



REDIAL PROJECT

National Synthesis Report – Greece

(Draft)

Greek report on the second package of the Return Directive

Articles 12 to 14 RD

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I. Article 12: Procedural safeguards

1. Judicial Interactions with European and national Courts

A. NO, National courts in Greece have not requested for (a) preliminary reference(s) from the CJEU in relation to procedural safeguards and/or principles of good administration in the context of return procedures.

B. YES, Administrative Court of first Instance of Thessaloniki (717/2015) specifically referred to CJEU rulings in its judgment. Particularly, it referred to Mukarubeja and Boudjilida judgments of CJUE. The court underlined that the right to be heard guarantees every person the opportunity to make known his views effectively during an administrative procedure and before the adoption of any decision liable to affect his interests adversely. The Court ordered the Greek authorities to pay due attention to the observations submitted by the person concerned, examining carefully and impartially all the relevant aspects of the individual case and giving a detailed statement of reasons for their decision. However, the Court has not clarified which legal effect should be attributed to them.

C. NO, National courts in Greece have not referred to the ECHR or the EU Charter in relation to the above mentioned issues.

D. NO National courts in Greece have never disregarded/departed from national legislation and or administrative practice on the basis the Return directive or/and the CJEU jurisprudence in order to ensure compliance with Article 12 RD.

E. NO, National courts in Greece have not referred to foreign domestic judgments (European or not) that have dealt with similar issues regarding procedural safeguards.

2. National Jurisprudence: major trends

A. NO, Greek courts do not consider *ex officio* the right to be heard by the administration during the return procedure. They consider the above right only if the TCN complains of violations.

B. What is the national courts approach when standard templates are issued in accordance with Art. 12(2) and (3) for decisions related to return when translation was in fact, available?

N/A

II. Article 13: Remedies

1. Judicial Interactions with European and national Courts

A. NO, National courts in Greece have not requested for (a) preliminary reference(s) from the CJEU in relation to legal remedies in the context of return procedures.

B. NO, Greek courts have not specifically referred to CJEU rulings (or to the provisions of the Return Directive as interpreted by the Court) in their judgments.

C. NO, National courts in Greece have not referred to the ECHR or the EU Charter in relation to the above mentioned issues.

D. NO National courts in Greece have never disregarded/departed from national legislation and or administrative practice on the basis the Return directive or/and the CJEU jurisprudence in order to ensure compliance with Article 13 RD.

E. NO, National courts in Greece have not referred to foreign domestic judgments (European or not) that have dealt with similar issues regarding legal/judicial remedies.

2. National Jurisprudence: major trends in the Courts' approach

A. Art. 28 of Law 3907/2011 provides that “Third-country nationals may appeal against the return decisions issued by police authorities, as stipulated in article 77, Law 3386/2005. Third-country nationals may also appeal against return decisions incorporated in decisions rejecting provision or renewal of residence permit, as well as in decision revoking an already existing residence permit to a third-country national, according to article 24, Greek Administrative Procedure Code”. Thus, “Decisions related to return” include return decisions, decisions on voluntary departure period as well as extension of such period, decisions on postponement of removal, decisions on entry bans as well as on suspension or withdrawal of entry ban, detention decisions as well as prolongation of detention. Removal decisions are not considered *per se* “decisions related to return”, because there are incorporated in other decisions (i.e. return decisions) and constitute part of them. However, they are controlled by the Court as part of the above decisions.

B. NO, Greek courts have never applied different or alternative legal remedies, than those provided by the domestic implementing legislation (Law 3907/2011), in order to ensure effective protection of the EU Return Directive procedural safeguards and/or EU fundamental rights of the individual.

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C. When the administration did not give reasons for its decisions, the court annuls the decision and refers the matter to a new decision of the competent administrative authority. When the administration did not pay due attention to the observations by the person concerned, the court does not annul always the decision, but it orders the administrative authority to hear the person concerned and then to proceed to a new decision. But until the issuance of a new decision, the court suspends the return of the alien.

D. NO Greek courts do not explicitly refer to considerations and objectives of efficiency/effectiveness of the return procedures when considering legal remedies and weighing the interests at stake.

Only one decision (Court of Thessaloniki 717/2015) referred to considerations and objectives of efficiency/effectiveness of the Directive 2008/114 in order to justify its option not to annul the return decision which would result that the TCN stay in the territory without any legal permit, but to order the administrative authority to hear the person concerned and to suspend the return until the issuance of a new decision.

E. Yes, Greek courts afford free legal assistance for irregular migrants within the judicial phase of the return procedure. The Court examines the economic situation of the applicant and accepts the demand only if its annual income during last years is very low.

To my personal legal opinion the lack of free legal assistance could be a legitimate reason for quashing the judgment of the first instance within the appeal procedure.

F. No, Greek courts have never considered the availability of interpreters as one of the factors which affect the accessibility of an effective remedy.

G. In all cases it is possible to submit an appeal before a administrative court. An appeal before the hierarchical superior administrative authorities shall not be considered an effective legal remedy within the meaning of Article 13(1) RD and the right of every person to receive legal protection by the courts which is guaranteed by the Greek Constitution.

III. Article 14: Safeguards pending return

1. Judicial Interactions with European and national Courts

A. NO, National courts in Greece have not requested for (a) preliminary reference(s) from the CJEU in relation to safeguards pending return.

B. NO, Greek courts have not specifically referred to CJEU rulings (or to the provisions of the Return Directive as interpreted by the Court) in their judgments.

C. NO, National courts in Greece have not referred to the ECHR or the EU Charter in relation to the above mentioned issues.

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D. NO National courts in Greece have never disregarded/departed from national legislation and or administrative practice on the basis the Return directive or/and the CJEU jurisprudence in order to ensure compliance with Article 14 RD.

E. NO, National courts in Greece have not referred to foreign domestic judgments (European or not) that have dealt with similar issues regarding legal/judicial remedies.

2. National Jurisprudence: major trends in the Courts' approach

A. Pursuant to Art 29 of Law 3907/2011 “1.Throughout the period of third-country national’s voluntary return, as provided according to article 22 and within the period that the return is postponed, according to the article 24, the relevant competent authorities shall mind for taking the respective measures in order to: a) safeguard the third country national’s family integrity within his/her family members established in Greece, b) safeguard minors’ access to compulsory education, accordingly to their term of stay, according to article 72, Law 3386/2005, c) provide emergency health care and essential treatment of illness, according to article 84, par. 1, Law 3386/2005 and d) take into consideration all special needs of vulnerable persons”. There is no jurisprudence concerning the interpretation of the above terms.

The Court (Administrative Court of first Instance of Thessaloniki 299/2015) has taken into account of the best interests of the children of the applicant, in order to suspend the enforcement of the return for some months in order to permit to minors to complete their studies in the class of the primary school for the school year.

B. NO, national courts do not explicitly refer to considerations and objectives of efficiency/effectiveness of the return procedures when considering safeguards pending return and weighing the interests at stake.