

Meijers Committee

Standing committee of experts on international immigration, refugee and criminal law

Secretariat

p.o. box 201, 3500 AE Utrecht/The Netherlands
phone 0031 30 297 43 28
fax 0031 30 296 00 50
e-mail cie.meijers@forum.nl
<http://www.commissie-meijers.nl>

To (by email)

Ms Cecilia Malmström
Commissioner for Home Affairs
European Commission
B-1049 BRUSSELS

Reference Regarding

CM1301
Letter Meijers Committee on the implications of the recent judgment of the ECHR *Stamose v Bulgaria* for visa liberalisation negotiations

Date

10 January 2013

Dear Ms Malmström,

The Meijers Committee wishes to bring to your attention the recent judgment of the European Court of Human Rights in the case of *Stamose v Bulgaria*¹ and the judgment's implications for requirements imposed by the EU on third countries in the context of negotiations on visa liberalisation and post-visa liberalisation monitoring.

The European Court of Human Rights held in *Stamose* that a travel ban for the duration of two years imposed by Bulgaria on one of its nationals for having violated US immigration laws and being deported back to Bulgaria was in violation of the right to leave any country, including his own, as protected under Article 2 Protocol No. 4 of the European Convention on Human Rights. The European Court notes in the judgment that the travel ban and the seizure of the applicant's passport were based on Bulgarian legislation that was adopted in the course of negotiations with the EU on visa liberalisation in the 1990s and which aimed at restricting the abuse of visa free travel.

Even though Bulgaria has in the meantime acceded to the EU and repealed the challenged legislation, the judgment is of relevance for current negotiations on visa liberalisation and post-visa liberalisation monitoring, as are underway with *inter alia* Kosovo, Albania, Georgia, Moldova, Ukraine, Turkey, Serbia, Macedonia and Montenegro. As a price for removing the visa requirement, the EU requires substantial concessions on a wide variety of issues relating to borders and movement of persons, in order to prevent possible abuse of visa liberalisation.²

The Minister of Internal Affairs of Macedonia, Ms Gordana Jankuloska announced for example in November 2011 that in order to satisfy EU demands, the Macedonian Criminal Code and the Law on Passports would be amended so as to allow for the confiscation of a passport for one year if the individual was forcefully deported or exiled from another country due to violation of entry and stay regulations.³ The Serbian government has announced similar deterrent measures, including the possible imposition of travel bans.⁴ This type of measures is highly questionable in view of the ECtHR's findings in *Stamose* that an automatic travel ban for having violated a foreign country's immigration laws is disproportionate, may fail to meet a legitimate aim and is "quite draconian" since the person in question has already been sanctioned by and deported from a foreign country.

¹ ECtHR 27 November 2012, no. 29713/05.

² See eg Third Report on the Post-Visa Liberalisation Monitoring for the Western Balkan Countries, COM(2012) 472 final.

³ Republic of Macedonia Press statement 16 November 2011, 'Jankuloska: Visa liberalization, crucial benefit in Macedonia's EU integration process'.

⁴ B92 2 June 2011, 'Number of false asylum seekers "halved"


<http://www.b92.net/eng/news/politics-article.php?yyyy=2011&mm=06&dd=02&nav_id=74713>.

The Meijers Committee has earlier expressed its concerns that EU pressure on third countries to prevent abuse of visa free travel could interfere with the human rights to leave one's country and to seek asylum, and that there are worrying signs that such pressure results in discriminatory practices of border control by third countries.⁵ Balkan countries are reported to not only revoke travel documents, but also to criminalise the act of violating the immigration laws of a foreign country and to undertake specific measures in respect of minorities who are likely to request asylum in the EU, such as Roma.⁶

The Meijers Committee would therefore advise the European Commission to closely review and, if necessary, reconsider the type of requirements that it demands from third countries in the context of visa liberalisation. It would be advisable that the roadmaps for the visa liberalisation dialogues and the post-visa liberalisation monitoring mechanism contain guarantees with a view to preventing that the assessment of progress and reforms in third countries is being made contingent on the adoption of measures that jeopardize fundamental rights.

We hope you will find these comments useful. Should any questions arise, the Meijers Committee is prepared to provide you with further information on this subject.

Yours sincerely,



Prof. dr. C.A. Groenendijk
Chairman

⁵ Meijers Committee, Note on the Proposal to introduce a safeguard clause to suspend visa liberalisation (COM (2011) 290 final), 19 December 2011, CM 1118 (<http://www.commissie-meijers.nl>).

⁶ See, for an overview of restrictive measures taken by a number of Balkan countries: Chachipe a.s.b.l., 'Selective Freedom. The Visa Liberalisation and Restrictions on the Right to Travel in the Balkans', June 2012
<http://romarights.files.wordpress.com/2012/07/chachipe_visa_liberalisation_report_270612.pdf>.