Parliamentary Assembly
Assemblée parlementaire
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Doc. 15174
26 October 2020

Rights and obligations of NGOs assisting refugees and migrants in Europe

Committee Opinion[1]
Committee on Legal Affairs and Human Rights
Rapporteur: Ms Alexandra LOUIS, France, Alliance of Liberals and Democrats for Europe

A. Conclusions of the Committee

1. The Committee on Legal Affairs and Human Rights welcomes the report prepared by the rapporteur of the Committee on Migration, Refugees and Displaced Persons, Mr Domagoj Hajduković (Croatia, SOC), and broadly supports the proposed draft resolution and recommendation.

2. The committee has already addressed the issue of inappropriate restrictions on NGO activities in Europe and the situation of human rights defenders assisting refugees and migrants.

3. December 2015 and May 2018 saw the adoption of two consecutive reports on inappropriate restrictions on NGO activities in Council of Europe member States.[2] On the basis of these two reports, the Parliamentary Assembly adopted Resolution 2096 (2016) and Recommendation 2086 (2016) "How can inappropriate restrictions on NGO activities in Europe be prevented?" on 28 January 2016, and then Resolution 2226 (2018) and Recommendation 2134 (2018) "New restrictions on NGO activities in Council of Europe member States" on 27 June 2018. A third report entitled "Restrictions on NGO activities in Council of Europe member States" is currently under way, the committee having appointed me as rapporteur on this subject when it met by videoconference on 29 June 2020.

4. The committee and the Assembly have also been monitoring the situation of human rights defenders in a targeted and specific way since 2006.[3] Four reports on the situation and protection of human rights defenders in Council of Europe member States have been produced by its rapporteurs.[4] In June 2018, further to the report by Mr Egidijus Vareikis (Lithuania, EPP/CD) on "Protecting human rights defenders in Council of Europe member States",[5] the committee proposed appointing a general rapporteur on the situation of human rights defenders. Since 30 January 2020, it has been my privilege to hold this position, following the departure of the first general rapporteur, Mr Raphaël Comte (Switzerland, ALDE), from the Assembly.

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1. Reference to committee: Bureau Decision, Reference 4331 of 13 October 2017. Reporting committee: Committee on Migration, Refugees and Displaced Persons. See Doc. 15161. Opinion approved by the committee on 14 October 2020.
2. Prepared by our former committee colleague Mr Yves Cruchten (Luxembourg, SOC), Doc. 13940 of 8 January 2016 and Doc. 14570 of 7 June 2018.
3. Doc. 10985, 27 June 2006.
4. The situation of human rights defenders in Council of Europe member States, Doc. 11841, 24 February 2009; The situation of human rights defenders in Council of Europe member States, Doc. 12957, 11 June 2012; Strengthening the protection and role of human rights defenders in Council of Europe member States, Doc. 13943, 11 January 2016 and Protecting human rights defenders in Council of Europe member States, Doc. 14567, 6 June 2018.
5. Doc. 14567, 6 June 2018. See also Resolution 2225 (2018) and Recommendation 2133 (2018), adopted by the Assembly on 26 June 2018 on the basis of that report.

5. The report of the Committee on Migration, Refugees and Displaced Persons focuses on the situation of NGOs which assist refugees and migrants and so help States to meet their humanitarian commitments in this area. Not without reason, the report draws attention to the various attacks on these NGOs and their donors and points out that, as well as rights, organisations have obligations under national law, not least as regards the transparency of their funding.

6. The Committee does nevertheless wish to propose some amendments to strengthen the draft resolution and draft recommendation. One of the aims of the proposed amendments is to add references to relevant legal texts and recent recommendations made by Council of Europe organs and bodies with regard to NGOs.

B. Proposed amendments

Amendment A (to the draft resolution)

In paragraph 1, after the words "regarding refugees and migrants", add the following words: "as they arise *inter alia* from the European Convention on Human Rights (ETS No. 5) and the 1951 Convention relating to the Status of Refugees,".

Amendment B (to the draft resolution)

In paragraph 4, replace the first sentence with the following sentence: "Referring to Recommendation CM/Rec(2018)11 of the Committee of Ministers on the need to strengthen the protection and promotion of civil society space in Europe, to Resolution 2226 (2018) and Recommendation 2134 (2018) on "New restrictions on NGO activities in Council of Europe member States" together with Resolution 2225 (2018) and Recommendation 2133 (2018) on "Protecting human rights defenders in Council of Europe member States", the Assembly strongly condemns attacks on NGOs and their donors, which have taken the form of physical violence, legal obstacles, judicial, administrative or fiscal harassment, smear campaigns, political accusations or even racist attacks."

Amendment C (to the draft resolution)

In paragraph 4, after the words: "Respecting the rights and freedoms of NGOs" insert the following words: ", in particular the rights and freedoms guaranteed under Articles 8, 10 and 11 of the European Convention on Human Rights,".

Amendment D (to the draft resolution)

In paragraph 5, after the words "Recommendation CM/Rec(2007)14 of the Committee of Ministers on the legal status of non-governmental organisations in Europe" insert the following words: ", the Joint Guidelines on Freedom of Association adopted by the European Commission for Democracy through Law (Venice Commission) and the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE/ODIHR) and the Guidelines on Protecting NGO Work in Support of Refugees and Other Migrants prepared by the Expert Council on NGO Law of the Conference of INGOs of the Council of Europe".

Amendment E (to the draft resolution)

In paragraph 6, after the words "Venice Commission", insert the following words: "and the Expert Council on NGO law of the Conference of INGOs of the Council of Europe".

Amendment F (to the draft resolution)

In paragraph 7, insert the following first sentence and the following words: "The Assembly refers to the Report on funding of associations, adopted by the Venice Commission in March 2019, which lays down guidelines on foreign funding of NGOs in Council of Europe member States. It considers that"

Amendment G (to the draft resolution)

In paragraph 10, after the second sentence, insert the following sentence: “They must also refrain from criminalising other activities of NGOs assisting refugees and migrants, unless they are justified in doing so under Article 11 of the European Convention on Human Rights.”

Amendment H (to the draft resolution)

After paragraph 11, add the following paragraph: “The Assembly calls on Council of Europe member States to sign and/or ratify the European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations (ETS No. 124), if this has not yet been done.”

Amendment I (to the draft recommendation)

In paragraph 2, after the words “Recommendation CM/Rec(2007)14 of the Committee of Ministers on the legal status of non-governmental organisations in Europe” insert the following words: “, the Joint Guidelines on Freedom of Association adopted by the European Commission for Democracy through Law (Venice Commission) and the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE/ODIHR) and the Guidelines on Protecting NGO Work in Support of Refugees and Other Migrants prepared by the Expert Council on NGO Law of the Conference of INGOs of the Council of Europe”.

C. Explanatory memorandum by Ms Alexandra Louis, rapporteur for opinion

1. On many occasions the European Court of Human Rights (“the Court”) has stressed that, along with the press, NGOs play the role of a “watchdog” in a democratic society.[6] As recalled in Assembly Resolution 2226 (2018), NGOs are a key component of an open and democratic civil society and make an essential contribution to the defence of human rights and to the strengthening of democracy and the rule of law. Respect for freedom of assembly and association (Article 11 of the European Convention on Human Rights, ETS No. 5, “the Convention”) and freedom of expression (Article 10 of the Convention) are inextricably linked to one another and are vital to the proper functioning of civil society. NGOs assisting migrants and refugees therefore enjoy these rights and freedoms, which may, however, be subject to restrictions under certain conditions (see paragraph 2 of Articles 11 and 10 of the Convention). NGOs of this kind help States to fulfil their obligations under Article 33.1 of the 1951 Convention relating to the Status of Refugees ("Geneva Convention") and Articles 2 and 3 of the Convention with regard to the prohibition of refoulement[7] and other obligations to protect the human rights and fundamental freedoms of such persons.

2. As Mr Hajduković’s report rightly points out, however, the NGOs in question face various obstacles in their everyday work. It is worth noting that the Committee on Legal Affairs and Human Rights has already addressed the issue of reprisals against activists assisting refugees and migrants. Mr Vareikis, in his May 2018 report on protecting human rights defenders in Council of Europe member States,[8] and also the previous rapporteur general on the situation of human rights defenders, Mr Raphaël Comte, reported cases of such persons being subjected to intimidation, not least in Croatia, Italy and Spain.[9]

3. In addition, the issue of the new Hungarian legislation specifically targeting NGOs assisting migrants and refugees (“Stop Soros”) was examined in the aforementioned report produced by Mr Cruchten in May 2018.[10] The legislation which criminalises certain NGO activities aimed at assisting irregular migrants has drawn criticism from the European Commission for Democracy through Law (“Venice Commission”) and the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE/ODIHR)[11] as well as from the Assembly in its Resolution 2226 (2018).[12] Moreover, in July 2018, the Hungarian Parliament passed a law amending certain Tax Acts and related Acts, and on the Special

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6. European Court of Human Rights, *Vides Aizsardzības Klubs v. Latvia,* application No. 57829/00, judgment of 27 May 2004, paragraph 42, and *Radio Twist, A.S. v. Slovakia,* application No. 62202/00, judgment of 19 December 2006, paragraphs 48-50.
7. The prohibition of refoulement to a country where the person might be unlawfully deprived of life, subjected to torture or to cruel, inhuman or degrading treatment or punishment follows from the Court’s case law; see, for example, *F.G. v. Sweden*, judgment of 23 March 2016, application No. 43611/11.
8. Doc. 14567, paragraph 36.
9. AS/Jur (2019)31 declassified, 26 June 2019, paragraph 28.
10. Doc. 14570, paragraph 23.

Immigration Tax, which imposes a 25% tax on donations or financial support to any group that carries out "immigration-supporting activity". Further to a request from the committee in December 2018, the Venice Commission jointly with the OSCE/ODIHR issued an opinion, criticising this legislation.[13]

4. Since the Assembly's last debate on the situation of human rights defenders and NGOs in June 2018, several new recommendations have been adopted at the Council of Europe. In November 2018, for example, the Committee of Ministers adopted Recommendation CM/Rec(2018)11 on the need to strengthen the protection and promotion of civil society space in Europe in which it expressed concern about cases of reprisals against human rights defenders and called on member States to put in place a "national legal framework and political and public environment to protect and promote civil society space".[14] In addition, the issue of funding, including foreign funding, of NGOs was examined in detail by the Venice Commission in its March 2019 Report on funding of associations.[15] Last May, the Expert Council on NGO Law of the Conference of INGOs of the Council of Europe issued Guidelines on Protecting NGO Work in Support of Refugees and Other Migrants.[16]

5. I would thus like to propose a few amendments to the draft resolution and draft recommendation, in order to strengthen them and, in particular, place greater emphasis on these new developments at the Council of Europe and on the work of the Assembly.

1. Explanatory notes

1.1. Amendment A (to the draft resolution)

The aim of this amendment is to emphasise that the work of NGOs assisting refugees and migrants in Europe is carried out in a legal context in which States are required to meet their obligations under the European Convention on Human Rights and the Convention relating to the Status of Refugees of 1951. NGOs carrying out humanitarian work, in particular when it comes to improving the living conditions of refugees and migrants in refugee camps or other reception facilities, assist States in ensuring that such persons do not suffer degrading or inhuman treatment within the meaning of Article 3 of the Convention and that, where appropriate, the procedural safeguards surrounding their detention are upheld. By providing them with legal aid, they help to ensure adherence to procedural safeguards in cases of expulsion or detention and respect for the right to an effective remedy. Their work can prevent States from carrying out refoulements that would be contrary to Articles 3 and 8 of the Convention and Article 31 paragraph 1 of the Geneva Convention.

1.2. Amendment B (to the draft resolution)

The aim of this amendment is to insert references to the Assembly's recent work on restrictions on NGO activities and to the situation of human rights defenders and also to include two further examples of "attacks on NGOs and their donors", namely judicial, administrative or fiscal harassment and smear campaigns.

1.3. Amendment C (to the draft resolution)

The purpose of this amendment is to make it clear that the rights of NGOs must be observed, in particular those guaranteed by Articles 8, 10 and 11 of the Convention. NGOs must enjoy the right to respect for private life, in particular in the context of reporting obligations concerning their donors or managers (Article 8 of the Convention), freedom of expression (Article 10 of the Convention) and freedom of assembly and association (Article 11 of the Convention).

1.4. Amendment D (to the draft resolution)

The aim of this amendment is to add a reference to other relevant recommendations in this area, namely the Joint Guidelines on Freedom of Association adopted by the Venice Commission and the OSCE/ODIHR[17]and the Guidelines on Protecting NGO Work in Support of Refugees and Other Migrants prepared by the Expert Council on NGO Law of the Conference of INGOs of the Council of Europe.

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11. Opinion No. 919/2018 of 22 June 2018.
12. See paragraph 6 of the resolution.
13. Opinion No. 941/2018 of 17 December 2018.
14. See in particular the appendix to this recommendation.
15. CDL-AD(2019)002, Study No. 895/2017, 18 March 2019.
16. CONF/EXP(2020)3.

1.5. Amendment E (to the draft resolution)

The aim of this amendment is to add a reference to the work of the Expert Council on NGO Law of the Conference of INGOs of the Council of Europe, which regularly studies draft laws on NGOs and issues opinions (see in particular its latest opinion on amendments to the Greek legislation on NGO registration).[18]

1.6. Amendment F (to the draft resolution)

The aim of this amendment is to add a reference to the Venice Commission's March 2019 Report on funding of associations which deals with the issue of foreign funding of NGOs.[19]

1.7. Amendment G (to the draft resolution)

The aim of this amendment is to emphasise that States must also refrain from criminalising not only cross-border transportation but also other activities of NGOs assisting refugees and migrants, unless they are justified in doing so under Article 11 of the Convention. It should be noted that restrictions on freedom of association must be "prescribed by law", "necessary in a democratic society" and comply with the principle of proportionality.[20] They must also pursue at least one of the legitimate aims listed in the Convention (Article 11.2). A study on the criminalisation of activities of NGOs assisting refugees and migrants was recently carried out by the Expert Council on NGO Law of the Conference of INGOs of the Council of Europe.[21]

1.8. Amendment H (to the draft resolution)

The purpose of this amendment is to call on those member States which have not yet done so to sign and/or ratify the European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations (ETS No. 124), which so far has been ratified by only 12 member States.[22]

1.9. Amendment I (to the draft recommendation)

See explanatory note for Amendment D.

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17. CDL-AD(2014)046, Study No. 706/201, 17 December 2014.
18. "Opinion on the compatibility with European standards of recent and planned amendments to the Greek legislation on NGO registration," CONF/EXP(2020)4, of 2 July 2020.
19. CDL-AD(2019)002, op. cit.
20. See for example European Court of Human Rights, *Chassagnou and Others v. France*, applications Nos. 25088/94 and others, judgment of 29 April 1999 (Grand Chamber), paragraph 104 et seq.
21. "Using criminal law to restrict the work of NGOs supporting refugees and other migrants in Council of Europe member States", CONF/EXP(2019)1, December 2019.
22. As at 23 September 2020: www.coe.int/en/web/conventions/search-on-treaties/-/conventions/treaty/124/signatures?p_auth=hnEYkJdf.