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OPERATIONAL GUIDANCE NOTE

REPUBLIC OF MONTENEGRO

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1. Introduction

- 1.1** This document summarises the general, political and human rights situation in Montenegro 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. See The Republic of Serbia OGN for all claims from people entitled to reside in Serbia. 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. 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.

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 4 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 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
- 2.2** Montenegro has a population of approximately 673,000 and has a presidential and a parliamentary system of government. The 2003 presidential 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.⁶
- 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.⁷
- 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.⁸

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

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)

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

⁶ USSD 2005 (Montenegro Introduction)

⁷ USSD 2005 (Montenegro Introduction)

⁸ USSD 2005 (Montenegro Introduction)

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).
- 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

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 Montenegrin 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
- 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.⁹
- 3.6.3** The housing situation for Roma in Montenegro is better than in other Balkan countries and local authorities in some municipalities have allowed Roma to build settlements on city owned land or provided alternative housing. In some cases, Roma squatters have moved into abandoned buildings and local authorities have accepted this. However, many Roma live in slums without even basic amenities.¹⁰
- 3.6.4** 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

⁹ USSD 2005 (Montenegro Section 5)

¹⁰ Humanitarian Law Centre report 2003

providing land and utility connections for an international NGO project to replace illegal and inadequate Romani housing.¹¹

Sandzak region

- 3.6.5 Treatment** The Sandzak region is an area that straddles the Serbia/Montenegro border and its population consists mainly of Bosniaks.¹² 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.¹³
- 3.6.6** 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."¹⁴
- 3.6.7** 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.¹⁵
- 3.6.8** In 2004 a sizable percentage of the Montenegrin police force was made up of Bosniaks, many of whom were deployed in the Sandzak region.¹⁶
- 3.6.9 Sufficiency of Protection** There is widespread prejudice against Roma in Montenegro and Roma may not always obtain the full protection of the law as individual police officers may discriminate against Roma.
- 3.6.10 Internal Relocation** In general there is freedom of movement within Montenegro¹⁷ and Roma will be able to internally relocate to another part of Montenegro where they will not face ill-treatment.
- 3.6.11 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 and Montenegro, 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.
- 3.6.12 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. The housing situation for Roma in Montenegro is better than in other Balkan countries and local authorities in some municipalities have allowed Roma to build settlements on city owned land or provided alternative housing. 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

¹¹ USSD 2005 (Montenegro Section 5)

¹² Helsinki Committee May 2004 p.373

¹³ Helsinki Committee May 2004 p.375

¹⁴ OSCE Mission report January 2002

¹⁵ USSD 2003 (Montenegro Section 4)

¹⁶ UNHCR Position paper March 2005

¹⁷ USSD 2005 (Serbia Section 2 & Montenegro Section 2)

- 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 Montenegrin authorities due to their refusal to perform military service.
- 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.¹⁸
- 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.¹⁹
- 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.²⁰
- 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.²¹
- 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.

¹⁸ WRI 2005

¹⁹ WRI 2005

²⁰ WRI 2005

²¹ WRI 2005

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 grounds is not persecution for a Convention reason. The Constitutional Charter guarantees the right of conscientious objection 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.

3.8 Prison Conditions

3.8.1 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 Montenegro are so poor as to amount to torture or inhuman treatment or punishment.

3.8.2 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.²²

3.8.3 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.²³

3.8.4 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)

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 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

²² USSD 2005 (Montenegro Section 1)

²³ USSD 2005 (Montenegro Section 1)

on any more favourable grounds be granted Discretionary Leave for a period of three years or until their 18th 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.²⁴ 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.²⁵ 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 specialized physician.²⁶

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.

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.

6. List of sources

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²⁴ Republic of Montenegro Ministry of Health June 2004 p.3

²⁵ Republic of Montenegro Ministry of Health June 2004 p.10

²⁶ Republic of Montenegro Ministry of Health June 2004 p.12

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