

# **Risk of Repression**

## New Rules on Civil Society Supporting Refugees and Migrants in Greece

May 2020

## Introduction

The operation of civil society in Greece has consistently contributed to strengthening the rule of law, accountability of the state, transparency and the protection of human rights, in particular the rights of minorities and the most vulnerable.

In addition to already established organisations and groups, in light of the large numbers of arrivals of refugees in 2015, many civil society actors, including from abroad, stepped in to provide humanitarian assistance and other needed support, including rescue at sea. Recently, however, **political discourse** against non-governmental organisations (NGOs) in the field of asylum and migration **has intensified and fuelled unprecedented hostility by local groups against civil society**,<sup>1</sup> ranging from generalised, vague accusations of illicit activity such as smuggling, to racist incidents and violent attacks against organisations and their staff.<sup>2</sup>

A “Greek and Foreign NGO Members Registry” (*Μητρώο Μελών Ελληνικών και Ξένων Μη Κυβερνητικών Οργανώσεων*) has been established since 2018 in Greece.<sup>3</sup> Since 2020, however, the Greek government has sought to introduce new rules on the registration and certification of Greek and foreign NGOs active in the area of asylum, migration and social inclusion. Changes have been brought about by a legislative reform of February 2020 introducing a “Greek and Foreign NGO Members Registry” (*Μητρώο Μελών Ελληνικών και Ξένων Μη Κυβερνητικών Οργανώσεων*),<sup>4</sup> following which the government adopted a Joint Ministerial Decision on 27 March 2020,<sup>5</sup> governing the Greek and Foreign NGO Registry and the Greek and Foreign NGO Members Registry”. The Ministerial Decision exceeds the powers conferred upon the executive by the legislature and lays down additional conditions for registration of NGOs and their members, staff and volunteers in the respective registries.

A legislative amendment adopted on 8 May 2020 recently introduced general provisions on the NGO Registry.<sup>6</sup> The law provided for the minimum necessary terms and conditions for the registration of organisations and granted power to the executive to lay down additional requirements for the registration of NGOs.<sup>7</sup> Yet, it should be noted that the establishment of further conditions beyond those set out in

<sup>1</sup> See e.g. Kathimerini, ‘NGO registry to include staff and partners, says gov’t spokesman’, 4 February 2020, available at: <https://bit.ly/2LrvwFb>; Ethnos, ‘Mitarachis: The government’s seven priorities on migration/refugees issue’, 17 February 2020, available at: <https://bit.ly/2xYEkiV>; in.gr, ‘Μηταράκης: Έλεγχος δράσης των ΜΚΟ με στοιχεία και πιστοποίηση κάθε εμπλεκομένου προσώπου’, 10 April 2020, available in Greek at: <https://bit.ly/2yV5W8V>; Naftemporiki, ‘N. Μηταράκης: Έλεγχος σε ΜΚΟ και υπ. Μετανάστευσης για τη διαχείριση κονδυλίων’, 13 May 2020, available in Greek at: <https://bit.ly/3cp1iyB>.

<sup>2</sup> Racist Violence Recording Network, ‘Δίκτυο Καταγραφής Περιστατικών Ρατσιστικής Βίας: Σοβαρή ανησυχία για τις επιθέσεις κατά προσφύγων και εργαζομένων σε ανθρωπιστικές οργανώσεις’, 5 March 2020, available in Greek at: <https://bit.ly/2ZdM6kb>; RSA, ‘Timeline of attacks against solidarity’, 18 March 2020, available at: <https://bit.ly/3bB2pKi>. See also Kathimerini, ‘Seven residents to face prosecutor over attack on NGO workers on Lesbos’, 12 March 2020, available at: <https://bit.ly/2WwMI2w>.

<sup>3</sup> Joint Ministerial Decision οικ.7586/18, Gov. Gazette B’ 4794/26.10.2018.

<sup>4</sup> The latter was established in February 2020 through Article 191(2) Law 4662/2020, Gov. Gazette A’ 27/7.2.2020, available in Greek at: <https://bit.ly/2WQfU3w>.

<sup>5</sup> Joint Ministerial Decision 3063/2020, Gov. Gazette B’ 1382/14.04.2020, available in Greek at: <https://bit.ly/2SGW2yG>.

<sup>6</sup> Article 58 Law 4686/2020 “on improvement of migration legislation”, Gov. Gazette A’ 96/12.5.2020, available in Greek at: <https://bit.ly/2Lir0j>.

<sup>7</sup> Article 58(3) Law 4686/2020. Note that Article 191(2) Law 4662/2020 only foresaw a power to set out procedures for registration and removal of organisations from the NGO Members Registry.

the law is contrary to constitutional standards.<sup>8</sup> In light of this new legal basis, a replacement of the March 2020 Decision by a **new Joint Ministerial Decision is likely to be issued** soon.

The regulations set out so far on the operation of NGOs include **stringent, disproportionate and arbitrary requirements** for registration and certification, which create risks of violations of rights of civil society.<sup>9</sup> The changes come against the backdrop of policy efforts appearing to create an increasingly hostile environment for civil society in Greece, as well as plans for broader legislation on NGOs.<sup>10</sup> The adoption of such rules is liable to result in unacceptable restrictions on the operation and activities of civil society and on the right to association. Beyond infringing legality, proportionality and freedom of association, they are liable to have **broader repercussions for non-profit work, transparency and efforts to prevent rule of law backsliding in Greece and beyond**.<sup>11</sup>

### Registration and certification

The Ministerial Decision provisions seem to primarily target humanitarian organisations with operational presence and involvement in aspects of the Greek asylum and migration system such as management of reception facilities and intervention in detention centres. Yet, the requirement of registration is formulated in such a way as to **exclude any unregistered organisation from carrying out any activity related to asylum, migration and social inclusion**. Organisations which do not operate in service provision but are active in monitoring and defending human rights, acting in solidarity with refugees, providing legal or psycho-social assistance to specific individuals in detention or reception facilities or on their premises without implementing programmes or agreements with the state, shall comply with the same requirements of registration and certification under the regulations.

The intended changes seem to make registration of organisations and their members, staff and volunteers necessary for their operation in Greece. It is a **prerequisite for implementing activities relating to international protection, migration and social inclusion on Greek territory, in particular legal, psychosocial and medical services, material reception conditions, and information**.<sup>12</sup>

Both the NGO Registry and the NGO Members Registry are managed by the Ministry of Migration and Asylum,<sup>13</sup> under a Special Secretariat for Stakeholders Coordination

<sup>8</sup> As explained by the Greek Parliament Scientific Service, the law empowers the government to set out additional substantive conditions beyond those set out in legislation, whereas such a power may only be exercised to regulate matters of technical nature or detail under Article 43(2)(b) of the Constitution: Greek Parliament, 'Εκθεση επί του νομοσχεδίου «Βελτίωση της μεταναστευτικής νομοθεσίας», 7 May 2020, 9-10, available in Greek at: <https://bit.ly/3dmNm8c>.

<sup>9</sup> See *inter alia* HIAS Greece, 'Some thoughts on the new Joint Ministerial Decision, regulating the registration of migration-related NGOs in Greece', 8 May 2020, available at: <https://bit.ly/2T1ej9O>.

<sup>10</sup> CNN Greece, 'Τα αλλάζει όλα στις ΜΚΟ η κυβέρνηση – Στα υπουργεία νομοσχέδιο «σκοπούπα»', 23 April 2020, available in Greek at: <https://bit.ly/3b7zopu>.

<sup>11</sup> See *inter alia* Expert Council on NGO Law, *Using criminal law to restrict the work of NGOs supporting refugees and other migrants*, CONF/EXP(2019)1, December 2019, available at: <https://bit.ly/2YZaS7y>; Venice Commission and OSCE/ODIHR, *Joint Guidelines on Freedom of Association*, GDL-FOASS/263/2014, CDL-AD(2014)046, 17 December 2014,.

<sup>12</sup> Article 58(1) Law 4686/2020.

<sup>13</sup> Articles 1 and 10 Joint Ministerial Decision 3063/2020.

(Ειδική Γραμματεία Συντονισμού Εμπλεκόμενων Φορέων).<sup>14</sup> Registration of NGOs is issued for a period of three years, renewable.<sup>15</sup>

Additionally, the Ministerial Decision currently in force details that certification (πιστοποίηση) of registered NGOs by the Ministry of Migration and Asylum is necessary for them to be able to carry out activities in reception facilities and Regional Asylum Offices, to receive national, EU or other funding for reception services, and to receive funding from the Ministry for any objective.<sup>16</sup>

### Unfettered discretion to reject registration

According to the Ministerial Decision, the Ministry of Migration and Asylum **retains discretion to reject** the registration of an NGO following an assessment of its compliance with legal requirements, in combination with “**elements relating to its activities**”.<sup>17</sup> Similarly, the Ministry may at its discretion reject the registration of an individual applicant in the NGO Members Registry following an assessment of the legal requirements, in combination with “**elements pertaining to the personality and activities of that applicant**”.<sup>18</sup>

Moreover, the aforementioned Decision provides that NGOs and individuals shall be removed from the respective registries where they are involved in **illegal activity or poor performance** of their activities. It thus inserts a vague provision open to arbitrary interpretation, in particular given that authorities may establish these elements through **any document from a competent public authority**.<sup>19</sup>

Furthermore, the provisions of the Ministerial Decision confer undue discretion upon the Ministry of Migration and Asylum to (1) deny registration to NGOs and/or individuals even when they fulfil the elaborate requirements set out in legislation, on the basis of assumptions relating to the quality of their activities and personality, and to (2) revoke registration where it deems that an organisation is not adequately performing its functions.

Such powers provide a **dangerous legal basis for arbitrary, partisan and non-transparent assessments** as to which organisations should be permitted to perform their activities and to operate in the country. The broad wording of the Decision thereby enables the government to deny or revoke registration **for reasons which are not outlined with sufficient clarity in the law so as to be foreseeable for NGOs, in dereliction of the fundamental right to freedom of association** under Article 11 of the European Convention on Human Rights (ECHR) and Article 12 of the Charter of Fundamental Rights of the European Union.<sup>20</sup> Freedom of association is enjoyed both individually and by organisations themselves.<sup>21</sup>

<sup>14</sup> Articles 4 and 12(4) Joint Ministerial Decision 3063/2020.

<sup>15</sup> Article 6(2) Joint Ministerial Decision 3063/2020.

<sup>16</sup> Article 4 Joint Ministerial Decision 3063/2020.

<sup>17</sup> Article 3(4) Joint Ministerial Decision 3063/2020.

<sup>18</sup> Article 12(3) Joint Ministerial Decision 3063/2020.

<sup>19</sup> Articles 8(1)(c)-(d) and 14(1)(b)-(c) Joint Ministerial Decision 3063/2020.

<sup>20</sup> See e.g. European Court of Human Rights, *Koretskyy v. Ukraine*, App No 40269/02, 3 July 2008, paras 47-48; *Hasan & Chausch v. Bulgaria*, App No 30985/96, 26 October 2000, para 84.

<sup>21</sup> Expert Council on NGO Law, *Using criminal law to restrict the work of NGOs supporting refugees and other migrants*, CONF/EXP(2019)1, December 2019, para 38; Venice Commission and OSCE/ODIHR, *Joint Guidelines on Freedom of Association*, GDL-FOASS/263/2014, CDL-AD(2014)046, 17 December 2014, para 19.

## Assessment of efficiency and transparency of civil society work

According to the March 2020 Ministerial Decision, organisations must abide by efficiency standards in order to be certified by the Ministry.<sup>22</sup> These standards are assessed by the Ministry of Migration and Asylum based on the **implementation of their activities** in the past two years, on funding sources and audit reports,<sup>23</sup> and on the **quality of services** offered. As discussed earlier, their certification can be revoked on the basis of an opinion from the authorities pointing to poor performance of activities.

Through this provision, the Ministerial Decision empowers the **political authorities developing migration policies in Greece to evaluate the work of independent organisations that monitor and defend the rights of refugees and migrants**, often through legal action against those very policies. The institutional position of the responsible authority responsible for certifying NGOs thereby renders a **neutral and impartial evaluation of civil society activities impossible**.

Furthermore, it remains unclear upon which criteria a government body is to adequately and objectively assess the efficiency and quality of NGO services in practice, including those of organisations that are not supported by the government or EU funds and do not entail donor relations or reporting processes. This framework creates **risks of misuse of registration rules for the purpose of crackdown on dissent** and contestation of policies and practices carried out by the state.

In order to be certified, organisations must also fulfil extremely demanding **transparency requirements**, namely by having annual audited reports and annual activity reports, means of communication with members, as well as individual donors and funders publicly available on their websites.<sup>24</sup> Compliance with the obligation to conduct audits, including for entities that have no audit obligations under national legislation, entails **substantial financial costs** for organisations. Moreover, the requirement to render the details of donors public **interferes with fundamental rights to privacy and protection of personal data**, as well as **freedom of association**.<sup>25</sup>

### Disproportionate reporting requirements

All organisations active in the area of asylum, migration and social inclusion are required to report annually on *inter alia* the services they provide, the **number of beneficiaries / recipients of such services**, the number of staff, the number of volunteers, and **activities carried out in the past two years**. The latter must include types of facilities managed, **number of persons supported, costs of operation**, actions implemented by area of activity, collaboration with stakeholders, and current interventions.<sup>26</sup>

Any changes to the composition or functioning of NGOs must be reported immediately.<sup>27</sup> Any changes to the personal details of persons registered in the NGO Members Registry must be **reported by their organisation within 24 hours**.<sup>28</sup>

<sup>22</sup> Article 5A Joint Ministerial Decision 3063/2020.

<sup>23</sup> This is a stricter obligation compared to legislation given that, under Article 57(2)(f) Law 4686/2020, financial reports may be audited or kept by a duly qualified finance manager within the organisation.

<sup>24</sup> Article 5C Joint Ministerial Decision 3063/2020.

<sup>25</sup> CJEU, Case C-78/18 *Commission v Hungary (Transparency of associations)*, Opinion of AG Campos Sanchez-Bordona of 14 January 2020, paras 134-136.

<sup>26</sup> Article 2(1)(h) Joint Ministerial Decision 3063/2020.

<sup>27</sup> Article 2(4) Joint Ministerial Decision 3063/2020.

Finally, certification is automatically suspended if reporting requirements are not met by the deadline, until the required documents are provided.<sup>29</sup> Organisations which do not comply with annual reporting requirements within three months of notification are to be removed from the registry.<sup>30</sup> Failure to comply with any of the requirements of individual members' registration results in immediate removal of both the individual from the NGO Members Registry and of the organisation from the NGO Registry.<sup>31</sup>

These requirements not only impose stringent reporting obligations and **disproportionate administrative burden on NGOs** but also potentially amount to **interference with** the right to private life and correspondence,<sup>32</sup> as well as **the right to protection of personal data** of persons supported by such organisations.

### Discrimination against migration NGOs

More broadly, the rules described above impose **considerably stricter conditions** on the operation of NGOs working in the area of asylum, migration and social inclusion, compared to other civil society organisations in the country, without offering objective justification as to the need to place organisations working in a particular field of policy at a disadvantage.

Differential treatment on the basis of the – lawful – mandate of specific organisations constitutes a breach of freedom of association,<sup>33</sup> and in the absence of objective justification, amounts to **arbitrary discrimination on grounds of political opinion**, contrary to Article 14 ECHR and Article 21 of the Charter.

### Concluding remarks

The intended regulations concerning the operation of NGOs in the area of asylum, migration and social inclusion in Greece contravene the state's obligation to ensure an environment that enables civil society organisations to carry out their work without undue interference by the government or third parties, and to "remove any unnecessary, unlawful or arbitrary restrictions to civil society space, in particular with regards to freedom of association, peaceful assembly and expression."<sup>34</sup>

To this end, bearing in mind the hostile environment created recently against civil society organisations active in the field, RSA stresses that it is essential that organisations and their members "are able to operate freely without fear that they may be subjected to any threats, acts of intimidation or violence, including... a media smear campaign", as highlighted by the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association.<sup>35</sup>

<sup>28</sup> Article 11(4) Joint Ministerial Decision 3063/2020.

<sup>29</sup> Article 7(3) Joint Ministerial Decision 3063/2020.

<sup>30</sup> Article 2(3) Joint Ministerial Decision 3063/2020.

<sup>31</sup> Article 11(5) Joint Ministerial Decision 3063/2020.

<sup>32</sup> Venice Commission and OSCE/ODIHR, *Joint Guidelines on Freedom of Association*, GDL-FOASS/263/2014, CDL-AD(2014)046, 17 December 2014, para 19.

<sup>33</sup> Expert Council on NGO Law, *Using criminal law to restrict the work of NGOs supporting refugees and other migrants*, CONF/EXP(2019)1, December 2019, para 46

<sup>34</sup> Council of Europe Committee of Ministers, *Recommendation on the need to strengthen the protection and promotion of civil society space in Europe*, CM/Rec(2018)11, 28 November 2018, Appendix I(c) and (d). See also Appendix II(a)-(d).

<sup>35</sup> United Nations Human Rights Council, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*, Maina Kiai, A/HRC/20/27, 21 May 2012, para 63, available at: <https://bit.ly/2WVWNRj>.

Lastly, RSA recalls that the European Court of Human Rights has on numerous occasions affirmed the **direct relationship between democracy, pluralism and freedom of association**, and has ruled that only convincing and compelling reasons can justify restrictions on that freedom.<sup>36</sup>

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<sup>36</sup> European Court of Human Rights, *Gorzelik v. Poland*, App No 44158/98, 17 February 2004, para 88.



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