



**Permanent Mission of Greece
to the United Nations Office
and other International
Organizations in Geneva**

URGENT

No.: 6170.7/AS 1137

NOTE VERBALE

The Permanent Mission of Greece to the United Nations Office and other International Organizations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights and has the honour to attach herewith the reply of His Excellency M. Nikos Dendias, Minister for Foreign Affairs of the Hellenic Republic, to the joint communication (Ref.: OL GRC 1/21) addressed to him by the Special Rapporteur on the rights to freedom of peaceful assembly and of association, the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the human rights of migrants.

The Permanent Mission of Greece to the United Nations Office and other International Organizations in Geneva avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, October 6, 2021

Encl.: As stated

To :
The Office of the
High Commissioner
for Human Rights

In town



THE MINISTER FOR FOREIGN AFFAIRS

Athens, September 24th 2021

Ref.: E/473

Dear Special Rapporteurs,

In response to the Joint Communication dated 31 March 2021, I have the honour to inform you of the following:

In recent years, Greece, due to its geographical location, has become a significant entry point to Europe for refugees and migrants arriving mainly from Asian and African countries with the aim of further moving to other EU member states. Consequently, the Greek state is called upon to manage the constant rising of migration and refugee flows and to bear the burden of a situation that concerns Europe as a whole.

During all these years, the role of non-governmental organizations (NGOs) in assisting the overall management of mass influx of migrants and asylum seekers in Greece has been substantial. Together with the EU Institutions and relevant International Organizations, the Greek Government has developed a long-standing and mutually beneficial cooperation with NGOs based on their expertise and their readiness to undertake humanitarian action.

It is in this context, and given the increasing number of NGOs on the field and the necessity for transparency and accountability in their everyday work, that the Greek Government has issued the new legislation (Law 4686/20) in order to facilitate the overall coordination among relevant stakeholders to the benefit of the people in need.

More specifically, while trying to cope with the enormous strain due to migration and the refugee issue, the Greek state was faced with a particular problem: along with the NGOs, which rallied to provide vital assistance, thus becoming helpful allies in the considerable effort to address the situation, there has also been a large number of "organizations" and/or other groups of people, self-proclaimed as NGOs, which, by claiming to provide assistance to refugees and migrants, acted with dubious motives; they took advantage of the delicate situation of vulnerable persons by inciting them to commit unlawful acts, to the detriment of both refugees/migrants and Greek citizens, residents of the surrounding areas.

Some of these groups have even come to question the Greek sovereignty over areas of the Greek islands where the accommodation facilities are located. In addition, the uncontrolled entry into accommodation facilities by groups of people or individuals self-proclaimed as "NGOs" or "members of NGOs" (providing no data to

H.E. Mr. Clement Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

H.E. Mrs. Mary Lawlor
Special Rapporteur on the situation of human rights defenders

H.E. Mr. Felipe González Morales
Special Rapporteur on the human rights of migrants

check the validity of their claim) raised further concerns regarding the very safety of migrants/refugees and, in particular, of vulnerable groups, women and children, including unaccompanied minors.

In this framework, in the context of a continuous effort for improvement and in complete agreement and compliance with the relevant legislation, constitutional requirements, principles of the rule of law and European legislation, the necessary conditions and requirements were set, in order for Greek and foreign NGOs active in our country in the field of international protection, migration and social integration, to be registered in the Registry of Greek and foreign NGOs.

These conditions and requirements of registration in the said Registry have become necessary so that:

a. the Greek State can ensure that these NGOs provide the services they claim they do for the safety of refugees and migrants and that the human rights of the latter are guaranteed;

b. the Greek State is fully informed, as it should be, about the exact number and the legality of the actions of these NGOs - as is the case for any other legal or natural person operating within the Greek territory.

In accordance with the above, 267 Greek and foreign NGOs have already submitted registration applications and have created relevant registration accounts.

The very principles of democracy and the constitutional requirements dictate that the operation and actions of any legal entity should be transparent and lawful, even more so when taking place in the sensitive field of refugee protection.

Therefore, the purpose of establishing the abovementioned Registry of NGOs is to register all NGOs active in our country on issues of international protection, migration, and social integration, to ensure transparency in their modus operandi and, through that, to optimize the services they provide. It is also a complementary as well as necessary means to safeguard the human rights of refugees and migrants taking into consideration issues of public interest.

The same arguments apply to the creation of the Registry of NGO Members. More specifically, the registration is necessary for all those NGO members who, in the course of their work, enter in contact with refugees and migrants, especially women, children and unaccompanied minors; registration is imperative, in particular for those who have free access and are active in accommodation facilities.

It is also imperative to bar the access and direct contact with refugees and migrants for persons of criminal conduct convicted of heinous criminal offences, such as sexual abuse, pedophilia, pandering, drug trafficking, actual bodily harm etc., as well as to prevent and protect people from incidents of exploitation, smuggling and/or human trafficking. In doing so, the human rights of refugees and migrants and, above all, the right to life, safety, physical integrity and mental health can be guaranteed, as required by the national law and the international conventions, and relevant incidents particularly involving unaccompanied minors can be avoided.

In addition, reasons of public interest dictate the necessity to register these individuals because of incidents of exploitation, or incitement of the abovementioned vulnerable groups to violent mass protests, which may serve vested interests, facilitate terrorist acts and challenge national sovereignty. Therefore, it is evident that not

only have the relevant principles of law not been circumvented but, on the contrary, they have been fully endorsed.

The Greek state functions on the basis of the rule of law, fully respecting the constitutional requirements, the fundamental principles of democracy and international conventions. All legal procedures are followed, and in case of a breach, the right to appeal before a court is inalienable.

Once again, it is emphasized that, for reasons of public interest, as well as for ensuring the human rights of particularly vulnerable groups of people, the conditions and requirements set by the law and the Joint Ministerial Decision (JMD) 10616/2020 for the registration of Greek and foreign NGOs and the Registration of Members of Greek and foreign NGOs, are not only justified but also absolutely necessary.

Given the points mentioned above, I would like to underline the following:

As is the case for many, if not all, natural and legal persons operating in the Greek territory, their registration in official Registries under the respective terms and conditions set by the Greek legislation (see, for example, General Commercial Registry, Courts of First Instance, Registries of Professional and Scientific Associations, etc.) is a necessary requirement for their activity to be legal.

The new measures and obligations introduced by the current legislation were therefore not only proportionate to the particular circumstances prevailing in the field of action of the NGOs operating in the sensitive areas of the Greek islands but also absolutely necessary.

Regarding the "restriction of the right of freedom of association" which is repeatedly mentioned by some NGOs, the following should be noted:

First of all, it should be clear that the right and freedom of association cannot be exercised unconditionally - thus additional conditions and requirements can be set by a State for its exercise. Consequently, requirements that are appropriate and proportionate towards achieving a legitimate aim can be introduced. In any case, the obligation to provide supporting documents and the assessment of essential factors for the registration of an NGO in the Registry does not and could not hinder the activity of any NGO.

Most of the documents required are supporting documents that NGOs, as legal entities, are obliged to have and already have. Furthermore, it should be emphasized that there is absolutely no "fee" for registration and that the issuance and submission of all requested documents and supporting documents under the current legislation, as can be observed by reading the relevant JMD, is done at no cost, with the sole exception of the chartered accountant's report and the ISO certification.

It is particularly striking that many provisions of the Ministerial Decision in question, which are being criticized by some organizations for making the conditions and requirements of the registration particularly stringent - to the extent of restricting the right and freedom of association - actually set the same prerequisites for registration in the 2018ⁱ registration procedures, at least in terms of the data that must be disclosed to the Service, according to Ministerial Decision (MD) 7586/2018 (Government Gazette B' 4794), including the requirement for providing a two-year financial audit to register.

Therefore, by comparing the conditions, requirements and procedures of the above MD and the recent JMD, one could notice that any claim of the currently inserted "stringency" and "disproportional restriction" of the relevant rights of action by the organizations is entirely unfounded. It is also worthwhile mentioning that the

requirement for a two-year financial audit, which was never contested in the old Registry, is now repeatedly outlined as a newly set condition.

Furthermore, in the mandate holders' communication, concerns are voiced about the new measures and the fact that they introduce further financial reporting requirements including the submission of a two-year audit. These are characterized as both costly and exclusive of newly-founded organizations, as well as organizations that do not have their headquarters or a subsidiary in Greece. They also portray certain requirements as stringent, such as the requirement to provide contracts to all paid and voluntary staff.

The fact that the registration is directly linked to issues of funding rights of these organizations is purposely omitted. However, this is the reason that fully justifies the submission of financial data. Specifically, as explicitly mentioned in both the law and article 6 par. 2 of the relevant JMD:

"The registration of the organizations in the Registry of Greek and foreign Non-Governmental Organizations (NGOs) which also constitutes their certification, is a necessary requirement so that they:

a. can be involved in the field of international protection, migration and social integration within the Greek territory

b. can receive funding from national or EU resources to provide material reception conditions

c. can receive funding from the Ministry of Migration and Asylum with funds derived from the State Budget or the Public Investment Program for the Implementation of Actions of Civilian and Humanitarian Character, Social Integration, Migration and International Protection ".

More specifically, the provision of financial statements dating back two years presupposes that the organization under registration has been established and operating for a period longer than two years; otherwise, the relevant financial data to be submitted will cover a shorter period of time and the appropriate decision will be made based on such data. It should be noted that a large number of NGOs have already been registered without the slightest difficulty in the submission of relevant documents. As for the organizations that have been rejected, it is pointed out that they submitted incomplete documents and no financial data, although they were not newly established and had been active for more than two years in Greece.

Therefore, regardless of all that has already been mentioned, since entering in the Registry gives the above organizations direct right to receive funds from the Greek State -the amount of which is not at all negligible and, in many cases, it is quite high-, it is absolutely reasonable and necessary, as in any law-abiding state, to request financial data and a report by chartered accountants, to ensure that the registered entity is a legal entity, operates lawfully and has a minimum of financial stability. Otherwise, there is a risk that the Greek state will be financing sham legal entities or even criminal organizations that, under the guise of "Non-Governmental Organizations that assist in migration situation in Greece", take advantage of the sensitive and particularly vulnerable group of asylum seekers and refugees, enjoying the freedom to operate undisturbed in the Greek territory, with free access to accommodation facilities.

An additional critical reason for which the requirement of a two-year financial audit has been set and maintained is the need to ensure that the organizations concerned would fulfill their obligations under the programs they would undertake in the field of migration. It has been observed that some NGOs launched, within the framework of programs in the area of migration, actions and obligations which they left unfinished

or financially pending. Taking this fact into account, it became imperative to adopt and maintain specific requirements that, combined with other criteria, would ensure the organization's financial stability, status, and constant presence in the field of migration for a reasonable amount of time.

As regards the issues of personal data protection that have been raised concerning the disclosure of the contracts of the members of the NGOs, the following should be mentioned:

According to the provisions of article 5 of law 4624/2019 (Government Gazette A' 137/29.8.2019) on Hellenic Data Protection Authority, measures implementing Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons about the processing of personal data and the free movement of such data, and the transposition into the national law of the Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 and other provisions, "State authorities are allowed to process personal data when the processing is necessary to perform a duty carried out in the public interest or in the exercise of official authority vested in the controller".

Furthermore, Article 35 of the same law, concerning the right to object, states that: "the right to object, according to Art. 21, par. 1 of the General Regulation on Data Protection is not exercised against a public authority, if there is a vested public interest for the processing of data which takes precedence over the interests of an individual or if a provision of law requires the processing to take place".

In addition to the explicit wording of the relevant provisions, the issue in question has been extensively covered in the bibliography. It has been accepted that, on the one hand "the public authority enjoys a special exemption from the obligation of a person's consent for the processing of personal data" (E. Papakonstantinou, "IT Law" 2010, par. 9.2.4). On the other hand, "Processing is legitimate if necessary for the performance of a duty exercised in the public interest" (V. Sotiropoulos 2019 "Data Protection Officer").

From all that has been explained and covered in detail above, there is no room for doubt about the existence of compelling reasons of public interest that make necessary and absolutely legal and permissible the provision of supporting documents and data, in order for a person to apply for registration in the Registry for Members of NGOs.

It should be noted that these data are not requested for all members, volunteers, employees, associates etc. of an NGO, but strictly for those who are actively employed in the field on behalf of the respective NGO, namely for those who come in contact with asylum seekers, refugees and migrants, having direct and unimpeded access to the accommodation facilities.

Therefore, anyone who does not meet the above conditions or does not wish to submit such information to the NGO Members Registry can certainly provide his/her work to these NGOs, but not actively in the field, i.e: he/she cannot come in contact with vulnerable groups, such as asylum seekers, refugees and migrants, including unaccompanied minors, nor, has access to accommodation units.

The need to monitor the protection and safeguarding of the human rights and freedoms of asylum seekers and refugees, as well as reasons of national security and overriding public interest, not only make the disclosure of the above information justified but also absolutely necessary.

Furthermore, the allegation of "unfavourable treatment" of the previously registered NGOs as opposed to the new ones, which is vaguely cited without justification or further analysis, is unfounded and may create false

impressions; there are transitional provisions for the already registered organizations that differentiate them from the non-registered ones, recognizing their registration and maintaining this status until the final inspection of the data submitted by them is made by the Service (article 9 of JMD 10616/2020).

Finally, it should be emphasized that, in case of rejection of the application for registration and certification of any organization, for all the reasons that are always extensively analyzed in both the Proposal made by the Service and the Evaluation of the competent Committee and incorporated in the decision of the Special Secretary for the Coordination of Stakeholders, the rejected organization always retains the right to resubmit its application even on the same day it is notified about the rejection.

In other words, no organization is deprived of the right to properly resubmit its application as many times as desired, despite its initial rejection. This can occur concurrently with, and independently of the legal and inalienable right of each organization to appeal before a court.

The abovementioned information and analysis demonstrate that the relevant conditions and requirements under the applicable legislation do not contradict Greece's international human rights obligations and commitments; on the contrary, they contribute to their integration in our domestic law and practice and to their safeguarding.

To conclude, I would like to underline that at no point has there been any attempt from our side to infringe on the rights of these organizations and their staff or to exercise any direct or indirect pressure. For us, it is clear and obvious that the new legislation and the relevant work of the competent authorities aim at enabling all actors to perform their work within a regulated, transparent and predictable framework according to international, European and national standards.

Sincerely,

Nikolaos S. Dondias

Article 1

In the Registry of Greek and Foreign Non-Governmental Organizations operating in the Department of Organization of Procedures, of the Directorate of Human Resources and Administrative Support, of the General Directorate of Administrative and Financial Services, the stakeholders that fall into the following categories can be registered:

Non-Profit Legal Entities under Private Law and Non-Governmental Organizations, such as:

- Associations and Clubs,
- Specially recognized bodies (with special legislation),
- Public Benefit Institutions,
- Non-Profit Civil Companies,
- Subsidiaries of foreign Non-Governmental Organizations

Article 2

Registration requirements

The stakeholders of article 1, are obliged when applying for registration in the Registry:

A. To have legal personality, which is proved by a legally published statute. Their statutes must provide for the implementation of activities of a Civilian and Humanitarian Nature, International Protection, Immigration or Social Integration.

B. The following information must be declared:

- Details or Identity of the stakeholder (name, VAT number, Tax Office, registered office, statute, geographical scope of activity)
- Details of a legal representative in Greece, where a relevant statement is required, that he/she has not been convicted by an irrevocable court decision for an offense mentioned in clause 1 of subparagraph a of par. 2 of article 6 of p.d. 118/2007 and in article 43 par. 1 of p.d. 60/2007
- Registration of the stakeholder in the Court of First Instance or in the General Commercial Registry (G.E.M.I.)
- Services provided (Beneficiaries / target groups / areas of activity, etc.)
- Number and specializations of paid staff and number and specializations of voluntary service personnel with the necessary voluntary service contracts
- Financial data (resources and sources of funding - account / balance sheet data - budget of the last two years, etc.)
- Tax and insurance information where required
- Logistical infrastructure
- Actions of the stakeholder (project report of two previous years, which will refer to at least: operation of structures / type / name / number of beneficiaries / operating costs, provision of services through structures, actions implemented by the organization in the previous two years, number of actions implemented per action category / titles of these actions, beneficiaries, collaborations with actors, current interventions).

The stakeholders under registration will be excluded from the Registry, when they do not meet, within a reasonable period of time, their obligations regarding the administrative procedure of their registration in the above Registry.

This registry will be updated for any changes at regular intervals. Greek and foreign NGOs are obliged to immediately inform about relevant changes, especially the cessation of operation or the departure from the Greek territory or from the field of action.

Article 3

Conditions for deletion / removal

The stakeholders of the above Registry are deleted / removed when:

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1. they cease to meet the requirements of Article 2 of this Decision;
 2. they are involved in illegal acts, which either:
 - a) have been established by a final court decision or
 - b) have been demonstrated by a document of a competent public authority;
 3. an inadequate execution of the work undertaken is ascertained, which is proved by a relevant document of the competent administrative authority, as the case may be.

In cases (2b) and (3), a prior hearing of the representative of the NGO concerned is required by a competent Hearing Committee.

The competent Committee is composed of:

- a) the Head of the Internal Audit Department of the General Secretariat of the Ministry of Migration Policy,
- (b) a representative of the Asylum Service; and
- c) a representative of the Reception and Identification Service.

The Head of the Department responsible for keeping the Registry is appointed as rapporteur to the competent Committee.

Each decision of the competent Committee is binding on the Department responsible for keeping the Registry, regarding the deletion / removal.

Article 4

Registration process

The categories of stakeholders wishing to join the Registry hereby, must submit an electronic application for registration via the relevant web application of the Ministry mko@ypes.gr, completing all fields of application and submitting electronically the data referred to in Article 2.

For the registration and attribution of a registration number as well as for deletion / removal from the registry, a relevant decision is issued by the authorized Head of the Ministry of Migration Policy.

The registration of the stakeholders in the Registry will be a necessary requirement, both for their operation and for their consequent certification and their wider cooperation with the services of the Ministry of Migration Policy.

Foreign documents are required to be certified and translated in accordance with current legislation.