



# OPERATIONAL GUIDANCE NOTE

## REPUBLIC OF SERBIA (including KOSOVO)

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### 1. Introduction

- 1.1** This document evaluates the general, political and human rights situation in Serbia (including Kosovo) 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 Serbia (including Kosovo) 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.

- 1.4** With effect from 1 April 2003 Serbia (including Kosovo) is a country listed in section 94 of the Nationality Immigration and Asylum Act 2002. If, following consideration, a claim made on or after 1 April 2003 by someone who is entitled to reside in Serbia (including Kosovo) is refused, caseworkers should certify it as clearly unfounded unless satisfied that it is not. A claim will be clearly unfounded if it is so clearly without substance that it is bound to fail. Guidance on whether certain types of claim are likely to be clearly unfounded is set out below.

### **Source documents**

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

### **Note**

- 1.6** This OGN focuses on the Republic of Serbia which includes the UN administered province of Kosovo. For reasons of clarity, it has sometimes been necessary to deal with Serbia and Kosovo separately. This should not be taken to imply any comment upon the legal or political status of these territories.

## **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.<sup>1</sup> However, on the 21 May 2006, Montenegro held a successful referendum on whether to remain within the state union and 55.5% of those who voted did so in favour of independence. The Montenegrin Assembly made a formal declaration of independence on 3 June 2006, thus bringing the union between Serbia and Montenegro to an end.<sup>2</sup>
- 2.2** On 5 June 2006, the Serbian National Assembly decreed Serbia to be the continuing international personality of the State Union of Serbia and Montenegro and fully succeeded its legal status. Serbia therefore inherited membership of international organisations of which Serbia and Montenegro was a member. The Republic of Serbia remains party to all international agreements, treaties and conventions to which Serbia and Montenegro was a party.<sup>3</sup>

### **Serbia**

- 2.3** The Republic of Serbia is a parliamentary democracy with approximately 10.2 million inhabitants.<sup>4</sup> According to the OSCE, the 21 January 2007 Serbian parliamentary elections were free and fair and provided a genuine opportunity for the citizens of Serbia to choose from a range of political platforms and were in line with OSCE commitments and Council of Europe's standards for democratic elections.<sup>5</sup>
- 2.4** Following the fall of the Milosevic regime (in October 2000), the human rights situation in Serbia has greatly improved. Serbia has ratified the majority of human rights-related international conventions and since the separation from Montenegro, Serbia remains bound by these agreements. The authorities have made some progress with implementation, for

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<sup>1</sup> USSD 2005 (Introduction)

<sup>2</sup> FCO Country Profile (22 December 2006)

<sup>3</sup> FCO Country Profile (22 December 2006)

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

<sup>5</sup> OSCE Press Release 22 January 2007

example, 'Minority Councils' for most of the major ethnic groups in Serbia have been established, which provide a more effective means for minorities to raise issues of concern with authorities. A Serbian Government strategy for tackling discrimination and better integration of the Roma community is also a positive development. The Serbian Government has also taken positive steps to address the inter-ethnic related problems in South Serbia.<sup>6</sup>

- 2.5** The government generally respected the human rights of its citizens and continued efforts to address human rights violations during 2005; however, numerous problems from previous years persisted including police violence, misconduct, and impunity, arbitrary arrest and selective enforcement of the law for political purposes, lengthy pre-trial detention, corruption in the judiciary, lengthy trials of human rights cases, government impediments to freedom of speech and the press, harassment of journalists, societal violence and discrimination against religious and ethnic minorities.<sup>7</sup>
- 2.6** The government's increased efforts in addressing human rights violations brought notable improvements during 2005 and increased the attention given to human rights abuses of minorities. The authorities also implemented a witness protection programme to help combat trafficking in persons.<sup>8</sup> However, since April 2005 there have been few significant developments in relation to the International Criminal Tribunal for the former Yugoslavia (ICTY) indictments. Following a series of negative reports from Carla Del Ponte about the level of co-operation from Serbia, on 8th May 2006, EU Enlargement Commissioner Olli Rehn decided to suspend Serbia's talks until Serbia achieves full co-operation.<sup>9</sup> In June 2006, eight people including four police officers were indicted by the Serb authorities in relation to mass graves identified in Serbia.<sup>10</sup>
- 2.7** Reports of police torture or ill-treatment fell in 2005, however, investigations into previous cases remained seriously flawed and in a number of trials testimony allegedly obtained under torture was admitted as evidence.<sup>11</sup>
- 2.8** Like many countries in the Balkans region, Serbia faces a serious threat from organised crime. Criminals exploited the vacuum, created by the conflicts of the 1990s and the isolation due to international sanctions, to establish lucrative networks, which reach far into government and have slowed social and economic development.<sup>12</sup>
- Kosovo**
- 2.9** Kosovo is legally a province of Serbia but has been under interim UN administration pending a settlement of its status in accordance with UN Security Council Resolution 1244 since 1999. The UN Interim Administration Mission in Kosovo (UNMIK) administers Kosovo.<sup>13</sup>
- 2.10** Multi-party elections in October 2004 for seats in the Assembly were generally free and fair. UNMIK international civilian authorities and an UN-authorized North Atlantic Treaty Organization (NATO) peacekeeping force for Kosovo (KFOR) generally maintained effective control over security forces in 2005; however, there were reports that local elements of the security forces acted independently of their respective authority.<sup>14</sup>
- 2.11** UNMIK and the provisional institutions of self government (PISG) generally respected the human rights of residents in 2005; however, there were serious problems in some areas,

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<sup>6</sup> FCO Country Profile (22 December 2006)

<sup>7</sup> USSD 2005 (Serbia Introduction)

<sup>8</sup> USSD 2005 (Serbia Introduction)

<sup>9</sup> FCO Country Profile (22 December 2006)

<sup>10</sup> EC Report Serbia 2006 p.12

<sup>11</sup> Amnesty International Annual Report (May 2006)

<sup>12</sup> FCO Country Profile (22 December 2006)

<sup>13</sup> FCO Country Profile (22 December 2006)

<sup>14</sup> USSD 2005 (Kosovo Introduction)

particularly relating to minority populations including politically and ethnically motivated killings, lengthy pre-trial detention and lack of judicial due process, corruption and government interference in the judiciary, attacks and harassment against journalists, societal antipathy against Serbs and the Serbian Orthodox Church, restrictions on freedom of movement for minorities, particularly ethnic Serbs and societal violence, abuse, and discrimination against minority communities.<sup>15</sup>

- 2.12** In February 2006, the operation of the ombudsperson institution was transferred from UNMIK to the Kosovo Assembly which will be responsible for officially appointing Kosovo's first local ombudsperson. From December 2005, until May 2006, the ombudsperson addressed 270 queries to the provisional institutions of self government and has received 75 positive responses of which three have been implemented.<sup>16</sup>
- 2.13** Policing in Kosovo is carried out by the international UNMIK police and the Kosovo Police Service (KPS). All local police stations with the exception of Mitrovica regional HQ have now been handed over to the KPS which also handle the traditional police and investigative functions. However, the war crimes and witness protection units are still under the responsibility of UNMIK.<sup>17</sup>
- 2.14** The recruitment from minorities into the KPS has further progressed during 2006 and the percentage of minority police officers in the KPS currently stands at around 15.5%, of these Kosovo Serbs make up about 9% of Kosovo Police Service numbers. There are mixed patrols in mixed areas in order to give every citizen the possibility of getting assistance in his or her own language. Overall, in 2006 the Kosovo police service has continued to make good progress towards becoming a credible and professional police force. The KPS has proven able to competently fulfil its tasks, especially in areas inhabited by members of the majority population.<sup>18</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 Serbia (including Kosovo). 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

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<sup>15</sup> USSD 2005 (Kosovo Introduction)

<sup>16</sup> EC report Kosovo 2006 p.12

<sup>17</sup> EC report Kosovo 2006 p.37

<sup>18</sup> EC report Kosovo 2006 p.38

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](http://www.ind.homeoffice.gov.uk/ind/en/home/laws_policy/policy_instructions/apis.html)

### **Main categories of claim from Serbia**

#### **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 Serb population due to their Roma ethnicity and that the authorities are not able to offer sufficiency of protection

**3.6.2** **Treatment** According to the 2002 census, 83 percent of Serbia's population (without Kosovo) are Serbs, while 14 percent come from minority communities. Hungarians figure as the biggest minority community in Serbia (over 3 percent of the population). They are followed by Bosniaks, Roma, Yugoslavs, Croats, Albanians, Slovaks, Wallachians, Romanians and Macedonians.<sup>19</sup>

**3.6.3** The law prohibits discrimination based on race, gender, disability, language, or social status.<sup>20</sup> Minority Councils which provide a more effective means for minorities to raise issues of concern with authorities have been established for most of the major ethnic groups in Serbia. Another positive development is a Serbian Government strategy for tackling discrimination and better integration of the Roma community. The Serbian Government has also taken positive steps to address the inter-ethnic related problems in South Serbia.<sup>21</sup>

**3.6.4** During 2005 the Belgrade authorities established a Romani co-ordination centre and purchased land for the construction of an apartment complex for Roma. To address concerns of minorities, the state union Ministry for Human and Minority Rights operated a hotline for minorities and others concerned about human rights problems. Callers to the hotline most commonly reported being the victim of threats, ethnic slurs, and bullying. The government also sponsored several school programmes to educate children about minority cultures and to promote tolerance.<sup>22</sup>

**3.6.5** During 2005 the police made modest improvements in investigating cases of societal violence against Roma. Twice during 2005 police investigated and pressed criminal charges against persons who attacked Romani settlements with Molotov cocktails.<sup>23</sup>

**3.6.6** The European Commission reported that as regards Roma, the Serbian Government has adopted a number of action plans in the areas of education, health care, employment and housing in 2006. However, the situation of Roma in particular of those who are internally displaced, remains precarious. A significant proportion of the Roma population does not possess basic personal documents and do not have access to any social security systems.<sup>24</sup>

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<sup>19</sup> Helsinki Committee National Minorities in Serbia (October 2004)

<sup>20</sup> USSD 2005 (Serbia Section 5)

<sup>21</sup> FCO Country Profile (22 December 2006)

<sup>22</sup> USSD 2005 (Serbia section 5)

<sup>23</sup> USSD 2005 (Serbia Section 5)

<sup>24</sup> EC Report Serbia 2006 p.15

- 3.6.7** Roma continued to be targets of numerous incidents of police violence, verbal and physical harassment from ordinary citizens, and societal discrimination during 2005. Many Roma, including IDPs from Kosovo, lived illegally in squatter settlements that lacked basic services such as schools, medical care, water, and sewage facilities. Some settlements were located on valuable industrial or commercial sites where private owners wanted to resume control; others were on the premises of state-owned enterprises due to be privatised.<sup>25</sup>
- 3.6.8** The UNHCR estimated that there were 40,000 to 45,000 displaced Roma living in Serbia proper in 2005; half of those were not registered due to lack of documents. Many Kosovar Roma were perceived to be Serb collaborators during the conflict in Kosovo and could not safely return to Kosovo. Living conditions for Roma in Serbia were extremely poor. Local municipalities were often reluctant to accommodate them, hoping that, if they failed to provide shelter, the Roma would leave the community. If Roma did settle, it was often in official collective centres with minimum amenities or, more often, in makeshift camps in or near major cities or towns.<sup>26</sup>
- 3.6.9** **Sufficiency of Protection** The authorities of Serbia recognise Roma as a national minority and discrimination against Roma is illegal. Although, Roma may not always obtain the full protection of the law and individual police officers may discriminate against Roma the authorities are willing to offer sufficiency protection to Roma and the perpetrators of discrimination and/or violence against Roma do face criminal sanctions.
- 3.6.10** **Internal Relocation** In general there is freedom of movement within Serbia<sup>27</sup> and Roma will be able to internally relocate to another part of Serbia 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, 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 Serbia is widespread and some Roma may be subject to physical attacks. However, in general this discrimination does not amount to persecution and the authorities are willing to offer sufficiency of protection although the effectiveness of this protection may be limited by the actions of individual police officers/government officials. However, internal relocation is an option and it is not unduly harsh for Roma to relocate to another part of Serbia where they will not face persecution. 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**

- 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 Serbian authorities due to their refusal to perform military service.
- 3.7.2** **Treatment.** During 2006, organisational changes within the Serbian army have seen the gradual replacement of conscripts with contract officers and the overall downsizing of the army.<sup>28</sup>

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<sup>25</sup> USSD 2005 (Serbia Section 5)

<sup>26</sup> USSD 2005 (Serbia Section 2)

<sup>27</sup> USSD 2005 (Serbia Section 2)

<sup>28</sup> EC Report Serbia 2006 p.9

- 3.7.3** The right to conscientious objection is enshrined in Article 45 of the 2006 Constitution, according to which 'No person shall be obliged to perform military or any other service involving the use of weapons if this opposes his religion or beliefs.'<sup>29</sup>
- 3.7.4** 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.<sup>30</sup>
- 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.<sup>31</sup>
- 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.

- 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 Constitution of Serbia guarantees the right of conscientious objection. 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.

## **Main categories of claim from Kosovo**

### **3.8 Ethnic Albanians originating from areas where they constitute an ethnic minority**

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<sup>29</sup> Serbian Constitution 2006

<sup>30</sup> WRI 2005

<sup>31</sup> WRI 2005

- 3.8.1** Some claimants will apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of Serbian civilians because they are from an area of Kosovo in which they form a minority of the population. The majority of claims are from Mitrovica City and Mitrovica Municipality.
- 3.8.2 *Treatment*** There are some parts of Kosovo, particularly in the north of the province, where Serbs are in the majority and ethnic Albanians may be subject to harassment and persecution. These areas include the northern part of the town of Mitrovica – i.e. north of the river Ibar; the northern municipalities of Leposavic, Zvecan and Zubin Potok; and the southern municipality of Strpce.<sup>32</sup>
- 3.8.3** On 22 April 2005, KFOR withdrew its armoured vehicles and barricades from the Austerlitz Bridge connecting ethnic Serb-majority northern Mitrovica with ethnic Albanian-majority southern Mitrovica. The KPS assumed control of the bridge on 6 June 2005 and on 18 July it opened to all civilian traffic for the first time since 1999.<sup>33</sup> During August 2005 over 80 cars a day were crossing the bridge and the situation is now considered to be routine. Nevertheless, Serbs crossing the bridge reportedly do not feel safe to move freely in southern Mitrovica and Albanians likewise do not enjoy freedom of movement in northern Mitrovica.<sup>34</sup>
- 3.8.4** The UNHCR reported that 2,816 individuals from ethnic minorities returned to 25 municipalities in Kosovo between March 2005 and May 2006,<sup>35</sup> including ethnic Albanians who returned to areas where they are a minority. However, in Mitrovica ethnic Serbs in the north of the city and ethnic Albanians in the south continued to illegally occupy each others' properties, hindering potential returnees.<sup>36</sup>
- 3.8.5** The UNHCR reiterated their position in June 2006 that Kosovo Albanians originating from areas where they constitute an ethnic minority should continue to benefit from international protection.<sup>37</sup>
- 3.8.6 *Sufficiency of Protection.*** Policing in Kosovo is carried out by the international UNMIK police and the Kosovo Police Service (KPS). All local police stations with the exception of Mitrovica regional HQ have now been handed over to the KPS which also handle the traditional police and investigative functions. However, the war crimes and witness protection units are still under the responsibility of UNMIK.<sup>38</sup> Overall, in 2006 the Kosovo police service has continued to make good progress towards becoming a credible and professional police force. The KPS has proven able to competently fulfil its tasks, especially in areas inhabited by members of the majority population.<sup>39</sup>
- 3.8.7** In general there is sufficiency of protection available from UNMIK/KPS/KFOR for all ethnic Albanians even in areas where they constitute a minority. UNMIK/KPS/KFOR are able and willing to provide protection for those that fear persecution and ensure that there is a legal mechanism for the detection, prosecution and punishment of persecutory acts.
- 3.8.8 *Internal Relocation*** UNMIK regulations and the constitutional framework provide for freedom of movement throughout Kosovo; however, inter-ethnic tensions and real and perceived security concerns restricted freedom of movement for some minorities. During 2005 UNMIK, KFOR, and the PISG generally improved freedom of movement for minority communities although sporadic incidents of violence and intimidation targeting minorities

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<sup>32</sup> OSCE Municipality Profiles (June 2004)

<sup>33</sup> USSD 2005 (Kosovo Section 2)

<sup>34</sup> UNHCR position paper (June 2006)

<sup>35</sup> UNHCR position paper (June 2006)

<sup>36</sup> USSD 2005 (Kosovo Section 2)

<sup>37</sup> UNHCR Position Paper (June 2006)

<sup>38</sup> EC report Kosovo 2006 p.37

<sup>39</sup> EC report Kosovo 2006 p.38



continued to limit freedom of movement for ethnic Albanians in northern Kosovo.<sup>40</sup> Despite the restrictions faced by some ethnic Albanians in majority Serb enclaves there is in general freedom of movement for ethnic Albanians in Kosovo and it will not be unduly harsh for an ethnic Albanian to internally relocate within Kosovo, to an area where they will not be in the minority.

### 3.8.9 *Caselaw*

**D [2003] UKIAT (00019)** The IAT found that there was no risk of persecution for an ethnic Albanian on return to Northern Mitrovica nor was it unduly harsh to relocate to Pristina.

**3.8.10 *Conclusion*** Although ethnic Albanians may be subject to high levels of harassment and intimidation in the few areas of Kosovo where they are a minority, sufficiency of protection is provided by UNMIK/KFOR/KPS. In addition ethnic Albanians in these areas can also internally relocate to areas within Kosovo where they will not be a minority. Due to the availability of sufficiency of protection and the possibility of internal relocation claimants who apply on this basis are unlikely to qualify for a grant of asylum or Humanitarian Protection and such claims are likely to be clearly unfounded.

### 3.9 **Harassment from extremist Albanians linked to the Kosovo Liberation Army (KLA) and/or the Kosovo Protection Corps (KPC).**

**3.9.1** Some claimants will apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of extremist Albanians from the Kosovo Liberation Army and/or its successor the Kosovo Protection Corps due to their refusal to assist or join the KLA either before, during or after the 1999 conflict.

**3.9.2 *Treatment*** The KLA was officially disbanded on 20 September 1999 and many former members were absorbed into the newly formed Kosovo Protection Corps (KPC).<sup>41</sup> In general, the Kosovo Protection Corps and its members continue to comply with the rule of law and exercise their duties in accordance with their mandate<sup>42</sup> and the International Organization for Migration (IOM) co-ordinated training and projects for the KPC in collaboration with other NGOs.<sup>43</sup>

**3.9.3** However, there are examples of KPC officers who have abused their position. The Association of Professional Journalists of Kosovo (APJK) accused the KPC of blocking filming of Serbian President Boris Tadic's visit to Kosovo. The APJK also reported that unknown persons made telephone death threats to the editor in chief of radio *Top Ilira* in February 2005 to stop reporting on the Democratic League of Kosovo (LDK) party.<sup>44</sup>

**3.9.4** However, extremist Albanians who break the law face criminal charges. Of the seven persons originally detained on suspicion of organising or leading the March 2004 riots, criminal investigations were ongoing in the cases of four: KPC reserve commander, Naser Shatri; chairman of the KLA war veterans association in Peja, Nexhmi Lajci; chairman of the KLA war veterans association in Gjilan, Shaqir Shaqiri; and chairman of the KLA war veterans Association in Vushtri, Salih Salihu.<sup>45</sup>

**3.9.5 *Sufficiency of Protection*** Policing in Kosovo is carried out by the international UNMIK police and the Kosovo Police Service (KPS). All local police stations with the exception of Mitrovica regional HQ have now been handed over to the KPS which also handle the traditional police and investigative functions. However, the war crimes and witness

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<sup>40</sup> USSD 2005 (Kosovo Section 2)

<sup>41</sup> Europa 2005 p.542

<sup>42</sup> UN report on UNMIK (February 2005) p.18

<sup>43</sup> USSD 2005 (Kosovo Section 3)

<sup>44</sup> USSD 2005 (Kosovo Section 2)

<sup>45</sup> USSD 2005 (Kosovo Section 4)

protection units are still under the responsibility of UNMIK.<sup>46</sup> Overall, in 2006 the Kosovo police service has continued to make good progress towards becoming a credible and professional police force. The KPS has proven able to competently fulfil its tasks, especially in areas inhabited by members of the majority population.<sup>47</sup>

**3.9.6** In general there is sufficiency of protection available from UNMIK/KPS/KFOR for all ethnic Albanians in Kosovo. UNMIK/KPS/KFOR are able and willing to provide protection for those that fear persecution and ensure that there is a legal mechanism for the detection, prosecution and punishment of persecutory acts.

**3.9.7 *Internal Relocation*** UNMIK regulations and the constitutional framework provide for freedom of movement throughout Kosovo; however, inter-ethnic tensions and real and perceived security concerns restricted freedom of movement for some minorities.<sup>48</sup> There is in general freedom of movement for ethnic Albanians in Kosovo (outside of the Serb enclaves) and internal relocation will not be unduly harsh where a person might face less risk in another part of Kosovo where their previous, alleged activities may not be known. Claimants facing difficulties from extremist elements of the KLA/KPC in their home area could relocate to other areas in Kosovo for example, relocation from a rural area to larger communities such as Pristina.

### **3.9.8 *Caselaw***

**Ilir CERMI (01/TH/0245 28 February 2001)** The Tribunal allowed the appeal of the Secretary of State regarding an LDK supporter who had refused to join the KLA, finding that the appellant had no well-founded fear of persecution in Kosovo because of the general level of support for the LDK and that there was a sufficiency of protection in Kosovo and Pec/Peje in particular.

**3.9.9 *Conclusion*** The KLA has been disbanded since 1999 and its successor the KPC operates as a civil protection/emergency force within the law. Considering the general sufficiency of protection for ethnic Albanians, the option of internal relocation within Kosovo, and the diminishing threat from former KLA members, it is unlikely that claimants in this category would qualify for a grant of asylum or Humanitarian Protection and such claims are likely to be clearly unfounded.

### **3.10 Those perceived to have been associated with the Serbian regime after 1990**

**3.10.1** Some claimants will apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of ethnic Albanians, operating as individuals or part of organised non-state agents such as offshoots of the KLA or other Albanian nationalist organisations, due to either their or a family members alleged collaboration with the Serb authorities after 1990.

**3.10.2 *Treatment*** The UNHCR reiterated their position in June 2006 that persons perceived to have been associated with the Serbian regime after 1990 may have a well founded fear of persecution.<sup>49</sup>

**3.10.3 *Sufficiency of protection*** Policing in Kosovo is carried out by the international UNMIK police and the Kosovo Police Service (KPS). All local police stations with the exception of Mitrovica regional HQ have now been handed over to the KPS which also handle the traditional police and investigative functions. However, the war crimes and witness protection units are still under the responsibility of UNMIK.<sup>50</sup> Overall, in 2006 the Kosovo police service has continued to make good progress towards becoming a credible and

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<sup>46</sup> EC report Kosovo 2006 p.37

<sup>47</sup> EC report Kosovo 2006 p.38

<sup>48</sup> USSD 2005 (Kosovo Section 2)

<sup>49</sup> UNHCR Position Paper (June 2006)

<sup>50</sup> EC report Kosovo 2006 p.37

professional police force. The KPS has proven able to competently fulfil its tasks, especially in areas inhabited by members of the majority population.<sup>51</sup>

- 3.10.4** In general there is sufficiency of protection available from UNMIK/KPS/KFOR for all ethnic Albanians including those who are accused of collaborating with the Serb regime. UNMIK/KPS/KFOR are able and willing to provide protection for those that fear persecution and ensure that there is a legal mechanism for the detection, prosecution and punishment of persecutory acts.
- 3.10.5 *Internal Relocation*** UNMIK regulations and the constitutional framework provide for freedom of movement throughout Kosovo; however, inter-ethnic tensions and real and perceived security concerns restricted freedom of movement for some minorities.<sup>52</sup> There is in general freedom of movement for ethnic Albanians in Kosovo (outside of the Serb enclaves) and caseworkers should consider that internal relocation is normally possible to another part of Kosovo, where the claimant's previous, alleged activities are unlikely to be known and hence where there is not a real risk of persecution, notwithstanding UNHCR and UNMIK's reservations about the return of this group to Kosovo at this time. For example, relocation from smaller rural areas to much larger urban communities such as Pristina.
- 3.10.6 *Conclusion*** Ethnic Albanians accused of/or perceived to have collaborated with the Serb authorities may face discrimination and ill-treatment in Kosovo. However, in the majority of cases sufficiency of protection is available and internal relocation is an option, therefore claimants from these categories of claim are unlikely to qualify for asylum or Humanitarian Protection. However, it should be noted that such cases are unlikely to be clearly unfounded.
- 3.10.7** Relatives of those who are accused of/or perceived to have collaborated with the Serb authorities may also face discrimination and ill-treatment in Kosovo, however, in the majority of cases sufficiency of protection is available and internal relocation is an option. Therefore claimants who apply on the basis of a relative's involvement/ or perceived collaboration with the previous Serb regime are unlikely to qualify for asylum or Humanitarian Protection. However, it should be noted that such cases are unlikely to be clearly unfounded.
- 3.11 Kosovans of mixed ethnicity and those in ethnically mixed marriages**
- 3.11.1** Many claimants will apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of the general ethnic Albanian population and/or their own minority group due to their mixed ethnicity or involvement in an ethnically mixed marriage.
- 3.11.2 *Treatment.*** People in mixed marriages with people from ethnic minorities or children from such families may face similar difficulties as those groups. Unlike other minority groups, mixed families may be excluded from all communities and may be unable to resort to the relative security of mono-ethnic enclaves.<sup>53</sup> The ability to speak Albanian is likely to be a factor in the degree to which any minority group are able to integrate with the majority community.<sup>54</sup>
- 3.11.3** The UNHCR reiterated their position in June 2006 that persons in ethnically mixed marriages and persons of mixed ethnicity may have a well founded fear of persecution.<sup>55</sup>

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<sup>51</sup> EC report Kosovo 2006 p.38

<sup>52</sup> USSD 2005 (Kosovo Section 2)

<sup>53</sup> UNHCR Position paper (March 2001)

<sup>54</sup> UNHCR Update January 2003 & UNHCR/OSCE Assessment (May 2002)

<sup>55</sup> UNHCR Position paper (June 2006)

- 3.11.4 Sufficiency of protection** Policing in Kosovo is carried out by the international UNMIK police and the Kosovo Police Service (KPS). All local police stations with the exception of Mitrovica regional HQ have now been handed over to the KPS which also handle the traditional police and investigative functions. However, the war crimes and witness protection units are still under the responsibility of UNMIK.<sup>56</sup> Overall, in 2006, the Kosovo police service has continued to make good progress towards becoming a credible and professional police force. The KPS has proven able to competently fulfil its tasks, especially in areas inhabited by members of the majority population.<sup>57</sup>
- 3.11.5** In general there is sufficiency of protection for Kosovans of mixed ethnicity and those in ethnically mixed marriages. UNMIK/KPS/KFOR are able and willing to provide protection for those that fear persecution and ensure that there is a legal mechanism for the detection, prosecution and punishment of persecutory acts. In general, an ethnically mixed claimant who speaks Albanian and can physically pass as an Albanian will be less at risk than those who do not speak Albanian and are easily distinguishable as being from a minority group.
- 3.11.6 Internal Relocation** UNMIK regulations and the constitutional framework provide for freedom of movement throughout Kosovo; however, inter-ethnic tensions and real and perceived security concerns restricted freedom of movement for some minorities.<sup>58</sup> There is in general freedom of movement for ethnic Albanians in Kosovo (outside of the Serb enclaves) and caseworkers should consider that internal relocation is normally possible, for claimants that can pass as an ethnic Albanian, to another part of Kosovo, where a claimant's ethnic background is unlikely to be known and hence where there is not a real risk of persecution, notwithstanding UNHCR and UNMIK's reservations about the return of this group to Kosovo at this time. For example, relocation from smaller rural areas to much larger urban communities such as Pristina. However, some claimants with mixed ethnicity and/or those in ethnically mixed marriages who are easily distinguishable as a member of a minority group may face limitations on their ability to internally relocate.

### 3.11.7 Caselaw

**[2006] UKAIT 00072 KX Serbia and Montenegro (Kosovo) CG** (Mixed marriages-Roma-Albanian – Januzi applied) The IAT found that "Where there is a visible difference in skin colour and the Roma partner speaks no, or accented, Albanian, Roma-Albanian mixed marriages and relationships akin to marriage in Serbia and Montenegro (Kosovo) put both parties at risk. The country background evidence now distinguishes between the risk to Roma and their partners, who remain at risk because they are perceived by the Albanian community as traitors and Serb collaborators, and Ashkaelia and Egyptians whose position is not as serious. Roma-Albanian couples cannot access the protection either of the Roma enclaves or the Albanian community and unless either party will normally be perceived as a member of the other community, the parties to such a relationship are at general risk of persecution or serious harm from individuals in both communities because the risk is from non-state actors and there is, in general, insufficient protection from either Serbia and Montenegro (Kosovo) state bodies or from K-FOR and other NGOs. This determination updates and replaces (in relation to Roma-Albanian relationships) the Tribunal's decisions in FM (IFA–mixed marriage–Albanian-Ashkaelian) Kosovo CG [2004] UKIAT 00013, SK and others (Roma in Kosovo-update) Serbia and Montenegro CG [2005] UKIAT 00023, BS (IFA –mixed ethnicity) Kosovo CG [2002] UKIAT 04254, FD (Kosovo-Roma) Kosovo CG [2004] UKIAT 00214 and AB (Ashkaelia) Kosovo CG [2004] UKIAT 00188."

**[2006] UKAIT 00071 ES Serbia and Montenegro (Kosovo) CG** (Ashkaelians, mixed Ashkaelian ethnicity) "Persons of Ashkaelian ethnicity or mixed Ashkaelian ethnicity do not in general face a real risk of persecution or treatment contrary to Article 3 on return to Kosovo. ii) This decision replaces as current guidance FM (IFA – Mixed Marriage – Albanian – Ashkaelian) Kosovo CG [2004] UKIAT 00081 and AB (Ashkaelia) Serbia and Montenegro CG [2004] UKIAT 00188. It also replaces FD (Kosovo-Roma) CG [2004] UKIAT 00214

<sup>56</sup> EC report Kosovo 2006 p.37

<sup>57</sup> EC report Kosovo 2006 p.38

<sup>58</sup> USSD 2005 (Kosovo Section 2)

insofar as that decision has any ongoing bearing on the issue of risk to Ashkaelia and persons of mixed ethnicity generally."

**[2003] UKIAT 00013KB (Mixed ethnicity – Roma/Albanian) Kosovo CG:** An applicant of mixed Roma and Albanian ethnicity who spoke Albanian and could pass as Albanian to strangers (ie did not look like he was Roma) was unlikely to be identified as Roma outside his home area.

**[2002] UKIAT 05547AI (Mixed Ethnicity - Albanian/Bosnian) Kosovo CG** The appellant was of mixed Bosniak and Albanian ethnicity. His father was a Kosovan Albanian, he spoke Albanian himself and his whole background indicates that he was a Kosovan Albanian. The IAT found that the appellant could relocate to Pristina in Kosovo and that it would not be unduly harsh or unreasonable to expect him to do so. In Pristina he could seek protection from the KFOR and UNMIK security forces and the risks of persecution to him are below that of a reasonable likelihood.

**3.11.8 Conclusion** Kosovans of mixed ethnicity and/or those in mixed marriages may face discrimination and ill-treatment in Kosovo from either the ethnic Albanian population or from members of their own minority group or sometimes both. However, in the majority of cases claimants will identify with and be accepted as one of the ethnicities that make up their mixed ethnicity and will be treated as such by the other ethnic groups in Kosovo. In most cases language will be the key factor in identifying which group a particular claimant can be identified with.

**3.11.9 Those who speak Albanian and can pass as an ethnic Albanian**

In general an applicant of mixed ethnicity who speaks Albanian and can pass as an ethnic Albanian to strangers (looked like an Albanian etc) is unlikely to be identified as being of mixed ethnicity outside of his home area. Therefore, the applicant would be able to internally relocate to another area of Kosovo where his ethnicity would not be known. Claimants from this category of claim are therefore unlikely to qualify for asylum or Humanitarian Protection and are likely to be clearly unfounded.

**3.11.10 Those who can not speak Albanian but who can pass as a member of a minority ethnic group**

Those who do not speak Albanian but who can pass as a member of a minority ethnic group are unlikely to be identified as being of mixed ethnicity outside their home area and will be treated in the same way as other members of that minority group. Caseworkers should assess each claim in line with the relevant section of the OGN and in line with the policy for that particular ethnic group. For example a mixed ethnicity Gorani/Albanian who speaks Gorani and can pass as a Gorani will be treated as a Gorani within Kosovo and so should be assessed in line with the policy advice on Gorani contained in section 3.16 of this OGN.

**3.11.11 Those who can not speak Albanian and who can not pass as a member of a minority ethnic group**

A few claimants of mixed ethnicity or those in mixed marriages, especially mixed marriages between Roma and Albanians, who do not speak Albanian and who are not able to pass or be accepted as a member of either community are likely to face difficulties in Kosovo and may not be able to find sufficient protection from UNMIK/KFOR/KPS. Therefore, in some cases a grant of asylum may be appropriate. All cases are unlikely to be clearly unfounded.

**3.12 Ethnic Minority Groups (overview)**

**3.12.1** Most claimants will make an asylum or human rights claim based on ill treatment amounting to persecution at the hands of the ethnic Albanian population due to their ethnicity.

**3.12.2 Treatment** Ethnic Albanians make up approximately 90% of the population of Kosovo. The remaining 10% are made up of various minorities including ethnic Serbs, Roma, Ashkaelia, Egyptians, Bosniaks, Gorani, Croats and Turks. Following the war, there was a very high level of violence directed at Serbs, Roma and other ethnic minorities, who were seen as

having collaborated with the Yugoslav oppression. Most of the perpetrators were ethnic Albanians seeking revenge or pursuing the aim of a wholly Albanian state. Large numbers of the Serbs and Roma communities fled from Kosovo. Those who remained are mostly (but not exclusively) concentrated in mono-ethnic areas.<sup>59</sup>

- 3.12.3** The UNHCR reported that since March 2005 the overall security situation in Kosovo has progressively improved. The number of members of minorities working at the central Institutions of Provisional Self-Government (PISG) and in the Kosovo Protection Corps (KPC) has increased; freedom of movement has generally progressed; a number of important steps have been taken to reinforce the protection of property rights; and an Inter-Ministerial Commission to monitor minorities' access to public services has been established.<sup>60</sup> There were 21 ethnic minority members in the 120-seat Assembly, including 10 ethnic Serbs (although at present the Kosovo Serb deputies are boycotting the Assembly) and 11 members of other groups, including ethnic Turks, Bosniaks, Gorani, Roma, Ashkaelia, and Egyptians.<sup>61</sup>
- 3.12.4** The European Commission reported that, during 2006, the security situation and freedom of movement for minority communities improved and there was a decline in serious crimes with an ethnic motivation.<sup>62</sup> The provision of UN bus services and other organised transport has generated the perception of an improving freedom of movement among some members of ethnic minority communities. However, in general individuals remain within the areas where their ethnic community represents the majority group.<sup>63</sup>
- 3.12.5** However, members of ethnic minorities continue to suffer also from 'low scale' ethnically motivated security incidents such as physical and verbal assaults/threats, arson, stoning, intimidation, harassment, looting, and "high-scale" incidents such as shootings and murders. Many of these incidents remain unreported, as the victims fear reprisals from the perpetrators of the majority community.<sup>64</sup>
- 3.12.6** During 2005 police and KFOR commenced large-scale operations to apprehend persons responsible for the March 2004 inter-ethnic riots. In its July 2005 report on follow-up actions after the riots, UNMIK stated that 348 individuals had been brought before the courts for riot-related offences. Of these, 179 cases were completed, 71 were awaiting trial, and 98 were under investigation. At least 57 serious cases were prosecuted by international lawyers and resulted in sentences of up to 16 years in prison. Kosovo judges handed down more than 85 convictions, with punishment ranging from court reprimands and fines up to \$240 (200 euros) to imprisonment for periods ranging from two months to two years. On 19 May 2005 an international panel of judges of the Gjilan/ Gnjilane district court convicted six ethnic Albanians in connection with the killing of two ethnic Serbs during the riots and sentenced them to prison terms ranging from 3.5 to 16 years.<sup>65</sup>
- 3.12.7** Of the seven persons originally detained on suspicion of organizing or leading the riots, criminal investigations were ongoing in the cases of four: KPC reserve commander, Naser Shatri; chairman of the KLA war veterans association in Peja, Nexhmi Lajci; chairman of the KLA war veterans association in Gjilan, Shaqir Shaqiri; and chairman of the KLA war veterans Association in Vushtrri, Salih Salihu.<sup>66</sup>
- 3.12.8** The UNHCR position as of June 2006 is that Kosovo Serb and Roma ethnic minorities continue to be in need of international protection. However, positive developments within the inter-ethnic environment have had a particular impact on members of the Ashkaelia and

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<sup>59</sup> Europa 2005 p.537

<sup>60</sup> UNHCR position paper (June 2006)

<sup>61</sup> USSD 2005 (Kosovo Section 3)

<sup>62</sup> EC report Kosovo 2006 p.14

<sup>63</sup> UNHCR position paper (June 2006)

<sup>64</sup> UNHCR position paper (June 2006)

<sup>65</sup> USSD 2005 (Kosovo Section 5)

<sup>66</sup> USSD 2005 (Kosovo Section 5)

Egyptian communities within Kosovo and they are no longer among those groups who the UNHCR consider to be at risk.<sup>67</sup> In addition the UNHCR position paper June 2006 does not refer to Bosniaks or Gorani as being groups who are at risk in Kosovo.<sup>68</sup> The UNHCR are no longer opposed to members of the Ashkaelia, Egyptian, Bosniak and Gorani communities groups being returned to Kosovo.<sup>69</sup>

**3.12.9 Conclusion.** Different ethnic minorities in different areas may be subject to differing levels of risk. Therefore the information above must be read in conjunction with information below that is specific to the minority group in question.

### **3.13 Kosovan Serbs**

**3.13.1** Some claimants will apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of the ethnic Albanian population due to their Serb ethnicity.

**3.13.2 Treatment.** There are some parts of Kosovo, particularly in the north of the province, where Serbs are in the majority. These areas include the northern part of the town of Mitrovica – i.e. north of the river Ibar; the northern municipalities of Leposavic, Zvecan and Zubin Potok; and the southern municipality of Strpce.<sup>70</sup>

**3.13.3** Discrimination continued against ethnic Serbs in the provision of education and health care services provided by the PISG. Minority employment in the PISG continued to be low and was generally confined to lower levels of the government and members of minorities occupied 11% of posts in the PISG ministries, despite a PISG target of more than 16%.<sup>71</sup>

**3.13.4** During 2005 ethnic Albanians destroyed, often by arson, private property belonging to ethnic Serbs and some cases of violence against Serbs may have been attempts to force them to sell their property. An UNMIK regulation prevents the wholesale buy-out of many ethnic Serb communities in an effort to prevent the intimidation of minority property owners in certain areas; however, it was rarely enforced. The ombudsperson and human rights groups criticised the regulation as limiting the ability of ethnic Serbs to exercise their property rights.<sup>72</sup>

**3.13.5** During 2005 police and KFOR commenced large-scale operations to apprehend persons responsible for the March 2004 inter-ethnic riots. UNMIK stated that 348 individuals had been brought before the courts for riot-related offences. At least 57 serious cases were prosecuted by international lawyers and resulted in sentences of up to 16 years in prison. Kosovo judges handed down more than 85 convictions, with punishment ranging from court reprimands and fines up to \$240 (200 euros) to imprisonment for periods ranging from two months to two years. On 19 May 2005, an international panel of judges of the Gjilan/ Gnjilane district court convicted six ethnic Albanians in connection with the killing of two ethnic Serbs during the riots and sentenced them to prison terms ranging from 3.5 to 16 years.<sup>73</sup>

**3.13.6** In addition the first Serb return to an urban area where there was not already an established Serb presence took place in March 2005, with sixteen families returning to Klina.<sup>74</sup>

**3.13.7 Sufficiency of Protection** Policing in Kosovo is carried out by the international UNMIK police and the Kosovo Police Service (KPS). All local police stations with the exception of

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<sup>67</sup> UNHCR Position paper (March 2005) & UNHCR position paper (June 2006)

<sup>68</sup> UNHCR position paper (June 2006)

<sup>69</sup> UNHCR Briefing notes (April 2005)

<sup>70</sup> OSCE Municipality Profiles June 2004

<sup>71</sup> USSD 2005 (Kosovo Section 5)

<sup>72</sup> USSD 2005 (Kosovo Section 5)

<sup>73</sup> USSD 2005 (Kosovo Section 4)

<sup>74</sup> HRW report 2006

Mitrovica regional HQ have now been handed over to the KPS which also handle the traditional police and investigative functions. However, the war crimes and witness protection units are still under the responsibility of UNMIK.<sup>75</sup> The recruitment from minorities has further progressed during 2006 and the percentage of minority police officers in the KPS currently stands at around 15.5% of these Kosovo Serbs make up about 9% of Kosovo Police Service numbers. There are mixed patrols in mixed areas in order to give every citizen the possibility of getting assistance in his or her own language. Overall, in 2006, the Kosovo police service has continued to make good progress towards becoming a credible and professional police force. The KPS has proven able to competently fulfil its tasks, especially in areas inhabited by members of the majority population.<sup>76</sup>

**3.13.8** There is sufficiency of protection for Kosovan Serbs within Serb enclaves or when specifically under KFOR protection and UNMIK/KPS/KFOR are able and willing to provide protection for those that fear persecution and ensure that there is a legal mechanism for the detection, prosecution and punishment of persecutory acts.

**3.13.9 *Internal Relocation*** UNMIK regulations and the constitutional framework provide for freedom of movement throughout Kosovo; however, inter-ethnic tensions and real and perceived security concerns restricted freedom of movement for some minorities.<sup>77</sup> Freedom of movement for Serbs outside of Serb enclaves is severely restricted and therefore internal relocation for Kosovan Serbs within Kosovo is not an option. In addition due to the precarious position of IDPs within Serbia proper internal relocation for Kosovan Serbs, to other parts of Serbia is also not an option.

**3.13.10 *Conclusion*** There is sufficiency of protection available for ethnic Serbs in Kosovo when resident in enclaves. However, for ethnic Serbs living in predominantly ethnic Albanian areas the cumulative effect of severe harassment and intimidation, together with often-extreme limitations upon freedom of movement may reach the threshold required to qualify for a grant of asylum. Cases from this category of claim are unlikely to be clearly unfounded.

### **3.14 Roma, Ashkaelia and Egyptians (RAE)**

**3.14.1** Many claimants will apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of the ethnic Albanian population due to their Roma, Ashkaelia or Egyptian ethnicity.

**3.14.2 *Treatment*** Although usually categorised together, Roma are distinct from the groups known as Ashkaelia or Egyptians. Ethnic identification as Roma, Ashkaelia or Egyptian is not necessarily determined by easily discernible or distinct characteristics or cultural traits, but rather by a process of self-identification. In general, however, ethnic Roma clearly identify themselves as Roma and tend to use Romany as their mother tongue, although a large percentage of the Roma population can speak Serbian and to a lesser extent Albanian.<sup>78</sup>

**3.14.3** During 2005 Roma continued to live in dire poverty, and those who lived in Mitrovica were viewed as ethnic Serb collaborators by many ethnic Albanians; as a result, in 1999, their houses were destroyed and they were forced to live in IDP camps, where many still reside.<sup>79</sup> However, during 2006, some progress was made in the reconstruction process of the Roma area of Mitrovica where the municipality issued construction permits for two apartment blocks that will host some of the inhabitants. 58 Roma, Ashkaelia and Egyptian IDP families, have now moved out of the lead – contaminated camps in northern Mitrovica

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<sup>75</sup> EC report Kosovo 2006 p.37

<sup>76</sup> EC report Kosovo 2006 p.38

<sup>77</sup> USSD 2005 (Kosovo Section 2)

<sup>78</sup> UNHCR/OSCE Assessment (May 2002) p.58 (footnote)

<sup>79</sup> USSD 2005 (Kosovo Section 5)



and Zvecan into lead free facilities in the northern part of the city. However, about 170 individuals opted to remain in the contaminated camps.<sup>80</sup>

- 3.14.4** Roma throughout Kosovo were subject to pervasive social and economic discrimination in 2005 and often lacked access to basic hygiene, medical care, and education and were heavily dependent on humanitarian aid. Although there were some successful efforts to resettle Roma, Ashkaelia, and Egyptians in the homes they occupied prior to the 1999 conflict in Vushtrri, security concerns remained.<sup>81</sup>
- 3.14.5** The Ashkaelia are Albanian-speaking (although many can also communicate in the Serbian language) and have historically associated themselves with Albanians, living close to that community. Nevertheless, Albanians treat them as separate from the Albanian community. Like the Ashkaelia, the Egyptians speak Albanian but differentiate themselves from Ashkaelia by claiming to have originated from Egypt.<sup>82</sup>
- 3.14.6** It should be noted that, on the local community level, Kosovan Albanians do not generally perceive the differences between the three groups, more often viewing Roma, Ashkaelia and Egyptians as one group. It should also be noted that the separations and distinctions between Roma, Ashkaelia and Egyptian vary between regions.<sup>83</sup>
- 3.14.7** The security position for Roma, Ashkaelia and Egyptian (RAE) communities varies according to perceptions of the majority population, locality and language issues. The ability to speak fluent Albanian is likely to be a factor in the degree to which RAE are able to integrate with the majority community.<sup>84</sup> In the main, since March 2004, the overall situation for the RAE communities has been one of gradual resumption to the relative levels of minority rights held before the violence.<sup>85</sup>
- 3.14.8** The RAE communities, in Gjakove number nearly 7,000, made up of approx 6,000 Ashkaelia and Egyptians and approx 700 Roma. They represent the biggest minority community in the municipality. Some of them live in town in the “Kolonia”, while the majority are located in the villages surrounding Gjakovë/Đakovica town. The OSCE reported that these minorities do not suffer security related problems.<sup>86</sup>
- 3.14.9** In 2003 a Task Force on RAE Return was established. It has been focusing on the return of 40 RAE families currently residing in Podgorica, Montenegro. As of November 2005 the project has proven to be very successful with 24 families (119 people) having returned and 34 houses so far constructed for them. This is the first organised return that has occurred in Gjakove and the role of the Municipal leadership has been crucial in supporting and facilitating it. The OSCE reported that those RAE who have returned have faced no security related problems.<sup>87</sup>
- 3.14.10** The UNHCR position as of June 2006 is that Roma are a minority group that are likely to be in need of international protection. However, positive developments within the inter-ethnic environment have had a particular impact on members of the Ashkaelia and Egyptian communities within Kosovo and they are no longer among those groups who the UNHCR consider to be at risk.<sup>88</sup> The UNHCR are no longer opposed to members of the Ashkaelia or Egyptian, communities being returned if circumstances permit.<sup>89</sup>

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<sup>80</sup> EC report Kosovo 2006 p.16

<sup>81</sup> USSD 2005 (Kosovo Section 5)

<sup>82</sup> UNHCR/OSCE Assessment (May 2002) p.58 (footnote)

<sup>83</sup> UNHCR/OSCE Assessment (May 2002) p.58 (footnote)

<sup>84</sup> UNHCR/OSCE Assessment (May 2002) p.58 & UNHCR Update January 2003

<sup>85</sup> UNHCR/OSCE Assessment (August 2004)

<sup>86</sup> OSCE Municipality Profiles Gjakove (November 2005)

<sup>87</sup> OSCE Municipality Profiles Gjakove (November 2005)

<sup>88</sup> UNHCR Position Paper (June 2006)

<sup>89</sup> UNHCR Briefing Notes (April 2005)

- 3.14.11 Sufficiency of Protection** Policing in Kosovo is carried out by the international UNMIK police and the Kosovo Police Service (KPS). All local police stations with the exception of Mitrovica regional HQ have now been handed over to the KPS which also handle the traditional police and investigative functions. However, the war crimes and witness protection units are still under the responsibility of UNMIK.<sup>90</sup> The recruitment from minorities has further progressed during 2006 and the percentage of minority police officers in the KPS currently stands at around 15.5%. There are mixed patrols in mixed areas in order to give every citizen the possibility of getting assistance in his or her own language. Overall in 2006, the Kosovo police service has continued to make good progress towards becoming a credible and professional police force. The KPS has proven able to competently fulfil its tasks, especially in areas inhabited by members of the majority population.<sup>91</sup>
- 3.14.12** In general, there is sufficiency protection for all Roma, Ashkaelia and Egyptians in Kosovo, in that UNMIK/KPS/ /KFOR maintain a presence and ensure protection of enclaves with checkpoints. Furthermore, UNMIK and the KPS ensure that there is a legal mechanism for the detection, prosecution and punishment of persecutory acts, for all ethnic groups including all groups of RAE.
- 3.14.13 Internal Relocation** UNMIK regulations and the constitutional framework provide for freedom of movement throughout Kosovo; however, inter-ethnic tensions and real and perceived security concerns restricted freedom of movement for some minorities.<sup>92</sup> In general it would not be unduly harsh for any RAE who can speak Albanian and who is held to be indistinguishable from ethnic Albanians to internally relocate to another part of Kosovo where their ethnic background may not be known. The IAT found in **KB [2003]** (see below) that an applicant of mixed Roma and Albanian ethnicity who spoke Albanian and could pass as an Albanian to strangers (ie did not look like he was Roma) was unlikely to be identified as Roma outside his home area.
- 3.14.14** Internal relocation may also be an option for RAE that are not indistinguishable from ethnic Albanians. The IAT found in **FD [2004]** (see below) that internal relocation to a Roma enclave is an option for Roma who are concerned about the security situation. Whereas an Ashkaelia or an Egyptian who can not pass as an ethnic Albanian can internally relocate to the Gjakove Municipality where the RAE population numbers around 7,000 and where according to the OSCE RAE do not face any security concerns.
- 3.14.15 Caselaw**
- [2006] UKAIT 00071 ES Serbia and Montenegro (Kosovo) CG** (Ashkaelians, mixed Ashkaelian ethnicity) "Persons of Ashkaelian ethnicity or mixed Ashkaelian ethnicity do not in general face a real risk of persecution or treatment contrary to Article 3 on return to Kosovo. ii) This decision replaces as current guidance FM (IFA – Mixed Marriage – Albanian – Ashkaelian) Kosovo CG [2004] UKIAT 00081 and AB (Ashkaelia) Serbia and Montenegro CG [2004] UKIAT 00188. It also replaces FD (Kosovo-Roma) CG [2004] UKIAT 00214 insofar as that decision has any ongoing bearing on the issue of risk to Ashkaelia and persons of mixed ethnicity generally."
- SK (Roma in Kosovo-Update) [2005] UKIAT 00023** The IAT found no evidence to suggest that the political or inter – ethnic landscape has changed to such an extent (since the March 2004 violence) that it can now be said that a Kosovan Roma is at real risk of treatment which amounts to persecution on grounds of ethnicity or which is in breach of Article 3. Also there is a sufficiency of protection from KFOR and KPS. Additionally the ability to speak Albanian means that an individual will be more likely to be re-integrated into the community.
- KB (Mixed ethnicity – Roma/Albanian) Kosovo CG [2003] UKIAT 00013:** An applicant of mixed Roma and Albanian ethnicity who spoke Albanian and could pass as Albanian to

<sup>90</sup> EC report Kosovo 2006 p.37

<sup>91</sup> EC report Kosovo 2006 p.38

<sup>92</sup> USSD 2005 (Kosovo Section 2)

strangers (ie did not look like he was Roma) was unlikely to be identified as Roma outside his home area.

**3.14.16 Conclusion** Discrimination and ill-treatment against RAE does occur in Kosovo and those RAE who only speak Serbian or Romani (usually just Roma) are more likely to encounter difficulties than those who speak Albanian (Ashkaelia and the Egyptians). However, the IAT found in **[SK 2005]** (see above) that even considering the ethnic violence of March 2004 it can not be said that a Kosovan Roma is at real risk of treatment which amounts to persecution on grounds of ethnicity or which is in breach of Article 3. The IAT also found in **[SK 2005]** that the ability to speak Albanian means that an individual will be more likely to be re-integrated into the community.

**3.14.17** In the majority of cases sufficiency of protection is available and internal relocation for Ashkaelia and Egyptians within Kosovo in particular to the Gjakove Municipality or for Roma to a Roma enclave is an option. Therefore, claimants from this category of claim are unlikely to qualify for asylum or Humanitarian Protection and claimants who speak Albanian and can pass as an ethnic Albanian are likely to be clearly unfounded.

### **3.15 Bosniaks**

**3.15.1** Some claimants will apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of the ethnic Albanian population due to their Bosniak ethnicity.

**3.15.2 Treatment** In the aftermath of the Kosovo conflict, Bosniaks were closely associated with Serbs because of their shared language and culture. As a result they suffered violent attacks, harassment and discrimination. The risk of being mistaken for a Serb when using their language has restricted freedom of movement outside their local area and inhibited equal access to social services and economic opportunities.<sup>93</sup>

**3.15.3** Although the Bosniak communities were not directly affected by the March 2004 riots, the communities were unsettled and it increased a migratory flow out of Kosovo. During the violence, in Mitrovica town, families moved away from their homes; some went to the Serb enclave, some left for the northern municipalities, some went from north to south of the city. However, many returned to their homes after the March 2004 riots.<sup>94</sup>

**3.15.4** The UNHCR position as of March 2005 is that due to the improved security situation Bosniak's are no longer among those groups continuing to be in need of international protection. Although it is still the case that claimants from these groups may still have valid claims for international protection on an individual basis.<sup>95</sup> The UNHCR position paper June 2006 does not refer to Bosniaks as being a group who are at risk in Kosovo<sup>96</sup> and the UNHCR are no longer opposed to the return of Bosniaks to Kosovo.<sup>97</sup>

**3.15.5 Sufficiency of Protection** Policing in Kosovo is carried out by the international UNMIK police and the Kosovo Police Service (KPS). All local police stations with the exception of Mitrovica regional HQ have now been handed over to the KPS which also handle the traditional police and investigative functions. However, the war crimes and witness protection units are still under the responsibility of UNMIK.<sup>98</sup> The recruitment from minorities has further progressed during 2006 and the percentage of minority police officers in the KPS currently stands at around 15.5%. There are mixed patrols in mixed areas in order to give every citizen the possibility of getting assistance in his or her own language. Overall in 2006 the Kosovo police service has continued to make good progress towards

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<sup>93</sup> UNHCR Position Paper (January 2003) p.2

<sup>94</sup> UNHCR/OSCE Assessment (August 2004) p.38 & 46

<sup>95</sup> UNHCR Position paper (March 2005) p.4

<sup>96</sup> UNHCR position paper (June 2006)

<sup>97</sup> UNHCR Briefing notes (April 2005)

<sup>98</sup> EC report Kosovo 2006 p.37

becoming a credible and professional police force. The KPS has proven able to competently fulfil its tasks, especially in areas inhabited by members of the majority population.<sup>99</sup>

**3.15.6** In general, there is sufficiency of protection for Bosniaks in Kosovo. UNMIK/KPS/KFOR are able and willing to provide protection for those that fear persecution and ensure that there is a legal mechanism for the detection, prosecution and punishment of persecutory acts.

**3.15.7 *Internal Relocation*** UNMIK regulations and the constitutional framework provide for freedom of movement throughout Kosovo; however, inter-ethnic tensions and real and perceived security concerns restricted freedom of movement for some minorities.<sup>100</sup> Internal relocation is normally possible to another part of Kosovo where there is a large Bosniak community and hence where there is not a real risk of persecution.

**3.15.8 *Conclusion*** Although Bosniaks may be subject to discrimination and/or harassment in Kosovo this does not generally reach the level of persecution. Considering the sufficiency of protection available and the option of internal relocation, in the majority of cases it is unlikely that a claim based solely on a fear of persecution because of Bosniak ethnicity will qualify for a grant of asylum or Humanitarian Protection and cases from this category of claim are likely to be clearly unfounded.

### **3.16 Gorani**

**3.16.1** 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 Albanian population due to their Gorani ethnicity.

**3.16.2 *Treatment*** The Gorani community consists of Muslim Slavs akin to the Bosniaks, and experience similar difficulties. However, the Gorani are a distinct group from Bosniaks, with their own language, though like the Bosniak language this is similar to Serbian. The overall Gorani population is estimated at 10,000 - 12,000, most of whom live in the Gora region of Kosovo, though there are small communities in Pristina and Mitrovica. The Gora region comprises 18 geographically linked villages within Dragash municipality inhabited by Gorani. The region was largely unaffected by the conflict in terms of damage to housing.<sup>101</sup>

**3.16.3** As with Bosniaks, Gorani have been closely associated with Serbs because of their shared language and culture and have suffered violent attacks, harassment and discrimination. The risk of being mistaken for a Serb when using their language has restricted freedom of movement outside their local area and inhibited equal access to social services and economic opportunities. The level of freedom of movement was affected by their command of the Albanian language, rather than by the actual security situation. While Kosovo Gorani exercised unlimited freedom of movement in the Gora region, the majority of the community was still reluctant to move beyond Prizren town.<sup>102</sup>

**3.16.4** Both the Kosovo Gorani and the Kosovo Albanians practice the Islamic faith. In Dragash town the attendance at the mosque includes both ethnicities and it seems that the Islamic Community has managed to keep the two ethnic groups together despite the division at the political level. Dragash and particularly the Gora area have been peaceful since 2001<sup>103</sup> and even during and after the March 2004 riots, the Gorani community were unsettled rather than directly targeted.<sup>104</sup>

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<sup>99</sup> EC report Kosovo 2006 p.38

<sup>100</sup> USSD 2005 (Kosovo Section 2)

<sup>101</sup> UNHCR/OSCE Assessment (October 2001) p.33

<sup>102</sup> UNHCR Update (January 2003) & UNHCR/OSCE Assessment (October 2001)

<sup>103</sup> OSCE Municipality Profiles Dragash (December 2005)

<sup>104</sup> UNHCR/OSCE Assessment (August 2004)

- 3.16.5** The UNHCR position as of March 2005 is that due to the improved security situation Gorani are no longer among those groups continuing to be in need of international protection. Although it is still the case that claimants from these groups may still have valid claims for international protection on an individual basis.<sup>105</sup> The UNHCR position paper June 2006 does not refer to Gorani as being a group who are at risk in Kosovo<sup>106</sup> and the UNHCR are no longer opposed to the return of Gorani to Kosovo.<sup>107</sup>
- 3.16.6 *Sufficiency of Protection*** Policing in Kosovo is carried out by the international UNMIK police and the Kosovo Police Service (KPS). All local police stations with the exception of Mitrovica regional HQ have now been handed over to the KPS which also handle the traditional police and investigative functions. However, the war crimes and witness protection units are still under the responsibility of UNMIK.<sup>108</sup> The recruitment from minorities has further progressed during 2006 and the percentage of minority police officers in the KPS currently stands at around 15.5%. There are mixed patrols in mixed areas in order to give every citizen the possibility of getting assistance in his or her own language. Overall, in 2006, the Kosovo police service has continued to make good progress towards becoming a credible and professional police force. The KPS has proven able to competently fulfil its tasks, especially in areas inhabited by members of the majority population.<sup>109</sup> Approximately half the KPS officers in Dragash are Gorani.<sup>110</sup>
- 3.16.7** In general, there is sufficiency of protection for Gorani within the main Gorani areas of Dragash municipality in Kosovo. UNMIK/KPS/KFOR are able and willing to provide protection for those that fear persecution and ensure that there is a legal mechanism for the detection, prosecution and punishment of persecutory acts.
- 3.16.8 *Internal Relocation*** UNMIK regulations and the constitutional framework provide for freedom of movement throughout Kosovo; however, inter-ethnic tensions and real and perceived security concerns restricted freedom of movement for some minorities.<sup>111</sup> Internal relocation is normally possible to or within the Gora/Dragash region where there is a large Gorani community and hence where there is not a real risk of persecution.

### **3.16.9 *Caselaw***

**RB (Risk – Ethnicity- Gorani – Sanxdali) Kosovo CG [2004] UKIAT 00037** – The IAT found that the objective evidence fell well short of demonstrating that there is a consistent pattern of gross, flagrant or mass violations of the human rights of Gorani. Furthermore, there is some indication that within Kosovo the Appellant's home area of Prizren is among the areas where Gorani are safest. Being an ethnic Gorani did not demonstrate a real risk of serious harm for a Gorani in his home area (the Prizren region).

**B [2003] UKIAT 00105** The IAT considered that the Gorani community in the Gora region is not at risk sufficient to engage either the Refugee Convention or the Human Rights Convention. Further, there is no reason to suggest that the claimant, as a young male, falls into an exceptional category of risk. It is accepted that his father's involvement with the Serbian army does not, in itself, intensify that risk.

- 3.16.10 *Conclusion*** Although some Gorani may be subject to discrimination and/or harassment in parts of Kosovo outside of the Dragash region this does not generally reach the level of persecution and in general sufficiency of protection is available through KFOR/KPS. Within the Gora region of the Dragash municipality Gorani constitute almost the entire population (over 10,000) and do not suffer any difficulties. In addition half the KPS officers in the Dragash municipality are Gorani. Considering that any harassment suffered is unlikely to

<sup>105</sup> UNHCR Position paper (March 2005) p.4

<sup>106</sup> UNHCR position paper (June 2006)

<sup>107</sup> UNHCR Briefing notes (April 2005)

<sup>108</sup> EC report Kosovo 2006 p.37

<sup>109</sup> EC report Kosovo 2006 p.38

<sup>110</sup> UNHCR/OSCE Assessment (March 2003)

<sup>111</sup> USSD 2005 (Kosovo Section 2)

reach the level of persecution, that sufficiency of protection is available and that there is an option of internal relocation to or within the Gora region of the Dragash municipality, it is unlikely that a claim based solely on a fear of persecution because of Gorani ethnicity will qualify for a grant of asylum or Humanitarian Protection and such claims are likely to be clearly unfounded.

### 3.17 Prison Conditions

**3.17.1** Claimants may claim that they cannot return to Serbia (including Kosovo) due to the fact that there is a serious risk that they will be imprisoned on return and that prison conditions in Serbia (including Kosovo) are so poor as to amount to torture or inhuman treatment or punishment.

**3.17.2** 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.

#### **Serbia**

**3.17.3** Prison conditions generally met international standards in 2005; however, conditions varied greatly between facilities, and some guards abused prisoners. In some prisons, most notably the Belgrade reformatory hospital housing psychiatric prisoners, inmates complained of dirty and inhumane conditions. The quality of food varied from poor to minimally acceptable, and health care was often inadequate. Guards were inadequately trained in the proper handling of prisoners. Juveniles were supposed to be held separately from adults; however, this did not always occur in practice.<sup>112</sup>

**3.17.4** The government permitted the International Committee of the Red Cross (ICRC) and local independent human rights monitors, including HCS, to visit prisons and to speak with prisoners without the presence of a warden.<sup>113</sup>

#### **Kosovo**

**3.17.5** Prison and detention centres generally met international standards in 2005, and UNMIK permitted visits by independent human rights observers; however, a local non-governmental organisation (NGO), Council for Defence of Human Rights and Freedoms (CDHRF), claimed that UNMIK prohibited it from visiting detainees in prisons and detention centres since May 2005. UNMIK police corrections officers managed prisons and detention centres but increasingly transferred responsibilities to the Kosovo Correctional Service.<sup>114</sup>

**3.17.6** There were prisons in Lipljan and Dubrava as well as five detention centres in operation during 2005. The CDHRF reported receiving approximately 10 telephone calls a day from prisoners and their families charging abuse and excessive solitary confinement in prison.<sup>115</sup>

**3.17.7** UNMIK reported that 35 disciplinary proceedings were brought against members of the Kosovo Correctional Service during the year, resulting in 1 dismissal, 1 suspension, 20 written warnings, 12 oral warnings and 1 suspension of promotion.<sup>116</sup>

**3.17.8 Conclusion** Prison conditions in Serbia (including Kosovo) have been judged to meet international standards. Therefore even where individual claimants can demonstrate a real risk of imprisonment on return to Serbia (including Kosovo) a grant of Humanitarian Protection will not be appropriate.

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<sup>112</sup> USSD 2005 (Serbia Section 1)

<sup>113</sup> USSD 2005 (Serbia Section 1)

<sup>114</sup> USSD 2005 (Kosovo Section 1)

<sup>115</sup> USSD 2005 (Kosovo Section 1)

<sup>116</sup> USSD 2005 (Kosovo Section 1)

#### **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 Serbia (including Kosovo) 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 on any more favourable grounds be granted Discretionary Leave for a period of twelve months 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 Serbia (including Kosovo) 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.

##### **Serbia**

**4.4.2** The public health sector in Serbia is based on a system of compulsory social health insurance, financed by salary contributions and operated by the Health Insurance Fund. The resources available to the health care sector have declined significantly during the last 10 years from \$200 per capita in 1990 to around \$60 per capita in 2000. As a result, real salaries of medical personnel have fallen sharply, and investment has declined, resulting in much of the sector's equipment becoming obsolete, and recurrent costs being under-funded.<sup>117</sup>

**4.4.3** Treatment for mental health disorders is available, though numbers of psychiatric staff and bed spaces are limited.<sup>118</sup> The Government has established the Republic National AIDS Committee which is formulating a strategy to deal with AIDS in co-operation with UNDP acting as funding agents.<sup>119</sup>

##### **Kosovo**

**4.4.4** The official health care system currently procures only essential drugs needed for common conditions. Consequently, many patients with rare, chronic diseases (e.g. lack of growth hormone, haemophilia, HIV/AIDS) will not be able to find the drugs they need in the public

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<sup>117</sup> DIFID Briefing Paper 2001

<sup>118</sup> WHO 2002

<sup>119</sup> UNDP Fact sheet 2002

health care institutions or in the state pharmacies. Private pharmacies may be able to import the drugs they need, but they are likely to be expensive and the supply may be uncertain.<sup>120</sup>

#### **Mental Health in Kosovo**

- 4.4.5** In August 2003 each region of Kosovo had one hospital psychiatric ward and one community mental health centre CMHC with the exception of Gjilan, which had two Centres.<sup>121</sup> The CMHCs are day centres, which seek to rehabilitate / reintegrate adults and young people who have severe chronic mental illness and are in remission. Acutely ill adults are referred to the hospital psychiatric wards.<sup>122</sup>
- 4.4.6** The hospital wards provide treatment for severely chronically and pathologically ill adults whose treatment depends entirely on drugs, which were, however, in very short supply in August 2003.<sup>123</sup> Ethnic Minorities are not excluded from treatment. However Serbs do not use the wards in Prishtinë, Gjakovë or Pejë hospital. They go to Mitrovicë North or Belgrade and Kosovan Albanians cannot go to Mitrovicë North and instead use the hospital in Prishtinë.<sup>124</sup>
- Post Traumatic Stress Disorder (PTSD) in Kosovo**
- 4.4.7** Provision of treatment for PTSD is extremely limited. The few services in the public and NGO sectors which provide some form of treatment for PTSD are overburdened and heavily constrained by limited capacity and resources.<sup>125</sup> According to UNMIK the prevailing problems in Kosovo include a general lack of medical health care professionals, insufficient financial resources, too few professionals who can assess people with special needs and inaccessibility of services for those living in rural areas. In particular mental health services for children have not been established.<sup>126</sup>
- 4.4.8** It remains the position of UNMIK that persons suffering from and undergoing treatment for PTSD should not be forcibly returned to Kosovo.<sup>127</sup>

#### **4.4.9 Caselaw**

**ZR [2004] UKIAT 00086 ZR:** An individual suffering from severe depression. He did not have any family in Kosovo, but it was found that removal to Kosovo is not reasonably likely to leave him isolated and without support. It is perfectly reasonable to expect him to go to whichever area of Kosovo would offer him the best available treatment facilities. Followed the case of **P [2003] UKIAT 00017** (see below).

**O [2003] UKIAT 00069:** IAT found that there is adequate treatment for PTSD in Kosovo and the situation is improving all the time. Article 3 is not breached by return.

**SP (Risk – suicide – PTSD – IFA – Medical facilities) Kosovo CG [2003] UKIAT 00017:** This case sets out guidelines for adjudicator's to follow when assessing medical evidence in HR cases when it is alleged that return would lead to real risk of suicide. The IAT find that the mere fact of return to the country of FRY or region of Kosovo does not mean that the appellant will be compelled to revisit the scene of his trauma.

**KK (risk – return – suicide – Roma) Serbia & Montenegro [2004] UKIAT 00228** This case concerned an applicant from Serbia who claimed that he would commit suicide if returned. The IAT found that the appellant was adequately protected from the risk of suicide whilst he remains in the United Kingdom. The decision to remove him would not, therefore, breach his human rights within this jurisdiction.

<sup>120</sup> KIP fact sheet on health care systems (May 2002)

<sup>121</sup> Medical Foundation (January 2004) p.19

<sup>122</sup> Medical Foundation (January 2004) p.25

<sup>123</sup> Medical Foundation (January 2004) p.22

<sup>124</sup> Medical Foundation (January 2004) p.22-23

<sup>125</sup> UNHCR letter (February 2004)

<sup>126</sup> UNMIK letter (July 2005)

<sup>127</sup> UNMIK letter (July 2005)



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

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