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Aktenzeichen
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Präsident des Landtags
Nordrhein-Westfalen
Geschäftsstelle des Petitionsausschusses

Oberverwaltungsgericht
für das Land Nordrhein-Westfalen
Münster

Oberlandesgerichte
Düsseldorf, Hamm und Köln

Verwaltungsgerichte
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**Rückführungen in das Kosovo
UNMIK-Politik nach Aktualisierung des UNHCR-Positionspapiers**

Meine Erlass vom 7. und 25.4.2006 – Az.: 15 – 39.02.01 – 4 – 132 Kosovo

Anlg.: 3

Hiermit übersende ich das Schreiben des Bundesministeriums des Innern vom 6.7.2006 (Anlage 1), den Schriftwechsel des BMI und des deutschen Verbindungsbüros in Pristina mit der Leiterin des Office of Communities, Returns and Minority (OCRM) der UNMIK (Anlage 2) sowie das aktuelle Positionspapier des UNHCR (Anlage 3) zur Kenntnisnahme.

Danach

- hält UNMIK bis auf weiteres an dem individuellen Prüfverfahren („Screeningverfahren“) für die Minderheitenangehörigen der Ashkali und Ägypter fest,
- erstreckt UNMIK die Prüfung, ob eine Person in das Kosovo zurückkehren kann, nicht mehr auf gesundheitliche Aspekte und wird daher **künftig generell die Rückführung von Personen aus gesundheitlichen Gründen** (auch von chronisch Kranken oder anderen schwerkranken Personen, Personen mit schweren oder chronischen psychischen Erkrankungen einschließlich Posttraumatischen Belastungsstörungen (PTBS) sowie schwerbehinderten Personen einschließlich deren Betreuungspersonen) **nicht mehr ablehnen**, sofern dem keine anderen Gründe entgegenstehen.

Dementsprechend entfällt ab sofort auch die Übermittlung von stichwortartigen Informationen über den Gesundheitszustand sowie von medizinischen Attesten oder ärztlichen Bescheinigungen.

Gleichwohl bittet UNMIK aus humanitären Erwägungen

- weiter um Informationen zu solchen ernsthaften Erkrankungen (z.B. ansteckende Krankheiten, notwendige ärztliche Betreuung am Flughafen etc.) von rückzuführenden Personen, die besondere Vorkehrungen bei der Ankunft in Pristina erforderlich machen,
- die Rückzuführenden ausreichend mit den notwendigen Medikamenten zu versorgen oder deren weitere ärztliche Behandlung im Kosovo sicherzustellen.

Ich bitte um Unterrichtung der Ausländerbehörden Ihres Bezirks.

Im Auftrag


(Schuk)



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BETREFF **Rückführungen in das Kosovo**
HER UNMIK-Politik nach Aktualisierung des UNHCR-Positionspapiers

BEZUG Schreiben vom 21. Juni 2006 an UNMIK

ANLAGE - 1 -

In der Anlage übersende ich Ihnen ein Schreiben von UNMIK-OCRM an das Deutsche Verbindungsbüro Pristina vom 26. Juni 2006 nebst Anlage, in dem die aktualisierte UNMIK-Rückführungspolitik nach dem jüngsten UNHCR-Positionspapier zum Kosovo dargestellt wird. Das in Rede stehende UNHCR-Papier sowie das Bezugsschreiben wurden Ihnen durch BMI bereits zur Kenntnisnahme übermittelt; eine direkte Antwort auf dieses Schreiben liegt bislang nicht vor.

Im Wesentlichen hält UNMIK neben seiner unveränderten Position betreffend die Rückführungen von Serben, Roma und Albanern in einer Minderheitensituation sowie verschiedenen Einzelfallgestaltungen bis auf weiteres am individuellen Prüfverfahren („Screeningverfahren“) für Minderheitenangehörige der Ashkali und Ägypter fest. Die Begründung hierfür leitet UNMIK aus der UNHCR-Empfehlung ab, Rückführungen dieser Minderheitengruppen nur in einem gestuften Verfahren durchzuführen.

Demgegenüber wird UNMIK ab sofort die Rückführung von Personen aus gesundheitlichen Gründen nicht mehr ablehnen, sofern dem keine anderen Bedenken entgegenstehen. Hinsichtlich der Frage, ob die mit UNMIK vereinbarte Übermittlung von stichwortartigen Informationen zum Gesundheitszustand weiterhin erforderlich ist, ergab eine Nachfrage bei UNMIK, dass diese ab sofort entfallen kann. Ebenso werden auch keine medizinischen Atteste oder

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SEITE 2 VON 2 ärztliche Bescheinigungen mehr benötigt. UNMIK erstreckt die Prüfung, ob eine Person in das Kosovo zurückgeführt werden kann, nicht mehr auf gesundheitliche Aspekte.

Unabhängig davon bittet UNMIK aus humanitären Erwägungen zum einen weiter um Informationen zu solchen ernsthaften Erkrankungen (z.B. ansteckende Krankheiten, notwendige ärztliche Betreuung bei Ankunft am Flughafen etc.) von rückzuführenden Personen, die besondere Vorkehrungen bei der Ankunft in Pristina erforderlich machen; zum anderen darum, die Rückzuführenden in einschlägigen Fällen ausreichend mit den notwendigen Medikamenten zu versorgen oder deren weitere ärztliche Behandlung im Kosovo sicherzustellen.

Ich bitte um Beachtung dieser neuen Vorgaben.

Im Auftrag

Schürmann
Schürmann



McLage 2

POSTANSCHRIFT Bundesministerium des Innern, 11014 Berlin

Frau
Sandra Mitchell
UNMIK
Office of Communities, Returns and Minority
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Pristina/KOSOVO

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Sehr geehrte Frau Mitchell,

ich danke Ihnen für Ihr Schreiben vom 16. Juni 2006, in dem Sie sich für eine Fortsetzung der Tätigkeit der beiden deutschen Beamten bei UNMIK aussprechen. Seien Sie versichert, dass Ihre Bitte bei unserer Entscheidung über eine Verlängerung des Einsatzes von Herrn Dr. Moritz und Herrn Helm berücksichtigt wird, von dem sich die deutsche Seite ja vor allem eine Erhöhung unserer Rückführungszahlen erhofft.

Wie Sie sicher wissen, hat UNHCR jetzt sein Positionspapier zur fortdauernden Schutzbedürftigkeit von Personen aus dem Kosovo aktualisiert. Wir gehen davon aus, dass UNMIK wie bisher diese modifizierte UNHCR-Position übernimmt und zur Grundlage ihrer Politik auf dem Gebiet der Flüchtlingsrückkehr in das Kosovo macht. Ich möchte Ihnen die wesentlichen Auswirkungen, die sich aus dem aktuellen UNHCR-Papier aus deutscher Sicht ergeben, wie folgt darstellen:

- Im Unterschied zu seinem Papier vom März 2005 sieht UNHCR keine internationale Schutzbedürftigkeit mehr für Minderheitenangehörige der Ashkali und Ägypter. Das noch im letzten Positionspapier von März 2005 geforderte umfassende individuelle Verfahren zur Feststellung dieses Schutzbedürfnisses findet jetzt keine Erwähnung mehr. Deutschland sieht in logischer Konsequenz dieser UNHCR-Position ab sofort keinen



SEITE 2 VON 2

Grund mehr für eine Fortsetzung des für UNMIK und Deutschland äußerst aufwändigen und bürokratischen Screeningverfahrens für die genannten Minderheitengruppen. Vielmehr müssen Ashkali und Ägypter nunmehr in das für Kosovo-Albaner und die Minderheiten der Bosniaken, Gorani, Torbesh und Türken geltende Rückführungsverfahren einbezogen werden. Eine solche Vereinheitlichung des Verfahrens sollte auch im Interesse der UNMIK liegen.

- UNHCR sieht entgegen der Position vom März 2005 keine Hinderungsgründe mehr für eine Rückführung von chronisch Kranken oder anderen schwerkranken Personen, Personen mit schweren oder chronischen psychischen Erkrankungen einschließlich Posttraumatischen Belastungsstörungen (PTBS) sowie schwerbehinderten Personen einschließlich deren Betreuungspersonen. Wir gehen für diesen Personenkreis nunmehr davon aus, dass Rückführungsentscheidungen, die unsere zuständigen Behörden und Gerichte nach deutschem Ausländerrecht getroffen haben, problemlos vollzogen werden können.

Lassen Sie mich abschließend betonen, dass Deutschland auch künftig eine verantwortungsbewusste Rückführungspolitik betreiben wird, welche die aktuelle Situation im Kosovo berücksichtigt.

Mit freundlichen Grüßen

Im Auftrag

Schürmann



26 June 2006

Dear Ms. Budde,

As you may know, UNHCR recently updated its Position Paper on the Continued International Protection Needs of Individuals from Kosovo. While noting that the security situation in Kosovo is progressively improving for minorities, UNHCR continues to conclude that the return of Kosovo Serbs, Roma and Albanians in a minority situation, should only take place on a strictly voluntary basis. UNHCR also recommends that the repatriation of Ashkali and Egyptians be considered in a phased manner.

After carefully studying the UNHCR Position Paper, UNMIK will continue its past practice of following UNHCR recommendations on the repatriation of persons originating from Kosovo. Accordingly, UNMIK will not accept the repatriation of Kosovo Serbs, Roma and Albanians in a minority situation, and UNMIK will continue to conduct individual screenings of members of the Ashkali and Egyptian communities pursuant to agreements reached with host countries.

In keeping with its 1951 Refugee Convention mandate, UNHCR has refrained from addressing humanitarian categories at length and removed previous medical-based restrictions for those being deported. UNMIK is prepared to accept UNHCR's position on this change too. This should not, however, be understood to mean that limitations in the treatment of serious illnesses have been overcome in Kosovo. UNMIK still requests to be informed of persons proposed for deportation that are suffering from serious medical conditions and we urge the authorities of host countries to ensure that their return to Kosovo does not undermine their health situation. In this regard, it would be helpful, if the host government could agree to provide the person in question with a sufficient supply of medication and make individual arrangements for the person to actually continue treatment in Kosovo.

I look forward to further discuss this with you and – most importantly – to discuss plans to transfer this competency to the Kosovo institutions. In the meantime, please advise the relevant authorities your countries of these updates in UNMIK policies. For easy reference, I have included an updated note outlining our current policy on repatriation.

I look forward to our continued cooperation.

Yours sincerely,

Sandra Mitchell, Director
Office of Communities, Returns and Minority Affairs
Office of the Special Representative of the Secretary-General

Ms. Birgit Budde
Migration Liaison Officer
German Liaison Office

Background Note on Repatriation Policy - June 2006

NB: This note is offered as a brief overview outlining UNMIK policy on the repatriation of persons originating from Kosovo denied status in a third country. It is not meant to be a policy paper. Anyone seeking further guidance on the reasons for this policy and additional background information should consult the full documents.

UNMIK's policy on repatriation (commonly known in Kosovo as "forced returns") is based on international human rights standards and the recommendations of UNHCR. It has been the consistent policy of UNMIK not to accept the repatriation of persons who remain in need of international protection according to UNHCR. UNMIK is not opposed to any person originating from Kosovo seeking voluntary repatriation.

UNMIK interprets voluntary repatriation to mean that a person decides to return freely, without coercion, and with the full knowledge of the current situation in Kosovo. Repatriation, or forced returns, involves those people that have failed to obtain refugee or other status and by court or administrative order are repatriated from third countries and returned to Kosovo.

Based on the most recent UNHCR Position on the Continued International Protection Needs of Individuals from Kosovo (June 2006), UNMIK will, at present, not accept the repatriation of the following persons:

- Kosovo Serbs or Roma;
- Kosovo Albanians originating from areas where they constitute a minority, particularly in the northern municipalities of Kosovo, including Mitrovica (North);
- Persons in ethnically mixed-marriages and persons of mixed ethnicity;
- Persons perceived to have been associated with the Serbian authorities after 1990;
- Victims of trafficking;
- Unaccompanied elderly persons who have no relatives or any other form of societal support in Kosovo;
- Separated children without relatives or caregivers in Kosovo, and for whom it is found not to be in their best interest to return to Kosovo.

UNMIK urges that the repatriation of the elderly, ill and separated children for whom relatives and caregivers have been identified should only take place after advance notification and arrangements have been made by the repatriating State, so that there is no gap in the care and protection provided to the person. It is also UNMIK's policy, in accordance with the Convention on the Rights of the Child and the European Convention on Human Rights, to prevent separation of families, except when this is in the best interests of the child.

UNHCR has recommended that the repatriation and return of Ashkali and Egyptians be considered in a phased manner. Accordingly, UNMIK will continue individual screenings of these groups. In assessing the individual possibilities of the potential Ashkali/Egyptian returnees, UNMIK will look at the housing situation as well. These additional measures are needed because of the limited absorption capacity of municipalities to reintegrate these persons and in order not to bring about politically and socially destabilizing factors at a time when negotiations on the future status of Kosovo are under way. Individual screenings are conducted pursuant to agreements reached with governments.



14.02.06

UNHCR's Position on the Continued International Protection Needs of Individuals from Kosovo* (June 2006)

I. Introduction

1. Security Council Resolution 1244 (1999) gives the Office of the United Nations High Commissioner for Refugees (UNHCR) the mandate to supervise the safe and free return of all refugees and displaced persons to their homes.¹ To this end, UNHCR has contributed since 1999 to create conditions enabling sustainable return, and has regularly issued position papers that assess the situation of ethnic minorities, the international protection needs of ethnic groups and other categories of persons in Kosovo, and regularly evaluates the application of the internal flight or relocation alternative to individual asylum claims.²

2. The purpose of this paper is to provide updated recommendations to the relevant authorities in asylum countries to assist them in the determination of claims for international protection by persons originating from Kosovo. The paper first highlights important political developments related to negotiations on the future status of Kosovo, against which consideration of the situation of minorities should be seen. Second, it assesses the current situation of ethnic minorities by analyzing information collected by UNHCR's five field offices in the province, complemented by authoritative reports from other United Nations bodies and international non-governmental organizations.³ Third, the paper identifies the ethnic minorities in relation to whom there continue to be risks of persecution, and highlights humanitarian needs of individuals from Kosovo that should be considered before taking a decision on possible return to Kosovo. Fourth, the paper considers the possibility of applying the internal flight or relocation alternative.

3. Positive developments within the inter-ethnic environment have had a particular impact on members of the Ashkaelia and Egyptian communities in Kosovo. UNHCR is therefore no longer including these minorities among those at risk. On the other hand, UNHCR remains concerned

* This position paper was finalized before the final result of the Referendum on Independence in Montenegro was announced on 3 June. Pending United Nations recognition of Montenegro's independence and Serbia as the successor state to the former State Union of Serbia and Montenegro, all references to Kosovo hence relate to the United Nations administered province of Serbia and Montenegro (SCG). Where reference is made to Serbia only, this relates to the specific situation of Serbia within the State Union of Serbia and Montenegro.

¹ See Annex 2 of Security Council Resolution 1244/99 dated 10 June 1999.

² UNHCR has continued to play a critical role in creating conditions conducive to return of refugees and internally displaced persons (IDPs) through facilitation of inter-ethnic dialogue, Go-and-See Visits and the Go-and-Inform Visit process, and through engagement in Working Groups, such as the Direct Dialogue Working Group on Return, the Kosovo Standards Implementation Plan and the Strategic Framework for Return. A compilation of UNHCR documents issued in this respect, can be found at <http://www.unhcr.org>

³ UNHCR's monitoring activities are carried out through continuous and close liaison between its five offices in Kosovo located in Gjilan/Gnjilane, Mitrovicë/a, Pejë/Peć, Prishtinë/Priština and Prizren, as well as with UNMIK, key stakeholders and the local authorities/communities.

about Kosovo Serbs, Roma and Albanians in a minority situation. Given their fragile security situation and the serious limitations to enjoying their fundamental human rights, UNHCR's position is that they should continue to be considered at risk of persecution, and should continue to benefit from international protection in countries of asylum. Return of these minorities should take place on a strictly voluntary basis, based on fully informed individual decisions. Their forced return to other parts of Serbia and Montenegro can not be considered as appropriate.

4. Continuing with established practice, UNHCR will be reviewing this position upon completion of the status talks, following a period sufficiently long to permit a new assessment of the situation of minorities.

II. The political environment

5. The current political environment is dominated by ongoing negotiations on the future status of Kosovo. Following the report of UN Special Envoy Kai Eide to the United Nations Security Council in October 2005 recommending that the political process to determine Kosovo's future status be initiated, negotiations on the future of the province have commenced in earnest with the appointment by the United Nations Secretary-General of Martti Ahtisaari as his Special Envoy on the future status process of Kosovo on 14 November 2005.⁴

6. The outcome of the status negotiations may significantly affect the position of minorities originating from Kosovo. The current situation has brought about a "wait-and-see" attitude on the part of many displaced persons, which is reflected, *inter alia*, in the low return figures and the slow reintegration process of internally displaced persons (IDPs). The overall number of refugees and IDPs voluntarily returning to/within Kosovo continues to be very low. From March 2005 to end May 2006, only 2,816 individuals from ethnic minority groups returned to 25 municipalities in Kosovo. The low rate of returns has its origin in a number of obstacles, which include, *inter alia*, (a) the fragile and volatile security situation in areas of return; (b) the absence of economic sustainability for returnees; (c) the unresolved status of returnees' homes and commercial/agricultural land; and (d) limited freedom of movement, resulting in only severely curtailed access to basic services, employment, and income-generating activities.⁵

7. In the delicate landscape of inter-ethnic relations surrounding the ongoing political negotiations over Kosovo's future status, a large-scale forced return of persons originating from Kosovo, regardless of their ethnicity, could represent another destabilizing factor in the months to come. Moreover, the forced return of persons originating from Kosovo to other areas of Serbia and Montenegro, prior to the conclusion of negotiations, may result in additional obstacles to achieving

⁴ See, *A comprehensive review of the developments in Kosovo*, Report submitted by Ambassador Kai Eide, Special Envoy to the Secretary-General of the United Nations for the comprehensive review of Kosovo, annexed to the letter from the Secretary-General to the President of the Security Council dated 7 October 2005 (S/2005/635). The Eide report has highlighted a lack of progress in the field of minority rights and identified this as an area where an enhanced implementation of standards is required to foster the confidence of Kosovo Serbs and other minorities during the period of increased political tension accompanying status talks, pp.9-12, and para. 73-74 on p.14. In addition, see the International Crisis Group (ICG) Report no. 170 of February 2006, *Kosovo: the Challenge of Transition*, pp. 7-10.

⁵ See also European Commission, *Kosovo (under UNSCR 1244) 2005 Progress Report*, Brussels, 9 November 2005, SEC (2005) 1423, section 1.2 Minority Rights: "Important obstacles remain to a sustainable returns process, resulting in few returnees. The overarching obstacle for the return of refugees and the internally displaced population (IDPs) is security concerns. This is coupled with a sense of uncertainty over the future status of Kosovo as well as limited opportunities in Kosovo to sustain a livelihood. Another major impediment of return are property related obstacles as returnees have difficulties in repossessing property left behind when fleeing Kosovo. Consequently, many of those displaced, in particular Serbs and Roma, have not yet found a durable solution."

durable solutions for those concerned. States should consider placing the issue of forced return within the wider political perspective. The return of individuals considered not in need of international protection should be approached in a gradual manner, taking into account the social and economic challenges affecting Kosovo at present.

III. Situation of Ethnic Minorities

Security environment

8. Since the issuance of UNHCR's March 2005 position paper, 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;⁶ and an Inter-Ministerial Commission to monitor minorities' access to public services has been established.⁷

9. The United Nations Interim Mission in Kosovo (UNMIK) reported in May 2006 that crime statistics for the first quarter of this year revealed a marked decline in crimes where the possibility of an ethnic motive had not yet been ruled out.⁸ Despite these improvements, the security environment, although stable, remains fragile and 'somewhat unpredictable'.⁹ While the number of reported serious ethnically-motivated crimes has decreased, the Serb community continues to be affected by a considerable number of incidents.¹⁰

10. 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. Security incidents against Albanian minorities have been reported in the proximities of the main bridge in Mitrovicë/a, in the course of identity card (ID) checks by Serb bridge-watchers,

⁶ See the Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2006/45 (25 January 2006), Annex I - Technical assessment of progress in implementation of the standards for Kosovo, prepared by the Special Representative of the Secretary-General for Kosovo, Para. 1, p. 9.

⁷ *Ibid.*, Annex I, Para. 7, p. 10.

⁸ As compared to 72 incidents recorded during January to March 2005, there were reportedly only 19 such incidents during the same period this year. Of these, 12 involved Kosovo Serb victims, six Kosovo Albanians and one a Kosovo Croatian, UNMIK press release, UNMIK/PR/1554, 24 May 2006.

⁹ See the Report of the Head of the OSCE Mission in Kosovo, Ambassador Werner Wnendt, to the Permanent Council, OSCE, Vienna, 19 January 2006. Referring (in Section 6) to the Internal Security Sector Review (ISSR) process that is being undertaken in consultation with a large section of Kosovo's society, the report says: "The ISSR comes at a moment when the security situation in Kosovo is stable, but somewhat unpredictable, with tensions remaining at heightened levels. Particularly in the context of status talks, it is in the interest of the political establishment, the international community and all communities in Kosovo to ensure that there is no widespread outbreak of violence". See also the Kai Eide Report (S/2005/635), of 7 October 2005, Para. 45, p. 9.

¹⁰ In August 2005, two Kosovo Serbs were killed in Shtërpçë/Štrpce, and the highest-ranking Kosovo Serb Police Officer was shot the following month. On 27 August 2005, two Kosovo Serbs were killed and two others were severely wounded in a drive-by shooting incident from a speeding car. The four Kosovo Serbs from Lipjan/Lipljan, near Prishtinë/Priština, had been traveling in a vehicle en route from Shtërpçë/Štrpce to Ferizaj/Uroševac, returning home to Lipjan/Lipljan after a Saturday night out. These two incidents are still to be fully elucidated by the KPS and their exact nature thus far has not been established. However, the killings were generally perceived by the Serbs as targeted at their ethnic group. For an elaboration of the impact of these incidents on the overall fragile security situation in Kosovo, see Human Rights Watch, 31 December 2005, *Essential Background: Overview of human rights issues in Serbia and Montenegro – Kosovo*, p. 3.

often involving intimidation and physical assault. Members of the Roma community, possibly due to their weak social and economic position and lack of trust in the authorities' ability or willingness to protect them against retaliation, are reluctant to report security incidents to the Kosovo Police Service (KPS) or Serbian Police (SUP) operating in the northern part of Kosovo.¹¹ In addition, Roma infrequently resort to the court system, e.g. because they live in remote areas.¹²

11. Law enforcement, when crimes have an ethnic dimension, is considered by many observers as insufficient.¹³ The failure to bring perpetrators of many serious reported crimes to justice contributes to a climate of impunity, aggravated by an ethnic imbalance in the composition of the local law enforcement structures.¹⁴

Insecurity – Real and Perceived

12. Members of ethnic minorities continue to perceive the current situation as insecure and in some instances even dangerous. Although not all security incidents are, of course, inter-ethnic in nature, they nevertheless exacerbate inter-ethnic perceptions and tensions.¹⁵ The pervasiveness of "low-scale" incidents such as harassment, intimidation, stone throwing, graffiti, and insults/threats has a negative bearing on the level of confidence of minorities in the ability of the security forces

¹¹ See the Opinion on the implementation of the Framework Convention for the Protection of National Minorities in Kosovo, Advisory Committee on the Framework Convention for the Protection of National Minorities - adopted on 25 November 2005, Council of Europe, ACFC/OP/I(2005)004, para. 53, p. 18: "The Advisory Committee notes that the normative framework for combating inter-ethnic hatred is advanced in Kosovo, with a specific UNMIK regulation on the prohibition of incitement to national, racial, religious or ethnic discord or intolerance and other norms providing important guarantees in this respect. There is, however, an exceptionally wide gap between the norms and reality in this sphere. According to UNMIK, large-scale violence against persons belonging to minority communities is now on the decrease in Kosovo. The Advisory Committee notes, however, that such violence did occur as late as March 2004, and that serious instances of inter-ethnic hostility are still reported rather frequently. Furthermore, it is a widely held view that a large proportion of the every-day manifestations of inter-ethnic hostility and harassment are not reported to law-enforcement bodies, often due to a lack of confidence in the institutions and in the effectiveness of the remedies available".

¹² Ibid.

¹³ See, Kosovo Review of the Criminal Justice System 1999-2005, Reforms and Residual Concerns, OSCE, Department of Human Rights and Rule of Law, March 2006, p. 68. Additionally, the latest Human Rights Watch report, *Not on the Agenda: The Continuing Failure to Address Accountability in Kosovo Post-March 2004*, published on 30 May 2006, states that "[T]he failure to bring to justice many of those responsible for the violence and destruction of March 2004 compounds an earlier lack of accountability for the war crimes and serious anti-minority violence of 1998-2000. Human Rights Watch research indicates that the lack of progress in delivering justice for these serious crimes has hampered Kosovo's progress toward a functional state. There is a real danger that if the status quo on impunity continues, Kosovo risks becoming a "failed state" in which lawlessness and arbitrariness, not transparent, democratic rule will reign, regardless of the identity of the future leadership of the province."

¹⁴ For example, in Pejë/Peć, out of a total of 952 KPS police officers in the local law enforcement structure, 114 are from minorities, including 15 Roma/Ashkaelia/Egyptians, and seven Serbs, and in Prizren the ethnic balance in the local law enforcement agencies is still not proportional for the Serb Minority. Prizren region has six municipalities with regional KPS HQ located in Prizren town. The region has 854 KPS officers out of which only two are Serb and there are no officers from the other minorities.

¹⁵ For a further elaboration of this point, see the Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2006/45 (25 January 2006), Annex I, Para 49, p. 14. See also Report of the Head of the OSCE mission in Kosovo, Op. cit., section 2: "The return of minority IDPs and refugees remains negligible. Despite an overall decline in recorded violent crime, some recent attacks on members of minority communities are likely to have at least a short term negative impact on freedom of movement – though there has been no proof that the criminal motivation in these cases has been ethnic in nature."

to adequately protect them, this even though the number of incidents may have decreased.¹⁶ Confidence in the Rule of Law sector has been weakened by ineffectual criminal investigations, low prosecution rates and a large number of unresolved theft and looting cases.¹⁷ The cumulative effect of these factors has reinforced perceptions of insecurity in the Serb Community, and to a lesser extent, in the Roma community.¹⁸

Freedom of Movement

13. As argued in Ambassador Eide's Report, "the low number of reported inter-ethnic incidents partly stems from the fact that minorities tend to avoid or reduce to a minimum their contacts with the majority population".¹⁹ Whether real or perceived, insecurity is still felt by the minorities in Kosovo and consequently limits their freedom of movement.

14. There are municipalities where minorities cannot travel freely for security reasons or have to rely on escorts and specially arranged transport. The provision of UN bus services and other organized 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.

15. Security incidents have a strong impact on the minorities' confidence and freedom of movement. In late 2005, UNMIK-CIVPOL began escorting all buses on the Dragash/š-Belgrade line following an incident where a rocket-propelled grenade was fired at a bus in Prizren. The Kosovo Serb community from Čaglavica/Çagllavicë to Graçanicë/Graçanica and Obiliq/Obilić areas has continued to request KFOR and KPS patrols to escort their children to attend classes to avoid stoning, allegedly by members of the Albanian majority population. Stoning incidents in March and May 2006 in the Pejë/Peć region affected buses on their way to Mitrovicë/a in Runik/Rudnik, Skenderaj/Srbica municipality, and in Shipol/Šipolj, one of the southern Mitrovicë/a suburbs.

16. As of July 2005, the Main Bridge joining northern and southern Mitrovicë/a, was opened for 24-hour traffic. Two-way traffic crossed the bridge at approximately 80 cars per day through August, after which monitoring ceased as traffic became routine. Nevertheless, Serbs crossing the bridge reportedly do not feel safe to move freely in southern Mitrovicë/a, and Albanians likewise do not enjoy freedom of movement in northern Mitrovicë/a.²⁰

17. Freedom of movement for Roma in Mitrovicë/a continues to be limited, with only minor signs of improvement. Roma living in the Serb enclaves do not enjoy full freedom of movement outside the villages, except for the train to north Mitrovicë/a. A number of Roma returnees, who had declared themselves in asylum countries as Egyptian or Ashkaelia, have expressed feelings of

¹⁶ UNMIK Police recently analyzed 1,408 Kosovo Serb convoys that were escorted by the Kosovo Police Service (KPS) during January to early May this year. It was found that there had been six incidents of stone throwing at these convoys and police had made five arrests in those cases.

¹⁷ See, the Kai Eide Report, op.cit., Executive summary, pp. ii-iii.

¹⁸ According to Human Rights Watch, while most minority homes destroyed in March 2004 have been reconstructed, displaced persons trying to visit them have reported continuing threats and intimidation. Ethnic Albanians living in Serb-majority areas or who travel to such areas report similar concerns. See Human Rights Watch Report, op. cit., p. 3.

¹⁹ See, Kai Eide Report, op.cit., p. 9, para. 47

²⁰ See the Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, op.cit., Annex I, p.15, para. 53

insecurity, and their limited freedom of movement leaves them with little or no access to basic services. Similarly, ethnic Albanians (in a minority situation) who have been forced to return, remain displaced in Mitrovicë/a south. Their freedom of movement in Mitrovicë/a north, where often their property is occupied, is restricted.

Access to Basic Services and Employment

18. Ethnic minorities continue to face serious obstacles to accessing essential services in the areas of health, education, justice and public administration.²¹ Insecurity – both perceived and real – and limited freedom of movement negatively affect minority access to public services. The discriminatory behaviour of some civil servants, as well as the low representation of minorities in the administrative structures, result in further disincentives to the exercise of basic rights.²²

19. Members of the Roma community face difficulty accessing public services.²³ Most Roma live in informal settlements where socio-economic opportunities are severely limited. Roma face discrimination when seeking employment and few are employed in municipal structures, which tend to fill their minority quotas with members of the Serb community.²⁴

20. Parallel structures continue to operate in all municipalities with significant Serb populations.²⁵ In these municipalities access to services within the parallel structures is not possible for Roma and Albanians if they are not in possession of SCG identity documents. Individuals in isolated locations are particularly vulnerable, for instance, in case of health emergencies.

21. Restricted freedom of movement limits the ability of minorities to engage in income generating activities. The unemployment rate in Kosovo is estimated at over 50 per cent. This problem for the minorities is compounded by the fact that access to the work place is often difficult and risky. Furthermore security problems prevent a large number of persons from rural background from working on their lands and making a livelihood.²⁶ These constraints result in many families not being able to meet their basic subsistence needs.

²¹ See Main Conclusions of the Assessment of Communities and the Returns Situation in Kosovo, European Agency for Reconstruction (EAR), February 2006, Para. 39. The report was commissioned by the EAR to assess the situation of communities and the returns situation in Kosovo.

²² According to the Kai Eide Report, “the number of Kosovo Serbs and other minority communities in the bureaucratic structures of the provisional authorities is also low”, op.cit.

²³ See the Ombudsperson Institution in Kosovo, Fifth Annual Report of June 2005, references to health (p. 36); employment (p. 39); and education (p. 41).

²⁴ The Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kaelin, listed the Roma minority population among one the most vulnerable groups in his September 2005 report. Report of Mr. Walter Kaelin, Representative of the Secretary-General on the human rights of internally displaced persons, Note by the Secretary-General, document A/60/338, 7 September 2005, www.ohchr.org/english/bodies/chr/docs/ga60/A.60.338.pdf. See also his Mission Report to Serbia and Montenegro, E/CN.4/2006/71/Add.5 dated 9 January 2006, available at <http://www.ohchr.org/english/issues/idp/visits.htm>

²⁵ See the Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, op.cit., Annex I, p.10, para. 14.

²⁶ See for example EC for Democracy through Law (Venice Commission), “Opinion on Human Rights in Kosovo” (11 October 2004) CDL – AD (2004)033, para. 34

Resolution of Housing, Land, and Property Issues

22. All persons should enjoy the right to the restoration of any housing, land and/or property (commercial and agricultural) of which they were arbitrarily or unlawfully deprived in the course of a conflict, or to be compensated for any housing, land and/or property that is factually impossible to repossess. While UNMIK has adopted Regulation No 2006/10 on 4 March 2006 (on the resolution of claims related to private immovable property, including agricultural and commercial property), the current repossession rate for illegally occupied properties remains limited, and an effective and streamlined mechanism for property restitution and compensation is still lacking.²⁷

23. A large number of displaced persons belonging to minorities do not physically repossess restituted property due to the prevailing problematic security situation and other obstacles to return. Following the eviction of illegal occupants, the looting and physical re-occupation of properties are commonplace as the rightful owners are often unable, or, due to security concerns, unwilling, to repossess their homes. In such cases, as a matter of legal procedure, the lawful owners must re-initiate court proceedings to evict the new illegal occupants.

IV. Groups at Risk

Kosovo Serbs, Roma and Albanians in a minority situation

24. Given the present fragile security situation in Kosovo and serious ongoing limitations to the fundamental human rights of Kosovo Serbs, Roma and Albanians in a minority situation, UNHCR maintains its position that persons in these groups continue to be at risk of persecution, and that those minorities having sought asylum abroad should be considered as falling under the provisions of Article 1 A (2) of the 1951 Convention and the 1967 Protocol relating to the Status of Refugees. Where a State feels unable to grant refugee status under the law, but the individual is not excluded from international protection, a complementary form of protection should be granted. The return of individuals belonging to these groups should only take place on a strictly voluntary basis. Individuals who express a wish to return voluntarily should be able to do so freely and with the full knowledge of the current situation in Kosovo.

25. On the other hand, UNHCR, in consideration of positive security developments which have taken place in the past year in Kosovo, no longer considers that the Ashkaelia and Egyptian minorities in general, are in need of international protection. Therefore, asylum claims originating from among these ethnic communities should be assessed individually based on Art. 1 A (2) of the 1951 Convention and the 1967 protocol. Nonetheless, under the current political and socio-economic circumstances, the return of persons from these two groups, found not in need of international protection should be approached in a phased manner, due to the limited absorption capacity of Kosovo, in order not to bring about politically and socially destabilizing factors at a time when negotiations on the future status of Kosovo are under way.

²⁷ The Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, op.cit., Annex I, p.22, para. 115 states: "Property rights protection in Kosovo remains extremely weak and in need of urgent strengthening. Illegal construction continues by individuals and companies on land owned by others, as well as non-permitted construction on land by its title owners. Concerns continue over possible illegal expropriation of land by municipalities, including land owned by minority communities. Illegal occupation and use of property remains widespread. Kosovo's legislation, courts and administrative procedures need to be significantly strengthened to identify, correct and punish these crimes. The Government and public sector need to lead by example, enforcing disciplinary procedures against public servants illegally occupying property. Courts, municipal authorities and police need to increase efforts to enforce property-related law faster and more consistently."

Other vulnerable categories of persons

26. In the current complex situation of Kosovo, individuals from groups not mentioned above may also have a well-founded fear of persecution for reasons covered by the 1951 Convention and the 1967 Protocol. These individuals may originate from ethnic minority groups not specified as being at high risk, or may belong to other vulnerable categories of persons. Examples may include but are not limited to

- Persons in ethnically mixed-marriages and persons of mixed ethnicity;
- Persons perceived to have been associated with the SCG authorities after 1990,²⁸ and
- Victims of trafficking.²⁹

27. Furthermore, asylum-seekers who do not qualify for 1951 Convention refugee status may still be protected against return if non-*refoulement* obligations under international or regional human rights law apply.

V. Application of the Internal Flight or Relocation Alternative (IFA) to Ethnic Minorities at Risk

28. In considering asylum applications from persons originating from Kosovo, States may be inclined to assess whether an internal flight or relocation alternative is available for them in other parts of Serbia. Based on UNHCR's Guidelines, the circumstances faced by internally displaced persons in Serbia, leads UNHCR to maintain its general conclusion that internal flight in such conditions does not offer a relevant or reasonable alternative to international protection.³⁰

29. UNHCR recommends that States refrain from forcibly returning ethnic minorities at risk in Kosovo to other areas of Serbia on the basis of the internal flight or relocation alternative, noting that this could lead to a situation of secondary displacement, which would appear to contradict the spirit of United Nations Security Council Resolution 1244.³¹ This applies particularly to Kosovo Roma in the light of their especially vulnerable situation in Serbia. The forced return of minorities at risk would hence not constitute a meaningful alternative to international protection or a durable solution for those displaced.

²⁸ The inter-ethnic violence in March 2004 highlighted the persistent and strong resistance in Kosovo to persons closely associated with the Kosovo Serbs or with the Serbian structures, whether past or present.

²⁹ See the UNHCR Guidelines on International Protection: The application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked HCR/GIP/06/07, 7 April 2006. On the risk for persons from Kosovo to become victims of trafficking, see e.g. UNICEF, "Trafficking in Children in Kosovo" (June 2004) and Human Rights Watch, "Country Summary: Serbia and Montenegro" (January 2005). See also OSCE, ODIHR, "Awareness Raising for Roma Activists on the Issue of Trafficking in Human Beings in South-Eastern Europe", Warsaw, April 2006.

³⁰ See UNHCR, "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, Geneva 23 July 2003.

³¹ Calls to "refrain from returning members of threatened communities and particularly vulnerable persons to situations where they would risk becoming internally displaced persons without the necessary assistance and protection of their rights" have been also made by Walter Kälin, following his visit to Kosovo in July 2005 and his assessment on the situation there. See Report of Mr. Walter Kälin, Representative of the Secretary-General on the human rights of internally displaced persons, op.cit., para.31

The Relevance Analysis: *Is the area of relocation practically, safely, and legally accessible to the individual?*

30. Even though physical access to Serbia is possible and minorities there do not normally face persecution, it is of particular importance to the relevance analysis to assess whether the applicant can legally access other parts of Serbia (excluding Kosovo). Persons belonging to ethnic minorities at risk in Kosovo who seek protection in Serbia (excluding Kosovo) face significant challenges receiving legal protection there. Administrative practices relating to civil registration and documentation present serious obstacles to obtaining legal residence and may create pressure to move to other areas causing a chain of further displacement.

31. In Serbia, access to basic rights and services, such as medical care, employment benefits, pensions, housing, and education is dependent on registration as a permanent resident or an IDP rather than mere possession of Serbian citizenship. Although persons originating from Kosovo are formally permitted to register as permanent residents in Serbia, many are unable to do so in practice as they cannot provide proof of residence. Moreover, despite their situation of secondary displacement, persons arriving spontaneously from Kosovo as well as forced returnees from abroad are not permitted to register as IDPs. Many are consequently deprived of access to basic civil, political, economic, and social rights, triggering a process of legal and socio-economic marginalization.

32. Administrative practices relating to documentation pose further barriers to effective legal protection. A large number of Kosovo Roma and some Kosovo Serbs lack personal documentation.³² In order to undertake civil registration and obtain basic documentation relating to citizenship, birth, and civil status, persons originating from Kosovo must go in person to "dislocated" registry offices.³³ Lengthy administrative procedures are frequently hampered by the non-implementation of the law, the lack of mutual recognition of documents by UNMIK and the Serbian authorities, as well as the significant backlog of cases before Kosovo's courts.

The Reasonableness Analysis: *Can the applicant, upon return to Serbia and Montenegro, lead a relatively normal life without facing undue hardship?*

33. UNHCR considers that the application of the internal flight or relocation alternative is not reasonable due to the hardship that persons belonging to Kosovo's minorities face in the areas of relocation. Serbia (excluding Kosovo) is currently hosting some 225,000 IDPs from Kosovo and some 115,000 refugees, in a context where the overall difficult socio-economic situation is characterized by high unemployment and a severely strained social welfare system. Although persons originating from Kosovo who arrive spontaneously in Serbia or are forcibly returned to Serbia face similar problems to IDPs, they do not benefit from humanitarian assistance. The limited capacity of state institutions to deal with the additional burden of forced returnees further reduces the prospects of Kosovo minorities in achieving an adequate standard of living upon return.

34. The absence of access to adequate social housing constitutes a crucial problem for Kosovo minorities in the full enjoyment of their economic, social, and cultural rights in Serbia. Due to the lack of capacity and funds, the authorities do not provide housing to persons originating from

³² The general marginalization of these minorities as well as the registration system of the former Federal Republic of Yugoslavia (FRY), resulted in many persons failing to obtain civil registration or documentation even before 1999. Moreover, many registry books have been destroyed, dislocated or were lost during the conflict.

³³ The registries were transferred to Serbia as FRY forces withdrew from Kosovo in June 1999. These registries have since been merged with the registry offices of the hosting municipalities.

Kosovo, with the exception of some 5,374 IDPs who are provided with basic shelter in collective accommodation centres. Many Kosovo Roma have found shelter in illegal settlements made up of makeshift huts, corrugated metal containers and other sub-standard shelters, and often live in extremely harsh conditions (no electricity, no running water, no sanitation, and no public services).³⁴

35. Only 11 per cent of all Roma settlements in Serbia represent settlements allowing for a dignified life. The current privatization process has triggered a series of evictions from Roma settlements, in a context where the legal framework does not require the identification of alternative housing solutions. This gives rise to homelessness, physical injury, health problems, insecurity, and the removal of children from school and the loss of employment. Moreover, it should be stressed that only 12 per cent of the Roma population in Serbia have a regular income, only seven per cent of the Roma population are recipients of regular medical services, and that Roma children are faced with health related problems three to ten times more often than other children in Serbia. Racial segregation in schools is a serious problem. Seventy-five percent of the Roma, Ashkaelia, and Egyptian population in Serbia live in extremely difficult living conditions in abject poverty.³⁵

VI. Humanitarian categories

36. With regard to individuals who are not in need of international protection, their special needs should be taken into account in the context of return, particularly bearing in mind the limitations of social welfare institutions in Kosovo. The following vulnerable persons fall under this category:

- Unaccompanied elderly persons who have no relatives or any other form of societal support in Kosovo;
- Separated children without relatives or caregivers in Kosovo, and for whom it is found not to be in their best interest to return to Kosovo.

37. In addition, the return of separated children for whom relatives and caregivers have been identified should only take place after appropriate advance notification and arrangements have been made by the repatriating State, so that there is no gap in the care and protection provided to the children.

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³⁴ See the Report of Mr. Walter Kälin, Representative of the Secretary-General on the human rights of internally displaced persons, *op.cit.*, para 36

³⁵ As stated by the Representatives of the Serbian authorities in May 2005 in a meeting on "The Role of Municipalities in the Decade of Roma Inclusion", organized by the Ministry for Human and Minority Rights of SCG.