



MARCH 2018

## Implications of Visa Liberalisation for Kosovo

After a long process, which included the disruptive use of tear gas in the Assembly hall by the opposition party Lëvizja VETËVENDOSJE!, the border demarcation deal has finally been ratified by the Assembly.<sup>1</sup> Because of continuing disagreement on the border demarcation throughout the last three years and the subsequent inability of the Kosovo Assembly to ratify it, visa liberalisation was put on hold by the European Commission (EC). Border demarcation was established as a criteria for visa liberalisation in 2015 when the EC presented its third progress report on the visa dialogue.<sup>2</sup> This article analyses the relationship between the border demarcation deal and visa liberalisation, and the conditions that have been laid out by the EU for Kosovo, notably with regard to the rule of law. Additionally, it explains what procedures the country would need to undergo in order to achieve visa-free travel in the Schengen area. Further, it examines the future prospects for visa liberalisation for Kosovo after the approval of the border demarcation deal, by analyzing developments in the other countries of the Western Balkans. Lastly, the report highlights the possible effects that such a process could have for minority communities in Kosovo.

### Public discourse on visa liberalisation

Recent political rhetoric in Kosovo regarding visa liberalisation has developed in the context of the border demarcation agreement with Montenegro. The recently presented EU Enlargement Strategy for the Western Balkans has only sparked this flame. President of the EC Jean-Claude Juncker stated during his visit to Kosovo on 28 February 2018 that “the most fundamental issue is the ratification of the border demarcation with Montenegro, because it is linked with visa liberalisation.”<sup>3</sup> Together with Juncker, EU policy officer Federica Mogherini and the Head of the EU Office in Kosovo and the EU Special

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<sup>1</sup> Dia Morina, ‘Kosovo Parliament Approves Montenegro Border Deal’, website *Balkan Insight*, 21-03-2018, <http://www.balkaninsight.com/en/article/xx-kosovo-parliament-approves-montenegro-border-deal-03-21-2018> (23-03-2018).

<sup>2</sup> N.N., ‘Reports’, website *Ministry of European Integration of the Republic of Kosovo*, <http://www.mei-ks.net/en/reports-506> (08-03-2018).

<sup>3</sup> L Lazar Semini, ‘EU’s Juncker Urges Kosovo Solve Border Deal with Montenegro’, website *New York Times*, 28-02-2018, <https://www.nytimes.com/aponline/2018/02/28/world/europe/ap-eu-balkans-eu.html> (05-03-2018).

Representative Nataliya Apostolova have mentioned border demarcation in line of visa liberalisation, which makes it a highly important and political issue.<sup>4</sup> This argument has been repeated by almost every politician active in Kosovo. Speaker of Assembly Kadri Veseli, President Hashim Thaçi and minister for European Integration Dhurata Hoxha have all stated that “ratification of the border agreement will make Kosovo reach the deadlines for granting visa free regime within 2018.”<sup>5</sup> By contrast, before demarcation was ratified, European Integration experts stated in the beginning of March 2018 that due to European Parliament elections next year, Kosovo would have to wait until 2020 for visa liberalisation.<sup>6</sup>

#### Fight against corruption and organized crime

Linking the border demarcation vote directly to visa liberalisation is too simplistic and the mentioned timeline appears to be too ambitious. The EU has set another, more challenging, condition for Kosovo, which is strengthening the rule of law and combating corruption and organised crime. According to the latest EU progress report, Kosovo fulfils fourteen of the fifteen requirements regarding combating organised crime and corruption. In terms of the ultimate requirement, which is “building up a track record of investigations, final court rulings and confiscations in high-profile organized crime and corruption cases”, Kosovo has fulfilled sufficient elements.<sup>7</sup> The only criticism that remains is that “confiscations in the absence of final verdicts remain low” and “the judicial follow-up of the remaining cases, the transfer of seized assets and final confiscation require sustained attention from the authorities.”<sup>8</sup> Back in October 2017, EU Special Representative Nataliya Apostolova stated: “I have never said that the criteria for the fight against corruption was fulfilled, but there has been a good job.”<sup>9</sup>

It seemed that Kosovo was on the right path; however, in the beginning of February 2018, Katerina Lopo, a representative of the EU Office in Kosovo, told participants of the conference *Kosovo and Visa*

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<sup>4</sup> N.N., ‘EU Representative in Kosovo: “Fight corruption, then visa liberalization”’, website *Top Channel*, 20-10-2017, <http://top-channel.tv/english/eu-representative-in-kosovo-fight-corruption-then-visa-liberalization/> (05-03-2018).

<sup>5</sup> GazetaExpress, ‘Veseli: Agreement with Montenegro opens the way for visa liberalisation’, website *Gazeta Express*, 16-02-2018, <http://www.gazetaexpress.com/en/news/veseli-agreement-with-montenegro-opens-the-way-for-visa-liberalisation-173620/> (05-03-2018), GazetaExpress, ‘Thaci: Demarcation to strengthen Kosovo sovereignty’, website *Gazeta Express*, 21-02-2018, <http://www.gazetaexpress.com/en/news/thaci-demarcation-to-strengthen-kosovo-sovereignty-173670/> (05-03-2018) and GazetaExpress, ‘Hoxha: Visa liberalization in 2018 if demarcation is ratified this week’, website *Gazeta Express*, 19-02-2018, <http://www.gazetaexpress.com/en/news/hoxha-visa-liberalisation-in-2018-if-demarcation-is-ratified-this-week-173656/> (06-03-2018).

<sup>6</sup> Arbesa Ibrahimimi, ‘Nese Demarkacioni s’kalon ne mars s’ka viza deri me 2020-n’, website *Zeri*, 07-03-2018, <http://zeri.info/aktuale/189401/nese-demarkacioni-skalon-ne-mars-ska-viza-deri-me-2020-n/> (07-03-2018).

<sup>7</sup> European Commission, *Report from the Commission to the European Parliament and the Council: Fourth report on progress by Kosovo\* in fulfilling the requirements of the visa liberalization roadmap* (Brussels 2016).

<sup>8</sup> Ibidem, 7.

<sup>9</sup> N.N., ‘EU Representative in Kosovo: “Fight corruption, then visa liberalization”’, website *Top Channel*, 20-10-2017, <http://top-channel.tv/english/eu-representative-in-kosovo-fight-corruption-then-visa-liberalization/> (05-03-2018).

*Liberalisation Process* that “Kosovo is not making progress, it is blocked with the demarcation and fighting organized crime and corruption.”<sup>10</sup> With all the talks focused on border demarcation, the EU has not been clear if border demarcation would directly lead to visa liberalization, which is apparently not the case. In addition, during the conference *Kosovo, the EU Presidency and the New Western Balkans Strategy – What Can we Expect*, Apostolova stated that “visa liberalization can only be discussed after concrete results in the fight against crime and corruption” and that it is “not fair to give dates for visa liberalization”.<sup>11</sup> Finally, if the last requirement is finally solved, both the EU Parliament and the European Council will have to take a final vote. Visa issues are approved by qualified majority, which means a proposal must garner 228 out of 309 votes. When both Parliament and Council have approved the proposal, an adopted act has to be published in the Official Journal of the European Union, which usually takes around three weeks. Twenty days after the date of the publication, the visa-free regime will officially enter into force.<sup>12</sup>

#### Visa liberalisation and minority rights in the Western Balkans

Before granting visa liberalisation, all the countries of the Western Balkans were given a roadmap with specific, tailor-made conditions. Visa liberalisation was granted to Serbia, FYROM and Montenegro in July 2009, while in December 2010 Albania and Bosnia-Herzegovina got a green light. These countries were able to get visa liberalisation within only 1-2 years after their specific roadmap was approved.<sup>13</sup> Kosovo, on the other hand, has already been waiting for more than 6 years. Right after visa liberalisation was granted to the above mentioned countries, there was a substantial increase of Balkan migrants to the EU. In the first year after liberalisation, the number of asylum seekers from FYROM rose by almost 600%. To illustrate the increase, while in 2009 the number of FYROM and Serbian asylum applicants to Germany totaled 690, in 2010 this number increased to 7,444.<sup>14</sup> In 2015, more than 130,000 irregular migrants from Albania, Serbia and Kosovo were asylum seekers in the EU.<sup>15</sup> The lack of minority integration in the

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<sup>10</sup> GazetaExpress, ‘EU Official: Kosovo has stagnated on visa liberalisation’, website *Gazeta Express*, 13-02-2018, <http://www.gazetaexpress.com/en/news/eu-official-kosovo-has-stagnated-on-visa-liberalisation-173591/> (06-03-2018).

<sup>11</sup> Gazeta Express, ‘Apostolova e thote qarte: S’ka date per liberalizimin e vizave’, website *Gazeta Express*, 27-03-2018, <http://www.gazetaexpress.com/lajme/apostolova-e-thote-qarte-s-ka-date-per-liberalizimin-e-vizave-516776/> (27-03-2018).

<sup>12</sup> European Stability Initiative, ‘The EU decision-making process’, website ESI, <http://www.esiweb.org/index.php?lang=en&id=489> (09-03-2018).

<sup>13</sup> Gunda Schumann, ‘Visa Liberalisation for Citizens of Kosovo – A Critical Analysis of the Current State of Play and Future’, *Südosteuropa Mitteilungen* 04-05 (2010) 23.

<sup>14</sup> Simonida Kacarska, ‘Losing the Rights along the way: The EU-Western Balkans Visa Liberalisation’, *European Politics and Society* 16 (2015) 370.

<sup>15</sup> Valbona Zeneli, ‘Migration, Brain Drain and the Western Balkans: What must be done to make life attractive enough at home to not see everyone go abroad?’, website *The Globalist*, 27-07-2017, <https://www.theglobalist.com/european-union-migration-brain-drain-and-the-western-balkans/> (05-03-2018).

Western Balkans is one of the main reasons why the number of asylum seeker with Balkan origin has increased drastically over the years.<sup>16</sup>

As a consequence of the influx of Balkan migrants, the EU has put pressure on states in the region to stop the abuse of EU asylum systems. Two examples of measures Balkan governments have undertaken because of this are stricter border controls and revocation of travel documents, but this has led to reported human rights violations. In FYROM, for example, there have been reported cases of ethnic profiling at the border. The rights of Roma community were violated distinctly, because of a new law that introduced the possibility to suspend the right to travel to individuals merely under suspicion of being potential failed asylum seekers.<sup>17</sup> Also, in Romania passing the border illegally could lead up to maximum two years of imprisonment.<sup>18</sup> Serbia's foreign minister Ivica Dacic even stated in 2011 that "no-one from those communities (meaning 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."<sup>19</sup> These recent experiences have shown that visa liberalisation can lead to even more social exclusion against already marginalized people and contributes to violations, rather than advancement and protection of fundamental rights.<sup>20</sup> These issues made the EU change its visa-free travel policies. The EU now "places more emphasis on issues relating to the fundamental rights and social inclusion of marginalized groups, in particular Roma."<sup>21</sup>

### Kosovo's Road Map

The benchmarks in the road map for Kosovo are similar to those in the road maps for the other Western Balkan countries. The granting of visa liberalisation to the people of Kosovo will most probably lead to a substantial increase in people seeking asylum in one of the EU member states. Recent history includes instances when people from Kosovo claimed asylum in EU countries on false grounds. In 2011, according to Bosnian authorities, 400 Kosovar migrants requested asylum in the EU as citizens of Bosnia-Herzegovina.<sup>22</sup> In 2010 there were reports of Kosovar citizens buying Serbian biometric passports for a price up to €10,000.<sup>23</sup>

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<sup>16</sup> Florian Trauner & Emanuele Manigrassi, 'When Visa-free Travel Becomes Difficult to Achieve and Easy to Lose: The EU Visa Free Dialogues after the EU's Experience with the Western Balkans', *European Journal of Migration and Law* 16 (2014) 125.

<sup>17</sup> *Ibidem*, 136-137.

<sup>18</sup> Kacarska, 'Losing the Rights along the way', 371.

<sup>19</sup> *Ibidem*, 372.

<sup>20</sup> Trauner & Manigrassi, 'When Visa-free Travel Becomes Difficult to Achieve and Easy to Lose', 144 and Kacarska, 'Losing the Rights along the way', 364.

<sup>21</sup> Trauner & Manigrassi, 'When Visa-free Travel Becomes Difficult to Achieve and Easy to Lose', 125.

<sup>22</sup> Simonida Kacarska, 'Losing the Rights along the way', 372.

<sup>23</sup> Gunda Schumann, 'Visa Liberalisation for Citizens of Kosovo', 33.

Civil registry is still a problem in Kosovo. As a consequence, people without proper identification will still not be able to travel to the Schengen area when visa liberalisation is granted. This is especially a problem for the Kosovar-Serbian people from Northern Kosovo, where overall numbers of registration remain particularly low. However, when the visa restrictions are lifted, necessity for registration of Kosovar citizenship for residents of the North will increase because of the improved freedom of movement that comes with it. Additionally, because of the development of Kosovo institutions in the northern municipalities, demand for Kosovo IDs will further increase.<sup>24</sup> Therefore, it is crucial for Kosovo authorities to start ensuring easy access procedures to Kosovo civil registry for residents of certain municipalities and minorities (for example Roma community), in order to not further increase divisions within the population.<sup>25</sup>

#### About ECMI Kosovo

**ECMI Kosovo is the principal non-governmental organisation engaged with minority issues in Kosovo, with the overarching aim to develop inclusive, representative, community-sensitive institutions that support a stable multi-ethnic Kosovo. ECMI Kosovo contributes to the developing, strengthening and implementation of relevant legislation, supports the institutionalisation of communities-related governmental bodies, and enhances the capacity of civil society actors and the government to engage with one another in a constructive and sustainable way.**

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<sup>24</sup> Equal Rights for All Coalition, *The People in Between: The Future of Citizenship and Freedom of Movement of Kosovo Serbs and Other Non-Majority Communities* (2017) 11.

<sup>25</sup> Ibidem.