

Combating barriers for exit: Macedonian Roma at the borders

Policy brief

This document summarizes the findings and recommendations on public policies, developed within the research carried out under the Combating barriers for Exit: Macedonian Roma at the Border project, implemented by the European Policies Institute (EPI) and the citizens' association KHAM. The main objective of the project is to contribute towards changing the public discourse based on policies and practices which present the Roma as a threat to the visa-free regime for Macedonia.

The project analyzed the experiences of the Roma who were prohibited from leaving the Republic of Macedonia in recent years, court cases where plaintiffs were Roma community members who were prevented from leaving the country, as well as the media representation of Roma in the context of visa liberalization.

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Why are there barriers to exit for Roma?

The abolition of visas for travel to the Schengen Zone at the end of 2009 was followed by an increased number of asylum seekers from the Republic of Macedonia, as well as from other countries from the region, to the EU member-states with longer asylum procedures, such as Sweden, Germany and Belgium. Facing an increased burden on their administrations, these countries influenced the governments of Western Balkans countries to take actions to reduce the number of asylum seekers and introduced protection clauses to suspend the visa liberalisation.

For its part, within that period the Republic of Macedonia began implementing enhanced passenger controls upon exit. These controls were based on a telegram from the Ministry of the Interior (Mol) sent to the services, according to which they were to “*enhance controls upon exit from the territory of RM of organized groups of citizens, potential asylum seekers, especially having in mind the provisions of article 15 of the Law on Border Control (Official Gazette of RM, No. 171 of 30.12.2010)*”.¹ According to Article 15 of the Law on Border Control, nationals of the RM, when crossing the state border, are subjected to minimal border check-ups, which entail checking the validity of the travel document and checking, on a non-systematic basis, certain records and electronic databases, to see whether the individual crossing the border is a threat to national security, public policy, international relations, or public health threat.² In addition to these check-ups, the law does not contain a single provision authorizing border officers to prevent a national of RM from exiting its territory.

Still, in 2012 and 2013, according to the Mol spokesperson, a total of 15.590 persons were returned to the Republic of Macedonia.³ International reports from the US State Department, the Council of Europe, national sources, as well as implemented situation testing, indicated that the Roma were disproportionately concerned with such enhanced controls, i.e., they were not allowed to exit the RM.⁴ When processing petitions on discrimination at border crossing points and

¹Mol telegram cited in the court judgment on case XXVIII П4-1228/13 of the Basic Court Skopje 2 according to the Legal Opinion of the Macedonian Young Lawyers Association, available at: <http://tinyurl.com/hrzxpqa>

²Official Gazette of the Republic of Macedonia no.171 of 30.12.2010

³Statement of the Mol spokesperson for BIRN, See Bekim Ajdini, Discrimination: Stamp for returning Macedonian Roma, PRIZMA, Balkan Investigative Reporting Network 26 June, 2014, <http://tinyurl.com/qftqfs3>

⁴US STATE DEPARTMENT, 2012. Human rights Report for Republic of Macedonia 2012. Достапно на: <http://www.state.gov/documents/organization/186589.pdf>

то е потврдено од тестирање на терен спроведено од страна на Хелсиншкиот комитет за човекови права на РМ

on restriction of the right to free movement, submitted by citizens from the Roma ethnic community, the Ombudsman established that the refusals to allow the citizens to exit represented discriminatory practices of the Mol towards the Roma, in four subsequent annual reports, for the period 2012 - 2015.⁵ The European Roma Rights Center in the course of their work, has confirmed that in 90% of the cases only the Roma were asked for proof of their purpose of travel when they travelled alongside other people.⁶ This discriminatory practice is particularly serious because it results in violation of one of the most protected grounds, the race, regarding which bodies on the global and on the European and regional level indicate that there is no situation in which racial discrimination can be justified. At the same time, people whose exit was prevented were not issued a written act or minutes on the basis of which they could later appeal.

The violation of equality that happens at Macedonian borders has already been recognized by the domestic courts, as well as by international human rights bodies (see findings in judicial cases below). In addition to the violation of rights that was already confirmed by Macedonian courts, this practice additionally entails risks that it might create and present the Roma as a threat to the visa-free regime, which is already clearly visible in the media, as indicated in the additional analysis carried out within this project.⁷ On the other hand, such actions create a risk of additional distancing of the Roma community from the state and its institutions, particularly the police. Roma mistrust of the police was recognized as an issue in the Strategy for the Roma, and independent body reports confirm it.⁸

⁵See Ombudsman's reports available at: www.ombudsman.mk

⁶EUROPEAN 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).

⁷See Demiri, M. Life until the border: reporting of the Macedonian media on the Roma and the visa liberalisation, European Policy Institute, available at: http://epi.org.mk/docs/Zivot%20do%20granica%20-%20Izvestuvanje%20na%20mediumite%20za%20Romite%20i%20vizna%20lib_MK.pdf

⁸See Helsinki Committee of the Republic of Macedonia, Analysis: Between the implementation and reality of the National Strategy for Roma integration, available at: http://www.mhc.org.mk/system/uploads/redactor_assets/documents/629/Romi_Analiza_Helsinki.pdf; 2012 Annual Report of the Ombudsman, available at: <http://www.ombudsman.mk/ombudsman/upload/documents/2013/GI-2012.pdf>

Findings from analysis of court cases

The main findings in the analysis of court cases in which citizens' association KHAM participated before 2015 are the following: judicial decisions based on invalid provisions in the legal system of the Republic of Macedonia, non-harmonized jurisprudence and restricting access to justice. First, on several occasions, the judicial decisions invoke provisions of the Schengen-border Code,⁹ although Macedonia is not a signatory to the Schengen Agreement, nor is it a member state of the EU. Despite such obvious anti-constitutional treatment, there is also confusion among the judges about the nature of this regulation. Some of the courts consider this regulation to be an international agreement, although that is not what it is, while others go as far as to make no difference between this regulation and the Schengen Agreement, which are two completely different legal documents. In one of the first-instance judgements, according to the court “the Republic of Macedonia is a country - signatory to the Schengen Agreement“.

Second, our analysis ascertained non-harmonized court practices. In the judgments accepting the charges from the applications to establish discrimination, the court accepts that in order to exit Macedonia, one needs only the travel document, i.e., passport, and no additional documents, in line with the Schengen regulations, because the freedom of movement is guaranteed by the Constitution and can be restricted only in line with the Constitution, but never in a discriminatory fashion. In judgments that refuse the plaintiff's claims, or modify the first instance judgments establishing discrimination, the courts take the position that the work of police officers does not entail unequal treatment towards the plaintiffs due to their ethnic affiliation, i.e., that they were not discriminated against, and that they fully apply Article 5, line C of the Schengen-border Code, which states, inter alia, that “to enter the EU-countries it is necessary ... to justify the purpose and the conditions of stay and to have sufficient funds for it...”¹⁰

Third, in some of the first-instance judgements, the judges unjustly afforded compensation of damages to the Mol. Such decisions are to the detriment of

⁹Article 5, point C and article 34 point C were mentioned. See Schengen border-code: <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=URISERV:l14514&from=EN>

¹⁰Article 5 applies to conditions for entry of third-country nationals, which means the article cannot be applied upon exit of nationals from the Republic of Macedonia who intend to travel abroad. In the reasoning of such judgments and rulings, it is always stated that according to the Schengen Borders Code, a condition for exit from the country when travelling to an EU Member-State is the possession of a letter of support.

citizens who decide to lodge complaints for protection from discrimination, because they additionally restrict the already difficult access to justice, especially for those under social risk. Although they could seek free legal assistance as members of one of the vulnerable groups, in line with the Law on Free Legal Assistance (article 12), discrimination is not included as a basis to acquire the right to free legal assistance, nor is the exemption from court fees for these procedures provided in the Law on Prevention and Protection from Discrimination.

The view of the Roma whose border exit was denied

Within this project, there were interviews with 53 male and female Roma returned from the border within the past 5 years, in order to communicate their experiences. While previous research was focused on public policies and cases, people who were denied the exit from RM were neglected, and this research has filled this gap.

Almost all female and male Roma who were returned from the borders, and were part of this research, believed that they were **rejected, discriminated against and treated as second-class citizens**, which contributes to creating their feeling of non-belonging in their own state.

All respondents stated that at border crossing points they were treated differently from other citizens - members of other ethnic communities; or, as one interviewee named Ismet noted **“As soon as they see us at the border - aaah, no no, get back. You are a Roma. Scram!”**

According to our respondents, **the skin color and the first and last name are the key factors** for prohibition of exit of Roma from Macedonian borders. Racial profiling profiling by the border police is very clearly illustrated through the excerpt from Dzenana's experience:

„Their conduct was very bad, they were aggressive towards the Roma, we - of course, the Roma, when we travel by bus, I will speak about myself, I was wearing a tracksuit, I have a bit darker skin color, and when they see the Roma like that, and that they are not well-dressed and are not groomed, they degrade us.“

The conduct of border guards causes different reactions in respondents, but what most of the Roma participating in this survey have in common is that they had asked for an explanation for their return from the border. **The respondents believe that the border guards have the duty to provide an explanation about the execution of the measures under which**

citizens attempting to leave Macedonia are returned , but no explanation was given to them. This can be observed best through the experience of Nevrija - „they should explain it to you, so if I decide to travel for the second time, I should know what I need“.

The interviewees did not see the freedom of movement as a privilege, but as a basic human right, and they believed that all should be equal before the law of the state, or as Seara puts it nicely:

„So they should let all of us through, we are all the same, we all have the right to travel wherever we want to, I believe that the law applies to everyone who are nationals of Macedonia and who live in Macedonia. If I am a Roma it doesn't mean that I necessarily go to seek asylum.“

Recommendations:

Regarding the legal framework and its application:

- Introducing a legal framework to adopt a written decision, with elaboration and instructions on the legal remedy in cases when the border police will not allow exit from the country;
- To amend the Law on Police, aiming at providing for mandatory wearing of an ID with the name and surname of every authorized officer;
- Providing for efficient investigation in cases of alleged racial discrimination and racially motivated unlawful police conduct by the Sector for Internal Control and Professional Standards within the Ministry of the Interior, as well as the Public Prosecutor's Office;
- Creating legal prerequisites for efficient access to justice for victims of discrimination through state-provided free legal assistance and support systems.

Education and public information:

- Education of the border police, as well as the Sector for Internal Control and Professional Standards, about the principle of non-discrimination and its application;
- Education of judges and attorneys about the legal implications of visa liberalisation, as well as the process of EU-accession;
- Raising awareness about the issue of discrimination of Roma at border crossing points by organizing a public hearing in the Parliament of the Republic of Macedonia;
- Representatives of the executive branch should refrain from presenting the Roma as (potential) asylum seekers in their public addresses.
- Raising awareness of the Roma community about their rights in cases where an exit from the borders of the Republic of Macedonia is denied.

