

Factsheet: Freedom of movement for Roma in Macedonia

This factsheet highlights findings of the European Roma Rights Centre's work on individual cases in the field, conducted in Macedonia in the period 2011-2013, on one of the thematic priorities of the ERRC: Freedom of Movement.

Freedom of movement, notably the right to leave one's country of nationality, has been recognised as a human right by the most important international human rights bodies and conventions, notably, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the European Convention on Human Rights. International legal standards binding on Macedonia ban any form of discrimination, including racial discrimination, either direct or indirect, in access to this right.

Apart from international treaties, this right has been incorporated into the domestic law of the Republic of Macedonia, including the highest legal act, the Constitution.

Despite these protections, the cases that the ERRC has handled indicate that Roma in Macedonia are frequently deprived of this right. In particular, they are subject to discriminatory practices and inappropriate treatment by border officials when they are trying to leave the country.

Given the gravity of these violations, the ERRC has launched a Constitutional Court initiative challenging the new amendments to the Law on Travel Documents of citizens of Macedonia, which are in conflict with the Constitution of the Republic of Macedonia.

Namely, Article 37, paragraph 1, subparagraph 6 of Law, which provides grounds to refuse a request to issue a passport as well as grounds for revocation of an existing passport, is in conflict with Article 27 paragraph 2 of the Constitution which guarantees the right of every citizen to leave the territory of the Republic and to return, except in certain exceptional, clearly defined cases (i.e. where it is necessary to protect the security of the state, in case of criminal procedures and for the protection of health (Article 27 paragraph 3 of the Constitution)).

Article 37 paragraph 1, subparagraph 6 of the Law goes far beyond these limited exceptions. Therefore, we have concluded that Article 37 paragraph 1, subparagraph 6 is unconstitutional.

FINDINGS

Between 2011 and 2013, the ERRC documented the cases of 74 Romani individuals who were prevented from exiting the country as well as 24 cases of passport revocations by Macedonian border officials. Additionally, the ERRC while working in the field, has become aware of another 50 similar cases.

60% of Roma involved in these cases were told by the border officials that they (the border officials) were instructed to restrict the rights of the people concerned. It appears that they were 'instructed' to act based on race.

90% of cases documented by the ERRC show that only Roma were asked for evidence to justify why they were travelling (i.e. in cases when Roma and non-Roma were travelling together).

30% of those concerned were told explicitly by the border officials that they cannot pass the border due to their ethnicity, i.e. they were explicitly told that they cannot pass the border because they are Roma.

10% of those concerned were refused because of not fulfilling the legal requirements to leave Macedonia (requirements which the ERRC has concluded are unlawful).

"The border guard explicitly told me that they received an order not to allow Roma to pass the border. Of course, they inserted two lines in the passport, meaning that I cannot pass the border for 24 hours"

-ERRC client refused the right to leave the country

Furthermore, according to the most recently available data from the Council of Europe Commissioner for Human Rights, from the end of 2009 to November 2012 **about 7,000 Macedonian citizens, mostly Roma**, were not allowed to leave the country and had their travel documents confiscated. In 2011 alone, during a seven-month period, more than 1,500 Macedonian citizens, mostly Roma, were refused exit from the country on the basis of being potential asylum seekers in the EU.¹ The Commissioner considered that the measures taken by the Macedonian authorities in response to EU demands for management of migratory outflows interfere with the freedom to leave a country, including one's own, guaranteed under Article 2 of Protocol No. 4 to the ECHR²

¹ Council of Europe Commissioner for Human Rights, Report on his visit to "the former Yugoslav Republic of Macedonia" from 26 to 29 November 2012, p. 25.

² Ibid.

RECOMMENDATIONS

The ERRC urges Government authorities in Macedonia to act on the following recommendations:

1. Ensure Roma are able to exercise the fundamental human rights and freedoms, guaranteed with the domestic and international regulations;
2. Support the argument that the Constitutional Court should annul Article 37 paragraph 1, subparagraph 6 from the Law on travel documents of citizens of Republic of Macedonia, because it is not in line with international and domestic regulations, including the highest legal act in the country, the Constitution of Republic of Macedonia;
3. Ensure that Roma are no longer to be profiled and discriminated when they are trying to leave the country;
4. Bring to justice any border official and other actor responsible for discriminating against Roma in access to freedom of movement in breach of national and international law;
5. Review and amend all laws and regulations to ensure that Roma are able to enjoy their freedom of movement equally with non-Roma in Macedonia;
6. Destroy all records and traces of unlawful profiling and discrimination at the borders. Provide new passports to those affected by this practice without any fee.

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