



Journal on Ethnopolitics and Minority Issues in Europe
Vol 16, No 2, 2017, 67-86.

Copyright © ECMI 2017

This article is located at:

<http://www.ecmi.de/fileadmin/downloads/publications/JEMIE/2017/Andeva.pdf>

Can Migration Jeopardize Basic Human Rights?: The Situation of the Roma Minority in Macedonia

Marina Andeva*

University American College Skopje

Abstract

This paper discusses the basic human rights of free movement and of equality of all citizens through the position of the Roma minority in the Republic of Macedonia. Since 2011, Roma were frequently stopped at border crossings and denied exit without any real arguments or proof of lack of documentation. Questions were raised whether the measures taken by border authorities in the Republic of Macedonia perceive the citizens of the republic as a potential danger to the public order, legal order and state's security, or as a potential danger to the state's distorted international image and its relations with the EU and its member states. The latter was used more indirectly as an argument because state authorities feared that Macedonia may lose the visa waiver because of the presence of Macedonian asylum-seekers in the European countries. By presenting the research findings and conducting an analysis of state policies, this paper addresses the ways in which state policies have been affected towards minorities and equality rights as caused by the "Schengen free" migration movements and the attempt by the EU to extend this arrangement to the Western Balkans.

* Marina Andeva has held the position of Assistant Professor Researcher at the School of Political Science, University American College Skopje since 2015. She is also Research Fellow and Project Manager at the Institute of International Sociology of Gorizia (ISIG) since 2009. Correspondence details: Marina Andeva. Email: marina.andeva@uacs.edu.mk; marinandeva@gmail.com.

Keywords: Republic of Macedonia; minorities; migration; free movement of persons; Roma; discrimination

Human migration comprises different events and actions, each distinctly characterized according to different factors and features. Migration is characterized by movements of people from one place to another for different reasons and intentions (Demuth, 2000). Migration can be: voluntary or forced; internal or external; for economic or family reasons; and, worst of all, it can be triggered by wars and terror. Migration is also distinguished by whether a person exits from one state with an intention to settle in another (emigration) or as a process by which non-nationals move into a country for the purpose of settlement (International Organization for Migration, 2011).

In view of the general consideration of what can constitute migration movements, this paper will focus on the emigration movements from the Republic of Macedonia, and the challenges the state and emigrants faced after the 2009 Schengen visa waiver for Macedonian citizens who are members of the Roma ethnic minority group. Roma minority members have been recognized in the Republic of Macedonia Constitution since this country's independence: the 1991 Constitutional Preamble asserted that the Republic of Macedonia is 'established as a national state of the Macedonian people, in which full equality as citizens and permanent co-existence with the Macedonian people is provided for Albanians, Turks, Vlachs, Roma and other nationalities living in the Republic of Macedonia'. The constitution included few provisions guaranteeing basic minority rights. Rather than using the term "minority", the distinct groups were identified as "nationalities". The constitutional amendments deriving from the Ohrid Framework Agreement introduced changes to the terminology by replacing "nationalities" with "peoples" and "communities". For clarity of terminology used in this paper, the term "minority groups" corresponds to the term "communities". Macedonia's mixed population structure (Table 1) comprises ethnic Macedonians as a dominant group and ethnic Albanians as another large group, alongside a few smaller minority groups.

Table 1. Population structure according to declared ethnic affiliation, by censuses.

	1991	1994	2002
TOTAL	2,033,964	1,945,932	2,022,547

Macedonians	1,328,187 (65.30%)	1,295,964 (66.60%)	1,297,981 (64.18 %)
Albanians	447,987 (22.03%)	441,104 (22.67%)	509,083 (25.17 %)
Turks	77,080 (3.79%)	78,019 (4.01%)	77,959 (3.85%)
Serbs	42,775 (2.10%)	40,228 (2.07%)	35,939 (1.78 %)
Roma	52,103 (2.56%)	43,707 (2.25%)	53,879 (2.66 %)
Bosniaks	-	6,829 (0.35%)	17,018 (0.84%)
Vlachs	7,764 (0.38%)	8,601 (0.44%)	9,695 (0.48%)

Note: Data retrieved from Republic of Macedonia State Statistical Office, Statistical Yearbook of the Republic of Macedonia. The last population census was in 2002.

The aim of this paper is to present the question of the possible effect of the “Schengen free” migration movements on the attitudes of state policies towards minorities in Macedonia from 2011. The right to equality is discussed by describing state policies towards preventing and limiting the right of free movement and right to leave a country of Macedonian citizens, in particular members of the Roma minority group. This paper also takes into account relevant international and domestic legislation; the focus is put on relevant laws, documents adopted by the United Nations (UN), issued by the European Union (EU) and the Council of Europe (CoE), as well as the legal and institutional framework of the Republic of Macedonia. By presenting the analysis of the effect of the migration movements of a specific minority group in the country, the paper would also like to present how migration movements and their consequences affirmed once again the discriminatory practices in the country and the continued marginalization of the Roma minority group in the society.

Some data presented in this paper are derived from research conducted by the author in 2014, when the issues of restraining the freedom of movement began to be actualized in the public sphere. Having in mind the complexity and the delicate nature of this topic, the analysis relied on several methods of qualitative and quantitative data collection. Information was requested from the Ministry of Interior and the Ombudsman of the Republic of Macedonia in accordance with the Law on Free Access to Public Information. Direct interviews were conducted with members of the Roma minority (particularly in Kumanovo, a city near the Macedonian-Serbian border). Moreover, interviews were conducted with a former Roma Member of Parliament, with the Director of the Association for Roma Education “Prosperity”, with the President of the Commission for Protection against Discrimination, with a member of

the Commission for Inter-Community Relations in the Municipality of Kumanovo, and with representatives from the non-governmental organizations (NGOs) “National Roma Centrum” in Kumanovo and “SUMNAL” in Skopje. Regarding the research limitations, in the process of data collection difficulties were encountered in terms of obtaining answers when contacting official authorities using a procedure in accordance with the Law on Free Access to Public Information. The procedure initiated to the Ombudsman Office by e-mail was to request access to information on the number of complaints lodged by Roma in the Republic of Macedonia in 2010, 2011, 2012 and 2013 on the grounds of violation of their right to freedom of movement. However, in response the Ombudsman Office provided the explanation that it does not provide such information and that such information was not published, thereby exempting this office from the legal obligation to disclose the requested information by processing relevant files and documents. Furthermore, difficulties were encountered in terms of data collection by means of interviews conducted with Roma people from Skopje and Kumanovo, in particular due to their reluctance to discuss the issues raised, fearing possible consequences in the future.

1. The right to leave the country of origin

The right to leave the country implies the duty of the state to refrain from discrimination on various grounds (in terms of ethnicity, colour, gender, race, religion, social status, etc.). This is evident in the International Covenant on Civil and Political Rights (ICCPR), where Article 2.1 provides that all signatory states undertake to respect the rights recognized in the Covenant and to guarantee them to all individuals within its territory and subject to their jurisdiction. In a document issued by the Commissioner for Human Rights of the CoE, dedicated to the right to leave their country, it is pointed out that when the state selects individuals who are not allowed to leave its territory (or travel documents are denied) the basis for this procedure should be examined with caution and it should be ensured that the criteria by which such procedures are adopted and implemented do not discriminate against the person, directly or indirectly, on various grounds (Council of Europe, 2013). The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) of 1966 prohibits discrimination in exercising the right to leave one’s own country. Article 5(d) (ii) prohibits discrimination in exercising the right to leave any country, including one’s own, and to return to your country. The relationship between the right to leave a country and the prohibition of discrimination is a very important issue in Europe, where recognition of the right of free movement of persons has seen significant progress in the past twenty years; incidents of violation of this right are sometimes

characterized as discrimination based on political opinion and belief, and more recently on the basis of ethnic origin, as can be seen in the analysis in this paper. Article 2 of Protocol 4 of the European Convention on Human Rights (ECHR) clearly states that: ‘Everyone shall be free to leave any country, including his/her own.’ This same article gives also some restrictions to this right ‘in accordance with law and justified by the public interest in a democratic society’.

It is obvious that the application of Protocol 4 of the ECHR raises many questions, discussions and debates when it comes to the right to freedom of movement of asylum-seekers—citizens of the western Balkan countries—in recent years. Several key aspects of the current policies of the EU, and in particular the Republic of Macedonia, are in direct conflict with the right of free movement guaranteed by the Protocol. Most importantly there is the issue of visa liberalization and freedom of movement within the EU, which exclusively affects the restrictive policies on migration and integration of immigrants in the EU member states and the conditions imposed on non-EU countries or so-called third countries, with respect to those same migratory policies. Freedom of movement in this context is closely related to migration processes, which in the past few years (starting from 2010) are also present on the route from the western Balkans (i.e. Macedonia) to the EU. And when speaking of migration processes, it should not be forgotten that those migrants are people who are leaving their home country, making their own choice and conviction to do so, despite the fact that often these choices are extremely limited and difficult. According to the International Convention for the Protection of the Rights of all Migrant Workers and Members of their Families (OHCHR), in Article 8 paragraph 1,

Migrant workers and members of their families shall be free to leave any state, including their state of origin. This right shall not be subject to any restrictions except those that are provided by law, are necessary to protect national security, public order, public health, morals, or the rights and freedoms of others and are consistent with the other rights recognized in the present part of the Convention.

2. The Schengen waiver and its effects

In effect since 19 December 2009, citizens of the Republic of Macedonia have been allowed to travel to the European Union without having to apply for visas at consular offices of EU member states in their country or in the neighbouring countries (Council of the European Union, 2009). Visa liberalization towards the Western Balkans has been accompanied by concern among the EU member states that citizens of these countries are “abusing” the

liberalization and free entry to the EU for a period of time, for a particular activity, or for reasons that were not provided for under national and European legislation. Some EU member states registering significant increases in asylum applications in 2011 have intensified calls to the governments of the western Balkan countries on issues related to the proper management of their migration outflows. A number of bilateral and regional meetings were held regarding the matter. Pressure on countries in the region became even higher in May 2011 when the European Commission proposed a temporary suspension of visa liberalization for Serbia, Macedonia, Bosnia and Herzegovina, Albania, and Montenegro. Under the proposal, the suspension would be possible if a group of EU member states detects an increase of asylum-seekers from these countries above a certain threshold (Council of Europe, 2013). On 12 September 2013, the European Parliament adopted a mechanism for the suspension of the visa regime, which allows the EU to restore a visa in emergencies (European Parliament, 2013). Various calls were made by the representatives of the EU to the authorities of those countries, pointing out that it is essential to take all necessary measures to reduce asylum-seekers, stressing that if the problem persists, the visa liberalization process will be jeopardized and visas will be reinstated. After registering alarming figures for the member states, the European Union has shifted the responsibility on the governments of the Western Balkans to address the issue of asylum-seekers.

In her speech, Viviane Reding, Vice President of the European Commission, indicated that Roma were the real problem for the free movement in the EU (Romea, 2014). She stressed that all 507 million EU citizens have equal rights and added that, in the several decades of the Union's existence, there have never been such intense attacks from politicians and media against one of the main European rights—the right to freedom of movement. In a different speech, she specifically pointed out that *'free movement is a right to free circulation; it is not a right to migrate in Member States' social security systems'* (European Commission, 2013a). The fourth report of the European Commission, which concerns the monitoring of visa liberalization for the western Balkan countries, noted that in 2013, according to an annual analysis of Frontex, the majority of asylum-seekers were Roma. In Germany, more than 80% of applicants were Roma (European Commission, 2013b). Analysis of the method applied for rejecting ungrounded asylum applications and for returning asylum-seekers reveals interesting variations among the Schengen area member states. In the first three months of 2013, Germany returned practically all asylum-seekers from the Western Balkans through forced return procedures; Luxembourg proceeded almost entirely via the voluntary return track; Sweden and

Belgium used mainly the voluntary track; and Switzerland used the two methods in almost equal measure (European Commission, 2013b).

The rate of admissible asylum applications by Macedonian citizens, according to Eurostat official data, was very small compared with those of other western Balkan countries (see Table 2).

Table 2. Number of submitted applications from Macedonian citizens (2009-2013).

	2009	2010	2011	2012	2013
No. of applications	1,015	8,105	6,555	10,740	11,065

Note: Data retrieved from the Fourth Report on the Post-Visa Liberalization Monitoring for the Western Balkan Countries (European Commission, 2013a) and Bitoulas (2014).

According to Eurostat data, in 2013 the number of rejected asylum applications filed by Macedonian citizens in Germany was 6,000. In 2013, out of a total of 7,480 decisions, there were only 70 positive results. Of those, 25 were Macedonian nationals who received recognized refugee status, 10 were granted protection (subsidiary protection), and 35 persons were granted the request on humanitarian grounds.

3. Is the right of free movement guaranteed for everyone?

Following the significant reaction by the EU member states, the government of the Republic of Macedonia started introducing measures for preventing further emigration to the European Union. According to official information from the Ministry of Internal Affairs of the Republic of Macedonia dated April 29, 2011, enhanced measures and activities to prevent the large number of persons seeking asylum in member states have started to be enforced. In the specific case of the Republic of Macedonia, Roma people's right to freedom of movement was seriously jeopardized as soon as the visa liberalization entered into effect. Statistical data on the number of asylum-seekers under the visa-free regime have played a major role in policy-making and political debates centred on measures for prevention of ungrounded asylum applications, besides the fact that the rate of admissible asylum applications by Macedonian citizens,

according to official data from Eurostat, is very small compared with that which applies to other countries in the western Balkans (Bitoulas, 2014).

The Constitution of the Republic of Macedonia guarantees equality and freedom of movement for all citizens, while the international treaties to which the Republic of Macedonia is a signatory state prohibit all types of discrimination and restriction of the freedom of movement. However, it should be noted that the European Commission's Visa Liberalization Roadmap clearly indicated that the Republic of Macedonia should guarantee its citizens freedom of movement, which should not be burdened with unjustified restrictions and discriminatory practices, and that the country should duly investigate all cases of ethnically motivated incidents caused by police officers in regard to freedom of movement, including practices targeting members of minority groups in Macedonia.

Under the suspicion of being possible asylum-seekers, from April 29 to December 31, 2011, permission for leaving the country was not given to 2,948 persons, in 2012 to 4,569 persons, and in 2013 to 6,475 persons. In terms of the number of persons belonging to the Roma minority group, according to legal regulations at border crossings, records are updated based on the travel document, according to which the distinction of Macedonian and foreign nationals is made. Accordingly, there is no record or breakdown by ethnic or national belonging of the returned persons. Ministry of Interior records for unauthorized exit of Macedonian citizens are updated according to place of residence and the border crossing where the exit is not allowed and according to these records, the majority of persons who are not allowed to exit are from Skopje (5,334), followed by Kumanovo (2,020), Strumica (808), Stip (801), Bitola (737), Prilep (647), and Kocani (564).

The official data from the authorities cannot prove the origin of the returned persons, however NGOs, as well as the interviewed persons, provide insight on this issue. Information received from the European Roma Rights Center (ERRC), working in the field with individual cases in the period between 2011 and 2013, suggests documented cases of clear infringement of the free movement of Roma in Macedonia. In particular, the ERRC reported that Roma are subject to discriminatory practices and mistreatment by border officials when trying to leave the country (ERRC, 2014). In the period from 2011 to 2013, the ERRC documented 74 cases of Roma individuals who have not been allowed to leave the country and 24 cases who had their passports confiscated by Macedonian border officials. Additionally, the ERRC, while working onsite, was informed of a further 50 cases. In 2012, the ERRC was alerted about this situation and complained to authorities. The ERRC filed an initiative before the Constitutional

Court of the Republic of Macedonia in regards to the amendments to the legality of traveling documents of Republic of Macedonia (grounds for revocation of passports and obstruction of the right to leave the country), which are in conflict with the constitution and with international regulations for the protection of human rights and freedoms. The Executive Director of the ERRC said: “The problems faced by Roma will not fade with the illegal prevention to travel. On the contrary, discrimination on the border creates new obstacles for Roma integration and respect for the rights of the Roma” (ERRC, 2014:2).

Since 2011, Roma were frequently stopped at border crossings and denied exit without any real arguments or proof of lack of documentation. Questions were raised as to whether the measures taken by border authorities in the Republic of Macedonia demonstrate the perception of the citizens of the country as potential dangers to the public order, legal order and the state’s security, or as potential dangers to the state’s distorted international image and its relations with the EU and its member states (EPI, 2016). The institutions were being wisely silent, but also the members of the Roma minority in the country feared openly speaking about this problem for a long time.

The interviews with 20 members of the Roma minority from Skopje and Kumanovo, who agreed to talk about their personal experiences but asked to remain anonymous, confirmed the above. Through open and direct interviews, interviewees expressed their personal stories and details, giving clear examples of undignified treatment by police officers at border crossings, where they were repeatedly held up for a long time and where they were returned with exit stamps marked with two stripes. Besides the fact that they were already given exit stamps on their passports, they were not allowed to exit, nor to continue their travel to the border crossing of the neighbouring country (in these cases, Serbia). From the interviewees, no one could tell exactly what those two stripes mean. They were primarily concerned by the fact that they cannot freely cross the Macedonian border, and annoyed by the fact that only Roma passports are marked. A report published in May 2012 by the ERRC stated that the two stripes mean crossing is prohibited within 24 hours. It is not completely clear whether this labelling is a kind of preventive measure taken by the authorities to stop asylum-seeking by Roma by not allowing exit from the borders of the state. This phenomenon is informally named “prevent abuse of asylum”, and such cases are often referred to as cases of “bogus asylum-seekers”. Persons returning to the country, and who were not given asylum (dismissed claims), are registered in the system available to border guards, so it is likely that those persons cannot re-cross the border. Despite such measures, interviews and collected data show that, in many cases, persons

present necessary documents (statements and copies of the return tickets and sufficient funds) requested by border officials, yet they still face denial of exit. As a member of the Committee on Relations of Kumanovo stated, most Roma from Kumanovo travelling for family reasons, often visiting relatives in Serbia near the border crossing, are not allowed to exit under suspicion that they are possible asylum-seekers in EU countries, and because they are Roma. From personal experience, he pointed out that, many times, his relatives had complete documentation (statements from relatives abroad translated into Macedonian and notarized, as well as travel insurance and a return ticket), yet exit from the country was not allowed. After a first, second, and third attempt they were given stripes to their exit stamps on their passports. After insisting and initiating formal proceedings, he said that ‘not in all cases there is the possibility to negotiate an exit or a way out’. Many who are in a difficult economic situation, after the great wave of asylum-seekers in recent years and learning from events and low admissible asylum, were not even thinking about filing any procedure in some member states. According to their statements, often the reasons for wanting to leave the country are to visit relatives and friends, and during the summer to pursue seasonal work to improve their financial situation. Some of the respondents also use the allowed 90 days stay within one year for purchasing medicines for their family members, which, they say, are difficult to obtain in Macedonia.

4. Legal remedies and cases before national courts

The Macedonian Young Lawyers Association (MYLA) registered many Roma who have had similar experiences at the border crossings, but very few of those people decided to initiate any legal proceedings. Their individual decisions, according to MYLA representatives interviewed, are mainly due to their significantly lower income, which in no way allows them to cover the costs of the proceedings. Some of those who came into their offices also said that they are afraid to initiate a procedure which, according to them, would have an impact on their possible future trips outside the country because they would be labelled and denied exit for an extended period of time. Through the projects ‘Combating Discrimination through Strategic Litigation - Strengthening the Role of Civil Society Organizations’, and ‘Action against Discrimination’, supported by the Open Society Institute - Macedonia and USAID - Macedonia, there were five procedures (in which 13 Roma persons participated) in front of the Constitutional Court, the Administrative Court, the Ombudsman and the Basic Court Skopje 2. MYLA analysis conducted within “Action against Discrimination” (MYLA, 2016b) recorded cases of

proceedings before the competent authorities on the issue of the right to equality and the prevention and prohibition of discrimination, i.e. requests for protection of the right to equality and prohibition of discrimination of the Roma by the authorities in an attempt to leave the territory of the Republic of Macedonia. In the cases mentioned in the analysis, Macedonian citizens of Roma ethnicity had a stamp with additional markings and were not allowed to leave the country by the border officials. The team of lawyers in these cases submitted a violation of the right to equality (guaranteed by Article 9 of the Constitution), the right to leave and return to the Republic of Macedonia (guaranteed by Article 27 of the Constitution), and basic human rights (guaranteed by Article 13 of the Universal Declaration of Human Rights and Freedoms and Article 8 and 14 and Protocol 12 of the European Convention on Human Rights and Freedoms).

Lawsuits began to fill the courts by the end of 2014 with the MYLA assistance and their project of free aid. The efforts resulted the very first judgment by the Appeal Court on June 6, 2016, laying down discrimination and violation of equality in which the Ministry of Interior (MOI) appears as a defendant because it prevented the plaintiff, a person belonging to the Roma nationality, from leaving the territory, acting contrary to the Law on Border Control (2010), and restricted his right to free movement and right to equality (MYLA, 2016a). In the case the court found that ‘there is no doubt that the state has the right, due to risk damaging the visa-free regime to take actions and measures that will result to prevent citizens from crossing the border to abuse the visa-free regime, but it must be done in a way that will not damage the equality of citizens’. The border authorities judging solely by ethnic affiliation made an assumption that the plaintiff might abuse the visa regime, which committed a serious violation of the right to equality and the right to freedom of movement (MYLA, 2016b). Article 8 of the Law on Border Control states that ‘in the performance of border control, police officers are obliged to fully respect human dignity’ and ‘over the performance of border control, police officers may not discriminate in terms of gender, race or ethnic origin, colour, age, nationality, social background, religious belief, disability or sexual orientation, wealth and social status’.

The Commission for Protection against Discrimination did not have enough data about complaints of discrimination by border officials, evident from its official reports. Information obtained through the interview with the President of the Commission pointed out that, since the establishment of the Commission for Protection against Discrimination (in 2010), there were only two complaints. One was in 2011, when the Commission submitted a complaint by a person of Roma origin with Macedonian and Slovenian citizenship who claimed he was

discriminated against by border police for five years upon entry and exit from Macedonia, with a detailed examination of his personal vehicle. According to the Commission, there was no justified finding of discrimination in this case. The second complaint was in 2014, about a discriminatory attitude by the border police on an individual citizen of Roma origin. At the moment of the interview, the case was still not completed. The last available report of the Commission (for 2015) reports only one complaint from a person (Roma) who claims to have been discriminated against on the basis of skin colour and ethnicity, in the field of access to goods and services by employees of the Ministry of Interior at the border crossing of Alexander the Great airport in Skopje. The daughter of the complainant asked the border police officer whether it is because of their skin colour that they were not allowed to travel (besides the fact that they had all the necessary documents); to this another police officer intervened, saying: “Look young lady, statistically speaking Roma are seeking asylum in the EU countries” (Commission for Protection against Discrimination, 2016: 13). This complaint, according to the report, was finalized by a recommendation from the Commission to the employees at the specific border crossing to take all measures not to repeat such an incident in the future.

However, the Ombudsman report in 2013, under its specific sections on ‘Civil States’ and ‘Interior, Police Actions and Non-discrimination’, neither mentioned complaints nor recorded such phenomena (Ombudsman, 2013). The report for 2013 referred only to studies conducted by the Ombudsman in 2013 as part of a regional project ‘Best Practices for Roma Integration’, which incorporates a field survey on ‘Aspects of Discrimination against Roma and their Protection’. The results of this research report indicated that “members of the Roma community still feel discriminated on separate grounds, particularly on grounds of ethnicity or nationality and colour”. The Ombudsman, based on received data, concluded that “many of the respondents are familiar with the concept of discrimination, but it is necessary to strengthen the mechanisms for protection against discrimination”. In the 2012 report, the Office of the Ombudsman, in the area of abuse of police authority, concluded that the border control led to complaints from citizens stating that their right of passage through the state border was violated (Ombudsman, 2012). But despite the constitutionally guaranteed right of citizens of the Republic of Macedonia for freedom of movement, the Ombudsman procedure concluded that the persons did not meet the conditions stipulated in the Law on Border Control because they did not have documents that could justify the purpose and reasons for travel, and thus they were not given the right to cross the border. In all reports from 2010 to 2013 it is stated that the Ombudsman encountered ‘not appropriate cooperation with the competent authority for

foreigners, i.e. Sector for Border Affairs and Migration within the Ministry of Interior' and issued a recommendation to the Ministry of Interior and the Government to take measures for Border Affairs and Migration to comply with regulations and not to hinder the work of the Ombudsman.

According to the MYLA and to the findings of the field research, Roma are afraid to talk about their problems faced at border crossings. They are revolted by the fact that only members of the Roma minority are discriminated against and prevented from crossing the border. They also demonstrate fear of additional labelling if they publicly express their anger. Moreover, financial problems also limit them from initiating legal action that could not only protect their rights, but also raise awareness among their citizens to begin to speak openly about their individual cases. After the verdict in the Basic Court Skopje 2 (and the following legal proceedings in front of the Court of Appeal), the number of publicly presented cases of freedom of movement and discrimination raised in number. The media published the case of an actress from Roma origin working in the Theatre for Children and Youth (Akademik, 2014). According to sources, the actress was prevented from travelling to her sister in Germany, as an employee of passport control at Alexander the Great airport cancelled her ticket and she was not allowed to continue her journey. As she said, she was the only one that was returned because she is Roma.

5. Between political and legal aspects of the problem

The threat to remove Macedonia from the "white list" (for visa liberalization) had important policy implications to the EU for any of the countries of the western Balkans; such a move is undoubtedly characterized as unfavourable for any political party in power. Thus, such a threat can result in measures that might be inconvenient for citizens or for a special category of citizens who intend to travel outside the country's borders, particularly against members of the Roma minority not only in Macedonia but also in other countries of the western Balkans. Issues related to human rights faced by Roma in many parts of Europe, not only in the western Balkans, were evidenced even before, by the European Court of Human Rights, such as inhuman treatment by police officers in Macedonia to people with Roma nationality (Council of Europe, 2012; ECHR, 2017).

While it was assumed that the visa regime is a useful weapon against illegal migration, it became a visa-free regime with restriction of freedom of movement. It was clear that because

of the abuse of the free movement in the Schengen area by the large number of citizens of the western Balkan countries, all citizens could be subject again to a visa regime. Moreover, the EU member states, the signatories of the Schengen agreement, have shifted the tackling of the numerous unfounded asylum claims to the countries of origin of the asylum-seekers. This action directly attacked mostly members of the Roma minority in Macedonia. With the return of Roma by the Macedonian border officers, there was a clear violation of the legal order of the state and international legal acts cited in this paper. Macedonian authorities' measures that were implemented to reduce the statistics of the number of Macedonian nationals seeking asylum was a direct violation of citizens' rights to free movement.

It is clear that the right of free movement of Roma in Macedonia was abused: first, due to the recommendations and conditions that the EU and its member states sent to Republic of Macedonia to prevent "bogus asylum-seekers"; and second, due to the discriminatory attitude of the Macedonian border authorities. Alternative solutions to this problem should be sought in reviewing the problem from several aspects: first, the socioeconomic situation of Roma in Macedonia; and second, the question whether the right of every citizen to freedom of movement and protection of every citizen from discrimination are less significant than the migration policy of the EU to reduce the number of asylum-seekers and illegal migrants. In the area of fundamental rights, in the 2013 report of the European Commission with regard to post-monitoring for determining the implementation of the given roadmaps, it was stated that there is an implementation of the action plan for Roma inclusion and it involves measures to further improve access to employment, education, housing and access to personal documents (European Commission, 2013b). The socioeconomic aspect, i.e. improving the socioeconomic situation of Roma in Macedonia, would significantly result in favourable migration policies and measures that the Republic of Macedonia is required to comply with, as requested by the roadmap published by the European Commission. But when it comes to limiting the right to free movement, they are primarily aimed at meeting the expectations of member states and the European Commission in terms of mutual cooperation by indirectly preventing a large number of asylum-seekers. Improving the socioeconomic situation goes in favour of indirectly addressing of restrictions on freedom of movement of Roma in Macedonia, improving quality of life and reducing the number of persons of Roma ethnicity coming out of the country looking for a better future. Although for years the question of better integration of the Roma has been discussed, the involvement of Roma in education and improvement of their financial position

(Ministry of Welfare and Social Policy, 2009) still face major flaws, which were clearly shown after the entry into force of visa liberalization.

The question of whether the right to freedom of movement for every citizen and the protection of every citizen from discrimination is less significant than the migration policy of the EU to reduce the number of asylum-seekers and illegal migrants puts us somewhere between the political and legal aspects of this problem. On account of the conditions and promises given to Macedonia for becoming an EU member state, there were frequent actions violating the constitution and the laws that should guarantee freedom and human rights.

Conclusions

Statistical data on the number of asylum-seekers under the visa-free regime have played a major role in policy-making and political debates centred on measures for prevention of ungrounded asylum applications. In light of these developments, it should be noted that there are significant differences in terms of annual numbers of asylum applications submitted by citizens from the western Balkans in the period 2010-2013. For example, Frontex data showed that, in January 2013, the number of asylum applications submitted by citizens from the western Balkans in the top five EU/Schengen states has decreased by 44% compared to January 2012 (-61% for Serbia, -45 % for Montenegro and -46% for the Republic of Macedonia). However, the same period has been marked by significant increases of asylum applications submitted by citizens from Albania (+74%) and Bosnia and Herzegovina (+51%) (European Commission, 2013c). Basing policy-making and relevant measures on these fluctuating data can, under no circumstances, be considered wise. Analysis of the method applied for rejecting ungrounded asylum applications and for returning asylum-seekers reveals interesting variations among the Schengen area member states. In the first three months of 2013, Germany returned practically all asylum-seekers from the western Balkans through forced return procedures; Luxembourg proceeded almost entirely via the voluntary return track; Sweden and Belgium used mainly the voluntary track; and Switzerland used the two methods in almost equal measure (European Commission, 2013b). This means that both the EU and its member states have adequate (prescribed by law) mechanisms that could prevent the occurrence of so-called “false asylum-seekers”, without having to transfer the responsibility to the western Balkans by issuing recommendations and imposing terms and conditions that they need to

fulfil. Nevertheless, these conclusions exclusively concern relations between the EU and the western Balkans.

As regards the prevention of Roma people crossing the Macedonian state borders, conclusions are indirectly related to the previously presented findings, but the Republic of Macedonia's role in the resolution of this problem should have been both direct and meaningful. As a reminder, the Constitution of the Republic of Macedonia guarantees equality and freedom of movement for all citizens, while the international treaties to which the Republic of Macedonia is a signatory state prohibit all types of discrimination and restriction of the freedom of movement.

The research and its results clearly indicated that this problem is significant for the treatment of one minority group in the country. The research also revealed a slight disregard towards this issue by the state institutions, with the institutions being silent on this issue for a long time. The members of the Roma minority feared openly speaking about this problem. Silence on the part of those whose right to freedom of movement has been violated or those who have been inflicted damage, those who have been treated in inhuman and unjust manner, and those who had been discriminated against by the border police officers and by different state institutions, is a major and serious problem that affects the progress of the country in building a democratic state that aspires to join the EU and a state whose legal order should guarantee complete protection of its citizens. NGO's such as the MYLA "broke the ice", but they also had unsuccessful judgments which prove the constant attempt of the Macedonian courts to neglect the right of free movements of persons and the prohibition against discrimination (MYLA, 2016b).

International organizations should have made serious efforts to emphasize the issue of restricted fundamental rights and freedoms of the citizens of the Republic of Macedonia by putting forward clear recommendations for the state, with a special focus on the right to freedom of movement and the right to non-discrimination of Roma people living in the Republic of Macedonia. Those organizations, in particular the Council of Europe, should have reacted publicly and strongly against the discriminatory measures taken by the Government of the Republic of Macedonia at its border crossing points, which not only contribute to the protection of citizens' safety, but instil greater distrust and fear among Roma people. And finally, the European Commission should have been engaged in thorough monitoring of the implementation of recommendations addressed to the Republic of Macedonia and enlisted in the Visa Liberalization Roadmap, especially those concerning the protection of human rights.

It is not only necessary, but also of absolute importance for the state institutions to respect the fundamental rights and freedoms of the citizens of the Republic of Macedonia guaranteed under the constitution and the laws, as well as under the international treaties and legal acts ratified by the state. Measures implemented at the border crossing points in the Republic of Macedonia targeting members of the Roma minority, which are discriminatory in nature and restrict their right to freedom of movement, must be prosecuted. With a slow pace, such actions were initiated; however, there is no substantial number of cases reached in order to clearly state that this has been accomplished. It is important to have a transparent and public presentation of measures implemented by border police services for the prevention of illegal migration and regular dissemination of public information about citizens' responsibilities related to their movement beyond the state borders and about the responsibilities of border police services when implementing such activities and measures. Civil society actors must act in a more strategic and creative manner for the purpose of finding ways and designing measures to raise public awareness on this important problem and they need to be more active and engaged in presenting this problem, by means of debates and conferences. Efforts have been shown by the civil society organizations mentioned in this paper, which have shown that the influence of such actors is quite significant and has a great impact. The citizens of the Republic of Macedonia should be the driving force for finding a solution to discriminatory practices by sending clear and loud messages and complaints to the state institutions, in particular the institutions that are by law obliged to protect the fundamental rights and freedoms of all citizens, concerning evident and blatant violations of individual rights and freedoms, especially the right to freedom of movement, for the purpose of indicating this issue as a problem and exerting pressure for its fast resolution. Such significant actions and movements were not registered, mostly because citizens of the country were significantly preoccupied with the overall political crisis in the last three years.

References

Akademik. 'Случај Емра Куртишова: Класичен случај на дискриминација – сметаат адвокати со искуство во антидискриминациони постапки' ['Case Emra Kurtishova: Classical Case of Discrimination – according to the Lawyers having Experience in Anti-discrimination Legal Practice]. Akademik.mk. <http://www.akademik.mk/sluchaj-emra-kurtishova-klasichen-sluchaj-na-diskriminatsija-smetaat-advokati-so-iskustvo-vo-antidiskriminatsioni-postapki>. Retrieved: June 20, 2014.

Bitoulas, A. 'Asylum Applicants and First Instance Decisions on Asylum Applications: 2013 – Data in Focus 3/2014'. Eurostat, 2014.

Commission for Protection against Discrimination. 'Annual Report of the Commission for Protection against Discrimination for 2015'. Skopje, March, 2016.

Constitution of the Republic of Macedonia. Official Gazette No. 52 of November 22, 1992, Preamble.

Council of Europe. 'European Convention on Human Rights'. Council of Europe. _ENG. <http://www.echr.coe.int/Documents/Convention.pdf>. Retrieved: February 04, 2014.

_____. *Human Rights of Roma and Travelers in Europe*. Strasbourg: Council of Europe, May 2012.

_____. 'Report by Nils Muižnieks, Council of Europe Commissioner for Human Rights, following his visit to the "former Yugoslav Republic of Macedonia, from 26 to 29 November 2012"', CommDH(2013)4, 2013.

_____. *The Right to Leave a Country*. Strasbourg: Council of Europe, 2013.

Council of the European Union. 'Visa Liberalisation for Western Balkan Countries'. Council of the European Union. Brussels, 30 November 2009. http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/111561.pdf.

Demuth, A. 'Some Conceptual Thoughts on Migration Research'. In *Theoretical and Methodological Issues in Migration Research*, B. Agozino (ed.), 21-58. Aldershot: Ashgate Publishing, 2000.

ECHR. 'Factsheet on Roma and Travelers'. European Court of Human Rights. http://www.echr.coe.int/Documents/FS_Roma_ENG.pdf. Retrieved: January 20, 2017.

EPI. 'Живот до граница. Известување на македонските медиуми за Ромите и визната либерализација' ['Life on the Border. Reporting of Macedonian Media on Roma and Visa Liberalization']. http://www.epi.org.mk/docs/Zivot%20do%20granica%20-%20Izvestuvanje%20na%20mediumite%20za%20Romite%20i%20vizna%20lib_MK.pdf. Retrieved: February 28, 2017.

ERRC. 'Factsheet: "Freedom of Movement for Roma in Macedonia"'. 2014. <http://www.errc.org/cms/upload/file/macedonia-press-release-errc-ja-osporuva-diskriminacijata-na-romite-na-granicite-pred-ustavniot-sud-macedonian-26-february-2014.pdf>.

European Commission. 'Free movement: Vice-President Reding's Intervention at the December Justice and Home Affairs Council', December 2, 2013a. http://europa.eu/rapid/press-release_SPEECH-13-1025_en.htm.

_____. 'Report from the Commission to the European Parliament and the Council, Fourth Report on the Post-Visa Liberalisation Monitoring for the Western Balkan Countries in accordance with the Commission Statement of 8 November 2010', COM(2013) 836 final, Brussels, November 28, 2013b.

_____. 'Report from the Commission to the European Parliament and the Council, Third Biannual Report on the Functioning of the Schengen Area, 1 November 2012 - 30 April 2013'. Report from the European Parliament and the Commission. COM(2013)326final, May 31, 2013c.

European Parliament. 'Parliament Backs Rules allowing Suspension of Visa-free Travel only as a Last Resort'. *Press Release*, September 12, 2013. <http://www.europarl.europa.eu/news/en/news-room/20130910IPR19556/ep-backs-rules-allowing-suspension-of-visa-free-travel-only-as-a-last-resort>.

International Organization for Migration. 'Glossary on Migration'. In *International Migration Law Series No. 25*. IOM, 2011.

Law on Border Control [Законот за граничната контрола], Official Gazette of the Republic of Macedonia No. 171 of December 30, 2010.

Ministry of Welfare and Social Policy. 'Ревизија на националните акциски планови од "Декадата за вклучување на Ромите 2005-2015" и Стратегија за Ромите во Република Македонија за период 2009-2011' ['Revision of the National Action Plans of the Decade of Roma Inclusion 2005-2015 and Strategy for Roma in the Republic of Macedonia for the Period 2009-2011']. Skopje, 2009.

MYLA. 'Донесена позитивна пресуда за повреда на право на еднаквост и повреда на слобода на движење [Decision on Violation of the Right to Equality and a Violation of Freedom of Movement]'. <http://myla.org.mk/донесена-позитивна-пресуда-за-повред/>. Retrieved: August 21, 2016a.

_____. 'Студија на случај: X.X против Министерството за внатрешни работи на РМ' [Case Study: H.H against Ministry of Interior of the Republic of Macedonia]. <http://myla.org.mk/x-x->. Retrieved: October 1, 2016b.

Ombudsman. *Годишен извештај 2011 [Annual Report for 2011]*. Skopje: Ombudsman of the Republic of Macedonia, 2012.

_____. *Годишен извештај за степенот на обезбедувањето, почитувањето, унапредувањето и заштитата на човековите слободи и права 2012 [Annual Report on the Degree of Security, Respect, Promotion and Protection of Human Rights in 2012]*. Skopje: Ombudsman of the Republic of Macedonia, 2012.

_____. *Годишен извештај за степенот на обезбедувањето, почитувањето, унапредувањето и заштитата на човековите слободи и права 2013 [Annual Report on the Degree of Security, Respect, Promotion and Protection of Human Rights in 2013]*. Skopje: Ombudsman of the Republic of Macedonia, 2013.

Romea. 'Vivian Reding: The Real Problem of Free Movement Are the Roma'. Speech, 2014. <http://www.romea.cz/en/news/world/viviane-reding-the-real-problem-of-free-movement-are-the-roma>.

State Statistical Office. *Statistical Yearbook of the Republic of Macedonia*. Skopje: State Statistical Office, 2016.

United Nations. International Convention for the Protection of the Rights of all Migrant Workers and Members of their Families, December 18, 1990.

_____. International Convention on the Elimination of All Forms of Racial Discrimination, January 4, 1969.

_____. International Covenant on Civil and Political Rights, March 23, 1976.

_____. Universal Declaration of Human Rights, December 10, 1948.