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25 January 2012

Mrs. Maria Åsenius
Head of Cabinet
Cabinet of Commissioner Cecilia Malmström
European Commission
B – 1049 Brussels

Re: Ongoing human rights concerns in relation with the European Commission's requests to the countries of the Western Balkans to stop the influx of asylum seekers in the EU – Your letter of 21 December 2011

Dear Mrs. Åsenius,

Thank you for your letter of 21 December 2011 concerning the increase in the number of asylum seekers from the countries in the Western Balkans in EU member states.

Whilst we very much appreciate you taking the time to reply to our letter, we nevertheless feel that you have not addressed all of our main concerns: The human rights aspect.

In your letter, you allege that those citizens of the countries of the Western Balkans, who are travelling to the EU with the purpose of seeking asylum, are actually abusing the visa-free system.

Please allow us to firstly point out that there is no legal definition of the abuse of the visa-free system, neither in the national law of the countries of origin of the asylum seekers, - with the exception of Macedonia, which has just introduced a very questionable article in its penal code, targeting travel companies and tour operators - , nor of the countries of destination.

The liberalization of the visa regime with the EU concerns states, which may incur obligations, such as stepping up border controls, ensuring document security and fighting against corruption. It does not however exempt these states from fulfilling their obligations, which derive from the international conventions and treaties, of which they are signatories to.

Amongst these obligations is the respect of the principle of freedom of movement and the right to asylum, which are protected 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), and by article 14(1) of the UDHR and the 1951 Convention relating to the Status of Refugees and the 1967 Protocol, respectively.

As we mentioned in our earlier communication, the principle of freedom of movement includes the right for an individual to leave any country including his or her own (see: article 13(2) of the UDHR, article 12(2) of the ICCPR, article 2(2) of Protocol No. 4 to the ECHR). It can only be restricted for serious reasons (please refer to: article 12(3) ICCPR and article 2(3) of Protocol 4 to the ECHR), but certainly not because a person lacks sufficient resources or cannot justify the

purpose of his/her travel in a way to convince border guards of its legitimacy, or because this person may want to apply for asylum.

As to the right of asylum, this does not, of course, mean, that a person is automatically entitled to be granted asylum if he or she expresses fears of persecution; nevertheless he or she has the right to have their asylum applications assessed on an individual basis and in a fair and objective way.

We do not think that this assessment can be left to border guards, neither within the countries of origin, nor within the countries of destination, and the fact that most of the asylum applications lodged by citizens of the countries of the Western Balkans are ultimately rejected does not make these citizens *mala fide* travelers as you suggest.

On this latter point we would like to draw your attention to the fact that the countries of the Western Balkans are today considered as so-called safe countries of origin in many EU member states. This political decision has as a consequence that asylum applications by citizens of these countries are generally being processed in the context of so-called accelerated procedures, which result in a high number of negative decisions, which are frequently turned down in appeal.

In relation with Serbia, for instance, the recognition rate of asylum seekers in the EU is indeed very low, i.e., just below one percent.¹ However, this concerns only first instance decision, and the overall protection rate, even after a first instance decision, is already at 2.15 percent.

For Kosovo, which makes up for about half of the asylum seekers from Serbia², the recognition rate is even higher, namely 5.87 percent. We believe that these 5.87 percent, which concerned 180 persons in the first quarter of 2011, should nevertheless have a fair chance to validate their claim.

The political character of these decisions is further underlined by the fact that the recognition rates vary substantially between the different EU member states. In 2010, 8.7 percent of the asylum seekers from Serbia filing an asylum application in Belgium were given a positive decision, but only 0.6 percent in Germany.³

In Canada, for instance, the recognition rates are much higher. In 2009, the recognition rate of asylum seekers from Serbia in Canada was 30 percent, in 2010, 46 percent and in 2011, 27 percent. Over the same period, the recognition rates for asylum seekers from Macedonia were 67, 17 and 32 percent.⁴

These differences do not only bring into question the objectivity of the decisions, but also the argument about the “largely unfounded nature of these asylum claims”, which you support in your letter.

In your letter, you justify the intensification of border controls by the fact that “increasing numbers of asylum seekers arrive in the EU without passports or ID documents and are

¹ 0.945 percent, figures for the first quarter 2011, see: [Eurostat: Number of asylum applicants on rise during the first quarter of 2011](#), 48/2011, p. 13

² According to the UNHCR, four out of five Serbian citizens who lodged asylum applications in France and one in three in Sweden, in the first quarter of 2011, were originally from Kosovo. see: [UNHCR: Asylum Levels and Trends in Industrialized Countries: Statistical overview of asylum applications lodged in Europe and selected non-European countries](#), p. 9 and 11

³ European Stability Initiative: Asylum seekers from the Balkans: Statistical data, based on government information concerning first instance decisions in 2010, p.6

⁴ Source: Immigration and Refugee Board of Canada/Asylum Protection Division: Claims Referred and Finalised: Macedonia; id.: Claims Referred and Finalised: Serbia, 17.01.12, information communicated upon request of Chachipe.

therefore in violation of their countries rules on exit controls, as well as EU rules on entry control.”

We assume that you are actually not referring to asylum seekers, but to travelers in general, as it would indeed be strange to expect asylum seekers to first get clearance from the border authorities of their country, before being able to seek asylum abroad. We are nevertheless puzzled by this argument as it seems unrelated with the liberalization of the visa system.

According to Frontex, the number of illegal border crossings by Albanian nationals, which are listed among the top ten nationalities of people who are illegally travelling to the EU has declined by almost 25 percent since the introduction of the visa liberalization.⁵ The number of illegal border crossings by Serbian nationals has decreased by more than half, which the agency sees as a direct consequence of the visa liberalisation.⁶

It is also interesting to note, that those who are refused entry into the EU, are not being refused, because they do not have valid travel documents, but, increasingly, because their justification for their travel is not considered as valid, or because they were not deemed having the necessary means of subsistence.⁷

As regards to the allegation on the involvement of organised crime, we believed that the Commission had actually dismissed this argument. Indeed, in your first report of the post-visa liberalization monitoring you state that the investigations conducted by the Serbian authorities concerning an eventual implication of human traffickers brought forth no result.⁸

Your second report takes a broader approach, as it refers to “travel agencies and transport companies potentially informed in misinforming citizens about asylum benefits.”⁹ According to this report the investigations conducted in Bosnia-Herzegovina, Serbia and Macedonian into “possible irregularities” led to the withdrawal of transport licences, in several cases. However, the report does not say anything about the motive for withdrawing these licences.

Frontex wrote about the second group of asylum seekers from Serbia:

“Interestingly enough, the second wave of asylum applications was much bigger in size, even though neither the Member States nor the Serbian authorities managed to discover any evidence

⁵ From 43.965 in 2008 to 33.58 in 2010, which is an almost 25 percent decrease. See: Illegal border crossings between BCPs, in: Frontex: Risk Analysis Western Balkans 2011, Warsaw, April 2011, p. 16. As a separate issue, Frontex also reports a decline in the number of illegal border crossings among circular migrants between Albania and Greece as a result of the visa liberalization. See: Frontex: *FRAN Quarterly*, Issue 2, April–June 2011, p. 12

⁶ Ibid., p. 9

⁷ This concerns only 50 out of 1685 Serbian citizens and ten out of 826 Macedonian citizens who have been denied entry to the EU in the second quarter of 2011. p. 41. In 2010, the main reason for refusing entry to Serbian citizens was still that they had no valid visa. 1.388 persons were rejected at the border on this ground out of 6.990 persons. See: Frontex: Risk Analysis Western Balkans 2011, Warsaw, April 2011, p. 41

⁸ In your report on the post-visa liberalisation monitoring, you state, for instance, in relation to Serbia: “The authorities investigated the possible involvement of travel agencies and individuals in organised departures of Serbian citizens to EU countries; an organised crime link has not been proven, however.” (European Commission: 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, 30.05.2011, p. 13

⁹ Commission staff working paper - [Second report on the post-visa liberalisation monitoring for the Western Balkan countries in accordance with the Commission Statement of 8 November 2010](#), Brussels, 7.12.2011, SEC(2011) 1570 final, p. 12

proving that the departures were being organised on a massive scale. It is therefore likely that the second wave was largely driven by word-of-mouth, rumours and deliberate attempts to take advantage of the asylum process itself.”¹⁰

We understand that this assessment has been confirmed by the Commission’s missions which were conducted in the context of the post-visa liberalization monitoring. According to your latest report, these missions “confirmed that the majority of people continue to choose the same EU countries as destination, because of information which they receive from friends and relatives who have already travelled to these countries.”¹¹

Again, it is completely illogical to assume that the recent increase in the number of asylum seekers from the countries of the Western Balkans can be attributed to the implication of “organised networks” in the recent influx of asylum seekers from the Balkans, unless you want to include family and neighborhood relations in your definition of “organised networks”, as it appears from your last report.¹² With the lifting of the visa requirements people are indeed no longer dependent on trafficker networks, if they wish to travel to the EU. However, this phenomenon, including border corruption, may soon reappear with the intensification of border controls.

In your letter, you write that there are no measures targeting minority communities other than those aiming to further their integration and you warn that the “abuse of the right of visa free travel to the EU does not provide a solution to the integration of Roma”.

Whilst the first statement is in direct contradiction with the statements made by national government representatives holding Roma and members of other ethnic minorities responsible for the current threat on the free visa system,¹³ we are very much worried by the fact, that “Roma integration” is increasingly seen as a handy tool and excuse for keeping foreign Roma out of a country and of the EU.¹⁴

¹⁰ Frontex: Risk Analysis Western Balkans 2011, Warsaw, April 2011, p. 25

¹¹ Commission staff working paper - [Second report on the post-visa liberalisation monitoring for the Western Balkan countries in accordance with the Commission Statement of 8 November 2010](#), Brussels, 7.12.2011, SEC(2011) 1570 final

¹² See the reference to “the increasing frequency of well-organised groups of asylum-seekers of Roma origin”. Ibid., p. 14

¹³ See, for instance, statements made by the Serbian Deputy Prime Minister and Minister of Interior, Ivica Dačić, following his meetings with representatives of the Roma community in May and in December 2011. stating that the Roma (Interior minister announces stricter border control, *Tanjug*, 08.05.11 and: Jačanje kontrole granica da se smanji broj lazni azilanata, *BETA*,14.12.11). In December, Dačić said that the majority of the asylum seekers were Roma, and that he would not tolerate departures, which would damage Serbia’s interests. (Jačanje kontrole granica da se smanji broj lazni azilanata, *Beta*,14.12.11) In November 2011, the Macedonian Minister of Interior, Gordana Jankulovska, informed her colleagues from Central Eastern Europe on the occasion of the “Salzburg Forum”, that her Ministry had established a “profile of so-called false asylum seekers”. Jankulovska went on explaining that her Ministry had launched a public information campaign on the “proper use of visa-free regime benefits” together with the Roma Information Centres, which leaves little question as to the essentially ethnic definition of “false asylum seekers”. (Source: Government of the Republic of Macedonia: [Jankulovska: Visa liberalization, crucial benefit in Macedonia's EU integration process](#), 17.11.11)

¹⁴ These statements have been attributed to Pierre Mirel, Director for Western Balkans in the European Commission’s Directorate General for Enlargement (see : [“Roma migrations could affect EU enlargement process”](#), *BETA*, 22.06.11). Similar statements were also issued by Robert Liddell, Head of Section in charge of political and JHA issues, information and Communication at the EU delegation in Skopje, who stated during a working meeting with representatives of the Macedonian government on the inclusion of Roma organised in the context of the post-visa liberalisation: “If in the current climate the next accessions are associated with migratory issues, then we increase the risk of rejection.” (see: Delegation of the

If visa free travel is a right, it should work for everyone.

We would be pleased to receive your answer to the following questions:

- Does the European Commission have any information regarding the geographic background of the asylum seekers?
 - Can the European Commission confirm information provided by the UNHCR according to which more than half (52 percent) of the asylum applications lodged by Serbian nationals were actually lodged by persons originating from Kosovo?¹⁵ In how far does the lack of sustainability of the status of Roma in Kosovo and the unresolved refugee crisis in the region contribute to this phenomenon?
- 1. -Can the European Commission confirm the impression that many of the asylum seekers from the countries of the Western Balkans have previously resided in EU member states? How does the European Commission, against this backdrop, evaluate the success of its repatriation policies, including the conclusion and signature of readmission agreements?
- Has the European Union or the Council ever asked the countries of the Western Balkans to apply exit controls to their citizens or third country nationals transiting via their countries?
- If so, what are the criteria qualifying a person to be allowed departure, or, on the contrary, to be prevented from leaving?
- How many citizens of the countries of the Western Balkans have been prevented either from leaving their country or entering the EU/Schengen area since the introduction of the visa liberalisation? What are the main grounds for refusing exit from these countries or entry into the Schengen area?
- Does the European Commission have any information about the ethnic background of the persons who are prevented from travelling and can the European Commission confirm the impression which is conveyed by media and NGO reports that Roma are overrepresented in this group?
- Is there a standard procedure on the basis of which people are refused exit/entry? What are the appeal procedures? Are travelers regularly informed about these procedures?
- What does the EU Commission know about the criteria used by the border authorities of the countries of the Western Balkans in order to prescreen the travelers? Can the European Commission provide us with any further information about the “risk analysis” applied by Macedonian border guards, which is referred to as “profiling” in the latest progress report?¹⁶ What is, in this context, the relevance of the confirmation, in 2011, of a “common profile of asylum seekers” and more particularly of the fact that “[t]he vast

European Union to the former Yugoslav Republic of Macedonia: [Working meeting on inclusion of Roma and Roma refugees](#), 26.07. 11).

¹⁵ UNHCR: [Asylum Levels and Trends in Industrialized Countries - First half 2011](#), p. 14

¹⁶ In her communication, the Macedonian minister of Interior, Gordana Jankulovska, has actually employed the word of “profile of so-called false asylum seekers”. (See: Ministry of Interior: [Демонстрирана институционална решителност за анулирање на злоупотреба на визната либерализација](#) (Demonstration of the institutional determination to stop the misuse of visa liberalization), 16.11.11 and: Government of the Republic of Macedonia: [Jankulovska: Visa liberalization, crucial benefit in Macedonia's EU integration process](#), 17.11.11)

majority of claims stems from persons belonging to the Roma minority” as stated in the second Commission report on post-visa liberalization monitoring?

- Does the European Commission consider that the practice of exit controls with the aim of preventing the departure of potential asylum seekers and, more generally, the singling out of travelers on the basis of criteria, which are eventually ethnically defined, compatible with the *acquis communautaire* in the field of human and minority rights?
- Does the European Commission agree with measures such as the temporary revocation of passports and other forms of punishment of failed asylum seekers and forced returnees with the aim to reduce the influx of asylum seekers in the EU?
- In this event, how does the Commission justify such an approach given that the freedom of movement is probably the most important single achievement, since the fall of the “iron curtain”, a freedom which is internationally guaranteed?
- Does the European Commission agree with the statement of the Council of Europe Commissioner for Human Rights, Thomas Hammarberg, who sees the increase in the number of asylum applications as a symptom for Europe’s failure “to break the cycle of anti-Gypsyism, discrimination and marginalisation of Roma populations” and considers that it should be taken “as a reminder that serious action is overdue”?¹⁷
- What does the European Commission do in order to make sure that the benefits of visa-free travel and more generally freedom of movement within the EU are available to everyone and not just to an elite?

We would like to thank you very much for your consideration and looking forward to your reply.

Yours sincerely,

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¹⁷ See : Commissioner for Human Rights: The right to leave one’s country should be applied without discrimination, *Human rights comment*, 22.11.11

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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
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