FRA EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS

PROTECTING HUMAN RIGHTS DEFENDERS AT RISK

EU ENTRY, STAY AND SUPPORT

REPORT

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Foreword

Across the world, human rights defenders take action to protect and promote human rights. A crucial part of civil society, they work at the forefront of upholding human rights in the most dangerous environments.

Civil society is not just useful, I believe it is essential to respectful societies that uphold human dignity. Without civil society, we would not even have the foundations for such societies.

Civil society is the brave custodian of human rights. Civil society is the guardian of hope.

We need to protect civil society. We see worrying and growing levels of threat, intimidation and harassment. Nowhere is this seen more acutely than the risks facing human rights defenders from third countries. Many face threats and attacks simply due to the nature of their work. Too often, they risk their lives and the safety of their family. Worse still, in some countries, their work is criminalised, and they face arbitrary arrest, torture, executions and assassinations.

In 2022 alone, over 400 human rights defenders were killed because of their human rights work – and this is just the number of confirmed killings.

Working in human rights has become a dangerous vocation for some. At great personal expense, they do important work to uncover human rights abuses or investigate corrupt practices in hostile environments. Defenders want to stay and continue their work in their country, even when the pressure is great.

But when the risks are too high, staying is not an option.

Emergency visas can provide much needed instant relief. Simply knowing there is an 'exit strategy' is sometimes enough. Longer-term residency can help those in exile.

Current EU law does not explicitly protect human rights defenders. There is no common, consistent EU approach.

We must figure out how to better support civil society at risk. This new research offers recommendations on how Member States can use the flexibility in existing legal provisions and provide shelter for those who flee from third states. We cannot hope for a society in which human rights are respected if we do not support and protect those fighting for it.

Michael O'Flaherty
Director

Key findings

The EU and its Member States support human rights defenders and their human rights activities at home and abroad, in accordance with the EU's policy priorities and with the United Nations (UN) and regional human rights commitments. Human rights defenders often face serious threats and attacks because of their work.

The European Commission, the European Parliament, the Council of the EU (in dedicated guidance notes) as well as civil society organisations have repeatedly called for increased opportunities for human rights defenders from third countries to access the EU in case of risk and need. While there are legal avenues for entering and staying in the EU, defenders face many obstacles in accessing them. Several Member States have set up dedicated programmes for temporary relocation of human rights defenders from outside the EU to respond to some of their specific protection needs.

In its work, the EU applies the definition of human rights defenders used in the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. The key reference document guiding the EU's work with defenders outside the EU is Ensuring Protection – European Union guidelines on human rights defenders. Approaches to human rights defenders in the EU have been set out in the recent Council Conclusions on the role of the civic space in protecting and promoting fundamental rights in the EU.

Regarding the entry and stay of human rights defenders from third countries, the general EU (Schengen) legal provisions apply. Different types of visas are currently used for this group of people, including short-term (Schengen) visas with or without limited territorial validity, various national long-stay visas such as study visas or national interest visa; and different types of residence permits.

The requirements of defenders in relocating to the EU are met by granting short-term visas under the existing rules in the EU Visa Code, often using the flexibility or facilitations that can be granted in line with this legislation, or by providing visas for longer stays under national law. The application processes, coverage of family members, length of stay and opportunity to renew such visas can vary considerably depending on the type of visa used.

Risks and mobility needs of human rights defenders

Across the world threats and attacks against human rights defenders range from verbal to physical attacks. In several third countries, human rights defenders' work is criminalised, and they can be subject to arbitrary arrest, torture, executions and assassinations. The human rights defenders facing particular challenges and risks are women human rights defenders, environmental human rights defenders and climate activists, indigenous and land rights defenders, LGBTIQ+ human rights defenders, and youth and child rights defenders.

Mobility needs of human rights defenders in relation to their work include:

- the need to relocate to be protected from risks to life, physical integrity and liberty;
- the need for rest and respite;
- the need for exchange and participation in international activities;
- the need for a 'just-in-case' safety net as part of broader protection plans.

Existing practices for defenders' mobility and relocation to the EU

Several EU Member States have implemented practices and initiatives to facilitate access to the EU specifically for human rights defenders under pressure and at risk.

This report identifies dedicated national initiatives for human rights defenders' relocation in eight Member States – Czechia, Estonia, Finland, France, Germany, Ireland, Latvia, Lithuania, the Netherlands, Poland, Spain and Sweden. It finds that human rights defenders at risk are accommodated to some extent in 18 Member States, including through city-led, academia-led or civil society-led initiatives.

Patchy protection and challenging access to visas

Relocation practices vary across the EU and defenders may find it difficult to access relocation support. In combination these factors result in the demand for protection being greater than the protection offered. The diverse mobility needs of human rights defenders necessitate a variety of responses, including emergency evacuation, temporary stay for up to one-year, longer-term stay, mobility into and within the EU, and flexible (multiple-entry) visas. For most of these, there is a legal pathway; however, these are not usually readily accessible to human rights defenders and the procedures can be lengthy.

The EU *visa acquis* provides for the possibility, in exceptional circumstances, for Member States issuing Schengen visas on humanitarian grounds even when the applicant does not meet the usual conditions. This allows human rights defenders to enter and stay in EU territory. Multiple-entry visas with a long period of validity are only occasionally provided to human rights defenders. A few Member States have occasionally applied accelerated procedures to issue Schengen visas to human rights defenders for an emergency relocation to address an immediate risk.

There are many hurdles in obtaining a visa. They can be particularly difficult for human rights defenders to overcome in certain situations. These include the length of procedures, a particular challenge for human rights defenders in need of emergency relocation. Visa applications normally require a range of documents and evidence which can be hard for defenders to provide. The most essential document is the passport, which a defender may have been denied because of their human rights work, and only in highly exceptional cases can Member States issue a travel document for foreigners.

Human rights defenders' activities may also be considered criminal and their names may be entered in International Criminal Police Organization (Interpol) databases, which may render their travel impossible. Sharing data with third-party service providers may present a security risk for defenders in some countries. Available legal avenues and support may be difficult to access for human rights defenders who live in remote areas and/or do not speak an EU language.

Support for longer-term stay in the European Union is rare

Only a few EU Member States issue residence permits to human rights defenders. In cases in which there is a need for longer-term stay, often the only avenue open to defenders is to apply for international protection. This can have the adverse effect of rendering their human rights work impossible because of their asylum seeker status. As an asylum seeker, they would not be allowed to travel to their country of origin, nor would they be allowed to carry out remunerated work, including human rights work, in the receiving country during the often lengthy asylum application process.

Some Member States provide additional support to human rights defenders to enable them to continue their human rights work during their stay in the EU. Such support includes access to a work permit, education, healthcare, banking services, capacity building, trauma relief and psychological support.

Ways forward

The EU's commitment to protect human rights defenders globally can be operationalised by enhancing their mobility into and within the EU, and by establishing measures that address their specific needs. Existing provisions in law, policies, practices and programmes at EU and national levels demonstrate that it is, in principle, possible to grant entry and stay to human rights defenders and for them to obtain funding for their human rights work. But at present there is no common, consistent EU approach.

Any support and protection instrument for human rights defenders should serve two main goals:

1. ensuring the safety, integrity and dignity of human rights defenders and their family members and community; and
2. supporting their ability to continue their human rights work.

To step up such support, the EU and its Member States could consider the following six points:

1. Making better and more frequent use of existing flexibility in EU law

Access to short-stay visas could be facilitated by applying the existing exceptions and derogations in the EU Visa Code. The EU Visa Code Handbook I – the Visa Code's implementation guidance – could provide more information about this. The EU guidelines for visa issuance in

relation to Russian applicants of September 2022 could serve as inspiration.

Consideration should be given to providing human rights defenders more often with multiple-entry Schengen visas with a long period of validity. That could be an important safety net for defenders at risk.

To facilitate greater use of the flexibility offered under existing EU law, the European Commission could compile a dedicated catalogue of the various options available to human rights defenders to come and stay lawfully in the EU, translate it into the relevant languages and make it available online, for example on the https://protectdefenders.eu/ platform.

2. Introducing and broadening existing programmes

EU Member States that do not yet have a relocation programme in place could consider introducing practices building on lessons learned from existing programmes.

Where relocation programmes establish specific requirements regarding the 'type' of human rights defender (such as journalist, artist), their language knowledge or the region or country they come from, consideration could be given to expanding the scope of these programmes. The inclusion of family members can be an important element in protecting human rights defenders.

3. Improving awareness about human rights defenders

Improve awareness about who human rights defenders are, what they do and how they could best be supported to continue their human rights work, both in their home countries and while in relocation.

This includes raising awareness among visa officers and border guards of the specifics of human rights defenders' challenges and support needs. It also includes raising awareness of the role, advantages and potential risks of the future digitalisation of the visa process and of EU large-scale IT systems in the areas of migration and security, including on how alerts in Interpol databases can affect human rights defenders.

A better understanding needs to be developed concerning the risks faced by family members of human rights defenders (including those in LGBTIQ+ partnerships).

4. Considering the benefits and risks of digitalisation of and technology use in border crossing procedures

It is important to take into account the benefits and risks of digitalisation and the use of technology impacting on human rights defenders' opportunities to come to the EU. This includes for instance automated checks against databases as part of the processing of the visa application, and the requirement to submit applications online, or through an intermediary (external service provider).

5. Providing more adequate support during stay

Support for relocated human rights defenders in the EU beyond the provision of visa and

residence permits should be provided, with the overall aim of enabling them to effectively continue their human rights work. Such support measures require sustainable funding. They include provision of housing and access to healthcare, employment, capacity building and advocacy assistance, the possibility to set up a non-governmental organisation (NGO) and to receive funding for their activities, and measures for rest and respite, including trauma relief and psychological support. Vulnerable individuals should be informed of the resources available to them and those facing transnational repression should receive targeted support.

6. Reviewing the adequacy of legal tools for supporting human rights defenders

The EU could review the adequacy of its legal tools for supporting human rights defenders, especially the Visa Code, the Visa information system (VIS) Regulation, and the European travel information and authorisation system (ETIAS) Regulation, and if necessary suggest possible amendments.

Introduction

The EU considers human rights defenders “natural and indispensable allies” in promoting human rights and democracy [1] and “essential in our constitutional democratic societies to bring life to and protect the values and rights enshrined in Article 2 of the Treaty on European Union (TEU) and in the Charter”. [2] Consequently, at home and abroad, the EU and its Member States support human rights defenders and their human rights work, in accordance with United Nations and regional human rights commitments.

Individuals defending human rights, democracy and the rule of law across the world are often subject to threats and attacks.

The European Parliament has repeatedly expressed concern over attacks and threats against human rights defenders and their family members worldwide, and pointed to the obstacles encountered by human rights defenders seeking to lawfully enter the EU. [3] The Parliament has called for an EU-wide scheme for issuing short-term humanitarian visas to human rights defenders and for a more coordinated EU policy on the provision of emergency visas for human rights defenders by Member States. It has also called on the EU to develop a more predictable, coordinated and consistent policy on visas for human rights defenders, allowing for flexible and reactive legal pathways for entry to the EU, including in critical situations.

The European Commission has acknowledged the need to improve the consistency of EU policy in support of human rights defenders, and the need to better implement the EU guidelines on human rights defenders. [4] Civil society actors have also repeatedly called for reform of the existing support schemes for human rights defenders and EU rules to protect human rights defenders, including by setting up coherent and clear legal channels to reach EU territory safely and swiftly where necessary. [5]

The Council adopted two internal guidance notes, in 2016 and 2020, [6] on implementing the EU Guidelines on Human Rights Defenders. [7] The guidelines and guidance notes suggest specific actions that EU authorities should take to foster a safe and enabling environment and to support and protect HRDs and their work. This notably includes the suggestions to provide support in visa procedures for human rights defenders at risk and to strengthen temporary relocation mechanisms.

Currently, EU law does not provide explicit and specific protection to human rights defenders. Still, this report highlights how 18 Member States accommodate human rights defenders at risk in different ways. Of those, eight have comprehensive programmes in place to receive and accommodate human rights defenders (Czechia, France, Germany, Ireland, Lithuania, the Netherlands, Poland and Spain) and two have been looking into developing similar initiatives (Finland and Luxembourg), two receive artists at risk (Finland and Sweden), and two have recently created dedicated access to visas specifically for defenders from Belarus or Russia (Estonia and Latvia).

In addition, there are examples of initiatives, run by cities, universities or civil society organisations across the EU, that accommodate defenders and support them in the visa process. For instance, the Cities of Refuge initiative, coordinated by the International Cities of Refuge Network (ICORN), operates in 11 EU Member States –Belgium, Denmark, Finland, France, Germany, the Netherlands, Poland, Slovakia, Slovenia, Spain and Sweden. There are also entities in several Member States that are part of the Artists at Risk and the Scholars at Risk networks.

At the request of the European Parliament in December 2022, this report outlines how human rights defenders can enter and stay in the EU when they need protection. It explains who human rights defenders are, what rights and responsibilities they have, what risks they face and therefore what kind of relocation needs they may have. It then introduces the role of the EU and EU law regarding human rights defenders and describes existing options facilitating human rights defenders' entry and stay in the EU. It also lists existing practices of human rights defender mobility and relocation in EU Member States and beyond.

Finally, it points to concrete ways on how the EU and its Member States could facilitate the entry and stay in the EU of human rights defenders so that they can continue their human rights work in their own countries and communities in the long term.

1. Definition, rights and responsibilities of human rights defenders in European Union policies

The raison d'être of human rights defenders is to build just and civil societies in their own countries. They often do so at great risk and under constant pressure. We need flexible visa systems for them, so that they can get out when the risk is high or the pressure too much, and go back afterwards to continue their work.

Mary Lawlor, UN Special Rapporteur on the situation of human rights defenders, interview with FRA, 8 March 2023

1.1 Who is a human rights defender?

EU law does not contain a legally binding definition of the term human rights defenders as such. The EU typically refers to the UN Declaration on Human Rights Defenders in its work.

A proposed EU directive [8] on strategic lawsuits against public participation (SLAPPs) (which applies to matters of a civil or commercial nature with cross-border implications) aims to protect people who engage in public participation from manifestly unfounded or abusive court proceedings. In the proposal, under Recital 7, they refer to human rights defenders as "*individuals or organisations engaged in defending fundamental rights and a variety of other rights, such as environmental and climate rights, women's rights, LGBTIQ rights, the rights of the people with a minority racial or ethnic background, labour rights or religious freedoms. Other participants in public debate, such as academics and researchers, also deserve adequate protection*."

Terminology

Human rights defenders

For this report, FRA uses the term 'human rights defenders' in line with the 2008 EU guidelines on human rights defenders:

"Human rights defenders are those individuals, groups and organs of society that promote and protect universally recognised human rights and fundamental freedoms. Human rights defenders seek the promotion and protection of civil and political rights as well as the promotion, protection and realisation of economic, social and cultural rights. Human rights defenders also promote and protect the rights of members of groups such as indigenous communities. The definition does not include those individuals or groups who commit or propagate violence."

Source: Council of the EU, Ensuring protection – European Union guidelines on human rights defenders, 2008, paragraph 3.

The European Commission uses the same description in its recommendation on the same matter, adopted in April 2022. [9]

The broad approach taken in the 2008 EU Guidelines builds on the position taken by the UN system. The Office of the United Nations High Commissioner for Human Rights (OHCHR) [10] underlines that:

HRDs are all persons, who individually or in association with others, act peacefully to promote or protect human rights. HRDs include individuals and members of groups and associations that can act locally, nationally and/or internationally. Human rights defenders are active in every part of the world, trying to promote and protect human rights of all often in difficult situations. In many countries, they have been the target of killings, torture, beatings, arbitrary arrest and detention, threats to them and their family, harassment, and defamation, as well as restrictions on their freedoms of movement, expression, association, and assembly. HRDs have also been the victims of false accusations and unfair trials and convictions. The world has witnessed a shrinking of civic space and an increase in attacks on human rights. Human rights defenders have been subject to threats, intimidation, and violence online and offline."

Acting collectively or individually, HRDs are typically involved in documenting, reporting and peacefully opposing human rights violations; providing legal, psychological, medical or other practical support to victims of such abuses where they occur; and promoting knowledge and respect for human rights.

Human rights defenders may be active at different levels of society, from the local to the national, regional and international. While some may be human rights lawyers and/or members of registered human rights organisations or trade unions, many operate at grassroots level, outside

formalised associative structures. Their efforts contribute to the realisation of the entire spectrum of recognised human rights, and to the development, discussion and acceptance of human rights.

1.2 Rights and responsibilities of human rights defenders

The rights and responsibilities of human rights defenders were recognised in 1998 through the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, [11] commonly referred to as the UN Declaration on Human Rights Defenders which was adopted by consensus by the UN General Assembly. The declaration outlines the rights of defenders (see box 'UN Declaration on Human Rights Defenders: human rights defenders' role and rights') and the duty of states to protect defenders (see box 'UN Declaration on Human Rights Defenders: states' responsibilities and duties'). It recognised for the first time the role of everyone in defending rights, not just States. This was followed in 2000 by the creation of a mandate for a UN Special Rapporteur on the situation of human rights defenders to promote the Declaration's effective implementation. [12]

Since the adoption of the declaration, several states have adopted legislation or policies on the role of human rights defenders and on the responsibility of states to support and offer them protection. [13] UN treaty bodies regularly refer to human rights defenders. [14]

The OSCE Guidelines on human rights defenders of 2014 also focus on protection of human rights of those who are at risk as a result of their human rights work. [15]

In addition, the Inter-American Court of Human Rights adjudicated cases concerning human rights defenders. It concluded, for instance, that states are obliged not only "to create the legal and formal conditions, but also to ensure the real conditions in which human rights defenders can freely carry out their work" and to provide "the necessary means" in that regard. [16]

The protection of human rights defenders has been further developed in the context of environmental protection law. Article 3 (8) of the Aarhus Convention – to which the EU and all its Member States are party – contains a duty whereby people exercising their rights under the convention should not be penalised, persecuted or harassed. [17] Based on this provision, in 2021 the parties to the convention adopted a rapid response mechanism to protect environmental defenders. [18]

Legal Corner

UN Declaration on Human Rights Defenders – Human rights defenders' role and rights

● Article 1: 'Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms (…)'

- Article 7: 'Everyone has the right, individually and in association with others, to develop and discuss new human rights ideas and principles and to advocate their acceptance.'
- Article 9.1: 'In the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights as referred to in the present Declaration, everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of the violation of those rights.'
- Article 12.1: 'Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms.'
- Article 13: 'Everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means (…).'

Source: OHCHR (1998), Declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms, A/RES/53/144

The Declaration on human rights defenders also outlines the responsibilities of states vis-à-vis human rights defenders (see the box below). For a comprehensive overview of rights connected to the right to promote and protect human rights, see the full text of the declaration. [19]

Legal corner

UN Declaration on Human Rights Defenders – states' responsibilities and duties

- Article 2:
    1. "Each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, *inter alia*, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice."
    2. "Each State shall adopt such legislative, administrative and other steps as may be necessary to ensure that the rights and freedoms referred to in the present Declaration are effectively guaranteed."
- Article 12. 2. "The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, *de facto* or *de jure* adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration."

Source: OHCHR (1998), Declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms, A/RES/53/144

1.3 Human rights defenders in EU policies

For the EU, human rights defenders are 'natural and indispensable allies' in the promotion of human rights and democracy externally, [20] and within the EU they are considered 'essential in our constitutional democratic societies to bring life to and protect the values and rights enshrined in Article 2 of the Treaty on European Union (TEU) and in the Charter'. [21]

1.3.1 External dimension of the European Union commitment towards human rights defenders

Political and financial support for human rights defenders is a long-established element of the EU's external human rights policy. The EU guidelines on human rights defenders are the primary embodiment of this prioritisation.

> *Courageous individuals fighting for human rights worldwide frequently find themselves the target of oppression and coercion; the EU will intensify its*

political and financial support for human rights defenders and step up its efforts against all forms of reprisals.

Council of the European Union (2012),
EU Strategic Framework and Action Plan on human rights and democracy

The EU adopted the guidelines on human rights defenders for its external policies in 2004 and revised them in 2008. [22] In 2012, they were reinforced through the EU Strategic framework and action plan on human rights and democracy. [23] The Council Working Party on Human Rights (COHOM) adopted an internal Guidance note for EU Missions on the effective and consistent implementation of the EU Guidelines on human rights defenders in 2014, which was revised in 2020 [24] to reflect the EU Action plan on human rights and democracy 2020-2024. [25] The guidance note (not publicly available) gives instructions to EU delegations and EU Member State embassies on how to adapt protection measures to current challenges (such as digital threats) and to specific groups of human rights defenders (LGBTIQ, land and environmental, women human rights defenders).

The current action plan calls for the systematic and coordinated use of the guidelines, regular dialogue with civil society and human rights defenders, and direct support for defenders. [26] On this basis, every EU delegation has a pluri-annual human rights and democracy country strategy (2020-2024) (not publicly available). According to the EEAS, civic space and human rights defenders are noted as a priority in most of these strategy documents.

The guidelines, read alongside the internal guidance notes, suggest a range of specific actions for the support and protection of human rights defenders by the EU. They include, in the relevant countries, actions such as nominating an EU liaison officer on human rights defenders in every country where the EU is represented; connecting regularly with and among defenders; visiting defenders at risk, in detention or under house arrest; trial observation; and more generally promoting an open civic space and a safe and enabling environment while strengthening monitoring and improving reporting. It notably also includes the suggestion to improve training of EU and Member State staff for a better understanding of the protection needs of human rights defenders.

The guidance note also calls on EU delegations, in particular local Schengen correspondents, to exchange information with EU Member States on the ground, and to raise awareness of protection and relocation needs of human rights defenders.

Another key point is the provision of support in visa procedures for human rights defenders at risk and the strengthening of temporary relocation mechanisms.

Legal corner

Strengthen temporary relocation mechanisms

- Facilitating temporary relocation for family members when they are at risk or dependant on the defender, taking into account specific circumstances of HRDs without discrimination of any kind, including for LGBTI defenders' partners. It is important to contemplate possibilities for regional relocation, to facilitate the continuity of the HRD work and avoid the additional difficulties related to cultural adjustment.
- Increase the Shelter City network and work with the European municipalities - consider more burden sharing in this respect.
- Consider financial support to local and regional relocation initiatives in complementarity with other EU support."

Source: Council of the European Union, *EU guidelines on human rights defenders – Guidance note 2020*, COHOM 56, COPS 253, CFSP/PESC 635 (not publicly available), p. 17.

In addition, in May 2023, the EU's Education, Youth, Culture and Sport Council adopted Council conclusions specifically on at-risk and displaced artists, which stress that artists should be offered protection. The conclusions speak of 'the need for preparedness in Europe to offer support to at-risk and displaced artists in both the short and the long term, through the appropriate institutional and legal frameworks' and invite Member States to 'consider taking further measures to enhance the capacity to offer safe havens and so-called "cities of refuge" for at-risk and displaced artists from different parts of the world.' [27]

The EU's support provided to human rights defenders is driven by the network of 140 EU delegations across the world, and by the EEAS headquarters in Brussels. The EU regularly supports human rights defenders through public diplomacy (statements), and political and human rights dialogues, and in other ways such as trial monitoring, visits in detention and financial emergency support. It also regularly raises individual cases with authorities.

But NGOs have pointed to certain shortcomings in EU actions to support human rights defenders. [28] EU delegations have established more human rights awards for human rights defenders (e.g., in Honduras and Uganda) and more public campaigns to support defenders (e.g., in Colombia and Mexico). The EU also co-organises the annual EU-NGO Human Rights Forum with the civil society organisation Human Rights and Democracy Network, gathering hundreds of defenders in Brussels together with EU and UN experts on specific topics.

The EU, in particular the EEAS and the Directorate-General for International Partnerships, also provides annual trainings for EU delegations (political and operational sections) on human rights defender protection.

The EU guidelines on human rights defenders are complemented by awareness-raising measures and EU funding. Since 1988, the European Parliament's Sakharov Prize for Freedom of Thought has been awarded to individuals or organisations that have made an important contribution to the fight for human rights or democracy.

The EU's financial support has been provided in particular through the European Instrument for Democracy and Human Rights, now replaced by the Global Europe human rights and democracy programme. [29] This Programme maintains short-, medium- and long-term holistic support for human rights defenders as a priority in the EU's efforts to promote and protect human rights, fundamental freedoms, democracy and the rule of law around the world. The budget for the implementation of the programme is EUR 1.5 billion for 2021-2027.

The European Parliament published a landmark report on EU policies in favour of human rights defenders already in 2010, which took stock of the implementation of the EU guidelines on human rights defenders, and tabled several proposals for a more effective policy with regard to human rights defenders. [30] In 2023, the European Parliament adopted a report on the EU guidelines on human rights defenders [31] noting that: *"the overall application of the Guidelines by the European External Action Service (EEAS), the Commission and the Member States has been uneven, largely focusing on reactive measures, lacking a consistent overall implementation of the strategy and being characterised by insufficient visibility of EU action and channels of support for HRDs".*

The report highlights that a human rights defender dimension has yet to be integrated into all EU external action in a systematic and consistent manner. It also 'notes with regret the fact that many human rights defenders and their families continue to see their urgent relocation or visa requests denied' and makes a range of suggestions on how to improve the situation. Every month, the European Parliament issues three urgency resolutions in Strasbourg, on a specific country, in which human rights defenders' cases are mentioned. [32]

In 2018, the Committee of Ministers of the Council of Europe adopted a recommendation on the need to strengthen the protection and promotion of civil society space in Europe. [33] The appendix to the non-binding recommendation states that Member States should "provide measures for swift assistance and protection for human rights defenders in danger in other countries, such as, where appropriate, attendance and observation of trials and/or, if feasible, the issuing of emergency visas."

Providing access to reliable avenues for human rights defenders to enter and stay on EU territory is also consonant with the 2018 *Global Compact for Safe, Orderly and Regular Migration*, signed by 18 of the 27 Member States, in which states committed to put in place standards and mechanisms designed to 'facilitate' mobility across international borders.

1.3.2 Internal dimension of the European Union commitment towards human rights defenders

The EU has also made clear commitments to support human rights defenders within the EU. A

series of statements show that a free and active civil society is considered an essential component of a strong rule of law system, [34] promoting the use and awareness of the Charter of Fundamental rights of the European Union and a culture of value, [35] a precondition for healthy democracies [36], and a safeguard for citizens preventing and reacting to violations or abuses. [37] FRA has reported annually on civic space developments across the EU since 2018. [38] All three major EU institutions acknowledged civic space pressures inside the EU in official documents:

- European Parliament resolution on civic space in the EU (March 2022) [39]
- European Commission report on the application of the Charter of Fundamental Rights of the European Union and civic space (December 2022) [40]
- Council Conclusions on the role of the civic space in protecting and promoting fundamental rights in the EU (February 2023) [41]

The European Commission has launched, against Member States, infringement proceedings relevant for the protection of civic space. [42] The 2022 European Commission proposal for an EU law against strategic lawsuits against public participation (SLAPP) refers explicitly to human rights defenders and applies to cases that have cross-border implications within the EU. [43] The directive's proposal states that human rights defenders 'play an important role in European democracies, especially in upholding fundamental rights, democratic values, social inclusion, environmental protection and the rule of law' and that they should be able to participate actively in public life and make their voice heard on policy matters and in decision-making processes 'without fear of intimidation'.

While the European Commission's recent proposal for a corporate sustainability due diligence directive (CSDDD) [44] does not explicitly mention human rights defenders, the amendments proposed by the European Parliament explicitly refer to human rights and environmental rights defenders. The Directive would oblige companies to engage with defenders, and Member States to ensure their safety as well as ensure structural ability to submit notifications about concerns regarding actual or potential adverse human rights or environmental impacts with respect to the companies. [45] The Parliament proposes references to human rights and environmental rights defenders in several recitals and articles, highlighting that:

"human rights and environmental rights defenders are on the front line of the consequences of adverse environmental and human rights impacts worldwide and in the EU, and have been threatened, intimidated, persecuted, harassed or even murdered. Companies should therefore not expose them to any kind of violence" (Recital 65a).

The EU also started providing significant EU funding for fundamental rights within the EU. This is most prominent in the current funding period: in 2020, the European Commission introduced a new funding programme for civil society in the EU, focusing on the support of democracy, fundamental rights and values, the Citizens, Equality, Rights and Values Programme (CERV). [46] CERV for example provides funds for civil society organisations [47], strategic litigators [48] and whistle-blowers. [49]

2. Human rights defenders' risks, challenges and needs

Human rights defenders around the globe face numerous risks and threats, including verbal and physical attacks; criminalisation and arbitrary arrest; and torture, executions and other killings. [50] The UN Special Rapporteur on the situation of human rights defenders, the UN Special Rapporteur on environmental defenders, the Council of Europe's Commissioner for Human Rights, the Organization for Security and Cooperation in Europe's Office for Democratic Institutions and Human Rights, the Inter-American Commission on Human Rights and other public bodies all have collected ample evidence and testimonies regarding the risks and threats experienced by human rights defenders globally, as have the EU-financed ProtectDefefenders.eu mechanism and numerous NGOs. [51]

Globally, there were at least 401 verified killings of human rights defenders in 2022 alone, in 26 countries, as reported by the *HRD Memorial* project. [52] The overall number is likely to be higher since killings in remote areas, self-censorship by communities fearing reprisals, and suppression of information make it challenging to verify cases. Cases reported to the NGO Front Line Defenders through its programmes indicate that the top five threats and violations against human rights defenders are arrest or detention (19.5%), legal action (14.2%), physical attack (12.8%), death threats (10.9%) and surveillance (9.6%). [53]

2.1 Risks for human rights defenders

Judicial persecution is one of the main drivers motivating human rights defenders' decisions to leave their country, according to a study on human rights defenders in long-term exile by the International Partnership for Human Rights (IPHR). [54] But the great majority of human rights defenders (90% of the interviewed defenders) decide to leave their home country because of different threats. Such threats were typically related to their work and were ongoing for an extended period.

In certain cases, a specific event acted as a catalyst, placing the human rights defender in imminent danger, such as participating in a protest, helping activists to leave the country or holding a speech criticising the ruling regime.

A range of risks for human rights defenders have been documented:

- killings and executions;
- enforced disappearance;
- torture;
- physical attacks;
- arbitrary arrest and detention;
- long-term imprisonment (10 years or longer);

- harassment, including gender-based abuse;
- physical and digital surveillance;
- online threats such as smear campaigns, doxing and targeted internet shutdowns;
- criminalisation;
- legal action, including strategic lawsuits against public participation (SLAPPs) or prosecution of unfounded charges;
- threats against them and their family members, including death threats;
- raids / break-ins / theft;
- defamation;
- questioning/interrogations;
- smear campaigns in state-controlled media;
- transnational repression.

As the UN Office of the High Commissioner for Human Rights [55] notes:

"Violations most commonly target either human rights defenders themselves or the organizations and mechanisms through which they work. Occasionally, violations target members of defenders' families, as a means of applying pressure to the defender. Some human rights defenders are at greater risk because of the nature of the rights they seek to protect. Women human rights defenders might confront in addition risks that are gender-specific and require particular attention.".

Other human rights defenders are also facing particular challenges and risks, such as environmental human rights defenders and climate activists, indigenous and land rights defenders, LGBTIQ+ human rights defenders, and youth and child rights defenders.

Regarding the issue of surveillance, the European Parliament has recently called on Member States to stop using spyware for surveillance of civil society actors and activists as this constitutes a severe violation of fundamental rights and underscores democracy. [56]

2.2 Need for temporary stay in the European Union

The engagement and work of human rights defenders is invariably intertwined with the societies and places in which they live. In most instances, effective support should seek to enable human rights defenders to continue their human rights work in their location and community.

However, there are circumstances in which moving to another country in the region, or to the EU, may be the only means of protecting defenders and enabling them to continue their work in their countries of origin in the long term. This has been underlined by the EU-funded ProtectDefenders.eu mechanism (a consortium of 12 NGOs) and the European Parliament, among others, and is reflected in the EU guidelines on human rights defenders and the respective

guidance notes. [57] There are also situations in which human rights defenders need to travel for respite, or to participate in events by international organisations, the EU or Member States.

There are no figures available to estimate the number of human rights defenders globally in need of relocation – inside their country, to a neighbouring country, or to other regions including the EU. There is usually an enhanced need in conflict situations, such as for Afghan defenders since 2021 or Russian and Ukrainian defenders since 2022. Considering the number of cases concerning human rights defenders at risk officially raised with states by the UN Special Rapporteur on the situation of human rights defenders, it is certainly clear that this is not a rare phenomenon. Between May 2020, when she took up her mandate, and June 2023, the current Special Rapporteur on the situation of human rights defenders signed 735 official communications sent to UN Member States and other actors concerning human rights defenders at risk, some of whom may need to turn to relocation as a means of last resort [58] .

Table 1 sets out some of the common mobility needs of human rights defenders in relation to their work. These cover the following types of situations in which short-term visits and/or longer stay in the EU may be necessary to protect human rights defenders and to support their work.

Table 1 – Human rights defenders' relocation needs and required responses

Type of situation	Required response	Existing legal tools
• Immediate risk to life, physical integrity and liberty	• Emergency evacuation	● Schengen C visa issued with urgency, immediately, or upon arrival in the EU at the external borders, using available flexibility under the Visa Code – but reactivity of the competent authorities of the Member States is often too slow
• Short- to medium-term risk to life, physical integrity and liberty (up to 1 year)	• Temporary stay	• Schengen C visa (up to 90 days in a 180-day period) • National D visa (beyond 3 months, up to 12 months)
• Long-term risk to life, physical integrity and liberty (1+ years)	• Long-term stay	• Residence permit issued under national or EU law (on humanitarian grounds, in the national interest, for the purposes of study or research etc.) • International protection under the qualification directive (refugee status or subsidiary protection)
• Anticipated risk to life, physical integrity and liberty	• Temporary stay	• Schengen Cvisa with long validity (maximum 5 years) • National D visa (beyond 3 months, up to 12 months)
• Preventive protection for unanticipated risk	• Flexible (multiple-entry) visa	• Multiple-entry Schengen Cvisa with long validity (maximum 5 years) • Multiple-entry national D visa (beyond 3 months, up to 12 months)
• Rest and respite	• Temporary stay	• Schengen C visa (up to 90 days in a 180-day period) • National D visa (beyond three months, up to 12 months)
• Exchange and participation	• Mobility into and within the EU	• Multiple-entry Schengen Cvisa with long validity (maximum 5 years) • Multiple-entry national D visa (beyond 3 months, up to 12 months)

Source: FRA, 2023.

The following real-life story illustrates the response to the needs of a human rights defender from Iran.

Real-life story

Student visa for relocation purposes

An Iranian journalist, human rights defender and scholar had already fled to Turkey when they were offered residency in Belgium under the programme of the International Cities of Refuge Network (ICORN). Their work largely focuses on tackling LGBTQI+ issues and sexism, and criticism of the Iranian regime, and they continued facing persecution, threats, harassment and defamation in Turkey.

As the defender's safety was at risk and they were unable to work freely, they required relocation and protection. Being a scholar, they were invited by an ICORN city in Belgium on the grounds of university enrolment for one academic year, with the possibility of extension. With the help of a lawyer, a student visa application was prepared, and significant numbers of the required personal, financial, and medical records were gathered. The visa was issued shortly after submission.

Source: Information provided by ICORN.

2.2.1 Risks to life, physical integrity and liberty

> *In situations where the pressure becomes too unbearable and the risks too great, human rights defenders need an exit strategy.*
>
> Mary Lawlor, UN Special Rapporteur on the situation of human rights defenders, interview with FRA, 8 March 2023

A number of human rights defenders, and in many cases also their family members, are facing risks to their life, physical integrity and liberty. In some situations, risks are immediate and pressing. Human rights defenders and/or their family members may receive death threats, suffer an assassination attempt, face a high risk of arbitrary arrest or detention, or be subject to similar risks of mistreatment. They may require emergency evacuation. In such circumstances, it may be possible to mitigate the risk by supporting a defender's temporary relocation within their home country.

However, in-country relocation may not always be appropriate, since threats of arrest, for example, are national. Similarly, neighbouring countries may not be the best option for relocation of human rights defenders to find safety, considering a hostile climate for defenders generally; the risk of transnational repression, including activities of security forces from country A in country B, or collaboration between the governments of country A and B (e.g., risk of *refoulement*). In such cases, evacuation to another country, including in the EU, may be the most practical solution to enable the defender to escape persecution and find protection.

Real-life story

Long-term risk and possibility of continuing human rights work after relocation

A Belarusian media outlet became the target of persecution that included judicial liquidation and searches of its offices and the homes of its staff. The support provided via the Czech 'civil society programme' helped the journalists relocate to Czechia with their families and continue their activities, although their colleagues were charged and received lengthy prison sentences. Importantly, because they were able to register their media outlet locally and had access to banking. they were able to continue their work smoothly.

Source: Information provided by People in Need, an NGO in Czechia.

The family members of human rights defenders are often exposed to the same security risks as the defender and may need a similar level of protection. Sometimes such risks also extend to close associates, cooperation partners or members of the community. Family members may also be affected indirectly when the respective human rights defenders are able to relocate but their families are left behind without financial support. Another specific situation is when family members are evacuated to ensure their safety, while the human rights defender stays in the country to continue their human rights work.

In other situations, human rights defenders have a need for medium- or long-term protection to avoid serious risk for themselves and their families. In the IPHR study on human rights defenders in exile, when asked to distinguish between 'relocation' and 'exile', the majority of defenders identified exile as a perceived lack of choice to return compared with relocation. For some respondents, an initial decision to leave their country temporarily eventually transformed into a permanent solution. [59]

Real-life story

Deciding whether to stay short- or long-term

A human rights defender from Bahrein says that it took her/him some time to decide to leave the country into exile. Initially, s/he felt unsafe and targeted, and decided to leave but without any specific plan. The hope was that things would calm down and there would be an opportunity to go back. Yet, the defender faced criminal charges in Bahrein, which took over one and a half years to deal with. So, s/he started to settle down and realised that a long-term solution was the safer option.

Source: Information provided by People in Need.

Real-life story

Protection in case of anticipated risk

A human rights defender from Belarus who participated in election monitoring and subsequently reported on violations was subject to intimidation by the security forces who threatened the defender with imprisonment unless s/he gave out the names of other election observers. Receiving a long-term visa was extremely important for the defender to safely continue his/her work. This was also important for the colleagues to avoid persecution in case their names had been communicated under pressure of the security forces.

Source: Information provided by People in Need.

2.2.2 Need for a safety net for unanticipated risk as part of broader protection plans

Unlike cases of 'anticipated risk', unforeseen risks cannot be planned for but require precaution. Visas, and in particular multiple-entry visas with a long validity period, are widely regarded by human rights defenders as a key element of a comprehensive (and preventive) security strategy for such cases. Such multiple-entry visas enable defenders to move in and out of their country quickly, reacting to changes in the level of risk, and at the same time to continue to work in their communities without forcing them to resort to permanent asylum paths when facing aggravated threats. [60] In many cases, simply knowing about the opportunity to relocate in case of immediate risk can constitute a very effective form of support for human rights defenders, empowering them to continue their work knowing that they have an exit strategy in place.

Real-life story

Example of a 'just-in-case' safety net

In 2018, a researcher for Amnesty International Russia was abducted while on a mission in the North Caucasus, where he was subjected to ill-treatment and threatened, supposedly by law enforcement officials. He happened to have a Schengen visa at the time, which allowed him to leave the country within a few days and stay in Germany together with his family to recover and assess the security risks.

Information about the incident was publicised without fear for his or his family's safety and prompted the authorities to start an investigation. Several weeks later, after a security assessment, it was deemed safe for him to return to Russia and continue his work.

Source: Amnesty International (2018), Russia: Amnesty researcher abducted and subjected to mock executions in Ingushetia

2.2.3 Need for recovery, rest and respite

> *"The intention is that participating defenders will return and continue their work in their own country, with new energy, skills, and contacts."*
>
> Shelter Cities Programme [61]

Alongside the risk of retaliation human rights defenders face for the work they do, they are often exposed to prolonged situations of heightened tension, stress and worry. Many come face-to-face with human rights violations and engage with victims of such abuse on a regular basis. Defenders themselves are often victims of violations or are members of communities at risk or under pressure, exposing them to post-traumatic stress disorder (PTSD) and/or secondary PTSD. A study has shown that levels of PTSD among front-line human rights defenders can be as high as among first responders and even combat veterans. [62] Some defenders may also face increased burdens as a result of being stigmatised in society for the work they do. This can be the case particularly for women's rights activists or LGBTIQ+ defenders.

Under such pressures, defenders can benefit from a period of rest and respite in a safe environment to recover, build capacity, and return to their work recharged. This may not be possible in their own communities, where the stigma, pressures and risks they encounter may persist, and thus defenders may need to travel to find space to recover. Certain circumstances, including security risks, may also make real recuperation impossible in their home countries and regions. In such cases, travel to the EU for a temporary stay may provide a solution.

Real-life story

Need for rest and advocacy

A human rights defender worked with several organisations in the Cauca Department of Colombia. They worked to promote human rights with rural communities, including farmers, indigenous groups and student and workers' unions in the region and held dialogues with state officials. They also helped local community leaders with legal actions to demand the rights to be respected, including by liaising with the human rights commission (Defensoria del Pueblo) in the case of threats to local community leaders. Due to this work, they were physically attacked and received threats. Amnesty International Spain gave the defender the opportunity to relocate to Spain for 1 year to get away from danger. They arrived in 2021 and were able to conduct activities including awareness raising and advocacy. They were also able to rest.

Source: Information provided by Amnesty International.

Real-life story

Need for rest and respite

An Uzbek human rights defender and prisoner of conscience was restricted from leaving the country after his release. Only after interference from international organisations was he allowed to travel to the EU. The facilitation of a Schengen visa allowed him to participate in several high-level advocacy events and undergo a month-long rest and respite programme. This journey motivated him to continue his work.

Source: Information provided by People in Need.

2.2.4 Need for exchange and participation in activities

EU institutions, as well as NGOs, organise events and offer opportunities for exchange, networking and capacity building for the professional and personal development of human rights defenders. These sometimes take place inside the EU and have the related aim of connecting human rights defenders from different parts of the world. To benefit from such opportunities, defenders need to be able to enter the EU. While it is rare for human rights defenders to be denied visas to attend conferences or events organised by the UN or the EU, human rights defenders frequently report practical challenges in accessing visas for these purposes – including for events organised and/or funded by the EU itself. [63] A report presented to the UN General Assembly in 2014 by the then Special Rapporteur on the rights to freedom of peaceful assembly and association noted 'inhospitable visa regimes' being a source of concern regarding the

participation of civil society actors at institutions headquartered in western Europe. [64] Human rights defenders in the EU who already hold a visa with limited territorial validity also experience these challenges. ProtectDefenders.eu reports that it regularly faces challenges in bringing human rights defenders staying in an EU Member State to Brussels for meetings or capacity building activities. [65]

Real-life story

Getting a visa too late to attend a conference

A human rights defender and Russian citizen who had been living and working at a human rights NGO in the United Kingdom for many years applied for a Belgian Schengen visa to attend several events in Brussels. Instead of being issued with a multiple-entry long-term visa that she had applied for, she was issued a single-entry visa for just a few days of the first event. Moreover, she had waited for months and only received the passport with the visa after it had expired. In response to her enquiry, the Belgian consulate cited EU guidelines that recommended giving single-entry visas to Russian nationals traveling for tourist purposes. It also said the waiting times were longer because of the withdrawal of the United Kingdom from the EU.

Source: Information provided by Araminta and Amnesty International.

The usual application procedure for a Schengen visa, without visa facilitations being granted in advance by the competent consulate, is costly and time consuming. It is particularly challenging for human rights defenders who live far from embassies or consulates, org those living in countries without embassies or consulates. Applications require providing documentation and attending an in-person appointment with the relevant authority competent for their place of residence. Where the local security context is rapidly deteriorating or where risks are escalating quickly, the time frame for discussion decisions on action at international organisations' headquarters can be short – often too short for defenders with direct experience to be able to receive a visa in time to participate in such discussions. Although opportunities for online participation have increased since the start of the COVID-19 pandemic, there are some noteworthy challenges around such online participation, such as internet shutdowns, energy supply issues, connectivity challenges, the risk of surveillance, and imposed media blackouts.

2.3 Support needs during short and long-term stay in the European Union

"Host organisations play a central role in the implementation of protection stays. They accompany the human rights defenders, promote exchange,

and prevent isolation. This allows human rights defenders to rest, to deal with trauma, to continue human rights work from a safe place, to build contacts that have a lasting effect, and to prepare for one's return."

Elisabeth Selbert Initiative [66]

This section focuses on cases in which human rights defenders have come to the EU for rest and respite or to escape a serious risk of immediate harm. In such cases, the main aims of relocating human rights defenders to the EU are first to protect them from harm, and second to enable them to continue their human rights work in the long term. To achieve these, human rights defenders need several types of support once in the EU. Interviews with civil society organisations and with human rights defenders in exile and secondary research point to the need for support in the following areas:

- access to rights and services;
- recovery;
- support to continue their human rights work;
- addressing security threats;
- integration for those defenders requiring longer term stay;
- the opportunity to travel inside the EU for networking and advocacy purposes;
- support in case of lack/expiry of valid travel document.

Table 2 details the different types of support that relocated human rights defenders need under the seven areas listed above.

Table 2 – Support needs of human rights defenders during short and long-term stay in the EU

Support needs	Short-term stay / rest and respite	Long-term stay / exile
• Access to rights and services	• Financial assistance • Help with accommodation • Access to banking services • Access to education • Insurance	• Financial assistance • Help with accommodation • Access to banking services • Access to education • Legal aid • Assistance with schooling for children • Insurance
• Recovery	• Medical aid and dental care • Rehabilitation • Psychological support/trauma relief • Coaching	• Medical aid and dental care • Rehabilitation • Psychological support/trauma relief • Coaching
• Support to continue human rights work	• Access to free workspace • Opportunity to connect and exchange with other defenders • Capacity building	• Work permit • Opportunity to connect and exchange with other defenders • Opportunity to register an NGO and receive funding • Access to free workspace
• Integration	• Language courses • Life coaching • Considering the needs of defenders placed in remote locations • Childcare (if applicable)	• Assistance with employment/help with career change • Language courses • Life coaching • Integration into society (including of family members) • Considering the needs of defenders placed in remote locations • Childcare (if applicable)

Support needs	Short-term stay / rest and respite Long-term stay / exile
• Addressing security threats through transnational repression [67]	• Recognizing the potential threat posed by foreign states to individual human rights defenders (including physical threats, assassination, forced repatriation, harassment) • Raising public awareness of transnational repression • Coordination between intelligence and law enforcement bodies to warn and protect targeted individuals • Oversight and consultation among multiple government ministries in cases of foreign assistance requests, including for extradition and arrest (with a particular focus on often unjustified accusations of terrorism directed against exiled human rights defenders) • Sanctions and other diplomatic responses (such as "persona non grata" designations) create accountability following acts of transnational repression
• Freedom of movement in the EU for networking and advocacy purposes	• A visa or residence permit allowing for travel in the Schengen area.
• Support in case of lack/expiry of a valid travel document	• If it is impossible for the defender to acquire a national passport, as a replacement use an ID document issued by the country of origin or the Member State, or an alien's passport. • Consider the specific challenges for transgender people who may have difficulty applying for a new passport at their consulates after having officially changed their gender.

Source: Overview based on interviews by the authors of this report. See also DefendDefenders (2016), Exiled and in Limbo. Support Mechanisms for Human Rights Defenders in Exile in Kenya, Uganda, and Rwanda. See also Council of Europe, Parliamentary Assembly (12/05/2023), PACE committee hails 'resilience, courage and determination' of exiled Belarusians, urges practical support for them.

The IPHR study among human rights defenders in exile finds that the support received by defenders during their stay in Europe depended heavily on the legal status of the defender. For example, those who had received refugee status had access to services such as unemployment benefits or state medical services. Human rights defenders also frequently mentioned challenges related to work visas and access to lawful employment opportunities. Renewal of residence permits was also cited as a challenge. [68]

3. Entry and stay of third-country nationals under European Union law

Under international law, states have a sovereign right to control the entry and presence of non-nationals – including human rights defenders – in their territory, subject to their human rights obligations including on *non-refoulement.* [69] Under EU law, common rules exist for Member States on short-term visas and border controls, notably the 'Visa Code' and the 'Schengen Borders Code'. [70] Decisions on who is given a long-term visa or residence permit are largely the responsibility of Member States. For some categories of migrants with a valid stay permit – for example migrant workers, students and researchers – EU law establishes certain rights. [71] There are no such specific provisions established for human rights defenders.

The EU established a unified system of external border controls and a border-free area inside, which is generally referred to as the 'Schengen area'. Not all EU Member States are part of the Schengen area, and the Schengen system extends beyond the borders of the EU to Iceland, Liechtenstein, Norway and Switzerland. [72] Regarding the four Member States that are not part of the Schengen area, many EU rules relating to Schengen apply also to the Schengen candidate countries – Bulgaria, Cyprus, and Romania – but only a few apply to Ireland. [73]

3.1 Entry into the European Union

This section briefly describes EU law regulating border controls and visas. It also refers to selected provisions that regulate the entry, storage, and processing of personal data in large-scale EU information technology systems, as relevant for human rights defenders.

> *"Despite the great EU policies on human rights defenders, in reality the processes are opaque, messy and slow."*
>
> Russian woman human rights defender, interview conducted by the authors, 23 February 2023

The EU has set up rules to prevent irregular entry and stay. Supporting the irregular entry of a human rights defenders in the EU is unlawful and thus punishable, unless justified by humanitarian exceptions or by obligations flowing from the UN Convention Relating to the Status of Refugees. [74] The Carriers Sanctions Directive [75] provides for sanctions against carriers, such as airlines, that transport undocumented migrants into the EU. The Facilitation Directive [76] defines unauthorised entry, transit and residence and provides for sanctions against those who facilitate such breaches. Under Article 1 (2) of the Facilitation Directive EU Member States can decide not to sanction humanitarian assistance but are not obliged to refrain from doing so [77] . In general, , there are few legal pathways available for entering the EU. [78] Accessing legal pathways can often be challenging for human rights defenders, meaning they may need to resort to doing so unlawfully. [79]

3.1.1 Border control

The Schengen Borders Code [80] lays down rules governing the control of people crossing the external borders of the Schengen area. Article 6 describes the conditions that third-country nationals must fulfil to cross the external borders. They must:

- have a valid travel document, usually a passport;
- have a visa, if they are nationals of third countries for which a visa is needed;
- justify the purpose and conditions of their intended stay and have sufficient means of subsistence;
- not be the subject of an alert in the Schengen information system (SIS) saying that their entry should be refused.

Human rights defenders are not always in a position to fulfil the conditions required to enter the EU. For example, the authorities of their country of origin may refuse to issue them a passport, which is a typical a pre-condition for requesting a visa. In addition, human rights defenders may not have sufficient resources. More importantly, they may not be able to demonstrate the purpose of their intended stay, as required by the authorities, and give assurances that they will not overstay their visa. They may also be listed in an Interpol database due to a criminalisation in retaliation for their human rights work. [81]

Exceptionally, under Article 6 (5) of the Schengen Borders Code, Member States may allow individuals who do not fulfil one or more of the above conditions to enter their territory on humanitarian grounds, on grounds of national interest or because of international obligations, which could be applied to human rights defenders. For example, following Russia's invasion of Ukraine, the European Commission issued guidance to Member States concerning admission on humanitarian grounds for people who did not fulfil one or more of the conditions for entry set out in the Schengen Borders Code. [82]

Real-life story

Effects of an Interpol alert

A human rights defender had been granted refugee status in Norway and therefore was free to travel in the EU with the required travel documents. In 2020 they travelled to Prague, Czechia, without any problems. However, on the way back, the defender was stopped in transit in another EU country following an Interpol alert. Despite the refugee status in Norway, the prosecutor of that country decided to take the case to court to consider whether they were in danger or not and if they should be returned to their country of origin. It took nine months for the justice system to handle the case due to the COVID-19 pandemic. Thanks to the effort of prominent NGOs, the defender was freed from custody a few days after being detained. They were not allowed to leave the country until the authorities had made their final decision, whereupon they were then sent back to Norway.

A political activist who had been granted refugee status in Sweden was stopped at the Norwegian border in Spring 2023 following an Interpol alert. The activist was released after 24 hours when the Norwegian border police received documentation from his lawyer and Swedish authorities confirming his refugee status in Sweden. The Human Rights House Foundation had also contacted the Norwegian police handling Interpol alerts. They were then sent back to Sweden.

Source: Information provided by the Human Rights House Foundation.

3.1.2 Third-country nationals requiring a visa

Nationals of 105 countries require a visa to come to the EU. [83] A visa must normally be obtained before travelling.

The Visa Code applies to visas issued for intended stays of up to 90 days in any 180-day period. It does not distinguish between categories of visa applicants on the basis of their profession, activities or travel purpose. There is no specific type of (short- or long-stay) visa for human rights defenders. They must collect and submit the same documentation as any other traveller [84]. Unless the competent Member State decides to apply the optional facilitations that are possible under the Visa Code, human rights defenders must follow the standard procedure, which is usually a lengthy process. The Court of Justice of the European Union clarified that under EU law there is no right to receive a visa to come to the EU to apply for asylum [85]. It also said that Member States can only refuse a Schengen visa on one of the grounds for refusal listed in the Visa Code. [86]

The 1990 Convention implementing the Schengen Agreement and the Visa Code [87] envisage three types of visas and provides detailed rules and procedures for the first two types. [88]

- **A visa:** Airport transit visas for nationals of the 12 countries that require a visa even if they only wish to transit through an airport in the EU. [89]
- **C visa:** Uniform visa for short-term stay – up to 90 days in any 180-day period – in the Schengen area (Schengen visa).
- **D visa:** Long-stay visa issued by one Member States in accordance with its national law or with EU law for an intended stay in that Member State of more than 3 months. Long-stay visas can be valid for up to 1 year under Article 18(2) of the 1990 Convention implementing the Schengen Agreement, as amended by Regulation No. 265/2010. [90]

As Schengen visas allow the holder to stay in the EU for a limited period only, they are not appropriate for many of the protection and mobility needs of human rights defenders outlined in Section 2.2. In addition, in the case of immediate risk, which would necessitate emergency relocation, procedures are normally too slow. Only in exceptional cases such visas have been issued within 48 hours, or even immediately. Furthermore, in exceptional cases Member States may also issue visas upon arrival at an EU external border. National long-stay visas have proven useful for many of the protection needs of human rights defenders; however, in practice these are not frequently used by Member States for the purpose of defenders' protection. [91]

A Schengen visa may be issued for one, two or multiple entries. [92] Article 24 (2) of the Visa Code envisages the issuing of multiple-entry visas with progressively longer validity (up to a maximum of 5 years) to people who have used previous short-stay visas correctly. A multiple entry visa with a long period of validity would significantly facilitate human rights defenders traveling into and across the EU. Multiple-entry visas offer the most flexible option for human rights defenders' mobility needs. They are also, under current rules, the only option that would allow a human rights defender to hold a valid visa in advance of possible risk, including unforeseen immediate risk. Member States occasionally provide multi-entry visas with a long period of validity to selected human rights defenders. [93]

The EU has concluded a number of visa facilitation agreements, for example, with Armenia, Azerbaijan, Belarus, Cape Verde and Russia. [94] Examples of visa facilitation include the waiving of the visa fees for certain people, quicker processing of visa applications or easier access to the opportunity to be granted multiple-entry visas for certain categories of people; and a shorter list of supporting documents being required. Depending on the specific agreement, human rights defenders may be covered under specific categories of people, such as journalists or participants in scientific, cultural or artistic activities. The EU suspended the visa facilitation agreement with Russia on 6 September 2022 and partially suspended the agreement with Belarus on 9 November 2021. [95]

Where a visa applicant does not fulfil all required conditions, Article 19 (4) of the EU Visa Code allows for the issuing of visas on humanitarian grounds, for reasons of national interest or because of international obligations. Under Article 25, such visas are valid only for the territory of the issuing Member State, unless other Member States consented to extend their validity to their territory as well. In practice, this means that human rights defenders holding such a visa cannot

travel freely within the EU for the purposes of their work, including advocacy and participating in events, unless the other Member States explicitly agree. Only very few Member States have provided visas for human rights defenders based on these provisions. [96]

3.1.3 Visa-free third-country nationals

Some human rights defenders who need to access the EU are nationals of a third country for which the EU does not require a visa to visit the Schengen area for a stay of up to 90 days within any 180-day period. As of April 2023, nationals of 61 countries – mainly in the Americas, including the Caribbean, in Europe and in the Asia-Pacific region – are visa exempt. [97] If they hold a valid travel document and fulfil the other requirements in the Schengen Borders Code, they can enter the EU.

In future, as with any other visa-free third-country nationals, human rights defenders will have to apply online for authorisation through ETIAS before travelling. [98] The travel authorisation does not confer an automatic right of entry or stay, and the traveller will still be checked at the border. [99]

ETIAS is a large-scale EU information system that, in the future, will support Member State authorities to assess the admissibility of third-country nationals travelling to the EU without a visa. Before travelling, individuals will have to obtain ETIAS travel authorisation by filling in an application online through a public website. Based on the personal data provided by the applicant, ETIAS will indicate whether their visit to the Schengen area poses any risks that requires further consideration by national authorities. ETIAS will do so by automatically cross-checking:

- the applicants' data against various databases, namely relevant EU IT systems and Europol data;
- the applicant's travel document(s) against the Interpol Stolen and Lost Travel Documents (SLTD) database and the Interpol Travel Documents Associated with Notices (TDAWN) database;
- the applicants' data against the ETIAS watchlist, which includes individuals suspected of past or potential future involvement in terrorism or other serious crimes;
- the applicants' data against specific risk indicators that will indicate through an algorithm whether a person could pose a security, irregular immigration or high epidemic risk. [100]

If ETIAS does not identify any risks, applicants will receive travel authorisation immediately. Otherwise, competent national authorities will review the application and determine if the ETIAS authorisation should be granted or rejected. Prior to boarding, airlines will verify that a visa-exempt traveller has a valid travel authorisation. ETIAS authorisations will be valid for 3 years (or until the passport expires, whichever comes first) and will allow multiple trips to the Schengen areas without the traveller having to re-apply each time.

The ETIAS might prevent a human rights defender from travelling to the EU if certain mitigating

measures are not in place. Based on the algorithm used, [101] human rights defenders might fall into a risk group for irregular migration meaning their application will not be automatically accepted but will be subject to manual review by Member State's authorities. If not specified in their application, the national competent authority might not know that the concerned person is travelling to seek safety or to carry out human rights work in the EU. Unless they interview the person, they might therefore not even be in a position to take such humanitarian considerations into account, and therefore refuse the travel authorisation.

In a similar way to the common rules on visas, Member States may exceptionally issue a travel authorisation for humanitarian reasons with limited territorial and temporal validity when the manual revision is still ongoing and/or if a travel authorisation has been refused, annulled or revoked. [102] Such limited territorial validity travel authorisation is usually valid for the Member State that has granted it, unless the competent authorities of other Member States agreed to extend its geographical validity.

Human rights defenders might not be aware that they could match a risk profile in ETIAS which would delay or even prevent the issuing of their authorisation. They may also not be aware of the option to indicate the humanitarian purpose of their visit in the application form [103] or to the responsible authorities.

Finally, any ETIAS application, including those submitted for travel on humanitarian grounds, must meet basic admissibility criteria, which means that the applicant must complete all fields of the online application form. Human rights defenders who do not possess valid travel documents (e.g., because their passport will expire in less than 3 months, [104] because the authorities denied their passport application, or because they are flagged in an Interpol database) will not be able to apply.

3.1.4 Processing personal data in European Union large-scale information technology systems

The personal data of third-country nationals coming to or applying for permission to come to the EU are stored in large-scale information systems. As described in Section 3.1.3, data on visa-free travellers will be stored in ETIAS. Data on visa applicants, including biometric data such as fingerprints and facial images, are stored in VIS. In future, fingerprints and facial images will also be processed in the entry-exit system any time a third-country national crosses the EU external borders for a short-stay visit. The systems are intended to be 'interoperable', meaning that authorised officers will be able to search and see data stored on individuals across these systems, depending on their access rights laid down in EU law. Besides competent national authorities, law enforcement authorities will be able to access the systems – when authorised and under strict conditions – to prevent, detect and investigate terrorist and other serious criminal offences. Moreover, ETIAS and VIS check data against the SIS II, which enables Member States to share information on suspected criminals, wanted or missing people (both EU citizens and third-country nationals), third-country nationals for whom entry in the EU is to be refused, and people

subject to a return decision, among others. [105] Earlier FRA reports pointed out opportunities for and risks to fundamental rights resulting from these systems and their interoperability. [106]

Human rights defenders might be under surveillance in their country of origin and hence afraid to have their data stored in a large-scale IT system. In addition, they might fear that their personal data could be unlawfully shared with the country of origin, or accessed for unauthorised purposes, or that a data breach might occur if the system is hacked. A data breach could expose them and/or their family members – including children – to retaliation measures in the country of origin. EU law provides for strict data protection and data security rules. Sharing personal data stored in any EU IT system with third countries is allowed only when this is necessary for return purposes and to fight serious crimes and terrorism. [107] Safeguards also exist for querying Interpol databases without revealing information to the state that issued the alert. [108] Human rights defenders might not be aware of these safeguards and hence be reluctant to provide their personal data.

Within the visa and border procedures, the Interpol Stolen and Lost Travel Documents (SLTD) database and the Interpol Travel Documents Associated with Notices (TDAWN) database will in the future be automatically queried through ETIAS, VIS and interoperability. [109] Interpol databases are fed by information provided by national law enforcement authorities. In this context, a European Parliament recommendation of 5 July 2022 to the Council and the Commission [110] noted that *"governmental, international and non-governmental organisations continue to report abuses by some member countries of Interpol's notice and diffusion system in order to persecute political opponents, national human rights defenders, lawyers, civil society activists and journalists, in violation of international standards on human rights and Interpol's own rules*." [111]

A hit in an Interpol database may lead to a visa or ETIAS authorisation refusal or to a refusal of entry at the border, hindering a human rights defender's access to EU territory.

Similarly, there have been instances in which renowned human rights defenders have been placed by their governments on an Interpol list, preventing them from entering the EU. [112]

Human rights defenders may also face challenges when travelling to the EU if they are the subject to an alert in the SIS. This large-scale IT system stores alerts on certain categories of wanted or missing people and missing objects. It also contains alerts on third-country nationals who are subject to a refusal of entry or a return decision. [113] The SIS legal framework encompasses three legal acts, namely the SIS police regulation, the SIS border checks regulation and the SIS returns regulation. An entry ban in SIS means that a visa application will in principle be rejected and entry into the EU refused. [114] If a Member State wants to grant a residence permit or a long-stay visa to a third-country national who is the subject of an entry ban entered by another Member State, it must engage in prior consultations with that other Member State and take its concerns and interests into account. [115]

Regarding online application tools, applying online for a visa might be beneficial for human rights defenders because they would not be exposed to the security risks associated with physically

travelling to a Member State embassy or consulate, and there would be faster access to the visa application process. Nonetheless, defenders may fear that their data will be hacked by or leaked to their country of origin, and that unauthorised or unlawful access could take place. It cannot be excluded that defenders with lower digital skills may not be able to fill in the application form online. Similarly, external service providers may unlawfully pass on information to national authorities. Moreover, risks to the physical integrity of defenders applying for a visa could persist, as the Commission's proposal sets out that visa applicants will need to appear in person the first time they request a visa and subsequently at regular intervals (e.g. after renewing their passport) to have their fingerprints taken.

3.2 Stay in the European Union

This section describes what permissions human rights defenders need to be able to stay in the EU for a short period or for longer periods.

3.2.1 Short-term stay

To stay lawfully in the EU for up to 90 days in any 180-day period, it is sufficient for a human rights defender – as for any other third-country national – to fulfil the conditions for entry set out in the Schengen Borders Code. In terms of documents, human rights defenders from countries that do not require a visa require only a valid travel document (and, in the future, ETIAS travel authorisation), whereas those who are visa-bound need to also have a Schengen visa. With these documents, they can also move freely within the Schengen area. [116] Even if there are no border controls for crossing internal borders of the Schengen area, they must hold a valid travel document (e.g., a valid passport).

Such short-term stay allows human rights defenders to participate in conferences and events, to meet human rights actors in the EU, to stay for short-term rest and respite or capacity building programmes, and, in principle, to continue their human rights work in their country of origin. However, to carry out remunerated work or to receive funding in the EU, they need to fulfil the conditions set out in the relevant Member State's domestic law.

3.2.2 Residence permits

Should human rights defenders wish or need to stay in the EU for more than 3 months or if they have already exhausted the 90 days-stay due to previous trips to the Schengen area within the same 180-day period, they need to obtain a long-stay visa, a residence permit or another form of permission to stay, for example as asylum applicants. Otherwise, they become 'overstayers' and will be subject to return procedures under the return directive [117] . As a rule, the purpose of stay is declared at the consulate (work, study, etc.), and the consulate makes its decision based on the declared purpose. The consulate might issue a long-term visa or a residence permit right away, or

they might issue an entry visa only, with the third-county national receiving the residence permit after arrival in the EU Member State.

The decision on whether to issue a residence permit to a human rights defender lies with the Member State. Residence permits may be issued for different purposes, which vary across Member States. For human rights defenders, residence permits are typically granted for work, research or study or based on humanitarian or national interest grounds. The rights attached to these permits, including whether holders are allowed to work, bring their family members or set up an NGO, are regulated in national law. For certain permits – those issued for the purpose of work, research or study – EU law provides for a common set of rights and harmonises application procedures. [118]

Holders of long-stay visas and residence permits issued by one Member States are entitled to move within the EU for short-term stay, for example to visit friends or participate in conferences of events, as long as they do not stay in another Member State for more than 3 months. [119] Students and researchers enjoy broader mobility rights which include the possibility of a longer stay in the second Member State. [120]

Provided they have a valid passport, human rights defenders holding a residence permit in an EU Member State may be able to travel for various reasons. Depending on the type of residence permit, defenders may also be able to access the labour market in the Member State in which they are temporarily staying. Holding a national residence permit may also facilitate the opening of bank accounts in the Member States, something that can otherwise be challenging, as human rights defenders have reported. [121]

3.2.3 Asylum

The right to asylum is a fundamental right enshrined in Article 18 of the Charter of Fundamental Rights of the European Union and Article 78 of the Treaty on the Functioning of the European Union. Providing international protection to people fleeing persecution is also an obligation under the Convention Relating to the Status of Refugees, with which EU asylum policy must be in harmony. Many human rights defenders may qualify as refugees under the definition set out in the Convention and in EU law, or for subsidiary protection. [122]

The international protection regime applies only to individuals who are outside their country of origin. Asylum rules are therefore of no help to human rights defenders who are still in their own country. Human rights defenders can apply for asylum when they reach the EU's external borders or when they are already in the EU, although a few Member States also allow their diplomatic representations to receive asylum applications.

The EU has established common rules on asylum adopting several EU law instruments. These rules regulate how to apply for asylum and the procedure to follow and the rights of asylum applicants and of those granted international protection, either as refugees or as subsidiary protection status holders. [123] The principle of *non-refoulement*, which prohibits the return to

persecution or other serious harm, is the cornerstone of international refugee law and of EU asylum law. [124] The forced return of human rights defenders to their country of origin may also violate the principle of *non-refoulement* set out in Article 19 of the Charter of Fundamental Rights of the European Union.

During the examination of the application, which, depending on the circumstances of the case, can last for several months or years, asylum applicants must usually hand over their national passports. Travelling to their home country may indicate that they are not at risk of serious harm there, thus entailing the rejection of their asylum claim. Applying for asylum in the EU is therefore not compatible with regular visits by human rights defenders to their home country to continue their human rights work. Similarly, if granted refugee status, regular visits to the country of origin may indicate that the person is no longer at risk there and trigger procedures to cease refugee status. [125]

For these reasons, the international protection regime is not suitable for human rights defenders who want to continue their human rights activities at home. However, in circumstances in which human rights defenders staying in the EU fear persecution or serious harm in case they return, and where they have no other legal basis to stay in the EU for a longer period, applying for international protection is currently the only option available. As asylum applicants, they have only restricted access to the labour market [126] and usually cannot set up an NGO for the purpose of carrying out their human rights work and receiving funding for it [127] . Once granted international protection, EU law allows them to work and, in the case of those with refugee status, to bring core family members to the EU. [128]

Experience shows that human rights defenders seeking to relocate temporarily or to use short-term mobility usually do so with the intention of returning to their communities to continue their human rights work. [129] Statistics from Spain and the Netherlands illustrate that human rights defenders usually return to their home countries to continue their human rights work: less than 10% of human rights defenders who arrived in the EU under their national temporary relocation programmes (see Chapter 4) filed an application for international protection.

The current practical limitations on access to visas and their nature of offering human rights defenders only shorter-term stays may, however, force defenders to turn to asylum as their only option to find safety.

3.2.4 Refugee resettlement programmes coordinated by the United Nations Commissioner for Refugees

Resettlement is the admission of refugees who are staying in a country of asylum but who cannot stay there any longer because they are exposed to risks. [130] While resettlement is not a dedicated programme for human rights defenders, some resettled refugees are likely to meet the description of human rights defenders, although the protection needs that make someone ‘viable’ for resettlement are not necessarily the same as the protection needs of human rights defenders. Resettlement is not an option for individuals, including human rights defenders, who are still in

their country, or who face immediate risks. Although there are procedures for the processing of urgent cases, the processing time for resettlement cases is generally long and unpredictable.

The United Nations High Commissioner for Refugees (UNHCR) selects and refers such refugees to a resettlement country which has agreed to admit and provide them with permanent residence status. According to Eurostat, in 2021, the 27 EU Member States admitted 23,755 refugees under resettlement programmes. [131]

3.3 Obstacles to accessing the European Union

> *"HRDs working with international civil society organisations report that the Schengen visa has become a matter of privilege that only some defenders have access to, and even the visa declines appear to be pervasive and systematic for HRDs from some countries, such as Syria, Iraq, Palestine, and Yemen."*
>
> ProtectDefenders.eu [132]

Many human rights defenders are not aware of the potential options available to them in terms of mobility and relocation to the EU. Existing relocation programmes are limited both in terms of the number of defenders who can benefit and the length of the programmes Most existing EU Member State practices for human rights defenders' relocation are via word of mouth and not publicised, for example through official websites. While this undercover approach tries to ensure that only legitimate defenders are aware of existing relocation programmes, it also means that existing schemes favour well-connected defenders, often from or around capital cities. Where information is available, it is often only in languages such as English, French, Russian and Spanish. [133]

When seeking to lawfully enter and stay in the EU, human rights defenders often face obstacles. Several of the challenges are common to anyone applying for an EU visa; however, some challenges are specific to human rights defenders. In practice, these obstacles are such that human rights defenders are often deterred from making applications or seeking temporary relocation as part of their protection strategies. [134]

When applying for EU visas, human rights defenders at risk may face the following obstacles: [135]

- lack of knowledge about existing options;
- restrictions on applications from outside their country of residence;
- long, costly and at times insecure travel required to access consulates and lodge applications, in particular for defenders in remote areas;
- visa services being outsourced to external service providers, resulting in privacy risks,

increased costs and administrative inflexibility around support documents;

- an inadequate time frame for making a visa application, especially for defenders at immediate risk;
- difficulties gathering required support documents, in particular proof of income or employment, to prove intention to return;
- difficulties in obtaining valid travel documents (passports);
- language requirements;
- visa fees;
- refusal based on criminalisation in retaliation for their human rights work, as their travel document may have been stored in the Interpol SLTD or TDAWN databases by their country of origin in order to prevent them from leaving the country or check their whereabouts. [136]

Human rights defenders who are staying in a third country other than their country of nationality may in certain cases need to return to their home country to file a visa application or to pick up their visa, which might put them at risk. They may also be at heightened risk if they have to visit their country's diplomatic service / consulate in a third country for visa-related reasons.

Real-life story

Need to return to home country for visa

A Turkish journalist and human rights defender, who was accepted for the ICORN relocation programme, had already relocated to Georgia when they were invited by an ICORN city in Sweden. In Turkey, they had been sentenced to more than 6 years in prison over their journalistic and activist work on Kurdish issues and women's and LGBTIQ+ rights violations, including sexual violence, torture, and enslavement. The journalist was granted a residence permit by the Swedish Migration Agency, and they were instructed to pick up their proof of residence permit / visa at a Swedish consulate in Turkey. This was impossible due to the risk of imprisonment. ICORN organised a courier who could travel from Georgia to Turkey and deliver the journalist's passport to the consulate. This was a costly procedure that added time and uncertainty to an already strained situation.

Source: Information provided by ICORN.

Human rights defenders also report difficulties in gathering required supporting documents, in particular, proof of income or employment and intention to return. [137] In some cases, the defender's country of origin will not issue them a passport to prevent them from travelling. Human rights defenders often do not have regular official income or an official employer and therefore find it difficult to provide proof of work and stable financial means in the visa application. They are required to demonstrate an intention to return to their country and adequate means of subsistence during a stay where the person is not sponsored by an inviting organisation. Some

defenders have reported having to downplay the risks to their lives to increase their chances being granted a visa. [138]

Visa procedures are usually lengthy, which is a particular challenge for human rights defenders in emergency situations. The Visa Code contains rules on the timeframe for lodging and processing visa applications. A visa application has to be lodged between 15 days and 6 months before the intended visit. Article 9 of the Visa Code, however, grants Member States discretion 'in justified cases of urgency'. Indeed, a few Member States have occasionally issued a Schengen visa within 48 hours for such cases. However, human rights defenders cannot know in advance whether this will be possible. As a result, human rights defenders in need of emergency relocation often evacuate in the first instance to a country for which they do not require a visa – which might not be safe for them in the long run but helps them escape the immediate danger – before trying to get to the EU from there.

Real-life story

Challenges because of lack of passport

An Afghan defender who supported Amnesty International with carrying out research in Afghanistan managed to flee to Iran in 2022 but remained at risk. Amnesty International assisted them with their application for a French visa. The visa application process was severely delayed, and the ability of the beneficiary's family to travel was hampered by their lack of passports. Despite much advocacy by civil society, they are still, at the time of writing, waiting on a decision by the French authorities.

Source: Information provided by Amnesty International.

Another challenge specific to human rights defenders relates to the outsourcing to external service providers of certain visa processing tasks, such as providing information, taking biometrics and accepting applications and transmitting them to the consulate (Article 43 of the Visa Code). Although external service providers are bound by data protection obligations and expatriate staff must monitor their activity, [139] such outsourcing of visa services to external service providers may result in additional privacy risks, and administrative inflexibility around supporting documents. [140] Since service providers usually work with local staff, human rights defenders may fear being exposed as defenders if they are invited to be part of a specific 'human rights defenders programme' of a given EU Member State, which has occurred in the past. [141] Such service providers may also charge additional fees for applications further increasing the economic barrier for defenders and others applying for visas.

Another challenge specific to human rights defenders concerns criminal records they may have been given as a result of the persecution related to their human rights work, which may lead to them being placed on Interpol's SLTD or TDAWN databases.

Real-life story

Risk in obtaining a visa at a consulate

ICORN is currently working on relocating a human rights defender from Kurdish Iraq to a specific EU country. This defender is experiencing hostility from their family who does not share their values or opinions.

New regulations in the intended country of relocation make it mandatory for residence permit applicants to have their passports verified at a consulate before the application can be processed. This means that applicants for a residence permit must visit a consulate at least twice: once to have their passport verified, and once to pick up their proof of residency, should the permit be granted.

The only consulate of the specific EU country in Iraq with the competency to verify passports is in Baghdad, which is far from the defender's home. To follow the application procedure the human rights defender will have to put themselves at great risk of violence if they must return to the family after the trip while awaiting the outcome of the application process.

Source: Information provided by ICORN.

Civil society reports that defenders from certain regions, in particular those regions with significant irregular migration to the EU, see their visa applications rejected more frequently than others. Notably, defenders from the Middle East and North Africa region seem to be refused visas more frequently than those from other regions, even in cases in which short-term stays are envisaged for attending events organised by EU institutions or EU civil society organisations. [142]

Another specific challenge relates to LGBTIQ+ defenders, who usually have difficulty providing proof of marriage and hence lack the opportunity to provide official arguments for the need for a visa for their partner, who may also be at risk and in need of relocation, whether or not they are activists themselves.

Overall, human rights defenders face a high degree of uncertainty when applying for Schengen visas as it is not known in advance whether any given Member State (or official) will exercise the discretion and flexibility possible in the Visa Code to their benefit. It also seems often unclear to applicants how to exercise their right to appeal in practice (in application of Article 32 (3) of the Visa Code).

Real-life story

"*Many HRDs from Belarus and Russia have had to leave their countries due to (the risk of) persecution, relocating to both EU and non-EU countries. The EU and some EU Member States have already been extremely helpful in issuing visas and helping with relocation. Nevertheless, there are still difficulties, including cases of denial of visas to HRDs at risk, HRDs with Schengen visas having difficulties crossing both internal and external borders, and long waiting times for visas. The fact that HRDs cannot yet return and that there are still many activists who remain in Russia and Belarus working in very difficult circumstances, means that facilitating access to visas will continue to be of utmost importance in the coming years.*"

Source: Amnesty International / School of Civic Education, *Belarusian and Russian Human Rights Defenders and Activists – Priorities for support and protection, Tbilisi, October 30–2 November 2022* (not publicly available; on file with Amnesty International), p. 4.

4. Initiatives facilitating entry and temporary stay

In recognition of the security risks that human rights defenders face, and with the aim of protecting them and enabling them to continue their human rights work, a range of initiatives for the temporary relocation of human rights defenders to the EU have been developed. At EU level, ProtectDefenders.eu supports defenders and operates the EU Temporary Relocation Platform which brings together many actors including civil society organisations engaged in temporary relocation. Several Member States have dedicated programmes in place to accommodate human rights defenders for specific periods. In addition, local-level initiatives, university initiatives and a range of civil society initiatives work to ensure the safety and dignity of human rights defenders at risk, including journalists, artists and scientists, and their family members.

4.1 Initiatives at European Union level

4.1.1 ProtectDefenders.eu

ProtectDefenders.eu is the European Union Human Rights Defenders mechanism, financed by the European Commission. It is led by a consortium of 12 NGOs active in the field of human rights and coordinated by a Brussels-based secretariat.

With a budget of EUR 30 Million over 4.5 years, ProtectDefenders.eu:

- operates a permanent and rapid response mechanism to provide urgent assistance and practical support to HRDs in danger, their families, and their work;
- manages a programme of temporary relocation for HRDs at risk to relocate inside their country, within their region, or abroad in case of an urgent threat;
- supports the creation of shelters for HRDs at risk and coordinates the EU temporary relocation platform (EUTRP);
- provides training, financial support, accompaniment, and capacity-building to HRDs;
- monitors the situation of human rights defenders;
- promotes coordination between organisations dedicated to support human rights defenders.

Overall, ProtectDefenders.eu has played a significant role in supporting human rights defenders worldwide since its establishment. With a focus on at-risk defenders outside the EU and in the most challenging countries, ProtectDefenders.eu provides financial and coordination support through its programmes for protection, training, advocacy and monitoring. Since its establishment, ProtectDefenders.eu has supported over 60 000 human rights defenders worldwide.
The involvement of ProtectDefenders.eu in discussions and solutions related to mobility for the protection of HRDs is also carried out through the implementation of a specific programme,

'Shelter Initiatives'. The programme strengthens capacity for relocation and protection of human rights defenders at regional level and outside the EU. [143] This programme has funded and supported the establishment or expansion of 15 shelters for human rights defenders in different regions across the world, providing contextually adapted solutions with a holistic approach. Furthermore, ProtectDefenders.eu is the implementing partner of the first-of-its-kind comprehensive resettlement stream for human rights defenders, [144] initiated by the Government of Canada (see Section 4.4.2).

4.1.2 The European Union Temporary Relocation Platform

Created in 2014 at the initiative of the EU, the EU Temporary Relocation Platform is a network of organisations supporting human rights defenders in need of or benefiting from temporary relocation. [145] Its membership includes host organisations, those providing grants to cover defenders' expenses during relocation, donors and policy makers. [146] Its purpose is to facilitate collaboration and coordination among entities involved in temporary relocation efforts for human rights defenders. The Platform has been coordinated by ProtectDefenders.eu since 2016. [147]

4.2 Member State practices

FRA has identified practices to accommodate human rights defenders in one way or another in 18 EU Member States, whether through Member State initiatives or city-led, academia-led or civil society-led initiatives. In Member States without such dedicated initiatives, human rights defenders can access the territory in certain cases if they fulfil criteria laid out in national legislation, for instance in view of humanitarian grounds or for study or work purposes.

Eight Member States have comprehensive programmes in place to accommodate human rights defenders: Czechia, France, Germany, Ireland, the Netherlands and Spain receive human rights defenders from across the world, and Lithuania and Poland receive human rights defenders from Central Asia, Belarus, Russia and the South Caucasus. Finland and Sweden have programmes in place for artists at risk globally. Estonia and Latvia have recently created dedicated access to visas specifically for human rights defenders from Belarus or Russia. Finland has been looking into creating a national humanitarian visa, which would allow human rights defenders, activists and journalists at risk to enter the country. [148] Luxembourg is in the process of developing a platform for human rights defenders and is currently exploring options. [149]

Figure 1 – Temporary relocation practices for human rights defenders in EU Member States

Interactive map of Member State practices

Interactive map showing temporary relocation practices for human rights defenders in EU Member States; information for each Member State is given in description in text below.

Source: FRA, 2023. See below descriptions of each Member State and Annex 1 for more details.

The interactive map shows the temporary relocation practices for human rights defenders in EU Member States.

The ways in which human rights defenders can access and stay in the EU under the different initiatives vary greatly. The interactive maps (Figure 1 and Figure 2) and the following descriptions of various programmes in EU Member States illustrate this information.

In terms of beneficiaries, most initiatives are open to human rights defenders from across the world, whereas some are focused solely on defenders from Belarus or Russia. Many relocation programmes have specific requirements concerning the defenders who can take part in them, therefore being restricted to a certain category of participants, such as journalists, artists and writers.

These programmes operate with different types of visas, ranging from Schengen visas to various national long-stay visas, such as national interest visas or humanitarian visas. In all programmes, visas required by defenders to relocate are granted under national law or the visa *acquis* as it currently exists, often using derogations and flexibility permitted under the Schengen *acquis*.

Equally varied is the anticipated length of stay provided under the schemes, which ranges from 2 months to 1 year, and whether they are renewable or not. Only a few initiatives entail the issuance of a residence permit. Very few countries provide accelerated procedures to issue rapid visas for human rights defenders in situations of immediate risk. Multiple-entry visas are only occasionally provided to human rights defenders.

While few schemes provide additional support aiming to empower defenders to continue their human rights work, most schemes provide support goes beyond the mere provision of visas and/or residence permits, extending to financial and housing support, capacity building, connection with other human rights defenders and psychological support. Access to work permits and to banking services is patchy. Family members are covered in some schemes but not in others, and same-sex partnerships are not always recognised as families.

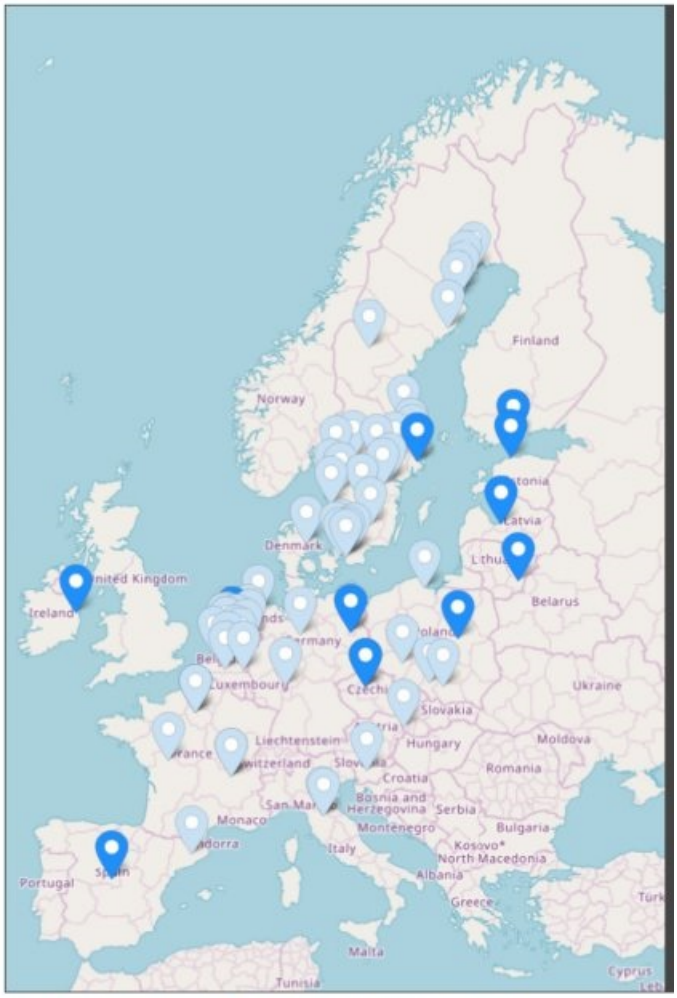
The accessibility of the dedicated programmes varies. While some select participants through transparent application processes – although in several cases with built-in limitations such as language barriers and potentially overly burdensome demands on defenders – others are operated under the radar and require knowledge gained through word-of-mouth. In both cases, the initiatives favour well-connected defenders.

The issue of accessibility is reflected in the number of human rights defenders benefiting from the programmes. Some city-based sanctuary programmes have hosted a dozen defenders over the course of a decade, whereas a small number of Member State programmes have been welcoming several hundred to several thousand defenders a year. This has happened in exceptional

circumstances, such as the overthrowing of the Afghan Government by the Taliban in 2021 in the case of Germany, or the Russia's invasion of Ukraine in 2022 in the case of Czechia and Poland. The overall number of defenders benefitting from the schemes seems small in comparison with the known frequency of serious attacks that defenders face across the world.

Figure 2 – Temporary relocation practices for human rights defenders at national and local level in the EU

Interactive map of national and local level practices



Interactive map showing the temporary relocation practices for human rights defenders at national and local level in the EU; information is given in description in text below.

Source: FRA, 2023. See below descriptions of each Member State and Annex 1 for more details.

The following overview describes the practices from the 13 Member States accommodating human rights defenders at risk through state-led programmes or visa initiatives. The Member States are listed in alphabetical protocol order.

4.2.1 Czechia

Czechia has provided visa support to human rights defenders looking to participate in advocacy events, rest and respite programmes, and other similar activities since at least 2012. In 2020there was an increased number of Belarusian defenders, and in 2022the arrival of hundreds of Russian defenders. Before this, there were smaller numbers of human rights defenders coming for short periods usually under the Schengen C visa. [150] They mostly came from target countries of the transition promotion programme of the Ministry of Foreign Affairs. [151]

In the aftermath of Russia's invasion of Ukraine, Czechia launched an additional pathway for citizens of Belarus or Russia at risk of persecution to apply for temporary residence in the country – the civil society programme Program Občanská Společnost was launched in May 2022. [152] The programme is renewable and was originally established with an annual quota of 500 applicants per year. The opportunity for human rights defenders from other countries to come for short periods with a Schengen visa continues in parallel.

To be eligible under the civil society programme, individuals require a sponsor NGO – which has to be from one of the partner NGOs of the programme - which must demonstrate that the potential participant is subject to persecution by state authorities as a result of their activities in defence of human rights and democratic principles, with an emphasis on the defence of freedom of expression. The participant may be a civil society representative, academic, independent media practitioner or any other kind of human rights defender.

The sponsor NGOs must submit a request for the defender's inclusion in the programme to the Ministry of Foreign Affairs, including information as to which form of residence permit the participant is applying for: a work permit; a long-term residency visa for the purpose of studies, a long-term visa for scientific research, a long-term visa for business purposes or a long-term visa for other purposes. [153] The ministry then informs the relevant Czech embassy/consulate that an application for a residence permit will be forthcoming from the defender. At the same time, the ministry communicates with the defender and sponsor NGO as to the conditions and requirements relating to the submission of their application. Once the application is submitted, a decision is made by the Ministry of the Interior within 30 days through an accelerated procedure.

Family members and partners of human rights defenders may join the participants in Czechia under the scheme, on the basis of long-term visas for family purposes or long-term residence permits for family reunification [154] . There is no available information as to the number of human rights defenders who may have benefited from the programme, with the yearly quota set at 500. However, it is estimated that over 1 000 defenders were hosted in total by Czechia (Schengen C - visa plus the new programme combined) in 2022-23. [155]

In 2020 and 2021, Czechia implemented the Medevac program, a humanitarian programme in support of Belarusians. Medevac 1 aimed to help 60 physically injured Belarusians and their families. The Medevac 2 programme provides assistance to repressed physicians and their families, supporting 29 people. The Czech Ministry of Internal Affairs provided participants with entry and residence, basic support, meals and a basic course in the Czech language. [156]

4.2.2 Estonia

After the Russian invasion of Ukraine in 2022, Estonia adopted a policy of issuing visas or temporary residence permits allowing independent journalists from Russia and Belarus to work. These were limited to those who are accredited by the Ministry of Foreign Affairs of Estonia and ICT specialists from Belarus, many of whom may qualify as human rights defenders, depending

on the nature of their work. This was done by means of a derogation clause included in a regulation by which the State imposed restrictions on access to Estonia for Russian and Belarusian citizens in the context of the invasion but allowing for the issuing of visas on humanitarian grounds. [157] There is no publicly available information as to the number of defenders who may have benefited from this exception.

4.2.3 Finland

Artists at Risk founded in 2013 in Helsinki provides temporary residencies (2-24 months) at hosting organisations in Finland and around the world to artists and cultural professionals under threat. It also provides funding and networking opportunities and connects people in similar positions. It particularly focuses on artists and journalists whose activities as artists and journalists whose activities as human rights defenders, change agents and/or activists have put them at risk in their home countries.

In November 2022, the Ministry for Foreign Affairs published updated guidelines for protecting and supporting human rights defenders. [158] The guidelines are intended specifically for Finnish foreign service employees in the ministry and Finland's missions abroad. They do not directly address the issue of visas for human rights defenders at risk, but refer to the possibility of the issuing of a limited territorial validity visa under the EU Visa Code when necessary, on humanitarian grounds.

On 29 September 2022, the Finnish government issued a resolution to restrict the entry of Russian tourists into Finland, with these rules entering into force on 30 September 2022. [159] Under the resolution, restrictions on the provision of visas in this context should not be applied where people are travelling on grounds which are essential to ensure the respect of fundamental rights. It further provides for exceptions in special circumstances, such as humanitarian needs, with such applications being assessed on a case-by-case basis. [160] The resolution stipulates that the issuing of a limited territorial validity visa for a maximum period of 90 days may be considered in such situations, as provided for under Article 25 of the EU Visa Code. Information on the number of people who have benefitted from the exceptions under the resolution is not available.

Finland has been looking into creating a national, humanitarian visa, which would allow human rights defenders, activists and journalists at risk to enter the country. In 2023, the Ministry for Foreign Affairs provided a grant for establishing a 'students at risk' mechanism, which is currently under development.

4.2.4 France

The Marianne Initiative for Human Rights Defenders was launched in December 2021 by the President of the Republic to reaffirm that France is a shelter and an asylum territory for those who fight for freedom or are threatened because of their commitment to human rights. Managed by both the Ministry for Europe and Foreign Affairs and the Ministry of the Interior, the initiative has

been built using a partnership approach with the participation of human rights NGOs, foundations and other stakeholders, including local authorities in France. It aims to support the work of human rights defenders, both in their home countries through its international pillar and by hosting them in France for 6 months, through its national pillar. [161]

The initiative creates a pathway for a yearly cohort of defenders to be welcomed in France for a 6-month period of personalised exchange, networking and training courses. Fifteen defenders participated in the programme in 2022, with a further 14 welcomed in 2023. While all of the members of the 2022 cohort were women, the programme is intended for both men and women defined as human rights defenders according to the UN Declaration of human rights defenders, and aims to represent geographical and thematic diversity in its participants. [162]

Defenders may register their interest to participate in the programme by submitting a detailed application form. [163] This can be done by several means, including through a French embassy/consulate abroad or a dedicated digital platform. Applications can be submitted in English, French or Spanish and are assessed by an independent selection committee. In their applications, defenders must be able to demonstrate their work in favour of human rights, including by providing documents and two referees to support their application. They must be able to justify how their involvement in the programme would reinforce their capacity to continue their human rights work, hold a valid passport or be prepared to obtain one, and be free from any judicial order not to leave their country of residence.

Participants in the programme are provided with tailored accompaniment during their stay in France, with support provided by NGOs, foundations and other initiative partners. Participants are expected to define a project to be developed during the programme and can also benefit from cultural programmes and activities while in France.

Human rights defenders welcomed under the initiative are provided with a temporary long stay-visa to allow them to travel to France and abroad. Their costs of travel to France are covered and they are provided with accommodation in Paris and a monthly stipend to cover their living costs. They can also benefit from psychological support if desired while in France. There are no provisions for defenders to be accompanied by family members while participating in the programme.

4.2.5 Germany

The Elisabeth-Selbert-Initiative (ESI) was launched in June 2020 as a support programme for human rights defenders at risk. It is operated by the NGO Institut für Auslandsbeziehungen (Institute for Foreign Relations), with financial support provided by the German Federal Foreign Office.

The initiative is designed to support defenders facing severe retaliation for their human rights

work, including threats and physical and psychological violence. It is open to all human rights defenders outside the EU and is based on four pillars. Two of the pillars involve temporary relocation (to either Germany or a third country), with one involving protective measures in the home country, and a special module providing support to Afghan human rights defenders who have already been granted admission to the country on a different legal basis. The other two pillars concern temporary relocation within the defenders' home countries or regions and financial assistance to support defenders who cannot or should not leave their ordinary place of residence.

Under the first pillar, defenders may temporarily stay in Germany for 4-6 months, during which time they are hosted by a civil society organisation active in the field of human rights. While in Germany, they are provided with health insurance, travel expenses and a monthly grant to cover living costs. The length of the stay can be extended once for up to 6 months in exceptional circumstances.

Human rights defenders can express their interest in participating in the programme by contacting the Elisabeth-Selbert-Initiative directly by encrypted email or through their prospective host organisation. They are then given access to an application platform, where they can fill out an application to demonstrate their work in favour of human rights and any risks they have faced as a result. Defenders may also apply through the same process without a prospective host organisation. In such cases, the Elisabeth-Selbert-Initiative will look for an appropriate organisation to host them. Decisions on applications are made by an independent committee based on several criteria, [164] including: documentation demonstrating the defender's peaceful defence or promotion of human rights; the demonstrable existence of risks related to their work; the availability and sufficiency of local protection measures; and their intention to return to their country of origin after the stay in Germany [165] . Decisions can be taken within a few days. Information from German embassies may be used to assist the decisions.

Defenders must have a valid passport and be able to cross the border of their country of residence in order to participate in the programme. Those selected for the programme are provided with a national D visa, as provided for under the German Residence Act, Section 7, subsection 1, sentence 3.

4.2.6 Ireland

The Irish Special Humanitarian Visa System for Human Rights Defenders at Risk was launched as a pilot programme in 2005. It began as a joint initiative of the Irish Department of Justice and Department of Foreign Affairs to provide short-notice national visas on humanitarian grounds to human rights defenders at extreme risk or under prolonged pressure linked to their work. [166] Ireland has received approx. 900 human rights defenders since 2005 through this programme.

Defenders participating in the programme benefit from accelerated access to humanitarian visas valid for a maximum of 3 months. In all cases, the human rights engagement and situation of risk or pressure is verified by an NGO called 'Front Line Defenders', headquartered in Dublin.

4.2.7 Latvia

There is no formal procedure in Latvia facilitating the entry and stay of human rights defenders at risk. However, in practice, at-risk defenders from Belarus or Russia, including independent journalists, have been provided with long-term visas and residence permits on humanitarian grounds, especially since Russia's invasion of Ukraine. As of October 2022, more than 250 visas for independent media workers from Russia had reportedly been issued on this basis. [167]

4.2.8 Lithuania

While no dedicated visa scheme exists for human rights defenders in Lithuania, the state has been facilitating the temporary relocation of Belarusian and Russian human rights defenders and independent journalists to the country in the context of the severe shrinking of civic space in both states and Russia's invasion of Ukraine. This is being done in cooperation with civil society actors who support the state in assessing applications. [168] There is no available information as to the number of human rights defenders who may have benefited from this initiative.

4.2.9 Netherlands

The Netherlands' Shelter City initiative launched in 2012 as a joint initiative of the Ministry of Foreign Affairs, the municipality of The Hague and the NGO Justice & Peace. Initially in pilot form, it created a temporary relocation programme for human rights defenders in response to the challenges and retaliation they face for their human rights work. Expanding to encompass a network of 13 host cities in the Netherlands, and another eight abroad, along with a large number of collaborating organisations, it has since offered defenders an opportunity for rest and respite during a 3 month period, which may be extended by a further 3 months in exceptional circumstances.

Where defenders are welcomed in the Netherlands, their participation is facilitated through the granting of a Schengen C visa, through an accelerated processes if necessary. [169]

The initiative is open to defenders from across the globe who may register their interest during two application windows per year. The call for applications is circulated by Dutch embassies, the Ministry of Foreign Affairs and Justice & Peace, and on social media. While 15 participants can be welcomed from each application window, on average 260 applications have been received during each window since 2019. Between 2012 and 2022, the initiative received 3,371 applications and approved 160. [170] As of December 2022, 15 participants had requested asylum in the Netherlands during their stay, amounting to approximately 10% of all participants in the initiative. [171]

Applications are initially screened by Justice & Peace, which prepares a shortlist to be passed on to an independent committee. Since 2018, Justice & Peace has carried out this short-listing process with the support of local Dutch Embassies and partners, which provide additional information to help assess applications where relevant. Final decisions on those to be welcomed under the initiative are based on (1) the demonstrated nature of the applicants work in favour of human rights; (2) the level of risk and/or pressure faced; (3) the possibility of the applicant returning to their own country after the programme; (4) their ability to communicate in English, French or Spanish; and (5) the possible impact of participation on the applicant's safety or that of their family. [172] In addition to the standard relocation programme, the initiative has the capacity to offer temporary relocation in four urgent cases per year. [173]

During the participants' stay in the Netherlands, they benefit from a holistic integration and training programme led by local organisations in their city of shelter. This is based on the provision of accommodation and monthly grants to cover living expenses. In addition, all participants can participate in a 1-week holistic security training conference organised by Justice & Peace in The Hague. [174] As of 2022, participants may be accompanied by family members during their stay, with this change implemented to increase the accessibility of the programme for women human rights defenders, who had previously expressed a reluctance to leave their dependants behind to participate. [175]

4.2.10 Poland

Under a special visa scheme, coordinated by the Ministry of Foreign Affairs in collaboration with civil society partners, human rights defenders may apply for permission to travel to Poland on humanitarian grounds. [176] This applies to all people who come to Poland for humanitarian reasons. Requests for visas are dealt with on a priority basis, without undue delay, and these cases are handled by the competent consulate.

The legally defined cases in which such a visa may be issued to a third-country national are where the person would be obliged to return to a country where any of the following apply:

● their life, liberty and/or personal safety would be threatened;

- they could be subjected to torture or to inhuman or degrading treatment or punishment;
- they could be forced to work;
- they could be deprived of the right to a fair trial, or be punished without legal basis.

This visa is also issued when return to the country of origin would violate the right to family or private (including sexual) life or would violate the rights of the child, endangering their psycho-physical development.

Where these conditions are met, defenders may be granted a national long-stay visa (type 21 under Polish law) in line with the Act on Foreigners, providing for their entry and stay in the country and travel within the Schengen area, for a period of 1 year.

Applications for such a humanitarian visa may be submitted directly to the Consul of the Republic of Poland in the applicant's country of origin, to the Ministry of Foreign Affairs, to voivodeship offices (especially offices of the two eastern voivodeships bordering Belarus and Ukraine) or to other organisations (NGOs and service points acting as intermediaries in the process of obtaining visas). This information is available on the websites of Polish embassies in the countries covered by the special procedure. In addition, it is possible to send an application by post to the address assigned in the visa application process after telephone contact or by e-mail (to protect the security of human rights defenders). Humanitarian visas are free of charge. However, there is a small service charge for applying for a visa at a visa application centre.

Human rights defenders can also register their interest in obtaining a visa with a partner civil society organisation, such as the Helsinki Foundation for Human Rights, via an application form. In their application, they must provide documentation of their human rights work and any related risks they face. Where this information can be verified, the application is forwarded to the Ministry of Foreign Affairs with information as to the defender’s profile, how they may be contacted, and where they intend to submit their request for a visa. The Ministry of Foreign Affairs verifies the application and makes the final decision. In situations of extreme need, visas can be processed in as little as 48 hours.

The general rules for applying for a visa, including the visa application form itself, are available on the websites of the Polish consulates. The application must be accompanied by three recent photographs. In addition, a current passport must be attached to the application. In special cases in which it is impossible for the applicant to obtain a passport, any document proving their identity can be used. The Polish programme seems to be one of very few in the EU under which travel for human rights defenders may be granted even in situations in which the person does not have access to usual travel documents, such as an international passport.

Data collected by the Consular Department of the Ministry of Foreign Affair, indicates that, in the last 3 years, visas under Article 60(1)(23) were granted to 3 378 people in 2020, 19 602 people in 2021, 25 756 people in 2022 and 5 321 people in 2023 (by 9 May). These include human rights defenders from Central Asia, the South Caucasus, Belarus or Russia. The statistics indicated above include all beneficiaries of humanitarian visas, including family members of the main visa applicant. No special procedures are applied to family members of the main applicant - the applicant supplements their application with the details of the family member, additionally indicating their relationship. The applications are processed simultaneously.

In addition, human rights defenders residing in Poland on the basis of humanitarian visas for which the expiry date is approaching or who entered Poland under a special procedure without a visa, and who would be entitled to obtain, for example, a humanitarian visa, have the opportunity to submit an application for a new visa (or for the same visa) to the Minister of Foreign Affairs or for a permanent residence permit.

Since January 2023, people who have been granted a humanitarian visa have been able to obtain a 'Polish travel document' in the case of loss of a travel document, destruction or loss of validity of a travel document. This includes those who are unable to obtain a new travel document, as the

consulate of countries of origin of human rights defenders in Poland often refuse to issue a new passport or identity document.. The Polish travel document for foreigners is valid for a period of 1 year and entitles the holder to multiple border crossings.

A national humanitarian visa entitles its holder to take up employment in Poland without the need to obtain a work permit. Additionally, in accordance with Article 3(1)(2) of the Act on Public funding and Healthcare, people with a national humanitarian visa are covered by public health insurance on the same basis as Polish citizens.

Additionally, under the procedure on foreigners and refugees, people with a national humanitarian visa have access to Polish education, which is free of charge, including higher education. Additional Polish language learning or psychological assistance is also provided free of charge for these people in cooperation with NGOs. Those defenders applying through the Warsaw-based Helsinki Foundation for Human Rights are provided with support tailored to their individual needs. This includes the provision of accommodation and support with living expenses during the first 3 months of their stay, with the possibility of extension in exceptional cases.

4.2.11 Spain

Spain launched its Temporary Protection Programme for Human Rights Defenders in 1995, making it the oldest such practice in the EU.

Under the programme, human rights defenders are welcomed to Spain for up to 1 year, extendable by up to a further year in critical cases. Participants are offered a type D Visa. These are granted on the basis of Article 50 of the Royal Decree 557/2011. [177]

The Spanish Ministry of Foreign Affairs, European Union and Cooperation leads this programme in close collaboration with regional governments, municipal authorities and Spanish civil society, and in coordination with Spanish embassies and the Ministry of Inclusion, Social Security and Migration. The Ministry of Foreign Affairs, European Union and Cooperation receives applications from defenders themselves or other actors acting on their behalf. Once the request has been made, the ministry will refer the information to the relevant Spanish embassy to verify the applicant's work in favour of human rights and their level of risk. [178] Once this has been done, the embassy in question will then refer the case to the consular unit within the embassy to authorize the issuance of a visa, which is automatically linked to the issuance of a temporary residence permit by the Ministry of Inclusion, Social Security and Migration. This process, from the receipt of the request to the issuance of the visa, normally takes 2-3 weeks, but may be reduced to 4-6 days in emergency situations. [179]

Human rights defenders may be accompanied by their family members during their stay in Spain. While in the country, they and their dependants are provided with access to healthcare and education, if required. However, participants in the programme do not have the right to work, and thus funding for their stay is essential for them to access the programme. EU mechanisms, including ProtectDefenders.eu, are key to the provision of such funding. Defenders must also have

the support of a host organisation which is responsible for providing holistic support to the defender, including capacity building and advocacy assistance. [180]

A total of 425 human rights defenders have been welcomed to Spain under the programme. While the scheme does not have a geographical focus, approximately 80% of those who have benefited from the programme have come from Latin America. Between 2012 and 2021, 150 defenders accessed the scheme. Of these, 22 applied for asylum, representing approximately 15% of participants. However, this figure falls to 6-7% when excluding persons who sought asylum since a return was not possible, only to return to their original country of residence after a few years. [181]

4.2.12 Sweden

Based on 2 year residence permits granted by the Swedish Migration Agency, Swedish municipalities and regions can welcome artists at risk in their ordinary countries of residence to Sweden. [182] Such artists may be human rights defenders, depending on the nature of their work. While participants are not granted a general right to work, they are guaranteed the right to practice their profession. Artists at risk welcomed to Sweden under the programme may be accompanied by their family members on the grounds of the Aliens Act. [183]

In April 2022, the Swedish Artist Residency Network (SWAN) had 40 emergency artist residencies available for single artists, groups or families. The network works together with the international "Artists at Risk" initiative [184] (see Section 4.3.2.) and aims to host artists for stays lasting a minimum of 3 months. The artists receive funding for accommodation and an art and production grant.

4.3 Other initiatives for temporary relocation of defenders to the EU

4.3.1 Local level initiatives: International Cities of Refuge Network and Shelter City

Globally, there is an ever-increasing number of local government initiatives that protects human rights defenders. [185]

Established in Stavanger, Norway, in 2006 before emerging as a fully independent organisation in 2010, **ICORN** today encompasses 83 member cities and regions in 19 countries worldwide, including in the EU [186] . They offer temporary long-term residencies to writers, artists and journalists at risk, many of whom may be considered human rights defenders due to the nature of their work. [187] Eleven EU Member States contain participating cities, regions and municipalities: Belgium, Denmark, Finland, France, Germany, the Netherlands, Poland, Slovakia, Slovenia, Spain

and Sweden. In addition, many cities outside the EU are part of the ICORN network, including in Iceland, Norway and Switzerland, which are part of the Schengen area. [188]

The initiative aims to improve conditions for freedom of expression worldwide, by allowing writers, artists and journalists to continue their critical professional and creative practice safely. While conditions depend on the host city and institution, the initiative typically offers relocation for a period of 2 years. All ICORN participants are provided with access to housing and a grant covering living expenses, along with access to public services. Writers, journalists and artists interested in participating can submit an application to the ICORN secretariat, in which they are asked to provide documentation of their work and to demonstrate being (1) in danger of assassination, abduction, physical attack or disappearance as a consequence of this work; (2) sentenced or at risk of being imprisoned as a result; or (3) unable to express oneself due to fear of persecution. [189] The secretariate supports human rights defenders in their visa applications. The programme is not designed to offer support in situations of immediate urgency, mainly due to the lengthy process of obtaining residence permits. In Sweden, one of the EU Member States where the network is most active, 12 participants are welcomed each year to the 24 cities in the initiative. [190]

Shelter City is a Dutch programme and is already described in Section 4.2. Overall, there are 21 Shelter Cities. Beyond the Netherlands, they can also be found in Benin, Costa Rica, Georgia, Nepal, Tanzania and the United Kingdom.

4.3.2 Initiatives by civil society and academia

The **Artists at Risk** initiative is run by the NGO Perpetuum Mobile, based in Finland. Since 2013, the initiative has developed into a global network of artistic institutions, non-profit organisations, municipalities, state institutions and international organisations to assist, relocate and fund artists who are at risk of persecution or oppression or fleeing war. Prior to Russia's invasion of Ukraine, Artists at Risk hosted artists in 26 locations in 19 countries globally. Since the beginning of Russia's invasion of Ukraine, approximately 570 hosting institutions have signed up to Artists at Risk across Europe, relocating and supporting almost 2 100 applicants from Ukraine. Parallel to this, almost 600 dissident artists and cultural workers from Belarus or Russia have applied for support. Afghan artists at risk also remain a high priority for the initiative. [191]

Artists and hosts register directly via forms on the Artists at Risk website [192] . Applications can also reach the initiative via its partners such as United Nations Educational, Scientific and Cultural Organization (UNESCO), the Goethe Institute, the Swedish Artist Residency Network (SWAN) and other networks. The initiative works with existing visas, for example, some, such as Ukrainians, can enter visa-free.

Scholars at Risk is an international network of institutions and individuals that works to protect scholars at risk and to promote academic freedom. It offers safety to scholars facing grave threats, notably by arranging temporary academic positions at member universities and colleges so scholars can keep working until conditions improve so that they are able to return to their

home countries. Scholars at Risk also provides advisory services for scholars and hosts and runs campaigns for scholars who are imprisoned or silenced in their home countries [193].

Scholars at Risk began at the University of Chicago in 1999, and it launched with a major international conference at the university in June 2000. To date, the network has over 540 participating higher education institutions globally, including in the EU (Belgium, Denmark, Finland, Germany, Greece, Ireland, Italy, the Netherlands, Slovakia and Sweden), and the Network of Universities from the Capitals of Europe [194]. The European office of the global Scholars at Risk network is hosted at Maynooth University, Ireland [195].

Civil society organisations play a crucial role in many of the Member State and local level practices described above, from vetting applicants to providing targeted support to relocated defenders. Additionally, a range of human rights defenders' support programmes have been developed by civil society organisations. These include initiatives such as the following:

● The **Hamburg Foundation** invites politically persecuted people for 1 year. It integrates them into a network of German and international opinion leaders in politics, media and civil society [196].

- The **National Programme for the Urgent Aid and Reception of Scientists in Exile (PAUSE)** is piloted by the Collège de France and the chancellery of the universities of Paris [197].
- The **Reception and Respite Programme** (**REPIT**) of the Paris bar is for lawyers under threat [198].
- A group of over 20 NGOs coordinated by **Araminta** has focused on relocating Russian human rights defenders since the start of the Russian war of aggression against Ukraine.

4.4 International programmes

4.4.1 Ubuntu Hub Cities

The **Ubuntu Hub Cities initiative** is a city-based temporary relocation initiative for human rights defenders at risk across Africa, set up in 2019. The initiative enables defenders who have been subject to threats, violence and extreme pressure as a consequence of their human rights work to relocate temporarily within the continent. The initiative is run by the Pan-African Human Rights Defenders Network, known as 'AfricanDefenders', which is a network of five African sub-regional organisations [199]. The initiative has eight official hub cities selected strategically across the continent, with diverse local partners providing individualised support and follow-up for relocated human rights defenders. So far, the initiative has supported 118 human rights defenders [200]. Any defender at risk, threatened or persecuted for their work, can apply for temporary relocation with Ubuntu Hub Cities. Risks or threats should be a direct consequence of the defender's human rights work, and defenders should be able to provide clear documentation of their work and of the risks faced. The main aim of the initiative is to ensure the physical and mental well-being of

human rights defenders during their relocation period, while enabling them to continue their work.

The type of support offered includes financial support for travel and removal costs; support in integration; personal development and training including language courses and fellowship placements; and, where needed, psychological support, trauma relief and medical support. The duration and location of the relocation is flexible up to 1 year, depending on human rights defenders' needs. As the defenders are coming from elsewhere in the same region within Africa, there is usually no requirement for a visa. Should the risk for the defender persist, Ubuntu Hub Cities supports either an asylum application or resettlement to other countries, including outside Africa. In case of risk for family members, they are also relocated. One of the unique features of this programme is the possibility of financial support being provided to family members who have stayed in the country of origin during the defender's relocation, since often the defender is the bread winner of the family.

4.4.2 The Canadian refugee stream for human rights defenders

The government of Canada has established a dedicated refugee resettlement stream for human rights defenders, with the aim of providing protection to human rights defenders at risk, who cannot return to their home country [201] . The programme is a dedicated stream of Canada's broader government-assisted refugees programme, under which refugees are selected for relocation to and granted permanent residence in Canada [202] . Through the dedicated refugee stream for human rights defenders, Canada aims to resettle up to 250 defenders and their family members per year.

To be considered for this stream, individuals must be referred to the government of Canada by UNHCR [203] . To reach defenders most in need of protection, Canada is working with Front Line Defenders and ProtectDefenders.eu. [204] These organisations work together with UNHCR to identify human rights defenders who face risks and need resettlement. Individuals cannot apply directly for resettlement or make a claim at a Canadian embassy/consulate. Such resettlement is a lengthy process, and thus is not a solution for emergency evacuation. Individual assistance and/or living expenses are not provided, but transportation loans are available.

Canadian civil society organisations help resettled human rights defenders with their integration into society, including by supporting community connections, and human rights defenders' continuation of human rights work.

5. Ways forward

Providing support to human rights defenders is one of the EU's priorities in its external human rights policy. However, there are few reliable dedicated avenues for human rights defenders to lawfully enter and stay (even temporarily) in the EU in case of risk. In addition, existing provisions for flexibility – such as those provided by the visa *acquis* are not sufficiently applied to human rights defenders.

There is currently no coordinated EU-level approach. However, several Member States - making use of the flexibility provided by the EU visa *acquis* or provisions of national law - have established dedicated programmes enabling human rights defenders to relocate temporarily to the EU. There is much to learn from these practices and they can serve as inspiration for how to offer access to EU territory and relevant services in a secure and sustainable way, and how to best support human rights defenders during relocation.

Moreover, there is scope to remove unnecessary obstacles in the visa application process ensuring flexibility in considering and processing visa applications from human rights defenders and their family members. For those who face immediate risk or danger it is necessary to consider the needs and challenges particular to human rights defenders and their family members.

The following actions could be considered to enhance the EU's responsiveness to the protection needs of human rights defenders from third countries:

● make better and more frequent use of existing flexibility in EU law;

- broaden existing relocation programmes;
- increase awareness about human rights defenders' work, risks and needs;
- take into account the opportunities and risks through the application of large-scale IT systems;
- provide more adequate support during stay;
- assess the need to revise existing legal instruments to address the specific needs of human rights defenders.

5.1 Better and more frequent use of existing flexibility in European Union law

Visas, and in particular multiple-entry visas, are widely regarded as a key element of a comprehensive protection strategy enabling defenders to move in and out of their country in a way that allows them to continue working in their home communities without forcing them to resort to permanent asylum paths.

To make better use of the flexibility under the Schengen *acquis*, the European Commission could provide guidance for Member States regarding the options for human rights defenders to lawfully enter and stay in the EU. Such guidance should be provided in all relevant languages and be disseminated via efficient channels such as the ProtectDefenders.eu platform.

Moreover, the *Visa Code Handbook I* [205], which provides practical guidance to Member States on how to implement the Visa Code, could be updated to provide clearer guidance and case study examples on human rights defenders. The September 2022 EU guidelines for visa issuance in relation to Russian applicants [206] could serve as inspiration in this regard, since they outline how provisions in the Visa Code allow for exceptional procedures and derogations for specific categories of visa applicants, including human rights defenders, journalists and dissidents, and explicitly encourage EU Member States to use these exceptions (in the context of Russia).

Such guidance could include reference to:

- the opportunity to apply for a visa at a consulate in a country where the applicant is physically present but does not reside (Article 6 (2) of the Visa Code);
- lodging visa applications without an appointment and within shorter time frames in justified cases of urgency (Article 9 (3));
- in case of emergency, waiving the requirement that a passport must be valid for at least 3 months after the intended departure from the Member State (Article 12);
- where applicants' integrity and reliability have been demonstrated, waiving the requirement for one or more supporting documents (Article 14(6));
- waiving visa fees (Article 16);
- where applicants' integrity and reliability have been demonstrated, issuing multiple-entry visa (Article 24, in particular Article 24 (2c));
- issuing visas with limited territorial validity without carrying out prior consultation (Article 25 (1)(a)(iii));
- consulting relevant and trusted civil society organisations when assessing the application (Article 21).

EU law allows for multiple-entry visas which Member States can issue with a validity of up to 5 years to applicants who prove their need or justify their intention to travel frequently or regularly and who fulfil certain criteria. Such visas could be used more often by Member States for the purposes of supporting the work of human rights defenders at risk, which would allow them to move in and out of their country depending on their level of risk.

5.2 Broaden relocation programmes

Member States that do not yet have a human rights defenders' relocation practice in place could consider developing specific schemes facilitating access to visas and support for human rights defenders at risk, drawing on the promising practices already put in place by some Member

States.

Most relocation programmes available in the EU last from 3-6 months, which is usually insufficient for recovery from persecution. Drawing on the promising practices described in Chapter 4, Member States could consider establishing programmes for human rights defenders to stay longer. In parallel, more flexible options for short stays could be considered for networking and respite activities for defenders who are not able to leave home for a longer period [207] . For example, Amnesty International Netherlands has supported a 10-day stay including networking and respite activities for human rights defenders, which the participating defenders evaluated very positively.

A number of relocation programmes establish specific requirements regarding the 'type' (journalist, artist, etc.) and language knowledge of human rights defender who can take part. Similarly, defenders seem to profit to differing degrees from relocation to the EU depending on the region or country they come from. Family members are not always included. The (personal) scope of existing programmes could be broadened to allow more human rights defenders to participate.

5.3 Increase awareness of human rights defenders' work, risks and needs

There is a need to raise awareness among relevant bodies and officials in EU institutions and Member State authorities. This includes (1) who human rights defenders are, (2) what risks they face and why they may need to travel temporarily to the EU, (3) the need for and opportunities to make full use of the flexibility allowed by EU law on visas and borders, and (4) how to best support human rights defenders once they are relocated to an EU Member State.

Often family members of human rights defenders are exposed to the same security risks as the defenders themselves and may need the same level of protection. A better understanding of the risks and threats facing such family members (including those in LGBTIQ+ partnerships) needs to be developed. It is important that in such cases relocation programmes and visas are extended to cover close family members, and that LGBTIQ+ partnerships are officially considered families.

It is important that border guards and visa officers receive appropriate training in the EU's commitments to support human rights defenders, including how the relevant EU legislation on the border and visa procedures allow them to enable the mobility of human rights defenders. Targeted training by Member States on the Visa Code, VIS, the Schengen Borders Code, the entry-exit system and ETIAS could incorporate these aspects. It could also include information about human rights defenders, the risks they face, their protection needs, the obstacles they face in accessing visas and the use of limited territorial validity visas. Peer-to-peer learning on good practices from Member State programmes could be encouraged.

Human rights defenders from some countries do not require a visa for a short stay of up to 90 days. However, once ETIAS is in operation they will need to request travel authorisation to be allowed to travel. The ETIAS public information website should explain all available options to

human rights defenders and provide clear information on the possibility of obtaining authorisation with limited territorial validity and what information the defender should provide to ensure that their application is fairly and appropriately assessed.

It is also important to raise awareness of the role, advantages and potential risks of the future digitalisation of the visa process and of EU large-scale IT systems in the areas of migration and security, including the impact that alerts in Interpol databases can have on human rights defenders.

5.4 Provide more adequate support during stay

In line with the EU's policy priorities on human rights, the main aims of relocating human rights defenders to the EU are to protect them from harm and to enable them to continue their human rights work. Achieving these will require work permits, capacity-building support, access to work spaces and the possibility to register an NGO and receive funding. Also required is access to housing, healthcare, employment and education.

There is a need to raise awareness of the issue of transnational repression of defenders among law enforcement officers and to increase the resilience of human rights defenders through (digital) security trainings and psychosocial, legal and social support. The support should include the opportunity to connect with other defenders and for advocacy with EU and international organisations, including the opportunity to travel within the EU.

Moreover, many defenders may be exhausted and traumatised when they arrive in the EU. Measures for physical and mental recovery, including trauma relief, are therefore important. In addition, defenders may require police protection from security threats even while in the EU.

Cooperation with local civil society and local authorities is crucial to tailor these different dimensions of support to their specific needs.

5.5 Considering the specific impact of tech-assisted procedures

The EU's increased efforts to rely on technological developments and digitalisation to support asylum, border and migration-related procedures present benefits and challenges specific to human rights defenders.

Human rights defenders might be subjected to surveillance activities in their own country and hence might be afraid to share their data in large-scale databases or online platforms. While EU law has strong safeguards to avoid the misuse or inappropriate sharing of personal data, the competent national authorities should process the personal data of defenders with extreme care. As concerns personal data stored in EU large-scale IT systems, it is important that the existing safeguards are known and that effective remedies become available and known to defenders regarding their rights to information, access, correction, and erasure.

5.6 Addressing gaps in legislation

The EU could review the adequacy of its legal tools for supporting human rights defenders, especially regarding the Visa Code, the VIS Regulation, the ETIAS Regulation and the Entry-Exit System Regulation, and suggest possible amendments if necessary. To respond to evolving risks for human rights defenders globally, the EU and the Member States are encouraged to continuously assess the need for additional policies and tools to protect and support human rights defenders at risk when coming to and staying in the EU.

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[115] SIS Returns Regulation (Regulation (EU) 2018/1860), Article 9; Return Directive (2008/115/EC), Article 11 (4).

[116] Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, OJ 2000 L 249/19, Articles 19-20.

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[207] Amnesty International Netherlands has supported a 10-day stay which included networking and respite activities for HRDs, which was very positively evaluated by the participating human rights defenders.

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