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Asylum procedures in “the former Yugoslav Republic of Macedonia” and forced return of Roma to Serbia and Kosovo

Written question No 512 to the Chair of the Committee of Ministers

Reply from the Chair of the Committee of Ministers dated 11 May 2007

I. Written Question No. 512 by Mr Cilevičs (Doc. 11107)

The European Roma Rights Center (ERRC) and UNHCR have alerted us that the authorities of “the former Yugoslav Republic of Macedonia” have begun earlier this month forcible expulsion of the first of approximately 400 rejected asylum seekers from Kosovo.

The adoption of the Law on Asylum and Temporary Protection in 2003, made it possible for Roma, Ashkaelia and Egyptian who fled Kosovo in 1999 and had temporary protection status in “the former Yugoslav Republic of Macedonia” to apply for asylum. According to UNHCR, only 28 persons are currently recognized under the provision of the 1951 Geneva Convention, 1186 persons received Humanitarian Protection status, while 395 persons received the negative decision of the Supreme Court, as the third and last instance of appeal.

The execution of the Refugee Status Determination procedure in “the former Yugoslav Republic of Macedonia” is of concern. It appears that neither the Governmental Appeals Commission nor the Supreme Court has overturned one single decision by the first instance; and that the appeals procedure is not transparent and fails to evaluate the merits of the appeals. It seems that most of these negative decisions were based on a misguided application of the notion of internal flight alternative where the asylum officers argued that many of the asylum seekers from Kosovo can effectively find refuge either elsewhere than their home in Kosovo or in Serbia.

In a wider European context, the Assembly has already expressed its concern with regard to forced returns of Roma from the Council of Europe member states in its Recommendation 1633 (2003), namely relating to legitimacy of certain decisions of expulsion; conditions in which forced returns take place; and the situation in which returned Roma, Ashkaelia and Egyptian find themselves upon their return to Serbia, Montenegro and Kosovo.

The return process under the readmission agreements generally lacks transparency and sufficient funding for durable integration of returnees, who find themselves most often in the situation of secondary displacement.

The final concern lies with the negotiation of the Kosovo status, the enforcement of minority rights and minority protection in Kosovo and future prospects for minority returns.

In the light of the above, Mr Cilevičs asks the Chairman of the Committee of Ministers,

What kind of steps will the Committee of Ministers take within its competence in order to:

- make the authorities of “the former Yugoslav Republic of Macedonia” fully respect the asylum procedures according to the international standards;

- exert pressure on member states that have signed readmission agreements with Serbia, Montenegro and UNMIK, to implement paragraph 9i. of the Assembly Recommendation 1633 (2003);
- follow up its Resolution ResCMN(2006)9 on the implementation of the Framework Convention for the Protection of National Minorities in Kosovo.

II. Reply by the Committee of Ministers

I would like to assure the Honourable Parliamentarian that the Committee of Ministers follows the situation as regards asylum procedures in the “former Yugoslav Republic of Macedonia” and forced return of Roma to Serbia and Kosovo closely. The Council of Europe is always greatly concerned about the risk of violation of fundamental rights and freedoms which may arise in the context of forced return.

I note that the UNHCR Position Paper (2006) recommends not to send Roma back to Kosovo, Serbia, as the security situation is still deemed “volatile” by the UNHCR. I have been informed that this opinion is shared by the European Roma and Travellers’ Forum (ERTF) which is concerned about Roma from former Yugoslavia who have been staying as refugees in host countries in the region and in Western European countries and whose situation is still unresolved. In this respect, the ERTF is also concerned about the situation of Roma in the Balkan countries, such as “the former Yugoslav Republic of Macedonia”. Few Roma people have been granted asylum on the basis of the 1951 Geneva Convention, which puts them at risk to be forcibly returned to Kosovo. At the same time, I have been informed, however, by the UNHCR representation in Skopje that to date no deportations or expulsions have taken place, nor is there for the moment any threat of expulsions of persons of UNHCR concern.

On 4 May 2005, the Committee of Ministers adopted “Twenty guidelines on forced return”. This is a comprehensive document relating to the procedures leading to the expulsion of non-nationals, including rejected asylum seekers. Concerning the issues raised in the Written Question, in particular the provisions relating to removal orders (Guideline 2), collective expulsion (Guideline 3), conditions of detention pending removal (Guideline 10), determination of a person’s fitness for travel (Guideline 16) and ensuring dignity and safety (Guideline 17), are of relevance.

Moreover, the Committee of Ministers has adopted a number of instruments of relevance to the situation in Kosovo – recommendations to member states – reinforcing the implementation of the 1951 Convention relating to the Status of Refugees, in particular, the application of the “non-refoulement” principle. In this context, I would like to underline that the protection provided by Article 3 of the European Convention of Human Rights against removal to a country where there is a risk of ill-treatment is absolute and applies also in cases where refugee status has been denied. Thus, the Committee of Ministers’ Recommendation (98)13 on “the right of rejected asylum seekers to an effective remedy against decisions on expulsion in the context of Article 3 of the European Convention on Human Rights” stipulates that “... 1. An effective remedy before a national authority should be provided for any asylum seeker, whose request for refugee status is rejected and who is subject to expulsion to a country about which that person presents an arguable claim that he or she would be subjected to torture or inhuman or degrading treatment or punishment...”.

Many of the concerns mentioned in the question of Mr Cilevičs and the Assembly Recommendation 1633 (2003) concerning the forced returns of Roma to Kosovo and Serbia are accordingly addressed by these Committee of Ministers’ guidelines and recommendations to member states that have general application. Furthermore, the Committee has Ministers has charged the Steering Committee on Human Rights with elaborating guidelines on accelerated asylum procedures. These are currently under preparation and will in principle be completed before the end of the year.

Regarding Mr Cilevičs’s last question on the follow-up to the Committee of Ministers’ Resolution ResCMN(2006)9, I would like to inform the Honourable Parliamentarian that the first series of follow-up activities and discussions have been organised in collaboration with relevant authorities in Kosovo, in conformity with the procedures of the Framework Convention. Further activities are planned in the coming future. With respect to “the former Yugoslav Republic of Macedonia”, a second opinion on the protection of national minorities is underway.

Since the early 1990s, the Council of Europe has organised assistance programmes in member and candidate states concerning asylum issues. These programmes aim at promoting the respect of the fundamental values and standards advocated by the Council of Europe by those states that are in the process of setting up or developing their national asylum systems.

Finally, I would like to inform the Honourable Parliamentarian that a conference on the situation of Roma refugees, IDPs and returnees in the Balkans, will take place in Serbia from 29 to 31 October 2007. The conference will be hosted by the Serbian Parliament and organised by the Council of Europe in co-operation with Serbian authorities. It will address topics such as the situation of Roma refugees, IDPs and returnees in Serbia and other countries of the region, readmission agreements and the impact on Roma of various scenarios related to the future status of Kosovo.