

Unjustified Restrictions of the Freedom of Movement: *Roma on Macedonian Borders*

Natalija Shikova¹

ABSTRACT

In 2009 North Macedonia gained visa-free travel within the EU. The re-established freedom of movement was seen as a successful example of the EU policy of conditionality. Visa liberalization immediately increased the number of asylum seekers in the EU member states. Being administratively overburdened, they influenced Western Balkan governments in taking action for reducing the number of false asylum seekers. The authorities responded by tightening border checks and preventing their marginalized citizens (mainly Roma) from crossing state borders. Even though those practices were highly criticized by human rights defenders, according to the various Roma NGOs and human rights advocates, restrictions for social and ethnic background are not rare. The paper analyzes the potential violability of human rights within the EU visa liberalization policy and policy of conditionality. It illustrates an example of a limitation of the freedom of movement, ethnic profiling, and clear discrimination towards Roma through the case study of the violation of the constitutionally granted rights to leave the country.

KEYWORDS: human rights, Roma, asylum seekers, EU polices, North Macedonia

POVZETEK

Leta 2009 je Severna Makedonija pridobila brezvizumski režim z EU. Ponovno vzpostavljena svoboda gibanja je bila videti kot uspešen primer pogojevanja politike EU in je bila zelo dobrodošla. Liberalizacija pa je takoj povečala število prosilcev za azil v državah članicah EU. Zaradi administrativnih preobremenitev se je od vlad držav Zahodnega Balkana zahtevalo ukrepanje za zmanjšanje števila lažnih prosilcev za azil. Države regije so zato poostriale mejne preglede in svojim marginaliziranim državljanom (predvsem Romom) preprečevale prehod državnih meja. Čeprav so nacionalni in mednarodni zagovorniki človekovih pravic te prakse močno kritizirali, omejitve zaradi socialnega in etničnega porekla, po mnenju romskih nevladnih organizacij in zagovornikov človekovih pravic, niso redke. V članku je analizirana morebitna kršitev človekovih pravic v okviru politike liberalizacije vizumskih režimov EU in politike pogojevanja. Predstavljen je primer omejevanja svobode gibanja, etničnega profiliranja in jasne diskriminacije Romov zaradi kršitev ustavno priznanih pravic do izstopa iz države.

KLJUČNE BESEDE: človekove pravice, meje, Romi, prosilci za azil, pisave EU, Severna Makedonija

1 ABOUT THE AUTHOR: Natalija Shikova, PhD, Assistant Professor, Faculty of Law, International Balkan University, Skopje. Email: n.shikova@ibu.edu.mk

INTRODUCTION

The discriminatory policies and racism against Roma are present in both Eastern and Western Europe, and although the most know hostilities against Roma are connected with Nazism and the holocaust, the history of repression of Roma precedes those events and dates several hundred years ago. The methods of repression that varied over time often involved enslavement, enforced assimilation, expulsion, confinement, and mass killings. However, it is striking that the policies of discrimination and expulsion of Roma are still present in nowadays democratic and non-democratic countries, the ones that are respecting human rights and the ones that face challenges in that respect. The hate speech and stigmatization of the Roma (in most of the cases as criminals) are still occurring and despite that the overwhelming majority of Roma individuals are not conflicting the law, the whole group often is blamed for what some of its members may have done (Council of Europe, 2012). The concerning fact is that the xenophobic statements and actions against Roma are often coming from the leading politicians or even from the national governments.

The ongoing structural discrimination that Roma face is not properly addressed within minority rights framework and post 1990s minority regimes in Europe are still not quite relevant for many Roma. The measures that are addressing the social exclusion and marginalization in most of the cases are largely unenforceable, they tend to overlook the harsh living conditions, lack to access to public services, low level of education as well as the prejudices and hostility against Roma. In the same time, they do not perceive the diversity within the Roma communities and observed them as homogeneous population (Pogány, 2006).

The paper presents the violability of human rights of the ones that are commonly marginalized during processes of migrations. It illustrates an example of the violation of the right of freedom of movement, ethnic profiling, and clear discrimination of the Roma individuals attempting to cross the national borders through the case study of the violation of the rights of Roma on the Macedonian borders. Methodologically, the paper presents the case stretching from the period of introducing visa liberalization policy (visa-free travel within the EU) to North Macedonia and other Western Balkans countries (from 2009), until nowadays (within the global COVID -19 pandemic), that exists with different variations.

The research methodology utilized in this paper sublimates civil society reports, regional and international organization findings, national institutions data, media outreach as well as scholarly articles that are exploring the subject of interest. Additionally, it relies on the interviews with the human rights lawyers and some of the victims, held for the purpose of this paper. The concerning finding is that the violation existed within the country institutional and legal frame (in approximate two-year period), under tacit and open pressure by the EU countries and by the observance of the EU institutions (still ongoing). The findings are suggesting that restraining of the right of freedom of movement for certain social groups is severe and it continues to exist even with the EU policy of conditionality applied towards EU candidate countries. Although those harsh practices upon Roma individuals are reduced, some of the sources are pointing that the unfavorable acts are still occurring from time to time, under modified circumstances, in different contexts and without high public involvement.

THE SOCIOECONOMIC AND POLITICAL POSITION OF THE ROMA

According to the Council of Europe, around 11-12 million Roma are living on the territory of its member states. By the official data, the largest population lives in Bulgaria (10.33%); North Macedonia (9.59%); Slovakia (9.17%); Romania (8.32%); Serbia (8.18%); Hungary (7.05%); Turkey (3.83%); Albania (3.18%); Greece (2.47%) and Spain (1.52%) (Council of Europe, 2013). Although arguably the numbers, due to the lack of administrative existence of many of the Roma individuals, are much higher. However, the numbers coming from various statistical sources are pointing out that Roma are the largest, and according to some scholars, the most discriminated ethnic minority in Europe (Bojadjieva, 2015).

In addition to life on the society margins, in poverty and exclusion, many of Roma do not even have an administrative existence. The civil wars, forced migrations, expulsions, and extreme poverty, made many of them stateless people or people that live in Europe but without any documents including birth certificates, identity cards, passports or other. That lead them into the denial of the very basic human rights such as the right to education, health care; the denial of their civil and political rights, such as right to vote; as well inability to enjoy the social rights. Above that, the interest of the authorities to overcome the explained situation is proved to be short-sided and without genuine

interest. Thus, although the problem of Roma discrimination exists in many countries in Europe, it is particularly acute in Western Balkans (Council of Europe, 2013).

The Roma are not homogeneous ethnic group and among them, there are many ethnic groups such as Arli, Barutčia, Džambazi, Gilanlia, Konopari...etc). Still, in North Macedonia are considered to be a homogeneous minority and according to the last census in 2002, they represent 2.66% of the total population of 2.022.547. Nevertheless, as elsewhere, mainly because they lack administrative existence or not being entirely entered into the national registers, there is an assumption that the actual number of Roma is much higher than the official figure and the estimations are moving up to roughly 10% of the population. To that figure, we must add that North Macedonia is home to nearly 1.700 refugees, mostly Roma, who fled because of the Kosovo conflict in 1999. A big number of them use to be asylum seekers (1100 were Roma) (European Roma Rights Centre, 2015) and in 2017 there were still 616 people with an unresolved legal status facing unreachable barriers in their access to basic human rights (Civil Rights Defenders, 2017). The unemployment rate among Roma people in North Macedonia is 53%, and the unemployment rate for the Roma woman rises up to 70% (European Roma Rights Centre, 2013). Some of the state statistical reports are indicating a tendency of rate growing (Civil Rights Defenders, 2017).

The trend in North Macedonia is not much different than the trend among other countries in Europe, whereas the inclusion in Roma in all society sectors remains low and it is even lower in the institutions of the public sector (Council of Europe, 2012). Although there is moderate progress towards securing an equitable representation of all the ethnic communities in the public domain in North Macedonia, still Roma remain underrepresented in the public institutions, participating only with 1.10% in the total number of the employees in the public sector. The representation in the local- self-government administration is even poorer (Civil Rights Defenders, 2017). The figures are a reflection of many difficulties that Roma face, such as endemic discrimination combined with the under-education and regardless of the efforts to increase the access of the Roma to the labor market, still, the level of unemployment is significantly high in comparison to the unemployment rate of the non Roma population (this situation does not differ much in comparison to other countries in Europe, as

for an illustration in Bulgaria the figures are among 70-80% of Roma unemployment; the Czech Republic 90% etc.). The discrimination in employment is recorded in North Macedonia² (and in many European countries including Estonia, Finland, Georgia, Hungary, Latvia, Poland, Portugal, Romania, Serbia, Spain, and Slovakia), and involves direct and indirect acts of discrimination (Council of Europe, 2012). Because of no solid data, the North Macedonia official figures are illustrating not only the difficulties of integrating Roma into the labor market but as well as the challenges in getting the reliable info about the real unemployment rate among the Roma (Civil Rights Defenders, 2017).

Concerning their political position, the Roma are explicitly recognized in the Preamble of the Constitution of the Republic of North Macedonia, as an ethnic community that resides in the country alongside with Macedonians, Albanians, Turks, Vlachs, Serbs, and Bosnians. The major strategic policy document related to Roma is the National Roma Integration Strategy (Strategy, 2014-2020) that covers education, employment, housing, health, and culture. The other important documents within the national legal frame concerning the Roma community are the Law on Promotion and Protection of the Rights of Communities that are less than 20% of the population in North Macedonia,³ the Law on Local Self-Government⁴ and the Law on Prevention and Protection against Discrimination.⁵ North Macedonia is a signatory to the various regional and international legal instruments that are regulating anti-discrimination and freedom of movement such as Universal Declaration of Human Rights (1948); International Covenant on Civil and Political Rights (1966); The International Convention on the Elimination of all form of Racial Discrimination (1969); the European Convention on Human Rights (1950) etc.

EU POLICY OF CONDITIONALITY AND VISA LIBERALIZATION

The Republic of North Macedonia became an independent state after the dissolution of SFRY, in 1991. North Macedonia has candidate status for EU membership since 2005. The country's main tendency is to reach the democratic standards; to establish the rule of law, to keep the

2 BIRN, "Macedonian Mall Caught in Roma Ban Row", 2013.

3 Law on the Promotion and Protection of the Rights of the Members of the Communities which are less than 20% in the population in the Republic of Macedonia, Official gazette 92/2008.

4 Law on Local Self-Government, Official Gazette 5/2002.

5 Law on Prevention and Protection against Discrimination, Official Gazette 101/2019.

peace and stability and to increase the economic growth. The political system tends to be democratic and it is open towards EU perspectives.

Since independence, North Macedonia had a favorable condition in respect of democracy and security, and compared to the bloody secession conflicts in neighboring countries, long has been considered a prime example of stability and interethnic coexistence (Richter, 2012, p.66). In 2001, North Macedonia became the first country in South Eastern Europe that signed a Stabilization and Association Agreement with the EU, and currently, after a long and uncertain path towards EU, the country is prepared to start the process for accession negotiations anticipated by the end of 2020.

In 2009, North Macedonia entered the European visa-free travel zone. As a part of it, Macedonian citizens were granted a short-term trip within the European Union states, without a visa and with valid passports (Council of EU, 2009). The act meant as well re-establishing the freedom of traveling for North Macedonia citizens in EU member states, almost two decades after the EU introduced the visa regime, and followed the two-year negotiation process between the European Commission and the Western Balkan countries (with the exception of Kosovo). Such an outcome of the process was observed as significant progress in the region (Kacarska and Mojsovski, 2016). None of the less, that was not perceived only as an example of the success of the countries' internal security policies, but as well as a successful example of EU's policy of conditionality i.e. traveling without the visa, was one of the most attractive rewards that EU offered for the EU candidate countries (Grabbe, Knaus and Korski, 2010).

North Macedonia as other Western Balkan countries (as well as Turkey) is subject to EU policy of conditionality. Applied as a political tool, the main idea is to stimulate country progress towards EU. Namely, by offering the incentive of EU membership, EU motivates the country political elites to force the democratic reform processes. The policy of conditionality is a bridge of the country towards EU membership, and since EU is unable to forcefully impose the democratic principles over the EU candidate countries, it introduces them as a precondition for an EU accession (Epstein and Sedelmeier, 2008). In that process the senders and recipients – enter into a circle of incentives, promises, and (non-violent) threats (Beichelt, 2012) i.e. the country is under strong observance whereas the fulfillment of the conditions is presented

by the EU Commission in a country progress report. The rules of political conditionality are not part of the *Acquis* but they are relying on fulfillment of democratic principles, human rights, and minority rights (Epstein and Sedelmeier, 2008). The process itself is successful if it is credible and consistent. The credibility assumes rewarding the compliance, sanctioning or withdrawing the rewards if there is no compliance. The consistency meaning that rewards are explicitly and reliably linked to the fulfillment of the EU criteria, and the same standards are applied in the processes (Richter, 2012).

The policy of conditionality has shortcomings and one of it is its implementation. Despite the expectations and initial success, the process is not sufficiently credible. There is inconsistency in policy application that instead the democratization of the Western Balkan countries, in a way lead to their democratic backsliding (Richter 2012). Alongside, EU often goes 'beyond conditionality' – through different mechanisms of influence and different modes of external governance (Epstein and Sedelmeier, 2008). Many recent events within the migrant crisis (in 2016) and consequent happenings prove that EU policy is focusing more on the symptoms rather than on the causes, fails to address them in a proper way. The process lacks credibility and consistency, because EU tends to trades stability over democracy, fundamental European values for geopolitical interests.⁶

In light of the examined case, lifting the visa requirements removed the screening function that visas had, and encouraged traveling of the needy individuals, among them Roma people, who would normally avoid such activities due to the high expenses of the visas and numerous administrative burdens for obtaining them (Hartley, 2014). In that manner, the introduced visa liberalization policy (within policy of conditionality) immediately increased the number of the asylum seekers from North Macedonia mainly to Belgium, Sweden, and Germany.⁷ The authorities of the receiving countries claim that the majority of the asylums seekers are of Roma ethnicity (despite the fact that countries, in general, do not register the ethnicity of asylum seekers). Additionally, the majority of the applicants was perceived as

6 Balkans in Europe Policy Advisory Group: The migrant crisis: a catalyst for EU enlargement? Policy Paper, BiEPAG, 2016.

7 Council of Europe Commissioner for Human Rights, Report on his visit to the former Yugoslav Republic of Macedonia from 26 to 29 November 2012.

not qualifying for an asylum (European Roma Rights Centre, 2013) and was categorized as illegitimate asylum seekers.⁸

“CARROT AND STICK” BREAKS ON THE BACKS OF THE MOST VULNERABLE

The Constitutional provisions of North Macedonia are stipulating that everyone have the right to leave the territory of the country and come back, indicating possible restrictions on those rights upon the law and in the exceptional cases, such as the protection of the security of the country, criminal proceedings that are in progress, or the protection of public health.⁹ Still, the EU officials intensified the pressure towards country officials to properly manage migration, alongside the threats for eventual temporary suspension of the visa liberalization policy (Andeva, 2017a). To demonstrate that “carrot” of gained visa liberalization was “deserved”, the Macedonian government, upon the EU pressure, implemented discriminatory policies against Roma identified as false asylum seekers in the European Union member states. The freedom of the movement, including the possibility to exit the country was limited alongside with the introducing of the ethnic profiling as a state practice.¹⁰

It is argued that false asylum claims have its reason within the deprived socioeconomic situation that Roma people face alongside with the longstanding discrimination (Hartley, 2014). Although the persons seeking asylum may not have a right to get it (asylum as a form of a protection by another sovereign authority is commonly granted if the person faces a prosecution in own country; being displaced person or person that needs an international protection),¹¹ still the time passed in the receiving states before the denial of the asylum (that can last up to several months), can bring certain financial benefits for the people in need (FRONTEX, 2012). In this process, the receiving country governments bared the financial and administrative burden and that was the reason beneath the undertaken pressure over North Macedonian authorities (European Stability Initiative, 2013). Answering those quests (according to various FRONTEX, the Bureau for Democracy, and the Council of Europe reports), by 2014 about 20,000 Roma were returned from the Macedonian border crossings.

8 Ibid.

9 Constitution of the Republic North Macedonia, Article 27.

10 Application Nos. 43440/15, 44027/16 and 16460/17, Dženifer Dželadin, Muamet Abedinov and Sejat Zekirov vs. the former Yugoslav Republic of Macedonia.

11 Asylum policy, European parliament fact sheets, <https://www.europarl.europa.eu/factsheets/en/sheet/151/asylum-policy>.

The largest wave was in 2013 when around 6.700 people were not allowed to leave the country.¹² The acting of the border police officials involved an ethnic profiling of Roma, infuriating their freedom of movement by set of discriminatory practices¹³ and bares the hallmarks of racial discrimination (Hartley, 2014). Except denning of an exit, the passports of the ones deported from the Western European countries (after being declared ineligible for asylum) were confiscated. By the order of the Ministry of Interior, those persons were further banned to cross the borders with the neighborhood countries as well, whereas the crossing is possible only with valid ID card.¹⁴

After been subject to criticism, North Macedonia established a legal ground for above explained acting, enacting a law that criminalizes seeking of an asylum without “solid proof of cause” (Chachipe, 2012) and an amendment to the Law on Travel Documents which prevented anyone returned as a false asylum seeker to use its passport for a year.¹⁵ Furthermore, the new amendments were introduced in the Criminal Code that had established a new criminal offense “Abuse of the visa-free regime with the European Union member states and Schengen agreement”. The articles were stipulating that a person, who recruits, encourages, organizes or transports persons to the EU and Schengen countries with the purpose of obtaining social, economic or other rights contrary to the law of the respective countries will be sanctioned with a minimum of four years imprisonment.¹⁶

Despite the changes of the laws, the most controversial practice was the extend of the discretionary powers of the border officers and selective targeting of the Roma individuals. In particular, the ones that were returned from the border crossings, attempting to leave the country, by the findings of the border officers, under the suspicion that a person is a false asylum seeker, received a mark “AZ” in their passports - indicating a potential asylum seeker.¹⁷ Following

12 Joint Initiative to empower Roma Civil Society in the Western Balkans and Turkey, Shadow report for the needs and problems of the Roma community, 2015.

13 European Roma Rights Centre, Written Comments of the European Concerning Macedonia for Consideration by the Committee on the Elimination of the Racial Discrimination at its 87th session, 2015.

14 Ibid.

15 Law Amending and Supplementing the Law on Travel Documents of Nationals of the Republic of Macedonia, official gazette 135/ 2011 (nb. the Law in 2014 was ruled as unconstitutional).

16 Criminal Code, Article 418-e.

17 Transitions Online, “Racial Profiling on Macedonia’s Borders?”, 27 June 2012; Independent Balkan News Agency Naser Pajaziti, “Roma community, the most marginalized and discriminated in FYR Macedonia,” January 16, 2015; Travel times, “Roma resistance: End ethnic profiling in Macedonia”, 2018.

the indication about detected discriminatory practices (mainly from the Council of Europe) the unfair treatment of Roma continued but on the more discrete manner, namely replacing the use of the “AZ” letters with the two parallel lines (Hartley, 2014). This phenomenon is informally named as “prevention of the abuse of the asylum”, and such cases are often referred to as cases of “bogus asylum-seekers”. Persons returned from the state borders and persons to whom the asylum was not granted (dismissed claims) were registered in a system available to border guards and permitted in any future crossing of other national borders (Andeva, 2017b).

The above explained practices and policies by the human rights defenders were seen as institutionalized discrimination against the Roma¹⁸ since the ethnic profiling and restriction were reflected in the legislation, administration, policy measures as well in the discriminatory attitudes of the state officials.¹⁹

IS THERE A WAY OUT?

Similar trends of returning the Roma from crossing of the national borders and discriminatory practices can be observed in the region especially in Serbia and most recently in Albania. Comparable measures were introduced in Bulgaria and Romania in the early 2000’s (Kacarska, 2019), contrary to the granted human rights. For example, the application of Protocol 4 of the European Convention on Human Rights (ECHR) raises many questions, discussions, and debates and in recent years several key aspects about the current EU policies related to migration and the policies applied to North Macedonia that were in direct conflict with the right of the free movement guaranteed by this instrument. The Constitution of the Republic of North Macedonia establishes equality and freedom of movement for all citizens while the international treaties to which North Macedonia is a party, are prohibiting all types of discrimination and restriction of the freedom of movement. In that light it is apparent that the measures undertaken by the Macedonian officials were not justified in any ground – especially not a constitutional one – the returned Roma individuals did not possess a danger to the public or to the legal order, nor the restrictions were imposed due to the protection of the public health. Contentious,

18 Application Nos. 43440/15, 44027/16 and 16460/17, Dženifer Dželadin, Muamet Abedinov and Sejat Zekirov vs. the former Yugoslav Republic of Macedonia.

19 Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Githu Muigai, A/HRC/17/40, 24 May 2011.

it was argued that the measures were introduced because of the need for protection of the country's international image - a category that the Constitution of North Macedonia and the international instruments do not recognize as a ground for restriction of the rights (Andeva, 2017a).

The measures were criticized as well by the Human Rights Commissioner of the Council of Europe, notified that the pressures preventing people to leave the country and selection for border checks that are targeting only Roma population jeopardize the recognized human rights (Council of Europe, 2013). Unlike the established practices, the European Commission Visa liberalization Roadmap indicates that North Macedonia need to grantee its citizens' freedom of movement unburdened with unjustified restriction and discriminatory practices. Additionally, it recommends that the country should investigate all the cases where there are ethnically motivated incidents and violations of the freedom of movement by the practices of the police officers. The concerning in this case is the fact that the judiciary institutions were aware about this problem but keep silent until one of the discriminated persons won the court case against the Macedonian Ministry of the Interior (Andeva, 2017a). Namely, the civil society organizations that are dealing with human rights protections challenged the official policies in front of the Constitutional Court, the Administrative Court, the Ombudsman, and the Basic Court 2 in Skopje. The lawsuits started in 2014, and the first final decision in favor was brought in 2016. Previously, in 2014, the articles from the Law on Travel Documents that were predicting confiscation of the passports in case of false asylum seekers were ruled unconstitutional. That resulted in more than 50 court cases and numerous verdicts confirming the state violation of the freedom of movement (European Policy Institute and KHAM, 2016). The Ombudsman as well reported the unjust limitation of the right to movement and the discrimination in the acting of the Ministry of Interior officials. Yet, in 2015, the European Roma Rights Center documented 75 new cases in which the passport of the Roma individuals was revoked by the North Macedonia border officials after been deported from EU countries as false asylum seekers. Following these happenings, in 2016 the Minister of Interior publicly announced that the discrimination of the border crossing cannot be allowed anymore and some of the authors saw that those statements were given in time when EU pressure in respect of the issue was slightly declined (Kacarska, 2019). Anyhow, additional cases were recorded by the end of 2017 as well (European Roma Right Center, 2017).

Currently, there are still ongoing cases in front of the Macedonian courts on the grounds of state discrimination and violation of the freedom of movement based on ethnic and social grounds. Although the discriminatory practices, for now, seem to be reduced, still there is a possibility that the issue of Roma discrimination on national border crossing can reappear during North Macedonia EU accession process (Kacarska, 2019).

As for the possibility of reaching the justice, for the ones deprived in rights, it is important to mention that several cases are in ongoing procedure in front of the European Court of Human Rights. In some of the cases a friendly settlement was reached, and in one case a court decision after the unilateral declaration of the Macedonian Government that did not fulfill the protection of the applicant's right to freedom of movement and protection against the discrimination. Still the Court didn't deliver judgment and did not confirm the systematic violation because the changed circumstances.²⁰ The expectations were that the Court will deliver favorable judgment which will bring a change in attitudes and terminate the existing discrimination against the Roma so that they can fully enjoy the freedom of movement both in their country and when they wish to leave it.²¹ Still the brought decision instead of judgment, confirms that despite the Court's extensive jurisprudence related to the freedom of movement, the restrictions of Roma border crossing, not yet been explored as systematic violations,²² and collective justice is still not reached.

Nevertheless, both the UN Human Rights Committee and the UN Committee on the Elimination of Racial Discrimination expressed their concern regarding the restriction of freedom of movement and ethnic profiling of Roma at North Macedonia's borders (Human Rights Committee, 2015),²³ a practice that according to the domestic human rights legal practitioners, continues without publicity, tough in reduced numbers. New cases are occurring from time but without significant public involvement (European Roma Right Center, 2017). For instance, since the outbreak of the COVID 19 pandemic, as it is

20 Decision 43440/15, Dženifer Dželadin against North Macedonia, September 2019.

21 Submission on behalf of the interveners (MRG) to the European Court of Human Rights in the case of Dženifer Dželadin, Muamet Abedinov and Sejat Zekirov v the Former Yugoslav Republic of Macedonia.

22 Application Nos. 43440/15, 44027/16 and 16460/17, Dženifer Dželadin, Muamet Abedinov and Sejat Zekirov vs. the former Yugoslav Republic of Macedonia.

23 Human Rights Committee, Concluding observations on the third periodic report of the former Yugoslav Republic of Macedonia, CCPR/C/MD/CO/3, 17 August 2015.

reported from the media, at the North Macedonia borders the Roma population was selected from other travellers and placed in the separated state quarantine.²⁴

In that respect, the potential “false asylum seekers”, the Roma, are still under some restrictions in regards to their right to leave and come back in their own country. Additionally, this issue is not overcome yet even on the EU institutional level. Despite the criticism and the outcomes of the Court cases clearly indicating discrimination against Roma in their attempts to cross the national borders, still, the EU institutions continue to balance the policy of conditionality *vis a vis* human rights, often accepting or even initiating their direct violation. For an illustration, the measures for preventing an asylum are put as an interim benchmark within the Serbia negotiation process (Marić and Bajić, 2018) and that is expected to be reflected in North Macedonia EU negotiation framework. Since the benchmark is part of Chapter 24 (Justice, freedom and security) that together with the Chapter 23 (Judiciary and fundamental rights) are first to be opened and last to be closed,²⁵ most probably similar policies and practices will pop up again in public agenda.

CONCLUSION

According to the various sources, in 2012 and 2013, over 15.590 people, mostly Roma, were forbidden to travel and returned from domestic borders simply because they were profiled as potential asylum seekers. Although this practice was highly criticized by the national and international human rights defenders and various EU institutions, similar acts of state discrimination and violation of human dignity are not rare. The presented case and analyzed problem from legal and political aspects, reopen the question of whether the right to freedom of movement for every citizen and the protection of every citizen from discrimination is less significant than the EU migration policy intend to reduce the number of asylum-seekers and illegal migrants (Andeva, 2017b). Affecting the human rights and violating them on a grounds

24 Health and Human Rights Journal, “Anti-Roma Racism is Spiraling During COVID-19 Pandemic”, April 2020; Romea, “North Macedonia selects just Romani people crossing the border for quarantine in unhygienic conditions”, 2020; OCCRP, “North Macedonia Singles Out Roma Musicians for Quarantine”, 2020.

25 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Enhancing the Accession Process - A credible EU perspective for the Western Balkans, 2020.

of EU conditionality, puts a shade over the role of the EU towards the third country and undermines its policies. The EU policies are meant to support the rule of law and good governance but at the same time the EU values on human rights and democracy (Kacarska, 2019). In the process of the EU enlargement, in North Macedonia, the Roma policies were an element of the political criteria for accession, closely related to the country's social policy, anti-discrimination and fundamental rights. Roma and their status in the society were and still are a topic and point of concern in all the EU annual progress reports. Still, on account of the conditions and promises given to North Macedonia for becoming an EU member state, frequent actions were violating the Constitution and the laws that should guarantee liberty and human rights. Despite the ruled court cases, the Ombudsman reports, the Constitutional Court decisions, the EU Commission did not recognize the problem of ethnic profiling (although in the years later, for example in 2018, noted that there are no new cases of preventing the Roma leaving the country).²⁶ Segregation, stereotyping and other form of discrimination of Roma, remain prevalent and they are promptly noted.²⁷ But the presented example and the European Human Right Court practice, witness that human rights are vulnerable in the processes of migration, but they are even more vulnerable when the violation is done institutionally, by the own state. Systematic violation of rights showed to be legally difficult to prove, but regardless the previous and future court decisions or preferable judgments, none of the given set of circumstances, gravities, possibilities for EU membership, socio-political implications and other concerns, cannot justify the unfair restrictions.

26 Commission Staff Working Document, The former Yugoslav Republic of Macedonia 2018 Report; (nb. in the report for 2019, the Commission notifies that the visa-free travel regime with the EU continued to work smoothly, national authorities are tackling the unfounded asylum applications and that lead to the decrease of the numbers, see more at EU Progress Report 2019, Commission Staff Working Document, North Macedonia 2019 Report).

27 Commission Staff Working Document, The former Yugoslav Republic of Macedonia 2018 Report.

REFERENCES

- Andeva, M., 2017a. Can Migration Jeopardize Basic Human Rights?: The Situation of the Roma Minority in Macedonia. In: *JEMIE* Vol 16, No 2, pp. 67-86.
- Andeva, M., 2017b. Migration Movements and Their Implications for Republic of Macedonia. In: *International Journal of Social Science Research*, Vol. 5, No. 2. <http://dx.doi.org/10.5296/ijssr.v5i2.10918>.
- Application Nos. 43440/15, 44027/16 and 16460/17. *Dženifer Dželadin, Muamet Abedinov and Sejat Zekirov vs. the former Yugoslav Republic of Macedonia*.
- Balkans in Europe Policy Advisory Group, 2016. *The migrant crisis: a catalyst for EU enlargement?* [pdf] Available at: <<http://biepag.eu/wp-content/uploads/2019/03/The-migrant-crisis-a-catalyst-for-EU-enlargement-web.pdf>> [Accessed March 2020].
- Beichelt T., 2012. The Research Field of Democracy Promotion. In: *Living Reviews in Democracy*, pp.1-13.
- BIRN, 2013. *Macedonian Mall Caught in Roma Ban Row*. [online] Available at: <<https://balkaninsight.com/2013/03/21/skopje-mall-accused-of-roma-discrimination/>> [Accessed 1 April 2020].
- Bojadjieva, A., 2015. *Roma Inclusion Index 2015*. Budapest: Decade of Roma Inclusion Secretariat Foundation available through: <<http://www.rcc.int/romaintegration2020/files/user/docs/Roma%20Inclusion%20Index%202015.pdf>> [Accessed July 2020].
- Constitution of the Republic of North Macedonia, 1991 [online]. Available at: <https://www.sobranie.mk/the-constitution-of-the-republic-of-macedonia-ns_article-constitution-of-the-republic-of-north-macedonia.nspx> [Accessed July 2020].
- Chachipe, 2012. *Selective freedom: the visa liberalization and restrictions on right to travel in the Balkans*, available through: <https://www.ggua.de/fileadmin/downloads/Rueckkehrer_Reisefreiheit/Chachipe_Visa_liberalisation_report_270612.pdf> [Accessed July 2020].
- Civil Rights Defenders, 2017. *The Wall of Antigypsyism – Roma in Macedonia*. [pdf] Available at: <<https://crd.org/wp-content/uploads/2018/03/The-Wall-of-Anti-Gypsyism-Roma-in-Macedonia.pdf>> [Accessed 1 July 2020].
- Commission Staff Working Document, 2018. *The former Yugoslav Republic of Macedonia Report*.
- Commission Staff Working Document, 2019. *North Macedonia Report*.
- Council of Europe, 2012. *Human rights of Roma and Travellers in Europe*. [pdf] Available at: <<https://rm.coe.int/the-human-rights-of-roma-and-travellers-in-europe/168079b434>> [Accessed July 2020].

- Publication Office of the EU, 2020. *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Enhancing the Accession Process - A credible EU perspective for the Western Balkans.*[online] Available at:<<https://op.europa.eu/en/publication-detail/-/publication/2bf63874-48d2-11ea-b81b-01aa75ed71a1/language-en>> [Accessed September 2020].
- Council of Europe, 2013. *Protecting the Rights of Roma.* [pdf] Available at: <file:///D:/Local%20Disk%20C/Downloads/roms_en.pdf> [Accessed July 2020].
- Council of Europe Commissioner for Human Rights, 2012. *Report on his visit to the former Yugoslav Republic of Macedonia from 26 to 29 November 2012.*
- Council of the European Union, 2009.'*Visa Liberalisation for Western Balkan Countries*'. Brussels, [online] Available at: <http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/111561.pdf> [Accessed July 2020].
- Criminal Code.* [online] Available at: <https://vlada.mk/sites/default/files/dokumenti/zakoni/criminal_code.pdf>[September 2020].
- Council of Europe, 2019. *Decision 43440/15, Dženifer Dželadin against North Macedonia.*
- Epstein, R., Sedelmeier, U., 2008. Beyond conditionality: international institutions in post communist Europe after enlargement. In: *Journal of European Public Policy*, 15:6, pp. 795-805.
- European Roma Rights Centre, 2013. *Macedonia, Country Profile 2011-2012.*
- European Roma Rights Centre, 2015. *Written Comments of the European Concerning Macedonia for Consideration by the Committee on the Elimination of the Racial Discrimination at its 87th session.*
- European Stability Initiative, 2013. *Saving visa-free travel: Visa, Asylum and the EU roadmap policy.*
- European Policy Institute and KHAM, 2016. *Right to Equality and Freedom of Movement at Borders: Experiences in Providing Legal Assistance.* [pdf] Available at: <http://epi.org.mk/docs/Sloboda%20na%20dvizenje%20%20iskustva%20od%20pravna%20pomosh_MK.pdf>[September 2020].
- European Roma Right Center, 2017. *Roma denied exit from Macedonia win Discrimination Case.* [online] Available at: <https://www.ecoi.net/en/document/1411609.html> >[Accessed September 2020].

- FRONTEX, 2012. *Western Balkans Annual Risk Analysis*. [pdf] Available at: <http://www.frontex.europa.eu/assets/Publications/Risk_Analysis/WB_ARA_2013.pdf> [September 2020].
- Grabbe, H., Knaus, G. and Korski, D., 2010. *Beyond wait-and-see: the way forward for EU Balkan policy*. European Council of Foreign Relations.
- Hartley, L., 2014. You Shall Not Pass: The Roma "Travel Ban," Racial Profiling in Macedonia, and Remedy Under International Law. In: *Penn State Law Review*, Vol. 119:2, pp. 583-605.
- Health and Human Rights Journal, 2020. *Anti-Roma Racism is Spiralling During COVID-19 Pandemic*. [online] Available at: <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7348427/>> [September 2020].
- Human Rights Committee, 2015. *Concluding observations on the third periodic report of the former Yugoslav Republic of Macedonia, CCPR/C/MD/CO/3*.
- Independent Balkan News Agency, Pajaziti, N., 2015. *Roma community, the most marginalized and discriminated in FYR Macedonia*. [online] Available at: <<https://balkaneu.com/roma-community-marginalized-discriminated-fyr-macedonia/>> [September 2020].
- Joint Initiative to empower Roma Civil Society in the Western Balkans and Turkey, 2015. *Shadow report for the needs and problems of the Roma community*.
- Kacarska, S., 2019. Conflicting objectives of EU conditionality uncovered Roma policies in the Republic of North Macedonia. *CEPS Papers on Liberty and Security in Europe*, no.5.
- Kacarska, S., Mojsovski, A., 2016. *Roma at Macedonian Borders*. Skopje: European Policy Institute.
- Law on Prevention and Protection against Discrimination, *Official Gazette 101/2019*.
- Law on the Promotion and Protection of the Rights of the Members of the Communities Which Are Less than 20% in the Population in the Republic of Macedonia, *Official Gazette 92/2008*.
- Law on Local Self-Government, *Official Gazette 5/2002*.
- Marić, S. and Bajić, D., 2018. *EU's Benchmarking within Chapters 23 and 24 in Accession Negotiations with Serbia Effects and Challenges*. Belgrade: European Policy Centre (CEP).
- OCCRP, 23 March 2020. *North Macedonia Singles Out Roma Musicians for Quarantine*. [online] Available at: <<https://www.occrp.org/en/daily/11885-north-macedonia-singles-out-roma-musicians-for-quarantine>> [September 2020].
- Pogány, I., 2006. Minority rights and the Roma of Central and Eastern Europe. In: *Human Rights Law Review* 6(1), pp. 1-25.
- UN Human Rights Council, 2011. *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Githu Muigai, A/ HRC/17/40*.

Richter S., 2012. Two at one blow? The EU and its quest for security and democracy by political conditionality in the Western Balkans. In: *Democratization*, Vol. 19, No. 3, pp. 507-534.

Romea, 2020. *North Macedonia selects just Romani people crossing the border for quarantine in unhygienic conditions*. [pdf] Available at: <<http://www.romea.cz/en/news/world/north-macedonia-selects-just-romani-people-crossing-the-border-for-quarantine-in-unhygienic-conditions>> [September 2020].

Strategy for the Roma in Republic of Macedonia, 2014 – 2020, Ministry of Labour and Social Policy. [pdf] Available at: <https://www.mtsp.gov.mk/WBStorage/Files/roma_strategy.pdf> [September 2020].

Submission on behalf of the interveners (MRG) to the European Court of Human Rights in the case of Dženifer Dželadin, Muamet Abedinov and Sejat Zekirov v the Former Yugoslav Republic of Macedonia. [online] Available at: <https://minorityrights.org/wp-content/uploads/2018/02/MRG-Intervention-Dzeladin-v-Macedonia-FINAL.pdf> [October 2020].

Transitions Online, 27 June 2012. *Racial Profiling on Macedonia's Borders?*. [online] Available at: <<https://tol.org/client/article/23232-racial-profiling-on-macedonias-borders.html>> [Accessed September 2020].

Travellers Time, 2018. *Roma resistance: End ethnic profiling in Macedonia*. [pdf] Available at: <travellerstimes.org.uk> [Accessed September 2020].