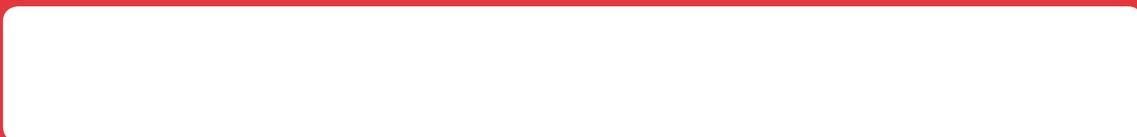


WRITTEN COMMENTS

BY THE EUROPEAN ROMA RIGHTS CENTRE CONCERNING MACEDONIA

Regarding EU Accession Progress for Consideration by the European Commission during its 2013 Review



CHALLENGING DISCRIMINATION PROMOTING EQUALITY

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1 ANTI-DISCRIMINATION LAW

The Law for Prevention and Protection against Discrimination (LPPD) was adopted on 8 February 2010 and came into force in January 2011.¹ There are issues with non-compliance of this law with the EU Racial Equality Directive and the Employment Equality Directive which the ERRC already raised in its written comments concerning Macedonia's EU accession progress that were submitted to the European Commission for consideration during its 2012 review.² The submission highlights the non-use of statistics as evidence in indirect discrimination cases, the *locus standi* position of non-governmental organizations limited to judicial procedures only and collective interest of certain groups, and the failure to address segregation as a special form of discrimination.

From January 2011 to April 2013, 159 complaints were submitted to the Commission for Protection against Discrimination (CPD)³, out of which 85 had been decided. Sixteen complaints were filed by Roma on the grounds of ethnic affiliation out of which eight cases have been concluded. Discrimination was found only in one case.⁴ The low number of submitted complaints may indicate low awareness among Romani community in Macedonia of anti-discrimination legislation and protection mechanisms.

In March 2013, the second annual report of the CPD was published and submitted to the Parliament of Macedonia.⁵ Several Macedonian NGOs united in the Anti-Discrimination Network urged Macedonia's parliament not to accept the CPD's annual report. The NGOs stated that the report shows that the commission had failed to do its primary job of acting on complaints and determining cases of discrimination present in public institutions. In particular, they raised concerns regarding the commission's practice of avoiding determining the existence or non-existence of discrimination in filed complaints, and highlighted that in many cases the commission had stopped an investigation based on arbitrary findings that the institution in question had shown a desire to correct its behaviour.⁶

The ERRC has already raised concerns about the independence and impartiality of the Committee, which was established in January 2011. Two of the seven members are employed in State institutions, one committee member is also employed in the Ministry of Labour and Social Affairs and another is employed in the Parliament.⁷

2 ACCESS TO EDUCATION

In the field of education of Roma in Macedonia, an ongoing problem is the overrepresentation of Romani pupils in special education. The overrepresentation occurs in either special schools or special classes for children with disabilities within mainstream schools, where children are isolated from the rest of the school population and offered a substandard curriculum that does not prepare them for educational success or employment. The special education system violates not only the Convention on the Rights of Persons with Disabilities, which Macedonia ratified in December 2011, but the disproportionate number of Romani children in these schools may suggest discrimination on the basis of ethnicity in violation of a host of Macedonia's international legal obligations.

For a child to study in a special school or to attend a special class within a standard primary school, the child first has to undergo testing before the Commission for Categorization. However, ERRC research found there have been cases where Romani children were enrolled into special education without being tested or without any alleged disability being established.⁸

1 Law on Prevention and Protection from Discrimination, 21 April, available at: http://nkt.mtsp.gov.mk/nkt/content/Documents/anti_discrimination_law_mkd_2010.pdf.

2 ERRC submission to the European Commission on Macedonian EU Progress Report, May 2012, available at: <http://www.errc.org/cms/upload/file/ecprogress-macedonia-2012.pdf>.

3 *SETimes*, "Macedonians get new resource against discrimination", 19 January 2011, available at: http://www.setimes.com/cocoon/setimes/xhtml/en_GB/features/setimes/features/2011/01/19/feature-03.

4 ERRC e-mail correspondence with the office of the Commission for Protection against Discrimination. Skopje: 19 and 22 April, 2013.

5 Commission for Protection against Discrimination of the Republic of Macedonia, *The second annual report* (R.Macedonia: Skopje, 2013) 7.

6 Sinisa Jakov Marusic, "Macedonia Accused of Concealing Discrimination", *BalkanInsight*, Skopje 30 April 2013, available at: <http://www.balkaninsight.com/en/article/ngo-s-macedonia-turns-blind-eye-on-discrimination>.

7 See: <http://www.kzd.mk/mk/za-kzd/clenovi>.

8 ERRC research mission March 2011.

A considerable number of Romani children start their education within mainstream schools, but later get transferred to special education due to lack of any additional educational support at an early stage, which results in poor school performance.⁹

The ERRC and the National Roma Centrum (NRC)¹⁰ conducted a survey on the overrepresentation of Romani children in special education in mid-2012 in several Macedonian cities, targeting 219 Romani families with 252 children enrolled in special schools and classes for children with special needs in mainstream schools.

Romani children in Macedonia are placed in special education without a clear and transparent process that allows parents to make a full and informed decision. The survey revealed that once a child is placed into special education, it becomes almost impossible to transfer back into mainstream school, thus severely limiting children's chances later in life. In addition, more than two thirds (69.6%) of interviewed parents said that after the initial categorisation their child was never tested again.¹¹

It is education and diagnostic officials - not parents – who start procedures leading to the placement of Romani children in special education. More than two thirds of parents surveyed (68.5%) said their children were recommended to be sent for testing by a school official, an education expert, a doctor or a centre for social work.¹²

Half of the parents (46.9%) surveyed were not even told what the testing of their child aimed to establish. The majority of parents were not told that: they can challenge the recommendation for enrolment into special education (78.9%); attending special education will severely limit the ability of their child to access higher education and employment (67.6%); or that they have the right to request re-testing and reintegration of their child into mainstream education (58.3%).¹³

Also in 2012, the ERRC conducted research on this issue from all special schools and mainstream primary schools with special classes, requesting information on the total number of children attending these schools, disaggregated by ethnicity. Both sets of research indicated that Romani children are very highly over-represented in special schools and classes providing education for children with mild mental disabilities.

Data collected from a selection of special schools and classes show continued overrepresentation of Romani children in the 2012-2013 academic year. The percentage of Roma students at special school Maca Ovcarova in the town of Veles went up to 38%, at special school Ranka Milanovik in Skopje it went up to 72%. As for special classes in mainstream primary schools, the number of Roma students at primary school Gorgi Sugare - Bitola went up to 29% and in primary school Straso Pindzur – Kavadarci, 66% of all children in the school are Romani.

3 FREEDOM OF MOVEMENT

The EU lifted visa restrictions for the citizens of Macedonia, Serbia and Montenegro in December 2009 allowing them to travel to the Schengen zone without visas for up to 90 days per six-month period, leading to a significant increase in the number of asylum seekers in certain EU countries.¹⁴ EU officials called on Macedonian authorities to take measures to prevent their citizens asking for asylum in the EU as the majority were perceived to be seeking asylum for economic reasons.¹⁵ According to the European Commission, the most frequent reasons for asylum claims concern lack of health care, unemployment and lack of schooling.¹⁶

⁹ ERRC Interview MK/March 2011.

¹⁰ The NRC is a Macedonian-based civil society organisation for the promotion and protection of human rights of the citizens in the Republic of Macedonia. NRC acts through direct field work, research, public debates and initiatives to change legislation. See: www.nationalromacentrum.org.

¹¹ ERRC and National Roma Centrum, *Fact Sheet: Overrepresentation of Romani Children in Special Education in Macedonia*, August 2012.

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ Euractiv, "Europe hit by scores of Western Balkan Asylum Seekers", 21 October 2010, available at: <http://www.euractiv.com/enlargement/europe-hit-scores-western-balkan-asylum-seekers-news-498992>.

¹⁵ ERRC submission to the European Commission on Macedonia, May 2012, available at: <http://www.errc.org/article/errc-submission-to-the-european-commission-on-macedonia-may-2012/3991>.

¹⁶ 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. 24.

In order to diffuse pressures from the EU, Macedonian authorities have prevented thousands of Macedonian citizens suspected of being likely to make unfounded asylum applications in the EU from leaving their country. The CoE Commissioner for Human Rights has noted that the measures taken included “enhanced border checks and profiling”.¹⁷

According to the most recent available data, from the day the EU lifted the visa restrictions until November 2012 about 7000 Macedonian citizens, mainly Roma, were not allowed to leave the country and had their travel documents confiscated.¹⁸ In 2011, during a seven-month period alone, 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.¹⁹

The CoE Commissioner for Human Rights reports that such measures interfere with the internationally established right to leave a country and undermine the right to seek asylum. Instead of penalising people for attempting to exercise their human rights, the authorities should better address the root causes of poverty and social exclusion which push individuals to seek refuge abroad in the first place.²⁰

The Macedonian Constitution guarantees the right for every citizen to leave the territory of Macedonia and return. The exercise of these rights may be restricted by law only in cases where it is necessary to protect the security of the state, criminal proceedings or the protection of human health (Article 27).²¹

However on 3 October 2011, the Macedonian Parliament adopted an amendment to the Law on Travel Documents related to Article 37.²² Article 37 stipulates that a person who has been forcibly returned or expelled from another country due to violating regulation on entry and stay in that country will be denied passport issuance. If these circumstances occurred once the passport had been issued, the passport will be confiscated for a period of one year.²³

Relating to this, the ERRC has documented 10 such cases of Romani individuals whose passports were revoked by Macedonian border officials, and become aware of another 40 such cases. Revocation of passports not only limits travel to the country citizens were returned from or other EU or Schengen country, but also travelling to other countries outside these areas, such as Serbia where many Romani families have relatives and friends. While exit control measure were introduced in order to limit the outflow of citizens who wish to exercise their right to seek asylum or to ban their return if they have attempted to do so, such measures also ban or obstruct citizens from travelling for tourism, family or business reasons.

4 EMPLOYMENT

According to the United States Country Report on Human Rights 2012 for Macedonia “Roma reported widespread societal discrimination. Namely, NGOs and international experts reported that employers often denied Roma job opportunities and some Roma complained of lack of access to public welfare funds.”²⁴

A recent well-publicised case supports the observations of the US government report that the Romani community in Macedonia suffers from discrimination in the sphere of employment. In an email to an agency that

17 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.

18 *Ibid.*

19 Bureau of Democracy, Human Rights and Labor, U.S. Department of State, *Country Report on Human Rights Practices for 2011 – Macedonia*, p.18.

20 Council of Europe Commissioner for Human Rights, Report on his visit to “the former Yugoslav Republic of Macedonia” from 26 to 29 November 2012.

21 Constitution of R.Macedonia, 1 November 1991, available at: <http://www.sobranie.mk/?ItemID=A431BEE83F63594B8FE11DA66C97BEAF>.

22 Law on amendments of the Law on Travel Documents for Citizens of Rep. of Macedonia, 3 October 2011, available at: <http://www.mvr.gov.mk/Uploads/ZAKON%20ZA%20IZMENUVAVE%20I%20DOPOLNUVAWE%20NA%20ZA-KONOT%20ZA%20PATNI135-11.pdf>.

23 *Ibid.*

24 United States Department of State - Bureau of Democracy, Human Rights and Labor, Macedonia 2012 Human Rights Report, p.24, available at: <http://www.state.gov/documents/organization/204523.pdf>.

provides cleaning services²⁵ a shopping centre in Skopje demanded that all employees of Roma ethnicity working in the food section must be removed from the workplace.²⁶ The email dated 9 January 2013 came to light on 19 March 2013 when published by Macedonian media.²⁷ It is clear from the published correspondence, and from enquiries made to the agency and to the affected Roma, that a ban was made on the basis of ethnic identity. Members of ethnic groups other than Roma were engaged in the same department of the shopping centre and their continuing work was not questioned.

Macedonian authorities have responded to the case. The Ombudsman opened a case to determinate discrimination according to his responsibilities.²⁸ Inspectors from the State Labour Inspectorate will look into indicators of possible discrimination.²⁹ Macedonia's Anti-Discrimination Commission also reacted, saying that the case "represents discrimination on ethnic grounds against a group of people of Roma ethnicity who are being degraded and humiliated."³⁰

25 DOOEL "LAND SERVICE" is an agency which provides cleaning services, Misko Mihajlovski 14A, 1 000 Skopje, Macedonia.

26 "Во Сити Мол Ромите непожелани во одделот за храна?", A1.on.mk, Skopje 19 March, available at: <http://a1on.mk/wordpress/archives/121612#.UU7Te78Rm90>.

27 *Ibid.*

28 "Инспекции ќе испитуваат дали имало дискриминација врз Ромите во случајот на "Сити Мол", Radio Mof, Skopje 20 March 2013.

29 *Ibid.*

30 "КЗД го осуди инцидентот со отпуштањето Роми во Сити Мол", Hajd Park, Skopje 21 March 2013, available at: <http://www.hajdpark.mk/kzd-go-osudi-incidentot-so-otpustanjeto-romi-vo-siti-mol/>.