

D. Representative(s) of the applicant organisation

Where the applicant is an organisation, it must be represented before the Court by a person entitled to act on its behalf and in its name (e.g. a duly authorised director or official). The details of the representative must be set out in section D.1.

If the representative instructs a lawyer to plead on behalf of the organisation, both D.2 and D.3 must be completed.

D.1. Organisation official

37. Capacity/relationship/function (please provide proof)

38. Surname

39. First name(s)

40. Nationality

41. Address

42. Telephone (including international dialling code)

43. Fax

44. Email

D.2. Lawyer

45. Surname

46. First name(s)

47. Nationality

48. Address

49. Telephone (including international dialling code)

50. Fax

51. Email

D.3. Authority

The representative of the applicant organisation must authorise any lawyer to act on its behalf by signing the first box below; the lawyer must indicate his or her acceptance by signing the second box below.

I hereby authorise the person indicated in section D.2 above to represent the organisation in the proceedings before the European Court of Human Rights concerning the application lodged under Article 34 of the Convention.

52. Signature of organisation official

53. Date

D	D	M	M	Y	Y	Y	Y

e.g. 27/09/2015

I hereby agree to represent the organisation in the proceedings before the European Court of Human Rights concerning the application lodged under Article 34 of the Convention.

54. Signature of lawyer

55. Date

D	D	M	M	Y	Y	Y	Y

e.g. 27/09/2015

Subject matter of the application

All the information concerning the facts, complaints and compliance with the requirements of exhaustion of domestic remedies and the six-month time-limit laid down in Article 35 § 1 of the Convention must be set out in this part of the application form (sections E, F and G). It is not acceptable to leave these sections blank or simply to refer to attached sheets. See Rule 47 § 2 and the Practice Direction on the Institution of proceedings as well as the “Notes for filling in the application form”.

E. Statement of the facts

56.
1. The applicants are three Macedonian nationals of Roma ethnicity residing in the town of Kriva Palanka. The first and the second applicant are husband and wife.

A. THE AUTHORITY’S REFUSAL TO ALLOW THE APPLICANTS TO TRAVEL ON 14 MARCH 2014

2. On 14 March 2014 the applicants were travelling to Gnjilane (Kosovo) to attend a ceremony connected with a wedding that had taken place in Kriva Palanka a few days earlier.

3. The applicants were travelling together with 11 other people in two vans decorated in a way that would have clearly signalled to others that the passengers were Romani people celebrating a wedding or another event. The applicants planned to stop in Bujanovac (Serbia), where other guests would join them, and then travel to Gnjilane, approximately 34 kilometres away. The plan was to stay in Gnjilane for a few hours and then return home.

4. When the applicants arrived at the Tabanovce border crossing with Serbia (hereinafter “Tabanovce”), some of the passengers handed over their ID cards while others presented their passports; however, the border police insisted that all of the passengers provide passports. The applicants and the other passengers complied. The applicants’ ethnicity, and the ethnicity of the passengers travelling in other van, would have been obvious to the border guards, not only because of the decoration on the vans, but also because of their names as well as the passengers’ dark complexion.

5. The applicants and other passengers were asked to park the vehicles and were brought in for questioning one by one, with each interrogation lasting between 10 and 30 minutes. They were questioned by a female police officer and another officer, a man not in uniform who later turned out to be an inspector for cross-border crime. The applicants were accused of being asylum seekers because of their ethnicity and were told that Roma “cannot be trusted”. The applicants denied planning to go any EU country and kept repeating that they were only going to Kosovo for a celebration; they even offered to the police to leave their passports to guarantee their return. The applicants were kept at the border crossing for at least four hours. Finally, they were refused permission to leave Macedonia and a stamp was put in their passports, struck through with two parallel lines in the upper left corner (see Annex 1 and Annex 2). The applicants and other passengers started to protest the fact that they were not allowed to travel and that they had been held at the border for so long. The officers behaved rudely towards the applicants, pushing them and making offensive comments, including that “Roma are liars”. The third applicant was also given a stamp struck through with two parallel lines in his passport, which on 20 March 2014 was stamped over by a Bulgarian border police at the Gyushevo border crossing when the third applicant was leaving Bulgaria (Annex 3).

6. On the same date (14 March 2014), the border police made an official note (Annex 8) listing the names of the passengers, including the applicants, who were refused exit from Macedonia and the reasons for refusing them. The note indicates that the applicants and others were refused exit based on Article 15 § 4 of the Law on Border Control, that they were travelling to Gnjilane (noted as being in “the Republic of Serbia”), and that they did not possess sufficient financial means or a letter of guarantee to support their stay abroad. It was also noted that the vans, the two drivers, and some of the passengers (but not the first and second applicant) were “registered” with the Ministry of Interior’s Sector for Border Affairs and Migration based on telegram no. 299 of 4 March 2014 and telegram no. 68 of 7 March 2014. The copy of this official note was made available to the applicants only during the trial in November 2015 (see below, § 11 and Annex 8).

B. LEGAL ACTION TAKEN BY THE APPLICANTS

7. On 1 July 2015 the applicants filed a claim (Annex 4) with Skopje Basic Court 2 (hereinafter “the trial court”) against the Republic of Macedonia – Ministry of Interior (hereinafter “the Mol”) for violations of the right to equal treatment and the right to leave one’s own country. The applicants asked the court: to establish that there had been discriminatory treatment and violations of the freedom of movement; to ban further discrimination; and to award just compensation. The applicants invoked relevant domestic and international human rights law and provided evidence of systemic discrimination by the Mol against Roma exercising their right to leave the country.

8. On 7 September 2015 the Mol submitted its observations (Annex 5) to the trial court disputing the applicants’ claims as arbitrary and unsubstantiated by the evidence. The Mol asserted that when leaving Macedonia and entering EU Member States, Macedonian citizens must obey EU regulations on entry and stay. The Mol noted, inter alia, that the applicants failed to provide any evidence of discrimination. The Mol claimed that the lawsuit was motivated by a desire for monetary compensation.

Statement of the facts (continued)

57.

9. On 30 September 2015 the applicants made submissions to the trial court (Annex 6) contesting every argument raised by the MoI. The applicants argued that EU regulations and specifically the Schengen Borders Code are not part of the Macedonian legal system and, furthermore, that they were not travelling to any EU or Schengen country. They also argued that the defendant failed to provide any evidence showing that the applicants represented a threat to public order, national security, or international relations.

10. At the preliminary hearing held on 27 October 2015 the applicants made an additional submission (Annex 7), enclosing a recent positive judgment of the Skopje Court of Appeal concerning the same legal issue and finding discrimination and violations of the freedom of movement in a similar case. The applicants also asked the trial court to order the MoI to issue new passports to the applicants at the MoI's own expense.

11. On 2 November 2015 the MoI submitted to the trial court (Annex 8) a copy of official note no. 25.7-7/1088 from 14 March 2014 and response no. 25.7-958/2 from Tabanovce Police Station dated 23 September 2015 (see above, § 6). According to these documents, the applicants were refused exit from Macedonia because they did not have sufficient funds, hotel reservations, return tickets, or letters of guarantee to justify their travel to "Serbia", and so they fit the profile of people likely to make unfounded asylum claims. Telegram no. 1677 of the MoI – Bureau of Public Security dated 28 April 2011 was also enclosed, containing internal instructions to different police sectors concerning "abuse of the visa-free regime". In order to eliminate such abuse, the telegram specifies different measures, including an instruction to the Sector for Border Affairs to "strengthen controls upon exit from the territory of the Rep. of Macedonia of organised groups of citizens, potential asylum claimants".

12. On 23 December 2015 one of the passengers from the other van testified before the trial court, confirming the accounts of the incident set out in the claim. On the same occasion, Toni Jovchevski, a police officer who performs passport controls at Tabanovce, was heard by the court. He stated that he did not have any recollection of the events of 14 March 2014, although he was one of three officers who signed the official note. He explained the usual practice during passport control. He explained that in addition to inspecting a person's travel document, border police also question passengers leaving the country. The purpose of these questions is not to gather specific information, but rather to establish whether the person is lying when explaining the reasons for her/his travel. He confirmed that border police were given additional instructions by their superiors to pay attention to potential "economic asylum seekers" (Annex 9).

13. Three police officers were subsequently heard by the court. The first, Goran Micesovski, did not offer any new information (Annex 10). The head of the shift, officer Merita Memeti, confirmed that the applicants were stopped because some of the passengers appeared on a "stop list" as possible asylum claimants. (The applicants note that they were unaware of the existence of the "stop list" before bringing their claim.) When asked about the constitutional grounds for denying them their right to leave the country, Officer Memeti stated that the border police operate in accordance with the internal passport control measures (Annex 11). Nikolche Koccev, police inspector for cross-border crime, confirmed that he had conducted an interview with both drivers as they had appeared in the system as suspected organisers of transport for potential asylum seekers. After determining that there were no elements of any criminal offence, Inspector Koccev had informed the border police that the passengers did not represent a risk (Annex 13).

14. On 10 May 2016 the applicants' attorney submitted to the trial court a letter from the Ombudsman explaining that his office had documented a significant increase in the number of complaints regarding racial profiling at the border, that he had established discrimination in several cases, and that he had addressed a request and several recommendations to the MoI and the Macedonian Government to resolve the issue, but with no success (Annex 12).

15. On 9 January 2017 the applicants gave detailed accounts to the trial court of the events that had taken place at the border crossing on 14 March 2014 (see above § 5; Annex 14).

16. On 9 March 2017 Skopje Basic Court 2 issued judgment XXV 25 П4 бр. 1088/15 (delivered to the applicants on 25 April 2017) establishing a violation of freedom of movement in respect of the first and second applicant and dismissing the remainder of claim as unfounded (Annex 15); the court did not award any compensation. In the reasoning of the judgment, the trial court stated that the applicants had not suffered discrimination because the border police had not shown discriminatory attitudes and because the existing internal instructions within the MoI regarding stricter border controls did not mention Roma explicitly. The trial court accepted the defendant's argument that there were also people of Macedonian and Albanian ethnicity who were being stopped at the border, meaning that there was no discrimination. The trial court gave particular weight to the fact that the applicants had not complained to the Macedonian equality body. No compensation was awarded because the applicants had only claimed damages for psychological suffering due to discrimination, and discrimination had not occurred. The court made no reference to the evidence submitted by the applicants of systemic and massive profiling of Roma leaving the territory of Macedonia and the large number of Roma stopped from leaving. As for the third applicant, the trial court found that he was not stopped from leaving the country given that there was (according to the court) no stamp in his passport on the date concerned and he chose to return home with the applicants and the other passengers.

Statement of the facts (continued)

58.

17. On 9 May 2017 the applicants lodged an appeal against the first-instance judgment (Annex 16). The applicants argued that on the date in question they met the only legally prescribed requirement to exit Macedonia – possession of a valid biometric passport – and that the trial court had failed to find any reasonable justification for prohibiting the applicants from leaving Macedonia to attend a celebration in Kosovo. The applicants also noted that detailed controls and interrogations at the border happen almost exclusively to Roma, resulting in travel bans and the refused-exit stamps that appeared in the applicants' passports. According to the applicants, the trial court had erroneously failed to find discrimination because it relied exclusively on the statements of the MoI's employees; all other evidence presented to the court pointed to an obvious difference in treatment. The applicants contested the trial court's refusal to order the defendant to provide the first two applicants with new, unmarked passports, given that the court established that the border police had unlawfully refused to let them leave the country (which implied that the stamps in their passports were unlawful). The third applicant, it was claimed, had provided a clear explanation concerning the stamp in his passport (which had been stamped over - see above, § 5), as well as other evidence that he too was prevented from leaving Macedonia on the date in question. Finally, the applicants challenged the trial court's decision not to award damages.

18. On 15 May 2017, the MoI filed an appeal (Annex 17) challenging the first-instance judgment in respect of the finding of a violation of the first and second applicants' right to leave the country. The MoI repeated that the border police were acting in accordance with their legal duties to check whether passengers travelling to EU or Schengen countries fulfil the requirements for entry to a particular country.

19. On 5 July 2017 the Skopje Court of Appeal issued judgment ГЖ-3736 (Annex 18) refusing both appeals as unfounded and upholding the first-instance judgment. The applicants received the decision on 24 August 2017.

C. ETHNIC PROFILING BY MACEDONIAN BORDER POLICE

20. There is widespread evidence that Macedonian border guards have been racially profiling Macedonian citizens of Roma ethnic origin and stopping many of them from leaving the country. The applicants attach a third-party intervention submitted by the European Roma Rights Centre ("the ERRC") in three related cases currently pending before the Court and ask the Court to consider this document in connection with the present case. The Court will note the data collection conducted by the ERRC, as well as confirmation by the Council of Europe Commissioner for Human Rights, UN bodies, and the domestic Ombudsman. The Interior Minister even admitted the practice in a statement made in November 2016. See Annex 19.

F. Statement of alleged violation(s) of the Convention and/or Protocols and relevant arguments

59. Article invoked Protocol no.12, Article 1 §§ 1 and 2	<p data-bbox="513 159 1503 443">Explanation The applicants have suffered a breach of both provisions of Article 1 of Protocol no.12: they were discriminated against on the basis of race and/or colour in exercising their right to leave Macedonia, a right protected by law (see Article 27 of the Constitution of the Republic of Macedonia); and they were discriminated against by public authorities (the border guards) who prevented them from leaving the country on the basis of their race and/or colour. This complaint is not merely directed against the border police and the MoI; the applicants also claim that the domestic courts' mishandling of their discrimination claim violated Protocol no.12, Article 1 §§ 1 and 2.</p> <p data-bbox="513 449 1503 905">The Court will have no difficulty finding that the applicants were stopped from leaving Macedonia on the basis of their Roma ethnicity (i.e. race) and colour. The authorities used racial slurs when speaking to the applicants (see statement of facts, § 5). This alone is enough to shift the burden of proof onto the Respondent State to show that there was no discrimination. See, e.g., <i>E.B. v France</i> (Grand Chamber, 2008), § 74. Moreover, the Court cannot ignore the evidence of a long-standing administrative practice of stopping Roma from leaving the country. There is a clear pattern of racial profiling of Romani people, a pattern which has been identified and denounced by national and international bodies and acknowledged by the Interior Minister (see Annex 19). That is sufficient to show the existence of discriminatory treatment, without it being necessary for the Court to examine the individual circumstances of the case. It is enough for the applicants to show that they are Romani people who were subjected to a pattern of racial profiling at the border. See, <i>mutatis mutandis</i>, <i>D.H and others v Czech Republic</i> (Grand Chamber, 2007), § 209.</p> <p data-bbox="513 911 1503 1976">The applicants' case also concerns the handling of their discrimination claim by the domestic courts. In this respect they highlight the fact that they have brought their case under Protocol no.12 to the Convention. The Court has rarely had the opportunity to interpret Protocol no.12, and never, as far as the applicants are aware, in the context of racial profiling by police, at the border or otherwise. By agreeing to be bound by Protocol no.12, Macedonia accepted specific obligations to prohibit discrimination by all public officials and in the enjoyment of all rights set forth by law. In accordance with the Court's ordinary way of interpreting the Convention and its protocols, Protocol no.12 must be seen as adding something more specific to the protection already provided by Article 14 taken, in this case, with Articles 6 and 8, and Article 2 § 2 of Protocol no.4. See <i>Sharma v Latvia</i> (2016), § 78 ("in addition to the protection afforded by Articles 3 and 8... taken in conjunction with Article 13, aliens benefit from the specific guarantees provided for in Article 1 of Protocol No. 7"). The applicants claim that Macedonia's ratification of Protocol no.12 did not merely expand the material scope of the prohibition on discrimination, but also amounted to an undertaking that its domestic courts would fully address, in accordance with principles derived from the Convention, claims of discrimination brought by individuals against public bodies and/or concerning the enjoyment of rights set forth by law. Ratification of Protocol no.12 also engages the responsibility of a Contracting Party under the Convention when its domestic courts misapply domestic anti-discrimination law in cases falling within the ambit of the protocol; the applicants note that in the explanatory memorandum to Protocol no.12 "attention [was] drawn in particular to Article 53, under the terms of which 'Nothing in this Convention shall be construed as limiting or derogating from any of the human rights and fundamental freedoms which may be ensured under the laws of any High Contracting Party...' (§ 32). Domestic law in Macedonia, in theory, provides extensive protection against the kind of discrimination the applicants suffered, including a shift of the burden of proof onto the defendant in discrimination cases (Article 38 of the Law on Prevention and Protection Against Discrimination). In practice, however, neither of the domestic courts that considered the applicants' claims applied the basic principles of Macedonia's anti-discrimination law. While the applicants appreciate that the Court is not a court of fourth instance, the notion of the shift of the burden of proof is so essential to the prohibition of discrimination that the Court must find a breach when the domestic courts of a State that has ratified the protocol failure to apply the shift</p>
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Statement of alleged violation(s) of the Convention and/or Protocols and relevant arguments (continued)	
60. Article invoked Protocol no.12, Article 1 §§ 1 and 2 (continued)	Explanation
	of the burden of proof properly in cases falling within the protocol's ambit. The notion of the shift of the burden of proof can be found not only in Macedonian domestic law and the case law of the Court, but also the legislation of most member States of the Council of Europe. See, e.g., EU Directive 2000/43, Article 8 (applying the shift of the burden of proof in discrimination cases in the 28 Member States of the EU). The applicants submit that it is appropriate for the Court, when applying Protocol no.12, to examine the way the domestic courts handled the discrimination claim and to exercise European supervision when there has been a blatant failure to apply the shift in the burden of proof or other essential principles of anti-discrimination law.
Article 2 § 2 of Protocol no.4, taken on its own	The applicants note that the domestic courts found a violation of the right to leave one's own country in respect of the first two applicants, but did not order any compensation. This is incompatible with the Court's case law, under which some amount of money should be awarded as just satisfaction for non-pecuniary damage when a person is deprived of her right to leave her own country. See, e.g., Kerimli v Azerbaijan (2015), § 63 (awarding 5,000 EUR); Battista v Italy (2014), § 58 (awarding 5,000 EUR); Napijalo v Croatia (2003), § 86 (awarding 2,000 EUR); Khlyustov v Russia (2013), § 107 (awarding 2,000 EUR). The Court has found in the past that even if the domestic courts have found a violation of the Convention right at issue, a person remains a victim, as that term is used in Article 34 of the Convention, if the domestic courts have awarded compensation "considerably below the minimum generally awarded by the Court". Ciorap (no.2) v Moldova (2010), §§ 24-25. The applicants claim that this is what happened in the present case. In respect of the third applicant, the domestic courts made an error so obvious on its face that the Court's intervention is required. It was clear that the third applicant was stopped from leaving the country. The domestic courts refused to examine the third applicant's passport and notice that a refusal stamp was there (but inadvertently stamped over by a Bulgarian border guard). This negligence on the part of the domestic courts is so severe as to make it appropriate for the Court to find a breach of Article 2 § 2 of Protocol no.4 in his case as well. The applicants also submit that the border police's insistence on applying internal instructions on border controls without regard for the Constitution is an aggravating factor and calls into question respect for fundamental rights and the rule of law.
Article 2 § 2 of Protocol no.4, taken with Article 14	Based on what is set out above in respect of Protocol no.12 to the Convention, the applicants also claim that the discriminatory refusal to allow them to leave the country breached Article 2 § 2 of Protocol no.12 taken with Article 14.
Article 8, taken on its own and with Article 14	During the course of the proceedings in the domestic courts, the applicants learned that their names were being kept in some kind of "stop list" (see Statement of Facts, § 13). The applicants were previously unaware of the existence of this list. Given the evidence of a widespread practice of stopping Roma from leaving the country, the applicants assert that their personal data appears to have been processed by the authorities with the illegitimate aim of engaging in race discrimination; likewise, the processing of their personal data was discriminatory and therefore not necessary in a democratic society. See, mutatis mutandis, L.H. v Latvia (2014), § 56 (bearing in mind that ethnic data, like health data, is of fundamental importance to a person's enjoyment of her Article 8 rights and is similarly protected in data protection legislation).
Article 6, taken on its own and with Article 14	The failure to consider the evidence of a practice of racial profiling violated the applicants' right to a fair trial, especially given the shift of the burden of proof in domestic anti-discrimination law. The applicants note that in many similar cases pending before the domestic courts, there were findings of discrimination. See Annex 19, § 19. Indeed, Skopje Basic Court 2 has delivered different rulings on the same matter, failing to apply the anti-discrimination law consistently. Ibid. The Skopje Court of Appeal was unwilling to deal with this issue, despite hearing appeals in divergent cases from Skopje Basic Court 2. See Tudor Tudor v Romania (2009), § 29 ("in the case at hand the conflicting interpretations stemmed from the same jurisdiction which, in addition, was the court of last resort in the matter") and § 30 ("there is still no definitive settlement of the interpretation given by the courts...").

62. Is or was there an appeal or remedy available to you which you have not used? Yes
 No

63. If you answered Yes above, please state which appeal or remedy you have not used and explain why not

H. Information concerning other international proceedings (if any)

64. Have you raised any of these complaints in another procedure of international investigation or settlement? Yes
 No

65. If you answered Yes above, please give a concise summary of the procedure (complaints submitted, name of the international body and date and nature of any decisions given).

66. Do you (the applicant) currently have, or have you previously had, any other applications before the Court? Yes
 No

67. If you answered Yes above, please write the relevant application number(s) in the box below.

I. List of accompanying documents

You should enclose full and legible copies of all documents. No documents will be returned to you. It is thus in your interests to submit copies, not originals. You MUST:

- arrange the documents in order by date and by procedure;
- number the pages consecutively; and
- NOT staple, bind or tape the documents.

68. In the box below, please list the documents in chronological order with a concise description. Indicate the page number at which each document may be found.

1.	First applicant's passport with exit stamp struck through with two lines, 14 March 2014	p.	1
2.	Second applicant's passport with exit stamp struck through with two lines, 14 March 2014	p.	2
3.	Third applicant's passport with exit stamp struck through with two lines (stamped over but still visible), 14 March 2014	p.	3
4.	Applicants' claim lodged with Skopje Basic Court 2, 1 July 2015	p.	5
5.	Mol's observations on the applicant's claim, 7 September 2015	p.	12
6.	Applicants' reply to the Mol's observations, 30 September 2015	p.	17
7.	Applicants' submission to the court, 27 October 2015	p.	22
8.	Mol's submission to the court (attaching three documents), 2 November 2015	p.	24
9.	Minutes of the hearing of 23 December 2015	p.	31
10.	Minutes of the hearing of 11 February 2016	p.	39
11.	Minutes of the hearing of 5 May 2016	p.	44
12.	Applicants' submission to the court (including letter from the Ombudsman), 10 May 2016	p.	50
13.	Minutes of the hearing of 3 November 2016	p.	53
14.	Minutes of the hearing of 9 January 2017	p.	57
15.	Skopje Basic Court 2, judgment of 9 March 2017 (delivered to the applicants on 25 April 2017)	p.	65
16.	Applicants' appeal, 9 May 2017	p.	83
17.	Mol's appeal, 15 May 2017	p.	89
18.	Skopje Court of Appeal, judgment of 5 July 2017 (with document showing it was delivered to the applicants on 24 August 2017)	p.	93
19.	Third-party intervention of the European Roma Rights Centre in three other cases pending before the Court, 5 February 2018	p.	101
20.		p.	
21.		p.	
22.		p.	
23.		p.	
24.		p.	
25.		p.	