

**Flygtningenævnets baggrundsmateriale**

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# OPERATIONAL GUIDANCE NOTE

## REPUBLIC OF MONTENEGRO

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### 1. Introduction

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

### Source documents

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

### 2. Country Assessment

- 2.1** In May 2006 Montenegro held a referendum on its future status within the State Union of Serbia and Montenegro (SaM). The result was a 55.5% vote in favour of independence. The Montenegro Assembly made a formal declaration of independence on 3 June 2006, thus bringing the union between Serbia and Montenegro to an end. On 5 June 2006 the

Serbian National Assembly decreed Serbia to be the continuing international personality of the State Union of Serbia and Montenegro, fully succeeding its legal status. Serbia therefore inherited membership of international organisations of which Serbia and Montenegro was a member and remains party to all international agreements, treaties and conventions to which Serbia and Montenegro was a party.<sup>1</sup>

- 2.2 Montenegro has a population of approximately 673,000 and has a presidential and a parliamentary system of government. The 2003 presidential elections and 2006 parliamentary elections were conducted generally in line with international standards. While the civilian authorities generally maintained effective control of the security services, there were a few instances in which elements of the security forces acted independently of government authority.<sup>2</sup>
- 2.3 The Government generally respected the human rights of its citizens and demonstrated a heightened concern for the protection of human rights during 2005 however there were problems in some areas including police abuse of detainees, prison overcrowding, impunity and corruption of security forces, lengthy pre-trial detention, judicial corruption and political pressure on the judiciary and discrimination against ethnic minorities.<sup>3</sup>
- 2.4 There were no reports in 2005 that the Government or its agents committed arbitrary or unlawful killings and there were no reports of politically motivated disappearances. The law prohibits torture and other cruel, inhuman, or degrading treatment or punishment. However, police occasionally beat suspects during arrest or while suspects were detained for questioning.<sup>4</sup>
- 2.5 According to the Foreign and Commonwealth Office the human rights situation in Montenegro has greatly improved over the past five years although typically for a country in political and economic transition, some problems still remain. Legislation on the protection of national minorities (The Law on Minorities' Rights and Freedoms) was adopted on 10 May 2006, but further efforts from the authorities are needed to implement it.<sup>5</sup>

### **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 Montenegro. 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).

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<sup>1</sup> FCO Country Profile September 2006

<sup>2</sup> USSD 2005 (Montenegro Introduction)

<sup>3</sup> USSD 2005 (Montenegro Introduction)

<sup>4</sup> USSD 2005 (Montenegro Introduction)

<sup>5</sup> FCO Country Profile September 2006

- 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/documents/asylumpolicyinstructions/>
- 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 Montenegrin population due to their Roma ethnicity and that the authorities are not able to offer sufficiency of protection
- 3.6.2 *Treatment.*** Societal discrimination against ethnic minorities was a problem in 2005. Prejudice against Roma was widespread, and local authorities often ignored or tacitly condoned societal intimidation or mistreatment of Roma, some of whom were IDPs from Kosovo. According to a local NGO, 70 percent of Roma were illiterate, 70 percent did not speak the local language, 95 percent were officially unemployed, 40 percent had no access to public utilities, and 90 percent lived below the poverty level.<sup>6</sup>
- 3.6.3** Romani IDPs, who lived primarily in collective centres and scattered settlements throughout the republic, often lacked identity documents and access to basic human services. Eviction from illegal settlements and, sometimes, legal residences was a serious problem. During 2005 there was limited official recognition of the problem, with authorities in the capital providing land and utility connections for an international NGO project to replace illegal and inadequate Romani housing.<sup>7</sup>
- 3.6.4** Legislation on the protection of national minorities was adopted in May 2006. However, further efforts from the authorities are needed to fully implement it.
- 3.6.5 *Sufficiency of Protection*** There is widespread prejudice against Roma in Montenegro and Roma may not always obtain the full protection of the law. Some individual police officers and officials may discriminate against Roma.
- 3.6.6 *Internal Relocation*** In general there is freedom of movement within Montenegro<sup>8</sup> and Roma will be able to internally relocate to another part of Montenegro where they will not face ill-treatment.
- 3.6.7 *Conclusion*** Societal discrimination against Roma in Montenegro is a problem and local authorities often ignored or tacitly condoned such treatment however, in general this discrimination does not amount to persecution. In addition, internal relocation is an option and it is not unduly harsh for Roma to relocate to another part of Montenegro where they will not face such problems. 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 Prison Conditions**

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<sup>6</sup> USSD 2005 (Montenegro Section 5)

<sup>7</sup> USSD 2005 (Montenegro Section 5)

<sup>8</sup> USSD 2005 (Serbia Section 2 & Montenegro Section 2)

- 3.7.1** Claimants may claim that they cannot return to Montenegro due to the fact that there is a serious risk that they will be imprisoned on return and that prison conditions in the Montenegro are so poor as to amount to torture or inhuman treatment or punishment.
- 3.7.2** The guidance in this section is concerned solely with whether prison conditions are such that they breach Article 3 of ECHR and warrant a grant of Humanitarian Protection. If imprisonment would be for a Refugee Convention reason, or in cases where for a Convention reason a prison sentence is extended above the norm, the claim should be considered as a whole but it is not necessary for prison conditions to breach Article 3 in order to justify a grant of asylum.
- 3.7.3 Treatment** Prison conditions generally met international standards in 2005; however, some problems remained. Prison facilities were antiquated, overcrowded, poorly maintained, and had inadequate hygiene. The law mandates that juveniles be held separately from adults and pre-trial detainees be held separately from convicted criminals; however, this did not always occur in practice due to overcrowding.<sup>9</sup>
- 3.7.4** The government permitted prison visits by human rights observers, including the International Committee of the Red Cross (ICRC) and local nongovernmental organizations (NGOs). Both the ICRC and the Helsinki Committee of Montenegro made several visits during the year. The ombudsman's office routinely visited prisons, meeting with detainees and inmates without prior notice.<sup>10</sup>
- 3.7.5 Conclusion** Prison conditions in Montenegro have been judged to meet international standards. Therefore even where individual claimants can demonstrate a real risk of imprisonment on return to Montenegro 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) Where the claim includes dependent family members consideration must also be given to the particular situation of those dependants in accordance with the API on Article 8 ECHR.
- 4.2** With particular reference to Montenegro the types of claim which may raise the issue of whether or not it will be appropriate to grant DL are likely to fall within the following categories. Each case must be considered on its individual merits and membership of one of these groups should *not* imply an automatic grant of DL. There may be other specific circumstances related to the applicant, or dependent family members who are part of the claim, not covered by the categories below which warrant a grant of DL - see the API on Discretionary Leave and the API on Article 8 ECHR.
- 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

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<sup>9</sup> USSD 2005 (Montenegro Section 1)

<sup>10</sup> USSD 2005 (Montenegro Section 1)

on any more favourable grounds be granted Discretionary Leave for a period of three years or until their 18<sup>th</sup> birthday, whichever is the shorter period.

#### **4.4 Medical treatment**

**4.4.1** Claimants may claim they cannot return to Montenegro 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.

**4.4.2** The existing healthcare system is a public service open to all, organised by the Republic of Montenegro.<sup>11</sup> With regards to primary healthcare provision was satisfactory at overall republic level, but there were imbalances and discrepancies in terms of actual provision at local level.<sup>12</sup> The health care system is generally free of charge at the point of use, with small payment for drugs, laboratory services and examinations with a specialised physician.<sup>13</sup>

**4.4.3 Conclusion** Where a caseworker considers that the circumstances of the individual claimant and the situation in the country reach the threshold detailed in the IDI on Medical Treatment making removal contrary to Article 3 or 8 a grant of Discretionary Leave to remain will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave.

#### **5. Returns**

**5.1** Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim. Where the claim includes dependent family members their situation on return should however be considered in line with the Immigration Rules, in particular paragraph 395C requires the consideration of all relevant factors known to the Secretary of State, and with regard to family members refers also to the factors listed in paragraphs 365-368 of the Immigration Rules.

**5.2** Nationals of Montenegro may return voluntarily to any region of Montenegro 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 Montenegro. 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 Montenegro wishing to avail themselves of this opportunity for assisted return to Montenegro should be put in contact with the IOM offices in London on 020 7233 0001 or [www.iomlondon.org](http://www.iomlondon.org).

#### **6. List of sources**

US State Department (USSD) report 2005 (08 March 2006)  
<http://www.state.gov/g/drl/rls/hrrpt/2005/61673.htm>

Foreign and Commonwealth Office (FCO) Country Profile Montenegro (last updated 22 September 2006)  
<http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1007029394365&a=KCountryProfile&aid=1150456892848>

Republic of Montenegro Ministry of Health, Institute for the Public Health of Montenegro  
“Analysis of Healthcare Services in Montenegro for 2003: Document preparing the healthcare system reform” Podgorica, (June 2004) [www.montenegro.yu](http://www.montenegro.yu)

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<sup>11</sup> Republic of Montenegro Ministry of Health June 2004 p.3

<sup>12</sup> Republic of Montenegro Ministry of Health June 2004 p.10

<sup>13</sup> Republic of Montenegro Ministry of Health June 2004 p.12

**Asylum and Appeals Policy Directorate**  
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