

Kosovo Albanians¹ in Asylum Countries:
UNHCR Recommendations as regards Returns

CAVEAT: The categories of Kosovo Albanians in asylum countries of concern to UNHCR include the following groups.

- those who are recognised as refugees or are in the asylum procedure with decisions pending (at any level)
- those enjoying temporary protection (whether they arrived under the Humanitarian Evacuation Programme or by other means)
- those issued a visa or allowed to stay on the basis of protection-related concerns (including those under forms of protection complementary to the refugee protection under the 1951 Convention.)

The Situation in Kosovo and On-going Protection Needs

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- the situation has improved dramatically for Kosovo Albanians •

The withdrawal of Yugoslav forces and the entry of the international military presence (KFOR) into Kosovo in mid-June 1999 heralded a dramatic improvement in the situation inside Kosovo for Kosovo Albanians. The systematic discrimination, harassment and persecution described in earlier UNHCR documents² no longer prevails, and as of 30 July 1999 over 90% of the ethnic Albanian Kosovars who had fled the province earlier in 1998 and 1999 had already returned. In these circumstances, it is to be expected that the majority of asylum claims launched by Kosovo Albanians who left the province after the beginning of July 1999 will not disclose a well-founded fear of persecution for 1951 Convention reasons.

- groups requiring particular attention •

Persons in particularly vulnerable circumstances, even if they left after mid-June, may have special needs which should be taken into account in the context of return in the present circumstances. Examples of the categories of persons who may well have such needs include (but are not limited to) the following:

- the (unaccompanied) elderly;
- unaccompanied minors;
- the handicapped and ill;
- traumatised individuals³;
- female single heads of households (especially those without relatives in Kosovo).

- exceptional Kosovo Albanian cases may, though, still warrant protection •

There will also be exceptional cases of claims for asylum, not limited to, but likely to include, for example,

- families of mixed ethnic origin;
- draft age males, particularly in rural areas, who refused to participate in KLA military activities;
- those accused of collaborating with the Serbian or Yugoslavian forces⁴

for whom a well-founded fear of persecution for Convention reasons may well exist. For this reason Kosovo Albanian asylum-seekers, like all others who make claims to protection in asylum countries, should be given access to status determination procedures and have their claims carefully and individually considered.

Spontaneous Voluntary Return and On-going Protection Needs

- the phenomenon of mass spontaneous voluntary return •

As noted above, the vast majority of Kosovo Albanians who had fled the province during the conflict or who were driven out by regular or special forces or paramilitaries have returned spontaneously to Kosovo from refugee camps and host family situations in the neighbouring countries. Significant numbers have also returned voluntarily from further abroad. The willingness of Kosovo Albanians to return quickly, even during the current difficult times⁵, demonstrates a strong commitment to rebuilding their homes and their lives and bodes well for the future of the province.

● complicated "push" and "pull" factors operating together ●

The often poor security and other conditions in which the Kosovo Albanians were living in the neighbouring countries, whether in camps, collective centres or host families, were clearly a factor which encouraged large numbers to return early. In addition, returnees have cited their fear that if they did not return immediately, their property in Kosovo would be occupied by others in their absence. Some were anxious to trace missing family members left behind in Kosovo. Others wanted to use the short summer to repair and rebuild housing. Often, returnees cited more than one of these reasons. It is therefore clear that it was a combination of these "push" and "pull" factors which fuelled the mass return, rather than any assessment by those returning that the situation in Kosovo had normalised.

● on-going protection needs must be met ●

In such circumstances, the decision by the vast majority of refugees to return in spite of the insecure environment, must not be misrepresented as constituting evidence that the situation in Kosovo has returned to normal. Neither is it a statement on the level of violence or on the adequacy of available shelter. Clearly, conditions in Kosovo remain dangerous and precarious.⁶ Any concerns that beneficiaries of temporary protection may raise as regards return at this juncture must be fully and fairly assessed against this background. This is especially important for individuals such as those enumerated above as having special needs. Where concerns are substantial and of a protection nature, they need to be met, including through suspending return.

Considerations relating to Cessation

● the "ceased circumstances" cessation clause ●

Persons enjoying refugee status in countries of asylum can only be returned voluntarily, in the absence of cessation of their status. In order to apply cessation⁷, the changes experienced in the country must, in the words of the relevant Executive Committee Conclusions, be both fundamental (meaning they are major, profound and stable) and durable.⁸ This means that there must be confidence that the changes are not merely transitory but will endure for the foreseeable future.⁹ Despite the significant change in circumstances in Kosovo, a general application of the cessation clause cannot presently be considered. The situation remains violent and insecure, with threats present for both Kosovo Albanians and other ethnic groups.¹⁰ Kosovo is currently under a fledgling UN civil administration¹¹ with military backing, and remains a province of Serbia in the Federal Republic of Yugoslavia. The eventual relationship between the province and the Serbian and Yugoslav governments is still to be worked out. In such circumstances, it can hardly be considered that the situation has been "normalised" to any reasonable degree. Neither the UN civil mission nor the international military presence is as yet fully deployed, and furthermore, their respective tenures have not been definitively determined, it being known only that the international presence will not last indefinitely. There is no effectively functioning national police force, national judiciary or national legislative framework. The situation at present and for the longer-term is consequently both unstable and uncertain.

● those who are not recognised refugees ●

As regards Kosovars not recognised as refugees but who fall within the groups of concern to UNHCR (see caveat), the "ceased circumstances" cessation clause of the 1951 Convention is not directly applicable. These persons are enjoying forms of protection offered to those in need prior to, and without prejudice to possible future resort to, 1951 Convention refugee status. As cessation relates to termination of refugee status, not other protection status, it has no immediate applicability to persons

enjoying other forms of protection. Nevertheless, there are valuable elements to be drawn from the application of the cessation clause to consider when and for whom such temporary protection can be lifted.¹² To allow for the general lifting of temporary protection the changes, coupled with reintegration potential¹³, must be fundamental, must have some measure of durability, and must remove the circumstances which generated the protection need in the first place.

A Synopsis and Concluding Comments on Timing of Returns

- protection and humanitarian needs should be considered on a case-by-case basis •

UNHCR urges asylum States to continue to take a principled approach to claims from Kosovo Albanians. Whether those claims are for on-going stay by ethnic Albanians already in asylum countries who do not wish to return, or are launched by those departing the province since mid-June 1999, deciding on such cases will require attention to the facts and detail of the individual claim and the gathering of reliable and up-to-date information regarding the situation in Kosovo, as well as careful analysis, to correctly determine if there are any protection and humanitarian needs of the claimants which would justify granting or continuing protection.

- cessation is premature •

Circumstances within Kosovo itself have not yet reached the point where it is appropriate to consider cessation of refugee status for Kosovo Albanians who are recognised refugees. The criteria for cessation include fundamental change which is enduring; this cannot yet be said to be the case in Kosovo. It is impossible to predict when cessation might be appropriate. Hence involuntary return of persons enjoying refugee status is not warranted.

- timing of returns is important •

Caution is justifiably marking the approach of important host countries towards returns at this point, prompting them to prolong the legal stay of Kosovo Albanians in the current circumstances. UNHCR welcomes and encourages this development. Where temporary forms of protection are withdrawn, this should not lead to persons being involuntarily returned in an indiscriminate way with undue haste. As outlined above, ending of temporary protection must be accompanied by viable, accessible possibilities for those who indicate they have ongoing protection needs¹⁴ to have those needs assessed and respected. Where persons who had previously benefited from temporary protection do not have compelling protection or other humanitarian reasons for remaining in countries of asylum, they can be returned. However, timing of returns should be carefully staged, taking into account both personal circumstances and the situation in Kosovo. Factors relating to the situation in Kosovo which will be important in deciding when returns can be implemented include the following:

- the availability of adequate shelter, food and other provision for basic needs;
- the presence and effectiveness of police or other security forces;
- the functioning of health care and social services;
- the level of violence prevalent in the province.

Given the current security situation and the serious shortage of adequate shelter, coupled with the rapidly approaching winter, UNHCR would strongly urge that protection currently being enjoyed by Kosovo Albanians be maintained and that only voluntary returns take place until the spring of 2000, at which time the situation will be reviewed.

UNHCR
Geneva, 1 October 1999

Endnotes:

¹ This paper relates only to persons from Kosovo of Albanian ethnicity. For the position with respect to members of other ethnic groups in Kosovo, reference should be made to UNHCR's paper on *Asylum-Seekers from The Federal Republic of Yugoslavia: Minorities* and to the joint UNHCR/OSCE *Preliminary Assessment of the Situation of Ethnic Minorities in Kosovo* (UNHCR/OSCE, 26 July 1999) and subsequent updates.

² Perhaps most thoroughly described in the *Position Paper on the Treatment of Asylum-seekers from Kosovo in Asylum Countries* of August 1998 and the update, *Position Paper on the Treatment of Refugees and Asylum-seekers from Kosovo* (HIWG/98/6/Rev.1) of November 1998.

³ Such persons might be, for example, victims of torture or particularly egregious forms of violence, (for example, ex-detainees, or women who may have suffered sexual violence), or witnesses to crimes against humanity. It should be noted with respect to traumatised individuals that even where cessation of status is warranted (which it is most definitively NOT in this case at present, see below), **Executive Committee Conclusion 69 (XLIII)** (1992) notes that it should be "recognised that compelling reasons may, for certain individuals, support the continuation of refugee status." It is likely the drafters had in mind Article 1(C) 5 (2nd paragraph) and paragraph 136 of the UNHCR *Handbook on Procedures and Criteria for Determining Refugee Status* (Geneva, 1979, re-edited 1992), which arguably would cover such cases as these traumatised individuals.

⁴ But note that **credibility** and **exclusion** may be relevant considerations in such cases.

⁵ Reports from Kosovo emphasise the extremely fluid and rapidly developing nature of the precarious security situation there at present. The current deficiency in law and order in the province makes it insecure for all who venture there, even KFOR troops, who have been experiencing increasing challenges, including sniper attacks. In addition, widespread destruction of shelter in particular means that certain individuals cannot return and live in adequate circumstances at the present time, particularly if they are not capable of rebuilding their own shelter (see above list of "groups requiring particular attention" for some examples). See also note 6.

⁶ KFOR has reported that from the time of their entry into Kosovo on 12 June up until 26 July they have confirmed and investigated 198 murders, 573 arsons and 840 lootings, the vast majority against Serbs and their property. With respect to the murders, however, OSCE has reported that of these victims, 73 have been identified as ethnic Serbs, and 72 have been identified as ethnic Albanians, suggesting that there is significant danger even for ethnic Albanians (particularly, of course, those who are accused of collaborating with the Serbs during the conflict). It is openly acknowledged by KFOR that these statistics are incomplete and that many more crimes of this nature occurred, but have gone unrecorded. See also note 5.

⁷ Article 1 C (5) of the **Convention relating to the Status of Refugees**, done at Geneva, 28 July 1951.

⁸ **Executive Committee Conclusions No. 65 (XLII)** (1991) and **No. 69 (XLIII)** (1992) speak of profound change which is fundamental, stable, and durable.

⁹ **Executive Committee Conclusion Number 69 (XLIII)** (1992), and paragraphs 135 and 136 of the *Handbook on Procedures and Criteria for Determining Refugee Status* elaborate on this criteria.

¹⁰ See notes 5 and 6 above.

¹¹ UNMIK is the United Nations Interim Mission in Kosovo, its very name confirming its temporary nature.

¹² For further discussion, see the Standing Committee Document, *Note on the Cessation Clauses*, EC/47/SC/CRP.30 of 30 May 1997, para. 27

¹³ Relevant in this regard would be the existence of an adequate infrastructure to allow the return to be sustainable, that is, availability of the basic necessities of life, including food, shelter and basic sanitary and health facilities.

¹⁴ In the current context, this is in fact likely to be a small number.