



ADVANCING THE RULE OF LAW

HUMAN RIGHTS DEFENDERS IN EU VISA POLICY: SOME RECOMMENDATIONS FOR REFORM

EXECUTIVE SUMMARY AND RECOMMENDATIONS

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GLOSSARY OF TERMS

HRD	Human rights defender
EU	European Union
COHOM	EU Council Working Party on Human Rights
SIS	Schengen Information System
MEV	Multiple Entry Visa
LTV	Limited Territorial Validity (Visas)
AFSJ	Area of Freedom, Security, and Justice
CFSP	EU Common Foreign and Security Policy
MFA	Ministry for Foreign Affairs
TEU	Treaty on European Union
VIS	Visa Information System
LGBTI	Lesbian Gay Bisexual Transgender Intersex

FOREWORD

This document and its recommendations are the result of a collective effort on the part of many individuals and institutions. Particular thanks to the representatives of EU-based human rights NGOs who convened in Prague on June 26-27 and November 16-17, 2019 to deliberate and discuss the recommendations for visa reform for human rights defenders. Also thanks are due to colleagues in the various surveyed countries who helped distribute our human rights defender visa survey to gather key information for this project. And lastly, we are grateful to our colleagues who work tirelessly and at great peril to defend human rights in their home countries and internationally. It is our sincere wish that the results of this work will benefit yours.

Prague, November 2019

EXECUTIVE SUMMARY

Drawing on legal research, over 120 survey responses from self-identified human rights defenders¹ (HRDs – broadly defined as those individuals, groups and organs of society that promote and protect universally recognised human rights and fundamental freedoms) and in-depth interviews with HRDs on their travel and visa application experiences, this paper examines the legal and practical barriers that HRDs face when applying for visas to enter Europe. After an overview of the legal regime and the challenges faced by HRDs, it outlines recommendations for changes that could improve this process in a way that would better meet the needs of these key individuals as they fight for human rights in their respective countries.

The periphery of Europe is home to a number of countries where civil society has been marginalised, attacked, and, in some cases, outlawed. Citizens remaining engaged in human rights defense in these countries have come under increasing pressure, and themselves are often victims of direct and indirect government-sponsored violence, threats, imprisonment, surveillance, and even death. In response to these deteriorating conditions, Europe has designed official policies to support HRDs, including to facilitate their mobility to, and within, Europe. A number of European organizations have also developed respite and emergency assistance programs as a way to give these HRDs the opportunity to both network with each other and European counterparts, and to be safe or recover from the many stresses that are inherent in the work that they do. For HRDs to be able to take advantage of these various opportunities and supports in Europe, though, they must have reliable access to a valid Schengen visa, which will permit them to travel to, and within, Europe's Schengen territory (a frontier-free area including all EU countries, except for the United Kingdom and Ireland, in addition to Norway, Iceland, Switzerland, and Liechtenstein).

¹ Full survey results can be found on hrd.ceeliinstitute.org

The EU legal and policy regime governing this matter is complex, involving a web of instruments that address a variety of subject matters, but that are all subject to the requirement of consistency. This requirement should, in theory, ensure that no policy in one area undermines another. However, in reality, these instruments, and the practices that take place pursuant to them, are often not aligned. The paper recommends a number of actions for EU-based NGOs, Member States, and EU Institutions to increase the access of HRDs to visas to travel within the territory of the EU.

Recommendations for EU-based NGOs

1. Consistent advocacy to the Member States' MFAs and Interior Ministries about HRDs and the importance of their mobility and access to the EU.

Including:

- a. strengthening links and providing briefings to interior ministries responsible for immigration, security and law and order
 - b. showcasing egregious cases and visa/travel successes;
 - c. developing and delivering human rights trainings for relevant national authorities of the Member States
 - d. Increase connections with consular departments in MFAs of Member States
2. For smaller NGOs, consider partnering with larger NGOs when issuing letters of invitation.
 3. Promote the issue of HRD mobility at the EU level (country Members of the European Parliament), including circulating recommendations and stories.
 4. Communicate stories of barriers to access and visa issuance malpractice to mass media.
 5. Continue to support HRDs in the visa application process (guidance, invitations, bookings, etc).
 - a. Familiarise staff with the EU Visa Handbook
 - b. Provide information to partners in third countries on the Schengen visa application process (including circulating the EU Visa Handbook).
 - c. When necessary, issue support letters to attest the identity and good faith of specific HRDs intending to travel to the EU.
 - d. When relevant, add donor to invitation text (e.g. EU-funded programmes)
 - e. Increase available fellowships and internships in the EU and foster links with academic and cultural institutions to facilitate/further strengthen invitation process.
 - f. Aim at long-term planning vis a vis HRDs envisaging multiple invitations to facilitate applications for MEVs.
 - g. Monitor and collect information on serious visa malpractices by Member States or external service providers, including in relation to alerts in the SIS.
 - h. Refer systematic serious malpractices to the European Commission for possible investigation.

- i. Consider supporting HRDs who have undertaken appeals and litigation.
 - a. Establish links with networks of immigration lawyers and experts who would be able to provide support.
6. Develop professional ties with other human rights networks in Europe including: Protect the Defenders, ICORN, Human Rights Cities Network.

Recommendations for the Member States

1. Support amendments to the EU Visa Handbook and the EU Visa Code with a view to achieving an effective implementation of the provisions on mobility of HRDs in the EU Guidelines on HRDs and of positions on visa facilitations for HRDs adopted within the framework of the Common Foreign and Security Policy.
2. Address more extensively the issue of visa facilitations for HRDs within the framework of the Common Foreign and Security Policy.
3. Exercise the discretion envisaged in the EU Visa Code to facilitate the issuing of visas to HRDs.
 - a. Instruct consulates to apply the most favourable conditions and procedures for issuing visas to HRDs including in relation to processing times, documentary requirements, fees, MEVs, admissibility and examination of applications and LTV visas.
4. Within Local Schengen Cooperation, and with the support of EU delegations, coordinate the exercise of national discretion on issuing visas to HRDs and identify good practices to be adopted as a model.
5. Work closely with EU human rights NGOs with strong ties to activities in other countries to address the issue of mobility of HRDs.
6. Train relevant national officials to ensure that they can identify different categories of HRDs and support them.
7. Ensure provision of accessible visa-issuing services:
 - a. Ensure consular coverage in third countries and regions. Where it is not possible to have a consular presence, conclude representation arrangements or organise other forms of cooperation.
 - b. Consider reinstating consular services in the countries with visa free regime with the EU (Georgia, Ukraine, Moldova) with attention to the needs of HRD visa applicants from third countries.

- c. Introduce offices in MFAs dedicated to liaising with NGOs and HRDs including on the issue of visas.
 - d. Accelerate the introduction of electronic visa applications.
- 8. Consider the security risks and potential information leaks associated with visa centres and their staff – particularly in countries where human rights defenders and civil society activists are under significant pressure from authorities.
 - a. When external service providers are used in a third country where a Member State is represented or has a consular presence, leave open the possibility of visa applicants applying directly at the consulate.
- 9. Closely monitor the performance of external service providers to ensure that they fully respect the provisions of the legal instrument regulating their cooperation with the Member States, as outlined in Annex 10 of the Visa Code.
 - a. Provide external service providers with clear instructions, fully compliant with the Visa Code and relevant EU law.
 - b. Ensure that external service providers are adequately trained to fulfil their tasks in compliance with the Visa Code and relevant EU law.
 - c. Fully implement the newly introduced obligation to provide a complaint procedure in relation to the conduct of external service providers.
- 10. Support the introduction of more EU-funded shelter programmes for HRDs, with the support of EU delegations, and ensure that these, as well as Member State-funded civil society programmes, are effectively coordinated with visa policy.
 - a. Work with the EU Human Rights Defenders Mechanism (ProtectDefenders.eu).
 - b. Become familiar with the Shelter Cities Initiative, Human Rights Cities Network and ICORN as examples of good practice.
- 11. Ensure that effective remedies are available to exercise the rights of information, access, correction and erasure in relation to SIS alerts for the purpose of entry refusal and the right of appeal against visa refusal decisions.
- 12. Monitor that alerts in the SIS for the purpose of refusing entry comply with the principle of proportionality and are based on an individual assessment and provide training to this effect to relevant national authorities.
- 13. For non-Schengen Member States, implement all applicable recommendations through national visa policy.

Recommendations for EU institutions

1. The European Commission, supported by the Visa Committee, the European Parliament and the Council, should include instructions in the EU Visa Handbook on granting facilitations to HRDs and their family members in the context of the exercise of discretion by the Member States and the interpretation of relevant terms of the EU Visa Code as concerns processing times, documentary requirements (particularly with regard to financial stability/income/official employment, criminal records and family ties), fees, MEVs, admissibility and examination of applications, and LTV visas.
2. Strongly endorse at the political level the importance of HRDs' mobility and access to the EU in the context of the Union's support for HRDs as part of the EU External Human Rights Policy.
 - a. The Presidency of the Council should play a key role in supporting this process.
3. Work towards the introduction of amendments to the legal instruments on visas, particularly the Visa Code.
 - a. Address shortcomings in relation to the policy's user-friendliness and human rights compliance and orientation.
 - b. Introduce facilitations for HRDs based on a clear definition of a HRD, developed and implemented with input from the Common Foreign and Security Policy and EU missions and addressing the Member States' concerns in relation to immigration risks and abuse of the system.
4. COHOM should make recommendations to the Council on the issue of mobility of HRDs on the basis of information from EU delegations and promote the integration of mobility-enhancing provisions into relevant EU policies and actions.
5. The European Commission should continue monitoring Member State compliance with the legal instruments on visas, the Regulation on the SIS in the field of border checks and other relevant EU law, including the EU Charter of Fundamental Rights.
 - a. In particular, monitor the availability of effective domestic remedies in the Member States for the exercise of the rights of information, access, correction and deletion in relation to SIS alerts for the purpose of refusal of entry and the right of appeal against visa refusal decisions.
 - b. Initiate infringement proceedings, when required.
6. 'Focal points' or liaison officers for local HRDs in EU Delegations (or Member State Embassies) should liaise with consulates in relation to visas for HRDs and participate in Local Schengen Cooperation.