

UPDATED

Periodic Country Report: Greece*

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Introduction

The aim of this (first) STREAM Country Report for Greece is to convey information concerning the ways in which judicial authorities in the country have interpreted and applied the different fundamental rights and rule of law standards that – under EU and national law – govern the issuing, validation, recognition, and execution of a European Arrest Warrant [hereafter EAW]. This is done primarily by means of presenting selected decisions by judicial organs entrusted with the execution of EAWs under Greek law, as well as surveying the law and practice of Greek authorities competent to issue EAWs addressed to other EU member States.

As an introductory note, it should be pointed out that the provisions concerning extradition¹ form the bulk of articles concerning judicial assistance in criminal matters contained in the Code of Criminal Procedure². The process for either issuing or executing EAWs, however, is regulated separately, in the context of articles 1-39 of the national Statute transposing the Framework Decision concerning the European Arrest Warrant.³ Articles 1-3 contain provisions of a general nature (applicable to both the issuance and the execution of EAWs); articles 4-8 regulate the issuance of EAWs by Greek authorities; articles 9-29 deal with the execution of EAWs issued by other EU member States. The process followed to either issue or execute an EAW is described in the respective sections of the report (section I with respect to issuing an EAW, and section II with respect to executing an EAW).

* This Report, prepared in the context of the STREAM Research Project, is accompanied by a comprehensive list of decisions issued by Greek judicial authorities (including – but not limited to – those cited infra, which are referenced at the end of the Report). The research team [based at Aristotle University of Thessaloniki] is coordinated by Professor E. Symeonidou-Kastanidou and is also comprised of V. Gounari and Y. Naziris, who were responsible for researching case-law and cataloguing the pertinent decisions.

¹ These provisions are contained in articles 436-457 of the Code of Criminal Procedure. A separate chapter contains the provisions concerning forms of judicial assistance save for extradition (articles 458-461).

² A new Code of Criminal Procedure was enacted in 2019 (Statute No. 4620/2019), including certain modifications to previously applicable provisions concerning extradition.

³ The said piece of legislation was enacted in 2004 (Statute No. 3251/2004). A separate Statute, which was enacted in 2017 (Statute No. 4489/2017), governs the issuance and execution of European Investigation Orders by Greek authorities.

The report attempts to provide an overview of: a) the procedures followed and safeguards afforded by Greek authorities issuing EAWs in Greece, and; b) the treatment of EAWs by Greek judicial authorities entrusted with their execution. The first section aims at addressing the following questions:

- The process followed by Greek authorities in order to issue an EAW and convey it to the competent authorities of the requested EU member State.
- Whether the authority entrusted with the issuance of EAWs on the Greek side can be classified as adequately 'independent', taking into account the pertinent case-law by the ECJ.
- Whether fundamental rights of the requested individual may be deemed to be adequately protected throughout the process followed to issue an EAW by Greek authorities.

In the second section, the case-law selected relates to the following issues:

- Whether the 'independence' (or lack thereof) of the issuing authority has been discussed in view of the execution of EAWs by Greek authorities.
- Whether the principle of 'proportionality' has posed an obstacle to the execution of EAWs by Greek judicial authorities.
- How the concept of 'case-readiness' has been dealt with by Greek judicial authorities, particularly with respect to the length of pre-trial detention.
- The ways in which executing judicial authorities in Greece have attempted to safeguard the fundamental rights of requested individuals, including those related to fair trial considerations.
- The treatment of constitutional pleas by Greek judicial authorities, especially in the context of (mandatory or non-mandatory) grounds of non-execution of an EAW invoked by requested individuals.
- The extent to which the specificity of the Greek criminal law and justice system has affected the execution of EAWs issued by other EU member States.

In the third section, a few remarks are made concerning the key controversies surrounding cooperation through the EAW in Greece, as reflected in the questions raised and the solutions adopted by Greek judicial authorities in the context of the case-law selected and analyzed in Sections I and II. The recapitulation of these questions allows for a broader understanding of the treatment of the principle of mutual recognition by Greek judicial authorities, as well as the application of fundamental rights and rule of law safeguards.

The selection of case-law analyzed in this report reflects the aforementioned considerations.

Section I – Issuing of EAWs: rule of law and fundamental rights considerations

A brief outline of the process followed by Greek authorities to issue an EAW

Under article 4 of Statute No. 3251/2004, the authority entrusted with issuing EAWs in Greece is the Prosecutor for the Court of Appeal. Depending on the type of EAW issued, the initiative for the requested individual's arrest will belong to a different judicial organ. Specifically: (a) in the event of an EAW issued for the purpose of a criminal prosecution, an arrest warrant will typically have been issued by the investigating Judge under article 276 of the Code of Criminal Procedure;⁴ the defendant's arrest will seldom be ordered by a pre-trial chamber (assuming the conditions for arrest are fulfilled subsequent to the investigation stage), or even (in rare cases) by the court which is competent to adjudicate the offense. At all events, no form of deprivation of liberty is permitted prior to the formal pressing of charges;⁵ hence, the 'wanted' individual will have become a defendant, there will be an ongoing prosecution, and the authority having ordered the arrest will be a judicial one in the strict sense; (b) in the event of an EAW issued for the purpose of executing a custodial sentence, a judgment will invariably have been issued by a competent criminal court, convicting the individual. The Office of the Prosecutor of each district is responsible to execute both arrest warrants⁶ and court judgments,⁷ regardless of the defendant's or convict's whereabouts. Provided there is information that the defendant or convict is located abroad (within the territory of an EU member State), the arrest warrant or court judgment, respectively, will be conveyed to the Prosecutor for the Court of Appeal in the district of which lies the *ratione loci* jurisdiction to either (a) adjudicate the offense or (b) execute the sentence, as the case may be. There is a minimum threshold, of course:⁸ an EAW for the purpose of a criminal prosecution may only be issued if the requested act is punishable (under Greek law) with a custodial sentence the upper limit of which is at least twelve months; an EAW for the purpose of executing a custodial sentence (following a criminal conviction) may only be issued if the sentence imposed has a minimum duration of four months. If such threshold is met, the Prosecutor for the Court of Appeal will convey an EAW to the competent authorities of the executing State, attaching all necessary documents.⁹ The EAW contains the information envisaged in article 2 para. 1 of Statute No. 3251/2004,¹⁰ and may include more than one offense.¹¹ The Prosecutor may include a request for the

⁴ Such arrest warrant may be issued either following an unsuccessful attempt by the investigating Judge to summon the defendant (article 270 para. 2 CCP) or even absent prior summoning (see article 271 para. 2 CCP), provided the defendant presents a danger to the community or a flight risk.

⁵ Put differently, a mere suspect is not subject to arrest or detention, regardless of his/her whereabouts, whether he/she presents a flight risk, etc.

⁶ Article 277 para. 1 sec. b CCP.

⁷ Article 549 para. 1 CCP.

⁸ As per article 5 of Statute No. 3251/2004.

⁹ The pertinent formalities are outlined in article 6 of Statute No. 3251/2004.

¹⁰ Such information (tagging article 8 of the Framework Decision) consists in: (a) the identity and nationality of the requested person; (b) the name, address, telephone and fax numbers and e-mail address of the issuing judicial authority; (c) evidence of an enforceable judgment, an arrest warrant or any other enforceable judicial decision having the same effect, coming within the scope of article 4 of the Statute; (d) the nature and legal classification of the offense, particularly in respect of article 5 of the Statute; (e) a description of the circumstances in which the offense was committed, including the time, place and degree of participation in the offense by the requested person; (f) the penalty imposed, if there is a final judgment, or the prescribed scale of penalties for the offense under the law of the issuing Member State; (g) if possible, any other piece of information concerning the offense.

¹¹ Article 2 para. 2 of Statute No. 3251/2004.

seizure of objects in the possession of the requested individual,¹² and/or for the lifting of any applicable privileges or immunities attaching to the individual.¹³

On the requirement of an independent judicial authority

With respect to cases in which Greece is the country issuing the EAW, any question concerning the independence of the judicial authority would hinge on the role (and place) of the Prosecutor in the Greek criminal justice system. As previously mentioned, the authority entrusted with issuing EAWs in Greece is the Prosecutor for the Court of Appeal which has *ratione loci* jurisdiction to either adjudicate the offense or execute the sentence or security measure, as the case may be.¹⁴ Public Prosecutor Offices are structured hierarchically under Greek law,¹⁵ meaning that Prosecutors are subject to orders from their superior prosecutors (retaining freedom as to the expression of their own opinion). Such hierarchical structure, nonetheless, cannot be construed as detracting from the independence of the Prosecutor vis-à-vis the Executive (including the Ministry of Justice), and even Courts.¹⁶ In terms of their status, Prosecutors may be classified as *lato sensu* Judges under Greek law. Accordingly, article 88 of the Constitution, which guarantees the independence of members of the Judiciary, also applies to Prosecutors regardless of rank or placement. As members of the Judiciary, Prosecutors are subject to the same requirements, privileges, and obligations as Judges.

In fact, the role of the Prosecutor is rather significant in handling requests in the context of judicial assistance (unlike other – auxiliary – organs of the Judiciary, which act under the approval of the respective Prosecution's Office). The status of the Public Prosecutor's Office as an independent judicial authority has further been reinforced following the enactment of the new Code of Criminal Procedure (for instance, a provision under article 30 of the former CCP, which used to permit the Minister of Justice to "order" a preliminary examination to a Prosecutor was abolished).¹⁷ Besides, it has already been pointed out that, while the Prosecutor for the Court of Appeal is the competent authority to issue EAWs under Greek law, the 'source' of the arrest warrant will consist in either a court judgment or an arrest warrant (e.g. issued by an investigating judge under article 276 of the CCP) requiring execution.¹⁸ Thus, the Prosecutor will merely copy the requisite information in the pertinent request, thereby ensuring uniformity and efficiency without compromising the authority of the organ requesting the arrest. In any event, it remains to be seen whether other EU jurisdictions will treat the Greek Public Prosecutor's Office as a judicial authority and, if not, whether a possible rejection of Greek requests might lead to a change in the stance of Greek judicial authorities or even reconfiguration of the applicable provisions under domestic law.

¹² Article 7 of Statute No. 3251/2004.

¹³ Article 8 of Statute No. 3251/2004.

¹⁴ Article 4 of Statute No. 3251/2004.

¹⁵ See article 24 of Statute No. 1756/1988.

¹⁶ According to article 27 para. 2 of the Code of Criminal Procedure, the Office of the Public Prosecutor is independent from any other authority, including Courts.

¹⁷ Up until 2003, the Code of Criminal Procedure then in force contained a provision allowing the Minister of Justice to order the prosecutor to press charges in a particular case. The said provision, which was widely regarded as contrary to the constitutionally guaranteed separation of powers, was not applied in practice.

¹⁸ Contrast that with the European Investigation Order, which is issued by each organ in need of the evidence sought as per article 6 of Statute No. 4489/2017. In the event of an investigator who is not a member of the Judiciary, the Prosecutor overseeing the investigation is specifically identified as a validating authority.

On the principle of proportionality and the rights of the defense

As an issuing State, Greece will not ‘prematurely’ issue EAWs, mainly because of the provisions of the domestic Code of Criminal Procedure. Greek law indeed permits the arrest and detention of any person (regardless of nationality) only after formal charges have been pressed,¹⁹ at which point the person shall be awarded all rights of a defendant. This is the earliest procedural point at which an EAW may be issued by the Prosecutor for the Court of Appeal, following a request by the competent investigating judge.²⁰ Coupled with the fact that the newly-enacted Code of Criminal Procedure permits virtually all investigative measures during a preliminary examination (i.e. prior to the formal pressing of charges, when the suspect may not be arrested or detained), it becomes clear that, by the time an EAW is issued, the case will be mature enough (if not trial-ready). Any subsequent delay will not be more extensive in EAW cases compared to purely ‘national’ ones. In any event, pre-trial detention in all cases shall be subject to the eighteen-month limit posed by article 6 of the Constitution.

Moreover, with respect to Greece as an issuing State, proportionality does not appear to be a major concern, for both substantive and procedural reasons: on a substantive level, EAWs are typically not issued for minor offenses, especially given the fact that relatively low sentences are typically not served in prison.²¹ On a procedural level, misdemeanors are normally not subject to arrest or detention at the pre-trial stage, and therefore it would be extremely rare for Greek authorities to issue an EAW with the aim of prosecuting this class of offenses.

It should be added that, following the surrender of the individual, Greek judicial authorities are confined to adjudicating the act described in the EAW or executing the sentence imposed by virtue of the judgment contained in the EAW, as the case may be, based on the principle of speciality, as delineated in article 34 of Statute No. 3251/2004.²² Greek judicial authorities treat violations of the principle of speciality in the vein of grounds barring prosecution (such as *res judicata* or *lis pendens*);²³ that being noted, it is permissible to modify the legal classification of the act subsequent to the individual’s surrender, as well as prosecute the individual for offenses deriving from the acts described in the EAW.²⁴ Last, the individual is protected against further surrender (to another EU member State having issued an EAW of its own)²⁵ or extradition to a third State.²⁶

¹⁹ Technically, an arrest warrant may be issued at the outset of the investigation, even absent prior summoning of the defendant by the investigating judge.

²⁰ As previously noted, a mere ‘suspect’ may not be deprived of his/her liberty in the context of a preliminary investigation preceding formal prosecution.

²¹ This was especially the case under the previous Criminal Code. Under the new Criminal Code, as the pertinent provisions currently stand, a convicted person will have to serve at least a portion of any sentence exceeding three years in prison.

²² Subject to the exceptions included in this provision [see para. 2].

²³ Supreme Court, Decision No. 963/2010, *Poinika Chronika* (2011), p. 274; Supreme Court, Decision No. 961/2010, *NOMOS*.

²⁴ *Ibid.*

²⁵ Article 35 of Statute No. 3251/2004.

²⁶ Article 36 of Statute No. 3251/2004.

Section II – The execution of EAWs: national judicial authorities as monitors of trust

A brief outline of the process followed by Greek judicial authorities to execute an EAW

The initial recipient (on behalf of the Greek Judiciary) of an EAW is the Prosecutor for the Court of Appeal in the region where the requested individual resides (or, absent knowledge of the requested individual's whereabouts, the Public Prosecutor's Office for the Court of Appeal of Athens). The said Prosecutor is responsible for the arrest of the requested individual and the possible imposition of provisional detention (or other measures ensuring the continued presence of the requested individual). The requested individual may appeal the arrest on the grounds of mistaken identity, and is also entitled to appeal the decision imposing provisional detention (or any other measure restricting liberty); the Appeals Chamber is competent to decide either of these appeals. Should the identity of the requested individual be confirmed, the Prosecutor seeks his/her consent to surrender. If the requested individual consents, the decision whether or not to execute the EAW lies with an Appellate Judge, and there is no right to an appeal. If, on the other hand, the requested individual does not provide his/her consent, the case is referred to an Appeals Chamber, which is competent to decide on the execution of the EAW, subject to an appeal before a Chamber of the Supreme Court. It is noteworthy that, in the context of executing EAWs, the Greek Supreme Court functions as an appellate court, meaning a court of second instance (this is generally the case in terms of extradition requests, even outside the EAW context). Thus, the Supreme Court Chambers are frequently engaged in factual matters,²⁷ which might explain their reticence in engaging in a 'dialogue' with the ECJ in terms of constitutional rights. In the event of an affirmative (final) decision to surrender, there are specific temporal limits (depending on the competent organ) to carry out the decision. The decision whether to surrender or not is purely judicial in nature; the Minister of Justice is only involved in the event of concurring requests, which include at least one request for extradition by a non-EU member State. Besides, a number of constitutional provisions²⁸ may be pertinent to judicial assistance in criminal matters (including extradition) depending on the particulars of each case, as for example those relating to certain individual rights, sources of law, the separation of powers, and proportionality.²⁹

On the requirement of an independent judicial authority

Greek authorities entrusted with the execution of EAWs were confronted with questions pertaining to the degree of independence of the issuing authority shortly after the enactment of the national Statute (No. 3251/2004) transposing the Framework-Decision on the EAW.

²⁷ For instance, requested individuals will often appeal to the Supreme Court attempting to establish permanent residence in Greece, so as to benefit from the pertinent grounds of refusal to execute an EAW. The Supreme Court will dispense with appeals of this sort either by questioning the factual basis of the claim [see, e.g., Supreme Court, Decision No. 1870/2019, NOMOS; Supreme Court, Decision No. 1824/2019, NOMOS] or by adjudicating that the facts proven do not constitute a strong link with the country [see, e.g., Supreme Court, Decision No. 418/2019, NOMOS; Supreme Court, Decision No. 417/2019, NOMOS].

²⁸ The Greek Constitution was enacted on June 7, 1975, shortly after the fall of a seven-year dictatorship. It replaced the Constitution of 1952, embracing a combination of traditional and modern provisions. Its latest amendment was completed in 2019.

²⁹ Some of these provisions either do not apply in the extradition process or are applied in a different fashion compared to cases decided in a purely national context.

In 2005, the Appeals Chamber of Athens declined the execution of an EAW issued by the Danish Ministry of Justice on the grounds that the latter is an administrative authority, thus falling short of a ‘judicial’ authority within the meaning of both the Greek Statute and the Framework-Decision.³⁰ Specifically, the Appeals Chamber held that a judicial act, such as the EAW, ought to be issued by an authority objectively identified as judicial; in contrast, an administrative authority, such as the Ministry of Justice, should not be entrusted with issuing EAWs but rather be confined at assisting the issuing judicial authority in its ‘transmission’.³¹ In fact, the Appeals Chamber went as far as to declare that a document issued by an administrative authority does not legally constitute an EAW, while allowing for the execution of any request contained in such a document would infringe on the separation of powers enshrined in the Greek Constitution.³² This particular decision was later overturned on appeal before the Supreme Court, which held that the classification of a particular authority as ‘judicial’ is the exclusive prerogative of the State issuing the EAW.³³ In order to arrive at this conclusion, the Supreme Court Chamber³⁴ highlighted the lack of a common, European approach as to the requisite degree of independence, the presence of distinct legal systems in various EU member States, each with its own idiosyncratic elements, as well as the need to further judicial cooperation among member States. Case-law ever since has remained consistent in acknowledging a broad margin to the law of the issuing State in determining what constitutes a judicial authority, the degree of independence of such authority, and the particular form of the request. Besides, Greek chambers have never questioned the independence of foreign prosecutorial authorities, rejecting all objections relating to the rank or placement of the foreign Prosecutor having issued an EAW.³⁵ Thus, the position that Greek judicial authorities may assess the nature (judicial or administrative) and/or the degree of independence of the issuing authority based on ‘objective’ criteria has not been adopted during the last fifteen years. It remains to be seen, of course, whether recent developments in the case-law of the European Court of Justice³⁶ might re-ignite the debate.

That being noted, it should be added that an intermediate view has been embraced by the majority of scholars having written on the subject (Mouzakis, 2009, pp. 476 et seq., Sevastidis, 2021, esp. pp. 1504-1506, Symeonidou-Kastanidou, 2004, p. 774): according to this view, a margin shall be acknowledged to the issuing State but only inasmuch as the designated authority is regarded as ‘judicial’ within its own legal system (irrespective of whether such classification corresponds to the one embraced in the Greek legal system or

³⁰ Appeals Chamber of Athens, Decision No. 32/2005, *Poinikos Logos* (2005), p. 695.

³¹ In referring the case to the Chamber, the Prosecutor for the Court of Appeal had adopted the opposite view, suggesting that the EAW be executed.

³² Appeals Chamber of Athens, Decision No. 32/2005, op. cit. Cf. article 1 para. 2 of Statute No. 3251/2004, which explicitly mentions that the application of the provisions of the Statute concerning either the issuance or the execution of EAWs may not result in any infringement of the principles contained, inter alia, in the Greek Constitution.

³³ Supreme Court, Decision No. 1735/2005, *Poinika Chronika* (2006), p. 504 = *Poinikos Logos* (2005), p. 1696.

³⁴ As previously mentioned, in the context of extradition cases (including – but not limited to – the process for executing EAWs), the Supreme Court functions as an appellate court, competent to discuss both factual and legal matters. The hearing takes place before a Chamber composed of five members of the Supreme Court. The requested individual has the right to participate in this hearing along with his/her attorney(s).

³⁵ Supreme Court, Decision No. 1403/2016, *Poinike Dikaiosyne* (2017), p. 997; Supreme Court, Decision No. 2252/2008, *Poinika Chronika* (2009), p. 829 [in these two decisions, the Supreme Court held that the Prosecutor entrusted with the issuance of EAWs in Bulgaria falls within the class of acceptable issuing authorities].

³⁶ See, e.g., CJEU, Judgment of 12 December 2019, Joined Cases C-566/19 PPU and C-626/19 PPU, *JR* and *YC*, ECLI:EU:C:2019:1077; CJEU, Judgment of 12 December 2019, *XD*, C-489/19 PPU, ECLI:EU:C:2019:1078; CJEU, Judgment of 9 October 2019, *NJ*, C-489/19 PPU, ECLI:EU:C:2019:849; CJEU [Grand Chamber], Judgment of 27 May 2019, Joined Cases C-508/18 and C-82/19 PPU, *OG* and *PI*, ECLI:EU:C:2019:456; CJEU [Grand Chamber], Judgment of 27 May 2019, *PF*, C-509/18, ECLI:EU:C:2019:457. Cf. *Kaiafa-Gbandi* (2019b).

tradition). Thus, the lack of an objective classification of judicial authorities is sidestepped, but the issuing State is still bound to certain standards determined *on its own legal system's terms*. In any event, it has been found that the requirement of an independent judicial authority only relates to the issuance of an EAW as such; on the other hand, any supplementary information requested by Greek executing authorities may be provided by administrative agencies of the issuing State.³⁷

On the issue of case-readiness and pre-trial detention

In adjudicating on the execution of an EAW, Greek judicial authorities typically stop short of discussing questions pertaining to the 'trial readiness' of the case in the issuing State. It is somehow presumed that the case will have matured in the issuing State to such an extent as to allow for the individual's arrest or detention under domestic law. At any rate, whether such presumption holds true or not is not to be second-guessed by Greek judicial authorities, generally being regarded as falling within the issuing State's national domain, hence being reviewable by its own judicial organs (subsequent, of course, to the requested individual's surrender). With respect to the length of detention, Statute No. 3251/2004 sets strict limits and provides the possibility of review before the Appeals Chamber even prior to the first instance hearing (i.e. before the Appeals Chamber) concerning execution of the EAW. Specifically, the requested individual may seek a remedy against detention (or provisional measures) before the Appeals Chamber. Failing that, detention may last until such time as the individual is surrendered to the authorities of the requesting State,³⁸ which in turn depends on whether the requested individual consents to surrender or not,³⁹ but should not be extended beyond three months at most.⁴⁰ In one extreme situation, featuring concurrent requests for extradition by France (based on an EAW), Russia (based on the European Convention on Extradition), and USA (based on its bilateral extradition treaty with Greece), the requested individual was detained for 29 months prior to his surrender to France.⁴¹ Such length of detention exceeds by far even the limit set by the Constitution⁴² for the pre-trial detention of accused felons (which does not apply to the detention of individuals arrested pending an extradition request⁴³). As regards the length of detention following the individual's surrender to the requesting State (which would be an indicator concerning the trial readiness of the case), no follow-up data is either sought or given to Greek authorities.

³⁷ See Supreme Court, Decision No. 273/2022, Qualex.

³⁸ See article 15 para. 3 of Statute No. 3251/2004. Although a number of requested individuals have invoked the fifteen-day limit to detention (which can be extended to thirty days at most, only in the presence of extenuating circumstances), it has consistently been held that the said limit only applies to requests via the Schengen Information System, and is therefore not relevant in the presence of a formal, properly issued EAW (Voulgaris, 2018).

³⁹ Under article 21 of Statute No. 3251/2004, the decision to execute the EAW (or not) is taken within ten days from the requested individual's consent [para. 1]. In the absence of such consent, the decision is taken within sixty days from the requested individual's arrest [para. 2]. These deadlines may be extended for an additional thirty days at most [para. 3].

⁴⁰ Counting from the moment of the arrest.

⁴¹ The case was even brought before the Council of State (i.e. the acting Supreme Court for administrative cases in Greece), which rejected the requested individual's pleas: see Council of State [Grand Chamber], Decision No. 49/2021, NOMOS.

⁴² According to article 6 of the Constitution, pre-trial detention awaiting trial for a felony may not exceed eighteen months. Under article 292 of the Code of Criminal Procedure, this limit is only applicable to grave felonies, while the bulk of felonies are only subject to a twelve-month pre-trial detention.

⁴³ Under article 452 para. 2 of the Code of Criminal Procedure, the requested individual shall be released after the lapse of twenty-four months (starting from the individual's arrest), which can be extended for another six months by virtue of a decision by the Appeals Chamber: the said provision was applied, for instance, by the Appeals Chamber of Thessaloniki in its decision no. 4730/2019.

On the principle of proportionality

Questions pertaining to proportionality have seldom been discussed by the judicial authorities entrusted with the execution of EAWs in Greece. The minimum sentence required under Statute No. 3251/2004 (which is higher in the case of offenses not covered under dual criminality)⁴⁴ is somehow regarded as ‘adequate’ to appease any proportionality requests, thereby ‘formalizing’ this topic. By thus dispensing with similar questions, judicial authorities divest themselves of their ability to engage in a substantive check of the issuing authority’s discretion, as if the matter had definitively been resolved upon the enactment of the Statute. Obviously, question arises with respect to the field of comparison:⁴⁵ for instance, one category of decisions concerning the execution of EAWs dispense with proportionality concerns by pointing out that, should the individual be surrendered, he/she shall not be subject to disproportionate treatment *compared to detainees resident in the requesting State* (as opposed to nationals or residents of Greece).⁴⁶ In yet other cases, Chambers will directly address proportionality concerns, juxtaposing the substantive and procedural ramifications of criminal charges brought for the specified offense(s) under both Greek law and the law of the requesting State.⁴⁷

That being said, it is a very rare occurrence that the execution of an EAW will be declined on the basis of (lack of) proportionality. One such example is offered in a series of decisions concerning respective EAWs issued by Italian authorities against Greek citizens involved in riots in the city of Milan, which had taken place on May 1, 2015.⁴⁸ The Appeals Chamber of Athens recalled that, under article 1 para. 2 sec. i of Statute No. 3251/2004, the execution of an EAW shall not be carried out in disregard of fundamental rights and principles enshrined in the Constitution and article 6 of the TEU, which specifically alludes to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such precept entails a *substantive*, as opposed to a

⁴⁴ Under article 10 para. 1 of Statute No. 3251/2004 – as previously noted – an EAW for the purpose of a criminal prosecution may only be issued if the requested act is punishable (under Greek law) with a custodial sentence the upper limit of which is at least twelve months, while an EAW for the purpose of executing a custodial sentence (following a criminal conviction) may only be issued if the sentence imposed has a minimum duration of four months. These thresholds refer to the penalty threatened in Greece, as they apply alongside the prerequisite that the act is also proscribed under Greek criminal law (‘dual criminality’ requirement). Article 10 para. 2, on the other hand, enumerates the class of offenses exempt from the ‘dual criminality’ requirement: the pertinent acts need only be criminally proscribed under the law of the requesting State, based on which they ought to be punishable with a custodial sentence the upper limit of which is at least three years.

⁴⁵ The same problem arises under the European Convention on Extradition. In discussing a pertinent objection against an extradition request by Croatia, for instance (prior to Croatia becoming an EU member State), the Supreme Court declared that applying the principle of proportionality presupposes the existence of two comparable parts, measured against a common point of reference, a condition not met in an extradition case, where two legal systems attempt to cooperate with each other: Supreme Court, Decision No. 1125/2006, NOMOS. Also see Supreme Court, Decision No. 1517/2004, NOMOS [rejecting a proportionality plea against an extradition request by Romania (prior to Romania becoming an EU member State), on the premise that the European Convention on Extradition contains no such grounds of refusal, particularly when the requested individual has already been convicted in the requesting State]; Supreme Court, Decision No. 800/2011, NOMOS [disassociating permanent residence in Greece and the creation of family ties from the principle of proportionality in deciding an extradition request by Albanian authorities].

⁴⁶ See, in this vein, Supreme Court, Decision No. 1451/2016, NOMOS; Supreme Court, Decision No. 966/2014, NOMOS [both decisions concern EAWs issued by German authorities]; Supreme Court, Decision No. 1390/2016, NOMOS [concerning an EAW issued by Polish authorities].

⁴⁷ For a discussion of the principle of proportionality in recent cases (under the European Convention on Extradition) see Supreme Court, Decision No. 1659/2019, NOMOS; Supreme Court, Decision No. 1360/2019, NOMOS; Supreme Court, Decision No. 830/2019, NOMOS.

⁴⁸ The following notes derive from Appeals Chamber of Athens, Decision No. 1/2016, NOMOS. A similar reasoning can be traced in Appeals Chamber of Athens, Decision No. 2/2016, NOMOS; Appeals Chamber of Athens, Decision No. 4/2016, NOMOS; Appeals Chamber of Athens, Decision No. 5/2016, NOMOS.

merely procedural review by Greek judicial authorities, including a proportionality review. The Appeals Chamber then proceeded to decline execution of the EAW,⁴⁹ declaring that any other decision would disregard the principle of proportionality⁵⁰ and the right to a fair trial, since the requested individual was facing grave criminal charges in Italy for acts which – albeit vaguely described in the request – would constitute (at worst) misdemeanors under Greek law, not even permitting the individual’s arrest and detention.⁵¹

Execution of EAWs and the right to a fair trial in the requesting State

Scholarly debate in Greece has favored an active role of judicial authorities in safeguarding the fundamental rights of requested individuals. The absence of a pertinent (explicit) basis of refusal in the text of the Framework Decision was not deemed to present an obstacle to the preservation of fundamental rights, not only due to article 1(3) of the Framework Decision itself, but also based on the superiority of primary EU law norms and the European Convention on Human Rights (Kaiafa-Gbandi, 2017, Mouzakis, 2009, pp. 352 et seq., Orfanos, 2021, pp. 52 et seq., Symeonidou-Kastanidou, 2004, Tsiakoumaki, 2019, pp. 228 et seq., Tzannetis, 2020, pp. 78 et seq., Voulgaris, 2013, p. 34). Yet Greek authorities entrusted with the execution of EAWs have appeared rather reticent in relying on the said sources to decline the surrender of requested individuals claiming a violation of their fundamental rights (having occurred or expected to occur). One might say that trust to the authorities of the issuing State is awarded by default, giving rise to a ‘presumption’ of appropriateness of the request which inheres in the decisions of Greek Chambers. Moreover, Greek judicial authorities steadily embrace the position that any perceived rights of the requested individual (procedural or otherwise) are engendered *subsequent* to the execution of the EAW.⁵² It should be mentioned that this is the prevailing view in Greek case-law also outside the EU context; Greek chambers dealing with extradition requests by third States indeed insist that any perceived breach of procedural rights in the requesting State is not opposable to Greek judicial authorities, as these rights are engendered subsequent to extradition.⁵³ By means of such presupposition, Greek Chambers do more than just state the obvious, i.e. that any violation of rules applicable in the issuing State is only opposable to the issuing State’s authorities: more than that, Greek Chambers in effect refuse these individuals the protection of the Greek Constitution, as well as that afforded

⁴⁹ The case was instead referred to the Public Prosecutor’s Office, which would decide whether to prosecute the individual for the alleged misdemeanors under the Greek Criminal Code.

⁵⁰ The Appeals Chamber specifically cited a 2014 report by the Committee on Civil Liberties, Justice and Home Affairs of the European Parliament, including recommendations to the Commission relating to the implementation of the EAW. In point of fact, the Appeals Chamber went as far as to imply that the issuance of the EAW by Italian authorities for the particular acts was tantamount to establishing collective responsibility.

⁵¹ A number of procedural violations were also pointed out, including the following: failure of Italian authorities to apprise the individual of the charges against him (even though he had initially been arrested), even though his treatment was apposite to that of a defendant; failure to appoint an interpreter, even though he could not speak Italian; denial of the right to counsel; forcible subjection to invasive measures, such as DNA sampling; imposition of pre-trial detention without prior hearing. According to the Appeals Chamber, these breaches also attest to a blatant disregard to the principle of proportionality, as well as the right to a fair trial (bordering on denial of the presumption of innocence).

⁵² See references *infra*. The Greek Statute (at least) ensures respect for the right of the requested individual to appoint an attorney in the issuing State [see article 15 para. 2 of Statute No. 3251/2004, as recently amended by virtue of article 33 of Statute No. 4947/2022, so as to conform to the dictates of article 10 para. 5 of Directive 2013/48/EU].

⁵³ See, indicatively, Supreme Court, Decision No. 1263/2022, Qualex; Supreme Court, Decision No. 1061/2022, Qualex; Supreme Court, Decision No. 920/2016, NOMOS. Also see [in relation to an extradition request by a third State but along the same lines] Supreme Court, Decision No. 873/2020, NOMOS, which held that: “the fundamental rights deriving from the ECHR and other legal instruments and accruing to the defense (fair trial, being apprised of charges brought, prior notification in a language the defendant comprehends) are engendered subsequent to surrender, once the defendant is brought before the competent judicial authorities of the requesting State, i.e. when the individual is called to prepare his/her defense. Such rights can therefore not be enforced by the executing State but remain strictly within the review powers of the requesting State”.

by EU law and the ECHR, in effect rendering these documents irrelevant at the stage of executing an EAW. Crucially, legal acts and processes aiming at the attainment of judicial cooperation are thus not viewed as an extension of the issuing State's sovereign powers (hence being subject to limitations itself), but rather as a form of quasi-administrative assistance, remaining outside the purview of a full-fledged review. As a result, any discussion of rights as a potential bar to the surrender of the requested individual is confined to certain grounds of refusal introduced by the Greek Legislature in Statute No. 3251/2004. These grounds, which are either directly or indirectly related to the protection of fundamental rights, are construed rather narrowly, but offer judicial authorities some leeway in declining to execute an EAW. Needless to say, the position of Greek chambers in this regard runs contrary to the case-law of the ECJ, which indicates that deficiencies in the justice system of the issuing State should be assessed by the judicial authorities of the executing State as potential grounds of refusal.⁵⁴

Non-execution of an EAW on the grounds of certain fundamental considerations

The first clause which enables (mandates, to be more precise) Greek executing authorities to engage in a "rights check" is article 1 para. 2 of Statute No. 3251/2004, which states: i) that no provision of the Statute may be construed in such manner as to result in the infringement of fundamental rights and principles enshrined in article 6 of the TEU;⁵⁵ ii) in any event, no person shall be surrendered to a State if there is a serious danger that the death penalty will be imposed or that the person will be subjected to torture or another form of inhuman or degrading treatment. This provision is widely considered to introduce a general basis of mandatory refusal to execute an EAW additional to those listed under article 11 of the Statute (Mouzakis, 2009, p. 544, Sevastidis, 2021, p. 1531, Togias, 2013). An alternative view has been advanced, according to which the said provision does not introduce grounds of refusal to execute an EAW but rather denotes that, in the presence of the circumstances described therein, the EAW should be regarded as 'illegitimately issued' (Chamilothoris, 2003).⁵⁶ In any event, the provision in question should inform the interpretation of other provisions in the Statute which introduce grounds of refusal (Mouzakis, 2009, p. 545). Regardless of its nature, article 1 para. 2 has been relied upon (albeit indirectly⁵⁷) by case-law in the context of decisions not to execute EAWs,⁵⁸ featuring an overlap with the principle of proportionality discussed above.⁵⁹ In point of fact, certain decisions, in declining the execution of EAWs, have stated that the allusion of article 1 para. 2 to the Constitution [at least until the 2022 amendment] and the TEU is all but redundant, given the inherent supremacy of the principles enshrined therein over the provisions of ordinary Statutes, including Statute No. 3251/2004.⁶⁰ On one

⁵⁴ CJEU [Grand Chamber], Judgment of 25 July 2018, Minister for Justice and Equality v LM, C-216/18 PPU, ECLI:EU:C:2018:586.

⁵⁵ This provision was recently amended, by virtue of article 28 of Statute No. 4947/2022. Prior to its amendment, it made reference not only to article 6 of the TEU but also to the Greek Constitution. According to the amending Statute's Explanatory Report [p. 45], reference to the Greek Constitution was deleted, given that the clause itself originates in EU law.

⁵⁶ Appeals Chamber of Athens, Decision No. 25/2007, 55 Nomiko Vima (2007), p. 1883.

⁵⁷ There do not appear to be decisions declining the execution of an EAW based on the risk of torture or another form of inhuman or degrading treatment; thus, Greek authorities have not had the opportunity to follow a particular approach concerning this matter, such as the approach embraced by the ECJ in Aranyosi and Căldăraru, for instance.

⁵⁸ It should be noted that the scope of application of the said provision is confined to official acts under color of State authority. Thus, the expression of fear for the life of the requested individual on account of acts by private individuals (e.g. revenge by the victim's family) is not regarded as valid grounds for refusal to execute an EAW: see, inter alia, Supreme Court, Decision No. 274/2014, NOMOS.

⁵⁹ See section I.

⁶⁰ Appeals Chamber of Athens, Decision Nos. 1/2016 and 2/2016, NOMOS, relying, inter alia, on articles 5, 6 and 7 of the Greek Constitution.

occasion, the execution of an EAW was declined by means of juxtaposing the gravity of the offense (for which the EAW had been issued) as evinced in the protected legal interest, the penalty threatened, and the number of victims, against the impact of a possible execution to the life of the requested individual and his family.⁶¹ These decisions, however, are the exception, the norm remaining that, under the prevailing view embraced by Greek case-law, rights arising out of constitutional dictates (in the broad sense including national Constitutions, the TEU, and the ECHR) are ‘born’ subsequent to the surrender of the requested individual, and therefore may not pose an obstacle to the execution of an EAW as such.⁶² In fact, certain decisions attempt to find footing for this line of reasoning in the absence of explicit grounds of non-execution of an EAW based on the possible violation of the requested individual’s right to a fair trial in the issuing State.⁶³

The other ‘obvious’ provision in discussing fundamental rights as grounds of non-execution of an EAW is article 12 section (j) [formerly contained in article 11 section (e)] of Statute No. 3251/2004. According to this provision, an EAW may not be executed, if it has been issued to the effect of prosecuting or punishing a person on the grounds of his or her sex, race, religion, ethnic origin, nationality, language, political opinions, sexual orientation, or action towards freedom. The text of the provision tags clause 12 of the Preamble to Framework Decision 2002/584/JHA, which it expands by also exempting ‘freedom fighters’ from surrender under an EAW.⁶⁴ Such exemption is established in article 5 para. 2 of the Greek Constitution, and had initially been included among the mandatory grounds of non-execution by the Greek Legislature on the conviction that constitutional norms should inform the transposition of rules pertaining to judicial cooperation, over which they prevail (Kaiafa-Gbandi, 2004, Tsolka, 2002). Recently, it has been ‘demoted’ to the ranks of non-mandatory grounds of execution,⁶⁵ along with four other grounds,⁶⁶ on the premise that they had initially been envisaged as non-mandatory in nature.⁶⁷ This provision, unsurprisingly perhaps, has been the target of criticism by the European Commission itself,⁶⁸ which remarked that the Framework Decision strictly enumerated grounds of non-execution, leaving it up to member States to classify these grounds as mandatory or not. Moreover, question has arisen as to whether this reference offers a ‘back door’ for non-execution of EAWs concerning political offenses, which would extend beyond the strict confines of the pertinent ground under article 11 section (a) of Statute No. 3251/2004,⁶⁹ which is one of only the three mandatory grounds of non-

⁶¹ Appeals Chamber of Athens, Decision No. 57/2018, NOMOS.

⁶² Supreme Court, Decision No. 1177/2012, NOMOS; Supreme Court, Decision No. 1303/2011, NOMOS; Supreme Court, Decision No. 47/2011, NOMOS (for a criticism of this approach see Toghias, 2013).

⁶³ See, e.g., Appeals Chamber of Thessaloniki, Decision No. 356/2022, NOMOS.

⁶⁴ Crucially, the Greek Statute transposing the Framework Decision did not incorporate the allusion that the requested individual’s position may not be prejudiced for any of the reasons cited. Thus, the requested individual would have to establish that the basis of prosecution or punishment relates to discriminatory grounds. See, however, the opinion that the Statute should be interpreted broadly, so as to also encompass such a reading, in Mouzakis, 2009, p. 513, Kaiafa-Gbandi, 2004, Sevastidis, 2021, p. 1540, Tsiakoumaki, pp. 153-154.

⁶⁵ See article 12 section (j) of Statute No. 4251/2014, following amendment by virtue of article 30 of Statute No. 4947/2022.

⁶⁶ Namely the grounds formerly included in article 11 sections (d), (f), (g), and (h), which have moved to article 12 para. 1 sections (e), (g), (h), and (i), respectively.

⁶⁷ According to the amending Statute’s Explanatory Report [p. 45], these grounds had been included in article 4 paras. 2, 4, 6, and 7 of the Framework Decision 2002/584/JHA as non-mandatory in nature, hence their initial classification as mandatory grounds of non-execution under the Greek Statute (binding the Judiciary) constituted an ‘improper transposition’ of the said Framework Decision. The question to whom the original provisions of the Framework Decision were actually addressed was not raised during the preparatory works leading to the amendment (or the answer thereto was taken for granted).

⁶⁸ First Evaluation Report, COM 2005 (final), Brussels, 23.02.2005, p. 63.

⁶⁹ Under article 11 section (a) of Statute No. 3251/2004, an EAW shall not be executed if the offense is: a) classified as a political one under Greek law; b) falls within the jurisdiction of Greek courts; and c) an amnesty has been granted by virtue of a Statute

execution still standing under the Greek Statute following its recent amendment. In any event, this provision [either as a mandatory ground of non-execution under article 11 section (e) or as a non-mandatory ground of non-execution under article 12 section (j) of Statute No. 3251/2004] has not been relied upon by Greek judicial authorities to decline the surrender of requested individuals. Human rights considerations may appear in decisions issued under special circumstances: on a couple of occasions, for instance, EAWs were executed on the condition of non-refoulement. Specifically, Kurdish nationals who were sought for their participation in an organization classified as terrorist were handed over to Germany⁷⁰ and France,⁷¹ respectively, on the condition that they not be extradited to Turkey, where they faced a danger of being prosecuted on account of their political views.

Another channel through which constitutional rights are brought to the fore by requested individuals is via the invocation of grounds of refusal which have been classified as non-mandatory from the outset. This can happen either directly or indirectly. For instance, a number of requested individuals invoke article 12 para. 1 section (e) of Statute No. 3251/2004, seeking that their sentence be carried out in Greece due to the fact that they reside in the country, having developed strong ties (e.g. created a family). This provision used to apply only to foreign nationals, provided they were able to prove a steady, uninterrupted presence in the country which would be apposite to a Greek citizen. Greek nationals, on the other hand, benefited from a mandatory ground of non-execution under article 11, which has now been abolished;⁷² accordingly, article 12 para. 1 section (e) has now been expanded so as to also cover Greek nationals, whose surrender may be declined. Greek judicial authorities have indeed applied the provision in accordance with the case-law of the ECJ,⁷³ by carefully reviewing the individual circumstances underlying the requested individual's personal and professional life, the length of their stay in the country, etc.⁷⁴ However, it has occasionally been declared that the affirmation of strong ties with Greece presupposes severance of former ties with the requested individual's country of nationality.⁷⁵

Last but not least, a major issue arising in the execution of EAWs relates to petitions for political asylum, which are frequently pending at the time of EAW proceedings. Greek judicial authorities consistently reject any pertinent objection to the execution of an EAW as long as political asylum has not been granted by the competent organ. Such position is explained on the premise that the national Statute (No. 3251/2004) does not contain any pertinent ground permitting (much less mandating) non-execution. Moreover, Greek courts have determined that article 5 para. 1 of Presidential Decree No. 113/2013, which permits the continuing presence of the individual requesting political asylum until such time as the administrative process concerning the petition for asylum has been completed, does not apply in the presence of an extradition request by a third

enacted by the Greek Parliament. These conditions confine the 'political offense exception' as applied in the EAW context to a narrower space compared to general extradition law.

⁷⁰ Supreme Court, Decision No. 1261/2013, NOMOS. According to the dissenting opinion, the EAW should not have been executed in view of a pending request for political asylum (as well as based on the principle of speciality).

⁷¹ Supreme Court, Decision No. 801/2015, NOMOS.

⁷² Following the Statute's amendment by virtue of Statute No. 4947/2022. According to the pertinent Explanatory Report [p. 46], Greek citizens are not to be afforded broader guarantees compared to non-Greeks residing in Greece.

⁷³ See, inter alia, CJEU, Judgment of 6 October 2009, *Wolzenburg*, C-123/08, ECLI:EU:C:2009:616; CJEU, Judgment of 17 July 2008, *Kozłowski*, C-66/08, ECLI:EU:C:2008:437.

⁷⁴ Supreme Court, Decision No. 1327/2014, NOMOS; Supreme Court, Decision No. 437/2012, NOMOS; Supreme Court, Decision No. 1676/2010, NOMOS.

⁷⁵ Supreme Court, Decision No. 533/2023, Qualex; Supreme Court, Decision No. 385/2023, NOMOS; Supreme Court, Decision No. 408/2014, NOMOS (criticized by Tzannetis, 2020, pp. 309-310).

State (including – but not limited to – EAWs).⁷⁶ Needless to say, this position *is a fortiori* embraced when the petition for political asylum has been filed subsequent to the issuance of an EAW.⁷⁷

Yet it is not entirely unheard of for Greek judicial authorities to decline extradition to third States on the grounds of a potential violation of fundamental rights / constitutional principles. For example, a request by Iran for the extradition of a mother (accused of abducting her own daughter and forging travel documents) was ultimately denied because it was deemed that she faced a real danger of inhuman and degrading treatment.⁷⁸ In another celebrated case, a request for the extradition of several military officers (accused, *inter alia*, of stealing a military helicopter during the 2016 coup) by Turkey was denied on the grounds that: a) the act described in the extradition request did not accurately match a similar offense proscribed in the Greek Military Code, which would be extraditable as such; b) the facts outlined in the extradition request were vague in defiance of the principle of speciality,⁷⁹ falling short of the minimum content required under article 12 of the European Convention on Extradition, as well as article 6 para. 3(a) of the ECHR and article 14 para. 3(a) of the ICCPR; most notably, c) a real danger of inhuman and degrading treatment would arise should extradition take place.⁸⁰ Also under the European Convention on Extradition, an extradition request by Serbia was denied on the grounds that the requested individual was being sought on account of his ethnic and religious identity.⁸¹ That is not to say, of course, that any claim of potential maltreatment in the requesting State will lead to non-extradition. Thus, it has been found that facing possible discrimination due to the requested individual's homosexuality does not constitute grounds for refusal.⁸² Besides, the invocation of a possible danger for the requested individual's life coming from private individuals does not constitute grounds for refusal of the extradition request.⁸³

EAWs aiming at the execution of judgments delivered in absentia

The most recent provision establishing a ground of non-execution of an EAW (albeit a non-mandatory one) is article 12 section (f) of Statute No. 3251/2004.⁸⁴ Under the said provision, an EAW issued with the aim of carrying out a sentence may be declined if the decision having imposed such sentence was issued in *absentia*.⁸⁵ According to the Explanatory Report to the Statute introducing it, the provision aims at ensuring that Greek authorities shall not assist in the carrying out of sentences imposed in defiance of the fundamental right to be

⁷⁶ Supreme Court, Decision No. 939/2018, NOMOS; Supreme Court, Decision No. 862/2015, NOMOS.

⁷⁷ Supreme Court, Decision No. 1823/2019, NOMOS.

⁷⁸ Supreme Court, Decision No. 1690/2019, NOMOS, reversing the decision of the Appeals Chamber, which had initially granted the request (both decisions were issued while the requested individual's petition for asylum was pending).

⁷⁹ It should be noted that, in executing EAWs, Greek chambers apply a rather 'lax' test in assessing whether the act is adequately described for the purpose of ensuring compliance with the principle of speciality: see, e.g., Supreme Court, Decision No. 1501/2022, Qualex.

⁸⁰ See, among other decisions, Supreme Court, Decision No. 135/2017, *Poinika Chronika* (2018), p. 272.

⁸¹ Supreme Court, Decision No. 1410/2010, NOMOS [reversing the first instance decision by the Thessaloniki Appeals Chamber, No. 409/2010].

⁸² Supreme Court, Decision No. 638/2015, NOMOS.

⁸³ Supreme Court, Decision No. 1185/2016, NOMOS.

⁸⁴ Introduced by virtue of Statute No. 4596/2019. Previously, a similar provision was contained in article 13, in the form of a guarantee (*Mouzakis*, 2012).

⁸⁵ In the event of an EAW issued for the requested individual's prosecution see article 13 para. 3 of Statute No. 3251/2004. Cf. Supreme Court, Decision No. 850/2013, *Poinika Chronika* (2014), p. 608.

tried in one's presence.⁸⁶ Even when tried in absentia, the requested individual shall be surrendered in the presence of either of the following (strictly enumerated) circumstances:⁸⁷ a) the defendant had been duly apprised of proceedings against him/her, as well as of the legal permissibility of a trial in absentia before a court of the requesting State. According to the prevailing view, however, Greek judicial authorities may not review the defendant's summons for voidness;⁸⁸ b) the defendant was represented by an attorney (either of his own choice or appointed proprio motu);⁸⁹ c) following service of the judgment convicting him/her, and having been apprised of the possibility to appeal such conviction or seek retrial in his/her presence;⁹⁰ the defendant either explicitly (by waiving the right to appeal) or tacitly (by letting the deadline(s) expire) conceded the conviction; d) there is the guarantee that the defendant will be fully apprised of the conviction, as well as of his/her rights to appeal it and/or seek retrial in his/her presence right after the extradition has taken place.⁹¹

Execution of EAWs and national 'specificities'

The position generally embraced by Greek judicial authorities is that idiosyncrasies pertaining to national substantive and procedural criminal law may not detract from the obligation to cooperate, and thus the execution of an EAW cannot be barred because of specific requirements that would attach to the prosecution of a given offense under Greek law. This topic is frequently touched upon in the context of discussing the requirement of dual criminality (or the absence thereof). For instance, it has been held that the particular manner in which Greek domestic law proscribes financial offenses (in that case: offenses pertaining to the stock market) may not pose an obstacle to the surrender of the requested individual.⁹² This can be said to reflect a presupposition that the Greek legal order is in a close proximity to the legal order of any State issuing an EAW, which will normally subscribe to certain common standards in terms of both its substantive and its procedural criminal law.

⁸⁶ Note the different stance compared to the Supreme Court's oft-embraced position that rights are born after surrender has been carried out.

⁸⁷ These circumstances ought to be explicitly mentioned in the EAW that they may apply.

⁸⁸ Supreme Court, Decision No. 1594/2007, Poinikos Logos (2007), p. 1136 (see criticism in Mouzakis, 2009, pp. 552-553).

⁸⁹ Supreme Court, Decision No. 1594/2007, *ibid.*

⁹⁰ The remedy leading to a potential retrial must be assessed on the merits of each particular case: Supreme Court, Decision No. 382/2008, Poinike Dikaiosyne (2008), p. 1255 (summary).

⁹¹ In the absence of adequate information attesting to the aforementioned conditions, Greek chambers will often order continuance, so that the appropriate documents are brought to their attention: see, e.g., Supreme Court, Decision No. 201/2023, Qualex.

⁹² Supreme Court, Decision No. 854/2016, NOMOS [according to which differences between legal systems do not pose valid grounds of refusal and may not detract from the obligation to cooperate]. See discussion in Brakoumatsos, 2017 (concurring with the view embraced by the Supreme Court), Kaiafa-Gbandi, 2019, Sevastidis, 2021, p. 1532, Voulgaris, 2018 (also concurring with the view embraced by the Supreme Court). In its 'regulated' form, this rationale applies to tax offenses, in the case of which – as explicitly stated under article 10 para. 1 sec. (a) of Statute No. 3251/2004 – the requirement of 'dual criminality' is somewhat moderated, so that national specificities pertaining to the particular manner of proscribing these offenses do not preclude the execution of EAWs.

Section III – Mutual Trust and cooperation through the EAW: key interpretation and implementation challenges, and solutions adopted in Greece

It is generally observed that mutual recognition has, in some respects, been employed as a substitute for the goal of approximation of substantive criminal law (Tzannetis, 2020, pp. 30-31; also see generally Kaiafa-Gbandi / Papakyriakou, 2019a, pp. 175 et seq., Mylonopoulos, 2021, pp. 450 et seq.). This is all the more affirmed, looking at the practice of Greek judicial authorities in the field of executing EAWs. On the surface, it may appear as though some sort of functional equivalence is taken for granted by Greek judicial authorities, creating a presumption in favor of executing an EAW. This would of course conform to the whole rationale of sustaining a mature system of judicial cooperation, in line with both the letter and the spirit of article 2 of the TEU (Tzannetis, 2020, pp. 42-44). Upon closer inspection, however, one does not discern any effort to ascertain a least common denominator of values crystallized into norms, but rather an ‘automated’ process aiming at the confirmation of mostly formal requirements. Thus, the execution of EAWs runs the risk of being reduced to a discharge of a duty imposed from top to bottom (see Naziris, 2020, on the lack of an ontological groundwork underpinning mutual recognition; cf. Tzannetis, 2020, p. 44). In effect, the approach of Greek judicial authorities gives rise to an appearance of ‘blind trust’, refusing to ‘check’ the judicial system of the issuing State for fear of exceeding their role in the context of judicial cooperation, and thereby waiving the opportunity to exercise a proactive function in terms of the requested individual’s fair trial rights.⁹³

Recapitulating, these are some of the controversies which have arisen before Greek judicial authorities in the (almost twenty) years following the enactment of Statute No. 3251/2004 concerning the European Arrest Warrant:

- In terms of the issuing authority, Greece was one of the first jurisdictions to question the independence of non-judicial authorities (in the strict sense). However, the Supreme Court quickly quelled such concerns by acknowledging the prerogative of the issuing State to appoint its own (national) authority with a mandate to issue EAWs. As a result, Greek executing authorities have abandoned their initially skeptical stance regarding this matter. Besides, the organ entrusted with issuing EAWs under Greek law is the Prosecutor for the Court of Appeal. Given that Prosecutors are members of the Judiciary, and that the Prosecutor issuing an EAW merely transposes an arrest warrant by a Judge or Pre-Trial Chamber or a decision entailing the execution of a sentence imposed by a standing court, Greek judicial authorities are reticent to question the independence of foreign prosecutorial authorities.
- Greek judicial authorities also appear reluctant to decline the execution of EAWs based on the principle of proportionality, especially given the lack of clarity concerning the level of comparison. Still, there have been a few cases in which the execution of an EAW was declined, since it was determined that the offense for which the EAW was issued would not allow the arrest or detention of the requested individual under domestic law.⁹⁴ Thus, it cannot be argued that a proportionality check remains outside the purview of the executing authorities’ review power.
- With respect to case-readiness and the length of detention awaiting surrender, Greek judicial authorities appear to follow a ‘presumption’ that the case will have matured enough in the jurisdiction of the

⁹³ This, inter alia, ignores the guidance of the ECJ’s case-law: see, e.g., CJEU [Grand Chamber], Judgment of 5 April 2016, Joined Cases C-404/15 and C-659/15 PPU, Aranyosi and Căldăraru, ECLI:EU:C:2016:198.

⁹⁴ See references supra, n. 48.

requesting State prior to the issuance of an EAW, so that any discussion of this matter remains outside the reach of the executing authorities' review powers. In any event, the length of detention prior to surrender is confined by virtue of the provisions of Statute No. 3251/2004, which place specific limits for each stage of the process. Significant problems in that regard have only arisen exceptionally, in the presence of concurring requests for extradition, requiring multiple proceedings, as well as a final decision by the Minister of Justice. In contrast, Greek authorities will only issue EAWs at a relatively advanced stage of domestic proceedings, given that the Greek Code of Criminal Procedure only allows the arrest and detention of defendants under specific circumstances; even then, the maximum length of pre-trial detention cannot exceed eighteen months (in extreme cases).

- Any perceived 'idiosyncrasies' of Greek criminal law (either substantive or procedural) do not appear to have an impact on the willingness of Greek authorities to execute EAWs. This is particularly evident in the broad reading of certain provisions concerning offenses against State interests, financial (including tax) offenses, etc. Coupled with the broad array of offenses enumerated in article 10 para. 2 of Statute No. 3251/2004, which are exempted from the dual criminality requirement, it can safely be argued that EAWs will ordinarily not be declined on these grounds.
- One might add that Greek judicial authorities even appear reticent to rely on Greek public order in order to decline the execution of EAWs. A case in point is statutory limitations, which constitutes a ground precluding criminal punishment under Greek law, and was until recently contained in article 11 section (d) of Statute No. 3251/2004 as a mandatory ground of non-execution of an EAW, currently being recognized as a non-mandatory ground of non-execution under article 12 para. 1 section (g).⁹⁵ Nevertheless, it has become the prevailing view in EAW case-law that statutory limitations (even when it was recognized as a mandatory ground of non-execution) might not preclude the surrender of an individual sought for an offense contained in article 10 para. 2 of Statute No. 3251/2004, i.e. for an offense exempted from the dual criminality requirement.⁹⁶ This view is premised on a creeping a fortiori argument, meaning that it would seem incongruous to be able to decline the execution of an EAW based on domestically imposed statutory limitations for acts which need not even be proscribed as criminal offenses under Greek law (see criticism in Naziris, 2018). Erroneous as this line of reasoning may be, it speaks volumes of the tendency of Greek judicial authorities to further judicial cooperation in spite of even substantive law restrictions applicable in the context of the domestic legal order.
- In terms of fair trial rights, Greek judicial authorities confine their review powers by subscribing to the precept that any procedural rights of the requested individual are only engendered subsequent to the execution of an EAW (hence the individual's surrender), therefore being opposable only to the authorities of the issuing State.⁹⁷ Thus, not only do Greek Chambers divest themselves of the authority to enforce rights enshrined in domestic law, but they also remain aloof of the rights enshrined in supranational instruments. It is hardly surprising, then, that one is hard-pressed to trace even the slightest reference to the case-law of the European Court of Justice in the decisions of Greek Chambers.
- Last but not least, a number of requested individuals attempt to channel human rights concerns through the invocation of even non-mandatory grounds of non-execution of an EAW, including those related to

⁹⁵ Following the Statute's amendment by virtue of Statute No. 4947/2022.

⁹⁶ Supreme Court, Decision No. 909/2020, NOMOS [an EAW issued by German authorities was executed in the face of a previous decision by the Appeals Chamber of Ioannina (No. 27/2020) terminating the prosecution of the same offense in Greece on the basis of statutory limitations applicable to the act under the Greek Criminal Code]; Supreme Court, Decision No. 1390/2016, NOMOS [with a dissenting opinion by one member of the bench]; Supreme Court, Decision No. 800/2016, Peiraiki Nomologia (2016), p. 89 [with a dissenting opinion by one member of the bench].

⁹⁷ See references supra, n. 53.

permanent residence in Greece, the development of family ties, etc.,⁹⁸ or even rely on a pending request for political asylum (which is quite common in Greece, due to the influx of refugees).⁹⁹ These pleas are rarely successful, especially given the possibility of carrying out the sentence in Greece after it has been imposed. Overall, it can be said that Greek executing authorities have not capitalized on either EU rights or national rights in order to inform the provisions concerning non-execution.

One might conclude that Greek judicial authorities entrusted with the execution of EAWs cannot be criticized for failure to abide by the dictates of mutual recognition. If anything, they abide thereby probably more than they ought to.

⁹⁸ See references supra, n. 74-75.

⁹⁹ See references supra, n. 76-77.

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¹⁰⁰ With the exception of CJEU judgments, all other referenced authorities included in the following list have been published in Greek.

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