



COMMISSIONER FOR HUMAN RIGHTS  
COMMISSAIRE AUX DROITS DE L'HOMME



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## REPORT

**by Nils Muižnieks**  
**Council of Europe Commissioner for Human Rights**

**Following his visit to “the former Yugoslav Republic of Macedonia”  
from 26 to 29 November 2012**

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## **Summary**

Commissioner Nils Muižnieks and his delegation visited “the former Yugoslav Republic of Macedonia” from 26 to 29 November 2012. In the course of this visit the Commissioner held discussions centred on the following major issues: transitional justice and social cohesion (section I of the present report) and the human rights of Roma (section II). Each section is accompanied by the Commissioner’s conclusions and recommendations.

### **I. Certain aspects of transitional justice and social cohesion**

#### **1. Implementation of the Ohrid Framework Agreement and inter-ethnic relations**

Several milestones have been reached since the signing of the Ohrid Framework Agreement, including the development of legislation in certain key areas, such as local self-government and the use of languages. Much has been done over the last decade in the area of equitable representation. However, the deep politicisation along party lines and the phenomenon of political patronage have limited the impact of this progress. The Commissioner recognises that in a richly diverse country such as “the former Yugoslav Republic of Macedonia” interethnic relations are complex and the existing cleavages do not lend themselves to facile solutions. All of the country’s political and public actors should bear in mind that their legacy will depend on their concrete contributions towards building a cohesive society. They should unequivocally condemn violent incidents such as those which occurred in the first half of 2012 and pursue comprehensive policies to prevent their occurrence in the future. It is also essential to actively promote constructive interaction between individuals and groups of different backgrounds. Moreover, the Commissioner cannot over-emphasise the importance of the role and responsibility of the media to promote inter-ethnic tolerance and to refrain from propagating stereotypes or inflaming any existing tensions. The authorities may usefully consider joining the Joint Action of the Council of Europe and the European Union on Intercultural Cities, which aims to develop a model that supports intercultural integration within diverse urban communities.

#### **2. Divisions in public education**

It is positive that well-developed opportunities exist in “the former Yugoslav Republic of Macedonia” for non-majority communities to receive education in their own language. However, the concomitant phenomenon of segregation in schools has to be addressed, as such divisions have a negative impact on pupils’ relationships, increase mutual incomprehension and undermine social cohesion. The Commissioner finds that the debates in the country surrounding the issue of education have been highly politicised and often reduced to a zero sum approach to community rights. This has led to mutual retaliation for perceived injustices which perpetuates the problem and ultimately penalises children and young persons, who can only benefit from increased opportunities for learning about and from each other. Political actors and opinion leaders should also pursue a responsible approach on these matters, and the authorities should redouble their efforts towards pursuing integrated and multilingual education policies such as the Strategy for Integrated Education and the new Joint Project of the European Union and the Council of Europe entitled “Regional Support for Inclusive Education”. The Commissioner is deeply concerned by the continuing occurrence of violent interethnic incidents in certain schools in the country. Every effort should be made to combat this negative phenomenon, and firm support should be given to initiatives aimed at ensuring school safety.

#### **3. Unresolved human rights issues related to the conflict**

Arguably, continued impunity for gross violations of human rights or serious violations of international humanitarian law committed in 2001 is one of the factors impeding efforts to achieve social cohesion and reconciliation in “the former Yugoslav Republic of Macedonia”. Justice is needed not only to ensure the accountability, through fair proceedings, of those who have committed such violations; it is also needed to restore the rights of victims who suffer additionally from the continuing lack of acknowledgement that they have been wronged. The Commissioner is aware of the complex political situation and the legitimate claims for stability and social peace which have been advanced as counterarguments against taking action on these serious matters. However, he considers that such action is indeed necessary, as allowing grievances to accumulate has not proven to be the most viable approach to establishing lasting inter-ethnic cohesion. The principle that amnesties should not be applied to gross human rights violations was

confirmed by the Council of Europe Committee of Ministers in the 2011 Guidelines on eradicating impunity for serious human rights violations and by the European Court of Human Rights in the recent judgment *Marguš v. Croatia*, where the Court stressed in relation to a case involving war crimes against civilians that “granting amnesty in respect of “international crimes” – which include crimes against humanity, war crimes and genocide – is increasingly considered to be prohibited by international law”. The Commissioner was informed that fourteen persons who went missing during the conflict remain unaccounted for; every effort should be made to clarify their fate. As to the situation of the 95 displaced persons who remain in collective centres, the Commissioner recommends that priority be given to identifying durable living solutions for them.

#### **4. Measures to combat discrimination**

The Commissioner has noted that a developed legal framework on non-discrimination is now in place in “the former Yugoslav Republic of Macedonia”, and that the national human rights structures, including the Ombudsman and the Commission on Protection Against Discrimination are active in this area. The authorities should provide the above-mentioned Commission, which at present does not have the requisite capacity, with the necessary financial and human resources so that it can carry out its duties independently and effectively. The Commissioner supports the Ombudsman’s recommendation concerning the full implementation of the legislative framework on non-discrimination and the need to pursue awareness-raising campaigns in this regard. More generally, he strongly supports measures aimed at promoting tolerance and respect for everyone’s human rights, as well as increasing public awareness of the situation of all groups which are subjected to discrimination in different contexts. Such measures should begin in the educational system, and school curricula should include education about the diverse groups in society with a view to countering ignorance and intolerance. Media outlets and journalists can also contribute to a fairer and more tolerant society by practicing ethical and responsible journalism.

#### **5. Lustration**

In light of the legitimate concerns about the proportionality and constitutionality of the lustration process, the Commissioner calls upon the authorities to ensure that the Constitutional Court’s decisions concerning lustration are fully respected and reflected in any future policy deliberations on the topic. Pursuant to the case-law of the European Court of Human Rights, lustration procedures should follow strict criteria in order to ensure that all the persons concerned enjoy the rights guaranteed by Article 6 of the European Convention on Human Rights, notably the right to equality of arms. Lustration should never be used for political or personal purposes. In this context, the Commissioner underlines that a democratic state based on the rule of law has sufficient means at its disposal to ensure that the cause of justice is served and the guilty are punished. However, it should not cater to the desire for revenge instead of justice.

## **II. Protection of the human rights of Roma**

### **1. General context and policy framework**

While welcoming the efforts already undertaken by “the former Yugoslav Republic of Macedonia” to improve the situation of Roma, the Commissioner underlines that there are numerous shortcomings in practice that still need to be effectively addressed. Most Roma continue to be trapped in a cycle of poverty and unemployment, residing in separate neighbourhoods which are often marked by unacceptable living conditions. The Commissioner calls on the authorities to develop urgently and implement targeted policies to address the problems confronting Roma in access to quality education, employment, health care and housing. The enactment of the law which provides for the legalisation of property and the allocation by the authorities of social housing units to Roma families are important steps. However, vigorous efforts should be made to promote integrated housing policies and prevent the creation of new segregated areas. The Commissioner considers that more systematic capacity building is needed in order to foster the effectiveness of the Roma Information Centres, which can play an important role in awareness-raising and counselling about access to social and economic rights. The new Roma health mediators programme appears to be effective and beneficial to the communities concerned and its sustainability should be ensured.

## **2. Education of Roma children in special institutions or classes**

Some of the positive measures aimed at promoting the inclusion of Roma in mainstream education have borne results, such as a reduction of the drop-out rate between fifth and sixth grade among girls and the doubling of Roma enrolment in public universities in the past seven years (from 150 in 2005 to 300 in 2012). However, the Commissioner is deeply concerned by the overrepresentation of Roma in special schools for children with disabilities and believes there is an urgent need to address this issue. He has noted the recommendations made by the Ombudsman and non-governmental organisations to rectify the shortcomings in the legal and regulatory framework pertaining to special education. It is crucial that the authorities' undertakings in this context go beyond reforming the system of categorisation of children, and include more comprehensive measures aimed at providing access to adequate education in mainstream schools for all children without discrimination on any ground. Measures to secure participation of Roma children in mainstream pre-school education should be strengthened and the presence of teaching assistants in all schools where they are needed should be ensured, in line with the 2010 Strasbourg Declaration on Roma. Moreover, Roma parents should be included in and adequately informed of all steps undertaken by the authorities relating to the inclusion of their children in mainstream education.

## **3. Exit control measures and their impact on the human rights of Roma**

In response to EU demands for effective management of migratory outflows, in 2011 the Macedonian authorities introduced various measures, including information campaigns, legislative amendments, and enhanced exit controls, targeted at preventing nationals from making "unfounded" asylum applications in EU member states. As a result, from December 2009 until the end of November 2012, about 7000 Macedonian citizens were not allowed to leave the country. Roma are clearly disproportionately affected by the exit control measures and the confiscation of travel documents, which effectively amount to travel bans. The Commissioner considers that the measures concerned interfere with the freedom to leave a country, including one's own, guaranteed under Article 2 of Protocol No. 4 to the ECHR, as well as the right to seek and enjoy in other countries asylum from persecution, enshrined in Article 14 of the Universal Declaration of Human Rights. It is evident that the increased levels of migration of Roma from the Balkans, including "the former Yugoslav Republic of Macedonia", relate to the root causes of poverty and social exclusion. It is therefore crucial to address all factors which contribute to the socio-economic exclusion of Roma. In this regard, the Commissioner is pleased to note that the issue of integration of Roma is high on the EU accession agendas for the countries in the region.

## **4. Lack of personal identity documents and statelessness**

Statelessness and the lack of registered civil status and personal identity documents constitute serious obstacles to the enjoyment by many Roma of basic social and economic rights. While significant progress has been achieved in recent years in "the former Yugoslav Republic of Macedonia" towards the elimination of statelessness, notably through the adoption and implementation of legislative measures, the problem has yet to be fully resolved. It is positive that steps have been taken to alleviate the situation of those who lack documents, including as regards their access to education; for instance, birth certificates are no longer required to enrol children in public elementary schools. The authorities should continue their efforts on the national and regional level aimed at the elimination of statelessness, including by the endorsement and implementation of the Zagreb Declaration adopted at the October 2011 regional conference on the Provision of Civil Status Documentation and Registration in Southeast Europe.

## **5. Situation of Roma refugees from Kosovo\***

While welcoming the assistance that has already been provided to Kosovo Roma refugees, the Commissioner calls on the authorities to step up their efforts aimed at resolving issues pertaining to the legal status of such persons, with a view to enabling the full and effective local integration of those who cannot or do not wish to return to Kosovo.

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\* Throughout this text, all reference to Kosovo, whether to the territory, institutions or population shall be understood in full compliance with United Nations Security Council Resolution 1244 (1999) and without prejudice to the status of Kosovo.

## Introduction and context of the visit

1. The present report follows a visit to “the former Yugoslav Republic of Macedonia” by the Council of Europe Commissioner for Human Rights (the Commissioner) from 26 to 29 November 2012.<sup>1</sup>
2. While in the capital city of Skopje, the Commissioner held discussions with the national authorities, including the Minister of the Interior, Ms Gordana Jankulovska, the Minister of Labour and Social Policy, Mr Spiro Ristovski, and the Deputy Minister of Justice, Ms Biljana Briškoska-Boškovski. He also met the Ombudsman, Mr Ixhet Memeti, two of the members of the Commission for the Protection Against Discrimination, Mr Duško Minovski and Mr Rizvan Sulejmani, and the Director and Deputy Director of the Agency for the Implementation of the Rights of Communities, Ms Vesna Babić-Petrovski and Mr Jusuf Hasani.
3. In the course of the visit, the Commissioner met various international and civil society representatives. He also carried out field visits to the Roma neighbourhood of Sredorek in Kumanovo, as well as a high school dormitory in the same town serving as a collective centre for the accommodation of some of the persons who still remain displaced from the 2001 armed conflict. In addition, he visited the Holocaust Memorial Center for the Jews of Macedonia which was instituted in 2011 on the site of the old Jewish quarter in Skopje.
4. The Commissioner wishes to thank the Macedonian authorities in both Skopje and Strasbourg for their assistance in organising the visit and facilitating its independent and smooth execution. He wishes to thank all his interlocutors for their willingness to share their knowledge and insights with him.
5. As of the time of the visit, “the former Yugoslav Republic of Macedonia” had entered its 22<sup>nd</sup> year as an independent Republic and had just marked its 17<sup>th</sup> anniversary of membership in the Council of Europe. More than eleven years had elapsed since the signing of the Ohrid Framework Agreement which marked the end of the armed conflict of 2001.
6. While “the former Yugoslav Republic of Macedonia” has undoubtedly made significant strides in the process of democratic consolidation over the last two decades, a variety of circumstances, including the socio-economic and political strains of post-Yugoslav transition, the 2001 conflict, as well as the heterogeneous nature of the country’s population and complex regional environment have at times posed challenges to maintaining internal social cohesion and forming a shared vision of a unified multi-ethnic state. Against this difficult background, the aspiration for and prospects of Euro-Atlantic integration act as a strong cohesive element in the current coalition government and also more broadly among political forces in the country.
7. Like in other societies undergoing transition, many of the country’s people have for years felt the effects of poverty and unemployment,<sup>2</sup> which - compounded by other deleterious phenomena like corruption, organised crime, and recurring political crises – constitute factors that can further stoke turmoil and discontent. Invariably, the foregoing problems have had an adverse impact on the effective protection of human rights, particularly those of the most vulnerable groups in society, including Roma.

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<sup>1</sup> During the visit, the Commissioner was accompanied by Ms Bojana Urumova, Deputy to the Director of his Office, and Ms Eriha Bičakčić, Adviser.

<sup>2</sup> The global economic recession has affected the already difficult economic situation in “the former Yugoslav Republic of Macedonia”. The unemployment rate among the general population remains high (30.6%), and very high among young persons (55%).

8. A number of violent incidents in the first half of 2012<sup>3</sup> prompted concerns about a deterioration of relations between the Macedonian and Albanian communities. Even though the situation in the country following these events was tense, the authorities succeeded in preventing an escalation. In 2012 the European Commission noted that joint efforts by the coalition partners played an important role in alleviating the inter-ethnic tensions triggered by these incidents. From his brief visit to the country, the Commissioner formed the impression that the population in a wider sense – from all communities - deserves credit in this regard as well.
9. The Commissioner considers that an understanding of transitional justice (section I of the report) is highly relevant to the assessment of the human rights situation in the country. Dealing with past human rights violations, such as those which occurred during the 2001 conflict, and seeing the country through its difficult, protracted transition following the demise of the former federal socialist republic, are essential to building a more cohesive society.
10. The human rights situation of the Roma (section II of the report), a community which faces discrimination and marginalisation in different parts of Europe, was another key focus of the Commissioner's visit. Apart from general policy issues in the areas of housing, health, and employment, as well as the serious problem of over-representation of Roma children in special-needs schools and classes, the present report aims to shed light on the impact of measures to manage migratory outflows on the human rights of Roma, which is a newer phenomenon common to a number of countries in the region.
11. Since its accession to the Council of Europe on 9 November 1995, "the former Yugoslav Republic of Macedonia" has signed and ratified most of the major Council of Europe and United Nations human rights treaties. The country has not as yet acceded to the European Charter for Regional and Minority Languages, the Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession and the European Convention on the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crimes.

## **I. Certain aspects of transitional justice and social cohesion**

### **1. Implementation of the Ohrid Framework Agreement and inter-ethnic relations**

12. While smaller in scale than the wars which devastated the former Yugoslavia in the 1990s, the 2001 armed conflict in "the former Yugoslav Republic of Macedonia" was a crisis which resulted in the loss of life, large-scale displacement and serious human rights violations,<sup>4</sup> and caused major strain to the coexistence of the two largest ethnic communities in the country, Macedonian and Albanian.<sup>5</sup>

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<sup>3</sup> The incidents included several assaults on passengers in buses in the capital's public transport which reportedly had an inter-ethnic dimension. In the north-western town of Gostivar, some 10 000 ethnic Albanians protested on 1 March after an off-duty ethnic Macedonian policeman shot dead two ethnic Albanians in an apparent altercation over a parking space. The policeman was promptly remanded in custody and charged with murder. Tensions were heightened further on the Thursday before Orthodox Easter (12 April), when five ethnic Macedonians, one aged 45 and the others between 18 and 22, were shot dead by a small lake near Skopje. On 1 May, 20 people, mainly ethnic Albanians, were arrested in private homes in Skopje and surrounding areas in connection with the above-mentioned killings. The government described them as "followers of radical Islam." The arrests were followed by sizable protests in Skopje on 4 and 11 May by ethnic Albanians; at the time there was also a proliferation of hate speech on the internet by voices from both communities. The trial into the April murders is pending, with four suspects in detention on terrorism charges and two other suspects at large.

<sup>4</sup> The conflict claimed more than 200 lives and displaced tens of thousands from their homes.

<sup>5</sup> According to the 2002 census, Macedonians constitute 64.18% of the country's total population, whereas Albanians constitute 25.17%.

13. Signed in Ohrid on 13 August 2001, the Framework Agreement brought the hostilities to an end and outlined a series of constitutional amendments aimed at reducing inter-ethnic tensions and promoting tolerance and understanding between the Macedonian and Albanian communities. Its basic principles include the rejection of the use of violence and of “territorial solutions to ethnic issues”, the re-affirmation of the multi-ethnic character of Macedonian society and of the need for the Constitution to fully meet the needs of all citizens, as well as an emphasis on local self-government development to encourage democratic participation of citizens and promote respect of the identity of (ethnic) communities. Apart from a revised framework for the use of languages, the agreement contains provisions on decentralisation, non-discrimination, equitable representation,<sup>6</sup> and expressions of identity through the regulated use of emblems by local authorities next to the emblem (flag) of the Republic. The constitutional amendments enacted subsequently provided that while the official language in the country is Macedonian, ‘any other language spoken by at least 20% of the population shall be considered as an official language’. The principle of “equitable representation of persons belonging to all communities in public bodies at all levels and in all areas of public life” has also been included in the 2001 constitutional amendments, as have special parliamentary procedures for taking decisions on questions of special importance to the ethnic communities.
14. In addition to the constitutional amendments, a number of legislative and institutional measures have been introduced, including the establishing in 2008 of the Secretariat for the Implementation of the Ohrid Framework Agreement. In 2012 the Council of Europe Committee of Ministers noted with satisfaction that the legislation implementing the Ohrid Agreement has on the whole been adopted.<sup>7</sup> According to the Advisory Committee of the Framework Convention on National Minorities (AC FCNM), the legal basis established to implement the Ohrid Framework Agreement of 2001 generates continued interethnic co-operation and remains vital for the political stability of the country. The AC FCNM also concluded that since ratifying the Framework Convention in 1997, the country has continued in its efforts to protect national minorities, and the authorities have continued to show their commitment to the implementation of this treaty.
15. The Law on Local Self-Government, adopted in 2002, provides for the establishing of Committees for Inter-Community Relations in those municipalities where at least 20% of the population belong to a minority community. These committees, which have been created in order to enhance the participation of representatives of all ethnic communities in the decision-making process at the local level, currently exist in 20 municipalities, including the municipality of Šuto Orizari in Skopje where the majority of the local population are Roma. Each community has an equal voice in the committees regardless of its actual numbers in the local municipality’s population. The committees decide on issues related to interethnic relations and give opinions and proposals which must be reviewed by the municipal council. However, some reports have noted that the potential of these bodies to lead inter-community dialogue at local level is not being fully used; for example, in his 2011 annual report, the Ombudsman observed that the committees are not functioning properly or have only held a few meetings.<sup>8</sup>
16. The long-awaited Law on the Use of Languages (the Language Law) was adopted in 2008. This law regulates the use of languages that are spoken by at least 20% of the citizens of the Republic. It thereby gives a clear legal status to the Albanian language as “another official language” and regulates its use in parliament, government ministries, court proceedings, administrative proceedings, etc. The 2011 amendments to the Law on the Use of Languages further extended the possibility to use a minority language (in practice, Albanian) in parliament,

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<sup>6</sup> The principle of equitable representation is also reflected in the Law on the Promotion and Protection of the Rights of Persons Belonging to Communities which Represent Less than 20% of the Population, which was adopted in 2008.

<sup>7</sup> The Committee of Ministers’ Resolution (2012)13 on the implementation of the Framework Convention for the Protection of National Minorities by “the former Yugoslav Republic of Macedonia”, June 2012.

<sup>8</sup> Cf. also the 2012 European Commission Progress report on “the former Yugoslav Republic of Macedonia”, October 2012, page 17.

affecting in particular the work of parliamentary commissions and permitting government representatives the possibility to use their native language when addressing parliament; it was also followed by the recruitment by the Parliament of more skilled translators and interpreters. In addition to the Language Law, the Law on Local Self-Government also provides that the languages and alphabets used by more than 20% of the population of the municipality shall have official status at the local level. The AC FCNM has welcomed the adoption of the Law on the Use of Languages and the progress achieved in terms of its implementation, and noted that since its adoption the Albanian language has been in more frequent use in public communication, notably in the Parliament, in communication between citizens and Ministries, and in judicial and administrative proceedings.<sup>9</sup>

17. Much has been done in the area of equitable representation over the past decade; according to the 2012 Progress Report of the European Commission, the overall proportion of civil servants from non-majority communities is 29%. Representation of minorities in law enforcement and in other governmental security-related functions has increased considerably. An illustrative example relates to the Ministry of the Interior, where in 2002 only 2% of the personnel came from non-majority ethnic communities, whereas by November 2012 the percentage had increased tenfold, i.e. to 21-22%. According to the Commissioner's interlocutors, this has made a real difference when security operations are carried out in minority-populated areas. However, the Ombudsman's 2011 annual report noted that, while generally speaking there is progress, the representation of all the members of the (ethnic) communities is not yet at the required level, which particularly concerns non-majority communities, and that the principle of equitable representation is not fully implemented as regards managerial positions.
18. Notwithstanding the progress made in the adoption of laws and institutional measures deriving from the Ohrid Framework Agreement, the AC FCNM highlighted a more complex issue: that society in "the former Yugoslav Republic of Macedonia" remained deeply divided along ethnic lines, "with the main ethnic communities living a parallel existence alongside each other, but without significant interaction with each other". The AC FCNM observed that this phenomenon is particularly visible in the education system, the media, political parties and as regards living areas, and further noted with concern that the deep politicisation along party lines (the parties themselves being established along ethnic lines) in all walks of public life, in particular employment, introduced additional divisions in society.<sup>10</sup> During the visit, the Commissioner's interlocutors also expressed concern about the phenomenon of political patronage in this context, which undermined good governance.<sup>11</sup>
19. Some civil society actors the Commissioner met during the visit pointed out that there is widespread mutual ignorance between the two largest communities due in part to limited interaction, which tends to feed into an atmosphere of distrust. The existing cleavages have lent themselves to exploitation by political parties, individual politicians, and other influential actors seeking short-term advantages. Nevertheless, there is a general consensus among the ethnic groups as well as the political parties with regard to the need to build a peaceful and prosperous society, and the view predominates that this goal can best be achieved through Euro-Atlantic integration.
20. The media have a particularly important role to play and can be instrumental in fostering an environment conducive to positive inter-ethnic relations or, conversely, in undermining it. This becomes crucial in the context of violent incidents or tensions of an inter-ethnic nature, and it

<sup>9</sup> Cf. paragraph 10 of the Advisory Committee on the Framework Agreement on National Minorities, Third Opinion of "the former Yugoslav Republic of Macedonia", March 2011.

<sup>10</sup> *Ibid.*

<sup>11</sup> In this context, former Commissioner Thomas Hammarberg observed in the report on his 2008 visit to "the former Yugoslav Republic of Macedonia" that "the legislative and administrative prerequisites for promoting and ensuring an effective political dialogue exist, but [...] the political culture is such that this does not directly equate to an adequate or effectively functioning, open political dialogue, particularly between the two biggest ethnic groups of ethnic Macedonians and the Albanian population".

should be borne in mind that cultivating trust is a long-term process, whereas inflaming any existing tensions can occur very quickly. The division of media along linguistic lines remains, offering very limited opportunities for intercultural dialogue with only one Albanian-language television channel broadcasting bilingual programmes on a regular basis, and thereby actively contributing to a greater mutual understanding between the communities. While the Commissioner has not undertaken an exhaustive analysis on the subject, it would appear that there tends to be a difference in tone and emphasis in the reporting on issues of an inter-ethnic character, including the inter-ethnic incidents of the first half of 2012, depending on the language used by the media and its audience.<sup>12</sup>

21. The Commissioner has also taken note of disturbing reports of hate speech and virulent ethnic intolerance regularly manifested by football fans during matches, as well as violent confrontations between fans. According to some reports, only light sanctions are pronounced even in cases involving violence.<sup>13</sup> In this regard, the Commissioner would like to draw the authorities' attention to Policy Recommendation No. 12 by the European Commission Against Racism and Intolerance on Combating Racism and Racial Discrimination in the Field of Sport (CRI(2009)5). In particular, specific legislation against racism and racial discrimination in sport should be put into place and effectively implemented. Sports clubs and federations should recognise the problem of racism in sport, demonstrate publicly their commitment to combating it, and be held responsible for racist acts committed during sports events.
22. The Commissioner is aware of a campaign of government-sponsored public service announcements which have been broadcast on television beginning in November 2012 with the aim of promoting inter-ethnic and inter-religious tolerance between the two largest communities, and addressing problems such as hate speech against persons on account of their ethnic origin during sports matches, etc. The reactions to this initiative have been mixed; whereas one can hardly dispute the necessity to transmit the key message of the value of tolerance, some commentators have noted that the campaign portrays an idealised picture of relations between the communities. The Commissioner is of the view that such messages constitute a positive step, but they should be part of a larger and more systematic strategy to promote interaction, dialogue and tolerance.

*Conclusions and recommendations:*

23. The Commissioner welcomes the progress achieved so far in the implementation of the Ohrid Framework Agreement. The legislative framework stemming from the agreement has been established in key areas, such as local self-government and the use of languages. Some of the most noteworthy achievements have related to equitable representation; however, the deep politicisation along party lines and the phenomenon of political patronage tend to dull the impact of this progress upon the well-being of society as a whole.
24. The Commissioner recognises that in a richly diverse country such as “the former Yugoslav Republic of Macedonia” interethnic relations are complex and do not lend themselves to facile solutions. In addition, there may be socio-cultural and historical factors which have played a role in establishing, for example, certain geographical population patterns and divisions in living areas. However, the Commissioner firmly believes that a cohesive society requires principled action and comprehensive, systematic policies that ensure the equal rights of all persons, combat discrimination and intolerance, and actively promote constructive interaction between individuals and groups of different backgrounds. The country's political actors should bear this principle in mind, as their legacy will depend on whether the prospect of achieving short-term political gains has led them to miss the opportunity to build such a society. In this regard, the Commissioner recommends that the authorities review the recommendations made by ECRI in its previous

<sup>12</sup> In this regard, the European Commission Against Racism and Intolerance (ECRI) observed in its 2010 report on “the former Yugoslav Republic of Macedonia” that “ethnically tinged reporting of events [is] still very widespread”.

<sup>13</sup> Cf. <http://www.balkaninsight.com/en/article/political-football-the-balkans-belligerent-ultras-avoid-penalties>

country report,<sup>14</sup> and invites them to consider joining the Joint Action of the Council of Europe and the European Union on Intercultural Cities, which aims to develop a model that supports intercultural integration within diverse urban communities.

25. Violent inter-ethnic incidents such as those which occurred in the first half of 2012 are a serious threat to the progress made since the 2001 conflict in “the former Yugoslav Republic of Macedonia” towards establishing lasting reconciliation and durable peace. The Commissioner urges the government as well as all other political and public actors to unequivocally condemn any such incidents and to pursue comprehensive policies to prevent them from occurring in the future.
26. The Commissioner cannot over-emphasise the importance of the role and responsibility of the media to promote inter-ethnic tolerance and to refrain from propagating stereotypes or inflaming any existing tensions. Media should present information in an ethical manner and be encouraged to present positive examples of inter-ethnic relations and to create an environment conducive to social cohesion.

## **2. Divisions in public education**

27. When discussing the issue of division along ethnic lines in public schools the issue of the use of languages is highly relevant. The languages of instruction in public schools at primary and secondary level are Macedonian and the languages of minorities. The authorities have the obligation to provide higher education in a minority language where the language in question is spoken by over 20% of the country's population. In practice, primary education is available in Macedonian, Albanian, Turkish and Serbian, secondary education in Macedonian and Albanian and to some extent in Turkish and Serbian, whereas university education is offered in Macedonian and Albanian. As the AC FCNM has observed, there is a well-developed system of minority language education in the country.<sup>15</sup>
28. In its 2010 report on “the former Yugoslav Republic of Macedonia”, ECRI noted that in practice a collateral effect of applying the right of education in languages of minorities had been the gradual separation of pupils along linguistic and ethnic lines. ECRI expressed concerns that this entails a risk that having been educated in different languages and separated from the earliest stage, members of the different communities might co-exist without knowing each other and communicating, thus perpetuating mutual mistrust and intolerance. In this context, ECRI reiterated its recommendation concerning “the strengthening of multilingual teaching at all levels of the educational system and determination and implementation of a deliberate policy of developing common schools and extracurricular activities promoting contacts, mixing and interaction between children of all linguistic and ethnic backgrounds.” According to an analysis performed by the OSCE Mission to Skopje, “maximally 26% of kids in primary education (but in reality most probably close to half this number) and 37% in secondary education have an actual chance to interact in the school environment by at all being in the same building at the same time.”<sup>16</sup> The Commissioner’s civil society interlocutors referred to “institutionalised segregation in the education system” which contributed to “ethnocentrism” within the two largest communities.
29. In 2010 the government adopted a Strategy for Integrated Education, developed in co-operation with the OSCE High Commissioner for National Minorities. The strategy is conceived according to

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<sup>14</sup> In particular, ECRI recommended that the authorities, through their most senior representatives, systematically and publically denounce in the strongest terms any expressions of intolerance by opinion leaders or persons in the media eye and that they initiate proceedings in cases where the remarks in question might qualify as hate speech and come within the scope of criminal law.

<sup>15</sup> Cf. the Advisory Committee on the Framework Agreement on National Minorities, Third Opinion of “the former Yugoslav Republic of Macedonia”, March 2011. It should also be noted that minority-language education at primary and secondary levels existed even prior to the country’s independence.

<sup>16</sup> Bridges and Divisions in Education: A quantitative overview of inter-ethnic realities in education (Programme Co-ordination Unit (PCU), OSCE Spillover Monitor Mission to Skopje, November 2010.

a balanced and phased approach aimed at raising the overall quality of education, promoting the learning of each other's languages and increasing inter-ethnic interaction between pupils. In 2011 the authorities reported to the AC FCNM that several actions were being taken in pursuance of this strategy, including the review of school textbooks, improving teachers' qualifications, as well as the promotion of integration of pupils through joint activities.<sup>17</sup> It was also reported that the competences in the field of education were subject to revision in accordance with the process of decentralisation. However, there are concerns that the implementation of the strategy has not progressed measurably, and it would appear that the various projects implemented – which are mainly financed by international donors – have not been accompanied by policy measures which would ensure its sustainability. As pointed out in the 2012 EC Progress Report on the country, no specific budget has been allocated to the Strategy.

30. Based on the information at the Commissioner's disposal, he finds that the debates in the country surrounding the issue of education have been highly politicised and often reduced to a zero sum approach to community rights. This has led to mutual retaliation for perceived injustices which perpetuates the problem and ultimately penalises children and young persons, who can only benefit from increased opportunities for learning about and from each other. Moreover, knowledge of languages is likely to enhance economic opportunities.
31. It is a well-known fact that incidents, occasionally violent, take place on a fairly regular basis in secondary schools between pupils belonging to different communities. In its 2010 country report, ECRI noted that this was an "alarm bell" signifying that urgent action was needed to avoid interethnic intolerance taking root in the school environment and establishing a lasting hold on society. In this context the Commissioner wishes to highlight one tragic example of violence in a Skopje school which also illustrates interethnic solidarity, and relates to the April 2011 death of an ethnic Albanian high school student who was killed while attempting to defend his Macedonian classmate from outside assailants.<sup>18</sup>

*Conclusions and recommendations:*

32. It is positive that well-developed opportunities exist in "the former Yugoslav Republic of Macedonia" for non-majority communities to receive education in their own language. However, the concomitant phenomenon of segregation in schools has to be addressed, as such divisions have a negative impact on pupils' relationships, increase mutual incomprehension and undermine social cohesion. The authorities should redouble their efforts towards pursuing integrated and multilingual education policies such as the Strategy for Integrated Education, and political actors and opinion leaders should also pursue a responsible approach in this regard.
33. The Commissioner has noted with satisfaction that "the former Yugoslav Republic of Macedonia" is part of the new Joint Project of the European Union and the Council of Europe entitled "Regional Support for Inclusive Education", in which seven pilot schools in each of the countries concerned will serve to enrich the understanding of policy makers of the benefits of inclusive education and provide them with suggestions as to effective practices in order to manage diversity in society.
34. The Commissioner is deeply concerned by the continuing occurrence of violent interethnic incidents in certain schools in the country. He recommends that every effort be made to combat this negative phenomenon and underlines that prevention is crucial in this context. Projects aimed at ensuring school safety, such as the one carried out by the OSCE Mission to Skopje in

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<sup>17</sup> Cf. the 2011 Comments of "the former Yugoslav Republic of Macedonia" on the Third opinion of the Advisory Committee on the FCNM.

<sup>18</sup> See for example the following news reports on the incident from a Macedonian-language and an Albanian-language daily: <http://www.novamakedonija.com.mk/NewsDetal.asp?vest=4911857458&id=12&setlzdanie=22253> and <http://www.koha.mk/mobile/aktuale/4082.html>

cooperation with the Ministries of Education and Science and of Internal Affairs, deserve firm support.

### 3. Unresolved human rights issues related to the conflict

#### *Impunity for gross human rights violations*

35. Arguably, continued impunity for gross violations of human rights or serious violations of international humanitarian law committed in 2001 is one of the factors impeding efforts to achieve social cohesion and reconciliation in “the former Yugoslav Republic of Macedonia”. Justice is needed not only to ensure the accountability, through fair proceedings, of those who have committed such violations; it is also needed to restore the rights of victims who suffer additionally from the continuing lack of acknowledgement that they have been wronged. The Commissioner is aware of the complex political situation and the legitimate claims for stability and social peace which have been advanced as counterarguments against taking action on these serious matters. However, he considers that such action is indeed necessary, as allowing grievances to accumulate has not proven to be the most viable approach to establishing lasting inter-ethnic cohesion.
36. Five cases of war crimes allegedly committed during the 2001 conflict were forwarded to the International Criminal Tribunal for the former Yugoslavia (ICTY). The ICTY delivered a judgment (in July 2008) concerning only one of those cases, involving Ljube Boškoski, the former Macedonian Minister of Interior, and Johan Tarčulovski, a police officer, by which it acquitted the former Minister of all charges (after he spent three years detained in the Hague, and one year beforehand detained in Croatia)<sup>19</sup>, and sentenced Mr Tarčulovski to 12 years of imprisonment. The remaining four cases were returned from the ICTY in 2008 to “the former Yugoslav Republic of Macedonia” for prosecution.
37. Already in March 2002 the Macedonian Parliament had enacted an Amnesty Law which provided that the amnesty would apply to all cases of criminal acts committed during the 2001 conflict, except to those in which the ICTY has initiated a criminal investigation. While the adoption of this law was widely welcomed by the international community as an important step towards establishing durable peace in the country, some human rights organisations expressed serious concerns. For example, in 2003 Human Rights Watch expressed concerns that the 2002 Amnesty Law would lead to impunity for many serious violations, since the ICTY would be able to pursue only a few high-profile cases.<sup>20</sup>
38. In the 2008 Concluding Observations on “the former Yugoslav Republic of Macedonia”, the UN Human Rights Committee expressed concerns about the scope of the Law on Amnesty and the number of persons to whom it had been applied. It observed that a political desire for an amnesty for crimes committed in periods of civil war may also lead to a form of impunity incompatible with the Covenant on Civil and Political Rights. The Committee reiterated the view that amnesty laws were generally incompatible with the duty of States parties to investigate such acts, to guarantee freedom from such acts within their jurisdiction, and to ensure that they do not occur in the future. The Committee further expressed concerns that victim organisations were not consulted in the drafting process of the Law, and called upon the authorities to ensure that the Amnesty Law was

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<sup>19</sup> Since his acquittal by the ICTY and his return to “the former Yugoslav Republic of Macedonia”, Boškoski has run for President and founded a political party. He was arrested in 2011 and is currently serving a seven-year sentence for illegal campaign funding and abuse of office.

<sup>20</sup> Apart from the cases sent to the ICTY, information indicative of serious human rights violations committed in 2001, such as torture or ill-treatment and enforced disappearances, has been documented by established international monitoring mechanisms as well as non-governmental organisations. Cf. for example the report on the visit in October 2001 to “the former Yugoslav Republic of Macedonia” by the European Committee for the Prevention of Torture (CPT/Inf (2003)3) and the 2012 publication *The Right to Know: Families Still in the Dark in the Balkans* by Amnesty International (pp. 10-11): <http://www.amnesty.org/en/library/asset/EUR05/001/2012/en/0a33c2c7-c145-4958-a8d1-b946b569c6aa/eur050012012en.pdf>

not applied to the most serious human rights violations or violations of international humanitarian law. In 2009 the authorities reported to the UN Human Rights Committee that an indictment was issued in one of the four returned cases; one case was in the investigative phase; while the two remaining cases were at the preliminary stage of criminal investigation.

39. In July 2011 the Macedonian Parliament adopted a decision on the “authentic interpretation of the 2002 Amnesty Law”, which stipulates that the latter applies to all cases relating to the 2001 conflict, i.e. including those returned from the ICTY to Macedonia. In September 2011, Amnesty International called on the Macedonian authorities to reverse that decision. In October 2012 the Constitutional Court rejected a challenge to the constitutionality of the above-mentioned parliamentary decision.
40. The principle that amnesties should not be applied to gross human rights violations was confirmed by the Council of Europe Committee of Ministers in the 2011 Guidelines on eradicating impunity for serious human rights violations. Furthermore, in the recent judgment *Marguš v. Croatia*<sup>21</sup> concerning the application of an amnesty to a case involving war crimes against civilians, the European Court of Human Rights stressed that “granting amnesty in respect of “international crimes” – which include crimes against humanity, war crimes and genocide – is increasingly considered to be prohibited by international law. This understanding is drawn from customary rules of international humanitarian law, human rights treaties, as well as the decisions of international and regional courts and developing State practice, as there has been a growing tendency for international, regional and national courts to overturn general amnesties enacted by Governments”.

*Missing persons, internally displaced persons (IDPs), and the need to establish the truth concerning gross human rights violations*

41. The authorities’ obligation to ensure, through prompt and effective investigations, accountability for cases of enforced disappearances and clarify the fate of those who remain missing is firmly established in the case-law of the European Court of Human Rights. The Court has found violations of Article 2 (right to life) and 3 (prohibition against torture) of the European Convention on Human Rights in unresolved cases of enforced disappearances; in particular, Article 3 violations have been found in respect of the family members of the missing, who suffer protracted anguish and are deprived of the possibility to lead a normal life.
42. According to the International Committee of the Red Cross (ICRC) there were 23 reported cases of enforced disappearances during the 2001 conflict. While the remains of nine of the 23 persons have been identified, 14 persons remain unaccounted for to date.
43. About 83 000 persons were internally displaced during the 2001 conflict. Currently, there remain 334 IDPs (95 families) for whom durable solutions need to be found. Of those persons, 95 still live in six collective centres.
44. For most of the IDPs, after more than a decade in this situation, return home is not a realistic option. The Commissioner met several IDPs living in a high school dormitory in Kumanovo serving as a collective centre. One of the concerns expressed by them was that, while they are entitled to claim monetary compensation for war damages, the amount awarded by the court might not be sufficient to find a durable housing solution; moreover, claiming compensation requires that they relinquish their IDP status. During his meeting with the Commissioner, the

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<sup>21</sup> Judgment of 13 November 2012 (Application no.4455/10). The Court found that there had been no violation in respect of the right to a fair trial in respect of the applicant, a former commander of the Croatian army, who had been convicted of war crimes against civilians committed in 1991. The applicant had complained in particular that the criminal offences of which he was convicted were the same as those which had been the subject of proceedings against him terminated in 1997 in application of the General Amnesty Act.

Minister of Labour and Social Policy emphasised that the government remained committed to finding durable solutions for IDPs.

45. Victims of gross human rights violations and their representatives are entitled to seek and obtain information on the true causes and conditions concerning the violations they have suffered.<sup>22</sup> The Commissioner regrets to note that the process of establishing the truth about the violations endured by the victims of the 2001 conflict in “the former Yugoslav Republic of Macedonia” has not yet taken place.
46. In its Resolution 1786 (2011) on the reconciliation and political dialogue between the countries of the former Yugoslavia, the Council of Europe Parliamentary Assembly (PACE) supported the establishment of a regional truth and reconciliation commission with a view to reaching a common understanding of past events and to acknowledging and honouring all the victims. The Resolution refers to the initiative taken in 2008 by a coalition of non-governmental organisations from the region aimed at establishing a regional truth commission (RECOM). This initiative has garnered broad support from civil society groups, victims’ associations and individuals throughout the region. Because of difficulties to address these issues on the national level, the regional approach has been useful in “the former Yugoslav Republic of Macedonia”, where the RECOM initiative has contributed to the start of a dialogue between different sections of the society on war crimes, including war veterans.<sup>23</sup> Macedonian President Ivanov has expressed his support for the initiative, and in January 2013 he appointed his personal envoy to RECOM.<sup>24</sup>

*Conclusions and recommendations:*

47. The continuing lack of accountability for serious human rights violations, as reflected in the termination of proceedings related to the war-crimes cases returned from the ICTY, is a serious impediment to the process of achieving justice and lasting reconciliation. The Commissioner urges the authorities of “the former Yugoslav Republic of Macedonia” to address those issues, and to effectively implement the Council of Europe Committee of Ministers Guidelines on eradicating impunity for serious human rights violations, adopted on 30 March 2011. Those guidelines should be widely disseminated among all competent authorities.
48. The Commissioner recommends that every effort be pursued to clarify the fate of those who are still missing, in light of the obligations arising from Article 2 and Article 3 of the European Convention on Human Rights.
49. The Commissioner welcomes the support expressed thus far to the RECOM initiative by the President of the Republic and considers that systematic institutional support is also necessary, including for reconciliation initiatives involving victims’ families.
50. The Commissioner recommends that the authorities sign and ratify the 1974 European Convention on the Non-Applicability of Statutory Limitations to Crimes against Humanity and War Crimes and to ratify the UN Convention on the Protection of all Persons Against Enforced Disappearances.
51. While welcoming the authorities’ commitments to identify durable solutions for the remaining internally displaced persons, the Commissioner underlines that urgent action is needed, notably

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<sup>22</sup> UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (2005).

<sup>23</sup> Cf. Report on Post-war justice and durable peace in the former Yugoslavia: Round table with human rights defenders organised by the Office of the Commissioner for Human Rights (Sarajevo, 18 March 2012) (CommDH(2012)31).

<sup>24</sup> <http://www.zarekom.org/news/Presidents-of-Croatia-and-Macedonia-Appoint-Personal-Envoys-to-RECOM.en.html>

for those IDPs still living in collective centres. As the number of remaining IDPs is relatively small, such solutions should indeed be within reach.

#### 4. Measures to combat discrimination

52. The essence of equal treatment and non-discrimination is to allow all individuals to have an equal and fair prospect of accessing opportunities available in a society. Specific equal treatment or anti-discrimination legislation at national level can be an important tool for providing actionable rights to people who have been wronged because of discrimination on various prohibited grounds.
53. In April 2010 “the former Yugoslav Republic of Macedonia” adopted a comprehensive Law on the Prevention and Protection against Discrimination (the Anti-Discrimination Law). The Anti-Discrimination Law protects the following grounds: colour, gender, belonging to a marginalised group, ethnic affiliation, language, citizenship, social origin, education, political affiliation, personal or social status, family or marital status, property ownership, and health condition, as well as any other ground foreseen by law or a ratified international treaty. The lack of explicit mention in the law of the grounds of sexual orientation prompted criticism by national and international civil society groups.<sup>25</sup>
54. In January 2011 a Commission on Protection against Discrimination (the Commission) was established. The Commission is responsible, together with the courts, for the application of the Anti-Discrimination Law, and is mandated in particular to receive complaints from individuals, initiate proceedings before competent bodies in cases of alleged discrimination, review draft legislation, suggest amendments to existing legal acts, and make recommendations. However, at the time of the Commissioner’s visit, the members of the Commission had no secretariat or support staff.
55. The Commission on Protection against Discrimination is a member of the European Network of Equality Bodies (Equinet). In order to prevent possible overlapping, the Ombudsperson and the Commission signed in 2011 a memorandum of understanding.
56. The Council of Europe Committee of Ministers in its Resolution (2012)13 (adopted on 4 July 2012) on the implementation of the Framework Convention for the Protection of National Minorities by “the former Yugoslav Republic of Macedonia” called on the authorities to provide the Commission with the appropriate financial and human resources and the composition and structures necessary to allow it to fulfil its duties effectively and independently. In its 2012 Progress Report, the European Commission noted that the overall capacity of the Commission remains weak and its public visibility and accessibility levels are low.
57. During his meeting with two of the Commission’s members, the Commissioner was informed that it was expected that the budget of the institution would be increased. From the time the Commission was formed until the end of November 2012, 132 applications had been received; of those, the Commission concluded that discrimination had indeed taken place in eight cases. The most frequent ground for discrimination cited by complainants was ethnic affiliation, primarily in the context of employment, and the second most frequent ground was gender discrimination.
58. In his 2011 annual report, the Ombudsman concluded that discrimination was present in all social spheres, particularly based on the grounds of ethnic affiliation and political conviction. He recommended that measures be taken from all competent institutions to effectively combat discrimination through full implementation of the laws in force, including the Anti-Discrimination law, as well as awareness-raising campaigns to enable people to benefit fully from the principle of equality.

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<sup>25</sup> However, the Commission’s decision in 2011 to withdraw a homophobic text book for trainee teachers was widely welcomed by international and national human rights groups and institutions.

*Conclusions and recommendations:*

59. The Commissioner has noted that a developed legal framework on non-discrimination is now in place in “the former Yugoslav Republic of Macedonia”, and that the national human rights structures, including the Ombudsman and the Commission on Protection Against Discrimination are active in this area. The authorities should provide the above-mentioned institutions with all the necessary support - including as regards secretariat capacity and/or resources for research and awareness-raising - so that they can carry out their duties independently and effectively.
60. The Commissioner supports the Ombudsman’s recommendation concerning the full implementation of the legislative framework on non-discrimination and the need to pursue awareness-raising campaigns in this regard. More generally, he strongly supports measures aimed at promoting tolerance and respect for everyone’s human rights, as well as increasing public awareness of the situation of all groups which are subjected to discrimination in different contexts. Such measures should begin in the educational system, and school curricula should include education about the diverse groups in society with a view to countering ignorance and intolerance. Media outlets and journalists can also contribute to a fairer and more tolerant society by practicing ethical and responsible journalism.

**5. Lustration**

61. In the years following the post-1989 transformations in Central and Eastern Europe, several formerly communist countries adopted lustration measures aimed at preventing individuals associated with former state security services from occupying certain positions in the post-communist government. “The former Yugoslav Republic of Macedonia” initiated a lustration process at a later stage, by enacting in 2008 the Law on Additional Criteria for Public Office Performance, Access to Documents and Disclosure of Collaboration with State Security Bodies (the Lustration Law), which provides for the identification of individuals who unlawfully cooperated with the former intelligence services during the period from 1944 until the entry into force of the Law in 2008. Pursuant to the Lustration Law, a Commission for Verification of Facts was established in 2009 (the Verification Commission), and is mandated to investigate holders of, and candidates for, high public office in order to establish whether they have links to the former intelligence services. The Commission, whose mandate ends 10 years after the entry into force of the Lustration Law, may not impose sanctions against former collaborators, but can inform other competent organs for further proceedings.<sup>26</sup>
62. The Constitutional Court abrogated the 2008 Lustration Law in April 2010 as well as a subsequent version in April 2012. In particular, the Constitutional Court found the provisions relating to the law’s temporal and personal scope of application, as well as those concerning the right of defence and publication of the names of the persons subject to lustration, to be incompatible with the Constitution. A third version of the Lustration Law was adopted in June 2012. However, the two previous decisions of the Constitutional Court’s decisions have been disregarded by the legislature; whereas the Constitutional Court had decided that the provisions extending the scope of lustration to the period after 17 November 1991 were unconstitutional, they were nevertheless retained in the law’s latest version.
63. In its 2012 Progress Report on the “former Yugoslav Republic of Macedonia” the European Commission<sup>27</sup> noted that “concerns have been raised about the proportionality and constitutionality of this law”. There have also been complaints that the lustration process was being used as a tool for political and personal score-settling. Following the Commissioner’s visit,

<sup>26</sup> Cf. the web-site of the Commission, <http://www.kvf.org.mk/index.php/en/>

<sup>27</sup> Cf. the 2012 European Commission Progress report on “the former Yugoslav Republic of Macedonia”, October 2012, page 15.

two members of the Verification Commission resigned, one of them claiming that the lustration process had become an instrument for selective stigmatisation of persons critical of the government.

64. In September 2012, the Constitutional Court was requested to assess the constitutionality of the third version of the Lustration Law. In December 2012, upon the request of the Constitutional Court, the European Commission of Democracy Through Law (Venice Commission) published an Amicus Curiae Brief<sup>28</sup> on the subject. Basing its opinion upon European standards in this field, notably the European Convention on Human Rights and relevant Resolutions of the Parliamentary Assembly of the Council of Europe (PACE),<sup>29</sup> the Venice Commission analysed the following issues: the temporal and personal scope of application of lustration measures, the procedural guarantees for the persons to whom such measures are applied, and the publication of the names of persons considered to have collaborated with the former intelligence services.
65. As regards the temporal scope of application of the Lustration Law, the Venice Commission concluded inter alia that introducing lustration measures a very long time after the beginning of the democratisation process in a country risks raising doubts as to the actual goals of the process, and that a fixed duration of the lustration measure should be provided in order to avoid discriminatory treatment of persons in comparable situations. Secondly, the Venice Commission found that the application of lustration measures to positions in private or semi-private organisations goes beyond the aim of lustration, which is to exclude persons from exercising governmental power if they cannot be trusted to exercise it in compliance with democratic principles. Thirdly, as concerns the procedural guarantees before the Verification Commission, the absence of the person concerned from the procedure was found to be at variance with his or her defence right, notably the right to equality of arms. In this context, the procedure before the Verification Commission and the appeal procedure should be regulated in great detail in order to comply with the principles of the rule of law and due process of law. Finally, the Venice Commission concluded that the name of the person who is deemed to be a collaborator should only be published after a final decision by a court.<sup>30</sup>
66. The Commissioner notes that the aim of the Venice Commission's Opinion was not to assess the constitutionality of the Lustration Law – which is the task of the Constitutional Court - but to provide it with elements based on European standards in this field in order to facilitate its own consideration of the case.<sup>31</sup> The Commissioner supports the Venice Commission's conclusions and underlines that all national authorities from the executive, judicial and legislative branches are obliged to respect the Constitutional Court decisions and adhere to them. This obligation derives also from Article 112 of the Macedonian Constitution which provides that the decisions of the Constitutional Court are final and binding.

*Conclusions and recommendations:*

67. The Commissioner is concerned about the proportionality and constitutionality of the lustration process in “the former Yugoslav Republic of Macedonia”. The disregard of the content of the Constitutional Court's decisions relating to the constitutionality of the previous versions of the Lustration Law raises some serious questions as to the rule of law. The Commissioner calls on the authorities to ensure that the Constitutional Court's decisions concerning lustration are fully respected and reflected in any future policy deliberations on the topic.

<sup>28</sup> The Venice Commission, CDL-AD(2012)028 Amicus Curiae Brief on the Law on Determining a Criterion for Limiting the Exercise of Public Office, Access to Documents and Publishing, the Co-operation with the Bodies of the State Security (“Lustration Law”) of “the former Yugoslav Republic of Macedonia”, 17 December 2012.

<sup>29</sup> Cf. PACE Resolutions 1096(1996) on measures to dismantle the heritage of former communist totalitarian systems and 1481(2006) on the need for international condemnation of totalitarian communist regimes.

<sup>30</sup> The Venice Commission further concluded that only in cases where collaboration is definitively proven can the adverse effects of publication upon a person's reputation be considered as a proportionate measure necessary in a democratic society.

<sup>31</sup> Cf. page 16 of CDL-AD(2012)028.

68. Recalling the relevant case-law of the European Court of Human Rights<sup>32</sup> and the ‘Guidelines to ensure the lustration laws and similar administrative measures comply with the requirements of a state based on the rule of law’,<sup>33</sup> the Commissioner underlines that lustration procedures should follow strict criteria in order to ensure that all the persons concerned enjoy the rights guaranteed by Article 6 of the European Convention on Human Rights, notably the right to equality of arms.
69. Lustration should never be used for political or personal purposes. In this context, the Commissioner underlines that a democratic state based on the rule of law has sufficient means at its disposal to ensure that the cause of justice is served and the guilty are punished. However, it should not cater to the desire for revenge instead of justice.

## II. Protection of the human rights of Roma

### 1. General context and policy framework

70. The last general census held in “the former Yugoslav Republic of Macedonia” in 2002 registered 53,879 Roma and 3,843 Egyptians, representing approximately 2.66% of the country’s total population. However, the actual number of Roma in the country may be higher, with estimates ranging between 80 000 and 135 000 persons.<sup>34</sup> The discrepancy between the official and non-official figures has been attributed to the fact that many of the country’s Roma are not registered at birth and/or lack personal identity documents.
71. “The former Yugoslav Republic of Macedonia” is a member of the “Decade for Roma Inclusion 2005-2012”, an initiative undertaken by governments, non-governmental and inter-governmental organisations, as well as Romani civil society, with the aim of improving the situation of Roma in four priority areas - housing, employment, education, and access to health – as well as addressing poverty, discrimination, and gender issues. In the framework of this initiative, a National Roma Strategy and the National Action Plan for the Decade of Roma Inclusion 2005-2015 have been introduced. In 2011 the government also adopted a Strategy on Social Inclusion of Roma 2012-2014, with a corresponding action plan.
72. In addition to the above-mentioned policy framework at national level, similar initiatives have been undertaken locally. For example, eight municipalities have developed local action plans for the improvement of the situation of Roma: Šuto Orizari, a Skopje neighbourhood almost entirely populated by Roma (in the areas of employment and housing); the towns of Tetovo, Gostivar, Bitola and Prilep (employment); and the towns of Kumanovo, Štip and Delčevo (in all four focus areas - education, employment, health and housing). Moreover, the local authorities of 19 municipalities have signed memoranda of understanding with the government to jointly implement the National Roma Strategy.<sup>35</sup>
73. While the introduction of a comprehensive policy framework for the improvement of the situation of Roma is a welcome development, concrete results are still lacking on the ground. Roma continue to face serious difficulties in access to quality education, employment, health care and housing, and the extreme poverty experienced by many of them – children included - is obvious

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<sup>32</sup> See for example, the judgment of 14 June 2011 of the European Court of Human Rights in the case of *Mościcki v. Poland* (Application No. 52443/07).

<sup>33</sup> Cf. PACE doc. 7568, (<http://assembly.coe.int/ASP/Doc/XrefViewHTML.asp?FileID=7506&Language=EN>), paragraphs 42 to 48.

<sup>34</sup> Cf. National Roma Strategy, Ministry of Labour and Social Policy, December 2004, page 8.

<sup>35</sup> Such memoranda have been signed by local authorities of the municipalities of Aračinovo, Berovo, Bitola, Čair, Debar, Delčevo, Kičevo, Kočani, Kratovo, Kriva Palanka, Kumanovo, Pehčevo, Prilep, Staro Nagoričane, Štip, Sveti Nikole, Tetovo, Veles, and Vinica.

to any observer.<sup>36</sup> Though Roma are represented in local politics and in the parliament, the general participation in decision-making remains low. In a significant number of cases, Roma residing in the country lack civil registration and personal identity documentation, and/or are de facto stateless (cf. in this regard paragraphs 109 to 115 below). In this context, it should be noted that the Council of Europe Committee of Ministers invited the authorities to develop urgently and implement appropriate and targeted policies to address the problems confronting Roma in the field of employment; allocate adequate resources to address the situation of Roma with regard to housing, education and access to health care, and the particular needs of Roma women (cf. Resolution CM/ResCMN (2012)13 on the implementation of the Framework Convention for the Protection of National Minorities).

74. The Roma Information Centres, which have been established in eleven municipalities so far, can serve as a useful tool for awareness-raising and counselling of Roma about access to social and economic rights. However, the centres have limited financial and infrastructural capacity and their staff do not have the status of public servants and thus have limited job security. While certain technical support has been provided by UNHCR, more systematic capacity building is needed in order to foster their effectiveness and strengthen their role.
75. According to various sources, the life expectancy of Roma is ten years shorter than the national average, whereas the infant mortality rate is almost double that of the general population.<sup>37</sup> These stark figures can be attributed to a variety of factors, such as inadequate housing conditions, unemployment, poverty, and difficulties in obtaining access to health care due to a lack of personal identity documents. During his visit, the Commissioner was also informed by non-governmental organisations of alleged cases where Roma who could not pay for medical services have had their personal documents (identity cards) taken away by medical institutions as a guarantee against payment.
76. In an effort to ameliorate the above-mentioned situation, a health mediators programme was initiated under the 2010 Strategic Framework for the Improvement of the Social and Health Status of Roma, with the aim of assisting Roma in obtaining access to health care services and promoting preventive health care measures such as immunisation. Sixteen mediators, whose field work is covered through a budget line provided by the Ministry of Health, began operating in May 2012 in eight municipalities, and sixteen additional mediators are expected to be appointed by the end of 2013. According to information received by the Commissioner, the health mediators have gained the confidence of Roma communities and their work has led to a significant increase of the number of visits and appointments, particularly of Roma women and children, to medical centres. The Commissioner considers that the authorities should ensure the sustainability of this programme, which appears to be effective and beneficial to the communities concerned.
77. While the unemployment rate among the general population is high (30.6%),<sup>38</sup> it is particularly so for the Roma community, 70% of whom are reportedly unemployed. The Council of Europe Committee of Ministers in its Resolution (2012)13 noted that the action plans in the field of employment have not been implemented at a sustained rate.<sup>39</sup> During the visit, the Commissioner was also informed by the Agency for the Implementation of the Rights of Communities<sup>40</sup> that Roma remain significantly underrepresented in the public service.

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<sup>36</sup> In the report on his 2008 visit to “the former Yugoslav Republic of Macedonia”, Commissioner for Human Rights Thomas Hammarberg noted that “many Roma find themselves caught in a generational cycle of poverty, which proves difficult to break free from”.

<sup>37</sup> Cf. UNICEF country profile, [http://www.unicef.org/infobycountry/TFYRMacedonia\\_1010.html](http://www.unicef.org/infobycountry/TFYRMacedonia_1010.html) .

<sup>38</sup> Unemployment rate registered for the third quarter of 2012 by the State Office of Statistics, [http://www.stat.gov.mk/PrikaziSooopstenie\\_en.aspx?rbtxt=98](http://www.stat.gov.mk/PrikaziSooopstenie_en.aspx?rbtxt=98)

<sup>39</sup> Council of Europe Committee of Ministers Resolution (CM/ResCMN (2012)13 on the implementation of the Framework Convention for the Protection of National Minorities, adopted on 4 July 2012.

<sup>40</sup> The Agency for the Implementation of the Rights of Communities, which in practice concerns communities that are numerically smaller than the majority (Macedonian) and the largest minority (Albanian), was established in 2008 in accordance with the 2008 Law on the Promotion and Protection of the Rights of Members of communities which

78. The European Commission against Racism and Intolerance had previously noted that “most Roma lived isolated from the rest of the population in ramshackle dwellings erected in unplanned communities without proper connections to utility networks [...] and, since they had no legal title to occupy these dwellings, were under constant threat of being evicted.”<sup>41</sup> The general tendency is for Roma to live in separate neighbourhoods; apparently, the eastern town of Delčevo (population: 11 500, including nearly 4% Roma according to the 2002 census) is an exception, and Roma live in different neighbourhoods throughout that town, interspersed with the rest of the population. The Commissioner directly observed that the living conditions in some of the dwellings in the Roma-populated Sredorek neighbourhood in Kumanovo, which he visited on 27 November 2012, were indeed unacceptable.<sup>42</sup>
79. In its 2010 report (cf. paragraph 56 of CRI(2010)19), ECRI urged the authorities “to settle without delay the issue of the legalisation of the Roma settlements”. In this regard, the Commissioner welcomes the adoption in February 2011 of the Law on the Treatment of Illegally Constructed Buildings. He was also informed of a project implemented in 2011 by non-governmental organisations aimed at encouraging Roma to request legalisation of property under this law. The project covered 18 municipalities and as a result 1 519 persons submitted their legalisation requests. The project now focuses on providing financial and legal support to Roma in order to enable them to successfully complete the process of property legalisation. The Commissioner was also pleased to note that under the project of construction of social housing units which is currently underway, 30 out of 753 social housing units will be specifically allocated to Roma. The Minister for Minister of Labour and Social Policy informed the Commissioner that 560 housing units had already been constructed in different towns.
80. According to some of the Commissioner’s interlocutors, the projects and programmes developed in the context of the implementation of the National Action Plan for the Decade of Roma Inclusion require better budgetary support and monitoring mechanisms in order to ensure their sustainability and effectiveness.

*Conclusions and recommendations:*

81. While welcoming the efforts already undertaken by “the former Yugoslav Republic of Macedonia” to improve the situation of Roma, the Commissioner underlines that there are numerous shortcomings in practice that still need to be effectively addressed. Most Roma continue to be trapped in a cycle of poverty and unemployment, living in separate neighbourhoods which are often marked by unacceptable living conditions. The Commissioner urges the authorities to implement their action plans concerning access of Roma to employment, education, housing and healthcare, as well as to ensure their sustainability, in accordance with the Council of Europe Committee of Ministers’ Recommendation CM/Rec(2008)5 on Policies for Roma and/or Travellers in Europe.
82. Constructive interaction between Roma and representatives of the authorities, notably at the local level, is an important factor contributing to the improvement of access by Roma to basic services. The Roma Information Centres can play an important role in this process; however, their capacity needs to be strengthened in order to enhance their effectiveness. In this context, some useful basic principles can be found in Recommendation CM/Rec(2012)9 of the Committee of Ministers

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represent less than 20% of the total population in the country. This Agency is entrusted with monitoring of the implementation of the law.

<sup>41</sup> 2010 ECRI Report on “the former Yugoslav Republic of Macedonia”, adopted on 28 April 2010, citing findings made in a previous report (2005) (cf. paragraph 54 of CRI(2010)19). Similar findings were made by the Advisory Committee of the Framework Convention on National Minorities (FCNM) in the Third Opinion on “the former Yugoslav Republic of Macedonia” published in 2011 (cf. paragraphs 66 to 68 and 71 to 72 of ACFC/OP/III(2011)001).

<sup>42</sup> Sredorek is the largest Roma community in the Kumanovo area, comprising 600 housing units with more than 2 500 inhabitants. It is located between two rivers, which are channels for wastewater, that often flood the settlement after heavy rains or from spring thaw.

to member States on mediation as an effective tool for promoting respect for human rights and social inclusion of Roma.

83. The Commissioner considers that the law providing for the legalisation of illegally-constructed property and the allocation by the authorities of social housing units to Roma families are important steps. However, a comprehensive strategy should be pursued to promote integrated housing policies and prevent the creation of new segregated areas. Specific guidance on housing policies may be found in Recommendation Rec(2005)4 of the Committee of Ministers of the Council of Europe on improving the housing conditions of Roma and Travellers in Europe, which contains recommendations regarding the general principles, legal frameworks and monitoring systems in this field.

## 2. Over-representation of Roma children in special-needs schools and classes

84. A key focus of the Commissioner's visit was the over-representation of Roma children in special-needs schools for children with mental disabilities and in special-needs classes within mainstream schools. This issue, which had previously been raised by local and international non-governmental organisations, was also highlighted by ECRI in its 2010 report on "the former Yugoslav Republic of Macedonia". In that report, the authorities were urged to end any practice of improperly sending Roma children in schools for children with mental disabilities, to identify the children concerned and to reintegrate them in mainstream schools.<sup>43</sup> In this context, the Commissioner would like to recall that the European Court of Human Rights (hereinafter: the Court) has ruled in several judgments that the placement of Roma children into special schools amounted to indirect discrimination without an objective or reasonable justification. For example, in the 2007 Grand Chamber judgment in the case of *D.H. and Others v. the Czech Republic*,<sup>44</sup> the Court held that such practices were in violation of Article 14 (prohibition against discrimination), in conjunction with Article 2 of Protocol No. 1 of the European Convention for Human Rights (right to education). As regards the question of parental consent to placements of children in special schools, the Court established in the *D.H.* judgment that no waiver of the right not to be subjected to racial discrimination can be accepted, as it would violate an important public interest.
85. Following his visits to several special-needs schools at the elementary and secondary level, the Ombudsman issued a publication in 2010<sup>45</sup> in which he observed that a large number of children enrolled in the special-needs schools were Roma.<sup>46</sup> Furthermore, the Ombudsman expressed doubts as to the objectivity of the screening process, and noted that some of the special schools' administrators and professional staff had themselves pointed out that they were receiving children who should have been placed in mainstream schools. He recommended that appropriate legislation or regulations be introduced to determine clearly which institutions are authorised to issue opinions regarding possible disabilities in school-age children.
86. A survey carried out in August 2012 by the European Roma Rights Centre (ERRC)<sup>47</sup> found that many of the Roma children in special education never underwent re-testing once they were placed in the special classes. Almost half of the parents had not been informed about the reasons for the initial testing, nor had they received full information about the difference between special education and education in mainstream schools. The survey also indicated that there was a need for awareness-raising among Roma about the availability of anti-discrimination mechanisms,

<sup>43</sup> Cf. paragraphs 47 to 48 of CRI(2010)19.

<sup>44</sup> Grand Chamber judgment of 13 November 2007 (Application no. 57325/00).

<sup>45</sup> Cf. Information of the Ombudsman on his visits to the special elementary schools "Zlatan Sremac" and "Idnina" - Skopje, "St. Kliment Ohridski" - Novo Selo and the public secondary school for education and rehabilitation "St. Naum Ohridski" - Skopje and "Iskra" - Štip, <http://www.ombudsman.mk/ombudsman/upload/documents/2010/Informacija-POU-2010-mk.pdf>.

<sup>46</sup> For example, in the central school "Zlatan Sremac" and its special units in five other schools in Skopje, 86 pupils out of a total number of 165 were Roma.

<sup>47</sup> ERRC, Overrepresentation of Romani Children in Special Education in Macedonia, August 2012, available at <http://www.errc.org/cms/upload/file/macedonia-factsheet-education-en-30-august-2012.pdf>.

since more than 75% of those surveyed indicated that they were not aware of the anti-discrimination law or the Commission for Protection Against Discrimination. Several shortcomings in the legislation pertaining to special education were also identified by the ERRC, notably relating to the Law on Primary Education and the regulations for primary education of students with developmental difficulties.<sup>48</sup>

87. During his visit, the Commissioner received information from various interlocutors that Roma children continue to be assigned to special-needs schools without justification, as a result of either faulty screening or direct enrolment in these schools without any screening. He was also made aware that the state benefits which are given to persons with a disability in practice act as a financial incentive for parents to enrol their children in special schools. On their part, certain representatives of the authorities have stated that some Roma parents have allegedly obliged their children to feign disabilities in order to enrol in special-needs schools or classes and thereby qualify for disability benefits. In this respect, the Commissioner wishes to underline that parents cannot be singled out for blame in a special education system displaying clear signs of indirect discrimination.
88. The Commissioner discussed this issue extensively with various interlocutors, including the Minister of Labour and Social Policy, the Ombudsman, the Commission for Protection Against Discrimination, as well as non-governmental organisations. The Minister of Labour and Social Policy agreed with the Commissioner that there was a problem of over-representation of Roma children in special-needs schools and classes. He had discussed the issue with the Ministers of Education and Health and it was decided to amend the specific regulations on the subject of categorisation.
89. Concerns have been expressed that insufficient knowledge of the Macedonian language by Roma children at the time of entrance into the first grade of primary school constitutes a significant disadvantage. The lack of opportunities for Roma children to attend pre-schools has been cited as one of the major problems in this context, although there have been efforts in recent years to address this problem (described in the following paragraph). In 2011 the Advisory Committee on the FCNM stressed that this problem is exacerbated by the lack of qualified teachers speaking the Romani language.<sup>49</sup> Apparently, the highest drop-out rates for Roma continue to be at the stage of primary education and enhanced measures to combat attrition are needed in that context.
90. Some of the positive measures aimed at promoting the inclusion of Roma in mainstream education have borne results, such as a reduction of the drop-out rate between fifth and sixth grade among girls and the doubling of Roma enrolment in public universities in the past seven years (from 150 in 2005 to 300 in 2012). Apart from the quota system which has been in place in universities for several years, the measures have included: an exemption from payment of administrative tax for immunisation certificates, which are required for school enrolment; the provision of free textbooks and school transportation to Roma children attending primary and secondary schools; scholarships for Roma secondary school students; and the reduction of the

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<sup>48</sup> The regulations in question are known as the "Rulebook on the criteria and method for implementation of the primary education of students with development difficulties".

<sup>49</sup> Cf. paragraphs 142 and 143 of ACFC/OP/III(2011)001, citing figures for the school year 2008/09 provided by the Directorate for the Development and Promotion of Education which show that out of 14,189 teachers working in primary schools only 24 were Roma, whereas the number of Roma pupils was 10,551. In this respect, the Commissioner noted with interest that an article published on 10 January 2013 in the Macedonian-language daily *Utrinski vesnik* presented the first Roma teacher working in the eastern town of Delčevo as a positive role model whose pupils include children from different ethnic groups. This young woman, who teaches classes on Romani language and culture and is involved in the project to promote the inclusion of Roma in nursery schools, was reportedly the only Roma graduate in her class in the Pedagogical Faculty in Štip.  
<http://www.utrinski.com.mk/?ItemID=2B56C6EA2BC79F49B46114865DAFBC8F>

average mark required of Roma children in order to enrol in the secondary school of their choice by 10%.

91. In the framework of the Council of Europe ROMED programme some 80 health, school and pre-school mediators from the Roma community have been trained. The mediators' work has reportedly received positive feedback by the government, education staff, as well as within the Roma community, who have particularly appreciated the additional support they received from mediators in their interactions with school and local authorities. The Commissioner was informed that since 2006, 18 Roma pre-school assistants have been working in different municipalities as part of the project "Inclusion of Roma pupils in pre-school education". This project is implemented by the authorities in the framework of the Decade for Roma Inclusion in co-operation with the Roma Education Fund, and supported by UNICEF. The Commissioner believes that efforts should be made to ensure the long-term sustainability of this important project in order to achieve full integration of Roma children in the pre-school education system.

*Conclusions and recommendations:*

92. While he welcomes the measures undertaken by the authorities to improve the access by Roma to adequate education, the Commissioner is deeply concerned by the overrepresentation of Roma in special-needs schools for children with disabilities and believes there is an urgent need to address this issue. There are serious long-term risks and costs to society associated with the fact that quality education is not equally accessible to all.
93. The Commissioner has noted the recommendations made by the Ombudsman and non-governmental organisations to rectify the shortcomings in the legal and regulatory framework pertaining to special education. In this respect, the Commissioner emphasises that the authorities' undertakings in this context should go beyond reforming the system of categorisation of children, and should include more comprehensive and systematic measures aimed at providing access to adequate education in mainstream schools for all children without discrimination on any ground. The objective should be not to use testing to single children out for segregation, but to support them, to the extent required by each pupil, in performing successfully in mainstream education.
94. In this context the Commissioner recalls that the 2010 Strasbourg Declaration on Roma calls on the member states to "ensure effective and equal access to the mainstream educational system, including pre-school education, for Roma children and methods to secure attendance, including, for instance, by making use of school assistants and mediators. Provide, where appropriate, in service training of teachers and educational staff".<sup>50</sup> In line with these commitments, the Commissioner urges the Macedonian authorities to strengthen measures to secure participation of Roma children in mainstream pre-school education and the presence of teaching assistants in all schools where they are needed. The Commissioner recommends that the participation of and appropriate support to Roma parents be ensured in the process of inclusion of Roma children in mainstream education.

### **3. Exit control measures and their impact on the human rights of Roma**

95. On 19 December 2009, the citizens of three former Yugoslav Republics seeking accession to the European Union, including "the former Yugoslav Republic of Macedonia",<sup>51</sup> were granted visa-free travel to EU member states, based on progress made by the countries concerned in the specific areas identified in the "roadmaps for the visa liberalisation dialogues", i.e. document

<sup>50</sup> "The Strasbourg Declaration on Roma", paragraph 33, CM(2010)133 final, 20 October 2010.

<sup>51</sup> The other two Republics were Serbia and Montenegro. Visa liberalisation was subsequently extended to Bosnia and Herzegovina and Albania in November 2010.

security, border management, asylum, migration, fight against organised crime and corruption, and protection of fundamental rights.<sup>52</sup>

96. Since the introduction of the visa-free regime for citizens of the different Balkan countries, the number of persons seeking asylum in Western Europe – notably in Germany, Belgium and Sweden – increased considerably. For example, UNHCR data for 2010 show that EU member states and Switzerland received 6 289 asylum applications from citizens of “the former Yugoslav Republic of Macedonia”, whereas the corresponding number for 2009 (i.e. prior to visa liberalisation) was 838.<sup>53</sup> In its third report on post-visa liberalisation monitoring, the European Commission concluded that “**the common profile of the asylum seekers**”<sup>54</sup> has been confirmed also during the first half of 2012. The majority of the claims continue to be persons belonging to the Roma minority, who often arrive with their families.<sup>55</sup> According to the European Commission, the most frequent reasons for asylum claims concern lack of health care, unemployment, and lack of schooling.<sup>56</sup> A high number of asylum applications are subsequently judged to be unfounded by the receiving countries and the persons concerned are forcibly returned.
97. The EU countries which registered a significant increase in asylum applications in 2011 intensified their calls on the Balkan governments concerned to properly manage their migration outflows, and a number of bilateral and regional meetings on the matter were held thereafter. Various calls have also been addressed by EU officials to the authorities of the respective countries pointing out that it is crucial for them to take all the necessary measures to counteract the increase in asylum seekers promptly and effectively, stressing that if the problem continued the visa liberalisation process would be jeopardised and visa requirements re-introduced. The pressure upon the countries in the region became even greater in May 2011, when the European Commission put forward a proposal to temporarily suspend the visa waiver systems agreed for Serbia, “the former Yugoslav Republic of Macedonia”, Bosnia and Herzegovina, Albania, and Montenegro. Under this proposal such a suspension would be possible if a group of countries experienced a rise in asylum seekers from these countries above a certain threshold. The proposal is still being discussed at the European Council and the European Parliament.
98. In response to the foregoing EU demands, and with the ultimate aim of maintaining the possibility of visa-free travel, in 2011 the Macedonian authorities introduced various legislative and policy measures. Public information campaigns under the banner “Stop abuse of visa liberalisation” have been pursued, essentially targeting Roma communities, “to clarify the rights and obligations of visa-free travel, including information on rules for access to EU labour market and liability for any abuse of rights under the visa-free regime”,<sup>57</sup> and at the same time discouraging citizens from seeking asylum in Schengen-area countries. Two key legislative amendments were introduced in October 2011: a provision for confiscation of a national’s travel document for up to one year in cases of forced returns was added to the Law on Travel Documents, and a new criminal offence, “the transport or facilitation of transport of nationals to EU member states in order to acquire or exercise social, economic or other rights, contrary to the law of the European Union”, was added to the Criminal Code with the aim of punishing travel companies or tour operators who transport “false asylum seekers” to the EU. In addition, the authorities have prevented the exit from the country of those nationals suspected of being likely to make unfounded asylum applications in the EU; in this respect, the European Commission has noted that the measures taken included

<sup>52</sup> Cf. Third Report on the Post-Visa Liberalisation Monitoring for the Western Balkan Countries in accordance with the Commission Statement of 8 November 2010, Report from the Commission to the European Parliament and the Council, Brussels, 28.8.2012, COM(2012) 472 final.

<sup>53</sup> UNHCR (2012): Asylum Levels and Trends in Industrialized Countries 2010 – 2011, Geneva, p. 22.

<sup>54</sup> Emphasis in original text.

<sup>55</sup> Cf. Third Report on the Post-Visa Liberalisation Monitoring for the Western Balkan Countries in accordance with the Commission Statement of 8 November 2010, Report from the Commission to the European Parliament and the Council, Brussels, 28.8.2012, COM(2012) 472 final.

<sup>56</sup> *Ibid.*

<sup>57</sup> *Ibid.*

“enhanced border checks and profiling”.<sup>58</sup> The Minister of Interior informed the Commissioner that, from the time of the introduction of the visa-free regime in December 2009 until the end of November 2012, about 7000 Macedonian citizens had not been allowed to leave the country.

99. There are indications that passports are regularly confiscated from those persons who are forcibly returned to “the former Yugoslav Republic of Macedonia”, and that Roma make up the majority of persons who have been prevented from leaving the country and had their travel documents confiscated. Several NGOs have collected information to this effect.<sup>59</sup> It has also been reported that the practice of the border authorities is to stamp the passport of those persons who are prevented from leaving the country. During the Commissioner’s visit to the neighbourhood of Sredorek in Kumanovo (a northern town near the border with Serbia), he met a group of Roma who claimed that they had been prevented from leaving the country – even if their intention had been only to go to Serbia - and their passports had been taken away by the authorities. The prevailing sentiment conveyed by the persons concerned was that they were being ethnically profiled, i.e. singled out by border officials for such treatment simply because they were Roma.
100. During her meeting with the Commissioner, the Minister of the Interior indicated that under the Law on Border Surveillance - which transposes elements of the Schengen Borders Code into domestic law - police officers at the external borders are authorised to perform the necessary checks to ensure that those travelling to the Schengen area can prove the purpose of their travel and have all required documents. The Minister rejected any allegations of discriminatory treatment in practice, recalling in this context that discrimination was specifically prohibited in the Law on Border Surveillance, and noted that - except for a case involving wedding singers in respect of whom there had been evidence that they were returned “asylum seekers” - she was not aware of any cases where people had been prevented from traveling to Serbia.
101. The Commissioner is fully cognizant of the necessity for the authorities to implement binding rules and policies in the context of the country’s EU accession process. Moreover, states have a legitimate authority to control their borders and regulate migratory movements. However, it is of serious concern to him that these measures are being applied through profiling at borders. Even though the authorities have argued that these controls are not aimed at any particular ethnic group, there are clear indications that Roma are disproportionately affected by the exit control measures in question. At the same time, it is clear that the Macedonian authorities have developed a profile of a potential “unfounded” or “false” asylum seeker on the basis of information they receive from EU countries (cf. paragraph 96 above).
102. The Commissioner underlines that the above-mentioned exit control measures interfere with the freedom to leave a country, including one’s own, enshrined in Article 2 of Protocol No. 4 to the European Convention on Human Rights as well as in Article 27 of the Macedonian Constitution. According to established case-law of the Court, any restriction placed on the exercise of the freedom of movement should be in accordance with the Court’s interpretation of relevant provisions of the European Convention. A law that provides for such restrictions should fulfil the requirements of quality, foreseeability and precision, as established by the Court. It is crucial that any restrictions never impair the essence of the freedom to leave. The Commissioner also underlines that according to the UN Human Rights Committee in its General Comment No 27, the principle of proportionality has to be respected not only in the law that frames the restrictions, but also by the administrative and judicial authorities in applying the law.
103. The Court recently found in the case of *Stamose v. Bulgaria*<sup>60</sup> that a blanket and indiscriminate ban on travelling to any foreign country is not a proportionate response to a person’s breach of

<sup>58</sup> Cf. the 2011 EC Progress report on the former Yugoslav Republic of Macedonia, page 66.

<sup>59</sup> Cf. the 2012 report by the NGO Chachipe “Selective Freedom: the visa liberalization and the restrictions on the right to travel in the Balkans”.

<sup>60</sup> Judgment of 27 November 2012 (Appl. No. 29713/05).

immigration laws of a particular country.<sup>61</sup> While the Court noted that it might be prepared to accept that a prohibition to leave one's own country imposed in relation to breaches of the immigration laws of another State may in certain compelling situations be justified, it considered that the automatic imposition of such a measure without any regard to the individual circumstances of the person could not be characterised as necessary in a democratic society. It may be noted that in the *Stamose* case, the travel ban and the seizure of the applicant's passport were based on Bulgarian legislation, aiming at restricting the abuse of visa-free travel, adopted in the course of negotiations with the EU on visa liberalisation in the 1990s and subsequently repealed.

104. The Commissioner is also concerned by the fact that the exit control measures being applied in "the former Yugoslav Republic of Macedonia" are in effect targeted at persons who wish to exercise their human right to seek and enjoy asylum enshrined in Article 14 of the Universal Declaration of Human Rights, or have attempted to do so. In this context, it should be noted that according to data available as of June 2011, the rates of positive decisions on asylum applications in 2010 by nationals of Serbia and "the former Yugoslav Republic of Macedonia" ranged in EU member states from 0 to 14.3%.<sup>62</sup> These figures indicate that at least some of the persons seeking asylum have been able to prove that they were in need of international protection in other European countries.
105. For their part, some of the Western European countries affected by an increase of arriving asylum seekers have decided to reintroduce accelerated asylum procedures, while other countries are considering this measure. Several countries apply the principle of the safe country of origin in rejecting asylum claims from persons from "the former Yugoslav Republic of Macedonia". In this context, the Commissioner recalls that in the 2009 Guidelines on human rights protection in the context of accelerated asylum procedures, the Council of Europe Committee of Ministers emphasised that asylum seekers have the right to an individual and fair examination of their applications by the competent authorities. The Guidelines contain the list of minimum procedural guarantees that the asylum seeker should enjoy when accelerated procedures are applied, including the right to access to legal advice and assistance.

*Conclusions and recommendations:*

106. The Commissioner considers that the measures adopted by the authorities of "the former Yugoslav Republic of Macedonia" in response to EU demands for management of migratory outflows interfere with the freedom to leave a country, including one's own, guaranteed under Article 2 of Protocol No. 4 to the ECHR, as well as the right to seek and enjoy in other countries asylum from persecution, enshrined in Article 14 of the Universal Declaration of Human Rights. Roma are clearly disproportionately affected by the exit control measures and the confiscation of travel documents, which effectively amount to travel bans.
107. Undermining an individual's effective access to international protection runs counter to fundamental human right values and principles. The Commissioner urges the authorities to revoke any measures aimed at penalising a person for having attempted to exercise their human right to seek and enjoy asylum.
108. It is evident that the increased levels of migration of Roma from the Balkans, including "the former Yugoslav Republic of Macedonia", relate to the root causes of poverty and exclusion. It is therefore crucial to address systematically all factors which contribute to the socio-economic exclusion of Roma, including the shortcomings in the areas of education, health care, housing and employment (cf. paragraph 70 to 83 above). In this regard, the Commissioner is pleased to

<sup>61</sup> In the *Stamose* case, the United States of America had deported the applicant to Bulgaria for infringing the terms and conditions of his visa.

<sup>62</sup> Council of the European Union, 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, June 2011.

note that the issue of integration of Roma is high on the EU accession agendas for the countries in the region.

#### 4. Lack of personal identity documents and statelessness

109. As a result of the dissolution of the Socialist Federal Republic of Yugoslavia in the 1990s, a considerable number of persons became de facto stateless. While significant progress has been achieved in recent years towards the elimination of statelessness in “the former Yugoslav Republic of Macedonia”, notably through the adoption and implementation of relevant legislative measures, the problem has yet to be fully resolved. According to UNHCR, as of December 2012 there were 1122 de facto stateless persons residing in “the former Yugoslav Republic of Macedonia”, including: 403 long-term habitual residents; 331 persons lacking birth/name registration; 118 non-nationals who lack civil registration/identity documents and who live in common-law marriages with nationals; and 270 nationals who experience difficulties in obtaining Macedonian identity cards. There are no estimates available as to the number of stateless children or children at risk of statelessness.
110. A UNHCR survey, which covered 70% of the territory of “the former Yugoslav Republic of Macedonia” and 13,770 members of the Roma, Ashkali and Egyptian communities, found that many of those persons face one or more of the following problems: a lack of personal documentation, registration at birth or personal name registration, or unregulated legal residence or citizenship.<sup>63</sup> The survey identified 6,514 individuals facing documentation problems, including 775 who had never been registered in the birth registry books as of October 2011. Concerns have also been expressed that the actual numbers of persons with documentation problems may be even higher.
111. Statelessness and the lack of registered civil status and personal identity documents constitute serious obstacles to the enjoyment by many Roma of basic social and economic rights. The problem of lack of personal identity documents is complicated by the lack of identity documents of Roma parents who cannot therefore register their own children. However, it is positive that measures have been taken to address the problem of access to education, and birth certificates are no longer required to enrol children in public elementary schools.
112. The Strategy on Migration Policy (2009-2014) and accompanying action plan provide for a set of measures aimed at resolving the problem of statelessness. In 2011 a working group was established to identify unregistered Roma and assist them in regularising their situation, and in September 2011 the Ministry of the Interior, the Ministry of Justice and the Ministry for Social and Labour Affairs carried out a joint action involving mobile teams on the ground, as a result of which 350 persons were registered in the registry books. The Commissioner was also informed about the creation of the Department for Managing of the Registry Books at the Ministry of Justice, as well as the authorities’ plans to carry out some 30 DNA tests in order to establish paternity and facilitate registration of children in birth registry books. The Commissioner welcomes the measures adopted by the authorities to address effectively the issues concerned.
113. The Commissioner notes that UNHCR listed a number of recommendations contained in the report entitled “The “Right to Have Rights” based on the findings of the aforementioned survey. These recommendations address the outstanding issues relating to the lack of personal registration and identification, as well as statelessness. Given the regional dimension of these issues, the authorities have also been invited to endorse and implement the Zagreb Declaration adopted at the October 2011 regional conference on the Provision of Civil Status Documentation

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<sup>63</sup> Cf. the UNHCR Report : *The “Right to Have Rights”*, Legal Identity, Civil registration and Citizenship: Key towards social inclusion of marginalised communities. The survey was based on a project conducted from February 2008 to March 2011 aimed at reducing the number of persons lacking registration or identity documents, as well as providing legal aid to this group and raising their awareness about the importance of civil registration and personal documentation.

and Registration in Southeast Europe.<sup>64</sup> The Commissioner supports these recommendations and calls on the authorities take them into account when developing and implementing future measures in this field.

*Conclusions and recommendations:*

114. The Commissioner recommends that the authorities of “the former Yugoslav Republic of Macedonia” proceed with accession to the 1961 Convention on the Reduction of Statelessness and the Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession.
115. The Commissioner welcomes the commitment shown by the Macedonian authorities and urges them to continue their constructive steps aimed at facilitating access of all Roma to personal identity documents so that they are placed in a position to effectively exercise and access social and economic rights.

**5. Situation of Roma refugees from Kosovo**

116. “The former Yugoslav Republic of Macedonia” acceded to the 1951 Refugee Convention and its 1967 Protocol, the 1954 Convention relating to the Status of Stateless persons and the International Covenant on Civil and Political Rights (ICCPR) on 18 January 1994 by succession. The responsibility for the refugee status determination and the provision of subsistence and housing allowance to refugees was transferred in 2010 from the UNHCR to the national authorities. According to UNHCR, as of September 2012 there were 1670 asylum seekers and refugees in the country, the majority of whom are Roma from Kosovo under subsidiary protection (about 1100) who left their homes as a result of the 1999 conflict in Kosovo. Most of these persons are living in the settlement Šuto Orizari in Skopje.
117. The Commissioner discussed with the authorities issues pertaining to the situation of Kosovo Roma refugees living in “the former Yugoslav Republic of Macedonia”, following up on the letter sent by his predecessor in 2010 to Prime Minister Gruevski. In that letter the authorities were urged to implement durable solutions for the approximately 1 500 refugees from Kosovo through local integration of those who cannot or do not wish to return. The Commissioner notes that the number of Kosovo Roma refugees residing in the country has decreased since 2010, given that some of them returned to Kosovo while others reportedly moved elsewhere. In 2011, 257 Kosovo Roma refugees voluntarily repatriated.<sup>65</sup> There are concerns that the unresolved legal status of the majority of these refugees is a major impediment to their access to basic human rights, including economic and social rights.
118. In an effort to ameliorate the framework for integration of refugees, in December 2008 the government adopted a Strategy for Integration of Asylum Seekers and Foreigners followed by an action plan for its implementation in 2009. The Minister for Labour and Social Affairs informed the Commissioner that the government was in the process of developing sustainable solutions for this group of refugees, focused in particular on access to the labour market and housing. In 2012 the Ministry of Labour and Social Policy developed family integration plans for 191 persons who had applied for local integration. While certain housing projects are on-going, the lack of sufficient funds appears to be the major obstacle both to voluntary returns to Kosovo and local integration. In this context, the Commissioner notes with interest that the authorities will resort to the financial funds available from the EU Instrument for Pre-Accession Assistance (IPA).

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<sup>64</sup> The Zagreb declaration, which includes recommendations on removing obstacles to civil registration and documentation, was adopted at the October 2011 regional conference on the Provision of Civil Status Documentation and Registration in Southeast Europe jointly organised by the UNHCR, the OSCE High Commissioner on National Minorities and ODHR, with the active participation at a senior level of all the Balkan countries concerned.

<sup>65</sup> Cf. the 2012 EC Progress Report on “the former Yugoslav Republic of Macedonia”, page 18.

*Conclusions and recommendations:*

119. While welcoming the assistance that has already been provided to Kosovo Roma refugees, the Commissioner calls upon the Macedonian authorities to step up their efforts aimed at resolving issues pertaining to the legal status of such persons, with a view to enabling the full and effective local integration of those who cannot or do not wish to return to Kosovo.
120. Finally, the Commissioner wishes to stress that he will continue to follow closely the situation in “the former Yugoslav Republic of Macedonia”, and give his support, in accordance with his mandate as an independent and impartial institution of the council of Europe, in order to promote the effective implementation of Council of Europe standards related to human rights protection. The Commissioner stands ready to continue his constructive dialogue with the Macedonian authorities to assist them in their efforts to further improve the situation in light of the recommendations made in the present report.