

SURVEY ON THE LEGAL STATUS OF REFUGEES FROM ALBANIA IN MONTENEGRO / 2010

INTRODUCTION

Although UNHCR considers all persons who sought refuge in Montenegro during the 1990's due to regional conflicts as "refugees," these persons were never recognized as refugees by the authorities in Montenegro or granted the same rights as refugees under the Montenegrin Law on Asylum or the 1951 Refugee Convention and 1967 Protocol.

Subsequent to their arrival to Montenegro in 1991, persons who fled from Albania were granted refugee status under the federal laws of, at that time, SFR Yugoslavia. Most of them were of Serb or Montenegrin ethnicity. Shortly after their arrival in Montenegro, the majority moved throughout Serbia and Montenegro (then SFR Yugoslavia).

As a result of the situation in Kosovo, this population returned to Montenegro in 1998 and 1999, when the Bureau for the Care of Refugees (BCR, at that time Montenegrin Commissariat for Displaced Persons) registered them as "internally displaced persons" under an *ad hoc* administrative measure responding to the emergency situation. This time, their refugee status granted in 1991 was not recognized by the authorities in Montenegro. The "internally displaced person" status remains largely undefined in written law, although this status was temporarily continued following Montenegrin independence in 2006.

As of 30 September 2010 the Government of Montenegro reports on some 11,000 registered as "internally displaced persons", from Kosovo, residing in Montenegro. This population from Kosovo includes those who fled from Albania. It is not possible to establish their exact number in the IDP data base managed by BCR, as the only distinction between them and IDPs originating from Kosovo is their place of birth, if they were born in Albania. However, it is presumed that their number can be up to 2,000.

According to the estimations of the community representatives, there could be up to 500 children without any citizenship among this population. These children have been born following their flight in 1991 and their parents have not been able to regulate their citizenship neither in Montenegro, Serbia (Kosovo), nor in Albania. These persons, some of them already 18 years of age or above, are confronted with numerous problems in exercising basic rights, starting from personal documents and education diplomas.

CURRENT SITUATION REGARDING LEGAL STATUS

Following UNHCR's consistent lobbying with the Government and cooperation with the Delegation of the European Union in Montenegro and other international and regional bodies, the Government adopted the *Action Plan for Resolution of the Status of Displaced*

Persons from the Former Yugoslav Republics and of the Status of Internally Displaced Persons from Kosovo in Montenegro, on 17 September 2009. The *Action Plan* creates a mechanism for “displaced persons” and “internally displaced persons” to have privileged, although difficult, access to the status of foreigner with permanent residence. This status provides the full spectrum of rights as Montenegrin citizens with the exception to the right to vote. In accordance with the *Action Plan*, this change in status was made possible by the adoption of the *Law on Amending the Law on Foreigners* on 23 October 2009.

In order to obtain the permanent resident status re-registered “internally displaced persons” should submit applications to the Ministry of Internal Affairs and Public Administration (MIAPA). They are exempted from requirements of secured health insurance, income, and accommodation, but they must provide a valid travel document from their country of origin, along with birth and citizenship certificates, and must also have a clear criminal record in Montenegro.

The Embassy of Albania is authorized to deal only with persons able to prove their Albanian citizenship, which is a problem for a number of ethnic Serbs and Montenegrins who fled Albania in 1991 and were recognized as refugees by the Interior Ministry of the former SFR Yugoslavia. The citizenship can be proven with any identity document issued by the Albanian authorities, regardless whether it is valid or not, as the Embassy forwards it to Tirana for verification. It is not possible to obtain a new Albanian passport through the Embassy. The Embassy can issue one way, 6 months – valid, travel documents to Albanian citizens in need of return to Albania, for the fee of 30 Euros. The passport has to be obtained in the place of residence in Albania and the issuance takes some 25 days and costs 45 Euros.

“Internally displaced persons” unable to access the status of permanent residence within two years from the entry into force of the *Law on Amending the Law on Foreigners* (hence, within 7 November 2011) will be considered as foreigners unlawfully staying in Montenegro. However, according to the *Action Plan*, it is the obligation of the Government to follow up the *Action Plan*’s implementation and identify solutions for “displaced” and “internally displaced persons” unable to meet these requirements.

According to Article 105(a)5, of the *Law on Amending the Law on Foreigners*, “Internally displaced persons” unable to present a valid travel document can still apply for foreigner status and will be granted temporary residence for foreigners, with all the rights accorded to the permanently residing foreigner. They will then have three years of temporary residence to obtain valid travel documents and have their status changed to that of permanent resident. At the end of the three years of temporary residence, those who will not be able to acquire a permanent residence will be considered as foreigners unlawfully staying in Montenegro.

THE SCOPE AND METHODOLOGY OF THE SURVEY

The survey was conducted between 21 September and 29 October 2010 in 4 municipalities in Montenegro: Podgorica, Danilovgrad, Budva and Bar. The 4 teams employed consisted of 2 UNHCR staff, 2 legal aid implementing partner (Legal Centre) staff and 2 assistants from the Albanian community.

A questionnaire with 33 questions was used, grouped in two sections: A. *Data about the respondent*; and B. *Data about parents* (I *Data about the father* and II *Data about the mother*). The members of the team interviewed people directly in their houses. Data on children was provided by parents. Once the data collection in the field was completed, it was entered into a database and processed.

The survey included 1,553 persons in total. According to the community representatives estimation there are 40 families (app. 200 family members) who were not included in the survey as they could not be located by the teams.

FINDINGS

	Male	Female	Total
< 18	232	202	434
≥18	567	552	1, 119
Total	799	754	1, 553

The survey showed that 1,553 persons who fled from Albania in 1991 still live in Montenegro. Out of this number, 434 (27.9%) are children while 1,119 (72.1%) are adults (Table 1).

Three countries were identified as places of birth (Table 2) :

- Albania, where the majority of the population is born (1,100 persons or 70.8%);
- Montenegro, where one quarter of population is born (365 persons or 23.5%); and
- Serbia (Kosovo) where the minority is born (88 persons or 5.7%)

	Male	Female	Total
Albania	558	542	1, 100
Montenegro	194	171	365
Serbia (Kosovo)	47	41	88
Total	799	754	1, 553

	Male	Female	Total
Albania	546	528	1,074
Montenegro	16	19	35
Serbia (Kosovo)	5	5	10
Total	567	552	1,119

Out of 434 children (under 18 years of age at the time of the survey), the vast majority is born in Montenegro (330 persons or 76%), while only 26 persons (6%) are born in Albania and 78 persons (18%) are born in Kosovo (Table 2.1).

On the other hand, most of those who are 18 or above are born in Albania (1,074 persons or 96%), while 35 persons (3.1%) are born in Montenegro and 10 persons (0.9%) are born in Kosovo (Table 2.2)

	Male	Female	Total
Albania	12	14	26
Montenegro	178	152	330
Serbia (Kosovo)	42	36	78
Total	232	202	434

In view of the fact that the number of children born in Montenegro is higher than the number of those born in Kosovo, it can be concluded that many continued to live in Montenegro illegally after 1991 and 1992, when the community was moved to Kosovo, or they stayed shortly in Kosovo and came back to Montenegro immediately in 1992 or 1993.

	Male	Female	Total
IDP re-registered in 2009	773	726	1,499
IDP whose re-registration is rejected in 2009	8	5	13
Other	18	23	41
Total	799	754	1,553

The Government of Montenegro has renewed, or revoked, the status of “internally displaced persons” through a series of UNHCR-supported registration exercises. The last re-registration of “internally displaced persons” from Kosovo was conducted between 14 September and 14 November 2009. Out of 1,553 persons from Albania, 1,499 persons (96.5%) reconfirmed their “internally displaced persons” status.

The Government rejected the re-registration of 13 persons (0.8%), while 41 persons (2.7%) have acquired some other status in Montenegro (foreigner with permanent residence or, in only a few cases, citizenship of Montenegro). (Table 3)

	Male	Female	Total
IDP re-registered in 2009	225	196	421
IDP whose re-registration is rejected in 2009	7	6	13
Total	232	202	434

	Male	Female	Total
IDP re-registered in 2009	548	530	1,078
IDP whose re-registration is rejected in 2009	8	5	13
Other	11	17	28
Total	567	552	1,119

All 13 persons whose re-registration was rejected are adults (Tables 3.1. and 3.2.). There are two main reasons why the government rejected their re-registration: (1) according to the government's data, the person returned to Kosovo; and (2) the person was not registered in the government's database during the previous re-registration conducted in 2003. The survey showed that most rejections of adults were due to lack of re-registration in 2003.

Although these rejected persons approached the government many times between the two re-registrations (2003 and 2009) trying to reconfirm their IDP status, the government has not re-assessed their situation.

	Country of birth	Registered		Not registered		Other	
		Male	Female	Male	Female	Male	Female
Albania	1,100	558	542	0	0	0	0
Montenegro	365	194	167	0	4	0	0
Serbia (Kosovo)	88	38	32	6	8	3	1
Total	1,553	790	741	6	12	3	1
Grand total		1,531		18		4	
		1,553					

The aggregated results of the survey show that from a total of 1,553 persons surveyed, 18 persons (1.2%) are not registered in birth or citizenship registry books (Table 4).

The registry books of 3 out of 4 persons indicated as “other” were destroyed during 1999 conflict in Kosovo, while 1 person was in the procedure for subsequent registration into birth registry books in Serbia (Kosovo) at the time of the survey.

	No of refugees born in the country	Registered		Not registered	
		Male	Female	Male	Female
Albania	26	12	14	0	0
Montenegro	330	178	149	0	3
Serbia (Kosovo)	78	33	27	6	8
Total	434	223	190	6	11
Grand total		413		17	
		434			

Out of the 18 persons not registered in both birth and citizenship books 17 are children. (Table 5).

	No of refugees born in the country	Registered		Not registered		Other	
		Male	Female	Male	Female	Male	Female
Albania	1,100	549	537	9	4	0	1
Montenegro	365	17	17	177	154	0	0
Serbia (Kosovo)	88	9	7	38	34	0	0
Total	1,553	575	561	224	192	0	1
Grand total		1,136		416		1	
		1,553					

The survey also identified a significant number of persons who are registered in birth registry books, but lack registration in the citizenship registry book. As their citizenship still has to be established, they are at risk of statelessness. The aggregated results show that from a total of 1,553 persons surveyed 416 persons (26.8%) are not registered in citizenship registry books, while 1 person was in the procedure of subsequent registration into the citizenship registry book in Albania. (Table 6.).

Out of 416 persons whose citizenship has to be established, 7 persons gave up their Albanian citizenship during the 1990-ies.

Table 6.1 Refugees <18 not registered in citizenship registry book							
	No of refugees born in the country	Registered		Not registered		Other	
		Male	Female	Male	Female	Male	Female
Albania	26	12	14	0	0	0	0
Montenegro	330	11	13	167	139	0	0
Serbia (Kosovo)	78	6	5	36	31	0	0
Total	434	29	32	203	170	0	0
Grand total		61		373		0	
		434					

The vast majority of those whose citizenship has to be established are children below 18 years of age (373 persons, or 89.7%) and most of them are born in Montenegro (306 persons) (Table 6.1)

Table 6.2 Refugees by citizenship				
Country of birth	Albanian Citizenship	Montenegrin Citizenship	Other	Total
Albania	1,078	6	2	1,086
Montenegro	31	5	1	37
Serbia (Kosovo)	12	0	2	14
Total	1,121	11	5	1,137

The survey showed that 1,121 persons (72.2%) are holders of Albanian citizenship, 11 persons (0.7%) have acquired the citizenship of Montenegro and 5 persons are holders of citizenship other than Albania or Montenegro (Serbia, Bosnia, United Kingdom) (Table 6.2).

Table 7. Refugees by valid passports			
	Male	Female	Total
Albanian passport	403	361	764
Montenegrin passport	5	2	7
In the procedure for acquisition of Albanian passport	11	20	31
In the procedure for acquisition of Montenegrin passport	0	0	0
Total	419	383	802

Although 1,121 persons are holders of Albanian citizenship, only 764 have a valid Albanian passport, while 31 had initiated the procedure for obtaining an Albanian passport.

Among the 1,553 persons surveyed, 510 have changed their imposed Albanian names to Christian ones commonly used in Montenegro.

PROBLEMS IDENTIFIED DURING THE FIELD VISITS

1. It is not clear whether the concerned individual has to officially change his/ her Albanian name into a Christian name before initiating the procedure of obtaining documents necessary for the status of foreigner in Montenegro in case he/she prefers a Christian name in Montenegrin documents. This could significantly complicate the already lengthy process;
2. Most persons did not show willingness to acquire Albanian documents for the children born in Montenegro, claiming that these children don't have attachments to Albania. Although it can be assumed that many will change their mind as the deadline approaches, a certain number of parents will choose not to register their children into Albanian registry books. These children will be deprived of the new legal status in Montenegro;
3. A certain number of couples married in Montenegro and claim that the Albanian law does not recognize their marriage being legal. In order to register their children in Albanian registry books they will have to through a paternity recognition process.

CONCLUSIONS

The survey indicated that there are 18 persons who are not registered in either birth or citizenship records. In addition, 416 persons (26.8%) are not registered in citizenship registry books, of whom 373 (89.7%) are children. Most of them were born in Montenegro (306 persons).

In total, 433 persons are in need of assistance in regulating their citizenship status. In that regard it should be borne in mind that the Law on the Montenegrin Citizenship does not provide for naturalization of these individuals, as it contains statelessness prevention safeguards exclusively for *de jure* cases of stateless persons. This principle cannot benefit the concerned population, unless they prove their inability to acquire the Albanian citizenship. It is not clear how this could be achieved. The only seemingly realistic option is a rather liberal Law on the Serbian Citizenship for the ones willing to resolve their risk of statelessness by applying for this citizenship.

Among the 18 persons not registered in both birth and citizenship registry books, and the 416 persons whose citizenship has to be established, there is only one individual without a reconfirmed IDP status in Montenegro, and thus without any identity document.

In addition to the statelessness risk, these 433 persons stand problems in completing their applications for foreigner with permanent residence for which a valid travel document is a prerequisite and cannot be obtained without a previous registration in the citizenship registry books. In addition, those 13 persons whose re-registration as IDPs was refused, will not be able to acquire the status of foreigner and all the years of their stay in Montenegro will not be taken into account for the purpose of residence permit.

UNHCR, together with its legal aid implementing partner Legal Centre, will work on all issues identified during survey in order to assist these people in obtaining basic identity documents and a legal status in Montenegro.

*UNHCR Montenegro
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