



Access by NGOs to Migrant Population

Policy Paper



CONFERENCE OF INGOs
OF THE COUNCIL OF EUROPE

CONFERENCE DES OING DU
CONSEIL DE L'EUROPE

**Migration Committee
on the Rights of Migrants**

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Introduction

As stated by different Council of Europe bodies and organs “NGO activities are an essential contribution to securing Human Rights, Democracy and Rules of Law” in the Council of Europe member States and beyond. It includes humanitarian activities led by Civil Society Organisations to save lives and answer to the fundamental needs and rights of refugees and other migrants, “including the rights to be treated with dignity and respect for their humanity, to be provided with adequate food, shelter and health care, to liberty and security, to seek asylum, to protection against torture and other ill-treatment and against refoulement and collective expulsion”[1].

For several years, largely under the impulse of the Conference of INGOs advocacy and strategic litigation initiated by NGOs, some of the main bodies of the Council of Europe have taken positions on the subject[2]. An important development to counter the abusive laws used against humanitarian workers and NGOs, was the decision of the European Court of Justice (ECJ) which ruled that Stop Soros law passed in Hungary in 2018 threatening jail time for people who support asylum-seekers is in violation of EU law. “Criminalising such activities impinges on the exercise of the rights safeguarded by the EU legislature in respect of the assistance of applicants for international protection” the ECJ said in a statement[3].

The criminalisation of humanitarian work with migrants extends and can take a variety of forms: harassment, criminal charges[4], detention of persons, equipment, boats etc.

[1] Expert Council on NGO Law CONF/EXP(2020)3. Guidelines on Protecting NGO Work in Support of Refugees and other Migrants.

[2] See PACE Recommendation 2192 “Rights and obligations of NGOs assisting refugees and migrants in Europe” Third party intervention, by the Council of Europe Commissioner for Human Rights, under Article 36, paragraph 3, of the European Convention on Human Rights, R.A. and others v. Poland (no. 42120/21)

[3] EU court slams Hungary’s ‘Stop Soros’ law | News | DW | 16.11.2021

[4] Italy: Lorena e Gian Andrea sotto accusa per reato di solidarietà - Linea d'Ombra ODV (lineadombra.org) Mare Jonio: Prosecutors request charges against captain, owner be dropped Mare Jonio: Prosecutors request charges against captain, owner be dropped - InfoMigrants

The stigmatising anti-migrant and anti-refugee narratives are used by high-ranking government figures, public officials, and some media, in particular in the context of the elections. The NGOs helping migrants are seen as the collaborators of smugglers, facilitating irregular entry to the countries. Their activities are presented as contrary to national security, destroying public trust towards civil society. The use of criminal charges[1] and sanctions against NGOs and the NGOs workers to stop their humanitarian activities harms not only the activists but also the migrants and refugees.

According to the evaluation of the contribution of NGOs to standard setting and monitoring in Council of Europe[2], there is a long experience of integration of NGOs in the CoE standard setting and monitoring. The NGOs being the frontline stakeholders, they bring the facts and evidence to the monitoring mechanism. Several monitoring mechanisms include either thematic meetings with NGOs in the visited countries or written contributions/consultations with NGOs on specific topics and contexts.

In the field of migration, the access ban or severe access restrictions to the places where the refugees and migrants are make it impossible for independent human rights NGOs to monitor hotspot centres and other places with exceptional migration flows. It produces a gap in national and international protection. This problem has been reported in a number of countries, including Greece, Hungary and Italy[3].

It goes without saying that when NGOs are prevented by various means from doing field work, they cannot collect facts and therefore cannot be a credible and useful partner for the Council of Europe. Accordingly, the lack of access by NGOs to the migrant population has a negative impact on the cooperation between the Council of Europe and civil society organisations.

[1] For exemple: human trafficking, money laundering, espionage, and disclosing state secrets

[2] Prepared by the Directorate of Internal Oversight Evaluation division Evaluation(2016)17 26 February 2016. Final NGO report for reference group review (coe.int)

[3] Sergio Carrera, Valsamis Mitsilegas, Jennifer Allsopp and Lina Vosyliūtė, Policing Humanitarianism: EU Policies Against Human Smuggling and their Impact on Civil Society (Hart, 2019), 84–86, 143–148.

In addition, as for intergovernmental institutions the priority is to maintain good diplomatic relations with their member States (which guarantee their existence) “some intergovernmental organisations have been less inclined to work with NGOs carrying out advocacy or who have expressed opinions contrary to the government. This has fostered divisions between NGOs and intergovernmental organisations”[1].

In this context, taking into account the restrictions but also the trust (and other assets) that civil society still expresses towards Council of Europe, the latter has to take the problem seriously: not only consider NGOs as useful informers but also take into account the possibilities they have to operate, to act and to fulfil their statutory missions, with full independence. The most concrete way to show such consideration is to take into account NGOs’ ability to access the public (in this case refugees, migrants and asylum seekers) as a part of the standards whose implementation is monitored by the CoE bodies and organs.

[1] Expert Council on NGO Law CONF/EXP(2019)1. Using Criminal Law to Restrict the Work of NGOs supporting Refugees and other Migrants in Council of Europe Member States. Thematic Study prepared by Dr Carla Ferstman on behalf of the Expert Council on NGO Law of the Conference of INGOs of the Council of Europe, paragraph 24.



Legal framework

The right to freedom of association is recognized by various legal instruments, including article 11 of the European Convention on Human Rights (ECHR). These legal instruments mainly focus on the (negative) legal obligation by member States to refrain from interfering with the right to freedom of association in a way which is not prescribed in law and only when it is absolutely necessary to protect national security or public safety, in line with democratic principles.

Experts and policymakers emphasise that besides a negative obligation to refrain from unjust interference the freedom of association also contains a positive obligation to create an enabling environment for NGOs. The joint guidelines on the freedom of association prepared by the Venice Commission and OSCE/ODIHR underline the member state's obligation to "facilitate the exercise of freedom of association by creating an enabling environment in which associations can operate".[1]

Another legal reference is the 1951 Refugee Convention which contains a recommendation that refugees need support from NGOs and that for that reason member States should "facilitate, encourage and sustain the efforts" of these organisations.[2]



[1] OSCE/ODIHR-Venice Commission (2015). Joint Guidelines on Freedom of Association. §27.

[2] UNHCR. Refugee Convention 1951 Recommendation C.

In the context of migration and asylum, this principle could be read as a positive obligation to enable or ensure access by NGOs to places where migrants and asylum seekers are located so that they could conduct their activities supporting this population. In 2020 a PACE recommendation about NGOs assisting refugees and migrants recalled that particular attention should be given to facilitating the provision of humanitarian services by NGOs[1]. PACE Resolution 2356 (2020) outlines the reason why access is important as NGOs provide specialised forms of assistance in camps or other accommodation for migrants and play an “important role in raising awareness about the situation of refugees and migrants, including human rights violations” [2].

Guidelines from the Expert Council on NGO Law of the Conference of INGOs of the Council of Europe state that in order to secure the rights of migrants and asylum seekers legislation and policies from member States should not “prohibit or prevent NGOs from monitoring the treatment of refugees and other migrants at border crossings, reception centres and wherever they are deprived of their liberty” nor should they “prohibit or prevent NGOs from providing refugees and other migrants with food, shelter, medical treatment, education and legal advice and assistance on these and other needs”[3].

[1] PACE. Recommendation 2192 (2020) Rights and obligations of NGOs assisting refugees and migrants in Europe.

[2] PACE. Resolution 2356 (2020) on the rights and obligations of NGOs assisting refugees and migrants in Europe.

[3] Expert Council on NGO Law CONF/EXP(2020)3

As for the specific situation of rescue mission at sea, international maritime conventions establish a duty to render assistance at sea: the United Nations Convention on the Law of the Sea (UNCLOS) of 10 November 1982, amongst other international conventions[1], forms the legal basis for rescue missions in the Mediterranean. Article 98 (1) states that: “Every State shall require the master of a ship flying its flag, insofar as he can do so without serious danger to the ship, the crew or the passengers: (a) to render assistance to any person found at sea in danger of being lost”. When a vessel in distress is spotted, every master should, as far as possible, refer the matter to the Rescue Coordination Center (RCC) responsible for the search and rescue region in which the vessel is located. The RCC is then responsible for coordinating the rescue, designating the vessel(s) responsible for the rescue[2], and then the safe port where the survivors should be disembarked.

Indeed, according to maritime law, a rescue is only achieved once people have been disembarked in a place of safety (PoS) – a place where the rights of those rescued are guaranteed, as well as access to food, medical care, basic needs and where the right to claim for protection / asylum is fulfilled. The place of safety must fulfil these cumulative requirements. In the resolution MSC.167(78) (adopted on 20 May 2004), the International Organisation for Migration (IOM) refers also to the Refugee Convention (1951), article 33, establishing the Principle of “non-refoulement” : “1. No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”

[1] SOLAS Convention (1974) ; SAR Convention (1979) ; EU Regulation 656/2014: establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union ; RESOLUTION MSC.167(78) (Adopted on 20 May 2004): Guideline on the treatment of persons rescued at sea

[2] IMO, International Convention on Maritime Search and Rescue (SAR), adopted at Hamburg on 27 April 1979, entry into force on 22 June 1985, UNTC, vol. 1405: “Parties should arrange that their search and rescue services are able to give prompt response to distress calls” (Regulation 2.1.8) and “On receiving information that a person is in distress at sea in an area within which a Party provides for the overall co-ordination of search and rescue operations, the responsible authorities of that Party shall take urgent steps to provide the most appropriate assistance available” (Regulation 2.1.9).

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Rescue obligations at sea affect not only ship captains but also and above all the three types of States concerned, whether they are coastal States, responsible for the SAR region or flag State. However, the SAR State is not the sole to have obligations. Both SAR and SOLAS Conventions impose an obligation on States to cooperate and coordinate to ensure that shipmasters are allowed to disembark rescued persons to a place of safety. The SAR State where a rescue occurred takes the lead in ensuring coordination and cooperation, but all States have an obligation to cooperate^[1]. However, in case of incapacity from the SAR States to undertake this primary responsibility, coastal States should take over.

Since 2018 and the recognition of the Libyan SAR region by the International Maritime Organisation (IMO) (supported by the European Union and its member States), civil rescue vessels are facing strong obstacles to conduct their activities in the Central Mediterranean since Libyan maritime authorities do not have the capacity to properly coordinate the rescues and provide a place of safety to disembark the rescued people. Indeed, Libya is currently a failed state that is under an international led conflict resolution process. Since the fall of Kadhafi's regime and the beginning of the political crisis, a large-scale human trafficking system has been developed by militias across the country. In this context, migrants are subject to arbitrary detention, violence and abuses of all kinds, enduring terrible conditions and human rights violations, that have been widely documented. Therefore, as long as all the Libyan authorities are not fully coordinated and controlled by an undisputed government, Libyan shores cannot be considered as a place of safety. Though European States continue to support the Libyan maritime authorities to conduct interception at sea.

[1] Regulations §3.1.6 and §4.8.5 SAR Convention: "Each Party should authorise its rescue coordination centres [...] to make the necessary arrangements in cooperation with other RCCs to identify the most appropriate place(s) for disembarking persons found in distress at sea"; "the rescue coordination centre or rescue sub-centre concerned shall initiate the process of identifying the most appropriate place(s) for disembarking persons found in distress at sea [...]".

Types of Barriers: Examples From the Field

The enabling environment necessary for NGOs to be able to access places where migrants and asylum seekers are located is far from guaranteed. For years experts and policymakers have warned that the space for civil society is shrinking in several Council of Europe member States[1]. Civil society organisations continue to face extremely burdensome legal (judicial restrictions or criminalisation of their work), administrative (financial or bureaucratic restrictions), and political (attacks/smear campaigns, changing state policies) barriers. This situation has a direct impact on the support of civil society to migrants or asylum seekers.

[1] Resolution 2226 (2018); Special Rapporteur on the Human Rights of Migrants 'Right to Freedom of Association of Migrants and their Defenders' (13 May 2020) UN DOC A/HRC/44/42 paras 74, 81; Expert Council on NGO Law (Council of Europe) 'Guidelines on Protecting NGO Work in Support of Refugees and Other Migrants (May 2020) CONF/EXP(2020)3 para 2.

a. Legal Barriers

Several laws in effect in EU member States consider "organised activities" as an aggravating circumstance for criminalised actions which would almost wholly correspond to NGOs' functioning. For example, while the penalty for facilitation of entry without the intent of making any profit is up to five years imprisonment in Italy and one year in Belgium, committing the alleged crime involving two or more people is considered organised and thus carries a sentence of up to fifteen years in Italy and up to twenty years in Belgium.[1] While States declare that such restrictions to the right to the association are pursued to counter migrant smuggling, this legitimate aim is used as a root to restrict NGOs that work with migrants. Expert Council on NGO Law stresses that such restrictions can not be considered necessary or proportionate in a democratic society.[2]

[1] Report of the Special Rapporteur on the human rights of migrants (13.05.2020), Right to freedom of association of migrants and their defenders.

[2] Expert Council on NGO Law. Study "Using Criminal Law to restrict the work of NGOs supporting Refugees and other Migrants in the Council of Europe Member States, §115.

On the other hand, agreements such as the 2017 Malta Declaration between the EU government leaders and the Libyan Government restricts NGOs' rescue activities in the field. Data collected by the European Union Agency for Fundamental Rights displays the ongoing administrative and criminal investigations and proscriptive decisions against NGO ships involved in search and rescue activities in the Mediterranean. This document shows that:

- Until 10 December 2021, 14 ships were denied permission to leave the port or were detained by public authorities in Italy, Malta, France[1].
- In 2018, there were 9 cases of investigation and / or legal proceedings by public authorities of Greece, Malta, Italy against crew members, individuals or NGO staff involved in search and rescue activities [2].
- In 2021, there were 5 ongoing legal proceedings[3].

While these overcontrolling regulations over civil society decreased the number of migrants crossing EU countries' borders, banning NGOs' rescue ships from the open sea has caused a rapid climb in the number of drownings.[4]

Some examples to specifically highlight are:

Greece

In 2016, The Greek General Secretariat of Aegean and Island Coordinating Committee generated a form that has to be completed by all the NGOs working to support refugees on Greek Islands[5]. In these forms, NGO workers are expected to reveal rather critical information about themselves, including their "previous actions." This Ministerial decision put the civil society working in migration directly under the State control and limited non-members' participation in these NGOs activities. Particularly, NGOs providing support in Lesbos were affected by this administrative decision which partially criminalised the operation of independent organisations[6].

[1] Fundamental rights considerations: NGO ships involved in search and rescue in the Mediterranean and criminal investigations – Tables and figures (europa.eu)

[2] Fundamental rights considerations: NGO ships involved in search and rescue in the Mediterranean and criminal investigations – Tables and figures (europa.eu)

[3] December 2021 Update – Search and Rescue (SAR) operations in the Mediterranean and fundamental rights | European Union Agency for Fundamental Rights (europa.eu)

[4] EU Parliament, Fit for purpose? The Facilitation Directive and the criminalisation of humanitarian assistance to irregular migrants: 2018 Update,

[5] Statewatch (2016), 'NGOs and volunteers helping refugees in Greece to be placed under state control', 22 February 2016.

[6] EU Agency for Fundamental Human Rights (2017), Challenges Facing Civil Society Working on Human Rights in the EU.

According to recent research, 20 out of the 70 organisations surveyed in Greece expressed that they lost their access to reception facilities or faced problems due to the current legislation. Further, 75% of the organisations foresee problems with the capacity of civil society when providing assistance and help to asylum-seekers and refugees[1].

On 2 July 2020, the Expert Council on NGO Law issued an Opinion on the Compatibility with European Standards of Amendments to the Greek Legislation on NGO Registration. The Opinion focused on the registration and certification of Greek and foreign NGOs engaged in activities related to asylum, migration, and social inclusion, considering in particular Ministerial Decision 3063/2020 of 14 April 2020 and several legislative provisions. The Opinion concluded that the requirements for NGO and individual member registration (including re-registration) and for maintaining an active membership in the Registry, as well as the certification process, were incompatible with freedom of association among other rights and freedoms.

In addition in November 2020, the Expert Council published the Addendum to its Opinion focuses on Ministerial Decision 10616/2020 of 9 September 2020 entitled: Specification of operations concerning the "Register of Greek and Foreign Non-Governmental Organisations (NGOs)" and the "Register of Members of Non-Governmental Organisations (NGOs)" (Ministerial Decision 10616/2020), which are active in matters of international protection, immigration and social inclusion within the territory of Greece[2]. The Expert Council concluded that the "Ministerial Decision 10616/2020 imposes even stricter and more intrusive rules on the registration and certification of NGOs and their members, and will further impede their work, makes it virtually impossible for NGOs working in the domains of asylum, migration and social inclusion to provide any services at all, and impedes their access to government and EU funding"[3].

[1] Under Pressure. How Greece is closing on Civil Society Organisations working with Refugees (February 2021).

[2] Addendum to the Opinion on the compatibility with European standards of recent and planned amendments to the Greek legislation on NGO registration Prepared by the Expert Council on NGO Law of the Conference of INGOs of the Council of Europe; 23 November 2020

[3] Law Opinion on the compatibility with European Standards of recent and planned amendments to the Greek Legislation on NGO registration. Prepared by the Expert Council on NGO Law of the Conference of INGOs of the Council of Europe. 2 July 2020.

This kind of legislation has a chilling effect on NGO activities because of the onerous, costly and time-consuming procedures. “Reportedly, some NGOs stopped working in camps or decided against applying for certification because they were not able to comply with the requirements (whether, because of their complexity, their cost, e.g., to produce documentation such as financial audits, or their failure to meet the formal requirements) for certification. For others, many NGOs were simply unable to navigate the registration process and did not meet the deadline for registration. The requirements are having a particularly negative impact on self organising migrant-led associations, who typically operate with less formal structures but nevertheless, carry out crucial activities that could never be replicated by large”[1].

Hungary

In 2018, amendments to nine different laws, including the Hungarian Asylum Law and laws regulating border control, have passed.[2] This package of changes introduced "facilitating illegal immigration" as an offense that criminalizes assisting irregular migrants seeking asylum in Hungary. Because a vast majority of the asylum-seekers arrive in the country irregularly[3]. These changes to the criminal system almost completely immobilise NGOs working for asylum-seekers in Hungary since fundamental activities such as border monitoring or distributing information materials can carry a criminal sanction.[4]

[1] ibid

[2] Bill No. T/333 amending certain laws relating to measures to combat illegal immigration (unofficial translation).

[3] The number of criminal procedures started for illegally crossing the border only between September 2015 and July 2016 is suggested as 2,800. Please see: ECRE 2020 Country Report: Hungary..

[4] Amnesty International, laws designed to silence: The global crackdown on civil society organisations (2019).



b. Administrative Barriers

Besides criminal indictments, administrative barriers are another obstruction tool used against NGOs that work with migrant populations. NGOs that assist asylum-seekers in some EU countries are obliged to report irregular migrants to the Government to seek humanitarian help.

[1] Such regulations will result in irregular migrants approaching civil society with caution, which can dramatically negatively affect various NGO activities, from data collection to providing financial aid or facilitating asylum applications. Research also shows that human traffickers often "fill the gap" when civil society cannot access its target population.[2]

The financial burden embedded in the legal systems also keeps NGOs working in migration away from accessing their intended population. For instance, private rescue organisations attempting to disembark rescued migrants will be fined up to one million euros[3] based on a relatively new provision introduced into the Italian security code. Similarly, NGOs who support or promote immigration in Hungary pay a special tax of 25% on the financial support they provide.[4]

Some country specific examples are:

France

In 2020, the order banning the distribution of food to migrants in Calais was validated by the Lille Administrative Court and by the Council of State. The latter noted that this ban does not prevent associations from carrying out their missions in the immediate proximity of the city centre, being strictly limited to the areas defined by the prefect and that the ban cannot in any case be applied by the police force beyond the defined perimeter.

[1] Report of the Special Rapporteur on the human rights of migrants (13.05.2020), Right to freedom of association of migrants and their defenders.

[2] EU Parliament, Fit for purpose? The Facilitation Directive and the criminalisation of humanitarian assistance to irregular migrants: 2018 Update, 46.

[3] Info Migrants (2019), Larger Fines for Migrant Rescue Ships in Italy, <https://www.infomigrants.net/en/post/18652/larger-fines-for-migrant-rescue-ships-in-italy>

[4] Report of the Special Rapporteur on the human rights of migrants (13.05.2020), Right to freedom of association of migrants and their defenders.

This order had appeared in the context of observed pressure and violence in Calais and in the surrounding area from 2016. In 2019, Amnesty International called on France to "end the harassment and attacks" against human rights defenders who help migrants in Calais (Nord) and Grande-Synthe (Pas-de-Calais). Organization noted that "since the dismantling of the Calais Jungle in 2016, human rights defenders say they are "under increasing pressure" "their actions are systematically obstructed" and they are "subjected to intimidation and harassment, ill-treatment and, in some cases, unfounded legal proceedings". The treatment of volunteers is "intrinsically linked to the treatment" of the migrants themselves"[1].

[1] Amnesty International France "LA SOLIDARITÉ PRISE POUR CIBLE Criminalisation et harcèlement des personnes qui défendent les droits des migrantes et des réfugiées dans le nord de la France". Report.



c. Political Barriers

States' non-cooperation with civil society can pose a problem in many areas, even when meeting migrants' vital needs such as food and shelter. Due to the militarization of borders and strict policies implemented by host countries, NGOs are forced to provide their services in transit hubs instead of border areas where migrants and refugees most need assistance[1].

In France, the intensified policy imposed to solve the issue of homeless migrants resulted in an unnecessarily violent attitude among the police and law enforcement officials. Consequently, the tense environment undermined humanitarian assistance provided by civil organisations, especially in Calais and Dunkirk.[2] Also, NGO volunteers working for Caritas France were arrested for bringing migrants to the NGO's Calais headquarters for a shower. Similarly, NGO volunteers were arrested for distributing food in Paris and for distributing food outside of designated zones in Italy. Individuals have also been charged with harbouring foreigners for bringing migrants home for coffee and biscuits in Denmark. Staff of NGOs who have stood up for the rights of migrants have been detained, prosecuted and/or fined in Belgium and France.

Some country specific examples are:

Serbia

In 2015 and in 2016 we observed an unprecedented flow of people through the Western Balkans, leading to the opening of a humanitarian corridor. When the corridor closed in March 2016 many people, including many Afghans, found themselves stopped in the middle of the roads to the European Union and were exploited by the smuggling networks.

[1] Danish Refugee Council (2021), Services for migrants and refugees on the Eastern Mediterranean and Western Balkans routes A mapping of services and migrants and refugees' knowledge, perception and usage of it,

[2]EU Parliament, Fit for purpose? The Facilitation Directive and the criminalisation of humanitarian assistance to irregular migrants: 2018 Update..

In 2017, Ambassador Tomáš Boček, Special Representative of the Secretary General on migration and refugees noted in its Information Documents SG/Inf(2017)33, that in Serbia “NGOs and INGOs have regular access to asylum centers and reception centers. Some NGOs’ activities are mostly designed as short-term assistance programmes and there is no coordination among the NGO-community with regard to the support and services provided by them.” However, the Conference of INGOs delegation during its fact-finding visit in Serbia found that “with the closure of the Western Balkan Route, refugees stay for a long time in Serbia and neither society nor the administration is prepared to tackle that problem. According to the NGO’s point of view, asylum and overall migration policy needs greater vertical and horizontal coordination. There is also a need to build capacities of the public administration and NGOs to share the responsibilities and tasks and to improve inclusion of migrants, to combat xenophobia. For that, the approach should change and the migration policy should focus not only on humanitarian aid but also integration longer-term strategy. The integration requires the developed capacities of local authorities to deal with migration and to share the responsibilities with NGOs. The NGOs which have access to the Centers or Camps feel obliged to keep low profile in order to maintain access to the camps”[1].

During its visit, the delegation of the Conference of INGOs visited Refuge Aid Miksalište, a reception center established in August 2015 by the cultural organisation Mikser. Mikser has been present and active in the area of Savamala through its cultural center “Mikser House”. According to founders and volunteers, Miksalište has provided assistance to more than 300,000 refugees and migrants, with the great support of nearly 2,000 volunteers from more than 60 countries. This community-based organisation articulates together humanitarian aid, legal and psychological support and social and cultural activities, involving the local community. Miksalište provides immediate response 24/7 for more than 200 refugees daily, mostly new arrivals, who hide in Belgrade’s abandoned buildings and parks. The lack of funds and closing of Mikser cultural center in Savamala area had made this organisation vulnerable

[1]Report of the Conference of INGOs (2017) on Civil participation in the decision-making process. Fact finding visit to Serbia Serbia (coe.int)

The Miksaliste, based not only on “first need” aid but also on inclusive projects, constitute a very good example of a new model for migration policy. The success of such a model is also determined by the collaborative relationships between the community-based small NGOs as Miksaliste and strong international NGOs providing humanitarian aid. However during different stages of the migration crises, Miksalište was forced to close and was reopened afterwards due to the number of people in need.

Poland

Since the summer of 2021, EU neighbouring countries bordering Belarus have experienced a significant increase in the number of migrants irregularly crossing the EU external borders from Belarus. Since the beginning of August, Polish border police, local residents and associations have been reporting on a daily basis multiple groups of migrants, including from Iraq, Afghanistan, Somalia and Syria, attempting to cross the Polish-Belarusian border irregularly. These people are sent back to Belarus by the Polish border police. The migrants are escorted to the border line, left there, usually in the middle of the forest, without food and first aid materials. The pushback that some and the same people undergo repeatedly, assaulted by Belarusian and Polish border guards (according to testimonies collected by NGOs) is prohibited by international law. Only a small number of people are allowed by the Polish border guards to apply for asylum. This too is prohibited by international law.

The state of emergency voted by Poland at the beginning of this crisis explicitly prohibits NGOs, civil society groups and journalists from being present in the border area, and prohibits inhabitants of the territory from providing assistance to migrants otherwise these helpers risk severe sanctions.

Since the beginning of the humanitarian crisis at the border, many representatives of NGOs have gone to the border to provide humanitarian aid to migrants. They were forced to leave the border territory as soon as the state of emergency was declared by the President of the Republic.

In this context, the NGOs have federated, creating a single group "Border Group" (pl. "Grupa Granica") to provide humanitarian aid and mobilise public opinion around the crisis, countering the anti-migrant narrative and actions disseminated by governments and associated media. Thanks to their actions, the number of citizen initiatives is increasing day by day in the hostile context, where humanitarian aid in the border area is prevented by the public authorities due to the state of emergency. A Polish lawyer has launched a plan to provide support to migrants who enter the country illegally via Belarus. He called on people living near the border to light a green light in their windows or doors to signal that they can provide food and shelter to migrants or simply offer to charge their mobile phones. Some local authorities have taken up the call by asking residents to light a green light. However they do it under big pressure and risk of sanctions enshrined in new legislation.

Recently, the prominent INGO "Doctors without borders" (Médécins sans frontières) left the Polish border after being blocked from assisting people. These humanitarian workers have been working in Belarus, Lithuania and Poland in response to the crisis but have not succeeded in gaining authorisation to enter the border areas of any of the three countries, despite repeated requests to respective authorities. "With aid organisations, non-governmental organisations and volunteer groups all blocked from accessing the border zone in Poland, it has largely fallen to residents of the restricted areas to provide assistance to people on the move. In addition "some of the volunteers have been vilified and intimidated, and had their property destroyed in what is believed to be an attempt to stop them from providing support"[1].

[1] MSF leaves Polish border after being blocked from assisting migrants and refugees | MSF



d. Covid-19 Pandemic Related Barriers

According to the study conducted by the Red Cross, the pandemic prevented undocumented or irregular migrants, people seeking asylum and refugees, indigenous migrants, migrants in transit, migrants on temporary visas or residency permits, returning migrants from accessing basic services as well as the COVID-19 vaccination policies and plans globally[1].

In several countries, the border restrictions halted free transit and cut off many from family and support networks, livelihoods and humanitarian assistance. The requirement to report migrants in an irregular situation to law enforcement or migration authorities – as placed by certain States on healthcare and other service providers and humanitarian organisations – deters migrants from seeking much needed help. For children in immigration detention, transit sites or camps, all of these places have suffered from reduced staff presence and a reduced offer of humanitarian services, including health, mental health and education.

[1] Locked down and left out? Why access to basic services for migrants is critical to our COVID-19 response and recovery A report by the Red Cross Red Crescent Global Migration Lab.



Conclusion

For years, the Conference of INGOs has been following the situation of migrants and the NGOs that help migrants on the Balkan routes, on the Mediterranean Sea, in the countries of Western Europe (France, Italy, Germany), of the South (Greece, Turkey) and more recently in the East (Poland, Lithuania, Latvia, Hungary).

Through the examples given in this paper, our intention was to show why the access of NGOs to the migrant population should attract more attention from intergovernmental institutions / international communities and more specifically from those that are active in the migration sector and conduct regular monitoring activities regarding the international law standards with human rights approach.

Specific recommendations will be formulated subsequently so that the Council of Europe monitoring bodies integrate the issue of access by NGOs, as a specific dimension to be monitored, during visits to the places where migrants are located.

