

WRITTEN COMMENTS

of the European Roma Rights Centre Concerning Macedonia

For Consideration by the Human Rights Committee at its 112th Session
(7-31 October 2014).



CHALLENGING DISCRIMINATION PROMOTING EQUALITY

TABLE OF CONTENTS

Introduction	3
Police Violence Against Roma (Articles 6, 7, 9 and 10)	3
Right to Freedom of Movement and Chose to Residence (Article 12)	4
Anti-Discrimination (Article 2 and 26)	7

INTRODUCTION

This list of critical issues with background information is presented by the European Roma Rights Centre (ERRC)¹ for consideration by the Human Rights Committee at its 112th Session (07-31 Oct 2014). It contains country-specific information on issues affecting Roma in Macedonia that raise questions under the International Covenant on Civil and Political Rights (ICCPR).

The Republic of Macedonia has 2,022,547 inhabitants, of whom 53,879 (2.66%) have declared themselves Roma.² However, as elsewhere in the region, the actual number of Roma³ is much higher than the official figure; the available unofficial estimate for Roma is 135,490 (6.77%).⁴ Roma live in 75 out of 85 municipalities across the country.⁵ According to official data, the majority of Roma live in the capital, Skopje (23,475), with 56% of Skopje's Roma concentrated in the municipality of Šuto Orizari (13,342).⁶

VIOLENCE AGAINST ROMA AND ILL-TREATMENT BY POLICE (ARTICLE 6, 7, 9 AND 10)

The level of police brutality against Roma in Macedonia is alarming. The ERRC draws the Committee's attention to the following incidents:

1. On 19 May 2014 at 20:20, a man reported ill-treatment of his 17 year-old son and his 12 year-old cousin by four police officers. The two children headed out to go shopping when suddenly four police officers belonging to the special 'Alfa' unit started to beat the two children without any prior warning, suspecting that the boy had stolen a woman's purse. The incident occurred at Skopsko Kale (Skopje Fortress). The police officers did not stop the beating even when the children's parents arrived at the scene, and did not allow parents to approach their children. The 17 year-old boy was subsequently taken to 'Bit Pazar' police station for interrogation. During the interrogation, the four police officers allegedly tried to force one of the boys to admit to the crime by slapping him in the face. After they concluded that the minor did not commit the act, he was released.⁷ The ERRC is providing legal representation to both victims in cooperation with the Macedonian Helsinki Committee.
2. On 5 February 2013, an eighteen year-old Romani man reported ill-treatment by two police officers belonging to the special 'Alfa' unit. The Romani man was selling perfumes in the centre of Skopje when two plain-clothes policemen approached and asked for his ID. The two policemen then told him to follow them to the 'Bit Pazar' Police Station, where they started to interrogate him, on suspicion of being a thief because of his Roma ethnicity. Later, another three police officers joined the interrogation. One of them tried to force him to admit to having broken a car window. When he refused to admit to the act, the interrogator started shouting at him and humiliating him with the following words '**you cigan,**⁸ **admit that you are a thief**' and kicked him hard in his leg, leaving him in severe pain.⁹ The Romani man did not want to file any complaints against the police officers due to fear of reprisals.

1 The European Roma Rights Centre is an international public interest law organisation working to combat anti-Romani racism and human rights abuse of Roma through strategic litigation, research and policy development, advocacy and human rights education. See: www.errc.org.

2 Census of Population, Households and Dwellings in the Republic of Macedonia, 2002, available at: http://www.stat.gov.mk/pdf/kniga_13.pdf.

3 According to ERRC understanding, the term "Roma" used throughout the report refers to other groups related to Roma and groups who are perceived by the majority population as Roma.

4 Open Society Institute Report, "No Data - No Progress, Data Collection in Countries Participating to the Decade of Roma Inclusion 2005-2015", August 2010, available at: http://www.opensocietyfoundations.org/sites/default/files/no-data-no-progress-country-reports-20100628_0.pdf.

5 Statistical Yearbook of the Republic of Macedonia, 2013, available at: <http://www.stat.gov.mk/Publikacii/PDFGodisnik2013/03-Naselenie-Population.pdf>.

6 *Ibid.*

7 ERRC Interview MK/MAY2014/17.

8 The word 'cigan' is always pejorative in Macedonian.

9 ERRC Interview MK/FEB2014/7.

3. On 5 May 2013, around 19:30 two uniformed police officers went to the Romani neighbourhood of Topana in Skopje, following an alert that a Romani person, who was on prison leave and failed to return in time, had wounded another man with a knife. The policemen called for a back-up of 50-60 police officers, including the special 'Alfa' police unit. Once they arrived at the scene, they raided the Roma community, and forcibly entered Romani houses, without providing any explanation. The policemen physically assaulted ten Roma, including three women. The police subsequently issued a public statement saying that locals resisted and attacked police officers during the arrest. The ERRC is providing legal representation to one of the victims, and the case is currently pending in front of the Macedonian Public Prosecutor's office.¹⁰

According to the Committee of Ministers of the Council of Europe, in spite of the diminishing number of cases of ill-treatment by the police, such cases continue to be reported and, according to non-governmental sources, persons belonging to national minorities, especially the Roma, are disproportionately targeted. Allegations of discriminatory ill-treatment of Roma are not always properly investigated.¹¹

Macedonia has pledged in its 2014 Universal Periodic Review to implement the recommendation to "fight impunity for violence against marginalized persons motivated by their ethnicity, religion, or sexual orientation, particularly through an improved awareness of public opinion, and the police and judicial authorities."¹²

SUGGESTED QUESTIONS TO THE GOVERNMENT:

- Does the Macedonian Government keep information on incidents where the police have used force against people? If so, do they keep specific information about incidents where they have used force against Roma? Please supply detailed information to the Committee.
- Have there been official investigations carried out into incidents of ill-treatment of Roma by police? If so, have these resulted in prosecutions or sanctions for the perpetrators?
- Does the Macedonian Government keep detailed data on the number and type of racially motivated crimes committed against Roma, as well as information on prosecutions? Please supply detailed information to the Committee.
- Have the official investigations into the above-referenced cases resulted in prosecutions or sanctions for the perpetrators? Please supply detailed information on the outcomes of the investigations to the Committee.
- Is there specific guidance (such as internal procedures or protocols) for police, prosecutors and other law enforcement officials on how to investigate racially motivated crimes?
- Has there been any investigation into patterns of abuse of Roma by certain police units or forces, such as the 'Alfa'?
- What measures have been taken to improve policing within minority communities, in particular Roma communities? Are there measures in place to encourage Roma enrolment within law-enforcement agencies and their deployment in Roma or multi-ethnic communities? What steps are taken to measure the quality of policing in Roma communities and the presence and impact of Roma within law-enforcement agencies?

RIGHT TO LIBERTY OF MOVEMENT AND FREEDOM TO CHOOSE RESIDENCE (ARTICLE 12)

Since visa liberalisation began in December 2009, which allowed Macedonian citizens to travel to the EU Schengen area without visas (for up to 90 days), the number of asylum seekers from Macedonia, mostly in Belgium, Sweden and

¹⁰ ERRC Interview MK/JUNE2013/4.

¹¹ Committee of Ministers of the Council of Europe, "Resolution CM/ResCMN(2012)13 on the implementation of the Framework Convention for the Protection of National Minorities by "the former Yugoslav Republic of Macedonia", 4 July 2012, available at: <https://wcd.coe.int/ViewDoc.jsp?id=1959557&Site=CM>.

¹² Report of the Working Group on the Universal Periodic Review, 16 June 2014, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G14/053/66/PDF/G1405366.pdf?OpenElement>.

Germany, has significantly increased.¹³ The most frequent reasons given for asylum claims concern lack of health care, unemployment and lack of schooling.¹⁴ In general, the authorities in receiving countries claim that the vast majority of the asylum seekers are of Romani ethnicity despite the fact that countries such as Germany do not register the ethnicity of asylum seekers. EU officials have called on the Macedonian authorities to take measures to prevent their citizens asking for asylum in the EU, because the majority of applicants have been perceived as not qualifying for asylum.¹⁵

As a response to intensified calls from EU officials to manage migration properly, and to the threat of the re-introduction of visas, in 2011 the Macedonian Parliament adopted an amendment to the Law on Travel Documents (LTD)¹⁶ which introduced a new ground to revoke an existing passport or to refuse to issue a new passport. Article 37 stipulates that a person who has been forcibly returned or expelled from another country due to violating the regulations on entry and stay in that country shall not be issued a passport.¹⁷ If the individual already has a passport, it will be confiscated¹⁸ for a period of one year.¹⁹

Apart from the problem of passport revocation, ethnic profiling of Roma by border police controlling exit from Macedonia is an additional problem hindering the freedom of movement. The ERRC has conducted research indicating that Macedonian officials engage in racially motivated discriminatory practices at the Macedonian border, in an apparent effort to discourage Roma from leaving the country and claiming asylum in the EU.

Between 2011 and 2014, the ERRC documented the cases of 131 Romani individuals who were prevented from exiting the country, and became aware of another 54 such cases. In the same period, the ERRC documented 55 cases in which Macedonian border officials revoked the passports of Romani individuals who had been deported from EU countries as failed asylum seekers, and became aware of another 155 such cases.

Most of the ERRC's documented cases show that only Roma were asked for evidence to justify why they intended to leave Macedonia; non-Roma were never asked. It appears that the border officials were instructed to act based on the ethnicity of the people trying to leave: some Roma were told explicitly by the border officials that they could not cross the border due to their ethnicity. 60% of Roma refused the right to leave were told by the border officials that they (the border officials) were instructed to restrict the rights of the people concerned. It appears that they were 'instructed' to act based on race. 30% of those Roma concerned were told explicitly by the border officials that they could cross the border due to their Roma ethnicity.

In response to the gravity of these violations of the right to leave one's own country, the ERRC took two actions. Firstly, in February 2014, the ERRC (and other parties) launched a Constitutional Court initiative challenging the abovementioned amendments to the Law on Travel Documents (LTD)²⁰ allowing for the revocation of passports. The ERRC complained to the Constitutional Court (the Court) that the LTD granted the authorities excessive powers to revoke the passports of citizens who have been forcibly returned or expelled from another country for having violated that country's rules on entry and stay, contrary to the Constitution of the Republic of Macedonia as well as to international instruments for the protection of human rights and

13 For example, UNHCR data for 2010 show that EU member states and Switzerland received 6,289 asylum applications from citizens of "the former Yugoslav Republic of Macedonia", whereas the corresponding number for 2009 (i.e. prior to visa liberalisation) was 838. See: Council of Europe Commissioner for Human Rights, Report on his visit to "the former Yugoslav Republic of Macedonia" from 26 to 29 November 2012, p. 24.

14 Council of Europe Commissioner for Human Rights, Report on his visit to "the former Yugoslav Republic of Macedonia" from 26 to 29 November 2012, p. 24.

15 ERRC submission to the European Commission on Macedonia, May 2014, available at: <http://www.errc.org/cms/upload/file/ec-progress-report-macedonia-2014.pdf>.

16 Закон за изменување и дополнување на Законот за патните исправи на државјаните на Република Македонија (Law on amendments of the Law on Travel Documents for Citizens of Rep. of Macedonia), („Сл. весник на РМ“, бр. 135/11 од 03.10.2011), available at: http://mfa.gov.mk/sites/default/files/zakoni_dokumenti.

17 Член 37 став 1 точка 6 (Article 37, paragraph 1, point 6) Закон за патните исправи на државјаните на Република Македонија (Law on Travel Documents for Citizens of Rep. of Macedonia), („Сл. весник на РМ“, бр. 67/92, 20/03, 46/04, 19/07, 84/08, 51/11, 135/11), available at: http://mfa.gov.mk/sites/default/files/zakoni_dokumenti.

18 *Ibid.*, Article 37, paragraph 2.

19 *Ibid.*, Article 38, paragraph 4.

20 ERRC, "ERRC Challenges Discrimination of Roma at the Border Before the Constitutional Court of Macedonia", press release, 26 February 2014, available at: <http://www.errc.org/article/errc-challenges-discrimination-of-roma-at-the-border-before-the-constitutional-court-of-macedonia/4248>.

fundamental freedoms.²¹ The Court has recently declared the impugned provisions (Article 37 paragraph 1 point 6 and Article 38 paragraph 4 of the LTD) unconstitutional. According to the Court, the highest judicial body in Macedonia, articles of the LTD which allowed the authorities to impose severe restrictions on freedom of movement of Macedonian citizens were incompatible with the constitutional right to freedom of movement.²² The authorities argued that the passport revocation measure was necessary to prevent or minimise the risk of individuals violating the immigration laws of other countries, thus damaging the country's reputation.²³ However, the Court concluded that these reasons were not legitimate. The Constitution sets out an exhaustive list of the grounds for restricting the right to leave the country: national security, public health and the conduct of criminal proceedings. Protecting the country's reputation or the immigration laws of another country does not fall within any of these categories. In addition, the Court stated that such a blanket measure was not proportionate because it imposed excessive limitations on the freedom of movement.

Secondly, the ERRC conducted situation testing in order to collect evidence of discriminatory administrative practice and ethnic profiling of Roma trying to exercise their right to leave their own country. The profiles of the different groups of testers were similar; the only significant difference was their ethnic background. The testing results showed explicit violations of the freedom of movement as well as ethnic profiling of and discrimination against Macedonian Roma when it comes to exercising their right to leave their own country.²⁴

According to the available data, from the end of 2009 to November 2012 about 7,000 Macedonian citizens, mostly Roma, were not allowed to leave the country and had their travel documents confiscated.²⁵ In 2011 alone, during a seven-month period, more than 1,500 Macedonian citizens, mostly Roma, were refused exit from the country on the basis of being potential asylum seekers.²⁶ According to the ERRC research this practice continues to the present day.

The Council of Europe's Commissioner for Human Rights (the Commissioner) reports that such measures interfere with the internationally established right to leave a country, and undermine the right to seek asylum. Instead of penalising people for attempting to exercise their human rights, the authorities should better address the root causes of poverty and social exclusion which push individuals to seek refuge abroad in the first place.²⁷ According to the Commissioner, the situation is of particular concern. His report of 6 October 2013 notes that "these restrictive, migration-related measures have been adopted at the instigation of EU member states in pursuance of their immigration and border control policies, and have been tainted by discrimination as they have targeted and affected, in practice, the Roma."²⁸

Additionally, the Macedonian *Ombudsman's Annual Report 2013* reported an increased number of complaints of discrimination, based on ethnicity of members of the Roma community, due to their return from border crossings of the Republic of Macedonia. The Ombudsman stresses in his recommendations that domestic and international standards must be applied to guarantee the right of free movement of citizens.²⁹

21 *Ibid.*

22 ERRC, "Highest court in Macedonia Upholds Freedom of Movement for all Macedonians, including Roma", press release, 15 July 2014, available at: <http://www.errc.org/article/highest-court-in-macedonia-upholds-freedom-of-movement-for-all-macedonians-including-roma/4301>.

23 ERRC, "Highest court in Macedonia Upholds Freedom of Movement for all Macedonians, including Roma", press release, 15 July 2014, available at: <http://www.errc.org/article/highest-court-in-macedonia-upholds-freedom-of-movement-for-all-macedonians-including-roma/4301>.

24 ERRC is considering having a separate report around this initiative.

25 Council of Europe Commissioner for Human Rights, Report on his visit to "the former Yugoslav Republic of Macedonia" from 26 to 29 November 2012, p. 25.

26 Bureau of Democracy, Human Rights and Labour, U.S. Department of State, *Country Report on Human Rights Practices for 2011 – Macedonia*, p.18.

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

28 Issue paper by Nils Muižnieks, Council of Europe Commissioner for Human Rights, The right to leave a country, October 2013, available at: <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2401714&SecMode=1&DocId=2082060&Usage=2>.

29 Ombudsman Annual Report 2013, March 2013, p. 18, available at: <http://ombudsman.mk/upload/Godisni%20izvestai/GI-2013-Ang.pdf>.

SUGGESTED QUESTIONS TO THE GOVERNMENT:

- What measures does the government of Macedonia intend to introduce to implement the decision of the Constitutional Court declaring certain sections of the Law on Travel Documents unconstitutional?
- How does the government seek to combat racial profiling at border crossings?

Have there been any official steps taken to investigate and stop any official or informal measures and practices that limit the right to free movement, and directly or indirectly discriminate against Roma crossing the border to travel outside of the country?

- What is the total number of Macedonian citizens and the total number of Macedonian citizens of Roma ethnicity denied exit from Republic of Macedonia and what were the reasons for refusing to let them leave?

ANTI-DISCRIMINATION (ARTICLE 2 AND 26)

The Law for the Prevention of and Protection against Discrimination (LPPD) was adopted on 8 February 2010, and came into force in January 2011.³⁰ Some legal experts claimed that it is not in compliance with EU law. These issues of non-compliance with the EU Racial Equality Directive and the Employment Equality Directive include the absence of an explicit legal framework or established practice allowing the use of statistics as evidence of indirect discrimination and failure to define and prohibit segregation as a special form of discrimination.³¹ Associations may act as a third party, that is as an “intervener”, in the judicial procedure (Article 39) or file a joint lawsuit and act as co-litigant with consent from the injured party (Article 41). The party claiming discrimination has to provide all the facts and evidence to support such a claim; the other party has an obligation to substantiate that discrimination has not occurred (Article 38). Additionally, the LPPD does not explicitly include the possibility of situation testing as a method for proving the discriminatory treatment.

A Commission for Protection against Discrimination (CPD), comprising seven members, became functional in January 2011.³² The CPD does not have a mandate to impose sanctions, but only to issue opinions and recommendations. If the discriminating party refuses to comply with the CPD’s recommendation, the CPD may initiate procedures before the relevant bodies (Article 28 LPPD), such as a misdemeanour procedure or a criminal complaint. The standing of the CPD before the courts is not clearly regulated by the law – the law does not explicitly allow for the CPD to act as an “intervener” or “co-litigant” in discrimination claims before civil courts. The law foresees that associations, foundations, institutions and other organisations *from civil society* may co-litigate the discrimination claim under certain conditions,³³ while institutions dealing with the protection of the right to equal treatment may appear as an “intervener” in the civil procedure (Article 39 paragraph 1), thus implying the CPD as well. The independence and expertise of the members of the Commission has been questioned considering that some of the members were until recently or are still employed in state institutions, and not all of them have experience of working on human rights issues.³⁴ The European Commission 2013 report on Macedonia noted that “concerns remain about the Commission’s independence, given its persistent lack of financial and human resources”.³⁵

30 Law on Prevention and Protection from Discrimination („Службен весник на Република Македонија“ бр.50/2010), available at: http://nkt.mtsp.gov.mk/nkt/content/Documents/anti_discrimination_law_mkd_2010.pdf.

31 ERRC submission to UN CEDAW on Macedonia, January 2013, available at: <http://www.errc.org/cms/upload/file/macedonia-cedaw-submission-30-january-2013.pdf>.

32 *SETimes*, “Macedonians get new resource against discrimination”, 19 January 2011, available at: http://www.setimes.com/cocoon/setimes/xhtml/en_GB/features/setimes/features/2011/01/19/feature-03.

33 Provided that they have justified interest and make probable that the right to equal treatment of greater number of persons has been violated (Article 41 paragraph 1 LPPD).

34 For an assessment see European Network of Legal Experts in the Non-Discrimination Field, “FYR Macedonia - The Assembly of the Republic of Macedonia appointed the members of the first Commission for Protection against Discrimination”, available at: http://www.non-discrimination.net/content/media/MK-7-Members_of_first_equality_body_appointed.pdf (last visit; for the biographies see the website of the Commission for Protection against Discrimination available at: <http://www.kzd.mk/mk/za-kzd/dlenovi>).

35 European Commission, *Commission Staff Working Paper – the Former Yugoslav Republic of Macedonia Progress Report 2013*, 16 October 2013, available at: http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/mk_rapport_2013.pdf.

SUGGESTED QUESTIONS TO THE GOVERNMENT:

- In what area (e.g. freedom of movement) are data disaggregated by ethnicity collected and in what way are these data used to shape public policy?
- What is the number of court judgments regarding discrimination on the basis of belonging to the Roma ethnic minority?
- Are there any plans to revise the LPPD, for example, to bring it in line with the European Union *acquis*?