

By force, if necessary

Minority returns to Kosovo after independence

Minority returns to Kosovo have been scarce. Security concerns and the poor economic outlook, in particular for Kosovo's ethnic minorities, have prevented Roma and other non-Albanians from returning to Kosovo. The [UNHCR's position](#) on the continued needs for international protection of individuals from Kosovo has provided a relative protection against large-scale forced returns of people from these groups to Kosovo.

This could well change with Kosovo's independence. The readmission policy and reintegration strategy developed by the Kosovo government under the guidance of international organisations prepare for a "big influx" of forcibly repatriated people to Kosovo after UNMIK's departure. Kosovo's ethnic minorities, and the Roma in particular, are a privileged target.

In a [document](#) published last November, the OSCE mission in Kosovo qualified return projects to Kosovo as among the most cost-intensive in the world. This notwithstanding, they have had little impact in terms of bringing back Kosovo's non-Albanian population to Kosovo.

The UNHCR has registered 17,938 so-called minority returns since 2000. Minority returns are defined as returns of persons "belonging to any ethnic group other than the majority at the place / community of return" (UNMIK: [Revised Manual on Sustainable Returns](#)). Kosovo Serbs make up for the largest share among these returns. Roma come only in third place with less than 2,500 voluntary returnees.

While the UNHCR insists that its statistics are based on information that have been verified on the ground, observers nevertheless doubt about their truthfulness. Allegedly, many of these so-called returnees only return to Kosovo to sell off their property and leave again soon after.

According to the [Serbian Ministry for Kosovo and Methojia](#), the real number of returnees stands at around 3,000 people only. The Ministry also argues that some 20,000 people have left Kosovo since the end of the NATO-intervention. Kosovo is still one of the main regions of origin of asylum seekers in Europe.

From failed returns ...

Security concerns together with a lack of trust in Kosovo's institutions and their willingness to protect the rights of Kosovo's non-Albanian population are among the first reasons why Kosovo's non-Albanian populations have been reluctant to return. The economic outlook is particularly bleak for Roma who have always been marginalised within Kosovo's society. Today, there is hardly any Roma employed by Kosovo's public institutions. International organisations in Kosovo do not fare much better.

The European Commission noticed in its 2007 [Progress report on Kosovo](#):

“[T]he situation of socially vulnerable persons, particularly of the Roma, Ashkali and Egyptian communities, disabled persons, returnees and internally displaced persons, remains a cause for concern.”

“Overall, there has been little progress in improving the situation of the Roma, Ashkali and Egyptian communities which continue to face very difficult living conditions and discrimination, especially in the areas of education, social protection, health care, housing and employment.”

These statements are also voiced by the US Department of State that writes in its [2006 Country Report on Human Rights Practices in Serbia \(including Kosovo\)](#):

“Official and societal discrimination persisted against Kosovo’s ethnic Serb, Roma, Ashkali, and Egyptian communities with respect to employment, social services, language use, freedom of movement, the right to return, and other basic rights During the year violence and other crimes directed at minorities and their property lessened but remained a problem.”

According to the [Annual Report 2007](#) of Human Rights Watch, 200 “inter-ethnic crimes” were reported in Kosovo throughout the year. While Kosovo Serbs were the main victims of these crimes, Roma also suffered from ethnically motivated crime.

The return process itself has been badly managed. Here again, the European Commission is most explicit:

“Kosovo has no database to implement and monitor the return process. No official relations exist between with the ministry for return and the Belgrade-supported Co-ordination Centre for Kosovo, thus hampering the return process.”

“The human resources of the Ministry for Return and Communities and its overall capacity and budget are insufficient to proceed with the implementation of documented return projects.

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The municipal teams are not properly equipped to implement the return policies. Kosovo has no database to implement and monitor the return process.

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Internally-displaced persons from all communities face housing problems due to insufficient budgetary allocations. They also encounter problems in being registered in the civil records.

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Kosovo still lacks both a reintegration strategy and a budget to deal with the asylum seekers rejected by western European countries. Overall, almost no progress was made. The return process remains a major challenge.”

As a common [OSCE/UNHCR report](#) from 2003 shows, Roma have been disadvantaged also in terms of reconstruction assistance. The highly mediatised project of the partial reconstruction, after six years, of the Roma Mahala in Mitrovica stands against many other Romani settlements and houses which have not been rebuilt.

Roma are present in high numbers among the 21,000 IDPs who are scattered in collective centres and private accomodation throughout Kosovo. In 2007, the acting Kosovo Ombudsperson, Hilmi Jashari, wrote in his [annual report](#):

“[M]any Serbs, Roma, Ashkali and Egyptians continue to live in containers and collective centres in Gracanica/Gracanice and the Municipality of Fushe Kosove/Kosovo Polje in central Kosovo, as well as Strepce/Shterpce and Prizren in the south. These settlements include displaced persons from 1999 and others who fled their homes during the riots of March 2004.”

... to forced returns

In spite of these unresolved challenges, Kosovo institutions, under the guidance of UNMIK, have developed an ambitious plan to tackle with large-scale forced returns of so-called vulnerable groups to Kosovo after independence:

The [Readmission Policy](#), which was adopted by the Kosovo Government on 31 October 2007, describes the process whereby UNMIK and, after a transition period which is termed to end with Kosovo’s independence, the Kosovo government, accept to readmit persons from Kosovo or their next of kin, who have been found illegally entering or residing on the territory of another state. The [Strategy for Reintegration of Repatriated Persons](#), which was approved by the Kosovo Government on 10 October 2007, devices a detailed plan how to reintegrate forcibly repatriated persons in Kosovo starting from their reception at the Pristina airport, and even before, to their arrival at destination and reintegration in Kosovo.

Both documents presume a landslide shift in terms of forced repatriations to Kosovo. Indeed, the focus is on the repatriation of so-called vulnerable groups, ethnic minorities including Roma, Ashkalija and Kosovo Egyptians, but also old people, unaccompanied children, victims of trafficking, and people with serious diseases, people who have in past enjoyed a relative protection against forced repatriation on the basis of the [UNHCR’s position](#) on the continued need for international protection of individuals from Kosovo. What is more, it appears that this position will become or actually be made redundant after the transfer of competencies from UNMIK to the Kosovo government.

Both, the readmission policy and the reintegration strategy, include particular chapters referring to the situation of so-called vulnerable groups. These are defined with reference to the IOM’s [Glossary on Migration](#) as “[a]ny group or sector of society that is at higher risk of being subjected to discriminatory practices, violence, natural or environmental disasters, or economic hardship, than other groups within the State” or “any group or sector of society (such as women, children or the elderly) that is at higher risk in periods of conflict and crisis.”

Members of ethnic minorities, though considered as part of the vulnerable groups, are not dealt with in such a manner, but there are several sections in the Reintegration Strategy, which, in an explicit or implicit way, refer to Roma. Together with the Ashkalija and Kosovo Egyptians they are thus identified as one of the principal targets of repatriation plans.

This is for instance the case as regards to the registration procedure where it is underlined that “some of the repatriated persons have never been registered with the responsible authorities in Kosovo before”, and authorities requested to inform about the importance of registration and this-related procedures, where it is said: “This is of special importance to groups particularly vulnerable to social exclusion and marginalization such as Roma, Ashkali and Egyptians, even more so when they return after several years of residence abroad.”

This is also the case in relation with education where the Reintegration Strategy emphasises the need to establish language classes for children who “have difficulties in communication and understanding in their native language or the chosen language for education”. The document also refers to the need of establishing “special classes” or “special schools” for children with “special needs” which might well be intended towards Roma children.

The most direct reference is however found in a footnote of this document, which says, referring to the estimated 100,000 people from Kosovo staying abroad with no legal residence title: “Germany alone has some 53.000 Kosovans presently living in Germany without a legal status, of which some 38.000 are claimed to belong to the Roma, Ashkali and Egyptian minorities.”

The UNHCR has considered Kosovo Roma, together with Serbs and Albanians in a minority situation as still in need of continued international protection and argued that they should not be forcibly repatriated to Kosovo. In June 2006, the UNHCR has eased the protection for Kosovo Egyptians and Ashkalija, but nevertheless made their forcible repatriation to Kosovo provisional on an individual assesment of their situation.

There have been speculations in how far the UNHCR would finally give in to pressures by the governments of host countries, who are also the main contributors to the UNHCR’s budget, to lift the protection for refugees from Kosovo altogether, but even before, the Readmission Policy and Reintegration Strategy pave the way for an ommission of the UNHCR’s position, whatever it would be.

It is indeed interesting to notice that both documents take great pains to explain that UNMIK’s policy on forced returns has been based on the UNHCR’s position. In the document on readmission it is explained that the UNHCR, on the basis of [UNSCR 1244 \(1999\)](#), has the mandate to supervise the safe, dignified and free return of refugees and IDPs. But in a next step it is then pointed out that the Kosovo authorities have taken into account the “views” of the UNCHR and committed themselves to improve the security situation and prepare to readmit people originating from Kosovo on the basis of international standards.

A similar remark is found a few pages later, and another few pages later it is repeated that UNMIK will continue to follow the UNHCR’s position during the transition period, which raises the logical question what comes after.

Another hint is found, when the readmission procedure is described in detail. Here it is said that readmission requests should include information on the ethnicity of a person. In a footnote it is further explained that this information will only be requested during the transition period, given the fact that UNMIK follows the UNHCR’s position. However, after the full transfer of competencies for readmission to the Kosovo authorities, such information will not be provided any longer. If this is obviously done in order to avoid that the forcibly repatriated suffer discrimination upon their return on the basis of their ethnicity, it entails at the same time that they can no longer be granted protection on the same basis.

The Reintegration Strategy does not confine to vague statements, but leaves no doubt that the UNHCR’s authority will be hollowed out after independence:

“Up to date, the UNMIK readmission policy regarding the involuntary repatriation of persons who originate from Kosovo and do not or no longer fulfil the conditions of residence in their current host countries has prevented the repatriation of these three

groups [Kosovo Serbs, Roma and Albanians in a minority situation]. ... *Once the mandate of the UNMIK has expired, the situation may change and host countries may not anymore follow the UNHCR recommendations as closely as they are at present.*" (our Italics)

With Kosovo declaring its independence, a massive wave of forced repatriations of Roma to Kosovo has thus become a close reality.

From denying asylum ...

There is no precise information about the number of Kosovo Roma staying abroad without or with no permanent residence title. This not only concerns war-time refugees, but also people who left Kosovo much before the war in order to escape poverty and discrimination: "Many repatriated have been living for ten or more years in a foreign country before their asylum application was rejected," the Reintegration Strategy explains.

Western Europe

The largest group of Kosovo Roma outside Serbia reportedly stays in Germany. According to recent figures (UNHCR January 2007), there were 24,000 Roma, 8,200 Ashkali, and 1,800 Kosovo Egyptians in Germany under the so-called toleration status ("*Duldung*"). This status provides merely a temporary protection against forced repatriation or expulsion, and can be lifted whenever the competent authorities consider that the grounds upon which it was granted have ceased to exist.

In April 2005, the German Federal Government signed a [Memorandum of Understanding](#) with UNMIK providing for the forced repatriation of up to 500 Ashkalija and Kosovo Egyptians to Kosovo. Taking into account the UNHCR position on the continued need for international protection of individuals from Kosovo Roma were exempted from forced repatriation with the exception of some groups of criminal offenders. This procedure was revised on 1 March 2006 with a view of facilitating forced repatriations of Roma, Ashkalija and Kosovo Egyptians. In 2007, Germany was the first country to forcibly repatriate people to Kosovo: Out of 3,125 forcibly repatriated persons 896 came from Germany alone.

In November 2006, the German conference of Ministers of Interior adopted a regularisation procedure for undocumented foreigners, the so-called "*Bleiberechtsregelung*". According to a [survey](#) realised by the Berlin Office for Integration, ten percent of the total number of "tolerated" immigrants in Germany had been able to obtain a residence permit on the basis of this rule by the end of September 2007 with a substantial number of decisions still pending.

The survey also shows that Kosovo Roma refugees have made use of this new rules and, in some places, have indeed been able to regularise their stay on that basis, but the survey does not provide a comprehensive overview for all of Germany. [Refugee organisations](#) have criticised that excessive requirements have in some cases prevented or delayed positive decisions.

Another large group of Kosovo Roma lives in Switzerland. In a first [reaction](#) to Kosovo's declaration of independence, the spokesperson of the Federal Office for Migration, Jonas Montani, said that Switzerland would not change its policy towards asylum seekers from Kosovo. In a second time, his office would consider whether Kosovo Serbs do not have an internal flight option in Kosovska Mitrovica. His

statements were confirmed by the head of the department of Interior of the canton Vaud, Philippe Leuba, who said in an [interview](#) that Kosovo Roma and Serbs are not yet considered as safe in Kosovo.

In many cases, such as in Denmark, Kosovo Roma have not been recognised as refugees on the basis of the 1951 Geneva convention and granted only temporary protection for humanitarian reasons. All these people are currently at risk of being forcibly repatriated to Kosovo.

Southeast Europe

Southeast Europe has hosted a large number of Kosovo Roma. This number has however dwindled with the years as more and more people made it to Western Europe. With regards to their legal status two situations need to be distinguished; the situation in Serbia and Montenegro, where the Kosovo Roma refugees were considered as [internally displaced persons](#), or IDPs, and the situation in countries such as Macedonia and Bosnia, where the Kosovo Roma are to be considered as [refugees](#), since they have crossed state borders.

Serbia

By the end of 2007, the UNHCR estimated that some 11 percent of the 206,100 IDPs from Kosovo staying in Serbia are Roma. This number may well be higher since many Kosovo Roma did not register in Serbia. In a [joint report](#) from March 2007, the UNHCR and Praxis estimated the number of Kosovo Roma in Serbia at up to 40,000 people.

Kosovo Roma were not particularly welcomed by the Serbian authorities and have faced manifold discrimination. In 2007, the [US State Department](#) noted for instance:

“Local municipalities often were 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 centers with minimum amenities or, more often, in makeshift camps in or near major cities or towns.”

The [Serbian Refugee Council](#) criticised that “[t]he Implementation Program for the National Strategy for Resolving Problems of Refugees and Internally Displaced Persons in Serbia of 2002 focuses solely on refugees, whereas the only option envisaged for IDPs is the return to Kosovo.”

The same determination is also manifest in the National Action Plan adopted in the context of the [Decade for Roma Inclusion](#).

Montenegro

As of November 2007, Montenegro provided home to some 16,000 IDPs, who, according to the UNHCR, are in their majority Roma.

In spite of being citizens of the same country, until Montenegro's independence, Kosovo IDPs were unable to gain access to civil, political, economic or social rights. As [Amnesty International](#) pointed out, civil registration was denied to them, and it was the UNHCR – rather than the Montenegrin authorities – which continued to provide accommodation, health care and social benefits.

After Montenegro's independence, the country adopted, in June 2006, a new asylum law which entered into effect on 25 January 2007. In theory, this law would have allowed Kosovo Roma IDPs to apply for asylum, but the Montenegrin government has focused on their return to Kosovo or departure to Serbia or other countries.

In February 2007, the Montenegrin Ministry of Interior opened negotiations with the Kosovo authorities in view of returning the refugees.

Macedonia

From the very beginning, Macedonia had been reluctant to admit Kosovo Roma refugees considering that they were under the responsibility of Serbia and Montenegro. They were finally admitted on the basis of the "Temporary Humanitarian Assisted Person" status, a status which was phased out in September 2003, forcing those who wanted to stay to apply for asylum under the newly adopted [law](#).

However, only some 28 persons belonging to the Roma, Ashkalija and Egyptian community from Kosovo have been granted asylum in Macedonia, a number which has remained almost unchanged for the last three years.

The Kosovo Roma refugees in Macedonia, including Ashkalija and Kosovo, Egyptians, can be divided into two groups, those the majority of the cases, who have been granted temporary protection, and those whose asylum application has been rejected or who are still in the procedure.

Macedonia's refugee status determination procedure has been criticised as flawed, by both, the [EU Commission](#) and the [US Department of State](#). The State Department has also summoned its negative bias against Roma.

The UNHCR stated in its Global Appeal 2006: "Appeal bodies continue to lack the knowledge and independence that are needed to function effectively, despite UNHCR's capacity-building efforts to this end."

Macedonian authorities have made no effort to integrate the Kosovo Roma refugees, and, in 2008, the UNHCR continues to provide basic shelter including health care to them.

In 2007, the UNHCR noted in its [Global Appeal 2008 – 2009](#):

"Durable solutions for these refugees are inseparably linked to the future status of the province. Possibilities for local integration remain limited UNHCR will assist asylum-seekers and refugees who wish to repatriate voluntarily."

Already in 2005, the Macedonian authorities entered negotiations with the Provisional Institutions of Self-Government in Kosovo with a view of repatriating the refugees. The Macedonian Secretary of State in the Ministry of Labour and Social Policy, Aco Janevski, said at that time during a [press conference](#): "We do not intend to expel Kosovo refugees, but it is normal to exercise pressure regarding their return to the country of their origin, taking into consideration the interest of Macedonian citizens."

If they were ever shelved, these negotiations will probably resume after Kosovo's independence.

Bosnia-Herzegovina

Just as Macedonia, Bosnia-Herzegovina has been a main transit country for Kosovo Roma. According to the Society for Threatened People, 12,000 to 15,000 Kosovo Roma entered Bosnia-Herzegovina in 1998 and 1999.

According to the UNHCR, there are at present 700 Kosovo Roma refugees in Bosnia-Herzegovina. Most of them live in the three collective centres in Bosanski Petrovac, Mostar and Sarajevo. However, the Society for Threatened people estimates that a substantial number of Kosovo Roma have not registered and puts the actual number at around 1,000 persons.

As in Macedonia, Bosnia and Herzegovina did not have an asylum legislation at the moment of the mass arrivals from Kosovo, and people from Kosovo were granted temporary admission on the basis of the [Instruction on the Temporary Admission to Bosnia and Herzegovina of Refugees from the Federal Republic of Yugoslavia](#) from 20 May 1999.

This status was regularly renewed until September 2007. The US Department of State noticed in its [Human Rights Report 2006](#): “By October [2006] the government had not accepted any of these refugees for local integration or permanent status in the country.”

In spite of the insistence of representatives of the international community including the [Council of Europe Commissioner for Human Rights](#), Thomas Hammerberg, to provide a sustainable solution to the Kosovo Roma refugees, the Bosnian authorities put an end to the temporary protection regime in September 2007.

According to the EU Commission, this decision concerns some 3,000 persons, including 700 Kosovo Roma, who are now forced to apply for asylum or leave the country. According to the UNHCR ([Global Appeal 2008-9](#)), most of the residents of collective centres have applied for asylum. However, there chances to succeed are considered as rather small.

In a letter to the European Roma and Travellers Forum in May 2007, the Bosnian Minister for Human Rights and Refugees, Safet Halilovi , stated that the ambition of his government is to return all refugees to their place of former residence in Kosovo in order not to support the policy of ethnic cleansing (sic!).

... to repatriating refugees

A [note](#) sent by the German Federal Minister of Interior, Uwe Schürmann, to the Ministers of Interior of the Länder, on 17 December 2007, confirms the idea that the adoption of the readmission policy by the Kosovo government will lead to a landslide shift in the repatriation policy towards ethnic minorities from Kosovo.

Schürman explains the main changes introduced by the adoption of the readmission policy. In his interpretation, the memoranda of understanding and referring notes signed between UNMIK and the German Federal government in 1999, 2003 and 2007 will become void with its entering into force on 1 January 2008.

He refers in particular to the quota imposed on the forced repatriation of people belonging to ethnic minorities from Kosovo. Accordingly, the ethnic origin of a person will not matter any longer and the “screening” of ethnic minority members will

become obsolete. Still, he admits that there are still some limitations to the forcible repatriation of Roma to Kosovo, given the fact that UNMIK continues to base its decisions on the position of the UNHCR.

He expresses hopes that the transfer of the operational competencies in the field of readmission from UNMIK to the Kosovo Ministry of Interior will facilitate the procedure, since the Kosovo authorities will essentially look at the geographic origin of a person to be readmitted. He refers to the German Liaison Office in Pristina which expects that people will no longer be returned at the Kosovo border on the grounds of the argument that they are not from Kosovo.

Once Germany has put these changes into practice, it can be assumed that other governments will follow its steps.

Some practical and other considerations

Forced returns to Kosovo raise a number of practical considerations ranging from the availability of appropriate accommodation, health care facilities or class rooms to the capacities of the Kosovo institutions to deal with a “big influx” of forced returnees. In this context it is most telling that the Action Plan, which is to accompany the strategy, has not been completed in time.

The budget for the implementation of the Reintegration Strategy is based on the return of up to 5,000 people, but it goes out from the document that the funds for a proper implementation of all the measures proposed are missing. It is therefore clear that the burden share of the costs for reintegrating the refugees will lie on the already deprived communities.

In the case of Roma and eventually also other communities much more fundamental issues are at stake. This concerns for instance the problem of documentation, both personal documents and also property titles, but also the problem of security, safety, and freedom of movement.

The Reintegration Strategy warns, for instance, about problems which might result from a failure to produce adequate documentation:

“Lack of any old document or a permanent address in Kosovo will result in the failure to qualify for social benefits. It may prevent access to education and employment and become a real obstacle in the reintegration of minority groups.”

The UNHCR has gone further and warned of the risk of Roma, Ashkalija and Kosovo Egyptians becoming stateless:

“Unless post-status legislation in the areas of residence and nationality is further elaborated, some segments of the population risk statelessness. This applies particularly to the most vulnerable ethnic communities that include the Roma, Ashkalia and Egyptian groups who, due to their social marginalization, have been unable or unwilling to register as habitual residents in Kosovo.” (UNHCR: [Global Appeal 2008 – 9](#))

The Reintegration Strategy also recognizes problems associated with the lack of formal property titles:

“A considerable number of the potential forced repatriated persons belong to minority groups and are likely to have lived in conditions of informal property tenure (i.e., lacking registered title over the residences they occupied) before they left Kosovo. Therefore, upon their return they may face difficulties in finding accommodation, reconstructing their property and/or experience negative consequences due to their property status (sanctions for unlawful construction, lack of access to basic infrastructure, lack of addresses, etc).”

The document includes an whole section on the so-called humanitarian transports from which it goes out that the forced returnees will have to accept considerable limitations of their freedom of movement. The document also refers to the marginalisation and social exclusion of Roma, Ashkali and Kosovo Egyptians, which it says could be even more important after several years of residence abroad.

The difficulties faced by forced returnees are also addressed in the [seventh annual report](#) of the Kosovo ombudsperson, which states that “[i]n many cases, those who could did try to return to their former host countries by whichever means possible, usually illegally.”

Forced returns of Roma and other ethnic minorities to Kosovo consequently raise a number of human rights issues starting with the respect of the international conventions related to asylum and freedom of movement, such as the principle of *non-refoulement* enshrined in article 33 of the 1951 Geneva Convention, article 3 of the European Convention on Human Rights, and article 19 of the Charter of Fundamental Human Rights of the European Union, to include political, economic, and social rights.

[UN Security Council Resolution 1244 \(1999\)](#) reaffirms the right of all refugees and displaced persons to return to their homes in safety. The [Standards Implementation Plan](#), adopted in 2004, has made refugees returns in safety and dignity a condition for the Kosovo status settlement. In 2006, [UNMIK’s Revised Manual for Sustainable Returns](#) has introduced the right to decide freely on the place of return. Forcing refugees to return is an implicit recognition by the international community of its failure to create the conditions for safe returns of minorities to Kosovo.

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