

Repression Continued

Greece Further Restricts Civil
Society Supporting Refugees and
Migrants

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Introduction

In May 2020, organisations including Refugee Support Aegean (RSA) had expressed their alarm at regulations adopted by Greece to establish new rules for the registration of non-governmental organisations (NGOs) working with refugees and migrants, and their members and staff.¹ The rules, set out in a March 2020 Joint Ministerial Decision and May 2020 legislation, were criticised as amounting to a disproportionate interference with the fundamental rights to freedom of association, privacy and freedom from discrimination,² and as liable to create a “chilling effect” for civil society in Greece.³ The **Expert Council on NGO Law** at the Council of Europe concluded in July 2020 that the “Ministerial Decision and related legislative provisions should be **substantially revised so that they are brought into line with European standards**”.⁴

The direction taken by the Joint Ministerial Decision⁵ published by the Greek government on 9 September 2020 to replace the March 2020 Decision not only does not comply with the Expert Council recommendations to bring problematic elements of its predecessor in line with human rights standards but further exacerbates interference with fundamental rights. **Registration requirements for NGOs are now stricter and more intrusive, while state discretion and administrative convenience are enhanced.** Furthermore, the new regulations impose additional burden on civil society and demands excessive documentation in a way that interferes with the freedom of occupation and of the right to engage in work.⁶ With this antithetical approach, the state shows **blatant disregard for Council of Europe recommendations⁷ and concerns about risks of rule of law backsliding** raised by stakeholders at domestic and international level, while doubling down on maintaining a hostile environment for civil society.

Registration requirements for organisations

Contrary to its predecessor, the new Ministerial Decision construes certification as an automatic effect of registration on the NGO Registry.⁸ This means that burdensome certification criteria are no longer part of a separate procedure available to registered NGOs that may wish to obtain it, but mandatory requirements for any organisation working in the areas of asylum, migration and social inclusion.

¹ Joint Ministerial Decision 3063/2020, Gov. Gazette B' 1382/14.04.2020; Article 58 L 4686/2020, Gov. Gazette A' 96/12.05.2020.

² RSA, *Risk of Repression: New Rules on Civil Society Supporting Refugees and Migrants in Greece*, May 2020, available at: <https://bit.ly/3bJHCWy>.

³ EU Observer, 'New Greek rules stigmatise NGOs working with migrants', 3 June 2020, available at: <https://bit.ly/2GQ9Gwe>; AFP, 'Greece culls migrant support groups in “transparency” overhaul', 20 June 2020, available at: <https://bit.ly/3k4Bhbe>.

⁴ Expert Council on NGO Law, *Opinion on the compatibility with European standards of recent and planned amendments to the Greek legislation on NGO registration*, CONF/EXP(2020)4, 2 July 2020, para 109, available at: <https://bit.ly/2Zr118w>. See also RSA et al., 'Μη συμβατές με τα ευρωπαϊκά πρότυπα οι ελληνικές ρυθμίσεις περί μητρώου μη κυβερνητικών οργανώσεων που υποστηρίζουν πρόσφυγες και μετανάστες, σύμφωνα με το Συμβούλιο της Ευρώπης', 9 July 2020, available at: <https://bit.ly/3hgn5Kl>.

⁵ Joint Ministerial Decision 10616/2020, Gov. Gazette B' 3820/09.09.2020.

⁶ Article 15 Charter of Fundamental Rights of the European Union.

⁷ The Minister of Asylum and Migration has stated that the Expert Council on NGO Law opinion in no way constitutes a Council of Europe reference to the NGO Registry: Hellenic Parliament, Plenary Debate, 6 July 2020, 15973-15974, available at: <https://bit.ly/2Zp4Xl3>.

⁸ Article 6(1) Joint Ministerial Decision 10616/2020.

Under the new Ministerial Decision, the onerous conditions previously reserved to certification are **mandatory substantive requirements for all organisations that need to register** with the Ministry of Migration and Asylum.⁹ In addition to extensive formal conditions,¹⁰ organisations must abide by (a) efficiency, (b) organisational capacity and (c) accountability standards in order to register with the Ministry.¹¹

The assessment of efficiency standards is conducted by the Ministry of Migration and Asylum based on the **implementation of organisations' activities** in the past two years, on funding sources, on the existence of quality assurance systems and external evaluations.¹² The Ministerial Decision thus maintains **powers for political authorities in charge of 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**. Reservations have also been raised by the Greek Ombudsman with regard to the way in which the Ministry may evaluate NGOs' efficiency.¹³

As regards transparency requirements, organisations must have annual audited reports and annual activity reports, means of communication with members, as well as details of Board members, managers, individual donors and funders publicly available on their websites.¹⁴ The requirement to render the details of donors and staff public **interferes with the fundamental rights to privacy and protection of personal data** under Articles 7 and 8 of the Charter of Fundamental Rights of the European Union, as held by the Court of Justice of the European Union (CJEU) in its recent *Commission v Hungary* judgment.¹⁵

Interference with the right to privacy is only permissible where it pursues the legitimate aims of "national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others",¹⁶ provided it fulfils criteria of necessity and proportionality. The basis for restrictions laid down in the Ministerial Decision is formulated in a substantially broader manner, however. Article 1(3) of the Decision provides that registration is necessary "for reasons of public interest", to guarantee transparency in the operation of NGOs and optimisation of their services, as well as to safeguard the human rights of refugees and migrants. In addition, the requirement for publication of personal data of donors and supporters is arguably a disproportionate measure to meet the aforementioned aims.

The lack of proportionality of restrictions on the right to privacy is also inferred from the substantial financial costs required to ensure compliance with the blanket obligation to conduct audits, including for entities that have no audit obligations under national legislation.

⁹ Article 5 Joint Ministerial Decision 10616/2020.

¹⁰ Article 2 Joint Ministerial Decision 10616/2020.

¹¹ Article 5 Joint Ministerial Decision 10616/2020.

¹² Article 5(1)(a) Joint Ministerial Decision 10616/2020.

¹³ Ombudsman, Letter No 279938/36758/2020, 13 August 2020.

¹⁴ Article 5(1)(c) Joint Ministerial Decision 10616/2020.

¹⁵ CJEU, Case C-78/18 *Commission v Hungary (Transparency of associations)*, 18 June 2020, paras 124 and 126.

¹⁶ Article 8(2) European Convention on Human Rights (ECHR).

Individual members' registration

Under the previous legal framework, registration of individual members, staff and volunteers of organisations on the NGO Members Registry was mandatory for persons wishing to carry out activities in reception facilities and Regional Asylum Offices.¹⁷ Currently, however, **all members, staff and volunteers of such organisations are required to individually register** on the NGO Members Registry,¹⁸ and to receive a special identity card, necessary for carrying out activities on behalf of their organisation in the areas of asylum, migration and social inclusion.¹⁹ This measure constitutes interference with fundamental rights, as well as with guarantees laid down in the law for certain professions.²⁰

Article 10(2) of the Ministerial Decision provides that individual registration is necessary for reasons of public interest, namely to safeguard asylum seekers and refugees from contact with “particularly law-breaking conduct” (*ιδιαιτέρως παραβατική συμπεριφορά*) and convicted of serious criminal offences. The measure, however, amounts to **disproportionate interference with the rights to privacy, data protection²¹ and freedom of association** since, whereas its predecessor deemed individual registration a prerequisite to offering services to people in reception centres and Asylum Service premises, the new Ministerial Decision imposes a blanket registration requirement, covering persons whose work may not involve direct contact with the refugee population e.g. researchers, policy experts.

Time limits

The new Ministerial Decision **amends procedural deadlines in such a way as to put additional pressure on NGOs, while serving administrative convenience**. Upon the submission of an application concerning an organisation or individual member, the Ministry of Migration and Asylum now has 60 days – instead of 30 – to assess the elements of the file. Where it informs the applicant organisation that more information is required, the organisation has no more than 10 days – down from 15 – to provide additional documentation.²² Furthermore, the new Decision provides that organisations which do not comply with obligations relating to registration will be removed from the Registry within 2 months – down from 3 under the previous rules – of notification.²³

Discretionary authorisation to allow entry in reception centres

Parallel to the aforementioned amendments aimed at rendering registration more onerous for civil society, the Ministerial Decision inserts a **derogation provision** enabling the Ministry of Migration and Asylum to **exceptionally grant free access to reception facilities to any organisation** for a period of up to 2 months, on the basis of a decision of the Special Secretariat for Stakeholder Coordination.²⁴ The provision not only epitomises the government's objectives of **administrative convenience and**

¹⁷ Article 13(2) Joint Ministerial Decision 3063/2020.

¹⁸ Article 10(1) Joint Ministerial Decision 10616/2020.

¹⁹ Article 13(2) Joint Ministerial Decision 10616/2020.

²⁰ See e.g. Article 34 Lawyers' Code (L 4914/2013) on the unhindered access of lawyers.

²¹ In addition to Article 8 Charter, compatibility of the measures with the General Data Protection Regulation should also be closely assessed.

²² Articles 3(2) and 12(2) Joint Ministerial Decision 10616/2020.

²³ Article 2(3) Joint Ministerial Decision 10616/2020.

²⁴ Article 16 Joint Ministerial Decision 10616/2020.

discretionary management of asylum and migration policy, but also appears to **turn the regulations' transparency objective on its head**.

Persisting concerns

As stated above, several elements of concern in the March 2020 Ministerial Decision previously analysed by RSA have not been revisited.²⁵ These include:

1. **Unfettered discretion** on the Special Secretariat for Stakeholder Coordination of the Ministry of Migration and Asylum to reject the registration of an NGO following an assessment of its compliance with legal requirements, in combination with **“elements relating to its activities”**,²⁶ or an individual following an assessment of the legal requirements, in combination with **“elements pertaining to the personality and activities of that applicant”**.²⁷ These measures entail a violation of the right to freedom of association enshrined in human rights law, insofar as interference with that right is not based on clear criteria “in accordance with the law”.²⁸ They also contravene the protection afforded to freedom of association by the Greek Constitution, which prohibits measures subjecting the operation of associations to the discretion of state bodies.²⁹
2. Unduly broad powers on the Special Secretariat to remove an NGO or individual from the respective Registry where they are involved in **illegal activity or poor performance, established *inter alia* by any document from a competent public authority**.³⁰
3. **Disproportionate reporting requirements** such as number of beneficiaries / recipients of services, number of staff and volunteers, and activities carried out in the past two years, i.e. types of facilities managed, number of persons supported, costs of operation, actions implemented by area of activity, collaboration with stakeholders, and current interventions.³¹ Any changes to the composition or functioning of NGOs must be reported immediately,³² while any changes to the personal details of persons registered in the NGO Members Registry must be reported by their organisation within 24 hours.³³
4. **Discriminatory treatment against migration NGOs and practitioners employed by them**, which remain subject to considerably more stringent conditions compared to other civil society organisations in Greece. The rationale behind the restrictions, offered in Articles 1(3) and 10(2) of the Ministerial Decision, in no way constitutes objective justification of differential treatment targeting this particular sector of organisations and their individual members, staff and volunteers.

²⁵ For more details, see RSA, *Risk of Repression: New Rules on Civil Society Supporting Refugees and Migrants in Greece*, May 2020.

²⁶ Article 6(4) Joint Ministerial Decision 10616/2020.

²⁷ Article 12(3) Joint Ministerial Decision 10616/2020.

²⁸ The Greek Ombudsman has also stated the need for such criteria to be clarified: Ombudsman, Letter No 279938/36758/2020, 13 August 2020.

²⁹ Alkiviadis Dervitsiotis, ‘Η ελευθερία ενώσεως’, 449-475 in Spyros Vlachopoulos (ed), *Θεμελιώδη Δικαιώματα* (Νομική Βιβλιοθήκη 2016), 471.

³⁰ Articles 8(1)(c)-(d) and 14(1)(b)-(c) Joint Ministerial Decision 10616/2020.

³¹ Article 2(1)(h) Joint Ministerial Decision 10616/2020.

³² Article 2(4) Joint Ministerial Decision 10616/2020.

³³ Article 11(4) Joint Ministerial Decision 10616/2020.

Concluding remarks

The decision to introduce further restrictions the work of civil society in the area of asylum and migration, within six months of a controversial reform attracting critique by expert bodies at European level, demonstrates **unwillingness on the part of the Greek government to abide by rule of law standards and fundamental rights**.

Lessons from Hungary, including the recent CJEU ruling on NGO legislation, are a stark reminder that **rule of law backsliding has wider repercussions** beyond the boundaries of a single European Union (EU) Member State, and warrants robust and immediate action at EU level through **condemnation and infringement proceedings**.



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