

ARTICLE

Special Issue: Strategic Litigation in EU Law

Can Strategic Litigation Backfire? Challenging the Crackdown on Migration NGOs in Greece Through EU Law

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Abstract

In 2020, amid aggressive and inflammatory political discourse and an unprecedented wave of violent attacks against migration Non-Governmental Organizations and their staff, the Greek Government sought to establish a new legal framework for the registration of Non-Governmental Organizations active in the fields of international protection, migration and social inclusion, and their members. This Article aims at providing an overview of the EU-law based litigation brought by Greek Civil Society organizations to challenge the new framework for breaching fundamental rights, and at exploring its effects beyond the Court proceedings. This Article concludes that, counterintuitively, the existence of pending litigation against the Regulation establishing the NGO Registries hampered advocacy on this issue with the European Commission.

Keywords: Migration; strategic litigation; advocacy; fundamental rights; NGOs; civil society; GDPR

A. Introduction

In 2019, the Greek government started adopting a hostile narrative against Non-Governmental Organizations (NGOs) working with migrants and refugees,¹ triggering a wave of violent attacks against NGO workers and assets on the Greek islands in 2020.²

Against this backdrop, in February 2020, Greece enacted legislation foreseeing the establishment of a Registry of NGO Members.³ According to the Alternate Minister of

*The information contained in this article is up to date as of June 2024.

¹Human Rights Council U.N. Doc. A/HRC/52/29/Add.1, ¶ 65 (Mar. 2, 2023) (Report of the Special Rapporteur on the Situation of Human Rights Defenders).

²Amnesty Int'l, *Europe: Caught in a Political Game: Asylum-seekers and Migrants on the Greece/Turkey Border Pay the Price for Europe's Failures*, AI Index EUR 01/2077/2020, 15–17 (Apr. 3, 2020).

³Nomos (2020:4662) Εθνικός Μηχανισμός Διαχείρισης Κρίσεων και Αντιμετώπισης Κινδύνων, αναδιάρθρωση της Γενικής Γραμματείας Πολιτικής Προστασίας, αναβάθμιση συστήματος εθελοντισμού πολιτικής προστασίας, αναδιοργάνωση του Πυροσβεστικού και άλλες διατάξεις [National Mechanism for Crisis Management and Risk Management, Restructuring of the General Secretariat of Civil Protection, Upgrading of the Voluntary Civil Protection System, Reorganization of the Fire Brigade and Other Provisions], ΕΦΗΜΕΡΙΣ ΤΗΣ ΚΥΒΕΡΝΗΣΕΩΣ ΤΗΣ ΗΛΛΗΝΙΚΗΣ ΔΗΜΟΚΡΑΤΙΑΣ [E.K.E.D.] 2020, A:27 art. 191(2) (Greece).

Migration and Asylum, this Registry was necessary, due to the operation of “deep and dark networks of NGO interests” that sought to take advantage of refugees.⁴

To that end, on April 14, 2020, the Greek government published Joint Ministerial Decision (JMD) 3063/2020, establishing a new Registry of NGOs and a Registry of NGO Members active in matters of international protection, migration, and social inclusion⁵ although a Registry of migration NGOs existed already since 2018.⁶ According to JMD 3063/2020, registration was mandatory for all these NGOs.⁷ Registered NGOs wishing to also (a) work in state-sponsored facilities; (b) receive funding from national, EU or other resources to provide material reception conditions; or (c) receive national funding for the implementation of social and humanitarian activities or activities of social integration, migration, and international protection, should additionally be certified.⁸ Certification was subject to compliance with the substantive criteria of “efficiency, administrative-organization ability, and accountability,” in addition to formal registration criteria.⁹ Certified NGOs were then obligated to register in the “Registry of NGO Members” all natural persons who were members, employees, remunerated, or volunteer associates and carried out activity in state-sponsored facilities.¹⁰

In May 2020, Greece adopted legislation authorizing the establishment of new requirements for the registration of migration NGOs.¹¹

In July 2020, the Expert Council on NGO Law (Expert Council) of the Council of Europe (CoE) issued an opinion¹² on the above measures and called on Greece to revise them “so that they are brought into line with European standards.”¹³ Nevertheless, on September 9, 2020, JMD 3063/2020 was replaced by JMD 10616/2020¹⁴ (hereinafter the Regulation), which did not only ignore

⁴*Βαριές κατηγορίες Κουμουτσάκου: Βαθιά και σκοτεινά δίκτυα συμφερόντων με ΜΚΟ* [Heavy Accusations By Koumoutsakos: Deep and Dark Networks of NGO Interests], TANEΑ (Feb. 5, 2020) (Greece), <https://www.tanea.gr/2020/02/05/politics/varies-katigories-koumoutsakou-vathia-kai-skoteina-diktya-symferonton-me-mko/>.

⁵Joint Ministerial Decision (2020:3063) Καθορισμός λειτουργίας του «Μητρώου Ελληνικών και Ξένων Μη Κυβερνητικών Οργανώσεων (ΜΚΟ)» και του «Μητρώου Μελών Μη Κυβερνητικών Οργανώσεων (ΜΚΟ)», που δραστηριοποιούνται σε θέματα διεθνούς προστασίας, μεταάστευσης και κοινωνικής ένταξης εντός της Ελληνικής Επικράτειας [Register of Greek and Foreign Non-Governmental Organizations (NGOs)] and the [Register of Members of Non-Governmental Organizations (NGOs)], which are active in matters of international protection, migration and social integration within the Greek Territory, ΕΦΗΜΕΡΙΣ ΤΗΣ ΚΥΒΕΡΝΗΣΕΩΣ ΤΗΣ ΗΛΛΗΝΙΚΗΣ ΔΗΜΟΚΡΑΤΙΑΣ [E.K.E.D.], 2020, Β:1382 (Greece) [hereinafter JMD 3063:2020].

⁶Ministerial Decision (2018:7586) Λειτουργία Μητρώου Ελληνικών και Ξένων Μη Κυβερνητικών Οργανώσεων (ΜΚΟ) που δραστηριοποιούνται σε θέματα διεθνούς προστασίας, μεταάστευσης και κοινωνικής ένταξης [Operation of the Registry of Greek and Foreign Non-Governmental Organizations (NGOs) active in matters of international protection, migration and social integration], ΕΦΗΜΕΡΙΣ ΤΗΣ ΚΥΒΕΡΝΗΣΕΩΣ ΤΗΣ ΗΛΛΗΝΙΚΗΣ ΔΗΜΟΚΡΑΤΙΑΣ [E.K.E.D.] 2018, Β:4794 (Greece).

⁷JMD 3063:2020 art. 1.

⁸JMD 3063:2020 art. 6.

⁹JMD 3063:2020 art. 5.

¹⁰JMD 3063:2020 art. 10.

¹¹Nomos (2020:4686) Βελτίωση της μεταναστευτικής νομοθεσίας, τροποποίηση διατάξεων των νόμων 4636/2019 (Α' 169), 4375/2016 (Α' 51), 4251/2014 (Α' 80) και άλλες διατάξεις [Improvement of immigration legislation, amendment of provisions of laws 4636/2019 (Α' 169), 4375/2016 (Α' 51), 4251/2014 (Α' 80) and other provisions], ΕΦΗΜΕΡΙΣ ΤΗΣ ΚΥΒΕΡΝΗΣΕΩΣ ΤΗΣ ΗΛΛΗΝΙΚΗΣ ΔΗΜΟΚΡΑΤΙΑΣ [E.K.E.D.] 2020, Α:96, art. 58 (Greece).

¹²Expert Council on NGO Law of the Conference of INGOs of the Council of Europe, *Opinion on the Compatibility with European Standards of Recent and Planned Amendments to the Greek Legislation on NGO Registration*, CONF/EXP(2020) 4, (July 2, 2020), <https://rm.coe.int/expert-council-conf-exp-2020-4-opinion-ngo-registration-greece/16809ee91d> [hereinafter Expert Council Opinion].

¹³*Id.* at ¶ 109.

¹⁴Joint Ministerial Decision (2020:10616) Καθορισμός λειτουργίας του «Μητρώου Ελληνικών και Ξένων Μη Κυβερνητικών Οργανώσεων (ΜΚΟ)» και του «Μητρώου Μελών Μη Κυβερνητικών Οργανώσεων (ΜΚΟ)», που δραστηριοποιούνται σε θέματα διεθνούς προστασίας, μεταάστευσης και κοινωνικής ένταξης εντός της Ελληνικής Επικράτειας [Regulation of the “Registry of Greek and Foreign Non-Governmental Organizations (NGOs)” and the “Registry of Members of Non-Governmental Organizations (NGOs)”, which are active in matters of international protection, migration

the Expert Council's Opinion but also introduced further restrictions on the exercise of fundamental rights.

This Article proceeds in the following way: In Part B, I first provide an overview of the Regulation and its non-compliance with fundamental rights, in Part C I outline our EU-law based legal strategy to challenge the Regulation, in Part D I summarize the hearing before the Greek Council of State. In the last part, Part E, I explore the effects of the litigation beyond the hearing and in particular, its effect on our advocacy with the European Commission.

B. The Contested Regulation

The Regulation raises serious issues as to its compatibility with the rights to freedom of association, freedom of expression, privacy, and data protection, and with the principle of non-discrimination. It is, therefore, at odds with Articles 11, 7, 8, and 21 of the Charter of Fundamental Rights of the EU (CFR)¹⁵ and Articles 11, 10, 8 and 14 of the European Convention on Human Rights (ECHR).¹⁶ Due to space constraints, this Article will address only some of these issues. In particular:

Just like the previous JMD, the Regulation establishes onerous formal registration requirements, such as expensive chartered audits.¹⁷ Among others, NGOs must submit reports of activities, balance sheets, and tax declarations of the past two years, excluding, newly founded organizations.¹⁸ NGOs must repeat the registration process every three years.¹⁹

Certification is now part of the registration and is mandatory for all migration NGOs, regardless of whether they operate in state-sponsored facilities or wish to access EU or national funding. Compliance with the substantive requirements of “efficiency, administrative-organization ability, and accountability” is assessed on the basis of indicative criteria, such as the “reasonable distribution of human resources” and the “operation of a webpage,” increasing the risk of arbitrary decision-making.²⁰ Certified NGOs are then obliged to register in the “Registry of NGO Members” all their members who operate “actively” in matters of international protection, migration, and social integration within the Greek territory; not only in state-sponsored facilities.²¹ The Ministry of Migration and Asylum (MoMA) enjoys a wide margin of administrative discretion to refuse the registration of NGOs and their members, after verification of, among others, “elements that concern the actions of these institutions” and “elements that relate to the personality and action so far of the applicants [NGO members]” respectively.²²

The Regulation also provides that NGOs and their members will be removed from the Registry of NGOs and the Registry of NGO Members respectively, if among others, they are involved in “illegal acts,” as evidenced by a final conviction or demonstrated by a “document of the competent public authority” or if found that the implementation of their projects is “poor,” as evidenced by a “relevant document” of the competent administrative authority.²³ Additionally, it foresees that an

and social integration within the Greek Territory], EPHEMERIS TES KYVERNESEOS TES HELLENIKES DEMOKRATIAS [E.K.E.D.] 2020, B:3820 (Greece) [hereinafter Regulation].

¹⁵Consolidated Version of the Charter of Fundamental Rights of the European Union, Jul. 6, 2016, 2016 O.J. (C 202) 389 [hereinafter CFR].

¹⁶European Convention on the Protection of Human Rights and Fundamental Freedoms, art. 5, Nov. 4, 1950 [hereinafter ECHR].

¹⁷Choose Love, *Under Pressure – How Greece is Closing in on Civil Society Organizations Working with Refugees*, 21–25 (Feb. 2021), <https://chooselove.org/wp-content/uploads/2021/09/27-02-2021-REPORT-Report-Civil-society-Greece-under-pressure.pdf>.

¹⁸Regulation art. 2(1)-(2).

¹⁹Regulation art. 6(3).

²⁰Regulation art. 5.

²¹Regulation art. 10(1).

²²Regulation arts. 6(4), 12(3).

²³Regulation arts. 8(1)(d), 14(1)(c).

NGO and its members can be removed from the Registry for as little as failing to declare any change concerning the member's personal data within the extremely tight deadline of twenty-four hours from the occurrence of the event.²⁴ Once the registration of an NGO member is revoked, this person can no longer work for or be a member of any NGO working in the field of international protection, migration, and social inclusion in Greece.²⁵

Based on our assessment, the obligations foreseen in the Regulation are disproportionate to the stated objective of transparency and of the protection of the rights and freedoms of others.²⁶ Similarly, the vagueness and open-ended wording of the Regulation's provisions does not satisfy the principle of legal certainty. It lends itself to a broad interpretation and grants excessive discretion to the authorities to decide which NGOs and NGO members will be registered, rejected, or removed from the respective Registries. Thus, the Regulation is at odds with the right to freedom of association. Moreover, the unfettered discretionary power could also be used to ban or silence NGOs vocal in their criticism of the State's migration policies or engaging in litigation against them, in breach of the right to freedom of expression.

NGOs must also publish information regarding their board members, managers, subscribers, and sponsors on their webpage,²⁷ giving rise to privacy concerns.

Furthermore, the Regulation is incompatible with the General Data Protection Regulation (GDPR)²⁸ and therefore with the right to protection of personal data. In particular, the Regulation does not indicate, as required by the principle of lawfulness, fairness, and transparency,²⁹ in what manner the collected data will be processed, which entities may have access to the data, and whether the data can be transferred to other authorities inside and outside the Greek territory. Similarly, in breach of the principle of storage limitation,³⁰ the Regulation does not specify the period of retention of personal data, and it does not set time limits for their erasure or for a periodic review. The Regulation is also at odds with the principle of integrity and confidentiality,³¹ insofar as it does not stipulate the specific technical and organizational measures implemented to ensure data security.³²

The amount and type of personal data that is collected from the NGO members, for example passport and ID number, Tax and Social Security ID number, and CVs,³³ does not meet the requirements of the principle of minimization.³⁴ The Regulation also requires that NGOs submit the criminal record of their members,³⁵ although Greece has not adopted the necessary secondary legislation establishing appropriate safeguards, as required by the GDPR.³⁶ Despite the very intrusive and large-scale data processing, no data protection impact assessment has been carried out.³⁷ At the same time, no Data Protection Officer is foreseen³⁸ and there is no reference to the competent supervisory authority or to the right to information and access to personal data.³⁹

²⁴Regulation arts. 11(4), (5).

²⁵Regulation art. 14(2).

²⁶Expert Council Opinion, *supra* note 12, at ¶ 105.

²⁷Regulation art. 5(1)(c).

²⁸Commission Regulation 2016/679 of Apr. 27, 2016, On the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data, and Repealing Directive 95/46/EC (General Data Protection Regulation), 2016 O.J. (L 119) 1 [hereinafter GDPR].

²⁹GDPR art. 5(1)(a).

³⁰GDPR art. 5(1)(e).

³¹GDPR art. 5(1)(f).

³²GDPR art. 32.

³³Regulation art. 11.

³⁴GDPR art. 5(1)(c).

³⁵Regulation art. 11(2)(b).

³⁶GDPR art. 10.

³⁷GDPR art. 35.

³⁸GDPR art. 37.

³⁹GDPR arts. 13-15.

The Regulation does not provide for the maintenance of a record of processing activities,⁴⁰ which must also be made available to the supervisory authority on request, and it does not appoint a data controller for the Registry of NGO Members.

Given that no objective justification has been provided for the differential treatment of migration NGOs, especially in relation to other NGOs working with vulnerable people, the legal framework is also at odds with the principle of non-discrimination.

C. Our EU-Law Based Legal Strategy

In view of Greece's persistent refusal to bring the legal framework in line with fundamental rights, HIAS Greece decided to lodge an application for annulment of the Regulation with the Greek Council of State (CoS). Challenging the Regulation directly would allow us to address the entirety of the problematic provisions and, if successful, achieve its full or partial annulment and subsequent quashing of negative decisions issued on its basis. This legal action could also help achieve broader political and social ends. It could help challenge the prevailing anti-NGO narrative and vindicate the role of Civil Society Organizations (CSOs) and their staff as public policy watchdogs, which must be protected from undue State interference with their right to freedom of association, expression, and personal data. Therefore, HIAS Greece's legal strategy also included deciding the right legal framing for the case, identifying relevant legal expertise, and forming alliances.

Regarding the legal framing, it was decided that the case should not only be argued under the Greek Constitution and the ECHR, but also under the CFR. This would bolster our coalition of NGOs' advocacy at the Directorate-General for Migration and Home Affairs of the European Commission, which has a permanent presence in Greece, as well as help us engage the Directorate-General for Justice and Consumers via its Rule of Law mechanism. The Commission was expected to be sympathetic to our arguments, especially in view of its position vis-à-vis the Hungarian Transparency Law on NGOs, which it successfully challenged before the Court of Justice of the EU (CJEU).⁴¹ In fact, in July 2020, the Commission answered to a parliamentary question regarding the Registries that it "[...] monitors the implementation of legislation and its compatibility with the EC law" and "[...] is assessing the new Greek legislation in all its aspects."⁴²

Furthermore, should questions of interpretation arise, the CoS would be under an obligation to make a reference for a preliminary ruling to the CJEU, as the national court of last instance.⁴³ To that end, HIAS Greece sought expert legal advice from EU Law Professors Daniel Sarmiento, Xavier Groussot, and Niovi Vavoula, and the Greek digital rights NGO "*Homo Digitalis*."

HIAS Greece identified three lines of reasoning that would allow us to argue that the Regulation had a sufficient connection with EU law and, therefore, that the CFR was applicable in the case at stake.⁴⁴ First, the Regulation provides that registration of NGOs and their members is a precondition for access to EU funding for reception conditions. The latter comes from the Asylum, Migration, and Integration Fund (AMIF), governed by the different AMIF Regulations.⁴⁵ Therefore, the CFR is applicable when the Greek government decides which NGOs will benefit

⁴⁰GDPR art. 30.

⁴¹Case C-78/18, *Comm'n v. Hungary*, ECLI:EU:C:2020:1 (Jun. 18, 2020), <https://curia.europa.eu/juris/liste.jsf?num=C-78/18>.

⁴²*Answer Given by Ms Johansson on Behalf of the European Commission to Parliamentary Question*, COM (2020) E-001537/2020(ASW) (Jul. 22, 2020), https://www.europarl.europa.eu/doceo/document/E-9-2020-001537-ASW_EN.html.

⁴³Consolidated Version of the Treaty on the Functioning of the European Union art. 267, May 9, 2008, 2016 O.J. (C 202) 47 [hereinafter TFEU].

⁴⁴CFR art. 51(1).

⁴⁵Commission Regulation 514/2014, of the European Parliament and of the Council of 16 April 2014 laying down general provisions on the Asylum, Migration and Integration Fund and on the instrument for financial support for police cooperation, preventing and combating crime, and crisis management, May 20, 2014, 2014 O.J. (L 150) 112; Regulation (EU) 2021/1147,

from the allocation of AMIF grants. Second, the Regulation may entail a restriction on the right to free movement of workers within the Union, as enshrined in Article 45 of the Treaty on the Functioning of the EU (TFEU).⁴⁶ This is because the refusal of registration or removal from the Registry of an NGO or an NGO employee will almost inevitably lead to the dismissal of this employee and, as seen above, a prohibition from future employment in migration NGOs. Third, the Regulation makes explicit reference to the processing of personal data, which is governed by the GDPR, an EU Regulation.⁴⁷

In terms of coalition-building, HIAS Greece was joined in the proceedings by the legal aid NGO “Equal Rights Beyond Borders” and by “Lava Project,” an NGO operating a medical laundry facility for refugees. Both NGOs were established in Greece in 2019 and, therefore, they could not comply with the requirement to submit reports of the past two years. Additionally, the registration of “Lava Project,” whose only member was its legal representative, had been rejected for failure to provide the burdensome documentation required under the Regulation. HIAS Greece’s French interpreter was also included in the litigation as an applicant. This consolidated HIAS Greece’s *locus standi* to raise arguments regarding the effect of the Regulation on the right to free movement of workers, and the non-compliance of the Registry of NGO Members with the GDPR.

Applications for annulment of the Regulation were also filed by the legal aid NGO “Refugee Support Aegean” (RSA) and by associations of NGO employees. The CoS, which is also the competent forum for the judicial review of individual negative decisions, joined the applications for annulment of the Regulation with RSA’s subsequent annulment application against the decision rejecting its registration. In particular, in October 2021, RSA’s application was rejected on the grounds that the “development of activity” “in support of persons under deportation,” as mentioned in its statute, is contrary to “Greek legislation.”⁴⁸

D. Hearing before the Greek Council of State

The case was heard by the Plenary of the CoS on December 2, 2022. Lava Project was removed from the application, as its registration had been refused and it had terminated its operations in Greece by the time of the hearing. RSA withdrew the application for annulment of its rejection decision, because, in the meantime, and although the NGO had not amended its statute, its new application for registration had been accepted.

The applicability of the CFR was not, in principle, called into question. However, the Greek government argued that NGOs do not enjoy the right to freedom of association and sought to minimize the practical consequences of non-registration. As a result, the questions of the judges to the parties did not address the subject-matter of the litigation, namely the Regulation’s compliance with fundamental rights, but rather focused on the practical implications of non-registration. The hearing was covered in only one media outlet, under the misleading article title “NGOs: The legality of NGOs under the microscope of the CoS.”⁴⁹ The decision of the CoS is still pending at the time of writing.

of the European Parliament and of the Council of 7 July 2021 establishing the Asylum, Migration and Integration Fund, Jul. 15, 2021, 2021 O.J. (L 251) 1.

⁴⁶TFEU art. 45.

⁴⁷Regulation art. 4.

⁴⁸RSA, *Joint statement by 19 Organisations Active on Refugee Issues in Greece* (Dec. 8, 2021), <https://rsaegean.org/en/joint-statement-by-19-org-ngo-registry-rejection/>.

⁴⁹Panagiotis Tsioukias, *MKO: Στο μικροσκόπιο του ΣτΕ η νομιμότητα των ΜΚΟ* [NGOs: The Legality of NGOs Under the Microscope of the CoS], PROTO THEMA (Greece) (Dec. 3, 2022), <https://www.protothema.gr/greece/article/1314254/mko-sto-mikroskopio-tou-ste-i-nomimotita-ton-mko/>.

E. Effects of the Litigation

Our coalition of NGOs' litigation served as a catalyst for advocacy against the Regulation at the level of more human rights-mandated institutions and bodies: The Expert Council, the CoE Commissioner for Human Rights, and three UN Special Rapporteurs asked Greece to review the Regulation due its incompatibility with human rights obligations.⁵⁰ The EU Fundamental Rights Agency (FRA) echoed the above institutions' concerns, pointing out the Regulation's "chilling effect on civil society."⁵¹

Conversely and counterintuitively, our advocacy at the European Commission did not yield the expected results. Most importantly, the Commission has not shared its assessment of the Regulation's "compatibility with the EC law" to date. Instead, even though this matter has been consistently raised by NGOs in their submissions ahead of the Commission's annual Rule of Law Report since 2021,⁵² the latter's findings have been limited to "noting" the concerns,⁵³ and asking Greece to "[e]nsure that registration requirements [...] are proportionate [...]."⁵⁴ In its 2023 Report, the Commission simply recommended that Greece "[...] evaluate the current registration system [...], including by initiating a structured dialogue with CSOs, and assess whether there is a need to amend it."⁵⁵ The Commission invariably mentions the existence of proceedings before the CoS.⁵⁶ Nevertheless, it is not clear whether it simply postpones sharing its position until the issuance of the decision or if it defers its assessment to the national judges.

Even so, the application of the Regulation continues unabated. At the same time, the CoS has been postponing hearings of individual annulment applications until the issuance of the decision on our application for annulment of the Regulation. For example, the CoS has postponed for October 22, 2024 the hearing of an annulment application filed in March 2023 on behalf of an NGO whose registration had been suspended for deciding not to register its members due to fundamental rights concerns. These long delays in the judicial proceedings have dissuaded other NGOs from challenging their rejection decisions in court, preferring instead to either try to re-apply for registration or remain unregistered with all possible

⁵⁰Eur. Council, *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, ¶¶ 23-24 (Nov. 23, 2020), <https://rm.coe.int/expert-council-conf-exp-2020-5-addendum-to-the-opinion-on-the-compatib/1680a076f2;CoE>; Dunja Mijatović (Commissioner for Human Rights), *Letter to Greek Authorities*, 2-3 (May 3, 2021), <https://rm.coe.int/letter-to-mr-michalis-chrysochoidis-minister-for-citizen-protection-o/1680a256ad>; Clement Nyaletsossi Voule, Mary Lawlor, & Felipe González Morales, *Joint Communication of the Mandates of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, the Special Rapporteur on the Situation of Human Rights Defenders, and the Special Rapporteur on the Human Rights of Migrants to Greece*, 4 (Mar. 31, 2021), <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26314>.

⁵¹EU Agency for Fundamental Rights, *Legal Environment and Space of Civil Society Organizations in Supporting Fundamental Rights (Greece)*, 4-6 (Jan. 2021), https://fra.europa.eu/sites/default/files/fra_uploads/franet_greece_civic_space_2021.pdf.

⁵²RSA, *Submission to the European Commission on the 2021 Rule of Law Report*, ¶¶ 17-26 (2021), https://rsaegean.org/wp-content/uploads/2021/03/RSA_RoL2021_Submission.pdf; Joint Civil Society, *Rule of Law Backsliding Continues in Greece*, ¶¶ 69-74 (Jan. 2023), https://hias.org/wp-content/uploads/Greece-RoL2023_JointSubmission_CSO.pdf; Vouliwatch, Greek Council for Refugees (GCR), HIAS Greece, RSA, Hellenic League for Human Rights, & Reporters United, *Greece in Institutional Decline: Joint Civil Society Submission to the European Commission on the 2024 Rule of Law Report*, ¶¶ 116-123 (Jan. 2024), https://hias.org/wp-content/uploads/RoL2024_JointSubmission_CSO_Greece.pdf [hereinafter 2024 Joint RoL Submission].

⁵³2021 *Rule of Law Report: Country Chapter on the rule of law situation in Greece*, at 12, COM (2021) 709 final (Jul. 20, 2021)[hereinafter 2021 RoL Report]; 2022 *Rule of Law Report: Country Chapter on the rule of law situation in Greece*, at 21, COM (2022) 508 final (Jul. 13, 2022) [hereinafter 2022 RoL Report]; European Commission, *2023 Rule of Law Report: Country Chapter on the rule of law situation in Greece*, at 28, COM (2023) 808 final (Jul. 5, 2023) [hereinafter 2023 RoL Report].

⁵⁴2022 RoL Report, 2.

⁵⁵2023 RoL Report, 2.

⁵⁶2021 RoL Report, 13; 2022 RoL Report, 21; 2023 RoL Report, 28.

consequences. Illustratively, HIAS Greece's application was last rejected in February 2023, despite a positive opinion from the competent service of the Ministry.⁵⁷ Its registration was refused for, among others, not having a webpage in Greek, although this requirement is not mentioned in the Regulation⁵⁸ and even though several NGOs have been registered without meeting this requirement.⁵⁹ HIAS Greece decided that it would be faster to translate its webpage to Greek and re-apply for registration. In March 2024, and while in the process of translating its webpage, HIAS Greece was informed by its bank that the latter cannot proceed with the renewal of HIAS Greece's legal representative's legalization, because the organization is not registered in the NGO Registry. As a result, HIAS Greece's bank account was deactivated, leading to the NGO's inability to pay salaries, social security contributions, taxes, rent, telephone bills, and legal fees for its court cases. These very serious practical consequences of non-registration as well as the discretionary application of the Regulation were brought to the attention of the Commission.

The Commission's hands-off approach has considerably undermined the impact of our litigation. By refraining from taking a position on the Regulation's compliance with fundamental rights and merely deferring to Greece to amend it if "there is a need," it has reduced a serious matter of legality and Rule of Law to a question of practical registration difficulties. This approach also disregards the fact that NGOs are actually expected to breach fundamental rights in order to be registered. Unsurprisingly, in May 2024, and despite having consulted the CSOs regarding their concerns about the Registry in October 2023,⁶⁰ the MoMA amended the Regulation but only to make the duration of the NGOs' registration permanent.⁶¹

F. Conclusion

This Article provides an overview of the strategic litigation brought by CSOs to challenge the new Regulation for the registration of migration NGOs and their members in Greece. It concludes that, counterintuitively, strategic litigation at the domestic level, albeit EU-law based, seems to have forestalled the European Commission's assessment of the Regulation's compliance with fundamental rights. More research is needed to understand the limits of advocacy at the European Commission in cases of pending domestic litigation. The Commission's approach in the present case has considerably undermined the impact of our litigation as well as its commitment to "ensure the effective application of the Charter" and to "take action against measures that breach EU law, including the Charter, which affect civil society organizations."⁶²

⁵⁷Regulation art. 7(3).

⁵⁸Regulation art. 5(1)(c) (providing that operating a webpage is a criterion of "accountability", but it does not require that the webpage be in Greek).

⁵⁹Hellenic Republic, MoMA, *Register of Greek and Foreign Non-Governmental Organizations (NGOs) Dealing with International Protection, Migration and Social Integration Issues*, (May 6, 2024) <https://ngo.migration.gov.gr/registered.php>.

⁶⁰2024 Joint RoL Submission ¶ 122

⁶¹Ministerial Decision (2024:148104) Τροποποίηση της υπ' αρ. οικ.10616/24-8-2020 κοινής απόφασης των Υπουργών Οικονομικών και Μεταnáστευσης και Ασύλου «Καθορισμός λειτουργίας του "Μητρώου Ελληνικών και Ξένων Μη Κυβερνητικών Οργανώσεων (ΜΚΟ)" και του "Μητρώου Μελών Μη Κυβερνητικών Οργανώσεων (ΜΚΟ)", που δραστηριοποιούνται σε θέματα διεθνούς προστασίας, μεταnáστευσης και κοινωνικής ένταξης εντός της Ελληνικής Επικράτειας» (Β' 3820) [Amendment of joint decision no 10616/24-8-2020 of the Ministers of Finance and of Migration and Asylum 'Regulation of the "Registry of Greek and Foreign Non-Governmental Organizations (NGOs)" and the "Registry of Members of Non-Governmental Organizations (NGOs)", which are active in matters of international protection, migration and social integration within the Greek Territory' (B' 3820)], ΕΦΗΜΕΡΙΣ ΤΗΣ ΚΥΒΕΡΝΗΣΕΩΣ ΤΗΣ ΕΛΛΗΝΙΚΗΣ ΔΗΜΟΚΡΑΤΙΑΣ [Ε.Κ.Ε.Δ.] 2024, Β:2829 (Greece).

⁶²*Strategy to strengthen the application of the Charter of Fundamental Rights in the EU*, at 2, 10, COM (2020) 711 final (Dec. 2, 2020), <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020DC0711>.

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