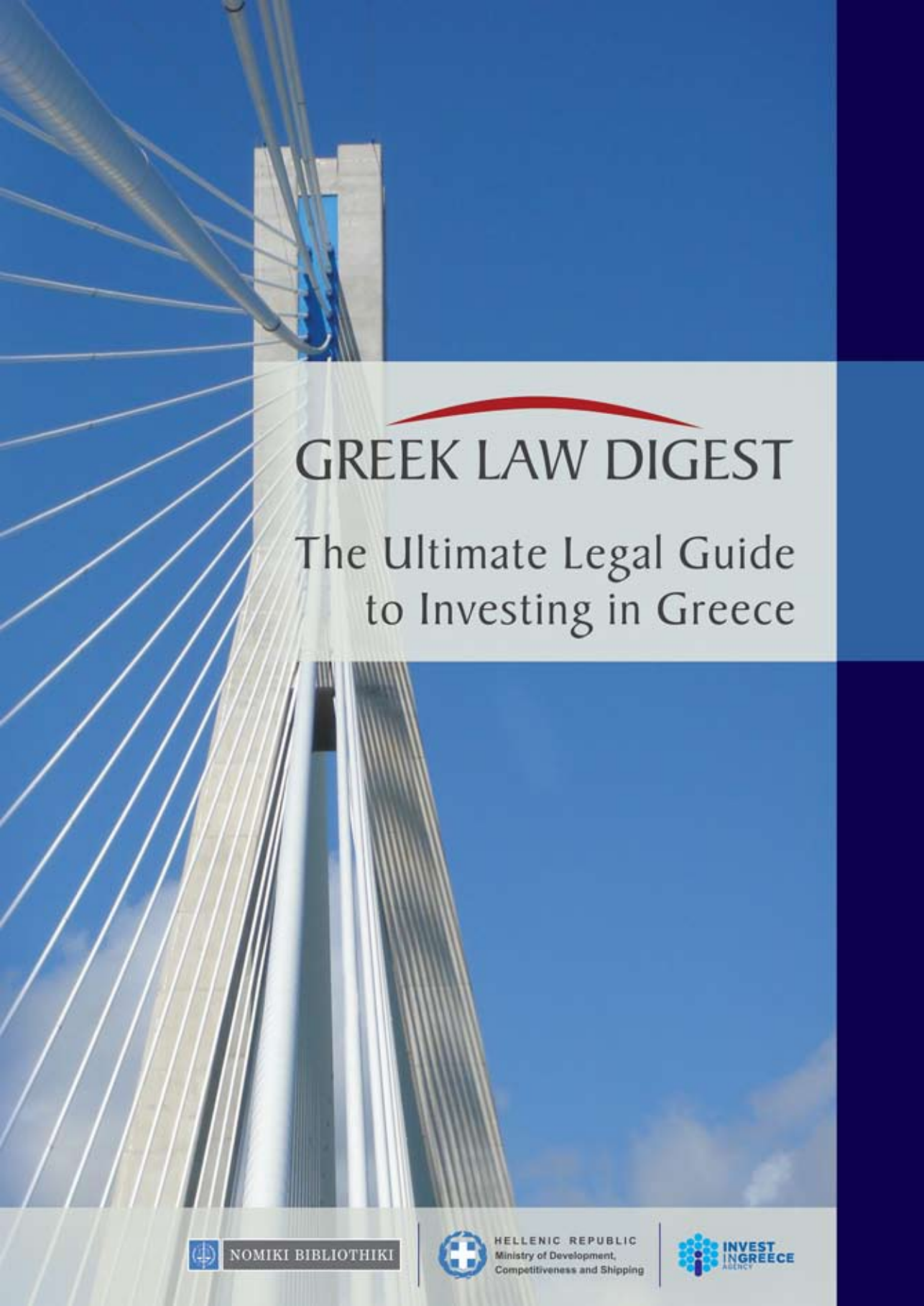

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GENERAL PRINCIPLES OF CONTRACT LAW

Alexandros Dovles, *Attorney at Law, LL.M., PhD (cand.)*
Associate at **A.S. Papadimitriou & Partners Law Firm**

Which are the sources of the Greek Contract Law?

Greece has a statutory legal system. Therefore the main sources of Greek Contract Law are: (a) The Greek Civil Code (Art. 127-946), (b) Law Nr. 2251/1994, regarding several aspects of business to consumer contracts and (c) other Laws on specific contract types, e.g. Law 1652/1986 on Time-Sharing, Law 1665/1986 on Financial Leasing, Presidential Decree 34/1995 on Commercial Lease etc. Furthermore Greek Contract Law has been affected by the EU effort for the unification of Contract Law. Although a common Code of European Contract Law is not due for decades to come, many European directives have significantly influenced Greek Contract Law (e.g. Directive 1999/44/EC on Consumer Sales, Directive 93/13/EEC on Unfair Terms in Consumer Contracts etc).

Which are the legal requirements for the formation of contracts?

Mutual agreement with an intention to create legal relations. Consideration is generally not required according to Greek Law.

When is it ascertained that the parties have reached mutual agreement? Are there any rules of conduct during contract negotiations?

An agreement is reached when the parties have agreed on:

(a) the essential terms of a contract type as defined by law (essentialia negotii), e.g. price and object of purchase for a sales contract and

(b) any point which according to the expressed wish of one of the parties was to be part of the contract (accidentalia negotii).

Failure to agree on any of the above equals to lack of agreement, therefore to lack of a binding contract.

During the stage of contract negotiations the parties have to observe certain rules of conduct dictated by good faith and commercial practice (Art. 197 Greek Civil Code). For example, although a party is not obliged to disclose all information to the other part, failure to reveal during negotiations certain information which is objectively necessary for the other party, may be deemed as conduct in bad faith.

Conduct in bad faith at fault of a party may result in an obligation to compensate the other party, even if a contract has not been concluded (Art. 198 Greek Civil Code). Such compensation will cover only reliance interest.

How can a contract be formed?

A contract can be formed by means of offer and acceptance of the offer, e.g. by separate declarations by the parties. In such a case the mirror-image rule applies, e.g.

the acceptance of the offer must be unqualified and unconditional. Several provisions regulate the process of offer and acceptance, e.g. possibility to revoke the offer before it reaches the other party, expiration of the offer within a time limit set by the offeror or according to good faith, offer remains in force even after the- death/loss of capacity by the offeror (Art. 185-194 Greek Civil Code). In practice, however, most contracts are concluded by means of mutual and simultaneous approval (e.g. simultaneous signing) of a legal document, therefore offer and acceptance rules are generally not applicable.

Are there any formalities required for contracts?

The general rule is that contracts are not subject to any kind of formalities (Art. 158 Greek Civil Code).

However, the parties may opt for any form of their choice. Failure to comply with the formality of choice shall entail, in case of doubt, the nullity of the contract. However, the performance of the contract with the knowledge of the defect as to form shall remedy such defect (Art. 159 para. 2 Greek Civil Code).

Furthermore, certain types of contracts are subject to a legal constitutive form (ad solemnitatem) by means of either a document drafted before a notary public (contracts regarding real estate, donations or other gratuitous transfer of rights, etc) or of a private document signed by the parties (guarantees etc). Failure to comply with a legal constitutive formality shall entail the nullity of the contract (Art. 159 para. 1 Greek Civil Code).

Moreover, several tax law provisions pose contract formality issues. Several contract categories (sale of real estate, assignment of claims, loans, leases, Transfer of shares of a joint stock company etc) are subject to stamp duty and/or other tax formalities, according to which contract document must be submitted after and/or prior signing to the competent tax authorites.

Can I conclude a contract orally or by exchange of e-mails?

Provided the intended contract is not subject to a legal constitutive from (see above), a contract may be concluded by any means of expression, e.g. speech, e-mails etc. However, it is advisable to conclude contracts by means which would facilitate proof of the existence of the contract, e.g. in writing.

Are there any limitations to the capacity of parties to conclude contracts?

Adults, viz. persons who are over the age of 18, have an unlimited capacity to conclude contracts. Minors and adults who are put under custody by virtue of a court order due to mental illness have no or limited capacity to conclude contracts, depending on several factors (age, scope of the contact, seriousness of mental illness). Legal entities (juristic persons) have the capacity to conclude any contract, provided that the relevant contract was executed by its legal representative and that the latter was acting within the scope of his/hers powers (Art. 70 and Art. 127-129 Greek Civil Code). Therefore contracts which are beyond the scope of the juridical person's business are not binding on it. Exceptionally, contracts concluded by joint stock companies (e.g. companies incorporated under Law 2190/1920), limited liability companies (e.g. companies

incorporated under Law 3190/1955) and shipping companies (e.g. companies incorporated under Law 959/1979) are binding on the relevant companies even if they lie outside the scope of the company business.

Is it possible to make the effects of a contract dependent on the occurrence of certain events?

Yes, the effects of a contract can be made dependent on the occurrence of future and uncertain events, which are called "conditions".

Conditions fall into two main categories: suspensive and resolutive.

Suspensive conditions suspend the effects of the contract until the condition is met. For example parties who enter a lease contract agree that the agreement will not come into effect until the lessee obtains an administrative permit relative to the intended use of the leased premises. The obligations arising out of the Lease agreement (e.g. the Lessor has to provide the Lessee with access to the leased premises and the latter has to pay rent to the former) become active only after the Lessee obtains the relevant administrative permit.

Resolutive conditions allow for the effects of the contract to occur immediately. However, upon fulfillment of the resolutive condition the effects of the contract cease automatically (ipso iure). For example a debtor transfer ownership of a movable object to his creditor on the resolutive condition that upon full repayment of the debt the ownership of the movable object will return automatically to the debtor.

Are there any alternatives to a fully binding, definitive contract?

When parties in negotiations have not yet reached an agreement which fully covers the scope of the intended transaction, they have the following options: (a) Conclude a Memorandum of Understanding, (b) Conclude a preliminary contract or (c) conclude an option contract.

(a) A Memorandum of Understanding (MoU) is not a binding contract but a declaration of will by the negotiating parties to reach an agreement. Its practical purpose is to clarify negotiation issues and to act as a roadmap to a final agreement. Its legal value is to define the negotiation rules of conduct, thus clarifying liability issues due to unfair negotiations (culpa in contrahendo-see above). Care needs to be taken when drafting a MoU, because the legal nature of a MoU as a non-binding agreement is judged only by its content. Therefore an agreement which provides for performance obligations by the parties will be construed as a definitive, fully binding agreement regardless of its title.

(b) A preliminary contract is a contract by virtue of which the contracting parties mutually promise to conclude a definitive contract. The parties are bound as of now and and if either of them fails to conform, i.e. fails to conclude the definitive contract, he will be liable for breach of contract (e.g. of the promise to contract).

(c) An option contract is a contract by virtue of which one party is given the right to bring about by his unilateral declaration to the other party the conclusion of a new contract or the extension of an existing contract.

What if the parties disagree on matters relating to the contract contents? How are contracts interpreted?

Every declaration of will, including offer and acceptance during the formation of a contract, is construed according to the true intention of the parties, without adherence to the words (Art. 173 Greek Civil Code). Furthermore contracts are interpreted according to the requirements of good faith and common (business) usages (Art. 200 Greek Civil Code). The above provisions of the Greek Civil Code are the two main pillars of a balanced interpretation method where both the true will of the parties and the objective meaning of the contract wording are taken into account. In case of disagreement however courts rule in favor of the objective meaning of the contract wording.

What about implied terms? Can they be accepted as part of a contract?

Implied terms may be accepted as part of a contract either by legal provisions (Terms Implied in Law or default terms) or by contract interpretation (Terms Implied in Fact). Terms Implied in Law or default terms are terms provided for in the Greek Civil Code or in other statutes which take effect in specific contract types unless the contract stipulates otherwise. Terms implied in Law are significant both in number and in importance and they are the reason why Greek Contracts are usually much shorter that common law Contracts.

Terms Implied in Fact refer mostly to supplementary contract provision which fill gaps in the contract, i.e. provide for certain situations which are not covered by an express term of the contract or by a Term Implied in Law. Terms Implied in Fact are based upon the principle of good faith (Art. 288 Greek Civil Code).

What if a party's declaration/will to enter a contract was mistaken?

An error in a party's declaration to enter a contract (i.e. offer, acceptance etc) entitiles the party in error to annul the contract (Art. 140 Greek Civil Code). An error is deemed substantial when it refers to a point of such importance in regard to the whole contract that if the party in error was aware of it he would not have entered the contract at all (Art. 141 Greek Civil Code).

An error in the party's will to conclude a contract is legally (Art. 143 Greek Civil Code). However, an error in the party's will as to qualities of a person or a thing can give reason to annulment of the contract provided that (a) such error is deemed substantial according to the principle of good faith and common (business) usages and (b) the party in error would not have concluded the contract.

A contract by annulled only by means of a judgment. The relevant action can be filed within two years of the contract conclusion. Upon annulment the annulling party must pay reliance damages to the other party (Art. 145- Art. 155-157 Greek Civil Code).

Is a debtor allowed to partial performances?

The debtor is generally not entitled to make partial performances (Art. 316 Greek Civil Code).

What if the other party fails to perform?

If the one party (debtor) fails to perform, performance is still possible (e.g. performance is delayed) and the other party (creditor) is still interested in the performance, the latter has the following options:

(a) Suspend the performance of his obligations arising under the same contract (non adimplenti contractus-Art. 374 Greek Civil Code) or even under other, related contract (jus retentionis-Art. 325 Greek Civil Code) until the debtor performs

(b) Claim for performance

(c) Claim for damages due to the delay, if the debtor is at fault as to the delay (Art. 343-345 Greek Civil Code)

If the one party (debtor) fails to perform, performance is still possible but the other party (creditor) is not interested in the performance, the latter has the following options (Art. 383-385 Greek Civil Code):

(a) Set a reasonable time limit, within which performance must take place and declare to the debtor that after the lapse of this time-limit he rejects performance.

This step is not necessary when:

- the creditor has no longer interest in performance (e.g. the purpose of the contract cannot be served by a delayed performance),
- a time-limit would be pointless since the debtor would not be able/willing to perform
- the parties have stipulated in the contract that no such time-limit is required

(b) After the above time-limit (if necessary) has expired, the creditor may:

- Seek full compensation for non-performance, if the debtor is at fault as to non-performance or
- Rescind the contract and seek reasonable (reduced) compensation if the debtor is at fault as to non-performance.

If the one party (debtor) fails to perform and performance has become impossible (impossibility), the other party (creditor) has the following options:

(a) If the debtor is not at fault as to the impossibility of performance, both parties are released from their obligations to perform. It must be noted that pecuniary obligations, i.e. obligations to pay money, can never be deemed to have become impossible.

(b) If the debtor is at fault as to the impossibility of performance, the creditor may seek damages for non-performance.

What if the other party fails to abide with contractual obligations other than performance? What remedies are there?

A party that fails to abide with any contractual obligation other than delay or non-performance (e.g. defective performance, personal injury or property damage to the other party etc) is obliged to fully compensate the other party, if at fault.

When is a party at fault? Can contractual liability be limited?

The default rule is that a party is at fault when the breach of contract results from intention or negligence. A person is deemed to act negligently if he does not have regard to the care necessary in common (business) affairs (Art. 330 Greek Civil Code). The parties may define the notion of fault within the contract, thus limiting contractual liability, but they may not exempt any party for intentional or gross negligent breaches of contract (Art. 330 Greek Civil Code 332). Any clause which limits liability for intentional or gross negligent breaches of contract, e.g. clauses which limit liability with respect to the amount of damages, is not enforceable.

Can a party be deemed at fault for employees, affiliates etc?

A party is responsible for the fault of any person who he employs in performing his contractual obligation to the same extent as for his own fault (Art. 334 Greek Civil Code).

A.S. PAPADIMITRIOU & PARTNERS LAW FIRM

367, SYNGROU AVENUE
PAL. FALIRO 175 64 ATHENS

Tel.: +30 210 94 09 960/61/62
Fax: +30 210 94 09 043
E-mail: office@saplegal.gr
Url: www.saplegal.gr

Languages
Greek, English, French

Number of Lawyers: 12

Contact
Mr. Anthony Papadimitriou

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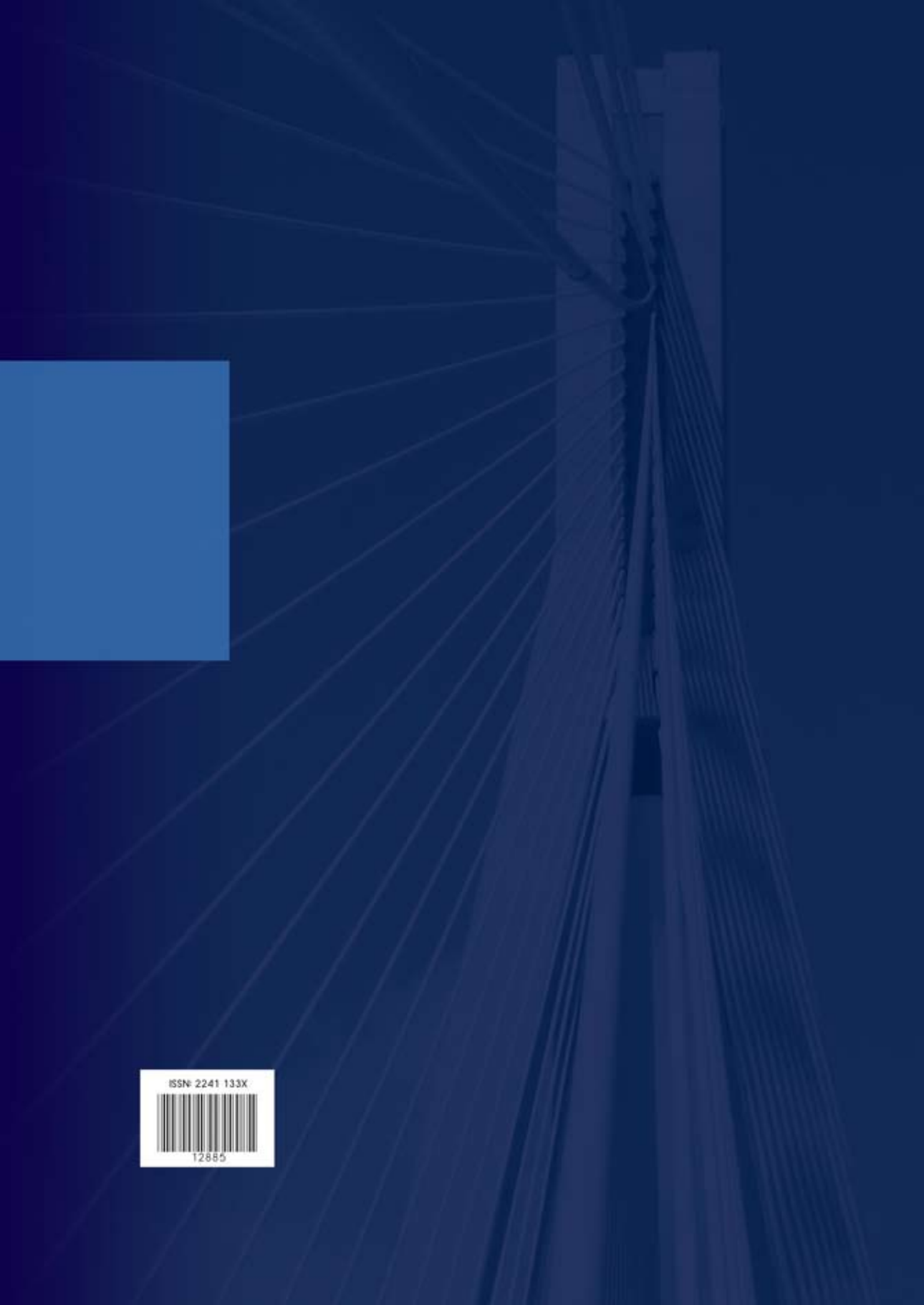

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