

AMNESTY INTERNATIONAL PUBLIC STATEMENT

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GREECE: REGULATION OF NGOS WORKING ON MIGRATION AND ASYLUM THREATENS CIVIC SPACE

New regulations introduced by the Greek government on the functioning of civil society organizations risk undermining their independence and further shrink the space for civil society, particularly for organizations that act to defend the rights of migrants, refugees and asylum seekers. In the midst of an increasingly hostile climate for asylum-seekers, refugees and migrants, and those who try to assist them, Amnesty International is concerned that the new rules threaten the right to freedom of association in Greece.

With the adoption on 14 April 2020 of the Joint Ministerial Decision (JMD) No 3063 on the operation of the Registry of Greek and foreign NGOs that operate in the areas of asylum, migration and social integration in Greece, and on the Registry of their members, Greek authorities have tightened up the requirements imposed on organisations and individuals to be able to operate in Greece.¹ While both registries were originally established in October 2018 and February 2020, respectively,² the JMD introduces new administrative requirements which are liable to affect organisations' ability to continue to operate freely in Greece. These requirements are in addition to the statutory conditions that all NGOs in Greece must fulfil in order to acquire legal status and are only imposed on those organisations which work on asylum, migration and social integration.

Significantly, the new regulations are implemented in the context of recent reforms of asylum and migration laws in Greece, adopted in November 2019 and May 2020, which greatly restricted asylum-seekers' and migrants' rights and also introduced restrictions on NGOs, including in terms of registration requirements.³ Article 58 of the new law of May 2020 (Law no 4686/2020, amending various provisions of immigration and asylum law) now makes registration an overarching requirement for all organisations working in these fields in Greece, stating that those that do not register "*cannot participate in the materialization of activities of international protection, migration and social integration within the Greek territory and particularly in the provision of legal, psychosocial and medical services of Article 47 para. 5, in the provision of material reception conditions of Article 55 para 1 and in the provision of information and updates of Articles 66 and 69 of La. 4636/2019 (A' 169)*". While setting minimum conditions for NGOs registration, Article 58 reserves to the Minister of Immigration and Asylum the power to set further requirements.⁴

Amnesty International is seriously concerned that the rules introduced through the JMD and Article 58 risks to unduly restrict the freedoms and independence of NGOs and individuals working with people on the move. The new rules appear to impose, in an apparently discriminatory manner, **additional, burdensome and intrusive requirements to these NGOs' registration and operation, including in matters of funding**, which make it virtually impossible for certain NGOs to comply. Some of the rules also risk to unduly interfere with NGOs' autonomy, are at odds with the right to privacy of organisations and their members and appear to assign excessive discretion to registering authorities. The government's move ultimately risks paralysing the work of NGOs assisting asylum-seekers and migrants, especially when it comes to smaller or more recently established NGOs, by creating a silencing and chilling effect on civil society organizations and human rights defenders.

Over the past year, Amnesty International has noticed with concern an increasingly antagonistic and suspicious attitude of the Greek

¹ Joint Ministerial Decision No. 3063 of the Greek Minister of Finance and of the Minister Immigration and Asylum on the "Register of Greek and Foreign Non-Governmental Organizations (NGOs)" and the "Register of Members of Non-Governmental Organizations (NGOs)", which operate in matters of international protection, immigration and social integration within the Greek Territory, available in Greek at: <https://bit.ly/2YMvxLG>.

² The Registry of NGO members was established by Article 191 of Law 4662/2020, "National Mechanism for the Management of Crises and Tackling Dangers, Restructure of the General Secretariat of Civil Protection, Upgrading the system for volunteering on civil protection, reform of the Fire Brigade and other provisions", Article 191 at: <https://bit.ly/2VO1otG>. Despite the recent legislative changes, the registry of NGOs itself was established in 2018 by Ministerial Decision No. 7586/2018 of 2018, establishing the "Registry of Greek and Foreign NGOs operating in areas of international protection, migration and social integration" and setting a series of requirements. See: <https://bit.ly/2NJKpUs>.

³ Amnesty International, "Greece: Amnesty International's submission on the proposed changes to the Greek law on international protection", 24 October 2019, <https://www.amnesty.org/en/documents/eur25/1280/2019/en/> and "Greece: worrying legal developments for asylum-seekers and NGOs", 4 May 2020, at: <https://www.amnesty.org/en/documents/eur25/2259/2020/en/>.

⁴ Article 58 of Law N. 4686/2020: "Improvement of immigration legislation, amendment of provisions of laws 4636/2019, 4375/2016, 4251/2014 and other provisions", at: <http://www.immigration.gr/2020/05/nomos-4686-2020-beltiosi-metanasteytikhs-nomothesias.html?m=1>

authorities towards NGOs working with people on the move. This has included both institutional actions - such as regulatory restrictions on NGOs' operations introduced through the November 2019 law on asylum,⁵ and a divisive public discourse, labelling 'good' and 'bad' NGOs and whipping up sentiment against those who are perceived to help migrants and refugees to the detriment of national interests. As an example, in a radio interview in February 2020, the Deputy Minister for Immigration and Asylum, Giorgos Koumoutsakos, compared NGOs to "leeches" "set up in one night in order to have access to EU funding".⁶ Similarly, upon the adoption of the new law on registration of NGOs' members, in February 2020, the Greek Government's spokesman Stelios Petsas remarked that the listing of members would be "so there is transparency and responsibility, as many NGOs may have helped decisively [...] but others operated in a faulty and parasitic manner".⁷

In March 2020, the mounting negative perception of NGOs in Greece and tensions in the local population reacting to the announcement of new closed centres opening on the islands and the events at the Turkey land borders, culminated in a series of attacks against refugees, journalists, NGO workers, activists and members of organizations on Chios, Lesbos and Kos. Fires were also set in Lesbos in an NGO community centre and a UNHCR transit shelter and in Chios in a warehouse run by volunteers.⁸

In this already tense climate, the JMD of April 2020 and Article 58 of the May 2020 Law seem to be aimed at consolidating an increasingly restrictive control of the work of NGOs working on migration and asylum, which undermines their independence and operations. These restrictions risk, in turn, limiting the services available to asylum-seekers, refugees and migrants in Greece, who often rely on NGOs for the provision of basic services, legal assistance or other forms of support. This trend could be further compounded by a new law establishing a national NGO registry under the Ministry of the Interior and imposing new requirements on civil society organizations, which is set to be voted by the Greek parliament at the end of July.⁹

As the Greek government has proven unable to address the appalling conditions of the over 30.000 people who survive in overcrowded and unsafe camps on the islands, with thousands of refugees at risk of homelessness and destitution following the latest government measures,¹⁰ the introduction of regulations that threaten to undermine the activities of NGOs cannot but be considered a dangerous and callous decision.¹¹

The JMD and the provisions under Article 58 have been received with criticism by many Greek and international NGOs.¹² On 2 July, the Council of Europe Expert Council on NGO Law of the Conference of INGOs (international non-governmental organisations) of the Council of Europe (CoE) issued its "Opinion on the compatibility with European standards of recent and planned amendments to the Greek legislation on NGO registration",¹³ concluding, among other things, that:

"[t]he provisions will have a significant chilling effect on the work of civil society on account of the significant number of NGOs who are likely not to complete the registration process either because they are ineligible for registration or certification on formal grounds, are rejected by decision-makers for having failed any number of the overly broad criteria for registration or certification, or because they exempt themselves from the registration process because it is judged to be too onerous, they do not wish to share personal data or they are unconvinced that there is a reasonable likelihood of registration or certification".

The Opinion recommends that "The Ministerial Decision and related legislative provisions should be substantially revised so that they are brought into line with European standards."¹⁴

⁵ Amnesty International, October 2019, footnote 3 above.

⁶ See: <https://bit.ly/2VwLROe> and radio interview in Greek at: <https://bit.ly/30wMRW4>.

⁷ Amnesty International, 'Punishing compassion: solidarity on trial in fortress Europe', March 2020, p.52, citing Petsas' declaration in Euractiv, Greece passes new law to better monitor NGOs dealing with migration, 5 February 2020, <https://bit.ly/2BrsLT5>, at: <https://bit.ly/2ZOR8n3>.

⁸ See: Amnesty International, Caught in a political game, April 2020: <https://bit.ly/3fPQjkk>.

⁹ Kathimerini, 7 June 2020: <https://www.kathimerini.gr/1081693/article/epikairothta/politikh/epixeirhsh---ta3h-stis-mko-me-kata8esh-nomosxedioy>

¹⁰ Following a change in the law in March 2020, the notice allowed to recognised refugees and beneficiaries of subsidiary protection before the termination of their housing support was reduced from 6 months to 30 days. As of 1 June, 11,237 refugees and migrants in camps and facilities in Greece were asked to leave their accommodation, with more expected to follow in the future. Concerns were raised, including by Amnesty, as to their access to support: <https://bit.ly/2CTVlr4>; press release by the Greek Minister for Immigration and Asylum, May 2020: <https://bit.ly/321QWiK>.

¹¹ In March 2020, a report by Amnesty International highlighted how policies and practices implemented in different European countries, including Greece, unduly restrict the operation of NGOs working with people on the move and can result in violations of the right of freedom of association and persecution of human rights defenders, ultimately also impacting the rights of migrants and refugees. See: Amnesty International, 'Punishing compassion: solidarity on trial in fortress Europe', March 2020, above at footnote 7.

¹² See among others: HIAS, *Some thoughts on the new Joint Ministerial Decision, regulating the registration of migration-related NGOs in Greece*, 8 May 2020, at: <https://bit.ly/2ZME7u1>; Refugee Support Aegean (RSA), 'Risk of Repression New Rules on Civil Society Supporting Refugees and Migrants in Greece', May 2020, at: <https://bit.ly/20FODx4>; Help Refugees and 73 other NGOs, open letter of 10 July 2020: <https://bit.ly/2ZOSi5X>.

¹³ Expert Council on NGO Law of the Conference of INGOs of the Council of Europe, "Opinion on the compatibility with European standards of recent and planned amendments to the Greek legislation on NGO registration", 2 July 2020 (hereinafter 'Expert Council of NGO law's opinion on Greece of 2 July 2020'), para. 107, at: <https://rm.coe.int/expert-council-conf-exp-2020-4-opinion-ngo-registration-greece/16809ee91d>

¹⁴ Ibid., para. 109.

Against this backdrop, Amnesty International expresses its key concerns¹⁵ on how the JMD and Article 58 risk undermining the independence and ability to operate of NGOs working on migration and asylum in Greece and threaten the right to association of their members.¹⁶ For the sake of simplicity, unless otherwise stated, in the following text the terms NGOs or NGOs' members are used to refer to those organisations working on migration, asylum and social integration, which are the subject of the rules in question.

The scope of the JMD and Article 58: registration and certification requirements

The April 2020 JMD sets obligations for NGOs working on migration, asylum and social integration and for their members and associates, understood to include also unpaid volunteers. While the JMD is an executive order and has not gone through any legislative process, the rules and requirements set therein have their legal basis in Article 191 of Law 4662/2020 and, more recently, Article 58 of Law no 4686/2020.

While Article 58 introduces the requirement of 'registration' in the "Registry of Greek and Foreign Non-Governmental Organizations (NGOs)" as a mandatory condition for all organisations working in these fields, the JMD regulates the operational aspects of the registration process and introduces the additional requirement of "certification" (Article 5 and 6). The latter is an additional requirement which grants certain prerogatives to NGOs that perform activities such as reception of migrants and asylum seekers, including the right to operate within State-run facilities, or that seek to receive EU and national funding to develop activities for their reception and social inclusion (Article 6 JMD).¹⁷

The same requirements, albeit under different conditions, are also established for members of those NGOs that are registered and certified in Greece, as natural persons (Articles 10-12 and 13).

In order to be registered and certified in accordance to Article 58 and the JMD, NGOs and their members must present multiple documentary and information requirements, which are at times invasive of their privacy (such as their financial and tax situation, under Article 2 and 11 for instance) and apply invariably to all organisations seeking registration, irrespective of their size or capacity. These new rules also impose additional requirements on organisations which are already legally constituted under Greek law,¹⁸ and are hence creating burdensome requirements that appear to be unnecessary.

While the JMD does not indicate a timeframe for the completion of the registration process for newly registered entities, those that had sought registration under the rules previously in force and had their application pending or approved under the old regime, were required to re-apply for registration within a period of 2 months, recently expired on 14 June 2020. According to the JMD, failing to meet this deadline will result in the concerned organisations being "*deleted from the Registry*" (Article 9.2 of the JMD), with serious implications for their operations in Greece.¹⁹

Effects of registration and certification requirements

Given that processes of registration and certification do not assign legal status to NGOs operating in Greece, failure to comply with these requirements does not have the effect of dissolving the NGO.²⁰ However, failure to register or be certified within the terms of the JMD drastically curtails NGOs' ability to operate in practice, impacting their access to refugees, asylum-seekers and migrants, and hinders their exercise of key functions, including of fundraising.

As mentioned, according to the May 2020 law on asylum and migration, registration does not only affect NGOs working in the specific sectors mentioned in Article 58 (i.e. those working "*in the provision of legal, psychosocial and medical services...in the*

¹⁵ A more extensive analysis of aspects not addressed in this text can be found in the statements of HIAS, *Some thoughts on the new Joint Ministerial Decision, regulating the registration of migration-related NGOs in Greece*, 8 May 2020, and Refugee Support Aegean (RSA), 'Risk of Repression New Rules on Civil Society Supporting Refugees and Migrants in Greece', May 2020, cited above at footnote 12.

¹⁶ According to international principles, NGOs, as legal persons, are themselves rightsholders and as such entitled to protection of a set of rights and freedoms including the right to freedom of assembly. See: 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*, December 2019. at: <https://bit.ly/3jr3BoU>, para. 38 (citing the European commission for democracy through law (Venice commission) and OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) Joint guidelines on Freedom of association, December 2014), para. 19, <https://bit.ly/2QJLEDm>: "*The right to freedom of association is capable of being enjoyed individually and by the association itself in the performance of its activities and fulfilment of its mandate....by virtue of the exercise of the freedom of association, 'associations shall themselves enjoy other human rights, including...the right to an effective remedy, the right to a fair trial, the right to the protection of their property, private life...and the right to be protected from discrimination'*".

¹⁷ Article 6.2 of the JMD (unofficial translation): "*The certification of the bodies that have been registered in the Register of Greek and Foreign Non-Governmental Organizations (NGOs), is a necessary condition in order to: a) be active and operate in the structures of par. 4 of article 8 and article 10 of law 4375/2016, in the Regional Asylum Offices, in housing units of housing programs under the Ministry of Immigration and Asylum, as well as in any other relevant structure that may be set up by the Ministry of Immigration and Asylum, b) receive funding from national, EU or other resources to meet material conditions for reception and c) receive funding from the Ministry of Immigration and Asylum with funds from the State Budget for the implementation of Social and Humanitarian Action, Social Inclusion, Immigration and International Protection.*"

¹⁸ Article 1 of the JMD states that entities eligible for registration, include among others: '*a) associations, b) non-profit civil Law partnerships, [...]* g) Annexes of foreign [NGOs] in Greece'. See also HIAS statement on this.

¹⁹ On the compliance with international principles of the transitional rules on NGOs registration see: HIAS and RSA statements, above in full.

²⁰ Article 1 and 2.1(a) of the JMD

provision of material reception condition...and in the provision of information and updates') but generally prevents all unregistered NGOs from participating in the 'implementation of activities in the areas of international protection, migration and social integration within the Greek territory'.²¹ In its current formulation, the Article does not specify how the failure to register would be enforced in practice, nor whether NGO who fail to register or are denied registration would have an opportunity to remedy their situation. The JMD also fails to clarify these points.

Therefore, as it stands, the provisions of Article 58 and of the JMD (particularly Articles 1, 2, 3 and 8) impose a clear obstacle to NGOs' operations and violates the right to freedom of association, which equally protects unregistered associations.²² International human rights standards further identify as a best practice that associations should not be required to register in order to carry out legal activities.²³ In this regard, as recommended by the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, states should adopt a notification regime under which the legal personality of an association does not depend upon the approval of the state, but rather automatically acquire legal personality by simply notifying authorities of their creation.²⁴

The European Court of Human Rights (ECtHR) has similarly determined that vaguely worded rules on registration of organizations are arbitrary and contravene the right to association. In the case of *Koretskyy and Others v Ukraine*, the Court observed that Ukraine's rules on registration "allowed a particularly broad interpretation and could be read as prohibiting any departure from the relevant domestic regulations of associations' activities" and were "too vague to be sufficiently 'foreseeable' for the persons concerned and grant an excessively wide margin of discretion to the authorities in deciding whether a particular association may be registered".²⁵

The drastic implications ensuing from an NGO's failure to register, which appear to entail the complete barring of the organisation from carrying out any work in the concerned fields in Greece, read in conjunction with the vague wording of Article 58, raise serious concerns about the clarity and foreseeability of these rules and, in turn, lend themselves to a risk of being used arbitrarily to deny NGOs registration.²⁶

Amnesty International urges the Greek authorities to repeal the provision making registration under the JMD a mandatory requirement for NGOs to be able to operate in their territory, as it unduly prevents unregistered organisations from carrying out their activities in Greece and contravenes the right to freedom of association.

Differential treatment of NGOs working on migration, asylum and social integration

The rules imposed by the May 2020 law and by the JMD single out and impose specific obligations on NGOs working on asylum, migration and social integration with no justification. While NGOs working on other areas are also required to register in Greece, the requirements imposed on them are not as burdensome as those that NGOs working in these fields need to follow. As an example, organisations and institutions providing social care services (in fields such as the protection of children, persons with disabilities, older people and persons with chronic medical conditions) are also required to register their data in an electronic register, where the information is processed by the Directorate of Social Rights of the Ministry of Labour.²⁷ As part of this process, the following information is required: "name and geographical scope; details of their legal representative in the country; services provided; number of beneficiaries; number and specialties of staff and volunteers; financial details such as source of funding; property details; bed capacity".

By contrast, the JMD impose extensive conditions and documentary requirements for the registration of NGOs working on asylum and migration. As an example, Article 2 of the JMD states that, as part of their registration application, NGOs must (unofficial translation):

"[...] h) Be sure to state the following information in their application: aa. identity of the institution (name, TIN, Tax Office, registered office, statute), bb. data of the legal representative in Greece, cc. nature of services, dd. number of beneficiaries - recipients of services, ee. number of employees, ff. number of volunteer service personnel, gg. registration of the body in the competent Court of First Instance or in the General Commercial Register (Γ.Ε.ΜΗ.), hh. financial data (sources of financing, balances and accounting data for the last two years), ii. real estate and movable property, jj. their actions (project report of the previous two years, which will indicate at least: operation of structures/type/name/number of beneficiaries/ operating costs, services through structures, actions implemented by the institution in the previous two years, number of actions implemented per action category/titles of these actions, beneficiaries, collaborations with institutions, current interventions)"

²¹ Law 4686/2020, Art. 58. According to RSA, the adoption of this law may lead to the JMD being replaced. See RSA statement cited above.

²² UN 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 56.

²³ Council of Europe, Steering Committee for Human Rights (CDDH)m, Analysis on the impact of current national legislation, policies and practices on the activities of civil society organisations, human rights defenders and national institutions for the promotion and protection of human rights, as adopted by the CDDH at its 87th meeting, 6-9 June 2017, para 92.

²⁴ UN Human Rights Council, A/HRC/20/27, above in full, para. 58.

²⁵ ECtHR, *Koretskyy and Others v Ukraine*, Application no 40269/02, para 48, also cited by HIAS.

²⁶ On foreseeability see also: HIAS statement, cited above in full.

²⁷ Article 7 of Law 4455/2017, in Greek at: <https://bit.ly/2VwFXNg>; and Joint Ministerial Decision for its Implementation: <https://bit.ly/3g9oqCL>.

Article 2.2 JMD states the documentary requirements in support of the above, which include (unofficial translation):

“a) a certified copy of the articles of association of the registering body, as well as certified copies of any legally published amendments thereto, b) minutes of the election and establishment of a board of directors, administrators, legal representatives and other statutory bodies and/or relevant court decisions and orders, c) a formal declaration of the body’s legal representative or persons responsible for management and its members that they have not been convicted by a final court decision for any of the offenses referred to in case f of paragraph 1, d) balance sheet data for the last two years, e) annual reports of the actions of the last two (2) years, f) the relevant necessary legal certificates, which indicate that the body in question is tax and insurance aware, g) income tax return of legal persons and legal entities for the last two years, h) declaration of real estate data (E9) for the last two years, as well as the corresponding, relevant declarations of the ENFIA property tax. All foreign documents are required to be validated and translated in accordance with current Greek legislation. [...]”

While, unlike NGOs under the JMD, organisations providing social care services are already required to obtain a licence in order to operate in Greece due to the nature of their services,²⁸ it is apparent that registration requirements for these associations are nowhere as intrusive as those imposed on NGOs working in migration and asylum,²⁹ especially since the JMD applies only based on the NGOs’ field of action, irrespective of the type of service they provide in practice.

The Government has so far failed to demonstrate that this differential treatment pursues a legitimate aim and respects the principles of necessity and proportionality. Without a legitimate justification for this differential treatment, these requirements would be discriminatory, and therefore, at odds with the right to freedom of association.³⁰

As noted by the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, the process for the establishment of associations should be non-discriminatory.³¹ The Venice Commission and OSCE/ODIHR joint Guidelines on Freedom of Association (the ‘OSCE/ODIHR Joint Guidelines’) similarly specify that “*legislation and state authorities should treat associations equally as regards regulations concerning their establishment, registration (where applicable) and activities. The differential treatment of different associations is discriminatory if it has no objective and reasonable justification, that is, if it does not pursue a legitimate aim or if there is no reasonable relationship of proportionality between the means employed and the intended aim*”.³² Insofar as the ‘legitimate aim’ is concerned, rules restricting the right to freedom of association must pursue one of the limited reasons allowed for such restrictions, as listed in the International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights (ECHR): national security, public safety or public order, public health or morals and the protection of the rights and freedoms of others, contained in article 22) and article 11, respectively.

Insofar as rules are imposed on NGOs by reasons of their field of work, it should also be recalled that according to the OSCE/ODIHR Joint Guidelines: “*associations should not be treated differently for reasons such as...promoting and defending the rights of persons belonging to national or ethnic, religious, linguistic and other minorities or groups*”.³³ The Council of Europe Expert Council on NGO Law specifies that it is incumbent “*on a Member State to demonstrate that any differential treatment of certain categories of NGOs is based on objective assessment, pursues a legitimate aim and is proportionate to that aim*”.³⁴

The unjustified differential treatment of NGOs working on migration and asylum could also have an indirect discriminatory effect on refugees, asylum-seekers and migrants, on the grounds of their migration status and ethnic or national origin. By imposing additional requirements on these NGOs, without a valid justification, the Greek authorities risk compromising the rights - in the form of access to services - of those who could potentially benefit from their assistance.³⁵

Amnesty International urges the Greek government to repeal the new regulations under the JMD and Article 58 of Law 4686/2020 that impose differentiated requirements to organizations working on asylum, migration and social integration, unless it can prove these are justified in the pursuance of a legitimate aim. The authorities must show that, in line with the Joint Guidelines, the differential treatment has an “objective and reasonable justification”, pursues “a legitimate aim” and there is “reasonable relationship of proportionality between the means employed and the intended aim”.

²⁸ Law 2345/1995, in Greek at: <https://www.e-nomothesia.gr/kat-vggia/n-2345-1995.html>.

²⁹ Article 2 of the JMD.

³⁰ On the discriminatory nature of these rules see also HIAS and RSA statements, cited above in full.

³¹ UN Human Rights Council, A/HRC/20/27, above in full, para 95.

³² Venice Commission and OSCE/ODHIR Joint Guidelines of 2014 (Joint Guidelines), para 94

³³ Joint Guidelines, para 127

³⁴ Expert Council on NGO Law of the Conference of INGOs of the Council of Europe, International standards relating to reporting and disclosure requirements for Non-Governmental Organizations, 27 November 2018, para. 41, at: <https://bit.ly/3jsYhkz>.

³⁵ EU asylum law explicitly recognises, at various points, the role of organisations in providing information and services throughout the asylum procedure: Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection, Article 21.1, Article 12.1(c), Article 8.2.

Burdensome and intrusive registration requirements

NGOs seeking to register under the JMD and Article 58 are under a duty to provide detailed information about their activities, often through extensive documentary evidence. In general, these requirements appear to be excessively burdensome, particularly for smaller, newer organizations that may lack the resources and capacity to comply with these requirements.³⁶ Some other registration requirements are too intrusive of NGOs' internal affairs and would contravene the right to privacy of the NGO and its members.³⁷ For instance, Article 2.1(h) of the JMD requires NGOs to disclose their financial data including 'sources of financing, balances and accounting data for the last two years' and their 'actions', illustrated through detailed project reports for the previous two years.³⁸

Requirements for registration are particularly damning for more recently created NGOs. Several documentary requirements under Article 2 require NGOs to present information or evidence of their financial or operational record for the previous two years.³⁹ Similar requirements are imposed for NGOs' registration under Article 58. In the absence of indications to the contrary, this seems to imply that eligibility to register and be certified is restricted to NGOs that have been active for 2 or more years in Greece.⁴⁰ This requirement, considered in conjunction with the impairing consequences of the failure to register, means that organizations that have been established more recently are effectively excluded from working in these fields in Greece in the future.

The ability to not only establish an association,⁴¹ but also to operate "freely and to be protected from undue interferences"⁴² is a core aspect of the right to freedom of association. The OSCE/ODIHR Joint Guidelines clearly provide that "[l]egislation that affects the exercise of the right to freedom of association should be drafted with the purpose of facilitating the establishment of associations and enabling them to pursue their objectives".⁴³ As such, provisions that prevent the registration of NGOs with less than 2 years' experience are not only in clear violation of the right to freedom of association, but also contravene the principle of non-discrimination, which requires that "all persons and groups wishing to form an association should be able to do so on the basis of equal treatment before the law and by state authorities".⁴⁴

In addition to requirements for NGOs to register as legal entities, Article 10 of the JMD imposes an obligation on organisations to register all their staff members in a separate Registry. Only certified NGOs are obliged to register their staff, which is understood to include all their members, employees and associates, whether paid or unpaid, who operate in facilities established by the Ministry of Immigration and Asylum or others.⁴⁵ Registration of members requires the submission of extensive personal data, including a copy of the individual's identity card and criminal record, contract of employment or voluntary service, curriculum vitae, and puts NGOs under a duty to communicate relevant changes affecting these individuals within strict timeframes (Article 11 JMD).

While technically only NGOs who are certified and whose personnel works in State-sponsored facilities are required to register in line with this provision, in recent times, the Greek government has taken further steps to expand its direct control over housing projects for asylum seekers in Greece, whereas they were previously run by UNHCR and their implementing partners. For instance, on 19 June 2020, the Government announced that the management of the housing scheme 'ESTIA', historically run by UNHCR, would be transferred to the Ministry of Immigration and Asylum by the end of the year.⁴⁶ In view of the ongoing tendency on the part of the Greek government to centralise the management of reception services, it is likely that certification requirements will affect an increasingly larger number of NGOs.

It should be recalled, in this respect, that administrative requirements imposed by the State must not have the effect of limiting the exercise of the right to freedom of association, including by over-scrutinizing associations or by imposing onerous and bureaucratic

³⁶ See also RSA statement on the costs of the process, p. 4, cited above in full.

³⁷ On privacy implications of the rules under considerations in this document see also HIAS and RSA's statements, cited above in full.

³⁸ In their analysis RSA also observe that the JMD requirement may have other implications, namely: "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. 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.", citing: CJEU, Case C-78/18 Commission v Hungary, Opinion of AG Campos Sanchez-Bordona of 14 January 2020, paras 134-136.

³⁹ Article 2.1(h)(hh-jj) and Article 2.2 (d, e, g, h).

⁴⁰ On the points under this section see also see HIAS statement, cited above in full.

⁴¹ Joint Guidelines, para. 76.

⁴² UN Human Rights Council, A/HRC/20/27, above in full, para 63

⁴³ Joint Guidelines, para. 20

⁴⁴ Joint Guidelines, para. 94.

⁴⁵ According to Article 10 the obligation to register NGO members applies to "the natural persons who are members, employees or associates on remuneration or on a voluntary basis and exercise activity on their behalf in the facilities of paragraph 4 of article 8 and article 10 of law 4375/2016, in the Regional Asylum Offices, in housing units of housing programs under the Ministry of Immigration and asylum, and any other relevant structure that may be established by the Ministry of Immigration and Asylum."

⁴⁶ Ekathimerini, Ministry taking over UN accommodation program, 19 June 2020, at: <https://bit.ly/3dJzeNZ>.

reporting requirements.⁴⁷ In particular, the UN Special Rapporteur has recognized that, while independent bodies have a legitimate reason to examine the associations' records to ensure transparency and accountability, states must ensure that this procedure is not arbitrary and that is respectful of the rights to non-discrimination and privacy, as it would otherwise put the independence of associations and the safety of their members at risk.⁴⁸

Crucially, the OSCE/ODIHR Joint Guidelines consider the possibility to impose higher reporting requirement as 'permissible' where it is linked the assignment of 'certain benefits' to the organisation, specifying however that it should remain "*within the discretion of the association to decide whether to comply with such reporting requirements or forgo them and forsake any related special benefits, where applicable*".⁴⁹ Similar considerations apply to associations receiving public funds, regarding which particular reporting requirements "*may be considered necessary to ensure an open society and prevent corruption*".⁵⁰ Even in this instance, however, the Joint Guidelines specify that "*[a]ll associations receiving public support should face the same reporting requirements*" and that only "*[i]n exceptional cases, associations that receive direct public support without going through a competitive and transparent procedure may be required to meet particularly detailed reporting requirements*".⁵¹

In the case of Greece, however, the additional reporting requirements connected to registration are applied to NGOs working in the field of asylum, migration and social integration irrespective of whether they receive public funds or seek to acquire specific benefits. While certification requirements might appear more in tune with the spirit of the above standards, in that they apply to NGOs seeking certain type of state or EU funding, they remain fundamentally disproportionate, equally affecting NGOs that seek to operate in State-run facilities and offices.

Registration and certification requirements need to be amended to ensure that NGOs are not subjected to burdensome conditions or compelled to disclose information that breaches the privacy of the association or its members. Amnesty International urges the Greek authorities not to impose arbitrary time constraints to documentary or other requirements on NGOs as part of their registration or certification processes, as they unfairly exclude some organisations from operating in Greece.

Serious consequences for failing to comply with registration requirements

Failures in the registration of NGO personnel (which according to Article 10 JMD includes '*members, employees or associates on remuneration or on a voluntary basis*') carry serious consequences for organizations and their members, which might seriously affect NGOs' activities in practice. For instance, Article 11.5 of the JMD provides that changes in the composition of staff must be communicated to the authorities, for the changes to be reflected in the registry, within 24 hours from occurrence. If the NGO fails to comply, the organisation is automatically deleted from the NGO registry, the person concerned is removed from the members' registry and the certification is revoked for both the member and the organization as a whole. Circumstances triggering such notification requirement range from changes in the personal data of the NGO members to situations where the member leaves Greece or the "field of operation" or their cooperation with the NGO terminates.⁵² Some of these requirements, such as the short time-limit and the vague definition of the moment in time from which it runs ("from occurrence", rather than from when the NGO becomes aware of the change), are construed in a way that makes it virtually impossible for NGOs to comply.

Amnesty International is concerned by the fact that, by providing for the automatic deletion of the NGO from the Registry and revoking its certification, Article 11.5 endangers the existence of organisations working in these fields in Greece. Certification is an essential condition for NGOs to operate in State-run facilities and offices, as well as to receive certain type of funding. Therefore, by losing their certification, these NGOs would stop receiving funding or being able to continue their operation in State-facilities, which can hugely impact their operations, especially if that is where their work primarily takes place.

The consequences of Article 11.5 are even more pervasive as the concerned NGO would also automatically lose its registration, a mandatory basic condition for NGOs to exercise any activity in the field of migration, asylum and social integration in Greece.

As noted by the OSCE/ODIHR Joint Guidelines, sanctions for breaches of regulations concerning organisations' activities should only 'in extreme cases' take the form of "*suspension of [the organisation's] activities or their de-registration or dissolution*".⁵³ Particularly, "*[s]anctions amounting to the effective suspension of activities, or to the prohibition or dissolution of the association [...] should only be applied in cases where the breach gives rise to a serious threat to the security of the state or of certain groups, or to fundamental democratic principles. In any case, these types of drastic sanctions should ultimately be imposed or reviewed by a*

⁴⁷ For instance, Joint Guidelines, para 225: "*Reporting requirements, where these exist, should not be burdensome, should be appropriate to the size of the association and the scope of its operations....Associations should not be required to submit more reports and information than other legal entities, such as businesses, and equality between different sectors should be exercised.*"

⁴⁸ UN Human Rights Council, A/HRC/20/27, above in full, para 65.

⁴⁹ Joint Guidelines, para. 225.

⁵⁰ Joint Guidelines, para. 226.

⁵¹ Joint Guidelines, para. 214.

⁵² On this see also HIAS and RSA statement, cited above in full.

⁵³ Joint Guidelines, para. 235.

judicial authority.”⁵⁴

While Article 11.5 does not explicitly provide for the suspension of the NGO's activities, it does provide for the deletion of the of NGO's registration, which is an essential pre-condition for its operation. Also, while not formally affecting the existence of the NGO, the effects of the revocation of certification, as explained above, can have such an impact on its ability to perform core functions, that it might in practice amount to a *de facto* suspension or, potentially, even to an outright cessation of the NGOs activities, with effects comparable to those of a dissolution, where the continuation of its core operations were prevented indefinitely as a result.

Amnesty International is seriously concerned that the consequences of failing to record changes in the composition of staff members, as per Article 11.5, fail to meet the principle of proportionality required for sanctions on NGOs, which, as observed by the Expert Council on NGO Law, requires that ‘...*the least intrusive option shall always be chosen, that a restriction shall always be narrowly construed and applied, and shall never completely extinguish the right nor encroach on NGOs essence*’.⁵⁵

Furthermore, nowhere in the JMD is it specified whether the effects of the automatic de-registration and the revocation of certification under Article 11.5 are temporary or permanent, nor whether affected NGOs have an administrative remedy to challenge these measures and rectify their situation. This is irrespective of the fact that similar safeguards exist in the context of the audit and compliance process of certified NGOs, under Article 7, which provides for milder sanctions where the NGO fails to comply, including the temporary ‘suspension’ of certification where the NGO fails to submit certain documents in time, which is withdrawn once these are submitted. In the absence of such provisions, it must be inferred that the effects of Article 11.5 are permanent, reinforcing the argument that sanctions imposed have comparable effects to the suspension or dissolution of the NGO.

The above should also be read in the light of the weaknesses affecting NGOs’ right to a remedy under the JMD, which are dealt with in the next sections.

Amnesty International urges the Greek authorities to reformulate the requirements for the registration of NGOs members, ensuring that they allow adequate time for NGOs to comply with them, and that an internal remedy to rectify the situation is provided. In all cases, failing to comply with registration requirement should not result in the automatic and permanent deletion of the NGO or the member from the registry and the consequent withdrawal of their certification. The organisation urges Greece to ensure that all sanctions contemplated in law comply with principles of necessity and proportionality, and that these can be challenged by an independent judicial body.

Excessive discretion of reviewing authorities in decisions on the registration of NGOs and their members

The JMD grants discretionary powers to the ‘Special Secretary for the coordination of stakeholders’ (the authority which sits under the Ministry of Immigration and Asylum that reviews the registration applications) to the effect that in certain circumstances they can ‘*reject the body's application for registration [...] under [their] sole discretion*’ (Article 3.4).⁵⁶ This also applies to the registration of NGO members (Article 12.3).⁵⁷

The powers of the Special Secretary are worded vaguely, allowing for a high degree of discretion, and are open to being abused or used in an arbitrary manner. For example, article 3.4 of the JMD gives the power to reject an application considering whether the NGO meets registration requirements “*in conjunction with data relating to the activities of the organisation*”.⁵⁸ Article 12 provides a similar power in the case of the registration of NGO members, where the discretionary rejection can take into account “*data concerning the personality and the actions of applicants*”.⁵⁹ Concepts such as personality and actions are too vague and subjective, and are left to the discretion of the authorities which can render its actions arbitrary.⁶⁰

It is important to note that the JMD already excludes the possibility of members to be registered if they have a ‘final’ criminal

⁵⁴ Joint Guidelines, para. 239.

⁵⁵ Expert Council on NGO Law of the Conference of INGOs of the Council of Europe, International standards relating to reporting and disclosure requirements for Non-Governmental Organizations, para. 129. See also Joint Guidelines, paras. 235-241.

⁵⁶ Article 3 para. 4 of the JMD (unofficial translation): “*The Special Secretary for the coordination of stakeholders retains the right, in every case, to verify the information submitted with data from all the competent state authorities, as well as the right to reject the body's application for registration, taking into account all of the above in conjunction with data relating to the activities of the bodies and under his sole discretion*”.

⁵⁷ On the issue of discretionary powers of the Special Secretary also see HIAS and RSA's statements, cited above in full.

⁵⁸ Article 3.4 of the JMD

⁵⁹ Article 12.3 of the JMD (unofficial translation): “*In addition to the above conditions and the required documents, the Special Secretary for Coordination of Involved Bodies reserves the right in all cases to verify the submitted data with all the competent state authorities as well as the right, with consideration of all the above, in combination with data concerning the personality and the actions of applicants for the registration of natural persons until that time and at his discretion, to reject the application for registration of the natural person*”. On this point see also: HIAS Statement, as above.

⁶⁰ On this see also RSA's statement, above in full, p. 3.

conviction (Article 11).⁶¹ Article 12 therefore creates a situation in which individuals and organizations risk being excluded from the Registry on broad and discriminatory grounds, and it can even be abused as a form to silence NGOs and its members who may censor themselves for fear of losing their registration if they criticise the authorities, creating a silencing and chilling effect on civil society organizations and human rights defenders.⁶²

This power of scrutiny may also have implication on the right to privacy which, as per the OSCE/ODIR Joint Guidelines, “*applies to an association and its members*”, meaning that “*oversight and supervision must have a clear legal basis and be proportionate to the legitimate aims they pursue [...], should not be invasive, nor should they be more exacting than those applicable to private businesses*”. Insofar as the discretionary rejection of individual members can be based on their ‘personality’ or ‘actions’, the right to privacy may be put at risk where individuals were prevented from being part of an organisation based on elements relating to their private life, which are irrelevant to their membership in an organization. As stated by the European Court of Human Rights (ECtHR), the right to privacy covers issues relating to the ‘identity and autonomy’ of the individual.⁶³

Insofar as the NGO’s own right to privacy is concerned, according to the UN Special Rapporteur on the rights to peaceful assembly and of association, “*authorities should not be entitled to condition any decisions and activities of the association*”.⁶⁴ Making registration of NGOs conditional upon an evaluation of the organisation’s activities assigns the Special Secretary with an unjustified and excessive power to interfere with the autonomy of NGOs.⁶⁵ As observed by NGOs in Greece, such as HIAS, these provisions fail to meet the standards of the European Court of Human Rights (ECtHR) regarding the right to association, whereby “*[i]n matters affecting fundamental rights it would be contrary to the rule of law...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 and the manner of its exercise*”.⁶⁶ In this sense, the ECtHR, in its jurisprudence on Article 11, has taken issues with domestic rules on NGO which it considered to be “*worded in rather general terms*”, and that appeared to afford the authorities a “*rather wide discretion to intervene in any matter related to an association’s existence*”.⁶⁷

Amnesty International is concerned that these provisions confer wide discretion to the registering authorities and may result in its arbitrary use as a way to silence and obstruct the work of particular organizations. We therefore urge the Greek authorities to remove this clause from the JMD and ensure that such processes are as unobtrusive as possible, understandable and non-discriminatory.⁶⁸

Risks of undue interference with the autonomy of organisations seeking certification

Amnesty International is also concerned that in order to be eligible for certification (Article 5), NGOs must fulfil criteria relating to their ‘efficiency’ and ‘administrative’ and ‘organizational’ competence, based on vaguely worded criteria. The evaluation of the NGO’s efficiency, for instance, can take into account the implementation of the organisation’s actions, based on its project reports, whereas its ‘administrative competence’ can be inferred from elements such the ‘*number and specializations of paid staff and volunteer personnel*’ or from internal organizational choices, including the NGO’s organizational chart and other statutory documents. These rules have the potential to unduly interfere in the NGO’s organizational and other internal decisions which pertain to its self-management.⁶⁹ Instead of evaluating the suitability of an NGO to perform a determined task, these rules would allow the authorities to scrutinise the internal management, organization and other private affairs of an NGO.

Furthermore, by allowing such a wide scrutiny into NGOs’ decisions, the requirement of certification may pose serious obstacles to

⁶¹ It is notable to report, on this point, HIAS’ remark that “*under Greek law, the presumption of innocence can only be reversed when there is an irrevocable conviction by a court of law, not just a ‘final’ one*”. See HIAS statement cited in full above.

⁶² On privacy and freedom of expression implications of these requirements see also: see HIAS and RSA statement, cited above in full.

⁶³ https://www.echr.coe.int/Documents/Guide_Art_8_ENG.pdf, para 71.

⁶⁴ UN Human Rights Council, A/HRC/20/27, above in full, para 65

⁶⁵ Similar concerns apply to the decision to include as a reason for the deletion of an NGO from the relevant registry (Article 8) the involvement in illegal acts proven not only by a final conviction but also “*by a document from a competent public authority*”. According to HIAS the wording used by the JMD in this and other 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*’ and ‘*it is unclear what the “document of the competent public authority” refers to*’. See HIAS statement, above. See also RSA statement above.

⁶⁶ See HIAS statement, cited above in full, citing *Hasan and Chausch v. Bulgaria*, no. 30985/96, para. 84. Also in: Council of Europe, 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, December 2019, para. 51, above, citing European Court of Human Rights (ECtHR) *Islam-Ittihad Association and Others v. Azerbaijan*, App. No. 5548/05, 13 November 2014, para. 44. On this see also RSA statement above.

⁶⁷ ECtHR, *Tebieti Mühafize Cemiyeti and Israfilov v. Azerbaijan*, Application no. 37083/03, para. 62.

⁶⁸ Along these lines see also HIAS statement, above.

⁶⁹ According to the Joint Guidelines: “*[f]ounders and members of associations shall be free in the determination of the objectives and activities of their associations, within the limits provided for by laws that comply with international standards. In pursuing their objectives and in conducting their activities, associations shall be free from interference with their internal management, organization and affairs. Associations have the freedom to determine the scope of their operations*”. On this point see also RSA and HIAS, statements above in full.

the organisation's ability to receive funding, as is explained in the next section.

The authorities' power to evaluate the organisation's internal choices is not exclusive to the process of certification. Elsewhere in the JMD, one of the grounds for removing an NGO member from the registry is the "*poor execution of the undertaken project [...] proven by a relevant document of the competent administrative authority*", a provision that confers the Greek authorities the power to evaluate how a project is conducted, even if the organization is not a direct contractor.⁷⁰ Similar powers exist for the removal of the NGO itself from the registry (Article 8.1 letter d of the JMD), '*if misconduct is found in the undertaken project, proven by a relevant document of the competent administrative authority, on a case-by-case basis*'. While some requirements might be justified for some NGO members operating in specific settings (for example, specific qualifications and/or disclosure of convictions or disbarment for those working in close contact with children), it is not clear why regulatory authorities are given decision making powers, not based on objective criteria but on their discretionary evaluation of how a project was conducted, when removing NGOs or their members from the respective registries. As noted by HIAS, '*removal from the Registries of an NGO/natural person of an NGO due to the "poor implementation" of the project...would also violate the organization's right to be "independent and free from undue interference of the state or of other external actors"*'. Similarly, RSA notes that through certification requirements "*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.*"⁷¹

In this sense, it should also be recalled that the ECtHR has taken issue with NGO rules lacking clarity as to the reviewing authorities' level of scrutiny into an NGO's internal affairs. In *Tebieti Mühafize Cemiyeti and Israfilov v. Azerbaijan* it was noted that Azerbaijan's NGO act lacked "*detailed rules governing the scope and extent of the Ministry of Justice's power to intervene in the internal management and activities of associations, or minimum safeguards concerning, inter alia, the procedure for conducting inspections by the Ministry or the period of time granted to public associations to eliminate any shortcomings detected....thus providing sufficient guarantees against the risk of abuse and arbitrariness*".⁷²

Amnesty International urges the Greek authorities to implement adequate safeguards to ensure that the powers afforded to reviewing authorities in the context of registration and certification processes do not cause undue interferences in NGOs' internal decisions and autonomy, including in matters relating to funding.

Restrictions in NGO's access to funding

Certification requirements under the JMD also affect NGOs' ability to apply for and receive certain type of funding, in that certification is set as a 'necessary condition' to:

"b) receive funding from national, EU or other resources to meet material conditions for reception and c) receive funding from the Ministry of Immigration and Asylum with funds from the State Budget for the implementation of Social and Humanitarian Action, Social Inclusion, Immigration and International Protection" (Article 6 JMD)

Based on the wording of Article 6 (b) and (c), it appears that a broad spectrum of funding sources would be liable to fall under this provision. Certification can only be granted to NGOs who have successfully been registered in line with the JMD and relevant legislation. Insofar as they affect the opportunity to compete for national or EU funding, the rules under the JMD raise serious questions about the right of associations to seek, receive and utilise resources from national, foreign and international sources.

All NGOs should have the same opportunity to access funds at the national, regional or international level. The UN Declaration on human rights defenders makes this principle clear by stating that: "*Everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means, in accordance with article 3 of the present Declaration*".⁷³

The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association also underscored this principle stating that: "*The ability to seek, secure and use resources is essential to the existence and effective operations of any association, no*

⁷⁰ Along these lines see also HIAS statement and RSA statement, above in full.

⁷¹ See HIAS statement, cited above in full, cross-citing the Joint Guidelines para. 215 whereby: "*An 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. The fact of having a single or a primary funder does not automatically result in a loss of independence by an association. However, an 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*".

⁷² *Tebieti Mühafize Cemiyeti and Israfilov v. Azerbaijan*, Application No. 37083/03, para. 64

⁷³ United Nations, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, A/RES/53/144.

matter how small”,⁷⁴ and that “undue restrictions on resources available to associations impact the enjoyment of the right to freedom of association and also undermine civil, cultural, economic, political and social rights as a whole”.⁷⁵

The Special Rapporteur also made clear that both registered and unregistered associations “should have the right to seek and secure funding and resources from domestic, foreign, and international entities”⁷⁶ and identified as best practice “legislation that does not prescribe the approval of the authorities before receiving domestic and foreign funding”.⁷⁷ Finally, while accepting that associations “should be accountable to their donors”, the Special Rapporteur remarked that the “transparency and accountability argument has, in some other cases, been used to exert extensive scrutiny over the internal affairs of associations, as a way of intimidation and harassment” and warned against “frequent, onerous and bureaucratic reporting requirements, which can eventually unduly obstruct the legitimate work carried out by associations. Controls need therefore to be fair, objective and non-discriminatory, and not be used as a pretext to silence critics. Composition of the supervisory body also needs to be independent from the executive power to ensure its decisions are not arbitrary”.⁷⁸

In their current state, Greek rules under Article 6 JMD, are fundamentally at odds with these standards, as they not only impose registration as a general condition for all NGOs in Greece, but create an additional layer of scrutiny for those seeking funding, who are also required to meet the demanding conditions for certification. As well as making the process generally more onerous for these NGOs, the rules also ultimately make access to funding conditional upon rules that -as described above- may subject them to an unduly broad state scrutiny, with risks of undue interferences with their autonomy and internal decisions, which might create a chilling effect on their independence (Above: ‘Risks of undue interference with the autonomy of organisations seeking certification’).

Amnesty International is therefore concerned that the rules under the JMD would render access to funding practically impossible for certain NGOs, especially, as noted by the Expert Council on NGO law, having regard to smaller or more recently established organisations.⁷⁹

Furthermore, by making access to funding for reception activities coming from ‘EU or other resources’ conditional to the NGO being certified, the rules allow the authorities’ to exercise pervasive functions of scrutiny over NGOs who are not contractors of the Greek state nor work in partnership or under the control of state entities.

As observed by the CoE Expert Council of NGO law, there is also a lack of clarity as to how the new rules will impact EU grants that benefit NGOs directly. It was noted that: “[w]hilst the EU has its own audit and quality control requirements relating to its grantees, it is unclear whether, and if so, how Greek internal certification requirements could impact on the ability of local NGOs to benefit from EU support, in this latter case”.⁸⁰

In light of the above, Amnesty International urges Greece to take steps to ensure access to funding is not conditional to the registration or certification of organizations, ensuring that both registered and unregistered NGOs can have equal opportunities in seeking, receiving and utilising funds from national, foreign and international sources.⁸¹

Procedural guarantees in the registration and certification processes and right to an effective remedy

Finally, throughout the JMD, serious shortcomings exist in terms of NGOs ability to administratively challenge decisions affecting their registration or certification (such as their exclusion from the registration procedure, their deletion from the NGOs registry or decisions affecting their certification) or to remedy procedural failures or mistakes,⁸² and their right to an effective remedy to appeal such decisions before an independent and impartial court.

Insofar as procedural guarantees are concerned, it should be recalled that as a general rule, “the law should not deny registration based solely on technical omissions...but should give applicants a specified and reasonable time period in which to rectify any omissions, while at the same time notifying the association of all requested changes and the rectification required”.⁸³ However, at several points, the JMD fails to provide affected NGOs with internal remedies throughout the registration or certification processes

⁷⁴ United Nations, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, 24 April 2013, A/HRC/23/39, para 8.

⁷⁵ Ibid. para. 9.

⁷⁶ A/HRC/20/27 para 68

⁷⁷ A/HRC/20/27 para 69

⁷⁸ A/HRC/23/39, para. 37-38

⁷⁹ On this see: Expert Council of NGO Law’s opinion of 2 July 2020, cited above in full, para. 101

⁸⁰ Expert Council on NGO law’s opinion on Greece of 2 July 2020, para. 95.

⁸¹ Similar conclusions are made by the Expert Council of NGO Law’s opinion of 2 July 2020, para. 101

⁸² See for instance Joint Guidelines para. 238. “Sanctions should, if circumstances so allow, be preceded by a warning with information as to how a violation may be rectified. In that case, the association should be given ample time to rectify the violation or omission”.

⁸³ See for instance Joint Guidelines para. 160, above.

(see for instance the automatic de-registration of NGOs and the revocation of certification under Article 11.5, examined above) and is not clear about NGOs right to be notified about decisions affecting them.

For instance, decisions on certification applications – which are liable to significantly affect the NGO's ability to operate or to continue operating – are taken by a committee, formed by the Special Secretary⁸⁴ (Article 6.3), which, having concluded that the NGO is compliant with the relevant conditions, adopts a decision granting the organisation 'certified status' for 3-years. However, Article 6 fails to address how this procedure unfolds where the Committee reaches a negative conclusion, if and how such decision is communicated to the NGO and if the NGO can submit a subsequent application or otherwise take action to challenge or remedy the negative decision.

Similarly, in the case of registration, according to Article 8 of the JMD the deletion of NGOs from the Registry can occur, in defined circumstances, through a decision of the Special Secretary. Only in some instances,⁸⁵ however, Article 8.2 affords the NGO an opportunity to be heard before this decision is taken, requiring the "*prior hearing of the legal representative of the affected body or a person authorized by him*" before the review board.⁸⁶ Also, it is not clear whether in this case it would be admissible for the NGO to file a subsequent application or otherwise overcome the shortcomings that had initially led to them being excluded from the Registry. The same applies to decisions negatively affecting the registration process of NGOs members (Article 12).

The procedure for the deletion of NGO members from the registry, on the other hand, does not provide for a comparable hearing (Article 14).⁸⁷ There appears to be no justification for the asymmetry in the provision of administrative remedies against the deletion from the two registries.

Finally, nowhere in the JMD are NGOs afforded an express right to judicially challenge decisions taken under the JMD before an independent and impartial court. According to Greek law, one could assume that NGOs may have access to ordinary recourse procedures available under administrative law to challenge a negative decision issued by an administrative authority, which include filing an application for annulment of the relevant decision before the Council of State.⁸⁸ However, the recourse process could take time to be heard and decided and is costly.

Amnesty International urges Greece to make sure that NGOs and their members are granted adequate procedural guarantees to administratively challenge or remedy decisions affecting them throughout the registration and certification procedures and to ensure that, in all cases, these decisions can be further challenged before an independent and impartial court, in line with international and European law and standards.⁸⁹

Recommendations:

In view of the above analysis, Amnesty International considers that the rules and requirements introduced through the JMD and Article 58 are liable to be used in a way that can significantly hamper the continued activities of NGOs working, at various levels, with people on the move in Greece and to overall produce a chilling effect on the exercise of their right to defend human rights.

The organisation urges the Ministry for Immigration and Asylum and other concerned authorities to take immediate steps to bring Greek legislation and practice in line with European and international human rights law and standards, including regarding the right to freedom of association. To this effect, Amnesty International considers that, in the absence of reasons justifying a different treatment of NGOs working on asylum, migration and social integration, and in view of the serious impact that new registration and certification requirements – as presently articulated – will have on NGOs and their members, as well as on the rights of migrants, refugees and asylum-seekers, the JMD and its legislative basis (Article 191 of Law 4662/2020 and Article 58 of Law no 486/2020) should be repealed or substantially amended in line with Greece's obligations under international human rights law.

In order to do so, Amnesty International urges the Greek authorities to take urgent steps to address some of the most dangerous provisions contained therein:

1. Guarantee that any restriction on the right to freedom of association is clearly provided in law, pursues one of the limited legitimate aims, and is necessary and proportionate to such aim.

⁸⁴ On the independence of this body and the lack of remedies see also HIAS statement, cited in full above.

⁸⁵ Article 8.2: "In cases b, c subpar. bb and d of paragraph 1 of this article"

⁸⁶ On this see also HIAS statement, cited above in full.

⁸⁷ On this see also HIAS statement, cited above in full.

⁸⁸ See https://e-justice.europa.eu/content_specialised_courts-19-el-maximizeMS-en.do?member=1.

⁸⁹ Recommendation CM/Rec(2007)14 of the Council of Europe Committee of Ministers to member states on the legal status of non-governmental organisations in Europe, <https://www.osce.org/odihr/33742?download=true>, para. 10. "Acts or omissions by public authorities affecting an NGO should be subject to administrative review and be open to challenge by the NGO in an independent and impartial court with full jurisdiction" and UN Human Rights Council, A/HRC/20/27, above in full, para 61: "Any decision rejecting the submission or application must be clearly motivated and duly communicated in writing to the applicant. Associations whose submissions or applications have been rejected should have the opportunity to challenge the decision before an independent and impartial court".

2. Ensure that NGOs working on asylum, migration and social integration are not treated in a discriminatory manner; any differential treatment must be adequately justified.
3. Repeal the provision making registration a mandatory requirement for all NGOs and ensure that unregistered organisations can continue carrying out their activities in a safe and enabling environment.
4. Amend registration and certification requirements ensuring that NGOs are not subjected to unduly burdensome conditions or compelled to disclose information that breaches the right to privacy of the association or its members.
5. Refrain from imposing arbitrary time constraints for the registration of NGOs in a way that unfairly excludes some organizations from operating in Greece.
6. Provide NGOs with adequate procedural guarantees throughout registration and certification procedures, including by giving them sufficient time to comply with the requirements to register members or notify changes to their conditions. Ensure that failures to comply with such requirements do not result in the automatic deletion of the NGO or the member from the registry or in the withdrawal of their certification.
7. Ensure that sanctions for failing to comply with registration or certification requirements are necessary and proportionate, and that these can be challenged by an independent judicial body.
8. Repeal or substantially amend articles 3.4 and 12.3 as they grant discretionary powers to the Special Secretary for the coordination of stakeholders to reject the registration of NGOs or NGOs' members in an abusive manner.
9. Implement adequate safeguards to ensure that the powers afforded to reviewing authorities in the context of registration and certification processes do not cause undue interferences in NGOs' internal decisions and autonomy, including in matters relating to funding.
10. Untie access to funding from registration and certification requirements, ensuring that both registered and unregistered organizations can have equal opportunities in seeking, receiving and utilising funds from national, foreign and international sources.
11. Ensure that the JMD and other relevant legislation provide for an effective remedy for NGOs and their members to challenge decisions relating to their registration and certification both administratively and before an independent and impartial court.
12. Refrain from misusing legislation or introducing new laws that may impinge on the right to freedom of association, expression and the right to privacy, which are a key to provide a safe and enabling environment for all human rights defenders working individually or collectively.
13. Ensure that laws and regulations affecting the right to freedom of association are discussed in consultation with human rights defenders and civil society organizations.⁹⁰

⁹⁰ NGOs in Greece have flagged the lack of participation of civil society in the adoption of the new rules on NGOs registration. See: HIAS statement, cited above in full.