



RSA Submission to the European Commission on the 2021 Rule of Law Report

Contribution as:	Non-governmental organisation
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Main areas of work:	Justice System; Other (Asylum; Migration)
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Publication:	Public

The information provided by Refugee Support Aegean (RSA) in this submission covers main developments related to the rule of law in Greece, with a focus on the field of asylum and migration.

I. Justice system

1. **General remark:** Appeals against decisions on asylum applications taken by the Asylum Service take the form of an administrative appeal (ενδικοφανής προσφυγή) before the Independent Appeals Committees (Ανεξάρτητες Επιτροπές Προσφυγών) of the Appeals Authority under the Ministry of Migration and Asylum. However, these three-member Committees are exclusively composed by three administrative judges – either first- (πρωτοδίκες) or higher-level judges (εφέτες) – following the entry into force of the International Protection Act (IPA),¹ and are described as “quasi-judicial bodies” (οιονεί δικαιοδοτικά όργανα) staffed by specialised judges, fulfilling the requirements of a “court or tribunal” set out in EU law.² Accordingly, in addition to information on administrative courts, input provided by RSA on the Greek justice system covers the structure and operation of the Independent Appeals Committees.

A. Independence

10. Significant developments capable of affecting the perception that the general public has of the independence of the judiciary

2. Following a reform of judicial review rules also introduced by the IPA and entering into force in 2020,³ competence for judicial review of decisions taken by the Appeals Committees was transferred from the Administrative Courts of Appeal (διοικητικά εφετεία) to the first-instance Administrative Courts (διοικητικά πρωτοδικεία) of Athens and Piraeus. Pursuant to the current judicial review structure, a first-instance Administrative Court thereby conducts judicial review of decisions that may be – and often are – taken by Committees composed by higher-level administrative judges.

¹ Article 5(2) L 4375/2016, as amended by Article 116(2) L 4636/2019 (IPA).

² Explanatory Memorandum to Article 86 L 4399/2016; Council of State, Decision 2347/2017, 22 September 2017, para 20; Decision 536/2020, 2 April 2020, para 5.

³ Article 15(1) L 3068/2002, as amended by Article 115 IPA and Article 57(1) L 4689/2020.

3. The sole impression of partiality created by the reversal of the established structure of the judiciary in instances, from lower to higher judges, creates fears of influence against judges tasked with reviewing decisions issued exclusively by same- or higher-level judges, appointed to Appeals Committees as asylum experts. This is liable to jeopardise the principle of judicial hierarchy, which constitutes a guarantee of independence and impartiality of the judiciary. On 5 February 2021, the Council of State Plenary heard three cases in the context of a pilot procedure on the constitutionality of the above legislative provisions.⁴

B. Quality of justice

11. Accessibility of courts (e.g. court fees, legal aid, language)

4. Several amendments introduced over the past year have posed additional restrictions on access to the procedure before the Appeals Committees and curtailed the effectiveness of the remedy against asylum decisions:
 - 4.1. Appellants are required to state the full grounds for challenging a first instance decision in writing for the appeal to be deemed admissible.⁵ This requirement was enacted despite the chronic and consistent inability of the Greek State to discharge its obligation under EU law⁶ to provide appellants with legal aid in the appeal procedure upon request;⁷
 - 4.2. Several categories of appeals no longer carry automatic suspensive effect. Accordingly, appellants are required to lodge a separate request for suspensive effect pending the completion of the appeal procedure;⁸
5. These provisions, read in conjunction, severely hinder the exercise of the right to an effective remedy insofar as they expose appellants who are not provided with legal aid through no fault of their own i.e. the failure of the State to comply with its duty to provide legal aid in the appeal procedure, to the risk of (a) their appeal being deemed inadmissible and (b) their right to remain on Greek territory pending the outcome of the remedy not being safeguarded. In this regard, RSA highlights that restrictions on the right to an effective remedy have also been upheld even vis-à-vis unaccompanied children for whom the State has not carried out its obligation to appoint a guardian prior to the conduct of the asylum procedure.⁹
 - 5.1. The procedure before the Appeals Committees is a written procedure as a rule, since the Committees have extremely limited discretion to conduct an

⁴ RSA, 'The Council of State pilot procedure on judicial review in the asylum procedure', 1 February 2021, <https://bit.ly/2OzBvN0>.

⁵ Article 93 IPA.

⁶ Article 20(1) Asylum Procedures Directive.

⁷ RSA & Stiftung PRO ASYL, *Submission in M.S.S. and Rahimi*, July 2020, paras 16-26, <https://bit.ly/3poQVAB>; RSA et al, 'Σοβαρές ενστάσεις των νομικών οργανώσεων σχετικά με την έλλειψη δωρεάν νομικής συνδρομής στους/στις αιτούντες/ούσες άσυλο στη Λέσβο', 13 January 2021, <https://bit.ly/3beUpQY>.

⁸ This is a superfluous step, as the Committees end up dismissing requests for suspensive effect as having no object (*άνευ αντικειμένου*), after having issued a positive or negative decision on the merits of the appeal: 4th Appeals Committee, Decision 12645/2020, 21 July 2020; 6th Appeals Committee, Decision 5692/2020, 28 February 2020; 10th Appeals Committee, Decision 7465/2020, 24 April 2020; 13th Appeals Committee, Decision 2727/2020, 9 April 2020; 19th Appeals Committee, 19883/2020, 11 August 2020. See further RSA, *Comments on the amended Commission proposal for an Asylum Procedures Regulation*, October 2020, 10, <https://bit.ly/3pMUvGe>.

⁹ See e.g. Administrative Court of Appeal of Athens, Decision 431/2020, paras 7-8, <https://bit.ly/3s3KsNf>.

oral hearing.¹⁰ Following the IPA, the Committees are forbidden from postponing the examination of appeals where the appellant's right to legal aid has not been respected, unless they determine that the person has suffered procedural damage (*δικονομική βλάβη*) and that the appeal has a tangible prospect of success;¹¹

- 5.2. Collegial decision-making has been abolished for many cases. Appeals in the accelerated procedure, appeals against inadmissibility decisions, appeals against decisions taken in the border procedure, as well as all appeals lodged by appellants present on the islands of Lesbos, Chios, Samos, Leros and Kos, are examined by the Committees in single-judge format;¹²
 - 5.3. Appeals Committees are forbidden from reverting cases back to the Asylum Service for re-examination (*αναπομπή*), even where a personal interview of the asylum seeker has to be conducted.¹³
6. The above provisions, read in conjunction, pose undue constraints on the scope and quality of the asylum appeal procedure, in dereliction of the duty of the Greek State to guarantee "a full and *ex nunc* examination of both facts and points of law" under Article 47 of the Charter and secondary EU law.¹⁴ Since oral hearings are rarely, if ever, granted by Appeals Committees, even where deficiencies or gaps are established in the first instance personal interview,¹⁵ and cases cannot be reverted back to the Asylum Service, crucial elements of asylum applications are solely examined *sur dossier* at a single instance. Examples can be drawn from asylum claims which have not been processed on the merits at first instance e.g. applications by Syrian applicants who are only interviewed on admissibility ("safe third country") grounds at first instance, and are only assessed on the merits based on the (insufficient) elements of the case file on appeal. This has resulted in incorrect denials of refugee status to applicants who were never interviewed on the substance of their claim.¹⁶

15. Court statistics and their transparency

7. Judgments of the administrative courts are not systematically made publicly available, given that no centralised, publicly accessible case law database is in place. Moreover, judgments of the administrative courts are not systematically uploaded on subscription-based databases e.g. NOMOS so as to be made available to the legal community. These gaps pose significant obstacles to maintaining an accurate and up-to-date understanding of jurisprudential developments in the country.
8. Decisions of the Appeals Committees on asylum appeals are not published, even though the Committees are deemed to fulfil the requirements of a "court or tribunal". The Appeals Authority is required under Greek law to publish quarterly reports on the operation of the Appeals Committees, covering *inter alia* the percentage of cases processed in written and oral procedures, processing times of appeals, recognition rates, applications for annulment lodged against Appeals Committee decisions, applications for legal aid and the number of persons benefitting from legal aid.¹⁷ This

¹⁰ Article 97(1) and (3) IPA.

¹¹ Article 98(3) IPA, inserted by Article 24(2) L 4686/2020.

¹² Article 5(7) L 4375/2016, as amended by Article 30(2) L 4686/2020.

¹³ Article 105 IPA, as amended by Article 27 L 4686/2020.

¹⁴ Article 46(3) Asylum Procedures Directive.

¹⁵ RSA & Stiftung PRO ASYL, *Submission in M.S.S. and Rahimi*, July 2020, para 20.

¹⁶ See e.g. Appeals Committee, Decision 28217/2020, 17 December 2020; 20th Appeals Committee, Decision 29118/2020, 19 January 2021.

¹⁷ Article 4(3) L 4375/2016, as amended by Article 86(2) L 4399/2016.

obligation has remained 'dead letter' since its enactment in 2016, as the Appeals Authority has never published said quarterly reports.

9. The decision-making of Appeals Committees corroborates concerns relating to the effectiveness of the remedy against asylum decisions, and the adequacy of their application of international law obligations such as the prohibition of *refoulement*. The rate of positive decisions on the merits of appeals was no more than 5.2% in 2020.¹⁸ As for judicial review, only 1.8% of Administrative Court decisions were positive.¹⁹

III. Media pluralism

C. Framework for journalists' protection

34. Rules and practices guaranteeing journalists' independence and safety

10. Over the course of 2020, high-ranking Government representatives have systematically made efforts to discredit journalists publishing reports on unlawful push backs of refugees and migrants at the country's land and sea borders.²⁰

In a May 2020 statement replying to a letter by a MEP, the Government Spokesperson publicly discredited media reports of unlawful conduct by Greek authorities, stating that "The Turkish side creates and disperses fake news targeted against Greece. Today they created yet another such falsehood, with injured migrants and one dead supposedly by Greek fire... Fake news keeps spreading... Waging disinformation campaigns is nothing new for Turkey".²¹

In an August 2020 interview with CNN, the Prime Minister stated that "some of these reporters who do this type of exploratory journalism should be more careful in checking those sources".²²

Following up to a LIBE Committee meeting on 6 July 2020 relating to fundamental rights violations at the Greek-Turkish borders, the Minister of Citizen Protection stated: "With particular reference to the allegations contained in your letter, that is to say the use of live fire on human targets, acts of violence, *refoulement* of migrants towards Turkey and similar accusations by the press, international organisations and NGOs, we are once again obliged to stress that such accusations are groundless".²³

In October 2020, the Minister of Migration and Asylum stated in Parliament that Der Spiegel reports of push backs in the Aegean Sea are the product of propaganda.²⁴

¹⁸ RSA, 'Asylum statistics for 2020 A need for regular and transparent official information', 12 February 2021, <https://bit.ly/37jBUd6>.

¹⁹ *Ibid.*

²⁰ For an overview of reports and official positions, see RSA and PRO ASYL, 'Push backs and violations of human rights at sea: a timeline', 29 December 2020, <https://bit.ly/3u7zJ5Z>; 'Official reactions and positions on push backs: a timeline', 29 December 2020, <https://bit.ly/3ppWkHv>.

²¹ Government Spokesperson, 'Statement by the Deputy Minister to the Prime Minister and Government Spokesperson Stelios Petsas', 8 May 2020, <https://bit.ly/3jUK2Wq>.

²² Excerpt of the interview in Christiane Amanpour, Twitter post, 19 August 2020, <https://bit.ly/37mSRDt>.

²³ Ministry of Citizen Protection, *Letter from Michalis Chrisochoidis, Minister of Citizen Protection, to Juan Fernando Lopez Aguilar, Chair of the Committee on Civil Liberties, Justice and Home Affairs*, 3 November 2020, <https://bit.ly/3at8XgK>.

²⁴ I Efimerida, 'Μηταράκης για δημοσίευμα Spiegel: «Είναι προπαγάνδα! Η χώρα φυλάει τα σύνορά της με σεβασμό στο διεθνές δίκαιο»', 24 October 2020, <https://bit.ly/2OMx3uD>.

The Minister has also described reported incidents as propaganda 2020 and 2021 interviews.²⁵

11. Journalists have also been the target of racist violence from local groups, with several incidents of violence recorded on Lesbos in March 2020.²⁶

IV. Other institutional issues related to checks and balances

A. The process for preparing and enacting laws

38. Framework, police and use of impact assessments, stakeholders' / public consultations (particularly consultation of judiciary on judicial reforms), and transparency and quality of the legislative process

12. The stated better regulation objectives of the Executive State Act²⁷ adopted in 2019 have not mitigated chronic deficiencies in the law-making process, recalled by the last Rule of Law Report as 'polynomia' and 'kakonomia'.²⁸ First, since the enactment of said law, the Government has continued to table large reforms to consultation under extremely short deadlines, as was the case in the 5.8-day consultation deadline for the 121-article International Protection Bill²⁹ which became the IPA. Legislative proposals are often rushed through truncated readings in parliamentary committees which do not enable the legislature to adequately scrutinise legal texts. For example, all committee meetings on L 4686/2020, which made several amendments to the IPA and migration legislation, were held within a total space of less than two days, while the plenary vote took place on the next day.³⁰
13. Second, the negative effects of the lack of codification continue to be exacerbated by constant legislative reform. The IPA, adopted in November 2019 in an effort to consolidate asylum legislation into a single act,³¹ had been amended four times by the end of 2020, by L 4674/2020,³² L 4686/2020,³³ L 4756/2020³⁴ and L 4760/2020.³⁵
14. Third, Greece continues to legislate through 'omnibus legislation' as the Government systematically resorts to the enactment of "other provisions" (άλλες διατάξεις) in unrelated legislative proposals. For example, L 4674/2020 on the functioning of local authorities includes reforms on digital policy, telecommunications, sports, citizenship, asylum, urban planning. In addition, L 4662/2020 on civil protection and crisis management includes reforms on prisons, public procurement rules, registration of

²⁵ Τα Νέα, 'Μηταράκης σε BBC: Καμία σχέση με την πραγματικότητα οι ισχυρισμοί για επαναπροωθήσεις', 31 August 2020, <https://bit.ly/3s5MegT>; Notis Mitarakis, 'Παραλάβαμε μία χαώδη κατάσταση στο μεταναστευτικό. Σήμερα κλείνουμε δομές και ενισχύουμε τα μέτρα ασφαλείας', 14 February 2021, <https://bit.ly/2NhcfuL>.

²⁶ RSA, 'Timeline of attacks against solidarity', 18 March 2020, <https://bit.ly/3qiuHAF>.

²⁷ Article 42(2) L 4622/2019, Gov. Gazette A' 133/07.08.2019.

²⁸ European Commission, SWD(2020) 307, 30 September 2020, 10.

²⁹ Ministry of Citizen Protection, Σχέδιο Νόμου περί Διεθνούς Προστασίας, 15 October 2019, <https://bit.ly/3axZQeK>.

³⁰ Hellenic Parliament, Βελτίωση της μεταναστευτικής νομοθεσίας, τροποποίηση διατάξεων των νόμων 4636/2019 (Α' 169), 4375/2016 (Α' 51), 4251/2014 (Α' 80) και άλλες διατάξεις, <https://bit.ly/3ub1ris>.

³¹ Explanatory Memorandum to the International Protection Bill, 21 October 2019, 1, <https://bit.ly/3pydByq>.

³² Gov. Gazette A' 53/11.03.2020.

³³ Gov. Gazette A' 96/12.05.2020.

³⁴ Gov. Gazette A' 235/26.11.2020.

³⁵ Gov. Gazette A' 247/11.12.2020.

NGOs in the area of migration, immigration detention facilities, staffing of the Ministry of Migration and Asylum.³⁶

15. "Other provisions" are often included through last-minute amendments in unrelated legislative proposals in such a way as to allow no time for proper examination and discussion. An amendment to education legislation was successfully inserted to a migration-related bill (enacted as L 4686/2020) only hours prior to the plenary vote.³⁷

C. Accessibility and judicial review of administrative decisions

43. Transparency of administrative decisions and sanctions (incl. their publication and rules on collection of related data) and judicial review (incl. scope, suspensive effect)

16. The current government has reached a record number of political appointments in the public administration, with over 3,000 appointees (*μετακλητοι*) at the beginning of 2021.³⁸ Political appointees are appointed to management positions e.g. Special Secretariats of Ministries, pursuant to the Executive State Act,³⁹ without following the formal procedures for recruitment of officials in the public sector.
17. In the case of the Ministry of Migration and Asylum, the Special Secretary for Stakeholder Coordination,⁴⁰ competent for managing the Registry of NGOs active in the area of migration, international protection and social inclusion, was appointed without any provision specifying duration of term or delegating powers of final signature,⁴¹ as required by law for the establishment of Special Secretaries.⁴² The compatibility of this measure with the rule of law and principles of legality, transparency and accountability has been brought, among other issues, before the Council of State in the application for annulment of the Decision setting out the NGO Registry, as stated in more detail below.

D. The enabling framework for civil society

45. Restrictive legislative measures on NGO registration in the area of asylum, migration and social inclusion

45.1. Legal framework

18. Concerns raised in the 2020 Rule of Law Report⁴³ relating to undue and disproportionate requirements for registration and certification of NGOs active in the area of asylum, migration and social inclusion have been heavily exacerbated by further legislative reform in 2020. The relevant secondary legislation, Joint Ministerial Decision (JMD) 3063/2020, had attracted sharp criticism *inter alia* by a July 2020 opinion of the Expert Council on NGO Law at the Council of Europe, highlighting risks of infringement of the right to freedom of association. The Expert Council had stressed

³⁶ Gov. Gazette A' 27/07.02.2020.

³⁷ Articles 63-64 L 4686/2020. See Hellenic Parliament, *Βελτίωση της μεταναστευτικής νομοθεσίας*, <https://bit.ly/3az9tKl>.

³⁸ Avgi, 'Κυβερνητικοί διορισμοί / Έσπασε το φράγμα των 3.000 μετακλητών η κυβέρνηση Μητσοτάκη', 22 January 2021, <https://bit.ly/2NDVgml>.

³⁹ Article 42(2) L 4622/2019.

⁴⁰ Article 1(4) Presidential Decree 18/2020, Gov. Gazette A' 34/19.02.2020.

⁴¹ These provisions are also absent from the subsequently enacted Article 44 Presidential Decree 106/2020.

⁴² Article 42(3) L 4622/2019.

⁴³ European Commission, *2020 Rule of Law Report – Country Chapter on the rule of law situation in Greece*, SWD(2020) 307, 30 September 2020, 12.

that the “Ministerial Decision and related legislative provisions should be substantially revised so that they are brought into line with European standards”.⁴⁴

19. The Greek government replaced the aforementioned Decision with JMD 10616/2020 (hereafter “new Decision”) in September 2020. The new Decision not only fully disregards the recommendations put forward by the Expert Council of NGO Law, but lays down further requirements and restrictions on fundamental rights and other EU law provisions. Registration requirements for NGOs are now stricter and more intrusive, while state discretion and administrative convenience are enhanced:⁴⁵

- 19.1. Certification is now construed as an automatic adjunct to registration on the NGO Registry. This means that the burdensome certification criteria previously reserved for NGOs with operational presence in reception facilities and Regional Asylum Offices are now laid down as mandatory substantive requirements for all civil society organisations per Article 5 of the Decision. As stated by the Expert Council on NGO Law in an addendum to its opinion, “all NGOs working in the field of asylum, migration and social inclusion must now comply with the extremely onerous and deeply problematic requirements for certification, regardless of the nature of their activities.”⁴⁶

Substantive requirements under Article 5 include: (a) efficiency, as attested by the implementation of activities, financial stability, quality; (b) organisational capacity; (c) transparency. The new Decision maintains broad discretion on the Special Secretary for Stakeholder Coordination to reject applications after taking into consideration the documents submitted by the applicant organisations.⁴⁷

- 19.2. Under the new Decision, all individual members, staff and volunteers of organisations are required to individually register on the NGO Members Registry.⁴⁸
- 19.3. The new Decision has amended procedural deadlines in such a way as to put additional pressure on NGOs, while serving administrative convenience. Upon the submission of an application concerning an organisation or individual member, the Ministry of Migration and Asylum now has 60 days – instead of 30 – to assess the elements of the file. Where it informs the applicant organisation that more information is required, the organisation has no more than 10 days – down from 15 – to provide additional documentation.
- 19.4. The new Decision includes a new provision, Article 16, which enables the Ministry of Migration and Asylum to derogate from the provisions of the Decision by permitting entry of NGOs to reception facilities by way of

⁴⁴ Expert Council on NGO Law, *Opinion on the compatibility with European standards of recent and planned amendments to the Greek legislation on NGO registration*, CONF/EXP(2020)4, 2 July 2020, para 109, <https://bit.ly/2Zr1l8w>.

⁴⁵ For a detailed analysis, see RSA, *Repression continued: Greece further restricts civil society supporting refugees and migrants*, September 2020, <https://bit.ly/3jrp2q6>.

⁴⁶ Expert Council on NGO Law, *Addendum to the Opinion on the compatibility with European standards of recent and planned amendments to the Greek legislation on NGO registration*, CONF/EXP(2020)5, 23 November 2020, para 17, <https://bit.ly/3pZYq1L>.

⁴⁷ Article 6(4) JMD 10616/2020.

⁴⁸ Expert Council on NGO Law, *Addendum to the Opinion on the compatibility with European standards of recent and planned amendments to the Greek legislation on NGO registration*, CONF/EXP(2020)5, 23 November 2020, para 11.

decision of the Special Secretary for Stakeholder Coordination, for a maximum period of 2 months.

20. In 2021, RSA and other entities lodged applications before the Council of State for the annulment of the new Decision and related provisions of the Organisation of the Ministry of Migration and Asylum⁴⁹ on the following main grounds:

- 20.1. The Decision was issued *ultra vires* as it exceeds the delegation of powers to the Ministry of Migration and Asylum by the Greek legislature. Whereas the legislative framework sets out competence to establish the NGO Registry and the NGO Members' Registry under a Division (Τμήμα), hierarchically reporting to a Directorate (Διεύθυνση) and in turn to a Directorate-General (Γενική Διεύθυνση),⁵⁰ the Decision and Presidential Decree entrust the power to decide on the registration of legal entities on the NGO Registry to the Special Secretary for Stakeholder Coordination, a political appointee not subject to any administrative hierarchy.
- 20.2. The rules infringe various provisions of the General Data Protection Regulation (GDPR), stemming from the mandatory processing of personal data by the Ministry of Migration and Asylum and applicant organisations, without express provisions guaranteeing information and consent of data subjects. Processing of such data is not carried out by the authorities designated as competent in the framework governing employment, social security or regulated professions.

Moreover, the Decision imposes the processing of special categories of personal data revealing political opinions and philosophical beliefs of the data subjects, which fall under the prohibited categories of Article 9(1), without meeting the guarantees of Article 9(2)(d) of the Regulation.

Furthermore, under the Decision, civil society organisations concerned are required to process personal data relating to criminal convictions and offences in complete dereliction of the safeguards laid down in Article 10 GDPR. Crucially, the Ministry of Migration and Asylum is not the entity competent for detection and prosecution of criminal offences.

- 20.3. By adding undue and discriminatory conditions on the operation of civil society organisations in this particular field, the rules infringe the fundamental right to freedom of association, enshrined in Article 12 of the Charter of Fundamental Rights, particularly in light of the recent Court of Justice of the European Union (CJEU) ruling in *Commission v Hungary*.⁵¹
- 20.4. By introducing exemptions from certain documentation requirements exclusively for refugees recognised by Greece who provide interpretation services, the rules infringe the prohibition of discrimination.

21. MEPs have also raised concerns about violations of the Charter of Fundamental Rights and the GDPR, in addition to questions to the Commission on its opinion as to the compatibility of the Decision with EU fundamental freedoms such as free movement of capital, workers and services. The Commissioner for Justice has not shared the Commission's assessment in his reply to the parliamentary questions.⁵²

⁴⁹ Presidential Decree 106/2020, Gov. Gazette A' 255/23.12.2020.

⁵⁰ Article 58 L 4686/2020; Article 191 L 4662/2020.

⁵¹ CJEU, C-78/18 *Commission v Hungary*, 18 June 2020.

⁵² European Commission, Reply to parliamentary question, P-005656/2020, 15 January 2021, <https://bit.ly/2N3puyG>.

22. The Expert Council on NGO Law has called for the Decision to “be revoked as soon as possible”.⁵³

45.2. Implementation of registration rules in practice

23. At the time of writing, 27 NGOs have been registered on the NGO Registry of the Ministry of Migration and Asylum.⁵⁴ While the number of rejected applications for registration is not known, RSA is aware of several negative decisions notified to civil society organisations since January 2021, which have rejected their applications on formal and/or substantive grounds.
24. Organisations navigating the application process do not always receive clarifications from the authorities. According to a recent survey covering 70 organisations, almost half requested clarifications from the Ministry on the exact requirements for registration, and almost half received no reply, while others were only provided with general references to legal provisions.⁵⁵
25. The assessment of registration applications by the Special Secretariat for Stakeholder Coordination has given rise to grounds for believing that the assessment of the registration criteria pursuant to the Decision is not conducted transparently, fairly, consistently and lawfully.
- 25.1. **Formal grounds (Article 2):** The Special Secretariat has issued negative decisions to certain organisations on the ground that they have not provided financial reports for covering the two years preceding their applications.⁵⁶ However, it has approved the applications of a number of NGOs which were founded less than two years ago and could thereby not have been able to provide such documentation.⁵⁷
- 25.2. **Substantive grounds (Article 5):** Decisions seen by RSA contain similar wording, stating that the applicant organisation “has not produced the elements establishing the substantive registration requirements, pursuant to Article 5” of the Decision (δεν έχει προσκομίσει τα στοιχεία τεκμηρίωσης των ουσιαστικών προϋποθέσεων εγγραφής, σύμφωνα με τις διατάξεις του άρθρου 5 της υπ’ αριθ 10616/24.8.2020 ΚΥΑ).⁵⁸ However, none of the decisions specify which of the requirements set out in Article 5 have not been met so as to enable the applicants to prove compliance with said conditions and/or to challenge the rejection of their application.

At the same time, the Special Secretariat has deemed the substantive requirements to be fulfilled in respect of organisations which had no prior experience in the field of asylum, migration or social inclusion. Since these organisations have been approved

⁵³ Expert Council on NGO Law, *Addendum to the Opinion on the compatibility with European standards of recent and planned amendments to the Greek legislation on NGO registration*, CONF/EXP(2020)5, 23 November 2020, para 23.

⁵⁴ Ministry of Migration and Asylum, *Εγγεγραμμένες ΜΚΟ*, <https://bit.ly/3u6TTgs>.

⁵⁵ Choose Love, *Under pressure: How Greece is closing in on civil society*, February 2021, 14, available at: <https://bit.ly/3bRHZii>.

⁵⁶ Article 2(2)(e) JMD 10616/2020.

⁵⁷ For example, the NGO “HOPELAND” was founded on 22 September 2020: Solomon, ‘Millions in funding at stake for refugee housing’, 22 January 2021, <https://bit.ly/2Zk2Bd5>. The NGO “NESTORAS” was founded on 8 March 2019 according to its statute, <https://bit.ly/3s5eLmN>.

⁵⁸ See also Choose Love, *Under pressure: How Greece is closing in on civil society*, February 2021, 17.

for funding under EU-funded programmes such as ESTIA, the implementation of the NGO Registry by the Greek authorities is closely connected to the use of EU funds in the area of asylum, migration and social inclusion, and the financial interests of the Union.⁵⁹

26. At the same time, the Special Secretariat has made use of the derogation provisions set out in Article 16 of the Decision by issuing exceptional permission decisions to several NGOs in December 2020.

45.3. Hostile and incriminating narrative against NGOs

27. The Greek government continues to engage in hostile political discourse against NGOs in the field of asylum and migration, through frequent allegations of unlawful activity that are widely reproduced in national media without supporting evidence and through the involvement of national agencies such as the National Intelligence Service (Εθνική Υπηρεσία Πληροφοριών, EYP) and the National Transparency Authority (Εθνική Αρχή Διαφάνειας, EAD) in cases of NGOs.

28. First, government representatives have frequently made statements connecting NGOs to unlawful activities such as smuggling, without presenting sufficient evidence to support such allegations. In October 2020, national media reported that the Hellenic Police and EYP conducted "Operation Alkmini" in August by "recruiting" two migrants who were transported to Izmir and subsequently boarded a boat en route to Greece. In an interview with broadcasting service SKAI, the Minister of Migration and Asylum stated: "we looked at the role of NGOs in the illegal smuggling of persons, NGOs active on our islands – not only Lesbos – NGOs who participated in networks for migrants to come illegally to our country, NGOs who watched the Coast Guard, intercepted frequencies and had the role of spies and not humanitarian action".⁶⁰ A media outlet covered the story with the following title: "Migrants: Four German NGOs caught in the act of trafficking and espionage on Lesbos".⁶¹ No further evidence has been publicly provided to date to corroborate the NGOs' involvement in unlawful activities. In February 2021, media presented "impressive findings" from the Hellenic Police and EYP "Operation Alkmini II", pointing to NGO involvement in "tactics" including pressure on the Hellenic Coast Guard not to return refugees and migrants to Turkey and directing new arrivals to particular locations on the islands "to avoid the attempt to return them to the neighbouring country and for them to appear before police authorities one or two days later or to the hotspots to register".⁶² It is worth stressing that the news item directly refers to Hellenic Coast Guard attempts to return people who have reached the Greek shores, a practice consistently reported in push back allegations denied by the Greek government, as mentioned above.

29. In December 2020, the Minister of Migration and Asylum presented media outlets with what was described as "documentation at [the authorities'] disposal proving that journeys are encouraged by smuggling groups and are at times supported by non-governmental organisations active in the area".⁶³ The Minister has named specific

⁵⁹ HOPELAND, which was founded on 22 September 2020 and successfully applied for ESTIA funding one week later, had no prior activities in the area and its members do not seem to have prior relevant experience: Solomon, 'Millions in funding at stake for refugee housing', 22 January 2021, <https://bit.ly/2Zk2Bd5>.

⁶⁰ SKAI, 'Μηταράκης σε ΣΚΑΪ: Πώς αποκαλύψαμε τις ΜΚΟ που διακινούσαν παράνομους μετανάστες- Το σχέδιο "Αλκμήνη" της ΕΥΠ', 4 October 2020, <https://bit.ly/2LTMVKy>.

⁶¹ Proto Thema, 'Μεταναστευτικό: Στα πράσα τέσσερις γερμανικές ΜΚΟ για δουλεμπόριο και κατασκοπεία στη Λέσβο', 5 October 2020, <https://bit.ly/3qrPX7Y>.

⁶² Το Vima, 'Μέλη ΜΚΟ έκρυβαν μετανάστες σε σπηλιές νησιών', 15 February 2021, <https://bit.ly/3qwm0ic>.

⁶³ Kathimerini, 'N. Μηταράκης: Τουρκία και ΜΚΟ διευκολύνουν τις παράνομες διελεύσεις Σομαλών', 8 December 2020, <https://bit.ly/3jSDqYC>.

NGOs in the context of those allegations.⁶⁴ No further evidence or information on legal action taken against the organisations has been made publicly available to date.

30. The Greek government also publicly implicated NGOs in the destruction of the hotspot of Moria by fires in September 2020. One day following the incident, the Ministry of Citizen Protection was cited as a source by different media outlets stating that NGOs instigated the arson that destroyed the camp.⁶⁵ No further evidence corroborating the involvement of civil society organisations in the incident has been made available at the time of writing.
31. Second, the government has made public statements implicating civil society organisations in mismanagement of funds in the area of asylum and migration. On 5 June 2020, the Minister of Migration and Asylum stated in Parliament that “the previous government had given the ‘keys’ to the hands of NGOs, which managed European funds, with which they recruited staff – thousands of appointees – under procedures entirely unknown to the State”.⁶⁶ Earlier in the year, EAD issued a press release referring to controls performed in respect of three NGOs providing accommodation services, focusing on “transparency and accountability in the use of EU and national funding”.⁶⁷ The announcement was again widely reproduced by media.⁶⁸ However, since the outcome of controls was never published by EAD, one of the targeted organisations announced that the process had been completed in July 2020 with no major findings, except for two minor recommendations on improving workflow.⁶⁹
32. Domestic media outlets generally lend support to the overall climate of distrust of civil society by reproducing an inculpatory and often inflammatory narrative when covering developments related to NGOs. Titles used in relevant news items published by reputable media over the past year include:
 - “Refugees: Order in the landscape of NGOs – The Registry in operation”⁷⁰
 - “NGOs are brought to order – The Ministerial Decision on the operation of the Registry was signed”⁷¹
 - “Operation-Order on NGOs with bill submission”⁷²
 - “Migrants: How the unlawful activity of NGOs is halted”⁷³
 - “An end to the arbitrariness of NGOs”⁷⁴

⁶⁴ Efsyn, ‘Ο Μηταράκης δείχνει Τουρκία και ΜΚΟ για τις διελεύσεις προσφύγων’, 9 December 2020, <https://bit.ly/3jVQUmz>.

⁶⁵ SKAI, ‘ΕΛ.ΑΣ-ΕΥΠ και Αντιπρομοκρατική ψάχνουν τους «καθοδηγητές» για την ένταση στην Μόρια’, 10 September 2020, <https://bit.ly/2ZjplVo>; Protagon, ‘Ποιος έκαψε τη Μόρια; Οι «προτροπές» των ΜΚΟ και το SMS για την εκκένωση 30 λεπτά πριν τη φωτιά’, 10 September 2020, <https://bit.ly/2LTQalc>.

⁶⁶ Naftemporiki, ‘Ν. Μηταράκης: Ο ΣΥΡΙΖΑ είχε παραδώσει «τα κλειδιά» του μεταναστευτικού σε ΜΚΟ’, 5 June 2020, <https://bit.ly/3s0liz6>.

⁶⁷ Kathimerini, ‘Ελέγχων συνέχεια στα γραφεία και άλλων ΜΚΟ’, 13 May 2020, <https://bit.ly/3dkJzf9>.

⁶⁸ EAD, ‘Ελεγχοι της ΕΑΔ σε ΜΚΟ’, 12 May 2020, <https://bit.ly/3pwKTxD>.

⁶⁹ METAdrasi, ‘Το πόρισμα ελέγχου της Εθνικής Αρχής Διαφάνειας και η κοινωνία των πολιτών’, 1 February 2021, <https://bit.ly/3u6Arkg>.

⁷⁰ Τα Νέα, ‘Προσφυγικό: Μπαίνει τάξη στο τοπίο των ΜΚΟ - Σε εφαρμογή η λειτουργία Μητρώου’, 14 April 2020, <https://bit.ly/3s1Pqds>.

⁷¹ I Efimerida, ‘Μπαίνουν σε τάξη οι ΜΚΟ -Υπεγράφη η υπουργική απόφαση για τη λειτουργία του Μητρώου’, 14 April 2020, <https://bit.ly/3s00BD8>.

⁷² Kathimerini, ‘Επιχείρηση – τάξη στις ΜΚΟ με κατάθεση νομοσχεδίου’, 7 June 2020, <https://bit.ly/3qFRx6t>.

⁷³ Naftemporiki, ‘Μεταναστευτικό: Πώς μπαίνει φρένο στην έκνομη δράση των ΜΚΟ’, 4 October 2020, <https://bit.ly/37gPhe0>.

⁷⁴ Τα Νέα, ‘Τέλος στις αυθαιρεσίες των ΜΚΟ’, 8 October 2020, <https://bit.ly/3bdIXq4>.

33. The intensifying negative narrative against civil society has fuelled unprecedented hostility by local groups against NGOs, including racist incidents and violent attacks against organisations and their staff in 2020.⁷⁵ NGO members were attacked on Lesbos by persons belonging to local groups, one of whom was recently found to unlawfully provide accommodation to migrants in exchange for payment.⁷⁶

E. Initiatives to foster a rule of law culture

46. Measures to foster a rule of law culture

46.1. Effectiveness of parliamentary scrutiny

34. The Greek government has demonstrated unwillingness to engage with parliamentary scrutiny on topics related to the rule of law. In the context of recent debates on the transparency of the process of registration of civil society organisations on the aforementioned NGO Registry, Members of Parliament (MPs) have submitted targeted questions in relation to the criteria upon which the NGO "HOPELAND" was deemed to fulfil the conditions for registration and ESTIA funding, on at least three occasions: 22 October 2020, 21 December 2020,⁷⁷ and 27 January 2021. Questions to the Minister of Migration and Asylum include the following:

- 34.1. "How, in your assessment, can said NGO, composed by two members, comply with the set of commitments undertaken for the provision of accommodation and corollary services under the ESTIA II programme?"⁷⁸
- 34.2. Is there a report of its activities in previous years as required by the aforementioned Ministerial Decisions for registration on the NGO Registry, given that the NGO HOPELAND was essentially founded on 22.09.2020?"⁷⁹
- 34.3. Given the formal requirements for registration on the NGO Registry of the Ministry of Migration and Asylum, the following documentation must be submitted and examined: audit reports for the two previous years and activity reports for the two previous years, in order to assess the capacity of organisations to meet their role. How was an organisation with minimal activity and no funding deemed capable for inclusion and was included in the Registry in a short period of time?"⁸⁰
- 34.4. MPs also requested the assessment by the competent committee of compliance by HOPELAND with the criteria for registration under the Ministerial Decision.⁸¹

35. In its replies to Parliament, the Ministry of Migration and Asylum has refrained from responding to the above questions and failed to submit the documents requested. Failure to provide the requested information has undermined the efforts of the

⁷⁵ Racist Violence Recording Network (RVRN), 'Σοβαρή ανησυχία για τις επιθέσεις κατά προσφύγων και εργαζομένων σε ανθρωπιστικές οργανώσεις', 5 March 2020, <https://bit.ly/2ZdM6kb>; RSA, 'Timeline of attacks against solidarity', 18 March 2020, <https://bit.ly/3bB2pKi>. See also Kathimerini, 'Seven residents to face prosecutor over attack on NGO workers on Lesbos', 12 March 2020, <https://bit.ly/2WwMI2w>.

⁷⁶ Sto Nisi, 'Το πρωί «αλληλέγγυος», το βράδυ... «πατριώτης»!', 17 February 2021, <https://bit.ly/3pvfifX>.

⁷⁷ Hellenic Parliament, Written question by KINAL, 21 December 2020, <https://bit.ly/2MLikPI>.

⁷⁸ Hellenic Parliament, Written question by KINAL, 22 October 2020, <https://bit.ly/3q0oQAB>.

⁷⁹ *Ibid.*

⁸⁰ Hellenic Parliament, Written question by SYRIZA, 27 January 2021, <https://bit.ly/3oTdQ6V>.

⁸¹ Hellenic Parliament, Written question by KINAL, 22 October 2020, <https://bit.ly/3q0oQAB>.

Parliament to scrutinise the legality and transparency of the process and to safeguard the democratic accountability of the government.

46.2. Evasion of parliamentary scrutiny in management of funding

36. Through a legislative reform adopted in May 2020, the Greek Parliament approved the establishment of a “special credit fund” which would allow the Ministry of Migration and Asylum to confidentially allocate funds for activities.⁸² As stated by the Minister of Migration and Asylum during the parliamentary vote, confidential spending is necessary since the Ministry is dealing with smugglers and with people obstructing returns.⁸³ MEPs addressed questions to the Commission regarding the transparency of the functioning of the fund. In her reply, the Commissioner for Home Affairs noted that the funding allocated under the Fund is exclusively drawn from the national budget.⁸⁴

⁸² Article 56 L 4686/2020.

⁸³ Hellenic Parliament, Plenary Debate ΠΑΔ', 8 May 2020, 12665, <https://bit.ly/3qxJXdS>.

⁸⁴ European Commission, Reply to parliamentary question E-002959/2020, 29 July 2020, <https://bit.ly/2OExsyZ>.