REDIAL PROJECT

National Synthesis Report – Greece

(Draft)

TEMPLATE FOR THE NATIONAL REPORTS ON THE THIRD PACKAGE OF THE RETURN DIRECTIVE – Articles 15 to 18 RD

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Please consider that the questions below do not represent an exhaustive list of issues raised by these provisions but mainly offer a starting point for research and greatly facilitate our subsequent comparative analysis. The jurisprudence to be considered should be primarily the one submitted by the national judge collaborating in the REDIAL Project. Any other jurisprudence which does not touch precisely on these issues might be included in your report, as long as it is relevant for the interpretation/implementation of Articles 15-18 of Chapter IV of the Return Directive. (See in this regard the REDIAL Annotated Return Directive covering both the ECtHR and CJEU relevant case law)

When applicable, please also refer to any relevant administrative practice or on-going legislative changes at national level relating to pre-removal detention.

1. Article 15 RD: detention

a. Competent authorities ordering and reviewing pre-removal detention

Q1. In your Member State, are judicial authorities involved at the initial stage of the detention measure? (*E.g. by endorsing a detention order or ordering pre-removal detention upon request of the administration)*

NO, in Greece judicial authorities are not involved at the initial stage of the detention measure

Q2. Which authority is competent for controlling the lawfulness of a pre-removal detention measure?

Administrative courts of first instance, composed of one judge are competent for controlling the lawfulness of a pre-removal detention measure.

Is it the same authority regardless of the length of the detention and/or the issuance of an explicit renewal order?

YES

Q3. Is the judicial review performed in accordance with Article 15 (3) RD automatic or upon applicant's request?

NO, Greek courts do not control *ex officio* the lawfulness of a pre-removal detention measure. They

consider the case only if the TCN complains of violations.

However detention is *ex officio* reviewed, every three months, by the authority that issued the detention decision. In the case of prolonged detention period, the relevant decision shall be forwarded to the President or the local first instance judge of the competent first instance court who shall decide on the legality of detention prolongation

Q4. Does your national legislation provide for one or two levels of jurisdiction and under which modalities? (*E.g. a first review by an administrative authority followed by an administrative court and/or a civil or criminal court?)*

The retention measure is issued by the competent police authority. The third-country national may appeal against the return decision issued by police authorities before the first instance administrative court. The TCN may not appeal against the decision of the first instance court. He is entitled however to request the revocation of the decision at any time only providing substantial new evidence that either arose after the issue of the first decision or that could not be originally produced.

Q5. In first instance, do national courts in your Member State *fully* control the legal and factual elements of the case when reviewing the lawfulness of a pre-removal detention measure? Or is the control limited to manifest error of assessment made by the ordering authority? (*E.g.* Mahdi, C-146/14)

In first instance, national courts fully control the legal and factual elements of the case when reviewing the lawfulness of a pre-removal detention measure or of its prolongation

Q6. Does the judge control *ex officio* all/some elements of lawfulness of the detention irrespective of the arguments of the parties?

YES

Detention is *ex officio* reviewed, every three months, by the authority that issued the detention decision. In the case of prolonged detention period, the relevant decision shall be forwarded to the president or the local first instance judge of the competent first instance court who shall decide on the legality of detention prolongation.

Q7. Please elaborate on any differences in the control of lawfulness of detention between the first and the second levels of jurisdiction

There is only one level of jurisdiction, see also Q4

b. Judicial Interactions with European and national Courts

Q1. Did national courts in your country request for (a) preliminary reference(s) from the CJEU in relation to detention in the context of the return procedures?

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

Q2. Did national courts specifically refer to CJEU rulings (or to the provisions of the Return Directive as interpreted by the Court) in their judgments on administrative detention?

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 on administrative detention**.**

Q3. Did national courts refer to the ECHR or the EU Charter in relation to pre-removal detention?

YES, Greek courts have referred to the ECHR in relation to the above mentioned issues: The Judge of the Administrative Court of Corinth (92/2013) referred to the ECHR and to cases Ahmade v. Greece, Bygylashvili v. Greece, Kudla v. Poland concerning vulnerable TCN due to their health situation and to cases Lin v. Greece, Ananyev v. Russia concerning detention conditions.

Q4. Have national courts ever 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 15 RD?

Pursuant to Greek legislation (Art. 30 par. 1 of Law 3907/2011) the detention measure shall apply also when grounds of national security occur. The majority of the Greek courts accepts this ground as a condition for detention. However, there are judgments which do not accept this ground as a condition, but only as a criterion to be taken into account for deciding whether there is a risk of absconding.

Q5. Did national courts refer to foreign domestic judgments (European or not) that have dealt with similar issues regarding detention?

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

c. National case-law: major trends

Q1. Is detention under the Return Directive considered to be a measure impeding – depriving – of freedom of movement and/or the right to liberty?

YES, detention under the Return Directive considered to be a measure impeding – depriving – of freedom of movement and/or the right to liberty.

Have the Highest Courts from your Member State already opined on this issue?

The Highest Courts from Greece have not already opined on this issue. Nevertheless, detention under the Return Directive, to my opinion, will be considered to be a measure impeding – depriving – of freedom of movement and/or the right to liberty.

Q2. Do national courts controlling the lawfulness of the **detention** in your Member State also control the lawfulness of the very **return** decision? E.g. Have there been decisions striking down detention measures due to the unlawfulness of the return decision?

NO, national courts controlling the lawfulness of the detention in Greece do not also control the lawfulness of the return decision.

Q3. Do national courts reviewing the lawfulness of the detention order also assess whether a **reasonable prospect of removal** exist? (*E.g.* even from the outset when controlling the initial detention order, see *Kadzoev* para. 63-68)

YES

Pursuant Art. 30 par. 4 of Law 3907/2011 when it appears that a reasonable prospect of removal no longer exists for legal or other considerations or the conditions for the detention no longer exist, detention ceases to be justified and the person concerned shall be released immediately

If yes: what legal or other considerations are interpreted by the courts as making the removal unlikely*?*

Lack of due diligence, lack of resources (human and material), conduct of the TCN concerned, especially if the latter refuses the cooperation which is indispensable for the issuance of relevant documentation by the State of return, *non-refoulement* in a broad sense, best interest of the child, family life, the state of health of the third Member State national concerned and individual considerations are interpreted by the courts as making the removal unlikely

Q3B. When considering the factors above, the courts: do not limit their assessment to an abstract or theoretical possibility of removal but they require clear information on its timetabling.

Greek courts sometimes but not always require clear information on its timetabling possibility of removal.

Q4. How do national courts controlling the lawfulness of pre-removal detention in your country assess the notion of **'avoiding or hampering the preparation of return or the removal process'?**

The judge of administrative Court of Piraeus (1059/2012) did not approve the extension decision for the detention of the third country national because the act of the administration did not cite the specific actions that had been done for the removal of the third country national from the country or any information indicating a refusal to cooperate with the authorities for his removal from the country.

However, courts often reject the allegation of unfeasible return due to lack of travel or other declaratory of nationality documents.

Q5. How do national courts controlling the lawfulness of pre-removal detention in your country assess the notion **'risk of absconding'?**

Does it go beyond the beyond the mere fact of an illegal stay or entry? (ECJ, *Achughbabian)*

YES, Greek Courts go beyond the beyond the mere fact of an illegal stay or entry. There is a risk of absconding when there is lack of travel documents or non-compliance of the TCN with a previous decision on his departure from the country or reasons of public order (previous conduct of TCN)

Q6. Does your Member State's <u>legislation</u> define objective criteria based on which the existence of a risk of absconding can be assumed?

NO

Greek legislation has not defined objective criteria based on which the existence of a risk of absconding can be assumed

If not:

- Can the criterion of a risk of absconding still be invoked as a ground of detention? How do the courts interpret this notion?

Pursuant Art. 30 par. 1 of Law 3907/2011 the detention measure shall apply when there is risk of absconding. The Courts accept that there is such a risk since there are no travel or other documents to prove the identity, when there is not sufficient proof of stable and permanent residence in the Country and when a imprisonment was imposed against him taking account the type of the crime, the nature and severity the sentence imposed against him and its recent commission

- To what extent are individual situation and individual circumstances taken into consideration by the judge when establishing whether there is a risk of absconding?

Yes, individual situation and individual circumstances shall be taken into consideration by the judge when establishing whether there is a risk of absconding

- Are there on-going legislative initiatives for the amendment of the law on this issue?

No, there are not on-going legislative initiatives for the amendment of the law on this issue.

Q7. Apart from these two grounds, does either your Member State's legislation, administrative practice or the relevant case law allow any other ground of detention?

YES, pursuant Art. 30 par. 1 of Law 3907/2011 the detention measure shall also apply when grounds of national security occur.

Q8. Does your Member State's legislation (and/or practice) provide for alternatives to detention?

YES

Pursuant Art. 30 par. 1 and Art 22 par. 3 of Law 3907/2011, the third-country nationals who are subject to return procedures,, shall be detained for their return preparation and enforcement of the removal procedure, unless other sufficient but less coercive measures can be implemented in a specific case, such as regular reporting to the authorities, deposit of an adequate financial guarantee, submission of documents or the obligation to stay at a certain place.

Q9. Are decision-making authorities obliged to consider **alternatives measures** before resorting to detention?

YES, see Q7

Q10. How do national courts control whether the administrative authorities lawfully considered alternative measures before ordering detention measures? Is the review limited to manifest error of appreciation? Can they perform a wider control, including substituting their own discretion to that of decision-making authority based on the necessity of respecting the principle of proportionality? (ECJ, *Arslan, El Dridi*)

Greek courts control whether the administrative authorities lawfully considered alternative measures before ordering detention measures and perform a wider control, including substituting their own discretion to that of decision-making authority based on the necessity of respecting the principle of proportionality

Q11. How is the requirement **'as short as possible'** interpreted by national courts in your Member State? Are time-periods fixed by national law or is the length of detention (necessary for removing the TCN) determined in each particular case?

Pursuant Art. 30 of Law 3907/2011, the detention shall be imposed and maintained for the shortest period possible. Detention shall be maintained for as long a period as the conditions provided by the Law are fulfilled and it is necessary to ensure successful removal. Maximum period of detention may not exceed six months. This period shall not be extended except for a limited period not exceeding a further twelve months in cases where, regardless of all their reasonable efforts, the removal operation is likely to last longer owing to: (a) lack of cooperation by the third-country national concerned, or (b) delays in obtaining the necessary documentation from third countries.

What is the duration of initial detention in your Member State?

Maximum period of detention may not exceed six months

The detention starts according to jurisprudence at the date of the actual placement in detention.

Q12. How do national courts control the **'due diligence'** of the competent authorities when carrying out the removal process?

The failure to complete the process to determine the nationality of the applicant within the quarter in which he was detained, was not considered as an infringement of due diligence by the competent bodies (Piraeus 92/2013)

However, the extension decision for the detention of the third country national was not approved because the act of the administration did not cite the specific actions that had been done for the removal of the third country national from the country (Court of Piraeus 1059/2012)

Do they perform a full or a limited control to manifest error of assessment?

They perform a limited control to manifest error of assessment.

Q13. Does the period when asylum proceedings are pending have any impact on calculating the length of detention? (See *Kadzoev* or *Arslan*)

When asylum proceedings are pending the TCN is not detained. The period when asylum proceedings are pending have not any impact on calculating the length of detention.

Q14. In which circumstances may competent authorities decide to extend the initial period of detention (i.e. beyond 6 months according to RD)? Do they proceed with a new assessment of the grounds justifying detention (e.g. a continuing risk of absconding of the detainee)

See Q10

Q15. In your Member State, when Judges declare the detention unlawful, does it lead to immediate release of the applicant? Is release from detention the only remedy provided by the law for unlawful detention?

YES, pursuant Art. 30 par. 4 of Law 3907/2011 when it appears that a reasonable prospect of removal no longer exists for legal or other considerations detention ceases to be justified and the person concerned shall be released immediately. Nevertheless the Court may provide other alternative measures.

Q16. After being released, can the detainee be re-detained and under which circumstances?

The detainee can be re-detained after being released but taking account new facts. The detainee cannot be retained due to the fact that he continues staying illegally in Greece.

Q17. Please provide a short description of the system of legal aid for pre-removal detainees in your Member State.

Pursuant Art. 28 par. 3 and 4 of Law 3907/2011 the authorities which are competent for foreigners' issues shall provide information and any possible assistance to third-country nationals who request legal consulting, legal representation and linguistic assistance, in order to exercise his/her rights expressed herein. Required legal assistance and representation shall be provided free of charge, upon request.

2. Article 16 RD: conditions of detention

a. National jurisprudence: major trends

Q1. Does your national legislation provide for the use of specific detention facilities? (as foreseen as a general rule by the Return Directive – ECJ, *Bero, Bouzalmate*) Who are the persons detained in such facilities?

YES, pursuant Art. 31 par. 1 of Law 3907/2011 detention shall take place as a rule in specialised detention facilities. In any case, the third-country nationals in detention shall be kept separated from ordinary prisoners.

Please elaborate further, including the practice in your Member State

Yes, there were in Greece detention centres, like this one of Amygdaleza in Attica.

Q2. In case irregular third-countries nationals are detained in prisons, are they separated from ordinary prisoners as required by the RD? In all circumstances? (ECJ, *Pham*)

YES, see Q1

Q3. Which material conditions and particular safeguards are ensured during the detention period? (*e.g.* vulnerable people, hygiene and health care, clothing, external contacts with family members, visits from legal representatives, access to information, education, activities etc. – *Suso Musa v. Malta*, Appl. 42337/12, 23 July 2013; *Ahmed v. Malta*, Appl. 55352/12, 23 July 2013; *Popov v. France*, Appl. 39472/07 39474/07, 19 January 2012)

YES, pursuant Art. 31 par. 3 of Law 3907/2011 emergency health care and essential treatment of illness shall be provided to third-country nationals in detention. Particular attention shall be paid to the situation of vulnerable persons.

How is it applied in practice? Do issues concerning the correct implementation of Article 16 RD and respect of human rights have arisen in practice?

Q4. Can exceptional circumstances justify the use of extraordinary places and conditions of detention for irregular migrants? (See *e.g.* a refugee crisis, state of emergency etc. ECtHR, *Khlaifia v. Italy*, 16483/12)

No, exceptional circumstances cannot justify the use of extraordinary places and conditions of

detention for irregular migrants

Q5. Do national courts assess of their own motion the lawfulness of the detention conditions or only following an individual application?

National courts assess the lawfulness of the detention conditions only following an individual application.

Q6. In your Member State, have there been judgments striking down detention measures based on conditions of detention?

No, only some decisions examine the detention conditions.

b. Judicial Interactions with European and national Courts

Q1. Did national courts in your country request for (a) preliminary reference(s) from the CJEU in relation to the place and conditions of detention in the context of return?

NO, Greek courts have not requested for (a) preliminary reference(s) from the CJEU in relation to the place and conditions of detention in the context of return.

Q2. Did national courts specifically refer to CJEU rulings (or to the provisions of the Return Directive as interpreted by the Court) in their judgments on Article 16 RD?

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 on Article 16 RD.

Q3. Did national courts refer to the ECHR or the EU Charter in relation to the conditions of detention?

YES, Greek courts have referred to the ECHR in relation to the above mentioned issues. The Judge of the Administrative Court of Corinth (92/2013) referred to the ECHR and to cases Ahmade v. Greece, Bygylashvili v. Greece, Kudla V. Poland concerning vulnerable TCN due to their health situation and to cases Lin v. Greece. Ananyev v. Russia concerning detention conditions.

Q4. Have national courts ever 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 16 RD?

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 16 RD.

Q5. Did national courts refer to foreign domestic judgments (European or not) that have dealt with similar issues?

NO, national courts in Greece have not referred to foreign domestic judgments (European or not) that have dealt with similar issues.

3. Article 17: detention of (unaccompanied) minors and families

Q1. Is there national jurisprudence on the implementation of Article 17 of the Return Directive?

NO, there is no national jurisprudence on the implementation of Article 17 of the Return Directive.

Q2. Do national courts refer to the ECHR (Article 8); the EU Charter (Articles 7 and 24); Article 3 of the UN Convention on the Rights of Children in relation to the conditions of detention for families and minors?

NO

Q3. How is **'the best interest of the child'** interpreted by national courts in the context of detention of minors and families? Is it considered by the courts as a primary consideration?

N/A

In this regard, please mention whether Article 24 of the EU Charter is cited by national courts and if a direct legal effect is recognised to this Article?

N/A

Q4. Have national courts ever 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 17 RD?

NO

Q5. Did national courts refer to foreign domestic judgments (European or not) that have dealt with similar issues?

NO

Q6. Do the courts (or any other competent authority) supervise and control places and detention for family and children more specifically than for other TCNs detained for the same purpose?

NO

4. Article 18: Emergency situations

Q1. Has the national legislation implementing Article 18 RD – or Article 18 as such – been activated in your Member State?

NO, Art 33 of Law 3907/2011 implementing Article 18 RD has not been activated in Greece.

General remarks and transversal issues

Q1. Have national courts ever addressed/clarified the scope of application of pre-removal detention – in comparison with initial police custody, imprisonment under criminal law, detention in the context of asylum procedures etc.?

Greek courts have never clarified the scope of application of pre-removal detention – in comparison with initial police custody, imprisonment under criminal law, detention in the context of asylum procedures.

Q2. Had the implementation of the Return Directive brought any changes in adjudicating the issues relating to lawfulness of immigration detention, alternatives to detention, access to national courts, effective legal/judicial remedies and legal aid etc.?

Yes, the implementation of the Directive has brought changes concerning alternatives to detention, duration of the detention, *ex officio* control of its prolongation and control of conditions during detention

Q3. Has the Return Directive and/or European jurisprudence impacted on the division of competences between the administration and national judiciaries? What about the relation between the different levels of the judiciaries?

No, the Return Directive and/or European jurisprudence have not impacted on the division of competences between the administration and national judiciaries.

Q4. According to you, what are the remaining major issues in the judicial implementation of the Return Directive when it comes to detention? Consider, for instance, the effective return procedures; protection of human rights of TCNs subject to the Return Directive etc.

The remaining major issue is the protection of human rights of TCNs subject to the Return Directive.

The implementation of Directive 2008/115 in Greek legal system

The Directive 2008/115/EC was implemented into the Greek legal order by articles 16 to 33 of Law 3907/2011 'Establishment of an Asylum Service and a First Reception Service, adaptation of the Greek legislation to the provisions of Directive 2008/115/EC "with regard to the common rules and procedures in Member States for the return of illegally staying third-country nationals" and other provisions.' (Gazette A΄ 7/26 January 2011). More particularly, Art. 15-18 of the Directive have been implemented by Art 30-33 of Law 3907/2011.

1. The detention

Art. 30 of Law 3907/2011 implementing Directive 2008/115 provides the necessary guaranties concerning return detention. The third-country nationals who are subject to return procedures shall be detained for their return preparation and enforcement of the removal procedure, unless other sufficient but less coercive measures can be implemented in a specific case. The detention measure shall apply when: a) there is risk of absconding or b) when the third-country national concerned avoids or hampers the preparation of return or the removal process or c) grounds of national security occur. Therefore, Greek legislation allows the detention not only on the two grounds provided in the Directive, but also when grounds of national security occur.

The detention shall be imposed and maintained for the shortest period possible, as long as removal arrangements are in progress and executed with due diligence. In any case, the availability of suitable detention facilities and the ability to guarantee decent living conditions for detainees shall be taken into consideration when imposing or pursuing the measure of detention.

The grounds for detention

Risk of absconding

Greek Courts go beyond the mere fact of an illegal stay or entry. There is a risk of absconding when there is lack of travel documents, not sufficient proof of stable and permanent residence or non-compliance with a previous decision on departure from the country or reasons of public order (previous conduct of the TCN).

The Courts accept, firstly, that there is such a risk when there are no travel or other documents to prove the identity. In the first case (Administrative Court of first Instance of Korinthos 92/2013) the Court held that the applicant is suspected of absconding and that, if released, it is likely that he takes action to hamper or to prevent the execution of a return decision, since there are no travel or other documents to prove his identity. By the decision no. 887/22.06.2011 of the President of the Piraeus Administrative Court the decision of the Police Authority to extend the detention of the third country national was approved, since there was still a risk of absconding primarily due to lack of travel documents.

The Courts accept also that there is such a risk when there is not sufficient proof of stable and permanent residence in Greece. The Administrative Court of first Instance of Korinthos, in its decision no 92/2013, held that the statement of the Free Syrian Expatriates of Greece Association that he will be temporarily hosted is not sufficient proof of stable and permanent residence in the Country. The President of the Thessaloniki Administrative Court (decision no 127/2013) has considered that the applicant did not state, as he was obliged, when submitting his application for recognition as a political refugee, the place of residence or stay and considered that there is a risk of absconding (In the same way President of the Lamia Administrative Court 2/2015).

The Courts accept also that there is such a risk of absconding, when an imprisonment was imposed against the TCN, taking into account the type of the crime, the nature and severity of the sentence imposed against him and its recent commission. In this way, the President of the Nafplio Administrative Court (Decision no 1/2016) having considered the type of the crime (drug trafficking), the nature and severity of it, the sentence imposed against him (imprisonment of 8 years and 2 months) and its recent commission (from 20 April 2014 to 1 July 2014), concluded that there was a risk of

absconding of the applicant for the reason that if the detention was lifted, there would be a risk of preventing the execution of the above return decision.

Finally, the Courts accept also that there is such a risk of absconding when the applicant did not cooperate with the authorities. The decision of the Police Authority to extend the detention of the third country national was approved, since there was still a risk of absconding primarily due to non-compliance with a previous decision on his departure from the country (Decision no. 887/22 June 2011 of the President of the Piraeus Administrative Court. In the same way President of the Lamia Administrative Court 2/2015). Due to the fact that the applicant did not cooperate with the authorities for the processing of his application the President of the Thessaloniki Administrative Court decided that the detention was lawful (Decision no. 127/2013).

Unfeasible return

Art. 30 par. 4 of Law 3907/2011 provides that when it appears that a reasonable prospect of removal no longer exists for legal or other considerations, detention ceases to be justified.

Greek courts often reject the allegation of unfeasible return due to lack of travel or other declaratory of nationality documents. The Administrative Court of first Instance of Korinthos, in its decision no 92/2013, rejected the allegation of unfeasible return because, due to lack of travel or other declaratory of nationality documents, there was no proof of its Syrian nationality. Finally, the Judge having considered that: a) a meeting request has been submitted by the Police Authority to the Consul of Syria to determine the nationality of the applicant b) there is no Syrian embassy in Greek territory, with the nearest being that of Bucharest in Romania, delaying the entire process, c) the time of the applicant's detention not exceeding three months and, considering the large number of relevant cases that are pending for processing before the competent administrative authorities, held firstly, that the failure to complete the process to determine the nationality of the applicant within the quarter in which he was detained, is not considered an infringement of due diligence by the competent bodies, and secondly, that the duration of detention of the applicant does not exceed the reasonable period that is necessary to achieve the intended objective.

The judge of administrative Court of Piraeus (decision no 1059/2012) did not approve the extension decision for the detention of the third-country national because the act of the administration did not cite the specific actions that had been done for the removal of the third country national from the country or any information indicating a refusal to cooperate with the authorities for his removal from the country.

The duration of the detention

Pursuant to Art. 30 of Law 3907/2011, the detention shall be imposed and maintained for the shortest period possible. Detention shall be maintained for as long a period as the conditions provided by the Law are fulfilled and it is necessary to ensure successful removal. Maximum period of detention may not exceed six months. This period shall not be extended except for a limited period not exceeding a further twelve months in cases where, regardless of all their reasonable efforts, the removal operation is likely to last longer owing to: (a) lack of cooperation by the third-country national concerned, or (b) delays in obtaining the necessary documentation from third countries. When it appears that a reasonable prospect of removal no longer exists for legal or other considerations or the conditions laid down by Law no longer exist, detention ceases to be justified and the person concerned shall be released immediately.

The opinion of State Legal Council (no 44/2014) that accepted the legality of 'indefinite detention' beyond the 18 month maximum time-limit until the TCN cooperates for its 'voluntary repatriation', is no more applied by Greek authorities and Greek courts.

The Administrative Court of first Instance of Piraeus, in its decision no1059/2012, after taking into account that, from the date of the initial detention of the applicant, had elapsed more than eighteen (18) months during which the applicant was detained continuously, considered that the measure of compulsory residence to the place where he was detained, which was imposed against him by the

decision of the Police Director, as a measure equivalent to the continuation of the detention, is not legal and should be lifted.

The detainee can be re-detained after being released but only by taking into account new facts. The detainee cannot be retained due to the fact that he continues staying illegally in Greece. The Administrative Court of first Instance of Corinth (2014) took into account that the applicant's detention lasted eighteen (18) months, surpassing the maximum permissible time limit without his removal taking place and considered that the renewed detention of the third country national in execution of the new return decision, based on the same grounds, without any change to the facts, and without indication that the absolute feasibility of his immediate removal from the country has been ensured, is unlawful and ordered the lifting of his detention.

However, after the end of the maximum period of detention it is not to be excluded that the Court orders the TCN to respect other alternative measures such as regular reporting to the authorities, deposit of an adequate financial guarantee, submission of documents or the obligation to stay at a certain place.

The Administrative Court of first Instance of Corinth (2014) given that the competent authorities may take alternative measures against the applicant so as to ensure execution of the return decision, ordered the applicant to appear at the local police station of his place of declared residence on the 1st, 11th and 21st of each month. Finally, the Administrative Court of first Instance of Piraeus (decision no 1059/2012) decided that, in order to avoid the applicant's absconding risk, he must appear once per week on a day to be set by the Police Directorate, at the police department of his place of residence which should be declared, and gave the applicant a deadline of 30 days to leave the country.

The extension of the detention

As mentioned above, the maximum period of detention may not exceed six months. This period shall not be extended except for a limited period not exceeding a further twelve months. The detention shall be *ex officio* reviewed, every three months, by the authority that issued the detention decision. In the case of prolonged detention period, the relevant decision shall be forwarded to the president or the local first instance judge of the competent first instance court, who shall decide on the legality of detention prolongation, and shall immediately issue his judgment.

The Administrative Court of first Instance of Piraeus (decision no 1059/2012) did not approve the extension decision for the detention of the third country national because the act of the administration did not cite the specific actions that had been done for the removal of the third country national from the country or any information indicating a refusal to cooperate with the authorities for his removal from the country.

2. The control of the detention decision

Art. 30 of Law 3907/2011 provides that the detention decision shall be actually and legally justified, issued in writing and if no return decision has been issued, the detention decision shall be issued within three (3) days. The detained third-country national, in parallel to his rights provided by the Greek Administrative Procedure Code, may object to the detention decision or the detention extension before the president or the local first instance judge of the competent administrative first instance court. The decision on the objection application may be revoked, upon the interested party's request, in the event that the revocation application is based on new evidence, according to article 205 par.5, of the Greek Administrative Procedure Code. The third-country national shall be immediately informed on his/her rights (hereunder) and shall be immediately released if found that his/her detention is illegal.

It provides also that in any case, detention shall be *ex officio* reviewed, every three months, by the authority that issued the detention decision. In the case of prolonged detention period, the relevant decision shall be forwarded to the president or the local first instance judge of the competent first instance court who shall decide on the legality of detention prolongation, and shall immediately issue

his judgment, briefly expressed in the respective minutes, a copy of which shall be promptly submitted to the competent police authority.

When it appears that a reasonable prospect of removal no longer exists for legal or other considerations or the conditions laid down by the Law no longer exist, detention ceases to be justified and the person concerned shall be released immediately. The Administrative Court of first Instance of Piraeus 1059/2012 after taking into account that from the date of the initial detention of the applicant had elapsed more than eighteen (18) months during which the applicant was detained continuously, he considered that the measure of compulsory residence to the place where he was detained, which was imposed against him by the decision of the Police Director, as a measure equivalent to the continuation of the detention is not legal and should be lifted.

The alternative measures

Pursuant to Art. 30 par. 1 and Art 22 par. 3 of Law 3907/2011, the third-country nationals who are subject to return procedures, shall be detained for their return preparation and enforcement of the removal procedure, unless other sufficient but less coercive measures can be implemented in a specific case. Such alternative measures are regular reporting to the authorities, deposit of an adequate financial guarantee, submission of documents or the obligation to stay at a certain place.

Greek Courts often adopt alternative measures instead of detention or after the end of the maximum period of detention in order to avoid the risk of absconding. The Judge of the Administrative Court of first Instance of Athens (decision no 3114/2014) decided, that, in order to avoid the applicant's absconding risk, he must appear once per week on a day to be set by the Police Directorate, at the police department of his place of residence which should be declared, and he gave the applicant a deadline of 30 days to leave the country.

The Judge of the Administrative Court of first Instance of Athens (decision no. 3080/2014) considered, primarily in view of the minority of the third country national, that further detention is not justified and that he should be released on the condition to reside in the Unaccompanied Minors Center for asylum seekers in Agria of Volos to which he will be transferred to the responsibility of the above NGO.

In the same way, the Judge of the Administrative Court of first Instance of Korinth (2014) ordered the applicant to appear at the local police station of his place of declared residence on the 1st, 11th and 21st of each month to ensure execution of the return decision.

Finally, the Judge of the Administrative Court of first Instance of Athens (decision no 406/2015) taking into account the health condition of the applicant decided that a further extension of his detention is not justified and accepted his request under the following conditions: 1) to submit within fifteen (15) days from his release from the place where he is detained an international protection request and 2) to appear twice per month, in days and hours to be appointed by the police authority, at the nearest to his place of residence police station.

3. The conditions of detention

Art. 31 of Law 3907/2011 provides also that detention shall take place as a rule in specialized detention facilities. In any case, the third-country nationals in detention shall be kept separated from ordinary prisoners. Third-country nationals in detention shall be allowed – on request – to establish in due time contact with their legal representatives, family members and competent consular authorities.

Emergency health care and essential treatment of illness shall be provided to third-country nationals in detention. Particular attention shall be paid to the situation of vulnerable persons. Relevant and competent national, international and non-governmental organizations and bodies shall have the possibility to visit detention facilities, as referred to in paragraph 1, to the extent that they are being used for detaining third-country nationals in accordance with this Chapter. Such visits shall be subject to authorization by the police authority which is competent for guarding the respective detention facility.

Some court decisions examine the detention conditions. However this issue is of major importance, as Greek courts are rather reticent to strike down detention measures based on conditions of detention. The Administrative Court of first Instance of Thessaloniki (decision no 6/2013) rejected the applicant's claim that he was held under conditions that do not meet the requirements of Article 3 of the European Convention on Human Rights on the grounds that the information supplied by the reports of Amnesty International concerning the detention area at the Athens International Airport were not in recent and therefore could not be taken into account. The Administrative Court of first Instance of Korinthos (decision no 92/2013) has demanded a report on the conditions of detention. The Court having assessed the content of this report presented, and further noting that the applicant did not indicate a health issue that required special care, considered that the conditions of this detention as described in the report and not been contradictory to similar information coming from relevant and time appropriate reports of international organizations, non-governmental organizations or other independent authorities, are compatible with respect for human dignity and do not exceed the unavoidable level of discomfort inherent to any custodial measure and that his health and wellbeing are ensured in an appropriate manner.

Art. 32 of Law 3907/2011 provides that unaccompanied minors and families with minors shall only be detained as a measure of last resort, only if other sufficient but less coercive measures may not apply, and for the shortest appropriate period of time. Families detained pending removal shall be provided with separate accommodation guaranteeing adequate privacy. Minors in detention shall have the possibility to engage in leisure activities, including play and recreational activities appropriate to their age, and shall have, depending on the length of their stay, access to education.

Unaccompanied minors shall, as far as possible, be provided with accommodation in institutions recruited and equipped with personnel and facilities which take into account the needs of persons of their age. The best interests of the child shall be a primary consideration in the context of the detention of minors pending removal.

Greek Courts take account if a TCN is a minor or a vulnerable person and usually decide that only alternative measures shall be taken. The Judge of the Administrative Court of first Instance of Athens (decision no 3080/2014) considered that the applicant is a minor and that he is detained for more than six months. Further, he balanced both the harmful consequences that will result from the continuation of his detention in view of his age and, on the other hand, the reasons of public interest concerning the delinquent behavior which, in view of the nature and specific perpetration conditions of the offenses committed, involved reduced demerit. The Judge considered, primarily in view of the minority, that further detention is not justified and that he should be released on the condition to reside in the Unaccompanied Minors Center for asylum seekers in Agria of Volos to which he will be transferred to the responsibility of a NGO.

The Judge of the Administrative Court of first Instance of Athens (decision no 406/2015) took into consideration a) the age of the applicant (19 years old) b) his seven-month detention without having yet been provided with travel documents, a fact for which he has no responsibility c) the medical certificates he submitted, from which serious health problems arise d) its intention to apply for asylum and e) the declaration of his friend that he will accommodate him and he will cover his essential needs. Under these conditions, the Court decided that a further extension of his detention is not justified, and that he can be characterized, in view of his health condition, as a 'vulnerable case' in the sense that his already burdened health is expected to worsen if his (seven-month already) detention continues. Thus, the Court upheld the application under the following conditions: 1) to submit within fifteen (15) days from his release from the place where he is detained an international protection request and 2) to appear two (2) times per month, in days and hours to be appointed by the police authority, at the nearest to his place of residence police station.