

OBSTACLES FOR THE INTEGRATION OF THE ASHKALI COMMUNITY INTO THE SERBIAN SOCIETY

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Abstract. *The Ashkali community copes with serious problems in order to integrate into the Serbian society. It is considered to be the most vulnerable community among the other Internally Displaced Persons. The magnitude of their problem is very often hidden, as many of them have not registered with the authorities. Non-registration causes many other problems and prevents their access to some fundamental rights, such as employment, education, health and social assistance. Most of them live in truly deplorable conditions, and due to the lack of education and language differences they are often subject to discrimination. It is necessary to undertake measures for their registration and further protection within the society.*

Key words: *Ashkali, Internally Displaced Persons, ethnic community, fundamental rights, integration.*

1. INTRODUCTION

The Ashkali are an ethnic group that has lived in the Balkan Peninsula for centuries. They are often regarded as Albanised Roma, but some believe they are descendants of Turks or Egyptians.¹

This ethnic group was most densely populated in the area of Kosovo, but they also inhabit parts of Macedonia, Albania and Italy. They have always lived in materially difficult conditions, which caused a lot of problems in preserving their national identity. Therefore, they accepted the language and cultural characteristics of neighboring nationalities. Today, the Ashkali speak Albanian language, but their lifestyle, customs and sense of community

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¹ According to one of the relevant theories, they are said to have come to the Balkans from Palestine (their name deriving from Ashkalon, a city in Israel) and according to another theory they are more likely to have come from Persia.

has prevented them from being totally assimilated within the Albanian and Slavic nations that surround them.

During the 1990's and especially after the Kosovo war in 1999 majority of them left Kosovo and moved to Serbia or to other European countries. As the European countries offered only temporary shelter and protection, those who were no longer eligible to stay on the territory of another state were being forcibly returned to Serbia (not including Kosovo).

Today, the Ashkali in Serbia live in truly deplorable conditions, often well below the level of human dignity. Their problems are often intensified by communication difficulties due to lack of education and language differences. Furthermore, this community frequently faces discrimination. In many respects, they are the most vulnerable community among the other Internally Displaced Persons. Even when not living in displacement, they occupied a marginalized position within Serbian society. For this reason, the magnitude of their problem is often hidden, as many of them have not registered with the authorities and simply mingle with the local RAE² population.³ Consequently they are forgotten and further marginalized.

2. LEGAL FRAMEWORK FOR PROTECTION

2.1. International law

The Ashkali who fled Kosovo after 1999 are protected under legal documents regarding internally displaced persons. The international legal framework for protection of Internally Displaced Persons (IDPs) includes International Human Rights Law and International Humanitarian Law. The Refugee Act⁴ is not directly applicable but, because IDPs suffer similar experiences, it is often useful by way of analogy. The most important document is UN Guiding Principles on Internal Displacement,⁵ which is an instrument to guide states and state actors in their relation to IDPs as well as inter-state and non-governmental organizations dealing with IDPs. Although this document is not legally binding, it restates the existing principles of international law which are applicable to IDPs. It identifies human rights relevant for protection of IDPs in all phases of displacement.

Serbia is party to all major international treaties on human rights and humanitarian law which form the UN Guiding Principles and the protection of IDPs. These obligations bind the authorities in their interpretation and application of domestic and constitutional laws.⁶

² RAE is an abbreviation for Roma, Ashkali and Egyptian Communities.

³ According to UNHCR statistics in 2007, 10.80% of the IDP population is Roma, while Egyptians make 0.36% and Ashkali make 0.04% of the IDP population in Serbia; Analysis of the Situation of Internally Displaced Persons from Kosovo in Serbia: Law and Practice. According to 2002 census, there are 584 Ashkali living in Serbia. However, there are estimates that many of them remained unregistered; OSCE - Ethnic Minorities in Serbia - An Overview (2008), <http://www.osce.org/serbia/30908>.

⁴ Official Gazette SRS, no. 18/92, Official Gazette FRY, no. 42/2002, Official Gazette of the Republic of the Republic of Serbia, no. 30/2010.

⁵ <http://www.icrc.org/eng/resources/documents/article/other/57jvgl.htm>.

⁶ According to Article 16 of the Constitution of the Republic of Serbia (Official Gazette of the Republic of Serbia no. 98/2006), international customary law and ratified international conventions are part of the legal system and are directly applicable in the territory of the Republic of Serbia. Article 18 of the Constitution establishes the direct applicability of human and minority rights provided for in international instruments as ratified by the State.

2.2. Serbian constitutional and legislative framework

The Ashkali ethnic group is recognized as a minority by the classification of nationalities and minorities in the Federal Bureau of Statistics.

The Serbian Constitution guarantees human and minority rights provided by international law and international treaties. As stated in the Constitution, provisions related to human and minority rights are to be interpreted in favour of enhancement of a democratic society, in accordance with international human and minority rights standards, as well as practices of international institutions that monitor their implementation. As a novelty, the Constitution introduces “collective rights” for members of minorities, such as: prohibition of discrimination, affirmative action, equality in participation in public affairs, prohibition of forcible assimilation, right to preservation of identity, etc. Concurrently, in Article 81 the Republic of Serbia undertakes the responsibility of developing a society based on tolerance.

The Act on Protection of Rights and Freedoms of National Minorities⁷ protects individual and collective rights of persons belonging to minorities. This Act specifically mentions RAE, an ethnic community particularly affected by internal displacement. The Act obliges the authorities to adopt laws and other measures to improve the situation of RAE and prohibits all forms of discrimination towards national minorities.

The Act on Local Self-Government⁸ may also be considered as an important legislative act in the general discussion on IDPs, as it delegates authority to local communities and provides opportunities for the financing and organization of minority communities in various fields such as education and culture. The local authorities and residents can play a crucial role in the acceptance, integration or reintegration of an IDP community.

3. OBSTACLES FOR INTEGRATION

3.1. Access to documentation

“Every human being has the right to recognition everywhere as a person before the law.”

“[...] the authorities concerned shall issue to them all documents necessary for the enjoyment and exercise of their legal rights, such as passports, personal identification documents, birth certificates and marriage certificates...”⁹

Mostly being internally displaced persons, the Ashkali face serious problems in accessing their documents. After the 1999, registry books were mostly dislocated from Kosovo to other cities in Serbia; some of them were lost or destroyed, while some are still in the administrative hands of Kosovo authorities.

According to the Serbian legislation, internally displaced persons are fully-pledged citizens of Serbia and have the same rights as other citizens with regard to their status, healthcare, education, employment, property and participation in the economic and political

⁷ Official Gazette FRY no. 11/2002, 1/2003. This Act was adopted by the State Union of Serbia and Montenegro in 2002 and remains in effect in the Republic of Serbia after the dissolution of the State Union.

⁸ Official Gazette of the Republic of Serbia, no. 129/2007.

⁹ Principle 20, Paragraph 1 and 2, UN Guiding Principles on Internal Displacement.

life of the country. But, to exercise those rights they must have adequate documentation to prove their legal identity.¹⁰

The most important documents to citizens of the Republic of Serbia are the ones serving as direct proof of their legal identity before domestic and international authorities. Those are the following:

1. IDP Card issued by the Commissariat for Refugees: it enables IDPs to access collective accommodation, humanitarian aid, unemployment benefits and pensions, and health protection¹¹
2. Birth Certificate: it is the most detailed proof of legal identity and precondition for obtaining all other relevant documents and accessing a wide range of rights
3. Marriage certificate
4. Death certificate
5. Citizenship certificate
6. ID Card
7. Employment Record Booklet
8. Years of Service “M-4 form”: it provides a record of an employee’s years of insurance, income, remuneration, insurance basis and paid taxes/contributions.

The situation of Ashkali people is further complicated by the history of non-registration. Many of them have never had documents while living in Kosovo and therefore they remain unregistered because they lack basic identification documents.

There are two administrative procedures for determining/registering the basic facts in the registry books: 1) Re-registration – in cases when a person had been registered into registry books but the records are destroyed or missing;¹² and 2) Subsequent registration – when a person had never been registered into registry books.

The problem arises when a person is not able to provide required documentation. In those cases, one must prove that his/her mother or father was born in Serbia (including Kosovo), which is impossible if one's parents were not registered. This problem is known as “chronic non-registration”. Lack of adequate documentation is especially problematic because most Ashkali people live in informal/illegal settlements where they cannot register a legal address.

In order to change their place of permanent residence, it is necessary to provide proof of their current place of residence in Serbia in addition to a document verifying de-registration in Kosovo. They must present either a title proving ownership of property in the location where they want to register or, if they are renting a property, they must provide a lease agreement with the owner’s signature. Without an address recognized by the municipality, they cannot register either for an ID card or for an IDP card. That prevents them from exercising the above-mentioned basic socio-economic rights. Furthermore, parents without documentation cannot register their newborn children in birth and

¹⁰ According to Article 48 of the Act on Civil Registry Books (Zakon o matičnim knjigama, Sl. Glasnik RS br. 20/2009) children must be registered within 15 days of birth. In exceptional circumstances, the birth can be registered after the 15-day deadline, under specific conditions (Article 51).

¹¹ As the Government of Serbia has not delegated the mandate to protect and assist internally displaced persons to any government body, the Serbian Commissariat for Refugees has taken on some of these responsibilities.

¹² Articles 43 and 44 of the Civil Registry Books Act, Articles 24, 89-93 of the Instruction on Administration and Forms of Registry Books, Official Gazette SRS, No. 48/90 and Official Gazette of the Republic of Serbia, No. 109/2009, 4/2010 – ispr. 10/2010, 25/2011, 5/2013 I 94/2013.

citizenship registries. This prevents these individuals from obtaining other documents, regulating their legal status, proving and establishing their citizenship. This especially affects newborn children and could lead to cases of statelessness which is in contradiction to the Convention Relating to the Status of Stateless Persons¹³ and the Convention of the Rights of the Child.¹⁴

What is more, in accessing documentation, the Ashkali face additional problems like geographical distance¹⁵, payment of administrative fees, complex and cumbersome procedures for obtaining personal documents, lack of trust towards the authorities and lack of flexibility of the authorities to adapt to their particular situation. Presently, there is no legal mechanism in place for the chronically unregistered to become registered. They do not receive adequate advice in relevant institutions, and even when they do, they face insurmountable obstacles concerning the registration of residence.

3.2. Accommodation

As mentioned above, adequate accommodation and living conditions are identified as the most pressing needs for members of the Ashkali community. They predominantly live in collective centers¹⁶ or in informal/illegal settlements usually located within or next to garbage dumps, under bridges or in open fields. Their houses are made of mud and cardboard remains and lack sanitation facilities, water supply, electricity and heating. Furthermore, they frequently experience forced eviction and the threat of forced eviction. Many families threatened by forced evictions are left without any form of protection, except the *ad hoc* interventions of international organizations and NGOs.

3.3. Social rights

Social rights to health care, education and social assistance are the basis of social integration that allows individuals and families to function within a community. The Ashkali and many IDPs are not aware of the rights to which they are entitled. The complex requirements of the bureaucracy, particularly in the area of documentation and registration, are serious obstacles to accessing health care, education, social security benefits and other State services. Among the displaced populations in Serbia, the Ashkali generally face the worst conditions.

¹³ Official Gazette FNRJ no. 9/59, Article 32: "The Contracting States shall as far as possible facilitate the [...] naturalization of stateless persons." Serbia has joined the Convention.

¹⁴ Official Gazette SFRY no. 15/90 and Official Gazette FRJ no. 4/96 and 2/97, Article 7: "The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents [...]"

¹⁵ Personal documents can be obtained only in dislocated registry or police offices that are mainly located in Southern Serbia and in most cases far away from their place of residence, Article 6 of the Act on Civil Registry Books.

¹⁶ As the existing collective centers were already occupied by refugees from Bosnia and Croatia, those displaced persons who could not get a place in these centers entered abandoned workers' shacks, warehouses, and hangers which then became so-called unofficial collective centers.

3.3.1. Education

The Ashkali speak Albanian language and there is no official education provided in their mother tongue, partly because they are scattered all over the country and usually far from education centers, and partly due to the lack in educated teaching personnel. All this resulted in the fact that the Ashkali children have not attended school for years, given that they cannot speak the language of their new surroundings. But, some of them attend some form of schools, organized by humanitarian centers such as Novi Sad humanitarian centre, Ecumenical Humanitarian Organisation “Sveti Sava”, school for adults in Novi Sad and Subotica Roma Association, where they are compelled to learn Roma Language, regardless the fact they are not Roma.

In addition, the Ashkali children face a wide range of other obstacles in their access to education including chronic illnesses, discrimination, poverty, prejudice from local communities and cultural barriers. In Serbia, they frequently suffer discrimination and racial segregation in education, despite legal provisions for national minorities.¹⁷ In some cases, schools refused to enroll Roma and Ashkali IDP children because of their deficient Serbian; they are often placed in separate classes and sometimes even in schools for children with learning disabilities.

3.3.2. Health

Hygiene and health care standards are low among members of this community, which is further complicated by limited reliance on the health care system and little appreciation of their rights in accessing public health care services. For example, their children are often not immunized and their living conditions are susceptible to the development of contagious diseases. Despite the fact that in theory, as IDPs, they have access to public health care, in practice this access is denied. This is because of they lack information about the system as well as personal documents, language and cultural barriers and discrimination by health care providers.¹⁸

3.3.3. Social assistance

Being without appropriate employment, a vast majority of Ashkali people live on the poverty line. All citizens of Serbia are eligible for social assistance under the Social Security Act.¹⁹ The lack of economic resources in Serbia continues to limit the assistance the government is able to provide to all vulnerable citizens. In order to access this support, they must obtain IDP cards, and for obtaining an IDP card they must present an ID and proof of temporary residence registration which is again the problem for those living in unofficial and illegal settlements.

¹⁷ According to the Act on Protection of Rights and Freedoms of National Minorities, “Prohibition of Discrimination” is regulated in article 3 and “Measures ensuring Equality between members of National Minorities and Members of the majority population” are regulated in article 4

¹⁸ IDP Interagency Working Group, *Analysis of the Situation of Internally Displaced Persons from Kosovo in Serbia and Montenegro: Law and Practice* Belgrade, 2005, p.52.

¹⁹ Article 4 of the Social Security Act, Official Gazette of the Republic of Serbia 24/2011.

3.4. Employment

“Internally displaced persons, whether or not they are living in camps, shall not be discriminated against as a result of their displacement in the enjoyment of the following rights: [...] (b) The right to seek freely opportunities for employment and to participate in economic activities...”²⁰

Most Ashkali within working age are unemployed so they do not have workers' rights deriving from labour relations. Subsequently, a large percentage of them work in “grey economy” or as day labourers. This might allow families to survive day to day but leaves them in a vulnerable position. They are often at the mercy of the employers and outside the scope of any legal protection. Employers do not pay any pension, social or health insurance, nor do they contribute to the income tax. Most of these problems originate from missing employment record booklets and other work related documentation (diplomas, M4 forms, etc). IDPs whose employment record booklets are missing must undergo a lengthy procedure for the issuance of a new booklet. Due to the lack of other work-related documentation (diplomas or M4 forms), they are frequently unable to prove the necessary facts in this procedure. The missing employment record booklets and the complicated procedure for issuing new booklets in some municipalities hinder the opportunity to register with the National Employment Bureau (NEB) and to access the existing unemployment benefits.

4. REJECTED ASYLUM SEEKERS RETURNED FROM WESTERN EUROPE

On its way to the European Union, Serbia has to fulfil the Readmission Agreement which implies its responsibility to accept the return of its own citizens - the asylum seekers, who no longer fulfil the legal conditions for stay on the territory of another state. Therefore, after the assessment of their asylum claims or following the cessation of temporary protection, many of them were forcedly returned to Serbia. Such persons are directly returned into a situation of secondary displacement in Serbia where they are unable to register as IDPs. The Serbian Commissioner for Refugees asserts that IDP registration is available only to those who enter Serbia directly from Kosovo, thereby denying the IDP status to those who find refuge in Serbia after a period spent in another State. Without the IDP documentation, Returnees from Western Europe are unable to access basic socio-economic rights. Many of them, especially the Ashkali from Kosovo cannot register their residence and are thus not recognized before the law. Yet, Serbia has not developed all the necessary mechanisms for the reintegration of the returnees. Consequently, there are frequent violations of human rights.

5. RECOMMENDATIONS

Recommendations for improvement of each of the above aspects related to the position of the Ashkali community are of legal, economic and social character.

Firstly, a legal recommendation for improving the status of Ashkali people is to address the problem of registration and lack of personal documents, thereby ensuring their

²⁰ Principle 22, Paragraph 1 of the UN Guiding Principles on Internal Displacement.

recognition before the law and removing obstacles for them to access their basic socio-economic rights. Serbia should take every measure to prevent and resolve possible cases of statelessness among the RAE IDPs lacking documentation. Procedures for obtaining personal documents should be reviewed and simplified, and free of any taxes for those without financial resources. Furthermore, the Serbian Commissariat for Refugees should issue IDP cards to all persons who have been returned into secondary displacement in Serbia (not including Kosovo) from countries where they have sought asylum following the Kosovo conflict, as they are internally displaced within their own country. Also, they should be provided with free legal aid, assistance and advice concerning their rights.

Serbia should ensure that Ashkali children fully enjoy the right to education, should create conditions for educational opportunities in their mother tongue and take all necessary measures to prevent their segregation in schools. In addition, the state should organize Serbian language courses which would help the children (re)integrate into the local community.

The competent authorities in Serbia should ensure the full application of Articles 7 and 8 of the Health Care Act enabling access to health care for all vulnerable groups, especially children under the age of 15, pregnant women, and persons without a registered place of residence.

Secondly, economic recommendations aimed at resolving the problem of unemployment and poverty of the Ashkali should be taken into account. In an attempt to solve the problem of unemployment, the state and municipalities should work together with National Employment Service and provide assistance in employing at least one person of their families. Furthermore, funds from the municipality budget should be used for its most vulnerable citizens in order to improve the living conditions in illegal and unhygienic settlements.

Lastly, social recommendations for the problem of discrimination of Ashkali people should be taken into consideration. The general notion is that Serbia should safeguard human rights of internally displaced persons and returnees in all parts of its territory. This can be done by promoting equality and anti-discrimination sentiment in workshops and assistance programs organized by the government and/or NGOs throughout the country. Legislation on evictions should be enacted and harmonized with relevant European and international standards.

6. CONCLUSION

Serbian authorities strongly refuse to consider Roma, Ashkali and Egyptian people as a “special group” among other internally displaced persons. Such a status is justified by the fact that all IDPs are in a difficult situation and should not be separated on the grounds of ethnicity. However, reality proves differently; together with the Roma and the Egyptian IDPs, the Ashkali are the most vulnerable segment of the IDP population in Serbia. Their situation is deteriorating on a daily basis and their problems remain unresolved. Despite certain commitments undertaken by the Serbian authorities and their obligations to provide protection and humanitarian assistance to IDPs without discrimination, the Ashkali are still strongly affected by social isolation, discrimination and marginalization.

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PREPREKE ZA INTEGRACIJU ZAJEDNICE AŠKALIJA U SRPSKO DRUŠTVO

U nameri da se integrišu u srpsko društvo, zajednica Aškalijska se susreće sa brojnim problemima. Smatraju se najugroženijom zajednicom među ostalim interno raseljenim licima. Njihovi problemi su najčešće skriveni, s obzirom da veliki broj njih nije ni registrovan kod nadležnih organa. To uzrokuje i mnoge druge probleme i onemogućava ih u ostvarivanju osnovnih prava, kao što su, primera radi, pravo na zaposlenje, obrazovanje, zdravlje i socijalnu pomoć. Većina pripadnika ove zajednice živi u izuzetno lošim uslovima, a zbog neobrazovanosti i nedovoljnog poznavanja jezika, često su meta diskriminacije. Neophodno je preduzeti mere za njihovu registraciju i potpuniju zaštitu u društvu.

Ključne reči: *Aškali, Interno raseljena lica, etnička zajednica, osnovna prava, integracija.*