10.2008 produced by the neurologist S.G. of the Neurological Clinic of the “Genimatas General Hospital”, the plaintiff is undergoing treatment in a medical unit of this hospital specialising in epilepsy, after a long treatment (three years) in the Neurological Department of a Children's hospital, as she suffers from frequent and enduring seizures since the age of three, despite the medical treatment and attention. As a result of her condition, she needs regular medical treatment and attention and the constant presence of a third person.

Additionally, according to the medical certification dated 13.5.2010 by the neurologist from the Neurological Department of the “Koryalenio-Benakio General Hospital” T.T., the plaintiff presented at the clinic after a seizure of epilepsy, lost consciousness for about five minutes and bit her tongue. It is also mentioned that she suffered from febrile and epilepsy seizures since the age of three, while taking medication (Depakine) until the age of 18, with a frequency of seizures one every two years. She stopped taking the medication for two years (between the age of 18 and 20), and started again on 13.5.2010.

The above medical certifications certify the intensity with which the plaintiff's chronic disease of epilepsy breaks out, as she has dense febrile and epilepsy seizures, usually resistant, and for that reason a constant oversight by a third person is indeed recommended. Moreover, because of the risky nature of the illness, the Court holds truthful the plaintiff's allegation that she was always informing her employers about her condition, and that she also did so with the legal representative of the defendant ...

However, notwithstanding the plaintiff's medical record, the defendant hired her, and after a one-month training (during which the plaintiff was working in the store, wearing a trainee card) she started working regularly. During the brief period she was employed, between 14.12.2015-6.9.2016 (namely for eight months), the plaintiff had four epilepsy seizures (as the parties mutually concede).

The first incident took place in the store in February 2016 during working hours; then, the plaintiff walked away from the customer service section and isolated herself into the personnel toilet. The legal representative of the defendant called a pharmacist for first aid from the pharmacy across the defendant's store.

The second incident took place on 17.6.2016 around 21:00, at the time when the store was closing and when only one customer was still present. ..., the person in charge of the store, called the pharmacist again and, furthermore, called an ambulance. Fifteen minutes later, the plaintiff came and asked for the cancellation of the call (see the calls to "166" [911] on the telephone bill of the month June 2016 of the defendant's telephone number) and she left with her partner ..., who testified in the present procedure.

The third seizure took place in August 2016, during the plaintiff's shift, and the fourth on 3.9.2016 on Sunday around 15:00, at a time that the store was already closed and the employees had gathered for a meeting.

From all the incidents of epilepsy seizures, the plaintiff recovered in about 20-30 minutes; she was able –as her condition is chronic– to cope with the symptoms on her own, as testified by her partner, who mentioned that when she has a seizure while they are together, they never seek medical help. He only "hugs her" and waits for her to recover. Hence, the allegation of the defendant that the plaintiff declined the call of an ambulance is considered truthful, as it is verified by her partner's testimony (he testifies that she always declines the call of an ambulance).

More specifically, as regards the last incident of seizure on 3.9.2016, the plaintiff, all of a sudden, lost consciousness and collapsed. Because of the fall, she hit her chin and suffered an injury and a rupture. Instantly, the legal representative of the defendant approached her and held her head waiting for her to come around. When she awaked, he asked her if she wanted him to call an ambulance. The plaintiff, as always, replied negatively, and asked for her partner to be informed in order to pick her up. The meeting of the employees was cancelled, and after the plaintiff had adequately recovered, they left the store, while some remained outside the store to chat. The plaintiff left the store accompanied by ..., waited for her partner sitting on the stairs of

an adjacent building, on the street. Subsequently, and after ..., a friend of the plaintiff who was passing by, offered to stay with her, she left. Around 15:45 her partner picked her up and they went at first to the “Tzanio Hospital” and then to the “Evangelismos General Hospital”, where the wound was sutured (see the medical certification of the 4<sup>th</sup> surgical department of the abovementioned hospital).

According to the above background, the legal representative of the defendant ..., in all the incidents of the epilepsy seizures of the plaintiff did whatever was possible to help and facilitate her coping with the symptoms, in line with the information he had from the plaintiff about her health condition. More precisely, he was calling the pharmacist for first aid (this is certified by the witness of the plaintiff, who said that once when he went to pick up the plaintiff, he saw the pharmacist in the store), another time an ambulance was called and was later canceled according to the plaintiff’s wish, and in all other cases she declined to go to the hospital.

The sole difference of the last epilepsy seizure of the plaintiff compared to the three previous ones was that she collapsed and suffered a rupture on the chin. However, according to the abovementioned medical certification of the surgeon N.A., who works at the “Evangelismos Hospital”, the plaintiff presented no acute surgical pathology; the wound was thus a simple rupture that understandably did not raise any concern for the representatives and the employees of the defendant, who acted the same as in any other epilepsy seizure of the plaintiff, namely they waited for her to come round, they asked her if she wished to be transferred to the hospital by ambulance, and informed her partner to pick her up.

With regard to the behaviour of the defendant’s representative ... it is also to be taken into consideration that the plaintiff’s wish not to call an ambulance was respected, despite the fact that she fell and suffered a rupture, that to the average person an epilepsy seizure (and indeed with the symptoms that the plaintiff presented) seems more severe and in need of medical care compared to a simple (as follows from the previously mentioned medical certification) rupture. Hence, when the patient herself does not wish to be treated for the seizure, the average person would not consider medical care necessary for the wound.

Additionally, after Saturday 3.9.2016, the plaintiff had a day off, and on Tuesday 6.9.2016 she went to work. That day the representative of the defendant ... informed her about her layoff during a private conversation in the office, without any other person being present. As to the reason of the termination of the employment contract, the plaintiff in her lawsuit claims reasons pertaining to her health, while the defendant pled that the plaintiff had failed to cope with the high and pressing sales targets that the company «\*» [the franchisor] was putting forth every month with regard to the new subscriptions, the transfer of subscribers from other providers etc.

As evidenced from the 8.9.2016 application for a process of labour dispute resolution, the plaintiff invoked abusive termination of her employment contract, because she was dismissed on the basis of reasons pertaining to her health. On

26.9.2016, the date of the hearing, the plaintiff claimed that she was fired also because of her activity as a unionist, while a new date was scheduled for the hearing in order for the defendant to be informed and prepared concerning the new claim for the complementary reason of the termination. During the new hearing on 2.10.2016 the defendant pled not to agree with the reasons of the notice, and claimed that the plaintiff was dismissed because of her performance. The plaintiff, albeit present, did not ask to take the stand, but, instead, three representatives of labour unions spoke on her behalf; they did not testify about the issue of her health, and rather referred only to her trade-union activity.

In particular, ..., a member of the Private Sector Employees' Union, ..., the secretary of the union of workers «\*» - «\*\*\*» - «\*\*\*\*», all testified that the plaintiff was fired because of her trade-union activity and because she was urging the defendant's employees to participate in strikes and claim their rights (working hours, salaries, working conditions). Therefore, during the deliberation at the labour relations inspector, there was no substantial discussion about the discrimination on grounds pertaining to health, referred in the present case, and this was the choice of the plaintiff herself, as it can be drawn from the above. On the contrary, the plaintiff, changing her legal stance, solely touched on her membership in the Piraeus Union of Private Employees, attributing her layoff to health reasons.

Additionally, as proven in the defendant's witness testimony —which is corroborated from the abovementioned ..., secretary of the workers union “\*” – “\*\*\*” – “\*\*\*\*”, who testified that *“in all stores “\*”, as in the store that the colleague was working, the prevailing working conditions were exhausting (high goals with achievement pressure, flexible working hours, Sunday opening and repealing of the B.T.R.)”*—, every month in the partner stores the company “\*” sets targets they have to meet with regard to new telephone contracts, the transfer of subscribers from other companies to the net of “\*” etc., as well as with regard to grading and evaluation by clients concerning the quality of services. The company promotes those targets in a pressing way, by wiring the payment of commission to every store not with the connections, transfers etc. made, rather with the meeting or non- of the monthly goals. As a result, the non-meeting of targets leads to reduction, or even the termination of the store's funding. This pressure on the stores-entrepreneurs was transmitted to the employees that were controlled by the company “\*” through its central computerised system, where the name of every employee is registered with every contract they updraw.

At the time of her hiring the plaintiff had a five years' work experience in relevant working positions in other telecommunication companies, not however in “\*”, while she is currently working in one of the stores of company “\*\*\*”. Despite all her working experience, the plaintiff did not meet the goals that the company, right or wrong, as it is not the issue at stake here, was setting for the store and those working in it. Furthermore, according to the testimony of witness ..., an employee in the store and a colleague of the plaintiff's, the latter was indeed polite and hard-working; however,

she was vulnerable to the whims of the clients, and as a result was unable to execute her duties to a satisfactory degree and was acting sentimentally, as in a case that she specifically mentioned, whereby the plaintiff burst into tears while attending to a complaining client.

In consideration of all the above, the Court holds that the plaintiff was dismissed due to her incompetence, rather than on grounds pertaining to her health, which, as was not an impediment for her to be hired hence was not the reason for the termination of her contract.

Based on the above, and since the 6.9.2016 termination, for which there was a legitimate reason in connection with the performance of the plaintiff in combination with the functional requirements of the enterprise, as those were formed through its cooperation with the company “\*”, was valid, the objection of the defendant should be sustained and the legal action should be dismissed on the merits in its entirety, i.e. concerning the declaration of the annulment of the working contract’s termination, the payment of default salaries, as well as the compensation for non-material damages, as this last claim is based on the alleged (“infringement of the right to personality”) of the plaintiff due to discrimination on grounds pertaining to health, which was not proven.

In conclusion, the legal action should be dismissed on the merits and the plaintiff be ordered to pay the costs of the defendant due to the former’s defeat (articles 176, 189, 191 of the [Greek] Code of Civil Procedure), according to those rulings on the operative part.