

Forbudsrep. Jugoslavien (Kosovo) (31)

FLYGTNINGENÆVNET

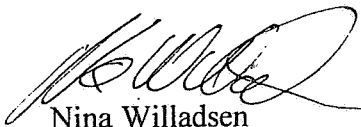
324

Dato: 17. december 2002
J. nr.: 2002/71511-44

Korrespondance mellem Integrationsministeriet og UNMIK, Kosovo.

Vedlagt korrespondance mellem Integrationsministeriet og UNMIK vedrørende tilbagesendelse til Kosovo af asylansøgere, der har fået afslag på asyl/humanitær opholdstilladelse i Danmark.

Med venlig hilsen



Nina Willadsen

Ministry of Refugee**Immigration and Integration Affairs****Permanent Undersecretary**

United Nations Interim Administration Mission in Kosovo
Director, Office of Returns and Communities
Ms Peggy L Hicks

* 8 DEC 2002

Date:

Contact: mmi

File No.: 2002/4132-1

Dear Ms Hicks

Thank you for your letter of 22 November 2002 regarding repatriation of mentally ill Kosovar Albanians.

I would like to renew my assurance that the Danish Government and the Danish authorities appreciate the great efforts and the valuable work of UNMIK and all its staff. The Danish Government fully supports UNMIK.

I would like to emphasize that no disagreement seems to exist between UNMIK and the Danish immigration authorities concerning the basic issue of which persons can be returned to Kosovo. The Danish government concurs with the opinion that persons suffering from a serious mental disorder should not be forcibly returned – the Danish Government thus fully accepts that cautiousness be shown to people who might suffer from such illnesses.

As stated in my letter of 6 September 2002, the circumstance that a person suffers from PTSD does not in itself make an applicant eligible for a residence permit on humanitarian grounds according to the practice of the Danish immigration authorities. On the other hand, very serious mental illnesses, such as schizophrenia and paranoia, may do so. There may also be other circumstances involved which, combined with the information that the person in question suffers from PTSD, may justify a residence permit.

This practice applies to applicants of all nationalities who have been refused asylum.

Kosovar Albanians who were evacuated to Denmark in the early summer of 1999 due to the conflict have extended access to a residence permit for Denmark for humanitarian reasons compared to other foreigners, including Kosovar Albanians who only entered Denmark after the conflict was over.

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As can be seen from our correspondence, there is a need to discuss in detail whether changes should be made in the return procedures agreed by UNMIK and the Danish immigration authorities in July 2000. There seems to be a need in this connection to give the Danish authorities an opportunity to make a detailed account to UNMIK of the legal basis for granting Danish residency and of the thorough examination of cases relating to applications for residence permits.

I would therefore be pleased to accept your suggestion of a meeting between UNMIK representatives and officials of the Danish immigration authorities to clarify these matters.

As the Danish Government deems this a serious matter, particularly because of the very basic issues involved concerning recognition of the decisions made by the Danish authorities in such cases, and since this case has given rise to several questions from members of Parliament to the Danish Government, I find it crucial to have an early clarification of the way that returns to Kosovo can be resumed.

I therefore kindly request that this meeting be held as soon as possible – either in Kosovo or in Denmark.

I look forward to your swift reply concerning the possibility of such a meeting very soon.

Yours faithfully



Niels Preisler
Permanent Undersecretary

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United Nations Interim
Administration Mission
in Kosovo



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Mission d'Administration
Intérimaire des Nations Unies
au Kosovo

Indgået i
3. udlændingekontor

22 NOV. 2002

22 November 2002 Im. 3.u. kt. 2002 J.nr. 4132-1

22 NOV. 2002 4/8-02

Dear Mr. Preisler:

Antal bilag 2 Aktnr. 112

I appreciated the reply and detailed summary of events that you sent to Mr. Steiner on 6 September regarding UNMIK's recent refusal to accept the entry of two Kosovar Albanian deportees from Denmark. While I accept that there appears to have been a breakdown in communication between UNMIK and the Danish immigration authorities in these cases, I cannot agree with your interpretation of the facts of this case. In so far as UNMIK was in contact with the Danish authorities regarding our information indicated that these two individuals were unsuitable for return to Kosovo. As a result, my office stated clearly that UNMIK did not recommend their deportation. My staff member correctly relied upon all information at his disposal when advising UNMIK Border Police in this case. It must be stressed, however, that the final decision was taken by UNMIK Border Police not to accept the entry of

Given that the caseload of Kosovans that Denmark accepted into its special protection regime in 1999 included a large number of individuals with serious mental illnesses, UNMIK maintains a cautious approach with regard to their return. As you are aware, Kosovo lacks the professional capacity and facilities to extend basic care to the mentally-ill. While there are some existing programmes for treating such cases, these few facilities are overcrowded, under-resourced, and are straining to remain operational. Recent international reports have been highly critical of their conditions and state that they fail to meet international standards. While UNMIK is attempting to find a solution to this problem, we are not there yet. As a result, an influx of individuals with mental health needs is simply beyond UNMIK's capacity to handle.

Clearly, UNMIK has a duty to cooperate closely with Denmark in the question of forcible returns of Kosovans and we are definitely willing to accept individuals who no longer suffer from serious illnesses. In order to do this, however, UNMIK needs adequate notice and information from the Danish

Mr. Neils Preisler
Permanent Undersecretary
Immigration Integration Affairs
Ministry of Refugees

22/11 2002 12:15 FAX 1535592

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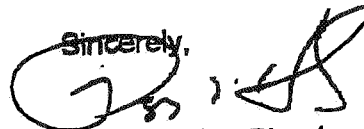
authorities in order to make an informed and accurate decision including medical records. In the past, Danish authorities have been reluctant or unwilling to pass on such information. UNMIK has received data from Mr. Hans Boserup regarding some cases and we are fully aware that he is not an official of the Danish Government. UNMIK must be able to base its decision upon any information at its disposal regarding cases of this kind. We would, of course, appreciate and accept additional information provided by the Danish Government on these cases as well.

As you have noted in past communications, UNMIK has been developing an information format for use by deporting governments in order to ensure that we receive the kind of information needed to make informed decisions. This form has only recently been agreed upon internally and is now ready for distribution to host countries. I am attaching an official copy of the form for your consideration. This format would be quite useful in strengthening the relationship of cooperation and information-sharing between UNMIK and Denmark that could prevent future problems of the sort that we have experienced recently.

UNMIK greatly appreciates the cooperation and humanitarian assistance that Denmark has extended to Kosovans displaced by the conflict since 1999. I would ask, however, that we work together to ensure that individuals with serious medical problems not be returned to an environment that cannot sustain them at present. Therefore I suggest that a meeting along the lines that you proposed be arranged for early in 2003.

Again, I greatly appreciate your cooperation and understanding in this matter.

Sincerely,



Peggy Hicks, Director
Office of Returns and Communities
United Nations Mission in Kosovo

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Aktiv. 112 Bilagene. 1

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Introductory Note

The UNMIK Information Format For Government Authorities Sending Forced Returnees back to Kosovo

On numerous occasions over the past three years UNMIK has received displaced persons from Kosovo that have been forcibly returned from host countries throughout Western Europe. We have been grateful to those States for the kindness and humanitarian spirit that they showed in accepting and assisting those individuals and families so gravely affected by the period of conflict in Kosovo.

In order to facilitate an orderly return within Kosovo, UNMIK has consistently requested that both sufficient information and notice be given to our border and returns authorities of coming deportations. Such notification ensures that the appropriate reception arrangements can be put in place before the deportees arrive.

To this end, in respect of Kosovo Albanians only, we have asked that host governments give UNMIK a minimum 3 working days notice before the deportation of 'normal' cases and 7 working days for 'special' cases, i.e. those persons with mental illnesses or with some form of criminal record.

While we appreciate the burden that the prolonged stay of Kosovo asylum seekers has placed on the host countries, it should be reiterated that only Kosovo Albanians should be considered acceptable for forced repatriation at present. Minorities should not be forcibly returned due to security concerns that still exist in most minority communities and potential return locations throughout the province. We further ask that no one with an illness or injury that is untreatable in Kosovo should be forcibly returned until such time as the need for treatment has ended.

Unfortunately, repatriating authorities have not always followed this policy nor have they always passed on adequate information to ensure that minorities and the disabled are not returned. This has resulted in cases of vulnerable minorities, persons with mentally-illnesses, and even individuals not from Kosovo being forcibly returned to Pristina. In most such cases, the arrangements are not in place to take care of these people or the treatment they need is not available.

To remedy this information and notification gap, UNMIK has designed a form to guide host country authorities in the screening process for deciding whether to deport an individual or not. In practice this form should be filled out and sent to UNMIK as part of the deportation notification process which has been spelled out above. This form asks host authorities for the key information needed by UNMIK to prepare adequately to receive these forced returnees. This information will also allow UNMIK authorities to

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alert host countries to reconsider deportation orders in cases where a vulnerable individual is slated for repatriation.

UNMIK would greatly appreciate host countries cooperation and assistance in making the forced repatriation of individuals from Kosovo a more smooth and consistent process.

Office of Returns and Communities
UNITED NATIONS MISSION IN KOSOVO

im Bu. kr. J. n. 2002/4132-1
Aktur, 112 Bilagsnr. 2

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**UNMIK Information Form
For Government Authorities Sending
Forced Returnee's back to Kosovo**

1. Name of Returnee (or head of household): _____ 2. Sex: M / F
3. Marital Status of Returnee: Single / Married / Divorced 4. Family Size: _____
- 4a. No. of school age children: _____ 4b. # of dependents traveling with individual: _____
5. Ethnicity: _____ 6. Place of origin (village/municipality/region): _____
7. Last place of residence in Kosovo (village/municipality/region): _____
- 7a. Has the host country made any assessment of the sustainability of living conditions (access to public and social services, including medical care, and utilities or special security considerations) for the individual/family in their place of former residence (i.e. A Kosovo Albanian returning to the Northern Mitrovica area)? If so to attach a copy:

8. Does the individual/family have relatives remaining in Kosovo? Where (exact address)? _____
9. Have other relatives or community members returned to Kosovo? Where? _____
10. Does individual/family own property or have a house? Condition of house: _____
11. Address or names of relatives/friends where individual/family intends to stay upon return: _____
12. Does the individual/family member have travel documents? Type/Issuing authority: _____
13. Date of arrival in host country: _____
14. Reason for deportation: _____
15. Was individual/family give notice prior to deportation? _____ 15a. Who was notified?(individual/family member/relative/friend/neighbor/physician/lawyer/contact person in Kosovo/NGO): _____
- 15b. How far in advance was notice given? _____
- 15c. Did the individual/family objected to or appeal against the decision to deport? if yes, on what grounds did they object and what reasoning was given by the competent court/tribunal? (Please attach any letters, written appeals, or court/tribunal decisions)

16. Did the individual or a family member being returned have a criminal record while in Country of Asylum? (if yes, please specify):

17. Does the individual or a family member being returned have any medical conditions, including mental illnesses or mental/physical disabilities, for which they are currently receiving treatment in host country? (if yes, please specify individual, diagnosis, type of medical condition/illness/disability, and type of treatment being received):

17a. Has the host country assessed whether any treatment for this medical condition/illness/disability is available in Kosovo and whether such treatment would be accessible to the individual/family member?

17b. How seriously would the lack of available treatment for this condition affect the returnee's health? Potentially life threatening/severely disabling/moderately disabling/no significant affect on day-to-day activities (please supply any medical assessment)

18. Was the individual/family a victim of or witness to serious violations of human rights or humanitarian law that led or could be expected to lead to trauma? If so, please provide a copy of any assessment that has been made of the likely psychological effects of return to Kosovo - or if no assessment has been made, explain why this was not thought necessary.

18a. Are such incidents or individuals responsible still a concern for the individual/family?

16 OKT. 2002

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16 October 2002

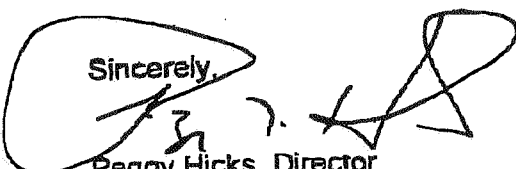
Dear Mr. Kjaergaard:

Thank you for your letter of 23 September 2002 concerning the request of Mr. Hans Boserup for access to copies of correspondence between your Ministry and UNMIK. I appreciate your efforts to consult with us on this matter. As to Mr. Boserup's request itself, I see no reason to restrict public access to these documents.

These letters refer specifically to matters of UNMIK's public policy in regards to the forced returns of minorities, persons with mental illnesses or other vulnerable cases to Kosovo. In so far as the letters do not deal with matters of a confidential or private nature (i.e. personal details of individuals not affiliated with the respondent), they should be considered to be in the public domain in the interests of transparency. Mr. Boserup, as the legal representative of _____ should have every opportunity to see and review this correspondence.

UNMIK has an open policy concerning vulnerable individuals that have sought protection abroad. Both minorities and persons with serious illnesses, especially mental illnesses, are at particular risk here as international assessments have shown. We greatly appreciate your cooperation with us and continued patience regarding avoidance of forced returns of such individuals to Kosovo at this time.

Sincerely,


Peggy Hicks, Director
Office of Returns and Communities
United Nations Mission in Kosovo

Michael Kjaergaard
Head of Division
Immigration Integration Affairs
Ministry of Refugees

cc. Ms. Merete Milo

Ministry of Refugee

Immigration Department
Immigration and Integration AffairsMs. Peggy Hicks
Director, Office of Returns and CommunitiesUnited Nations Interim
Administration Mission in Kosovo

BREVKOPI

Date: 23 SEP. 2002
File No: 3.U. 1-28-263.298
Sagsbeh.: nmi

Dear Madam Hicks,

Reference is made to the correspondence between the Permanent Undersecretary of this Ministry and the Head of the UNMIK concerning returns to Kosovo from Denmark.

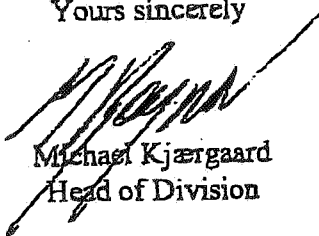
Please be informed that Mr. Hans Boserup, attorney for _____ has asked for copies of the correspondence, letters of 2, 3 and 6 September 2002, under the Danish legislation concerning Access to Public Administration Files. Copies are enclosed for your easy reference.

You are hereby kindly requested to inform us whether the United Nations Interim Administration Mission in Kosovo (the UNMIK) has objections to giving Mr. Hans Boserup access to the correspondence, wholly or in part.

We would very much appreciate an early response from the UNMIK.

Please forward your response, addressed to the Ministry, for the attention of Ms. Merete Milo in this division, to fax No.: +45 33 92 45 54 or by email: inm@inm.dk

Yours sincerely


Michael Kjærgaard
Head of Division



Secretary General's Special Representative for Kosovo,
Head of the United Nations Interim Mission in Kosovo
Mr Michael Steiner

Date: 6 September 2002
File No.: 2002/4132-1
Contact: mmi

Dear Michael Steiner

Thank you for the swift reply from the UNMIK, signed by the Director of the Office of Returns and Communities and sent by fax of 3 September 2002, to my letter of 2 September 2002 concerning the case of [redacted] who was refused entry to Kosovo by two representatives of the UNMIK Border Police in connection with a planned return from Denmark on 28 August 2002.

I must stress that the Danish Government is strongly concerned that foreigners who have been refused a residence permit for Denmark are repatriated as quickly as possible after the decision - or judgment. We are convinced that the Danish legal system providing for these decisions and judgments is in consonance with high human rights standards, allowing for appeals and for assistance to the person in question by counsel assigned by the State.

We are pleased to take note of the assurances given by the UNMIK that the UNMIK has a clear responsibility to work with host governments regarding Kosovar refugees and that it takes this responsibility very seriously. I would like to assure you that the Danish Government and the Danish authorities appreciate the great efforts and the valuable work of the UNMIK and all its staff. We are very pleased with the existing cooperation. The Danish Government fully supports the UNMIK.

Please find below our comments on the two concrete cases addressed in this letter. On that background, the Danish authorities find that there is no basis for suspending returns to Kosovo as requested by the UNMIK in its letter of 3 September 2002. If the UNMIK still finds that there is a need for discussing this issue in detail directly with the responsible authorities, we are prepared to let officials attend meetings either in Denmark with a delegation from the UNMIK or with the UNMIK in Kosovo.

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Our detailed comments to the cases are as follows:

1. You stated that, according to the information given to the UNMIK, _____ has been diagnosed as mentally ill.

In reply to this I would like to state that, for use in connection with the consideration of his application, the Danish authorities received a medical certificate of 13 August 2002 saying that no signs of a psychotic or mental disorder were found. It also appears that _____ suffers from PTSD and mixed dissociative disorder and that he has been given anti-depressant treatment for four months. It finally appears that he has said that he has been offered anti-depressant treatment in Kosovo.

The Danish authorities found on the basis of this medical certificate that the person in question does not suffer from a mental illness of such serious nature that it gave rise to a suspension of the planned return.

I would like to state in this connection that the Danish immigration authorities regularly receive applications for a residence permit for humanitarian reasons from applicants who suffer from mental problems in the form of PTSD, depression, etc., but that such mental disorders do not in themselves make an applicant eligible for a residence permit on humanitarian grounds. On the other hand, very serious mental illnesses, such as the disorders schizophrenia and paranoia, may in themselves make an applicant eligible for a residence permit on humanitarian grounds according to case law.

This practice applies to applicants of all nationalities who have been refused asylum.

Moreover, this practice is in accordance with the UNHCR recommendations from April 2002, "UNHCR Position on the Continued Protection Needs of Individuals from Kosovo". This paper states that individuals who are particularly vulnerable may have special needs which have to be taken into account in connection with their return to Kosovo, including "persons with severe and chronic mental illness whose condition requires specialised medical intervention of a type not yet available in Kosovo".

You stated in your fax of 3 September 2002 that the UNMIK Office of Returns and Communities disagreed in the return of _____ and that this opinion had been passed on to the Danish authorities before the return was effected.

To this I find it necessary to state that the UNMIK confirmed by e-mail of 26 August 2002 to the Danish police that it would accept _____ I enclose a copy of the e-mail from the UNMIK.

Later the same day, the Danish police received an e-mail from an officer of the UNMIK, Mr Enver Vrajolli, who forwarded an e-mail of 16 August 2002 to Mr Hans Boserup, attorney. This e-mail gives some general observations on the practice of the UNMIK in relation to the reception of mentally ill persons.

It does not appear from the e-mail to the Danish police that the confirmation from the UNMIK of its acceptance of _____ had been revoked.

Already considering the fact that the e-mail to Mr Boserup was dated 16 August 2002, the Danish authorities have not otherwise had any reason to assume that the forwarding of this e-mail supposedly revoked the acceptance granted earlier on 26 August 2002.

The Danish authorities therefore presumed that the UNMIK would receive _____

The Danish authorities are aware that e-mails have been exchanged between Mr Vrajolli and _____ Danish attorney, Mr Boserup.

The nature of the correspondence between Mr Vrajolli and Mr Boserup might give the impression that the UNMIK acts on the basis of the impression that Mr Boserup is a Danish official.

This is supported by the fact that, without involving the Danish authorities and without having made any medical examinations itself, the UNMIK assessed _____ mental state on the basis of information provided unilaterally by Mr Boserup in a draft questionnaire which is intended for government authorities as can be seen from the heading, "UNMIK Information Format for Government Authorities Sending Forced Returnee's back to Kosovo". I enclose a copy of the questionnaire.

I would like to emphasise that Mr Boserup is a self-employed professional lawyer who represents _____ Mr Boserup does not in any way represent the Danish Government and is not – as Danish public authorities – subject to any duty of neutrality or objectivity.

We conclude that UNMIK's refusal of _____ was not based on the correct facts.

In this connection I would like to inform you that the Danish police has returned a total of 88 persons by police escort to Kosovo without receiving any objections or complaints from the UNMIK.

2. The UNMIK then stated in its letter of 3 September 2002 that the UNMIK has been informed of the return of _____ which was planned for 4 September 2002. The UNMIK mentioned in that connection that _____ has been diagnosed as seriously depressive and suicidal.

For your information, the decision on expulsion of _____ was not made by the Danish immigration authorities, but by a Danish court in June 2002 in connection with a criminal case against him. _____ could have relied on his illness during the trial before the courts.

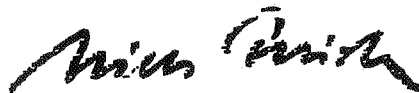
The UNMIK confirmed by e-mail of 2 September 2002 that it would receive _____ I enclose a copy of this e-mail too.

I have sent copies of this letter to the Danish Ministry of Foreign Affairs, Department for Consular Matters, and the Danish Steering Unit in Pristina.

- 4 -

I avail myself of this opportunity to renew to you the assurances of my highest consideration.

Yours faithfully



Niels Preisler
Permanent Undersecretary

Encl.

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Mission in Kosovo



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au Kosovo
Administration Interimaire

3 September 2002

Dear Mr. Preisler,

I am in receipt of your letter dated 2 September 2002 regarding the unfortunate situation that occurred on 28 August in regards to _____ who was refused entry into Kosovo after being deported from Denmark. According to information I have received _____ has been diagnosed as mentally ill and the UNMIK Office of Returns and Communities did not recommend or agree with the deportation due to the fact that he has neither family nor accommodation in Kosovo, and his disorder cannot be adequately treated in Kosovo at this time. This information was transmitted to the Danish authorities prior to the deportation taking place.

Additionally, I have been informed that a second deportation is planned for 4 September 2002, that of _____ who has been diagnosed as severely depressed and suicidal. Undoubtedly, UNMIK has a clear responsibility to work with host governments regarding Kosovan refugees and we take this responsibility very seriously. We have asked, however, that returns of this nature be temporarily suspended until such a time as appropriate care is available. In accordance with that policy, due to the severity of these returnees' mental disorders and the immediacy of this situation, I would ask that these returns be suspended until such arrangements can be made. Please be assured that UNMIK is working to resolve this situation as expeditiously as possible.

I apologize for the inconvenience caused in this matter and appreciate the continuing spirit of cooperation we share on these most important matters.

Sincerely yours,

Peggy L. Hicks
Director, Office of Returns and Communities

Mr. Niels Preisler
Permanent Undersecretary
Ministry of Refugee Immigration and
Integration Affairs
Halbergsgade 6
DK-1057 Kobenhavn, K
Denmark



Secretary General's Special Representative for Kosovo,
Head of the United Nations Interim Mission in Kosovo
Mr. Michael Steiner

Date: 2 September 2002
J. nr.: 2002/1133
Sagsbeh.: mmi

Dear Michael Steiner

In connection with the planned return on 28 August 2002 of a Kosovar Albanian who has been refused asylum in Denmark, the accompanying Danish police officers were refused entry on arrival at the airport of Pristina and were referred to staying in the airplane until its return flight to Ljubiana.

They were refused entry by two representatives of the Kosovo Border Police who stated that they acted on the basis of orders from Mr Enver Vrajolli from UNMIK. The reason for the refusal is supposed to be that UNMIK will not accept persons who suffer from a mental illness, and the reason for Mr Vrajolli's decision was stated to be information from attorney in Denmark, Mr Hans Boserup.

Prior to the return, the Danish police had notified the UNMIK – on 26 August 2002 – about the return in accordance with the usual procedure, and on the same day the UNMIK had confirmed acceptance of without any comments.

The Danish authorities have knowledge of correspondence between Danish attorney, Mr Boserup, and the particular employee of UNMIK, Mr Vrajolli. The Danish authorities are also aware that the issue of illness has been mentioned in this correspondence.

However, UNMIK has not submitted the issues raised by attorney to the Danish authorities. The Danish authorities therefore have to assume that the matter causes no problems when UNMIK confirms its acceptance of the person in question.

The Danish authorities find this refusal absolutely unacceptable and completely contrary to the very satisfactory cooperation between UNMIK and the Danish authorities so far.

I therefore presume that, on behalf of UNMIK, you are able to confirm by tomorrow, Tuesday, 3 September 2002, to the Ministry of Refugee, Immigration and Integration Affairs by fax at No. +45 33 92 45 54 that a similar situation will not arise in connection with the return planned by the Danish police for Wednesday, 4 September 2002, so that future returns will follow the usual procedure so far.

I have sent copies of this letter to the Danish Ministry of Foreign Affairs, Department for Consular Matters, and the Danish Steering Unit in Pristina.

Yours faithfully

Niels Preisler

Niels Preisler

Permanent Undersecretary