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OPERATIONAL GUIDANCE NOTE

REPUBLIC OF SERBIA (including KOSOVO)

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1. Introduction

- 1.1** This document summarises the general, political and human rights situation in Serbia (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 any relevant COI Service Country of Origin Information at:

http://www.homeoffice.gov.uk/rds/country_reports.html

- 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 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** From February 2003 until June 2006 Serbia and Montenegro (SaM) comprised a state union of two republics; Serbia (including Kosovo) and Montenegro. However, on 3 June 2006 following a referendum on the issue Montenegro declared its formal independence. On 5 June 2006 the Serbian National Assembly decreed that Serbia is the continuing international personality of the State Union of Serbia and Montenegro and fully succeeds to its legal status, a position which the UK accepts.
- 1.5** With effect from 1 April 2003 Serbia and Montenegro (including Kosovo) was a country listed in section 94 of the Nationality, Immigration and Asylum Act 2002. As The Republic of Serbia is the continuing international personality of the State Union of Serbia and Montenegro, with effect from 3 June 2006 The Republic of Serbia (including Kosovo) continues to be 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 from someone who is entitled to reside in Serbia and Montenegro (including Kosovo), made on or after 1 April 2003 or The Republic of Serbia (including Kosovo) from 3 June 2006, is refused, caseworkers should certify the claim as clearly unfounded unless satisfied that it is not. As the now separate Republic of Montenegro is not the continuing international personality of the previous state union, but rather a successor to it, it is not a country listed in section 94. Accordingly, there is no obligation to certify clearly unfounded claims from people entitled to reside in the Republic of Montenegro decided on or after 3 June 2006. However, claims which are clearly unfounded may be certified on a case-by-case basis. See the Republic of Montenegro OGN for all claims from people entitled to reside in Montenegro. 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 certain types of claim are likely to be clearly unfounded.

Source documents

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

Note

- 1.7** This OGN focuses on the Republic of Serbia which includes the UN administered province of Kosovo. For reasons of clarity, it has sometimes been necessary to deal with Serbia and Kosovo separately. This should not be taken to imply any comment upon the legal or political status of these territories.

2. Country Assessment

- 2.1** Until June 2006 Serbia and Montenegro (SaM) was a state union consisting of the relatively large Republic of Serbia and the much smaller Republic of Montenegro.¹ However, in May 2006 Montenegro voted to end the union with Serbia and on the 3 June 2006 Montenegro declared its formal independence from the union with Serbia.² On the 5 June 2006 Serbia formally declared itself the legal continuation of the old state union of SaM³ and on the 15 June recognised Montenegro as a separate independent state.⁴ Under the constitutional

¹ USSD 2005 (Introduction)

² BBC Article BBC Montenegro declares independence (4 June 2006)

³ BBC Article Serbia confirms Union break up (5 June 2006)

⁴ BBC Article Montenegro gets Serb recognition (15 June 2006)

charter of the union, Serbia now inherits membership of the United Nations and other international institutions, leaving Montenegro to apply in its own right as a separate state.⁵

Serbia

- 2.2** The Republic of Serbia is a parliamentary democracy with approximately 10.2 million inhabitants. Prime Minister Vojislav Kostunica has led Serbia's multi-party government since March 2004. Boris Tadic was elected president in June 2004 elections that observers deemed essentially in line with international standards. While civilian authorities generally maintained effective control of the security forces, there were a few instances in 2005 in which elements of the security forces acted independently of government authority.⁶
- 2.3** Following the fall of the Milosevic regime in October 2000, the human rights situation in Serbia has improved greatly, however, problems still remain. Human and minority rights are protected under the 2003 Charter for Human and Minority Rights and Serbia has ratified the majority of human rights-related international conventions.⁷
- 2.4** The government generally respected the human rights of its citizens and continued efforts to address human rights violations during 2005; however, numerous problems from previous years persisted. The following human rights problems were reported: police violence, misconduct, and impunity, arbitrary arrest and selective enforcement of the law for political purposes, lengthy pre-trial detention, corruption in the judiciary, lengthy trials of human rights cases, government impediments to freedom of speech and the press, harassment of journalists, societal violence and discrimination against religious and ethnic minorities⁸
- 2.5** The government's increased efforts in addressing human rights violations brought notable improvements in 2005. The government improved its level of co-operation with the International Criminal Tribunal for Yugoslavia (ICTY) responding more quickly to requests for documentation as well as handing over a number of persons indicted for war crimes (although Mladic and Karadzic remain at large). Serbia also demonstrated that it could effectively prosecute high-profile criminals in its domestic special courts; it increased attention to human rights abuses of minorities and implemented a witness protection program to help combat trafficking in persons.⁹
- 2.6** Like many countries in the Balkans region, Serbia 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.¹⁰

Kosovo

- 2.7** Kosovo is legally a province of Serbia but has been under interim UN administration pending a settlement of its status in accordance with UN Security Council Resolution 1244 since 1999. The UN Interim Administration Mission in Kosovo (UNMIK) administers Kosovo. Under the overall authority of the Special Representative of the UN Secretary-General (SRSG), responsibilities are shared between the interim Kosovo government (PISG) (eg in areas such as education, labour and social welfare) and UNMIK (eg external relations).¹¹
- 2.8** Multi-party elections in October 2004 for seats in the Assembly were generally free and fair. UNMIK international civilian authorities and an UN-authorised North Atlantic Treaty Organization peacekeeping force for Kosovo (KFOR) generally maintained effective control

⁵ BBC Article Serbia confirms Union break up (5 June 2006)

⁶ USSD 2005 (Serbia Introduction)

⁷ FCO Country Profile (Serbia & Montenegro) April 2006

⁸ USSD 2005 (Serbia Introduction)

⁹ USSD 2005 (Serbia Introduction)

¹⁰ FCO Country Profile (Serbia & Montenegro) April 2006

¹¹ FCO Country Profile (Serbia and Montenegro inc Kosovo) June 2006

over security forces in 2005; however, there were reports that local elements of the security forces acted independently of their respective authority.¹²

- 2.9** 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.¹³
- 2.10** However, 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.¹⁴
- 2.11** The political situation in Kosovo remained stable during the parliamentary elections (October 2004) and the subsequent establishment of the coalition government, as well as on the occasion of the ICTY indictment and voluntary surrender of the former Prime Minister (March 2005). However, during 2005 the relationship between Kosovo Serbs and Kosovo Albanians has remained strained.¹⁵
- 2.12** UNMIK and the provisional institutions of self government (PISG) generally respected the human rights of residents in 2005; however, there were serious problems in some areas, particularly relating to minority populations. The following human rights problems were reported: politically and ethnically motivated killings, lengthy pre-trial detention and lack of judicial due process, corruption and government interference in the judiciary, attacks and harassment against journalists, societal antipathy against Serbs and the Serbian Orthodox Church, restrictions on freedom of movement for minorities, particularly ethnic Serbs and societal violence, abuse, and discrimination against minority communities.¹⁶
- 2.13** 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 multi-ethnic – the majority being of Albanian ethnicity, other staff members are of Serbian, Turkish and Roma origin.¹⁷ The ombudsperson institution has continued to play a crucial role in safeguarding human rights and the protection of minorities.¹⁸
- 2.14** Policing in Kosovo is carried out by the international UNMIK police and the Kosovo Police Service (KPS). The process of emancipation of the Kosovo Police Service from the UNMIK police is well under way. Recruitment and training have maintained their high momentum, and the Kosovo Police Service, with more than 6,700 members, now seems more and more capable of assuming its order-maintaining tasks. Policing has been increasingly transferred to local authorities and 33 police stations as well as three police regions and all regional traffic units have made this transition (the Mitrovica and Pec police regions remain under international control).¹⁹

¹² USSD 2005 (Kosovo Introduction)

¹³ FCO country Profile (Serbia and Montenegro inc Kosovo) June 2006

¹⁴ FCO Country Profile (Serbia and Montenegro inc Kosovo) June 2006

¹⁵ EC Kosovo Report 2005 p.25

¹⁶ USSD 2005 (Kosovo Introduction)

¹⁷ Ombudsman Institution Report 2004

¹⁸ EC Kosovo report 2005 p.26

¹⁹ EC Kosovo report 2005 p.53

- 2.15** However, there are some concerns about the state of preparedness of the Kosovo Police Service. Kosovo Police Service staff are well trained, but their efficiency in carrying out investigations is hampered by lack of experience and low technical capacities.²⁰
- 2.16** The recruitment from minorities has further progressed in the Kosovo Police Service and currently stands at around 15%. Kosovo Serbs make up about nine percent of Kosovo Police Service numbers. There are mixed patrols in mixed areas in order to give every citizen the possibility of getting assistance in his or her own language, but there have been a number of complaints that police reports were written in a language not understood by the citizen.²¹

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 (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 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 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** 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

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 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

²⁰ EC Kosovo report 2005 p.53

²¹ EC Kosovo report 2005 p.53

- 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.²²
- 3.6.3** Roma continued to be targets of numerous incidents of police violence, verbal and physical harassment from ordinary citizens, and societal discrimination during 2005. Many Roma, including IDPs from Kosovo, 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 2005 the Belgrade authorities continued to suspend demolition of one settlement on privatised land until they could locate alternative housing for Roma living there.²³
- 3.6.4** The law prohibits discrimination based on race, gender, disability, language, or social status²⁴ and the Serbian Government has a strategy for tackling discrimination and better integration of the Roma community.²⁵
- 3.6.5** During 2005 the Belgrade authorities established a Romani co-ordination centre and purchased land for the construction of an apartment complex for Roma. To address concerns of minorities, the state union Ministry for Human and Minority Rights operated a hotline for minorities and others concerned about human rights problems. Callers to the hotline most commonly reported being the victim of threats, ethnic slurs, and bullying. The government also sponsored several school programmes to educate children about minority cultures and to promote tolerance.²⁶
- 3.6.6** Human Rights Watch reported that there has also been some progress in providing pre-school education for Roma children in Serbia in 2005. However, thousands of Roma continue to face discrimination in most areas of life, and lack basic access to education, health services and housing.²⁷
- 3.6.7** During 2005 the police made modest improvements in investigating cases of societal violence against Roma. Twice during 2005 police investigated and pressed criminal charges against persons who attacked Romani settlements with Molotov cocktails.²⁸
- 3.6.8** The UNHCR estimated that there were 40,000 to 45,000 displaced Roma living in Serbia proper in 2005; half of those were not registered due to lack of documents. Many Kosovar Roma were perceived to be Serb collaborators during the conflict in Kosovo and could not safely return to Kosovo. Living conditions for Roma in Serbia were extremely poor. Local municipalities were often reluctant to accommodate them, hoping that, if they failed to provide shelter, the Roma would leave the community. If Roma did settle, it was often in official collective centres with minimum amenities or, more often, in makeshift camps in or near major cities or towns.²⁹
- 3.6.9** Most Roma who fled Kosovo after July 1999 continued to face severe problems, exacerbated by difficulties in obtaining registration necessary for access to health and

²² Helsinki Committee National Minorities in Serbia October 2004.

²³ USSD 2005 (Serbia Section 5)

²⁴ USSD 2005 (Serbia Section 5)

²⁵ FCO Country Profile (Serbia and Montenegro) 2005

²⁶ USSD 2005 (Serbia section 5)

²⁷ HRW Report 2006

²⁸ USSD 2005 (Serbia Section 5)

²⁹ USSD 2005 (Serbia Section 2)

social welfare. Many Roma from both Serbia suffered similar deprivation because they were not officially registered at birth.³⁰

Sandzak region

- 3.6.10 Treatment** The Sandzak region is an area that straddles the Serbia/Montenegro border and its population consists mainly of Bosniaks.³¹ 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.³²
- 3.6.11** 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."³³
- 3.6.12** 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.³⁴
- 3.6.13 Sufficiency of Protection** 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 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.
- 3.6.14 Internal Relocation** In general there is freedom of movement within Serbia³⁵ and Roma will be able to internally relocate to another part of Serbia where they will not face ill-treatment.

3.6.15 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.

- 3.6.16 Conclusion** Societal discrimination against Roma in Serbia 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 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.

³⁰ AI report 2005

³¹ Helsinki Committee May 2004 p.373

³² Helsinki Committee May 2004 p.375

³³ OSCE Mission report January 2002

³⁴ USSD 2003 (Montenegro Section 4)

³⁵ USSD 2005 (Serbia Section 2)

- 3.7.2 Treatment** Conscription is enshrined in Article 57 of the 2003 Constitution and is further regulated by the 1993 Defence Law. All men between the ages of 18 and 35 are liable for military service although in practice men are seldom called up after the age of 27. The length of military service is 9 months. Reservist obligations apply up to the age of 60. Since 2000, reservists are in practice seldom called up for reservist duties.³⁶
- 3.7.3** The right to conscientious objection is enshrined in Article 58 of the 2003 Constitution, according to which 'Recruits shall be guaranteed the right to conscientious objection'. Further legal provisions on conscientious objection are laid down in the Regulation on Civilian Service (37/2003). The Regulation was adopted by Parliament on 25 August 2003 and entered into force on 14 October 2003. Both religious and non-religious grounds for conscientious objection are legally recognised.³⁷
- 3.7.4** The length of substitute service is 13 months, which is four months longer than military service. Substitute service is administered by the Ministry of Defence. 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.³⁸
- 3.7.5** 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 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.³⁹
- 3.7.6 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.
- 3.7.7 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.
- 3.7.8 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

³⁶ WRI 2005

³⁷ WRI 2005

³⁸ WRI 2005

³⁹ WRI 2005

grounds is not persecution for a Convention reason. The Constitutional Charter of Serbia 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.

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 apply for asylum or make a human rights claim 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.⁴⁰
- 3.8.3** On 22 April 2005, KFOR withdrew its armoured vehicles and barricades from the Austerlitz Bridge connecting ethnic Serb-majority northern Mitrovica with ethnic Albanian-majority southern Mitrovica. The KPS assumed control of the bridge on 6 June 2005 and on 18 July it opened to all civilian traffic for the first time since 1999.⁴¹ During August 2005 over 80 cars a day were crossing the bridge and the situation is now considered to be routine. Nevertheless, Serbs crossing the bridge reportedly do not feel safe to move freely in southern Mitrovica and Albanians likewise do not enjoy freedom of movement in northern Mitrovica.⁴²
- 3.8.4** The UNHCR reported that 2,816 individuals from ethnic minorities returned to 25 municipalities in Kosovo between March 2005 and May 2006,⁴³ including ethnic Albanians who returned to areas where they are a minority. However, in Mitrovica ethnic Serbs in the north of the city and ethnic Albanians in the south continued to illegally occupy each others' properties, hindering potential returnees.⁴⁴
- 3.8.5** The UNHCR reiterated their position in June 2006 that Kosovo Albanians originating from areas where they constitute an ethnic minority should continue to benefit from international protection.⁴⁵
- 3.8.6** ***Sufficiency of Protection***. Policing in Kosovo is carried out by the international UNMIK police and the Kosovo Police Service (KPS). Recruitment and training maintained their high momentum in 2005, and the Kosovo Police Service, with more than 6,700 members, is more and more capable of assuming its order-maintaining tasks.⁴⁶ An international commissioner of police directed both UNMIK police and the KPS. The combined force was generally effective and its performance improved in 2005 compared to previous years. Members of ethnic minorities made up approximately 16 percent of KPS officers by the end

⁴⁰ OSCE Municipality Profiles June 2004

⁴¹ USSD 2005 (Kosovo Section 2)

⁴² UNHCR position paper June 2006

⁴³ UNHCR position paper June 2006

⁴⁴ USSD 2005 (Kosovo Section 2)

⁴⁵ UNHCR Position Paper June 2006

⁴⁶ EC Kosovo report 2005 p.53

of 2005, compared with 15 percent in 2004. In addition to the UNMIK police and the KPS, KFOR can also arrest and detain individuals.⁴⁷

3.8.7 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.

3.8.8 *Internal Relocation* UNMIK regulations and the constitutional framework provide for freedom of movement throughout Kosovo; however, inter-ethnic tensions and real and perceived security concerns restricted freedom of movement for some minorities. During 2005 UNMIK, KFOR, and the PISG generally improved freedom of movement for minority communities although sporadic incidents of violence and intimidation targeting minorities continued to limit freedom of movement for ethnic Albanians in northern Kosovo.⁴⁸ Despite the restrictions faced by some ethnic Albanians in majority Serb enclaves there is in general freedom of movement for ethnic Albanians in Kosovo and it will not be unduly harsh for an ethnic Albanian to internally relocate within Kosovo, to an area where they will not be in the minority.

3.8.9 *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.

3.8.10 *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 internally 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.

3.9 *Harassment from extremist Albanians linked to the Kosovo Liberation Army (KLA) and/or the Kosovo Protection Corps (KPC).*

3.9.1 Some claimants will apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of extremist Albanians from the Kosovo Liberation Army and/or its successor the Kosovo Protection Corps 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).⁴⁹

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 mandate⁵⁰ and the International Organization for Migration (IOM) co-ordinated training and projects for the KPC in collaboration with other NGOs.⁵¹

3.9.4 However, there are examples of KPC officers who have abused their position. The Association of Professional Journalists of Kosovo (APJK) accused the KPC of blocking filming of Serbian President Boris Tadic's visit to Kosovo. The APJK also reported that

⁴⁷ USSD 2005 (Kosovo Section 1)

⁴⁸ USSD 2005 (Kosovo Section 2)

⁴⁹ Europa 2005 p.542

⁵⁰ UN report on UNMIK February 2005 p.18

⁵¹ USSD 2005 (Kosovo Section 3)

unknown persons made telephone death threats to the editor in chief of radio *Top Ilira* in February to stop reporting on the Democratic League of Kosovo (LDK) party.⁵²

3.9.5 However, extremist Albanians who break the law face criminal charges. Of the seven persons originally detained on suspicion of organising or leading the March 2004 riots, criminal investigations were ongoing in the cases of four: KPC reserve commander, Naser Shatri; chairman of the KLA war veterans association in Peja, Nexhmi Lajci; chairman of the KLA war veterans association in Gjilan, Shaqir Shaqiri; and chairman of the KLA war veterans Association in Vushtrri, Salih Salihu.⁵³

3.9.6 *Sufficiency of Protection* Policing in Kosovo is carried out by the international UNMIK police and the Kosovo Police Service (KPS). Recruitment and training maintained their high momentum in 2005, and the Kosovo Police Service, with more than 6,700 members, is more and more capable of assuming its order-maintaining tasks.⁵⁴ An international commissioner of police directed both UNMIK police and the KPS. The combined force was generally effective and its performance improved in 2005 compared to previous years. Members of ethnic minorities made up approximately 16 percent of KPS officers by the end of 2005, compared with 15 percent in 2004. In addition to the UNMIK police and the KPS, KFOR can also arrest and detain individuals.⁵⁵

3.9.7 In general there is sufficiency of protection available from UNMIK/KPS/KFOR for all ethnic Albanians 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.

3.9.8 *Internal Relocation* UNMIK regulations and the constitutional framework provide for freedom of movement throughout Kosovo; however, inter-ethnic tensions and real and perceived security concerns restricted freedom of movement for some minorities.⁵⁶ There is in general freedom of movement for ethnic Albanians in Kosovo (outside of the Serb enclaves) 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.

3.9.9 *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 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 Dyli" (00/TH/02186) "Arif" (1999 IAR 271) and "Horvath" (2000 IAR 205) were taken into account.

3.9.10 *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.

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

⁵² USSD 2005 (Kosovo Section 2)

⁵³ USSD 2005 (Kosovo Section 4)

⁵⁴ EC Kosovo report 2005 p.53

⁵⁵ USSD 2005 (Kosovo Section 1)

⁵⁶ USSD 2005 (Kosovo Section 2)

- 3.10.1** Some claimants will apply for asylum or make a human rights claim 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 June 2006 that persons perceived to have been associated with the Serbian regime after 1990 may have a well founded fear of persecution.⁵⁷
- 3.10.3 *Sufficiency of protection*** Policing in Kosovo is carried out by the international UNMIK police and the Kosovo Police Service (KPS). Recruitment and training maintained their high momentum in 2005, and the Kosovo Police Service, with more than 6,700 members, is more and more capable of assuming its order-maintaining tasks.⁵⁸ An international commissioner of police directed both UNMIK police and the KPS. The combined force was generally effective and its performance improved in 2005 compared to previous years. Members of ethnic minorities made up approximately 16 percent of KPS officers by the end of 2005, compared with 15 percent in 2004. In addition to the UNMIK police and the KPS, KFOR can also arrest and detain individuals.⁵⁹
- 3.10.4** 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.
- 3.10.5 *Internal Relocation*** UNMIK regulations and the constitutional framework provide for freedom of movement throughout Kosovo; however, inter-ethnic tensions and real and perceived security concerns restricted freedom of movement for some minorities.⁶⁰ There is in general freedom of movement for ethnic Albanians in Kosovo (outside of the Serb enclaves) 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.
- 3.10.6 *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.
- 3.10.7** 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.
- 3.11 Kosovans of mixed ethnicity and those in ethnically mixed marriages**

⁵⁷ UNHCR Position Paper June 2006

⁵⁸ EC Kosovo report 2005 p.53

⁵⁹ USSD 2005 (Kosovo Section 1)

⁶⁰ USSD 2005 (Kosovo Section 2)

- 3.11.1** Many claimants will apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of the general ethnic Albanian population and/or their own minority group due to their mixed ethnicity or involvement in an ethnically mixed marriage.
- 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.⁶¹ The UNHCR reiterated their position in June 2006 that persons in ethnically mixed marriages and persons of mixed ethnicity may have a well founded fear of persecution.⁶²
- 3.11.3** The ability to speak fluent Albanian is likely to be a factor in the degree to which any minority group are able to integrate with the majority community.⁶³
- 3.11.4 *Sufficiency of protection*** Policing in Kosovo is carried out by the international UNMIK police and the Kosovo Police Service (KPS). Recruitment and training maintained their high momentum in 2005, and the Kosovo Police Service, with more than 6,700 members, is more and more capable of assuming its order-maintaining tasks.⁶⁴ An international commissioner of police directed both UNMIK police and the KPS. The combined force was generally effective and its performance improved in 2005 compared to previous years. Members of ethnic minorities made up approximately 16 percent of KPS officers by the end of 2005, compared with 15 percent in 2004. In addition to the UNMIK police and the KPS, KFOR can also arrest and detain individuals.⁶⁵
- 3.11.5** In general 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.
- 3.11.6 *Internal Relocation*** UNMIK regulations and the constitutional framework provide for freedom of movement throughout Kosovo; however, inter-ethnic tensions and real and perceived security concerns restricted freedom of movement for some minorities.⁶⁶ There is in general freedom of movement for ethnic Albanians in Kosovo (outside of the Serb enclaves) and caseworkers should consider that internal relocation is normally possible, for claimants that can pass as an ethnic Albanian, 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. However, some claimants with mixed ethnicity and/or those in ethnically mixed marriages who are easily distinguishable as a member of a minority group may face limitations on their ability to internally relocate.

3.11.7 *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

⁶¹ UNHCR Position paper March 2001

⁶² UNHCR Position paper June 2006

⁶³ UNHCR Update January 2003 & UNHCR/OSCE Assessment May 2002

⁶⁴ EC Kosovo report 2005 p.53

⁶⁵ USSD 2005 (Kosovo Section 1)

⁶⁶ USSD 2005 (Kosovo Section 2)

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.

KB (Mixed ethnicity – Roma/Albanian) Kosovo CG [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

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.

3.11.8 Conclusion Kosovans of mixed ethnicity and/or those in mixed marriages may face discrimination and ill-treatment in Kosovo from either the ethnic Albanian population or from members of their own minority group or sometimes both. However, in the majority of cases claimants will identify with and be accepted as one of the ethnicities that make up their mixed ethnicity and will be treated as such by the other ethnic groups in Kosovo. In most cases language will be the key factor in identifying which group a particular claimant can be identified with.

3.11.9 Those who speak Albanian and can pass as an ethnic Albanian

In general an applicant of mixed ethnicity who speaks Albanian and can pass as an ethnic Albanian to strangers (looked like an Albanian etc) is unlikely to be identified as being of mixed ethnicity outside of his home area. Therefore, the applicant would be able to internally relocate to another area of Kosovo where 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.

3.11.10 Those who can not speak Albanian but who can pass as a member of a minority ethnic group

Those who do not speak Albanian but who can pass as a member of a minority ethnic group are unlikely to be identified as being of mixed ethnicity outside their home area and will be treated in the same way as other members of that minority group. Caseworkers should assess each claim in line with the relevant section of the OGN and in line with the policy for that particular ethnic group. For example a mixed ethnicity Gorani/Albanian who speaks Gorani and can pass as a Gorani will be treated as a Gorani within Kosovo and so should be assessed in line with the policy advice on Gorani contained in section 3.16 of this OGN.

3.11.11 Those who can not speak Albanian and who can not pass as a member of a minority ethnic group

A few claimants of mixed ethnicity who do not speak Albanian will also not be able to pass as a member of minority ethnic group and are likely to be identified as being of mixed ethnicity and as a result be in a worse position than those of minority ethnic groups. However there is generally a sufficiency of protection available through UNMIK/KFOR/KPS and therefore claimants from this category of claim are unlikely to qualify for asylum or Humanitarian Protection but are unlikely to be clearly unfounded.

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.⁶⁷
- 3.12.3** The overall freedom of movement for Serbs and Roma in many Albanian-dominated areas continued to improve slowly in 2004 and early 2005, however it is still far from satisfactory. There are still many areas where isolated villages inhabited by Serbs and Roma are only accessible through KFOR checkpoints.⁶⁸ The provision of UN bus services and other organised transport has generated the perception of an improving freedom of movement among some members of ethnic minority communities. However, in general individuals remain within the areas where their ethnic community represents the majority group.⁶⁹
- 3.12.4** The UNHCR reported that since March 2005 the overall security situation in Kosovo has progressively improved. The number of members of minorities working at the central Institutions of Provisional Self-Government (PISG) and in the Kosovo Protection Corps (KPC) has increased; freedom of movement has generally progressed; a number of important steps have been taken to reinforce the protection of property rights; and an Inter-Ministerial Commission to monitor minorities' access to public services has been established.⁷⁰
- 3.12.5** Official and societal discrimination with respect to employment, social services, language use, freedom of movement, the right to return, and other basic rights and harassment of members of minorities improved in 2005 compared to 2004, although discrimination persisted, particularly against ethnic Serbs and Roma, Ashkaelia, and Egyptians. Violence and crimes against property directed at minorities lessened, but remained a problem.⁷¹
- 3.12.6** The United Nations Interim Mission in Kosovo (UNMIK) reported in May 2006 that crime statistics for the first quarter of 2006 revealed a marked decline in crimes where the possibility of an ethnic motive had not yet been ruled out. Despite these improvements, the security environment, although stable, remains fragile and 'somewhat unpredictable'. While the number of reported serious ethnically-motivated crimes has decreased, the Serb community continues to be affected by a considerable number of incidents.⁷²
- 3.12.7** Members of ethnic minorities continue to suffer also from "low scale" ethnically motivated security incidents such as physical and verbal assaults/threats, arson, stoning, intimidation, harassment, looting, and "high-scale" incidents such as shootings and murders. Many of these incidents remain unreported, as the victims fear reprisals from the perpetrators of the majority community.⁷³
- 3.12.8** During 2005 police and KFOR commenced large-scale operations to apprehend persons responsible for the March 2004 inter-ethnic riots that resulted in the deaths of 8 ethnic

⁶⁷ Europa 2005 p.537

⁶⁸ Ombudsman Institution Report 2005 p.29

⁶⁹ UNHCR position paper June 2006

⁷⁰ UNHCR position paper June 2006

⁷¹ USSD 2005 (Kosovo Section 5)

⁷² UNHCR position paper June 2006

⁷³ UNHCR position paper June 2006

Serbs and 12 ethnic Albanians, injury of more than 900 persons, severe damage or destruction of more than 900 ethnic Serb, Romani, and Ashkaelia houses and 30 Orthodox churches or monasteries. In its July 2005 report on follow-up actions after the riots, UNMIK stated that 348 individuals had been brought before the courts for riot-related offences. Of these, 179 cases were completed, 71 were awaiting trial, and 98 were under investigation. At least 57 serious cases were prosecuted by international lawyers and resulted in sentences of up to 16 years in prison. Kosovo judges handed down more than 85 convictions, with punishment ranging from court reprimands and fines up to \$240 (200 euros) to imprisonment for periods ranging from two months to two years. On 19 May 2005 an international panel of judges of the Gjilan/ Gnjilane district court convicted six ethnic Albanians in connection with the killing of two ethnic Serbs during the riots and sentenced them to prison terms ranging from 3.5 to 16 years.⁷⁴

- 3.12.9** Of the seven persons originally detained on suspicion of organizing or leading the riots, criminal investigations were ongoing in the cases of four: KPC reserve commander, Naser Shatri; chairman of the KLA war veterans association in Peja, Nexhmi Lajci; chairman of the KLA war veterans association in Gjilan, Shaqir Shaqiri; and chairman of the KLA war veterans Association in Vushtrri, Salih Salihu.⁷⁵
- 3.12.10** By the end of 2005 the PISG had reconstructed more than 95 percent of the houses damaged or destroyed in March 2004 and started church reconstruction.⁷⁶ There were 21 ethnic minority members in the 120-seat Assembly, including 10 ethnic Serbs (although at present the Kosovo Serb deputies are boycotting the Assembly) and 11 members of other groups, including ethnic Turks, Bosniaks, Gorani, Roma, Ashkaelia, and Egyptians.⁷⁷
- 3.12.11** The UNHCR position as of June 2006 is that Kosovo Serb and Roma ethnic minorities continue to be in need of international protection. However, positive developments within the inter-ethnic environment have had a particular impact on members of the Ashkaelia and Egyptian communities within Kosovo and they are no longer among those groups who the UNHCR consider to be at risk.⁷⁸ In addition the UNHCR position paper June 2006 does not refer to Bosniaks or Gorani as being groups who are at risk in Kosovo.⁷⁹
- 3.12.12** The UNHCR are no longer opposed to members of the Ashkaelia, Egyptian, Bosniak and Gorani communities groups being returned if circumstances permit.⁸⁰
- 3.12.13 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.

3.13 Kosovan Serbs

- 3.13.1** Some claimants will apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of the ethnic Albanian population due to their Serb ethnicity.
- 3.13.2 Treatment.** Ethnic Serbs were the principal targets for ethnically motivated attacks in 2004 and Serbs continued to remain 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.⁸¹

⁷⁴ USSD 2005 (Kosovo Section 5)

⁷⁵ USSD 2005 (Kosovo Section 5)

⁷⁶ USSD 2005 (Kosovo Section 2)

⁷⁷ USSD 2005 (Kosovo Section 3)

⁷⁸ UNHCR Position paper March 2005 & UNHCR position paper June 2006

⁷⁹ UNHCR position paper June 2006

⁸⁰ UNHCR Briefing notes April 2005

⁸¹ UNHCR/OSCE Assessment August 2004 p.5

- 3.13.3** Discrimination continued against ethnic Serbs in the provision of education and health care services provided by the PISG. Minority employment in the PISG continued to be low and was generally confined to lower levels of the government and members of minorities occupied 11 percent of posts in the PISG ministries, despite a PISG target of more than 16 percent.⁸²
- 3.13.4** During 2005 ethnic Albanians destroyed, often by arson, private property belonging to ethnic Serbs and some cases of violence against Serbs may have been attempts to force them to sell their property. An UNMIK regulation prevents the wholesale buy-out of many ethnic Serb communities in an effort to prevent the intimidation of minority property owners in certain areas; however, it was rarely enforced. The ombudsperson and human rights groups criticized the regulation as limiting the ability of ethnic Serbs to exercise their property rights.⁸³
- 3.13.5** During 2005 police and KFOR commenced large-scale operations to apprehend persons responsible for the March 2004 inter-ethnic riots. UNMIK stated that 348 individuals had been brought before the courts for riot-related offences. At least 57 serious cases were prosecuted by international lawyers and resulted in sentences of up to 16 years in prison. Kosovo judges handed down more than 85 convictions, with punishment ranging from court reprimands and fines up to \$240 (200 euros) to imprisonment for periods ranging from two months to two years. On 19 May 2005, an international panel of judges of the Gjilan/ Gnjilane district court convicted six ethnic Albanians in connection with the killing of two ethnic Serbs during the riots and sentenced them to prison terms ranging from 3.5 to 16 years.⁸⁴
- 3.13.6** In addition the first Serb return to an urban area where there was not already an established Serb presence took place in March 2005, with sixteen families returning to Klina.⁸⁵
- 3.13.7 *Sufficiency of Protection*** Policing in Kosovo is carried out by the international UNMIK police and the Kosovo Police Service (KPS). Recruitment and training maintained their high momentum in 2005, and the Kosovo Police Service, with more than 6,700 members, is more and more capable of assuming its order-maintaining tasks.⁸⁶ An international commissioner of police directed both UNMIK police and the KPS. The combined force was generally effective and its performance improved in 2005 compared to previous years. Members of ethnic minorities made up approximately 16 percent of KPS officers by the end of 2005, compared with 15 percent in 2004. In addition to the UNMIK police and the KPS, KFOR can also arrest and detain individuals.⁸⁷
- 3.13.8** 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.
- 3.13.9 *Internal Relocation*** UNMIK regulations and the constitutional framework provide for freedom of movement throughout Kosovo; however, inter-ethnic tensions and real and perceived security concerns restricted freedom of movement for some minorities.⁸⁸ The overall freedom of movement for Serbs and Roma in many Albanian-dominated areas continued to improve slowly in 2004 and early 2005, however it is still far from satisfactory. There are still many areas where isolated villages inhabited by Serbs and Roma are only accessible through KFOR checkpoints.⁸⁹ Freedom of movement for Serbs outside of Serb

⁸² USSD 2005 (Kosovo Section 5)

⁸³ USSD 2005 (Kosovo Section 5)

⁸⁴ USSD 2005 (Kosovo Section 4)

⁸⁵ HRW report 2006

⁸⁶ EC Kosovo report 2005 p.53

⁸⁷ USSD 2005 (Kosovo Section 1)

⁸⁸ USSD 2005 (Kosovo Section 2)

⁸⁹ Ombudsman Institution Report 2005 p.29

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 is also not an option.

3.13.10 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. Cases from this category of claim are unlikely to be clearly unfounded.

3.14 Roma, Ashkaelia and Egyptians (RAE)

3.14.1 Many claimants will apply for asylum or make a human rights claim 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.⁹⁰

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.⁹¹

3.14.4 Although usually categorised together, Roma are distinct from the groups known as Ashkaelia or Egyptians. 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.⁹²

3.14.5 During 2005 Roma continued to live in dire poverty, and those who lived in Mitrovica were viewed as ethnic Serb collaborators by many ethnic Albanians; as a result, in 1999, their houses were destroyed and they were forced to live in IDP camps, where they still reside.⁹³ Many of the displaced Roma have been living adjacent to the Trepca mine in North Mitrovica since 1999. In 2004, the high level of lead contamination in the area led the World Health Organisation to recommend an immediate evacuation of children and pregnant women and temporary relocation of all others.⁹⁴

3.14.6 Roma throughout Kosovo were subject to pervasive social and economic discrimination in 2005 and often lacked access to basic hygiene, medical care, and education and were heavily dependent on humanitarian aid. Although there were some successful efforts to resettle Roma, Ashkaelia, and Egyptians in the homes they occupied prior to the 1999 conflict in Vushtri, security concerns remained.⁹⁵

⁹⁰ CoE report October 2002 p.30

⁹¹ UNHCR/OSCE Assessment May 2002 p.58

⁹² UNHCR/OSCE Assessment May 2002 p.58 (footnote)

⁹³ USSD 2005 (Kosovo Section 5)

⁹⁴ HRW report 2006

⁹⁵ USSD 2005 (Kosovo Section 5)

- 3.14.7** 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.⁹⁶
- 3.14.8** 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.⁹⁷
- 3.14.9** 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.⁹⁸ 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.⁹⁹
- 3.14.10** The Roma, Ashkaelia, and Egyptian (RAE) communities, in Gjakove number nearly 7,000, made up of approx 6,000 Ashkaelia and Egyptians and approx 700 Roma. They represent the biggest minority community in the municipality. Some of them live in town in the "Kolonia", while the majority are located in the villages surrounding Gjakovë/Đakovica town. The OSCE reported that these minorities do not suffer security related problems.¹⁰⁰
- 3.14.11** In the year 2003 a Task Force on RAE Return was established. It has been focusing on the return of 40 RAE families currently residing in Podgorica, Montenegro. As of November 2005 the project has proven to be very successful with 24 families (119 people) having returned and 34 houses so far constructed for them. This is the first organised return that has occurred in Gjakove and the role of the Municipal leadership has been crucial in supporting and facilitating it. The OSCE reported that those RAE who have returned have faced no security related problems.¹⁰¹
- 3.14.12** The UNHCR position as of June 2006 is that Roma are a minority group that are likely to be in need of international protection. However, positive developments within the inter-ethnic environment have had a particular impact on members of the Ashkaelia and Egyptian communities within Kosovo and they are no longer among those groups who the UNHCR consider to be at risk.¹⁰²
- 3.14.13** The UNHCR are no longer opposed to members of the Ashkaelia or Egyptian, communities being returned if circumstances permit.¹⁰³
- 3.14.14 Sufficiency of Protection** Policing in Kosovo is carried out by the international UNMIK police and the Kosovo Police Service (KPS). Recruitment and training maintained their high momentum in 2005, and the Kosovo Police Service, with more than 6,700 members, is more and more capable of assuming its order-maintaining tasks.¹⁰⁴ An international commissioner of police directed both UNMIK police and the KPS. The combined force was generally effective and its performance improved in 2005 compared to previous years. Members of ethnic minorities made up approximately 16 percent of KPS officers by the end

⁹⁶ UNHCR/OSCE Assessment May 2002 p.58 (footnote)

⁹⁷ UNHCR/OSCE Assessment May 2002 p.58 (footnote)

⁹⁸ UNHCR/OSCE Assessment May 2002 p.58 & UNHCR Update January 2003

⁹⁹ UNHCR/OSCE Assessment August 2004

¹⁰⁰ OSCE Municipality Profiles Gjakove November 2005

¹⁰¹ OSCE Municipality Profiles Gjakove November 2005

¹⁰² UNHCR Position Paper June 2006

¹⁰³ UNHCR Briefing Notes April 2005

¹⁰⁴ EC Kosovo report 2005 p.53

of 2005, compared with 15 percent in 2004. In addition to the UNMIK police and the KPS, KFOR can also arrest and detain individuals.¹⁰⁵

3.14.15 In general, there is sufficiency protection for all Roma, Ashkaelia and Egyptians in Kosovo, in that UNMIK/KPS/ /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.

3.14.16 Internal Relocation UNMIK regulations and the constitutional framework provide for freedom of movement throughout Kosovo; however, inter-ethnic tensions and real and perceived security concerns restricted freedom of movement for some minorities.¹⁰⁶ The overall freedom of movement for Serbs and Roma in many Albanian-dominated areas continued to improve slowly in 2004 and early 2005, however it is still far from satisfactory. There are still many areas where isolated villages inhabited by Serbs and Roma are only accessible through KFOR checkpoints.¹⁰⁷ In general it would not be unduly harsh for any RAE who can speak Albanian and who is 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 **KB [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.

3.14.17 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. Whereas an Ashkaelia or an Egyptian who can not pass as an ethnic Albanian can internally relocate to the Gjakove Municipality where the RAE population numbers around 7,000 and where according to the OSCE RAE do not face any security concerns.

3.14.18 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 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*".

¹⁰⁵ USSD 2005 (Kosovo Section 1)

¹⁰⁶ USSD 2005 (Kosovo Section 2)

¹⁰⁷ Ombudsman Institution Report 2005 p.29

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.

KB (Mixed ethnicity – Roma/Albanian) Kosovo CG [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.

3.14.19 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.

3.14.20 In the majority of cases sufficiency of protection is available and internal relocation for Ashkaelia and Egyptians within Kosovo in particular to the Gjakove Municipality 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 and claimants who speak Albanian and can pass as an ethnic Albanian are likely to be clearly unfounded.

3.15 Bosniaks

3.15.1 Some claimants will apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of the 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.¹⁰⁸

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.¹⁰⁹

3.15.4 Bosniak leaders continued to complain that thousands of their community members had left Kosovo because of discrimination and a lack of economic opportunity.¹¹⁰

¹⁰⁸ UNHCR Position Paper January 2003 p.2

¹⁰⁹ UNHCR/OSCE Assessment August 2004 p.38 & 46

¹¹⁰ USSD 2005 (Kosovo Section 5)

- 3.15.5** 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.¹¹¹ The UNHCR are no longer opposed to the return of Bosniaks to Kosovo if the individual circumstances permit.¹¹² The UNHCR position paper June 2006 does not refer to Bosniaks as being a group who are at risk in Kosovo.¹¹³
- 3.15.6 *Sufficiency of Protection*** Policing in Kosovo is carried out by the international UNMIK police and the Kosovo Police Service (KPS). Recruitment and training maintained their high momentum in 2005, and the Kosovo Police Service, with more than 6,700 members, is more and more capable of assuming its order-maintaining tasks.¹¹⁴ An international commissioner of police directed both UNMIK police and the KPS. The combined force was generally effective and its performance improved in 2005 compared to previous years. Members of ethnic minorities made up approximately 16 percent of KPS officers by the end of 2005, compared with 15 percent in 2004. In addition to the UNMIK police and the KPS, KFOR can also arrest and detain individuals.¹¹⁵
- 3.15.7** 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.
- 3.15.8 *Internal Relocation*** UNMIK regulations and the constitutional framework provide for freedom of movement throughout Kosovo; however, inter-ethnic tensions and real and perceived security concerns restricted freedom of movement for some minorities.¹¹⁶ 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.
- 3.15.9 *Conclusion*** Although Bosniaks may be subject to discrimination and/or harassment in Kosovo 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.
- 3.16 Gorani**
- 3.16.1** 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 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.¹¹⁷
- 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.

¹¹¹ UNHCR Position paper March 2005 p.4

¹¹² UNHCR Briefing notes April 2005

¹¹³ UNHCR position paper June 2006

¹¹⁴ EC Kosovo report 2005 p.53

¹¹⁵ USSD 2005 (Kosovo Section 1)

¹¹⁶ USSD 2005 (Kosovo Section 2)

¹¹⁷ UNHCR/OSCE Assessment October 2001 p.33

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.¹¹⁸

3.16.4 Both the Kosovo Gorani and the Kosovo Albanians practice the Islamic faith. In Dragash town the attendance at the mosque includes both ethnicities and it seems that the Islamic Community has managed to keep the two ethnic groups together despite the division at the political level. Dragash and particularly the Gora area have been peaceful since 2001¹¹⁹ and even during and after the March 2004 riots, the Gorani community were unsettled rather than directly targeted.¹²⁰

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.¹²¹ The UNHCR are no longer opposed to the return of Gorani to Kosovo if the individual circumstances permit.¹²² The UNHCR position paper June 2006 does not refer to Bosniaks as being a group who are at risk in Kosovo.¹²³

3.16.6 Sufficiency of Protection Policing in Kosovo is carried out by the international UNMIK police and the Kosovo Police Service (KPS). Recruitment and training maintained their high momentum in 2005, and the Kosovo Police Service, with more than 6,700 members, is more and more capable of assuming its order-maintaining tasks.¹²⁴ An international commissioner of police directed both UNMIK police and the KPS. The combined force was generally effective and its performance improved in 2005 compared to previous years. Members of ethnic minorities made up approximately 16 percent of KPS officers by the end of 2005, compared with 15 percent in 2004. In addition to the UNMIK police and the KPS, KFOR can also arrest and detain individuals.¹²⁵ Approximately half the KPS officers in Dragash are Gorani.¹²⁶

3.16.7 In general, there is sufficiency of protection for Gorani within the main Gorani areas of Dragash municipality 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.

3.16.8 Internal Relocation UNMIK regulations and the constitutional framework provide for freedom of movement throughout Kosovo; however, inter-ethnic tensions and real and perceived security concerns restricted freedom of movement for some minorities.¹²⁷ 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.

3.16.9 Caselaw

RB (Risk – Ethnicity- Gorani – Sanxdali) Kosovo CG [2004] UKIAT 00037 – The IAT found that the objective evidence fell well short of demonstrating that there is a consistent

¹¹⁸ UNHCR Update January 2003 & UNHCR/OSCE Assessment October 2001

¹¹⁹ OSCE Municipality Profiles Dragash December 2005

¹²⁰ UNHCR/OSCE Assessment August 2004

¹²¹ UNHCR Position paper March 2005 p.4

¹²² UNHCR Briefing notes April 2005

¹²³ UNHCR position paper June 2006

¹²⁴ EC Kosovo report 2005 p.53

¹²⁵ USSD 2005 (Kosovo Section 1)

¹²⁶ UNHCR/OSCE Assessment March 2003

¹²⁷ USSD 2005 (Kosovo Section 2)

pattern of gross, flagrant or mass violations of the human rights of Gorani. Furthermore, there is some indication that within Kosovo the Appellant's home area of Prizren is among the areas where Gorani are safest. 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.

3.16.10 Conclusion Although some Gorani may be subject to discrimination and/or harassment in parts of Kosovo outside of the Dragash region this does not generally reach the level of persecution and in general sufficiency of protection is available through KFOR/KPS. Within the Gora region of the Dragash municipality Gorani constitute almost the entire population (over 10,000) and do not suffer any difficulties. In addition half the KPS officers in the Dragash municipality are Gorani. Considering that any harassment suffered is unlikely to reach the level of persecution, that sufficiency of protection is available and that there is an option of internal relocation to or within the Gora region of the Dragash municipality, 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 and such claims are likely to be clearly unfounded.

3.17 Prison Conditions

3.17.1 Claimants may claim that they cannot return to Serbia (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 (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 2005; however, conditions varied greatly between facilities, and some guards abused prisoners. In some prisons, most notably the Belgrade reformatory hospital housing psychiatric prisoners, inmates complained of dirty and inhumane 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. Juveniles were supposed to be held separately from adults; however, this did not always occur in practice.¹²⁸

3.17.3 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.¹²⁹

Kosovo

3.17.6 Treatment Prison and detention centres generally met international standards in 2005, and UNMIK permitted visits by independent human rights observers; however, a local non-governmental organisation (NGO), Council for Defence of Human Rights and Freedoms (CDHRF), claimed that UNMIK prohibited it from visiting detainees in prisons and detention centres since May 2005. Facilities were at times overcrowded; however, the construction of two new facilities continued during the year. UNMIK police corrections officers managed prisons and detention centres but increasingly transferred responsibilities to the Kosovo Correctional Service.¹³⁰

3.17.7 There were prisons in Lipljan and Dubrava as well as five detention centres in operation during the year. The CDHRF reported receiving approximately 10 telephone calls a day

¹²⁸ USSD 2005 (Serbia Section 1)

¹²⁹ USSD 2005 (Serbia Section 1)

¹³⁰ USSD 2005 (Kosovo Section 1)

from prisoners and their families charging abuse and excessive solitary confinement in prison.¹³¹

3.17.8 UNMIK reported that 35 disciplinary proceedings were brought against members of the Kosovo Correctional Service during the year, resulting in 1 dismissal, 1 suspension, 20 written warnings, 12 oral warnings and 1 suspension of promotion.¹³²

3.17.9 Conclusion Prison conditions in Serbia (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 (including Kosovo) 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 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 Minors claiming in their own right

4.3.1 Minors claiming in their own right 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.

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, 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 (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.¹³³

¹³¹ USSD 2005 (Kosovo Section 1)

¹³² USSD 2005 (Kosovo Section 1)

¹³³ DIFID Briefing Paper 2001

- 4.4.3** Treatment for mental health disorders is available, though numbers of psychiatric staff and bed spaces are limited.¹³⁴ 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.¹³⁵

Kosovo

- 4.4.4** 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.¹³⁶

Mental Health in Kosovo

- 4.4.5** 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.¹³⁷ 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.¹³⁸
- 4.4.6** 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 2003.¹³⁹ 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.¹⁴⁰
- Post Traumatic Stress Disorder (PTSD) in Kosovo**
- 4.4.7** 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.¹⁴¹ 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.¹⁴²
- 4.4.8** It remains the position of UNMIK that persons suffering from and undergoing treatment for PTSD should not be forcibly returned to Kosovo.¹⁴³

4.4.9 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.

¹³⁴ WHO 2002

¹³⁵ UNDP Fact sheet 2002

¹³⁶ KIP fact sheet on health care systems May 2002

¹³⁷ Medical Foundation January 2004 p.19

¹³⁸ Medical Foundation January 2004 p.25

¹³⁹ Medical Foundation January 2004 p.22

¹⁴⁰ Medical Foundation January 2004 p.22-23

¹⁴¹ UNHCR letter February 2004

¹⁴² UNMIK letter July 2005

¹⁴³ UNMIK letter July 2005

SP (Risk – suicide – PTSD – IFA – Medical facilities) Kosovo CG [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.

4.4.10 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.
- 5.2** Nationals of Serbia (including Kosovo) may return voluntarily to any region of Serbia (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 (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 (including Kosovo) wishing to avail themselves of this opportunity for assisted return to Serbia (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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