

Netherlands - Raad van State (Council of State) - 201904035/1/V3 – 23 October 2019 -  
ECLI:NL:RVS:2019:3537

**No effective remedy in asylum procedures in Greece - No transfer to Greece - Regulation 604/2013 (Dublin Regulation) - Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms - Article 4 of the Charter of Fundamental Rights of the European Union - Article 20 of Directive 2013/32/EU (Procedures Directive) - ECJ judgement Jawo (C-163/17) - ECHR judgment M.S.S. v. Belgium and Greece (30696/09)**

*(State Secretary of Security and Justice against appellant)*

The Administrative Jurisdiction Division of the Council of State (Division) considers that there are points for special interest regarding the Greek asylum procedure. The reception facilities to which the asylum seeker should return in this case have been improved and brought to an adequate level. However, the very limited access of asylum seekers to free legal assistance during their appeal procedure remains a problem. Before asylum seekers can be sent back to Greece to await the outcome of their asylum procedure, the State Secretary must further investigate and ascertain the access of asylum seekers to legal aid in Greece.

In its judgment the Division assessed whether the District Court of The Hague rightly decided that the asylum seeker (appellant) could not be sent back to Greece. The appellant had previously applied for asylum in Greece. Pursuant to the Dublin Regulation Greece is responsible for examining his asylum application. The appellant claimed that the reception and asylum procedure in Greece is so inadequate and that he for that reason cannot be returned.

The Division considers that the District Court has rightly taken the position that the State Secretary has to carefully investigate and properly substantiate that the appellant can be sent back to Greece. The Division also considers that the District Court rightly concluded that, in addition to shortcomings in the living conditions of asylum seekers, as referred to in the ECJ Jawo judgment and the ECHR judgement M.S.S. v. Belgium and Greece, other defects in the asylum procedure, such as access to an effective remedy in Greece, can result in shortcomings that are contrary to Article 3 of the ECHR and Article 4 of the CFREU.

The Division confirms the preceding Judgment of the District Court. The appellant won his case.

This ruling means that the State Secretary is currently not allowed to transfer foreign nationals to Greece. First, he must investigate further the access of foreigners to legal aid, as referred to in Article 20 of the Procedures Directive in Greece or ask the Greek authorities for an individual guarantee that a foreign national will be granted legal aid.

*Also on 23 October 2019, the Division judged in a case very similar to this one, with the same outcome (see: ECLI:NL:RVS:2019:3538).*