



The Role of Non-Governmental and Intergovernmental Organizations in Strengthening Protection of Fundamental Rights of Migrants in the Area of Freedom, Security and Justice

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Abstract. The aim of the paper is to verify the thesis that throughout the 25 years of forming of the Area of Freedom, Security and Justice and migration and asylum policy, participation of non-governmental and international organizations has had its part in real strengthening of protection of fundamental rights. The methodology adopted assumes an analysis of legal norms in terms of their cohesion and completeness and an assessment of their efficiency at the level of their use by their addressees. The methodology also uses a functional analysis of the structure and activities taken up by the organizations analysed. The article analysis the activity of non-governmental and international organizations in the area of migration and asylum: analytical, advocacy and advisory activity and tangible work for the exercise of migrants' fundamental rights. NGO actions complement projects taken up by Union and domestic institutions in their implementation of a migration policy. Thanks to the NGO activity, they concretize guarantees included in the EU Charter of Fundamental Rights. The analysis points out that the presence of these entities has a real impact on strengthening guarantees of fundamental rights of migrants in the AFSJ. In the last 25 years, the activity and presence and also visibility of NGO action in the area of migration and implementation of Union policies has grown and has been strengthened too.

Keywords: migration law, European Union law, refugees, NGO, international organisations.

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1. INTRODUCTORY NOTES

Pursuant to provisions of the Treaty on European Union (TEU), the European Union (EU) builds its *acquis communautaire* with respect for fundamental rights¹. The Area of Freedom, Security and Justice (AFSJ) is also constructed with respect for fundamental rights - pursuant to Article 67 of the Treaty on the Functioning of the European Union (TFEU): "The Union shall constitute an area of freedom, security and justice with respect for fundamental rights and the different legal systems and traditions of the Member States"².

This paper aims to verify the thesis that throughout over 25 years of forming of the AFSJ and migration and asylum policy, participation of non-governmental and international organizations has had its part in real strengthening of protection of fundamental rights. We analyse and evaluate here the activity of non-governmental organizations (NGO) and intergovernmental organizations (IGO) in building migration law standards and in ensuring their efficiency. The paper closes with recommendations for the future for the EU legislator and EU institutions.

The methodology adopted assumes an analysis of legal norms (both those resulting from treaties and secondary legislation) in terms of their cohesion and completeness and an assessment of their efficiency at the level of their use by their addressees: EU administration institutions and bodies and NGOs themselves. The methodology also uses a functional analysis of the structure and activities taken up by the organizations analysed³.

The activity of non-governmental and international organizations in the area of migration and asylum was broken down into a few groups depending on their level of engagement and type of tasks carried out. We will analyse two main areas of activity of NGOs and IGOs: analytical, advocacy and advisory activity and tangible work for the exercise of migrants' fundamental rights⁴. This first group of activities includes mainly their opinion-giving contribution in the legislative process, preparing information about migrants' countries of origin, informing the public about violations of migrants' rights and promoting their protection, and also advocacy and advisory activity at individual AFSJ's decentralised agencies. The second group of operations includes mainly granting legal assistance to persons who seek international protection, monitoring return policies and helping in their implementation (International Organization for Migration, UN - IOM) or rescue operations on the Mediterranean Sea.

2. THE ROLE OF NGOS IN MODELLING A CIVIL SOCIETY AND PROTECTION OF RIGHTS OF MIGRANTS

Given the diversity of existing non-governmental organizations, it is difficult to construct their uniform definition. Scholars identify legal, economic and functional descriptions (Lewis, 2010, p. 3). Salamon and Anheier (1992, pp. 125-151) propose an operational (structural) definition, which seems useful for a discussion here. It stipulates that a non-governmental organization has five features - its existence is formalized (it has a seat and is

¹ Pursuant to Article 2 sentence 1 TEU: "The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities (...)" Treaty on European Union, consolidated version (O.J.EU. C 202, 7 June 2016), 13.

² Treaty on the Functioning of the European Union, consolidated version (O.J.EU. C 202, 7 June 2016), 47.

³ Regarding the terminology used, the term "migrant" refers to individuals in the migration process, i.e., third-country nationals entering EU territory. It has the broadest meaning and encompasses both legal migrants and irregular migrants and those seeking international protection. The term "refugee," in turn, refers to individuals seeking international protection as well as those who have obtained such protection, thus supplementing the term "asylum seeker."

⁴ Legal scholars and commentators also emphasize division of NGOs' activity into three areas - "policing and patrolling, caring and rescuing, observing and knowing" (Andersson, 2014, p. 13, as cited in Eule et al., 2019, p. 190). In turn, the Council of Europe's report "Rights and obligations of NGOs assisting refugees and migrants in Europe" lists two basic directions of NGO activity in the area of migration policy - "towards policy and in practice" - Rights and obligations of NGOs assisting refugees and migrants in Europe. Committee on Migration, Refugees and Displaced Persons, Rapporteur: Mr Domagoj Hajduković, Croatia, Socialists, Democrats and Greens Group (SOC), September 7, 2020.

appointed for a fixed term), it is a private organization (institutionally not related to governmental structures, though it might be publically funded), it carries out a non-profit and self-governing activity, and participation in it is at least partially voluntary. When it comes to protection of human rights, NGOs play two key functions - promoting protection of human rights and monitoring its application (Kälin & Künzli, 2019, p. 17; see also Lindblom, 2006).

Modern intensive development of non-governmental organizations that deal with the protection of human rights has been taking place since the 1970s (Shamima, 2011, p. 817)⁵. According to available statistics, there were 20 such organizations in the early 1950s, there were 67 of them in 1983 and in 2003 their number reached 169 (FitzGerald, 2019, p. 53). Currently, the number of NGOs and IGOs can be determined based on the reports being prepared - for example, the Union of International Associations (UIA) reported the activity of 7890 IGOs and 69257 NGOs in their report (data for 2023)⁶.

The special role and authorization of NGOs to act for the international community was already expressed in the Preamble of the Universal Declaration of Human Rights (Kälin & Künzli, 2019, p. 17)⁷ and in the Charter of the United Nations (Lewis, 2020, p. 5)⁸ - its Article 71 reads: "The Economic and Social Council may make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence. Such arrangements may be made with international organizations and, where appropriate, with national organizations after consultation with the Member of the United Nations concerned"⁹. The European Convention on Human Rights in its Article 11 also guarantees everyone freedom of association¹⁰. It's worth emphasizing that the issue of international NGO legal status is a complex one, stemming, among other things, from the fact that NGOs are not primary subjects of international law and are registered under the laws of a specific state. Currently, we are witnessing the internationalization of NGOs and their empowerment, for example, to conclude international agreements and establish representative offices abroad (Perkowski & Szadkowska, 2013, p. 97).

Studies in political science also point to the relationship between non-governmental organizations and intergovernmental organizations (IGOs). Since the 1990s, more and more NGOs have been granted a consultative status with the United Nations (Martens, 2010, p. 1041). The 1990s were the time of rise of activity of advocacy groups, such as the Human Rights Watch or the Statewatch (it monitors observance of human rights) (FitzGerald, 2019, p. 54; Givens, 2012, p. 165).

⁵ It is worth mentioning here the 1977 Nobel Peace Prize awarded to Amnesty International, which is a non-governmental organization (NGO) – see FitzGerald (2019, p. 52).

⁶ The Union of International Associations, accessed August 13, 2025, [UIA-Meetings-Survey-2024.pdf](https://www.uia.org/meetings-survey-2024.pdf).

⁷ See: Universal Declaration of Human Rights, (text available at: <https://www.un.org/en/about-us/universal-declaration-of-human-rights>). It reads: "(...) to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction". Universal Declaration of Human Rights adopted on 10 December 1948, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948).

⁸ The United Nations Charter signed at the United Nations Charter in San Francisco on 26 June 1945, 1 UNTS XVI.

⁹ The text of the Charter available at: <https://www.un.org/en/about-us/un-charter/chapter-1>. Accessed January 13, 2025.

¹⁰ Council of Europe, The Convention for the Protection of Human Rights and Fundamental Freedoms, Rome 4 November 1950, as amended by Protocols No. 13, 5 and 8 and supplemented by Protocol No. 2, ETS No. 5. According to Article 11(1) of the EU Charter of Fundamental Rights: "Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests". The right of non-governmental organizations to act in the civil society is also confirmed in Council of Europe, European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations, ETS No. 124 and Recommendation CM/Rec(2007)14 of the Committee of Ministers on the legal status of non-governmental organisations in Europe – See – "Rights and obligations of NGOs assisting refugees and migrants in Europe," Committee on Migration, Refugees and Displaced Persons, Rapporteur: Mr Domagoj Hajduković, Croatia, Socialists, Democrats and Greens Group (SOC), September , 2020, 2 para. 5.

Joining in the broadly understood functioning and strengthening of the civil society, NGOs have started active operations also in the migration area¹¹, which was accepted by the international community¹². The UNHCR (UN Refugee Agency) and the IOM, acting as specialized agencies of the United Nations, are certainly the most recognizable actors in migration area globally (Goodwin-Gill & McAdam, 2011, pp. 426, 487; Martin, 2014, pp. 87, 148-153)¹³.

NGOs' engagement is key for the development of protection of fundamental rights in the EU, which some scholars consider to be actually an IGO. As believed by Ahmed (2011, p. 818; see also Ahmed, 2009, pp. 293, 299-306) "NGOs and IGOs are multifaceted—they work side by side as partners of development, as agenda-shapers, as policymakers, as sources of information and expertise, and often times as "watch dogs."

NGOs' activity in the implementation of EU's migration policies is in fact a subject fit for a monograph. The diversity of NGOs and IGOs active in modelling the EU migration policy is rather impressive. We have the renowned international organizations such as the UNHCR (see also Lee, 2013, p. 135), ILO (International Labour Organisation) (see Chetail, 2019, p. 214), IOM (International Organization for Migration, UN) (Chetail, 2019, p. 305), and also organizations that operate globally, such as the Red Cross or the Human Rights Watch. A special role is given to organizations such as PICUM (Platform for International Cooperation on Undocumented Migrants)¹⁴ or ECRE (European Council on Refugees and Exiles)¹⁵, which focus on monitoring and advocacy. NGOs are also treated as institutional partners for international organizations such as the EU or the Council of Europe (CoE)¹⁶.

Many organizations limit their activity to the national level and real help to migrants and refugees¹⁷. These include, for example, Polish NGOs¹⁸ such as the Rule of Law Institute and the Institute of Public Affairs¹⁹. The UNHCR plays a major role in building the capacity of national NGOs (FitzGerald, 2019, p. 55). However, there is no doubt that the primary goal of all activities carried out by NGOs in the area of migration is to protect fundamental rights of migrant persons²⁰.

This study serves as an illustration and a review, but most of all it looks at problematic issues (it envisages an analysis of types of activities of NGOs and IGOs). Its prime focus is on the typology of activities taken up by NGOs and the key role in actually ensuring protection of fundamental rights of migrants in the civil society.

¹¹ On the activity of NGOs in Australia, USA and Canada see Hamlin (2014).

¹² The adoption of the United Nations Convention against Transnational Organized Crime along with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and the Protocol against the Smuggling of Migrants by Land, Air and Sea, adopted by the UN General Assembly: 15 November 2000, by resolution 55/25) was an example that NGOs need to be involved in the migration policy. Pursuant to Article 32(3) of the Convention, the Conference of Parties should undertake cooperation with NGOs and IGOs. See: David & Gallagher, 2014, p. 43. Similarly, NGOs should be involved in putting the Migrant Smuggling Protocol into effect, *Ibidem*, 76. See: Article 9(3) and 10(2) of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, adopted by General Assembly resolution 55/25, 15 November 2000.

¹³ See also: CoE report *Rights and obligations of NGOs assisting refugees and migrants in Europe* (op. cit.), 6. The International Catholic Migration Commission and the International Orthodox Christian Charities are considered particularly important in helping migrants.

¹⁴ Platform for International Cooperation on Undocumented Migrants, accessed January 13, 2025, <https://picum.org/>.

¹⁵ European Council on Refugees and Exiles (ECRE), accessed January 13, 2025, <https://ecre.org/>.

¹⁶ *Rights and obligations of NGOs assisting refugees and migrants in Europe* (op. cit.), 6, point 2.2.

¹⁷ For the activity of French, Italian and Swedish NGOs see also: Lambert & Silga (2012, p. 54); Messineo (2012, p. 100); Stern (2012, p. 202).

¹⁸ See also: White et al. (2018, p. 27).

¹⁹ Instytut na rzecz Państwa Prawa, accessed January 13, 2025, <https://panstwoprawa.org/?lang=en>; Instytut Spraw Publicznych, accessed January 13, 2025, <https://www.isp.org.pl/en>.

²⁰ *Rights and obligations of NGOs assisting refugees and migrants in Europe* (op. cit.), 7.

3. ANALYTICAL, ADVOCACY AND ADVISORY ACTIVITY OF NGOS IN THE AREA OF FREEDOM, SECURITY AND JUSTICE

3.1. Participation in public consultations and issuing opinions on legislation

The so-called principles of better regulation and thus principles of carrying out public consultations and of ensuring transparency of the processed legislative initiatives and the organization of public consultations are specified in Communications of the European Commission²¹. An example of successful activity in this matter was to create the “Have your say” portal, where citizens and other stakeholders may express their opinion on how EU policies are implemented in the existing law²². This portal also provides space to submit opinions of processed legislative acts. Representatives of the civil society may also be engaged in expressing their opinions on legislative acts through the “Fit for future” platform, composed of representatives of governments of Member States and stakeholders²³.

ECRE²⁴ is a particularly active organization when it comes to preparing opinions on legislative proposals. It is also worth remembering that NGOs, INGOs (international non-governmental organizations) and IGOs alike participate in giving opinions on legislative acts on the level of Member States. Given the specific nature of the division of EU competences regarding the AFSJ²⁵, most of such acts implement Union law which thus leads to a certain civil inspection of the protection of fundamental rights in domestic migration policies²⁶.

A clear example of the engagement of the third sector in the opinion-giving process for legislative acts was a draft regulation that established an EU list of safe countries of origin²⁷. This proposal was a political response of the EU legislator to the 2015 migration crisis and assumed as safe countries such as the Republic of Macedonia, Kosovo, Montenegro, Serbia and Turkey. The countries identified in the draft were, at the same time, places from where most refugees fled. The draft was subject to public consultation and sparked a heated debate among activists that act for the protection of rights of migrants. ECRE²⁸ and Caritas²⁹, to name just a few, offered their opinions on the draft. ECRE emphasised, for example, the risk of application of accelerated procedures in the case of persons coming from safe countries since migrants would not have time to present evidence. On the other hand, Caritas

²¹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Better regulation: taking stock and sustaining our commitment {SWD(2019) 156 final}, Brussels, 15.4.2019, COM(2019) 178 final, accessed January 13, 2025: <https://eur-lex.europa.eu/legal-content/PL/TXT/PDF/?uri=CELEX:52019DC0178>.

²² This tool was introduced in 2017, Have your say, accessed January 13, 2025: https://ec.europa.eu/info/law/better-regulation/have-your-say_en.

²³ Fit for Future Platform - The Stakeholder group, accessed January 13, 2025: https://commission.europa.eu/law/law-making-process/evaluating-and-improving-existing-laws/refit-making-eu-law-simpler-less-costly-and-future-proof/fit-future-platform-f4f-2021-2024/composition/fit-future-platform-stakeholder-group-0_en.

²⁴ Comments Papers, European Council on Refugees and Exiles (ECRE), accessed January 13, 2025: <https://ecre.org/ecre-publications/comments-papers/>.

²⁵ Article 4 of the TFEU.

²⁶ Refworld, Comments on National Legislation, accessed January 13, 2025: <https://www.refworld.org/type/NATLEGCOMMENTS.html>.

²⁷ Proposal for a Regulation of the European Parliament and of the Council establishing an EU common list of safe countries of origin for the purposes of Directive 2013/32/EU of the European Parliament and of the Council on common procedures for granting and withdrawing international protection, and amending Directive 2013/32/EU, Brussels, 9.9.2015, COM(2015) 452 final, 2015/0211(COD), accessed January 13, 2025: <http://eur-lex.europa.eu/legal-content/PL/TXT/HTML/?uri=CELEX:52015PC0452&from=en>.

²⁸ ECRE Comments on the Proposal for a Regulation of the European Parliament and of the Council establishing an EU common list of safe countries of origin and amending the recast Asylum Procedures Directive (COM(2015) 452), October 2015, accessed January 13, 2025: http://www.ecre.org/wp-content/uploads/2016/07/ECRE-Comments-on-the-Commission-Proposal-for-an-EU-common-list-of-safe-countries-of-origin_Oct-2015.pdf.

²⁹ Caritas Europa, Safe countries of origin. Position paper, 1.06.2016, accessed January 13, 2025, http://www.caritas.eu/sites/default/files/ce_position_paper_on_safe_countries_of_origin.pdf.

claims that even if a safe country list is adopted, every person must be guaranteed an absolute right to seek international protection. NGOs' voices helped build publicity for this controversial draft and ultimately the EU legislator decided not to adopt it.

3.2. Impact of non-governmental organizations on decisions of European courts

Non-governmental organizations play an important role in implementing an asylum policy and in actions for safeguarding rights of persons seeking international protection by preparing reports on the situation of migrants' countries of origin. General information on violations of fundamental rights in individual countries may be found on the websites of Amnesty International or the Human Rights Watch³⁰. Analytical studies and reports (so-called grey literature (Baumgärtel, 2019, p. 10)) are regularly published by the Refworld portal operated by the UNHCR³¹. There are more and more national initiatives which provide solid information of migrants' countries of origin and which may be an efficient tool for lawyers who deal with refugee matters³². The data on migrants' countries of origin and an analysis prepared by NGOs are also used by the European Union Agency for Asylum in drafting information compilations about countries of origin³³.

NGOs' reports have also had a real impact on the development of judicial decisions of European courts in cases addressing migrants' rights³⁴. In its breakthrough ruling in M.S.S. v Belgium and Greece³⁵, the European Court of Human Rights (ECtHR), evaluating the migration situation in Greece and the administrative crisis of the refugee procedure, invoked UNCHR's reports and also those of other organizations such as the ECRe³⁶.

In another case concerning the Dublin Procedure M.E. and N.S. the Court of Justice of the European Union (CJEU, the Court) upheld that returning persons who are applying for international protection from the United Kingdom to Greece which was their country of first entry, poses a risk of violation of their fundamental rights³⁷. In its legal analysis the Court also relied on sources quoted earlier by the ECtHR in the M.S.S. case³⁸. What is more, the Court stated that "information such as that cited by the European Court of Human Rights (in the M.S.S. case - author's note) enables Member States to assess the functioning of the asylum system in the Member State

³⁰ Amnesty International, accessed January 13, 2025: <https://www.amnesty.org/en/>; Human Rights watch, accessed January 13, 2025: <https://www.hrw.org/>.

³¹ UN High Commissioner for Refugees, Refworld, accessed January 13, 2025: <https://www.refworld.org/>.

³²The ecoi.net - European Country of Origin Information Network - carried out by the Austrian Red Cross' department ACCORD - About ecoi.net is an example of such activities. About ecoi.net, accessed January 13, 2025: <https://www.ecoi.net/en/about/about-ecoi.net/>.

³³Using data provided by NGOs when working on information on countries of origin of migrants was emphasized in a methodological work by the European Union Agency for Asylum – see: Country of Origin Information (COI) Report Methodology, European Union Agency for Asylum (EUAA), February 2023, 15, accessed January 13, 2025: https://euaa.europa.eu/sites/default/files/publications/2023-02/2023_02_EUAA_COI_Report_Methodology_Rebranded.pdf.

³⁴The interrelations between the system of human rights protection in the Council of Europe and in the European Union is dictated by provisions of Article 6(2) of the Treaty on European Union. It reads that: "2. The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in the Treaties".

³⁵The case concerned the question of returning, under the Dublin Regulation, a foreign national to the country of first entry, that is Greece, which, pursuant to the so-called Dublin criteria, was responsible for examining this application. The applicant claimed that returning him to Greece will expose him to inhumane treatment. The Court recognized the applicant's claims. See: ECtHR Judgment of 21 January 2023, Case M.S.S. v. Belgium and Greece, application no. 30696/09 (hereinafter as M.S.S. judgment). See also summary: ECtHR - M.S.S. v Belgium and Greece [GC], application no. 30696/09, accessed January 13, 2025, <https://www.asylumlawdatabase.eu/en/content/echr-mss-v-belgium-gc-application-no-3069609>.

³⁶ Paragraph 159 of the judgement in M.S.S. See also Groenendijk (2012, p. 6).

³⁷ Judgment of the Court (Grand Chamber) of 21 December 2011 in the case N. S. (C-411/10) v Secretary of State for the Home Department and M. E. and Others (C-493/10) v Refugee Applications Commissioner and Minister for Justice, Equality and Law Reform, ECCLI:EU:C:2011:865 (hereinafter as N.S. judgement).

³⁸ Paras 88-90 of the N.S. judgment.

responsible, making it possible to evaluate those risks”³⁹. Thus, in the Court’s opinion national courts should rely on reports prepared by leading NGOs in the process of assessing the risk of breach of migrants’ fundamental rights (Baumgärtel, 2019, p. 58).

Interventions of leading NGOs could play a major role in modelling the established line of CJEU’s decisions. Unfortunately, in the legal framework the opportunity of NGOs intervention is limited in the procedure of referring questions for a preliminary ruling (where migrants’ cases are examined). Pursuant to Article 23 of the Statute of the Court⁴⁰, within two months of notification of the case, it may be joined by Member States, the Commission and other Union bodies. On the other hand, pursuant to Article 40 of the Statute: “Natural or legal persons shall not intervene in cases between Member States, between institutions of the Union or between Member States and institutions of the Union”. In practice this means that non-governmental organizations and IGOs should get involved in the proceedings at the domestic level to have a chance to express their opinion at the stage of proceedings before the CJEU. It was the same in the already-discussed N.S. case, where the proceedings were joined by the UNHCR, Amnesty International and AIRE before a question was referred for a preliminary ruling (Krommendijk & Pas, 2022, p. 1400).

3.3. Promotion of protection of rights of migrants in a civil society

One of the tasks carried out by non-governmental organizations, at home and Europe-wide, is to inform the public about challenges involved in guaranteeing full protection of fundamental rights to migrants.

These tasks are carried out by means of on-going monitoring of the migration situation and publishing current analysis and posts on social networking sites operated by the NGOs. Organizations such as PICUM publish a monthly newsletter that sums up the legal state of affairs in their area of interest, including political actions, judicial decisions and draft legislative amendments. The organizations use their websites to post information concerning major problems relating to violations of fundamental rights. Most organizations that work at the Union level, the so-called think-tanks (e.g. Statewatch or ICMPD) also prepare thematic reports and opinions (policy papers or working papers). ECRE is a good example here. It operates in the area of refugee migration, and, on top of that, provides ongoing information about key rulings in refugee-related cases.

NGOs also carry out watch-dog activities and monitor observance of specific human rights. An example of such activities was a report on monitoring detention centres drafted by the Institute of Public Affairs. It triggered an extensive discussion on the conditions of detention of third-country nationals⁴¹.

As part of their activity to boost public awareness on the difficult situation of migrants, non-governmental organizations also organize various types of social campaigns. One of such well-recognized campaigns in the past decades was the one coordinated by PICUM - “Words Matter”. It aimed to popularize the use of the term “irregular migrant” instead of “illegal migrant” in legal language. PICUM believes that using the adjective “illegal” leads to the public having negative connotations of migration. It is perceived as crime and violates migrants’ dignity. The campaign found support in the EU administration, it was backed by, for example, former director of the European Union Agency for Fundamental Rights, Morten Kjaerum⁴². As part of its campaign, PICUM also drew up a

³⁹ Para 91 of the N.S. judgment.

⁴⁰ Statute of the Court of Justice of the European Union (consolidated version), 1 May 2019, accessed January 13, 2025, https://curia.europa.eu/jcms/jcms/Jo2_7031/en/.

⁴¹ Wciąż za kratami. Raport z monitoringu strzeżonych ośrodków dla cudzoziemców przeprowadzonego przez Helsińską Fundację Praw Człowieka i Stowarzyszenie Interwencji Prawnej, ed. Jacek Biały and Witold Klaus (Helsińska Fundacja Praw Człowieka, Stowarzyszenie Interwencji Prawnej, Warsaw, 2014), accessed January 13, 2025, <https://interwencjaprawna.pl/wp-content/uploads/wciaz-za-kratami.pdf>.

⁴² PICUM, Words Matter: Illegal vs Undocumented Migrants, accessed January 13, 2025, <https://picum.org/words-matter/>.

compilation of alternative terms to “illegal migrant” in 28 languages (including Chinese, Arabic and Russian), that should be applied when adopting legislative acts, in judicial decisions and in narratives about migrants.

3.4. NGOs cooperation networks in the area of migration policy

Non-governmental organizations actively operate in cooperation platforms. International Dialogue on Migration⁴³, established by IOM, is an example of such a platform. Along with the emergence of Union’s decentralized agencies in the Area of Freedom, Security and Justice, migration-focused non-governmental organizations were also invited to cooperate and provide their opinions on the activities carried out by the agencies.

The first such cooperation measure was to create a Consultative Forum at the European Border and Coast Guard Agency which was launched in Autumn 2012. The Forum’s foundation is now Article 108 of Regulation 2019/1896⁴⁴. It reads that: “A consultative forum shall be established by the Agency to assist it by providing independent advice in fundamental rights matters. The executive director and the management board, in coordination with the fundamental rights officer, may consult the consultative forum on any matter related to fundamental rights”. The forum now has 13 members, including a representative of the UNHCR, IOM, Jesuit Refugee Service Europe (JRS) and the Rule of Law Institute from Poland⁴⁵. The Forum’s tasks also stipulate participation in developing and implementing the Fundamental Rights Strategy of Frontex and consultations in the process of appointing the Fundamental Rights Officer⁴⁶.

The consultative status was also granted to non-governmental organizations as part of the Consultative Forum set up at the European Union Agency for Asylum⁴⁷. The current forum operates pursuant to Article 50 of Regulation 2021/2303⁴⁸. This article provides that the forum is to ensure that the Agency may conduct dialogue with civil society organizations and to provide advice and support, for example, at the stage of preparing the Fundamental Rights Strategy. Currently the Forum affiliates a few dozen non-governmental organizations, not only such that operate on the European level, like Save the Children, but also local and national organizations, such as the Rule of Law Institute from Poland⁴⁹.

Finally, it is worth mentioning a specific initiative which admittedly does not directly concern migration questions, but serves to consolidate the third sector under the EU. It is the Fundamental Rights Platform established at the European Union Agency for Fundamental Rights⁵⁰. This Forum is to facilitate information exchange between third sector organizations in the realm of protection of fundamental rights in the EU. Its activity is based on Article 10 of Regulation 168/2007, pursuant to which the forum is “composed of non-governmental organisations dealing with human rights, trade unions and employer’s organisations, relevant social and professional organisations,

⁴³ The platform was set up in 2001 and “is a forum for policy dialogue between countries of origin, transit and destination, civil society, migrants, experts and other stakeholders” - International Organization for Migration, accessed January 13, 2025: <https://www.iom.int/international-dialogue-migration>.

⁴⁴ Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulation (EU) No 1052/2013 and (EU) 2016/1624, OJ L 295, 14.11.2019, 1–131 (hereinafter as Regulation (EU) 2019/1896).

⁴⁵ A full list of members is available at the Forum’s website: Frontex, Consultative Forum, accessed March 13, 2023: <https://www.frontex.europa.eu/fundamental-rights/consultative-forum/members/c>. The Forum’s term of office is two years, it operates on the basis of the program of works and stipulates preparation of an annual report on its activity.

⁴⁶ Article 109 of Regulation 2019/1896.

⁴⁷ Before that, the European Asylum Support Office, predecessor of the EUAA, also had a consultative forum - European Asylum Support Office, Consultative Forum, accessed: February 1, 2025: <https://euaa.europa.eu/archive-civil-society-and-consultative-forum>.

⁴⁸ Regulation (EU) 2021/2303 of the European Parliament and of the Council of 15 December 2021 on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010, OJ L 468, 30.12.2021, 1–54.

⁴⁹ A full list of members is available at EUAA CF Members, accessed January 13, 2025: https://euaa.europa.eu/sites/default/files/2022-10/EUAA_CF_Members.pdf.

⁵⁰ Civil society and the Fundamental Rights Platform, European Union Agency for Fundamental Rights, accessed January 13, 2025: <https://fra.europa.eu/en/cooperation/civil-society>.

churches, religious, philosophical and non-confessional organisations, universities and other qualified experts of European and international bodies and organisations”⁵¹. The mandate of the Agency itself includes assessment of how far fundamental rights in the EU are respected. Legal commentators often see its activity as a think-tank⁵². The Agency published numerous reports and assessments on compliance of the migration policy with fundamental rights guaranteed in the Charter and on establishing the Forum facilitates information exchange in the area of respecting human rights, including those of migrants, in member states in the process of implementing the EU law⁵³.

4. PRACTICAL ACTIONS AND WORKING WITH MIGRANTS

Practical actions of non-governmental organizations focus on a broad spectrum of activities with all share one thing, that is real engagement in migrants’ matters and working directly with them. Such actions include, for example, legal and legalization aid, direct actions at the EU border to protect migrants vulnerable to real dangers during their entry into the Union’s territory (mainly search and rescue operations on the Mediterranean Sea) and implementing integration projects, such as language courses. This chapter will analyse briefly practical examples of actions taken by NGOs which have the greatest boosting impact on the real protection of migrants’ rights.

4.1. Legal assistance

The right to a fair trial is guaranteed in Article 47 of the Charter and also applies to persons seeking international protection⁵⁴. Non-governmental organizations actively engage in ensuring legal assistance to third-country nationals, be it through programmes financed by Member States or under their own statutory activity.

Provisions of the Common European Asylum System (CEAS) directive guarantee persons applying for international protection access to free legal assistance. Pursuant to Article 21 of the Procedural Directive: “Member States may provide that the legal and procedural information free of charge referred to in Article 19 is provided by non-governmental organisations, or by professionals from government authorities or from specialised services of the State”⁵⁵. Provisions of the Reception Conditions Directive, in turn, facilitate access of non-governmental organizations to detained persons who seek international protection⁵⁶. Persons who reside in open reception centres may also enjoy legal assistance from, for example the UNHCR or non-governmental organizations⁵⁷.

Third-country nationals in return procedures are also guaranteed access to legal assistance under Directive 2008/115. Pursuant to Article 16(2): “Third-country nationals in detention shall be allowed — on request — to establish in due time contact with legal representatives, family members and competent consular authorities”⁵⁸.

⁵¹ Council Regulation (EC) No 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights, OJ L 53, 22.2.2007, 1–14.

⁵² See Toggenburg (2008, p. 392).

⁵³ See also Wouters & Ovádek (2021, pp. 48–49).

⁵⁴ On the regulation of the right to legal assistance in the EU law see Mikołajczyk (2016, p. 455).

⁵⁵ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection, OJ L 180, 29.6.2013, p. 60. See also Article 22(2).

⁵⁶ Article 10(4) of Directive 2013/33. It reads that: “Member States shall ensure that family members, legal advisers or counsellors and persons representing relevant non-governmental organisations recognised by the Member State concerned have the possibility to communicate with and visit applicants in conditions that respect privacy”. Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast) OJ L 180, 29.6.2013, 96.

⁵⁷ Article 18(2)(b) and (c) of Directive 2013/33.

⁵⁸ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, OJ L 348, 24.12.2008, 98. See also FRA’s report Legal Aid for Returnees Deprived of Liberty, European Union Agency for Fundamental Rights, 202, accessed January 13, 2025: www.fra.europa.eu.

Legal assistance carried out by non-governmental organizations is very diverse. It accommodates meetings with lawyers in NGO offices or real help in drafting documents, requests and relevant legalization letters. Lawyers also accompany third-country nationals in legalization-related visits or interviews related to applying for international protection. Non-governmental organizations offer duty hours and go to see persons who need help as part of their activities in open reception centres and detention centres.

Migrants are in a weaker position given their lack of knowledge of the law of the host country and also very often of the language. Without professional support, pursuing their rights might in many situations be ineffective. Organizations that specialize in legal assistance to third-country nationals have qualified lawyers who are able to handle complex cases at the level of many instances. The Helsinki Foundation for Human Rights is an example of such an organization. It represents third-country nationals in domestic proceedings⁵⁹ and also in cases that ultimately end up before the European Court of Human Rights. There is no denying that without the support of NGOs, third-country nationals would not be able to manage such complicated cases themselves⁶⁰.

4.2. Support in executing returns

In light of the standards of protection of rights of migrants, a return to the country of origin should be humanitarian, should not violate the dignity of the returnee and, where possible, be voluntary. Pursuant to Article 3(8) of Directive 2008/115, “voluntary departure means compliance with the obligation to return within the time-limit fixed for that purpose in the return decision”. IOM, as part of its mandate, has been implementing a worldwide programme supporting voluntary returns of migrants to their countries of origin. The support programme envisages that migrants are ensured legal advice, assistance in obtaining travel documents and, which seems most essential, re-integration help after the return. Such assistance may be used to do some vocational training or to start an economic activity. It thus allows migrants themselves to succeed in reintegration in the country of origin or in the country of return⁶¹. IOM’s activity is co-financed from European Funds (the [Asylum, Migration and Integration Fund and before - the European Return Fund](#)). Non-governmental organizations that run legal assistance centres also get involved in cooperation with the IOM and provide migrants with information on possibilities of assisted voluntary returns. The IOM’s position in the execution of assisted returns is, however, dominant because it usually acts within its mandate, on the basis of an agreement with the government of the host country.

Non-governmental organizations are also engaged in the process of monitoring forced returns of migrants to their countries of origin. The legal basis for these actions is accommodated in Article 8(6) of Directive 2008/115, which reads: “Member States shall provide for an effective forced-return monitoring system. Implementation of the provisions of the directive to the national system is presented in the report of the Fundamental Rights Agency “Forced return monitoring systems – State of play in 27 EU Member States - 2021 update”⁶². According to the

⁵⁹ Pushbacki na granicy polsko-białoruskiej są różaco sprzeczne z prawem - kolejny wyrok sądu krajowego, Helsińska Fundacja Praw Człowieka, accessed January 13, 2025, 2023: <https://hfhr.pl/aktualnosci/kolejny-wyrok-sadu-pushbacki-razaco-sprzeczne-z-polskim-prawem>.

⁶⁰ Proceedings pending before the ECtHR, Application no 54862/21 F.A. and S.H. against Poland lodged on 15 November 2021 communicated on 20 June 2022, may act as an example of such a case. See: ETPC zakomunikował sprawę push-backu Afgańczyków na granicy polsko-białoruskiej, Helsińska Fundacja Praw Człowieka, accessed January 13, 2025: <https://hfhr.pl/aktualnosci/push-back-granica-polsko-bialoruska-etpc>.

⁶¹ For more on the Assisted Voluntary Return and Reintegration programme see: Return and Reintegration, IOM, accessed January 13, 2025: <https://www.iom.int/return-and-reintegration>. The framework for the IOM’s policy on returns has been laid out in the document IOM’s policy on the full spectrum of return, readmission and reintegration of 23 April 2021, accessed January 13, 2025: <https://www.iom.int/sites/g/files/tmzbdl486/files/documents/ioms-policy-full-spectrum-of-return-readmission-and-reintegration.pdf>.

⁶² Forced return monitoring systems – State of play in 27 EU Member States - 2021 update, 13 December 2021, FRA, accessed January 13, 2025: <https://fra.europa.eu/en/publication/2021/forced-return-monitoring-systems-2021-update>.

presented data, it is NGOs who are responsible for this monitoring in most Member States⁶³. Return supervision essentially involves four phases - from the moment a return decision is issued, to the preparation of a report, to the execution of the return, to the reception in the country of destination⁶⁴. The efficiency of the monitoring, guaranteed by the presence of unbiased and trained observers on the one hand contributes to strengthening practical realization of fundamental rights and on the other facilitates development of good practices.

4.3. Search and rescue operations at borders

Apart from ensuring effective legal assistance in the legalization process, non-governmental organizations conduct various assistance activities at the European Union's external borders. Representatives of migration organizations are present and active where national authorities make it difficult or impossible for third-country nationals to enter, in a situation where these persons seek protection. Search and assistance actions carried out by the Polish Grupa Granica [transl. Border Group], associated with the crisis at the Polish-Belarusian border, are an example of such engagement⁶⁵.

Non-governmental organizations have also been involved for many years in helping migrants who cross the border at sea, the so-called "boat people" (Glynn, 2016, p. 34). Interference of NGO vessels in searching for migrants in the waters of the Mediterranean Sea triggers many controversies. Critics of such activities believe that NGOs help the operation of smugglers, weaken border integrity and play the role of a "taxi service" in reaching Europe's coasts (Kilpatrick & Smith, 2020, pp. 99-100). However, in practice, NGOs act as a rescue service where the state support fails and where human life is at risk. They often experience persecution in their work due to the fact that they bring the rescued persons into the territory of the European Union, not back to their countries of origin. Such accusations seem, however, not to be grounded in international and European law, because Member States are obliged to observe the *non-refoulement* principle and to not return migrants to their countries of origin where they face inhumane treatment⁶⁶. The most public case concerning rescue actions at sea was the one of Carola Rackete, captain of Sea-Watch 3, who requested that the ECtHR establish an interim measure as she had no permission to enter the Italian port with migrants on board⁶⁷. The ECtHR refused to issue such a measure, captain Rackete entered the harbour without permission and was arrested.⁶⁸ Carola Rackete was ultimately cleared of the charges⁶⁹.

The activity of NGOs' boats is monitored by the European Union Agency for Fundamental Rights - in its reports it believed that in the period between 2016 and 15 June 2021 the total of 58 cases against organizations were initiated, whereas between 2014 and 2023 over 28 000 people died or went missing during the process of crossing the Mediterranean Sea⁷⁰. NGO activities are approval-worthy. They tangibly reinforce protection of life of migrants

⁶³ FRM update for 2024, accessed January 13, 2025: [Forced Return Monitoring Systems – 2024 update | European Union Agency for Fundamental Rights](https://fra.europa.eu/en/publication/2024/june-2024-update-forced-return-monitoring-systems).

⁶⁴ Raport z monitoringu powrotów przymusowych obywateli państw trzecich do krajów pochodzenia. Lipiec 2019 – grudzień 2020, The Rule of Law Institute, Lublin 2020, 5-6. Report in Polish, accessed January 13, 2025: www.panstwoprawa.org.

⁶⁵ Grupa Granica, Facebook, accessed January 13, 2025: <https://www.facebook.com/grupagranica/>.

⁶⁶These commitments flow from Article 19(2) of the Charter in conjunction with Article 2, 4 and 18 of the Charter.

⁶⁷ The Court decides not to indicate an interim measure requiring that the applicants be authorised to disembark in Italy from the ship Sea-Watch 3, Press Release ECHR 240 (2019) 25.06.2019, accessed January 13, 2025: www.hudoc.echr.coe.int.

⁶⁸ Italy: Sea-Watch 3's captain must not be prosecuted for saving lives, Amnesty International, accessed January 13, 2025: <https://www.amnesty.org/en/latest/press-release/2019/07/sea-watch-3-captain-must-not-be-prosecuted-for-saving-lives/>.

⁶⁹ Sea-Watch captain Rackete shouldn't have been arrested, Italian high court rules, InfoMigrants, accessed January 13, 2025: <https://www.infomigrants.net/en/post/22223/seawatch-captain-rackete-shouldnt-have-been-arrested-italian-high-court-rules>.

⁷⁰ June 2021 Update – Search and Rescue (SAR) operations in the Mediterranean and fundamental rights, European Union Agency for Fundamental Rights, accessed January 13, 2025: <https://fra.europa.eu/en/publication/2021/june-2021-update-ngo-ships-sar-activities#publication-tab-0>.

and allow reaching a safe port where their possible premises to grant international protection may be processed by relevant national administration bodies.

4.4. Implementation of projects that facilitate the integration process

Non-governmental organizations run numerous integration projects for third-country nationals. Integration as a bilateral process is a guarantor of migrants' harmonious functioning in the host community. The European Union has adopted guidelines on the implementation of the integration policy in 2004.⁷¹ The currently binding integration priorities have been accommodated in the Communication from the European Commission "Action plan on Integration and Inclusion 2021-2027"⁷². Migration-related European Union law does not stipulate obligatory integration classes or exams, leaving these questions to the discretion of Member States⁷³. Only persons who are in the asylum procedure, pursuant to Article 34 of the Qualification Directive (2011/95), should be ensured access to integration programmes.

However, there is no doubt that for the integration process to be effective, it is necessary to make migrants aware of the realities of life in the host country, which in turn results in full participation in community life. Legal scholars and commentators also emphasize the existence of the right of migrants to cultural integration (Kosińska, 2018, p. 332), whereas such effective integration is a guarantor of enjoying other fundamental rights, including educational and cultural rights.

Projects carried out by non-governmental organizations provide support to migrants in their preparation to integration exams. Such projects deliver a broad array of support measures - these may include language lessons, culture or history lessons, thematic walks, visits in offices or educational activities for migrant children. The European Union has been supporting non-governmental organizations with its budget for years now. In 2008-2013 the following funds were in operation: the European Fund for the Integration of Third-Country Nationals, the European Return Fund and the European Refugee Fund⁷⁴. Since 2014 integration activities may be carried out thanks to the support of the Asylum, Migration and Integration Fund⁷⁵. The funds are distributed by competent domestic bodies and transferred through calls to selected organizations⁷⁶.

June 2023 update - Search and rescue operations in the Mediterranean and fundamental rights, European Union Agency for Fundamental Rights, accessed January 13, 2025:

[June 2023 update - Search and rescue operations in the Mediterranean and fundamental rights | European Union Agency for Fundamental Rights](#)

For NGOs' actions at sea see also: CoE report *Rights and obligations of NGOs assisting refugees and migrants in Europe* (op. cit.), 11.

⁷¹ Common Basic Principles for Immigrant Integration Policy in the European Union. Council of the European Union, Conclusions, press release, 2618th Council Meeting. Justice and Home Affairs, Brussels, 19 November 2004, accessed January 13, 2025, https://ec.europa.eu/commission/presscorner/detail/en/pres_04_321.

⁷² Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Brussels, 24.11.2020, COM(2020) 758 final.

⁷³ Pursuant to the provisions of Article 15(3) of the long-term residents' directive: "Member States may require third-country nationals to comply with integration measures, in accordance with national law (...). Without prejudice to the second subparagraph, the persons concerned may be required to attend language courses". Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, OJ L 16, 23.01.2004, 44.

Pursuant to the provisions of Article 7(2) of the family reunification directive: "Member States may require third country nationals to comply with integration measures, in accordance with national law." Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, OJ L 251, 3.10.2003, 12-18

⁷⁴ Council Decision of 25 June 2007 establishing the European Fund for the Integration of third-country nationals for the period 2007 to 2013 as part of the General programme Solidarity and Management of Migration Flows, OJ L 168, 28.06.2007, 19.

⁷⁵ Regulation (EU) No 516/2014 of the European Parliament and of the Council of 16 April 2014 establishing the Asylum, Migration and Integration Fund, amending Council Decision 2008/381/EC and repealing Decisions No 573/2007/EC and No 575/2007/EC of the European Parliament and of the Council and Council Decision 2007/435/EC, OJ L 150, 20.05.2014, 168.

⁷⁶ Asylum, Migration and Integration Fund (2021-2027), accessed January 13, 2025: https://home-affairs.ec.europa.eu/funding/asylum-migration-and-integration-funds/asylum-migration-and-integration-fund-2021-2027_en. See examples of national websites: Asyl-, Migrations- und Integrationsfonds (AMIF), Projekte, accessed January 13, 2025: <https://www.eu>

5. CONCLUSIONS

The analysis of the legal basis and of real actions carried out by non-governmental organizations and intergovernmental organizations points out that the presence of these entities has a real impact on strengthening guarantees of fundamental rights of migrants in the AFSJ. In the last 25 years, the activity and presence and also visibility of NGO action in the area of migration and implementation of Union policies has grown and has been strengthened by, for example, NGO involvement in advisory bodies of decentralized agencies such as Frontex or EUAA.

NGO actions complement projects taken up by Union and domestic institutions in their implementation of a migration policy. Thanks to the NGO activity, they concretize guarantees included in the Charter, such as for example the right to an effective remedy under Article 47 of the Charter (through legal assistance given to third-country nationals) or respecting the non-refoulement rule under Article 19(2) of the Charter (through so-called search and rescue operations at sea).

When creating the AFSJ over the last few decades, the EU legislator consciously included non-governmental organizations and intergovernmental organizations in actions for migrants, as proven by regulations in CEAS directives that guarantee organizations access to persons who reside in centres for third-country nationals to provide them with legal assistance.

The broad array of NGO activity, their flexible form of operation and thus the opportunity to respond dynamically to migrants' needs means that NGOs are present and active at each stage of the migration process. As a recommendation for the future, non-governmental organizations should be allowed to join in pre-judicial proceedings concerning protection of rights of migrants in a role of an intervener. This, however, would require a change in the CJEU's status.

In summary, it is difficult to imagine today the AFSJ without migration organizations, while the sectors of activity of NGOs and IGOs analysed in this chapter point out that activity of these organizations has a real impact on ensuring protection of rights of migrants.

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