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Europeanisation through mobility: visa liberalisation and citizenship regimes in the Western Balkans

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Abstract

This paper examines the implications of the visa liberalisation dialogues which took place between the European Commission and national governments of the Western Balkans for the citizenship regimes of the countries concerned. The visa liberalisation process is approached as a tool of Europeanisation of the area of justice, freedom and security and as an exercise of EU conditionality. The analysis reflects on the negotiations for visa liberalisation as well as the mechanisms established for post-visa liberalisation monitoring. Looking both at the formal benchmarking process and through interviews with stakeholders at the national level, the paper traces how the visa liberalisation process affected the status and rights dimension of citizenship in the region.

Keywords:

visa liberalisation, citizenship, Western Balkans, asylum seekers

1 Introduction and background to the study

Visa liberalisation dialogues took place from 2008 to 2010 between the European Commission (EC) and the following countries of the Western Balkans: Macedonia, Serbia, Montenegro, Albania and Bosnia and Herzegovina. The objective of this dialogue was the removal of these countries from the so-called Schengen black list listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement.[2] In the former Yugoslav space, Croatia was not subject to visa requirements, whereas Kosovo was added to the black list under the same Regulation in late 2009. According to this Regulation the exemption from the visa requirement is based on "an assessment of a variety of criteria relating *inter alia* to illegal immigration, public policy and security, and to the European Union's external relations with third countries, consideration also being given to the implications of regional coherence and reciprocity".[3] Examining these criteria, it has been argued that the link between them is the potential threat that migratory flows could potentially pose to the internal security of the Union (Bigo and Guild, 2005 p.245).

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[2] 2001. Council Regulation (EC) No. 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement. *(EC) No.539/2001.* Official Journal of the European Communities.

[3] Ibid.

Similarly, for Monar, the Union has developed a common understanding that the 'safe' area inside the Union needs to be protected from the 'unsafe' surrounding (Monar, 2001).

In practice, the criteria from the Regulation (EC) No. 539/2001 were streamlined though the monitoring of the implementation of roadmaps prepared by the EC and delivered to the countries in the region in mid-2008. These roadmaps contained specific benchmarks structured in four blocks: document security, illegal migration, public order and security, and external relations and fundamental rights linked to the movement of persons.[4] The assessments on the compliance with the stipulated benchmarks took place through written responses by the national governments and several on-the ground assessments through peer-missions of experts of the EC and the European Union member states. After satisfactory progress was judged to have been made on the benchmarks, the visa requirements were lifted, first for Macedonia, Serbia and Montenegro at the end of 2009, and in the following year for Albania and Bosnia and Herzegovina.[5]

The benchmarks of the first three blocks of the liberalisation roadmaps were mostly related to the justice, freedom and security *acquis* and reflected the content of Regulation (EC) No. 539/2001. The last, fourth block concerning external relations and fundamental rights has more recently been included in the context of the visa liberalisation, as it was not part of the discussions for the removal of the visa requirement for Bulgaria and Romania which took place in 2001 (See Guild, 2003). In this 'novel' block the Commission dealt with two policy areas: freedom of movement and identity documents and citizens' rights, including protection of minorities. The new benchmarks dealt with issues of freedom of movement, conditions and procedures for issuing identity documents, adopting and enforcing anti-discrimination legislation and implementing policies regarding all minorities, including Roma.[6]

In essence, the topics covered in block 4 represent key elements of the citizenship regimes of the countries studied. Citizenship regimes encompass certain key individual and collective rights protected by national and international human rights law, such as minority rights and non-discrimination rights which profoundly impact upon the exercise of full civic membership within a society and a polity (Shaw and Štiks, 2010). By focusing on block 4 of the visa liberalisation roadmaps,

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[4] The Roadmaps for visa liberalisation are available at: http://www.esiweb.org/index.php?lang=en&id=352

[5] 2009c. Council Regulation (EC) No. 1244/2009 of 30 November 2009 amending Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement. *(EC) No. 1244/2009.* Official Journal of the European Communities.
2010g. Regulation (EU) No. 1091/2010 of the European Parliament and the Council of 24 November 2010 amending Council Regulation (EC) No. 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement. *(EU) No. 1091/2010.*

[6] For an overview of all benchmarks in this block, please see next section.

this paper examines the impact of the visa liberalisation process on the citizenship regimes in the Western Balkans. It argues that although visa liberalisation was a powerful tool of EU conditionality, it has not been used to its fullest potential to resolve ongoing problems related to the citizenship regimes in this region.

As a relatively recent process, visa liberalisation has not been studied with specific reference to the respective citizenship regimes. A 2008 Centre for European Policy Studies research paper examined the contents and objectives of visa facilitation and readmission agreements, which is relevant as a background study for this research, but does not deal with the visa liberalisation dialogue (Trauner and Kruse, 2008). More recent studies on the process have been prepared by European and national NGOs, with scarce or no reference to academic literature. The most extensive monitoring of the visa liberalisation was conducted by the European Stability Initiative (ESI), an organisation which has also been a staunch supporter of the liberalisation process.[7] In addition, most of the regional think tanks contracted by the ESI to conduct direct in-country monitoring limited their work to the question of whether the stipulated benchmarks were fulfilled.[8] Petrovic has conducted a document analysis of the visa liberalisation process for the purposes of uncovering the major underlying dynamics and practices driving these policies in practice, though this is limited to the EU perspective (Petrovic, 2010). Lastly, Trauner has examined the visa liberalisation process in the case of Macedonia as part of wider justice, freedom and security reforms by arguing that the "EU succeeded in transforming the leverage that derived from the prospect of visa liberalisation into a major stimulus for successful EU rule adoption in Macedonia's justice and home affairs sector" (Trauner, 2011 p.148). Though this study will build upon existing research in the area, it will focus more specifically on the citizenship regimes and the novelties brought about by block 4.

The rationale for studying interactions between the visa liberalisation process and the respective citizenship regimes is multifaceted. First, the visa liberalisation was politically the most significant tangible benefit that could be offered by the EU to the countries in this region and their citizens.[9] Increasing demands for the liberalisation of the visa regime came both from national governments in the region in the early 2000s as well as several influential think tanks.[10] Thus, the potential of the visa liberalisation process in bringing about substantial policy changes in various aspects of the citizenship regimes was high. As Kochenov has argued, "the Community is a powerful actor in the field of nationality regulation in the candidate

[7] See Europe's Border Revolution and the Schengen White List Project, http://esiweb.org/index.php?lang=en&id=483

[8] See Centre for Research and Policy Making in Macedonia www.crpm.org.mk; Centre for Democracy and Human Rights in Montenegro www.cedem.me; and Group 484 in Serbia http://www.grupa484.org.rs .

[9] Its importance was also linked to the visa-free status enjoyed by the citizens of former Yugoslav Federation.

[10] 2005. EU visas and the Western Balkans. *Europe Report.* International Crisis Group.

countries preparing for the accession to the EU […since…] the candidate countries' nationality legislation can legally become subject to Union's [sic] intervention in the course of the pre-accession process" (Kochenov, 2007 p.130). Second, in terms of the application of EU conditions, the visa liberalisation process was the most detailed benchmarking process employed by the EC and as such provides an exceptional example for evaluating the role of external actors in the domestic transformations. The EC itself considered that "the visa liberalisation process has demonstrated the effectiveness of an approach which set concrete, specific reform requirements thus allowing the countries to better focus their efforts".[11] Lastly, the visa liberalisation process was largely evaluated as a successful exercise of conditionality by policy makers and analysts and brought back the faith in the potential of the European Union to bring about change in as turbulent region as the Balkans. It was commonly argued that "the recent visa liberalisation in the region demonstrates clearly the mechanics of EU soft power. The EU held out an electorally attractive reward and spelled out clearly the conditions required to obtain it" (Grabbe et al., 2010 p.2). In light of this positive assessment it has already been replicated as a tool for successful conditionality in Kosovo as well as in the European neighbourhood countries.[12]

The 'visa liberalisation process' for the purposes of this research is an element of the process of Europeanisation of the Western Balkans. Europeanisation is here understood as "domestic adaptation to European regional integration" (Vink and Graziano, 2007). Given the potential for stretching the concept of Europeanisation already identified in the literature (Radaelli, 2000), additional mechanisms such as conditionality and securitisation will be utilised. Although this is a widely used term in the literature, there is no commonly agreed definition of conditionality. While rational institutionalism as the dominant approach defines conditionality as a reinforcement by reward focusing on the outcome of the conditionality (Schimmelfennig and Sedelmeier, 2005), this analysis is also interested in the process of its application. Hence, it understands conditionality as a process, which "includes not only the formal technical requirements on candidates but also the informal pressures arising from the behaviour and perceptions of actors engaged in the political process" (Hughes et al., 2005 p.2). Analysing formal benchmarking, but also the informal guidance the countries received from the EC, this understanding of conditionality highlights the importance of the latter and thus seeks to uncover the unintended and indirect consequences of EU conditionality (Sasse, 2009).

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[11] 2010d. Enlargement Strategy and Main Challenges 2010-2011. *Communication from the Commission to the European Parliament and the Council* Brussels: Commission of the European Communities.

[12] The EU has put forward a visa liberalisation roadmap for Ukraine and Moldova. In addition, there are ongoing "transfers of knowledge" between NGOs in the Western Balkans and the ENP countries on the monitoring of the visa liberalisation processes. See for example 2011e. How to achieve visa-free regime with the European Union? Western Balkans' experience for Ukraine, Europe without barriers publications, see *Europe Without Barriers* [Online]. Available: http://novisa.com.ua/upload/file/WBpublicationENG.pdf [Accessed 20 March 2012].

The second dimension of Europeanisation relevant for this study is the establishment of the area of justice, freedom and security in the EU and the development of associated policies. The creation of a common external border at the EU level has provided the EC with the legitimacy of negotiating visa liberalisation with the countries studied. On a general level, EU law and policy have developed a security nexus between irregular forms of human mobility and border security (Carrera and Guild, 2007). Huysmans has pointed that migration is constructed as a security question in the EU (Huysmans, 2000). In fact, securitisation denoting the discursive construction of wider categories of persons and practices as threats has been considered as a key mechanism in the institutionalisation of the EU area of freedom, security and justice (Guild et al., 2008). Since the area of freedom, security and justice is driven by a security rationale it became a very sensitive policy domain in the context of enlargement (Monar, 2001). In this context, the coordination of visa policy in the union and the so-called horizontal readmission agreements are examples of the restrictive and control-oriented imperative that drives European migration policy (Huysmans, 2005 p.68).[13] Readmission agreements were the first step preceding the visa liberalisation process in the region studied and today are considered indispensable for any talks on visa-free travel with the EU in the case of the Eastern Partnership and Kosovo.[14] Against this theoretical background, the main objective of this paper is to unpack the interactions between the conditionality mechanism and securitisation paradigm in the visa liberalisation process and their influence upon the transformation of the respective citizenship regimes.

The empirical analysis that follows is divided into two sections: the first deals with the implications of the visa liberalisation dialogues for the citizenship regimes of the countries concerned in terms of the status and rights dimension. Due to the regional significance of the visa liberalisation project, the section also reflects on the implications of the process on Kosovo, which was formally included in the process in early 2012.[15] The following section examines developments in the post-visa liberalisation period focusing on the pressure placed by EC and EU member states on these countries to restrict the freedom of movement on groups of citizens. Focusing on citizenship regimes both during and after the visa liberalisation dialogues, this paper makes an empirical contribution to existing research on the visa liberalisation which is limited to the security dimension (See Trauner, 2008, 2011).

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[13] With the readmission agreements the contracting states must be prepared to readmit not only their own citizens but even third country nationals on the same terms. See TRAUNER, F. & KRUSE, I. 2008. EC visa facilitation and readmission agreements: implementing a new EU security approach in the neighbourhood. *CEPS Working Document*.

[14] See 2008. Communication from the Commission to the European Parliament and the Council, Eastern Partnership COM(2008) 823 final. Available: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0823:FIN:EN:PDF [Accessed 20 March 2012].

[15] 2012a. Commission launches dialogue with Kosovo on visa free travel. *Europa Press Releases* [Online]. Available: http://europa.eu/rapid/pressReleasesAction.do?reference=IP/12/32 [Accessed 20 February 2012].

2 Citizenship regimes in the visa liberalisation dialogue in the Western Balkans: status and rights

The EC channelled its requirements for Schengen visa liberalisation through visa liberalisation roadmaps which "were almost identical, but they took into account the specific situation in each country, in terms of existing legislation and practice".[16] The governments of the Western Balkan countries submitted regular information on realisation of the stipulated benchmarks during 2009 and 2010. Block 4 consisted of the following benchmarks:

Freedom of movement of nationals

The respective country should:

- ensure that freedom of movement of citizens is not subject to unjustified restrictions, including measures of a discriminatory nature, based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation.

Conditions and procedures for the issue of identity documents

The respective country should:

- ensure full and effective access to travel and identity documents for all citizens including women, children, people with disabilities, people belonging to minorities and other vulnerable groups;
- ensure full and effective access to identity documents for IDPs and refugees.[17]

Citizens' rights including protection of minorities

The respective country should:

- adopt and enforce legislation to ensure effective protection against discrimination;
- specify conditions and circumstances for acquisition of citizenship;
- ensure investigation of ethnically motivated incidents by law enforcement officers in the area of freedom of movement, including cases targeting members of minorities;
- ensure that constitutional provisions on protection of minorities are observed;

[16] The Visa Roadmaps, Schengen White List project, European Stability Initiative, available at: http://www.esiweb.org/index.php?lang=en&id=352.

[17] In the case of Albania, this benchmark refers only to refugees.

- implement relevant policies regarding all minorities, including Roma.[18]

The three separate areas of this block relate to both the status and the rights dimensions of citizenship (see Joppke, 2007). With issues generally outside of the justice, freedom and security *acquis* this block was considered by the national stakeholders as an outlier in the visa liberalisation process.[19] EU and national documents confirm this tendency as there is an evident lack of scrutiny and attention to the issues when compared to the other blocks dealing with the security of documents, migration and the fight against organised crime. The lack of attention to these issues was also confirmed in the decision to assess compliance in this block on the basis of the reports that the countries sent to Brussels and not to perform on-the-ground peer mission assessments. Peer missions were the usual procedure for evaluating the other three blocks of the visa liberalisation roadmap. In these missions, experts from the EC and the member states went on the ground to verify the progress in terms of the stipulated benchmarks. During the visa liberalisation dialogues, peer missions on the first three blocks of the visa liberalisation roadmap were organised in all countries concerned on several occasions during 2009 and 2010. The EC, in its Enlargement strategy of 2010, highlighted that in the context of visa liberalisation "peer assessment and other missions have been intensified, bringing judges, prosecutors and other experts in law enforcement, border management and migration from the Member States into direct contact with their counterparts".[20] At the same time the EC also announced that "the use of peer missions and of benchmarking will be extended", which was the case in Bosnia and Herzegovina and Albania which were both subject to additional peer missions organised by the EC. [21]

Nevertheless, this form of detailed on-the-ground assessment was limited to the first three blocks of the visa liberalisation roadmap, reflecting the securitisation of the visa liberalisation process in general. Despite the positive assessment of the usefulness of the peer-missions, the EC did not organise assessments on block 4 of the visa liberalisation roadmap. Instead, all of the countries had a one-day meeting with the EC experts discussing issues primarily linked to questions of anti-discrimination, which was considered of primary importance in relation to this block.[22] Overall, "the issues in this block were assessed on paper, as no one went into Roma settlements in the country to really see what they looked like or talked to

[18] These benchmarks were part of all the roadmaps for the 5 countries negotiating visa free travel.
[19] Author's interview with representative of the Ministry of Foreign Affairs of Albania, March 2012; Author's interview with civil society organisation representative in Belgrade, March 2012.
[20] 2010d. Enlargement Strategy and Main Challenges 2010-2011. *Communication from the Commission to the European Parliament and the Council* Brussels: Commission of the European Communities.
[21] Ibid.
[22] Author's interview with civil society organisation representative in Belgrade, March 2012, Author's interview with representative of the Ministry of Foreign Affairs of the Republic of Macedonia in Skopje, January 2012.

NGOs about anti-discrimination".[23] Not surprisingly, at the national level the stakeholders involved in the process considered the block to be irrelevant and with no significance for the outcome of the visa liberalisation process.[24] On the other hand, studies of the other three blocks in the visa liberalisation process have concluded that the "EU succeeded in transforming the leverage that derived from the prospect of visa liberalisation into a major stimulus for successful EU rule adoption in Macedonia's justice and home affairs sector" (Trauner, 2011 p.148), highlighting the difference between this block and the other three security-related blocks. An interviewee who participated in the visa liberalisation peer missions provided an interesting example of this tendency. When visiting a town close to the border in Macedonia an expert from an EU member state inquired about the treatment of persons illegally crossing the border. In order to ensure she received a reply, she added: "Don't worry, I do not come from human rights NGO, hence I am not interested in rights".[25]

On a general level, the issues concerning the citizenship regimes in the countries concerned were not of primary importance in the discussions on the visa liberalisation regimes. The securitization of the migration policy within the EU was streamlined through the visa liberalisation process and therefore the fourth block dealing with fundamental rights and directly influencing the citizenship regimes was in comparative terms sidelined. However, taking into consideration the leverage of the Commission in general and the high importance assigned to the process by the national governments, the visa liberalisation process provided a significant opportunity for transforming the citizenship regimes in these countries, both in terms of the status and rights dimension.

2.1 Status dimension – enabling and disabling access to documents

The status dimension of the citizenship regimes was tackled through the visa liberalisation process primarily through the access to documents for various vulnerable groups, most notably Roma, IDPs and refugees. In terms of the Roma, "although the size and the dispersion of the population vary from one country to the other, the problems that besiege it are identical. The critical lack of effective citizenship and lack of personal documents […] is a main obstacle to their social inclusion and enjoyment of fundamental rights".[26] The problem of Roma registration has already been raised in numerous academic publications and NGO research and has been confirmed in the earlier CITSEE research as well (Spaskovska, 2010,

[23] Author's interview with civil society organisation representative, Brussels October 2010.
[24] Author's interview with representative of the Ministry of Foreign Affairs of Montenegro, March 2012; Author's interview with civil society organisation representative in Belgrade, March 2012.
[25] Author's interview with representative of the Ministry of Foreign Affairs of the Republic of Macedonia in Skopje, January 2012.
[26] 2009e. Social inclusion of Roma, Ashkali and Egyptians in South-eastern Europe Available: http://www.unhcr.org/4b75652e9.html [Accessed 05 June 2012].

Krasniqi, 2011). In the visa liberalisation roadmaps the Commission required the countries to undertake activities for the registration of Roma. In Macedonia, a special governmental group was established for the registering of Roma and facilitating their access to documents. As was noted by the EC Progress Report of 2010 between February 2008 and April 2010, some 3,100 Roma obtained personal documents.[27] In addition, the visa liberalisation activities in this field continued with the EU supporting a UNHCR-led regional project on Social inclusion of Roma, Ashkali and Egyptians in South-Eastern Europe which made significant progress in the registration or these groups.[28]

In Montenegro, the EC primarily focused on resolving the status of the displaced and internally displaced persons. This was initially resolved with an amendment of the Law on Foreigners in late 2009.[29] The amendments enable these groups to obtain the status of a foreigner with permanent residence, which includes the right to obtain ID cards, but not a passport for which Montenegrin citizenship is required (Koprivica, 2009, Dzankic, 2010, 2011). Pressure from the EU on Montenegro to deal with approximately 17,000 people has continued in the post-2009 period when Montenegro was granted the status of a candidate country.[30] In the 2010 opinion granting Montenegro the status of a candidate country, the Commission included the "adoption and implementation of a sustainable strategy for the closure of the Konik camp" among its key priorities which was nevertheless not included in the visa liberalisation process.[31] The Konik camp located on the outskirts of Podgorica is inhabited by 1,500 Roma, Ashkali and Egyptians, most of whom fled Kosovo during 1999. It has been known for inhuman and hazardous conditions (see Milosevic, 2012). Although not included in the requirements for the visa liberalisation, these are considered to be a follow-up of the visa liberalisation process.[32]

Access to documents for vulnerable groups was also the focus of the second group of countries which negotiated for visa liberalisation. In Albania, the EC similarly emphasized the issuance of documents for the Roma community and a working group for identification and registration of unregistered Roma population

[27] 2010e. The Former Yugoslav Republic of Macedonia 2010 Progress Report *Commission Staff Working Paper.* Brussels: Commission of the European Communities.

[28] See 2009e. Social inclusion of Roma, Ashkali and Egyptians in South-eastern Europe Available: http://www.unhcr.org/4b75652e9.html [Accessed 05 June 2012].

[29] Author's interview with representative of the Ministry of Foreign Affairs of Montenegro, March 2012.

[30] Author's interview with representative of the Ministry of Foreign Affairs of Montenegro, March 2012, See also 2011j. Montenegro 2011 Progress Report. *Commission Staff Working Paper.* Brussels: Commission of the European Communities.

[31] 2010c. Commission Opinion on Montenegro's application for membership of the European Union. *Communication from the Commission to the European Parliament and Council* Brussels.

[32] Author's interview with representative of the Ministry of Foreign Affairs of Montenegro, March 2012.

was also set up.[33] For this purpose, in 2009 the new biometric identity cards and passports became documents necessary for an individual to vote in the elections (Koci, 2009). The Roma were especially targeted by this policy through subsidizing the costs for the ID cards, as this was also a requirement for the visa liberalisation process.[34] Similar activities were undertaken in Bosnia and Herzegovina in terms of registration. According to the Council of Ministers, between June 2008 and January 2009 527 beneficiaries obtained legal aid and documents.[35] In addition, in 2009 and 2010 the Ministry for Human Rights and Refugees conducted an analysis of registration of Roma population and Roma Households, in an attempt to devise a more encompassing approach to the issue.[36]

While in the countries analysed so far the EC was dealing with ongoing issues related to the status dimension of the citizenship regimes, the visa liberalisation process directly affected the holders of Serbian passports residing in Kosovo, which were excluded from the visa-free regime. The rationale for keeping Kosovo residents outside the borders of EU Member States has been based on security concerns, as explained by the Commission in its Explanatory Memorandum to the 2009 proposal for amending Council Regulation 539/2001. According to the Memorandum,

> the Commission and the Member States experts were not in a position to verify (in particular through expert missions) the issuing of breeder documents and the integrity and security of the procedures followed by the Serbian authorities for the verification of the correctness of data submitted by persons residing in Kosovo when applying for new Serbian biometric passports.[37]

For the purposes of the visa liberalisation process the Government of Serbia stopped issuing biometric passports to Kosovo residents (including Kosovo Serbs) between June and August 2009. In August 2009 a Coordination Directorate was established in Belgrade, with a responsibility for issuing passports to Kosovo residents for whom the visa liberalisation does not apply.[38] In practice this policy has created several categories of Serbian citizens from Kosovo: first, those with residency in Kosovo who

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[33] Author's interview with representative of the Ministry of Foreign Affairs of Albania, March 2012.
[34] Author's interview with representative of the Ministry of Foreign Affairs of Albania, March 2012.
[35] 2009b. Additional report requested by the European Commision's first assesment of the progress in implementation of the roadmap towards a visa free regime with Bosnia and Herzegovina - January 2009. Council of Ministers of Bosnia and Herzegovina.
[36] Author's interview with representative of the Ministry of Human Rights and Refugees of Bosnia and Herzegovina in Sarajevo, March 2012.
[37] 2009c. Council Regulation (EC) No. 1244/2009 of 30 November 2009 amending Regulation (EC) No.539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement. *(EC) No. 1244/2009.* Official Journal of the European Communities.
[38] 2009d. Isolating Kosovo? Kosovo vs Afghanistan 5:22. *ESI Discussion Paper* [Online]. Available: http://www.esiweb.org/pdf/esi_document_id_111.pdf [Accessed 17 March 2011].

acquired biometric passports before this decision was adopted[39]; second, holders of the Directorate passports who cannot travel freely, and IDPs that live in Serbia. Visa liberalisation applies to the last group, since according to the law, IDPs can obtain passports linked to the location of their temporary stay.[40] The exemption of Kosovo residents from the visa free regime was considered by my interlocutors as the most difficult and decisive point for removing Serbia from the Schengen black list and after this "the EC made it clear that nothing else mattered".[41]

Categorising citizens on the basis of their documents, which in turn are linked to the person's residency or place of temporary residence, has created the possibility of abuse for the purpose of obtaining a 'visa free' passport. As such, the implementation of this decision was of primary interest to the Commission in terms of preventing abuse of the system.[42] The authorities in Belgrade have thus been faced with a dilemma of deciding which change of residency is illegal. At the same time, in early 2010 the media reported on the "increasing number of Kosovo residents [which] are looking for passports of other countries" and the fees that accompany this change.[43] Unofficial figures show that between August 2009 and March 2012 out of 12,680 submitted requests for a change of residency from Kosovo to Serbia 9,084 have been approved.[44] The message nevertheless for Serbia from the EC is to make the obtaining of a "Serbian passport as hard as possible".[45] Thus, my interlocutors commonly stressed that in the case of Serbia once it was clear that the visa liberalisation would not apply to the Kosovo citizens, the visa free regime was certain, despite the complexity of the legal solution as well as the potential difficulties in its implementation.[46]

2.2 Rights dimension of citizenship

According to Joppke, the liberalisation of access to citizenship in the past half century has resulted in its internal diversification along ethnic, racial and religious lines, and in light of this development, anti-discrimination and multicultural recognition gain importance for the rights dimension of citizenship (Joppke, 2007 p.38-39). Moreover, in the context of the EU, rights instruments can be seen as part of the structure of

[39] 7141 until may 2009, see 2009g. Updated assessment of the implementation by Serbia of the roadmap for visa liberalisation. Available: http://www.esiweb.org/pdf/White%20List%20Project%20Paper%20-%20Serbia%20updated%20visa%20dialogue%20assessment%2018%20May.pdf.

[40] Author's interview with civil society organisation representative in Belgrade, March 2012.

[41] Author's interview with civil society organisation representative in Belgrade, March 2012.

[42] Author's interview with civil society organisation representative in Belgrade, March 2012.

[43] 2010a. Albanians pay EUR 3,000 for Serbian passports. *B92* [Online]. Available: http://www.b92.net/eng/news/comments.php?mm=3&dd=26&yyyy=2010 [Accessed 15 March 2012].

[44] Author's interview with civil society organisation representative in Belgrade, March 2012.

[45] 2009d. Isolating Kosovo? Kosovo vs Afghanistan 5:22. *ESI Discussion Paper* [Online]. Available: http://www.esiweb.org/pdf/esi_document_id_111.pdf [Accessed 17 March 2011].

[46] Author's interview with civil society organisation representative in Belgrade, March 2012.

multi-level governance in the Union, and in this sense non-discrimination is one of the most developed components of the social dimension of European integration (Mabbett, 2005). This component was streamlined through the visa liberalisation roadmaps in the requirement of these countries to adopt a framework law on anti-discrimination.[47] All of the countries already had anti-discrimination provisions in area legislation; nevertheless a framework law was a requirement of the visa liberalisation process. In essence, the anti-discrimination legislation was the most precise benchmark stipulated by the Commission in the fourth block dealing with fundamental rights.[48]

In most of the countries however, progress was formal, and was accompanied by problems in terms of definitions in the legislation, let alone implementation. The weak compliance has already been identified as a problem at a more general level in the case of the Western Balkans (see Noutcheva, 2007). The best example of the lack of importance assigned to the anti-discrimination legislation is the case of **Macedonia**, which was considered as a frontrunner in the visa liberalisation process, and yet was granted visa liberalisation without having formally adopted a framework anti-discrimination law. The EC in its assessment in May 2009 made it clear that the country would be granted visa liberalisation, despite a continuous lag in the adoption of a framework law on anti-discrimination.[49] For the purposes of the visa liberalisation process in late 2009, the Government proposed a draft law which was largely in line with the EU *acquis* in the area, which was not adopted. Following the liberalisation of the visa regime, in early 2010 a new draft law was put forward and later adopted although it did not include sexual orientation or gender identity as an area of discrimination to be covered by the law. Upon its adoption, the law was subsequently considered not to be in line with the EU *acquis* and was criticized by numerous human rights organisations (Dittrich, 2010).

Montenegro, like Macedonia, did not adopt a Law on anti-discrimination by the time the decision on lifting the visas was endorsed at the end of 2009. The Montenegrin anti-discrimination act was adopted half a year later, in the summer of 2010, and was not fully aligned with the EU directives on anti-discrimination. The EC in its last report notes that "the alignment of anti-discrimination law with the *acquis* remains limited as there are cases in which it still permits direct discrimination and it fails to include an obligation for employers to provide reasonable accommodation for

[47] In addition, the EU's demands on implementing the Roma Strategies and Action Plans of these countries were at times included, but due to space constraints they're not analysed in this paper. Both the document and interview data point as well to the low importance assigned to these topics in the process as well.

[48] All of my interviewees confirmed this.

[49] 2009h. Updated assessment of the implementation by the former Yugoslav Republic of Macedonia of the roadmap for visa liberalisation. Available: http://www.esiweb.org/pdf/White%20List%20Project%20Paper%20-%20FYROM%20updated%20visa%20assessment%2018%20May.pdf.

persons with disabilities".[50] In addition, the Commission highlights that "the effective implementation of the anti-discrimination law still remains a challenge; Roma, Ashkalis and Egyptians, persons with disabilities and lesbian, gay, bisexual and transgender (LGBT) persons are still subject to discrimination in practice, including on the part of State authorities".[51]

Serbia was the only country in this first group that had adopted a Law on Prohibition of Discrimination in March 2009, prior to the visa liberalisation decision, which came later that year. Even though the passing of a law denotes a formal compliance with the benchmarks from the EC, my interviewees expressed their disbelief in the potential for significant impact of this Law. It was argued that in the visa liberalisation discussion the adoption of this law was a box-ticking exercise and as a lot of activities surrounding this legislation are missing, this law was not put into action.[52] At the time of the passing of the legislation, NGOs also highlighted that although the significance of passing such a Law [anti-discrimination] was recognised, a single Law on prevention of family violence, which would include efficient family and crime-related legal provisions, as well as rules on the activities of police in cases of family violence, has not been produced.[53]

The second group of countries in the visa liberalisation process adopted the anti-discrimination legislation prior to the visa liberalisation decision being made. **Bosnia and Herzegovina** adopted anti-discrimination legislation in July 2009, which in the last EU report is criticised as it does not include age and disability and allows for a wide range of exceptions.[54] In the case of Bosnia and Herzegovina, as part of the visa liberalisation dialogue the Commission insisted on the merger of the Entity Ombudsman offices to ensure the functioning of one single Ombudsman office responsible for implementing anti-discrimination legislation. However, due to opposition to the merger from the Ombudsman office of Republika Srpska, this process was delayed until the end of 2010 when it was finally resolved upon the insistence of the Commission.[55] Although assessed positively in terms of the merging of the Ombudsmen offices, my interlocutors from civil society organisations stressed that "the scope for civil society pressure for implementation on issues such as anti-discrimination was limited, since the EC advised us [the civil society organisations] primarily to provide information to the citizens on the specificities of the visa liberalization process in order to prevent abuse".[56]

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[50] 2011j. Montenegro 2011 Progress Report. *Commission Staff Working Paper.* Brussels: Commission of the European Communities.

[51] Ibid.

[52] Author's interview with civil society organisation representative in Belgrade, March 2012.

[53] 2009f. Towards the White Schengen List: Serbia Progress Report on Visa Liberalisation Process. Belgrade: Group 484, Fund for an Open Society-Serbia.

[54] 2011c. Bosnia and Herzegovina 2011 Progress Report. *Commission Staff Working Paper.* Brussels: Commission of the European Communities.

[55] Author's interview with civil society organisation representative in Brussels, October 2010.

[56] Author's interview with civil society organisation representative in Sarajevo, March 2012.

At the same time, contacts at the national level expressed doubts about the potential for success of the anti-discrimination legislation in light of the pending harmonisation of the Constitution with the decision of the European Court of Human Rights (ECtHR) in the Sejdic-Finci case.[57] The (ECtHR) judgment established that there is systemic constitutional discrimination against all persons not belonging to the constituent peoples on account of their ineligibility to run for office.[58] The Parliamentary Commission set up for resolving the issue has so far missed several deadlines as it was tasked with reconciling the opposing logics of anti-discrimination and multicultural recognition.[59] In this sense, Joppke's concerns were confirmed, since "anti-discrimination aims at abolishing ethnicity or race as marker of individual and group differentiation, whereas recognition seeks to perpetuate such differentiation. In a nutshell, anti-discrimination is universalistic; recognition is particularistic" (Joppke, 2007 p.43). A Human Rights Watch 2012 report on Roma in Bosnia and Herzegovina underlined that "although the provisions of this law [i.e. anti-discrimination] are strong, national minorities have brought very few cases under the law, possibly because […] the law seems to directly contravene constitutional provisions that favour the three main ethnic groups".[60]

Lastly, the **Albanian** Parliament adopted a specific law on anti-discrimination in February 2010, which was considered to be in line with *acquis*. The adoption of this law was included in the unfulfilled benchmarks as part of the letters the EC sent both to Bosnia and Albania in the summer of 2009. In addition to the anti-discrimination law, the letter also included the adoption and measures taken to implement the National Strategy for improving Roma Living Standards and the Roma National Action Plan as part of the Roma Decade (De Brouwer, 2009). Similarly as in the case of Montenegro, the Commission included reinforcing human rights and implementing anti-discrimination policies as a part of the key priorities for Albania in its opinion on the application for membership in 2010.[61] Moreover, in its 2011 Progress Report on Albania, the Commission highlights that in terms of anti-

[57]Sejdic and Finci v. Bosnia and Herzegovina , Application nos. 27996/06 and 34836/06, 22 December 2009. Council of Europe: European Court of Human Rights.

[58] See HODZIC, E. & STOJANOVIC, N. 2011. Novi-stari ustavni inzenjering u BiH: Kompleksnost presude Evropskog suda za ljudska prava u predmetu Sejdic i Finci protiv BiH i moguci pravci njenog provodjenja [New/old constitutional engineering? Challenges and implications of the European Court of Human Rights decision in the case of Sejdic´ and Finci v. BiH] *Analitika: Centre for Social Research* [Online]. Available: http://analitika.ba/files/NEW%20OLD%20CONSTITUTIONAL%20ENGINEERING%20-%2007062011%20za%20web.pdf [Accessed 01 June 2012].

[59] JUKIC, E. 2012. Bosnians Fail to Agree Sejdic-Finci Changes 12 March 2012. *Balkan Insight* [Online]. Available: http://www.balkaninsight.com/en/article/bosnian-leaders-fail-agreement-on-human-rights-ruling [Accessed 20 May 2012].

[60] 2012b. Second Class Citizens: Discrimination Against Roma, Jews, and Other National Minorities in Bosnia and Herzegovina. *Human Rights Watch* [Online]. Available: www.hrw.org/sites/default/files/.../bosnia0412ForUpload_0_0.pdf [Accessed 03 June 2012].

[61] 2010b. Commission Opinion on Albania's application for membership of the European Union. *Communication from the Commission to the European Parliament and Council* Brussels.

discrimination, "some important legislative gaps remain, including as regards persons with disabilities, and implementation of existing legislative and policy tools in this field is still inadequate".[62] In this vein, with respect to Albania my interlocutors highlighted that the anti-discrimination legislation was of secondary importance as was the fourth block in general in the visa liberalisation.[63]

2.3 Kosovo: a delayed road out of isolation

Whilst it directly affects the entire region, the visa liberalisation process has also had significant implications for the citizens of **Kosovo**. With the amendments to Council regulation 539/2001 Kosovo — as defined by the United Nations Security Council Resolution 1244 of 10 June 1999 — was added to the EU black list in 2009.[64] Thus, the visa liberalisation with all the countries in the region exacerbated the already difficult position of Kosovo citizens with respect to their travel possibilities. In 2010, the holders of the Kosovo passport could travel visa free to only five other states: Albania, Montenegro and Macedonia in its immediate neighbourhood, plus Turkey and Haiti. This effectively makes Kosovo "one of the most isolated places on earth".[65] Between 2008 and 2011, the EC on a couple of occasions announced the prospect of visa liberalisation, which was delayed causing frustration in Kosovan society.[66] The Roadmap was finally approved at the EU level at the end of May 2012.[67] In the most optimistic scenarios, according to my interlocutors, Kosovan citizens could expect to travel freely to the Schengen zone in 2014.[68]

In the absence of an EU roadmap for visa liberalisation, the Kosovan Government adopted its own Action Plan for Implementation of the Roadmap on Visa Liberalisation Regime with the European Union 2009-2011 (Krasniqi, 2010). The Plan was based on a roadmap prepared by local experts based on the experience of the other countries.[69] However, the plan from the Kosovan government did not contain a section in relation to the fourth block of the roadmap.[70] At the same time,

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[62] 2011a. Albania 2011 Progress Report. *Commission Staff Working Paper.* Brussels: Commission of the European Communities.

[63] Author's interview with representative of the Ministry of Foreign Affairs of Albania, March 2012.

[64] 2009c. Council Regulation (EC) No. 1244/2009 of 30 November 2009 amending Regulation (EC) No. 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement. *(EC) No. 1244/2009.* Official Journal of the European Communities.

[65] 2009d. Isolating Kosovo? Kosovo vs. Afghanistan 5:22. *ESI Discussion Paper* [Online]. Available: http://www.esiweb.org/pdf/esi_document_id_111.pdf [Accessed 17 March 2011], p.2

[66] Author's interview with EU expert in Kosovo, May 2012.

[67] EU approves the roadmap for Kosovo, 30 May 2012. *INFO GLOBI* [Online]. Available: http://eng.infoglobi.com/index.php/kosovo/art/4944 [Accessed 02 June 2012].

[68] Author's interview with EU expert in Kosovo, May 2012.

[69] Author's interview with EU expert in Kosovo, May 2012.

[70] 2009a. Action Plan for Implementation of Roadmap of Government of Kosovo on Visa Liberalisation Regime with European Union (2009-2011). Pristina: Government of the Republic of Kosovo.

numerous reports from international organisations have pointed to the discrimination and difficulties that Kosovan minorities face especially in terms of their reintegration into society. NGOs have expressed their belief that the offer of a visa liberalisation roadmap is the only promising way forward for advancing the position of minorities in the Kosovan society, primarily due to the importance of block 4 of the Roadmap for the future implementation of the Strategy on Roma, Ashkali and Egyptian Communities and its related Action Plan.[71] Having in mind the experience with block 4 in the other countries and the sidelining of the rights dimension in this process, the likelihood of successful application of conditionality in this area is also weak.

3 Post-visa liberalisation monitoring

The aftermath of the first wave of visa liberalisation was accompanied by a rise in the number of asylum seekers from these countries to the EU. Following the decision to liberalise travel with the first wave of countries in mid 2009, the EC sent letters to Bosnia and Herzegovina and Albania asking them to make progress in specific areas of the roadmaps. During 2010 the Commission put more emphasis on activities directed towards the prevention of a new wave of asylum seekers from these countries. Hence, the difference in the approach between the two groups was primarily in relation to the public awareness. Due to the rise in the numbers of asylum seekers from Macedonia and Serbia, the EC's focus shifted to the promotional campaigns for preventing such a phenomenon happening in the case of Albania and Bosnia and Herzegovina.[72]

Most of the asylum seekers came from Macedonia and Serbia for economic reasons. In the first year after liberalisation, Macedonia was listed as a major country of origin of asylum seekers with the highest relative increase of more than 599%.[73] As was reported by *Der Spiegel*, in the case of Germany in 2010, asylum requests from Macedonia and Serbia accounted together for 7,444 applications, whereas a year earlier, just 690 applicants came from the two countries (Angelos, 2011). Similar trends were noticeable in Sweden and Belgium as well. The rise in the numbers of asylum seekers on the grounds of 'blood vengeance' from Albania was registered in the summer of 2011, but lasted for a short period of time.[74]

As a result of this increase and the pressure from member states affected, the Commission introduced post-visa liberalisation monitoring that again focused on the

[71] 2010f. Isolation Confirmed: How the EU is undermining its interests in Kosovo. *ESI Discussion Paper* [Online]. Available: http://www.esiweb.org/pdf/esi_document_id_119.pdf [Accessed 17 March 2011].
[72] Author's interview with representative of the Ministry of Foreign Affairs of Montenegro, March 2012.
[73] 2011b. Asylum Levels and Trends in Industrialized Countries 2010-Statistical overview of asylum applications lodged in Europe and selected non-European countries. Geneva: UNHCR.
[74] Author's interview with representative of the Ministry of Foreign Affairs of Albania, March 2012.

developments in the first three security-related blocks of the roadmaps.[75] Moreover, the Commission organised post-visa liberalisation missions in Serbia and Macedonia in April and May 2011 that once more did not deal with block 4 of the roadmap. In May 2011, Belgium sent a letter to the EC suggesting a suspension of the visa free regime with Serbia. "If Serbia fails to undertake necessary measures, Belgium is ready to request suspension [of the visa-free regime with Serbia]," the Belgian letter reads (Sommo, 2011). Similar messages were sent to Macedonia as well, with the Belgian high officials regularly visiting Macedonia in order to 'warn' the authorities and the local population. The rise of the number of asylum seekers from these countries has provoked further action at the European level with proposals for introducing a safeguard clause to suspend visa liberalisation.[76] The proposal is not novel in light of the general anti-Schengen trend in the Union, "as mainstream parties across the bloc adopt the language of an increasingly popular far-right - Denmark and the Netherlands earlier this year also introduced new border security measures"(Rettman, 2011).

The introduction of the possibility for suspension of the visa free travel has resulted in pressure on national governments, primarily in Macedonia and in Serbia, to control the movement of people. This has come in various forms and initiatives. In the post-visa liberalisation period, the monitoring has followed the principle: "deal with asylum seekers immediately".[77] The proposed solutions have taken the shape of two initiatives: devising legal ways of criminalising the abuse of the visa free regime and pressure on the border police to profile people when exiting the country. In relation to the former, both Macedonia and Serbia have been looking into ways to criminalise the abuse of the visa free regime. Such legislative solutions were already enforced in the case of Bulgaria and Romania in 2001 which criminalised the violation of the immigration law of any country of the EU. In the case of Romania, "the entering or leaving a foreign state by the illegal passing of its borders, committed by a Romanian citizen or by a person without citizenship residing on the Romanian territory is considered as an offence and is punished with imprisonment from 3 months to 2 years".[78] Similarly, in Bulgaria, Tchorbadjiyska argued that the

[75] 2011l. On the post-visa liberalisation monitoring for the Western Balkan countries in accordance with the Commission Statement of 8 November 2010. *Commission Staff Working Paper* Brussels: European Commission, 2011n. Second report on the post-visa liberalisation monitoring for the Western Balkan countries in accordance with the Commission Statement of 8 November 2010. *Commission Staff Working Paper* Brussels: European Commission.

[76] 2011m. Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No. 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement COM(2011) 290 final. Available: http://ec.europa.eu/home-affairs/news/intro/docs/110524/290/1_EN_ACT_part1_v10.pdf.

[77] Author's interview with civil society organisation representative in Belgrade, March 2012.

[78] Art. 1(1), Emergency Ordinance no. 112 Referring to the Punishment of Some Action Committed Abroad by Romanian Citizens or by Person Without Citizenship Residing in Romania, 30 August 2001 (Official Gazette of Romania no. 549, 3 September 2001).

possibility for revoking the passports of those who have infringed on other states' entry and residence rules might be challenged as a limitation to their freedom to move (Tchorbadjiyska, 2007). Despite the concerns raised already in relation to Bulgaria and Romania, the legislative solutions sought in the Western Balkans have followed the same logic. The Commission in its report of December 2011 on the monitoring of the visa free regime notes the amendments of the Criminal Codes that have been prepared in these two countries.[79] In Serbia, my interviewees emphasised that the amendment to the Criminal code was done through legal inventiveness, but will be very difficult to implement as it requires proving intent.[80] In Macedonia, however, in June 2012 four people were sentenced to 4 years in prison by a basic court for having abused the visa free regime with the EU (Mackic, 2012).

Meanwhile, on the ground, both Serbia and Macedonia have been putting pressure on their border police both verbally and in written form to conduct thorough checks on their citizens when exiting the country. Serbia adopted a *Directive on determining the manner of performing police duties of the border police officers and the obligations of people crossing the state border* in June 2011 instructing police officers to ask citizens leaving the country whether they possess the necessary documents for travelling in the EU.[81] The EU has found a bureaucratic disguise for this, requesting that Serbia and Macedonia help implement the Schengen Convention (Knaus and Stiglmayer, 2011). In Macedonia a "verbal" directive was issued to border police officers who also regularly report on the number of people prevented from leaving the country.[82] In the same vein, since the liberalisation of the visa regime, the Minister of Interior of Macedonia has been reporting in European and domestic media on the number of people being prevented from leaving the country.[83] In December 2011 the Commission commended the authorities on these activities, noting that "the number of citizens of the Western Balkan countries who were

[79] 2011n. Second report on the post-visa liberalisation monitoring for the Western Balkan countries in accordance with the Commission Statement of 8 November 2010. *Commission Staff Working Paper* Brussels: European Commission.

[80] Author's interview with civil society organisation representative in Belgrade, March 2012.

[81] Official Gazette of the Republic of Serbia No. 39/2011.

[82] 2011g. Jankulovska and Naumovski on the border crossing Tabanovce: Stop for the false asylum seekers, [Јанкулоска и Наумовски на ГП "Табановце" Стоп за лажните азиланти] *Ministry of Interior of the Republic of Macedonia* [Online]. Available: http://www.mvr.gov.mk/ShowAnnouncements.aspx?ItemID=10007&mid=710&tabId=358&tabindex=0 [Accessed 30 May 2012].

[83] For example, in the course of May and June 2011 764 people were not allowed exit from the country by Macedonian border guards upon suspicion of being false asylum seekers. See 2011o. За два месеци 764 обиди за злоупотреба на визното олеснување [In two months 764 attempts for abuse of the visa free travel]. *Radio Free Europe* [Online]. Available: http://www.makdenes.org/archive/news/20110629/428/428.html?id=24250163.

identified while attempting to leave their countries without meeting the requirements for entering the Schengen area gradually increased".[84]

As most of the asylum seekers belong to the Roma and the Albanian communities the problem very quickly became defined in terms of the ethnic background of the people leaving these countries. For example, Serbian interior minister Ivica Dacic announced rigorous control by the border police, stressing that "no one from those communities [Albanian and Roma] will be able to leave the country if they do not have a return ticket, means to support their stay and cannot state the reason for the journey".[85] As a result of this policy, national stakeholders have argued that what the EU is requesting in the aftermath of the visa liberalisation is completely opposite to the requirements of block 4. "Whereas in block 4 they [meaning the EC and EU member states] demanded us to ensure the freedom of movement without any discrimination, what they demand now is basically that if there is an Albanian, Roma or a poor person at the border to treat him/her differently".[86] While being encouraged to enforce strict controls, the border police officers do not issue any document on the basis of which a person is not allowed to exit, making it impossible to formally appeal against this decision.[87] In Macedonia local NGOs reported that Roma, who were kept from leaving Macedonia, had the letters "AZ" [short version of asylum] stamped in their passport, indicating a ban on leaving the country.[88]

Although mostly limited to the cases of Serbia and Macedonia, the phenomenon also carries a regional dimension due to the intrinsic links between the countries as well as the population movements as a result of the conflicts of the 1990s. For example, in the summer of 2011 there were 400 registered asylum seekers from Bosnia and Herzegovina, a significant increase in comparison to previous years.[89] The Bosnian authorities however have argued that these people are not citizens of Bosnia and Herzegovina, but from the territory of Kosovo and were falsely representing themselves as citizens of Bosnia and Herzegovina (Halimović, 2011). Unsurprisingly, the response was to strengthen controls on the country's

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[84] 2011n. Second report on the post-visa liberalisation monitoring for the Western Balkan countries in accordance with the Commission Statement of 8 November 2010. *Commission Staff Working Paper* Brussels: European Commission.

[85] 2011f. Interior minister announces stricter border control. *B92* [Online]. Available: http://www.b92.rs/eng/news/politics-article.php?yyyy=2011&mm=05&dd=08&nav_id=74223 [Accessed 20 March 2012].

[86] Author's interview with civil society organisation representative in Belgrade, March 2012.

[87] Author's interview with civil society organisation representative in Sarajevo, March 2012.

[88] 2011k. Monthly Report for the situation of the Roma Rights in Macedonia, May-June 2011. *NGO ARKA*. Skopje. This issue was also raised in a letter from 12 Roma NGOs to the Macedonian Government, See 2011i. Letter to Macedonian authorities: Human rights concerns in relation with the recent measures taken by your government aimed to restrict the alleged abuse of the visa-free regime 3 August 2011. *Chachipe Roma Organisation* [Online]. Available: http://romarights.files.wordpress.com/2011/08/letter_macedonian_authorities_030811.pdf.

[89] 2011d. Bosnian Asylum Seekers in Belgium to be Repatriated *Balkan Insight* [Online]. Available: http://www.balkaninsight.com/en/article/bosnian-asylum-seekers-in-belgium-to-be-repatriated

border posts and Bosnian security minister Srdzan Sadikovic was quoted saying "we will do everything in our power to solve this problem as soon as possible".[90] In light of this pressure on Bosnia and Herzegovina by the EC, my interlocutors highlighted that it is likely that the authorities will push for these people, again predominantly Roma, to leave the country.[91] In the second report on the post-visa liberalisation monitoring, the Commission also notes that while the numbers of asylum seekers from Macedonia and Serbia has decreased, the trend is opposite in the case of Albania and Bosnia and Herzegovina.[92]

Overall, due to the increased pressure from the EC and the EU member states the governments in the region were instructed to *de facto* discriminate against marginalised groups. This worrying tendency of profiling at the border has been recognised and has also raised concerns in terms of its implications for the protection of human rights by international organisations and Roma NGOs. The Council of Europe Commissioner for Human Rights, in a statement in late 2011, highlighted that "significantly, it is the minorities, and in particular the Roma, who have become targeted. Everyone cannot be checked on exit and the selection is being done on the basis of 'profiling'. The result is another layer of discrimination against this minority" (Hammarberg, 2011). Similarly, the Meijers committee of experts on international immigration, refugee and criminal law highlighted that "the EU pressure on third countries to prevent Roma from entering the EU in order to claim asylum, […] may contribute to a climate of stigmatisation and repression of ethnic minorities in Balkan countries".[93] These practices therefore highlight how through the securitisation of the visa liberalisation process, the conditionality mechanism can lead to unintended consequences such as discrimination against disadvantaged groups in terms of their freedom of movement.

Conclusion

In an attempt to examine the interactions between conditionality and securitisation of the migration policy in the EU this paper has focused on the transformation of the citizenship regimes in the Western Balkan countries in the visa liberalisation dialogues. Looking specifically at block 4 of the visa liberalisation process, which dealt with fundamental rights, the paper discussed the status and rights dimensions

[90] Ibid.

[91] Author's interview with civil society organisation representative in Sarajevo, March 2012, Author's interview with civil servant in the Ministry of human rights and refugees in Sarajevo, March 2012.

[92] 2011n. Second report on the post-visa liberalisation monitoring for the Western Balkan countries in accordance with the Commission Statement of 8 November 2010. *Commission Staff Working Paper* Brussels: European Commission.

[93] 2011h. Letter to European Parliament: Note of the Meijers Committee on the proposal to introduce a safeguard clause to suspend visa liberalization. Available: http://www.statewatch.org/news/2011/dec/eu-meijers-committee-visas.pdf [Accessed 09 January 2012].

of citizenship as well as developments in the post-visa liberalisation period. In relation to the status dimension, the visa liberalisation process contributed to resolving problems of registration of Roma and displaced persons in the region. This was the case in Macedonia, Bosnia and Herzegovina and Albania, where the visa liberalisation negotiations contributed to facilitated access to personal documents and registration of vulnerable groups. In the case of Montenegro, the primary beneficiaries of the process were the displaced and internally displaced persons which through legislative amendments obtained ID cards. In addition to tackling issues already encountered in the region, the visa liberalisation contributed to creating status-related discrepancies in the case of Kosovo residents - holders of Serbian passports who are excluded from visa-free travel. On the ground, the distinguishing of citizens on the basis of their residency created numerous practical possibilities for abuse of the system which have been in the spotlight since liberalisation. Lastly, on a more general level, the visa free travel for all of the countries has facilitated the isolation of Kosovo citizens who do not benefit from visa free travel.

In terms of the rights dimension, the most important requirement streamlined in the visa liberalisation dialogues was the adoption of a framework law on anti-discrimination. In the first group of countries, Macedonia, Serbia and Montenegro, the anti-discrimination legislation which was a core benchmark of the visa liberalisation roadmaps has not been a deal breaker for the granting of the visa free regime. In fact, both Macedonia and Montenegro had not adopted such a law at the time of the liberalisation of the visa regime although they were considered frontrunners of the liberalisation process. In Bosnia and Herzegovina and Albania, the group of countries which negotiated for a further year until the end of 2010, similar tendencies can be noticed. Though formally both adopted anti-discrimination legislation prior to the liberalisation of the visa regime, the participants of the visa liberalisation process have considered the rights dimension as an issue of minor importance in relation to the other security related issues. In both countries the interest of the EC in the anti-discrimination policies was formal and did not go into depth in relation to the ongoing problems in these countries. Overall, the analysis of the application of the benchmarking in relation to the rights dimension in the visa liberalisation dialogue confirms its sidelining in the process, but also highlights the multiplicity of actors and the formal and informal features of conditionality (see Hughes et al., 2005).

While the analysis of the visa liberalisation dialogues confirmed the multifaceted nature of conditionality, the study of the post-visa liberalisation period sheds lights on the securitisation of the EU's approach and the potentially polarizing role of the EC demands on the ground. The visa liberalisation decision was accompanied by an increase of the number of people travelling to the EU member states claiming asylum; as the asylum recognition rate of this group is very low, they have been labelled as "false asylum seekers". In response to these developments both the EC and the governments of the affected EU member states are once again

prioritising security concerns, and have put increasing pressure on the governments in the Western Balkans to take measures in the direction of limiting the freedom of movement of their own citizens. In essence, the border police officers in the region are required in practice to conduct profiling on the basis of the ethnic background as well as economic status of citizens exiting the country. This practice, in turn, highlights the potentially negative and unwanted effects of EU conditionality.

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2010g. Regulation (EU) No. 1091/2010 of the European Parliament and the Council of 24 November 2010 amending Council Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement. *(EU) No. 1091/2010.*

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