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Bosnien-Hercegovina (179)



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Kære Inge Bruhn Thomsen

Vedlagt fremsendes UNHCR's svar på Dansk Flygtningehjælps forespørgsel af 21. august 2001 angående "Open Cities".

Med venlig hilsen

S. Egelund

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Bosnia & Herzegovina

Sarajevo, 23 August 2001

Dear Sara,

I am writing to you in relation to the enquiry received from the Danish Refugee Council regarding the relevance of the 'Open Cities' initiative in individual asylum procedures. Please see below some comments that you might find useful.

1) What is the current status of the Open Cities' initiative?

The Open City Initiative Project can be considered completed at the end of 1998. The last report on its implementation was released in August 1999. Despite the many remaining impediments to return and security problems, returns now take place in municipalities across BiH. This UNHCR Initiative played an important part in the early stages of implementation of Annex 7 of the General Framework Agreement on Peace (GFAP), opening up returns to municipalities in both entities (first in the Federation and then in the RS) by encouraging selected municipalities to declare their willingness "to allow" minority groups to return.

At present, and with particular regard to return to occupied properties in urban areas, the focus of the International Community (IC) has shifted towards the respect of individual rights of returnees and the Rule of Law. The Property Law Implementation Plan (PLIP) has the advantage of allowing individuals to repossess properties in their places of origin without the need for the IC to negotiate group returns with the local authorities.

Ms. Sara Egelund
Asylum Department
Danish Refugee Council

- 2) Is the fact that a municipality has been awarded Open City status relevant to the determination of refugee status in individual asylum procedures concerning pre-war inhabitants of that municipality?

The Open City Initiative was directed to "reward" municipalities which declared themselves open to minority returns. Although this commitment had to be demonstrated with a satisfactory human rights record, the fact that a municipality had been awarded Open City status was never meant to constitute a guarantee of individual returnees' safety upon return, but was rather a programme tool to prioritise areas of intervention and target assistance to the most co-operative municipalities in BiH. Projects and resources were directed towards Open Cities applying a principle of "positive conditionality".

In general, the municipality of origin can not be the sole element to be considered when determining the refugee status of persons from BiH, as asylum claims should be individually assessed with regard to the individual circumstances of the claimant. Incidentally, as the asylum claim in question refers to a mixed couple, it is important to note that mixed marriages from BiH remain a category of persons considered by UNHCR as in continued need of international protection.

It is important to note that every day serious security incidents (murders, throwing of grenades, explosions of houses and cars, attempted mobbing, etc.) are reported in minority return areas. The local police and judiciary have in many instances failed to provide effective protection to returnees and to sanction the perpetrators of these crimes. In addition, serious obstacles to sustainable re-integration remain, and continued discrimination results in denials of basic civil, political, economic, social and cultural rights. On these problems, please see the *Update of UNHCR's position on persons from BiH in continuing need of international protection* which was issued in August 2000 (a new *Update* covering 2001 will be released soon) and, *inter alia*, the latest Report of the *Special Rapporteur* of the Commission on Human Rights on the situation of human rights in Bosnia and Herzegovina, S/2000/788, A/55/282, Amnesty International, *Bosnia-Herzegovina - Waiting on the Doorstep: minority returns to eastern Republika Srpska*, July 2000, International Crisis Group, *War Criminals in Bosnia's Republika Srpska: who are the people in your neighbourhood?*, November 2000, and the US Committee for Refugees, *World Refugee Survey 2001*.

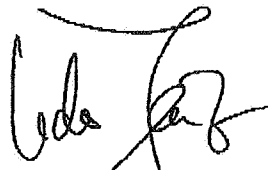
- 3) Is it consistent with the objective of the Open Cities' initiative to consider a municipality which has been declared an Open City as a destination for relocation (an "internal flight alternative") of persons who did not live in that municipality prior to the war?

It was never the objective of the Open Cities Initiative to create areas for relocation of persons who can not return to their homes of origin. In addition to UNHCR's general concerns regarding the "internal flight alternative" (which as you very well know should not represent a "short-cut" to by-pass a substantive individual assessment of

the asylum claim), the GFAP enshrines the right of every refugee and displaced person from BiH to return to their home of origin (as opposed to merely their country or area of origin). For these rights to be effectively enabled, it should be underlined that returnees from abroad must be able to respect the property rights of others, and cannot be forced to occupy contested property, as may result from enforced returns where the individuals concerned are unable or unwilling for reasons of continuing security concerns to return to their municipality of origin.

I hope this is useful and answers your questions.

Yours sincerely,



Udo Janz
Deputy Chief of Mission