



Welcome the stranger.
Protect the refugee.

May 8, 2020

Some thoughts on the new Joint Ministerial Decision, regulating the registration of migration-related NGOs in Greece

Last week, the Expert Council on NGO Law of the Conference of INGOs of the Council of Europe published Guidelines on protecting NGO work in support of refugees and other migrants¹, complementing the Expert Council's study² published in December 2019. The guidelines provide that laws, policies and practices should not criminalize NGOs or impose disproportionate burdens on them, due to their activities involving assistance to refugees and other migrants in distress.

However, HIAS Greece remains concerned that recent changes in the regulatory framework of NGOs working in the field of international protection, migration and social inclusion within the Greek Territory do not only fall short of these standards but also establish particularly onerous requirements for the registration and certification of migration-related NGOs, bring their activities and personnel under strict state control and direction, and are likely to have a chilling effect on the Civil Society.

In particular:

- On 14 April 2020, Greece published a new Joint Ministerial Decision entitled 'Determination of the operation of the "Registry of Greek and Foreign Non-Governmental Organizations (NGOs) and of the "Registry of Members of the Non-Governmental Organizations (NGOs)", working in the field of international protection, migration and social inclusion within the Greek Territory' (Joint Ministerial Decision 3063/2020).
- According to the Joint Ministerial Decision, registration in the "Registry of Greek and Foreign NGOs" is a necessary precondition for their activity, certification and cooperation with the State authorities. As per the relevant Explanatory Report, the creation of a "Registry of Members of NGOs" is absolutely necessary for the more effective monitoring of the activities of the natural persons of the NGOs. Natural persons of

¹ <https://rm.coe.int/expert-council-conf-exp-2020-3-guidelines-on-protecting-ngo-work-in-su/16809e4a81>

² Expert Council on NGO Law of the Conference of INGOs of the Council of Europe - *Using Criminal Law to Restrict the Work of NGOs Supporting Refugees and Other Migrants in Council of Europe Member States* - <https://rm.coe.int/expert-council-conf-exp-2019-1-criminal-law-ngo-restrictions-migration/1680996969>

NGOs are defined as members, employees, paid associates or volunteers of NGOs who operate on behalf of NGOs in the Appeals Authority, Reception and Identifications Centres, Regional Asylum Offices and other accommodation facilities operated under accommodations schemes under the responsibility of the Ministry of Migration and Asylum, as well as in any other facility which may be established by the Ministry of Migration and Asylum.

- The Common Ministerial Decision at issue only concerns organizations involved in “International Protection”, “Migration” and “Social integration” and, hence, discriminates among NGOs based on their activities.
- The relevant legislative framework, despite interfering with the freedom of association, was not adopted through a participatory process and consultation with the NGOs concerned [*see also Principles 8 and 9 of the OSCE/ODIHR and Venice Commission Joint Guidelines on Freedom of Association*³, (*‘Joint Guidelines’*) and CoE, *Legal status of non-governmental organisations in Europe, Recommendation CM/Rec (2007)*⁴ 14 and explanatory memorandum⁵, Paras. 76-77 [*‘Recommendation 2007(14’)*].
- Only organizations with a legal personality can be included in the Registry. The registration requirements under the new framework are particularly burdensome and include, for instance, annual and detailed project reports of activities of the last two years which, as a minimum, must refer to the operation of facilities type/ title/ number of beneficiaries/ cost of operation, services provided in accommodation facilities, , actions undertaken by the entity in the previous two years, number of activities implemented per category of action/ titles of these activities, beneficiaries, cooperation with agencies, current interventions [*see also Principle 2 of the Joint Guidelines*].
- The registration requirements include reports of activities and tax declarations of the past two years, excluding, thus, newly founded organizations.
- NGOs that have already submitted an application for inclusion in the pre-existing Registry under the former legal regime will have to reapply within a time-limit of 2 months, starting from the publication of the Joint Ministerial Decision. Organizations that were already included in the pre-existing Registry must also reapply within 2 months for inclusion in the new Registry, otherwise they will be removed from the Registry [*see also para. 165 of the Joint Guidelines as per which “(f)inally, re-registration should not automatically be required following changes to legislation on associations. Renewals of registration may be required in exceptional cases where significant and fundamental changes are to take effect. In such cases, the competent authorities should first notify the respective association of the need to re-register, and should provide them with a sufficient transitional period to enable the associations to comply with the new requirements. In any case, even if they do not re-register, the associations should be able to continue to operate without being considered unlawful”*].
- In any case, the “Special Secretary of Coordination of the Involved Institutions” reserves the right to verify submitted information with all the competent state authorities as well as the right, in assessing all the above, **together with elements that concern the actions of these institutions, and at his/her discretion**, to reject the applicant's registration application. Hence, the registration procedure is subject to an

³ [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2014\)046-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)046-e)

⁴ https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805d534d

⁵ <https://www.statewatch.org/news/2016/feb/coe-rec-ngos-explanatory-memo.pdf>

excessively wide margin of administrative discretion and does not meet the condition of “foreseeability” of the law as required by Art. 11 of the ECHR and the relevant jurisprudence of the ECtHR [see also Principle 9 of the Joint Guidelines and ECtHR, *Hasan and Chausch v. Bulgaria*⁶ [GC] §84, where the Court found that “(i)n matters affecting fundamental rights it would be contrary to the rule of law, one of the basic principles of a democratic society enshrined in the Convention, for a legal discretion granted to the executive to be expressed in terms of an unfettered power. Consequently, the law must indicate with sufficient clarity the scope of any such discretion conferred on the competent authorities and the manner of its exercise”. Similarly, in *Koretskyy and Others v. Ukraine*, the Court considered that the provisions of the domestic law regulating the registration of associations were too vague to be sufficiently “foreseeable” and granted an excessively wide margin of discretion to the authorities to decide whether a particular association could be registered (§48)].

- The certification of the registered NGOs is a prerequisite in order 1) to be able to operate in the Registration and Identification Centers and other accommodation facilities for asylum seekers as well as in the Regional Asylum Offices, 2) to access national, EU and other funds for the provision of material reception conditions and 3) to receive funding from the Ministry of Immigration and Asylum from the National Budget for the implementation of actions of a Social and Humanitarian nature as well as Social Integration and International Protection activities. The criteria for the certification are: implementation and effectiveness of actions, economic efficiency and stability, quality (as proven by a quality management system, ISO EN 9001 certification, external quality assessment reports), administrative - organizational capacity, logistical infrastructure and accountability (website, where the NGO will publish at least its Statute, the names of the members of its Board and of the holders of positions of responsibility, annual balance sheets by certified auditors, channels of communication with its members, subscribers and sponsors and annual action reports) [see also para. 68 of the Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, A/HRC/20/27, as per which “(a)ny associations, both registered or unregistered, should have the right to seek and secure funding and resources from domestic, foreign, and international entities, including individuals, businesses, civil society organizations, Governments and international organizations”].
- Similarly, certified, under this Joint Ministerial Decision, NGOs are required to register, within three months, the natural persons who are members, employees, paid associates or volunteers and operate on their behalf in the Registration and Identification Centers and other accommodation facilities for asylum seekers as well as in the Regional Asylum Offices. For the registration in the “Registry of Members of the NGOs”, it is necessary for the natural persons not to have been convicted with a final conviction for any criminal offense (with the exception of traffic violations) and to submit the following information: identity or passport details, Tax ID, social security number, competent Tax Office, professional activity and seat, permanent address in Greece, telephone number and e-mail address, copy of their criminal record, a solemn declaration that they have not been sentenced by a final judgment for any criminal offense, a solemn declaration regarding any discharge or acquittal or permanent termination of any criminal prosecution against them, their CV and their employment contract or agreement for voluntary work. In case of foreign documents, these must be duly certified and translated to Greek. Any change in the aforementioned information must be communicated by the NGOs to the competent authorities within 24 hours. **Not only do these provisions establish particularly onerous requirements for the NGOs and their natural persons but also constitute disproportionate interference with the right to privacy and the right of the associations to be free from state interference. To be also noted that, under Greek law, the**

⁶ <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58921>

presumption of innocence can only be reversed when there is an “irrevocable conviction” by a court of law, not just a “final” one.

- The above is exacerbated by the fact that, similarly to the procedure for the registration of NGOs, the Special Secretary of Coordination of Involved Institutions in any case reserves the right to verify submitted information with all the competent state authorities as well as **the right, in assessing all the above, together with elements that relate to the personality and action so far of the applicants, and at his/her discretion, to reject the registration of the natural person.** Hence, this provision confers unfettered discretion to the administrative authorities and does not meet the condition of “foreseeability” of the law, while, at the same time, no legal remedy is provided in the Joint Ministerial Decision against the decision of the Special Secretary to reject the registration of the natural person. Further, it constitutes a violation of the organization’s right to be free from state interference and could also lead to a violation of the right to privacy and of the right to freedom of expression.
- NGOs and natural persons of NGOs will be removed from the Registry of NGOs and the Registry of Members of NGOs respectively, if among others, they are involved in “illegal acts”, as evidenced by a final conviction or demonstrated by a “document of the competent public authority” or if found that the implementation of the project that they have undertaken is “poor”, as evidenced by a “relevant document of the competent, for every case, administrative authority”. Again, the wording of these provisions lends itself to a broad interpretation, thus granting excessive discretion to the administrative authorities as to the removal of NGOs and natural persons of NGOs from the respective Registries. “Illegal acts” is an overly broad term, which could be understood as encompassing administrative irregularities and minor offenses, such as traffic violations or breaches of the anti-smoking legislation. Furthermore, it is unclear what the “document of the competent public authority” refers to. All in all, the aforementioned provisions are also incompatible with the presumption of innocence which, under Greek law, can only be reversed when there is an “irrevocable conviction” by a court of law, not just a “final” one. Finally, the removal from the Registries of an NGO/natural person of an NGO due to the “poor implementation” of the project, as evidenced by a “relevant document of the competent, for every case, administrative authority” would also violate the organization’s right to be “independent and free from undue interference of the state or of other external actors”. *[See also para. 215 of the Joint Guidelines also providing that “(a)n association is not independent if decisions over its activities and operations are taken by anyone other than the members of the association or an internal governing body, as designated by the members. [...] (A)n association is not considered independent in cases where the government has a wide discretion to, directly or indirectly, influence the decision-making processes of its managers and members, thereby rendering decisions on the establishment of the association, its activities and operations, the appointment of its management or on changes to its by-laws” and Paragraph 6 of the Recommendation 2007(14) providing that “(a)lthough subject to the law like everyone else, the freedom from direction by public authorities is essential to maintain the “non-governmental” nature of NGOs. This freedom should extend not only to the decision to establish an NGO and the choice of its objectives but also to the way it is managed and the focus of its activities. In particular there should be no attempts by public authorities to make NGOs effectively agencies working under their control”].*
- Additionally, the remedy provided against the decision to remove an NGO from the Registry is a hearing before a “Hearings Committee”, which is an administrative Committee, composed, inter alia, of a representative of the Special Secretariat of Coordination of the Involved Institutions. The Rapporteur and the Secretary of the Committee are also staff working for the Special Secretariat of Coordination of the Involved Institutions. The right to a hearing is not foreseen for cases where the “illegal act” is evidenced by a “final conviction”. No legal remedy is foreseen in the Joint Ministerial Decision in the cases of removal of natural persons from the Registry of Members of NGOs.

- All in all, the Joint Ministerial Decision at issue not only establishes particularly onerous requirements for the registration and certification of migration-related NGOs, but also brings their activities and personnel under strict state control and direction and is likely to have a chilling effect on Civil Society. At the same time, the provisions of the Decision do not meet the requirement of “foreseeability of the law”, confer excessive discretionary powers to the administrative authorities and amount to a disproportionate interference with the right to freedom of association. The legitimate aim pursued by this Decision is also unclear. *[It is also worth noting that the Fundamental Rights Agency of the EU had already reported⁷, in relation to the 2016 legislative framework, which was less onerous that, “(i)n January 2016, a Ministerial Decision put all NGOs in Lesbos directly under state control and refused to recognise the operations of independent and unregistered NGOs, effectively criminalising them. NGOs and volunteers helping refugees were asked, starting in February 2016, to fill out forms providing personal details of all their members to the government.]*

⁷ FRA, *Challenges facing human rights organisations working on human rights issues in the EU*, pp. 22-24)
- https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-challenges-facing-civil-society_en.pdf