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UNITED NATIONS
HIGH COMMISSIONER
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23 September 1998

FURB. JUGOSLAVIEN
(31)

Re: FRY. Draft Evaders

Reference is made to our letter dated 28 August 1998, ROBNC 0530/98, with the attachments Guidelines for Determining Refugee Status of Draft Evaders and Deserters from FRY Army (VJ), issued by the Protection Section of UNHCR Belgrade on 12 August 1998, and UNHCR Position Paper on the Treatment of Asylum-seekers from Kosovo in Countries of Asylum, dated 25 August 1998.

We have recently been informed by the Former Yugoslavia Liaison Office in Geneva that the first document, Guidelines for Determining Refugee Status of Draft Evaders and Deserters from FRY army (VJ), which was shared with you purely for background information should be disregarded. Following the issuance of the UNHCR Position Paper on the Treatment of Asylum-seekers from Kosovo in Countries of Asylum, dated 25 August 1998, the situation of draft evaders and deserters should be considered in accordance with the later document and the relevant provisions of the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status.

We apologise for any inconvenience this may have caused.

Yours sincerely

Kallu Kalumiya

Kallu Kalumiya
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for the Baltic and Nordic Countries

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cc: Mr. Svend Waeaver, Ministry of Foreign Affairs



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For Bosnia (31)

FACSIMILE MESSAGE

To: Louise Juelskiär Asylafdelingen DRC	Destination fax number: 007 45 33 91 45 07
From: Brita Helleland Liaison Officer for former Yugoslavia	Return fax number: +46 8 457 4887 Tel: +46 8 457 4895 Email: helleland@unhcr.ch
Date: 24 August 1998	No. of pages including this page: 4

File code: 10.4.01

Other code: ROBNC 0527/98

Subject: FR Yugoslavia: Draft Evaders

Please find attached Guidelines for Determining Refugee Status of Draft Evaders and Deserters from the FRY Army (VJ), issued by the Protection Section of UNHCR Belgrade.

Best regards

A handwritten signature in dark ink, appearing to be 'Brita'.

Guidelines for Determining Refugee Status of

Draft Evaders and Deserters from the FRY Army (VI)

The Case of Sandzak Muslims and Kosovo Albanians

Conscription practice

General practice of Yugoslav military authorities since 1989 shows that only a small number of Kosovo Albanians have been called up to serve in the army. This applies also to ethnic-Albanians from Montenegro, but to a lesser extent. As for Sandzak Muslims, they have been called to serve in the army, as required for all Yugoslav citizens, though probably at a lower rate than Serbs and persons from other ethnic groups (e.g. Romas). The loyalty of Kosovo Albanians and Sandzak Muslims, perceived by military authorities as doubtful, certainly constitutes the fundamental reason for this policy.

Presently, the on-going non-declared war between Kosovo Albanian rebels and Serb security forces rules out completely the conscription of Kosovo Albanians. However, at the time of writing, we have no information on the particular situation of ethnic Albanians from areas other than Kosovo.

Regarding Sandzak Muslims, during the month of July 1998, Sulejman Ugljanin, leader of the Democratic Action Party for Sandzak (SDA) and President of Sandzak's Muslim National Council, repeatedly called on them not to respond to VJ's draft notices. Calling for peace, he stated that "the VJ does not have the right to request Moslems to do their obligatory military service since the Yugoslav state has not resolved the status of Bosniaks and the Sandzak". The SDA was joined by the Bosniak Democratic Party (BDS) in its protest consequent to the entry of VJ elements into villages of Tutin municipality (Sandzak) where refugees from Kosovo were housed. Their announcement mentioned that "the entry of the army into these villages marked the beginning of the kosovization of Sandzak". In these circumstances, it is unlikely that the VJ may want to increase the number of Sandzak Muslims in its ranks.

Notwithstanding, it cannot be excluded that Kosovo Albanians and Sandzak Muslims may receive call ups or summons to show up at military barracks or offices, even though they will finally not be asked to serve in the army. Until recently this was a means to exert pressure on Kosovo Albanians and induce them to leave the country. Harassment could occur on those occasions.

Sanctions

Articles 214 and 217 of the Yugoslav Penal Code foresee that draft evaders and deserters may be convicted up to 10 and 15 years imprisonment respectively. The maximum sentences are foreseen for draft evaders and deserters who leave the Federal Republic of Yugoslavia and stay abroad. Sentences can be reduced if indicies show up voluntarily to do or complete their military service.

In the years immediately preceding the entry into force of the Yugoslav Amnesty Law of June 1996, draft evaders from the Yugoslav Army were usually sentenced to small fines or their sentences were suspended. Only a few of them were ever imprisoned and rarely for more than three months.

As for deserters, approximately one third of cases were sentenced to imprisonment, usually from three months to one year.

Kosovo Albanians, and to a lesser extent Sandzak Muslims, did not seem to be more exposed to punishment or to more severe punishment than Serbs, Montenegrins or Romas.

NGOs active in the field of human rights inform that since the beginning of the conflict in Kosovo (end of February 1998) several Serbs have deserted the army or have tried to evade the draft. We were also informed that a few Montenegrin Muslims deserted. Some of them later returned to their places of origin, of whom one, who recently reported his return to the police, was subsequently beaten up by the military police though not arrested. We are not aware of the fate of the other "returnees". We also learned that the sentence of a Serb draft evader was suspended and that an ethnic-Slovak deserter was sentenced to serve in the army for the remaining part of his regular military service. This having been said, and irrespective of the nationality of each case, it is not yet possible to draw general conclusions on the military authorities' present policy regarding draft evaders and deserters.

Eligibility guidelines

The above information, to be regularly updated as events in the country unfold and more information is available, attempts to provide basic elements of the general background in which the eligibility claims of Yugoslav draft evaders and deserters are assessed. The brutality of the conflict in Kosovo, in which civilians are directly targeted, and which

results in horrendous violations of human rights and international humanitarian law, should obviously be considered as a fundamental element as well.

In this context, UNHCR's position on conscientious objection, desertion and draft evasion should be that described in the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status, paragraphs 167-174. Situations in which deserters and draft evaders can be refugees include the following:

- where a person can show that he would suffer disproportionately severe punishment for a military offence on account of his race, religion, nationality, membership of a particular social group or political opinion;
- where participation in military action would have been contrary to a person's genuine political, religious or moral convictions;
- where the type of military action with which the person concerned does not wish to be associated was contrary to basic rules of human conduct.

In our view, UNHCR's position should be that persons who since the beginning of the conflict in Kosovo, by means of desertion or draft evasion, avoided having to participate in the fighting and thereby being a possible accomplice to violations of human rights and international humanitarian law, deserve international protection.

Protection Section
UNHCR Belgrade
12 August 1998