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OPERATIONAL GUIDANCE NOTE

SERBIA

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1. Introduction

- 1.1** This document evaluates the general, political and human rights situation in Serbia and provides guidance on the nature and handling of the most common types of claims received from nationals/residents of that country, including whether claims are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Caseworkers must refer to the relevant Asylum Instructions (AIs) for further details of the policy on these areas.
- 1.2** This guidance must also be read in conjunction with any COI Service Serbia Country of Origin Information at:
- http://www.homeoffice.gov.uk/rds/country_reports.html
- 1.3** Claims should be considered on an individual basis, but taking full account of the guidance contained in this document. In considering claims where the main applicant has dependent family members who are a part of his/her claim, account must be taken of the situation of all the dependent family members included in the claim in accordance with the AI on Article 8 ECHR. If, following consideration, a claim is to be refused, caseworkers should consider whether it can be certified as clearly unfounded under the case by case certification power in section 94(2) of the Nationality Immigration and Asylum Act 2002. A claim will be clearly unfounded if it is so clearly without substance that it is bound to fail.
- 1.4** With effect from 1 April 2003 Serbia is a country listed in section 94 of the Nationality Immigration and Asylum Act 2002. If, following consideration, a claim made on or after 1 April 2003 by someone who is entitled to reside in Serbia is refused, caseworkers should certify it 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. Guidance on whether certain types of claim are likely to be clearly unfounded is set out below.

Source documents

- 1.5 A full list of source documents cited in footnotes is at the end of this note.

2. Country assessment

- 2.1 The Republic of Serbia is a parliamentary democracy with approximately 7.5 million inhabitants.¹ Boris Tadic was elected President in the 2004 elections which were deemed by independent observers to be in line with international standards.² Parliamentary and local elections held in May 2008 bought about by the collapse of the coalition government and the election of Mirko Cvetkovic as the new Serbian Prime Minister. These elections were also deemed to be in line with international standards showing an increase in Pro EU/ Pro Reform parties and a corresponding decline in the number of deputies from more radical and nationalist parties.³
- 2.4 Following the fall of the Milosevic regime (in October 2000), the human rights situation in Serbia has greatly improved. Serbia has ratified the majority of human rights-related international conventions and since its separation from Montenegro in 2002, remains bound by these agreements. Minority Councils' for most of the major ethnic groups in Serbia have been established, which provide a more effective means for minorities to raise issues of concern with the authorities and the Serbian Government strategy for tackling discrimination and better integration of the Roma community is seen to be a positive development. The Serbian Government has also taken positive steps to address the inter-ethnic related problems in South Serbia.⁴
- 2.5 While the government continued to address human rights in Serbia during 2007, some problems did persist. These included: corruption in the police and judiciary; inefficient and lengthy trials; harassment of journalists, human rights workers and others critical of the government; limitations on freedom of speech and religion; societal intolerance; discrimination against ethnic minorities (particularly Roma); violence against women and children and trafficking in persons.⁵
- 2.6 Serbia improved its cooperation with the International Criminal Tribunal for the Former Yugoslavia (ICTY) during 2007 when the government assisted in the arrests of Zdravko Tolimir and Vlastimir Djordjevic sought by (ICTY) for war crimes.⁶ And on 22 July 2008, Radovan Karadzic, one of Serbia's most wanted war criminals, was arrested after 13 years on the run.⁷
- 2.7 In May 2006, the Serbian parliament approved a new "National Strategy for Reform of the Judiciary" intended to bring Serbian criminal legislation in line with EU standards, rationalise the court system and improve the training of judges and prosecutors. However, corruption in the Court is a serious problem. The judicial system suffered from a backlog of cases, underpaid judges and prosecutors, long delays in filing formal charges against suspects and failure of legislative institutions to heed judicial rulings.⁸
- 2.8 Whilst the Serbian constitution prohibits torture and other forms of ill treatment, police did at times during 2007 beat detainees and harass persons usually during arrest or initial detention. However, despite reports of corruption and impunity in the police force, the government did take measures to address these reports and the Interior Ministry Inspector General's Office

¹ USSD 2007 (Serbia – introduction)

² USSD 2007 (Serbia – introduction)

³ FCO Country Profile (23 July 2008)

⁴ FCO Country Profile (23 July 2008)

⁵ USSD 2007 (Serbia – introduction)

⁶ EC Report Serbia 2006 p.12

⁷ BBC online – Profile of Radovan Karadzic - <http://news.bbc.co.uk/1/hi/world/europe/876084.stm>

⁸ Freedom House Report 2008 Serbia

(Internal Control) obtained increased authority to actively investigate abuses. For example, it initiated disciplinary measures against approximately 100 officers, primarily traffic police, and prosecutors brought charges in all cases.⁹

- 2.9** Like many countries in the Balkans region, Serbia faces a serious threat from organised crime. Criminals have 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 have slowed social and economic development.¹⁰
- 2.10** Kosovo declared its independence from Serbia on 17 February 2008.¹¹

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. It also contains any common claims that may raise issues covered by the AI 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 relocation are set out in the relevant AI'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 AI 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 the AI on Assessing the Claim)
- 3.5** All AIs can be accessed via the UKBA website at:

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

Main categories of claim from Serbia

3.6 Roma

- 3.6.1** Most claimants will apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of the ethnic Serb population due to their Roma ethnicity and that the authorities are not able to offer sufficiency of protection

⁹ USSD 2007

¹⁰ FCO Country Profile (23 July 2008)

¹¹ FCO Country Profile (23 July 2008)

- 3.6.2 Treatment** Minorities constitute 25-30% of Serbia's population and include ethnic Hungarians, Bosniaks, Roma, Slovaks, Romanians, Vlachs, Bulgarians, Croats, Albanians and others. Roma constitute 1.4% of the population.¹²
- 3.6.4** In July 2006, the UN Development Programme's social vulnerability report found that the Roma population in Serbia continued to live in conditions of extreme poverty with limited access to education and healthcare and that the situation for Roma remained largely unchanged since aid efforts began.¹³
- 3.6.3** Roma continued to be targets of verbal and physical harassment from ordinary citizens and from societal discrimination during 2007. It was reported that they faced very difficult living conditions as well as difficulties in obtaining personal documents hindering access to education, employment and the social security system. Many Roma lived illegally in squatter settlements that lacked basic services such as schools, medical care, water and sewage facilities. Some settlements were located on valuable industrial or commercial sites where private owners wanted to resume control; others were on the premises of state owned enterprises due to be privatised. During 2007, the Belgrade authorities continued to suspend the demolition of one settlement on privatised land until they could locate alternative housing for Roma living there.¹⁴
- 3.6.4** Overall progress in the situation for Roma was however reported with the adoption of the new constitution which contained provisions on minority rights.¹⁵ Minority Councils provided a more effective means for minorities to raise issues of concern with authorities and were established for most of the major ethnic groups including Roma. New regulations which institutionalised the Roma National Strategy Secretariat as part of the Government's Human and Minority Rights Agency would also, according to the European Commission, enhance the Agency's administrative capacity to handle the integration of the Roma population action plans. These action plans covered areas such as education, health, employment, housing, social protection, media, culture and anti discrimination.¹⁶ The government also operated a hotline for minorities and others concerned about human rights problems.¹⁷
- 3.6.5 Sufficiency of Protection** There are approximately 43,000 police officers in Serbia under the authority of the Ministry of the Interior. The police are divided into 33 regional secretariats and report to the national government. Most officers are Serbs but the police force also included other ethnic minorities.¹⁸
- 3.6.6** Whilst the Serbian constitution prohibits torture and other forms of ill treatment, police did at times during 2007 beat detainees and harass persons usually during arrest or initial detention. However, despite reports of corruption and impunity in the police force, the government did take measures to address these reports and the Interior Ministry Inspector General's Office (Internal Control) obtained increased authority to actively investigate abuses. For example, it initiated disciplinary measures against approximately 100 officers, primarily traffic police, and prosecutors brought charges in all cases.¹⁹
- 3.6.7** There is no systematic discrimination or persecution of ethnic minorities (including Roma) in Serbia.²⁰ The authorities of Serbia 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 may be subject to societal discrimination and harassment the authorities are willing to offer a sufficiency protection to Roma and the perpetrators of discrimination and/or violence against Roma do face criminal sanctions.

¹² USSD 2007

¹³ USSD 2007

¹⁴ USSD 2007

¹⁵ EC Progress Report Serbia 2007

¹⁶ EC Progress Report Serbia 2007

¹⁷ USSD 2007

¹⁸ USSD 2007

¹⁹ USSD 2007

²⁰ FCO annual report on Human Rights 2007 - <http://www.britishembassy.gov.uk/Files/kfile/>

3.6.10 Internal Relocation In general there is freedom of movement within Serbia²¹ and Roma will be able to internally relocate to another part of Serbia where they will not face ill-treatment.

3.6.11 Caselaw

[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.

3.6.12 Conclusion Societal discrimination against Roma in Serbia continues. 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 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.

3.7 Military service

3.7.1 Some claimants will apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of the Serbian authorities due to their refusal to perform military service.

3.7.2 Treatment.

3.7.3 Serbia has compulsory military service for men and women aged from 19-35. There is a 6 month service obligation²² with a reserve obligation to age 60 for men and age 50 for women.²³ However, during 2006, organisational changes within the Serbian army saw the gradual replacement of conscripts with contract officers and the overall downsizing of the army.²⁴

3.7.4 The right to conscientious objection is enshrined in Article 45 of the 2006 Constitution, according to which 'No person shall be obliged to perform military or any other service involving the use of weapons if this opposes his religion or beliefs.'²⁵

3.7.5 In recent years, the Serbian government has discussed the idea of gradually introducing a professional army. However, the abolition of conscription is not foreseen in the near future as it is considered to be too expensive.²⁶

3.7.6 Substitute service is administered by the Ministry of Defence and lasts for 13 months. It can be performed in government institutions, such as hospitals, nurseries, cultural institutions, institutions for handicapped people and rescue organisations. Substitute service can also be performed with some non-governmental organisations. After completing substitute service, COs have no reservist duties during peacetime. During wartime, COs may be called up for unarmed military service within the armed forces.²⁷

3.7.7 During the 1990s there were thousands of draft evaders and deserters from the Yugoslav army. Many went into hiding or fled abroad and were sentenced in absentia. The Yugoslav

²¹ USSD 2005 (Serbia Section 2)

²² English people daily - http://english.peopledaily.com.cn/200510/23/eng20051023_216151.html

²³ CIA world factbook – Serbia - <https://www.cia.gov/library/publications/the-world-factbook/geos/rb.html>

²⁴ EC Report Serbia 2006 p.9

²⁵ Serbian Constitution 2006

²⁶ WRI 2005

²⁷ WRI 2005

authorities have never released detailed information about the number of prosecuted draft evaders and deserters. It is believed that in 1999 and 2000, criminal proceedings were started against 26,000 men in connection with draft evasion and desertion during the Kosovo crisis. In 2001 the government announced an amnesty, which applied to approx. 24,000 draft evaders and deserters. In 1995, a similar amnesty was announced as a part of the Dayton Peace Agreements for thousands of men who evaded military service or deserted during the early 1990s. Draft evaders and deserters who are granted an amnesty are consequently freed from criminal prosecution, but they remain liable for military service.²⁸

3.7.8 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.

3.7.9 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.

3.7.10 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.

3.7.11 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. The Constitution of Serbia guarantees the right of conscientious objection. 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.

3.8 Prison Conditions

3.8.2 Claimants may claim that they cannot return to Serbia due to the fact that there is a serious risk that they will be imprisoned on return and that prison conditions in Serbia are so poor as to amount to torture or inhuman treatment or punishment.

3.8.3 The guidance in this section is concerned solely with whether prison conditions are such that they breach Article 3 of ECHR and warrant a grant of Humanitarian Protection. If imprisonment would be for a Refugee Convention reason or in cases where for a Convention reason a prison sentence is extended above the norm, the claim should be considered as a whole but it is not necessary for prison conditions to breach Article 3 in order to justify a grant of asylum.

3.8.4 According to the 2007 EC Progress Report on Serbia, general prison conditions in Serbia are poor due, in the main, to overcrowding and inadequate financial resources. Excessive force was reported to have been used by the police against prisoners in several violent protests which revealed some flaws in the security system and the overall capacity of prison services.²⁹

3.8.5 The USSD reported that some 8,500 prisoners were incarcerated in the prison system during 2007, exceeding the capacity of 6000 established by the Department for the Treatment of Prisoners. In some prisons, inmates continued to complain of dirty and inhuman conditions. The quality of food varied from poor to minimally acceptable and health care was often inadequate. Guards were inadequately trained in the proper handling of prisoners. In July 2007, inmates in the Central Prison protested against conditions and in the same month

²⁸ WRI 2005

²⁹ EC Progress Report on Serbia 2007

inmates at Pozarevac prison carried out a hunger strike in protest at delays in passing the draft amnesty law.³⁰

3.8.6 However, regulations on disciplinary procedures and sanctions against prisoners and on safety measures in prisons were adopted during 2007. A special facility for prisoners convicted of organised crime was opened and reconstruction works continued on several prisons. Access to training for prisoners also improved³¹ and unlike in previous years there were no reports of juveniles held in the same prisons as adults.³² The government permitted the International Committee of the Red Cross (ICRC) and local independent human rights monitors, including HCS, to visit prisons and to speak with prisoners without the presence of a warden and the HCS did note improvements since its 2005 report on prison conditions in Serbia.³³

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

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 AI on Discretionary Leave) Where the claim includes dependent family members consideration must also be given to the particular situation of those dependants in accordance with the AI on Article 8 ECHR.

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 related to the applicant, or dependent family members who are part of the claim, not covered by the categories below which warrant a grant of DL - see the AI on Discretionary Leave and the AI on Article 8 ECHR.

4.3 Minors claiming in their own right

4.3.1 The policy on minors claiming in their own right is set out in the Asylum Instructions 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, care and support arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate reception, care and support arrangements in place for minors with no family in Serbia.

4.3.2 Minors claiming in their own right without a family to return to, or where there are no adequate reception, care and support arrangements, and who do not qualify for leave on any more favourable grounds, should be granted Discretionary Leave for a period as set out in the relevant Asylum Instructions.

4.4 Medical treatment

4.4.1 Claimants may claim they cannot return to Serbia 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.

³⁰ USSD 2007

³¹

³² USSD 2007 (Serbia Section 1)

³³ USSD 2005 (Serbia Section 1)

4.4.2 Serbia has an integrated model of health care provision with publicly owned providers and facilities contracted by the Republic's Health Insurance Fund. According to a WHO survey conducted in 2004, Serbia had 45 general hospitals and 57 specialised inpatient institutions for tertiary care. These were evenly distributed throughout the regions. Along with primary care facilities, hospitals are managed by health centres which are complex regional institutions comprising at least one district hospital and several primary health centres.³⁴

4.4.3 In 2004, Serbia had adopted legislation on pharmaceuticals, communicable diseases and sanitary inspection. Legislation was also pending to address health care, health workers organisations and patient's rights³⁵. The resources available to the health care sector in 2005 were \$395 per capita and total expenditure on health as a percentage of the annual GDP was 8%.³⁶

4.4.4 According to Freedom House, a report released in November 2007 by Mental Disability Rights International claimed that some of the worst cases of abuse and neglect of individuals with mental disabilities had been found in Serbia.³⁷ However, treatment for mental health disorders is available, though numbers of psychiatric staff and bed spaces are limited.³⁸ On 1 December 2007, Serbia marked World AIDS Day with the opening of a National HIV/AIDS Office. The National Office would provide operational and technical support to organizations involved in the implementation of the Republic of Serbia HIV/AIDS Strategy.³⁹

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.

4.4.5 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.

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. Where the claim includes dependent family members their situation on return should however be considered in line with the Immigration Rules, in particular paragraph 395C requires the consideration of all relevant factors known to the Secretary of State, and with regard to family members refers also to the factors listed in paragraphs 365-368 of the Immigration Rules.

5.2 Nationals of Serbia may return voluntarily to any region of Serbia 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. The programme was established in 1999, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Serbian nationals wishing to avail themselves of this opportunity for assisted return to

³⁴ WHO – 10 health questions (Serbia and Montenegro)

³⁵ WHO – 10 health questions (Serbia and Montenegro)

³⁶ WHO 2008

³⁷ Freedom House 2008

³⁸ WHO 2002

³⁹ UNDP website

Serbia should be put in contact with the IOM offices in London on 0800 783 2332 or www.iomlondon.org.

6. List of sources

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Performance Directorate

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