

**UNHCR Position Paper:
Asylum-Seekers from the Federal Republic of Yugoslavia: Particular Groups**

The General Rule

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• access and individual consideration •

Like all asylum-seekers who request refugee status in countries with functioning asylum procedures, persons from the Federal Republic of Yugoslavia (FRY), including those from various ethnic groups in the province of Kosovo, should have access to asylum procedures and their cases should be individually considered and determined in accordance with the criteria for refugee status. If claims are rejected for refugee status, consideration should be given to providing other available protection, where this may be warranted.

• up-to-date information crucial •

Reliable, current area of origin information is crucial to fair and correct determinations. This is particularly so where the situation (as it is in FRY, both inside and outside Kosovo) is evolving rapidly. Reports throughout the summer of 1999 have indicated slow improvements in the security situation in some areas of Kosovo, but deteriorating security conditions in others, with numerous serious crimes being committed throughout Kosovo, and even attacks targeting KFOR patrols and checkpoints. Political events and demonstrations, build up of police and military presence and related activities in some parts of the remainder of FRY have also led to increased tension. Up-to-date information should be sought at the time when status determinations are made.¹

The Various Groups of Concern

• the "minority" terminology •

Where the term "minority" is used in this document, it describes groups of persons who are in a numerical minority situation in a particular location, regardless of their status elsewhere in a country or province.

• ethnic Serbs from Kosovo •

A systematic pattern of indiscriminate targeting of Kosovo Serbs², apparently with the intention of displacing whole Serb communities, has been observed to have evolved since the entry into Kosovo of KFOR and the ensuing return of Kosovo Albanians. While it is often not clear who exactly the perpetrators are, ethnic Serbs, particularly the elderly who have remained in their homes, suffer harassment, arson, evictions, theft, looting and physical attacks, sometimes resulting in death (about 30 murders per week were reported as of the end of July 1999.) Since its entry into Kosovo on 12 June 1999 up to 26 July 1999, KFOR confirmed and investigated 198 murders, 573 arsons and 840 lootings, the vast majority against ethnic Serbs and their property. It is openly acknowledged by KFOR that these statistics are incomplete and that many more crimes of this nature occurred, but have gone unrecorded.

¹ Information pertinent to minorities is available in the *Second Assessment of the Situation of Ethnic Minorities in Kosovo* (UNHCR/OSCE, 6 September, 1999) and subsequent updates. Increasingly other sources, including non-governmental organisations, are also providing such information. Reports on the situation of minorities in Kosovo have been published in August, for instance, by the Lawyers Committee for Human Rights, by Human Rights Watch and by ODIHR, (OSCE).

² It should be noted that so-called *Montenegrins* in Kosovo are generally perceived to be ethnic Serbs and are subjected to the same treatment as accorded to the local Serb population.

● ethnic Serb refugees from Croatia and Bosnia ●

UNHCR has received numerous reports of serious security incidents directed at ethnic Serb refugees who had previously been settled in Kosovo. It is particularly important in such cases to review the past history of displacement and to consider the cumulative effect of discrimination and persecution suffered by individuals.

● Muslim Slavs ●

Muslim Slavs, who are Serb-speaking followers of Islam, have various backgrounds. Except for the Gorani (see below), they are mainly found in the Sandzak area straddling the Serbian/Montenegrin administrative border, with smaller populations in various municipalities in Kosovo and Montenegro. Since the outbreak of the war in Bosnia and Herzegovina, the designation "Bosniak" has come into use among the Muslim Slavs in the Sandzak area. In Kosovo, Muslim Slavs have at times been perceived and treated by the Serbian authorities as associated with Albanian political aspirations. On the other hand, radical Albanian groups may perceive the Muslim Slavs as associated with the Serbian authorities, and may target this group. A specific sub-group of the Muslim Slavs are the Bulgarian/Macedonian speaking Torbesh.

● Gorani ●

This is a distinct group of ethnic Slavs from the Goran region (south of Prizren), who follow Islam but have ethnic and linguistic links with the Serbs, often sharing political attitudes as well. There is significant tension between the Gorani and ethnic Albanians in some areas, while in others the two communities are well-integrated.

● Roma and "Egyptians"³ ●

Although far from a cohesive community, comprising various groups with different allegiances, linguistic and religious traditions, Kosovo Roma are targeted as a group and have suffered serious problems - physical attacks (including beatings, abductions and rapes, and sometimes resulting in death), arson, looting and ejection from their homes - since the massive return of ethnic Albanians to the province. They are accused of having collaborated in mistreatment of Kosovo Albanians during the conflict, often wrongly. It is important to be aware that Roma are a visible minority in Kosovo and therefore are easily identified.

● Turks ●

The Turkish community has long been established in Kosovo, particularly in certain areas (notably Prizren). Its members continue to speak Turkish and have enjoyed access to primary and secondary education in the Turkish language, although most members also speak Albanian and Serbian. Many were displaced during the recent conflict, and some are now returning.

● ethnic Albanians from elsewhere in Serbia ●

Ethnic Albanians in other parts of Serbia have reportedly been targeted for the same sort of treatment meted out to ethnic Albanians in Kosovo during the conflict: evictions, burning and

³ Some of those leaving are called "Egyptians" or "Hasjkalija", however, these groups are often perceived as Roma by the other ethnic groups and treated accordingly, despite being Albanian-speaking.

looting of their property, forced displacement and expulsion. Large numbers continue to enter Kosovo and other countries from particular areas of Serbia.

Relocation within the Federal Republic of Yugoslavia

● is relocating a reasonable option? ●

When considering whether any fear of persecution being experienced by these groups could be reasonably and successfully avoided by moving to other parts of the FRY, decision-makers should take into account all the circumstances of the case, including the risk that denying claims on this ground may condone programmes of ethnic cleansing, the subjective effect on the asylum-seeker and the treatment afforded those who flee, both en route and when they reach their destinations. The possibility of safety in Montenegro, which still hosts refugees and displaced from the earlier regional conflicts, and is currently negotiating with FRY on economic and other reforms, will require serious analysis of fears of destabilisation and lack of absorption capacity. Considerations regarding relocation will be different, depending on the group to which a claimant belongs.

- **ethnic Serbs from Kosovo** may experience difficulties in other parts of Serbia to obtain shelter and social and medical services, to send their children to school, to collect their pensions or to obtain new or extend expired travel documents, depending on the resources and practices in the municipalities they are staying in and the documentation which they are able to provide;
- **ethnic Serb refugees from Bosnia and Croatia** have been "settled" in Kosovo and need the prior permission of the authorities to move their residence within FRY. While they can fairly readily benefit from humanitarian assistance (food and non-food items), they may experience difficulty in accessing accommodation and exercising other rights;
- **Roma** experience practically universal discrimination. In Montenegro and in other parts of the Federal Republic of Yugoslavia the Roma population consequently generally suffers from marginalisation and is not well-accepted by the majority; these problems are often exacerbated by communication difficulties due to language differences. Many of these difficulties are likely to affect displaced Roma disproportionately, particularly with respect to access to accommodation;
- **ethnic Albanians from outside of Kosovo** who may arrive in Kosovo are subject to the same precarious security situation, lack of fully-functioning policing, legal, judicial and municipal structures, and shortage of adequate shelter that plague the existing population.

In the present circumstances, for all these reasons, reasonable internal relocation alternatives for these groups are not likely to be generally available; however, as noted above, the determination should be made as the result of an individual, case-by-case analysis. Further guidance in deciding individual cases can be found in UNHCR's *Position Paper on Relocating Internally as an Alternative to Seeking Asylum* (February 1999).

Exclusion from Refugee Status

● the possibility of exclusion ●

In cases where the claim to asylum is based on accusations of collaboration, particular attention may need to be paid to the possibility of exclusion clauses being relevant to the individual case. See UNHCR's paper *The Exclusion Clauses: Guidelines on their Application* (December 1996) for more detailed advice on analysing such cases.

Draft Evaders and Deserters from FRY

● **claims justified only in certain cases** ●

While punishment for failure to perform military service obligations cannot generally be regarded as persecution for the purposes of the Convention, in certain circumstances (for example, where punishment is applied in a discriminatory way, on 1951 Convention grounds, or where the claimant is a conscientious objector, if no alternative service option is available) such punishment may indeed constitute persecution. This will be so, importantly for this situation, if the military activity that is refused by a conscientious objector is contrary to the basic rules of human conduct, as, for example, when it is condemned by the international community.⁴

● **ethnic Albanians from other parts of Serbia or Montenegro** ●

A particular case of conscientious objection which might well be determined to be well-founded would be that of a refusal by a member of an ethnic minority who, in a situation of internal conflict, would be required to participate in military action against his/her own ethnic community.

● **background information essential** ●

It is essential for analysis of such claims to know the provisions of the law in force and the practice in implementing it. For relevant background information and guidance, please refer to UNHCR's more complete Note on *Deserters and Persons avoiding Military Service originating from the Federal Republic of Yugoslavia in Countries of Asylum: Relevant Considerations* (September 1999).

Department of International Protection
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⁴ Reference should be had to the UNHCR *Handbook on Procedures and Criteria for Determining Refugee Status* (paragraphs 167 to 174) for further guidance on analysing such claims.