



UNHCR

United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

The Possibility of Applying the Internal Flight or Relocation Alternative within Serbia and Montenegro to Certain Persons Originating from Kosovo and Belonging to Ethnic Minorities There August 2004

A. Introduction

1. The possibility of applying the internal flight or relocation alternative to persons originating from the territory of Kosovo, and returning them to another part of Serbia and Montenegro has increasingly been discussed in asylum countries. This possibility concerns especially persons belonging to ethnic minorities in Kosovo, in particular the Roma, Ashkaelia and Egyptians.

2. In order to assess the possibility of applying the internal flight or relocation alternative in respect of such persons, it would be necessary to assess in the individual case first whether internal relocation is relevant and second whether this is reasonable, as is outlined in UNHCR's Guidelines on International Protection on this issue.¹ The paragraphs which follow address what would seem likely to be the most relevant questions raised in these Guidelines for these particular groups.

3. In UNHCR's view, the implementation of the internal flight or relocation alternative to these minorities would not necessarily, depending on the individual circumstances, be either relevant or reasonable. One of the key considerations is the legal status of those displaced which serves as an obstacle to their accessing basic rights and services. Given this as well as the already over-stretched absorption capacity in a country already hosting over 220,000 IDPs, forced return is likely to lead to further internal displacement rather than a durable solution. Moreover, the application of internal flight or relocation alternative can appear to condone ethnic cleansing and thus contradict the spirit of Security Council Resolution 1244 of 10 June 1999 which emphasises the safe and unimpeded return of all refugees and displaced persons to their homes.

B. The relevance analysis

(i) The legal status of Kosovo Roma, Ashkaelia and Egyptians in Serbia proper and in Montenegro

4. Of particular importance to the relevance analysis in cases of persons from ethnic minorities from Kosovo, it would appear that the question of whether the applicant can legally access other areas in Serbia (apart from Kosovo) or in Montenegro is likely to raise serious concerns.

¹ See UNHCR, "Guidelines on International Protection: the 'Internal Flight or Relocation Alternative' within the context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees", HCR/GIP/03/04, 23 July 2003.

5. In Serbia, access to basic rights and services, such as medical care, employment benefits, pensions, and education are dependent on being registered as a resident or an IDP rather than related to the holding of Serbian and Montenegrin citizenship. Until July 2003, Serbian government policy did not allow IDPs to register as permanent residents in Serbia proper. Although it since then in principle has been possible for IDPs to apply for permanent residency, UNHCR is not aware of cases where this has actually taken place. Moreover, the access of Kosovo Roma, Ashkaelia and Egyptians to documentation in Serbia and Montenegro is hampered by the fact that any official document can only be obtained by approaching the “dislocated municipal registry offices”², mostly located in Southern Serbia, in person. Most key documents, such as birth and marriage certificates, are only valid for a period of six months. Hence already economically and otherwise vulnerable IDPs have to travel several times and on a regular basis to the relevant “dislocated municipal registry offices”. Such requirements put a heavy financial burden on the IDPs, in particular as they have to cover the expenses related to travel and accommodation pending issuance of the document as well as the related document fees. This also applies to the IDPs living in Montenegro. Mostly, the Kosovo Roma, Ashkaelia and Egyptian IDPs fail to request or obtain key personal documents as a result of these requirements. In addition, Kosovo Roma, Ashkaelia and Egyptian IDPs have complained about discriminatory attitudes by some officials of these registry offices and subsequently failed to make the necessary request.

6. In the absence of permanent residency, IDP registration with the Serbian Commissioner for Refugees is a pre-requisite to access all socio-economic rights. **It is important to note that, persons originating from Kosovo who are forcibly returned from third countries to Serbia and Montenegro are not permitted to be registered as IDPs either in Serbia or in Montenegro.** IDPs who do not hold an IDP identification card are consequently deprived of access to basic rights including but not limited to health, employment benefits³, pensions, social insurance, and accommodation. This triggers a subsequent process of legal and socio-economic marginalization.

7. Those from these minority communities who are currently internally displaced are largely unable to successfully integrate or maintain a dignified existence elsewhere in Serbia or in Montenegro. Only an estimated 45% of Roma, Ashkaelia and Egyptians originating from Kosovo, who fled to Serbia and Montenegro following the ethnic violence in 1999, have been registered as IDPs. In many cases the lack of required personal documentation prevented others from registering. Both general marginalization of these minorities as well as the registration system under the Federal Republic of Yugoslavia (FRY), requiring deregistration in previous place of residence before enabling registration in the new place of habitation, resulted in them failing to obtain civil registration or other documentation even before 1999. The subsequent removal of civil registration and other municipal offices from Kosovo along with the withdrawal of FRY troops in 1999 has also impacted on the lack of required personal documentation.

² The registries were transferred to Serbia proper as the FRY forces withdrew from Kosovo in June 1999. These registries have recently been merged with the registry offices of the hosting municipality.

³ See further para 9 in relation to the situation in Montenegro, where non-residents, including registered IDPs are not allowed to work.

8. For the new group of persons fleeing from Kosovo to Serbia proper after the ethnic violence in March 2004, the registration of this caseload has not yet been established, as the authorities assume that the duration of their stay in Serbia is to remain very short. Therefore no IDP documents have been issued to them. Instead, these persons received a temporary right to stay in Serbia for an initial period of 45 days (extendable upon request for another 45 days, through an Instruction issued by the Serbian Commissioner for Refugees).

9. In Montenegro, IDPs from Kosovo are registered as IDPs under the same conditions and encounter similar practical problems as in Serbia proper. However, the problem of access to documents and to rights for all IDPs is further exacerbated by the fact that IDPs originating from Kosovo are *de facto* considered Serbian citizens, not Montenegrin citizens. The Decree of Montenegro on Displaced Persons dated July 1992 regulates the rights and obligations of both refugees and IDPs. It offers very limited access to civil as well as socio-economic rights for both categories. Further, as a rule, they are not able to receive permanent residence permits. As a result, they do not have access to the labour market and they have very limited access to health care. The Decree on Employment of Non-Residents of 2003 further restricts access by IDPs to the grey area of economy, as additional taxes are imposed on employers who hire non-permanent residents of Montenegro.

(ii) Discrimination and the danger of persecution or other serious harm

10. In addition to the problems related to access to legal status and attached rights highlighted above, the Roma, Ashkaelia and Egyptian population generally faces a pattern of discrimination from some representatives of the local authorities and some segments of society. This renders access to health care and services particularly difficult. Moreover, racial segregation in schools is a serious problem. Kosovo IDPs belonging to these ethnic communities face an additional obstacle; many of them do not know the Serbian language, speaking Albanian/Roma only. Therefore the drop out rate is very high resulting in additional marginalization, isolation and puts their future prospect for social integration in jeopardy. In the individual case, such treatment could cumulatively rise to the level of persecution or serious harm and this may therefore rule out return to other parts of Serbia or to Montenegro.

C. The reasonableness analysis

(i) Can the applicant lead a relatively normal life elsewhere in Serbia or in Montenegro without facing undue hardship?

11. Serbia and Montenegro, excluding Kosovo, is currently hosting over 220,000 (IDPs) from Kosovo, in addition to the almost 290,000 refugees from the former Socialist Federal Republic of Yugoslavia (SFRY). The refugees and the IDPs are competing for the same scarce resources, in a context where the economic situation is characterized by high unemployment, a general collapse of the social welfare system and the international assistance to displaced persons, which has been drastically cut back. In the current situation, achieving an adequate standard of living for the displaced constitutes a major challenge.

12. Access to housing constitutes a crucial problem for IDPs in Serbia and Montenegro. Due to lack of capacity and funds, the authorities do not provide housing

to IDPs, except for a very limited number (some 7,000 in Serbia and 1,000 in Montenegro, hosted in collective centres for refugees). This particularly affects the Roma, Ashkaelia and Egyptian IDPs. Most of them have found shelter in improvised illegal settlements and live under extremely harsh conditions (no electricity, no running water, no sanitation, no public services etc.). There are currently 586 illegal Roma, Ashkaelia and Egyptian settlements in Serbia and Montenegro. The current privatization process has further triggered a series of on-going evictions from these settlements. Neither the legal framework in Serbia nor that in Montenegro requires identification of alternative accommodation in case of such evictions. Hence no alternative solution is provided in such cases, giving rise to homelessness, physical injury, health problems, insecurity, the removal of children from school and the loss of employment.

13. At the same time, it has to be stressed that all elderly IDPs in both Serbia and in Montenegro have not received their full pensions for years, leaving this extremely vulnerable category destitute. Having in mind the fact that even the younger IDPs, and particularly marginalized Roma, Ashkaelia and Egyptians, cannot find employment, entire IDP families are barely surviving. Moreover, as noted above, IDPs are not allowed to work in Montenegro, nor will those without an IDP card have access to basic rights and services there.

D. UN Security Council Resolution 1244

14. The forced return of persons to Serbia and Montenegro (excluding Kosovo) on the basis of the internal flight or relocation alternative raises the issue of obligations stemming from United Nations Security Council Resolution 1244 of 10 June 1999, which states that “the main responsibilities of the international civil presence will include ... assuring the safe and unimpeded return of all refugees and displaced persons to their homes in Kosovo” as well as “encourages all Member States and International Organizations to contribute to economic and social reconstruction as well as to the safe return of refugees and displaced persons”. Forced returns to secondary displacement, keeping in mind that applying the internal flight or relocation alternative most likely leads to secondary displacement in Serbia and Montenegro, would hence undermine the responsibilities of the international civil presence in Kosovo and the responsibilities of UN Member states as reflected in the UN Security Council Resolution 1244.

15. The above is particularly relevant as denial of refugee status on the basis of the internal flight or relocation concept may be interpreted as condoning the new ethnic reality on the ground, and hence negatively impact on the safe and unimpeded return to their homes of those minority members who wish to do so.

E. Conclusion

16. In view of the above, in UNHCR’s view, the application of the internal flight or relocation alternative with respect to this caseload from Kosovo may, depending on individual circumstances be neither a relevant nor a reasonable option. The applicants, particularly if they are Roma, Ashkaelia and Egyptians, may not be able to reintegrate legally elsewhere in Serbia or in Montenegro and may face undue hardship as the conditions for legal re-integration and economic survival may not be met. The quality

of life of the minority groups would generally fail to meet the basic norms of civil, political and socio-economic human rights and would place them in a situation of destitution and marginalization based on the serious practical obstacles to obtaining legal residence.

17. In addition, the implementation of the internal flight or relocation alternative is likely to lead to further displacement within the territory of Serbia and Montenegro. Not only would the legal status of persons returned under such conditions be unclear, but they would also compete for survival with the IDPs and refugees already in Serbia and Montenegro in dire situations, further exacerbating the already over-stretched absorption capacity in Serbia and Montenegro.

18. Finally, in UNHCR's view, forced returns to Serbia and Montenegro (excluding Kosovo) on the basis of the internal flight or relocation alternative contradict the spirit of the UN Security Council Resolution 1244, which refer to the safe and unimpeded return of all refugees and internally displaced persons to their homes in Kosovo. Meanwhile, refugees from Kosovo should have the right to seek and enjoy asylum in other countries or to remain in the country of asylum, as also emphasised in the Guiding Principles on Internal Displacement, Principle 2(2). This principle states that the Principles are not to be interpreted as "restricting, modifying or impairing the provisions of any international human rights or international humanitarian law instrument or rights granted to persons under domestic law" and in particular, they are "without prejudice to the right to seek and enjoy asylum in other countries".⁴

UNHCR Geneva
August 2004

⁴ See also paras 31-32 of UNHCR, "Guidelines on International Protection: 'Internal Flight or Relocation Alternative' ... referred to in footnote 1.