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OPERATIONAL GUIDANCE NOTES

SERBIA

1. INTRODUCTION

1.1 This document summarises the general, political and human rights situation in Serbia and provides information on the nature and handling of claims frequently received from nationals/residents of that republic. It must be read in conjunction with the Serbia section of the Serbia & Montenegro country assessment and any CIPU Country bulletins.

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

1.4 Serbia is a republic within Serbia & Montenegro (SaM), 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 Section of the Federal Republic of Yugoslavia Country Assessment April 2003. Other source documents are listed at the end of this note.

2. COUNTRY ASSESSMENT

2.1 The state union of Serbia and Montenegro (SaM) is made up of two republics, Serbia and Montenegro. SaM replaced the Federal Republic of Yugoslavia (FRY) on 4 February 2003 and is a looser union than its predecessor. The joint administration is responsible for defence, foreign affairs, international relations and human rights: all other matters are dealt with separately by the respective republics. The agreement is for an initial period of three years, after which it can be reviewed and the individual republics have the right to withdraw following a referendum. [para 4.8]

2.2 Although Kosovo is a province of Serbia, it is administered by the United Nations and is therefore dealt with in a separate document.

2.3 In terms of its area, population and economy, Serbia is much the larger of the two republics. It is a constitutional republic with a president and parliamentary system of government based on multi party elections. Following free and fair elections towards the end of 2000, the repressive Milosevic regime was replaced by a coalition of parties called DOS: with Vojislav Kostunica elected President of FRY and Zoran Djindjic elected Prime Minister of Serbia. During 2002, growing divisions within DOS, largely between the factions of Kostunica's conservative nationalists and Djindjic's progressive reformists threatened the stability of the government. [paras 5.5.,5.6.]

2.4 With the demise of FRY, Kostunica lost his position as president and his attempts to become President of Serbia have been thwarted by the failure of recent elections to produce the 50% turnout required for a valid result. It is likely that this law will be amended before further elections are held. As a temporary solution, Parliamentary Speaker Natasa Micic has the position of acting President. [paras 4.13.,4.14.,5.17.]

2.5 Despite its difficulties, the government has made considerable progress in several areas since coming to power. These include reforming Serbia's administrative and legal institutions; devolving more power to the regions; bringing stability to southern Serbia (the Presevo Valley); and fostering better relations with its neighbours and with the international community. The government has also cooperated to a large degree with the International Criminal Tribunal for the former Yugoslavia (ICTY), though there remains some room for improvement in this area. [paras 3.4.]

2.6 These positive developments in Serbia seemed to be threatened by the assassination on 12 March 2003 of Prime Minister Zoran Djindjic. It is thought that organised crime groups with links to the Milosevic regime were responsible for the assassination. Zoran Zivkovic, also from Djindjic's Democratic Party, has been appointed to replace him as Prime Minister. He is expected to continue Djindjic's reformist policies. [paras 4.9.]

2.7 Following the assassination, the government declared a State of Emergency, giving it increased powers which allow the police and army to arrest suspects without warrant and to detain them for 30 days without charge. Around 1000 people have been detained under these provisions. Also a number of members of the judiciary and police with alleged links to criminal groups have been sacked or arrested and certain newspapers have been banned. [paras 4.10.]

2.8 Western governments including the UK see these measures as a necessary purge of criminal elements and remnants of the Milosevic regime and have supported the Serbian government's strong stance. There is no evidence to suggest that the emergency powers are being abused to target political opposition or minority groups. [paras 4.11.]

2.9 The government of Serbia has generally respected the human rights of its citizens and its overall human rights record is a radical improvement on that of the Milosevic administration. Although corruption and political influence within the police and judiciary have not yet been entirely eradicated and there have been some reports of police brutality, the Serbian authorities are generally able to provide a sufficiency of protection to citizens. [paras 5.6, 6.1]

2.10 Under the previous regime there were serious abuses directed towards ethnic Albanians and other minority groups. These groups are no longer generally at risk in Serbia. As with many central and east European countries, there are some concerns about discrimination towards ethnic minorities and the Roma community in particular. However, a law on National Minorities, passed in 2002 and approved by the Council of Europe, gives legal protection to minorities equivalent to that received in other European Countries. [paras 6.40., 6.80.]

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 the republic of Serbia. It also contains any common claims which 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 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 applicant 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 applicant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the applicant 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)

3.6 Ethnic Albanians

Treatment

3.6.1 Most of the ethnic Albanian community live in the Presevo Valley, an area in southern Serbia close to the border with Kosovo, which comprises the municipalities of Presevo, Bujanovac and Medvedje. About 70,000 ethnic Albanians live in the Presevo area, where they form the majority of the population; a further 5,000 live in Belgrade and other smaller communities throughout the Republic. [para 5.58.]

3.6.2 Under Milosevic, ethnic Albanians were subjected to harassment and discrimination, which escalated during the Kosovo war in 1999. From December 1999, a growing number of violent attacks on Serb police targets began occurring in the Presevo area, carried out by an ethnic Albanian military group called the UCPMB. This unrest continued during 2000, when over 30 Serb police officers were killed and several thousand ethnic Albanians fled the area for Kosovo. [paras 6.60.]

3.6.3 Following the change of government, Serb forces showed great restraint in the face of regular attacks from the UCPMB. The Deputy Prime Minister of Serbia, Mr Covic, acknowledged that ethnic Albanians in the Presevo area had genuine grievances and proposed a detailed peace plan, which ultimately formed the basis of a negotiated settlement with the ethnic Albanian leaders in the area. In May 2001, the UCPMB accepted an amnesty from the Serb authorities, handed over weapons, disbanded and withdrew from the Presevo area. [paras 6.61. - 6.62.]

3.6.4 Significant progress has been made in implementing the Covic plan. In particular, a multi-ethnic police force was established to reflect the ethnic make up of the local population, which has received wide approval among the ethnic Albanian community. Incidents of police harassment of ethnic Albanians in southern Serbia have decreased significantly and cases of police misconduct are addressed. [paras 6.63. - 6.64., 6.70.]

3.6.5 Previously boycotted by the ethnic Albanian community, local elections were held in the three municipalities on 28 July 2002, for the first time in 10 years. These elections (which generally met international standards) represented a further step towards the peaceful resolution of tensions in the region. Following the elections, representation in local government structures broadly reflects the ethnic balance of the local populations. [para 6.67.]

3.6.6 The positive developments in the Presevo area have been hailed by the international community as a great success for the Serb administration and the local ethnic Albanian leaders. Most ethnic Albanians who fled to Kosovo have now returned to their homes, assisted by UNHCR, who organised "go and see" visits for those considering return. Although there have been sporadic incidents of violence from ethnic Albanian extremists, the situation in Presevo has continued to be generally stable and peaceful. [para 6.70.]

3.6.7 In general, ethnic Albanians are no longer at risk of persecution in Serbia and it will not be appropriate to grant asylum solely on the basis of membership of this group.

Sufficiency of protection

3.6.8 There is generally a sufficiency of protection for ethnic Albanians in Serbia.

Internal flight / relocation

3.6.9 As this category are not generally at risk, internal relocation is not a relevant option.

Conclusion

3.6.10 Given general improvements in the situation for ethnic Albanians in Serbia, applications from this category will not generally qualify for asylum or humanitarian protection. Applications from ethnic Albanians can generally be certified as clearly unfounded.

[paras. 6.64.- 6.69.][Supp. Doc. A]

IAT determination:

Meritan HASANI [2002] UKIAT 06398 Heard 27 November 2002 Promulgated 4 February 2003:

- no real risk of a breach of Article 3 in returning this appellant to the Presevo Valley via Belgrade.
- the objective country info (CIPU report, additional letters and reports from the FCO and UNHCR) quote the security situation as vastly improved and that the situation for ethnic Albanians in the rest of Serbia is improving.
- the UNHCR letter 05.09.02 which must be treated as more objective than FCO info states that individuals returned through Belgrade should not face undue hardships provided they have the necessary travel documentation. Part 4 of the CIPU bulletin 1/2002 states there should not be any difficulty in obtaining the appropriate documentation.

3.7 Roma

Treatment

3.7.1 Discrimination against the Roma community occurs in all fields including housing, education social and health care and employment.

3.7.2 Intimidation and harassment is also common and violent attacks by skinheads and similar groups have not always been adequately dealt with by police. There have also been cases of police brutality towards Roma. Complaints about police misconduct are not always adequately dealt with. [para 6.71.]

3.7.3 There are about 45,000 Roma refugees in SaM, mostly from Kosovo. In Belgrade and other towns in Serbia and Montenegro, many Roma IDPs live in squalid illegal settlements, without access to electricity, running water or sanitation. Such living conditions give rise to a higher incidence of ill-health and infant mortality than among the general population. [para 6.76.]

3.7.4 The problems for Roma IDPs are exacerbated by difficulties regarding registration and acquiring identity cards. Most who fled from Kosovo do not have adequate documentation or evidence of citizenship and are therefore unable to access to health, social welfare and education for their children. For the most part Roma have no prospect of finding employment. Registration and attendance of Roma at schools is very low. [para 6.79.]

3.7.5 Republic level laws provide for equal rights for all citizens, regardless of ethnic group, religion, language, or social status. The Law on the Protection of Rights and Freedoms of National Minorities 2002, approved by the Council of Europe, gives legal protection to minorities equal to that in other European countries and specifically designates the Roma community as a national minority in Serbia. The government has appointed a federal minister for national and ethnic minorities and a team has been established to deal with ethnic minority issues.[paras. 5.1., 6.80.]

3.7.6 Although Roma may experience considerable difficulties in relation to discrimination, harassment and their living conditions, the cumulative effect of these will not usually be sufficient to warrant a grant of asylum or humanitarian protection.

Sufficiency of protection

3.7.7 Although there is sufficiency of protection for most Roma in Serbia, there may be individuals whose cases have not been dealt with by the police in a satisfactory manner.

Internal flight / relocation

3.7.8 As Roma applicants will not usually be at risk of persecution or in need of humanitarian protection, the issue of internal relocation will not usually arise. However, internal relocation to another part of Serbia should be considered in relation to any cases where a grant of asylum or humanitarian protection is being contemplated. However, options for Roma to improve their living conditions by relocating are likely to be minimal.

Conclusion

3.7.9 It will usually not be appropriate to grant asylum or humanitarian protection in relation to applications from this category and most cases will be clearly unfounded. A grant of asylum or humanitarian protection would only be appropriate in exceptional cases, where an individual is able to show that he/she remains at risk because of specific factors related to his/her particular personal history and that there was not a sufficiency of protection available and internal flight was not an option.

3.8 Evasion of military service

3.8.1 A large number of young men left Serbia during 1998 and 1999 to avoid being drafted to serve in the Kosovo war. Draft evasion is punishable by imprisonment in time of war. However, the new 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. Military service offences committed after 7 October 2000 would be dealt with in a proportionate manner. [paras 5.26. - 5.27.]

Sufficiency of protection

3.8.2 Not applicable as this category is not at risk.

Internal flight / relocation

3.8.3 Not applicable as this category is not at risk.

Conclusion

3.8.4 People who are wanted for military service offences prior to 7 October 2000 would be subject to the Amnesty Act and would not be prosecuted. Applicants from this category are not entitled to asylum or humanitarian protection and will be clearly unfounded. Punishment for military service offences committed after 7 October 2000 would not amount to persecution or a breach of human rights. [para. 5.32.]

3.9 Political activists

3.9.1 During the Milosevic era, political opponents and critics of the government were routinely persecuted. Persecution could be via official means such as the police / judicial system or by direct intimidation and in some cases murder by criminal elements associated with the regime.

3.9.2 Under the new government, political opposition is accepted as part of the democratic process. Although corruption has not been entirely eradicated from the police and judicial system, there has been a fundamental change in the approach of the authorities and there is no evidence that the abuses of the former regime have continued to any significant extent. [paras 6.13. - 6.16.]

Sufficiency of Protection

3.9.3 The government is taking urgent steps to eradicate corrupt and criminal elements from its structures. There is a sufficiency of protection for political activists.

Internal flight / relocation

3.9.4 In cases where an individual was targeted by criminal elements, it is unlikely that relocation would make their position significantly safer.

Conclusion

3.9.5 Applications relating to persecution by the Milosevic regime (ie pre-October 2000) will not generally qualify for asylum or humanitarian protection given the change of government; neither will applications claiming persecution by the current administration. These cases will usually be clearly unfounded.

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 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 Possible categories for Discretionary Leave

4.4 Unaccompanied minors

4.41 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 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. [para 6.91.] Efforts should be made to verify the claimed age before deciding the case. Unaccompanied minors without a family to return to should if they do not qualify for leave on any more favourable grounds be granted Discretionary Leave for one year or until their 18th birthday, whichever is the shorter period.

4.5 Medical Treatment in Serbia

4.51 Applicants may claim they cannot return to Serbia due to a lack of specific medical treatment. See API on ECHR and DL and IDI. Where the lack of treatment on return would make removal contrary to Article 3 a grant of discretionary leave to remain will be appropriate.

4.52 Although Serb citizens are legally entitled to free health treatment, years of neglect and corruption under the Milosevic regime have seriously damaged the health service. However, treatment and medication for most conditions (including mental health conditions) are available in Serbia, though payment is usually likely to be required. [para 5.33.]

4.53 As the Article 3 threshold will not be breached in the great majority of medical cases, the grant of Discretionary Leave will usually not be appropriate.

5. RETURNS

5.1 Return to Serbia - not via Kosovo

5.11 The return of people from Serbia **should not** be made via Kosovo. Although the Immigration and Appeals Tribunal has accepted this geographically convenient route, there are political reasons why it should not be used. The UN Mission in Kosovo (UNMIK) has a mandate and responsibility to accept back any former residents of the province. But they are not prepared to accept individuals who do not originate from Kosovo. The Foreign and Commonwealth Office has made it very clear that this position must be respected.

5.2 Removal directions

5.21 Removal directions should specify **Serbia and Montenegro (Serbia)**. The abbreviation "SaM" should not be used. There appears to be a number of cases where applicants have been accepted as being from Serbia (mostly Presevo) and removal directions have been wrongly set for Kosovo. In such cases, the removal directions should be amended - either formally or by an undertaking from the Presenting Officer.

5.3 Returning ethnic Albanians to Serbia - security issues

5.31 All unsuccessful applicants from Serbia should be returned there, via Belgrade. It has sometimes been suggested that returning ethnic Albanians from southern Serbia via this route could place them at risk of harassment, discrimination or persecution. We are not aware of any evidence to support this view. [paras. 6.64. - 6.66., 6.69.]

IAT determination:

Ardi CELAJ [2002] UKIAT06010, heard 21.11.02 and notified 13.1.03 . Ethnic

Albanian male from Serbia.

IAT held that they were satisfied that "there is no reasonable likelihood of this appellant being subjected to any persecutory treatment in undertaking the journey from Belgrade to the Preshevo Valley".

Meritan HASANI [2002] UKIAT 06398 Heard 27 November 2002 Promulgated 4 February 2003 (see above)

5.4 Documentation

5.41 The SaM authorities have indicated to the Immigration Service that they will accept the return of individuals whom they accept as being SaM nationals. For individuals without a valid national passport/travel document they will accept applications lodged on behalf of the United Kingdom Immigration Service, (UKIS) by the Immigration Service Documentation Unit, (ISDU). In order to be able to issue a travel document the SaM authorities will require some original supporting documentary evidence such as an expired passport, identity card, or a driving licence.

5.42 For applications without acceptable supporting documentary evidence, the SaM authorities can verify identity and nationality details by referring back to official records held in Serbia and Montenegro, but not in the Kosovo region at this time. For any such referral to be effective, the applicant's full name, place of birth, date of birth, address details and photograph are required.

5.43 The SaM Embassy is not currently authorised to allow the UKIS to remove individuals using a European Union Proforma Removal Letter (EU Letter), though discussions with the SaM authorities about this issue are ongoing.

Wherever possible, caseworkers should be encouraged to obtain supporting evidence of identity and nationality, as this may be crucial to the documentation process.

5.5 Voluntary assisted returns programme

5.51 *Any failed asylum seekers from Serbia should be directed to the Voluntary Assisted Returns Programme*, which is organised by the International Organisation of Migration on behalf of the Government. Applications should be registered with Refugee Action offices at The Old Fire Station, 150 Waterloo Road, London SE1 8SB tel 020 7654 7700.

6. UK VISAS: ENTRY CLEARANCE FROM SERBIA

6.1 Visa applications should be made at the British Embassy in Belgrade. The waiting time for an interview is about four weeks from receipt of application. If the ECO is satisfied that immigration rules have been met, the visa is usually issued the same day. If further documents or enquiries are required, the waiting time can be extended by a few days to months, depending upon the situation. Therefore, the earliest a settlement visa can be issued is 4 weeks.

7. SOURCE DOCUMENTS

Supp. Doc. A. UNHCR letter 5.09.02

**Country Information and Policy Unit
Asylum and Appeals Policy Directorate
May 2003**