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Mrs. Cecilia Malmström
Commissioner in charge of Home Affairs
European Commission
B – 1049 Brussels

Ongoing human rights concerns in relation with your requests to the countries of the Western Balkans to stop the influx of asylum seekers in the European Union

Dear Commissioner Malmström,

We are writing to you to express our ongoing concern regarding pressure put on the countries of the so-called Western Balkans by the European Commission and EU Member States aiming to force these countries to stop the influx of asylum seekers into the EU.

One year ago, on 26 October 2010, we wrote to you expressing our concern in regards to a letter which you had sent, on 20 September 2010, to the Serbian and Macedonian ministers of Interior, requesting them to take measures in order to prevent their citizens from seeking asylum in the EU. This letter contained an explicit warning that the increase in the number of asylum applications filed by citizens of these two countries could “jeopardise the entire process of visa liberalisation in the Western Balkans.”¹

About the same time, Commissioner Štefan Füle sent a similar request to Foreign Ministers of the two countries.²

In his reply to our letter³, your deputy head of office, Mr. Laurent Muschel, denied that the European Commission had ever asked for the asylum applications of third country citizens to be stopped. He stated that the purpose of your request was to make sure that the visa liberalisation would not lead to an abuse of the asylum system by “organised networks” as a way of facilitating immigration.

Four months later, the Head of Unit A2, External relations and enlargement, Mr. Luigi Soreca, stated that the European Commission “has no indication that the increase in the number of

¹ See: Asylum rise puts Balkan visa-free scheme in danger, *EU Observer*, 21.10.11

² See: European Stability Initiative: Advancing Freedom of Movement in a Populist Age : How the Western Balkans asylum seekers’ affair can be resolved, p. 8. According to the *European Stability Initiative*, which published extracts of the letter of Commissioner Füle to the then Macedonian Foreign Minister Antonio Milošoski, the Commissioner asked the authorities of the two countries to “take *all the necessary measures* to reduce the influx of asylum seekers *without any delay*.” The letter included a clear warning that the increase in the number of asylum seekers, if unchallenged, could not only affect Serbia’s and Macedonia’s credibility in the eyes of EU member states, but also lead to a hardening of their position with regards to visa issues.

³ Letter of 25 March 2011

asylum applications lodged by nationals of the visa-exempted Western Balkan countries was linked to criminal activities of ‘organised networks’.⁴ The same information is also given by the European border agency, Frontex, in its annual risk analysis on the countries of the Western Balkans.⁵

On 22 June 2011, we wrote to you in relation to the publication by your services of a report *On the post-visa liberalisation monitoring for the Western Balkan countries*. In this letter, we expressed our concern regarding the proposal by the Serbian authorities to introduce a law reform making it possible to temporarily revoke the passports of failed asylum seekers and returned immigrants.

In the meantime, we understood that the Macedonian authorities put forward a similar proposal. According to a note of the Macedonian Ministry of Foreign Affairs, the Macedonian Minister briefed you on this and other measures taken by the Macedonian authorities in order to reduce the number of asylum seekers during a meeting in Brussels, in June 2011, and you welcomed these measures.⁶

Over the last twelve months, we observed that both countries took comprehensive measures in order to divert the pressures from the side of the European Union and individual EU member states. These measures include a strengthening of border controls including exit controls which result in a limitation of the freedom of movement of Serbian and Macedonian nationals.

According to information we received from consular services, the authorities of the countries, which have recently been granted a visa waiver for short-term travels to the EU, have been asked to adopt certain elements of the *Schengen Borders Code* into national law. This concerns, in particular, the requirement to verify that persons who wish to enter the Schengen area fulfill the entry requirements set by the Schengen countries, i.e., that “they justify the purpose and conditions of the intended stay, and they have sufficient means of subsistence, both for the duration of the intended stay and for the return to their country of origin or transit to a third country into which they are certain to be admitted, or are in a position to acquire such means lawfully”.⁷

According to a recent report of the *European Stability Initiative*, “the Commission and EU countries have asked Serbian and Macedonian border police to do what *EU* border police actually *must* do under the Schengen Convention. EU border police are obliged to refuse entry to the EU in cases where there is a lack of “documents justifying the purpose and conditions of the intended stay” and a lack of “sufficient means of subsistence” during the trip and for the return. *Now Serbian and Macedonian border police have to ask the same questions and keep people back who do not have the right answers.*”⁸

This information is confirmed by your recent report *On the post-visa liberalisation monitoring for the Western Balkan countries*⁹ and by the Frontex *Annual Risk Analysis* for the countries of the Western

⁴ Letter of 26 July 2011 to Chachipe

⁵ Frontex: Western Balkans. Annual risk analysis 2011, Warsaw, April 2011, p. 25

⁶ See: Macedonian Ministry of Foreign Affairs: Minister Milošoski meets European Commissioner for Home Affairs Cecilia Malmström, 24.06.11

⁷ Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), art. 5: Entry conditions for third-country nationals

⁸ European Stability Initiative: Advancing Freedom of Movement in a Populist Age : How the Western Balkans asylum seekers’ affair can be resolved, p. 28, emphasis added

⁹ In the case of Montenegro, the report states: “Until 1 April 2011, 538 Montenegrin citizens were prevented from leaving Montenegro because they did not meet conditions for entering the EU and the Schengen zone countries (lack of funds for the intended stay; absence of reason for staying abroad; lack of

Balkans, which both include statistical material and practical examples of citizens from these two countries being denied the right to leave their country.¹⁰

As we pointed out in our letter to the Macedonian authorities¹¹, and as it is also underlined in the abovementioned Frontex report in the case of Serbia,¹² both countries have no legal basis for these controls and the denial of exit.

Nevertheless you recommend, in conclusion to your report *On the post-visa liberalisation monitoring for the Western Balkan countries*, “(4) encouraging the countries of origin and transit States to increase controls at borders, in line with the Schengen acquis, with a view to avoiding as far as possible abuse of visa free travel. For this purpose, Frontex could facilitate cooperation and exchange of information between all parties concerned.”¹³

This recommendation coupled with a request to prevent citizens who do not fulfill the “entry conditions”¹⁴ from leaving these countries is incompatible with international human rights law. While every country is sovereign in its decision on whom to admit or not on its territory, as far as foreign nationals are concerned, this is otherwise in the case of departure.

Indeed, the right of every person to leave any country including his/her own is guaranteed by article 13 of the Universal Declaration of Human Rights (UDHR), article 12 of the International Covenant on Civil and Political Rights (ICCPR) and article 2 of Protocol No. 4 to the European Convention on Human Rights (ECHR).

In the context of the Stabilisation and Association Process, the countries of the Western Balkans have been asked to adopt international human rights standards and to transpose them into national law. As a consequence, the principle of freedom of movement is today guaranteed by the national constitutions of all the six (including Kosovo) countries of the Western Balkans.¹⁵

return tickets or passengers health insurance) or for other reasons (minors without parental consent; previous completed stay of three months within the last six months in the EU).”

In the case of Serbia, the report mentions the introduction of enhanced controls at the border crossing in order to prevent the “abuse of the visa-free regime”, implying a control of return tickets and requesting evidence on sufficient means for subsistence in the Schengen area.

(Commission staff working paper on the post-visa liberalisation monitoring for the Western Balkan countries in accordance with the Commission Statement of 8 November 2010, SEC(2011) 695 final, Brussels, 30.5.2011)

¹⁰ Frontex writes: “Serbia strengthened exit controls at border crossings with Hungary in order to minimise the abuse after the first wave of asylum claims in the EU. (...) In one incident, Serbia prevented a group of FYROM nationals to exit, largely following a lead that they intended to claim asylum in Germany.” The agency further specifies that “two out of three refused Serbian nationals in 2010 were refused due to an existing entry ban [into the Schengen area]” (Frontex: Western Balkans. Annual risk analysis 2011, Warsaw, April 2011, p. 28, box 8)

¹¹ Letter to the Macedonian Prime Minister, Deputy Prime Minister in charge of European Affairs, Minister of Interior, Justice, Foreign Affairs, Roma inclusion of 3 August 2011

¹² “Serbia strengthened exit controls at border crossings with Hungary in order to minimise the abuse after the first wave of asylum claims in the EU. However, there was and still is no legal basis to refuse a Serbian (or other) national to exit if the person fulfils all legal conditions on the basis of information received from the Serbian authorities.” Frontex: Western Balkans. Annual risk analysis 2011, Warsaw, April 2011, p. 28, box 8

¹³ op.cit.

¹⁴ As defined in the Schengen Borders Code

¹⁵ Article 3 (m) of the Constitution of Bosnia and Herzegovina; article 38 (2) of the Albanian constitution; article 39 of the Constitution of the Republic of Serbia; article 27(2) of the Constitution of the Republic of Macedonia; article 39 of the Constitution of Montenegro, article 35 (2) of the Constitution of Kosovo

Forcing countries to adopt a pre-screening by singling out those travellers who do not have sufficient resources or do not provide the guarantees for their return is thus not just an invitation to violate international human rights standards but also to break national law and constitutional guarantees.

It is of particular concern to us that the measures aiming to prevent persons from seeking asylum abroad are targeting primarily persons belonging to ethnic minorities of whom Roma are the most affected. This can be seen from political statements by government officials and is supported by local reports:

On 8 May 2011, the Serbian state news agency, *Tanjug*, quoted the Serbian Minister of Interior, Ivica Dačić, announcing the enhancement of border controls. According to *Tanjug*, the Minister said the following:

“We will meet with representatives of local governments and the Roma and Albanian communities and explain to them that those people will not be granted asylum (in the EU) and that they could harm the whole country in terms of the visa liberalization”.¹⁶

He added:

“The border police will also introduce more rigorous control *no one from those communities will be able to leave the country if they do not have a return ticket, means to support their stay and cannot state the reason for the journey.*”¹⁷

In the case of Macedonia, we have been able to gather several reports by NGOs and journalists, documenting that Roma are the prime targets and victims of these checks.¹⁸

The European Commission seems to be aware of these facts, as the information is included in the recent progress report on Macedonia.

Indeed, the report states that, “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.*”¹⁹

The practice of selectively stopping and searching person’s on the basis of their ethnicity, race or colour amounts to direct discrimination. As it was stipulated by the Human Rights Committee in its judgment in the case of *Rosalind Lecraft Williams v. Spain* it violates article 26 of the International Covenant on Civil and Political Rights (ICCPR) in conjunction with article 2, paragraph 3 of the same covenant. It also violates article 2 of Protocol No. 4 of the ECHR, together with articles 6 of Protocol No. 4 to the ECHR and article 14 of the ECHR.

The principle of non-discrimination is also enshrined in the national constitution of the countries of the Western Balkans.²⁰

¹⁶ Interior minister announces stricter border control, *Tanjug*, 08.05.11, emphasis added

¹⁷ Ibid.

¹⁸ for details, please refer to our letter to the Macedonian government of 3 August 2011

¹⁹ European Commission: The former Yugoslav Republic of Macedonia 2011 Progress report, Brussels, 12.10.11, emphasis added

²⁰ See: article 18 of the Constitution of the Republic of Albania, article 4 of the Constitution of Bosnia and Herzegovina, article 9 of the Republic of Macedonia, article 8 of the Constitution of the Republic of Montenegro, article 21 of the Constitution of the Republic of Serbia

This notwithstanding, you have asked the authorities of these two countries and of the remaining countries of the so-called Western Balkans to take “additional measures to address the situation [i.e., the influx of asylum seekers] promptly.”²¹

As it is obvious that the countries will be unable to address, in the near future, the root causes which explain why several thousands of their nationals and in particular members of ethnic minorities see no other hope than to leave their country and seek asylum abroad, this will inevitably lead to further discrimination and repression against these same minorities.

A few weeks ago, the minister of Security of Bosnia-Herzegovina, the last country to come under fire from the side of the Commission and different EU member states, Mr. Sadik Ahmetović, announced the introduction of a series of measures in order to curtail the number of asylum seekers from Bosnia including the tightening of border controls and the punishment of those who are considered as having abused the visa-free regime by seeking asylum.²² The number of Bosnian nationals, who have applied for asylum in the EU is at around 400 persons.

- There is no progress in terms of improving the situation of ethnic minorities, in particular, the Roma. As it goes out from the recent progress reports, Roma continue to be discriminated against in all the countries of the region.
- There is no progress in terms of integrating the refugees and IDPs from Kosovo. Instead, pressures continue to be put on them to return to Kosovo.
- The countries of the European Union continue to deport Roma to the countries of the Western Balkans. This concerns persons who have been living in the EU for more than a decade and who sometimes have no other link with these countries than their passport.
- Instead of assisting the returnees and helping them to reintegrate, the countries, under the pressure of the European Union, are now considering means of punishment such as for instance, depriving them of welfare benefits and access to health care. This will only increase their precarious status and provide additional incentives to leave.
- The policy of enhanced and largely arbitrary border controls will only increase corruption.

We find it most ironic that the European Union, which has requested these countries adopt international human rights principles as a condition to participate in the Enlargement process, is now inviting them to break these very principles in an effort to control migration.

Given the fact that these measures are essentially targeted at ethnic minorities of whom Roma are the most affected, they put the European Commission’s credibility as a champion of human and minority rights under jeopardy.

We ask you:

- to stop putting pressures on the countries of the so-called Western Balkans to prevent their citizens from seeking asylum in the EU;

²¹ Your letter of 20 September 2011 to the ministers of Interior of Serbia, Albania, Montenegro, and Macedonia and to the Minister of Security of Bosnia-Herzegovina

²² Belgija ne traži uvođenje viza za građane BiH, *Nezavisne novine*, 29.09.11

- to revoke any instructions to the authorities of these countries to apply the entry conditions of the Schengen Code as criteria upon which to allow the exit of their citizens;
- to ask the authorities of the countries to abandon any plans aiming to establish the abuse of the visa-free regime with the EU as a penal deed and to abandon any plans to introduce a law reform enabling the revocation of the passport in relation with emigration or asylum issues;
- to ask the authorities of these countries to assure that people who feel that they have become victims of discriminatory or unfair treatment can get effective redress;
- to ask the authorities of these countries to take immediate measures to combat poverty and social exclusion and to improve the situation of the Roma minority;
- to ask the authorities of these countries to facilitate school access of children from disadvantaged communities including refugees and IDPs;
- to ask the public authorities of these countries not to inhibit the principle of freedom of movement within their country by refusing residence changes;
- to ask the countries to integrate Kosovo Roma refugees and IDPs;
- to financially support the integration of Kosovo Roma refugees and IDPs;
- to ask the EU member states to stop deporting persons who have lived in the EU for a substantial period of time or all their life and who have established personal links in the EU;
- to ask the member states to financially support the reintegration of persons who have been deported;
- to ask the EU member states to stop deporting Roma to Kosovo;
- to ask the political representatives of the EU, EU member states, candidate countries and potential candidate countries to refrain from a discourse which encourages anti-Roma racism;
- to work with the Directorate on Justice and Fundamental Rights in order to make sure that fundamental rights are respected in every area of EU politics and in particular in the area of migration and border control;
- to support NGOs which effectively combat racism, discrimination and human rights abuses;
- to make the content of the talks in the Steering Committee and in the Joint Committees on Visa Liberalisation and in the Committees Readmission public;
- to make the report of the European's Commission's mission recent fact-finding mission to Kosovo in relation with the planned visa liberalization for Kosovo public;
- to open these committees for members of the European and national parliament and human rights NGOs;
- to commission an independent expert report on human rights abuses at the Schengen borders.

We kindly ask you to inform us about the follow-up you have given to our requests.

Yours sincerely,

Chachipe a.s.b.l., Luxembourg

Union des Roms d'Ex-Yougoslavie en diaspora, France

Union française des Roms du Kosovo, Saint Etienne/France

Flüchtlingsrat Niedersachsen e.V., Hildesheim/Germany

Rom e.V., Cologne/Germany

Förderverein Roma e. V., Frankfurt am Main/Germany

Forschungsstelle Flucht und Migration e.V., Berlin/Germany

Projekt Roma Center Göttingen e.V., Göttingen/Germany

Flüchtlingsrat Hamburg e.V., Hamburg/Germany
Flüchtlingsrat Sachsen-Anhalt e.V., Magdeburg/Germany
Roma Union Grenzland e.V., Aachen/Germany
Romane Aglonipe e.V., Hannover/Germany
Pour une Europe en Développement, Namur/Belgium
C.I.R.É., Brussels/Belgium
Migreurop, Réseau euro-africain
Pro Asyl e.V., Frankfurt am Main/Germany
Le Monde des Possibles a.s.b.l., Liège/Belgium

CC:

Mr. Donald Tusk, President of the Council of the European Union
Mrs. Viviane Reding, Vice-President of the European Commission and Commissioner responsible for justice, fundamental rights and citizenship
Mr. Štefan Füle, Commissioner for Enlargement and Neighbourhood Policy
Mrs. Navanethem Pillay, UN High Commissioner for Human Rights
Mrs. Rita Izsák, United Nations Independent Expert on Minority Issues
Mrs Zonke Zanele Majodina, Chairperson of the Human Rights Committee
Mr. Thorbjørn Jagland, Secretary General of the Council of Europe
Mr. Thomas Hammarberg, Council of Europe Commissioner for Human Rights
Mr. Dick Marty, Head of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe
Mr. Luis Jimena Quesada, President of the European Committee of Social Rights
Mr. Janez Lenarcic, Director of the OSCE Office for Democratic Institutions and Human Rights
Mr. Knut Vollebaek, OSCE High Commissioner on National Minorities
Ambassador Ettore Sequi, Head of the EU Delegation to Albania
Ambassador Peter Sørensen, Head of the Delegation of the European Union to Bosnia and Herzegovina and Head to the Delegation of the European Union to the former Yugoslav Republic of Macedonia
Ambassador Leopold Maurer, Head of the EU Delegation to Montenegro
Ambassador Vincent Degert, Head of Delegation of the European Union to the Republic of Serbia
Mr. Khaldoun Sinno, Acting Head of EC Liaison Office to Kosovo
Mr. Juan Fernando López Aguilar, Head of the European Parliament's Committee on Civil Liberties, Justice and Home Affairs
Mrs. Barbara Lochbihler, Head of the European Parliament's Subcommittee on Human Rights
Mr. Jorgo Chatzimarkakis, Chair of the Delegation to the EU-Former Yugoslav Republic of Macedonia Joint Parliamentary Committee
Mrs. Tanja Fajon, European Parliament Rapporteur on Visa Liberalization for the Western Balkans
Mr. Nikolaos Chountis, European Parliament Rapporteur on Albania
Mrs. Doris Pack, European Parliament Rapporteur on Bosnia-Herzegovina
Mr. Richard Howitt, European Parliament Rapporteur for the former Yugoslav Republic of Macedonia
Mr. Charles Tannock, European Parliament Rapporteur on Montenegro
Mr. Jelko Kacin, European Parliament Rapporteur on Serbia
Mrs. Ulrike Lunacek, European Parliament Rapporteur on Kosovo
Mr. Morten Kjaerum, Director of the European Union Agency for Fundamental Rights