Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Resolution 2356 (2020)[1]

Rights and obligations of NGOs assisting refugees and migrants in Europe

Parliamentary Assembly

1. The Parliamentary Assembly pays tribute to the enormous and tireless efforts of so many non-governmental organisations (NGOs) which are assisting refugees and migrants in Europe and globally. Depending on voluntary donations or working as contractual partners of the United Nations, the European Union (EU) or member States, these NGOs perform extremely valuable humanitarian work. Without the efforts of thousands of volunteers working for NGOs, member States would not be able to meet either their legal commitments regarding refugees and migrants arising from, *inter alia,* the European Convention on Human Rights (ETS No. 5) and the United Nations 1951 Convention relating to the Status of Refugees, or their daily humanitarian needs.

2. Many NGOs provide specialised forms of assistance to migrants and refugees, in particular humanitarian assistance in refugee camps or other accommodation for migrants, medical and psychological support, educational services or legal assistance and translation services to administrations and before courts. Some assist refugees in finding, and reuniting with, family members. Others help migrants who are victims of violence, human trafficking and crime. Their neutrality and humanitarian competence enable them in some cases to work in conflict situations, following the historical example of the International Red Cross and Red Crescent Movement. In addition, NGOs have an important role in raising awareness about the situation of refugees and migrants, including human rights violations.

3. Many NGOs assist refugees and migrants, but there are also good examples of how refugees participate actively in the work of NGOs and even create NGOs themselves. This allows NGOs to better take account of the specific needs of the persons concerned and can ensure that humanitarian assistance effectively reaches beneficiaries. Within NGOs, refugees can also overcome language barriers and cultural differences. The Assembly encourages NGOs and donors to include refugees and migrants in the implementation of their humanitarian work and its monitoring.

4. 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 Assembly 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. Respecting the rights and freedoms of NGOs, in particular the rights and freedoms guaranteed under Articles 8, 10 and 11 of the European Convention on Human Rights, is imperative for upholding fully functioning democratic societies. At the same time, governments or political organisations should not use NGOs as vehicles for extending their sphere of influence through political agitation.

1. *Text adopted by the Standing Committee*, acting on behalf of the Assembly, on 4 December 2020 (see Doc. 15161, report of the Committee on Migration, Refugees and Displaced Persons, rapporteur: Mr Domagoj Hajduković; and Doc. 15174, opinion of the Committee on Legal Affairs and Human Rights, rapporteur: Ms Alexandra Louis).
See also Recommendation 2192 (2020).

5. Recalling Article 11 of the European Convention on Human Rights, the European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations (ETS No. 124), Recommendation CM/Rec(2007)14 of the Committee of Ministers on the legal status of non-governmental organisations in Europe, 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, the Assembly is deeply concerned by reports about politically motivated and undue restrictions on the work of NGOs which are assisting refugees and migrants.

6. The legislation and practice of member States must comply with Council of Europe standards and member States concerned should also implement the opinions of the Venice Commission and the Expert Council on NGO Law of the Conference of INGOs of the Council of Europe in this field.

7. 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 member States should neither discriminate against foreign NGOs providing humanitarian assistance to refugees and migrants on their territory, nor should they restrict foreign funding of humanitarian work by domestic NGOs. In this regard, humanitarian donations and activities should not be subject to taxation by national fiscal authorities.

8. Being such pivotal civil society actors, NGOs must, for their part, comply with requirements such as respect for national laws and transparency. They should be incorporated and ensure clarity regarding their objectives, staff, funding, use of financial resources and activities. Lack of transparency, political agitation, religious or philosophical proselytising or commercial lobbying by NGOs which assist refugees and migrants would undermine public trust in them.

9. The Assembly welcomes the substantial financing by the EU of NGOs providing assistance to migrants and refugees. In the current context, it invites member States which are also EU members to continue their budgetary contributions during and after the Covid-19 pandemic. Oversight of the appropriate use of such funds should be assured by the European Court of Auditors and the EU Anti-Fraud Office (OLAF).

10. Because NGOs can be vehicles for illegal activities, such as the smuggling or human trafficking of migrants, money laundering or aiding terrorism, they must take all precautions to ensure that they do not unintentionally become parties to such criminal activities. In line with the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime (Palermo, 2000), member States should not criminalise the transport of migrants across borders on purely humanitarian grounds. They must also refrain from criminalising other activities of NGOs which assist refugees and migrants, unless they are justified in doing so under Article 11 of the European Convention on Human Rights. European history provides a multitude of heroic examples of humanitarian smuggling of refugees fleeing various dictatorships or ethnic cleansing.

11. Recalling its Resolution 2229 (2018) on international obligations of Council of Europe member States to protect life at sea, the Assembly emphasises that NGOs should be allowed to carry out search and rescue activities in international waters and disembark rescued persons at the nearest safe port, in accordance with international maritime law. National border guards can set up rules or codes of conduct for the co-operation of NGOs in official search and rescue operations within national territorial waters. In the current context of the Covid-19 pandemic and its aftermath the Assembly recalls that the "safety" of a port is also determined by local health risks. Nevertheless, the specific health problems of people rescued at sea require more rapid disembarkation and medical treatment.

12. 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, if they have not yet done so.