

Mandates of 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

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on the human rights of migrants, pursuant to Human Rights Council resolutions 41/12, 43/16 and 43/6.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **recently adopted Law 4686/2020 (hereinafter: the Law on NGOs) and Joint Ministerial Decision 10616/2020 (hereinafter: the JMD), which introduced new onerous legal requirements and conditions for registrations of non-profit organizations (NGOs) that work with migrants and refugees.** This might severely hamper the work of independent NGOs, especially smaller organizations that do not have the financial means to comply with all the reporting requirements.

We are concerned that the Law on NGOs and JMD may have a significant and detrimental impact on the operations of all civil society organizations working with migrants and refugees in Greece, including those that provide essential services to them. The Law on NGOs and JMD unnecessarily and disproportionately restrict the right to freedom of association, as provided by Article 22 of the International Covenant of Civil and Political Rights (ICCPR), ratified by Greece on 5 May 1997.

It has been brought to our attention, that since 2016, Greece has made different attempts of creating a register for NGOs that work with migrants and refugees. A row of different registers, both at local and national level were created, but many NGOs working in the sectors regularly voiced concerns that they were not able to register successfully. In addition since November 2019 the legal requirements for NGOs working with migration have changed four times.

Until 2020, the Ministry of Citizen Protection was responsible for the registration and handling of NGOs, including NGOs working with migrants. On 15 January 2020 the newly created Ministry of Migration and Asylum took over the competency and responsibility over NGOs working with migrants. On 8 February 2020 law 4662/2020 Article 191 (1) was passed, requiring NGOs to register with the Ministry of Migration and Asylum. On 14 March 2020 a Joint Ministerial Decision was published, citing that all NGOs working on migration that used to be registered with the Ministry of Citizen Protection had two months to register with the Ministry of Migration and Asylum.

On 12 May 2020 the Government published Law 4686/2020 (the Law on NGOs) introducing new legal requirements for registration in article 58. The JMD 10616/2020 which gives more details on the new law was only published four months later, on 10 September 2020, leaving many NGOs working with migrants and

refugees in legal uncertainty in the months between.

The Law on NGOs and JMD confirm that all NGOs working with migrants in Greece need to be registered in Greece to obtain legal status and be allowed to do their work according to article 58 (2)(b) of the Law on NGOs. Furthermore, the Law on NGOs and JMD introduced further reporting requirements, including a two-year financial audit of the NGOs. However, this audit needs to be done by the Greek legal entity of an NGO, meaning if an NGO has not had legal status in Greece for at least two years or if it only has a subsidiary in Greece without legal personality, it cannot get registered. At the same time, NGOs are not allowed to work in Greece with migrants under the new legislation, if they are not registered. This makes it impossible for new organizations or ones that have only started working in Greece in the last two years, to continue working or start working with migrants in Greece.

Article 5 of the JMD specifies that the NGOs covered by the new law need to prove the “essential criteria” of efficiency, economic efficiency and stability as well as quality their work. Furthermore, they need to provide the project reports of the last two years, contracts of all paid and voluntary staff, organizational charts and a website that meets certain criteria. Lastly, NGOs need to be ISO certified (ISO EN 9001) to qualify for registration.

We are very concerned about these stringent and sometimes contradictory rules on registrations of NGOs. As the former Special Rapporteur on freedom of peaceful assembly and association noted in his report A/HRC/20/27, “the right to freedom of association equally protects associations that are not registered. Individuals involved in unregistered associations should indeed be free to carry out any activities. [...] This is particularly important when the procedure to establish an association is burdensome and subject to administrative discretion, as such criminalization could be used as a means to quell dissenting views or beliefs.”¹

Furthermore, the registration procedure should be “simple, non-onerous or even free of charge” and not request all associations that were previously registered to re-register.² This protects NGOs from arbitrary rejections or time gaps in the conduct of their activities. This argument is further supported by United Nations Human Rights Council Resolution 22/6, which calls upon States to ensure that procedures governing the registration of civil society organizations are transparent, accessible, non-discriminatory, expeditious and inexpensive, allow for the possibility to appeal and avoid requiring re-registration and are in conformity with international human rights law.

The Law on NGOs and the JMD do not therefore seem compliant with the above-mentioned protections of the right to freedom of association. Especially the de facto prohibition of registering new NGOs that want to work with migrants, because they cannot provide two years of audited annual reports since they were not allowed to work with migrants before registering. This paradoxical convolution of the law should be rectified and the right to freedom of association should be guaranteed.

We would like to remind your Excellency’s Government that to ensure an independent and diverse civil society sector, registration should be free or at least

¹ A/HRC/20/27, para. 56.

² A/HRC/20/27, paras. 57 and 62.

available at a low cost.³ The required audits by chartered accountants and the ISO certification, which are required for registration, come with an average price tag of around 10,000 Euros. These requirements thus establish a financial barrier that will make it difficult, if not impossible, for smaller NGOs to be registered and continue their work legally. The required submissions of contracts, organizational charts and project reports are intrusive and far-reaching report requirements which will put additional onus on NGOs.

We would like to recall that the right to freedom of association, as set forth in article 22 of the ICCPR implies a wide range of positive and negative obligations for the State to ensure its enjoyment as it foresees that: *“No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others”*.

While States may have a legitimate interest in establishing reporting requirements to registered associations to ensure their compliance with the law, these requirements should not limit associations’ functional autonomy and operation, by adding costly and protracted burdens. The listed reporting requirements provided in the Law on NGOs and JMD are very burdensome for organizations, especially for small organizations that do not have the same financial capacities and resources as larger ones. The need to dedicate a high volume of time and resources to administrative requirements could be highly detrimental to the activities of many organizations, as they are particularly time-consuming, and may have a negative impact on their budgets.

The above mentioned Human Rights Council Resolution 22/6 provides that States need to ensure that reporting requirements “do not inhibit functional autonomy” of associations. The Special Rapporteur on freedom of assembly and association has reiterated that the use of onerous and bureaucratic reporting requirements can eventually obstruct the legitimate work carried out by association.⁴ The Special Rapporteur on the human rights of migrants has also urged States to ensure that administrative barriers are not misused to punish migration-related humanitarian acts or to obstruct civil society organizations that work with migrants. In this connection, the Special Rapporteur called States to strengthen civil space and create an enabling environment for civil society organizations, including those working on migration and migrants’ rights issues, noting that while the formation of an association with legal personality may require certain formalities, rules on association should facilitate the registration, work and funding of civil society organizations, the process should be simple, practical and free from undue State restrictions and interference.⁵

We would like to remind your Excellency’s Government that all restrictions of the right to freedom of association should be necessary and proportionate. Suspension and the involuntarily dissolution of an association are the severest types of restrictions on freedom of association. This includes the de-registration of NGOs that make it impossible for them to continue their legitimate work. As a result, such severe actions are only justified when there is a clear and imminent danger resulting in a flagrant

³ “Practical recommendations for the creation and maintenance of a safe and enabling environment for civil society, based on good practices and lessons learned” A/HRC/32/20 para. 16.

⁴ A/HRC/38/34 paras. 28-30.

⁵ A/HRC/44/42, para 89 (j).

violation of national law, in compliance with international human rights law. It should be strictly proportional to the legitimate aim pursued and used only when softer measures would be insufficient.⁶ It seems to us that the Law on NGOs and the JMD do not meet these conditions of proportionality and legitimacy.

Furthermore, we would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, article 16 and article 18 which highlight the responsibility and fundamental role NGOs play in protecting and promoting human rights and fundamental freedoms, and that the State must respect and enable a safe environment for NGOs to operate in.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information on measures taken to ensure the compliance of the Law on NGOs and the JMD with Greece's relevant obligations under international human rights law and standards.
3. Please provide information on how Greece plans to ensure that NGOs that have been unduly affected by recent regulations or which are unable to continue their legitimate work, will be able to operate freely until legal certainty is established and contradictions are removed from the regulations.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting for your response, we would urge your Excellency's Government to undertake a review of Law on NGOs and the JMD to ensure that they are in accordance with Greece's international human rights obligations. Furthermore, we urge you to engage in an inclusive consultation process, which provides sufficient opportunity for meaningful dialogue among all those concerned on this important issue to ensure that NGOs working with migrants can continue their important and meaningful work. We stand ready to provide your Excellency's Government with technical assistance in this regard.

Please accept, Excellency, the assurances of our highest consideration.

Clement Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

⁶ A/HRC/20/27, para. 75.

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Felipe González Morales
Special Rapporteur on the human rights of migrants