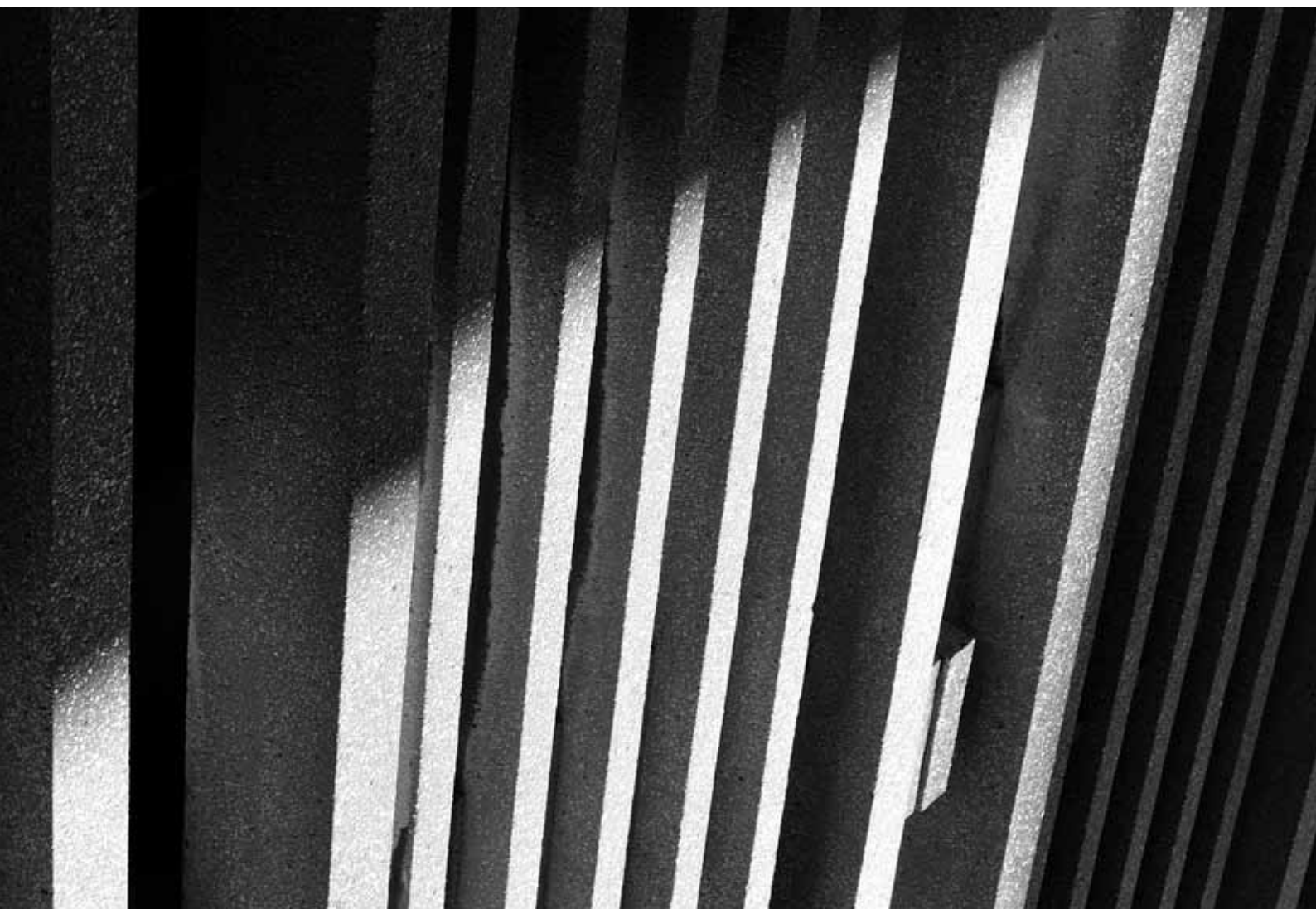




Selective Freedom

THE VISA LIBERALISATION AND RESTRICTIONS
ON THE RIGHT TO TRAVEL IN THE BALKANS



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Table of Contents

3 Introduction

6 EU Pressures

13 Defending the visa freedom

- Serbia
- Macedonia
- Montenegro
- Albania
- Bosnia-Herzegovina

61 The EU's impact

67 Freedom to discriminate?



Chachipe a.s.b.l.
B.p. 97
L - 7201 Béréldange

www.romarights.wordpress.com



Bottleneck: border crossing between Macedonia and Serbia, July 2011.

Introduction

“[F]ollowing the lifting of the visa requirement, some EU Member States witnessed significantly increased numbers of asylum applications by citizens from the countries concerned [...]. The Commission invites the authorities of the countries concerned to take all the necessary further measures to allow for the visa free regime to function smoothly.”

**European Commission:
Enlargement Strategy 2011-2012**

On 19 December 2009, Serbia, Montenegro and Macedonia were granted a liberalisation of their visa regime with the EU. One year later, on 8 November 2010, the same facility was extended to Bosnia-Herzegovina and Albania.

The liberalisation of the visa regime does not imply the right to unrestricted travel to the European Union. This right is limited to those citizens of these countries who hold a new biometric passport, who can travel to the EU for maximum period of 90 days within a six-month period. Moreover, they are still subjected to the entry conditions entailed in the so-called *Schengen Borders Code*¹ and may be refused, if they do not appear to fulfil these conditions. In 2011, this was the case for 305 Montenegrin, 3,350 Macedonian, 6,475 Serbian, 16,800 Albanian and 1,735 Bosnian citizens.²

¹ The entry conditions are defined in article 5.1 of the *Schengen Borders Code*. They imply: the possession of a valid travel document or other documents authorising border crossing; the justification of sufficient means of subsistence, for the duration of the intended stay and for the return to the country of origin or transit country; the absence of an alert or public threat. The only requirement which has become void is the need for a visa. (see: Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders).

² EUROSTAT : Third country nationals refused entry at the external borders - Annual data (rounded), 8.06.12, provided upon request of *Chachipe*.

The visa liberalisation did not come as a gift. On the contrary, it was conditional upon the countries performing substantial reforms in the field of migration and border control, public order and security, external relations and human rights, which the countries need to put in line with EU standards.

In the area of migration and border control, these reforms implied, for instance, the obligation to adopt the Schengen *Scheng*³ and its transposition into national law. As a result, the entry conditions for the Schengen area⁴ have become conditions that the nationals of these countries and third country nationals transiting through these countries have to fulfil to be allowed to leave these countries.

Another questionable reform is the transposition of the carriers' liability⁵ into national law. This implies that any carrier, who travels to these states, needs to check that the persons, he takes on board, are in the possession of the right travel documents to enter into these states. Otherwise, he will be required to bring them back at his own costs.

The visa liberalisation has enabled several hundred thousands of citizens from the countries, which in EU jargon are commonly referred to as Western Balkans, to travel to EU member states without undergoing the cumbersome, time- and money-consuming procedure of applying for a visa. This has contributed, among others, to a substantial decrease in the number of irregular migrants from these countries, for the simple reason, that one of the main reasons for irregular migration, the difficulties of obtaining a visa, fell away.

However, the combined effect of “(1)[a] reduction of costs, both financial and in terms of time or planning needed, associated with travelling to the EU; (2) [the] opening-up of legal travel channels to previously non-eligible specific marginal groups; [... and] and (4) [an] expanded choice of available travel methods and entry points”, pointed out by FRONTEX, as three of four relevant changes in the area of migration, has also facilitated

³ On this see in particular the “Schengen Borders Code”: Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (*Schengen Borders Code*).

⁴ *Ibid.*, article 5, “Entry conditions for third-country nationals”

⁵ See: Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985

the departure of those, who have been longing, sometimes for years, for a possibility to travel to the EU and apply for asylum. It resulted in a substantial increase in the number of asylum applications by nationals of these countries in several EU member states.⁶

This phenomenon, together with the fact that most of those who have applied for asylum in the EU are Roma, has prompted a swift reaction from the side of the EU, which has pressured the countries to take “additional measures” in order to curb emigration. Otherwise, the EU warned, the visa liberalisation is at risk.

The following report aims to provide an overview of the measures taken by the countries of the Western Balkans as a follow-up to the pressures of the EU. It concentrates on those measures, which have a most immediate impact on the population, which are described on a country by country basis. It highlights the link between the EU’s intervention and domestic response in the countries and discusses the EU’s responsibility in the resulting human rights violations.

⁶ FRONTEX: Western Balkans Risk Analysis 2012, Warsaw, April 2012, p. 16

EU pressures

It was not long after the liberalization of the visa regime, when countries such as Germany, Belgium and Sweden started to complain about an increase in the number of asylum seekers from the countries of the Western Balkans. Even though it is impossible to discuss both issues in isolation, it is obvious that fact, that most of the asylum seekers were Roma, contributed substantially to the complaints.

Soon stories about allegedly unfounded asylum applications or the fact that Roma would only come to Western Europe to cash financial benefits, made their rounds.⁷ They were eagerly passed on from the governments of the countries of the Western

⁷ In a note concerning its proposal to lift the visa obligations for the citizens of Albania and Bosnia-Herzegovina, the European Commission addressed concerns over a potential new increase in the number of asylum seekers, by referring to the asylum seekers from Serbia and Macedonia as “rather **isolated cases** due to manipulations and false information provided by certain smuggling networks to inhabitants of the poorest municipalities of some Balkan countries.” Ibid. (European Commission: European Commission proposes to waive the short-term visa requirement for the citizens of Albania and Bosnia and Herzegovina, MEMO/10/218, 27 May 2010) During a meeting of the European Ministers of Justice and Home Affairs, in June 2011, the Belgian Secretary of State for Migration, Melchior Wathelet, and the Swedish Tobias Billström, both referred to “an increased number of manifestly unfounded asylum applications”, (Source: Serbia, Macedonia’s EU visa freedom under threat, DPA, 10.06.11). Justifying the temporary closure of the Luxembourgish Refugee Board, the Luxembourgish Minister for Immigration, Nicolas Schmit said: “It is well possible that this will penalise those, who really need to have their asylum application being dealt with, but it is about time that this asylum tourism, and I weigh my words, is stopped.” (quoted according to: *wort.lu*: Schmit dénonce un « tourisme de l’asile » vers le Luxembourg, 03.11.11, our translation) In a comment on the increase in the number of asylum applications by nationals from Serbia, a spokesperson of the Swiss Immigration Board, said: “We can only assume that these people, who are often living in precarious camps (sic!), come to spend the winter in Switzerland, where they know they receive food and lodging for the duration of the review of their application. We cannot exclude this hypothesis.” (Roms en quête d’un asile hivernal, *Swissinfo*, 6.02.12). The EU border agency, FRONTEX, wrote in its annual “risk analysis” for the Western Balkans: “Two waves of asylum claims indicate that claiming asylum in the EU is part of Roma overall seasonal strategy for their livelihood” (FRONTEX: *Western Balkans Risk Analysis 2012*, Warsaw, April 2012, figure 17, p. 29).

Balkans⁸, who were eager to find ways to explain the population outflow without raising questions over living conditions, to their West European counterparts, in search for arguments for a quick expulsion of the asylum seekers.⁹

“Two waves of asylum claims indicate that claiming asylum in the EU is part of Roma overall seasonal strategy for their livelihood.”

FRONTEX

On 10 March 2010, Belgium deported a group of asylum seekers to Serbia and Macedonia.¹⁰ Two weeks later, on 23 March 2010, Sweden followed this example and deported another group to Macedonia.¹¹ These were the first of a series of highly mediatised expulsions of asylum seekers from EU countries to Southeast Europe.¹²

At the same time, the Belgian Prime Minister Yves Leterme and his Secretary of State for asylum and immigration policy, Melchior Wathelet, set off for a “sensitisation mission” to Serbia and Montenegro.¹³ They initiated a series of visits between representatives of West European states and EU institutions and the governments

⁸ Following a meeting with the German Parliamentary Secretary of State for Migration, Ole Schröder, during which a bilateral protocol for the implementation of the EU readmission agreement was signed, the Serbian Deputy Prime Minister and Minister of Interior, Ivica Dačić, expressed his satisfaction that Germany had discontinued its financial aid to asylum seekers from Serbia. “Our citizens will have no benefit, if they engage themselves in such an uncertain adventure such as seeking asylum in Germany”, Dačić is quoted in the media. (Dačić: Ne isplati se tražiti azil u Nemačkoj, *Deutsche Welle*, 30.03.11) In May 2011, Dačić said in an interview that the asylum seekers would go to Western Europe, because of the benefits they and return home before the end of the procedure. Dačić: Nećemo postupati rasistički, *B92*, 6.05.11 (Video). Dačić said repeatedly, that Roma and ethnic Albanians from the South of Serbia were going to apply for asylum in the EU after the end of the seasonal work to spend the winter. (“Kako zaustaviti azilante, a da ne budemo rasisti?”), *FoNet*, 6.05.11; Malstremova i Dačić o azilantima, *BETA*, 28.11.11. This argument has also been promoted by the Berlin-based think tank *European Stability Initiative (ESI)*, which has been advocating for a radical shortening of the asylum procedure. The ESI is even qualifyin the asylum applications as „paid holidays“. (see: European Stability Initiative: Advancing Freedom of Movement in a Populist Age - How the Western Balkans asylum seekers’ affair can be resolved, Berlin, Brussels, 9 July 2011, pp. 20 ff., and: Balkan asylum seekers and the spectre of European hypocrisy, *EUobserver*, 4.11.11).

⁹ In this context, one should also mention the repeat statements, that no one from these countries would get asylum, which were echoed by Eastern and Western politicians.

¹⁰ In February 2011, the German authorities deported 60 Macedonian citizens to Skopje. The same months France deported a group composed of 93 failed asylum seekers, essentially Roma and ethnic Albanians, from France to Macedonia in February 2011 (see: Rejected asylum-seekers return to Macedonia from France, *Eubusiness*, 17.02.11).

¹¹ Swedish Embassy in Skopje: Sweden returns Macedonian asylum seekers, 23.03.10

¹² In February 2011, a group of sixty asylum seekers, of which 59 ethnic Albanian and one Roma, were deported from Germany to Macedonia. The same month, France deported 93 asylum seekers, mainly ethnic Roma and ethnic Albanians, to Macedonia. (Rejected asylum-seekers attack media on return to Macedonia, *AFP*, 10.02.11; Macedonian Asylum Seekers Arrive From France, *ALSat*, 18.02.11).

¹³ Macédoine, Serbie : premières expulsions de Belgique pour les demandeurs d’asile, *Forum (Macedonia)*, 10.03.10, translated by : *Le courrier des Balkans*, published on : 11.03.10

Bilateral visits on the topic of asylum seekers

- 21 October 2010:** Belgian Secretary of State for Migration, Melchior Wathelet, on visit in Serbia
- On the same day:** Secretary of State of Bavaria, Emilia Müller, on visit in Serbia
- October 2010:** Belgian Secretary of State for Migration, Melchior Wathelet, on visit in Skopje
- March 2011:** Belgian Prime Minister, Yves Leterme, on visit in Pristina and Skopje
- March 2011:** German Parliamentary Secretary of State within the Ministry of Interior, Ole Schröder, on visit in Serbia
- 6 May 2011:** Serbian Deputy Prime Minister and Minister of Interior, Ivica Dačić, on visit in Luxembourg
- 17 May 2011:** Luxembourgish Minister of Foreign Affairs, Jean Asselborn, on visit in Belgrade
- 23 May 2011:** Belgian Secretary of State, Melchior Wathelet, on visit in Serbia
- 13 June 2011:** Swedish Minister for Migration and Asylum Policy Tobias Billstrom on visit in Belgrade
- 9 September 2011:** Serbian Minister of Foreign Affairs, Vuk Jeremić, on visit in Sweden
- October 2011:** EU Commissioner for Home Affairs, Cecilia Malmström, on visit in Skopje
- November 2011:** EU Commissioner for Home Affairs, Cecilia Malmström, on visit in Belgrade
- December 2011:** Serbian Minister of Foreign Affairs, Vuk Jeremić, on visit in Luxembourg
- December 2012:** Serbian Minister without Portfolio, Sulejman Ugljanin, on visit in Luxembourg
- April 2012:** Luxembourg's Minister for Family Affairs and Integration, Marie-Josée Jacobs, on visit in Belgrade
- May 2012:** German Federal Minister of Interior, Hans-Peter Friedrich, on visit in Serbia

“This is the result of mainly Roma and [ethnic] Albanians, who, in Autumn, after the seasonal works, are trying to settled down in Western Europe, in order to obtain some benefits, and who, later, return to Serbia.”

Ivica Dačić,
Minister of Interior of the Republic of Serbia

from these states, both EU Commissioner for Home Affairs, Cecilia Malmström and EU Commissioner for Enlargement, Štefan Füle, wrote letters to the Serbian and Macedonian governments warning them over a possible reintroduction of visa

of the countries of the Western Balkans, which have focused on one and the same question, how to reduce the number of asylum seekers.

In October 2010, European media reported a new “massive arrival” of asylum seekers from Serbia and Macedonia in several EU member states (Belgium, Germany and Sweden).¹⁴ Following pressures

¹⁴ Europe hit by scores of Western Balkan asylum seekers, *Euractiv*, 21.10.10

requirements, if the increase in the number of asylum seekers was not be stopped.¹⁵ Commissioner for Enlargement, Štefan Füle, urged the foreign affairs ministers of both countries to “take all the necessary measures to reduce the influx of asylum seekers without any delay.”¹⁶

On 8 November 2010, when the European ministers of interior agreed to lift the visa obligation for short-time travels for Albanian and Bosnian citizens, several EU member states, including France, the Netherlands and Germany, showed their support for this decision conditional upon the introduction of a so-called safeguard clause in the visa regulation with third countries.¹⁷ Such a clause would create the possibility for a temporary suspension of the visa waiver in case of a major affluence of asylum seeker or massive occurrence of irregular migrants.

On the same occasion, the European Commission made a proposal to establish a follow-up mechanism “cover[ing] inter alia border management, document security, combating organised crime and corruption, effective implementation of readmission agreements and management of migration flows between the EU and the countries concerned.”¹⁸ This mechanism was presented as a first step, which could lead to the eventual adoption, by the Council, of provisional measures including a temporary suspension of the visa liberalisation.

On 24 May 2011, the European Commission issued a proposal for an amendment of the visa regulations for third country nationals.¹⁹ It creates a mechanism, whereby EU member states, who are confronted with a massive increase in the number of asylum

¹⁵ “Some member states are once again experiencing an alarming increase of persons coming from your country and seeking asylum. This trend is extremely worrying and might seriously jeopardise the entire process of visa liberalisation in the Western Balkans.”, quoted according to: *Asylum rise puts Balkan visa-free scheme in danger*, *Euobserver*, 21.10.10

¹⁶ “The latest figures from some EU Member States show an alarming new increase in the number of asylum seekers coming from your country over the past month. [...] This is a very worrying development. It sheds doubt on the effectiveness of the measures taken by your country in spring. [...] I would like to point out that it will be crucial that your authorities take all the necessary measures to reduce the influx of asylum seekers without any delay.” (Enlargement Commissioner Štefan Füle, Letter to Macedonian Foreign Minister, 18 October 2010, quoted according to: *European Stability Initiative: Freedom of movement in a populist age: Why Balkan visa liberalisation is (still) a success*, Brussels, 30 June 2011)

¹⁷ *Bruxelles supprime les visas pour les Albanais et les Bosniens*, *Le Monde*, 8.11.10 ; *Les Vingt-Sept mettent un bémol à l'Europe sans visa*, *Le Figaro*, 9.11.10

¹⁸ Council of the European Union: Proposal for a Regulation of the European Parliament and of the Council of the European Union amending Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders of Member States and those whose nationals are exempt from that requirement (first reading) – Commission statement, 10364/10 VISA 145 COWEB 159 CODEC 496 COMIX 400 (COM(2010) 256 final).

¹⁹ European Commission: Proposal for a Regulation of the European Parliament and the Council amending Council Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement.

“We can only assume that these people, who are often living in precarious camps (sic!), come to spend the winter in Switzerland, where they know they receive food and lodging for the duration of the review of their application. We cannot exclude this hypothesis.”

Swiss Immigration Board

seekers or irregular migrants from countries, which have been granted a visa waiver, or which have their readmission requests for citizens from these countries turned down in high numbers, may call on the EU Commission, which may, upon examination of the situation, decide to temporarily re-impose visa requirements.²⁰ One week later, the European Commission released its first post-visa liberalization monitoring report. A second report followed in December. A third report was due to be published in June 2012.

The publication of these reports, which involve an intensive cooperation with FRONTEX, has been an occasion, for the European Commission, to ask the countries for “continuous and in some cases reinforced efforts”²¹ or “reinforced efforts are needed to ensure the full sustainability and irreversibility of the reforms.”²² In conclusion to its first report, the European Commission asked the countries of the Western Balkans to continue “targeted information campaigns”, and to “increase controls at borders, in line with the Schengen *acquis*”.²³ In its second report, the European Commission concluded, among others, on the need to “improve” the investigation of facilitators through the establishment of “joint investigation tools”, with the support of Europol, and commented on the need to strengthen exit controls.²⁴

²⁰ “Article 1a – Safeguard clause”, *ibid.*, p. 16

²¹ European Commission: Commission staff working paper: Report on the post-visa liberalisation monitoring for the Western Balkan countries in accordance with the Commission Statement of 8 November 2010, SEC(2011) 695 final, 30.5.11, p. 18

²² European Commission: Commission staff working paper: Second report on the post-visa liberalisation monitoring for the Western Balkan countries in accordance with the Commission Statement of 8 November 2010, SEC(2011) 1570 final, p. 13

²³ European Commission: Commission staff working paper: Report on the post-visa liberalisation monitoring for the Western Balkan countries in accordance with the Commission Statement of 8 November 2010, SEC(2011) 695 final, 30.5.11, p. 18

²⁴ European Commission: Commission staff working paper: Second report on the post-visa liberalisation monitoring for the Western Balkan countries in accordance with the Commission Statement of 8 November 2010, SEC(2011) 1570 final, 7.12.11

“Some member states are once again experiencing an alarming increase of persons coming from your country and seeking asylum. This trend is extremely worrying and might seriously jeopardise the entire process of visa liberalisation in the Western Balkans.”

Cecilia Malmström
EU Commissioner for Home Affairs

safeguard clause in the visa-regulation.²⁶ Commenting on the Commission’s findings, the Belgian Secretary of State, Melchior Wathelet, said: “The risk (to reintroduce visas) is there ... we asked for a monitoring, there were a certain number of conditions which seemed to have been fulfilled in 2009 and which are no longer today, especially for Macedonia”.²⁷

On 20 September 2011, EU Commissioner Cecilia Malmström sent a new letter to the Ministers of Interior of the five concerned countries, in which she pointed out a “tangible increase in the overall number of asylum applications in some EU member states” at the end of Summer and conveyed to these member states’ “concerns about the proper management of migration flows from your countries.” She asked for “additional measures to address this situation promptly and effectively”. She concluded that these “negative developments” might otherwise endanger the visa liberalization process.”²⁸

The increase in the number of asylum seekers was also one the topics of discussion at the EU Western Balkans JHA Ministerial Forum in Ohrid/Macedonia, on 3 - 4 October 2011. Answering the question of a Green MEP, Commissioner Malmström explained that she took this meeting as another opportunity to ask the representatives of the countries of the Western Balkans, “to take decisive action to counteract the situation with the unfounded asylum applications.”²⁹

The European Commission presented the results of its first report at the Justice and Home Affairs Council in Luxembourg, on 10 June 2011²⁵. During this meeting, where several delegations highlighted the need to address “the problem of persisting high numbers of unfounded asylum applications from some of the Western Balkan countries”, the ministers also held a first discussion on the Commission’s proposal to introduce a so-called

²⁵ Council of the European Union: Press release: 3096th Council meeting Justice and Home Affairs, Luxembourg, 9-10 June 2011

²⁶ Ibid.

²⁷ Serbia, Macedonia’s EU visa freedom under threat, DPA, 10.06.11

²⁸ Letter by Cecilia Malmström, Member of the European Commission, to the ministers of Interior of Serbia, Albania, Bosnia-Herzegovina, Montenegro and Macedonia, 20.09.11

²⁹ European Parliament: Answer given by Ms Malmström on behalf of the Commission, 14.11.11

One day later, the same subject was discussed at a meeting of senior officials from the countries of the Western Balkans, EU member states, the EU Commission, FRONTEX and Europol, in Brussels, where the representatives from the countries of the Western Balkans were asked to provide an “update on measures introduced and planned”.³⁰

The increase in the number of asylum seekers is also mentioned in the Commission’s progress reports. In its Enlargement Strategy 2011-12, which accompanied these reports, the Commission writes: “following the lifting of the visa requirement, some EU Member States witnessed significantly increased numbers of asylum applications by citizens from the countries concerned, ... , pointing towards abuse of the visa-free regime. ... The Commission invites the authorities of the countries concerned to take all the necessary further measures to allow for the visa free regime to function smoothly.”³¹

On 13 December 2011, the Council adopted a “general approach” on the European Commission’s proposal to amend the visa regulation, which was generally welcomed. However, the ministers increased the leverage of the member states by introducing an element of subjectivity in the conditions under which they may rely on the so-called safe-guard clause.³² In the view of the ministers, a “sudden and substantial increase” in either the number of asylum seekers, irregular migrants or rejected readmission requests, should be enough to call on the European Commission’s intervention.³³

³⁰ European Parliament: Parliamentary questions: Subject: Asylum applications from Albania, Bosnia and Herzegovina, Macedonia, Montenegro and Serbia, Question for written answer E-009204/2011 to the Commission, Answer given by Ms Malmström on behalf of the Commission, 14.11.11

³¹ European Commission: Enlargement Strategy and Main Challenges 2011-2012, p. 21

³² See: Council of the European Union: Press release: 3135th Council meeting Justice and Home Affairs, Brussels, 13-14 December 2011, p. 10

³³ The proposal of the EU Commission implied that a member state could call on the EU Commission if confronted with a sudden increase of at least 50 percent in relation to illegal stays and/or asylum applications and/or rejected readmission applications. This reference to a percentage was replaced by a reference to “a substantial and sudden increase”, which conveys the member states greater leverage.

Defending the Visa Freedom

Serbia

The Republic of Serbia was granted a liberalisation of its visa regime with the European Union on 30 November 2011. It entered into force on 19 December 2009.

On 23 October 2008, the Serbian Parliament adopted a new Law on State Border Protection³⁴, which was implemented on 1 April 2009. This law grants the border police with the authority to check persons at the entry and at the exit. Such checks may concern not only travel documents, but also the purpose of travel.

In 2007, the Serbian Parliament adopted a new Law on Travel Documents which entered into effect on 9 October 2007.³⁵ This law created the basis for the introduction of biometric travel documents. It was amended several times in order to extend the period of validity the old passports.³⁶

On 23 October 2008, the Serbian Parliament adopted a new Law on Foreigners, which entered into force on 1 April 2009.³⁷ This law introduces the principle of carrier's liability into national law, which obliges a carrier to bring back, at his own expense, a person who does not fulfill the entry requirements.³⁸ A carrier who fails to fulfill this obligation risks a fine between 860 and 4,300 Euros.³⁹ Under article 11 of this law, a foreigner can be denied entry to Serbia, if s/he does not have sufficient means of subsistence or if "[h]e/she is in transit, but does not meet the requirements to enter

³⁴ Law on State Border protection, published in: *Gazette of the Republic of Serbia*, Nr. 97/08 of 27.10.08, article 6, "Powers, measures and activities"

³⁵ Law on travel documents, published in: *Official Gazette of the Republic of Serbia*, Nr. 90/07

³⁶ Законом о измени Закона о путним исправама, published in: *Official Gazette of the Republic of Serbia*, Nr. 90/07, 1.10.07; Законом о измени Закона о путним исправама, published in: *Official Gazette of the Republic of Serbia*, Nr. 116/08, 22.12.08; Законом о измени Закона о путним исправама, published in: *Official Gazette of the Republic of Serbia*, Nr. 104/09, 16.12.09, and: Законом о измени Закона о путним исправама, published in: *Official Gazette of the Republic of Serbia*, Nr. 76/10, 22.10.10

³⁷ Law on Foreigners, published in: *Official Gazette of the Republic of Serbia*, Nr. 97/08, 27.10.08

³⁸ *Ibid.*, article 22, "Obligations of carriers"

³⁹ *Ibid.*, article 81, "Penalty provision"

the third country”.⁴⁰ Under article 13 (2) of this law, a foreigner can be temporarily prevented from leaving Serbia, if s/he does not have the necessary visa to enter another country.⁴¹

Between 1996 and 2007, Serbia signed 16 bilateral readmission agreements with 18 countries.⁴² An EC readmission agreement was signed on 18 September 2007. It entered into force on 1 January 2008. In 2009, Serbia signed a separate bilateral readmission agreements with Switzerland⁴³ and Norway, which are not members of the EU, but nevertheless part of the Schengen area.⁴⁴

In 2009, the Serbian government adopted a Strategy for the reintegration of returnees under readmission agreements⁴⁵ and an action plan for its implementation for the period 2009-2010.

In 2008, 5,855 Serbian citizens were forcibly returned from EU Member States to Serbia. In 2009, 4,105 persons were deported on the basis of either these agreements.⁴⁶ The majority of those who are forcibly returned under these agreements are Roma, followed by members of other ethnic minorities.⁴⁷

⁴⁰ Ibid., article 11, “Denial of entry”

⁴¹ Ibid., article 13 (2), “Exit”

⁴² The list includes: Hungary (2001), Germany (2003), Sweden (2003), Denmark (2003), Italy (2003), the Benelux countries (2004), Austria (2004), Slovakia (2003), France (2006), Canada (2006), Slovenia (2009), Croatia, Bosnia and Herzegovina (2008), Norway (2009), Switzerland (2009), Albania (2010), Macedonia (2010), Malta (2010), Bulgaria (2011), Romania (2011)

⁴³ Bundesamt für Migration (2009): *Abkommen mit Serbien unterzeichnet*, 30.07.09

⁴⁴ Ministry of Justice and Public Policy (Norway) (2009): *Readmission agreements with Montenegro and Serbia*, (Press Release) 21.12.09

⁴⁵ *Strategy for Reintegration of Returnees under Readmission Agreements*, published in: *Official Gazette of the Republic of Serbia*, No. 15/09

⁴⁶ Third country nationals (broken by their citizenship) returned from ms. [member states], European Commission (2011): *Evaluation of EU Readmission Agreements*, Commission staff working document accompanying the communication from the European Commission to the European Parliament and the Council, SEC (2011) 211, Brussels, 23.02.11, p. 3

⁴⁷ On this the Serbian NGO *Grupa 484* writes: “According to the IOM data, before the visa regime abolition, a typical returnee was male, married, declared as Roma, was unemployed, aged between 30 and 39, with two children, and lived in Germany for about five years. 42.20% of the total number of returnees stayed in Germany for 2 to 5 years; 21.09% for 6 to 10 years; 23.56% for 11 to 15 years.” (see: *Grupa 484* (2011): *Irregular can be Regular – migration from southern Serbia*, December 2011, p. 5) The same observation is also valid for those returned after the visa liberalisation, as it is documented by the data provided by the Commissariat for Refugees. According to these data, out of 1315 Serbian citizens who were returned via the Belgrade airport in the period between January and October 2011, 1,023 were declared as Roma, another 19 as Ashkali. (ibid., p. 6).

POST-VISA LIBERALIZATION DEVELOPMENTS

Following the liberalization of the visa-regime with the EU, the number of asylum applications by Serbian citizens increased drastically. According to data provided by EUROSTAT, the number of asylum seekers from Serbia, in the EU and Switzerland, increased from 3,475 in 2009 to 15,420 in 2010. In 2011, 11,520 Serbian citizens applied for asylum in EU member states according to EUROSTAT, mainly in Germany (4,580), and Sweden (2,645).⁴⁸ According to UNHCR figures⁴⁹, the number of asylum applications filed by persons from Serbia (including Kosovo) in industrialised countries, increased from 18,782 in 2009⁵⁰ to 29,605 in 2010 and 21,246 in 2011.⁵¹

“Would it be possible to analyse whether the European Commission is able to take a decision or actions which would limit the negative consequences of the liberalization of EU visa regime in this particular case?”

Yves Leterme
Belgian Prime Minister

Serbia was put under pressure around February 2010, when several EU member states including Belgium and Sweden started to complain over a strong increase in the number of asylum seekers from Serbia.⁵² At the end of the month, the Belgian Prime Minister, Yves Leterme, send an alarming letter to EU Commissioner for Home Affairs, Cecilia Malmström, in which he asked the Commissioner to analyse possible actions in order to limit the negative consequences of the visa liberalisation.⁵³

On 8 March 2010, Leterme, whose country was preparing to take over the EU’s rotating presidency, travelled to the Balkans. In Belgrade, he met with the Serbian Prime Minister, Mirko Cvetković, whom he had already met three days before, in Brussels,

⁴⁸ EUROSTAT : New asylum applications by citizenship, annual aggregated data, own calculations based on EUROSTAT data

⁴⁹ UNHCR figures include persons originating from Kosovo.

⁵⁰ Origin of asylum applications lodged in 44 industrialized countries 2009 and 2010, in: UNHCR (2011): *Asylum Levels and Trends in Industrialized Countries 2009 – 2010*, Geneva, p. 17

⁵¹ Origin of asylum applications lodged in 44 industrialized countries 2010 and 2011, in: UNHCR (2012): *Asylum Levels and Trends in Industrialized Countries 2010 – 2011*, Geneva, p. 22

⁵² See for instance: Swedish towns strained by asylum seeker spike, *The Local*, 6.10.10; Asylum Seekers from Serbia Board Buses for Europe, *BalkanInsight*, 21.10.10

⁵³ « Vous serait-il possible d’examiner si la Commission européenne est en mesure de prendre des décisions ou des actions qui permettraient de limiter les conséquences néfastes de la libéralisation du régime européen des visas dans ce cas d’espèce? », Belgian Prime Minister Yves Leterme in a letter to EU Commissioner Cecilia Malmström, quoted according to: *Visas supprimés dans l’UE: les immigrés des Balkans affluent*, *La Gazette*, 26.02.10

“We will not accept this obvious abuse of our right on asylum. ... If nothing changes, it should be very clear: The visa freedom for Serbia and Macedonia is in danger.”

Joachim Herrmann
Minister of Interior of Bavaria

in order to discuss the increase in the number of asylum applications by Serbian nationals.⁵⁴ At the same time, the Belgian Secretary of State, Melchior Wathelet, visited Preševo and Bujanovac, two towns in Southern Serbia, which had been identified as places of origin of asylum seekers, and where he held meetings with the mayors.⁵⁵

Concomitant with this visit, the Belgian authorities organised the first of a series of highly mediatised deportations of a group of 44 asylum seekers to Serbia, sending out a clear sign that “there is no sense in travelling to Belgium ... for the purpose of seeking political refugee status.”⁵⁶

In October 2010, several EU member states and the EU Commission put renewed pressure on Serbia to reduce the number of asylum seekers:

On 21 October 2010, the Belgian Secretary of State, Melchior Wathelet, whose country was then holding the EU presidency, visited Belgrade, where he had meetings with the Serbian Deputy Prime Minister and Minister of Interior, Ivica Dačić.⁵⁷ The same day, the Secretary of State of the Land Bavaria, Emilia Müller, was also on visit in Belgrade, where she had meetings with the Serbian Minister of Interior and other representatives of the Serbian state.⁵⁸ Two days before, the Minister of Interior of Bavaria, Joachim Herrmann, warned, in a press release, over a possible reintroduction of visa requirements for Serbian and Macedonian citizens.⁵⁹

⁵⁴ Serbian PM Cvetkovic to meet with leaders of EU, Belgium, *BETA*, 5.03.10

⁵⁵ Belgium sends back asylum seekers, *B92/BETA*, 10.03.10

⁵⁶ Rush to asylum puts visa-free travel at risk in Serbia, Macedonia, *SETimes*, 30.03.10

⁵⁷ Wathelet, Dačić: Visa regime not threatened, *Tanjug*, 22.10.10; UE/asile: les Serbes mis en garde, *Le Figaro*, 21.10.10; Les demandeurs d’asile serbes dans l’UE seront tous renvoyés, *7sur7*, 21.10.11

⁵⁸ Asylum Seekers from Serbia Board Buses for Europe, *BalkanInsight*, 21.10.10

⁵⁹ “Diesen offenkundigen Missbrauch unseres Asylrechts werden wir nicht hinnehmen. Wenn sich diese Entwicklung fortsetzt, muss die Europäische Union handeln und die Visumpflicht für diese Länder wieder einführen. Wir werden das jetzt sehr genau beobachten. Sollte sich hier nichts ändern, muss klar sein: Die Visafreiheit für Serbien und Mazedonien steht auf dem Spiel.” (Bayrisches Staatsministerium des Inneren (2010): Pressemitteilung Nr. 383/10: Asylbewerberzahlen aus Serbien und Mazedonien sprunghaft angestiegen – Joachim Herrmann: „Visafreiheit steht auf dem Spiel – keine staatlichen Mittel für Asylbetrüger“, 19.10.11)

“We will take preventive actions and explain [our] citizens, that asylum seekers, or to be more precise, false asylum seekers, will not get asylum. They will all be returned [to Serbia] on the basis of readmission agreements”.

Ivica Dačić

Deputy Prime Minister and Minister of Interior of the Republic of Serbia

On 18 October 2010, EU Commissioner for Enlargement, Štefan Füle, wrote a letter to the Serbian and Macedonian Ministers of Foreign Affairs, in which he questioned the efficiency of the measures taken in Spring in order to reduce the number of asylum seekers in the EU. He warned about a possible negative impact on the attitude of some member states towards the visa liberalisation and asked the authorities of both

countries to “take all the necessary measures to reduce the influx of asylum seekers without any delay.”⁶⁰ Two days later, EU Commissioner for Home Affairs Cecilia Malmström wrote a letter of similar content to the Serbian and Macedonian Minister of Home Affairs.⁶¹

DOMESTIC REACTIONS

Following the first complaints over an increase in the number of asylum seekers, the Serbian Prime Minister and Minister of Interior, Ivica Dačić, announced, in March that Serbia together with Macedonia would conduct investigations into travel companies in order to determine whether this activity was organised.⁶² He also said that Serbia would be “very cooperative” in terms of the readmission of the asylum seekers in order to make sure that this issue “would not jeopardize the visa liberalization with the EU countries”.⁶³

⁶⁰ European Stability Initiative (2011): Freedom of movement in a populist age: Why Balkan visa liberalisation is (still) a success, Brussels, 30 June 2011, p. 8

⁶¹ Asylum rise puts Balkan visa-free scheme in danger, *EUobserver*, 21.10.10

⁶² “Visa liberalization not jeopardized”, *B92*, 11.03.10

⁶³ *Ibid.*

In November 2010, Dačić announced that Serbia would tighten its border controls, in particular, at the border with Hungary. He also said that Serbia would conduct investigations into the eventual involvement of travel companies in the upsurge of asylum applications.⁶⁴

In February 2011, the Serbian government created a monitoring commission for the visa liberalisation. As stated by *Tanjug*, the task of this commission is to follow the issue of so-called false asylum seekers and to make proposals to the Government, in order to reduce their numbers.⁶⁵

In May 2011, members of the Serbian government announced again an enhancement of border controls, implying pre-departure controls of travellers, who would have to justify the purpose of their travel and the possession of sufficient means of subsistence. Measures would also involve the prosecution of those who are transporting “false asylum seekers” to the European Union.⁶⁶

In a speech before the Foreign Affairs Committee of the European Parliament, Deputy Prime Minister for European Integration, Božidar Djelić, said that Serbia would restrict the freedom of movement of persons abusing the visa-free system with the EU and conduct strict controls of travellers at the border crossing and travel agencies.⁶⁷

In October 2011, the Serbian government announced further reforms, in a document submitted to the European Commission. These reforms would include the reclassification of the organization of illegal migration as a criminal act, the temporary confiscation of the passports of “false asylum seekers” and their hindrance from leaving the country, as well as the strengthening of the powers of the border police.⁶⁸

⁶⁴ Serbia vows to tackle EU asylum influx, *AFP*, 9.11.10; “Number of false asylum seekers to be reduced”, *B92*, 21.11.10

⁶⁵ Vlada obrazovala Komisiju za praćenje bezviznog rezima s EU, *Tanjug*, 24.02.11

⁶⁶ Serbia to tighten border controls, *Sofia Echo*, 19.05.11

⁶⁷ “We established the governmental Commission for monitoring the implementation of the visa free regime, we are consulting the European Commission on amendments to Serbian legislation to better prosecute organizers of groups of asylum seekers, we will restrict travel for those who abuse the system while respecting human rights, we conduct strict controls of passengers at border crossings and travel agencies, we conduct awareness raising campaigns targeting those groups that are recognized as potential asylum seekers, we implement further projects for the inclusion of the Roma community, etc. We welcome envisaged changes to the Schengen Area rules along the Return Directive, preventing offenders re-entering the Area for a period of up to five years, and we look forward to establishment of the Common European Asylum System.” Address by H.E. Božidar Djelić Deputy Prime Minister for European Integration of Serbia AFET, European Parliament, Brussels, 16.06.11

⁶⁸ Asylum seekers may cost Serbia EU visa liberalization, *Isa Intel*, 10.05.11

STRENGTHENING BORDER CONTROLS

In May 2011, the Serbian Minister of Interior, Ivica Dačić, announced that travellers who did not have sufficient means of subsistence would not be allowed to leave Serbia. He quoted as an example the case of a family that allegedly wanted to leave for Sweden with a one-way ticket and just 100 Euros in their pockets. The border police concluded that the family actually intended to apply for asylum and prevented them from pursuing their journey.⁶⁹

On 2 June 2011, the Serbian government adopted a new regulation aimed at creating a legal basis for the pre-departure controls. Under the cumbersome title “Regulation governing in detail the manner of exercising police powers by the border police officers and duties of the persons crossing the border”,⁷⁰ it sets out the documents and other proofs that the border police may request from Serbian citizens in addition to the customary travel documents. They include any document legitimating the purpose of the trip such as letters of invitation, vouchers or reservations, and return tickets as well as the proof of sufficient means of subsistence in accordance with the purpose of the trip. The legitimization of this law is to “protect the interests of the Republic of Serbia and of its citizens, or to prevent abuse of visa-free regime of the European Union towards the Republic of Serbia”.⁷¹

Regulation governing in detail the manner of exercising police powers by the border police officers and duties of the persons crossing the border

“In order to protect the interests of the Republic of Serbia and of its citizens and to prevent abuse of the visa-free regime of the European Union towards the Republic of Serbia, to travel to the Member States of the European Union, the officer of the Border Police may ask from the citizens of the Republic of Serbia, in addition to the travel and other documents prescribed for the crossing of the border:

- 1) other appropriate documents proving the purpose of the travel to the Member States of the European Union (...);
- 2) the proof of possession of sufficient means of subsistence for their stay in the Member States of the European Union (...), in accordance with the purpose of travel;
- 3) other justifications, invitations or proofs concerning the purpose of the journey, as foreseen in the legislation of the European Union and its Member States.”

⁶⁹ Ako nemate dovoljno para policija ne pušta u inostranstvo, *Vesti online*, 13.05.11

⁷⁰ Uredba o bližem uređivanju načina vršenja policijskih ovlašćenja policijskih službenika granične policije i dužnostima lica koje prelazi državnu granicu, *Službeni glasnik Republike Srbije*, br. 39/2011

⁷¹ *Ibid.*, article 1

“If someone appears suspicious to us and could be a bogus asylum seeker, we will check his identity. We will [also] check whether he has a return ticket and a travel insurance, whether he has sufficient money with him for his planned stay, we conduct a short interview [in order to assess], where he is travelling and what is the purpose of his trip.”

Nenad Banović
Head of the monitoring commission
for the visa liberalisation

In a comment, the Head of the Communication Department of the Serbian government, said that the Serbian government estimated that this regulation would prevent the misuse of the asylum system and of the EU visa-free travel with the EU.⁷²

In an interview with the Serbian newspaper *Novosti*, the Head of the Border Police Department, Nenad Banović, who is also chairing the monitoring commission for the visa liberalisation, explained these controls would essentially concern individuals travelling to Germany, Luxembourg, Belgium, Italy or France, but not those travelling to Greece.⁷³

He described the methodology of these controls as follows: “If someone appears suspicious to us and could be a bogus asylum seeker, we will check his identity. We will [also] check whether he has a return ticket and a travel insurance, whether he has sufficient money with him for his planned stay, we conduct a short interview [in order to assess], where he is travelling and what is the purpose of his trip.”⁷⁴

Persons who do not appear to fulfill these conditions are banned from travelling. According to a report submitted to the European Commission, 1,715 persons were prevented from leaving Serbia between the 24 February 2011 and 15 October 2011 “for the reason of not fulfilling the conditions for exiting the country.”⁷⁵

⁷² Nema u EU bez potvrda i rezervacija, *B92*, 2.06.11

⁷³ Zaustavljeni lažni azilanti, *Novosti*, 19.05.11

⁷⁴ Ibid.

⁷⁵ Report on measures taken and planed by the Commission for monitoring the visa free regime of travel with EU aimed at reducing the number of asylum seekers, October 2011, courtesy translation provided by the Serbian government.

In a report submitted to the European Commission in October 2011, the Serbian government announced a further increase of powers of the Serbian border police. Accordingly, the Serbian border police would be entitled, “to investigate anyone suspected of attempting to seek false asylum in the EU.”⁷⁶

The Serbian authorities insisted that these controls would not target any particular groups. In May 2011, the Serbian Deputy Prime Minister and Minister for European Integration, Božidar Đelić said that the border controls would be conducted in a non-discriminatory way, with everybody being asked the same questions.⁷⁷ The same month, the Serbian Deputy Prime Minister and Minister of Interior, Ivica Dačić, asked a journalist, who insisted on the need for more efficient measures: “Do we have to behave in a racist or nazistic way? Do we have to take the four Roma out of the bus and to tell them, you are Roma that they cannot travel?”⁷⁸

These statements are however contradicted by other statements, which indicate that Roma, together with ethnic Albanians from the South of Serbia, who have been identified as those who are most commonly „abusing the free visa regime“ with the EU are the main targets of these controls.⁷⁹ On 8 May 2011, Ivica Dačić told Serbian media that “no one from those communities will be able to leave the country if they do not have a return ticket, means to support their stay and cannot state the reason for the journey.”⁸⁰

On 1 December 2011, the Serbian newspaper *Vecerne Novosti* reported that the Serbian border police prevented a Roma family of four from boarding on an airplane to Göteborg, where they wanted to attend a wedding. According to the father, they were first told that the 1,500 Euros they were carrying, was sufficient, but that they did not have a return ticket. When it turned out that they had a return ticket, they were told that the money was not enough.⁸¹

⁷⁶ Asylum seekers may cost Serbia EU visa liberalization, *Isa Intel*, 10.05.11

⁷⁷ Đelić: Vladine mere smanjile broj zahteva za azil, *RTV*, 18.05.11

⁷⁸ Dačić: Nećemo postupati rasistički, *B92*, 6.05.11 (Video)

⁷⁹ See for instance the statements of the Head of the Serbian Police and Head of the monitoring committee, Nenad Banović, according to which most of the asylum seekers from the Vojvodina region are either Roma or ethnic Albanians. (Oštra kontrola lažnih azilanata, *Tanjug*, 10.03.11)

⁸⁰ Interior minister announces stricter border control, *Tanjug*, 8.05.11

⁸¹ Sa aerodroma Nikola Tesla vraćeni Romi, *Vecerne Novosti*, 1.12.11

“We will meet with representatives of local governments and the Roma and Albanian communities and explain to them that those people will not be granted asylum (in the EU) and that they could harm the whole country in terms of the visa liberalization”.

“[N]o one from those communities will be able to leave the country if they do not have a return ticket, means to support their stay and cannot state the reason for the journey.”

Ivica Dačić

Deputy Prime Minister and Minister of Interior of the Republic of Serbia

In October 2010, Serbian border guards at the Preševo border crossing, returned a group of Macedonian Roma travelling on board of a van. According to a representative of a Roma NGO from Štip, who was among the group, the border guards put an entry and an exit stamp in their passports and wished them, goodbye. They were refused to leave Serbia for the EU. The Roma claimed that they wanted to visit relatives in Germany and Austria.⁸² The Serbian newspaper *Blic* claimed that the Serbian police had received information from its German colleagues that the Roma intended to apply for asylum in Germany.⁸³ According to the European Roma Rights Centre, one Roma man subsequently filed a complaint to the administrative court in Belgrade. The case was still pending in May 2012.⁸⁴

As it turned out, the family, which was cited, by the Serbian Minister of Interior, as an example for the misuse of the free visa regime was actually also of Roma origin: “We had a Roma family at the Belgrade airport who wanted to travel with *Wizz Air* to Malmö in Sweden. When we asked them where they would go, they were not able to give us details, when we asked them how long they would plan to stay, they stayed silent, the one way ticket was an indicator that would abuse the freedom of travel. (...) they were therefore returned at the border crossing because they did not meet the conditions for leaving the country”.⁸⁵

⁸² Ромите ќе ја затвораат границата со Србија, *Nova Makedonija*, 21.10.10 ; Македонските Роми непожелни во Србија, *A1*, 21.10.10

⁸³ Pojačana kontrola granice zbog novog talasa azilanata iz Srbije ka EU, *Blic*, 19.10.11

⁸⁴ European Roma Rights Centre (ERRC): Serbia: EU Enlargement Programme 2012 ERRC report (submission to the European Commission), May 2012

⁸⁵ Kad evropska kriza izgleda kao blagostanje, *Vreme*, 26.05.11

REVOCATION OF TRAVEL DOCUMENTS

In May 2011, several members of the Serbian government announced that the government was considering the possibility of temporarily revoking passports of failed asylum seekers or not to issue a new passport. During a visit in Luxembourg, the Serbian Deputy Prime Minister and Minister of Interior, Ivica Dačić, explained that the purpose of this measure was to prevent repeated asylum applications.⁸⁶

On another occasion, Dačić said that his Ministry would “request the EU’s opinion of whether it is possible to introduce restrictive regulations”. He added that the measures could also include “the temporary taking away of passports for one or two years from the person who abuses it”.⁸⁷

In a document submitted to the European Commission, the Serbian government stated that the Ministry of Interior of the Republic of Serbia “declares null and void passports of all persons whose biometric travel documents were issued to by the competent authorities of the Republic of Serbia, and who, under the procedure of implementation of the Agreement on Readmission, declared before the competent foreign authorities not to possess passports.”⁸⁸

According to the same document, the Ministry of Interior would also consider the temporary confiscation of the passports of false asylum seekers as well as additional measures to prevent them from leaving Serbia.⁸⁹ Similar announcements were made by other representatives of the Serbian state.⁹⁰

The Serbian newspaper *Novosti* suggested that an article of the Serbian Law on travel documents, foreseeing the possibility of withdrawing these documents, if these documents have been issued on the basis of false information, might be used in relation with the so-called abuse of the visa liberalization by “false asylum seekers”.

⁸⁶ Nicolas Schmit et Ivica Dačić ont fait part de leur volonté que Luxembourg et Serbie poursuivent leur coopération « dans un esprit parfaitement européen » pour lutter contre l’afflux de demandeurs d’asile en provenance de Serbie, *Europaforum*, 5.05.12

⁸⁷ Interior minister announces stricter border control, *Tanjug*, 8.05.11

⁸⁸ Report on measures taken and planned by the Commission for monitoring the visa free regime of travel with EU aimed at reducing the number of asylum seekers, October 2011 (Document submitted to the European Commission, courtesy translation provided by the Serbian authorities).

⁸⁹ Asylum seekers may cost Serbia EU visa liberalization, *Isa Intel*, 10.05.11

⁹⁰ Dačić: Za izlaz iz zemlje- novac, povratna karta, osiguranje, *Večerni Novosti*, 23.05.11

⁹¹ The newspaper explained that ethnic Albanians from Kosovo would register *en masse* in municipalities in Southern Serbia for the sole purpose of obtaining Serbian travel documents.⁹²

Subsequent to the recommendation of the European Commission to avoid “bogus residence changes from Kosovo”⁹³, Roma from Kosovo, who are displaced in the region have encountered increasing problems to register in Serbia or to get a Serbian passport.⁹⁴ According to the UNHCR, some displaced Roma, Ashkali, and Kosovo Egyptian were arbitrarily prevented from changing their address and reregistering in Serbia.⁹⁵

OTHER MEASURES

In May 2011, the head of the Border Police, Nenad Banović, stated in an interview with the Serbian newspaper *Novosti*, that asylum seekers would be punished by the courts.⁹⁶ No further details were however provided.

However, in the beginning of 2012, the Minister of Justice made a proposal to introduce a new article 350a in the Penal Code, called “Disabling Abuse to Exercise Rights in Foreign Country”. Such an action would be subject to a prison fine of three months to eight years. The proposal was brought before the Parliament, but due to the Parliamentary elections it has not yet been adopted.⁹⁷

MEASURES AGAINST TRAVEL COMPANIES

In May 2011, the Serbian government announced an amendment to the Criminal Code introducing the organisation of illegal migration.⁹⁸ The aim of this reform is to “lay down criminal offence by which natural or legal entities, like tourist agencies, emerging

⁹¹ EU traži oduzimanje pasoša, *Vecerne Novosti*, 7.05.11

⁹² EU traži oduzimanje pasoša, *Vecerne Novosti*, 7.05.11

⁹³ European Commission: Commission staff working paper: Report on the post-visa liberalisation monitoring for the Western Balkan countries in accordance with the Commission Statement of 8 November 2010, SEC 2011 (695) final, 30.05.2011, p. 11

⁹⁴ Information received from Kosovo Roma refugees living in Macedonia.

⁹⁵ Quoted according to: U.S. Department of State: Bureau of Human Rights, Democracy and Labour: Country Reports on Human Rights Practices for 2011: Serbia, June 2012

⁹⁶ Zaustavljeni lažni azilanti, *Novosti*, 19.05.11

⁹⁷ Normative measures - amendments of the criminal legislation Ministry of Justice made proposal of the Law on Amendments of the Criminal Code, communicated by the Mission of Serbia to the EU.

⁹⁸ Delić: Potrebni podaci o azilantima, *B92*, 7.05.11

as organizers of the trips for false asylum seekers into the EU member states, would bear criminal responsibility and which would be adequately fined, or punished by business activity ban, but as well as by imprisonment in duration of 3 to 5 years.”⁹⁹

In May 2011, the head of the Border Police Department, Nenad Banović, stated in an interview with the Serbian newspaper *Novosti*, that the government had already agreed with the EU to introduce a new criminal offense affecting those, who lure persons into applying for asylum or organise the trips whereas the asylum seekers would be punished by the court.¹⁰⁰

In a document submitted to the EU Commission in October 2011, the Serbian government announced amendments to the criminal code, which would “reclassify the organization of illegal migration as a special criminal act.”¹⁰¹

On 21 December 2011, the Head of the Serbian Border Police, Nenad Banović, announced that the border police had conducted controls on more than 40 travel companies and private carriers organising transports to the EU, without finding any evidence regarding the allegedly organised character of asylum applications.¹⁰²

INFORMATION CAMPAIGNS

The Serbian authorities have organised an extensive information campaign. According to a government report, three hundred posters and 20,000 flyers have been distributed throughout Serbia, informing the population “that visa liberalization does not imply the right to work, unlimited stay and political asylum in EU”.¹⁰³

According to the same report, the posters were mainly posted on police stations, in particular in the South of Serbia and other places, identified as main regions of origin of the so-called false asylum seekers.¹⁰⁴ Information leaflets were also distributed at the border crossings with Hungary and Croatia, at the Belgrade Airport and at the Airport Niš.

⁹⁹ Report on measures taken and planned by the Commission for monitoring the visa free regime of travel with EU aimed at reducing the number of asylum seekers, October 2011 (courtesy translation provided by the Serbian government).

¹⁰⁰ *Zaustavljeni lažni azilanti*, *Novosti*, 19.05.11

¹⁰¹ *Asylum seekers may cost Serbia EU visa liberalization*, *Isa Intel*, 10.05.11

¹⁰² *Government of the Republic of Serbia: Srbiji ne preti opasnost od ukidanja vizne liberalizacije*, 21.12.11

¹⁰³ Report on measures taken and planned by the Commission for monitoring the visa free regime of travel with EU aimed at reducing the number of asylum seekers, October 2011, courtesy translation provided by the Serbian government.

¹⁰⁴ *Ibid.*

Additional information was distributed via the media. According to the chairman of the monitoring commission, Nenad Banović, members of this commission spoke to *the local media* and explained that the abuse of the visa-free regime would not only have severe consequences for the state, but also for those, who would abuse it.¹⁰⁵

The Serbian authorities distributed a poster with the following text:

“False asylum seekers risk everything
They will lose financial assistance
They will be deported to the country [Serbia]
They will be banned from travelling to the European Union for a specific time”.



According to a government document of October 2011, the Serbian authorities prepared a video clip, explaining that the abuse of the visa liberalization is punishable by law. This clip has been broadcasted on national TV.¹⁰⁶

On the occasion of the signature of a readmission protocol with Germany, in March 2011, the Serbian Minister of Interior, Ivica Dačić, announced the launch of a public information campaign informing potential asylum seekers “that the adventure will not pay off”, and that the right to asylum is a political, and “not an economic, but a political category”.¹⁰⁷

¹⁰⁵ Banović: Bevizni režim nije ugrožen, BETA, 26.02.12

¹⁰⁶ Op. cit.

¹⁰⁷ Serbia and Germany ink readmission protocol, B92, 30.03.11

In addition, the Serbian authorities have distributed information material, particularly at border crossing and in those regions that were identified as the main source of “false asylum seekers”.¹⁰⁸

This campaign is particularly targeted at members of national minorities, Roma and Albanians from the South of Serbia, who according to the Serbian government, make up for about 95 percent of the asylum seekers.¹⁰⁹ Members of the Serbian government, in particular, the Serbian Deputy Prime Minister and Minister of Interior, Ivica Dačić, have repeatedly met with representatives of these communities and called on them not to seek asylum abroad. On the occasion of 8 May 2011, the traditional Roma Spring celebration, Dačić warned the Roma that they would damage Serbia’s national and state interests, if they seek asylum abroad.¹¹⁰

On 8 May 2011, the Serbian state news agency, *Tanjug*, quoted Dačić stating that he will meet with Roma and Albanian communities to explain to them that they will not be granted asylum in the EU, and that they could harm the whole country with regard to the visa liberalisation; “no-one from those communities will be able to leave the country if they do not have a return ticket, means to support their stay and cannot state the reason for the journey.”¹¹¹

“We have told the people that they will not be accepted for the economic asylum they are looking for ... they will face serious material consequences, if they go there and apply for asylum. They will be returned at their own costs to the place where they came from.”

Vitomir Mihajlović
President of the Roma National Council

In December 2011, Dačić held another meeting with representatives of the Roma community, where he told them that the asylum seekers would create problems for the entire state and contribute to foster resentments against Roma.¹¹²

The representatives of these communities, in particular, the Roma, have been involved in the public information campaign. In October 2010, the Serbian National

¹⁰⁸ Report on measures taken and planned by the Commission for monitoring the visa free regime of travel with EU aimed at reducing the number of asylum seekers, October 2011, courtesy translation provided by the Serbian government.

¹⁰⁹ See, for instance, statements made by the Serbian Deputy Prime Minister and Minister of Interior, Ivica Dacic, in a meeting with Commissioner Cecilia Malmström (Government of the Republic of Serbia: Србији не прети укидање визне либерализације, 30.03.11).

¹¹⁰ Serbian government: Dačić pozvao građane romske nacionalne manjine da ne traže azil u zemljama EU, 9.05.11

¹¹¹ Interior minister announces stricter border control, *Tanjug*, 08.05.11

¹¹² Dačić: Oštrijom kontrolom protiv lažnih azilanata, *VestiOnline*, 14.12.11

Council of the Roma declared, following a meeting with the Belgian Secretary of State, Melchior Wathelet, that “every attempt to seek asylum ... will be severely punished and [the individual] will be quickly returned.”¹¹³ In May 2011, its president, Vitomir Mihajlović declared in an interview with the Serbian TV channel, *RTS*, that his office would use all its channels to inform the Roma that they would not be granted asylum abroad, but would have to face material consequences and be returned at their own costs.¹¹⁴

FORCED RETURNS

Following the conclusion of the EC readmission agreement, Serbia signed protocols “on the implementation of the Agreement between the European Community and the Republic of Serbia on readmission of people residing without authorization in an EU member state” with several EU member states. By the end of 2011, such agreements with twelve EU member states had been signed, and the conclusion with some 10 other EU member states were still pending.¹¹⁵ In addition, Serbia also signed further bilateral readmission agreements with neighbouring countries¹¹⁶ as well as with Bulgaria¹¹⁷ Romania¹¹⁸ and Malta.¹¹⁹

On the occasion of signing the implementation protocol by Germany, the Serbian Minister of Interior explained that the protocol called for the immediate deportation of illegal migrants from Germany to Serbia, and that its purpose was also to reduce their number.¹²⁰

The European Commission noted that the Serbian Minister of Interior “gave assurances to all EU Member States that it could accommodate all requests for readmission of new biometric passport holders from Serbia within 48 hours”. The European Commission noted that this was “much faster than the legally required period.”¹²¹

¹¹³ Savet Roma: Svaki pokušaj traženja azila biće strogo kažnjen, *Politika online*; 28.10.10

¹¹⁴ Manje siromašnih, manje i azilanata, *RTS*, 12.05.11

¹¹⁵ Commissariat for Refugees of the Republic of Serbia: Email reply to a request from *Chachipe*, 8 June 2011. The list includes Austria, Bulgaria, Estonia, France, Germany, Great Britain, Hungary, Italy, Malta, Slovakia, Slovenia, and Romania. In May 2012, the signature of an implementation protocol with the Benelux countries was still pending (Secrétariat général du Benelux: Le Benelux informe le Monténégro, 31.05.12).

¹¹⁶ On 29 April 2010, Serbia signed a bilateral readmission agreement with Albania; on 4 October 2010, with Macedonia. (Albanija i Srbija potpisale sporazum o readmisiji, *SETimes*, 1.05.10; Sporazum o readmisiji sa Makedonijom, *RTV*, 4.10.10)

¹¹⁷ Srbija i Bugarska potpisale sporazum o readmisiji, *Tanjug*, 16.09.11

¹¹⁸ Serbia, Romania sign agreement on readmission, *Tanjug*, 9.06.11

¹¹⁹ Dačić i Borg potpisali protokol o readmisiji, *Tanjug*, 2.07.10

¹²⁰ Serbia and Germany ink readmission protocol, *B92*, 30.03.11

¹²¹ European Commission: Commission staff working paper: Report on the post-visa liberalisation monitoring for the Western Balkan countries in accordance with the Commission Statement of 8 November 2010, SEC 2011 (695) final, 30.05.11, p. 16

According to the Serbian Minister of Interior, approximately 4,000 persons had been forcibly returned to Serbia in 2010.¹²² According to a report submitted to the EU Commission, 3,520 Serbian citizens were forcibly returned to Serbia, in the period from 1 January and 1 September 2011.¹²³ On 21 December 2011, the Head of the Serbian border police, Nenad Banović, said that 3,222 out of 3,878 asylum seekers had been returned to Serbia, by November 1.¹²⁴

On 20 April 2012, an assistant to the Government Office for Refugees told Serbian media, that 548 people had already been deported back to Serbia since the beginning of the year.¹²⁵ The returnees are mostly Roma, but also Serbs and members of other ethnic minorities.¹²⁶ The Serbian newspaper *Novosti* wrote, that many of those, who are forcibly returned to Serbia, leave again after some while “in the search for bread”.¹²⁷

Representatives of the Serbian government have repeatedly requested European governments to communicate the names of asylum seekers, a request which was rebuked over data-protection concerns.¹²⁸

In May 2011, the Serbian Minister of Interior Ivica Dačić announced that the Serbian authorities would create a data base with the data of those who would be returned to Serbia in the context of a readmission agreement. He explained the relevance of this step by the fact that the asylum seekers “are mostly people who go from country to country requesting asylum. To avoid being included on the list, most asylum seekers give up on their request a couple of days before the bringing of the decision”.¹²⁹ Figures provided by EUROSTAT show that almost one in five asylum applications filed by Serbian citizens was withdrawn before a decision.¹³⁰

¹²² Dačić: Visa liberalisation is not in jeopardy, *BETA*, 23.02.11, quoted according to: Serbian government: Daily Survey, Belgrade, February 24, 2011

¹²³ Report on measures taken and planned by the Commission for monitoring the visa free regime of travel with EU aimed at reducing the number of asylum seekers, October 2011, courtesy translation provided by the Serbian government.

¹²⁴ Government of the Republic of Serbia: Srbiji ne pretila opasnost od ukidanja vizne liberalizacije, 21.12.11

¹²⁵ Zbrinjavanje povratnika u postupku readmisije, *MRS*, 20.04.12

¹²⁶ According to the Government Office for Refugees, 1,606 Serbian citizens were forcibly returned to Serbia in 2011, mostly from Germany (685) and Sweden (549), followed by Switzerland (165), Belgium (58), and Denmark (54). Of these 1,249 declared themselves as Roma 207 as Serbs, 48 as Muslims and 41 as Albanians. (ibid.)

¹²⁷ Readmisija: U Srbiju vraćeno 9.000 ljudi, *Novosti*, 19.10.11

¹²⁸ Deliće: Potrebni podaci o azilantima, *B92*, 7.05.11

¹²⁹ MUP to create database on asylum seekers, *B92*, 11.05.11

¹³⁰ For 3,475 applicants in 2009, 985 applications were withdrawn; for 15,420 applicants 2,285 withdrawals in 2010; and for 11,520 applicants 2,146 withdrawals in 2011. Own calculations based on EUROSTAT data.

Persons, who are returned to Serbia via the Belgrade airport, are registered by the readmission office at the airport. According to a local officer in charge of readmission, forced returnees are afraid to ask for assistance for fear of sanctions.¹³¹

Members of the Serbian government have also asked EU member states to issue travel bans to failed asylum seekers and returned migrants. On the occasion of a meeting of the so-called *Salzburg Forum*, the Deputy Prime Minister and Minister of Interior, Ivica Dačić, said that bogus asylum seekers would not go to countries where they run the risk of a temporary or permanent entry ban.¹³²

“We will introduce records, since these are mostly people who go from country to country requesting asylum. To avoid being included on the list, most asylum seekers give up on their request a couple of days before the bringing of the decision.”

Ivica Dačić
Deputy Prime Minister and Minister of Interior

In a speech before the Foreign Affairs Committee of the European Parliament, Deputy Prime Minister for European Integration, Božidar Djelić, also said that Serbia would welcome the envisaged changes of the Schengen rules and the “return directive”.¹³³ In April 2012, the Ministry of Interior made broad announcements of the adoption, by Sweden, of the EU returns directive, under which forced returnees risk an entry ban of one to five years.¹³⁴

¹³¹ Za tri meseca u Vranju registrovano 106 vraćenih azilanata, *BETA*, 13.05.11

¹³² Dačić: EU da zabrani ponovni ulazak lažnih azilanata, *BETA*, 16.11.11

¹³³ Directive 2008/115/EC of the European Parliament and Council on common standards and procedures in Member States for returning illegally staying third-country nationals, also return directive sets out common standards and procedures for the return of third-country nationals who are staying on the territory of the European Union without an authorisation.

¹³⁴ Švedska od 1. maja vraća odbijene azilante iz Srbije, *Telegraf*, 19.04.12; Švedska vraća azilante u Srbiju, *FoNet*, 19.04.12; MUP: Švedska od 1. maja primenjuje direktivu o azilantima, *BETA*, 19.04.12

Defending the Visa Freedom

Macedonia

Macedonia was granted a liberalization of its visa regime with the European Union on 30 November 2009. It entered into force on 19 December 2009.

In March 2006, the Macedonian Parliament adopted a new Law on Foreigners.¹³⁵ This law was again amended in September 2008¹³⁶ and in July 2009¹³⁷. Article 22 of this law introduces the principle of carriers' liability, by virtue of which a carrier is obliged to remove, at his own expense, any foreign passenger who does not have the appropriate travel documents or visa to enter Macedonia.¹³⁸ A carrier who fails to comply with this obligation risks a sanction between 3,000 and 5,000 Euros and a work ban.¹³⁹ Contrary to the Serbian law on foreigners, the Macedonian law does not foresee any particular restrictions to the right of foreigners to leave the country for reason of not fulfilling the entry requirements of a third country.¹⁴⁰

In 2007, the Macedonian Parliament adopted several amendments¹⁴¹ to the law on travel documents¹⁴², which was again amended in 2008.¹⁴³ This law created the conditions for the issuance of the new biometric passports, which started in April 2007.¹⁴⁴

¹³⁵ Law on Foreigners (закон за странците) of 14 March 2006, published in: *Official Gazette of the Republic of Macedonia*, Nr. 35/06

¹³⁶ Law on Amendments to the Law on Foreigners (ЗАКОН ЗА ИЗМЕНУВАЊЕ И ДОПОЛНУВАЊЕ НА ЗАКОНОТ ЗА СТРАНЦИТЕ), published in: *Official Gazette of the Republic of Macedonia*, Nr. 117/08, 18.09.08

¹³⁷ Law on Amendments to the Law on Foreigners (ЗАКОН ЗА ИЗМЕНУВАЊЕ И ДОПОЛНУВАЊЕ НА ЗАКОНОТ ЗА СТРАНЦИТЕ), published in: *Official Gazette of the Republic of Macedonia*, Nr. 92/09, 24.07.09. This new amendment removed the requirement for EU citizens to possess travel insurance when entering Macedonia.

¹³⁸ Law on Foreigners (закон за странците) of 14 March 2006, published in: *Official Gazette of the Republic of Macedonia*, Nr. 35/06, article 22, "Carriers' liabilities"

¹³⁹ *Ibid.*, article 150

¹⁴⁰ *Ibid.*, article 26, "Freedom of movement"

¹⁴¹ ЗАКОН ЗА ПАТНИТЕ ИСПРАВИ НА ДРЖАВЈАНИТЕ НА РЕПУБЛИКА МАКЕДОНИЈА, published in: *Official Gazette of the Republic of Macedonia*, Nr. 19/07, 19.02.07

¹⁴² ЗАКОН ЗА ПАТНИТЕ ИСПРАВИ НА ДРЖАВЈАНИТЕ НА РЕПУБЛИКА МАКЕДОНИЈА, published in: *Official Gazette of the Republic of Macedonia*, Nr. 73/04, 21.10.04

¹⁴³ ЗАКОН ЗА ПАТНИТЕ ИСПРАВИ НА ДРЖАВЈАНИТЕ НА РЕПУБЛИКА МАКЕДОНИЈА, *Official Gazette of the Republic of Macedonia*, Nr. 84/08, 11.07.08

¹⁴⁴ Macedonian citizens get biometric passports, *SETimes*, 7.05.11

In April 2009, the Macedonian Parliament amended the Law on State Border Surveillance of 2007 in order to bring this law in line with the so-called Schengen *acquis*. The new law contains a definition of the criteria for minimum and detailed checks, as contained in the *Schengen Borders Code*¹⁴⁵, and of the obligations of the police performing these checks.

Macedonia signed bilateral readmission agreements with some twenty countries.¹⁴⁶ On 18 September 2007, Macedonia signed a readmission agreement with the EU. It entered into force on 1 January 2008. According to EUROSTAT data, 1,275 Macedonian citizens were forcibly returned to Macedonia from an EU member state in 2008; in 2009, the number of forced returnees was 1,065.¹⁴⁷

POST-VISA LIBERALISATION DEVELOPMENTS

The visa liberalization had an almost immediate and considerable impact on the number of asylum applications filed by Macedonian nationals. UNHCR figures show an almost eight times increase in this number between 2009, when it stood at 838, and 2010, when it reached 6,289 applications.¹⁴⁸ EUROSTAT figures show an even stronger increase. According to EUROSTAT, 655 Macedonian nationals applied for asylum in EU member states and Switzerland in 2009. In 2010, they were almost ten times that number, i.e., 6,520 persons.¹⁴⁹ In 2011, the number of applications dropped slightly. According to the UNHCR, 5,607 were filed by Macedonian nationals;¹⁵⁰ EUROSTAT counted 5,350 new applicants from Macedonia.¹⁵¹

Macedonia was put under pressure after several EU member states including Belgium and Sweden complained over a strong increase in the number of asylum applications filed by Macedonian nationals.¹⁵²

¹⁴⁵ Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (*Schengen Borders Code*)

¹⁴⁶ The list includes: Italy (1997), Slovenia (1998), Switzerland (1998), France (1998), Slovakia (2000), Germany (2002, ratified: 2004), Hungary (2002, ratified 2004), Romania (2003), Poland (2006), Spain (2006), Austria (2006), BENELUX (2006), Denmark (2006), Sweden (2006), Switzerland (1998, 2012), Bulgaria (2001, ratified 2002), Croatia (2001), Romania (2003, ratified 2004), Albania (2004, ratified 2005), Norway (2009).

¹⁴⁷ Third country nationals (broken by their citizenship) returned from ms [member states], European Commission (2011): *Evaluation of EU Readmission Agreements*, Commission staff working document accompanying the communication from the European Commission to the European Parliament and the Council, SEC (2011) 211, Brussels, 23.02.11, p. 3

¹⁴⁸ Origin of asylum applications lodged in 44 industrialized countries 2009 and 2010, in: UNHCR (2011): *Asylum Levels and Trends in Industrialized Countries 2009 – 2010*, Geneva, p. 17

¹⁴⁹ EUROSTAT: *New asylum applicants by citizenship, aggregated data*, own calculations based on EURSTAT data

¹⁵⁰ UNHCR (2012): *Asylum Levels and Trends in Industrialized Countries 2010 – 2011*, Geneva, p. 22

¹⁵¹ EUROSTAT: *New asylum applicants by citizenship, aggregated data*, own calculations based on EUROSTAT data

¹⁵² Европа се крена на нозе од македонските азиланти, *Sitel*, 22.10.10; Serbia, Macedonia vow to prevent asylum-seekers exodus to EU, *EUbusiness*, 12.03.11

On 8 March 2010, the Belgian Prime Minister Yves Leterme and the Belgian Secretary of State for Migration Melchior Wathelet visited Macedonia.¹⁵³ Leterme met with his Macedonian counterpart, Nikola Gruevski. Wathelet visited several places of origin of asylum seekers in North-Western Macedonia.

“My country doesn’t give political asylum to economic refugees, so there is no sense in travelling to Belgium from Macedonia for the purpose of seeking political refugee status.”

Yves Leterme
Prime Minister of Belgium

During this visit, the accent was put on the alleged implication of tour operators, who would allegedly lure people into applying for asylum in Belgium.¹⁵⁴ In order to underline their message, that Belgium would not “grant political asylum to economic refugees”, the Belgian authorities deported, at the same time, some sixty Macedonian asylum seekers from Belgium.

On 21 October 2010, the Belgian Secretary of State for Migration, Melchior Wathelet, whose country held the rotating Presidency of the EU, visited Macedonia for the second time. He asked the Macedonian authorities to keep up the pressure, arguing that “some people keep on convincing other people that they will be granted asylum status in Belgium.”¹⁵⁵

At the same time, the EU Commissioners for Home Affairs and for Enlargement, Cecilia Malmström and Štefan Füle, sent letters¹⁵⁶ to representatives of the Macedonian government, warning them that Macedonia might lose its newly acquired visa waiver, if the increase in the number of asylum applications continued unabated.

¹⁵³ Belgian PM Yves Leterme in Official Visit to Skopje, *Skopjediem*, 8.03.10

¹⁵⁴ Belgium will not grant political asylum to economic refugees: PM, *EU business*, 9.03.10

¹⁵⁵ Les demandeurs d’asile serbes dans l’UE seront tous renvoyés, *7 sur 7*, 21.10.10 ; Wathelet: Macedonian citizens should not abuse free visa regime, *MIA*, 21.10.10

¹⁵⁶ According to the online newspaper, *EUobserver*, which saw copies of the letters, Commissioner Malmström wrote: “Some member states are once again experiencing an alarming increase of persons coming from your country and seeking asylum. This trend is extremely worrying and might seriously jeopardise the entire process of visa liberalisation in the Western Balkans.” (*Asylum rise puts Balkan visa-free scheme in danger*, *EUobserver*, 21.10.10). According to the European Stability Initiative (ESI), Commissioner Füle wrote: “The latest figures from some EU Member States show an alarming new increase in the number of asylum seekers coming from your country over the past month. [...] This is a very worrying development. It sheds doubt on the effectiveness of the measures taken by your country in spring. [...] I would like to point out that it will be crucial that your authorities take all the necessary measures to reduce the influx of asylum seekers without any delay.” Enlargement Commissioner Štefan Füle: Letter to Macedonian Foreign Minister, 18 October 2010, quoted according to: European Stability Initiative: Freedom of movement in a populist age: Why Balkan visa liberalisation is (still) a success, Brussels, 30.06.11, p. 8

DOMESTIC REACTIONS

The Macedonian authorities reacted promptly. In February 2010, they created a monitoring committee for the implementation of the visa liberalization with the EU, which held its first meeting in March.¹⁵⁷

“[Macedonia and Serbia] want to send a clear message that the two states are co-operating in that field and are working on preventing the appearance of false asylum seekers.”

Gordana Jankulovska
Minister of Interior of the Republic of Macedonia

In March, the Serbian and Macedonian authorities promised that they would undertake common actions against the alleged organizers of the travels.¹⁵⁸ Following a meeting with her Serbian counterpart, Ivica Dačić, the Macedonian Minister of Interior, Gordana Jankulovska said both countries would “want to send a clear message that the two states are co-operating in that field and are working on preventing the appearance of false asylum seekers”¹⁵⁹.

In one of the first actions, two travel companies were closed over irregularities in their management.¹⁶⁰ In May 2011, the Macedonian authorities announced a series of new measures aimed at “suppressing the ongoing trend of asylum seeking”.¹⁶¹ A document, which was submitted to the European Commission, distinguishes general, preventive and operative measures:

Among the general measures is the strengthening of inter-institutional cooperation and cooperation with EU member states. The “preventive measures” include so-called socio-economic measures aimed to improve the living conditions of vulnerable groups, and awareness raising. The “operative” or, better, repressive measures are not described with the same detail. They include enhanced border controls and investigations into a possible involvement of travel agencies in the increase of the number of asylum applications filed by Macedonian nationals.

¹⁵⁷ Belgian PM Yves Leterme in Official Visit to Skopje, *Skopjediem*, 8.03.10

¹⁵⁸ Serbia, Macedonia vow to co-operate against asylum seekers, *SETimes*, 12.03.10

¹⁵⁹ Rush to asylum puts visa-free travel at risk in Serbia, Macedonia, *SETimes*, 30.03.10

¹⁶⁰ Belgium PM to Take On Balkans Asylum Issue, *Balkan Insight*, 8.03.10

¹⁶¹ Republic of Macedonia/Ministry of Foreign Affairs: Implementation of the visa liberalisation – Measures and activities of the Government of the Republic of Macedonia against the occurrence of increased asylum applications in certain EU/Schengen member states, 4.05.11 (Document submitted to the European Commission)

Following the snap elections in June, the Macedonian government announced a series of legal amendments.¹⁶² They include changes of the Law on Travel Documents aimed to enable the temporary revocation of the passports of failed asylum seekers and returned migrants and the introduction of a new article concerning the “misuse of the visa-free regime with the EU” in the Macedonian Penal Code, which aims to punish those who transport so-called false asylum seekers.

ENHANCING BORDER CONTROLS

On 29 December 2010, the Macedonian Parliament adopted a new Law on Border Surveillance¹⁶³. This law transposes essential elements of the *Schengen Borders Code* into domestic law.¹⁶⁴ This concerns among others the distinction between “minimum”, which concern Macedonian citizens as well as every person enjoying “the Community right of freedom of movement” and “detailed checks” which concern third country nationals along with the introduction of entry and exit criteria.¹⁶⁵

Article 15 of this law conveys the Macedonian border police extensive powers to control persons entering or exiting Macedonia. Under paragraph 4 of this article, they are entitled to conduct random checks on passengers aimed to determine that they do not pose any threats to the public, national security, public policy, international relations or public health.¹⁶⁶

¹⁶² Macedonian Ministry of Foreign Affairs: Minister Milošoski meets European Commissioner for Home Affairs Cecilia Malmström, 24.06.11

¹⁶³ Law on Border Surveillance (Законот за гранична контрола), published in: *Official Gazette of the Republic of Macedonia*, Nr. 171/10, 30.12.10

¹⁶⁴ See statements made by the Macedonian Minister of Interior, Gordana Jankulovska, in an interview with *Sitel* (Јанкуловска: Се намалува бројот на лажни азиланти, *Sitel*, 11.04.12) Law on Border Surveillance (Законот за гранична контрола), published in: *Official Gazette of the Republic of Macedonia*, Nr. 171/10, 30.12.10, article 15 and 16

¹⁶⁵ *Ibid.*, article 15 and 16

¹⁶⁶ Minimum border checks

(1) Minimum border checks are carried out over all persons crossing the state border in order to check and determine their identity based on a given travel document or other document prescribed for crossing the state border. (2) The minimum border checks of paragraph 1 of this Article shall consist of a quick and simple check with the appropriate technical devices and by checking the appropriate records and electronic databases only to check travel documents, or other prescribed documents for crossing the state border, if stolen, misused, lost or invalid, to check its validity and to verify the presence of signs suggestive of abuse, forgery or alterations to the document.

(3) The minimum border checks of paragraph 2 of this Article shall apply to nationals of the Republic and those who enjoy the Community law on free movement.

(4) The implementation of minimum border checks on persons nationals of the Republic of Macedonia, and over those who enjoy the Community law on free movement, the police officer may, on a non systematic basis, check in the appropriate records and electronic databases if they pose a threat to people, national security, public policy, international relations or a threat to public health. (Article 15, Law on Border Surveillance (Законот за гранична контрола), published in: *Official Gazette of the Republic of Macedonia*, Nr. 171/10, 30.12.10)

This paragraph has been used to legitimate the issuance of travel bans against Macedonian nationals who were suspected to have the intention to apply for asylum in the EU. As Minister Jankulovska explained in her reply to an oral question of an opposition MP, in December 2011, these persons are considered to harm national interests.¹⁶⁷

“ ... if there are indications that a citizen has the intention to travel to a Member State of the European Union with the purpose of abusing the right to asylum, he cannot be allowed to leave Macedonia, everything is regulated by the Law on Border Surveillance, which was adopted by this Assembly (...), (...) read article 15 paragraph 4 of this specific law.”

Gordana Jankulovska
Macedonian Minister of Interior

their passports stamped.¹⁷⁰ She explained that these stamps would be a clear indication for the border guards at other border crossings to perform additional checks on these travellers in order to prevent them from “abusing the visa liberalization and damaging Macedonia’s image”.¹⁷¹

In December 2011, Jankulovska said that in the period between 29 April 2011, the beginning of the official count, until 24 November 2011, 2,888 Macedonian citizens were deprived of their right to leave Macedonia.

¹⁶⁸ In April 2012, the spokesperson of the Ministry of Interior, Ivo Kotovski, said in a TV interview, that some 4,000 Macedonian citizens had been returned at the border, since 29 April 2011, when the new measures were adopted.¹⁶⁹

On 22 May 2011, Jankulovska announced that persons who are suspected to be so-called false asylum seekers would not only be refused exit, but additionally have

¹⁶⁷ “... доколку постојат индикации, дека намерата на граѓаните е патување во било која од земјите членки на Европската унија со цел да го злоупотребат правото на азил, на истите може да не им биде дозволен излез од Република Македонија, сето ова е регулирано со Законот за гранична контрола, донесен од страна на ова Собрание (...), прочитајте го членот 15 ставот 4 од овој конкретен закон.” (Gordana Jankulovska in a debate at the Macedonian Parliament of 29.12.12, in: Macedonian Parliament: СТЕНОГРАФСКИ БЕЛЕШКИ од Деветнаесеттата седница на Собранието на Република Македонија, одржана на 29 декември 2011 година)

¹⁶⁸ Ibid.

¹⁶⁹ KOD lažni azilanti, *Kanal 5*, mins. 11.50 – 12.19

¹⁷⁰ Ibid.

¹⁷¹ Pečati za lažne azilante, *RTS*, 23.05.11

On 28 September 2011, the Macedonian Parliament adopted an amendment to the Law on Travel Documents for Nationals of the Republic of Macedonia. It introduces, under article 37, a new ground for the rejection of the issuance of a passport or a visa. It concerns persons who have been forcibly returned to Macedonia, who may be deprived of their passport for one year's time.¹⁷²

Roma, who were prevented from leaving Macedonia, had the letters "AZ" stamped in their passports. According to the Macedonian NGO ARKA, which reported several such cases, these letters would indicate that the holders of these passports are not allowed to leave Macedonia.¹⁷³ A police inspector in charge of border surveillance, at the Macedonian Ministry of Interior, explained the European Roma Rights Centre (ERRC) that these letters indicate that holder of the passport has tried to cross the Macedonian border without meeting all necessary requirements and therefore may be suspected of being an asylum seeker.¹⁷⁴ Most probably, the letters "AZ" simply indicate that the holder of the passport is suspected to be an asylum seeker, "AZilant" in Macedonian.

The Macedonian authorities have failed to provide any information on the criteria which are used by Macedonian border guards to conclude that a traveller intends to seek asylum abroad. In line with article 6, paragraph 2 of the *Schengen Borders Code*,¹⁷⁵ the Macedonian Law on Border Surveillance contains a clear prohibition of any form of discrimination. According to article 7 of this law, Macedonian border police "may not discriminate on the basis of gender, racial or ethnic origin, skin colour, nationality, social origin, religious belief, disability, sexual orientation, wealth or social position."¹⁷⁶

According to the Macedonian Minister of Interior, Gordana Jankulovska, the controls are performed on the basis of a "method of risk analysis". Accordingly, the Macedonian authorities have developed a "profile" of so-called false asylum seekers or potential

¹⁷² Law amending and supplementing the law on Passports of the citizens of the Republic of Macedonia, *Official Gazette of the Republic of Macedonia*, Nr. 135, 3.10.11, p. 6

¹⁷³ ARKA (2011): Monthly Report for the situation of the Roma Rights in Macedonia, May - June 2011

¹⁷⁴ ERRC: Letter to the Macedonian government: Re: Freedom of Movement at Macedonian Borders, 20.04.12

¹⁷⁵ "While carrying out border checks, border guards shall not discriminate against persons on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation." (Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (*Schengen Borders Code*))

¹⁷⁶ Law on Border Surveillance (Законот за гранична контрола), published in: *Official Gazette of the Republic of Macedonia*, Nr. 171/10, 30.12.10, Article 8, "Respect for human dignity"

asylum seekers on the basis of the information they receive from EU member states. This “profile” is regularly updated and communicated to all the centres dealing with border control, who use this profile in the performance of their control.¹⁷⁷

The European Commission is much more explicit. In its second post-visa liberalization monitoring report, the European Commission writes:

The common profile of the asylum seekers has been confirmed during the second half of 2011. The vast majority of the claims stems from persons belonging to the Roma minority, who often arrive with their families.

**European Commission:
Macedonia 2011 Progress Report**

“The common profile of the asylum seekers has been confirmed during the second half of 2011. The vast majority of the claims stems from persons belonging to the Roma minority, who often arrive with their families.”¹⁷⁸

More specifically on Macedonia, the European Commission writes in its 2011 progress report:

“To counteract this phenomenon [the increase of so-called unfounded asylum applications by Macedonian citizens] the national authorities introduced a set of measures, including public information campaigns, *focusing in particular on the vulnerable groups most likely to be involved, as well as preventive measures like enhanced border checks and profiling.*”¹⁷⁹ (emphasis added)

The US Department of State explained in its 2011 country report on Macedonia:

“In response to an EU request to decrease the number of asylum seekers, the authorities organized a multiagency working group that created a multipronged strategy including a media campaign, sanctions for travel agencies who target potential asylum seekers, and *profiling at border stations.*”¹⁸⁰ (emphasis added)

¹⁷⁷ Government of the Republic of Macedonia: Jankuloska: Visa liberalization, crucial benefit in Macedonia’s EU integration process, 16.11.2011; Gordana Jankulovska, parliament debate of 29.12.12, in: Macedonian Parliament: СТЕНОГРАФСКИ БЕЛЕШКИ од Деветнаесеттата седница на Собранието на Република Македонија, одржана на 29 декември 2011 година

¹⁷⁸ European Commission (2011): Commission staff working paper: Second report on the post-visa liberalisation monitoring for the Western Balkan countries in accordance with the Commission Statement of 8 November 2010, SEC(2011) 1570 final, 7.12.11, p. 11

¹⁷⁹ European Commission: Commission staff working paper: The former Yugoslav Republic of Macedonia 2011 Progress report, SEC(2011) 1203 final, Brussels, 12.10.11, p. 66

¹⁸⁰ U.S. Department of State/Bureau of Democracy, Human Rights and Labor (2012): Country Reports on Human Rights Practices for 2011: Macedonia, Washington, 24.05.12



Not allowed to leave (Source : *Kanal 5*: KOD lažni azilanti)

Reports provide an indication of the highly arbitrary character of these controls and the exit bans they entail.

The Macedonian NGO ARKA reported two cases of Roma who were prevented from visiting relatives in Serbia or attending a wedding. In another case reported by the same NGO, Roma were prevented from travelling to Serbia for seasonal work.¹⁸¹

The Budapest-based ERRC reported the case of a group of musicians from Kočani, who were denied the right to travel to Germany, where they wanted to perform at a wedding.¹⁸² In another case reported by the ERRC, a man from Štip was prevented from travelling to nearby Greece, where he wanted to purchase car parts.¹⁸³

The National Roma Centre in Kumanovo reported a case of a professional musician, who was kept from leaving Macedonia, in late 2011. According to this man, he had been travelling in the region since 1996 and had never encountered any problems. Last year, however, he was returned at border crossing in Tabanovce, without any explanation.¹⁸⁴

¹⁸¹ ARKA (2011): Monthly Report for the situation of the Roma Rights in Macedonia, May- June 2011

¹⁸² ERRC: Letter to the Macedonian government, Re: Freedom of Movement at Macedonian Borders, 20.04.12

¹⁸³ ERRC (2012): Macedonia: EU Enlargement Programme 2012 (Submission to the EU Commission, May 2012)

¹⁸⁴ Роми дискриминирани на македонската граница?!, *EDNO magazine*, 20.01.12

A representative from another NGO from Kumanovo confirmed people had been prevented from visiting their relatives or from going in search of seasonal work in neighbouring countries.¹⁸⁵

In a QA session at the Macedonian Parliament, the Macedonian MP, Oliver Spasovski, mentioned two cases, where Roma were arbitrarily deprived of their right to travel. In one of these cases, occurring on 27 August 2011, Roma who wanted to leave for work in Montenegro, were prevented from travelling and had their passports marked. In another case, a family from Kumanovo was kept from visiting its relatives in the nearby Serbian town of Bujanovac.¹⁸⁶

In April 2012, the Macedonian TV channel *Kanal 5* broadcasted a feature called “KOD Lažni azilanti”, meaning “false asylum seekers”, which documented several cases of Roma, who had been prevented from leaving Macedonia under more than questionable arguments. In one of these cases a couple was not allowed to go on a visit to Bor, in Southern Serbia, in January 2012.¹⁸⁷ They were first told, that they were not married. Later, they were told that they would need to have a letter of invitation.¹⁸⁸

Several of these reports mention, that the Roma had their passports marked with the letters “AZ” or other marks, rendering them useless as a travel document.¹⁸⁹ This was for instance the case for four of the five musicians who were not allowed to travel to Germany reported by ARKA.¹⁹⁰ In another case, reported by the ERRC, a Roma woman from Kumanovo had her passport stamped, after the border guard objected, that the invitation letter, she had with her, was not the original.¹⁹¹

¹⁸⁵ Ромите најмногу бараат азил, *Kumanovo News*, 30.09.11

¹⁸⁶ Macedonian Parliament: СТЕНОГРАФСКИ БЕЛЕШКИ од Деветнаесеттата седница на Собранието на Република Македонија, одржана на 29 декември 2011 година (Stenographic notes of the nineteenth session of the Assembly of the Republic of Macedonia, held on December 29, 2011)

¹⁸⁷ KOD Lazni azilanti, *Kanal 5*, mins. 8:17 – 8:45

¹⁸⁸ Ibid., mins. 5:58 – 6:38

¹⁸⁹ In the case *Sissanis v. Romania*, the European Court of Human Rights held that the stamping of a letter in the applicants passport amounted to a restriction of his freedom of movement. (see: no. 23468/02) The right to freedom of movement according to article 12(3) ICCPR only allows exceptional restrictions requiring that they “are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant” (see also article 2(3) of Protocol 4 to the ECHR). Restrictions that do not meet these standards violate freedom of movement (see: Human Rights Committee - General Comment No. 27, para. 12). General Comment No. 27 clarifies that “[t]he law itself (authorizing the application of restrictions) has to establish the conditions under which the rights may be limited” (see para. 12) and that it should use “precise criteria and may not confer unfettered discretion on those charged with their execution”. (see para. 13)

¹⁹⁰ ARKA (2011): Monthly Report for the situation of the Roma Rights in Macedonia, May- June 2011

¹⁹¹ ERRC (2012): Macedonia: EU Enlargement Programme 2012 ERRC report, May 2012

In this and another case reported by the ERRC, the Roma were the only ones who were asked to provide any documents or answer questions.¹⁹² In an interview with *Kanal 5*, a representative of the local NGO, *Daja*, said Roma are the only ones who are requested to justify an invitation and the possession of sufficient means of subsistence. She said that the Roma felt discriminated for that reason.¹⁹³

“I have nothing against [these measures], but it is absurd to be returned, because you have a different name and skin colour. And it is even more absurd, because my destination was Belgrade, Serbia, which is not even a member of the European Union.”

Young man in “KOD Lažni azilanti”

In one case reported by the ERRC, a man from Štip, who was prevented from travelling to nearby Greece, was reportedly told by the border guards that they received instructions not to allow Roma cross the border.¹⁹⁴ In another case, the case of the family from Kumanovo, reported by the Macedonian MP Oliver Spasovski, the family was told by a border guard that he acted upon orders from the Ministry of Interior.¹⁹⁵

The highly arbitrary character of the controls and travel bans is also underlined in the most recent human rights report of the US Department of State, which notes: “In response to an EU request to decrease the number of asylum seekers, the authorities organized a multiagency working group that created a multipronged strategy including a media campaign, sanctions for travel agencies who target potential asylum seekers, and profiling at border stations. From April to October [2011], more than 1,500 Macedonia citizens (mostly Roma) were refused exit from the country on the basis of being potential asylum seekers in the EU.”¹⁹⁶

¹⁹² Ibid.

¹⁹³ KOD Lazni azilanti, *Kanal 5*, mins. 5:58 – 6:38

¹⁹⁴ ERRC (2012): Macedonia: EU Enlargement Programme 2012 ERRC report, May 2012

¹⁹⁵ Macedonian Parliament: СТЕНОГРАФСКИ БЕЛЕШКИ од Деветнаесеттата седница на Собранието на Република Македонија, одржана на 29 декември 2011 година (Stenographic notes of the nineteenth session of the Assembly of the Republic of Macedonia, held on December 29, 2011)

¹⁹⁶ U.S. Department of State/Bureau of Democracy, Human Rights and Labor (2012): Country Reports on Human Rights Practices for 2011: Macedonia, Washington, 24.05.12

In her reply to a parliamentary question of the Macedonian MP, Oliver Spasovski, the Macedonian denied any form of discrimination of the Roma.¹⁹⁷ She said that that her Ministry did not even keep records of the ethnicity of those who were rejected at the borders. They would simply be considered as Macedonian citizens with equal rights and duties, and that it was their duty to respect the law.¹⁹⁸

MEASURES AGAINST TRAVEL COMPANIES AND TOUR OPERATORS

In July 2011, the Macedonian Ministry of Interior announced that the State Prosecutor had brought up charges against two tour operators from Strumica and Kumanovo with “fraud” and complicity.¹⁹⁹ Both were accused of having lured persons into seeking asylum in Sweden. In the same announcement, the Ministry also reported on criminal charges against a tour operator from Prilep who was accused of having organised international travels without an appropriate license and having transported asylum seekers.

On 29 December 2011, the Minister of Interior, Gordana Jankulovska, said in a debate at the Macedonian Parliament that 302 controls had been conducted, concerning 108 travel agencies, 37 tour operators and 22 local carriers.²⁰⁰ However, there was no proof concerning the alleged involvement of these agencies in the increase of asylum applications.²⁰¹

¹⁹⁷ Macedonian Parliament: СТЕНОГРАФСКИ БЕЛЕШКИ од Деветнаесеттата седница на Собранието на Република Македонија, одржана на 29 декември 2011 година

¹⁹⁸ “Иако имаше обид да се дискриминираат граѓаните според нивната етничка припадност, јас ќе ве разочарам и ќе ви кажам дека во ниту еден документ не постои податок за етничката припадност, така што ние како Министерство дури и да го барате тоа од нас нема да бидеме во состојба да ви дадеме податок за етничката припадност на овие граѓани. За нас тие се граѓани на Република Македонија, со еднакви права, и еднакви обврски кон државата, односно кон полчитувањето на законите.” Translation: “Even if there was an attempt to discriminate against citizens according to their ethnicity, I will disappoint you and tell you that there is no single document with data on ethnic affiliation, so that if you would ask this from us, even we as the Ministry will not be able to give you information on the ethnicity of these people. For us they are citizens of the Republic of Macedonia, with equal rights and equal obligations towards the State, namely to respect the laws.” (Macedonian Minister of Interior, Gordana Jankulovska, parliament debate of 29.12.12, in: Macedonian Parliament: СТЕНОГРАФСКИ БЕЛЕШКИ од Деветнаесеттата седница на Собранието на Република Македонија, одржана на 29 декември 2011 година)

¹⁹⁹ See: Ministry of Interior: Кривични пријави за двајца сопственици на туристички агенции, 12.07.11

²⁰⁰ Macedonian Parliament: СТЕНОГРАФСКИ БЕЛЕШКИ од Деветнаесеттата седница на Собранието на Република Македонија, одржана на 29 декември 2011 година

²⁰¹ ESI email conversation with a senior Macedonian official, 23.06.11. European Stability Initiative: Advancing Freedom of Movement in a Populist Age: How the Western Balkans asylum seekers affair can be resolved (2011), Bruxelles, 9.07.11, p. 27

On 28 September 2011, the Macedonian Parliament adopted an amendment to the Criminal Code. It talks of a new article 418e, called “Abuse of the visa-free regime with the member states of the European Union and of the Schengen Agreement”, in the Macedonian Penal Code.²⁰²

Article 418-e of the Macedonian Penal Code: Abuse of the visa-free regime with the member states of the European Union and of the Schengen Agreement

“Whosoever recruits, instigates, organizes, shelters or transports persons to a member state of the European Union or of the Schengen Agreement in order to acquire or exercise social, economic or other rights, contrary to the law of the European Union, to the regulations of the member states of the European Union and of the Schengen Agreement and to the international law shall be sentenced to minimum four years of imprisonment.”

This article aims at the punishment of travel companies or tour operators who transport so-called false asylum seekers to the EU, encourage them or provide them shelter. They expose themselves to prison fines of one year to more than eight years depending on their degree of awareness of the intentions of the traveller and as to whether they did it for financial gain.²⁰³

While this article essentially aims at travel companies and tour operators, its obvious purpose is to dissuade them from taking people on board who could use the opportunity of their travel abroad to apply for asylum.

²⁰² Ukaz za poglazuvanje ZAKON ZA IZMENUVANJE I DOPOLNUVANJE NA KRIVICHNIOT ZAKONIK, published in: *Official Gazette of the Republic of Macedonia*, Nr. 135/11, 3.10.11, p. 15. Article 418-e: Abuse of the visa-free regime with the member states of the European Union and of the Schengen Agreement

(1) Whosoever recruits, instigates, organizes, shelters or transports persons to a member state of the European Union or of the Schengen Agreement in order to acquire or exercise social, economic or other rights, contrary to the law of the European Union, to the regulations of the member states of the European Union and of the Schengen Agreement and to the international law shall be sentenced to minimum four years of imprisonment.

(2) If the offender referred to in paragraph (1) was obliged and might have known that the transport is made in order to acquire or exercise the rights referred to in paragraph (1), contrary to the law of the European Union, to the regulations of the member states of the European Union and of the Schengen Agreement and to the international law, he/she shall be sentenced to imprisonment from one to five years.

(3) If the crime is committed out of covetousness, the offender shall be sentenced for the crime referred to in paragraph (1) to imprisonment of minimum eight years, and for the crime referred to in paragraph (2) to imprisonment of minimum four years.

(4) If the crime is committed by a legal entity, it shall be fined.

(5) The items and means of transport used to commit the crime shall be seized.

²⁰³ Ibid.

PUBLIC INFORMATION CAMPAIGNS

In July 2011, the Macedonian government launched a new public information campaign called “Stop the abuse of the visa liberalization”.²⁰⁴ The campaign involved the organisation of public meetings and other activities as well as the distribution of information material.

In a debate in the Macedonian Parliament, the Macedonian Minister of Interior, Gordana Jankulovska, said that 149 meetings had been held and 4,400 flyers distributed in all languages spoken by Macedonian citizens.²⁰⁵

In reality, the campaign is essentially targeted at those regions, which are considered as the main regions of origin of the asylum seekers, such as North-Western Macedonia, and at those communities, who are considered as being the most likely to “abuse the visa-free system” by seeking asylum abroad: Roma.²⁰⁶

Members of the Macedonian government, but also representatives of Western governments, visited Roma communities in Shuto Orizari, Kumanovo, Tetova, Bitola, Prilep, Štip and Gostivar.²⁰⁷ In one of these meetings, the Macedonian Minister without Portfolio, Neždet Mustafa, said, that the visa liberalisation was for business men, students and family visits, but did not imply the right to stay abroad. He said that the misuse of the visa liberalisation would harm Macedonia’s interests.²⁰⁸

The campaign involved the active participation of Roma NGOs via the Roma information centres, which have been set up throughout the countries. NGOs participating in this campaign have reportedly been asked to warn their constituencies that they might lose their social benefits, health insurance, if they apply for asylum

²⁰⁴ Почна реализацијата на проектот „Стоп на злоупотребата на визната либерализација”, *Sitel*, 20.07.11

²⁰⁵ Macedonian Minister of Interior, Gordana Jankulovska, parliament debate of 29.12.12, in: Macedonian Parliament: СТЕНОГРАФСКИ БЕЛЕШКИ од Деветнаесеттата седница на Собранието на Република Македонија, одржана на 29 декември 2011 година

²⁰⁶ РОМИТЕ ДА НЕ НАСЕДНУВААТ НА ЛАЖНИ ВЕТУВАЊА И МАНИПУЛАЦИИ, *Telma*, 15.05.11; Government of the Republic of Macedonia: Jankuloska: Number of false asylum seekers dropping, intensive efforts still being made, 11.04.12

²⁰⁷ Јанкулоска во Шуто Оризари: Да не се злоупотребува визната либерализација, *Sitel*, 27.10.10; Одржана трибина за едукација на ромската заедница во Битола, *Time Macedonia*, 11.01.12; Во Тетово и Битола трибини против злоупотреба на визната либерализација, *Sitel*, 11.01.12

²⁰⁸ Едукативна работилница за ромското население, *Makedonija24*; 26.09.11

in the EU.²⁰⁹ Macedonian media reported that the NGOs were also asked to warn the members of the community, that they may face imprisonment if they would misuse the free visa regime.²¹⁰

The public information campaign has obviously contributed to nurturing rumors among members of the Roma community that those who were applying for asylum would face negative consequences upon their return in Macedonia. Among these rumors is the allegation that forced returnees would be deprived of their social benefits.

The Macedonian government has further contributed to nurturing these rumors by issuing ambiguous statements. In a note concerning the forced return of 59 Macedonian citizens from Germany, the government said that those, who would travel to the EU with the purpose of seeking asylum would expose themselves to “unnecessary financial costs”.²¹¹

Forced returns have been broadly broadcasted in Macedonian media. The aim of these broadcasts is obviously to dissuade potential asylum seekers from their plans. Macedonian media also announced that the Macedonian government had requested Western governments to communicate information about the identity of the asylum seekers.²¹²

In an interview with *Radio Free Europe*, a representative of a Roma NGO from Gostivar explained that fear was one of the main reasons keeping Roma from seeking asylum abroad. At the same time, he questioned the impact of the information campaign, wondering if the information actually affects those who are desperate.²¹³

²⁰⁹ ARKA (2011): Monthly Report for the situation of the Roma Rights in Macedonia, May - June 2011

²¹⁰ Едукација - како да се користи визната либерализација, *Sitel*, 15.05.11

²¹¹ Macedonian Government/Ministry of Interior: Денес со чартер лет од Дрезден Германија, 10.02.11

²¹² РОМИТЕ ДА НЕ НАСЕДНУВААТ НА ЛАЖНИ ВЕТУВАЊА И МАНИПУЛАЦИИ, *Telma*, 15.05.11

²¹³ Азилантите се вратија, сиромаштијата остана, *Radio Free Europe*, 25.04.12

FORCED RETURNS

Further to the conclusion of an EC readmission agreement, Macedonia signed bilateral protocols for its implementation. On 23 April 2010, Macedonia signed such a protocol with Estonia,²¹⁴ on 24 June 2010, with Austria,²¹⁵ and, on 21 February 2011, with Bulgaria.

“[It is] rather fear. It is true that the information has reached them, but you know, if people are in a difficult situation, if they face existential problems, if they are disappointed, because of the discrimination they face, they receive information that they should not go as asylum seekers, but whether they see this as a way out, this is another question.”

Muhamed Toći
NGO Mesecina

Macedonia concluded bilateral readmission agreements with neighbouring countries. On 16 March 2012, such a bilateral readmission agreement has been concluded with Montenegro.²¹⁶

Macedonia renewed its bilateral readmission agreement with Switzerland.²¹⁷ The new agreement, which replaces the existing agreement of 16 April 1998, entails the additional obligation to readmit third country nationals who transited via Macedonia.

The number of forced returns has strongly increased following the liberalisation of the visa regime with the EU. In 2010, 2,205 Macedonian citizens were forcibly returned from EU member states; in 2011, this number stood at 3,350.²¹⁸ Most of these returnees are returned from either Sweden or Germany, followed by Belgium, the Netherlands, and France.

²¹⁴ Eesti Vabariigi valitsuse ja Makedoonia Vabariigi valitsuse Euroopa Ühenduse ja endise Jugoslaavia Makedoonia Vabariigi vahelise ebaseaduslikult riigis elavate isikute tagasivõtmise lepingu rakendamise protokoll (rakendusprotokoll), signed on 24.04.10 in Tallinn.

²¹⁵ Protocol on the implementation of the Agreement on the readmission of persons residing without authorization, as published in the *Official Journal of the European Union*, L 334/1 – L 334/24 on 19.12.07, concluded between the Government of the Republic of Austria represented by the Federal Minister of the Interior and the Government of the Republic of Macedonia, done in Skopje on 24.06.10

²¹⁶ Ministry of Interior (Montenegro): Brajović i Jankulovska potpisali više sporazuma, 16.03.12

²¹⁷ Confédération suisse : Conclusion d'un Accord de réadmission avec la Macédoine, 16.03.12

²¹⁸ EUROSTAT: Third country nationals returned following an order to leave - Annual data (rounded), 2010, 2011, figures communicated on 21.05.12 upon request of Chachipe.

Defending the Visa Freedom

Montenegro

Montenegro was granted a liberalisation of its visa regime with the European Union on 30 November 2009. It entered into force on 19 December 2009.

On 15 December 2008, the Montenegrin parliament adopted a new Law on foreigners²¹⁹, which entered into force in January 2009. This law was again amended in October 2009 in order to facilitate the integration of some 17,000 displaced persons from Kosovo, Bosnia-Herzegovina and Croatia.²²⁰ Under article 15 (2) of the new law, a foreigner can be deprived of the right to leave the country, if s/he does not fulfill the entry requirements for his or her destination country. Article 26 introduces the principle of “carriers’ obligation”, by virtue of which a carrier is obliged to immediately remove, at his own expense, a foreign traveller who does not fulfill the entry requirements for Montenegro.²²¹

On 22 October 2009, the Montenegrin parliament adopted a new law on border controls.²²² This law foresees minimum checks, which concern Montenegrin citizens and citizens of other countries with which Montenegro has signed a visa agreement, and detailed checks which concern third country nationals. Controls are conducted at the entry and departure from Montenegro.²²³

On 18 March, the Montenegrin Parliament adopted a new law on travel documents, which entered into effect on 1 July 2008.²²⁴ This law created the basis for the introduction of biometric passports.

²¹⁹ Law on foreigners of 1 January 2008, published in: *Official Gazette of Montenegro*, No. 82/08

²²⁰ The law was again amended in June 2011. See: *Zakon o izmjenjama i dopunama zakona o strancima* of 22 June 2011

²²¹ *Ibid.*, article 26, “Obligations of carriers”

²²² Law on border controls (*Zakon o graničnoj kontroli*) of 22 October 2009, published in: *Official Gazette of Montenegro*, No. 72/09 of 30.10.09

²²³ *Ibid.*, articles 36, “Minimal checks”, and 37, “Detailed checks”

²²⁴ Law on Travel Documents (*Zakon o putnim ispravama*), published in: *Official Gazette of Montenegro*, No. 21/08

Montenegro has signed bilateral readmission agreements with more than a dozen EU member states and Switzerland.²²⁵ On 18 September 2007, Montenegro signed an EC readmission agreement, which entered into force on 1 January 2008.

According to EUROSTAT data, 180 Montenegrin citizens were forcibly returned to Montenegro from an EU member state, in 2008. In 2009, 155 Montenegrin citizens were deported.²²⁶

POST-VISA LIBERALISATION DEVELOPMENTS

The number of asylum applications filed by Montenegrin citizens is comparatively low. In 2010, 360 Montenegrin citizens applied for asylum in EU member states and in Switzerland; in 2011, their number was 535.²²⁷ However, there has been a steady increase from 2008, when the number of Montenegrin applicants was no more than 90 persons.²²⁸

So far, neither the European Commission, nor FRONTEX have shown much concern about asylum seekers from Montenegro. They have simply noted that the number of asylum seekers and irregular migrants detected in the Schengen area” is small²²⁹ and much below to the numbers for Serbia and Macedonia.²³⁰

As a result, the Montenegrin authorities have not experienced the same pressures to undertake additional reforms as their bigger neighbours:

On 26 October 2010, the Montenegrin daily *Pobjeda* quoted the Montenegrin Minister of Interior, Ivan Brajović, saying that no one in the EU associated Montenegro with the increase of asylum seekers as not one Montenegrin citizen had requested asylum in the Schengen area. The same newspaper quoted an unnamed source at the EU delegation to Montenegro stating that no one in the EU connected Montenegro with Serbia and Macedonia, from where the biggest number of asylum seekers came.²³¹

²²⁵ Germany (2002), Switzerland (1997, 2011), Bulgaria (2001), Slovakia (2001), Sweden (2003), the Benelux countries (2002), Italy (2003), Slovenia (2001); Austria (2003), Denmark (2003), Croatia (2003), Hungary (2003), Czech Republic (2008), Kosovo (2011), Macedonia (2012)

²²⁶ Third country nationals (broken by their citizenship) returned from ms. [member states], European Commission (2011): Evaluation of EU Readmission Agreements, Commission staff working document accompanying the communication from the European Commission to the European Parliament and the Council, SEC (2011) 211, Brussels, 23.02.11, p. 3

²²⁷ EUROSTAT: New asylum applicants by citizenship, annual aggregated data: Montenegro, 2008-2011

²²⁸ Ibid.

²²⁹ European Commission (2011): Commission Staff working paper : Montenegro 2011 Progress report, (SEC(2011) 1204 final), Brussels, 12.10.11, p. 61

²³⁰ FRONTEX (2011): Annual Risk Analysis 2011, Warsaw, April 2011, p. 21

²³¹ Nema azilanata iz Crne Gore, *Pobjeda*, 22.10.11

On 2 February 2011, the Montenegrin daily *Vijesti* quoted the general director for consular issues and the Diaspora at the Ministry of Foreign Affairs, Ivan Miličić, saying that Montenegro did not receive any warnings from Brussels. Referring to the increased number of asylum seekers from neighbouring countries, he said that Montenegro did not have the same problems and should therefore not face any negative consequences. He said that Montenegro's measures had delivered excellent results, which is why Montenegro was presented in a positive light in the Commission reports.²³²

“Montenegro did not receive any warnings from Brussels.”

Ivan Miličić

General Director for consular issues and the Diaspora at the Ministry of Foreign Affairs

On the basis of the controls performed at the Montenegrin border, 538 Montenegrin citizens were prevented from leaving Montenegro, in the first quarter of 2011 alone, on the ground that they did not fulfill the entry

conditions for the Schengen area or for other reasons.²³³ Over the whole year, another 305 Montenegrin citizens were refused entry into the Schengen area, mainly at the Hungarian and Slovenian borders.²³⁴

Further to the liberalisation of its visa regime with the EU, Montenegro signed further bilateral readmission agreements with neighbouring countries and protocols on the implementation of the EC readmission agreement with EU member states²³⁵ On 16 March 2012, a readmission agreement was signed with Macedonia.²³⁶ The first implementing protocol was signed with Slovenia, on 9 May 2008,²³⁷ the most recent one, on 6 June 2012, with Slovakia.²³⁸ A strategy for the reintegration of the reintegration of persons returned under readmission agreements (*Strategija reintegracije lica vrađenih na osnovu Sporazuma o readmisiji za period 2011-2015. godina*) and an action plan for its implementation were adopted by the Montenegrin government on 20 June 2011.²³⁹

²³² MVP: Ne očekujemo da se vrate vize, *Vijesti online*, 2.02.11

²³³ European Commission (2011): Commission staff working paper: Report on the post-visa liberalisation monitoring for the Western Balkan countries in accordance with the Commission Statement of 8 November 2010, SEC 2011 (695) final, 30.05.11, p. 10

²³⁴ EUROSTAT: Third country nationals refused entry at the external borders - Annual data (rounded): 2011, data communicated on 24.05.12 by EUROSTAT upon request of *Chachipe*.

²³⁵ Agreements were signed with Bulgaria (2010), Austria (2011), Czech Republic (2011), Germany (2012)

²³⁶ Ministry of Interior (Montenegro) (2012): Brajović i Jankuloska potpisali više sporazuma, 16.03.12

²³⁷ Slovenian EU Presidency (2008): Dragutin Mate and the Montenegrin interior minister sign a protocol between the governments of Slovenia and Montenegro on readmission of persons residing without authorisation, 9.05.08

²³⁸ Crna Gora i Njemačka potpisale Sporazum o readmisiji, *Pobjeda*, 20.04.12

²³⁹ Vlada Crne Gore Međuresorska komisija za sprovođenje Strategije integrisanog upravljanja granicom i Akcionog plana za njeno sprovođenje (2012) : Izvještaj o implementaciji Akcionog plana za sprovođenje Strategije integrisanog upravljanja granicom u 2011. godini, sa prioritarnim aktivnostima u 2012. godini, Podgorica, February 2012.

Defending the Visa Freedom

Albania

Albania was granted a liberalisation of its visa regime with the European Union on 8 November 2010. It entered into force on 15 December 2010.

On 24 January 2008, the Albanian Parliament adopted a new Law on State Border Control and Surveillance.²⁴⁰ Articles 24 and 25 of this law establish a distinction between “minimal checks” and “full checks”.²⁴¹ Full checks include the verification that a person, who wishes to stay in Albania or to travel to another country has sufficient financial means or is “in such position as to be able to achieve those financial means in a legal way”.²⁴²

On 17 July 2008, the Albanian Parliament adopted a new Law on Foreigners, which entered into force on 1 December 2008.²⁴³ Under article 96, this law took over the principle of carriers’ responsibility which was already included in the 1999 law²⁴⁴, but revised its sanctions. On the basis of this article, a carrier is responsible to verify the travel documents of its passengers and obliged to bring back, at his own costs, a passenger, who does not have the necessary travel documents, in which case he may even be subject to a fine.²⁴⁵ The 1999 law already included an article, which creates the possibility of prohibiting a foreigner from the right to leave, if s/he “wants to leave towards another country and has no visa or permission to enter in that country.”²⁴⁶

²⁴⁰ Law On State Border Control and Surveillance, Nr. 9861, dated 24.01.2008

²⁴¹ Ibid., article 25, “Minimal Checks of Persons”, article 25, “Full Checks of Persons”

²⁴² Ibid., article 25, “Full Checks of Persons”, para. 5): “Verify that the person possesses sufficient financial means for the timeframe and purpose of residence and return to country of origin or transit to a third country where he/she is authorized to enter; or verify that he/she is in such position as to be able to achieve those financial means in a legal way.”

²⁴³ Law on foreigners (Ligj për të huajt), Nr. 9959, dated 17 July 2008

²⁴⁴ Law on Foreigners Republic of Albania, Nr. 8492, dated 5 August 1999, article 65, “Responsibility of the persons that transport the foreigners”

²⁴⁵ Law on foreigners (Ligj për të huajt), Nr. 9959, dated 17 July 2008, article 96, Obligations of carriers’ (Detyrimet e transportuesit)

²⁴⁶ Law on Foreigners Republic of Albania, Nr. 8492, dated 5 August 1999, article 13 (2)

Albania has signed bilateral readmission agreements and readmission protocols with more than a dozen EU member states and third countries.²⁴⁷ An EU readmission agreement was signed on 14 April 2005. It entered into force on 1 May 2006.

In June 2010, the Albanian government adopted a strategy for the reintegration of Albanian citizens²⁴⁸ which focuses primarily on those who are forcibly returned under EC or bilateral readmission agreements.

According to figures, which were published by the European Commission in the context of its evaluation of the EU readmission agreements, based on EUROSTAT data, 72,715 Albanian citizens were apprehended in EU member states in 2008. The same year, 69,090 Albanian citizens were forcibly returned on the basis of readmission agreements. In 2009, 69,060 Albanian citizens were apprehended and 62,675 forcibly returned.²⁴⁹ A substantial number of these forced returns occur between Greece and Albania. In 2010, 50,820 Albanian citizens were forcibly returned to Albania, with 48,175 persons being returned, alone from Greece.²⁵⁰

POST-VISA LIBERALIZATION DEVELOPMENTS

Compared with Serbia and Macedonia, the visa liberalisation with Albania did not translate into a substantial increase in the number of asylum seekers. On 15 February 2011, the Albanian Minister of Interior, Lulzim Basha, even boasted that the number of asylum seekers from Albania in the EU was easy to remember as it was zero.²⁵¹

The liberalisation of the visa regime with the EU has nevertheless contributed to a small, but steady increase in the number of asylum applications filed by Albanian nationals. According to UNHCR figures, the number of asylum applications filed by

²⁴⁷ Readmission agreements have been signed with, at least, the following countries: Italy (1998), Switzerland (2000), Hungary (2001), Bulgaria (2002), Romania (2002), Germany (2003), Belgium (2004), Croatia (2005), United Kingdom (2005), Macedonia (2005), Norway (2008), Island (2008), Bosnia-Herzegovina (2009), Moldova, Kosovo (2009), Serbia (2011). Readmission protocols have been signed with, at least, Italy (2008), Bosnia and Herzegovina (2009), Croatia (2009), Denmark (2008), Island (2008), Norway (2008).

²⁴⁸ Republic of Albania: *Strategy on Reintegration of Returned Albanian citizens 2010-2015*, June 2010

²⁴⁹ Third country nationals (broken by their citizenship) returned from ms. [member states], European Commission (2011): *Evaluation of EU Readmission Agreements*, Commission staff working document accompanying the communication from the European Commission to the European Parliament and the Council, SEC (2011) 211, Brussels, 23.02.11, p. 3

²⁵⁰ EUROSTAT: *Third country nationals returned following an order to leave - Annual data 2010*

²⁵¹ Albanians 'Respect' Visa Liberalisation Deal, *BalkanInsight*, 15.02.11

Albanian nationals increased from 2,026 in 2009 to 2,227 in 2010 and to 3,330 in 2011.²⁵² EUROSTAT figures document the same tendency: according to EUROSTAT, the number of new asylum applications filed by Albanian citizens was 615 in 2008. In 2009, it reached 1,310 persons. In 2010, this number slightly dropped to 1,090, but it increased again in 2011, when it reached 2,615 persons.²⁵³

Many Albanians are living and working abroad in the context of so-called circular migration, mostly with Italy and Greece. Many of these migrants do not have the necessary documents. The European Commission noted in its 2011 progress report on Albania: “Irregular migration from Albania remains a significant challenge, particularly across the land border with Greece.”²⁵⁴

This phenomenon is reflected in the high number of Albanian citizens, who have been apprehended in EU member states, mainly in Greece, subjected to a return decision and returned to Albania, where Albania leads the statistics.²⁵⁵

The liberalisation of the visa-regime has led, nevertheless, to a substantial decline in the number of “illegal” border crossings. According to FRONTEX, the number of detections at the Greek-Albanian borders dropped from 52,700 in 2010 to just 6,472 in 2011²⁵⁶

Albania has been less under pressure to undertake additional measures in order to reduce the number of asylum seekers or irregular migrants. In its progress report 2011, the European Commission concluded that the “[i]mplementation of the visa free regime has been smooth so far”.²⁵⁷ The Commission, nevertheless, pointed out that a “relatively small numbers of asylum-seekers and irregular migrants were detected in the Schengen area.”²⁵⁸

²⁵² Origin of asylum applications lodged in 44 industrialized countries 2009 and 2010, in: UNHCR (2011): *Asylum Levels and Trends in Industrialized Countries 2009 – 2010*, Geneva, p. 17; Origin of asylum applications lodged in 44 industrialized countries 2010 and 2011, in: UNHCR (2012): *Asylum Levels and Trends in Industrialized Countries 2010 – 2011*, Geneva, p. 22

²⁵³ New asylum applicants by citizenship, own calculations based on EUROSTAT figures.

²⁵⁴ European Commission: Staff working document: Analytical report accompanying the communication from the commission to the European parliament and the Council: Commission Opinion on Albania’s application for membership of the European Union, Brussels, 9.11.10, SEC(2010) 1335, p. 98

²⁵⁵ In 2010, 50,820 Albanian nationals were forcibly returned from EU member states; in 2011, this number dropped drastically. 8,735 Albanian citizens were nevertheless returned from the EU. (EUROSTAT: Third country nationals returned following an order to leave - Annual data, 2010 and 2011, communicated on 21.05.12 upon request of *Chachipe*).

²⁵⁶ FRONTEX (2012): *Western Balkans Risk Analysis 2012*, Warsaw, April 2012, p. 5

²⁵⁷ European Commission: Staff working paper: Albania 2011 Progress report, SEC(2011) 1205 final, Brussels, 12.10.11, p. 56

²⁵⁸ Ibid.

This situation changed in October 2011, when the Belgian government complained over an unprecedented increase in the number of asylum applications filed by Albanian nationals.²⁵⁹ EUROSTAT statistics show, indeed, a substantial increase in the number of asylum seekers in October, when the number of asylum seekers increased from a monthly average of 53 persons to 575.²⁶⁰ According to FRONTEX, the UK authorities also reported a “noticeable increase” in asylum claims by Albanian nationals.²⁶¹ However, the monthly average never exceeded 39 persons. At its peak, 70 Albanian nationals applied for asylum in the UK.²⁶²

“[R]elatively small numbers of asylum-seekers and irregular migrants were detected in the Schengen area.”

European Commission

On 18 October 2011, the head of the Belgian Department for Asylum and Migration, Freddy Rosemont, visited Tirana, where he announced that 240 Albanian citizens had applied for asylum in Belgium since the beginning of the month.²⁶³ During a press conference, Rosemont stated that most of these asylum seekers had argued that their lives were in danger due to blood feuds.²⁶⁴ He claimed that they had been lured into seeking asylum in Belgium by organised networks, which provided them with false documents. He asked the Albanian authorities take actions against these networks and against the persons seeking asylum abroad.²⁶⁵

According to several media reports, cited by the Canadian Refugee Board, this prompted the Albanian Ministry of Interior to set up a task force aimed to address the problem of counterfeit documents used by asylum seekers. He also vowed to prosecute those who prepare these documents.²⁶⁶

²⁵⁹ See above.

²⁶⁰ EUROSTAT: Asylum seekers by citizenship, aggregated data, Albania, 01/11-12/11

²⁶¹ FRONTEX (2012): Western Balkans Risk Analysis 2012, Warsaw, April 2012, p. 30

²⁶² EUROSTAT: Asylum seekers by citizenship, aggregated data, Albania, 01/11-12/11

²⁶³ Belgium complains over increase of Albanian asylum seekers, *Xinhua*, 19.10.11; Albania Asylum Seekers Repatriated from Belgium, *BalkanInsight*, 28.10.11

²⁶⁴ Belgium complains over increase of Albanian asylum seekers, *Xinhua*, 19.10.11;

²⁶⁵ Belgium complains over increase of Albanian asylum seekers, *Xinhua*, 19.10.11; Albania Asylum Seekers Repatriated from Belgium, *BalkanInsight*, 28.10.11

²⁶⁶ Immigration and Refugee Board of Canada: Albania: Attestation letters for blood feuds; issuing organizations, 1 February 2012, ALB103902.E

On 30 October 2011, Albanian media reported the arrest, three days before, at the Tirana airport, of nine asylum seekers following their deportation from Belgium. They allegedly admitted the use of false documents to substantiate their claims that they were victims of persecution. They were transferred to the Prosecutor who charged them over the use of false documents. The media quoted the Head of the border police at the Tirana airport, Gëzim Prebibaj, saying that other asylum seekers would face the same treatment.²⁶⁷

The Albanian border police regularly stops Albanian citizens at the borders and prevents them from travelling further. According to a report by the Albanian Helsinki Committee, 16,032 Albanian citizens were stopped by the Albanian border police in 2008.²⁶⁸ In Albania, illegal border crossing constitutes a criminal offense and is subject to a prison fine of up to two years of imprisonment and of up to 10 years, when it is done for a financial gain.²⁶⁹

In the second quarter of 2011, 4,918 Albanian citizens were prevented from entering the Schengen area. The main reasons given for refusing entry were existing alerts (3,177 cases) followed by the absence of sufficient means for subsistence (835 cases) and lack of justification (677 cases)²⁷⁰ They became the second most refused group of citizens denied access at Schengen borders, which FRONTEX sees as a consequence of the visa liberalisation.²⁷¹

²⁶⁷ Vërtetimet false, nëntë azilkërkuës nën akuzë, *Panorama*, 30.10.11

²⁶⁸ Sefa, Ersida (2009): *The Rights of Albanian Emigrants and Returnees in Albania*, *Social Watch: Albania*

²⁶⁹ Article 297 of the Criminal Code, "Illegally crossing state border". Illegally crossing the state borders constitutes a criminal contravention and subject to a fine or up to two years of imprisonment and, when it is done for reasons of profits is punishable by imprisonment up to 10 years.

²⁷⁰ FRONTEX: *FRAN Quarterly, Issue 2*, April–June 2011, Warsaw, September 2011, p. 41

²⁷¹ *Ibid.* FRONTEX probably wants to suggest, that a year before, these people would not have been allowed to travel.

Defending the Visa Freedom

Bosnia-Herzegovina

Bosnia-Herzegovina was granted a liberalisation of its visa regime with the European Union on the 8th of November 2010. The visa liberalisation entered into force on the 15th December 2010.

In April 2008, the Bosnian Parliamentary Assembly adopted amendments to its legislation on travel documents. The 1997 law²⁷² was replaced by the Law on Amendments to the Law on Travel Documents of Bosnia and Herzegovina.²⁷³ This law created the basis for the introduction of biometric travel documents.

At the same time, the Assembly of Bosnia and Herzegovina adopted amendments to its Law on Movement and Stay of Aliens and Asylum,²⁷⁴ replacing the Law on Movement and Stay of Foreigners and Asylum²⁷⁵, and a Bylaw on supervision and removal of Aliens from Bosnia and Herzegovina.²⁷⁶ This law created the possibility to deprive foreigners from the right to enter and to leave Bosnia-Herzegovina.²⁷⁷ It introduces, under

²⁷² Law on Amendments to the Law on Travel Documents of Bosnia and Herzegovina, published in: *Official Gazette of Bosnia and Herzegovina*, No. 4/97

²⁷³ Law on Amendments to the Law on Travel Documents of Bosnia and Herzegovina, published in: *Official Gazette of Bosnia and Herzegovina*, Nr. 15/08, further amended by: Law on Amendments to the Law on Travel Documents of Bosnia and Herzegovina (Zakon o izmjenjama i dopunama zakona o putnim ispravama Bosne i Hercegovine), published in: *Official Gazette of Bosnia and Herzegovina*, Nr. 33/08, and: Correction of the Law on Amendments to the Law on Travel Documents of Bosnia and Herzegovina, published in: *Official Gazette of Bosnia and Herzegovina*, Nr. 39/08

²⁷⁴ Law on Movement and Stay of Aliens and Asylum (Zakon o kretanju i boravku stranaca i azilu), published in: *Official Gazette of Bosnia and Herzegovina*, Nr. 36/08, 6.05.08, and entered into force 8 days after its publication, save for Articles 77(2) and 78 which entered into force on 1.11.08.

²⁷⁵ Law on Movement and Stay of Foreigners and Asylum, published in: *Official Gazette of Bosnia and Herzegovina*, Nr. 29/03 and 4/04

²⁷⁶ Bylaw on supervision and removal of Aliens from Bosnia and Herzegovina, published in: *Official Gazette of Bosnia and Herzegovina*, Nr. 81/08, 22.09.08

²⁷⁷ The entry to Bosnia-Herzegovina is, for instance, conditioned on a foreigner having sufficient means of subsistence for his or her stay and departure. (Law on Movement and Stay of Aliens and Asylum, para 3, a), Article 19, "General entry conditions")

article 18,²⁷⁸ the principle of carriers' liability, obliging the carrier to bring back, at his own expense, to his or her home country, any foreigner, who does not fulfill the entry conditions for Bosnia-Herzegovina.

In June 2009, the Parliamentary Assembly adopted a Law on Border Control²⁷⁹ which entered into force on 15th of July, 2009. It replaces the Law on Surveillance and Control of the State Border of October 2004.²⁸⁰

According to the European Commission, the Bosnian border police intercepted 381 in 2009 while trying to cross the Bosnian border illegally. In 2010, this concerned 322 persons, and in the first half of 2011, 159 people.²⁸¹ This is a substantial decline from 2008, when 543 persons were intercepted when trying to enter or leave the territory of Bosnia and Herzegovina (851 in 2007). There is no information as to the citizenship of the persons apprehended.²⁸²

Bosnia has concluded readmission agreements with more than twenty EU and non-EU countries.²⁸³ On 18 September 2007, Bosnia signed a Community readmission agreement. It entered into force on 1 January 2008.

In September 2009, the Council of Ministers of Bosnia-Herzegovina adopted a strategy for the reintegration of persons who were forcibly returned to Bosnia-Herzegovina under this agreement.²⁸⁴ In its press release, the Council of Ministers presented the adoption of this strategy as one of the obligations included in the Roadmap for the liberalisation of the visa regime.²⁸⁵

²⁷⁸ Ibid., article 18, "Duties of the carrier or organizers of touristic or similar travels" (Obaveze prijevoznika i organizatora turističkog ili sličnog putovanja, (ibid., Duties of the carrier or organizers of touristic or similar travels)

²⁷⁹ Law on Border Control, in: *Official Gazette of Bosnia and Herzegovina*, Nr. 73/08

²⁸⁰ Law on Surveillance and Control of the State Border, in: *Official Gazette of Bosnia and Herzegovina*, Nr. 56/04, 21.10.04

²⁸¹ European Commission: Commission Staff Working Document (2011): *Bosnia and Herzegovina 2011 Progress report*, SEC(2011) 1206 final, Brussels, 12.10.11, p. 54

²⁸² European Commission: Commission Staff Working Document (2009): *Bosnia and Herzegovina 2009 Progress report*, SEC(2009) 1338, Brussels, 14.10.09, p. 57

²⁸³ Bosnia-Herzegovina has signed bilateral readmission agreements with, at least, the following countries: Croatia (2004), Hungary (2005), Norway (2006), Romania (2006), Bulgaria (2006), Italy (2006), Serbia and Montenegro (2007), Denmark (2007), Sweden (2007), Austria (2007), Benelux countries (2007), France (2007), Greece (2006), Austria (2007), Slovenia (2007), Macedonia (2008), Montenegro (2008), Albania (2009), Switzerland (2009), Turkey (2012). (The date refers to the publication of the text of the agreements in the *Official Gazette of Bosnia and Herzegovina*.)

²⁸⁴ Returnee reintegration strategy under the community readmission agreement, published in: *Bosnia and Herzegovina Council of Ministers (2009): Second readiness report on the implementation of the roadmap for viza (!) liberalization*, Sarajevo, 1.10.09, Annex 2, pp. 151-187

²⁸⁵ Ministry for Human Rights (2009): *Vijeće ministara BiH je na posljednjoj sjednici usvojilo Strategiju o reintegraciji povratnika po osnovu sporazuma o readmisiji*, 25.09.09

According to EUROSTAT data, 860 Bosnian citizens were forcibly returned to Bosnia-Herzegovina from a EU member state in 2008 and 845 in 2009.²⁸⁶ According to official information, more than 70 percent of the forced returnees are Roma.²⁸⁷

POST-VISA LIBERALISATION DEVELOPMENTS

Contrary to Serbia and Macedonia, the visa liberalisation did not seem to have, at first, any major impact on the asylum applications by Bosnian nationals.

According to UNHCR figures, the number of asylum applications filed by Bosnian citizens was 1,425 in 2009²⁸⁸; 2,326 in 2010; and 2,732 in 2011.²⁸⁹ EUROSTAT data show a similar trend of constant increase in asylum applications. According to EUROSTAT, 1,245 Bosnian citizens applied for asylum in 2009, in EU member states and Switzerland, 2,030 in 2010, and 2,535 in 2011.²⁹⁰

In February 2011, the Bosnian Minister for Security, Sadik Ahmetović, stated at a press conference: “BiH [Bosnia and Herzegovina] citizens have no reason to fear since in the [last] two months, BiH has not provoked a single problem in complying with the requirements [of the visa liberalisation].”²⁹¹ During a visit in Sarajevo in May 2011, the EU High Representative for Foreign Affairs and Security, Catherine Ashton, even hailed Bosnia as a role model for other countries in the region.²⁹²

²⁸⁶ Third country nationals (broken by their citizenship) returned from ms. [member states], European Commission (2011): *Evaluation of EU Readmission Agreements*, Commission staff working document accompanying the communication from the European Commission to the European Parliament and the Council, SEC (2011) 211, Brussels, 23.02.11, p. 3

²⁸⁷ Returnee reintegration strategy under the community readmission agreement, published in: Bosnia and Herzegovina Council of Ministers (2009): *Second readiness report on the implementation of the roadmap for visa (!) liberalization*, Sarajevo, 1.10.09, Annex 2, p. 166

²⁸⁸ Origin of asylum applications lodged in 44 industrialized countries 2009 and 2010, in: UNHCR (2011): *Asylum Levels and Trends in Industrialized Countries 2009 – 2010*, Geneva, p. 17

²⁸⁹ Origin of asylum applications lodged in 44 industrialized countries 2010 and 2011, in: UNHCR (2012): *Asylum Levels and Trends in Industrialized Countries 2010 – 2011*, Geneva, p. 22

²⁹⁰ EUROSTAT: *New asylum applicants by citizenship, annual aggregated data*, own calculations based on EUROSTAT data

²⁹¹ European Union Police Mission in Bosnia-Herzegovina (2011): *Ministry of Security: BiH is fully complying with requirements of visa liberalisation*, 23.02.11

²⁹² Delegation of the European Union to BiH (2011): *BiH citizens are the most disciplined in respecting the obligations of the visa-free regime*, *Newsletter*, N°. 2, 2011, p. 3

The Head of the Monitoring Team for the Implementation of the Decision on Visa Regime Abolition, **Bakir Dautbašić**, said: “What we did was a good informational media campaign in which we explained to our citizens the rules of the visa-free regime, but also the risks they’re taking if they go down a different path.”²⁹³

“BiH [Bosnia and Herzegovina] has not provoked a single problem in complying with the requirements [of the visa liberalisation].”

Sadik Ahmetović
Minister for Security of Bosnia and Herzegovina

The situation changed in September 2011, when the Belgian authorities started to complain over an increased number of asylum applications by Bosnian citizens.²⁹⁴ On 29 September 2011, the Head of the Belgian Department for Migration and Asylum, Freddy Rosemont, visited Bosnia, where he met with representatives of the Bosnian government.²⁹⁵ At the same

time, Bosnian media reported that an advisor to the mission of Bosnia-Herzegovina to the EU had written a confidential letter to the Bosnian Minister for Security and to the Foreign Affairs Minister, in which he warned that the EU was considering the reintroduction of visa requirements.²⁹⁶

The Bosnian authorities first tried to play down the problem by denying the fact that the asylum seekers were Bosnian citizens. The Bosnian Minister for Security, Sadik Ahmetović, stated that the asylum seekers were Serbian or Macedonian nationals, who threw away their passports, and declared that they are Bosnians.²⁹⁷ The Head of the Monitoring Team, **Bakir Dautbašić**, said, that the Bosnian government had already

²⁹³ JEF campaign against visa: A contribution by JEF Bosnia, *Le Taurillon*, 28.09.11

²⁹⁴ The number of asylum applications by Bosnian nationals in Belgium did indeed increase steadily and reached a new peak in September 2011, when the threshold of 3,000 asylum seekers was broken. Bosnian asylum seekers in Belgium/annual peaks

September 2009: 2,655
October 2010: 2880
September 2011: 3,115

EUROSTAT: Asylum and new asylum applicants by citizenship, age and sex. Monthly data.

²⁹⁵ Les demandeurs d’asile bosniens seront renvoyés de la Belgique, *LCT*, 29.09.11

²⁹⁶ Bosnia-Herzegovina “may lose visa-free regime”, *Tanjug*, 22.09.11; Bosnia may lose EU visa privileges, *New Europe*, 2.10.11

²⁹⁷ “We are talking about false asylum seekers, who throw away their passports, when they come from Serbia or Macedonia and register as Bosnian citizens”. (Nekoliko desetina državljana BiH zatražilo azil u Belgiji, *SRNA*, 22.09.11) Similar statements have also been attributed to Bosnian Prime Minister, Nikola Spirić. (see: Asylum-seekers not Bosnians, insists prime minister, *Europolitics*, 27.09.11)

warned the European Commission, in May 2011, that Serbian and Macedonian citizens would declare themselves as Bosnian citizens. He said, that this information was received from the Bosnian security services.²⁹⁸

Following his meetings with Head of the Belgian Department for Migration and Asylum, the Bosnian Minister for Security announced that Bosnia would take additional measures and do everything possible to “resolve the problem quickly”.²⁹⁹ He said that Bosnia had already stepped up its border controls.³⁰⁰ He announced an exchange of information with the Belgian authorities and actions against those who would abuse the visa-free regime with the EU by seeking asylum. He said that they would face sanctions in the countries of asylum and in Bosnia.³⁰¹

In an interview with *Radio Free Europe*, the Head of the Monitoring Team, Bakir Dautbašić, said the measures of the Bosnian government would stretch from official visits to the regions of origin of the asylum seekers to operational measures. Concerning the latter, he said only that they would not yet public.³⁰² The only information which was provided was that the Bosnian authorities would embark on an exchange of information with the countries of destination of the asylum seekers and that they had made the proposal to pay for their return trip, in order to make sure that they would return back home on the quickest possible way.³⁰³

The Head of the Belgian Department for Migration and Asylum declared that all the asylum seekers from Bosnia would receive a negative reply and be returned to Bosnia.³⁰⁴ According to EUROSTAT data, 1,095 Bosnian citizens were returned from EU member states in 2010. In 2011, the number of forced returnees was 1,140.³⁰⁵

²⁹⁸ “In May [2011], we officially informed the EU about this phenomenon, because we had information from our police and security services that some Serbian and Macedonian citizens would, in future, declare themselves as citizens of Bosnia and Herzegovina, which is what is happening now. We will repeat this, because we cannot accept to be held responsible if someone declares himself as our citizen.” (Bakir Dautbašić, quoted according to SRNA. Bezvizni režim nije ugrožen, lažni azilanti predstavljaju se kao građani BiH, SRNA, 22.09.2011)

²⁹⁹ Najveća sigurnosna prijetnja organizirani kriminal, FENA, 23.12.11

³⁰⁰ Ibid.

³⁰¹ Ibid.

³⁰² Lažni azilanti ugrožavaju bezvizni sistem, *Radio Free Europe*, 3.10.11

³⁰³ Ibid.

³⁰⁴ Les demandeurs d’asile bosniens seront renvoyés de la Belgique, *LCT*, 29.09.11

³⁰⁵ EUROSTAT: Third country nationals returned following an order to leave - Annual data (rounded), 2010 and 2011, data communicated on 21.05.12 at the request of *Chachipe*.

In February 2012, Bosnia was again put under pressure due to a sudden upsurge of asylum applications by Bosnian nationals in Sweden. Again, the Head of the Monitoring Team minimized the importance of this new increase with reference to much lower number of asylum seekers in other countries. He also said that Serbia and Macedonia would face similar problems.³⁰⁶

“If the problem is that 70 people applied for asylum, and if their applications have really put Bosnia’s visa-free regime in jeopardy, then I really do not know, what this is all about ... It seems that the main problem is that these people are Roma.”

Dervo Sejdić
President of the National Council of Roma
of Bosnia and Herzegovina

A spokesperson of the Ministry for Security stated that Bosnia had increased its cooperation with the relevant EU institutions and with several EU member states. Referring more concretely to the recent increase in the number of Bosnian asylum seekers in Sweden, she said that Bosnia would now intensify its cooperation with Sweden.³⁰⁷ She said that the earlier measures had already shown first results as the overall number of asylum applications by Bosnian nationals had declined over the two previous months.

Policy makers and media have identified the asylum seekers as members of the Roma community.³⁰⁸ They are also those who are targeted by public information campaigns. In an interview with Bosnian media, the president of the Bosnian Roma Council, Dervo Sejdić, said individuals and state institutions were increasingly blaming Roma over the threat on the free visa regime. He wondered how seventy people could bring the free visa regime into jeopardy and blamed Bosnia and the EU for discriminating against Roma.³⁰⁹

³⁰⁶ EU mulls suspension of Bosnia’s visa-free regime, *B92*, 11.02.11

³⁰⁷ Bevizni režim za BiH nije ugrožen, *Moje Vjesti*, 28.03.12

³⁰⁸ Bevizni režim nije ugrožen: Azil zatražilo 1.600 građana, *Nezavisne novine*, 28.03.12; Najviše lažnih azilanata iz BiH u Švedskoj, *Vijesti.ba*, 28.03.12; Bevizni režim: Azil u zemljama EU uglavnom traže Romi iz BiH, *24sata.info*, 28.03.12; Azil u EU najčešće traže Romi, *istocnabosna*, 28.03.12

³⁰⁹ Problem je što su azil tražili Romi, *PressOnline*, 26.09.11

The EU's impact

If one compares the measures taken by the different countries, in order to evade pressures from the side of the EU, one is inevitably struck by their great similarity.

All five countries have operated exit controls and are regularly depriving their citizens of the right to leave their country. All five countries have regularly implemented the readmission agreements they signed with the EU and concluded new agreements with their neighbours and third countries. They have also signed implementing protocol with EU member states. At least one country, Montenegro, has adopted a reintegration strategy for persons returned under readmission agreements. All other countries, with the exception of Macedonia, had already adopted such a strategy, before the visa liberalisation entered into force.

At least two countries, Serbia and Macedonia, have strengthened their border controls and adopted new legislation in order to strengthen these controls. Controls are performed on the basis of profiles of “false asylum seekers” and targeting in particular members of disadvantaged ethnic minorities, primarily Roma.

At least two countries, Serbia and Macedonia have considered changes of their legislation on travel documents. While Macedonia has already changed its Law on Travel Documents, this process is still underway in Serbia.

Serbia and Macedonia have taken actions against travel companies and amended their legislation or are in the process of amending their legislation in order to enable the punishment of tour operators, which transport persons who leave their country with the purpose of applying for asylum in the EU.

With the exception of Montenegro, all countries have announced that they will also punish so-called false asylum seekers. Several countries including Serbia and Macedonia have reportedly requested EU member states to share information about those of their citizens who submitted asylum applications.

Finally, most countries have intensified their information campaigns. These campaigns target primarily Roma and, to a minor extent, other ethnic minorities. In addition, they also focus on certain regions, which are perceived as main regions of origin of asylum seekers. These regions frequently correspond with major settlements of these minorities such as Southern Serbia and North-Western Macedonia.

The convergence of these measures has been highlighted in the second post-visa liberalisation report of the EU Commission, which lists information campaigns, border controls, and “intensified measures as regards the control of travel agencies and transport companies” for all five countries. This report also promulgates legal reforms implying the introduction of “a new criminal offence of facilitation of the misuse of the visa-free regime” and “amendments of the respective laws on travel documents” in Serbia and Macedonia.³¹⁰

It is also emphasised in the “Annual Regional Risk Analysis” of the European Borders Agency, FRONTEX, which notes: “Border-control authorities from all five visa exempt Western Balkan countries and neighbouring EU Member States have invested additional efforts in streamlining their bordercheck procedures, training officers and improving their capacity to identify risk groups of travellers.”³¹¹

It is therefore obvious that the European Union has played a key role in the conception, promotion, and implementation of these measures, which goes well beyond mere consultations on diplomatic level.³¹²

Recipes such as exit bans and the temporary revocation of travel documents are not new: They have been tested in other countries such as Romania:³¹³

³¹⁰ European Commission: Commission staff working paper: Second report on the post-visa liberalisation monitoring for the Western Balkan countries in accordance with the Commission Statement of 8 November 2010, SEC(2011) 1570 final, 7.12.11, Fn 5, p. 12

³¹¹ FRONTEX: Western Balkans Risk Analysis 2012, Warsaw, April 2012, p. 32

³¹² The European Union has provided crucial intelligence in the field of border management and migration control via organisations such as MARRI (Migration, Asylum, Refugees Regional Initiative), IOM (International Organization for Migrations), ICMPD (International Centre for Migration Policy Development), FRONTEX and EUROPOL.

³¹³ Interestingly, this reference is also found in the FRONTEX report. FRONTEX writes: “In a similar situation, after the EU/Schengen visa obligation had been lifted for Romania (and Bulgaria) in late 2001 and reports of abuse followed, Romanian authorities addressed the issue by imposing minimum exit conditions for Romanian citizens wishing to travel to Member States, including the requirement to have been in possession of a valid passport for at least six months prior to the departure.”, FRONTEX (2011): Annual Risk Analysis 2011, Warsaw, April 2011, p. 29

Beforehand the entry into force of the visa liberalisation with the EU, Romania was likewise obliged to establish exit controls and to conclude readmission agreements. Romanian citizens, who were considered not to meet the entry requirements of their country of destination and those who are forcibly repatriated, could have their passport revoked.³¹⁴ In the time period from 1998 to 2001, 27,409 Romanian citizens were forbidden the right to leave their country; in the period from 1998 to February 2001, 59,602 Romanian citizens, many of whom Roma, who were forcibly returned on the basis of readmission agreements, had their passports suspended.³¹⁵

“As regards the similarity between measures adopted by the Western Balkan countries aimed at decreasing the number of unfounded asylum seekers and limiting the abuse of the visa free regime, I would like to clarify that this is a logical consequence of the consistent message that the Commission is sending to the Western Balkan countries.”

Stefano Manservigi
Director General, DG Home Affairs

the Schengen Convention. EU border police are obliged to refuse entry to the EU in cases where there is a lack of “documents justifying the purpose and conditions of the intended stay” and a lack of “sufficient means of subsistence” during the trip and for the return. *Now Serbian and Macedonian border police have to ask the same questions and keep people back who do not have the right answers.*”³¹⁶

Despite this overwhelming evidence, the European Commission, as the executive arm of the European Union, has always denied its active involvement in the measures taken by the countries of the Western Balkans:

The Berlin-based European think tank, *European Stability Initiative (ESI)*, which has been a strong promoter of the visa-liberalisation, and today advocates for an acceleration of the asylum procedures and for a cutting down of aid, has even accused the European Commission and the EU member states of forcing the countries of the Western Balkans to do the “dirty work”, they do not want to do. The ESI writes: “[T]he Commission and EU countries have asked Serbian and Macedonian border police to do what *EU* border police actually *must* do under

³¹⁴ See: *ibid.*, under: 2. Illegal emigration of Romanian nationals to the member states.

³¹⁵ *Ibid.*

³¹⁶ European Stability Initiative (2011): *Advancing Freedom of Movement in a Populist Age : How the Western Balkans asylum seekers’ affair can be resolved*, Brussels, 9 June 2011, p. 28, emphasis added.

When asked by the Green MEP, Barbara Lochbihler, whether there have “been any formal requirement for the countries concerned to adopt elements of the *Schengen Borders Code*, in particular the entry criteria, including the need for persons wishing to leave these countries and enter the EU to provide details of their travel plans and means of subsistence, or have the countries otherwise been asked to operate exit controls?”³¹⁷, Commissioner Cecilia Malmström replied: “No, it has not. The *Schengen Borders Code* regulates the conditions for entry and exit to and from the territory of Member States of the European Union.”³¹⁸

Asked by *Chachipe*, whether the Vienna-based International Centre for Migration Policy Development, ICMPD, an organization specializing in the field of migration control, had been given a specific mandate to advise the countries on measures to apply in order to reduce the “abuse of the visa-free regime”,³¹⁹ the Director General of the DG Home Affairs at the European Commission, Stefano Manservisi, said that the European Commission has “not given the ICMPD a particular mandate [in relation with the measures to be implemented in the context of the visa liberalisation]”, which “does not exclude the possibility for the authorities of the countries to be in contact with ICMPD and to cooperate on related matters.”³²⁰

Manservisi explained “the similarity between the measures adopted by the countries of the western Balkans aimed at decreasing the number of unfounded asylum applications and limiting the abuse of [the] visa free regime ... [as] the logical consequence of the consistent message that the Commission is sending to the Western Balkan countries.”³²¹

³¹⁷ European Parliament: Parliamentary questions: Barbara Lochbihler: Question to the European Commission: Subject: Visa-free regime with countries from the western Balkans – recent developments, 5.01.12

³¹⁸ Answer given by Ms Malmström on behalf of the Commission, 9.02.12

³¹⁹ Letter of *Chachipe* to Mr. Stefano Manservisi, Director General, DG Home Affairs, Subject: Information request: Mission of the International Centre for Migration Policy Development in relation with the visa liberalisation for the Western Balkans, 12.12.11

³²⁰ Ibid.

³²¹ Reply to *Chachipe*, Subject: Information request on the mission of the International Centre for Migration Policy Development in relation with the visa liberalisation for the Western Balkans, 20.12.11.

Consistent with this attitude, the European Commission has refused any comment on the measures and, when pressured by *Chachipe* and other NGOs to take position,³²² decided to discontinue correspondence.³²³

“I would like to clarify one important issue: the Commission has never asked that asylum requests from citizens of a third country must stop. The Commission has requested Western Balkan countries which have recently been granted the visa-free regime to ensure that organised networks do not use the asylum systems of Member States to facilitate the entry and stay of persons without international protection needs.”

Laurent Muschel
Deputy Head of Cabinet of Commissioner Cecilia Malmström

In December 2011, the Socialist MEP, Monika Flašíková-Beňová, asked the European Commission to comment on “Undue political pressure by the Commission on Western Balkan countries”, compelling those countries “to violate the human rights and fundamental freedoms of a particularly vulnerable social group.”³²⁴ In her answer, Commissioner Malmström simply referred her to the Commission’s second post-visa liberalization monitoring report and to the pending adoption of an amendment to the visa regulation introducing a safeguard clause, enabling the temporary suspension of the visa-free regime.³²⁵

³²² Letter of *Chachipe* et al. to Ms. Maria Åsenius, Head of Cabinet of Commissioner Cecilia Malmström of 25 January 2012, Subject: Ongoing human rights concerns in relation with the European Commission’s requests to the countries of the Western Balkans to stop the influx of asylum seekers in the EU – Your letter of 21 December 2011.

³²³ “In our replies of 7 October 2009, 25 March 2011, 26 July 2011 and 21 December 2011, the Vice President Mr Barrot, the Director General of DG Home affairs Mr Manservisi, a member of Commissioner’s Malmström’s cabinet, Mr Muschel and myself respectively, provided you with relevant information on the developments as regards the asylum seekers coming from the Western Balkan countries since 2009. (...) I would like to inform you that, according to the Code of Good Administrative Behaviour for the Staff of the European Commission in their relations with the public (OJ L 308 of 8.12.2000), the Commission will henceforth discontinue corresponding with you on this subject, as all relevant issues at this stage have been considered.” (Reply by Mr. Luigi Soreca, Head of Unit 2 International Affairs, DG Home Affairs, to *Chachipe*, 15.02.12)

³²⁴ European Parliament: Parliamentary questions: Monika Flašíková-Beňová: Question to the European Commission: Undue political pressure by the Commission on Western Balkan countries, 13 December 2011

³²⁵ Answer given by Ms Malmström on behalf of the Commission, 31.01.12

With the same persistence, the European Commission has also denied having ever asked for a reduction in the number of asylum seekers, putting, however, increasingly the stress on the allegedly unfounded character of the asylum applications filed by citizens from the Western Balkans.³²⁶

Asked by MEP Barbara Lochbihler whether “these measures [border checks based on “profiling”] and other measures such as stamping and invalidating passports and the temporary revocation of passports ... [are] compatible with the EU’s *acquis* and, more generally, international human rights standards, including the ECHR”,³²⁷ the Commission claimed that it “is not competent to decide on individual cases, as referred in the question. However, special attention is given to the existence of effective legal remedies and proper implementation of the decisions of the competent national and international supervisory authorities.”³²⁸

Asked by *Chachipe* to review its position and to answer open questions from the NGO’s letters, the Commission claimed that it does not have the competence to assess the compatibility of the national legislation of the countries of the Western Balkans with international human rights standards.³²⁹ Consequently, the European Commission would not be in a position to provide an evaluation of the measures taken by the countries and assess whether they are in line with these standards.³³⁰

³²⁶ “I would like to clarify one important issue: the Commission has never asked that asylum requests from citizens of a third country must stop. The Commission has requested Western Balkan countries which have recently been granted the visa-free regime to ensure that organised networks do not use the asylum systems of Member States to facilitate the entry and stay of persons without international protection needs.”

(Reply of Laurent Muschel, Deputy Head of Cabinet of Commissioner Cecilia Malmström, to *Chachipe*, 25.03.11)

“I would like to confirm once again that the Commission has never asked that asylum requests from citizens of third countries must stop. The Commission’s intention is not to restrict access to the asylum procedure. The efforts of the Commission, the EU Member States and the Western Balkan countries aim at avoiding abuse of the visa free regime without compromising the international standards of protection. The data received by the EU Member States indicates that the number of positive decisions on asylum claims of citizens from the countries of the Western Balkans remains very low (below 1%). This clearly confirms the largely unfounded nature of these asylum claims which put the asylum and reception systems of some EU Member States under great pressure.” (Reply of Maria Åsenius, Head of Cabinet of Commissioner Cecilia Malmström, to *Chachipe*, 21.12.11).

³²⁷ European Parliament: Parliamentary questions: Barbara Lochbihler: Question to the European Commission: Subject: Visa-free regime with countries from the western Balkans — recent developments, 5.01.12

³²⁸ Answer given by Ms Malmström on behalf of the Commission, 9.02.12

³²⁹ “... in your letter of 25 January you raised a number of questions which go beyond the competence of the Commission, in particular questions related to the national legislation of the Western Balkan countries, as well as its compatibility with the international standards. ... [T]he protection of human rights is a great priority for the EU and has a direct impact on the relations with third countries. Consequently, the evaluation of the competent international organisations, like the Council of Europe and the European Court of Human Rights, are of particular importance. However, the Commission does not have competence to assess third countries’ national legislation against these standards and is not in a position to provide you with the requested evaluation.”

(Reply by Stefano Manservigi, Director General, DG Home Affairs, to *Chachipe*, 4.05.12)

³³⁰ *Ibid.*

Freedom to discriminate?

“Visa free travel will facilitate people-to-people contacts, enhance business opportunities and give the possibility for the people of the region to get to know the EU better.”

Cecilia Malmström
European Commissioner for Home Affairs³³¹

“Citizens must not abuse their travelling document and expect to be granted asylum status in other countries. The attempts of some Roma people to emigrate also have negative affect on the education of their children and we must stop that”.

Neždet Mustafa
Minister without Portfolio, Republic of Macedonia³³²

The proposal of the European Commission for amending the visa regulation has received the approval of the Foreign Affairs Committee of the European Parliament.³³³ Once adopted by the Plenary, the regulation will give the European Union a powerful tool to maintain its pressure on the countries of the Western Balkans to control the population outflow and to prevent poor and destitute Roma from travelling to the European Union.

³³¹ European Commission: Visa free regime for Albania and Bosnia and Herzegovina: the European Commission welcomes the Council’s decision. MEMO/10/548, 8.11.10

³³² Macedonian government: Number of false asylum seekers from Macedonia substantially reduced - Minister Mustafa, 13.12.11

³³³ See: European Parliament: Orientation Vote Result on the proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (COM(2011)0290 – C7-0135/2011 – 2011/0138(COD)), Committee on Civil Liberties, Justice and Home Affairs, Plenary sitting, 25.04.12

Exit controls based on the alleged or real belonging to an ethnic group are discriminatory. This was the final statement by the Chamber of Lords in the case *Regina c./Immigration*, in which the Chamber held that the controls at the Prague airport whereby British immigration tried to prevent potential asylum seekers from the Czech Republic from boarding, were racist and against UK Law. Based on the observations of an ERRC staff member, the judges found that persons who were identified as Roma had a 400 times higher chance to be refused the right to board on an airplane to the UK.³³⁴

One of the judges of this court, Baroness Hale stated: “All the evidence before us, other than that of the intentions of those in charge of the operation, which intentions were not conveyed to the officers on the ground, supports the inference that Roma

“[A]ny individual Roma was 400 times more likely to be rejected than any individual non-Roma.”

House of Lords: Judgments -Regina v. Immigration Officer at Prague Airport

were, simply because they were Roma, routinely treated with more suspicion and subjected to more intensive and intrusive questioning than non-Roma.” This is why she concluded that “the operation was inherently and systemically discriminatory and unlawful.”³³⁵

The fact that these controls have been outsourced to the countries does not make them less ugly. Whilst countries are free to regulate immigration, exit controls amounting to an outright restriction of departure breach both domestic legislation and international Human Rights standards. The freedom of movement is enshrined in the Universal Declaration of Human Rights (UDHR)³³⁶ and in the European Convention on Human Rights³³⁷. It is also guaranteed in all five countries’ constitutions.³³⁸ Most obviously, the measures prevent the right to seek asylum laid out in the UDHR Article 14 and the Geneva Convention of 1951 on the status of Refugees. All countries mentioned in this report are signatories to this Convention.³³⁹

³³⁴ Judge Lord Steyn: “The statistics show that almost 90% of Roma were refused leave to enter and only 0.2% of non Roma were refused leave to enter. Roma were 400 times more likely than non Roma to be refused permission.” House of the Lords (2004): Opinions of appeal for the judgement in the cause *Regina v. Immigration Officer at Prague Airport and another (Respondents) ex parte European Roma Rights Centre and others (Appellants)*, 9 December 2004 (Para. 34)

³³⁵ *Ibid.*, para. 97

³³⁶ “Everyone has the right to leave any country, including his own, and to return to his country.” (Article 13 (2), Universal Declaration of Human Rights (1948))

³³⁷ “Everyone shall be free to leave any country, including his own.” (Para. 2, Article 2, “Freedom of movement”, Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto.)

³³⁸ See: Article 38 (2) of the Constitution of Albania; article 3 (m) of the Constitution of Bosnia and Herzegovina; article 27(2) of the Constitution of the Republic of Macedonia; article 39 of the Constitution of Montenegro; article 39 of the Constitution of the Republic of Serbia.

³³⁹ Montenegro being the most recent country, ratifying the Convention on 10 October 2006.

Furthermore, the often arbitrary character of border controls serves to highlight their discriminatory nature. Discrimination is clearly prohibited in all of the countries constitutions,³⁴⁰ which guarantee equality amongst all citizens. Yet, members of ethnic minorities, and, in particular, Roma, are regularly denied the right to leave their

“Significantly, it is the minorities, and in particular the Roma, who have become targeted. Everyone cannot be checked on exit and the selection is being done on the basis of “profiling”. The result is another layer of discrimination against this minority.”

Thomas Hammarberg
Former Human Rights Commissioner

country on the basis of the simple assumption that they are potential asylum seekers. This along with defamatory media campaigns and rhetoric by governmental officials has led to further stigmatisation. This is aptly resumed in a comment by the former Human Rights Commissioner, Thomas Hammarberg, who has also called on the states of destination in the EU to avoid any discriminatory treatment of those who seek asylum.³⁴¹

The EU should not oblige these countries to go against their laws and infringe fundamental human rights principles, for the sole reason that it does not want to be confronted with the poverty and despair faced by their Roma populations.

³⁴⁰ See: Article 18 of the Constitution of the Republic of Albania; article 4 of the Constitution of Bosnia and Herzegovina; article 9 of the Republic of Macedonia; article 8 of the Constitution of the Republic of Montenegro; article 21 of the Constitution of the Republic of Serbia.

³⁴¹ Thomas Hammarberg: The right to leave one’s country should be applied without discrimination, *Human Rights Comment*, 22.11.11



Street vendors in Skopje, July 2011.



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Chachipe a.s.b.l.
B.p. 97
L - 7201 Bérelange

www.romarights.wordpress.com

