



Flygtningenævnets baggrundsmateriale

Bilagsnr.:	392
Land:	Serbien-Montenegro
Kilde:	Home Office
Titel:	"Operational Guidance Note"
Udgivet:	Oktober 2005
Optaget på baggrundsmaterialet:	13. februar 2006



OPERATIONAL GUIDANCE NOTE

SERBIA & MONTENEGRO (including KOSOVO)

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1. Introduction

1.1 This document summarises the general, political and human rights situation in Serbia and Montenegro including Kosovo and provides information on the nature and handling of claims frequently received from nationals/residents of that country. It must be read in conjunction with the CIPU Serbia and Montenegro Country Report April 2005 any CIPU or COI Service Serbia, Montenegro or Kosovo bulletins.

1.2 This document is intended to provide clear guidance on whether the main types of claim are or are not likely to justify the granting of asylum, Humanitarian Protection or

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Discretionary Leave. Caseworkers should refer to the following Asylum Policy Instructions for further details of the policy on these areas:

API on Assessing the Claim
API on Humanitarian Protection
API on Discretionary Leave
API on the European Convention on Human Rights

1.3 Claims should be considered on an individual basis, but taking full account of the information set out below, in particular Part 3 on main categories of claims.

1.4 Serbia and Montenegro (including Kosovo) is a country listed in section 94 of the Nationality Immigration and Asylum Act 2002. Asylum and human rights claims must be considered on their individual merits. However if, following consideration, the claim is refused, caseworkers should certify the claim as clearly unfounded unless satisfied that it is not. A claim will be clearly unfounded if it is so clearly without substance that it is bound to fail. The information set out below contains relevant country information, the most common types of claim and guidance from the courts, including guidance on whether cases are likely to be clearly unfounded.

Source documents

1.5 Where paragraph numbers have been cited, these refer to the Serbia and Montenegro CIPU Country Report April 2005. Additional source documents are listed at the end of this note.

1.6 Serbia and Montenegro (SaM) is comprised of Serbia (including Kosovo) and Montenegro. Although currently administered by the UN, Kosovo remains a province of Serbia. For reasons of clarity, it has sometimes been necessary to deal with Serbia, Montenegro and Kosovo separately. This should not be taken to imply any comment upon the legal or political status of these territories.

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2. Country Assessment

2.1 Serbia and Montenegro (SaM) comprises the two republics of Serbia and Montenegro. The province of Kosovo occupies the south-west portion of the Republic of Serbia and Vojvodina occupies the northern part. Belgrade is the capital of SaM, as well as being the capital of the Republic of Serbia. Podgorica, formerly known as Titograd, is the capital of the Republic of Montenegro. [1.2.1]

2.2 Although a province of Serbia, and therefore part of Serbia and Montenegro, Kosovo is currently administered on an interim basis by the UN as United Nations Interim Administration Mission In Kosovo (UNMIK) under the terms of UN Resolution 1244, pending a process to determine its final status. [K.4.1]

2.3 The two republics of Serbia and Montenegro share common policies for foreign affairs, defence, internal economic affairs, foreign economic affairs and human/minority rights. They also have a shared court, but retain individual responsibility for all other matters. [1.4.10] The Assembly of Serbia & Montenegro is unicameral, consisting of 126 members of whom 91 come from Serbia and 35 from Montenegro. [1.5.7]

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2.4 Following the fall of the Milosevic regime in October 2000, the human rights situation in Serbia and Montenegro has improved greatly, however, problems still remain. Human and minority rights are protected under the 2003 Serbia and Montenegro Charter for Human and Minority Rights and Serbia and Montenegro has ratified the majority of human rights-related international conventions [5] The European Commission reported that there was some progress in the field of human rights in Serbia and Montenegro in recent years with accession to the Council of Europe in April 2003 and the Ratification of the European Convention for Human Rights and of the European Convention on the Prevention of Torture in March 2004 being important positive developments. [M.6.3]

2.5 Like many countries in the Balkans region, Serbia and Montenegro faces a serious threat from organised crime. Criminals exploited the vacuum, created by the conflicts of the 1990s and the isolation due to international sanctions, to establish lucrative networks, which reach far into government and retard social and economic development. [5]

Serbia

2.6 The Government of Serbia generally respected the human rights of its citizens during 2004; however, there were problems in some areas. [S.6.1] Police at times beat detainees and harassed citizens and prolonged pre-trial detention was a problem. Throughout 2004 the courts remained backlogged and administratively paralyzed, and lengthy trials persisted. Although impunity and corruption were problems the police effectively investigated high-level killings committed during and after the Milosevic era. [6]

2.7 During 2004 the media was generally independent; however, journalists practiced some self-censorship because of their vulnerability to private libel suits and indirect political manipulation. During 2004 there were incidents of arbitrary arrest and detention and the judiciary continued to be susceptible to political influence. Poor cooperation between the judiciary and other government branches slowed the implementation of legislative reforms. [6.6.4] & [3]

Montenegro

2.8 The Government of Montenegro generally respected the human rights of its citizens in 2004; however, there were problems in some areas. Police at times beat and abused civilians and impunity was a problem. Media independence was also a problem during 2004 and pressure from politicians sometimes resulted in distorted coverage of events by state and some private media. [M.6.1.]

2.9 The first Ombudsman was appointed by the Montenegrin Assembly on 21 October 2003. Although independent in practice, the Ombudsman was more effective in responding to individual violations of human rights than in addressing systemic problems. [M.6.4]

Kosovo

2.10 When the Kosovan conflict ended in June 1999, the peace agreement required the withdrawal of Serb forces from Kosovo. The UN Interim Administration Mission in Kosovo (UNMIK) was established shortly after, supported by an international security force, KFOR. [K.4.1] Fearing revenge attacks, large numbers of the Serb and Roma population left the province in the following months. [K.4.2]

2.11 Under UN Security Council Resolution 1244, UNMIK is responsible for performing basic civilian administrative functions and promoting the establishment of provisional self-

government. [K5.1] The UN-authorized, NATO-led peacekeeping force for Kosovo (KFOR) continued to carry out its mandate to maintain a safe and secure environment and defend against external threats. UNMIK Civilian Police continued to transfer basic police authority and functions to the local Kosovo Police Service (KPS). [K.5.47]

2.12 On 17 and 18 March 2004, the worst violence since 1999 broke out in Kosovo. Violent clashes in Mitrovica (North Kosovo) between Kosovo Albanians and Kosovo Serbs triggered inter-ethnic violence elsewhere in Kosovo resulting in 19 fatalities (11 Kosovo Albanians and 8 Kosovo Serbs) and approximately 954 injured (including KFOR and UNMIK personnel). Around 4000 Kosovo Serbs were evacuated from Mitrovica. Many houses belonging to Kosovo Serbs and orthodox churches were destroyed. [5]

2.13 Since March 2004 at least 2000 Kosovo Serbs have returned to Mitrovica and the overall security situation has remained calm, but tense. UNMIK continued to work with the local authorities to establish and protect minority rights, entrench the rule of law and build local capacity for law enforcement. [5]

2.14 Since March 2004 Human rights issues in Kosovo have been dominated by the issues of sufficiency of protection offered by the security forces to ethnic minority groups; ethnic minority group's access to essential services and the development of institutions in Kosovo that respect such rights. [K.6.1]

2.15 The human rights issues are constitutionally overseen by the Ombudsperson Institution (OI), established by UNMIK Regulation No. 2000/38, the Ombudsperson Institution is an independent institution which has the role of addressing issues concerning alleged human rights violations or abuse of authority by the Interim Civil Administration or any emerging central or local institution in Kosovo. Since the very beginning, the staff of the Ombudsperson Institution has been multiethnic – the majority being of Albanian ethnicity, other staff members are of Serbian, Turkish and Roma origin. [K.6.2]

2.16 As of 31 October 2004, 6,282 KPS officers were in service of which 15.5% were from ethnic minority groups (9.4% Serbs and 6% from other ethnic minority groups). [K.5.54] Since July 2004 five police stations have been transferred to the KPS, with 15 now under its command. By October 2004, 85 per cent of training at the Kosovo Police Service School was managed and delivered by KPS officers and other staff from Kosovo. [K.5.55]

2.17 The Kosovo Protection Corps (KPC) operates as a civil emergency organisation and performs its mandated tasks well, particularly de-mining, search and rescue, fire-fighting, humanitarian activities and emergency interventions. [K.5.49 – K.5.53]

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3. Main categories of claims

3.1 This Section sets out the main types of asylum claim, human rights claim and Humanitarian Protection claim (whether explicit or implied) made by those entitled to reside in Serbia and Montenegro (including Kosovo). It also contains any common claims that may raise issues covered by the API on Discretionary Leave. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/punishment. It also provides guidance on whether or not sufficiency of protection is

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available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on persecution, Humanitarian Protection, sufficiency of protection and internal flight are set out in the relevant API's, but how these affect particular categories of claim are set out in the instructions below.

3.2 Each claim should be assessed to determine whether there are reasonable grounds for believing that the claimant would, if returned, face persecution for a Convention reason - i.e. due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in *Karanakaran* should be followed when deciding how much weight to be given to the material provided in support of the claim (see the API on Assessing the Claim).

3.3 If the claimant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the claimant qualifies for neither asylum nor Humanitarian Protection, consideration should be given as to whether he/she qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.

3.4 This guidance is **not** designed to cover issues of credibility. Caseworkers will need to consider credibility issues based on all the information available to them. (For guidance on credibility see para 11 of the API on Assessing the Claim)

3.5 Also, this guidance does not generally provide information on whether or not a person should be excluded from the Refugee Convention or from Humanitarian Protection or Discretionary Leave. (See API on Humanitarian Protection and API on Exclusion under Article 1F or 33(2) and API on DL)

All APIs can be accessed via the IND website at:

http://www.ind.homeoffice.gov.uk/ind/en/home/laws_policy/policy_instructions/apis.html

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Main categories of claim from Serbia and Montenegro (excluding Kosovo)

3.6 Roma

3.6.1 Most claimants will claim asylum based on ill treatment amounting to persecution at the hands of the ethnic Serb/Montenegrin or in the case of the Sandzak region Bosniak population due to their Roma ethnicity and that the authorities are not able to offer sufficiency of protection

Serbia

3.6.2 Treatment According to the 2002 census, 83 percent of Serbia's population (without Kosovo) are Serbs, while 14 percent come from minority communities. Hungarians figure as the biggest minority community in Serbia (over 3 percent of the population). They are followed by Bosniaks, Roma, Yugoslavs, Croats, Albanians, Slovaks, Wallachians, Romanians and Macedonians. [S.6.48] In addition the UNHCR estimated that there were 40,000 to 45,000 displaced Roma originally from Kosovo living in Serbia proper in 2004. [S.6.79]

3.6.3 Throughout 2004 the Roma community continued to face intimidation, harassment and discrimination and sometimes violent attacks. The Humanitarian Law Centre, a Serbian NGO

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and advocacy group, investigated 241 cases of attacks on Roma in the period 2000 - 2002, by individuals and groups, and by the police. [S.6.73 & S.6.74] Societal discrimination against Roma, including non-admittance to restaurants, nightclubs, and sports centres was reported as widespread and there were reports that judicial proceedings were unduly prolonged when Roma appeared as plaintiffs and that the police response when Roma were assaulted by private citizens was inadequate. [S.6.75]

3.6.4 The UNHCR estimated that there were 40,000 to 45,000 displaced Roma originally from Kosovo living in Serbia proper in 2004. However, local municipalities were often reluctant to accommodate them, hoping that if they failed to provide shelter the Roma would not remain in the community. If Roma did settle, it was most often in official collective centres with minimum amenities or, more often, in makeshift camps on the periphery of major cities or towns. [S.6.79] In 2003 Roma IDPs from Kosovo appeared to be particularly subject to discrimination and abuse; most of them lacked identity documents, making it difficult for them to gain access to social services and state-provided health care. [S.6.83]

3.6.5 However, the Federal Minorities Law (which covers Serbia) recognises Roma as a national minority and explicitly bans discrimination on racial grounds. It also calls for government measures to improve Roma's conditions. In addition, the SaM Human and Minority Rights Ministry has a four-person section, currently funded by the OSCE, dedicated to Roma issues. [S.6.85] The Serbian Government also has a strategy for tackling discrimination and better integration of the Roma community. [5] During 2004, NGO's in co-ordination with the Serbian authorities took several actions to support the Roma community, including free distribution of school textbooks and support in secondary and high education. [S.6.73]

3.6.6 As regards legal redress for Roma, in May 2001, two skinheads were convicted for an attack on two Roma that was accepted by the court as being motivated by ethnic hatred and at the end of 2004, two adults and a juvenile were on trial for a 2003 incident in which Roma were beaten. [S.6.75] & [3] Roma have also been successful in gaining legal remedy for having been denied access to public places. In July 2002, the municipal court in Sabac ruled in favour of Roma who were barred from using a public swimming pool: this was the first time that existing law had been used to prove discrimination against Roma. [S.6.77]

Montenegro

3.6.7 Treatment. As of 2003 there were 2,601 Roma in Montenegro out of a total population 672,656. In addition in 2004 among the 17,000 internally displaced persons (IDPs) from Kosovo in Montenegro there were approximately 1,300 Roma. [M.6.28]

3.6.8 Prejudice against Roma in Montenegro was widespread during 2004, and local authorities often ignored or tacitly condoned societal intimidation or ill treatment of Roma, some of whom were IDPs from Kosovo. According to a local NGO, 70 percent of Roma were illiterate, 70 percent did not speak the local language, 95 percent were officially unemployed, 40 percent had no access to public utilities, and 90 percent lived below the poverty level in 2004. [M.6.33]

3.6.9 As in Serbia, Roma experience difficulties in relation to gaining access to public amenities, which was sometimes compounded by violence against them by private citizens. As reported in 2003 Roma do not always enjoy the full protection of the law and judicial proceedings were often unduly prolonged when Roma appeared as plaintiffs. The police response to physical assaults by private citizens on Roma was often inadequate. [M.6.37]

3.6.10 The housing situation for Roma in Montenegro is sometimes better than in Serbia and local authorities in some municipalities have allowed Roma to build settlements on city owned land or provided alternative housing. In some cases, Roma squatters have moved into abandoned buildings and local authorities have accepted this. However, many Roma live in slums without even basic amenities. [M.6.34]

3.6.11 Romani IDPs, who lived primarily in collective centres and scattered settlements throughout the country, often lacked identity documents and access to basic human services. Eviction from illegal settlements and, sometimes, legal residences was a serious problem during 2004. However, there was some limited official recognition of the problem, with authorities in the capital providing land and utility connections for an international NGO project to replace illegal and inadequate Romani housing. [M.6.36]

Sandzak region

3.6.12 *Treatment* The Sandzak region is an area that straddles the Serbia/Montenegro border and its population consists mainly of Bosniaks. [S.6.58] The March 2002 census recorded that of the total population of 235,567, there are 134,128 Bosniaks, 89,396 Serbs, 8,222 Muslims and 2,115 other minorities living in the Sandzak municipalities. [S.6.57] & [6]

3.6.13 Since the fall of Milosevic in October 2000, the situation in the Sandzak region has improved considerably. The OSCE noted in January 2002 that, "Despite the mixed ethnic composition of the area and a difficult recent history, inter-ethnic relations in Sandzak appear harmonious." [S.6.59]

3.6.14 In 2003 all seven Sandzak municipalities had multi-ethnic municipal assemblies and Bosniaks led the local governments in the three Muslim majority municipalities in the Sandzak region. In Novi Pazar, the municipal government gave the Bosnian language official status, as allowed under the 2002 Law on Local Elections. [S.6.61]

3.6.15 In 2004 a sizable percentage of the Montenegrin police force was made up of Bosniaks, many of whom were deployed in the Sandzak region. [2]

3.6.16 *Sufficiency of Protection* The authorities of Serbia and Montenegro recognise Roma as a national minority and discrimination against Roma is illegal. Although, Roma may not always obtain the full protection of the law and individual police officers may discriminate against Roma the authorities are willing to offer sufficiency protection to Roma and the perpetrators of discrimination and/or violence against Roma do face criminal sanctions.

3.6.17 *Internal Relocation* In general there is freedom of movement within Serbia and Montenegro [S.6.32] and Roma will be able to internally relocate to another part of Serbia and Montenegro where they will not face ill-treatment or discrimination.

3.6.18 *Case/law*

[2004] UKIAT 00228 KK (Serbia and Montenegro) Heard (No date), Promulgated 13 August 2004. The IAT found that while they do not seek to underestimate the level of harassment and discrimination experienced by the Roma community in Serbia, there remains a sizeable Roma community into which the appellant is able to place himself with adequate security and with appropriate safeguards to prevent his depression causing his suicide.

3.6.19 Conclusion Societal discrimination against Roma in Serbia and Montenegro is widespread and some Roma may be subject to physical attacks. However, in general this discrimination does not amount to persecution and the authorities are willing to offer sufficiency of protection although the effectiveness of this protection may be limited by the actions of individual police officers/government officials. However, internal relocation is an option and it is not unduly harsh for Roma to relocate to another part of Serbia and Montenegro where they will not face persecution. Therefore the majority of claims from this category are unlikely to qualify for a grant of asylum or Humanitarian Protection and are likely to be clearly unfounded.

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3.7 Evasion of military service

3.7.1 Some claimants will claim asylum based on ill treatment amounting to persecution at the hands of Serbian or Montenegrin authorities due to their refusal to perform military service.

3.7.2 Treatment Military service is compulsory for all young men in Serbia and Montenegro. Military service begins at the age of 17, and is an obligation as a citizen until the age of 60. The length of military service was reduced in December 2001 from 12 to 9 months service for regular conscripts and 22 to 13 months for conscientious objectors. Article 58 of the Constitutional Charter guarantees the right of conscientious objection in both states. [S.5.55 & M.5.30]

3.7.3 In addition the state union Government of Serbia and Montenegro has implemented civilian service as an alternative to mandatory army service. Civilian service options complement the non-lethal options already present for conscripts who object to military service for reasons of conscience. There are no reports of religious adherents serving sentences for conscientious objection to the draft. [S.5.56]

3.7.3 The FRY Government passed an Amnesty Act in February 2001 which granted amnesty to all draft evaders / deserters. The Act applies to all offences before 7 October 2000 and it is estimated that 24,000 people benefited from the amnesty. [S.5.57 & M.5.31]

3.7.4 Sufficiency of Protection As this category of claimants' fear is of ill treatment/persecution by the state authorities they cannot apply to these authorities for protection.

3.7.5 Internal Relocation As this category of claimants fear is of ill treatment/persecution by the state authorities relocation to a different area of the country to escape this threat is not feasible.

3.7.6 Caselaw

Sepet (FC) & Another (FC) [2003] UKHL 15 – The ground upon which the appellants claimed asylum was related to their liability, if returned to Turkey, to perform compulsory military service on pain of imprisonment if they refused. The House of Lords in a unanimous judgement dismissed the appellants' appeals. The House of Lords found that there is no internationally recognised right to object to military service on grounds of conscience, so that a proper punishment for evading military service on such grounds is not persecution for a Convention reason.

3.7.9 Conclusion The House of Lords found in **Sepet (FC) & Another (FC) [2003] UKHL 15** (see above) that there is no internationally recognised right to object to military service on grounds of conscience, so that a proper punishment for evading military service on such grounds is not persecution for a Convention reason.

3.7.10 Although the House of Lords judgment relates specifically to a Turkish case its conclusion can be applied to draft evaders from most countries. In addition the Constitutional Charter of Serbia and Montenegro guarantees the right of conscientious objection in both states and there is a civilian service alternative to mandatory army service. Therefore it is unlikely that claimants in this category would qualify for asylum or Humanitarian Protection and such claims are likely to be clearly unfounded.

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Main categories of claim from Kosovo

3.8 Ethnic Albanians originating from areas where they constitute an ethnic minority

3.8.1 Some claimants will claim asylum based on ill treatment amounting to persecution at the hands of Serbian civilians because they are from an area of Kosovo in which they form a minority of the population. The majority of claims are from Mitrovica City and Mitrovica Municipality.

3.8.2 Treatment There are some parts of Kosovo, particularly in the north of the province, where Serbs are in the majority and ethnic Albanians may be subject to harassment and persecution. These areas include the northern part of the town of Mitrovica – i.e. north of the river Ibar; the northern municipalities of Leposavic, Zvečan and Zubin Potok; and the southern municipality of Strpce. [K.6.127]

3.8.3 Security for ethnic Albanians in northern Mitrovica was enhanced in November 2002 when UNMIK established its administration in Mitrovica for the first time, in January 2003 KFOR and UNMIK police assumed control of the bridge over the river Ibar. [K.6.128]

3.8.4 On 17 March 2004 that there were confrontations between the Serb and Albanian populations at key border points, particularly the bridges over the Ibar and in northern Mitrovica. [K.5.68] These violent clashes in Mitrovica between Kosovo Albanians and Kosovo Serbs triggered inter-ethnic violence elsewhere in Kosovo resulting in 19 fatalities (11 Kosovo Albanians and 8 Kosovo Serbs) and approximately 954 injured (including KFOR and UNMIK personnel). Around 4000 Kosovo Serbs were evacuated from Kosovo. [5] However, in early 2005 KFOR dismantled their checkpoints on the eastern bridge [K.5.70] and by July 2005 the FCO had reported that the overall security situation is calm, but tense. [5]

3.8.5 The UNHCR reiterated their position in March 2005 that Kosovo Albanians originating from areas where they constitute an ethnic minority should continue to benefit from international protection. [2]

3.8.6 Sufficiency of Protection. In general there is sufficiency of protection available from UNMIK/KPS/KFOR for all ethnic Albanians even in areas where they constitute a minority. UNMIK/KPS/KFOR are able and willing to provide protection for those that fear

persecution and ensure that there is a legal mechanism for the detection, prosecution and punishment of persecutory acts.

3.8.7 Internal Relocation There is a freedom of movement for all ethnic Albanians in Kosovo. It will not be unduly harsh for ethnic Albanians to relocate internally within Kosovo, to an area where they will not be in the minority.

3.8.8 Caselaw

D [2003] UKIAT (00019) The IAT found that there was no risk of persecution for an ethnic Albanian on return to Northern Mitrovica nor was it unduly harsh to relocate to Pristina.

3.8.9 Conclusion Although ethnic Albanians may be subject to high levels of harassment and intimidation in the few areas of Kosovo where they are a minority, sufficiency of protection is provided by UNMIK/KFOR/KPS. In addition ethnic Albanians in these areas can also relocate to areas within Kosovo where they will not be a minority. Due to the availability of sufficiency of protection and the possibility of internal relocation claimants who apply on this basis are unlikely to qualify for a grant of asylum or Humanitarian Protection and such claims are likely to be clearly unfounded.

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3.9 Harassment from the Kosovo Liberation Army (KLA)

3.9.1 Some claimants will claim asylum based on ill treatment amounting to persecution at the hands of the Kosovo Liberation Army (KLA) and/or its supporters due to their refusal to assist or join the KLA either before, during or after the 1999 conflict.

3.9.2 Treatment The KLA was officially disbanded on 20 September 1999 and many former members were absorbed into the newly formed Kosovo Protection Corps (KPC/TMK). [K.5.50] The Kosovo Protection Corps operated as a civil emergency organisation focussing particularly on de-mining, search and rescue, fire-fighting, humanitarian activities and emergency interventions. [K.5.49 – K.5.53]

3.9.3 In general, the Kosovo Protection Corps and its members continue to comply with the rule of law and exercise their duties in accordance with their mandate. [K.5.51]

3.9.4 Sufficiency of Protection In general there is sufficiency of protection available from UNMIK/KPS/KFOR for all ethnic Albanians. UNMIK/KPS/KFOR are able and willing to provide protection for those that fear persecution and ensure that there is a legal mechanism for the detection, prosecution and punishment of persecutory acts.

3.9.4 Internal Relocation There is freedom of movement for all ethnic Albanians in Kosovo and internal relocation will not be unduly harsh where a person might face less risk in another part of Kosovo where their previous, alleged activities may not be known. Claimants facing difficulties from extremist elements of the KLA/KPC in their home area could relocate to other areas in Kosovo for example, relocation from a rural area to larger communities such as Pristina.

3.9.5 Caselaw

Ilir CERMI (01/TH/0245 28 February 2001) The Tribunal allowed the appeal of the Secretary of State regarding an LDK supporter who had refused to join the KLA, finding that the appellant had no

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well-founded fear of persecution in Kosovo because of the general level of support for the LDK and that there was a sufficiency of protection in Kosovo and Pec/Peje in particular. "Fadil Dylli" (00/TH/02186) "Arif" (1999 IAR 271) and "Horvath" (2000 IAR 205) were taken into account.

3.9.6 Conclusion The KLA has been disbanded since 1999 and its successor the KPC operates as a civil protection/emergency force within the law. Considering the general sufficiency of protection for ethnic Albanians, the option of internal relocation within Kosovo, and the diminishing threat from former KLA members, it is unlikely that claimants in this category would qualify for a grant of asylum or Humanitarian Protection and such claims are likely to be clearly unfounded.

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3.10 Those perceived to have been associated with the Serbian regime after 1990

3.10.1 Some claimants will claim asylum based on ill treatment amounting to persecution at the hands of ethnic Albanians, operating as individuals or part of organised non-state agents such as offshoots of the KLA or other Albanian nationalist organisations, due to either their or a family members alleged collaboration with the Serb authorities after 1990.

3.10.2 Treatment The UNHCR reiterated their position in March 2005 that persons perceived to have been associated with the Serbian regime after 1990 may have a well founded fear of persecution. [2]

3.10.3 Sufficiency of protection In general there is sufficiency of protection available from UNMIK/KPS/KFOR for all ethnic Albanians including those who are accused of collaborating with the Serb regime. UNMIK/KPS/KFOR are able and willing to provide protection for those that fear persecution and ensure that there is a legal mechanism for the detection, prosecution and punishment of persecutory acts.

3.10.4 Internal Relocation There is freedom of movement for all ethnic Albanians in Kosovo and caseworkers should consider that internal relocation is normally possible to another part of Kosovo, where the claimant's previous, alleged activities are unlikely to be known and hence where there is not a real risk of persecution, notwithstanding UNHCR and UNMIK's reservations about the return of this group to Kosovo at this time. For example, relocation from smaller rural areas to much larger urban communities such as Pristina.

3.10.5 Conclusion Ethnic Albanians accused of/or perceived to have collaborated with the Serb authorities may face discrimination and ill-treatment in Kosovo. However, in the majority of cases sufficiency of protection is available and internal relocation is an option, therefore claimants from these categories of claim are unlikely to qualify for asylum or humanitarian protection. However, it should be noted that such cases are unlikely to be clearly unfounded.

3.10.6 Relatives of those who are accused of/or perceived to have collaborated with the Serb authorities may also face discrimination and ill-treatment in Kosovo, however, in the majority of cases sufficiency of protection is available and internal relocation is an option. Therefore claimants who apply on the basis of a relative's involvement/ or perceived collaboration with the previous Serb regime are unlikely to qualify for asylum or humanitarian protection. However, it should be noted that such cases are unlikely to be clearly unfounded.

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3.11 Kosovans of mixed ethnicity and those in ethnically mixed marriages

3.11.1 Many claimants will claim asylum based on ill treatment amounting to persecution at the hands of the general ethnic Albanian population due to their mixed ethnicity or ethnically mixed marriages.

3.11.2 *Treatment.* People in mixed marriages with people from ethnic minorities or children from such families may face similar difficulties as those groups. Unlike other minority groups, mixed families may be excluded from all communities and may be unable to resort to the relative security of mono-ethnic enclaves. [K.6.111] The UNHCR reiterated their position in March 2005 that persons in ethnically mixed marriages and persons of mixed ethnicity may have a well founded fear of persecution. [2]

3.11.3 The ability to speak fluent Albanian is likely to be a factor in the degree to which Roma and any minority group are able to integrate with the majority community. [K.6.93]

3.11.3 *Sufficiency of protection* There is sufficiency of protection for Kosovans of mixed ethnicity and those in ethnically mixed marriages. UNMIK/KPS/KFOR are able and willing to provide protection for those that fear persecution and ensure that there is a legal mechanism for the detection, prosecution and punishment of persecutory acts. In general, an ethnically mixed claimant who speaks Albanian and can physically pass as an Albanian will be less at risk than those who do not speak Albanian and are easily distinguishable as being from a minority group.

3.11.4 *Internal Relocation* There is freedom of movement for all ethnic Albanians in Kosovo and caseworkers should consider that internal relocation is normally possible to another part of Kosovo, where a claimant's ethnic background is unlikely to be known and hence where there is not a real risk of persecution, notwithstanding UNHCR and UNMIK's reservations about the return of this group to Kosovo at this time. For example, relocation from smaller rural areas to much larger urban communities such as Pristina.

3.11.5 *Caselaw*

AB [2004] UKIAT 00188 (Ashkaelia): The appellant is an ethnic Ashkaelia and a Christian who encountered problems from ethnic Albanians in Kosovo on account of his ethnicity and marriage to an ethnic Albanian. The Tribunal found that the appellant and his wife would not be at any real risk of persecution or a breach of article 3 on return to their home area and would have a sufficiency of protection within the terms of Horvarth.

B [2003] UKIAT 00013: An applicant of mixed Roma and Albanian ethnicity who spoke Albanian and could pass as Albanian to strangers (ie did not look like he was Roma) was unlikely to be identified as Roma outside his home area.

BS (IFA – Mixed Ethnicity) Kosovo CG [2002] UKIAT 04254 The appellant was of mixed Serb and Albanian ethnicity. The IAT found that even though Kosovo is a relatively small area overall, the adjudicator was not in error in concluding that the risk did not extend beyond the appellant's home district, for example to Pristina and that there was accordingly a viable internal flight option. The applicant's father was of Albanian ethnicity there is nothing in his name or behaviour that would now suggest mixed ethnicity to those who were not aware of it. The IAT agreed therefore with the adjudicator that there is a viable internal flight option to Pristina.

AI (Mixed Ethnicity - Albanian/Bosnian) Kosovo CG [2002]UKIAT05547

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The appellant was of mixed Bosniak and Albanian ethnicity. His father was a Kosovan Albanian, he spoke Albanian himself and his whole background indicates that he was a Kosovan Albanian. The IAT found that the appellant could relocate to Pristina in Kosovo and that it would not be unduly harsh or unreasonable to expect him to do so. In Pristina he could seek protection from the KFOR and UNMIK security forces and the risks of persecution to him are below that of a reasonable likelihood.

3.11.6 Conclusion Kosovans of mixed ethnicity and/or those in mixed marriages may face discrimination and ill-treatment in Kosovo and those who speak only minority languages such as Serbian/Romani/Bosniak/Gorani or those who will be identified as such are more likely to encounter difficulties than those who speak Albanian. Those who only speak a minority language and can not pass as an ethnic Albanian are likely to be associated with that minority group and be treated accordingly (see relevant sections of the OGN for details of the treatment of each minority group.) Claimants from this category of claim are unlikely to qualify for asylum or Humanitarian Protection however, such cases are unlikely to be clearly unfounded.

3.11.7 However, the IAT found in a number of cases (see above) that an applicant of mixed ethnicity who speaks Albanian and could pass as an ethnic Albanian to strangers (looked like an Albanian etc) was unlikely to be identified as being of mixed ethnicity outside his home area. Therefore, the applicant would be able to internally relocate to another area of Kosovo were his ethnicity would not be known. Claimants from this category of claim are therefore unlikely to qualify for asylum or Humanitarian Protection and are likely to be clearly unfounded.

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3.12 Ethnic Minority Groups (overview)

3.12.1 Most claimants will claim asylum based on ill treatment amounting to persecution at the hands of the ethnic Albanian population due to their ethnicity.

3.12.2 Treatment Ethnic Albanians make up approximately 90% of the population of Kosovo. The remaining 10% are made up of various minorities including ethnic Serbs, Roma, Ashkaelia, Egyptians, Bosniaks, Gorani, Croats and Turks. Following the war, there was a very high level of violence directed at Serbs, Roma and other ethnic minorities, who were seen as having collaborated with the Yugoslav oppression. Most of the perpetrators were ethnic Albanians seeking revenge or pursuing the aim of a wholly Albanian state. Large numbers of the Serbs and Roma communities fled from Kosovo. Those who remained are mostly (but not exclusively) concentrated in mono-ethnic areas. [K.6.61]

3.12.3 Kosovo's most serious human rights problem in 2004 was pervasive social discrimination and harassment against members of minority communities, particularly Serbs but also Roma, Ashkaelia, and Egyptians, with respect to employment, social services, language use, freedom of movement, the right to return, and other basic rights. Violence and property crime directed at Kosovo's minorities remained serious problems. [K.6.67]

3.12.4 In March 2005 the UNHCR noted that over the past six months, the security situation has improved, in the sense that the number of serious crimes against members of minority communities has dropped and that no ethnic based killing has been reported since June 2004. However, minorities continue to face attacks, harassment and

intimidation such as stoning of transport, desecration of graves, looting of properties and racist graffiti. [4]

3.12.5 The UNHCR position as of March 2005 is that Kosovo Serb and Roma ethnic minorities are in need of international protection. However, with regard to Ashkaelia, Egyptian, Bosniak and Gorani communities, the UNHCR has changed its position slightly, noting that members of these groups are now better tolerated in Kosovo and are no longer among those groups who the UNHCR consider to be in continuing need of international protection. Although the UNHCR stressed that it was still the case that applicants from these groups may still have valid claims for international protection on an individual basis. [2] and [4]

3.12.6 The UNHCR are no longer opposed to members of the Ashkaelia, Egyptian, Bosniak and Gorani communities groups being returned if circumstances permit. [4]

3.12.7 Conclusion Different ethnic minorities in different areas may be subject to differing levels of risk. Therefore the information above must be read in conjunction with information below that is specific to the minority group in question.

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3.13 Kosovan Serbs

3.13.1 Most claimants will claim asylum based on ill treatment amounting to persecution at the hands of the ethnic Albanian population due to their Serb ethnicity.

3.13.2 Treatment Ethnic Serbs have been the principal targets for ethnically motivated attacks. Kosovo Serbs remained the primary targets of inter-ethnic violence, not only in terms of the number of incidents or victims, but also in terms of the severity and cruelty of the crime. Of the 72 murders in Kosovo during 2003, 13 were of Serbs, with 7 held to be ethnically motivated. [K.6.76]

3.13.3 Approximately 62 killings occurred during 2004, including 20 deaths as a result of the March 2004 violence; 11 of the victims were Serbs, including 8 during the March riots. Outside of the March riots, Kosovo Serbs were victims of three killings, three attempted killings, and one serious attack. [K.6.77] However, no ethnic based killing has been reported since June 2004. [1] and [4]

3.13.4 The situation of Serbs after the March 2004 riots is one of continuing uncertainty and fear. Most of the recently displaced Serbs have been staying in Serb enclaves. Further security incidents since March 2004 in mixed areas manifest how precarious the security conditions remain. As a result of the continuing volatile security, freedom of movement has significantly decreased particularly in the regions of Pristina and Mitrovica, and notably with regard to movements to ethnically mixed areas (as opposed to movements within enclaves). [K.6.82]

3.13.5 The situation of Serbs in Pristina, Gnjilane, Prizren, Pec and Mitrovica (and notably not in the Serb-dominated Municipalities of Leposavic, Zvecan, and Zubin Potok) are areas where previous freedom of movement outside enclaves / mono-ethnic communities had ceased and has essentially not resumed, with the exception of some KFOR escorted bus shuttle services. [K.6.83]

3.13.6 Sufficiency of Protection There is sufficiency of protection for Kosovan Serbs within Serb enclaves or when specifically under KFOR protection and UNMIK/KPS/KFOR are able and willing to provide protection for those that fear persecution and ensure that there is a legal mechanism for the detection, prosecution and punishment of persecutory acts.

3.13.7 Internal Relocation Freedom of movement for Serbs outside of Serb enclaves is severely restricted and therefore internal relocation for Kosovan Serbs within Kosovo is not an option. In addition due to the precarious position of IDPs within Serbia proper internal relocation for Kosovan Serbs, to other parts of Serbia or Montenegro is also not an option.

3.13.8 Conclusion There is sufficiency of protection available for ethnic Serbs in Kosovo when resident in enclaves. However, for ethnic Serbs living in predominantly ethnic Albanian areas the cumulative effect of severe harassment and intimidation, together with often-extreme limitations upon freedom of movement may reach the threshold required to qualify for a grant of asylum or Humanitarian Protection. Cases from this category of claim are unlikely to be clearly unfounded.

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3.14 Roma, Ashkaelia and Egyptians (RAE)

3.14.1 Most claimants will claim asylum based on ill treatment amounting to persecution at the hands of the ethnic Albanian population due to their Roma, Ashkaelia or Egyptian ethnicity.

3.14.2 Treatment Kosovo Roma have been targeted as a group because they are seen as having collaborated with Serb mistreatment of ethnic Albanians during the 1999 conflict. Allegations that some Roma took part in criminal acts with Yugoslav forces or opportunistic looting have blackened the name of others. Since the end of the conflict approximately 25,000 Roma fled from Kosovo to Serbia, Montenegro or Macedonia and those who remain tended to move to Roma enclaves. [K.6.85]

3.14.3 Roma are not a homogenous or cohesive group – they are made up of various groups with different allegiances, linguistic and religious traditions, most have a settled rather than nomadic lifestyle. [K.6.86]

3.14.4 Although usually categorised together, Roma are distinct from the groups known as Ashkaelia or Egyptians. [K.6.87] Ethnic identification as Roma, Ashkaelia or Egyptian is not necessarily determined by easily discernible or distinct characteristics or cultural traits, but rather by a process of self-identification. It is not uncommon in Kosovo for individuals to change their ethnic self-identification depending on the pressures of local circumstances, especially when it is necessary in order to distance themselves from other groups to avoid negative associations. In general, however, ethnic Roma clearly identify themselves as Roma and tend to use Romany as their mother tongue, although a large percentage of the Roma population can speak Serbian and to a lesser extent Albanian. [K.6.88]

3.14.5 The Ashkaelia are Albanian-speaking (although many can also communicate in the Serbian language) and have historically associated themselves with Albanians, living close to that community. Nevertheless, Albanians treat them as separate from the Albanian community. Like the Ashkaelia, the Egyptians speak the Albanian language but differentiate themselves from Ashkaelia by claiming to have originated from Egypt. [K.6.90]

3.14.6 It should be noted that, on the local community level, Albanians do not generally perceive the differences between the three groups, more often viewing Roma, Ashkaelia and Egyptians as one group. It should also be noted that the separations and distinctions between Roma, Ashkaelia and Egyptian vary between regions. [K.6.91]

3.14.7 The security position for Roma, Ashkaelia and Egyptian (RAE) communities varies according to perceptions of the majority population, locality and language issues. The ability to speak fluent Albanian is likely to be a factor in the degree to which RAE are able to integrate with the majority community. [K.6.93]

3.14.8 In the main, since March 2004, the overall situation for the RAE communities has been one of gradual resumption to the relative levels of minority rights held before the violence. [K.6.97]

3.14.9 The UNHCR position as of March 2005 is that Roma are a minority group that are likely to be in need of international protection. However, due to the improved security situation, Ashkaelia and Egyptian minorities are no longer among those groups who the UNHCR consider to be in continuing need of international protection. Although it is still the case that claimants from these groups may still have valid claims for international protection on an individual basis. [2] (p4)

3.14.10 The UNHCR are no longer opposed to members of the Ashkaelia or Egyptian, communities being returned if circumstances permit. [4]

3.14.11 Sufficiency of Protection In general, there is sufficiency protection for all Roma, Ashkaelia and Egyptians in Kosovo, in that the KPS/UNMIK/KFOR maintain a presence and ensure protection of enclaves with checkpoints. Furthermore, UNMIK and the KPS ensure that there is a legal mechanism for the detection, prosecution and punishment of persecutory acts, for all ethnic groups including all groups of RAE.

3.14.12 Internal Relocation In general it would not be unduly harsh for any RAE who can speak Albanian and who are held to be indistinguishable from ethnic Albanians to internally relocate to another part of Kosovo where their ethnic background may not be known. The IAT found in **B [2003]** (see below) that an applicant of mixed Roma and Albanian ethnicity who spoke Albanian and could pass as an Albanian to strangers (ie did not look like he was Roma) was unlikely to be identified as Roma outside his home area.

3.14.13 Internal relocation may also be an option for RAE that are not indistinguishable from ethnic Albanians. The IAT found in **FD [2004]** (see below) that internal relocation to a Roma enclave is an option for Roma who are concerned about the security situation.

3.14.14 Caselaw

SK (Roma in Kosovo-Update) [2005] UKIAT 00023 The IAT found no evidence to suggest that the political or inter – ethnic landscape has changed to such an extent (since the March 2004 violence) that it can now be said that a Kosovan Roma is at real risk of treatment which amounts to persecution on grounds of ethnicity or which is in breach of Article 3. Also there is a sufficiency of protection from KFOR and KPS. Additionally the ability to speak Albanian means that an individual will be more likely to be re-integrated into the community.

FD (Kosovo – Roma) Serbia and Montenegro CG [2004] UKIAT 00214: notified on the 14 July 2004 The IAT found that the outbreak of violence (March 2004) and the UNHCR paper (also of

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March 2004) do not cause them to change their analysis of the situation regarding Roma in Kosovo as set out below:

The IAT do not consider that the evidence as a whole justifies the conclusion that the ethnic discrimination and violence to which Roma are at times subject from other groups is of a level or frequency to mean that Roma would face a real risk of persecution for a Convention reason were they to be returned. That would be to ignore the presence and effectiveness of the international forces there. Neither do we think that the conditions of life have been shown to be of the severity requisite for the return to constitute a breach of Article 3.

The UNHCR's position "*remains that members of all minority groups, particularly Serbs, Roma, Ashkaelia, Egyptians as well as Bosniaks and Goranis should continue to benefit from international protection in countries of asylum. Induced or forced return movements jeopardize the highly delicate ethnic balance and may contribute to increasing the potential for new inter-ethnic clashes*".

Considering the UNHCR position the IAT saw no reason to revise their view that the Claimant would return, not to his former village, but to a Roma enclave or camp, neither of which would involve a breach of Article 3. The situation prevailing before the recent outbreak of inter-ethnic violence was not one of substantial peace and harmony. Inter-ethnic hatreds simmered below the surface of daily life, with sporadic violent eruptions against which the UN Authorities and KPS provided a sufficient degree of protection. The response of the UN and NATO forces was prompt and brought the violence swiftly under control.

The IAT found that Roma do not all live in Roma enclaves or in camps and those who live outside do not all face persecution; the picture is somewhat variable depending on time and place. The position in an enclave, however, does not suggest that there is a real risk of persecution there; Roma concerned about the security situation can go to such enclaves where there is a greater prospect of collective protection than outside. There is no evidence that conditions in the camps breach Article 3 of the ECHR.

B [2003] UKIAT 00013: An applicant of mixed Roma and Albanian ethnicity who spoke Albanian and could pass as Albanian to strangers (ie did not look like he was Roma) was unlikely to be identified as Roma outside his home area.

3.14.15 Conclusion Discrimination and ill-treatment against RAE does occur in Kosovo and those RAE who speak only Serbian or Romani (usually just Roma) are more likely to encounter difficulties than those who speak Albanian (the Ashkaelia and the Egyptians). However, the IAT found in **[SK 2005]** (see above) that even considering the ethnic violence of March 2004 it can not be said that a Kosovan Roma is at real risk of treatment which amounts to persecution on grounds of ethnicity or which is in breach of Article 3. The IAT also found in **[SK 2005]** that the ability to speak Albanian means that an individual will be more likely to be re-integrated into the community.

3.14.16 In the majority of cases sufficiency of protection is available and internal relocation for Ashkaelia and Egyptians within Kosovo or for Roma to a Roma enclave is an option. Therefore, claimants from this category of claim are unlikely to qualify for asylum or humanitarian protection. However, cases are unlikely to be clearly unfounded.

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3.15 Bosniaks

3.15.1 Most claimants will claim asylum based on ill treatment amounting to persecution at the hands of the ethnic Albanian population due to their Bosniak ethnicity.

3.15.2 Treatment In the aftermath of the Kosovo conflict, Bosniaks were closely associated with Serbs because of their shared language and culture. As a result they

suffered violent attacks, harassment and discrimination. The risk of being mistaken for a Serb when using their language has restricted freedom of movement outside their local area and inhibited equal access to social services and economic opportunities. [K.6.100]

3.15.3 Although the Bosniak communities were not directly affected by the March 2004 riots, the communities were unsettled and it increased a migratory flow out of Kosovo. During the violence, in Mitrovica town, families moved away from their homes; some went to the Serb enclave, some left for the northern municipalities, some went from north to south of the city. However, many returned to their homes after the March 2004 riots. [K.6.102]

3.15.4 The UNHCR position as of March 2005 is that due to the improved security situation Bosniaks are no longer among those groups continuing to be in need of international protection. Although it is still the case that claimants from these groups may still have valid claims for international protection on an individual basis. [2] (p4) The UNHCR are no longer opposed to the return of Bosniaks to Kosovo if the individual circumstances permit. [4]

3.15.5 Sufficiency of Protection In general, there is sufficiency of protection for Bosniaks in Kosovo. UNMIK/KPS/KFOR are able and willing to provide protection for those that fear persecution and ensure that there is a legal mechanism for the detection, prosecution and punishment of persecutory acts.

3.15.6 Internal Relocation Internal relocation is normally possible to another part of Kosovo where there is a large Bosniak community and hence where there is not a real risk of persecution.

3.15.7 Conclusion Although Bosniaks may be subject to discrimination and/or harassment this does not generally reach the level of persecution. Considering the sufficiency of protection available and the option of internal relocation in the majority of cases it is unlikely that a claim based solely on a fear of persecution because of Bosniak ethnicity will qualify for a grant of asylum or humanitarian protection. However, cases from this category of claim are unlikely to be clearly unfounded.

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3.16 Gorani

3.16.1 Most claimants will claim asylum based on ill treatment amounting to persecution at the hands of the ethnic Albanian population due to their Gorani ethnicity.

3.16.2 Treatment The Gorani community consists of Muslim Slavs akin to the Bosniaks, and experience similar difficulties. However, the Gorani are a distinct group from Bosniaks, with their own language, though like the Bosniak language this is similar to Serbian. The overall Gorani population is estimated at 10,000 - 12,000, most of whom live in the Gora region of Kosovo, though there are small communities in Pristina and Mitrovica. The Gora region comprises 18 geographically linked villages within Dragash municipality inhabited by Gorani. The region was largely unaffected by the conflict in terms of damage to housing. [K.6.104]

3.16.3 As with Bosniaks, Gorani have been closely associated with Serbs because of their shared language and culture and have suffered violent attacks, harassment and discrimination. The risk of being mistaken for a Serb when using their language has

restricted freedom of movement outside their local area and inhibited equal access to social services and economic opportunities. The level of freedom of movement was affected by their command of the Albanian language, rather than by the actual security situation. While Kosovo Gorani exercised unlimited freedom of movement in the Gora region, the majority of the community was still reluctant to move beyond Prizren town. [K.6.105] Approximately half the KPS officers in Dragash are Gorani. [K.6.106]

3.16.4 During and after the March 2004 riots, the Bosniak and Gorani communities were unsettled rather than directly targeted. [K.6.108]

3.16.5 The UNHCR position as of March 2005 is that due to the improved security situation Gorani are no longer among those groups continuing to be in need of international protection. Although it is still the case that claimants from these groups may still have valid claims for international protection on an individual basis. [2] (p4) The UNHCR are no longer opposed to the return of Gorani to Kosovo if the individual circumstances permit. [4]

3.16.6 Sufficiency of Protection In general, there is sufficiency of protection for Gorani within the main Gorani areas of Dragas and Prizren municipalities in Kosovo. UNMIK/KPS/KFOR are able and willing to provide protection for those that fear persecution and ensure that there is a legal mechanism for the detection, prosecution and punishment of persecutory acts.

3.16.7 Internal Relocation Internal relocation is normally possible to or within the Gora/Dragash region where there is a large Gorani community and hence where there is not a real risk of persecution.

3.16.8 Caselaw

B [2004] UKIAT 00037 – The IAT found that being an ethnic Gorani did not demonstrate a real risk of serious harm for a Gorani in his home area (the Prizren region).

B [2003] UKIAT 00105 The IAT considered that the Gorani community in the Gora region is not at risk sufficient to engage either the Refugee Convention or the Human Rights Convention. Further, there is no reason to suggest that the claimant, as a young male, falls into an exceptional category of risk. It is accepted that his father's involvement with the Serbian army does not, in itself, intensify that risk.

3.16.9 Conclusion Although the Gorani may be subject to discrimination and/or harassment this does not generally reach the level of persecution. In general, considering the sufficiency of protection available and the option of internal relocation to or within the Gora/Dragash region in the majority of cases it is unlikely that a claim based solely on a fear of persecution because of Gorani ethnicity will qualify for a grant of asylum or Humanitarian Protection. However, cases from this category of claim are unlikely to be clearly unfounded.

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3.17 Prison Conditions

3.17.1 Claimants may claim that they cannot return to Serbia and Montenegro including Kosovo due to the fact that there is a serious risk that they will be imprisoned on return

and that prison conditions in Serbia and Montenegro including Kosovo are so poor as to amount to torture or inhuman treatment or punishment.

Serbia

3.17.2 Treatment Prison conditions generally met international standards in 2004 however, conditions varied greatly from one facility to another and some guards abused prisoners. [S.5.50] Men and women were held separately. Juveniles were supposed to be held separately from adults; however, in practice, this did not always happen. Pre-trial detainees were held separately from convicted prisoners. [S.5.52]

3.17.3 Some prisons offered clean, secure environments for inmates; the quality of food varied from poor to minimally acceptable; health care was often inadequate. Basic educational and vocational training programs were in place at most prisons, but they were limited by lack of resources. The level of training for guards was inadequate, and guards received extremely low pay. [S.5.51]

Montenegro

3.17.4 Treatment Prison conditions generally met international standards in 2004 however some problems remain. Prison facilities were antiquated, overcrowded and poorly maintained. Women were held separately from men and although the law also requires that juveniles are held separately from adults, as are pre-trial detainees from convicted criminals, overcrowding means that this does not always occur in practice. [M.5.26]

3.17.5 According to the European Commission the situation in Montenegrin penal institutions is difficult, due to the lack of adequate resources and infrastructure. However, the treatment of prisoners is improving, and there are ongoing prison staff training projects. [M.5.27]

3.17.6 The Government permitted prison visits by human rights observers during 2004, including the International Committee of the Red Cross and local non-governmental organizations (NGOs). The Ombudsman, elected by Parliament in 2003, had the right to visit detainees and prisoners at any time, without prior notice. The Ombudsman's office routinely made prison visits, meeting with detainees and inmates. [M.5.28]

Kosovo

3.17.7 Treatment Prisons generally met international standards in 2004, and UNMIK permitted visits by independent human rights observers. Prison and detention centre conditions were generally good and did not pose a serious threat to life or health. Facilities were at times overcrowded; however, the construction of two new facilities began during 2004. UNMIK operated eight facilities with a total capacity of 1,356 inmates. UNMIK Police corrections officers managed the prison system and increasingly transferred responsibilities to the local Kosovo Correctional Service (KCS). [K.5.73]

3.17.8 During June to September 2003 64 more persons, mostly from minority groups, were recruited into the Kosovo Correctional Service, as of October 2003 the KCS had a staff of 1,416. Of these, 84.9 per cent were Kosovo Albanian, down from 86.2 per cent during the last reporting period; Kosovo Serb representation has increased marginally, from 11 per cent to 11.2 per cent, while the proportion of non-Serbian minority groups has substantially increased, from 2.8 per cent to 3.8 per cent. Some 18 per cent of the staff are female. [K.5.74]

3.17.9 Conclusion Prison conditions in Serbia and Montenegro including Kosovo have been judged to meet international standards. Therefore even where individual claimants can demonstrate a real risk of imprisonment on return to Serbia and Montenegro including Kosovo a grant of Humanitarian Protection will not be appropriate.

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4. Discretionary Leave

4.1 Where an application for asylum and Humanitarian Protection falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. (See API on Discretionary Leave)

4.2 With particular reference to Serbia and Montenegro including Kosovo the types of claim which may raise the issue of whether or not it will be appropriate to grant DL are likely to fall within the following categories. Each case must be considered on its individual merits and membership of one of these groups should *not* imply an automatic grant of DL. There may be other specific circumstances not covered by the categories below which warrant a grant of DL - see the API on Discretionary Leave.

4.3 Unaccompanied minors

4.3.1 The policy on unaccompanied minors is set out in the API on Children. Unaccompanied minors who have not been granted asylum or HP can only be returned where they have family to return to or there are adequate reception arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate reception arrangements in place.

4.3.2 Unaccompanied minors without a family to return to, or where there are no adequate reception arrangements, should if they do not qualify for leave on any more favourable grounds be granted Discretionary Leave for a period of twelve months or until their 18th birthday, whichever is the shorter period.

4.4 Medical Treatment

4.4.1 Claimants may claim they cannot return to Serbia and Montenegro including Kosovo due to a lack of specific medical treatment. See the IDI on Medical Treatment which sets out in detail the requirements for Article 3 and/or 8 to be engaged.

Serbia

4.4.2 The public health sector in Serbia is based on a system of compulsory social health insurance, financed by salary contributions and operated by the Health Insurance Fund. The resources available to the health care sector have declined significantly during the last 10 years from \$200 per capita in 1990 to around \$60 per capita in 2000. As a result, real salaries of medical personnel have fallen sharply, and investment has declined, resulting in much of the sector's equipment becoming obsolete, and recurrent costs being under-funded. [s.5.58]

4.4.3 Treatment for mental health disorders is available, though numbers of psychiatric staff and bed spaces are limited. [s.5.61] The Government has established the Republic National AIDS Committee which is formulating a strategy to deal with AIDS in co-operation with UNDP acting as funding agents. [s.5.62]

Montenegro

4.4.4 The existing healthcare system is a public service open to all, organised by the Republic of Montenegro. [M.5.33] With regards to primary healthcare provision was satisfactory at overall republic level, but there were imbalances and discrepancies in terms of actual provision at local level. [M.5.36] The health care system is generally free of charge at the point of use, with small payment for drugs, laboratory services and examinations with a specialized physician. [M.5.37]

Kosovo

4.4.5 The official health care system currently procures only essential drugs needed for common conditions. Consequently, many patients with rare, chronic diseases (e.g. lack of growth hormone, haemophilia, HIV/AIDS) will not be able to find the drugs they need in the public health care institutions or in the state pharmacies. Private pharmacies may be able to import the drugs they need, but they are likely to be expensive and the supply may be uncertain. There is a growing AIDS problem in Kosovo, thought to originate from the large influx of prostitutes into the province. [K.5.78]

Mental Health in Kosovo

4.4.6 In August 2003 each region of Kosovo had one hospital psychiatric ward and one community mental health centre CMHC with the exception of Gjilan, which had two Centres. [K.5.79] The CMHCs are day centres, which seek to rehabilitate / reintegrate adults and young people who have severe chronic mental illness and are in remission. Acutely ill adults are referred to the hospital psychiatric wards. [K.5.85]

4.4.7 The hospital wards provide treatment for severely chronically and pathologically ill adults whose treatment depends entirely on drugs, which were, however, in very short supply in August 2003. [K.5.81] Ethnic Minorities are not excluded from treatment. However Serbs do not use the wards in Prishtinë, Gjakovë or Pejë hospital. They go to Mitrovicë North or Belgrade and Kosovan Albanians cannot go to Mitrovicë North and instead use the hospital in Prishtinë. [K.5.84]

Post Traumatic Stress Disorder (PTSD) in Kosovo

4.4.8 Provision of treatment for PTSD is extremely limited. The few services in the public and NGO sectors which provide some form of treatment for PTSD are overburdened and heavily constrained by limited capacity and resources. [5.95] According to UNMIK the prevailing problems in Kosovo include a general lack of medical health care professionals, insufficient financial resources, too few professionals who can assess people with special needs and inaccessibility of services for those living in rural areas. In particular mental health services for children have not been established. [7]

4.4.9 It remains the position of UNMIK that persons suffering from and undergoing treatment for PTSD should not be forcibly returned to Kosovo. [K.5.96] & [7]

4.4.10 Caselaw

ZR [2004] UKIAT 00086 ZR: An individual suffering from severe depression. He did not have any family in Kosovo, but it was found that removal to Kosovo is not reasonably likely to leave him isolated and without support. It is perfectly reasonable to expect him to go to whichever area of Kosovo would offer him the best available treatment facilities. Followed the case of **P [2003] UKIAT 00017** (see below).

O [2003] UKIAT 00069: IAT found that there is adequate treatment for PTSD in Kosovo and the situation is improving all the time. Article 3 is not breached by return.

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P [2003] UKIAT 00017: This case sets out guidelines for adjudicator's to follow when assessing medical evidence in HR cases when it is alleged that return would lead to real risk of suicide. The IAT find that the mere fact of return to the country of FRY or region of Kosovo does not mean that the appellant will be compelled to revisit the scene of his trauma.

KK (risk – return – suicide – Roma) Serbia & Montenegro [2004] UKIAT 00228 This case concerned an applicant from Serbia who claimed that he would commit suicide if returned. The IAT found that the appellant was adequately protected from the risk of suicide whilst he remains in the United Kingdom. The decision to remove him would not, therefore, breach his human rights within this jurisdiction.

4.4.11 Conclusion Where a caseworker considers that the circumstances of the individual claimant and the situation in the country reach the threshold detailed in the IDI on Medical Treatment making removal contrary to Article 3 or 8 a grant of Discretionary Leave to remain will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave.

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5. Returns

5.1 Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim.

5.2 Nationals of Serbia and Montenegro including Kosovo may return voluntarily to any region of Serbia and Montenegro including Kosovo at any time by way of the Voluntary Assisted Return and Reintegration Programme run by the International Organisation for Migration (IOM) and co-funded by the European Refugee Fund. IOM will provide advice and help with obtaining travel documents and booking flights, as well as organising reintegration assistance in Serbia and Montenegro including Kosovo. The programme was established in 2001, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Nationals of Serbia and Montenegro including Kosovo wishing to avail themselves of this opportunity for assisted return to Serbia and Montenegro including Kosovo should be put in contact with the IOM offices in London on 020 7233 0001 or www.iomlondon.org.

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6. Additional References

[1] United Nations, Security Council S/2004/348 The Secretary Generals Quarterly Report to the UN Security Council, (14 February 2005)

[2] UNHCR Position on the Continued International Protection Needs of Individuals from Kosovo (March 2005)

[3] US State Department report 2004 (24 February 2005)

[4] UNHCR Briefing notes 'Kosovo: New UNHCR paper on protection and return.' (8 April 2005)

[5] FCO country Profile (last updated 12 July 2005)

[6] Helsinki Committee for Human Rights in Serbia “Human Rights in the Shadow of Nationalism. Serbia 2002.” 2003

[7] UNMIK letter ‘Post-Traumatic Stress Disorder (PTSD) Treatment in Kosovo.’ July 2005

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