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26 October 2010

Mrs. Cecilia Malmström
Commissioner in charge of Home Affairs
European Commission
B – 1049 Brussels

Re: Human rights concerns in relation with your request to the Serbian and Macedonian authorities to prevent their citizens from seeking asylum in the European Union

Dear Commissioner Malmström,

We are organisations working in the field of human rights, asylum and anti-discrimination.

We are writing to you in order to express our grave concern regarding the letters you sent, a week ago, to the Ministers of the Interior of Serbia and Macedonia, requesting them to tighten their border controls in order to avoid their countries being removed from the “White Schengen list”.

In these letters, you expressed concerns regarding an increase of asylum applications by citizens of these countries in several EU member states including your own, Sweden.

The European Union has made the lifting of visa requirements for the citizens of Serbia and Macedonia conditional on these countries signing readmission agreements with the EU. Several thousand Roma and members of other ethnic minorities have already been deported on the basis of these agreements.

This practice is very much at odds with the Commission’s progress reports, which find that Roma and other ethnic minorities continue to be seriously disadvantaged or even discriminated in Serbia and Macedonia.

In relation to the fact that the majority of those who are seeking asylum abroad belong to an ethnic minority we would like to quote these reports.

In its latest progress report on Macedonia, the Commission notes:

“Minorities, the Roma community and people with disabilities, particularly children, suffer most from discrimination in various walks of economic, social and cultural life.” (p. 19)

“The authorities have taken practical measures to address the issue of social inclusion of Roma, but with limited results so far. Between 3,000 to 5,000 Roma, ethnic Albanians and ethnic Turks still lack personal documents, such as birth certificates and medical insurance or employment cards, which are necessary to benefit from social insurance, healthcare and other social services.” (p. 22)

“Little progress can be reported regarding the **Roma**. The four action plans in the framework of the 2005-2015 Decade of Roma Inclusion were recently revised and continued to be implemented slowly.

... the commitment on the part of line ministries and of municipalities is still insufficient. The inter-ministerial coordination working group on implementation of the Roma strategy was not operational for most of the reporting period.” (p. 22)

“Roma continued to be the most disadvantaged ethnic group. Unemployment among Roma was still the highest (as high as 73% compared to around 30% among the general population). Roma continued to have the lowest incomes (about 63% live below the poverty line) and the highest mortality rate. An estimated two thirds of Roma households live below the poverty line. The number of Roma children attending school was still low and the drop-out rate high. Segregation of Roma pupils was still practised. The practice of sending Roma children with learning difficulties to special institutions for mentally disabled children continued. The number of Roma street children is growing. No cases of police violence or targeting of Roma were reported through official channels. Reportedly, Roma suffer disproportionately from police abuse, but are reluctant to lodge complaints. There are no disaggregated data on Roma.

Overall, there has been some progress with cultural rights and minority rights. There has been some progress on equitable representation and the government undertook initial steps to address the issue of implementation of the law on languages and to foster inter-ethnic integration in the education system. Nonetheless, integration of ethnic communities remains limited. Effective implementation of the Ohrid Framework Agreement needs to be maintained, in a spirit of consensus. The concerns of the smaller ethnic communities should be more thoroughly addressed. Little progress can be reported regarding the Roma. They continue to face very difficult living conditions and discrimination, particularly regarding access to personal documents, education, social protection, healthcare, employment and adequate housing.” (ibid.)

“A project implemented by the Ministry of Labour and Social Policy enabled 243 Roma children aged 4 and 5 to be included in pre-school education. However, many Roma children, rural girls and children with disabilities still do not complete their education.” (p. 53)

“Ethnic minorities, particularly the Roma community, suffer from discrimination in various spheres of economic, social and cultural life. The situation of people with disabilities has not improved. Preparations in this area have started.”

Regarding the Kosovo Roma refugees, the Commission further notes shortcomings in the appeal procedures. (p. 20 - 1) We would like to add that many Kosovo Roma refugees in Macedonia have had to cope with long delays in the payment of their monthly allowances subsequent to the transfer of responsibilities from the UNHCR to the Macedonian Ministry of Labour and Social

Policy and have faced existential problems. In these regards, we would also note serious delays in the implementation of the strategy for the integration of refugees and aliens, which leaves entirely open the situation of those Roma, Ashkali and Egyptians from Kosovo whose asylum application has been rejected by the Macedonian Supreme Court.

Regarding the situation of ethnic minorities in Serbia, Roma in particular, the EU Commission notes in its 2009 progress reports:

“More concerted efforts need to be made to raise awareness of the situation of vulnerable groups of children and ensure that their rights are protected. The rate of school attendance by Roma children, especially girls, is still very low. Due to their insufficient knowledge of the Serbian language, many children, particularly Roma refugees from abroad, are placed in special schools for children with disabilities.” (p. 17)

“...there is ongoing discrimination, in particular against vulnerable groups such as Roma,” (p. 18)

“*Overall*, the framework for protection of minority rights in Serbia is in place and minority rights are broadly respected. Insufficient attention has been paid to resolving the status of refugees and IDPs. The Roma population continues to endure very difficult living conditions and frequent discrimination, particularly regarding access to education, social protection, health care, employment and adequate housing.” (p. 20)

“...the Roma population, especially Roma children and women, remains one of the most vulnerable groups in the country. There is no organised and systematic approach to resolving the issue of housing including the relocation of Roma settlements, but instead ad hoc and often inadequate solutions, which in some cases have led to fundamental rights being violated. The Roma population is subject to discrimination, prejudice and intolerance and has been victim of a number of individual attacks. There is still a problem with civil registration, particularly for Roma IDPs. A special law to regulate the procedure for recognition of legal subjectivity and allow subsequent inclusion in citizens’ registries has not been adopted. Low school attendance by Roma children and high unemployment are widespread.” (p. 22)

“Regarding *social inclusion*, the Serbian poverty reduction strategy has continued to contribute to reducing the number of people living in absolute poverty. However, with the economic crisis, poverty levels are likely to rise. Fighting poverty and social exclusion of vulnerable categories of the population, with particular reference to the Roma population, IDPs and some pensioners, remains a key challenge.” (p. 38)

“Vulnerable groups, such as Roma ... remain the most exposed to discrimination.” (ibid.)

Regarding the situation in Southern Serbia and the Sandžak area, where another group of asylum seekers come from, the Commission notes:

“The situation in southern Serbia deteriorated following a number of attacks on the Serbian gendarmerie in July 2009.” (p. 18)

“The situation in Sandžak has deteriorated. Divisions within the Muslim community have continued and there have been several outbreaks of violence. In April 2009 the incidents spilled over from Sandžak to Vojvodina, triggering clashes between supporters of the opposing Muslim religious factions. Municipal structures lack the capacity to enforce minority rights fully in Sandžak.” (ibid.)

We understand that some of the asylum seekers are actually IDPs from Kosovo. Here the Commission notes:

“According to the UNHCR there are approximately 86,000 **refugees** and 205,000 **internally displaced persons** (IDPs) in Serbia. The number of refugees living in collective centres has decreased. However, more than **5,500** people are still living in these centres, enduring very poor conditions. Both the national strategy on refugees and the law regulating this issue still have to be revised. There have been very limited improvements in the housing situation.

Poverty is widespread and is particularly acute among refugees. Unemployment is high. The situation for IDPs continues to be very difficult. They are faced with many obstacles in exercising their basic social rights. Very few IDPs have returned to Kosovo.” (p. 18 – 19)

We would like to add that the situation of Roma IDPs from Kosovo is even worse. Many of them are unregistered. They are living in informal settlements with no access to basic social services and utilities. Over recent years, they have been frequent victims of forced evictions.

On the basis of this information, we find it hard to follow the interpretation **by** your spokesman, Mr. Michele Cercone, who believes that the majority of the asylum seekers are leaving Serbia and Macedonia for economic reasons.

We consider that economic hardship and discrimination on ethnic grounds are indeed closely linked, where discrimination becomes an aggravating factor, making it impossible for people to earn their livelihood. The UNHCR has recognized this fact in its Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, where it states “... in certain circumstances ... discrimination will amount to persecution. This would be so if measures of discrimination lead to consequences of a substantially prejudicial nature for the person concerned, e.g. **serious restrictions on his right to earn his livelihood**, his right to practise his religion, or his access to normally available educational facilities.” (emphasis added)

We are thus particularly at odds to understand your invitation to the governments of Serbia and Macedonia to keep their citizens from leaving their country. Such a move would actually amount to a violation of two fundamental principles of International Human Rights Law, freedom of movement, which includes the right of every person to leave any country including his own (Article 13.2 of the Universal Declaration of Human Rights) and the right of asylum.

Regarding the fact that the forced repatriation of persons under the EU readmission agreements has already given rise to serious human rights concerns, we are very much concerned that your invitation to the Serbian and Macedonian authorities will lead to further abuses and discriminatory actions against ethnic minorities, in particular Roma.

Indeed, we are not ready to forget the passenger checks which were conducted in 2001 by UK officials at the Prague airport, aiming to prevent Roma from boarding airplanes to the UK, which were later considered as unlawful by the House of Lords.

According to media reports, the Serbian police has recently returned a bus with Macedonian citizens travelling to Germany. Further to your letter, the Serbian Minister of Interior, Ivica Dačić and the Deputy Prime Minister for European Integration, Božidar Đjelić, have already announced “special control measures”. According to the media, the Serbian Minister of Interior announced “thorough controls of suspect travellers and tours organised from areas producing most asylum seekers” (DPA, 21.10.10)

We believe that this will open the door to the ethnic profiling of travellers.

We are therefore calling on you to recall your letter immediately and instead urge the governments of Serbia and Macedonia to make further efforts in the field of human and minority rights and to assure the integration of refugees and IDPs. We are also asking the Commission to provide a detailed account of the results of its monitoring of the implementation of the readmission agreements with those countries.

Thank you very much for your attention!

Respectfully,

Chachipe a.s.b.l., Luxembourg
Projekt Roma Center Göttingen e.V., Germany
Avutnipe, Denmark
Förderverein Roma e.V., Frankfurt am Main/Germany
Union des Roms de Yougoslavie en Diaspora/Fleuve Ibar, France
Roma Union Grenzland e.V., Aachen/Germany
Niedersächsischer Flüchtlingsrat, Hildesheim/Germany
Flüchtlingsrat Hamburg e.V., Hamburg/Germany

Cc : Mrs. Viviane Reding, Vice-President of the European Commission in charge of Justice, Fundamental Rights and Citizenship
Mrs. Navanethem Pillay, UN High Commissioner for Human Rights
Mr. António Guterres, UN High Commissioner for Refugees
Mr. Thomas Hammarberg, Council of Europe Commissioner for Human Rights
Mr. Knut Vollebaek, OSCE High Commissioner on National Minorities
Mr. Milorad Pupovac, Member of the Parliamentary Assembly of the Council of Europe (PACE), author of the PACE report on Roma Asylum seekers in Europe
Members of the AFET Committee