

FREEDOM OF MOVEMENT OF ROMA PEOPLE IN MACEDONIA AND FRANCE

By

Elvis Shakjiri

M.A. Human Rights - Long Thesis

Professor: Mathias Möschel

Central European University

1051 Budapest, Nador utca 9.

Hungary

Contents	
Executive summary	ii
List of Abbreviations	iv
Introduction	1
Historical background of Roma people	2
Chapter 1. Freedom of movement	5
A. Under EU law	5
1. Freedom of movement of workers	5
1.1 Freedom of movement of non – workers	7
1.2 Restrictions at EU level	8
1.3 Schengen agreement	9
B. Under International Human Rights Law	10
Chapter 2. Freedom of movement of Roma people	18
A. Freedom of movement of Roma people in Macedonia - restrictions at national level	18
1.1 Background of Roma people in Macedonia	19
1.2 Visa liberalization and “fake” asylum seekers	21
1.3 Legal and Policy Framework	24
1.4 Case Studies	35
Conclusion	44
B. Freedom of movement of ‘gens du voyage’ and Roma people in France- restrictions at national level	46
1.1 ‘Gens du voyage’	48
1.2 Case <i>Ory v France</i>	53
2.1 Roma in France	55
2.2 Freedom of movement - violations	59
2.3 European Commission challenges on preventing the Directive 2004	62
Conclusion	65
General Conclusion	66
Bibliography	68

Executive summary

“All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood”

- *Universal Declaration of Human Rights, Article 1.*

One of the most difficult challenges for the EU is to secure the freedom of movement. The Roma people who move to the EU Member States such as France are faced with forced deportations and aggression. The Roma people have encountered discrimination and prejudices in all of Europe including in Macedonia. The free visa regime gave another reason to generate discrimination against Roma individuals from Macedonia, who want to enjoy the free movement within the Schengen zone. The purpose of this thesis is to examine the freedom of movement of Roma people in Macedonia and France and to show under which grounds this right is restricted when it comes to the Roma people. This thesis analyzes the effects of the visa liberalization and the attitude of the public authorities towards the Roma people from Macedonia, who are profiled as ‘bogus’ asylum seekers and are not allowed to leave the country. In addition, it examines the tradeoff that Macedonia has made to preserve the free visa regime and the consequences that have resulted in discriminatory policies and human rights violations. The thesis also debates the practices of the French government concerning Roma in the period between 2010 and 2013. The thesis demonstrates how these deportations violate the 2004 Directive on Freedom of Movement of the European Union and how the European Commission responded to this.

Acknowledgement

My deep gratitude first goes to my supervisor Mathias Möschel, who expertly guided me through this academic process. I am sincerely grateful for his support, enthusiasm, motivation, patience and immense knowledge. His guidance has been precious for the development of this thesis. I could not have imagined having a better supervisor.

My deepest gratitude goes to my parents, my brother, my sister in law, my grandchildren Ersin and Asibe, and all extended family, for their love and unconditional support throughout my studies. Special thanks go to my wife Nadire, without whom I would never have had the strength to succeed.

My appreciation also extends to my friends Albert Memeti, Suad Skenderi and Deniz Selmani, who constantly supported me and made me work more effectively by asking me “are you done yet?”

Last but not least, I would like to thank my teacher Victoria Vajnai and my friend Camille Hesterberg for their proofreading, which has profoundly improved this thesis.

List of Abbreviations

CERD	Committee on the Elimination of Racial Discrimination
CoE	Council of Europe
EC	European Commission
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
ECtHR	European Court of Human Rights
ERRC	European Roma Rights Center
EU	European Union
FRA	Fundamental Rights Agency
HRC	Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
SIS	Schengen Information System
UDHR	Universal Declaration of Human Rights

Introduction

The aim of this thesis is to make a comparative analysis between Macedonia and France concerning the right to freedom of movement of Roma people and to show that when it comes to the freedom of movement of Roma, the countries always find different justifications for restricting this right. The thesis is divided in two chapters. In the first chapter, I describe the general legal framework for the freedom of movement as an EU freedom and as an international human rights issue. In the second chapter, I analyze specific cases of Roma people in Macedonia and France. In this chapter, I am demonstrating the specific ways in which Roma people's freedom of movement is being restricted. In particular, in this thesis I analyze the effects of the visa liberalization towards the Roma in Macedonia, and the effects of the forced expulsion of Bulgarian and Romanian Roma from France. Separately, I also describe the issue of 'gens du voyage' and the effects of the circulation booklets that they possess.

Historical background of Roma people

The Roma people are the largest ethnic minority in Europe. According to the Council of Europe (CoE), there are approximately 11-12 million Roma living in the Member States CoE.¹ The CoE estimates that the largest Roma populations in its member states can be found in “Bulgaria (10.33%), 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%)”.²

Even though the non-Roma often frame the Roma problem as an issue of migration within the EU member states (mostly to the West), the discriminatory public policies and the anti-Roma racism are still problems in both Eastern and Western Europe.³

The ancestors of Roma people came from India. This fact is proven by different findings in the fields of science, history, linguistics, cultural anthropology and population genetics. Comparing the Romani language to other languages proved that they first migrated from Central to Northern India.⁴

They first set off towards Europe somewhere between the 10th and 11th centuries. Then they traveled through Persia and Armenia to the Byzantine Empire where they worked in their trades. During this migration, they split into three groups and some communities can be still found in the Caucasus, Turkey, and the Middle East. In these places, Roma are also known as “Dom” or

¹ Bunjes, Ulrich. "Making Human Rights for Roma a Reality." - Council of Europe, 2014. Accessed October 31, 2015. <http://www.coe.int/en/web/portal/roma/>

² The Council of Europe: Protecting the Rights of Roma, 2013. Accessed October 31, 2015. http://www.strassburg-europarat.diplo.de/contentblob/3392612/Daten/1862070/CoE_publication_Roma.pdf

³ Gehring, Jacqueline S. "Free Movement for Some: The Treatment of the Roma after the European Union's Eastern Expansion." *European Journal of Migration and Law*, (2013), 7-28.

⁴ The Council of Europe: Protecting the Rights of Roma, 2013. Accessed October 31, 2015. http://www.strassburg-europarat.diplo.de/contentblob/3392612/Daten/1862070/CoE_publication_Roma.pdf

“Lom”. The group speaking “Dom” settled in the Middle East, the group speaking “Lom” took the northern route, and the group speaking “Rom” took the western route.⁵

The Roma settled in Europe from between the 15th and the 17th century. During this period, they suffered discrimination in Central Europe and within the Ottoman Empire. In Moldavia and Wallachia, they were enslaved for 500 years. The Roma faced new forms of discrimination during the 18th century. During the period of “Enlightenment”, the Roma people in Spain were put into forced labor camps. The Austro-Hungarian Empire enacted laws to forcibly assimilate them. However, the Roma became fully-fledged subjects in the Russian Empire; they were granted civil rights. In the Ottoman Empire, their metal skills made them handy in the navy.

Romania enslaved the Roma people around 1860, at the time when America abolished slavery. By the end of the 19th century and the beginning of the 20th century, the discrimination against the Roma people became more intense. When Austro-Hungary split, many Roma remained in Austria. In 1938 Austria was annexed by Nazi Germany. During the Second World War, the Roma were taken to concentration camps, where they were experimented on, sterilized and killed. It is estimated that the Third Reich exterminated between 400,000 and 500,000 Roma. The Romani word for Holocaust is “Pharrajmos” or “Porajmos,” which means “devouring”. The Roma people who survived the Holocaust received very little to no compensation. Many Roma survivors were also told that they were liars. Also, the Roma were not mentioned during the Nurnberg trials.

Today, according to the reports of the Fundamental Rights Agency (FRA), the Roma people are the most hated ethnic group in Europe.⁶ The CoE in its conclusion on the inclusion of the Roma,

⁵ Marushiakova, Elena, & Vesselin Popov, “The Romanies in the Balkans during the Ottoman Empire,” *Roma*, 47:63-72, (1997).

noted that even though the Roma people have the same rights and obligations as the rest of the population, they are still vulnerable to social exclusion and are a disadvantaged group that faces discrimination and poverty.⁷ The European Court of Human Rights (ECtHR) in the case *D.H v. the Czech Republic* established that “Roma are a vulnerable group, and indirect discrimination will not be tolerated”.⁸

The Roma people are also known as Gypsies, Sinti, Tsigani, Kale, Ashkali, Boyash, Egyptians, Travelers, Lom and Dom. For the purpose of this thesis, it is important to accept the consideration of Vermeersch who suggests that Roma mobility is not a homogenous phenomenon meaning that ‘gens du voyage’ or “Travelers” should be considered as a unique, nomadic group and that we should make clear distinctions between them and other Roma who “do not live in caravans and do not have and seek itinerant lifestyles”.⁹ He claims that ‘gens du voyage’ are “national citizens of the countries in which they travel”.¹⁰ Vermeersch also argues that there is a third and fourth category of Roma who use the opportunity of the freedom of movement. This third group consists of nationals of EU member states who move from one member state to another with a plan to live there for longer period. In the fourth category are third country nationals who are either asylum seekers or recognized refugees.¹¹

⁶ European Agency for Fundamental Rights, "The Situation of Roma EU Citizens Moving to and Settling in Other EU Member States." 2009. Accessed October 31, 2015. http://fra.europa.eu/sites/default/files/fra_uploads/629-ROMA-Movement-Comparative-report_en.pdf

⁷ "European Commission - PRESS RELEASES - Press Release - 2914th Council Meeting General Affairs and External Relations General Affairs Brussels, 8 December 2008. Accessed October 31, 2015. http://europa.eu/rapid/press-release_PRES-08-359_en.htm

⁸ ECtHR, *D. H v. Czech Republic*, [GC] App. No. 57325/00, (2007), para.182.

⁹ Peter Vermeersch, Roma and mobility in the European Union in “Roma and Traveler Inclusion in Europe”, Green Questions and Answers. European Parliament, (2011), pp.92.

¹⁰ Ibid.

¹¹ Ibid.

Chapter 1. Freedom of movement

A. Under EU law

1. Freedom of movement of workers

Freedom of movement is one of the four freedoms perceived as necessary in building a European common market. The four freedoms of the European common market are the free movement of people, goods, services and capital. The free movement of workers is an essential part of European economic integration. According to Article 45 (ex. Article 39 EC) of the Treaty on the Functioning of the European Union, the workers have the right to move, seek and take up employment in another Member State under the same conditions as nationals. The “old” Member States also had the right to decide whether they would allow free movement of workers who were nationals of the new member states of the European Union (EU), (Romania and Bulgaria). The Member States that chose to impose restrictions feared that “an influx of ‘cheap’ Eastern European labor would displace local labor and drive down wages”.¹² The restrictions for these two countries ended on 31 December 2013.

The European Court of Justice (ECJ) in *Lawrie – Blum* stated that “the essential feature of an employment relationship, is that for a certain period of time a person performs services for and under the direction of another person in return for which he receives remuneration”.¹³ In 1998,¹⁴ the ECJ extended the definition of “worker” to also include those who are seeking a job.

¹² Barnard, Catherine. *The Substantive Law of the EU: The Four Freedoms*. 2nd ed. Oxford: Oxford University Press, (2007), pp.264.

¹³ *Lawrie - Blum v. Land Baden – Württemberg*, C- 66/85 (1986) ECR 2121, para. 17.

¹⁴ *Martinez Sala v. Freistaat Bayern* C-85/96 ECR I – 2691 (1998), para.32.

According to the Regulation¹⁵, the work seekers must be given a chance to stay in the host state for at least three months to look for a job.

In the case of *Commission v. Belgium*,¹⁶ the ECJ held that the Belgian law that requires the person to leave the country after the period of three months breached Article 45. If the person can show that he/she has a real chance to get a job, the host state cannot expel him/her. There is a connection between this case law and the Directive of the European Parliament and the Council, which stated that “the Union citizens and their family members may not be expelled for as long as the Union citizens can provide evidence that they are continuing to seek employment and that they have a genuine chance of being engaged”.¹⁷ The free movement of workers has been also interpreted in the view that they are also people and “not just inanimate objects”.¹⁸

As I have already stated, Article 45 (1) provides the workers with the right to free movement, in addition, according to Article 45 (2) the right to free movement of workers between the Member States shall be without discrimination. In addition, the ECJ emphasized that “nationals of Member States have in particular the right, which they derive directly from the Treaty, to leave their country of origin to enter the territory of a Member State and reside there in order to pursue economic activity”.¹⁹ The Court of Justice stressed: “the relevant provisions of the EEC and EC

¹⁵ European Commission, Proposal for a Council Decision, Regulation 883/04 from March 2010, Article 64.

¹⁶ *Commission of the European Union v Kingdom of Belgium*, Failure of a Member State to fulfill its obligations, Judgment of the Court (Sixth Chamber), C-344/95 (1997), para.18.

¹⁷ Directive 2004/38/EC, of the European Parliament and of the Council." Official Journal of the European Union, L158/77 (2004), Article 14 (b).

¹⁸ Steiner, Josephine, and Lorna Woods. EU Law. 10th ed. Oxford: Oxford University Press, (2009), pp.529.

¹⁹ Union Royale Belge des Sociétés de Football Association ASBL v. Jean-Marc Bosman, Case C-415/93 (1995) para.95.

Treaties are based on the twin principles of free movement and the prohibition of all discrimination on grounds of nationality”.²⁰

1.1 Freedom of movement of non – workers

As previously mentioned, the freedom of movement of workers is a primary aspect of the right to freedom of movement. The EU extended this right to subsequent legislation and treaties that would allow other nationals that are non-workers from the Member States to move freely. The extension of this right shows the evolution of the EU from an economic to a political entity. Shimmel argues that “freedom of movement now serves both as a tool to encourage support for greater EU integration among the European populace and as an expression of a nascent EU consciousness and identity”.²¹

Regulation 1251/70²² of 1970 gives permission to the families of the EU nationals who moved to another Member State for employment to stay and who, as a result of severe injury, is unable to work. After the 1970’s, there were many directives that extended the right of residence. In 1993, Directive²³ 93/96 recognized the rights of the students who are enrolled in educational programs and have health insurance to study in another Member State. We can conclude from these pieces of legislation that at least in theory nationals from the Member States can freely travel from one country to another. However, in practice the situation is different because “only those who are

²⁰ Siofra O’Leary, "Free Movement of Persons and Services." In *The Evolution of EU Law*, edited by Paul Craig and Gráinne De Búrca. 2nd ed. Oxford, (2011), pp.499.

²¹ Shimmel, Natalie, *Welcome to Europe, but Please Stay Out: Freedom of Movement and the May 2004 Expansion of the European Union*, 24 *Berkeley J. Int’l Law*, 760 (2006), pp.769.

²² Regulation of the Commission (ECC) No 1251/70, on the right of workers to remain in the territory of a Member State after having been employed in that State, *Official Journal of the European Communities*, No L 142/24, (1970) Article 1.

²³ Council Directive 93-96/EEC (1993), on the right of residence for students, *Official Journal of the European Communities*, Article 1.

able to find a job, study, or have sufficient resources to support themselves can truly take advantage of the right to live in another Member State”.²⁴

1.2 Restrictions at EU level

The Citizenship Directive²⁵ lays down that the right to freedom of movement can be limited on grounds of public policy, public security or public health. Catharine Barnard argues that the ECJ in its case law recognized that the derogation of the right to freedom of movement should be interpreted in the light of individual’s fundamental rights.²⁶

a) **Public Policy**

The ECJ has given the Member States a wider margin of discretion when determining what constitutes public policy. The concept of public policy “might vary from one country to another and from one period to another”.²⁷ In the case *Bosington v. Oberstadtdirektor*²⁸, the former was convicted for killing his brother by negligence, and therefore was deported to his country of origin. The justification for this action was that of a preventive nature. The ECJ stated that the deportation was contrary to the directive, and expulsion could be ordered just in cases of breaching the public security. Later on in *Regina v. Pierre Bouchereau*²⁹ the ECJ said that the

²⁴ Natalie Shimmel, *Welcome to Europe, but Please Stay Out: Freedom of Movement and the May 2004 Expansion of the European Union*, 24 Berkeley J. Int’l Law, 760 (2006), pp.770.

²⁵ Directive 2004/38/EC (2004), Article 1 para. (C), on the right of citizens of the Union and their family members to move freely and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC.

²⁶ Barnard, Catherine. *The Substantive Law of the EU: The Four Freedoms*. 3rd ed. Oxford: Oxford University Press, (2010).

²⁷ *Yvonne van Duyn v Home Office*, Case 41/74 (1974), ECR 1337, para.18.

²⁸ *Bosignore v. Oberstadtdirektor*, Case 67/74 (1975), ECR 297.

²⁹ *Regina v. Pierre Bouchereau*, Case 30/77, 1977, ECR 1999.

public-policy restriction could be invoked just in cases when “there was a genuine and sufficient serious threat affecting one of the fundamental interests of society”.³⁰

b) **Public Security**

Although public security is considered as a separate ground for restricting the freedom of movement, in practice it is considered the same as public policy. The same limitation grounds that are identified in relation to public policy are also found in public security. The Directive 2004/38/EC “has introduced a distinction between public policy and public security, but has given no guidance on determining the boundaries between these two categories”.³¹ Public security refers to more serious conduct, including terrorism.

c) **Public Health**

The Directive 64/221 provides an exhaustive list of diseases that might be considered a reason for the restriction of the free movement of an individual. Migrants that were HIV positive or who had AIDS were in a difficult position. The Commission in its Communication in 1999 “rejected the use of any measures that could lead to social exclusion, discrimination or stigmatization of persons with HIV/AIDS”.³² Furthermore, it concluded that the restrictions on free movement “can no longer be considered a necessary and effective means of solving public health problems”.³³

1.3 Schengen agreement

The Schengen agreement is an additional component of the right to freedom of movement, whose effect is to abolish controls at internal frontiers and to “allow the Europeans to move from

³⁰ Barnard, Catherine. *The Substantive Law of the EU: The Four Freedoms*. 3rd ed. Oxford: Oxford University Press, (2010), pp.484.

³¹ Steiner, Josephine, and Lorna Woods. *EU Law*. 10th ed. Oxford: Oxford University Press, (2009), pp.570.

³² *Ibid*, pp.493.

³³ *Ibid*.

Member State to Member State without passing through customs or so much as presenting passport”.³⁴ At the time when the Schengen agreements were signed, they were not immediately part of the EU law but later on they became part of the EU treaty system and became incorporated in the Treaty of Amsterdam³⁵ (1999). Currently, 22 member states of EU participate in the Schengen Area except UK, Ireland, Bulgaria, Croatia, Cyprus and Romania. The Schengen Agreement in Chapter I established the Schengen Information System (SIS) with the aim of collecting a database of those individuals who can pose threat to public order, security, and health. Currently 22 EU Member States fully operate the SIS, Bulgaria, Romania and UK only operate the SIS for the purpose of law enforcement, Croatia, Ireland and Cyprus are carrying preparatory activities to integrate into the SIS. Those persons who are found in the SIS list will be refused entrance to a Member State. Furthermore, the Schengen Agreements provide a common asylum policy between the European Member States. Refugees that are coming from safe-listed third countries are allowed to seek asylum in one Member State, the one that issued residence, visa or the state where the asylum seeker first arrived. If a person is denied a refugee status then he/she cannot apply again in another Member State.

B. Under International Human Rights Law

The Universal Declaration of Human Rights (UDHR) in Article 13 (1) guarantees the right to freedom of movement and residence within the borders of each state.³⁶ The same article in paragraph 2 also recognizes the right of a person to leave his/her own country and to return. Even though the UDHR is not binding upon the states, it still has an effect of customary international

³⁴ Ibid.

³⁵ European Union, Treaty on European Union (Consolidated Version), Treaty of Amsterdam, (1997).

³⁶ UN General Assembly, Universal Declaration of Human Rights, 217 A (III), (1948), Article 13 para. 1,2.

law. Furthermore, the UDHR has the force of *opinion juris*, and almost all countries in the General Assembly have accepted it.³⁷ Another factor that contributes to the force of the UDHR as a custom is that it also serves as an “authoritative interpretation of the human rights obligations contained in the United Nations Charter”,³⁸ a document that legally binds the signatory countries.

The right to freedom of movement is also incorporated in other human rights treaties. The International Covenant on Civil and Political Rights (ICCPR) in Article 12 (1) deals with the freedom of movement and residence within the territory. The same article in paragraph (2) and (4) gives the person the right to leave his/her own country and to return back. There are exceptions under which this right can be restricted. Paragraph (3) affirms that the freedom of movement can be restricted in cases that are “prescribed by law and necessary to protect the public security, public order, public health and morals, or the rights and freedoms of others”.³⁹ Moreover, for the purposes of this thesis, Article 26 and its non-discrimination provision is also relevant as will be seen later in the case study on France.⁴⁰

Country reports and inter-state complaints can be submitted under ICCPR, in front of the Human Rights Committee (HRC). If a country has ratified the First Optional Protocol, individuals

³⁷ Alyssa Haun, The Long Road: The Roma of Eastern and Central Europe and the Freedom of Movement and Right to Choose a Residence, 33 *George Washington International Law Review*, 155, (2000).

³⁸ *Ibid.* pp.169.

³⁹ UN General Assembly, International Covenant on Civil and Political Rights, (1966), entered into force (1976), Article 12. UN Human Rights Committee (HRC), CCPR General Comment No. 27: Article 12 (Freedom of Movement), 2 November 1999, CCPR/C/21/Rev.1/Add.9.

Accessed October 31, 2015. <http://www.refworld.org/docid/45139c394.html>

⁴⁰ “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”. UN General Assembly, International Covenant on Civil and Political Rights, (1966), entered into force (1976), Article 26.

claiming to be victims of human rights violations can also submit an individual complaint in front of the HRC once they exhaust the domestic remedies.⁴¹

In General Comment No.27 it is noted that “ [s]tates have often failed to show that the application of their laws restricting the rights enshrined in article 12, paragraphs 1 and 2, are in conformity with all requirements referred to in article 12, paragraph 3”.⁴² Furthermore it is also noted that “[t]he application of restrictions in any individual case must be based on clear legal grounds and meet the test of necessity and the requirements of proportionality”.⁴³

In the case *Orazova v. Turkmenistan*, border officials prevented the author, a national of Turkmenistan, from leaving the country in January 2004 without any explanation. Similarly, after a couple of years her husband “was prevented from boarding a flight departing from Ashgabat to Moscow”.⁴⁴ The border officials also prevented their daughter from leaving the country. In July 2004, the author and her father were unlawfully arrested and detained for eight hours at a police station in Ashgabat. They were also prevented from traveling internally within the country of Turkmenistan. The author claimed violations of her rights under Article 2 (3), (a) and (b); Article 12 (1) and (2); Article 14 (1); and Article 17 (1) of the Covenant.

The HRC in this case has held that the national authorities “have imposed unjustified restrictions on her liberty of movement”⁴⁵ which resulted in violations of Article 12 (2). The HRC referred to General Comment No.27 on freedom of movement and stated that the “liberty of movement is an

⁴¹ UN General Assembly, Optional Protocol to the International Covenant on Civil and Political Rights, (1966), entered into force (1976).

Unfortunately this opportunity has not been sufficiently used by the Roma people.

⁴² UN Human Rights Committee (HRC), CCPR General Comment No. 27: Article 12 (Freedom of Movement), 2 November 1999, CCPR/C/21/Rev.1/Add.9, para.16. Accessed October 31, 2015.
<http://www.refworld.org/docid/45139c394.html>

⁴³ Ibid.

⁴⁴ *Orazova v. Turkmenistan*, CCPR/C/104/D/1883/2009, adopted on 12-30 March 2012, para. 2.1.

⁴⁵ Ibid. para. 7.2.

indispensable condition for the free development of the individual”.⁴⁶ Furthermore, it also noted that the rights covered by Article 12 are not absolute so they might be restricted with permissible limitations that are prescribed under Article 12 (3).⁴⁷ In its decision, the HRC noted in reference to General Comment No.27 that “it is not sufficient that the restrictions serve the permissible purposes; they must also be necessary to protect them and that restrictive measures must conform to the principle of proportionality; they must be appropriate to achieve their protective function”.⁴⁸ The HRC also adopted identical views in the cases of *Sayadi and Vick v. Belgium*,⁴⁹ and *Batyrov v. Uzbekistan*.⁵⁰

The International Convention on Elimination of All Form of Racial Discrimination (ICERD) also contains a mention of the protection of freedom of movement in combination with protection against racial discrimination. Similarly as in ICCPR, UDHR and ECHR, the ICERD in Article 5 (d) (i) (ii) obliges the state to eliminate racial discrimination when the persons exercise their right to freedom of movement and residence.⁵¹ Moreover, the ICERD in Article 1 defines the term racial discrimination as “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life”.⁵² The Committee on the Elimination of All Forms of Racial Discrimination (CERD) performs monitoring through different mechanisms such as: early-warning procedure, inter-state

⁴⁶ Ibid. para. 7.3.

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ *Sayadi and Vick v. Belgium*, CCPR/C/94/D/1472/2006, adopted on 22 October 2008.

⁵⁰ *Batyrov v. Uzbekistan*, CCPR/C/96/D/1585/2007, adopted on 30 July 2009.

⁵¹ UN General Assembly, International Convention on the Elimination of All Forms of Racial Discrimination, 21 December (1965), Article 5.

⁵² Ibid. Article 1.

complaints and individual complaints.⁵³ State parties are obliged to submit reports to the CERD for the steps that countries are taking for the implementation of human rights

The European Convention on Human Rights (ECHR) in Protocol 4 Article 2 defines freedom of movement, as “Everyone within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence... Everyone shall be free to leave any country including his own”.⁵⁴ According to the same article, the right can be restricted under specified reasons such as prevention of crime, public order, public safety, protection of health and morals, and the protection of the rights and freedoms of others.⁵⁵

Like the other amendments of the legal framework described above, this one also raises certain human rights concerns of a different nature that are highlighted in a recent judgment by the ECtHR, *Stamose v Bulgaria*.⁵⁶ This case dealt with certain requirements imposed by the European Union on third countries. This case is relevant to the Macedonian one because the Bulgarian law was adopted at a time when Bulgaria was in negotiation with the EU to become a member and the aim of the law was to prevent abuse of the visa regime.

In the case *Stamose v. Bulgaria*, the applicant complained that the Bulgarian border police imposed on him a two-year ban for breaching a US immigration laws. The applicant claimed that the restrictions that were imposed on him were disproportionate. As a result, he was prevented

⁵³ UN Committee on the Elimination of Racial Discrimination (CERD), UN Committee on the Elimination of Racial Discrimination: Concluding Observations, Canada, (2007), CERD/C/CAN/CO/18.

⁵⁴ Council of Europe, Protocol 4 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain Rights and Freedoms other than those already included in the Convention and in the First Protocol thereto, 16 September 1963, ETS 46. Article 2.

Accessed October 31, 2015. http://www.echr.coe.int/Documents/Convention_ENG.pdf

Total number of ratifications/accessions 43, status as of 08/11/2015.

Accessed November 11 2015. http://www.coe.int/en/web/conventions/search-on-treaties/_conventions/treaty/046/signatures?p_auth=B7uZB2uu

⁵⁵ Ibid.

⁵⁶ ECtHR. *Stamose v. Bulgaria*, Application No. 29713/05, 2012.

from visiting his family. In its judgment, the ECtHR held that the imposed travel ban on the applicant for a period of two years imposed by Bulgaria on its own citizen for having breached a US immigration law constitutes a violation of the right to leave any country including his own⁵⁷ which is a protected right under Article 2, Protocol No. 4 of the ECHR. Furthermore, the ECtHR found⁵⁸ that the seizure of the applicant's passport and the travel ban resulted in interference with his rights and argued that it was disproportionate to prohibit the applicant automatically to travel because he had violated the immigration law.

In the view of the ECtHR such indiscriminate measures for having breached the immigration law of a foreign country cannot be considered as proportionate because it may fail to meet the legitimate aim, and it appears that this type of measure is quite draconian.⁵⁹

Article 14 of the ECHR guarantees the freedoms of all rights and prohibits all forms⁶⁰ of discrimination. Article 14 “does not prohibit all different treatment – only different treatment that is based on identifiable, objective or personal characteristics and without reasonable justification”.⁶¹

In the case *Timishev v. Russia*,⁶² the applicant who is a Russian national of Chechen ethnicity alleged a violation of Article 2 Protocol No.4 in conjunction with Article 14 of the ECHR. The applicant was born in the Chechen Republic and his property had been destroyed because of a military operation. For this reason he was forced to move to Nalchik, the capital city of a neighboring republic Kabardino – Balkar. As a displaced person, he applied for permanent

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ “sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status” - European Convention on Human Rights, Article 14.

⁶¹ Gunther, Caitlin T, “France’s Repatriation of Roma: Violation of Fundamental Freedoms”, Cornell International Law Journal; Winter2012, Vol. 45 Issue 1, Article 5, pp.220.

⁶² ECtHR. *Timishev v. Russia*, Application No. 55762/00 and 55974/00, 2005.

residence in Nalchik but his application was rejected. One day while traveling from Ingushetia to Kabardino – Balkar, he was stopped at a checkpoint between the two republics. The public authorities refused him to enter Kabardino – Balkar on the explanation that the Ministry of Interior of Kabardino – Balkar had instructed them “not to admit persons of Chechen ethnic origin”.⁶³

The ECtHR when defining racial discrimination it took into consideration Article 1 of the ICERD. In determining a violation of Article 2 Protocol No.4 the ECtHR held that the restrictions “should be in accordance with law”.⁶⁴ The ECtHR further noted that the restriction should “pursue one or more of the legitimate aims contemplated in paragraph 3 be necessary in a democratic society.... or be justified by the public interest in a democratic society”.⁶⁵ As the instruction was given orally by the Head of the Police, it appeared that this order was not legally formalized.⁶⁶ Therefore, the ECtHR found that the restriction on the applicant’s right to freedom of movement was not in accordance with the law.⁶⁷

When determining whether there was discrimination on the basis of Article 14 of the ECHR the ECtHR took into consideration the submission of the Government. On the submission it was stated that the “Russian Constitution did not require citizens to make known their ethnic origin and it was not indicated in a person's identity documents”.⁶⁸ Taking into consideration this submission that one’s person ethnicity is not written anywhere, the ECtHR concluded that the seniors officer’s order not to admit Chechens had impact “not only of any person who actually was of Chechen ethnicity, but also of those who were merely perceived as belonging to that

⁶³ Ibid. para.13.

⁶⁴ Ibid. para.45.

⁶⁵ Ibid.

⁶⁶ Ibid. para.48.

⁶⁷ Ibid para.49.

⁶⁸ Ibid. para.52.

ethnic group”.⁶⁹ It is further noted that other ethnicities had not claimed similar restrictions.⁷⁰ On the basis of these facts, the ECtHR stated that there was a clear inequality of treatment in exercising the freedom of movement on the basis of one’s ethnic origin. In the Court’s view, ethnicity and race are overlapping concepts and any different treatment that has no objective reason and objective justification will constitute discrimination.⁷¹ Furthermore, the ECtHR noted: “discrimination is a particularly invidious kind of discrimination and, in view of its perilous consequences, requires from the authorities special vigilance and a vigorous reaction”.⁷² On this note, the ECtHR called the authorities to combat racism with all available means. Accordingly, the ECtHR found that there had been a violation of Article 14 in conjunction with Article 2 Protocol No.4 to the ECHR.

⁶⁹ Ibid. para.54.

⁷⁰ Ibid.

⁷¹ Ibid. para.56.

⁷² Ibid.

Chapter 2. Freedom of movement of Roma people

A. Freedom of movement of Roma people in Macedonia - restrictions at national level

The aim of this chapter is to show that the restrictions on freedom of movement towards Roma people in Macedonia are based on illegal grounds. This chapter will discuss the restrictions on the freedom of movement in Macedonia, and it is divided into four parts. First, I will describe the background of Roma people in Macedonia by presenting their social, economic and political position in the Macedonian society. Secondly, I will introduce the aim of the visa liberalization and how Macedonia was granted this liberalization. In the second part, I will also describe the problems after the visa liberalization was awarded to Macedonian citizens and, in particular, the problems that the Roma community faces when they try to leave the country. In the third part of this chapter I will discuss the legal and policy framework that the Macedonian government adopted to protect the visa-free regime. It will describe how the freedom of movement is defined in the national legislation of Macedonia, how the government was amending the laws for protecting the visa-free regime, and what kinds of practices the government undertook to prevent the “potential” asylum seekers from crossing the borders. Moreover, in the third part I will present the role of the European institutions regarding this issue. In the last part of this chapter, I will analyze some decisions of the primary courts and the decision of the Constitutional Court concerning the freedom of movement of Roma people in Macedonia. In this chapter, I will answer the research question about the ways the freedom of movement is restricted when it comes to the Roma people in Macedonia.

1.1 Background of Roma people in Macedonia

According to the census⁷³ of 2002, Macedonia has 2,022,547 inhabitants. In that census, the number of Roma is declared to be 53,879 or 2.66 % of the total population. However, in a report by the World Bank, some NGOs claim that the number⁷⁴ of Roma in Macedonia is much higher, reaching 135,490 people, or 6.77 % of the total population. As stated in the official report⁷⁵ there are different sub-ethnic groups of Roma in Macedonia, indicating that 90% of the Roma are Muslims, that Romani is the first language of 80% of Roma, and that they live in 75 out of 85 municipalities in the country. The last census in Macedonia was held in 2011, but due to the political disagreements about how some articles⁷⁶ of the law for census should be interpreted, the State Census Commission resigned, and the process was interrupted and canceled.⁷⁷ As a result, in Macedonia there are no recent official data on the population and the households.

The Roma people in Macedonia are explicitly recognized in the Preamble⁷⁸ of the Constitution as a constituent ethnic community in which they are given full equality as citizens with the other

⁷³ State statistical office, Census of population, households and dwellings in the Republic of Macedonia, Final data, (2002). Accessed October 31, 2015. http://www.stat.gov.mk/pdf/kniga_13.pdf

⁷⁴ D. Lakinska, A. Memedova, Z. Durmis, Lj. Demir. Assessment of Priority Areas of Activity and Potential Financing Needs in the Republic Macedonia for the International REF. Skopje: World Bank, 2004, Table 2. Unofficial data on the number of Roma in Macedonia, according to Elezovski (2003). Accessed October 31, 2015. http://www-wds.worldbank.org/external/default/WDSPContentServer/WDSP/IB/2006/02/28/000090341_20060228112346/Rendered/PDF/352070MK0NA0Report.pdf

⁷⁵ Statistical Yearbook of the Republic of Macedonia, (2013). Accessed October 31, 2015. <http://www.stat.gov.mk/Publikacii/PDFGodisnik2013/03-Naselenie-Population.pdf>

⁷⁶ Articles concerning the method for counting the citizens who work abroad. Law on the census of population households and dwellings in Macedonia, Article 6 para.3, Articles 40 and 42, published in: Official Gazette of the Republic of Macedonia, Nr.156/2010.

⁷⁷ European Commission, Staff working document, Progress report, SWD (2012) 332 final, (2012).

⁷⁸ The citizens of the Republic of Macedonia, the Macedonian people, as well as citizens living within its borders who are part of the Albanian people, the Turkish people, the Vlach people, the Serbian people, the Romany people, the Bosniak people and others taking responsibility for the present and future of their fatherland, aware of and grateful to their predecessors for their sacrifice and dedication in their endeavors and struggle to create an independent and sovereign state of Macedonia, and responsible to future generations to preserve and develop everything that is valuable from the rich cultural inheritance and coexistence within Macedonia, equal in rights and obligations towards the common good - the Republic of Macedonia - in accordance with the tradition of the Krushevo Republic and the decisions of the Antifascist People's Liberation Assembly of Macedonia, and the

ethnic groups who live in Macedonia. This has helped Roma to be present at the political level. Thus, there are two Roma members of Parliament out of 123, one is in the opposition, and the other one is in coalition with the current governing party. In addition to this, there is a Roma who is a deputy minister for social and labor affairs, and another one who is a minister without portfolio. In 2013, an ethnic Roma was elected as a Deputy Ombudsman in Macedonia's capital of Skopje.⁷⁹

Macedonia is one of the member countries that signed the Decade⁸⁰ of Roma Inclusion in 2005. The decade covers four priority areas: education, employment, housing and health. The official body for implementing the decade in Macedonia is the Ministry of Labor and Social Policy. In 2008, Macedonia established a position of "minister without portfolio"⁸¹ which is led by an ethnic Roma individual who has been named the National Coordinator of the Decade.

As I previously mentioned, Roma are dispersed around the country but the biggest number of Roma live in the municipality of Shuto Orizari⁸², which is located in the capital city of Skopje. This is the only municipality where the Roma people are in majority. The mayor of the municipality is ethnic Roma, the "majority of the members of the municipal assembly are

Referendum of September 8, 1991, have decided to establish the Republic of Macedonia as an independent, sovereign state, with the intention of establishing and consolidating the rule of law, guaranteeing human rights and civil liberties, providing peace and coexistence, social justice, economic well-being and prosperity in the life of the individual and the community, and, in this regard, through their representatives in the Assembly of the Republic of Macedonia, elected in free and democratic elections, adopt . . .

"Preamble of Constitution of the Republic of Macedonia", The Constitution of the Republic of Macedonia. 1991. Accessed November 1, (2015). Accessed October 31, 2015. <http://www.sobranie.mk/the-constitution-of-the-republic-of-macedonia.nspx>.

⁷⁹ "Ombudsman of the Republic of Macedonia." Accessed November 1, 2015.

http://www.ombudsman.mk/EN/about_the_ombudsman/deputies.aspx.

⁸⁰ Decade of Roma Inclusion - Republic of Macedonia, Action Plans, Skopje, November (2004). Accessed October 31, 2015.

<http://romadecade.org/files/downloads/Decade%20Documents/macedonia%20Decade%20action%20plan.pdf>

⁸¹ Minister without portfolio, Government of R.Macedonia. Accessed October 31, 2015. <http://vlada.mk/node/62>

⁸² The municipality of Shuto Orizari. Accessed October 31, 2015. <http://www.sutoorizari.gov.mk/>

Roma”⁸³ and the Romani language is the second official language. Nonetheless, Roma people in Macedonia remain to be the most discriminated ethnicity in all segments of their everyday life.⁸⁴

1.2 Visa liberalization and “fake” asylum seekers

In 2009, the European Council decided to grant Macedonian citizens visa-free travel throughout the Schengen zone. The European Parliament and the Council recognized that Macedonia successfully fulfilled all conditions for visa liberalization. As a result, the Regulation (EC) No.539/2009 was amended and allowed Macedonia to join the visa-free regime.⁸⁵ With the decision of the Council, free visa travel was also given to Serbia and Montenegro. The decision entered into force on 19 December 2009. Citizens who hold biometric passports can travel without a visa throughout the twenty-six states in the Schengen zone⁸⁶, and “their stay should not exceed 90 days within the period of 180 days counting from the date of first entry”.⁸⁷

The visa-free regime requires not only biometric passports but also the fulfillment of certain conditions such as proof of sufficient financial means, proof of the aim of traveling, and proof

⁸³ European Roma Rights Center, Report, Country Profile, 2011-2012, pp.18.

⁸⁴ Human Rights Council, Universal Periodic Review, Compilation prepared by the Office of the United Nations High Commissioner for Human Rights, A/HRC/WG.6/18/MKD2, (2013). Accessed October 31, 2015.

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/185/96/PDF/G1318596.pdf?OpenElement>

⁸⁵ Council of the European Union, Visa liberalization for Western Balkan Countries, 16640/09, Brussels, November (2009). Accessed October 31, 2015.

http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/111561.pdf

⁸⁶ Official Journal of the European Union, Agreement between the European Community and the Former Yugoslav Republic of Macedonia on the facilitation of the issuance of visas, L 334/125, Article 1, December (2007). Accessed October 31, 2015.

[http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22007A1219\(08\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22007A1219(08)&from=EN)

⁸⁷ Elvis Shakkjiri, Discrimination against Roma at the borders of Macedonia, State obligations regarding freedom of movement in International and European Human Rights Law, Central European University, (2014), pp.3.

See more: Official Journal of the European Union, Agreement between the European Community and the Former Yugoslav Republic of Macedonia on the facilitation of the issuance of visas, L 334/125, Article 1, December (2007). Accessed October 31, 2015.

[http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22007A1219\(08\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22007A1219(08)&from=EN)

that the passenger is not a threat to the public health, security, or public order for the country of destination.⁸⁸

On the one hand, the visa-free regime was seen as a step forward to the EU integration process, and it was supposed to diminish the skepticism towards the EU. However, on the other hand, the visa liberalization had an immense impact on the number of asylum applicants from Macedonia. With the start of the visa liberalization, the first cases of Macedonian asylum applications began in the EU countries.⁸⁹ The number of asylum applications significantly increased⁹⁰, mostly in Sweden, Belgium and Germany, and the most frequent reasons for seeking asylum are unemployment, lack of schooling and health care in the country.⁹¹ One of the bases of claiming asylum protection is the fact that Macedonia is a partially free country in terms of human rights protections.⁹² These three countries declared that most of the asylum applications had been submitted by ethnic Roma from Macedonia. This information is highly problematic, given that these countries does not or should not register the ethnic background of asylum seekers.

The wave of asylum seekers was seen as a problem for the destination countries because they had to provide the applicants with certain benefits. In fact, governments of countries in which asylum applications are lodged have to bear the financial and administrative burden.⁹³ In March

⁸⁸ Official Journal of the European Union, Agreement between the European Community and the Former Yugoslav Republic of Macedonia on the facilitation of the issuance of visas, L 334/125, (2007).

⁸⁹ Elvis Shakjiri, Discrimination against Roma at the borders of Macedonia, State obligations regarding freedom of movement in International and European Human Rights Law, Central European University, (2014).

⁹⁰ For example, UNHCR data for 2010 show that EU member states and Switzerland received many applications from "the former Yugoslav Republic of Macedonia". Accessed October 31, 2015.

<http://www.unhcr.org/4ef9cc9c9.html>

See, Report by Nils Muiznieks, Council of Europe Commissioner for Human Rights, (2012). Accessed October 31, 2015. <https://wcd.coe.int/ViewDoc.jsp?id=2052823>

⁹¹ Ibid.

⁹² "Freedom House - Report Macedonia", Macedonia, (2014). Accessed November 1, 2015. https://freedomhouse.org/report/freedom-world/2014/macedonia#.VRVIQ_nF_z8.

⁹³ A trio of "Directives" guides EU asylum policy: the Asylum Procedures Directive, the Asylum Qualification Directive, and the Asylum Reception Conditions Directive. See Council Directive 2005/85, 2005 O.J. (L 326) 13, 14

2010, the Belgian Prime Minister visited Macedonia. His intent was to visit the places where most of the asylum applicants had come from. He urged the local authorities to take some measures to stop the mass influx. For the media, he announced, “My country does not give political asylum to economic refugees, so there is no sense in traveling to Belgium from Macedonia for the purpose of seeking political refugee status”.⁹⁴

In 2010, the EU warned Macedonia that they might withdraw the free regime for Macedonia and Serbia. As a consequence the Macedonian Minister of Interior proposed an amendment to the criminal law, making it illegal to seek asylum if there are no substantial grounds for it, such as political reasons. Furthermore, the Ministry enhanced the border checks and created a profile of so-called “bogus” asylum seekers, which mainly targeted Roma people.

In order to reduce the pressures by the EU, the Macedonian government prevented thousands of its citizens (mainly Roma) from leaving the country. The Roma were prohibited from leaving the country if the border police suspected them of being “potential” asylum seekers in EU countries. As reported by the CoE between 2009, when the visa-free regime was granted, and 2012, there were about 7,000 Roma who were prevented from leaving the country or had their passports

(EC)[hereinafter Asylum Procedures Directive]; Council Directive 2011/95, 2011 O.J. (L 337) 14 (EU) [hereinafter Asylum Qualifications Directive]; Council Directive 2003/9, 2003 O.J. (L 31) 18 (EC) [hereinafter Asylum Reception Conditions Directive].

⁹⁴ Belgian PM Yves Leterme in Official Visit to Skopje in “Selective Freedom: The Visa Liberalization and Restrictions on the Right to Travel in the Balkans”, (2012), pp.33. Accessed November 1, 2015.
https://romarights.files.wordpress.com/2012/07/chachiye visa liberalisation report_270612.pdf.

confiscated by police officials.⁹⁵ The CoE argues that these “measures interfered with the internationally established right to leave the country and undermined the right to seek asylum”.⁹⁶

In summary, Macedonia as a country, which strives to join the EU and to prove its worth as a potential member, had to comply with the requests of the EU to prevent its citizens from seeking asylum. The government introduced new laws and practices that aimed to prevent the “fake” asylum seekers from crossing the borders. These policies and practices resulted in restricting the freedom of movement, racial profiling and discrimination at the borders of Macedonia.

1.3 Legal and Policy Framework

Freedom of movement and the right to travel are seen as a great achievement for a democratic society. As I previously stated, freedom of movement is a principle that can be found in different international conventions. The UDHR in Article 13 stipulates that “[e]veryone has the right to leave any country, including his own, and to return to his country”.⁹⁷ Article 2 of Protocol No. 4 of the ECHR also recognizes the right to freedom of movement: “Everyone shall be free to leave any country including his own”.⁹⁸ The same article stipulates that this right can be restricted for

⁹⁵ UN Human Rights Council, *Summary : [Universal Periodic Review] : The Former Yugoslav Republic of Macedonia / prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21*, 4 November 2013, A/HRC/WG.6/18/MKD/3, pp.7.

⁹⁶ Elvis Shakjiri, *Discrimination against Roma at the borders of Macedonia, State obligations regarding freedom of movement in International and European Human Rights Law*, Central European University, (2014), pp.8. See more: UN Human Rights Council, *Summary : [Universal Periodic Review] : The Former Yugoslav Republic of Macedonia / prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21*, 4 November 2013, A/HRC/WG.6/18/MKD/3, para.41, pp.7.

⁹⁷ UN General Assembly, *Universal Declaration of Human Rights*, Article 13, 10 December (1948), 217 A (III). Accessed October 31, 2015. <http://www.refworld.org/docid/3ae6b3712c.html>

⁹⁸ Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms*, supplemented by Protocols Nos. 1, 4, 6, 7, 12 and 13, November (1950), ETS 5. Accessed October 31, 2015. <http://www.refworld.org/docid/3ae6b3b04.html>

specified reasons such as public order, protection of health and morals, security, and the protection of the rights and freedoms of others. In practice, the freedom of movement collides with the presumption that a democratic society might protect its borders from foreigners by closing them when necessary.

Many of the international human rights treaties have been ratified by Macedonia. Both the ECHR and the ICCPR are also part of the adopted treaties. Some of the provisions regarding the freedom of movement stipulated in these treaties are incorporated into the domestic laws of Macedonia.

Freedom of movement is also enshrined in Article 27 of Macedonia's Constitution:

“Every citizen of the Republic of Macedonia has the right of free movement on the territory of the Republic and freely to choose his/her place of residence. Every citizen has the right to leave the territory of the Republic and to return to the Republic. The law may restrict the exercise of these rights only in cases where it is necessary for the protection of the security of the Republic, criminal investigation or the protection of people's health”.⁹⁹

As we can note from this article, the lack of resources for traveling, and the inability to prove the purpose of traveling are not amongst the reasons for restricting the right of movement. Moreover, nor in the Constitution it is stated that a person should convince the border guard that he/she is not a “potential” asylum seeker in a foreign country. At this point, we may note that the enormous pressure by the EU towards the Macedonian government resulted in giving too much power to the border guards in deciding whether someone can leave the country or not.

⁹⁹ Constitution of the Republic of Macedonia, Official Gazette of the Republic of Macedonia, Nr.52/1991, 22.11.1991.

In 2011, the European Parliament and the Council proposed a safeguard clause,¹⁰⁰ a “suspension mechanism” that allows reintroducing visas for citizens of third countries who can travel without visas in the EU. The mechanism could be used in cases of increased numbers of migrants and “unfounded requests” or rejections of “unfounded asylum seekers”. The European Parliament and the Council adopted the safeguard clause in 2013.¹⁰¹

These measures were heavily criticized by the Commissioner for Human Rights, Thomas Hammarberg, who argued that these pressures on preventing people from traveling jeopardize already established human rights such as the right to leave.¹⁰² The right to leave is guaranteed not only by the Constitution of Macedonia, but also in the UDHR and the ECHR, of which treaties Macedonia is a party. Moreover, Hammarberg claims that not everyone can be checked at the borders. As a consequence, selection is made on the basis of ethnic profiling and targets just the Roma population. Ethnic profiling at the borders can be seen as another layer of discrimination against Roma in Macedonia.

The European Commission (EC) tried to justify the measures taken at the borders of Macedonia by claiming that the fact that most of the requests are from the Roma population does not mean that the actions to fight against the abuse of visa-free regime are discriminatory.¹⁰³ Professor

¹⁰⁰ Council of the European Union: Press release: 3135th Council meeting Justice and Home Affairs, Brussels, (2011), pp.10. Accessed October 31, 2015.

http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/126932.pdf

¹⁰¹ Council of the European Union, Council amends EU visa rules, 17328/13, (2013).

http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/139926.pdf

¹⁰² Council of Europe Commissioner for Human rights, Human rights comment from the Council of Europe's Commissioner for Human Rights, the right of the individual to leave his or her country is an established human right, (2011).

<http://www.ein.org.uk/news/coe-right-leave-ones-country-should-be-applied-without-discrimination>

¹⁰³ European Parliament, Parliamentary questions, Answer given by Ms Malmstrom on behalf of the commission, (2012). Accessed October 31, 2015. <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2011-012329&language=EN#def1>

Biljana Vankovska criticized this statement made by the EC, of which she notes that “Yet, the EU officials conveniently forget about the profiling procedures”.¹⁰⁴

This statement of the EC is also contradictory with its second report where the EC admits that in order to counteract this phenomenon the Macedonian authorities enhanced the border checks and profiling.¹⁰⁵

Furthermore, a member of the European Parliament, Barbara Lochbihler addressed¹⁰⁶ a question to the EC asking if there were some formal and particular criteria for the persons who wish to leave the country to justify their intent to travel and to show their means. To this question Ms. Malmstrom, on behalf of the EC, responded that the Schengen Borders Code regulates these matters.¹⁰⁷

I argue that Ms. Malmstrom forgets that the Schengen Agreement applies to entry conditions for those countries having borders with the EU. In the Macedonian case, most of the Roma were returned from the border between Macedonia and Serbia, countries that are not part of the EU. Moreover, Macedonia and Serbia have a bilateral agreement that their citizens can travel from Macedonia to Serbia and vice versa with personal ID without the need of a passport. Thus the

¹⁰⁴ Biljana Vankovska, The Visa Liberalisation and the Republic of Macedonia: Two sides of the Coin, *European Perspectives – Journal on European Perspectives of the Western Balkans*, Vol. 6, No. 1(10), (2014), pp. 131.

¹⁰⁵ “To counteract this phenomenon [the increase of so-called unfounded asylum applications by Macedonian citizens] the national authorities introduced a set of measures, including public information campaigns, focusing in particular on the vulnerable groups most likely to be involved, as well as preventive measures like enhanced border checks and profiling.” European Commission: Commission staff working paper: The former Yugoslav Republic of Macedonia 2011 Progress report, SEC(2011) 1203 final, Brussels, (2011), pp.66.

¹⁰⁶ 1. Has there been any formal requirement for the countries concerned to adopt elements of the Schengen Borders Code, in particular the entry criteria, including the need for persons wishing to leave these countries and enter the EU to provide details of their travel plans and means of subsistence, or have the countries otherwise been asked to operate exit controls? If so, please specify. “Parliamentary questions – Question for written answer to the Commission Rule 117, Barbara Lochbihler, European Parliament, (2012). Accessed October 31, 2015.

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+WQ+E-2011-012329+0+DOC+XML+V0//EN>

¹⁰⁷ No, it has not. The Schengen Borders Code (2) regulates the conditions for entry and exit to and from the territory of Member States of the European Union. “Parliamentary questions - Answer given by MS Malmström on behalf of the Commission, (2012). Accessed October 31, 2015.

<http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2011-012329&language=EN#def1>

question that arises is how and why the EU can require Macedonia to implement the Schengen Rules and why Roma specifically are prevented from entering Serbia?

Another argument that speaks about the heavy involvement of the EU in this matter is the EC 2014 strategy and progress report for Macedonia.¹⁰⁸ In this report, the EC provides an overview of the situation and the problems¹⁰⁹ of Roma people in Macedonia by mentioning them 28 times. However, the report does not mention anything regarding the restrictions on the free movement of Roma people in Macedonia while for the Roma people in Macedonia, this is among the biggest problems they have been facing in the last six years.

In December 2010, the Macedonian Parliament adopted a new law of border surveillance. With this law, some provisions of the Schengen Borders Code were transposed into national legislation. Article 15 paragraph 4 provides that the border officials have extensive powers to conduct checks on people crossing borders. These controls are aimed at determining whether the person who travels can pose any threat to the public policy, national security, public health or international relations.¹¹⁰ In this regard, I would like to point out that the international relations as given in this law is not found in the Constitution of Macedonia as a ground for denying someone to pass through the borders.

¹⁰⁸ European Commission, Progress Report for the “Former Yugoslav Republic of Macedonia”, (2014). Accessed October 31, 2015. http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-the-former-yugoslav-republic-of-macedonia-progress-report_en.pdf

¹⁰⁹ The Roma community continues to live in deep poverty and to suffer from poor social and economic conditions. Prejudice and discrimination against Roma persists, particularly in the area of employment. “European Commission, Progress Report for the “Former Yugoslav Republic of Macedonia”, (2014), pp.33.

¹¹⁰ Article 15, Law on Border Surveillance, published in: Official Gazette of the Republic of Macedonia, Nr. 171/10, 30.12.10, (4) The implementation of minimum border checks on persons nationals of the Republic of Macedonia, and over those who enjoy the Community law on free movement, the police officer may, on a non-systematic basis, check in the appropriate records and electronic databases if they pose a threat to people, national security, public policy, international relations or a threat to public health.

With this paragraph, the government tried to legitimize the travel bans for those citizens who were suspected of intending to seek asylum in one of the EU countries. In one of her speeches before Parliament, the Minister of Interior claimed that those who apply for asylum are harming the national interest. Therefore “... if there are indications that a citizen has the intention to travel to a Member State of the European Union for the purpose of abusing the right to asylum, he cannot be allowed to leave Macedonia,,,everything is regulated by the Law on Border Surveillance, which was adopted by this Assembly (...), (...) read article 15 paragraph 4 of this specific law”.¹¹¹ Furthermore she claimed that those suspected of seeking asylum “would not only be refused to exit but additionally will have their passports stamped”.¹¹² In this regard, I argue that there is neither an international nor a national definition by destination countries of the abuse of the visa liberalization, which is the case just in Macedonia.

Additionally in 2011, the government amended the Criminal Law by introducing a new criminal offense: the abuse of the visa-free regime with the EU/Schengen member states. The new law stipulates that:

“Whosoever recruits, instigates, organizes, shelters or transports persons to a member state of the European Union or of the Schengen Agreement in order to acquire or exercise social, economic or other rights, contrary to the law of the European Union, to the regulations of the member states of the European Union and to the Schengen Agreement

¹¹¹ “Selective Freedom: The Visa Liberalization and Restrictions on the Right to Travel in the Balkans”, (2012), pp.36.

¹¹² KOD lažni azilanti, Kanal 5, mins. 11.50 – 12.19, KOD is a unique TV news magazine in Macedonia, the first magazine dedicated to investigate corruption, criminal in the country and the law system in Macedonia, <https://www.youtube.com/watch?v=vEUD4qObrvU>

and to international law shall be sentenced to a minimum of four years of imprisonment”¹¹³

With this law, the government aimed to threaten not only individuals but also the travel companies that transport people internationally. Some of the travel companies were closed down and were sanctioned financially, and some managers or employees were even jailed, but there was no explanation from the government how the travel companies would know if some of their passengers would be seeking asylum in a foreign country. In many cases, the Prime Minister of Macedonia promised that the government would try to improve the socio-economic situation in the areas where the asylum seekers mostly come from. Nevertheless, nothing was done in the end. It was easier for the government to implement punitive measures against those who seek asylum or look like they are going to do so.

Apart from amending the Criminal Law, the EU pressure resulted in amending the Law on Travel Documents of Citizens of the Republic of Macedonia.¹¹⁴ Thus, Article 37 of that law has been modified by adding a new reason for denying the request to issue a passport or revocation of a passport at point 6: “The person who is forcibly returned or expelled from another state for conduct contrary to the regulations can be denied for issuing a passport or visa”.¹¹⁵

The Roma, who are prevented from leaving the borders, receive two letters ‘AZ’ (asylum) on their passports, meaning that the person is a “potential” asylum seeker and, for this reason, he/she is not allowed to leave the country. In this regard, this is openly supported by the Minister

¹¹³ Criminal Code, published in: Official Gazette of the Republic of Macedonia, Nr. 135/2011, (2011).

¹¹⁴ Law on Travel Documents of Citizens of the Republic of Macedonia, published in: Official Gazette of the Republic of Macedonia, Nr.67/1992.

¹¹⁵ Ibid, Point 6 of paragraph 1 of Article 37 has been abolished by a Decision of the Constitutional Court of the Republic of Macedonia U. no. 189/2012 of 25 June 2014, published in the "Official Gazette of the Republic of Macedonia" no. 106/2014.

of Interior who claims that the purpose of writing ‘AZ’ is to warn the border guards that the passport holder might be a “potential” asylum seeker and, for this reason, he/she has to be subject to additional checking in order to prevent eventual damage to the reputation of Macedonia and to prevent them from abusing the liberalization.¹¹⁶ We may note at this point that the police officials make their decision on the basis of prejudices and stereotypes towards the Roma people. Moreover, the police officers do not comply with the legal obligation to provide the persons who are returned from the borders with a document stating the reasons why they are returned.

In this regard, I would like to highlight the ECtHR’s case of *Sissanis v. Romania*.¹¹⁷ The applicant, in this case, was prohibited twice from leaving the country. The police officials did not let him leave the country and stamped his passport with the letter ‘C’. He claimed that any preventive measures prohibiting him from passing through the borders and stamping his passport had to be ordered by legal service and in his case the stamp on his passport was instructed by the police officials. The applicant requested from the courts that the letter on his passport be removed, and he claimed for pecuniary and non-pecuniary damages.

The ECtHR, in this case, stated that if a person is dispossessed of his/her passport this will interfere with the freedom of movement. Furthermore, the ECtHR claimed that although the applicant’s passport was not taken, the letter on his passport prevented him from being able to make use of the passport to leave the country. Thus, this amounted to a restriction of his freedom of movement. Article 12, paragraph 3 of the ICCPR list the grounds for restricting the freedom

¹¹⁶ "Pečati Za Lažne Azilante", Radio Televizija - Srbija, 23 May, (2011). Accessed October 31, 2015.

<http://www.rts.rs/page/stories/sr/story/11/Region/896248/Pe%C4%8Dati+za+la%C5%BEn+azilante.html>

¹¹⁷ ECtHR, *Sissanis v Romania*, Application no. 23468/02, (2007).

of movement.¹¹⁸ Eventual restrictions that do not meet these grounds would result in a violation of the freedom of movement.¹¹⁹ Moreover, the HRC in its General Comment states in paragraph 12 that “[t]he law itself has to establish the conditions under which the rights may be limited”¹²⁰ and “[t]he laws authorizing the application of restrictions should use precise criteria and may not confer unfettered discretion on those charged with their execution”.¹²¹

In its 2013 report, Amnesty International noted the same issues regarding the government’s adoption of increasingly repressive measures to prevent the Roma people from exercising their right to freedom of movement.¹²² In addition, it stated that the marking of passports of suspected “bogus” asylum seekers results in preventing the Roma from leaving the country again.¹²³

This kind of approach by the EU and the Macedonian government has a very substantial impact on the rights of the minorities. Some of the EU representatives claimed that these measures are not intended to target the Roma minority in Macedonia. In practice, the EU argues that the lack of Roma integration in the local communities is a push factor for the unfounded asylum applications.¹²⁴ According to the same report, they claim that the governments are committed to finding solutions to prevent the asylum seekers and some even produced positive results. Even though the report does not specify which measures concretely helped in decreasing the asylum

¹¹⁸ “are provided by law, are necessary to protect national security, public order (order public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant” – UN General Assembly, International Covenant on Civil and Political Rights, (1966), entered into force (1976), Article 12 para.3.

¹¹⁹ Human Rights Committee General Comment no.27 para.12, U.N. Doc CCPR/C/21/Rev.1/Add.9 (1999). Accessed October 31, 2015. <http://www1.umn.edu/humanrts/gencomm/hrcom27.htm>

¹²⁰ Ibid.

¹²¹ Ibid.

¹²² Amnesty International, Macedonia: Submission to the UN Universal Period Review 18th Session of the UPR Working Group, January – February (2014).

¹²³ Ibid.

¹²⁴ European Commission, Report from the Commission to the European Parliament and the Council, Third Report on the Post-Visa Liberalisation Monitoring for the Western Balkan Countries in accordance with the Commission Statement of 8 November 2010, COM(2012) 472 final.

seekers, I argue that the decreasing number of asylum seekers was achieved as a result of preventing the people from leaving the country. Furthermore, in the report they call upon states to strengthen exit controls (Macedonia) and entry controls (EU borders). These statements show that the EU supports ethnic profiling and discrimination at the borders.

The Meijers Committee¹²⁵ in the letter addressed¹²⁶ to the Commissioner for Home Affairs Cecilia Malmstrom, expresses her concerns arguing that the pressure from the EU on third countries interferes with the fundamental human rights such as the right to leave one's own country and to seek asylum, thus this type of pressure results in discriminatory practices at the borders. The Committee also notes that the third countries such as Macedonia not only do they revoke passports but also criminalize the act of violation of the immigration laws of a foreign country. Such measures target the minorities such as Roma because they are more likely to request asylum.

In 2013, the European Roma Rights Center (ERRC) conducted a research in which there were “74 cases of Roma who were prevented from leaving the country as well 24 case from Roma whose passports were confiscated by the police officials. In this research they found that 90% of Roma were asked to justify their reasons for traveling, 30% were told explicitly by the border officials that they cannot pass the border due to their ethnicity, 10% were refused because of not

¹²⁵ Standing Committee of experts on international immigration, refugee and criminal law, open letter addressed to Ms Cecilia Malmström Commissioner for Home Affairs European Commission B-1049 BRUSSELS, (2013). Accessed October 31, 2015.
http://www.commissiemeijers.nl/assets/commissiemeijers/CM1301%20Letter%20Meijers%20Committee%20on%20the%20implications%20of%20the%20ECtHR%20Stamose%20judgment%20for%20visa%20liberation%20negotiations_COM.pdf

¹²⁶ Ibid.

fulfilling the legal requirements to leave Macedonia (requirements that ERRC found were unlawful)".¹²⁷

The Bureau of Democracy noted that in 2011, more than 1,500 people, of whom mostly Roma, were prevented from leaving the Macedonian borders on the basis of being "potential" asylum seekers.¹²⁸ In their report for 2012 they noted that the Macedonian authorities for the first four months until April 2012 they prevented 8,322 people mostly Roma from leaving the borders.¹²⁹ In fact, the increasing number of Roma who were prevented from leaving the borders from 2011 to 2012 is almost 454.8%. It is clear that the bigger the pressure from the EU, the bigger the percentage of Roma were prevented from leaving.

The Commissioner for Human rights argued that the Macedonian officials received information from the EU countries and on the basis of this information they developed a profile of "fake" or "unfounded" asylum seekers. Furthermore, he claims that although the controls by the authorities are not aimed at a particular ethnic group. Indeed, there are clear indications that the Roma people are put at a disadvantage and disproportionately affected by the exit controls.¹³⁰

The Roma people who were prevented from leaving the country claimed that they are the only ones who are asked by the police officials to justify their reasons for traveling and that only they

¹²⁷ Elvis Shakjiri, Discrimination against Roma at the borders of Macedonia, State obligations regarding freedom of movement in International and European Human Rights Law, Central European University, (2014), pp.7. For more information find: Bikovski, Zoran, and Tefik Mahmut. "Macedonia- Creating a Padlocked Cage for Roma Called "Measures for False Asylum Seekers"" Journal of the European Roma Rights Center, (2014), pp.25. Accessed October 31, 2015. <http://www.errc.org/cms/upload/file/roma-rights-1-2014-going-nowhere-western-balkan-roma-and-eu-visa-liberalisation.pdf>.

¹²⁸ Bureau of Democracy, Human Rights and Labour, U.S. Department of State, *Country Report on Human Rights Practices for 2011 – Macedonia*. Accessed October 31, 2015. <http://www.state.gov/j/drl/rls/hrrpt/2011humanrightsreport/index.htm#wrapper>

¹²⁹ Bureau of Democracy, Human Rights and Labor, U.S. Department of State, *Country Report on Human Rights Practices for 2013 – Macedonia*, pp.12. Accessed October 31, 2015. <http://www.state.gov/documents/organization/220516.pdf>

¹³⁰ Council of Europe Commissioner for Human Rights, Report on his visit to "the former Yugoslav Republic of Macedonia". (2012), pp.24.

have to provide the officials with additional documents. A young Roma for KOD testifies “I have nothing against [these measures], but it is absurd to be returned because you have a different name and skin color it is even more absurd because my destination was Belgrade, Serbia, which is not even a member of the European Union”.¹³¹

Some of the Roma people who were prevented from leaving the Macedonian borders started legal procedures against the Ministry of Interior for restricting their right to freedom of movement.

1.4 Case Studies

The Constitutional Court of Macedonia declared¹³² some provisions of the controversial Law on Travel Documents as unconstitutional. According to the Court, the provisions of the Law that allowed state authorities to impose restrictions on the freedom of movement of Roma (Macedonian citizens) were incompatible with the Constitution of the Republic of Macedonia.

The Constitutional Court of the Republic of Macedonia found that the justifications for restricting freedom of movement were not legitimate. It pointed out that the grounds for restricting the right to leave the country are national security, the conduct of criminal procedure and public health. The protection of morals and the reputation does not fall within these categories. Moreover, the Court claimed that the adopted measures were disproportionate, and they imposed an excessive limitation on the right to freedom of movement. It also highlighted

¹³¹ “Selective Freedom: The Visa Liberalization and Restrictions on the Right to Travel in the Balkans”, (2012), pp.41.

¹³² Decision of the Constitutional Court, published in the "Official Gazette of the Republic of Macedonia" no. 106/2012, Const. No. 189/2012, (2014). Accessed October 31, 2015.
<http://www.mvr.gov.mk/Uploads/Odluka%20na%20Ustaven%20sud.pdf>

that the measures that were taken cannot be justified with the claim that they were imposed for the protection of national security because in this case it is not about entering the country, but rather about leaving one's own country. This issue raises the question of how a country would protect its own security if it is obvious that these measures are imposed for protecting the security of another state, i.e. the other states by protecting the rules of entry and residence of that State. By imposing these measures, the country implements sovereign rights of another state. Moreover, it raises the question in which way and how Macedonian state would make an estimation on the impaired security of the other states. The Court in its decision also referred to *Stamose v. Bulgaria*.

Therefore, the Court concluded that the provisions of the Law for travel documents were unconstitutional and in violation of Article 27 of the Constitution of the Republic of Macedonia.

In the report of the Helsinki Committee for November and December 2014, it is noted that few citizens of Roma origin asked the Helsinki Committee for legal advice because they were prevented from leaving the country. In the first case, a family with two children was removed from the train at the border between Macedonia and Serbia, and they were prevented from continuing their trip for a family celebration. On their passports, two lines were written indicating that they were "potential" asylum seekers. In the other case, a Roma was prevented from traveling to France from the airport in Skopje, although he had sufficient financial means, a return ticket, and a letter of warrant.

This kind of discriminatory practice for restricting the freedom of movement and racial profiling of Roma is familiar for most of the public institutions, and this type of practice continues with the same intensity. In the cases where the police officials tell the citizens that they cannot pass the border because they are "potential" asylum seekers, it is against the constitutional rights that

are guaranteed by the Constitution. This is also confirmed in the opinion of the Ombudsman¹³³ and the decision of the Constitutional Court. The Organization for Security and Cooperation in Europe (OSCE), the Macedonian Ombudsman, and the Helsinki Committee organized a conference on freedom of movement of Roma in Skopje. On this conference, more than sixty representatives were coming from different positions such as ministries, ambassadors, public prosecutors, judges and national and international organizations. On this conference, the representative from the sector for border control (sector under the Ministry of Interior) openly declared that they do make racial profiling at the borders “We separate them in our practice, I do not hide that we take them (Roma) out from the buses”.¹³⁴

After five years of this type of practice, a Roma family that was returned from the border lodged a lawsuit in front of the primary court in Skopje. This case is crucial because it is the first case brought in front of the court with a claim that the police officers at the border are preventing Roma from leaving the borders on the grounds that they would abuse the visa regime.

The Roma family wanted to travel to Italy for the celebration of a wedding. When asked to justify their intent of traveling, they presented proof of sufficient economic means, proof of accommodation and even proof from the Italian municipality confirming the wedding celebration. The police officer at the border refused to let them leave the country. Moreover, the police officer put stamps on their passports and marked them with two lines, meaning that they are “potential” violators of the free visa regime.

¹³³ Ombudsman, Annual Report, on the level of respect, promotion and protection of human rights and freedoms, (2013). Accessed October 31, 2015. <http://ombudsman.mk/upload/Godisni%20izvestai/GI-2013-Ang.pdf>

¹³⁴ Restrictions on the Rights of Freedom of Movement of Roma People at the Borders.", Conference, Skopje, October 13, 2015. Accessed October 31, 2015. <http://www.makdenes.org/content/article/27306187.html>

The primary court found that it is not disputed that the country has the right to prevent citizens from leaving the country in order to prevent the danger of abusing the visa liberalization, but this “must not be done in a way that will violate the equality of the citizens”.¹³⁵ Furthermore, the Court noted that the border official was supposed to consider the proofs for traveling provided by the family, “and not only looked at them and concluded only on the ground of them being Roma that they are “potential” asylum seekers”.¹³⁶ Therefore, this resulted in a violation of their right to freedom of movement, and if they had looked, this would not have happened.

Regarding this statement, I argue that the Court puts more emphasis on the discrimination and not on the freedom of movement. When the Court claims that the country has the right to prevent the citizens from leaving the country in order to prevent the danger of abusing the visa liberalization, it does not mention the grounds under which the state can restrict the freedom of movement. However, still this decision is crucial because it can empower the other Roma who are returned from the borders to initiate a legal procedure against the Ministry of Interior.

There is a second legal case where Roma started a legal procedure against the Ministry of Interior because of violating their right to freedom of movement. This case¹³⁷ originated in 2014, and the plaintiff was represented by a Roma lawyer who is employed by the Roma organization ‘Kham’ from Delcevo.

The plaintiff lodged a lawsuit in front of the Primary Court in Kocani against the Ministry of Internal Affairs with a claim that the police officer at the border violated his right to equal

¹³⁵ Biljana Kotevska, Court decision, Discrimination in relation to free movement of Roma by border officials, European network of legal experts in the non-discrimination field, (2014). Accessed October 31, 2015. http://www.non-discrimination.net/content/media/MK-32-CourtCase_Roma.pdf The judgment is not yet published, thus more details as to the sanctions and specific readings of the law and application to this case are not yet available. They will be reported as soon as the judgment becomes public.

¹³⁶ Ibid.

¹³⁷ Decision of the Primary Court – Kocani, Case No. 124/14 from 04.02.2015.

treatment. The plaintiff Senul Azizov a Roma business person from Kocani on 17 May 2014 together with his uncle wanted to visit a relative who was sick and placed in the hospital in Dortmund, Germany. With that trip, the plaintiff also wished to order a machine for his firm. He was not allowed to leave the country although he had a return ticket, 550 euros, and planned to stay no more than 15 days. The justification of the police was that this money was not sufficient for his trip.

On 22 May 2014, the plaintiff tried for the second time to travel to Dortmund Germany, but again with the same justifications he was denied from boarding flight to Dortmund. The defendant who is a police officer who prevented the plaintiff from leaving the country, during the trial in the court showed a telegram as evidence sent by the Ministry of Internal Affairs – Bureau for public security. In the telegram was written that from 28 April 2011 there is a huge wave of Macedonian asylum seekers in the EU/Schengen countries, with this they abuse the visa liberalization regime, and this situation has an adverse impact on the visa liberalization. Moreover, this kind of behavior has a negative effect on the international reputation of Macedonia. For these reasons, in order to prevent further asylum applications, one needs to adopt similar measures.

The plaintiff argued that by preventing him from leaving the border they restricted his right to freedom of movement and he had also suffered emotional pain, impaired honor, and reputation. For these reasons, he required the court to award damages. The court when deciding the case took into consideration the following articles of the laws.

Article 3 of the law on prevention of and protection against discrimination¹³⁸ stipulates that:

“Any direct or indirect discrimination, call for and incitement to discrimination, and assistance in discriminatory treatment on the basis of sex, race, color, gender, belonging to a marginalized group, ethnic origin, language, nationality, social background, religion or religious beliefs, other types of beliefs, education, political affiliation, personal or social status, mental and physical impediment, age, family or marital status, property status, health condition or any other basis anticipated by a law or ratified international agreement (hereinafter: discriminatory ground) shall be prohibited”¹³⁹

Article 5, point 3

“Discrimination is any unjustified legal or factual, direct or indirect, differentiation or unequal treatment, i.e. omission (exclusion, limitation or giving priority) with respect to persons or groups based on sex, race, color, gender, belonging to a marginalized group, ethnic origin, language, nationality, social background, religion or religious beliefs, education, political affiliation, personal or social status, mental and physical impediment, age, family or marital status, property status, health condition or any other ground”¹⁴⁰

Article 5, point 6

“Equality is a principle according to which all people are equal, i.e. have equal obligations and rights. The equality principle includes diversity, i.e. includes the existence of different persons who should be equally treated”¹⁴¹

¹³⁸ Law on prevention of and protection against discrimination, published in: Official Gazette of the Republic of Macedonia, Nr. 50/10, (2010).

¹³⁹ Ibid.

¹⁴⁰ Ibid.

¹⁴¹ Ibid.

Burden of proof

Article 38, para 1

“If the party in the court procedure claims that, in accordance with the provisions of this Law, its right to equal treatment has been violated, it shall be obliged to provide all facts and proofs justifying the claim. The opposite party shall bear the obligation to substantiate that discrimination has not occurred”¹⁴²

Respect for human dignity

Article 8

The Macedonian border police “may not discriminate on the basis of gender, racial or ethnic origin, skin colour, nationality, social origin, religious belief, disability, sexual orientation, wealth or social position”.¹⁴³

The court held that the defendant is responsible for the damages caused to the plaintiff because the police officials without any reason restricted his right to travel freely to Germany. The rights of the plaintiff are guaranteed by Article 9 of the Constitution:

“Citizens of the Republic of Macedonia are equal in their freedoms and rights, regardless of sex, race, color of skin, national and social origin, political and religious beliefs, property and social status. All citizens are equal before the Constitution and law”¹⁴⁴

Moreover Article 27, points 2 and 4 stipulates that:

¹⁴² Ibid.

¹⁴³ Law on Border Surveillance, published in: Official Gazette of the Republic of Macedonia, Nr. 171/10, 30.12.10, Article 8, “Respect for human dignity”.

¹⁴⁴ Constitution of the Republic of Macedonia, Official Gazette of the Republic of Macedonia, Nr.52/1991, 22.11.1991.

“Every citizen of the Republic of Macedonia has the right of free movement on the territory of the Republic and freely to choose his/her place of residence. Every citizen has the right to leave the territory of the Republic and to return to the Republic”¹⁴⁵

“The exercise of these rights may be restricted by law only in cases where it is necessary for the protection of the security of the Republic, criminal investigation or protection of people’s health”¹⁴⁶

In this case, the plaintiff was discriminated against. He was not allowed to leave the country, and two lines were written into his passport indicating that he is forbidden to leave the country without any justification. Moreover, the police official did not have a formal record where he could write the reasons for preventing the plaintiff from leaving the country.

In March 2015, I conducted an interview¹⁴⁷ with the Roma organization KHAM from Macedonia. The lawyer Aksel Ahmedovski, an ethnic Roma, is employed in this organization, and he is the one who submitted the initiative in front of the constitutional court for checking the constitutionality of some provisions of the law for travel documents. As a legal representative of many Roma, he argues that so far they have submitted 18 lawsuits in front of the courts claiming violations of the right to freedom of movement and discrimination. When asked whether he considers this number as sufficient taking into account how many Roma are returned from the borders, he claimed that this number is not enough, but it is a good starting point that might empower other Roma to report such cases. In his view, the reason why the Roma do not initiate a legal procedure is that there is a lack of awareness that they can begin a legal procedure. Furthermore, he argues that many Roma do not have financial means to initiate the procedure, or

¹⁴⁵ Ibid.

¹⁴⁶ Ibid.

¹⁴⁷ Aksel Ahmedovski (lawyer) employee at the Roma NGO “Kham”, in discussion with the author, 03.20.2015.

they are afraid that there might be some negative consequences imposed on them if they complain in front of the courts.

When asked how the police border justify their actions before the courts and whether they openly declare that there is order from the higher authorities in the Ministry to prevent Roma people from leaving the border, he responded that the police border officers present a telegram that is sent to them from the higher instances in the Ministry, and they are required to implement it. With this telegram, they are given orders to restrict the freedom of movement of the “potential” asylum seekers and to protect the visa liberalization. The lawyer stated that the decision of the Constitutional Court declaring the amended Law for Travel Documents unconstitutional had a significant positive impact on the decisions taken by the primary courts. As a result, he argued that the number of Roma that report such cases has significantly increased.

Conclusion

The visa-free regime was introduced to allow Macedonian citizens to travel freely to the Schengen countries without a visa. The visa liberalization resulted in huge waves of asylum seekers, mostly Roma, in various EU countries. This has triggered EU countries to put pressure on Macedonia to adopt policies and to stop its citizens from leaving the country. The Macedonian Government has chosen to introduce “unlawful measures against the Roma minority such as ethnic profiling at the borders, penalties for those who were returned from the foreign countries (taking passports, fines)”.¹⁴⁸ All these measures constitute constitutional and human rights violations.

We may note from this chapter that the freedom of movement according to the laws of Macedonia can be restricted in three ways if there is criminal procedure against the person who tries to leave the borders, for the protection of the security and health. Similar provisions can be found in the ECHR and the ICCPR. Macedonia is legally bound to respect these conventions because the country has ratified them. In conclusion, this chapter points out that the justification for the restriction of the freedom of movement of Roma people is that these people are harming the national and foreign relations meaning that they destroy the reputation of Macedonia internationally.

As we can note with the actions taken by the government to protect the visa-free regime, the minority groups pay a high cost. This cost is paid by a violation of some human rights such as the freedom of movement, the right to seek asylum, racial profiling, and the right not to be discriminated by ethnicity.

¹⁴⁸ Elvis Shakjiri, Discrimination against Roma at the borders of Macedonia, State obligations regarding freedom of movement in International and European Human Rights Law, Central European University, (2014), pp.14.

The European Union has played an interesting role in this issue, given that in order to join the EU it demands from Macedonia as an aspirant country to respect the human rights. However, in turn, it led to Macedonian society to breach the human rights and implicitly to agree with the measures taken by the government to prevent the Roma people from leaving the country.

In order to overcome this situation Macedonia should take different legal and educational steps. The systematic discrimination on the basis of ethnicity and the racial profiling must be stopped at the Macedonian borders. These cases should be monitored by the Ministry of Interior and the police officers who make ethnic profiling should be adequately sanctioned. The police officers should be educated to overcome their personal prejudices and stereotypes towards the Roma. The European Commission Against Racism and Intolerance in Recommendation 11 defines profiling as “the use by the police, with no objective and reasonable justification, of grounds such as race, colour, language, religion, nationality or national or ethnic origin in control, surveillance or investigation activities”.¹⁴⁹ The police officers should provide the persons who are prevented from leaving the country with a document stating the reasons for not allowing them to pass the border. This document will guarantee legal certainty and further protection on their rights for appealing the decision. As we could read in this chapter, many Roma were prevented from leaving the country but there are few legal procedures started against the public officials. This is because of the lack of financial resources Roma possess or because they are afraid to report such cases. The country should provide the victims of discrimination with free legal assistance that will guarantee equality and justice.

¹⁴⁹European Commission against Racism and Intolerance, ECRI General Policy, Recommendation No.11 on combating racism and racial discrimination in policing, (2007), Article I. Accessed October 31, 2015. [ECRI General Policy Recommendation No.11 on combating racism and racial discrimination in policing, Article I, https://www.coe.int/t/dlapil/codexter/Source/ECRI_Recommendation_11_2007_EN.pdf](https://www.coe.int/t/dlapil/codexter/Source/ECRI_Recommendation_11_2007_EN.pdf)

B. Freedom of movement of ‘gens du voyage’ and Roma people in France- restrictions at national level

The aim of this second part of Chapter 2 is to show in which ways the freedom of movement is restricted in France when it comes to traveling communities in that country. This topic is significant because it will explain the treatment of the French authorities towards this particular ethnic group. The chapter will argue that this case is a clear violation of the guaranteed right to freedom of movement and prohibition of discrimination. The situation is slightly complicated because in France one must distinguish between two separate legal issues: the freedom of movement violations relating to the internal, French traveling communities, known as ‘gens du voyage’ which will be described first in this chapter and then the separate issue of French expulsion policies towards the Roma, mainly from Romania and Bulgaria which will be analyzed in the second part of this chapter and the (non-)reaction by the EC.

Many Roma have moved from one member state to another to find jobs in the labor market. Some of them succeed, but most of them are facing real struggle, abuse, and discrimination, they are blamed by the states that they are “burden on the social assistance”. For example in France in 2010, the government started expelling Roma from Romania. Bulgaria and the traveling communities called as ‘gens du voyage’. This case reached the international community (the EC). The justifications of the government were that they introduced these measures because of security reasons that target foreigners. In this case, the government did not make any distinction between the Roma, who are coming from the other Member States and the ‘gens du voyage’ who are nationals of France.

In France, there is no official data of how many Roma live in this country. They are not recognized as an ethnic minority because generally France does not recognize minorities. The Roma people as an ethnic group also do not appear in the official statistics in France. The French authorities consider the Roma as nomadic people. There is unofficial estimation that in France live approximately 300,000 Roma.¹⁵⁰ It is believed that all these 300,000 Roma are French citizens who have been living for centuries in this country.¹⁵¹ After the collapse of the Communism around 20,000 Romanian and Bulgarian Roma have moved to France.¹⁵² Many of the Roma in France today are believed to be descendants of the enslaved people

In France during the 1500's Roma were not allowed to reside in one place they were always forcibly expelled from the places where they would settle. Hancock argues that during the time of the Holy Emperor Karl VI many Roma were killed as wild animals.¹⁵³ Nowadays we are witnesses that the history is repeated, the Roma people in France are facing eviction and physical attacks.

It is reported that racial segregation in education still exists, the Romany and Travelers children are placed in the special schools for children with learning difficulties.¹⁵⁴ This type of schools are built in locations that separate the Roma people with the mainstream society, and these schools are dominated exclusively by Roma children.

¹⁵⁰ Robert Gould, Roma rights and Roma expulsions in France: Official discourse and EU responses, Critical Social Policy, (2014). Accessed October 31, 2015. <http://csp.sagepub.com/>

¹⁵¹ Ibid.

¹⁵² Ibid.

¹⁵³ I.Hancock, 'Roma: Genocide of Roma in the Holocaust', in: I. W. Charny (ed.) Encyclopedia of Genocide, Santa Barbara, CA: ABC-CLIO, (1999), pp. 501.

¹⁵⁴ European Commission, The situation of Roma in Enlarged Europe, Manuscript, (2004), pp.19.

Furthermore, the Roma and the Traveler communities are not accepted in the public institutions. Instead, they have to go to the associations that are established just for “them”.¹⁵⁵ Many Roma appear to be removed from the social support, with justification from the public officials that they earn money illegally and do not declare them. The Traveler communities are not eligible to receive social support because they do not have a permanent residence. A similar experience is shared by other Roma who live in Europe.

The French Travelers are required to poses ‘travel document’ for traveling within the country. This document inflicts obligations on the Roma for what is known to be called the right to ‘freedom of movement’.

1.1 ‘Gens du voyage’

The French legislation requires people over the age of 16 who live itinerantly to hold a travel document. The imposition of this booklet mainly targets the ‘gens du voyage’ or Travelers in France, they must possess a circulation form (travel document) for moving internally which needs to be stamped by the authorities every three months, failing to do so they risk of being fined and imprisoned. Since the persons are required to get stamps, this type of travel permit restricts their right to freedom of movement. Moreover, under this law the ‘gens du voyage’ are obliged for at least two years to be attached administratively to a municipality before they choose their new destination.¹⁵⁶ The Human Rights Commissioner Hammarberg noted that these

¹⁵⁵ Ibid. pp.30.

¹⁵⁶ Gilbert, Jérémie. *Nomadic Peoples and Human Rights*. 1st ed. Routledge, (2014) pp.74.

requirements are “at odds with the very concept of traveling”.¹⁵⁷ Furthermore, he argues that “these provisions restrict their freedom to settle in the municipality of one’s choice”.¹⁵⁸ The obligation for ‘gens du voyage’ to have travel permit also goes against the Recommendation¹⁵⁹ of the CoE. The Recommendation requires Member States to “refrain from requiring of national Travelers documents other than ordinary-law identity papers and/or documents authorizing an itinerant economic activity (hawker's professional card) in countries in which such papers are required”.¹⁶⁰

The CERD reviewed this issue and expressed its concerns regarding the imposition of travel permit that needs to be renewed periodically. Furthermore, it also recommended that state parties should ensure equal treatment for all citizens and this type of travel permits need to be abolished.¹⁶¹

In order to find the reasons to what had led to control of Roma people in France, I will explore the previous laws in France dating from 1912 to 2000.

Since the arrival of Roma people in France in around 15th century,¹⁶² the authorities had difficulties to describe and to name the Roma people. Very soon they compared the Roma with vagrants or bohemians because they were nomadic, had no traditional jobs and had very little

¹⁵⁷ Council of Europe, Memorandum by Thomas Hammarberg, Council of Europe Commissioner for Human Rights, following his visit to France, commDH(2008)34, (2008), para.137. Accessed October 31, 2015. <https://wcd.coe.int/ViewDoc.jsp?id=1410711>

¹⁵⁸ Ibid.

¹⁵⁹ Council of Europe, Committee of Ministers, Recommendation Rec(2004)14 on the Committee of Ministers to member states on the movement and encampment of Travelers in Europe, (2004). Accessed October 31, 2015. <https://wcd.coe.int/ViewDoc.jsp?id=797221&Site=CM>

¹⁶⁰ Ibid para.14.

¹⁶¹ Committee on the Elimination of Racial Discrimination, Seventy – seventh session, CERD/C/FRA/CO/17-19, (2010), para.16. Accessed October 31, 2015. <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15882&LangID=E>

¹⁶² Henriette Asséo, ‘ Marginalité et exclusion : le traitement administratif des Bohémiens dans la société française du XVIIe siècle ’, Problèmes socio-culturels en France au XVIIe siècle, Paris, Klincksieck, n°21, (1974).

financial resources.¹⁶³ During the 16th century, the French authorities designed specific laws to target the Roma identified as vagrants, and different measures of banishment were taken against them.¹⁶⁴

Over the 18th and 19th century, the French authorities included vagrancy in the criminal law.¹⁶⁵ Additionally in this period they also claimed that the criminal character of the Roma people is a natural characteristic and they also claimed that nomadism is a pathology that should be treated.¹⁶⁶ The state required the authorities to protect the frontiers of the country but also to control the people who move within the country. As a consequence, the authorities started closer surveillance over the Roma and very soon they created specific identity cards or so called ‘booklets’ for nomads, to control their movement within the country.¹⁶⁷

In July 1912¹⁶⁸, the French authorities introduced a law that created an administrative category of ‘nomads’ which corresponded with the saying of the parliament members “vagrants with an ethnic character”.¹⁶⁹ The law made clear distinction between the “travelers and the fairground people”¹⁷⁰ on the one hand and between all other people who do not belong to the previous group

¹⁶³ Howard S. Becker, *Outsiders. Etudes de sociologie de la déviance*, Paris, Métailié, 1985, 1st edition, (1963).

¹⁶⁴ Claire Auzias, *Les funambules de l'histoire. Les Tsiganes, entre préhistoire et modernité*, Paris, Digitale, (2002).

¹⁶⁵ The article n°269 of the Criminal Law recognizes officially the ‘vagrancy’s offence’.

¹⁶⁶ Valérie Bertrand, ‘La mendicité et l’état dangereux : l’historicité des représentations sociales dans le discours juridique’, *Connexions*, vol. 2, n°80, (2003), pp. 137-154.

¹⁶⁷ Christophe Delclitte, ‘La catégorie juridique ‘nomade’ dans la loi de 1912’, *Hommes et Migrations*, n°1188-1189, juin-juillet (1995), pp. 23-30.

¹⁶⁸ Law of the 16th July 1912 on the exercising of travelling jobs and the order about nomads’ circulation (Loi du 16 juillet 1912 sur l’exercice des professions ambulantes et la réglementation de la circulation des nomads).

¹⁶⁹ Sigona, Nando, ed. "Romani Mobilities in Europe: Multidisciplinary Perspectives." *Refugee Studies Centre, University of Oxford, Conference Proceedings* (2010), pp.21.

¹⁷⁰ Sigona, Nando, ed. "Romani Mobilities in Europe: Multidisciplinary Perspectives." *Refugee Studies Centre, University of Oxford, Conference Proceedings* (2010), pp.21.

considered as nomads or usually referred to Roma people. This law allowed the “nomads to travel in familial groups and to exercise their jobs”.¹⁷¹

The struggling of Roma people in France continues and during the period of Second World War where they are suspected to be spies. Based on the fact that they are nomads the Roma were obliged to possess anthropometrical booklet. The President of the French Republic on April 1940 in its first article forbids the circulation of nomads in France.¹⁷² Furthermore, the German occupying authorities with the decree of the 4th October 1940 commanded their internment in the occupied zone.¹⁷³ There were 30 internment camps in France with more than 6,000 Roma after the Liberation of France. The racial arguments for internment were linked with “fight against the mobility of wandering people and the will to ‘integrate’ them by the work”.¹⁷⁴

After the abolishment of the anthropometrical booklet from 3rd January 1969¹⁷⁵, a new circulation booklet (titres de circulation) was created. The category nomad is removed from the circulation booklets, and it is replaced with “people without neither accommodation nor fixed residence”.¹⁷⁶

We can conclude that the freedom of movement of Roma people is historically targeted in France. All documents that were mentioned above were intended to control their movement. They were supposed to be checked by the administration and by the police many times per year.

¹⁷¹ Ibid, pp.22.

¹⁷² Ibid.

¹⁷³ The decree of the 22nd November 1940 from the German occupying authorities commands the arrest not only of the ‘nomads’ but of all the persons suspected to be gypsy. In the ‘free zone’, the internment is decided and done by the only French authorities.

¹⁷⁴ Sigona, Nando, ed. "Romani Mobilities in Europe: Multidisciplinary Perspectives." Refugee Studies Centre, University of Oxford, Conference Proceedings (2010), pp.22.

¹⁷⁵ Law n°69-3 of the 3rd January 1969 dedicated to the exercising of travelling jobs and to the status for persons travelling through France without neither accommodation nor fixed residence (*Loi du 3 janvier 1969 relative a l'exercice des activites ambulantes et au regime applicable aux personnes circulant en France sans domicile ni residence fixe*).

¹⁷⁶ Ibid.

The most recent law that targets the Roma people is the Besson law of 2000. This law is described to be designed in the same spirit as the previous laws that controlled the movement of Roma. The meaning of “people who travel” used in this law refers to people “whose main accommodation is a mobile residence”¹⁷⁷ Lochak¹⁷⁸ claims that since minorities are not recognized as such in France, this term is used to target the Roma people and to identify them. Furthermore, she argues that in France if somebody talks about people who travel the others immediately think of Roma people. This is a twofold context, first to create an image that Roma people are nomadic and second to create special places that will be identified for their stops. So the idea of this specific law is to target a specific group of people who travel – the Roma people.

The imposition of an administrative booklet for circulation was partially declared unconstitutional and partly upheld by the Constitutional Council in 2010¹⁷⁹ and 2012.¹⁸⁰

The free movement is essential for all people including the nomads. The mobility of this group of people cannot be seen just as a lifestyle it should be also seen as a strategy for survival. Despite the international law that is concerned with control of movement, the human rights law also declares that the freedom of movement is a fundamental liberty that should be enjoyed by

¹⁷⁷ Sigona, Nando, ed. "Romani Mobilities in Europe: Multidisciplinary Perspectives." Refugee Studies Centre, University of Oxford, Conference Proceedings (2010), pp.23.

¹⁷⁸ Danièle Lochak, ' La loi et la société : du spécifique au global ', in Louis Assier-Andrieu et Anne Gotman (eds), *Ville et hospitalité. Légiférer sur les 'gens du voyage': les communes et la République*, actes du séminaire de Perpignan, Paris, MSH, janvier (2000), pp. 51-55.

¹⁷⁹ Traveling Communities in France, Decision no. 2010-13, QPC of 9 July (2010).

¹⁸⁰ Traveling Communities in France, Decision no. 2012-279 QPC of 5 October (2012).

On May 28th 2010 the Constitutional Council, in the conditions provided for by Article 61-1 of the Constitution, received an application for a priority preliminary ruling on the issue of constitutionality transmitted by the Conseil d'Etat (decision n° 337840 of May 28th 2010), application made by Messrs Orient O and Puiu B, pertaining to the conformity of sections 9 and 9-1 of Act n° 2000-614 of July 5th 2000 pertaining to the Reception and Accommodation of Travelling Communities with the rights and freedoms guaranteed by the Constitution.

every individual.¹⁸¹ Based on this the nomads can claim their fundamental right to a lifestyle based on mobility.

1.2 Case *Ory v France*

In the case *Ory v. France*¹⁸², the plaintiff born in France, a person without fixed abode, claimed that his rights under the Articles 12 paragraph 1 and 26 of the ICCPR had been violated by the French authorities. The plaintiff is a member of the Traveller community in France, and he lives in a caravan. In fact, according to the French law Act No. 69-3 and the associated Decree No. 70-708 of 31 July 1970, people without fixed abode, should possess a circulation document, called, “Titre de circulation”, which has to be stamped by the authorities every three months. Failing to acquire such a stamp, the person will be liable to criminal sanctions.

The author in this decision belongs to a group called ‘gens du voyage’ (travelers) and was fined with 150 euros (after reduced to 50 euros by the Court of Appeal Of Angers) for failing to obtain such a stamp. The last stamp on his booklet was from 27 August 2003. The applicant’s defence referred to Protocol 4 Article 2 and claimed that the circulation document constituted a restriction on the applicant’s freedom of movement. Furthermore, the applicant also claimed that the travel permits constitute discrimination against the travelers, and they give rise to “inequality of rights in respect of the concept of a domicile”.¹⁸³

According to the state the registration is used to maintain a link with the authorities, it is used only for administrative purposes and “does not constitute a residence within the meaning of

¹⁸¹ Gilbert, Jérémie. *Nomadic Peoples and Human Rights*. 1st ed. Routledge, (2014), pp.57.

¹⁸² *Ory v. France*, CCPR/C/110/D/1960/2010 adopted on 28 March 2014.

¹⁸³ *Ory v. France*, CCPR/C/110/D/1960/2010 adopted on 28 March (2014), para 3.4.

article 12 of the Covenant”.¹⁸⁴ The state party also argued that the right protected under article 12 of the Covenant also applies to the authors’ residence that in this case is by nature mobile. Regarding Article 26 of the Covenant, the state party added that the Act of 3 January 1969 refers to any person who has no fixed adobe and who is over the age of 16. The State party tried to justify the registration by referring to Committee’s general comment No 18 (1989) on non-discrimination. Specifically the state argued that the registration enables the persons without fixed adobe to effectively enjoy and exercise their right to vote.¹⁸⁵ As regards to the travel permit, the State argued that the law is justified under the reasons of public order.

On these claims, the author argued that he challenges the principle of freedom of movement. He claimed that French citizens who have fixed residence were not obliged to possess administrative booklet. Moreover, he also added that other categories of people such as homeless and bargees are not obliged to possess administrative document. The only people who are obliged to carry this type of documents are the Travelers. The author added that the system of travel permits enabled the police to create special files of persons without fixed adobe. The file of people without fixed adobe currently contains more than 200,000 records.¹⁸⁶

The HRC found that France violated the freedom of movement of the author, the restriction was not authorized under Article 12 paragraph 1, and it was in contravention with it. Furthermore, the HRC observed that the State party has not demonstrated that the obligation for holding a travel permit that needs to be stamped at frequent intervals or “to make failure to fulfill that obligation

¹⁸⁴ *Ibid.* para 5.2.

¹⁸⁵ *Ibid.* para 5.4.

¹⁸⁶ *Ibid.* para. 6.3.

subject to criminal charges are measures that are necessary and proportionate to the end that is sought”.¹⁸⁷

The HRC required the state party to provide the author with an effective remedy, including removal of his criminal record, revision of the French legislation and adequate compensation. The HRC did not find it necessary to examine the authors claim under Article 26 of the Covenant.

Mr. Fabian Omar Salvioli, in spite of agreeing with the decision in his concurring opinion regrets that the HRC did not explore the authors’ serious claims about the equality before the law and non-discrimination. He argues that the HRC remained silent on these two human rights issues that appear to be significant in this communication. Mr. Salvioli claims that the obligation to persons without fixed abode to get their passports stamped is neither reasonable nor proportionate to the aim pursued. According to Salvioli, the HRC should have found a violation of Article 26 of the ICCPR.

2.1 Roma in France

As I previously mentioned the freedom of movement is one of the fundamental freedoms of the EU and is essential for the common market. The freedom of movement has been adopted in the EU law, but in practice the national states limited this right just for those people who have high economic standing and high job skills. This failure of the EU to guarantee the freedom of movement for everybody has an impact on the equality of the citizens but as well and economic impact. The EC is the enforcement body of the EU law, and is also responsible for detecting

¹⁸⁷ Ibid para. 8.5.

possible abuses of the freedom of movement rules.¹⁸⁸ If the EC finds abuses of the freedom of movement rules, then it can make the states comply the rules through its infringement procedures.

The limits on freedom of movement and residence within the EU were sharpened after the massive expulsion of Roma people from France. The atmosphere in France escalated in 2010 after a violent incident. In July 2010, a number of French ‘gens du voyage’ started attacking the police station in Saint Aignan as a response to the killing of a 22-year old boy who was a member of this community.¹⁸⁹ The police officials claimed that the boy had been involved in a burglary. After this event, President Sarkozy made a speech in Grenoble with a focus on security and public order and he declared a “war” against “delinquents”, “traffickers”, “irregular immigrants”, “abusers of freedom of movement” and the “uncontrolled establishment of Roma camps”.¹⁹⁰ Making these statements, he narrowed the focus of his speech on the Roma and he shifted his talk from delinquency to immigration. Sarkozy highlighted his request to the Ministry of Interior to “put an end to the wild squatting and camping of the Roma”,¹⁹¹ and he gave a period of three months for clearing the Roma camps.

However, this is not the first case where the French authorities tried to decrease the number of the Roma population in France. Similarly in 2009, the French government expelled

¹⁸⁸ Jacqueline S. Gehring, Roma and the Limits of Free Movement in the European Union, *European Journal of Migration and Law*, 15 (2013).

¹⁸⁹ Owen Parker, *Journal of Common Markets*, Roma and the Politics of EU Citizenship in France: Everyday Security and Resistance, Vol.50, Num.3, (2012), pp. 475-491.

¹⁹⁰ Sergio Carrera, Shifting Responsibilities for EU Roma Citizens, the 2010 French affair on Roma evictions and expulsions continued, No.55, (2013).

¹⁹¹ Owen Parker, *Journal of Common Markets*, Roma and the Politics of EU Citizenship in France: Everyday Security and Resistance, Vol.50, Num.3, (2012), pp. 477.

approximately 10,000 Roma which is a much higher number in comparison with 2010 when 8,000 Roma were expelled.¹⁹²

In August 2010, the government introduced “voluntary” repatriation program, meaning that those who will decide to leave France voluntarily will receive 300 euros.¹⁹³ The supports of the repatriations argued that this program is limited just to those individuals who will agree voluntarily to leave France and return to their countries of origin (Bulgaria and Romania).¹⁹⁴ Furthermore, the French officials deny that France conducts collective expulsions that target only Roma. The Human Rights Commissioner, Thomas Hammarberg argued that the “volunteers” who wanted to leave the country “had had their identity papers confiscated until they reached their home countries”.¹⁹⁵ Their confiscated identity documents were typed as a guarantee that they could not change their mind.

In September 2010, one month after the repatriation program, an official memorandum sent by the Minister of Interior to all police officials appeared in the press.¹⁹⁶ The memorandum was about instructing the police to target the Roma when breaking up the illegal camps.¹⁹⁷ The European Commissioner for Justice and Fundamental Rights, Viviane Reding, criticized the

¹⁹²European Roma Rights Center (ERRC), Factsheet – Roma Rights Record, (2010). Accessed October 31, 2015. <http://www.errc.org/cms/upload/file/factsheet-4october2010.pdf>

¹⁹³ Caitlin T. Gunther, France Repatriation of Roma: Violation on Fundamental Freedoms, Cornell International Law Journal, Vol.45, (2012).

¹⁹⁴ European Union Agency for Fundamental Rights (FRA), The situation of Roma EU citizens moving to and settling in other EU member states, conference edition, (2009). Accessed October 31, 2015. http://fra.europa.eu/sites/default/files/fra_uploads/629-ROMA-Movement-Comparative-report_en.pdf

¹⁹⁵ Ibid, pp.30.

¹⁹⁶ Bruno Waterfield & Henry Samuel, Europe compares France Roma expulsion to Nazi deportations, Telegraph, September 15, 2010. Accessed October 31, 2015. <http://www.telegraph.co.uk/news/worldnews/europe/france/8002518/Europe-compares-France-Roma-expulsion-to-Nazi-deportations.html>

¹⁹⁷ Ibid.

program and claimed that it breaches the EU law. Furthermore, she stated that this kind of situation “Europe would not have to witness again after the Second World War”.¹⁹⁸

After implementing the program, the French government was accused of violating several fundamental citizenship rights among which, the freedom of movement and prohibition of discrimination. The EC on September 2010 started legal proceedings against France for violating the freedom of movement and anti-discrimination laws.¹⁹⁹ Furthermore, the EC asserted that the discrimination on Roma contravenes with the EU minority rights protection mechanisms.²⁰⁰ The Amnesty International urged the authorities to end the forced deportation stating that the Roma might face further human rights abuses in their countries of origin upon their arrival.²⁰¹

However, these proceedings were withdrawn after a short period with the justification that France promised to amend its laws making them be in compliance with the EU law.²⁰² France claimed that the amendments to the law would protect and ensure the right to freedom of movement in the country. In addition to this, the Ministry of Interior made an order that every reference to Roma had to be removed from the documents.²⁰³

In January 2011, the *Conseil Constitutionnel* intervened by declaring that the framework statute on internal security is unconstitutional. This radical policy aimed to support the forced

¹⁹⁸ Leo Cendrowicz, Sarkozy Lashes Out as Roma Row Escalates, Time, September 17, (2010). Accessed October 31, 2015. <http://content.time.com/time/world/article/0,8599,2019860,00.html>

¹⁹⁹ France slapped for EU free movement infraction, not discrimination, Euronews, 2010. Accessed October 31, 2015. <http://www.euronews.com/2010/09/29/france-slapped-for-eu-freemovement-infraction-not-discrimination>

²⁰⁰ Expulsion of the Roma: Is France violating EU Freedom of movement and playing by French rules or can it proceed with collective Roma expulsions free of charge? 37 Brook. J. Int'l L. 651 2011-2012.

²⁰¹ Ibid.

²⁰² Valentina Pop, *EU Drops Charges against France on Roma*, EUOBSERVER, (2010). Accessed October 31, 2015. <http://euobserver.com/24/31074>

²⁰³ Mark Dawson and Elise Muir, Individual, institutional and collective vigilance in protecting fundamental rights in the EU: lessons from the Roma, Common Market Law Review, Vol.48, (2011).

evacuations of the irregular nomadic settlements.²⁰⁴ The bill would have allowed the state representatives to continue with the forced evacuations “whenever they represent a serious risk to the public health, security, or peace through and emergency procedure”.²⁰⁵ This intervention in the name of public security is seen by the constitutional judges as a disproportionate action that violates already established constitutional rights and freedoms.²⁰⁶ In *Law, Lawyers, and Race*²⁰⁷ it is noted that the judges gave three reasons why the intervention is disproportionate. The first reason was that the emergency procedure could be easily employed at any moment. The second reason was that the personal and familiar circumstances for those who did not have decent housing were not taken into consideration. The third argument was that “the possibility of judicial recourse, which would stay the emergency procedure, was an insufficient guarantee for a resolution”.²⁰⁸

2.2 Freedom of movement - violations

The freedom of movement is one of the four fundamental freedoms in the EU. Over the last twenty-five years, the freedom of movement has developed in different provisions such as the Treaty of Paris (1951), Treaty of Rome (1957), the Schengen Agreement (1985) and the European Directive on freedom of movement and residence (2004).²⁰⁹ The significant development of the freedom of movement is the Directive from 2004 which gave rights to the workers to move and reside freely. The Directive on freedom of movement stipulates specific

²⁰⁴ Mathias Möschel, *Law, Lawyers and Race, Critical Race Theory from the United States to Europe*, (2014).

²⁰⁵ *Ibid*, pp.148.

²⁰⁶ *Ibid*.

²⁰⁷ *Ibid*.

²⁰⁸ *Ibid*.

²⁰⁹ Jacqueline S. Gehring, *Roma and the Limits of Free Movement in the European Union*, *European Journal of Migration and Law*, 15, (2013), pp.158.

procedures protecting individuals from being unlawfully expelled from the member states of the EU. However, the Directive indicates that a person might be deported just if he/she is a real threat for the three limitation grounds such as public security, public policy, and public health.²¹⁰

Article 30 of the Directive specifies that the person might be expelled only after a judicial or administrative decision is reached, for which the person has a right to appeal. Furthermore, Article 27 of the Directive stipulates that the measures taken for expulsion must be based on the personal conduct and this conduct has to represent “a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society”.²¹¹ In addition to this, the Directive lays down that automatic expulsion is not allowed.²¹²

In the case of France, the expulsion policy targeted just the Roma community as an ethnic group. However, in practice “there were no individualized assessments, particulars of the case or specific cases”.²¹³ The decisions that the government has made were not based on the personal conduct but instead they were decided on a basis of the membership in an ethnic group. We may conclude that despite all rules that are entailed in the Directive, the French policy of expulsion, targeted specifically the Roma people as an ethnic group and no individual assessments were made.

The EC has been active in monitoring the Member States whether they implement the 2004 Directive correctly or not. There are a number of states that were followed by the EC for an improper transposition of the Directive for freedom of movement. An evident example of the

²¹⁰ Directive 2004/38/EC of the European Parliament and of the Council, L 158/77, (2004). Accessed October 31, 2015. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:158:0077:0123:en:PDF>

²¹¹ Ibid, Article 27.

²¹² Ibid, Article 14.

²¹³ Quinn Bennett, Please Don't be our guest: the Roma expulsion from France under the European Union Law, 40 Ga. J. Int'l & Comp. L. 219, 2011-2012, pp.243.

active participation of the EC is the Czech case where the country obliges the EU citizens to present a certificate of accommodation when applying for EU residence documents.²¹⁴ In this case, the EC argued against the Czech Republic claiming that this type of actions is against the spirit of the Directive.²¹⁵ Regardless of the active participation of the EC when protecting the Directive, when it came to the Roma in 2010 it has failed to stop and protect the Roma from expulsion. These expulsions were a clear violation of the Directive and the EU law.

The collective and systematic expulsion of the Roma by its nature is discriminatory. The EU decided to prohibit this kind of discriminatory practice in its Chapter of Fundamental Rights. This chapter is equal to an EU treaty. According to Article 51 of the Chapter, the Member States are obliged to obey this Charter when they act in an area that is ruled by EU law.²¹⁶ Furthermore, the Article 21 of the Chapter prohibits discrimination on more than 20 grounds.²¹⁷

It is obvious that the French government ignored all these protections and continued to expel particularly the Roma and to destroy their camps.

The purpose of the Directive 2004 is to give the Member States a possibility to take measures against individuals who are posing a serious threat to the society. However, in practice the measures were taken against groups of people.

²¹⁴ European Commission, Press Release, Free movement: Commission upholds EU citizens' rights, (2012). Accessed October 31, 2015. http://europa.eu/rapid/press-release_IP-12-75_en.htm

²¹⁵ Ibid.

²¹⁶ Charter on Fundamental Rights of the European Union, Official Journal of the European Communities, 2000/C 364/01, (2000). Accessed October 31, 2015. http://www.europarl.europa.eu/charter/pdf/text_en.pdf

²¹⁷ Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited. "EU Charter of Fundamental Rights, Article 21".

2.3 European Commission challenges on preventing the Directive 2004

The response of the EC concerning the violations of the EU law by France, for the expulsion of the Roma people is seen as the EC has become a less powerful EU institution. It is argued that the Member States have limited the power of the EC.

“[R]estricted the Commission’s monopoly over the initiation of legislation, refused to make available to the Commission the human resources necessary for it to carry out its existing responsibilities, and challenged how it exercises its prerogatives”²¹⁸

Another argument that the EU Member States would not support the action of the EC to protect the freedom of movement of Roma is the disrespect towards this ethnic group in Europe. It follows that the Member States of the EU are trying to limit the power of the Commission and to impose their control. This kind of situation leaves the Commission in a tough position when securing the Directive of freedom of movement in practice.

It is noted that France is the worst complier with the EU laws, and the Commission has a significant amount of experience with France when negotiating disputes.²¹⁹ Gehring²²⁰ argues that there are two reasons why France very regularly implements the EU laws improperly. The first argument is that France is perceived as the most powerful state in the EU and can always escape its non-compliance. Moreover, the second argument is that in France there is a high rate of inefficient bureaucracy, and this makes the country not to comply with the EU changes very fast.

²¹⁸ Husein Kasim and Anand Menon, *EU Member States and the Prodi Commission*, The changing European Commission, edited by Dionyssi G. Dimitrakopoulos, (2004), pp.90.

²¹⁹ Jacqueline S. Gehring, *Roma and the Limits of Free Movement in the European Union*, *European Journal of Migration and Law*, 15, (2013), pp.170.

²²⁰ *Ibid.*

The implementation of the EU laws in practice and, in this case, the Directive of freedom of movement plays a significant role for the Roma people. It is easy for the states to put the laws on paper and transfer them in their national legislation, but when they are not implemented in practice than they can become questionable.

The ERRC documented all cases when the freedom of movement was violated in practice, but the EC has not initiate investigations for the allegations. In my opinion, the reason why the EC has not initiate investigations is the political pressure that is put on it. This pressure has an impact on the practical implementation of the Directive of freedom of movement.

As a possible solution to overcome the problem of limited resources is to increase the number of regulations instead of directives in EU law. It is argued that the Commission is more of the use of regulations because “they are directly applicable and do not require transposition”.²²¹ Furthermore, the EC claims that this would increase the “legal certainty” in the EU.²²² Some scholars are criticizing this position of the EC. Versluis argues that this reasoning does not hold because “problems are at least as likely to occur in the phase of practical implementation as they are in the phase of transposition”.²²³

Besides the arguments for the limited institutional power of the EC and the limited resources, there is a third argument for the failure of the EC to fully implement the Directive 2004. It is argued that the employees of the EC often conflict about the role of the EC regarding the policy

²²¹ Eshter Versluis, *Even Rules, Uneven Practices: Opening the ‘Black box’ of EU Law in Action*, West European Politics, Vol.30, No.1, (2007), pp.64.

²²² Commission of the European Communities (CEC) (2001). *European Governance. A White Paper*. COM (2001) 428 final, 25 July, Brussels. Accessed October 31, 2015.
http://www.ab.gov.tr/files/ardb/evt/1_avrupa_birligi/1_6_raporlar/1_1_white_papers/com2001_white_paper_european_governance.pdf

²²³ Eshter Versluis, *Even Rules, Uneven Practices: Opening the “Black Box” of EU law in action*, West European Politics, Vol. 30, No. 1, (2007), pp.64.

making and enforcements.²²⁴ Hooghe, compares the “institutional pragmatists” (28.9%) who avoid institutional battles with member states, and the state centrists 13.5 % who want to settle down the disputes between the Commission and the Member States.²²⁵

These internal conflicts and strong divisions demonstrate how the EC would exercise its powers when is in conflict with the strong EU Member States. Overall these arguments point out why the EC does not start actions against France when it comes to the freedom of movement of Roma.

²²⁴ Jacqueline S. Gehring, Roma and the Limits of Free Movement in the European Union, *European Journal of Migration and Law*, 15, (2013), pp.172.

²²⁵ Liesbet Hooghe, Images of Europe: How Commission Officials Conceive Their Institution’s Role, *JCMS Volume 50. Number 1*, (2012), pp. 105.

Conclusion

The freedom of movement of Roma people particularly the group ‘gens du voyage’ in France is historically targeted by the imposition of circulation booklets. The HRC found violations of the freedom of movement and it also concluded that the measures that the country has taken were not necessary and proportionate to the end that is sought.

The French policy of expulsion according to the laws of the EU was illegal. The Roma who are coming to France from different countries from Europe must be treated as EU citizens but as well as individuals. The policy program of President Sarkozy was based on a generalization that targeted explicitly the Roma community which if seen from the EU law perspective we may note that it was illegal.

We may conclude that the Directive of freedom of movement is transposed in France. However, in practice the Directive has been less successful especially when it comes to the Roma people. As we could see from the different cases described above, the freedom of movement sometimes exists for particular groups of persons. When the rights of the European citizens (non-Roma) were infringed the Commission actively got involved, but when it came to the Roma easily gave up.

To summarize, the EU adopted many policies and laws for improving the situation of the Roma, but there is a lack of enforcement by the states. I would like to point out that although the Directive 2004 and the Charter of Fundamental Rights are binding on France, they were violated without bearing a consequence.

General Conclusion

Unlike the other EU citizens, the Roma do not enjoy protection of their rights, and they also cannot make use of all benefits that are associated with their national citizenship. The Roma are still excluded and discriminated against and cannot use the opportunities in the countries of EU.

The countries that implement these measures face no sanctions or minimal from the EU

The Roma people are facing with social exclusion in the societies where they live, but also with stereotypes and racial policies that are created to exclude them from the mainstream society. The EU works on the inclusion of the Roma in Europe but still there is no sign of improvement.

The thesis described the limitations of the right to freedom of movement under EU and Human Rights law. The restrictions on the freedom of movement prescribed by these laws were the following: public security, public health, public policy, public order, protection of morals and the protection of the rights and freedoms of the others.

In the case of Macedonia, the justification used for restricting the movement of Roma was to protect the national interest. We can notice that national interest is not one of the grounds for restricting someone's right to freedom of movement. The measures that the Macedonian government has taken are also against the Constitution of the country.

In the case of France, the justification used for the imposition of circulation booklet that needed to be stamped every three months was justified on the grounds of public security. The HRC in the case *Ory v France* found violations on the freedom of movement and it also concluded that the measures that the country has taken were not necessary and proportionate to the end that is sought.

The French government created an image that the Roma represent a common threat that should be prevented by deporting the Roma to their countries of origin in Bulgaria and Romania. The mass expulsion of Roma in France is illegal and violates the Free Movement Directive and the Charter of Fundamental Rights. Furthermore with the restrictions that are proven to be based on ethnicity, the principle of equality and EU citizenship is being undermined. These laws should be enforced by the EC, and the Roma people should enjoy the freedom of movement because they are also entitled to be treated as EU citizens.

We can conclude that the freedom of movement when it comes to the Roma people is being restricted on different grounds and in practice it really exists for some.

Bibliography

Books, Articles, Journals

Alyssa Haun, The Long Road: The Roma of Eastern and Central Europe and the Freedom of Movement and Right to Choose a Residence, 33 *George Washington International Law Review*, 155, (2000)

Catherine, Barnard. *The Substantive Law of the EU: The Four Freedoms*. 2nd ed. Oxford: Oxford University Press, (2007)

Catherine, Barnard. *The Substantive Law of the EU: The Four Freedoms*. 3rd ed. Oxford: Oxford University Press, (2010)

Bikovski, Zoran, and Tefik Mahmut. "Macedonia- Creating a Padlocked Cage for Roma Called "Measures for False Asylum Seekers"" *Journal of the European Roma Rights Center*, (2014)

Biljana Vankovska, The Visa Liberalisation and the Republic of Macedonia: Two sides of the Coin, *European Perspectives – Journal on European Perspectives of the Western Balkans*, Vol. 6, No. 1(10), (2014)

Caitlin T. Gunther, France Repatriation of Roma: Violation on Fundamental Freedoms, *Cornell International Law Journal*, Vol.45, (2012)

Christophe Delclitte, ‘ La catégorie juridique ‘nomade’ dans la loi de 1912 ’, *Hommes et Migrations*, n°1188-1189, juin-juillet (1995)

Claire Auzias, *Les funambules de l'histoire. Les Tsiganes, entre préhistoire et modernité*, Paris, Digitale, (2002)

Danièle Lochak, ‘ La loi et la société : du spécifique au global ’, in Louis Assier-Andrieu et Anne Gotman (eds), *Ville et hospitalité. Légiférer sur les ‘gens du voyage’: les communes et la République*, actes du séminaire de Perpignan, Paris, MSH, janvier (2000)

Diana E. Mahoney, Expulsion of the Roma: Is France Violating EU Freedom of Movement and Playing by French Rules or Can it Proceed with Collective Roma Expulsions Free of Charge, 37 *Brook. J. Int'l L.* (2012)

Eshter Versluis, Even Rules, Uneven Practices: Opening the ‘Black box’ of EU Law in Action, *West European Politics*, Vol.30, No.1, 50-67, (2007)

European Commission, *The situation of Roma in Enlarged Europe*, Manuscript, (2004)

Gilbert, Jérémie. *Nomadic Peoples and Human Rights*. 1st ed. Routledge, (2014)

Henriette Asséo, ' Marginalité et exclusion : le traitement administratif des Bohémiens dans la société française du XVIIIe siècle ', Problèmes socio-culturels en France au XVIIIe siècle, Paris, Klincksieck, n°21, (1974)

Howard S. Becker, Outsiders. Etudes de sociologie de la déviance, Paris, Métailié, 1985, 1st edition, (1963)

Husein Kasim and Anand Menon, EU Member States and the Prodi Commission, The changing European Commission, edited by Dionyssis G. Dimitrakopoulos, (2004)

I.Hancock, 'Roma: Genocide of Roma in the Holocaust', in: I. W. Charny (ed.) Encyclopedia of Genocide, Santa Barbara, CA: ABC-CLIO, (1999)

Jacqueline, S. Gehring, "Free Movement for Some: The Treatment of the Roma after the European Union's Eastern Expansion" , European Journal of Migration and Law, (2013)

Jacquelin, S. Gehring, e Roma and the Limits of Free Movement in the European Union, European Journal of Migration and Law, 15, (2013)

Liesbet Hooghe, Images of Europe: How Commission Officials Conceive Their Institution's Role, JCMS Volume 50. Number 1, (2012)

Mark Dawson and Elise Muir, Individual, institutional and collective vigilance in protecting fundamental rights in the EU: lessons from the Roma, Common Market Law Review, Vol.48, (2011)

Marushiakova, Elena, & Vesselin Popov, "The Romanies in the Balkans during the Ottoman Empire", Roma, 47:63-72, (1997)

Mathias Möschel, Law, Lawyers and Race, Critical Race Theory from the United States to Europe, (2014)

Owen Parker, Journal of Common Markets, Roma and the Politics of EU Citizenship in France: Everyday Security and Resistance, Vol.50, Num.3, (2012)

Peter Vermeersch, Roma and mobility in the European Union in "Roma and Traveler Inclusion in Europe", Green Questions and Answers. European Parliament, (2011)

Quinn Bennett, Please Don't be our guest: the Roma expulsion from France under the European Union Law, 40 Ga. J. Int'l & Comp. L. 219, 2011-2012

Robert Gould, Roma rights and Roma expulsions in France: Official discourse and EU responses, Critical Social Policy, (2014)

Sergio Carrera, Shifting Responsibilities for EU Roma Citizens, the 2010 French affair on Roma evictions and expulsions continued, No.55, (2013)

Shimmel, Natalie, Welcome to Europe, but Please Stay Out: Freedom of Movement and the May 2004 Expansion of the European Union, 24 Berkeley J. Int'l Law, 760 (2006)

Sigona, Nando, ed. "Romani Mobilities in Europe: Multidisciplinary Perspectives." Refugee Studies Centre, University of Oxford, Conference Proceedings (2010)

Siofra O'Leary, "Free Movement of Persons and Services." In The Evolution of EU Law, edited by Paul Craig and Gráinne De Búrca. 2nd ed. Oxford, (2011)

Steiner, Josephine, and Lorna Woods. EU Law. 10th ed. Oxford: Oxford University Press, (2009)

Valérie Bertrand, ' La mendicité et l'état dangereux : l'historicité des représentations sociales dans le discours juridique ', Connexions, vol. 2, n°80, (2003)

Legislations, Conventions, Treaties, General Comments

A trio of "Directives" guides EU asylum policy: the Asylum Procedures Directive, the Asylum Qualification Directive, and the Asylum Reception Conditions Directive. *See* Council Directive 2005/85, 2005 O.J. (L 326) 13, 14 (EC)[hereinafter Asylum Procedures Directive]; Council Directive 2011/95, 2011 O.J. (L 337) 14 (EU) [hereinafter Asylum Qualifications Directive]; Council Directive 2003/9, 2003 O.J. (L 31) 18 (EC) [hereinafter Asylum Reception Conditions Directive]

Charter on Fundamental Rights of the European Union, Official Journal of the European Communities, 2000/C 364/01, (2000)

Constitution of the Republic of Macedonia, Official Gazette of the Republic of Macedonia, Nr.52/1991, 22.11.1991

Council Directive 93-96/EEC (1993), on the right of residence for students, Official Journal of the European Communities No. L 317

Council of Europe, Protocol 4 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain Rights and Freedoms other than those already included in the Convention and in the First Protocol thereto, 16 September 1963, ETS 46

Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms*, supplemented by Protocols Nos. 1, 4, 6, 7, 12 and 13, November (1950), ETS 5

Criminal Code, Official Gazette of the Republic of Macedonia, Nr. 135/2011, (2011)

Directive 2004/38/EC (2004), On the right of citizens of the Union and their family members to move freely and reside freely within the territory of the Member States, L158/77, Official Journal of the European Union, amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC

Directive 2004/38/EC, of the European Parliament and of the Council." Official Journal of the European Union, L158/77 (2004)

European Commission, Proposal for a Council Decision, Regulation 883/04 from March 2010

European Union, Treaty on European Union (Consolidated Version), Treaty of Amsterdam, 2 October 1997

Human Rights Committee General Comment no.27, U.N. Doc CCPR/C/21/Rev.1/Add.9 (1999)

Human Rights Council, Universal Periodic Review, Compilation prepared by the Office of the United Nations High Commissioner for Human Rights, A/HRC/WG.6/18/MKD2

Law n°69-3 of the 3rd January 1969 dedicated to the exercising of travelling jobs and to the status for persons travelling through France without neither accommodation nor fixed residence (*Loi du 3 janvier 1969 relative a l'exercice des activites ambulantes et au regime applicable aux personnes circulant en France sans domicile ni residence fixe*)

Law of the 16th July 1912 on the exercising of travelling jobs and the order about nomads' circulation (*Loi du 16 juillet 1912 sur l'exercice des professions ambulantes et la reglementation de la circulation des nomads*)

Law on Border Surveillance, Official Gazette of the Republic of Macedonia, Nr. 171/10, 30.12.10

Law on Border Surveillance, Official Gazette of the Republic of Macedonia, Nr. 171/10, 30.12.10

Law on prevention of and protection against discrimination, Official Gazette of the Republic of Macedonia, Nr. 50/10, (2010)

Law on the census of population households and dwellings in Macedonia, Official Gazette of the Republic of Macedonia, Nr.156/2010

Law on Travel Documents of Citizens of the Republic of Macedonia, published in: Official Gazette of the Republic of Macedonia, Nr.67/1992

Official Journal of the European Union, Agreement between the European Community and the Former Yugoslav Republic of Macedonia on the facilitation of the issuance of visas, L 334/125, Article 1, December (2007)

Regulation of the Commission (ECC) No 1251/70, on the right of workers to remain in the territory of a Member State after having been employed in that State, Official Journal of the European Communities, No L 142/24, (1970)

UN Committee on the Elimination of Racial Discrimination (CERD), UN Committee on the Elimination of Racial Discrimination: Concluding Observations, Canada, (2007)

UN General Assembly, International Convention on the Elimination of All Forms of Racial Discrimination, 21 December (1965)

UN General Assembly, International Covenant on Civil and Political Rights, (1966), entered into force (1976), Article 12. UN Human Rights Committee (HRC), CCPR General Comment No. 27: Article 12 (Freedom of Movement), 2 November 1999, CCPR/C/21/Rev.1/Add.9

UN General Assembly, Optional Protocol to the International Covenant on Civil and Political Rights, (1966), entered into force (1976)

UN General Assembly, Universal Declaration of Human Rights, 217 A (III), (1948)

UN Human Rights Committee (HRC), CCPR General Comment No. 27: Article 12 (Freedom of Movement), 2 November 1999, CCPR/C/21/Rev.1/Add.9

UN Human Rights Council, *Summary : [Universal Periodic Review] : The Former Yugoslav Republic of Macedonia / prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21*, 4 November 2013, A/HRC/WG.6/18/MKD/3

CASES

Batyrov v. Uzbekistan, CCPR/C/96/D/1585/2007, adopted on 30 July 2009

Bonsignore v. Oberstadtdirektor, Case 67/74 (1975), ECR 297

Commission of the European Union v Kingdom of Belgium, Failure of a Member State to fulfill its obligations, Judgment of the Court (Sixth Chamber), C-344/95 (1997)

Decision of the Constitutional Court, published in the "Official Gazette of the Republic of Macedonia" no. 106/2012, Const. No. 189/2012, (2014)

Decision of the Primary Court – Kocani, Case No. 124/14 from 04.02.2015

ECtHR, *D. H v. Czech Republic*, [GC] App. No. 57325/00, (2007)

ECtHR, *Sissanis v Romania*, Application no. 23468/02, (2007)

ECtHR. *Stamose v. Bulgaria*, Application No. 29713/05, 2012

ECtHR. *Timishev v. Russia*, Application No. 55762/00 and 55974/00, 2005

Lawrie - Blum v. Land Baden – Württemberg, C- 66/85 (1986) ECR 2121

Martinez Sala v. Freistaat Bayern C-85/96 ECR I – 2691 (1998)

Orazova v. Turkmenistan, CCPR/C/104/D/1883/2009, adopted on 12-30 March 2012

Ory v. France, CCPR/C/110/D/1960/2010 adopted on 28 March 2014

Regina v. Pierre Bouchereau, Case 30/77, 1977, ECR 1999

Sayadi and Vick v. Belgium, CCPR/C/94/D/1472/2006, adopted on 22 October 2008

Traveling Communities in France, Decision no. 2010-13, QPC of 9 July (2010)

Traveling Communities in France, Decision no. 2012-279 QPC of 5 October (2012)

Union Royale Belge des Sociétés de Football Association ASBL v. Jean-Marc Bosman, Case C-415/93 (1995)

Yvonne van Duyn v Home Office, Case 41/74 (1974), ECR 1337

Other Documents

Biljana Kotevska, Court decision, Discrimination in relation to free movement of Roma by border officials, European network of legal experts in the non-discrimination field, (2014)

http://www.non-discrimination.net/content/media/MK-32-CourtCase_Roma.pdf

Accessed October 31, 2015

Bureau of Democracy, Human Rights and Labor, U.S. Department of State, *Country Report on Human Rights Practices for 2013 – Macedonia*

<http://www.state.gov/documents/organization/220516.pdf> Accessed October 31, 2015

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

<http://www.state.gov/j/drl/rls/hrrpt/2011humanrightsreport/index.htm#wrapper>

Accessed October 31, 2015

Commission of the European Communities (CEC) (2001), European Governance, A White Paper. COM (2001) 428 final

http://www.ab.gov.tr/files/ardb/evt/1_avrupa_birligi/1_6_raporlar/1_1_white_papers/com2001_white_paper_european_governance.pdf Accessed October 31, 2015

Committee on the Elimination of Racial Discrimination, Seventy – seventh session CERD/C/FRA/CO/17-19, (2010)

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15882&LangID=E> Accessed October 31, 2015

Council of Europe Commissioner for Human rights, Human rights comment from the Council of Europe's Commissioner for Human Rights, the right of the individual to leave his or her country is an established human right, (2011)

<http://www.ein.org.uk/news/coe-right-leave-ones-country-should-be-applied-without-discrimination> Accessed October 31, 2015

Council of Europe Commissioner for Human Rights, Report on his visit to “the former Yugoslav Republic of Macedonia” (2012)

Council of Europe, Committee of Ministers, Recommendation Rec(2004)14 on the Committee of Ministers to member states on the movement and encampment of Travelers in Europe, (2004)

<https://wcd.coe.int/ViewDoc.jsp?id=797221&Site=CM> Accessed October 31, 2015

Council of Europe, Memorandum by Thomas Hammarberg, Council of Europe Commissioner for Human Rights, following his visit to France, commDH(2008)34, (2008)

<https://wcd.coe.int/ViewDoc.jsp?id=1410711> Accessed October 31, 2015

Council of the European Union, Council amends EU visa rules, 17328/13, (2013)

http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/139926.pdf

Accessed October 31, 2015

Council of the European Union, Visa liberalization for Western Balkan Countries, 16640/09, Brussels, November (2009)

http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/111561.pdf

Accessed October 31, 2015

Council of the European Union: Press release: 3135th Council meeting Justice and Home Affairs, Brussels, (2011)

http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/126932.pdf

Accessed October 31, 2015

D. Lakinska, A. Memedova, Z. Durmis, Lj. Demir. Assessment of Priority Areas of Activity and Potential Financing Needs in the Republic Macedonia for the International REF. Skopje: World Bank, 2004, Table 2. Unofficial data on the number of Roma in Macedonia, according to Elezovski (2003)

http://www-wds.worldbank.org/external/default/WDSPContentServer/WDSP/IB/2006/02/28/000090341_20060228112346/Rendered/PDF/352070MK0NA0Report.pdf Accessed October 31, 2015

Decade of Roma Inclusion - Republic of Macedonia, Action Plans, Skopje, November (2004)
<http://romadecade.org/files/downloads/Decade%20Documents/macedonia%20Decade%20action%20plan.pdf> Accessed October 31, 2015

European Agency for Fundamental Rights, "The Situation of Roma EU Citizens Moving to and Settling in Other EU Member States." 2009
http://fra.europa.eu/sites/default/files/fra_uploads/629-ROMA-Movement-Comparative-report_en.pdf Accessed October 31, 2015

European Commission, Staff working document, Progress report, SWD (2012) 332 final, (2012)

European Commission - PRESS RELEASES - Press Release - 2914th Council Meeting General Affairs and External Relations General Affairs Brussels, 8 December 2008
http://europa.eu/rapid/press-release_PRES-08-359_en.htm Accessed October 31, 2015

European Commission against Racism and Intolerance, ECRI General Policy, Recommendation No.11 on combating racism and racial discrimination in policing, (2007)
https://www.coe.int/t/dlapil/codexter/Source/ECRI_Recommendation_11_2007_EN.pdf
Accessed October 31, 2015

European Commission, Press Release, Free movement: Commission upholds EU citizens' rights, (2012)
http://europa.eu/rapid/press-release_IP-12-75_en.htm Accessed October 31, 2015

European Commission, Progress Report for the "Former Yugoslav Republic of Macedonia", (2014)
http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-the-former-yugoslav-republic-of-macedonia-progress-report_en.pdf Accessed October 31, 2015

European Commission, Report from the Commission to the European Parliament and the Council, Third Report on the Post-Visa Liberalisation Monitoring for the Western Balkan Countries in accordance with the Commission Statement of 8 November 2010, COM(2012) 472 final

European Roma Rights Center (ERRC), Factsheet – Roma Rights Record, (2010)
<http://www.errc.org/cms/upload/file/factsheet-4october2010.pdf> Accessed October 31, 2015

European Union Agency for Fundamental Rights (FRA), The situation of Roma EU citizens moving to and settling in other EU member states, conference edition, (2009) http://fra.europa.eu/sites/default/files/fra_uploads/629-ROMA-Movement-Comparative-report_en.pdf Accessed October 31, 2015

Freedom House - Report Macedonia", Macedonia, (2014) https://freedomhouse.org/report/freedom-world/2014/macedonia#.VRVIQ_nF_z8 Accessed November 1, 2015

Ombudsman, Annual Report, on the level of respect, promotion and protection of human rights and freedoms, (2013) <http://ombudsman.mk/upload/Godisni%20izvestai/GI-2013-Ang.pdf> Accessed October 31, 2015

Report by Nils Muiznieks, Council of Europe Commissioner for Human Rights, (2012) <https://wcd.coe.int/ViewDoc.jsp?id=2052823> Accessed October 31, 2015

Selective Freedom: The Visa Liberalization and Restrictions on the Right to Travel in the Balkans, (2012) https://romarights.files.wordpress.com/2012/07/chachipe_visa_liberalisation_report_270612.pdf Accessed October 31, 2015

State statistical office, Census of population, households and dwellings in the Republic of Macedonia, Final data, (2002) http://www.stat.gov.mk/pdf/kniga_13.pdf Accessed October 31, 2015

Statistical Yearbook of the Republic of Macedonia, (2013) <http://www.stat.gov.mk/Publikacii/PDFGodisnik2013/03-Naselenie-Population.pdf> Accessed October 31, 2015

The Council of Europe: Protecting the Rights of Roma, (2013) http://www.strassburg-europarat.diplo.de/contentblob/3392612/Daten/1862070/CoE_publication_Roma.pdf Accessed October 31, 2015

UNHCR data for 2010 show that EU member states and Switzerland received many applications from “the former Yugoslav Republic of Macedonia” <http://www.unhcr.org/4ef9cc9c9.html> Accessed October 31, 2015

Online Sources

Bruno Waterfield & Henry Samuel, Europe compares France Roma expulsion to Nazi deportations, Telegraph, September 15, 2010

<http://www.telegraph.co.uk/news/worldnews/europe/france/8002518/Europe-compares-France-Roma-expulsion-to-Nazi-deportations.html> Accessed October 31, 2015

Bunjes, Ulrich. "Making Human Rights for Roma a Reality." - Council of Europe, (2014)

<http://www.coe.int/en/web/portal/roma/> Accessed October 31, 2015

European Parliament, Parliamentary questions, Answer given by Ms Malmstrom on behalf of the commission, (2012)

<http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2011-012329&language=EN#def1> Accessed October 31, 2015

France slapped for EU free movement infraction, not discrimination, Euronews, 2010

<http://www.euronews.com/2010/09/29/france-slapped-for-eu-freemovement-infraction-not-discrimination> Accessed October 31, 2015

KOD lažni azilanti, Kanal 5, mins. 11.50 – 12.19, KOD is a unique TV news magazine in Macedonia, the first magazine dedicated to investigate corruption, criminal in the country and the law system in Macedonia

<https://www.youtube.com/watch?v=vEUD4qObrvU>

Leo Cendrowicz, Sarkozy Lashes Out as Roma Row Escalates, Time, September 17, (2010)

<http://content.time.com/time/world/article/0,8599,2019860,00.html> Accessed October 31, 2015

Minister without portfolio, Government of R.Macedonia

<http://vlada.mk/node/62> Accessed October 31, 2015

Ombudsman of the Republic of Macedonia

http://www.ombudsman.mk/EN/about_the_ombudsman/deputies.aspx

Accessed November 1, 2015

Pečati Za Lažne Azilante, Radio Televizija - Srbija, 23 May, (2011)

<http://www.rts.rs/page/stories/sr/story/11/Region/896248/Pe%C4%8Dati+za+la%C5%BEna+azilante.html> Accessed October 31, 2015

Restrictions on the Rights of Freedom of Movement of Roma People at the Borders

<http://www.makdenes.org/content/article/27306187.html> Accessed October 31, 2015

Standing Committee of experts on international immigration, refugee and criminal law, open letter addressed to Ms Cecilia Malmström Commissioner for Home Affairs European Commission B-1049 BRUSSELS, (2013)

http://www.commissiemeijers.nl/assets/commissiemeijers/CM1301%20Letter%20Meijers%20Committee%20on%20the%20implications%20of%20the%20ECtHR%20Stamose%20judgment%20for%20visa%20liberation%20negotiations_COM.pdf Accessed October 31, 2015

The municipality of Shuto Orizari

<http://www.sutoorizari.gov.mk/> Accessed October 31, 2015

Valentina Pop, *EU Drops Charges against France on Roma*, EUOBSERVER, (2010)

<http://euobserver.com/24/31074> Accessed October 31, 2015