

Roma in the Visa - Free Regime

2017

Abstract:

Since the introduction of visa liberalization in 2009, the citizens of the Republic of Macedonia can travel visa-free to the Schengen countries. This change was welcomed as a great benefit due to its cutting the costs for obtaining a visa and the elimination of the visa administrative procedure. Nevertheless, it also caused an influx of asylum applications in EU member states. In order to ease the pressure resulting from this trend, the Republic of Macedonia, in danger of having its visa-waiver suspended, undertook measures to combat this phenomenon together with EU member states. The implemented measures resulted in changes in legislation, assessment procedures, fast-tracking asylum applications and information campaigns. Having said the above, this paper aims to examine the implemented measures and their impact, using desk research and analysis of all relevant domestic and international laws, documents and researches. Unfortunately, our research shows that these measures committed a great violation of fundamental rights of the members of the Roma community living in the Republic of Macedonia by restricting their right to freedom of movement and their right to equality and by violating their dignity. Due to the undertaken measures, approximately 20.000 Roma were refused their right to leave the country, while many were fast-tracked and forcibly returned to Macedonia from EU countries. Moreover, the general perception about Roma has been worsened as the Macedonian media framed them as the ones at fault for the possible suspension of the visa-free regime. The stakeholders should not seek a solution by introducing discriminatory changes in the administrative procedures and legislation, but should develop sustainable policies and practices so the issue of misuse of the visa-free regime is permanently resolved.

Macedonian Roma through the legislation changes in the EU and the Republic of Macedonia after the visa liberalization

Author:
Ismail Kamberi

Reviewer:
Simonida Kacarska

CONTENTS

Introduction	4
Responses of the Republic of Macedonia	4
1.1. Soft measures	6
1.2. Legislative response	8
Legislative responses of the most concerned EU member states	10
2.1. Airport procedures.....	10
2.2. Speedy asylum procedure.....	10
2.3. Safe list	12
Response from the European Union	13
3.1. Asylum Procedures	14
Conclusions	15
Recommendations	15

We have always held to the hope, the belief, the conviction that there is a better life, a better world, beyond the horizon - Franklin D. Roosevelt

INTRODUCTION

Since the introduction of visa liberalization in December 2009¹, the citizens of the Republic of Macedonia have been able to travel visa-free to all EU Member States, apart from the United Kingdom and Ireland, using only their biometric passports. The country obtained visa liberalization by fulfilling all the EU's benchmarks of the roadmaps of visa liberalization in 2009. These benchmarks were related to strengthening the fields of the rule of law, combating corruption and transnational organized crime, citizens' rights including the protection of minorities, illegal migration and strengthening the administrative capacities of border management.²

Following visa liberalization, a great number of citizens from the Western Balkan (WB) countries started to seek asylum in the EU member states. The Republic of Macedonia and Serbia were the first countries to register the severity of this phenomenon by documenting 17.715 Serbian and 7.550 Macedonian asylum claims in EU countries by the end of 2010.³ Due to the influx of asylum seekers, in the beginning of 2011 the European Commission (EC) created a mechanism to monitor visa liberalization in the WB countries concerned (Albania, Bosnia and Herzegovina, the Republic of Macedonia, Montenegro and Serbia). This monitoring mechanism⁴ covers the areas of fundamental rights, organized crime, document security and border management. It also allows the EC to engage with the countries and assess the reform process related to the visa liberalization roadmaps.

¹Regulation (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 - <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32009R1244>

²<http://www.esiweb.org/index.php?lang=en&id=371> – For more see European Stability Initiative - Europe's Border Revolution and the Schengen White List Project

³Article of the European Stability Initiative <http://www.esiweb.org/index.php?lang=en&id=532>

⁴Press release of the Council of the European Union from 8 and 9 November 2010 - https://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/jha/117609.pdf_p.8

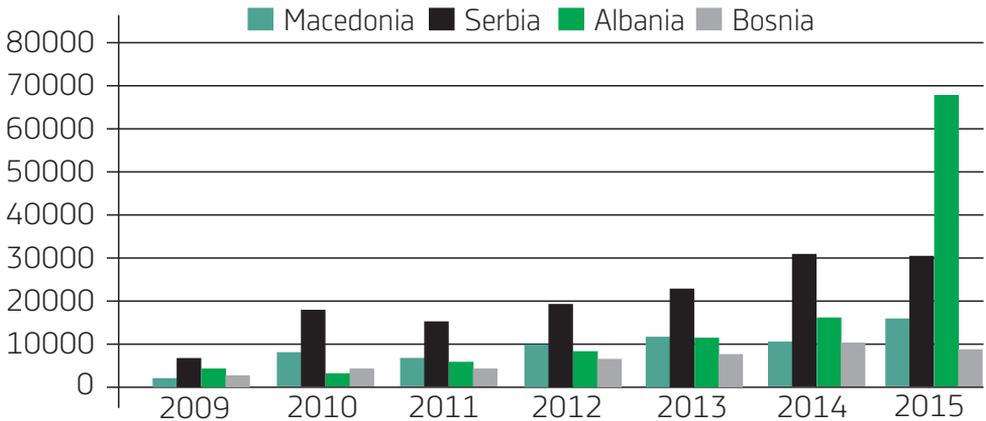


FIGURE 1 : NUMBER OF ASYLUM CLAIMS FROM THE WB COUNTRIES TO THE EU MEMBER STATES⁵

In 4 of the 5 reports on post-visa liberalization (2011-2015), the EC determined a profile of the asylum seekers and accordingly claimed that, “the vast majority of the claims stems from persons belonging to the Roma minority, who often arrive with their families”.⁶ The racial profiling of asylum seekers led to the ability of pointing out culprits if visa liberalization were to be suspended for its misuse.⁷ The media coverage on this issue was focused on two issues: that most of the asylum applications come from the Roma community,⁸ and that the EU has problems with the asylum seekers⁹ and thus there is a possible threat of suspending the visa liberalization.¹⁰ The media analysis conducted by the European Policy Institute – Skopje (EPI) has shown that the Roma in Macedonia are perceived to abuse the free-visa travel regime.¹¹

⁵Source: Euro stat. <http://appsso.eurostat.ec.europa.eu/nui/submitViewTableAction.do>

⁶European’s Commission Second report on the post-visa liberalization monitoring for the Western Balkan countries in accordance with the Commission Statement of 8 November 2010 -

[http://www.europarl.europa.eu/registre/docs_autres_institutions/commission_europeenne/sec/2011/1570/COM_SEC\(2011\)1570_EN.pdf](http://www.europarl.europa.eu/registre/docs_autres_institutions/commission_europeenne/sec/2011/1570/COM_SEC(2011)1570_EN.pdf)

⁷Information Package containing Roma related articles within EU candidate or potential candidate countries (Western Balkans and Turkey) p.49 :

http://cloud2.snappages.com/ecc3fa83da15cf423fe3aaa342f545fa355b24f3/Western%20Balkans%20and%20Turkey%20inf%20package_2013.pdf

⁸Macedonian newspaper article - <http://dnevnik.mk/?ItemID=36CF7F2E3EF7AE48BE96AC52AFD04D99>

⁹Macedonian newspaper article - <http://dnevnik.mk/?ItemID=F3CB8FD3A6E4F34195BEEF5D777EFE47>

¹⁰Macedonian newspaper article - <http://www.vest.mk/?ItemID=2AFE903159EA3F46BE91ECB22206D435>

¹¹For the detailed analysis see: http://www.epi.org.mk/docs/Zivot%20do%20granica%20-%20Izvestuvanieto%20na%20mediumite%20za%20Romite%20i%20vizna%20lib_MK.pdf

RESPONSES OF THE REPUBLIC OF MACEDONIA

In light of the rise in the numbers of asylum seekers, the Republic of Macedonia responded with soft measures¹² and legislative changes to the respective laws.¹³ These changes were made in order to reduce the number of unfounded asylum applications¹⁴ and to tackle the new increase in the number of asylum seekers from Macedonia.¹⁵

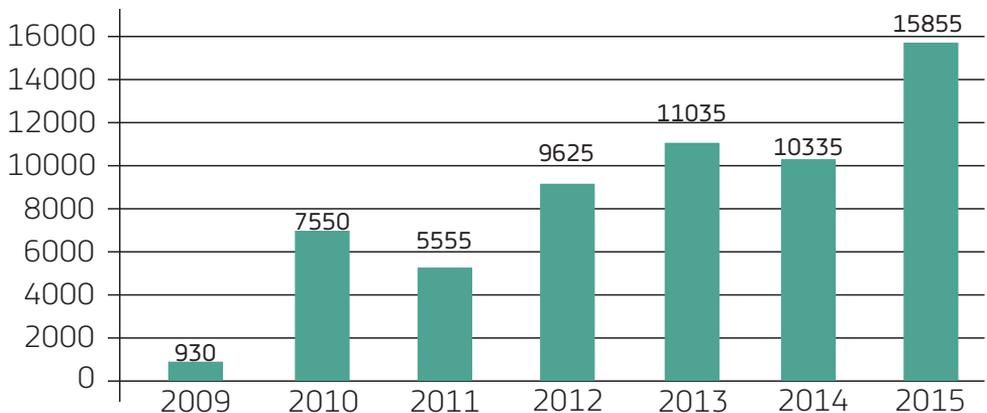


FIGURE 2 : NUMBER OF ASYLUM CLAIMS FROM MACEDONIA IN THE EU MEMBER STATES IN THE PERIOD 2009-2015¹⁶

1.1.SOFT MEASURES

The Government of the Republic of Macedonia took initial measures in 2010 against the high inflow of unfounded asylum applications submitted by Macedonian citizens to EU member states. The country started awareness-raising campaigns to inform the citizens in Roma settlements about the negative consequences of unfounded asylum claims. The campaigns were led by the Macedonian Minister without portfolio (Mr. Nezdet Mustafa),¹⁷ Roma NGOs, the Roma Information Centers,¹⁸ representatives of the Ministry for Labor and Social Policy, the

¹²Such as: information and awareness raising campaigns and strengthening border exit controls

¹³Such as: the Criminal Code and the Law on Travel Documents

¹⁴<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV%3A133102>

¹⁵European's Commission Second report on the post-visa liberalization monitoring for the Western Balkan

countries in accordance with the Commission Statement of 8 November 2010 -

[http://www.europarl.europa.eu/registre/docs_autres_institutions/commission_europeenne/sec/2011/1570/COM_SEC\(2011\)1570_EN.pdf.p.4](http://www.europarl.europa.eu/registre/docs_autres_institutions/commission_europeenne/sec/2011/1570/COM_SEC(2011)1570_EN.pdf.p.4)

¹⁶Source: Euro stat. <http://appsso.eurostat.ec.europa.eu/nui/submitViewTableAction.do>

¹⁷Macedonian newspaper article - <http://vecer.mk/makedonija/nezhdet-mustafa-ne-pagajate-na-lazhnite-ubeduv-anja-na-lazhnite-turistichki-agencii>

¹⁸The Roma Information Centers' goal is to ensure the informational link between the Roma community and the institutions on a local level, directed to a faster integration of the Roma in the society. Source: Ministry of Labor and Social Policy - http://www.mtsp.gov.mk/WBStorage/Files/Akcionen_plan_RIC.doc

Secretariat for European Affairs and the Ministry of Interior (MOI). According to Frontex, “these short-term measures didn’t decrease the high inflow of asylum claims, and additional and more efficient measures need to be implemented”.¹⁹ Additionally, the Republic of Macedonia strengthened its border exit controls. These measures included checks of necessary financial means, conducting interviews in reference to the travelers’ final destinations and the purpose and motives for the travel. The Roma in the Republic of Macedonia were disproportionately affected by the implementing measures. The European Roma Rights Center (ERRC) has confirmed that in 90% of the cases, it was only Roma that were required to provide proof of the purpose of their travel when traveling with others.²⁰

Some of the Roma who were denied exit from Macedonia filed lawsuits against the MOI, claiming that they were discriminated on the basis of their ethnicity and accordingly, discriminated on the basis of their skin color and appearance. The Macedonian Courts ruled that the right of equality was violated in 9 cases.²¹

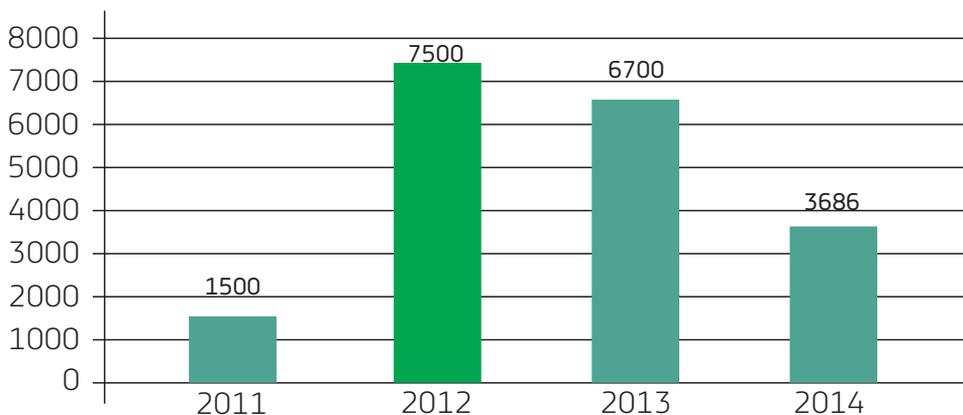


FIGURE 3 : NUMBER OF RETURNED PERSONS FROM THE MACEDONIAN BORDERS²²

In the reports issued by the Council of Europe Commissioner for Human Rights, the Macedonian Ombudsman and the USA Bureau of Democracy, Human Rights and Labor, it is stated that the Macedonian border authorities allegedly denied exit to mainly Roma persons

¹⁹FRONTEXT - Western Balkans - Annual Risk Analysis 2010 - http://frontex.europa.eu/assets/Publications/Risk_Analysis/WB_ARA_2010.pdf p.28

²⁰EUROPEAN ROMA RIGHTS CENTRE 2015. Written Comments for Consideration by the Committee on the Elimination of the Racial Discrimination at its 87th session (03 - 28 August 2015).

²¹Data obtained from NGO “KHAM” Delcevo as of February 2016

1.2. LEGISLATIVE RESPONSE

Besides the soft measures, the Republic of Macedonia additionally introduced changes in legislation so as to combat the increased inflow of asylum claims in EU member states. The aim of these changes was to shrink the possibilities for Roma living in Macedonia to leave the country.

The legislative changes included:

- 1.Introduction of a new criminal offence in Macedonian Criminal Code;
- 2.Introduction of an amendment to the Law on Travel Documents regarding applications for passports.

1. In 2010,²³ the Republic of Macedonia started to investigate the indications that the travel agencies' misinformed the citizens about asylum benefits. In several cases their transport licenses were suspended and criminal proceedings were launched.²⁴ As a result, in October 2011,²⁵ a new criminal offence was introduced in the Macedonian Criminal Code. Specifically, , a new article²⁶ was added in the Criminal Code,²⁷ stipulating that anyone facilitating the misuse of the visa-free regime will be sentenced to at least 4 years in prison. On the basis of this amendment, in 2012 the Macedonian law enforcement agencies brought a number of criminal charges against individuals for misusing the visa-free arrangement.²⁸ In 2013 a Macedonian citizen who also holds German citizenship was sentenced to eight years in prison for misuse of the visa-free regime. Namely, this person was sentenced for informing the border authorities that he was taking some passengers as guests to his home in Germany,²⁹ when he was actually transporting potential asylum applicants.

²³FRONTEX - Western Balkans - Annual Risk Analysis 2010 -

http://frontex.europa.eu/assets/Publications/Risk_Analysis/WB_ARA_2010.pdf p.28

²⁴European's Commission Second report on the post-visa liberalization monitoring for the Western Balkan countries in accordance with the Commission Statement of 8 November 2010 -

[http://www.europarl.europa.eu/registre/docs_autres_institutions/commission_europeenne/sec/2011/1570/COM_SEC\(2011\)1570_EN.pdf](http://www.europarl.europa.eu/registre/docs_autres_institutions/commission_europeenne/sec/2011/1570/COM_SEC(2011)1570_EN.pdf) p. 12

²⁵Draft Law amending the Macedonian Criminal Code prepared by the Ministry of Justice - http://justice.gov.mk/documents/predlog-zakon_za_izmenuvanje_i_dopolnuvanje_na_kvivicniot_zakonik.doc

418-D

²⁶Macedonian's Criminal Code - <http://www.pravda.gov.mk/documents/KRIVICEN%20ZAKONIK%20precisten%20%20tekst.pdf>

²⁷European's Commission fourth report on the post-visa liberalization monitoring for the Western Balkan countries in accordance with the Commission Statement of 8 November 2010 -

<http://ec.europa.eu/transparency/rectdoc/rep/1/2013/EN/1-2013-836-EN-F1-1.Pdf>

²⁸Macedonian newspaper article - <http://daily.mk/makedonija/kumanovec-dobi-osum-godini-zatvor-za-shverc-na-migranti>

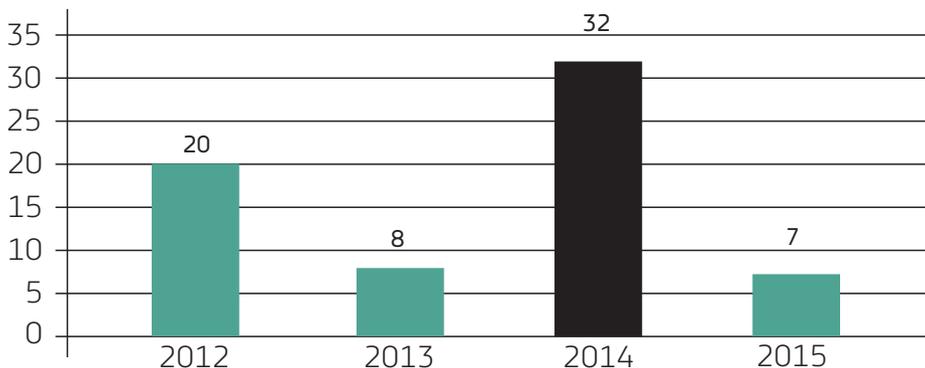


FIGURE 4 : NUMBER OF CRIMINAL CHARGES IN MACEDONIA AGAINST INDIVIDUALS AND TRAVEL AGENCIES FOR MISUSING THE VISA-FREE REGIME³⁰

2. The Macedonian Government adopted a new amendment to the Law on travel documents in September 2011,³¹ which stipulated that passport applications would be rejected for a period of one year if the applicant is forcibly returned or deported from a foreign country for having violated its regulations of entry and residence. Several years later, in June 2014, the Constitutional Court in Macedonia abolished the controversial amendment,³² stating that the adopted amendment is not in line with Article 27³³ of the Macedonian Constitution.³⁴ In that regard, the ERRC documented 75 cases in which the Macedonian border authorities revoked the passports of Romani individuals reported as failed asylum seekers by EU countries. Additionally, in the Republic of Macedonia, the ERRC became aware of 155 additional cases of the same nature”.³⁵

³⁰ Author's elaboration based on the Progress Reports on the Republic of Macedonia issued annually by the European Commission in the period 2012-2015

³¹ Macedonian Official Gazette - <http://www.slvesnik.com.mk/Issues/3582020A95AAE14DB4BD5F242BF6853A.pdf>

³² Decision of the Macedonian Constitutional Court - <http://62.162.77.57/Uploads/Odluka%20na%20Ustaven%20sud.pdf>

³³ Every citizen of the Republic of Macedonia has the right of free movement on the territory of the Republic and freely to choose his/her place of residence. Every citizen has the right to leave the territory of the Republic and to return to the Republic. The exercise of these rights may be restricted by law only in cases where it is necessary for the protection of the security of the Republic, criminal investigation or protection of peoples' health.

³⁴ Macedonian Constitution - <http://sobranie.mk/the-constitution-of-the-republic-of-macedonia.nspx>

LEGISLATIVE RESPONSES OF THE MOST CONCERNED EU MEMBER STATES

Following the adoption of the decision for visa liberalization, the highest numbers of unsubstantiated asylum claims were recorded in Germany, Belgium, the Netherlands, Switzerland, Norway and Sweden.³⁶ The most concerned EU member states quickly responded to the influx of asylum claims from the Western Balkan countries, following the lift of the visa requirement. Namely, Germany, Norway, and Switzerland, as the most targeted countries for asylum seekers, implemented several measures to stem the inflow of asylum seekers through airport and speedy procedures which are elaborated in the following paragraphs.

2.1. AIRPORT PROCEDURES

In 2011, Germany amended its legal framework³⁷ for asylum procedures at the airports.³⁸ This had the result that if the Federal Office rejects an asylum application as unfounded, the foreigner will be **deported** should he enter the country. Additionally, the German authorities increased the **pre-boarding analysis** of the air passengers coming from WB countries and, accordingly, updated the risk profiles that now provide additional information to the German border guards.³⁹ Norway undertook similar measures at its main airports as well, including **sharing risk profiles** with the relevant air carriers operating direct flights to and from the countries of the WB. **Sweden shared intelligence and risk profiles** with authorities from Norway and Slovenia; however these initiatives failed to reduce the numbers of asylum seekers coming from the WB countries.⁴⁰

2.2. SPEEDY ASYLUM PROCEDURE

One of the initial measures to solve the issue of an increased number of asylum seekers was implemented in 2010 by the **Norwegian Government**. It introduced a **fast track procedure (48 hours)** and forcefully returned 78 failed asylum seekers in March 2010 alone. This resulted in a 90% weekly decrease of asylum claims from the Republic of Macedonia and Serbia.⁴¹

³⁶Written comments of the European Roma Rights Centre - <http://www.errc.org/cms/upload/file/ec-submission-on-roma-inclusion-in-the-western-balkans-july-2016.pdf> p. 8

³⁷FRONTEXT - Western Balkans - Annual Risk Analysis 2010 - http://frontex.europa.eu/assets/Publications/Risk_Analysis/WB_ARA_2010.pdf p.28

³⁸German Asylum Act - http://www.gesetze-im-internet.de/englisch_asylvfg/englisch_asylvfg.pdf

In section 18a from the German Asylum Act, it is stipulated that in the case of foreigners from a safe country of origin (Section 29a) who wish to enter via an airport and apply for asylum with the border authority, the asylum procedure shall be conducted prior to the decision on entry.

³⁹FRONTEXT Western Balkan Analysis 2011 -

http://frontex.europa.eu/assets/Attachments_News/wb_ara_2011_for_public_release.pdf p.27

⁴⁰Ibid

⁴¹FRONTEXT Western Balkan Analysis 2010 - http://frontex.europa.eu/assets/Publications/Risk_Analysis/WB_ARA_2010.pdf p.

In October 2012, the number of asylum applications in Germany rose to 6615.⁴² This was due to the decision⁴³ adopted by German Federal Constitutional Court which resulted in an increased inflow of asylum applications from the Republic of Macedonia and Serbia. In response to the increased number of asylum applications, in August 2012 the **German** authorities established a *Western Balkan support unit*, manned by seconded staff that focused exclusively on applications from these countries. With this, the asylum processing time was reduced from **40 to 10 days**.⁴⁴ “The so-called *Blitzverfahren* officially named that “**absolute direct procedures**” means that the applicant's interview is held on the same day the refugee asks for asylum (or two days later at the latest), and that the decision claiming whether protection is accorded or not is submitted within one week”.⁴⁵ These procedures only refer to applications coming from Serbia and Macedonia, which in itself sets grounds for discriminatory practices. The “absolute direct procedures” are designed in a way that the applicant does not have enough time to prepare for the interview because often, the interview is conducted on the day of arrival. The average duration of the interview is only 40 minutes, and the formal 25 questions concerning the name, origin, family etc, take approximately 30 minutes of that time. It is also striking that married couples are interviewed together.⁴⁶ Research has argued that these discriminatory interviews resulted in 100% negative decisions submitted with the added comment that the applications were “obviously unsubstantiated”.⁴⁷

In August 2012, the Swiss authorities introduced a **fast-track method** for all of the European visa-free states, allowing the decision to be made based on merit within the timeframe of **48 hours**.⁴⁸ Additional measures such as **preliminary interviews** were implemented, advising the applicants on the consequences of submitting unfounded asylum applications. The Swiss authorities also began **canceling the forms of return assistance**⁴⁹ for rejected asylum seekers, and introduced a **five-year re-entry ban** for those who would make multiple unfounded applications as well as for those who would not cooperate with them. The implemented measures resulted in the immediate reduction of the asylum influx from the visa-free countries to Switzerland.

⁴²This increase is linked to the decision of the German Constitutional Court for raising the monetary benefit for the asylum seekers to 336 EUR per month by 130 EUR disbursed in cash in comparison to the previous monetary benefit from 225 EUR per month with 40 EUR disbursed in cash (Judgment of the German Federal Constitutional Court in proceeding 1 BvL 10/10, 18 July 2012). This decision was adopted because the German Constitutional Court ruled that the previous provisions of the asylum-seekers' benefit act were incompatible with the fundamental right to a minimum standard of living (<http://ec.europa.eu/transparency/regdoc/rep/1/2013/EN/1-2013-836-EN-F1-1.Pdf> p. 17)

⁴³Judgment of the German Federal Constitutional Court in proceeding 1 BvL 10/10, 18 July 2012

⁴⁴Ibid

⁴⁵Helene Heuser - Blitzverfahren - German Asylum Procedures for Roma from Western Balkan Countries - <http://www.errc.org/article/roma-rights-1-2014-going-nowhere-western-balkan-roma-and-eu-visa-liberalisation/4325/9>

⁴⁶This could be problematic due to the reason that one partner might feel less free to speak in front of the other.

⁴⁷Ibid

⁴⁸Article of the Asylum Information Database - <http://www.asylumineurope.org/reports/country/switzerland/asylum-procedure/procedures/regular-procedure>

⁴⁹European's Commission fourth report on the post-visa liberalization monitoring for the Western Balkan countries in accordance with the Commission Statement of 8 November 2010 - <http://ec.europa.eu/transparency/regdoc/rep/1/2013/EN/1-2013-836-EN-F1-1.Pdf> p.18

2.3. SAFE LIST

The Republic of Macedonia, whose citizens mainly targeted Germany, Belgium, Sweden and France for asylum in 2013, was placed on the safe country list of origin by Austria, Belgium, Bulgaria, the Czech Republic, Denmark, Germany, France, Luxembourg and the UK. To define this, “The Asylum Procedures Directive considers a country safe when a democratic system is installed in the country and consistently has no persecution, torture or inhuman or degrading treatment, threats of violence or armed conflict”.⁵⁰ “The candidates for EU membership are usually confirmed as “safe” as these countries fulfill the “Copenhagen Criteria”⁵¹ of guaranteeing democracy, the rule of law, human rights and the rights of minorities”. Being on this safe country list means that applications for asylum by Macedonians citizens are fast-tracked and applicants would be returned faster if the individual assessment of their application finds their claims to asylum to be unfounded.

It has been argued that the concept of “safe list” countries is a disservice to a large number of asylum applicants during the procedure, sometimes even excluding them from being able to participate in the procedure.⁵² It establishes a practice where the process of assessing the asylum applications is accelerated, which consequentially creates the presumption of their inadmissibility. Moreover, no country can be considered “safe” for everyone, as there are citizens with different backgrounds (ethnicity, sexual orientation, social status, party affiliation etc.) on the basis of which they can face different challenges in their country. Opposed to this, the European Parliament (EP) considers the common list of “safe” countries as a tool for helping Member states to process certain asylum applications faster and more consistently.⁵³

In September 2015, the EC proposed to replace the national safe lists with an EU common list of safe countries of origin.⁵⁴ The EC proposed the EU common list due to the increase of the number of asylum claims from the WB countries and the high rate of refusals of asylum application from these countries.⁵⁵ “The proposal would enable

⁵¹European Commission (Background information), Second implementation package (09/09/2015): An EU “Safe countries of origin” list - http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/2_eu_safe_countries_of_origin_en.pdf

Accession criteria (Copenhagen criteria) - http://eur-lex.europa.eu/summary/glossary/accession_criteria_copenhagen.html

⁵²“Safe” countries: A denial of the right of asylum AEDH / EuroMed Rights / FIDH May 2016 - <http://www.ohchr.org/Documents/Issues/MHR/ReportLargeMovements/FIDH2%20.pdf>

⁵³<http://www.europarl.europa.eu/news/en/news-room/20160707IPR36205/asylum-eu-list-of-safe-countries-of-origin-to-replace-national-lists-in-3-years>

⁵⁴Proposal for a Regulation of the European Parliament and of the Council - http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/proposal_for_regulation_of_the_ep_and_council_establishing_an_eu_common_list_of_safe_countries_of_origin_en.pdf

⁵⁵<http://eulawanalysis.blogspot.mk/2015/09/safe-countries-of-origin-assessing-new.html>

Member States to apply specific procedural rules, in particular accelerated asylum and border procedures, where the applicant is a national of a country that has been designated as a safe country of origin by national law".⁵⁶ The proposal was responding to the specific problem that 12 EU countries have safe lists but they are not coordinated, which leads to different treatment of similar applications. The proposal should enter into force in 3 years, which would lead to a process of creating one safe list for all EU member states. Among the countries included in the EC proposal are Albania, Bosnia and Herzegovina, the Republic of Macedonia, Kosovo, Montenegro, Serbia and Turkey, which are designated as safe countries of origin within the meaning of Directive 2013/32/EU.⁵⁷

■ RESPONSE FROM THE EUROPEAN UNION

Although on 21 December 2010, France and Netherlands proposed a change in Regulation 539/2001 that would allow the visa free regime to be suspended in certain situations; the proposal was not accepted at that time.⁵⁸ However, on 24 May 2011, the EP⁵⁹ proposed the establishment of the so called "**visa safeguard clause**".⁶⁰ This would allow for temporary suspension of the visa exemption for the nationals of a third country, for a short period of time and as a matter of urgency and on the basis of well-defined criteria.

On 11 December 2013 the EP and the Council adopted Regulation 1289/2013,⁶¹ which amended Regulation 539/2001 by introducing the so-called "**suspension mechanism**" and modifying the reciprocity mechanism. Thus the visa suspension mechanism was introduced, which can be used to suspend third-country nationals' visa free statuses under certain exceptional circumstances. According to the current mechanism, when a Member State is confronted (*over a six-month period*) with one or more well defined circumstances related to nationals of a third country which led to an emergency situation, yet it is unable to remedy the situation on its own, it may request the EC to suspend the visa waiver for the nationals of that country for a

⁵⁶<http://www.europarl.europa.eu/legislative-train/theme-towards-a-new-policy-on-migration/file-european-list-of-safe-third-countries-of-origin>

⁵⁷Proposal for a Regulation of the European Parliament and of the Council - http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/proposal_for_regulation_of_the_ep_and_council_establishing_an_eu_common_list_of_safe_countries_of_origin_en.pdf

⁵⁸ESI's The Schengen White List Project Compendium - http://www.esiweb.org/pdf/schengen_white_list_project_compendium.pdf p.126

⁵⁹Text adopted by the European Parliament - <http://www.europarl.europa.eu/oeil-mobile/summary/1302953?t=e&l=en>

⁶⁰The suspension mechanism is a temporary suspension of the visa waiver for a third country listed in Annex II to Regulation (EC) No 539/2001 in case of an emergency situation, where an urgent response is needed in order to resolve the difficulties faced by one or more Member States, and taking account of the overall impact of the emergency situation on the European Union as a whole (particularly where there is a substantial increase in illegal immigrants, of unfounded asylum applications or rejected readmission applications over a six month period).

⁶¹Regulation (EU) No 1289/2013 of the European Parliament and of the Council of 11 December 2013 - <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:347:0074:0080:EN:PDF>

short period of time. The suspension can only be temporarily applied and as a **last resort**. The specific circumstances cover the substantial and sudden increase in the number of irregular migrants, unfounded asylum requests or rejected readmissions applications. Even if the conditions for triggering the safeguard clause are clearly defined, the EC will have to assess the situation, and there should be no automaticity flowing from the notifications by Member States. On the basis of its examination and accounting for the consequences of a suspension of the exemption from the visa requirement for the external relations of the EU and its Member States with the third country concerned, the EC can decide whether action is needed. In this case, the EU shall adopt an implementing act that would temporarily suspend the exemption from the visa requirement for the nationals of the third country concerned for a period of six months. This mechanism applies to all of the countries listed (including Macedonia) in Annex II of the Council Regulation (EC) 539/2001.⁶² Annex II is consisted of countries whose citizens are holders of biometric passports and are exempt from the visa requirement.

3.1. Asylum Procedures

The EP and the Council adopted a new revised *Asylum Procedures Directive* (APD) (originally Directive 2005/85/EC)⁶³ in 2013. The Directive became applicable in 2015 and it created new tools for the prevention of abuse of the asylum system through repetitive, unfounded applications. Among the many novelties introduced in the Recast APD, the one that is most relevant to this topic is the novelty to the subsequent applications. With this novelty the rights of the applicants may be limited when the second submitted application does not contain new elements when compared to the previous one. This is also the case for the applicants who have submitted a third or further asylum application.⁶⁴ The novelty led to creating a coherent system which ensured that the asylum decisions were made more efficiently and with a higher quality standard, common to all Member States.⁶⁵

The Recast APD was subject to comment by the UNHCR. Regarding the subsequent applications, the UNHCR stated that the preliminary examination of a subsequent application may be justified only if the previous claim was considered fully on its merits. Consequently, the UNHCR considers that it is not appropriate to treat claims as subsequent applications if they are submitted following a “rejection” based on the explicit withdrawal of an earlier claim.⁶⁶

⁶²Council Regulation (EC) No 539/2001 - <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A532001R0539>

⁶³Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 - <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32013L0032>

⁶⁴European's Commission fourth report on the post-visa liberalization monitoring for the Western Balkan countries in accordance with the Commission Statement of 8 November 2010 - <http://ec.europa.eu/transparency/regdoc/rep/1/2013/EN/1-2013-836-EN-F1-1.Pdf>

⁶⁵Article from the European Commission's webpage - http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/common-procedures/index_en.htm

⁶⁶UNHCR comments on the European Commission's proposal for a Directive of the European Parliament and of the Council on minimum standards on procedures in Member States for granting and withdrawing international protection [COM(2009)554, 21 October 2009] <http://www.aedh.eu/plugins/fckeditor/userfiles/file/Asile%20et%20immigration/comments%20on%20procedure%20directive%20EN%20july2010.pdf> p. 36

CONCLUSIONS

The key and most controversial finding from the analysis of the post-visa liberalization reports is the standpoint of the EC towards the Roma community. In 4 out of 5 reports, the EC is profiling the Roma as the overwhelming majority of the total asylum applications from the Western Balkan countries. This ethnical profiling is discriminatory and it creates a negative surge of emotions against the Roma community. It also creates space for other non-Roma communities from the WB countries to boost the negative opinion towards Roma that already exists in some form within these non-Roma communities. If by any chance the EC decides to activate the suspension mechanism for the visas, it will create a chain of events that may trigger more negative and discriminatory practices towards Roma. It is positive that the EC in its last report, their fifth one, does not mention Roma as the majority ethnic group amongst asylum applicants. However, the damage has been done regarding public opinion on the Roma and the misuse of the visa liberalization.

The solution in order to decrease the number of asylum claims from the WB countries does not lie in the amendments of the legislative of EU member states or in the legislation of the Republic of Macedonia. Changes such as fast-tracking of asylum procedures, introducing criminal offences, strengthening border controls or creating risk profiles are only temporary solutions for the issue of the overwhelming number of asylum claims from WB countries. In addition to this, the measures of the Macedonian authorities for strengthening border controls are not in line with Article 13 of the Universal Declaration of Human rights,⁶⁷ since the authorities are restricting the fundamental right of freedom of movement. In that regard, there are already 9 effective court decisions confirming discrimination and violation of the freedom of movement against Roma by the authorities of the Macedonian border police.

RECOMMENDATIONS

The people who seek asylum in other countries are driven to leave their home country because of unemployment, lack of access to health care, decent social benefits, education and many other push factors. The WB countries need to develop sustainable policies and practices so that the issue of misusing the visa-free regime is permanently resolved. The existing awareness-raising campaigns are a good addition to combating the misuse, but every country should dig deeper and seek the root of the problem. Furthermore, every WB country should work on reintegrating the returned asylum applicants; because many of them have sold everything they had, including their homes, just to be able to afford to travel to EU member states with the hope to live a better life in a foreign country, far from their homelands.

⁶⁷Universal Declaration of Human Rights - <http://www.un.org/en/universal-declaration-human-rights/>

