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Honouring of obligations and commitments by Serbia

Report
Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)
Co-rapporteurs: Mr Charles GOERENS, Luxembourg, Alliance of Liberals and Democrats for Europe, and Mr Andreas GROSS, Switzerland, Socialist Group

Summary

The Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee) welcomes Serbia's ambition to pursue European integration and fully supports the country on this path. It notes that the majority of Serbian citizens made a clear choice in favour of European integration in the May 2008 parliamentary elections. To live up to the expectations of the citizens, the Serbian authorities should now urgently take a number of concrete reform measures to make the benefits of European integration available to all.

The committee welcomes the fact that, so far, the Serbian authorities have defended their position with respect to Kosovo by peaceful and diplomatic means, in accordance with international law. It calls upon the Serbian authorities to provide a forum for open dialogue between all political parties and actors on developments in Kosovo.

The newly built political stability, following the establishment of a new government supported by a wide and diverse coalition of political forces, creates a favourable environment for society to progress and implement the necessary reforms in the field of democracy, human rights and rule of law. The Monitoring Committee urges the opposition parties to stop obstructionism and adopt a constructive attitude in the parliamentary arena. At the same time, it calls upon the majority coalition to create conditions for a meaningful dialogue with the opposition on key issues.

To fulfil the membership obligations and commitments, the Monitoring Committee expects Serbia to take a number of concrete actions, in accordance with the recommendations contained in the present report. Pending their implementation, it proposes that the Assembly continue the monitoring procedure with respect to Serbia.

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A. Draft resolution

1. Serbia is a member state of the Council of Europe since 2003, succeeding in 2006 to the state union of Serbia and Montenegro. Over this period, Serbia has been steadily implementing the obligations and commitments entered into at the moment of its accession. It actively cooperates with the Council of Europe and chaired the Committee of Ministers from May to November 2007.

2. The Parliamentary Assembly recalls its Resolution 1514 (2006) on the consequences of the referendum in Montenegro and takes note of key political developments which have occurred in Serbia since the dissolution of the state union of Serbia and Montenegro in June 2006: a new constitution was approved by referendum on 28 and 29 October 2006; a parliamentary election was held on 21 January 2007, a presidential election was organised on 20 January and 3 February 2008 and, most recently, after a government crisis, a pre-term parliamentary election was held on 11 May 2008.

3. The Assembly refers to the reports of its Election Assessment Mission for the Presidential Election (Second round) and Ad Hoc Committee for the observation of the parliamentary election in Serbia on 11 May 2008 and congratulates the Serbian people and Serbian authorities for having conducted the votes in accordance with Council of Europe standards for democratic elections.

4. The Assembly notes that the majority of the Serbian citizens made a clear choice in favour of European integration.

5. The Assembly welcomes Serbia's ambition to pursue European integration and is strongly committed to support Serbia on this path. In this respect, the Assembly welcomes the ratification, on 9 September 2008, of the Stabilisation and Association Agreement between the European Union and Serbia. This Agreement will give a fresh impetus to the necessary reforms aiming at bringing the Serbian legal order closer to the European *acquis* in the field of democracy, rule of law and human rights. At the same time, the Assembly considers that the Serbian authorities have urgently to take a number of concrete reform measures to make the benefits of European integration available to all citizens of the country. Only then will European integration become a shared vision of the country's future.

6. The Assembly is closely following the developments concerning the status of Kosovo. It has taken note of the unilateral declaration of independence, adopted by the Kosovo Assembly on 17 February 2008, and of the fact that several countries, including a number of Council of Europe member states, have already recognised the independence of Kosovo. Equally, the Assembly has taken note of the rejection of this declaration by Serbia and several Council of Europe member states as being illegal and contradicting international law.

7. The Assembly understands the frustration of the Serbian people with respect to the developments in Kosovo. It welcomes the fact that, so far, the Serbian authorities have defended their position by peaceful and diplomatic means, in accordance with international law.

8. The Assembly strongly condemns the violent incidents which occurred in February 2008 after the adoption of the unilateral declaration of independence in the Northern areas of Kosovo as well as in Belgrade and, in particular, the attacks against some foreign embassies, which are totally unacceptable in a country adhering to democratic principles and international law. At the same time, the Assembly notes that these incidents have remained isolated and that the authorities have taken steps to punish those responsible.

9. Therefore, the Assembly calls upon the Serbian authorities to:

   9.1. ensure that, in defending their position with respect to Kosovo, they will continue to use only peaceful and diplomatic means;

   9.2. provide a forum for open dialogue between all political parties and actors about the developments in Kosovo;

   9.3. continue co-operation and dialogue with all international and regional actors in order to promote peace, stability and reconciliation in the Western Balkans, in the spirit of European integration;

   9.4. continue co-operation with the United Nations international civil presence in Kosovo with a view to preserving and promoting the cultural, linguistic and religious rights of all communities in Kosovo.

10. The Assembly welcomes the establishment of a new government supported by a wide and diverse coalition of political forces. The newly built political stability creates a favourable environment for the society to progress and implement the necessary reforms in the field of democracy, human rights and rule of law. In this respect, the Assembly urges the opposition parties to stop obstructionism and adopt a constructive attitude in

the parliamentary arena. At the same time, it calls upon the majority coalition to create conditions for a meaningful dialogue with the opposition on key issues. Serbia has had too many elections over the past two years. Now the time has come for all political forces to work together to make Serbia a better place to live in: European integration, cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY), strengthening of democratic institutions and human rights, reform of the judiciary and prosecutor's office, the fight against crime and corruption and the improvement of citizens' living standards should be the key priorities.

11. In this respect, the Assembly notes that Serbia is making clear progress in the implementation of its commitment relating to co-operation with the ICTY. It congratulates the authorities on the arrest of Radovan Karadžić, Stojan Župljanin, Zdravko Tolimir and Vlastimir Đorđević. It believes that the new government is strongly committed to complete its co-operation with the Tribunal.

12. Therefore, as regards co-operation between Serbia and the ICTY, the Assembly calls upon the Serbian authorities to:

12.1. spare no effort to track down the indicted persons who still remain at large and hand them over to the ICTY at the earliest opportunity;

12.2. make all documents and archives of the Ministry of Defence and of the Security Services available to the ICTY, for the purposes of conducting investigations within its mandate;

12.3. sign and ratify, without further delay, the European Convention on the Non-Applicability of Statutory Limitations to Crimes against Humanity and War Crimes (ETS No. 82) and the Convention on the Compensation of Victims of Violent Crimes (ETS No. 116);

12.4. apprehend and promptly extradite the two remaining indictees, Ratko Mladić and Goran Hadžić.

13. As regards the functioning of democratic institutions, the Assembly:

13.1. regrets that Serbia's democratic institutions are still not strong enough and underlines the need that they should be further strengthened in the fields of electoral legislation, parliamentary democracy and decentralisation;

13.2. encourages the National Assembly of Serbia to develop, in co-operation with the Assembly, a follow-up Parliamentary Assistance Programme, making full use in particular of new funding opportunities within the framework of the European Union's Instrument for Pre-accession Assistance (IPA);

13.3. welcomes the readiness of the newly appointed Speaker of the National Assembly of the Republic of Serbia to work with the Assembly on the drafting of new Rules of Procedure which would guarantee the rights of the opposition while enabling the parliament to function effectively;

13.4. therefore, the Assembly calls upon the Serbian authorities to:

13.4.1. amend the electoral legislation, in accordance with the Joint Recommendations of the Venice Commission and OSCE/ODIHR, in particular, to bring the system of allocation of mandates in the parliament and in municipal assemblies into line with European standards;

13.4.2. eliminate from the constitution the provisions establishing the imperative mandate of referendums of parliament and strengthen the capacity of the National Assembly to play an increasingly active role in the political process;

13.4.3. adopt a new law on the National Assembly of Serbia and new Rules of Procedure of the parliament, in close co-operation with the Assembly, within the framework of the Parliamentary Support Programme;

13.4.4. further strengthen the legislative basis for, and the operational capacity of, the Office of the Defender of Citizens' Rights and of the Office of the Commissioner for Freedom of Information;

13.4.5. continue to implement a comprehensive decentralisation reform, with a view to effectively devolving sectoral competences to local authorities and autonomous provinces, strengthening fiscal decentralisation, improving administrative supervision over local authorities' action and building up the capacity of local authorities;

13.4.6. sign and ratify, without further delay, the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 106).

14. As regards the rule of law, the Assembly:

14.1. regrets that the reforms of the judiciary and of the public prosecutor's office have not yet been completed;

14.2. welcomes the adoption of the law on the Constitutional Court and the appointment of the judges to this court;

14.3. welcomes the co-operation between the Serbian authorities and the Council of Europe in the fields of the reform of the judiciary and of the public prosecutor's office, the fight against corruption, money laundering and counter terrorism financing;

14.4. notes that the new constitution requires the adoption of a whole set of new laws governing the judiciary and the office of the public prosecutor, which should be done in co-operation with the Council of Europe;

14.5. in particular, the Assembly calls upon the Serbian authorities to:

14.5.1. develop and implement the legislation on the organisation of courts of law, status of judges, status of the High Judicial Council, organisation of the public prosecutor's office, status of public prosecutors and the State Prosecutorial Council, in accordance with European standards, guaranteeing in particular that the judiciary and the prosecutors are immune from political influence;

14.5.2. increase the effectiveness and professionalism of judges and prosecutors, in particular, by reinforcing their initial and in-service training through the Academy of Jurisprudence;

14.5.3. enact specific measures to combat corruption within the judiciary, while preserving the fundamental guarantee of independence of judges;

14.5.4. implement in full the recommendations of the Council of Europe Group of States Against Corruption (GRECO);

14.5.5. work with the Council of Europe in the development and establishment of the Anti-Corruption Agency in order to intensify and streamline the implementation of different policies and measures to combat political and administrative corruption;

14.5.6. spare no effort to strengthen the legislation and policies aiming at preventing money laundering and counter terrorism financing, in line with the recommendations of MONEYVAL.

15. As regards human rights, the Assembly:

15.1. welcomes the comprehensive catalogue of human and minority rights guaranteed by the new constitution;

15.2. welcomes the new mechanisms of democratic control over the armed and security forces introduced by the new constitution and the Laws on the Army of Serbia and on Security Forces, while regretting that the legislation on alternative service and conscientious objectors has not yet been enacted;

15.3. welcomes the development of new legislation on the freedom of association in co-operation with the Council of Europe;

15.4. strongly condemns the threats and attacks against human rights defenders, independent journalists, media outlets and representatives of national minorities which have occurred over the last couple of years;

15.5. in particular, the Assembly calls upon the Serbian authorities to:

15.5.1. enact the Law on Associations, taking into account all recommendations of the Council of Europe experts;

15.5.2. enact legislation on alternative service and conscientious objectors, in consultation with the Council of Europe;

15.5.3. enact a law on anti-discrimination and develop a comprehensive anti-discrimination policy to eliminate all forms of discrimination, including against sexual minorities;

15.5.4. implement the recommendations of the European Commission against Racism and Intolerance, adopted on 14 December 2007;

15.5.5. further develop the minority rights policy by strengthening confidence and trust between the representatives of different communities and implementing effectively the rights of national minorities, in the spirit of dialogue and co-operation between the central government and the minority communities, in particular, in the fields of use of minority languages, education, as well as representation of minorities in political and administrative bodies at all levels;

15.5.6. enact a law on the Councils of national minorities, clarifying their responsibilities, election modalities, their role vis-à-vis the central government, as well as the methods of their financing;

15.5.7. investigate and prosecute all cases of violence and harassment against human rights activists, members of the minority communities and journalists and take positive steps to ensure their protection;

15.5.8. publish the report of the Committee for the Prevention of Torture and Inhuman and Degrading Treatment (CPT) and work with the Council of Europe in the implementation of the recommendations of the CPT;

15.5.9. take appropriate measures to increase the pluralism of the media, ensure the proper application of the Broadcasting Law and ensure transparency in the work of the Republican Broadcasting Agency;

15.5.10. continue the educational reform and make arrangements to teach the principles of tolerance, respect for others, inter-cultural dialogue and reconciliation;

15.5.11. sign and ratify the European Convention on Nationality (ETS No. 166) and the Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession (CETS No. 200);

15.5.12. continue working to ensure permanent, safe and sustainable return of refugees and displaced persons, where possible, and spare no efforts to find durable solutions for those who decide to stay in Serbia.

16. As regards accession to the Council of Europe conventions, the Assembly:

16.1. welcomes the fact that, to date, Serbia has signed and ratified 58 Council of Europe conventions;

16.2. calls upon the Serbian authorities to ratify, without further delay, the 14 conventions signed but not ratified to date and, in particular, the (Revised) European Social Charter.

17. The Assembly resolves to pursue its monitoring of the honouring of obligations and commitments by Serbia, pending progress in the fields of co-operation with the ICTY, functioning of democratic institutions, rule of law, and human rights.

B. Draft recommendation

1. The Assembly refers to its Resolution … (2008) on the honouring of obligations and commitments by Serbia in which it fully supports Serbia's European aspirations and calls upon the authorities to concentrate all their efforts to improve co-operation with the International Criminal Tribunal for the former Yugoslavia, as well as complete the necessary reforms in the field of democratic institutions, rule of law and human rights.

2. The Assembly recommends that the Committee of Ministers:

2.1. takes Assembly Resolution … (2008) into account in the context of the Secretariat's reporting procedure before the Group of Rapporteurs on Democracy (GR-DEM);

2.2. continues and reinforces existing assistance programmes to support Serbia in the implementation of obligations and commitments to the Council of Europe by allocating appropriate financial resources and making use of bilateral donor funding, where necessary;

2.3. works with the Serbian authorities to develop, where appropriate, new targeted co-operation programmes in the fields of strengthening of democratic institutions, local and regional democracy, reform of the judiciary and of the public prosecutor's office, the fight against corruption, human rights, mass media, and education, making full use in particular of new funding opportunities, including within the framework of the European Union's Instrument for Pre-accession Assistance (IPA).

C. Explanatory memorandum, by Mr Goerens and Mr Gross

1. Introduction

1. The state union of Serbia and Montenegro joined the Council of Europe on 3 April 2003. As a successor of the state union of Serbia and Montenegro, Serbia continued its membership in the Council of Europe. In accordance with the Parliamentary Assembly Opinion No. 239 (2002) on the Federal Republic of Yugoslavia's application for membership of the Council of Europe, the country had undertaken a number of specific commitments, in addition to general obligations resulting from membership of the Organisation. The monitoring procedure was opened and a first assessment of the implementation of the obligations and commitments was made in Resolution 1397 (2004) on the functioning of democratic institutions in Serbia and Montenegro.

2. In the following two years, the co-rapporteurs travelled to Serbia twice, from 17 to 20 April 2005, for a fact-finding visit that focused specifically on the situation of national minorities and certain aspects of the functioning of the institutions of the state union of Serbia and Montenegro, and from 8 to 11 April 2006, for a fact-finding visit concerning the preparation of the referendum on independence in Montenegro.

3. Several developments have occurred since, the most important being the referendum on independence organised in Montenegro on 21 May 2006 and the adoption by the National Assembly of Montenegro of the Declaration of Independence on 3 June 2006, which subsequently led to the dissolution of the state union of Serbia and Montenegro.

4. In the light of these developments, the Assembly instructed the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee) in its Resolution 1514 (2006) to "review and redefine the commitments originally entered into by the state union of Serbia and Montenegro, to make them applicable to the Republic of Serbia". The Monitoring Committee appointed Charles Goerens (Luxembourg, ALDE) and Andreas Gross (Switzerland, SOC) as co-rapporteurs to complete this task. The co-rapporteurs travelled three times to Serbia to prepare the present report, respectively, from 3 to 5 September 2007 (Belgrade), from 26 to 28 November 2007 (Belgrade and Vojvodina), and on 1 and 2 September 2008 (Belgrade).

5. A preliminary draft report on the honouring of obligations and commitments by Serbia was presented to the Monitoring Committee on 18 December 2007. The report was then transmitted to the Serbian authorities who were requested to provide comments within a maximum period of three months. After having taken into account the authorities' comments, the co-rapporteurs prepared a draft report, which the Monitoring Committee was expected to adopt on 18 March 2008 with a view to an Assembly debate during the April 2008 part-session. However, after the government crisis and the dissolution, on 10 March 2008, of the National Assembly of Serbia, the Bureau of the Assembly decided to postpone the debate on the honouring of obligations and commitments by Serbia until after the early parliamentary elections. In this context, at the request of the co-rapporteurs, the Monitoring Committee made the draft report of the co-rapporteurs public on 18 March 2008. The present draft report is an updated version of the one made public on 18 March 2008.

2. Political developments since the adoption of Assembly Resolution 1514 (2006)

2.1. Parliamentary elections of January 2007 and formation of the government

6. In the last one and a half years, Serbia's political life has been marked by important political developments. After the adoption of the new constitution by the National Assembly of Serbia on 30 September 2006 and its subsequent approval by referendum on 28 and 29 October 2006, the parliament adopted on 10 November 2006 a decision on the proclamation of the Constitutional Law on the Implementation of the Constitution of the Republic of Serbia. Among other things, the constitutional law established the basis for the organisation of a general parliamentary election, election of the President of the Republic and election of the members of the assembly of the Autonomous Province of Vojvodina and of the municipal councils.

7. The parliamentary elections were subsequently held on 21 January 2007. As was the case in previous elections, the Serbian Radical Party got the highest percentage of votes cast securing 81 seats out of a total of 250 (just one seat (SRS) less than in the previous legislature). The Democratic Party (DS) of President Boris Tadić considerably improved its position with 60 seats (against 37 mandates in the previous legislature). The Democratic Party of Serbia (DSS) secured 33 mandates (against 53 in the previous legislature) and G17+ obtained 19 mandates (against 34 in the previous legislature). The remaining 57 seats were shared between the Socialist Party of Serbia (SPS, 14 mandates), New Serbia (NS, 10 mandates), the Liberal

Democratic Party (six mandates), the League of Social Democrats of Vojvodina (four mandates), the Alliance of Vojvodina Hungarians, the Civic Alliance and the Sandžak Democratic Party (nine mandates), the Serbian Democratic Party of Renewal and the United Serbia (four mandates), and Social Democratic Union (one mandate). The Union of Roma of Serbia, the Roma Party, the Demo-Christian Party of Serbia, the Democratic Alliance of Croats in Vojvodina, the Bosniac Democratic Party of Sandžak, the Party for Democratic Action, the Movement of Veterans of Serbia, the Social Liberal Party of Serbia and the "no party" lists obtained one mandate each.[1]

8. No party in the National Assembly could secure a sufficient majority to appoint the government alone. Coalitions therefore had to be formed. The coalition talks were lengthy and tough. Immediately after the certification of the results of the election, President Tadić began consultations with a view to establishing a "democratic bloc" comprising DS, DSS and G17+. While the key interest of G17 in the negotiations was to secure control over the key economic ministries, the DS targeted the post of prime minister as well as key ministries with responsibilities relating to European integration, and the DSS platform for negotiations was clearly centred on the issue of the status of Kosovo.[2]

9. In the meantime, the former government continued to ensure the day-to-day management of the country. As no budget for 2007 was approved by the previous legislature, the government adopted a decree on interim financing for three months (January-March 2007), which was further extended until June 2007. No legislative activity was carried out in this period, which delayed the preparation of legislation whose adoption is required by the law on the implementation of the constitution.

10. On 7 May 2007, just eight days before the expiration of the deadline for appointing a government, the parliament started a debate about the election of the Deputy Head of the Serbian Radical Party, Tomislav Nikolić, to the post of Speaker of Parliament. The DSS/NS, SPS and SRS unanimously supported Nikolić's election, thus forming a majority coalition of 145 deputies (out of a total of 250). In this context, President Tadić was obliged to ask the newly formed coalition to propose a candidate for the post of prime minister at the earliest opportunity in order to comply with the constitutional deadline.[3] In the meantime, on 9 May 2007, the newly elected Speaker, Tomislav Nikolić, made a strong declaration about the possibility of declaring a state of emergency, should Kosovo become independent.[4] Interestingly enough, he retracted his statement on the next day, saying that he had only raised a "theory".[5] These alarming developments must have pushed the DS, DSS/NS and G17+ to come to a final agreement on the future cabinet. Tomislav Nikolić resigned from the post of Speaker of Parliament on 13 May and after a two-day debate a new government was voted just half an hour before the expiration of the official constitutional deadline.

11. The government was headed by Prime Minister Koštunica, from the DSS, and had a fairly balanced composition. The DS held most of the key ministries, including the Ministry of Finance, the Ministry of Defence, the Ministry of Foreign Affairs, the Ministry of Justice, the Ministry of State Administration and Local Self-Government, as well as the post of Deputy Prime Minister for European Integration. The DSS kept under its control the Ministry of the Interior, the Ministry of Trade, the Ministry of Education and the Ministry for Kosovo and Metohija. The G17+ took control of the Ministry of the Economy and Regional Development, the Ministry of Health, the Ministry of Sport, as well as the Ministry of Science.

12. An agreement was reached to share the post of the head of the information and security agency (security services) between the DS and the DSS, but the director in office of the agency, Rade Bulatović (apparently loyal to the DSS), remained in power.

13. During our visits of September and November 2007, we met almost all key ministers, including Prime Minister Koštunica and Deputy Prime Minister responsible for European Integration Đelić. We were particularly impressed by the enthusiasm and commitment of the ministers from the Democratic Party and, in particular, Deputy Prime Minister Đelić, Minister of Justice Petrović and Minister for Foreign Affairs Jeremić. The strong and genuine democratic and European aspirations of these young and very competent politicians

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1. According to Serbian electoral legislation, while in general the lists of political parties have to obtain a minimum of 5% of votes to be allocated seats in the parliament, the so-called "minority parties" benefit from more favourable arrangements. Please see *infra*, Section 5.8.1.
2. See, in particular, "Platforma DSS-a za pregovore", B92, 31 January 2007.
3. According to Article 109 of the constitution, the National Assembly shall be dissolved if it fails to appoint a government within ninety days from the date of its constitution.
4. "Nikolić ponders state of emergency", B92, Beta, 10 May 2007.
5. "Vanredno stanje samo teorija", B92, Blic, 10 May 2007.

deserve a particular appreciation. Our discussions with DSS members of the government were somewhat less emotional and more technical, but left a generally positive impression. The meeting with Prime Minister Koštunica was positively open and constructive.

14. We noted that the first results of the newly formed government were encouraging: we commended in particular the resumption of the negotiations on the Stabilisation and Association Agreement and the improvement of co-operation with the International Criminal Tribunal for the former Yugoslavia (ICTY). Equally, we welcomed the ratification of the Central European Free Trade Agreement (CEFTA) and the ratification of the European Charter of Local Self-Government, one of the Council of Europe conventions that were signed by the state union and were not ratified before its dissolution. Finally, as will be seen further below in this report, we welcomed the launching of the preparation of a number of key framework laws in the field of the reform of the judiciary and of the public prosecutor's office.

15. This being said, soon after its formation, the government was confronted with a difficult political agenda, with respect primarily to the negotiations about the status of Kosovo and the organisation of presidential and local elections. We regret that the political debate between the different political forces forming the coalition about these issues prevented the government from completing its reform agenda and, eventually, led to a government crisis and the dissolution of the National Assembly.

2.2. Negotiations on the future status of Kosovo

16. The issue of the status of Kosovo has dominated the political agenda in Serbia for the last couple of years. The adoption of the new constitution, which specifies in its preamble that "the Province of Kosovo and Metohija is an integral part of the territory of Serbia" and stipulates that "the substantial autonomy of the Autonomous Province … shall be regulated by a special law which shall be adopted in accordance with the proceedings envisaged for amending the constitution" was seen as an important step in the direction of the definition of the final status of Kosovo within the territory of Serbia.

17. The representatives of all political parties we met during our 2007 visits (with the exception of the so-called "minority parties") mentioned that the status of Kosovo was one of the most complex and burning challenges Serbia had to face, along with European integration and social and economic development. The new round of negotiations started in August 2007 after several unsuccessful attempts to pass a new resolution in the United Nations Security Council based on the plan proposed by the Special Envoy of the UN Secretary General, Marti Ahtisaari. Supplementary talks were mediated by a troika comprising the representatives of the European Union (EU), the United States and the Russian Federation. The troika held intensive consultations with the Serbian and Kosovan leadership until the end of November 2007. Six meetings with the participation of both parties were held. With the last meeting held from 26 to 28 November 2007, the supplementary round of negotiations ended and the troika presented a report about the results of the negotiations to the United Nations Secretary-General on 10 December 2007.

18. In its statement about the final meeting between the parties the troika specified that "regrettably, the parties were unable to reach an agreement on Kosovo's future status".

19. The United Nations Security Council could not agree on the future status of Kosovo on the basis of the report presented by the Secretary-General on the conclusions of the troika. Subsequently, on 17 February 2008, the Kosovo Assembly adopted a unilateral declaration of independence. The Government of Serbia immediately adopted a special decision to annul "the acts and actions of the Provisional Institutions of Self-Government of Kosovo and Metohija whereby unilateral independence is declared", "as they violate the sovereignty and territorial integrity of the Republic of Serbia guaranteed by the Constitution of the Republic of Serbia, the United Nations Charter, Security Council Resolution 1244 (1999), other relevant Security Council resolutions as well as by international law in force".[6]

20. Nevertheless, promptly after the adoption of the unilateral declaration of independence, several states, including a number of Council of Europe and EU member states, recognised the independence of Kosovo. The Serbian authorities delivered to the ministries of foreign affairs of the states concerned protest notes as well as recalled their ambassadors for consultations from these countries.[7] President Tadić and the Serbian Foreign Minister, Vuk Jeremić, made statements before the UN Security Council, the Organization for Security and Cooperation in Europe (OSCE) Permanent Council, the Committee of Ministers of the Council of Europe and the European Parliament expressing their position with respect to the unilateral declaration of independence.

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6. www.srbija.sr.gov.yu/kosovo-metohija/index.php?id=43159.
7. Subsequently, on 25 July 2008, the Serbian Government decided to let its ambassadors return to EU member states.

21. On the domestic political front, the parties of the ruling coalition strongly condemned the unilateral declaration of independence. A massive protest rally was held in Belgrade on 22 February 2008. The rally was followed by several violent incidents including attacks against the embassies of the United States, Canada, United Kingdom, Germany and Croatia. The Serbian authorities are investigating the attacks. All political actors condemned the violent incidents, which apparently were conducted by isolated groups of hooligans. However, some high-ranking officials of the Government of Serbia made statements that could be interpreted as legitimising the attacks. Isolated attacks against representatives of national minorities were also reported.

22. Moreover, there was information in the press that human rights defenders and some politicians who expressed views on the developments in Kosovo different from the authorities' official position were harassed by some political actors. In particular, the Socialist Party of Serbia announced that it would collect signatures to lodge a criminal complaint against the prominent human rights activist Nataša Kandić, Executive Director of the Humanitarian Law Centre, for "acting against the constitutional order and threatening the state's independence and integrity". A massive campaign against Nataša Kandić was launched in the media. Equally, B92 – one of the country's key media outlets – received threats and its office was attacked on the evening that followed the 22 February rally.

23. We strongly condemn violent protests as well as attacks against human rights activists, minorities and media outlets. We express strong concern about the attacks against foreign embassies in Belgrade. Such attacks are totally unacceptable in a country adhering to democratic principles and international law. We welcome the condemnation of these attacks by all political actors and the steps the authorities are taking to investigate and prosecute all those responsible for violence, attacks and harassment against human right defenders, minority representatives and politicians. We hope that those responsible will be brought to justice.

24. Equally, we condemn the violent protests of Serbs in northern areas of Kosovo, which happened after the unilateral declaration of independence. Violence will not resolve the concerns of the Serbian community, neither will it help build confidence between the representatives of various ethnic communities living in Kosovo.

25. We welcome the fact that the Serbian authorities have so far defended their position with respect to Kosovo only by peaceful and legal means. We call upon Serbia to continue co-operation with the international civil presence in Kosovo with a view to promoting the cultural, linguistic and religious rights of all communities living in Kosovo.

26. Irrespective of the developments in Kosovo, we encourage the Serbian authorities to continue their strategic course towards European integration, while continuing to implement the necessary key democratic institutional, economic and social reforms to make Serbia a better place to live in. Many officials and NGO representatives we met during our visits spoke about the need to tackle more effectively some urgent social and economic problems, reducing unemployment, strengthening democratic institutions and creating a favourable environment for foreign investments. We believe that now is the time for the Serbian authorities to concentrate on these important issues, while acknowledging their willingness to continue to defend their position with respect to the developments in Kosovo.

2.3. Presidential elections of February 2008 and provincial and local elections of May 2008

27. The law on the implementation of the constitution provides that the date for the organisation of presidential, provincial and local elections should be set by the Speaker of Parliament before 31 December 2007 and within sixty days of enactment of a number of key laws.

28. The coalition partners held intensive consultations throughout October 2007 about the date of the election. While the DS appeared to argue in favour of the holding of the presidential election before the end of 2007 (on the eve of the closing of the supplementary round of talks about the status of Kosovo and Metohija), the DSS considered that the elections should be organised after the final definition of the status of the province and Mr Miloš Aligrudić, head of the DSS parliamentary group and chair of the Serbian delegation to the Parliamentary Assembly, was quoted saying that "elections were not what was needed in this phase of resolving the future status of Kosovo".[8]

29. As a result of the consultations, an agreement between the main partners in the coalition was reached on 3 November 2007. According to this agreement, the presidential elections were supposed to be called after the end of the supplementary round of talks about Kosovo (that is, after 10 December) unless there was an

8. *VIP Daily News Report*, Issue No. 3695, 11 October 2007.

immediate threat to territorial integrity of the country (for example, proclamation or a unilateral declaration of independence by Kosovo). The agreement apparently included a detailed timetable of adoption of legislation necessary for the holding of the election. All laws necessary for holding the presidential election were adopted on 11 December 2007 and the Speaker of the National Assembly called the presidential election for 20 January 2008.

30. The Assembly observed the second round of the presidential election held on 3 February 2008. In this respect, we refer to the Assembly report on the observation of the presidential election, which contains a detailed description of the modalities of the voting.[9] We join the conclusions of the Election Assessment Mission in that "the second round of voting in Serbia's presidential election was conducted in line with Council of Europe commitments for democratic elections". This election confirmed once more Serbia's strategic course towards European integration. It showed, however, that the "European integration project" was not shared by all the sectors of the society. It is now the responsibility of Serbia's leadership to work with all actors concerned to build much-needed bridges in the society for European integration to become a shared vision of the country's future.

31. The legislation necessary for the holding of provincial and local elections, namely the Law on Territorial Organisation, the Law on the Capital City, the Law on Local Elections and the Law on Local Self-Government, was adopted on 29 December 2007 and the elections were subsequently called for 11 May 2008. The Congress of Local and Regional Authorities of the Council of Europe observed the elections and concluded that the voting was in line with international standards.[10]

2.4. Early parliamentary elections of 11 May 2008 and recent political developments

32. After the presidential election of February 2008 and the adoption of the unilateral declaration of independence by the Kosovo Assembly, the tensions in the governing coalition increased. Although both the DS and DSS ministers appeared to jointly implement the government action plan on measures to be taken in case of the adoption of a unilateral declaration of independence by Kosovo, Prime Minister Koštunica and DSS ministers took a much harder line. European integration appeared to be the main issue of disagreement between the parties: while the DS and G17+ favoured a further rapprochement with the EU and the signing of the Stabilisation and Association Agreement (SAA), DSS ministers called for the annulment of the agreement, arguing that the unilateral declaration of independence and the recognition of independent Kosovo by some EU member states changed the purpose and the object of the SAA. As a result of heated political debate, the government became completely blocked: without having the majority, Prime Minister Koštunica refused on several occasions to convene the sessions of the government knowing that his party's representatives would be outvoted on issues relating to European integration.

33. The crisis culminated in the resignation of the government on 10 March 2008, together with the adoption of a proposal to dissolve the National Assembly of the Republic of Serbia and to hold early parliamentary elections on 11 May 2008. In this proposal, the government acknowledged the lack of unity on key issues, which prevented it from formulating and conducting a common policy for the country. President Tadić accepted the proposal, dissolved the National Assembly and subsequently called a pre-term election for 11 May 2008.

34. An Assembly ad hoc committee observed the elections of 11 May 2008. We shall not reproduce in the present report the conclusions of the ad hoc committee, which we fully subscribe to.[11] We note that, building upon the success in the presidential election, the pro-European bloc rallied around the DS, won a resounding victory and became, with 102 mandates, the biggest parliamentary force. The SRS managed to secure 78 mandates (against 81 in the previous legislature). The DSS appeared to be the biggest loser of the election with only 21 mandates. The results of the other parties remained more or less comparable to the previously obtained scores in the January 2007 parliamentary elections.

35. Just as in January 2007, no party could form a majority alone and coalition negotiations were tough. Initially, it appeared that the so-called "patriotic bloc" comprising the SRS and the DSS-NS could form a coalition with the Serbian Socialist Party (SPS) to form a majority government. The agreement to form majority coalitions at local level was reached between the parties of the "patriotic bloc" and SPS in most local assemblies, including in the city assembly of Belgrade, where the SRS candidate, Aleksandar Vučić, appeared to be in a good position to win the post of mayor. Several days after the election, it appeared,

9. See Assembly Doc. 11534.
10. www.coe.int/t/congress/10-docs-news/20080512-ELections-Serbia_en.asp.
11. For further information, see Assembly Doc. 11618.

however, that the SPS-led coalition comprising 20 MPs from the SPS, the United Party of Retired Persons (PUPS) and the United Serbia Party (JS) was no longer keen on forming an alliance with the SRS and DSS-NS, primarily because the SPS coalition partners (PUPS and JS) strongly rejected any actions that could slow down the process of European integration. The "patriotic bloc" on the contrary argued that the Stabilisation and Association Agreement had to be annulled in the new context created after the recognition of Kosovan independence by the majority of EU member states.[12]

36. Subsequently, the SPS-led coalition announced that it broke the coalition agreement with the SRS and DSSNS in order to start new negotiations with the DS-led pro-European bloc. The negotiations culminated in the signing of a coalition agreement and formation of a new government, which was also supported in the National Assembly by the parties of national minorities and the Liberal Democratic Party (LDP).[13]

37. The new government reflects its political composition. With 24 ministries, one first deputy prime minister (leader of the SPS, Ivica Dačić), three deputy prime ministers and one minister without portfolio, the new government is larger than the previous ones. Its policy priorities appear to be in line with the strategic course towards European integration launched by the previous coalition governments. As was underlined by Prime Minister Mirko Cvetković in his keynote address to the National Assembly, the key elements of his government's programme will be "the commitment to European integration, non-acceptance of the independence of the Autonomous Province of Kosovo and Metohija, the need to strengthen the economy, increase the social responsibility of the government, step up efforts to combat crime and corruption and respect for international law".[14]

38. We congratulate Serbia's political actors on having promptly completed the coalition negotiations in an orderly and democratic fashion. We welcome the country's European aspirations and stand ready to support the government's strategic course towards European integration. We note, however, that the new government is currently in a difficult position. With a strong and relatively consolidated opposition, it will have to engage in a dialogue with all political actors to make European integration a shared vision of the country's future. It will also have to fulfil its electoral promises, focusing in particular on social programmes and the improvement of citizens' living standards. This will be an extremely complex endeavour, especially because the opposition appears to use the shortfalls of the existing Rules of Procedure of the National Assembly to paralyse the debate.

39. We strongly condemn obstructionism and call upon the opposition political parties to adopt a constructive attitude in the parliamentary arena. Obstruction cannot be used as a tool in the political process. Instead, all actors representing the majority and the opposition should engage in a meaningful dialogue about the much needed key reforms, which have been put on hold for the last three years because of political rivalries. In this respect, we call on the majority coalition to spare no effort in building a constructive working relation with the opposition. As will be seen further below, we consider that the adoption of new Rules of Procedure of the parliament can help overcome this problem (see paragraph 104).

40. We will closely follow the activities of the new government, especially those relating to the implementation of the Council of Europe obligations and commitments. As will be seen further below in this report, we expect the authorities to implement promptly a number of key reforms in the field of strengthening of democratic institutions, rule of law and human rights. We trust that the new government has the political will and the capacity to successfully complete this reform agenda. For our part, we shall spare no effort in providing political support to these reforms, which are essential for the future of democracy in Serbia and in the Western Balkans, in general.

2.5. Relations with the European Union

41. Serbia is a potential candidate for EU membership. Negotiations about a Stabilisation and Association Agreement were officially opened in October 2005. However, they were put on hold in May 2006 due to the failure of the Serbian authorities to fully co-operate with the International Criminal Tribunal for the former Yugoslavia (ICTY). The talks resumed in June 2007 after the formation of the new coalition government and were conditioned on full co-operation with the ICTY.

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12. Some 21 out of 27 at the moment of writing the present report.
13. To no surprise, after the formation of a coalition with the DS-led bloc, the SPS annulled coalition agreements with the SRS and DSS-NS in local assemblies and, especially, in the city assembly of Belgrade.
14. www.srbija.sr.gov.yu/pages/article.php?id=46940.

42. Improvements in the co-operation with the tribunal were detected and reported to the European Commission by the chief prosecutor of the ICTY in autumn 2007. Taking into account the positive dynamic, the Stabilisation and Association Agreement between Serbia and the European Union was initialled on 6 November 2007. All domestic and international actors saw the initialling of the SAA as an important step forward on the path of integration of Serbia into the European Union.

43. In the meantime, the European Commission issued on 13 November 2007 the 2007 progress report on Serbia. While the progress report acknowledges some progress Serbia has made in the fulfilment of the Copenhagen political criteria, it points at a number of weaknesses and shortcomings of democratic institutions in Serbia. In particular, the European Commission joins the opinion of the Venice Commission in that the new Constitution of Serbia contains a number of provisions that are not in line with European standards, including the political party control over mandates of individual members of parliament and the excessive role of the parliament in judicial appointments.

44. The Commission also noted that "limited progress has been made in the fight against corruption. Corruption is widespread and remains a serious problem in Serbia".[15] There are also serious problems with respect to the reform of the judiciary, in particular, "the provisions of the new constitution on judicial appointments have not been implemented as new laws on courts and prosecution have yet to be adopted. Clear criteria and procedures for judicial appointments have not yet been established. There are concerns about the level of influence of parliament over the judiciary. Parliament is responsible for the appointment of judges and prosecutors for the initial probationary period following a proposal from the High Judicial Council and State Prosecutors' Council. Several members of the High Judicial and Prosecutors' Councils are also elected by parliament."[16]

45. Serbia ratified the revised Central European Free Trade Agreement (CEFTA) in September 2007 and the Agreements on Visa Facilitation and Readmission of Persons Illegally Residing on the Territory of the EU in November 2007.

46. In February 2008, the European Union appointed Mr Peter Feith as EU Special Representative in Kosovo and authorised the deployment of the European Union Rule of Law Mission (EULEX) to take over the competences of the United Nations Interim Administration Mission in Kosovo (UNMIK). The Serbian authorities disputed the legality of the deployment of the mission, in the absence of a decision by the UN Security Council. The newly elected National Assembly of Serbia is expected to launch a debate about a new resolution on the situation in Kosovo as one of the priority items for the September 2008 session, which started on 2 September 2008. While we understand the desire of the Serbian MPs to take a political position on the issue of Kosovo, we hope that this debate will not undermine the unity of the coalition partners on the issue of European integration and add more division in the society. We consider that the Serbian authorities can defend their legitimate interests with respect to Kosovo while pursuing the strategic course of European integration. We stand ready to support our Serbian colleagues in this task at the level of the Parliamentary Assembly.

2.6. International context and relations with neighbours

47. Serbia chaired the Committee of Ministers of the Council of Europe from May to November 2007. The chairmanship was prepared in a particularly complex context of adoption of the new constitution, parliamentary elections and formation of a new government. However, the preparations were well handled by the Ministry of Foreign Affairs: an inter-sectoral working group bringing together all key actors was established and a programme of the chairmanship was prepared in time. The priorities of the Serbian chairmanship in the Committee of Ministers included:

– promoting the Council of Europe core values: human rights, democracy and the rule of law, including the further strengthening of conventional and monitoring mechanisms and the consolidation of democracy and rule of law throughout Europe;

– enhancing personal security – especially, combating terrorism, organised crime and corruption;

– building a more humane Europe – towards more active participation of all citizens, including fostering European identity and unity based on shared fundamental values, respect for our common heritage and cultural diversity and building the capacities of local communities and individuals;

15. European Commission's "Serbia 2007 progress report", SEC(2007)1435, 6 November 2007.
16. Ibid.

– strengthening co-operation and good neighbourly relations through full respect of values and implementation of Council of Europe standards in South-Eastern European countries, thus fostering the European perspective of the region.

48. The results of the chairmanship were highly assessed by the Council of Europe as well as by domestic and international politicians. The Council of Europe Secretary General was quoted saying that the country proved that it was a "capable European leader" that "deserved to wear the European colours". We congratulate the Serbian authorities on the successful completion of this important task.

49. Serbia took an active part in the regional co-operation initiatives. From November 2006 until May 2007 Serbia chaired the Black Sea Co-operation Council. Serbia also actively participated in the Stability Pact for South-Eastern Europe and its transformation into a more regionally based co-operation framework of South-East European Co-operation Process (SEECP). Within the framework of the chairmanship of the Committee of Ministers Serbia facilitated the establishment of contacts between the Council of Europe and the newly formed Regional Co-operation Council. Serbia participated constructively in the negotiations on the amended Central European Free Trade Agreement (CEFTA), which it ratified in September 2007.

50. Co-operation on implementation of UN Security Council Resolution 1244 on Kosovo was somewhat less encouraging. The Serbian authorities called upon the Serb communities living in Kosovo to boycott the elections held on 17 November 2007. Not surprisingly, voter turnout in municipalities where the Serb communities live was very low. It has not hampered the organisation of the election, however, which was considered valid.

51. Since the independence of Montenegro and the dissolution of the state union, Serbia has developed good cooperative relations with its new independent neighbour. An agreement on Social Security was signed between the two countries. Montenegro also entrusted to Serbia responsibility for the protection of Montenegrin citizens abroad. This being said, the relations between the Serbian and the Montenegrin Orthodox churches still remain tense. The issue of dual citizenship also generated a negative reaction in Montenegro. The September 2007 amendments to the Serbian citizenship law providing for a simplified procedure of granting Serbian citizenship to citizens of Montenegro who resided on the territory of Serbia on the day of independence were seen as interference in domestic affairs in Montenegro. We hope that the authorities of both countries will find a constructive solution to this problem.

52. Relations with Croatia are good. A co-operation agreement on the prosecution of war crimes was signed in 2007. However, both countries have yet to sign an agreement on the border. Croatia also continues to pursue its case of genocide against Serbia before the International Court of Justice.

53. The International Court of Justice adopted a ruling in February 2007 in the case *Bosnia and Herzegovina v. Serbia*. The court found that acts of genocide were committed in Srebrenica. However, the court ruled that Serbia did not commit genocide against Bosnia and Herzegovina. Nevertheless, the court considered that Serbia had failed to take all measures necessary to prevent the Srebrenica genocide and bring the perpetrators to justice.

54. Serbia continues to develop good relations with "the former Yugoslav Republic of Macedonia" despite somepersisting tensions between the Serbian and Macedonian Orthodox churches.

55. Relations with Romania, Bulgaria and Slovenia are generally good.

3. Functioning of democratic institutions

3.1. Constitutional reform

3.1.1. Adoption of the constitution

56. Work on the new Constitution of Serbia has been ongoing since the overthrow of the Milosevic regime, but the final version of the constitution was in fact drafted within a very short time frame. The final text was prepared very quickly and apparently represented a compromise between the top leaders of the four main political parties (DSS, DS, G17+ and SPS). Other political forces and the expert community seem to have been excluded from the drafting process.

57. The constitution was approved on 30 September 2006 by some 242 members of the National Assembly participating in the special session. The constitution was approved unanimously and submitted for approval to a referendum scheduled to be held on 28 and 29 October 2006 (less than one month after the adoption of the constitution). The referendum was held over two days in order to ensure the 50% voter turnout.

58. Given the short time frame, the Venice Commission did not analyse the constitution before its approval by referendum.[17] It was not properly discussed with the citizens either. The preparation of the new constitution was not a good example of constitution-making.

59. In the couple of weeks that followed the adoption of the constitution, electronic and printed media organised a massive campaign in favour of the constitution. Some claimed that the constitution would bring a final solution to the status of Kosovo and Metohija. Others argued that the constitution would help Serbia break with its past and move ahead from the Milosevic era into a new brighter future. The activities of the prime minister and of the president aiming at promoting the constitution were largely publicised in all television news bulletins. But overall, none of the television programmes and talk shows offered a forum for serious debate.

60. Although according to the Assembly delegation observing the voting, "the Constitutional Referendum … was, in general, conducted with due respect for Serbia's democratic commitments to the Council of Europe",[18] the organisation of the voting appears to have been flawed by serious irregularities. The Assembly observers identified some of these which included, *inter alia*, inaccuracies in voters' lists, improper sealing of the ballot boxes, ballot box stuffing, etc. Specific problems relating to the twoday voting were also identified, whereby the protocols were not properly signed and sealed upon the closing of the polling stations on the first day and subsequently verified on the morning of the following day, upon the reopening of the polling stations.

61. As a general remark, we would like to note that the Assembly delegation visited only 318 polling stations out of 8 600 open nationwide, which represented some 3.7%. The Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE/ODIHR) did not observe the referendum because apparently it was not invited to send an observation mission. Only two parliamentary parties that opposed the constitution were allowed to deploy observers (the Civic Alliance of Serbia posted 670 observers and the Social Democratic Union deployed 335 observers). The Belgrade-based Centre for Free Elections and Democracy (CeSID) monitored the voting at 600 polling stations only.[19]

62. The Assembly delegation was informed that a group of NGOs (Helsinki Committee for Human Rights, Lawyers' Committee for Human Rights, Youth Initiative for Human Rights and the Humanitarian Law Centre) had produced an "Analysis of irregularities that occurred during the referendum". According to this analysis, the process of confirming the constitution was marked by the following irregularities: Albanians from Kosovo were not included in the voters' register and they received a barely formal call for signing in the voters' register; the authorities in charge of the referendum process included only the representatives of parties that supported the endorsement of the constitution; the referendum process was accompanied by a highly aggressive and negative campaign directed against a group of political parties and NGOs that called for the boycott; the turnout was very poor until the afternoon hours of the second day, when it surprisingly improved; the greatest number of incidents occurred in a period of several hours before the closing of the polling stations, etc. The Assembly observation mission did not take a position on these findings, however, as it reported only on the situation at the polling stations where it had observed the voting.

63. This being said, although the voting appears to have been flawed by a number of irregularities, the adoption of the long-awaited new Constitution for Serbia should be welcomed, provided that this new constitution complies with European standards and creates the legal basis for the country's advancement on the path to European integration. This, however, has yet to be fully guaranteed by the adopted text.

3.1.2. Analysis of the provisions of the new constitution in the light of Council of Europe standards

64. In its subsequent opinion on the Constitution of Serbia, the Venice Commission noted that "the constitution contains many positive elements, including the option for a functional parliamentary system of government and a comprehensive catalogue of fundamental rights. While it would have been preferable to

17. At the request of the Monitoring Committee, the Venice Commission subsequently produced an opinion on the Constitution of Serbia, which we shall refer to further in this report (CDL-AD(2007)004).

18. Doc. 11102, "Observation of the constitutional referendum in Serbia (28 and 29 October 2006)", report of the ad hoc committee of the Bureau of the Assembly.

19. "Serbia's new constitution: democracy going backwards", International Crisis Group, *Europe Briefing No. 44*, Belgrade/Brussels, 8 November 2006.

have clearer and less complicated rules on restrictions to fundamental rights, it is possible for the courts and in particular the Constitutional Court to apply these rights in full conformity with European standards."[20] It was also noted that the new constitution had rectified many of the criticisms made by the Venice Commission in its 2005 opinion.[21]

65. However, there are several fundamental sections of the constitution that must be further improved in order to comply with European standards of constitutional law. We shall more specifically focus on six issues in the present report, namely excessive influence of political parties on members of parliament, status of the judiciary, status of the public prosecutors' offices, provincial autonomy and local self-government, place of international law in the domestic legal order, and modalities of amending the constitution.

3.1.2.1. Imperative mandate of members of parliament

66. In our view, this is one of the most worrying provisions of the new constitution as it represents a direct threat to the development of a functioning and efficient parliamentary democracy in Serbia. Section 2 of Article 102 provides that "under the terms stipulated by the law, a deputy shall be free to irrevocably put his/her term of office [*mandat*, in the local language, which means "mandate"] at the disposal [of] a political party upon [whose] proposal he or she has been elected a deputy". The Venice Commission estimated that this provision was intended to tie the deputy's position on all matters at all times to the instructions from political parties. This is a serious threat to the freedom of the referendums of parliament to express their views on any issue debated in parliament.

67. Furthermore, this provision, seen from the angle of electoral arrangements (which enable the parties to choose the candidates who will actually sit in the parliament, irrespective of the voters' choice – see *infra*, Section 3.2), gives to the political parties an excessive role in the political process. It is a major threat to the functioning of democratic institutions, especially, given the excessive role of the parliament in judicial appointments (see *infra*, paragraph *b*).

68. Some of the interlocutors we met during our visits argued that the strong role of the political parties was justified in the current situation in Serbia in order to prevent corruption and excessive influence of business or criminal circles on the political life. However, many people we met condemned this practice, as hindering transparency of the political process and preventing the citizens from actually bringing their elected representatives to account.

69. While commending the good intentions of those who strive to fight corruption in politics, we do not think that making elected representatives prisoners of political parties' leaderships is a legitimate solution to this problem. There are other ways of building a strong, democratic and transparent parliamentary democracy. Making representatives entirely dependent on the goodwill of party leaderships is against European standards of parliamentary democracy. On the contrary, members of parliament must be free and have the right to oppose their party leaders. Lack of freedom destroys political dialogue and prevents society from learning and moving ahead with democratic changes.

70. This provision of the constitution must be changed.

3.1.2.2. Independence of the judiciary

71. According to Article 147, judges are elected by the National Assembly. The Venice Commission condemned this practice in its opinion on the Constitution of Serbia, endorsing the remarks it had made already in its previous "Opinion on the judiciary in the draft constitution of Serbia". According to the Venice Commission, "the involvement of parliament in judicial appointments risks leading to a politicisation of the appointments and, especially for judges at lower court level, it is difficult to see the added value of a parliamentary procedure. … Elections by a parliament are discretionary acts and political considerations will always play a role" in judicial appointments.

72. According to Recommendation No. R (94) 12 of the Committee of Ministers of the Council of Europe on the independence, efficiency and role of judges, "all decisions concerning the professional career of judges should be based on objective criteria, and the selection and career of judges should be based on merit, having regard to qualifications, integrity, ability and efficiency. The authority taking the decision on the selection and career of judges should be independent of the government and the administration. In order to safeguard its independence, rules should ensure that, for instance, its members are selected by the judiciary

20. Venice Commission's "Opinion on the Constitution of Serbia" (CDL-AD(2007)004), p. 22. 1.
21. Ibid., p. 3.

and that the authority decides itself on its procedural rules." Therefore, in the light of European standards, the appointment of judges should not be made on the basis of political considerations. The Venice Commission suggested in this respect that judges be appointed by the president on the basis of proposals submitted by the High Judicial Council.

73. The High Judicial Council is established by the constitution in Article 153. Its composition appears to be balanced (3 *ex-officio* members, that is, President of the Supreme Court of Cassation, Minister of Justice, chair of the relevant committee of parliament, six judges, one practising lawyer and one professor of law). However, in its Opinion No. 405/2006, the Venice Commission argued that the composition of the High Judicial Council was in fact flawed because "all members of the High Judicial Council are elected, directly or indirectly, by the National Assembly". The Venice Commission concluded on this basis that there was a risk of politicisation of the appointment process. The draft law on the High Judicial Council of the Republic of Serbia, developed by the Ministry of Justice in co-operation with the Council of Europe and appraised by the Venice Commission,[22] attempts to address this issue by providing a procedure whereby the National Assembly would, in respect of each vacancy, be presented with one name only of a person elected by the "authorised nominators" (that is, the judges' or the lawyers' associations or faculties). This procedure indeed reduces to the minimum the influence of political parties on the election process. However, it does not eliminate the risk of politicisation completely and we consider that in future, the constitution should be amended, following the recommendations made by the Venice Commission in 2006.

74. The Constitutional Law on the Implementation of the Constitution introduces an additional element of concern. In fact, Article 7, paragraph 2, provides that "judges and presidents of other courts [excluding the Supreme Court of Cassation] shall be elected no later than one year from the date of the constitution of the High Judicial Council". This provision opens the door for different interpretations. In its opinion on the Constitution of Serbia, the Venice Commission interpreted this provision as the legal basis for the reappointment of all judges in the country. This approach could be motivated by the desire to get rid of judges who in the past were appointed for political reasons and have seriously compromised their impartiality. Indeed, some of our interlocutors quoted examples of judges appointed in the times of Milosevic rule that had on previous occasions taken politically motivated decisions or were allegedly involved in cases of corruption. We agree with this legitimate aim, in principle. However, we join the Venice Commission in that the reappointment process has to be carried out on the basis of clear and transparent criteria, providing for the right of appeal by the persons concerned. We also support the Venice Commission's opinion in that a High Judicial Council totally dependent on the parliament cannot be a body that would be able to conduct this procedure in a fair, impartial and transparent manner.

75. Whatever the political choice of the Serbian authorities will be with respect to the (re-) appointment of judges, we consider that the appointment process should in any case be immune from interference of political bodies. We therefore strongly recommend strengthening the status of the judiciary in ordinary legislation, as will be described further below (see *infra*, Section 4.1), as well as amending the constitution in the medium term in order to bring it into line with European standards on independence of the judiciary and eliminate vague provisions opening the door for different interpretations.

3.1.2.3. Status of the public prosecutors' offices

76. In its opinion on the Constitution of Serbia, the Venice Commission noted that the meaning of the public prosecutor's office's function to "take measures in order to protect constitutionality and legality" was not clear. The Serbian delegation to the Assembly explained in the comments on the present report that this provision was about "introduc[ing] extraordinary legal means in accordance with the provisions of the Law on Criminal Procedure". In accordance with this procedure, the public prosecutor only initiates the procedure where the final decision shall be brought by the court, that is, a competent organ, thus respecting fully the principle of legal security. Furthermore, it is added that "the public prosecutor of the Republic of Serbia … has the right to introduce legal means, among other things, the request for the protection of legality, even against the judicial procedure preceding the effective sentence in case the law has been violated" (Article 419 of the Law on Criminal Procedure), with the final decision brought by the Supreme Court of Serbia. It should be noted that the court, at the time of bringing the decision, is bound by the ban *reformatio in peius* so that, if the request for the protection of legality has been introduced at the expense of the defendant, and the court finds it valid, it will just decide that the violation of the law has been committed, without touching the effective court decision (Article 423, paragraph 3, and Article 425, paragraph 3, of the Law on Criminal Procedure). The provision of Article 22 of the Law on Criminal Procedure clearly states that "the court charged with bringing the decision

22. CDL-AD(2008)006.

upon the request for the protection of legality may, taking into account the contents of the request, decide to postpone, that is, terminate the implementation of the effective court decision. It is obvious that the public prosecutor only has the right to submit a proposal, while the decision is brought by the court."

77. We take note of this detailed explanation. Our lack of knowledge of Serbia's Law on Criminal Procedure does not allow us to make the analysis of the above provisions, taken out of context. We hope that the described "legal means" do not enable the public prosecutors to exercise "supervision" over court decisions, by challenging final decisions of courts of law on the grounds of illegality. If it were the case, there could be a risk to legal certainty, which could give rise to the violation of the right to a fair trial, as protected by the Convention for the Protection of Human Rights and Fundamental Freedoms. We shall study the opinion of the Council of Europe experts on the legislation governing the functioning of the public prosecutor's office and take it into account in the monitoring process.

78. Besides, we share the concerns of the Venice Commission about the possible interference of parliament in the work of public prosecutors resulting from their double accountability to the republic public prosecutor and the National Assembly.

79. The procedure of election of public prosecutors and deputy public prosecutors by the National Assembly upon the proposal of the State Prosecutorial Council (which, just as the High Judicial Council, is composed of members elected directly or indirectly by the National Assembly) is also disturbing because of the interference of parliament.

80. These shortcomings should be eliminated in ordinary legislation, as will be indicated below (please see *infra*, Section 4.2.) in order to guarantee the independence of prosecutors and avoid political interference. We would also recommend amending in the medium term the constitution in order to implement European standards for public prosecution at constitutional level.

3.1.2.4. Provincial autonomy and local self-government

81. In fact, the chapter of the constitution on provincial autonomy and local self-government (Chapter Seven) contains a number of declarations of principles. The actual substance of these principles will, however, have to be defined in specific legislation. The constitutional provisions about Kosovo and Metohija are particularly interesting in this respect. While one of the aims of the constitution was to define the autonomy of the province, it fails to do so, simply saying in Article 182 that "the substantial autonomy of the Autonomous Province of Kosovo and Metohija shall be regulated by the special law which shall be adopted in accordance with the procedure envisaged for amending the constitution".

82. From the legal technique viewpoint, it would have been wiser to lay down in the constitution a regulatory framework based on the principles of the European Charter of Local Self-Government (ETS No. 122), signed and ratified by Serbia, applicable to all autonomous provinces (taking into account the fact that the constitution expressly authorises in Section 3 of Article 182 the establishment of new autonomous provinces).

83. The same could apply to the status of municipalities.

3.1.2.5. Place of international law in the domestic legal order

84. Article 16, Section 3, provides that "ratified international treaties must be in accordance with the constitution". This is not disturbing in principle as many Council of Europe member states give higher rank to the national constitution with respect to international law. However, in practice, if a treaty signed and ratified by Serbia is found not to be in compliance with the constitution, the authorities will have to either denounce the treaty or amend the constitution (which is a particularly complex procedure, as will be seen below), as, according to the Vienna Convention on the Law of International Treaties, the provisions of internal law cannot be used as a justification for not applying the treaty.

85. We subscribe to the recommendation of the Venice Commission in that to avoid these problems, it is necessary to introduce a special procedure of verification of the constitutionality of the treaty prior to its ratification before the Constitutional Court.

3.1.2.6. Complex procedure of amending the constitution

86. As we have seen earlier, the Constitution of Serbia contains a number of problematic provisions that have to be brought into line with European standards. This, however, will be a rather complex process as the constitution provides in its Article 203 for a two-level procedure of confirming amendments. Firstly, the

"proposal to amend the constitution" must be approved by a two-thirds' majority of the total number of members of parliament. If the proposal is approved, "an act on amending the constitution" has to be drafted and approved again by a two-thirds' majority.

87. There is a third, additional, procedural safeguard: amendments to the preamble of the constitution and chapters dealing with "principles of the constitution, human and minority rights and freedoms, the system of authority, proclamation of state of war and emergency, derogation from human and minority rights in the state of emergency or war or procedure for amending the constitution" have to be endorsed by the majority of the voters participating in a referendum.

88. We understand the intention of the legislator to preserve a certain stability in the constitutional order. However, the constitution, as any other law, should evolve over time, as new legal challenges emerge (for example, European integration). The procedure for amending the constitution should, without any doubts, be rigid. But it should not make it virtually impossible to introduce any amendments to the constitutional order.

89. In practical terms, in the current political context in Serbia, it will be extremely difficult for the majority coalition to introduce amendments to the constitution required to bring its provisions into line with European standards. We hope that this obstacle will be eventually overcome.

3.2. Electoral legislation

90. As we mentioned earlier, the electoral legislation in Serbia does not fully meet European standards.

91. The law on the election of representatives of the Republic of Serbia adopted in 2000 and last amended in 2004 was substantially improved in the light of the joint recommendations by the Venice Commission and OSCE/ODIHR.[23] It now "provides important safeguards to promote democratic election practices, including measures to enhance the transparency in the organisation and conduct of the election and to protect the secrecy of vote."[24]

92. It does, however, contain a number of problematic points, especially with regard to the composition of electoral lists (while authorising the submission of lists by political parties and other political organisations and groups of citizens, it does not precisely define which organisations can be defined as "political"; while the law does not prohibit the submission of lists with just one candidate, it does not expressly provide for self-nomination by an individual independent candidate) and allocation of mandates.

93. The latter problem is particularly disturbing.

94. Firstly, the law introduces a 5% threshold for electoral lists to be entitled to the apportionment of mandates (this requirement is waived, however, for "parties of ethnic minorities", which is a welcome development). It does not, however, define exactly how the 5% threshold is calculated. According to Article 81, electoral lists that receive the support of "5% of the voters who have voted" shall be allocated mandates. It does not say whether this 5% is calculated with reference to the number of signatures on the voter list or by counting the total number of ballot papers in the ballot boxes (valid or invalid) or by some other means. The Venice Commission and the OSCE/ODIHR recommended that this article be amended to specify that the 5% should be calculated by reference to the total number of valid votes cast. Otherwise, the voters who sign the voter register but do not cast a valid vote are allowed to influence the ballot, as was the case in previous elections because the Central Election Commission calculated the 5% threshold on the basis of the number of signatures on the voter lists.

95. Secondly, as we mentioned earlier, Article 84 allows the parties to arbitrarily choose the candidates from their lists to become members of parliament after the election instead of determining the order of candidates beforehand. We share the view of the Venice Commission and of the OSCE/ODIHR in that "this limits the transparency of the system and gives political parties a disproportionately strong position vis-à-vis candidates".[25] Seen together with the constitutional provision on the imperative mandate of the members of parliament, this provision constitutes a serious violation of European standards and a threat to the good functioning of democratic institutions.

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23. "Joint recommendations on the laws on parliamentary, presidential and local elections, and electoral administration in the Republic of Serbia" (CDLAD(2006)013).
24. Doc. 11238 Addendum 2, "Observation of the parliamentary elections in the Republic of Serbia (21 January 2007)", report of the ad hoc committee to the Bureau of the Assembly, 11 October 2007.
25. CDL-AD(2006)013, p. 12.

96. We also note that virtually the same procedure of allocation of mandates applies to the allocation of seats in municipal assemblies (except that one third of the mandates are allocated to the candidates according to their sequence on the list and the allocation of the remaining mandates is left to the discretion of the political party, political organisation or group of citizens that had submitted the list). Although this procedure is slightly better than the system of allocation of mandates at the National Assembly, it undermines transparency and disproportionately increases the influence of political parties on politics at local level.

97. We strongly recommend that these problems as well as others identified in the joint opinion of the Venice Commission and OSCE/ODIHR should be eliminated at the earliest opportunity and, in any case, before the next parliamentary elections.

98. Otherwise, members of parliament and local councillors will always remain "prisoners" of the views of their parties' leaderships and parliament will not be able to play its role of major forum for political debate and key actor in the legislative process.

3.3. Functioning of parliament

99. During our visits we met the representatives of all political parties represented in the National Assembly in 2007 and in 2008 (with the exception of the SRS, whose representatives refused to meet us, despite our requests). They have provided us with extensive information about the functioning of parliament.

100. Following the adoption of the new constitution, a new law on the National Assembly has to be prepared and a new set of Rules of Procedure adopted. We were informed that the 2007 legislature was working on a new law on the National Assembly, which, however, did not meet the consensus of all political parties. Apparently, that draft law failed to correct one of the key problems we mentioned earlier, namely the imperative character of the mandate of members of parliament. We were told that the draft law defined the mandates of MPs as "free, in accordance with the constitution", which in fact confirms the practice that binds the MPs to instructions given by political parties' leaders. This practice is manifestly in conflict with European standards of parliamentary democracy.[26] The future of the country cannot depend on the will of three or four people. The parliament must be a forum of political dialogue where MPs discuss various political options and alternatives as free elected representatives of citizens.

101. Once again we have to stress that the current Constitution of Serbia contains a number of problematic provisions that constitute an obstacle to further reforms. A comprehensive revision of the constitution is necessary in order to bring ordinary legislation/draft new legislation into compliance with European standards. We hope that the newly elected National Assembly will soon resume work on the draft law on the National Assembly as well as on the new Rules of Procedure.

102. In the absence of new Rules of Procedure, the debate in parliament is governed by the Revised Rules of Procedure of the National Assembly of the Republic of Serbia, as amended on 28 June 2005.[27] The current Rules of Procedure do not make the parliamentary debate very efficient and streamlined. The role of committees in parliamentary procedure is particularly weak, which means that practically all draft laws and decisions are extensively discussed by the National Assembly in plenary. The adoption, in July 2007, of the Law on the Ratification of the European Charter of Local Self-Government was a particularly striking example: we were told that the draft law was debated in plenary during several days while in a normal parliamentary system laws on the ratification of international instruments are passed very quickly, if the preparatory work by the government is completed and the competent committee of the parliament issues a favourable opinion.

103. Deficiencies in the rules for parliamentary procedure are not the only reason for the weakness of parliamentary committees. More importantly, the parliament dramatically lacks staff that could provide MPs with expert support not only on procedural matters but also on the substance of the proposals discussed. We strongly recommend that the staff of the National Assembly be further reinforced in order to enable the parliament to become a full actor in the legislative process.

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26. We note that a Council of Europe expert appraisal of the draft Rules of Procedure of the National Assembly of Serbia made available to the Serbian Parliament contains a very comprehensive and clear overview of key European standards for parliamentary democracy. It contains express references to the Rules of Procedure of the Council of Europe's Parliamentary Assembly, Rules of Procedure of the European Parliament as well as the case law of the European Court of Human Rights and the Court of Justice of the European Union concerning MPs' exercise of their mandate. We strongly hope that this appraisal and the recommendations therein will be seriously considered by the Serbian legislator and used in the preparation of the law on the National Assembly.

27. www.parlament.sr.gov.yu/content/eng/akta/poslovnik/poslovnik_ceo.asp.

104. At the same time, we stand ready to provide support to our Serbian colleagues in the drafting of new Rules of Procedure, using the internal Assembly expertise as well as model rules of procedure developed by other parliaments of the region with the support of international expertise. We welcome the readiness of the newly appointed Speaker of the National Assembly to work with the Assembly on this issue.

3.4. Functioning of the National Human Rights Institution (Office of the Defender of Citizens' Rights)

105. We were positively impressed by our discussion with the Defender of Citizens' Rights (ombudsperson), Saša Janković. He was elected by the National Assembly on 29 June 2007 by 143 votes out of the total of 250. His appointment was welcomed by all key actors; we therefore gained the impression that there was a broad agreement about the need to establish a national human rights institution in Serbia, especially knowing that all previous attempts to appoint an ombudsperson failed since the adoption of the law in 2005.

106. The appointment of the ombudsperson should be welcomed. Mr Janković appeared to have a lot of new projects and ideas about how his office's work could be organised. We particularly welcome his intention to collect data about human rights violations, focusing as a priority on cases of discrimination and violations of the rights of national minorities. We commend the new ombudsperson's intention to make full use of his right of legislative initiative in order to work on long-awaited and badly needed legislation, for example, relating to the Code of Conduct of Public Officials.

107. These welcome projects will, however, not be implemented in practice if the office of the Ombudsperson is not given appropriate means to operate properly.

108. At the time of our meeting with the ombudsperson (September 2007), his office was not fully operational. Mr Janković was temporarily located in the building of the National Assembly. Equally, the ombudsperson did not have sufficient staff at that time to be able to fulfil his statutory functions. We were informed that the draft staffing organigram providing for some 62 staff and four deputies to second the ombudsperson was forwarded to the competent committee of the National Assembly at the beginning of September 2007 and put on the agenda of the parliament as one of the last items for the current session. We were particularly surprised to find out that the parliamentary committee wanted to ask the government's opinion on the staffing table. This appears to be totally inappropriate, as an ombudsperson is primarily a parliamentary institution.

109. However, subsequently, the Serbian delegation to the Assembly informed us that the Government of the Republic of Serbia and the National Assembly of the Republic of Serbia adopted the budget proposed by the ombudsperson (92 million dinars – approximately €1.1 million) for the year 2008. The National Assembly also adopted the Act on the Establishment of the Institution of the Ombudsperson. The office of the ombudsperson began operations on 24 December 2007 with 15 employees seconded from other public services for a fixed period of time in order to carry out the elementary operations of the institution of the ombudsperson. At the same time, a competition for the recruitment of 22 additional staff was opened and five additional employees were engaged outside the normal recruitment procedure. When the procedure is completed, 27 additional staff members will reinforce the office of the ombudsperson, who has already received a large number of both written and oral citizens' complaints and requests for advice and assistance.

110. This being said, although important, the provision of appropriate material conditions is not the only challenge the institution of the ombudsperson has to face in Serbia. In the medium term, the legislation governing the functioning of the ombudsperson could be further improved in the light of European standards.

111. In its opinion on the Constitution of Serbia, the Venice Commission noted that it was regrettable that there was no protection of the ombudsperson against unjustified pre-term dismissal by the National Assembly. While the ombudsperson should indeed present reports to the National Assembly, it seems questionable to state that the National Assembly supervises the ombudsperson (Article 99) and that the ombudsperson shall account for his/her work to the National Assembly.[28]

112. Further concerns are raised by the Law on the Defender of Citizens' Rights (Ombudsperson), which was adopted in 2005 and subsequently amended in June 2007. This law was jointly appraised by the Venice Commission and the office of the Council of Europe Commissioner for Human Rights in 2004.[29] We welcome the fact that several important recommendations of the Council of Europe experts were taken on board in the final version of the law.

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28. CDL-AD(2007)004, p. 13.
29. CDL-AD(2004)041, Opinion 318/2004 of 6 December 2004.

113. However, three aspects of the law could be improved, in our view.

114. Firstly, the ombudsperson is appointed by the National Assembly by an absolute majority vote (Article 4). This is indeed an improvement with respect to the previous version of the law, which provided for a simple majority. This procedure does not, however, follow the recommendation of the Council of Europe experts in that the ombudsperson should be appointed by a qualified majority (two-thirds or three-fifths) of referendums of parliament. We agree with the Council of Europe experts in that a broad consensus for the choice of the ombudsperson is important in order to ensure public trust in the independence of the ombudsperson. We also join the Venice Commission in that it is important to provide for guarantees against unjustified pre-term dismissal by the National Assembly. According to the law, the ombudsperson can be dismissed by an absolute majority of votes cast on the basis of a number of criteria, some of which are rather vague (for example, Article 12, paragraph 12, sub-paragraph 1, which says that an ombudsperson can be dismissed "due to incompetence or negligence in discharging duties"). A procedure involving a qualified majority vote would definitely be better.

115. Secondly, we are concerned about the fact that the criteria for the selection of the ombudsperson are somewhat restrictive. According to Article 5, a candidate must hold a "bachelor's degree in law; [prove] at least ten years of professional experience in jobs related to the purview of [the ombudsperson], [possess] high moral character and qualifications; significant experience in protection of civil rights". We agree with the Council of Europe experts in that the requirement to hold a law degree should not be a precondition for being an ombudsperson and that the requirement of professional experience is vague and could potentially be interpreted restrictively. It could discourage competent candidates from applying for lack of specific professional experience. We would have liked the first two criteria to be left out of the law; the two remaining criteria appear to be broadly in line with the requirements of most national and international mandates of human rights defenders.

116. Thirdly, we are concerned by the rigidity of the procedure of filing a complaint, which is very much court like (Article 27). Although the procedure has been improved (and, in particular, it is welcome that the staff of the ombudsperson are now obliged to provide technical assistance to the complainant in writing, if the complainant so requests), we believe that too strict requirements concerning the complaints contradict the very idea of the institution.

3.5. Functioning of the office of the Commissioner for Access to Information of Public Interest

117. The Commissioner for Access to Information of Public Interest has to face broadly the same problems as the ombudsperson. Mr Rodoljub Šabić was appointed commissioner by the National Assembly on 12 December 2004 but his office became fully operational only in late May 2005, almost six months after his appointment. At present, Mr Šabić works with just six employees, while the staffing table approved by the parliament provides for as many as 21 staff members to second the commissioner.

118. We were particularly impressed by Mr Šabić's personal commitment to his work. A practising lawyer, during the first six months, he invested his personal resources into work in order to speed up the operation of his office. Valuable assistance was provided by the OSCE in terms of training of the commissioner's staff.

119. The commissioner's office was established on the basis of the Law on Free Access to Information of Public Interest, which was adopted on 2 November 2004 and further amended on 13 June 2007. The law defines the concept of "information of public interest" as well as regulates the manner in which citizens can exercise their right to obtain information of public interest and the obligation of public authority bodies to provide such information to citizens. The office of the commissioner has been established to monitor the respect of the public authorities' obligation to provide information of public interest to citizens and consider complaints against the decisions of public bodies concerning the provision of such information. The commissioner is appointed and dismissed by the National Assembly by an absolute majority of votes. The criteria for appointing and dismissing the commissioner are very similar to those applicable to the ombudsperson. In order to be appointed, the candidate must hold a bachelor's degree in law, possess at least ten years of work experience as well as demonstrate repute and expertise in the field of protecting and promoting human rights. The commissioner can be dismissed by the National Assembly on the initiative of one third of MPs and, *inter alia*, for performing his/her "duties unprofessionally and unconscientiously".

120. While we understand that the function of the commissioner requires a certain professional competence, we doubt that the requirement of holding a law degree, possessing ten years of experience, and demonstrating human rights expertise are justified. Just as in the case of the ombudsperson, these requirements appear to be restrictive and may discourage competent candidates from running for the post.

121. Equally, we are concerned about the fact the decisions on appointment and dismissal are taken by an absolute majority. It means that the commissioner can in practice be appointed and dismissed by a majority coalition, without consultations and possible agreement with the opposition. The commissioner performs the very important function of protecting and promoting transparency in the work of public administrations and protecting citizens' right to information. The appointment and dismissal of the commissioner must meet the consensus of all political actors representing the majority and the opposition.

122. Therefore, we recommend in future modifying the law and introducing a qualified majority requirement for the appointment and dismissal of the commissioner.

123. This being said, the results of the work of the commissioner are commendable. All information about the activities of the commissioner can be easily accessed on the commissioner's website (www.poverenik.org.yu) in Serbian and English. Information request and complaint forms can also be downloaded in Serbian and English. Statistics, and monthly and yearly reports are also available.

124. We welcome in particular the availability on the website of the "Guidebook on the Law on Freedom of Access to Information of Public Interest", which is published not only in Serbian but also in English as well as in several minority languages (Albanian, Bulgarian, Hungarian, Romanian, Ruthenian and Slovak).

125. A positive example of the commissioner's work is his role in the scandal about the publication of the concession contract for the construction and maintenance of the Horgoš-Požega motorway. The contract for the construction of the motorway was signed in March 2007 with the Spanish-Austrian FCC-Alpina Consortium. Immediately after the signing of the contract, rumours circulated about some allegedly preferential financial arrangements granted to the consortium in terms of collection and utilisation of toll fees. The authorities of Vojvodina at the highest level confronted the Government of Serbia claiming that the terms of the contract violated the interests of the autonomous province and requested the annulment of the contract. In the meantime, the government refused to make the agreement public, claiming that a special confidentiality provision prevented it from declassifying the contract without express agreement of the foreign partners. The Commissioner for Access to Public Information made a public statement stressing that such confidentiality rules would be contrary to the Serbian Constitution and Law on Freedom of Access to Information of Public Interest, which guarantee the right of citizens to access public information and establish the basis for restricting the exercise of this right only "for the purpose of protecting superior interests in democratic society from severe detriment". He also noted that it was the obligation of public authorities to make sure that these constitutional and legal principles are applied by all institutions, including foreign partners operating within the Serbian legal framework. Failure to respect this fundamental obligation would be particularly harmful in the current context of harmonisation of Serbian legal order with the acquis of the European Union.[30]

126. As a result of the commissioner's intervention, the government finally decided to disclose the terms of the contract, restricting access, however, to some annexes of the agreement, which, apparently, regulate some financial aspects of the implementation of the contract and banking guarantees.

127. It is not our mandate to investigate the technical and financial aspects of granting concessions for the construction of motorways in Serbia. We will therefore refrain from making comments on this particular matter. We cannot help but stress, however, that in a democratic society governed by the rule of law, all public institutions have to abide by the rules and that the citizens must have the possibility of checking public spending in order to bring politicians to account. We therefore hope that the issue of access to full information about the construction of the motorway will be eventually resolved in full transparency and in accordance with the law.

3.6. Local democracy

128. The ratification of the European Charter of Local Self-Government (ETS No. 122) is a very welcome development. The ratification of the charter was one of the long overdue commitments that the state union had entered into and failed to implement before its dissolution. We commend the Serbian authorities for ratifying the charter, which will now create the appropriate legal basis for strengthening local democracy.

129. In the meantime, local democracy should be further strengthened.

30. www.poverenik.org.yu/saopstenja_eng.asp.

3.6.1. Institutional arrangements

130. The status of municipalities is governed by the constitution and the new Law on Local Self-Government adopted on 29 December 2007. This law, together with the Law on Territorial Organisation, the Law on Local Elections and the Law on the Capital City, introduced some changes in the system of local self-government. In particular, the Law on Territorial Organisation gave the status of city to an additional 19 municipalities; at the moment, Serbia is divided into 150 municipalities, 23 cities and the capital city (Belgrade). The National Assembly of the Republic of Serbia is competent to decide on the establishment of new municipalities and cities as well as on the changing of borders or dissolution of existing units of local self-government. Any territorial changes can be implemented only following a consultative referendum called by the municipal assembly or by 10% of the inhabitants of the municipality.

131. According to the new legislation, the municipal assembly is the highest organ of the local self-government unit; the mayors are elected from among the assembly members by secret ballot for a four-year term. The local elections are organised on the basis of a proportional system with a 5% electoral threshold (which is waived for parties and coalitions of the parties of national minorities). These changes appear to be in line with the standards of the European Charter of Local Self-Government. The institutional and financial arrangements for local government require, however, some substantial improvements.

3.6.2. Devolution of new competences

132. From 1 January 2007, the municipalities were allowed to take up new functions in the field of administration and collection of local taxes, purchase and maintenance of equipment in primary health care, transportation of preschool children, and management of centres of social work. The transfer of new functions is being phased in over time; the process should be completed by 2009.

133. While the transfer of the responsibility for organising transport for preschool children has virtually no incidence on municipal budgets, the transfer of other responsibilities requires the development of complex and effective financial mechanisms. This does not apply, however, to the collection and administration of local taxes. This function is highly lucrative and can potentially increase local revenue potential.

134. The transfer of functions in the field of primary health care and the social sector could potentially create more complications for municipalities. Apart from designing new financial mechanisms for covering the costs of these new functions, the devolution requires the transfer of equipment and staff used at the moment by central government ministries to perform the very same functions. This is tricky because the transfer process has to be closely co-ordinated with the revision of the overall public service delivery strategies and network master plans.

135. In this context, we believe that the development of a comprehensive integrated strategy of transferring service delivery functions from the central level to municipalities under strong leadership of the Ministry of Public Administration and Local Self-Government, sectoral ministries and the Ministry of Finance is required to guarantee a smooth and effective transfer process.

3.6.3. Fiscal decentralisation

136. The development of fiscal decentralisation is closely related to the devolution of new sectoral responsibilities to the municipalities. The transfer of new functions should not be operated at the expense of local authorities. Funding should follow the competence and new financial mechanisms have to be designed to cover the costs of new responsibilities to be taken over by municipalities (for example, block grants, matching grants, etc.).

137. The Law on Local Government Finance adopted in 2007 introduced a new financial equalisation scheme based on objective criteria. Simulations made at the stage of preparation of the law hint at a substantial improvement of horizontal fiscal equalisation between municipalities. But the long-term effects of the new equalisation scheme have to be monitored over time, as local government responsibilities (and spending) increase.

138. The new law made property tax one of the most important resources of municipalities. The administration of this tax is problematic, however, because of the lack of up-to-date cadastral data on property and the absence of a modern and efficient property valuation system. Some municipalities are making attempts to design their own systems with the assistance of foreign donors. A comprehensive nationwide system has yet to be developed.

139. We consider that the recently established Commission for Intergovernmental Finance has to take an active part in the monitoring of the implementation of the new financial arrangements for local government, making recommendations for possible improvements where appropriate.

3.6.4. Devolution of property

140. Since the adoption of the Law on Assets of the Republic of Serbia in 1995, which "nationalised" all local government property, the municipalities have been suffering from the systematic interference of central authorities in all property transactions at local level. This has created substantial obstacles to local economic development and discouraged potential investors from launching projects with local authorities.

141. The new constitution appears to enable municipalities to own property, but it leaves it to ordinary legislation to define the rules governing the ownership rights of local authorities. A law on the delimitation of state and local government property is therefore required. In parallel with this, legislation governing the use of property governed by the public law regime and private law regime needs to be enacted. The devolution of property is closely linked to the issue of restitution of property nationalised upon the establishment of socialist Yugoslavia.

142. We believe that the preparation of a comprehensive package of laws on property and ownership rights should be one of the top priorities of the government in order to enable the municipalities (and the central authorities) to freely dispose of their property, within the limits of the law, in order to promote local and regional development, especially in the context of pre-accession programmes of the EU.

3.6.5. Relations between central and local authorities

143. The system of administrative supervision over local authorities' action established by the Law on Local Self-Government appears to be rather complex. There is no mandatory supervision of local government acts, but the government through the ministry responsible for local self-government may initiate proceedings before the Constitutional Court if it considers that a particular act of a municipality contravenes the constitution or the law, creates an irrevocable damage or violates citizens' rights and freedoms. Pending a decision by the Constitutional Court, the challenged act is suspended by decision of the government.

144. The ministry responsible for local self-government may also challenge a local government act before the Supreme Court, if it deems that the act in question violates the statutes of the municipality.

145. The ministry is allowed to annul administrative acts of minor importance issued by municipalities following a "conciliation procedure". It is assumed that the decision of the ministry may be challenged in a court of law, although this is not clearly spelled out in the law.

146. Although formally complying with European standards, the existing legal arrangements do not seem to provide adequate protection to municipalities as the Constitutional and the Supreme Courts may not be in a position to handle all cases effectively and in a timely manner. A more efficient and streamlined procedure of legal supervision, guaranteeing the effective and timely intervention of the judiciary, is required to satisfy the principles of the European Charter of Local Self-Government.

147. Local authorities can also challenge the constitutionality or legality of a law or general act of the republic or of the Autonomous Province of Vojvodina before the Supreme Court. Individual acts of state organs may also be the subjects of appeals before the Supreme Court.

3.6.6. Provincial autonomy

148. In the time of Milosevic's rule, the wide autonomy traditionally granted to the Autonomous Province of Vojvodina was substantially decreased. The new constitution of 2006 has failed to rectify the situation and the current competences of the province are in fact no different from the competences exercised under the former constitution. This is in fact the reason why the provincial authorities advocated against adopting the constitution and called for a boycott of the referendum. It transpired from our meetings with the provincial authorities that, although they were not satisfied with the provisions of the new constitution, they accepted they needed to work within the new constitutional context proposing amendments and new legislation aiming at increasing the autonomy of the province. We welcome this positive and constructive attitude.

149. This being said, the new constitution contains some important guarantees of the "acquired rights" of the province, especially in the financial sphere. Notably, Article 184 guarantees that the budget of the Autonomous Province of Vojvodina shall amount to at least 7% of the budget of the Republic of Serbia. We are not in favour of such relatively volatile thresholds when it comes to financial resources of regional or local

authorities and would have preferred to have a different formulation, possibly based on the principle of "commensurability" of financial resources to devolved competences, in accordance with the European Charter of Local Self-Government. However, we acknowledge that this is a positive element and an important guarantee that should be further strengthened as decentralisation progresses.

150. The authorities of the Autonomous Province of Vojvodina are currently working on the new draft statute of the province which, according to the law on the implementation of the constitution, should be submitted to the National Assembly of Serbia no later than ninety days from the constitution of the new provincial assembly. We invite the authorities of the autonomous province and the Belgrade authorities to work in close co-ordination on the draft statute. Seeking the Council of Europe's advice on the drafting of this important legal document would also be advisable.

151. Besides, we were informed that there are discussions at various levels about the possibility of establishing additional provinces in Serbia, thus creating a new intermediate tier of government between Belgrade and local authorities. We welcome such discussions, as regionalisation is a good way to improve standards of democracy.

152. Regionalisation will improve the capacity of public authorities to manage devolved competences more efficiently, in line with the principle of subsidiarity. It will furthermore create an appropriate basis for managing structural reforms, thus increasing the capacity of the Serbian authorities to absorb EU pre-accession funding. We encourage all the actors concerned to continue to consider this issue. Without prejudice to the special position of Vojvodina, its current status could be used as a model to stimulate further discussions.

4. Rule of law

4.1. Reform of the judiciary

153. The reform of the judiciary is governed by the National Judicial Reform Strategy adopted in April 2006. The strategy appears to be a comprehensive and well-written document, which sets priority reform objectives for the period 2006-11. It provides for the establishment of a strategy implementation commission bringing together the representatives of the Ministry of Justice, Supreme Court, National Assembly, public prosecutor's office, Judicial Training Centre as well as professional associations of judges, prosecutors and practising lawyers.[31]

154. The strategy focuses on four main pillars of the judiciary, namely independence, transparency, accountability and efficiency. It aims at strengthening the role of the High Judicial Council in order to transform it into a powerful and independent structure to be responsible in the medium term for managing the judiciary, with the Ministry of Justice performing only those functions that cannot be delegated to the High Judicial Council.

155. While we commend these legitimate goals, we are concerned about their actual implementation in practice. The effectiveness of the implementation of reform strategies depends to a major extent on the availability of concrete and well-articulated action plans and good co-operation between the key actors within the framework of small and operational implementing bodies (for instance, task forces to supervise specific elements of the strategy, working groups to draft legislation, expert teams to propose alternative options). Some of our interlocutors complained about the slow pace of the implementation of reform and argued that the Strategy Implementation Commission has been paralysed since its establishment.

4.1.1. Legislative framework

156. During our visits we had the opportunity to extensively discuss the drafting of new legislation on the judiciary and public prosecutor's offices with the former Minister of Justice and his team. We are glad to note that the new Minister of Justice, Mrs Snežana Marković, was fully involved in the process of development of the legislation on the judiciary and public prosecutor's office, in her previous capacity of deputy minister. We hope that Mrs Marković and her team will promptly complete the legislative reform, making full use of the draft

31. We note that the Association of Judges and the Association of Prosecutors consider that the composition of the commission is not sufficiently balanced. Out of 11 members, there are just two judges and one prosecutor. It transpired from our meeting with the professional associations that the judges and prosecutors felt that they were not sufficiently included in the consultation process.

laws and expert appraisals already developed. This applies in particular to the drafting of legislation on the organisation of courts of law, status of judges, status of the High Judicial Council, organisation of the public prosecutor's office, and the status of public prosecutors and the State Prosecutorial Council.

157. We welcome the good co-operation developed between the Ministry of Justice and Council of Europe experts within the framework of a Joint Council of Europe-European Agency for Reconstruction (EAR) Initiative on the Implementation of the National Judicial Reform Strategy. Within the framework of this joint programme, the ministry and the Council of Europe developed the basic principles with respect to the reform of the judiciary and of the public prosecutor's offices as well as several draft laws that we will examine below.

158. We shall concentrate in this section of the report on the examination of the legislation relating to the reform of the judiciary; the reform of the public prosecutor's office will be addressed further below in Section 4.2.

159. The "Basic principles relating to the reform of the judiciary" is a long and comprehensive document aiming at laying the foundations for drafting legislation governing the status of the judiciary. It describes the key principles upon which the judiciary should be built, the basic features of the status of judges, the organisation of the courts of law, the status and mandate of the High Judicial Council, the principles for electing judges and court presidents, the rights and duties of judges and court presidents, the principles of measurement of performance of judges and court presidents, the disciplinary responsibility of judges, as well as the modalities of termination of their office.

160. The basic principles aim at developing further a number of constitutional guarantees of the independence of the judiciary in line with a number of international standards enshrined in various international conventions and recommendations. They served as a basis for the preparation of the draft laws on judges, the organisation of courts in Serbia and on the High Judicial Council, which were appraised by the Venice Commission.[32]

161. While welcoming a number of good provisions contained in these laws, the Venice Commission considered that the legislative package on the reform of the judiciary tends to weaken judicial independence. In certain cases, the draft laws increase the risk of politicising the judiciary by requiring that for the election of each judge, the National Assembly be presented with two candidates by the High Judicial Council and by failing to provide for an acceptable model for the continuance in office of the serving judges against whom no incompetence or behavior incompatible with the role of an independent judge is alleged. As we mentioned earlier in paragraph 73, we are not fully convinced by the solution proposed in the draft law on the High Judicial Council concerning parliament's interference in the process of appointment of the members of the council. The operation of the law will have to be carefully analysed after its adoption.

162. We invite the Serbian authorities to carefully study the opinion of the Venice Commission and redraft the laws, in accordance with the experts' recommendations. We shall closely study the legislation once adopted in the further stages of the monitoring process.

163. We welcome the adoption by parliament, on 24 November 2007, of the Law on the Constitutional Court. The adoption of this draft law is crucial, as the Constitutional Court has not been operational since autumn 2006, when the president of the court retired. Since then, the president has not been replaced and the court has not met a single time, as according to the rules of procedure it is the task of the president to call sessions. At the same session, parliament elected five judges of the court from the list of 10 candidates submitted by the president. At the same time, parliament approved a list of 10 candidates to be submitted to the president for the appointment of five judges from the presidential "quota". Subsequently, the president appointed five members of the court from his quota and the court has now become operational.[33]

164. By and large, the Law on the Constitutional Court, appraised by the Venice Commission, is a serious and comprehensive piece of legislation that addresses practically all aspects of the functioning of the Constitutional Court. It establishes a strong Constitutional Court with a balanced composition. It clarifies, at least to a certain extent, the concerns of the members of the Venice Commission about the right of the National Assembly to dismiss the judges of the Constitutional Court. This can be done only under certain

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32. See Opinion No. 464/2007 (CDL-AD(2008)007 and CDL-AD(2008)006).

33. According to Article 172 of the constitution, the Constitutional Court is composed of 15 Judges, five of whom are appointed by the president, five by the National Assembly, and five by the Supreme Court of Cassation, from a joint list submitted by the High Judicial Council and the State Prosecutorial Council. The court becomes functional if two thirds of its members are appointed (for example, 10 judges from the presidential and parliamentary quota), in order to avoid delays relating to the establishment of the High Judicial Council, State Prosecutorial Council and Supreme Court of Cassation, which cannot operate in the absence of appropriate legislation.

exceptional conditions (for instance, when the judge violates the principles of conflict of interests, permanently loses the ability to discharge the function of judge, is sentenced to a penalty of imprisonment or convicted of a criminal offence that makes him/her ineligible for the post of judge at the Constitutional Court) and the court reserves the right to decide whether these conditions are fulfilled.

165. Some of the provisions of the law could be further improved, however. This applies in particular to some procedural norms, relating to the application of procedural legislation by analogy, parties to the proceedings, modalities of abstract control of norms, consideration of cases of conflict of competences, judicial deadlines as well as the role of state institutions responsible for overseeing the exercise of human rights in introducing constitutional complaints. We hope that this law will be improved in future, in accordance with the recommendations of the Venice Commission.

4.1.2. Judicial practice and functioning of courts

166. Legislative changes are not the only challenge the judiciary has to face in Serbia. Corruption in the judiciary is seen as one of the major obstacles to the efficient administration of justice. Although according to our interlocutors the judges who have compromised their impartiality and independence represent a minority, thorough work is required to cleanse the judicial corps, which is composed of around 2 400 judges.

167. According to the statistics of criminal justice, judges tend to apply penalties *a minima*. To give but two examples: in 58% of murder cases, those convicted are sentenced to five years of imprisonment (the legal penalty being from five to fifteen years), and in 52% of aggravated murder cases, they are sentenced to ten years of imprisonment (which is below the minimum provided by the law, that is to say between thirty and forty years of imprisonment); while, according to the law, drug traffickers can be sentenced from two to twelve years of imprisonment (and from five to fifteen, in cases where they operate as part of an organised network), in practice, in 70% of cases the courts apply conditional sentences and out of 30% of the remaining cases, 48% concern sentences of one year and 43% sentences ranging between one and three years of imprisonment. This could, no doubt, be a matter of judicial practice (with a view to avoiding overcrowding of detention facilities); it could also be seen as an indication of corruption, especially for cases of aggravated murder and drug trafficking.

168. In practice, the Ministry of Justice has no tools to combat effectively corruption in the judiciary. According to the existing legislation, the Minister of Justice cannot initiate proceedings to dismiss a judge. This is the competence of the High Personnel Council of the Supreme Court composed of nine judges. So far, one judge of the Supreme Court has been convicted for taking bribes from organised criminal groups, and another judge was found guilty of corruption but still performs his functions.

169. While not denying the fact that corruption within the judiciary exists, the judicial community does not feel secure. Many judges complain about pressure being exercised on them from political and business circles. Many competent judges leave the judicial function to work for government agencies or run a private practice. According to the judges themselves, they work for years in a situation of legal uncertainty because their appointment and dismissal is decided by the National Assembly, which is composed of elected members representing the various interests of political parties. A reform of the judiciary and the reinforcement of the guarantees of the independence of judges are badly needed.

4.2. Reform of the prosecutor's office

170. Currently, the status of the public prosecutor's office is governed by the new Constitution of Serbia. Legislation on the organisation of prosecutors' offices, appointment and cessation functions of public prosecutors and deputy public prosecutors as well as the status of the State Prosecutorial Council has not been adopted yet.

171. In the meantime, the Ministry of Justice has drafted a set of basic principles on the reform of the public prosecutor's office to lay the basis for the drafting of specific legislation. Subsequently, two draft laws on public prosecution and the State Prosecutorial Council were prepared and sent to the Council of Europe for appraisal. The Council of Europe experts appraised both draft laws within the framework of the Joint Council of Europe-EAR Initiative on the Implementation of the National Judicial Reform Strategy.

172. While both draft laws appear to be well drafted, they raise a number of concerns with respect to European standards on the status of public prosecutors' offices enshrined in particular in Recommendation Rec(2000)19 of the Committee of Ministers of the Council of Europe on the role of public prosecution in the

criminal justice system and Assembly Recommendation 1604 (2003) on the role of the public prosecutor's office in a democratic society governed by the rule of law. These concerns stem from the provisions of the new constitution, which, as we mentioned earlier, should be brought into line with European standards.

173. We have noted already the explanation provided by the Serbian delegation to the Assembly concerning the function of the public prosecutors as regards the protection of constitutionality, legality, human rights and civil liberties. We hope that the "legal means" conferred on the public prosecutors do not enable them to exercise "supervision" over court decisions, by challenging final decisions of courts of law on the grounds of illegality. If it were the case, there could be a risk to legal certainty, which would violate the right to a fair trial, as protected by the Convention for the Protection of Human Rights and Fundamental Freedoms.

174. The proposed draft laws have not fully resolved the concerns expressed by the Venice Commission concerning the modalities of election of the state public prosecutor, public prosecutors and deputy public prosecutors (for an initial period of three years, however, with the possibility of confirmation of appointment for an indefinite duration by the State Prosecutorial Council). It is anticipated that, in line with the constitution, these will be elected by the National Assembly upon submission of a proposal by the government and upon consultation of the competent committee of the National Assembly. The government makes a proposal on the basis of a list of candidates prepared by the State Prosecutorial Council. If the role of the National Assembly was merely ceremonial, this would not have created any problems. However, the law appears to indicate that the National Assembly may choose between the candidates proposed by the government or refuse to elect any of the candidates proposed by the government, in which case a new "election" is organised. This procedure gives the National Assembly discretionary power to take a political decision on the appointment of the prosecutors, thus making the prosecutors "dependent" on parliament. This is especially true for the state public prosecutor and the public prosecutors who are elected for six years and may be re-elected. The reelection procedure gives the National Assembly the means to exercise pressure on prosecutors; the latter will inevitably be influenced by politics in their actions, if they want to be re-elected. Alternatively, the majority in the National Assembly could "sack" a prosecutor if his/her actions did not correspond to their political interests.

175. With respect to the election of the six members of the State Prosecutorial Council by the National Assembly, we were informed by the Serbian delegation to the Assembly that the draft law on the State Prosecutorial Council provides that the council should propose to the Government of the Republic of Serbia three candidates for each position of an elective member of the council and that the government must propose to the National Assembly two candidates of the proposed three for each position of the elective member of the council. The National Assembly must elect one person from the list of candidates and is not allowed to return the list of candidates to the government and the State Prosecutorial Council for new proposals. This procedure indeed reduces to the minimum the influence of political parties on the election process. However, it does not eliminate the risk of politicisation of the process completely, as it is difficult to ascertain on what grounds the National Assembly will choose between one or other candidate proposed by the government.

176. Just as for the modalities of election of the members of the High Judicial Council, we would recommend making the proposals submitted by the State Prosecutorial Council binding for the government and the National Assembly, limiting its role to a mere ceremonial confirmation of the appointments. This would help build a strong and autonomous public prosecution service.

4.3. Prosecution of war crimes

177. Prosecution of war crimes and co-operation with the ICTY were key commitments of the state union of Serbia and Montenegro, which were subsequently taken on by Serbia. In particular, the authorities committed themselves to "do the utmost to track down […] indicted persons who are still at large, and to hand them over to the ICTY […]; to revise the law on co-operation with the ICTY in accordance with the statute of the ICTY and the relevant United Nations Security Council resolution; […] to make documents and archives, including military documents and archives, available to the ICTY without further delay;".[34] The implementation of this commitment did not, however, progress as well as it should.

178. While the new Serbian Constitution no longer bans the extradition of Serbian nationals, such a ban has not been removed from legislation. This remains a matter of great concern for the Assembly, which recommended in its Resolution 1564 (2007) on prosecution of offences falling within the jurisdiction of the

34. Assembly Opinion No. 239 (2002) on the Federal Republic of Yugoslavia's application for membership of the Council of Europe.

International Criminal Tribunal for the former Yugoslavia (ICTY)[35] that the ban imposed on the extradition of nationals charged with committing war crimes be removed immediately. In practical terms, the rapporteur suggested that the application of international treaties on extradition could remove the obstacles created by the domestic legislation, as international law takes precedence over national law.[36] Indeed, as we mentioned earlier, international treaties signed and ratified by Serbia take precedence over national law, in as much as they comply with the constitution (which appears to be the case for extradition). In this respect, the Assembly recommended that Serbia should withdraw the restrictive declaration made upon ratification of the European Convention on Extradition (ETS No. 24) for the purpose of prohibiting extradition of its nationals.[37] We firmly support this recommendation of the Assembly.

179. On the conventions front, we welcome the fact that Serbia recently signed and ratified the European Convention on International Validity of Criminal Judgements (ETS No. 70)[38] and the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (ETS. No. 182).[39] However, it has yet to become a state party to the European Convention on the Non-Applicability of Statutory Limitations to Crimes against Humanity and War Crimes (ETS No. 82) and the European Convention on the Compensation of Victims of Violent Crimes (ETS No. 116).

180. Besides, in practical terms, until recently, co-operation with the ICTY was slow and insufficient, which led the European Commission to suspend the negotiations on a Stabilisation and Association Agreement with Serbia in May 2006. The negotiations resumed, however, in June 2007 after the formation of the new government. Since then, an improvement in co-operation with the ICTY has been detected. In particular, thanks to good co-operation between the security services of Serbia, Bosnia and Herzegovina and Montenegro, two indictees were handed over to the Hague tribunal, namely Milocevic's former head of security services, General Zdravko Tolimir, was apprehended on 30 May 2007, and General Vlastimir Đorđević, a senior Serbian police officer indicted for crimes against humanity and war crimes committed against Kosovo Albanians in 1999, was transferred to the tribunal on 17 June 2007.

181. Most importantly, in the past six months two more indictees – Stojan Župljanin and Radovan Karadžić – were apprehended and extradited to the tribunal. We strongly welcome these arrests as a clear sign of the improvement of Serbia's co-operation with the ICTY. The fact that two of the four most wanted indictees were arrested proves that the remaining fugitives are within reach. We believe that the Serbian authorities are strongly committed to successfully completing co-operation with the tribunal by apprehending and extraditing General Ratko Mladić, the former Commander of the Main Staff of the Bosnian Serb Army (VRS), and Goran Hadžić, the former Premier of the "Republic of Srpska Krajina", and expect the authorities to arrest these war criminals promptly.

4.4. The fight against corruption and money laundering

4.4.1. Legislative and institutional framework

182. The fight against corruption has been cited as a priority of Serbian governments over the past six years. Several important legislative and practical measures were taken to fight against corruption. In terms of legislation, the fight against corruption is regulated by the Law on the Prevention of Conflict of Interest adopted in 2004, the Law on the Financing of Political Parties adopted in 2003, the Law on Public Procurement adopted in 2002 and subsequently amended in 2004, the Law on Civil Servants adopted in 2005, the Law on Government Auditing Institutions adopted in 2005, the Law on the Defender of Citizens' Rights adopted in 2005, the Law on Free Access to Information of Public Interest adopted in 2004, as well as the Criminal Code and the Code of Criminal Procedure.[40] The implementation of this comprehensive legislative package is co-ordinated within the framework of the National Anti-Corruption Strategy adopted in 2005.

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35. Text adopted by the Assembly on 28 June 2007 (25th Sitting).
36. Assembly Doc. 11281, "Prosecution of offences falling within the jurisdiction of the International Criminal Tribunal for the former Yugoslavia (ICTY)", report by Mr Tony Lloyd (UK, SOC) for the Committee on Legal Affairs and Human Rights, p. 20.
37. Recommendation 1803 (2007) on prosecution of offences falling within the jurisdiction of the International Criminal Tribunal for the former Yugoslavia (ICTY), adopted by the Assembly on 28 June 2007 (25th Sitting), paragraph 1.2.
38. Signed and ratified on 26 April 2007 and effective from 27 July 2007.
39. Signed and ratified on 7 April 2007 and effective from 1 August 2007.
40. Begović, B. and Mijatović, B. (eds.), *Corruption in Serbia five years later*, Centre for Liberal-Democratic Studies, 2007.

183. An action plan on the implementation of the strategy was adopted in 2006. The implementation of the anti-corruption measures progresses smoothly and several new cases involving corruption by civil servants, police and customs officials were opened during 2006. However, the action plan on the fight against corruption lacks clear deadlines, concrete actions and the necessary resources for its implementation.

184. According to Transparency International, Serbia's corruption perception index (CPI) for 2007 is 3.4, which places the country in 79th position,[41] above other countries of South-Eastern Europe with the exception of Croatia, which has a CPI of 4.1. However, it is generally acknowledged that "corruption is still widespread and constitutes a serious problem in Serbia".[42] Although the legislation establishes a sound basis for developing an anti-corruption policy, it needs to be further improved in several respects. The Law on the Financing of Political Parties contains a number of sound principles but measures for supervision and control are weak: for example, political parties' reports on the financing of the election campaign in January 2007 were mostly incomplete and unsatisfactory.[43] The Law on the Prevention of Conflict of Interest does not cover all officials who are involved in the decision-making process; there are also problems with its enforcement, as the sanctions foreseen by the law are rather weak (that is, confidential warning and public announcement of the violation of the law by an official with a recommendation to resign). The Law on Public Procurement introduces complex procurement procedures. However, the role of the public procurement agency is not strong enough. The auditors to the Supreme Audit Institution were appointed only in September 2007. The material and procedural criminal legislation could be further improved, in line with the recommendations of the Council of Europe experts.

185. As regards Council conventions, Serbia is a State Party to the Council of Europe Criminal Law Convention on Corruption (ETS No. 173), the Council of Europe Civil Law Convention on Corruption (ETS No. 174), the Additional Protocol to the Criminal Law Convention on Corruption (ETS No. 191), the Council of Europe Convention on Laundering, Search, Seizure, and Confiscation of the Proceeds from Crime (ETS No. 141), and the European Convention on Mutual Assistance in Criminal Matters (ETS No. 30) and its Additional Protocol (ETS No. 99). However, it has yet to ratify the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198), and the Council of Europe Convention on Cybercrime (ETS No. 185).

186. At institutional level, the fight against corruption is concentrated in the relevant council. It was established by government decision in 2001 and comprises 13 members. It is an advisory body whose mandate is to provide support to the government in the implementation of anti-corruption policies. It examines activities related to the fight against corruption, proposes measures that need to be taken for more efficient policies against corruption and follows their implementation. The council may also make proposals for new legislation, programmes and other activities to fight against corruption.[44]

187. The council has taken a number of sound initiatives to fight against corruption in the past couple of years. It has focused primarily on so-called "political corruption". The cases of "administrative corruption", that is, corruption of civil servants, such as corruption in the health sector, judiciary, tax administration and customs, appear to have been neglected in the work of the council.[45]

188. In order to achieve greater efficiency in investigating and prosecuting criminal acts with elements of corruption and money laundering, the Department for the Fight Against Corruption was established as part of the 2008 plan and programme of the prosecutor's office of the Republic of Serbia. The task of the department is to co-ordinate its activities with the district prosecutors' offices, as well as with other state organs (the Ministry of Internal Affairs, tax police and other inspection services) and, if needed, to take part in first instance criminal proceedings. The experience of a number of European states is being used in the establishment of this department. The OSCE mission in Serbia also announced its readiness to provide expert and material support. This being said, it appears that there is a need to create a more operational structure to strengthen the enforcement of measures to fight against corruption, as well as ensure better co-ordination between different anti-corruption policies and mechanisms.

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41. This is an improvement, however, as Serbia's CPI for 2006 was 3.0, putting it in 90th place among the countries monitored (www.transparency.org/policy_research/surveys_indices/cpi/2007).
42. European Commission's "Serbia 2007 progress report", SEC(2007)1435, 6 November 2007.
43. Begović, B. and Mijatović, B., op. cit.
44. GRECO's "Evaluation report on the Republic of Serbia", adopted by GRECO at its 29th plenary meeting, (Strasbourg, 19-23 June 2006), Greco Eval I-II Rep(2005)1E revised.
45. Begović, B. and Mijatović, B., op. cit.

4.4.2. GRECO's recommendations

189. The Council of Europe Group of States against Corruption (commonly known as GRECO) adopted an evaluation report on the Republic of Serbia in June 2006. The group formulated a number of concrete recommendations and invited the Serbian authorities to report on implementation of these recommendations by the end of 2007.

190. In total, 25 recommendations were addressed to the Serbian authorities. Summing up, these could be divided into the following categories and include, *inter alia*:[46]

– institutional aspects (improving the transparency of appointment of judges and prosecutors and eliminating political influence in the appointment process in order to build confidence in the judicial and prosecutorial function; make the tenure of deputy public prosecutors permanent; strengthen the terms of office of the special prosecutor for organised crime; improve co-operation between the police and the prosecutor's office; strengthen in-service training for police officers and prosecutors dealing with corruption and organised crime; develop efficient mechanisms for monitoring implementation of the action plan of the Anti-Corruption Strategy, etc.);

– investigation (establish special investigation techniques and provide training; develop a fully-fledged witness protection programme; temporary freezing of suspicious transactions; seizure and confiscation of illicit property transferred to third parties, etc.);

– money laundering (developing guidelines containing money laundering indicators, increase awareness of suspicious transaction reporting and monitor progress, etc.);

– prevention of corruption (anti-corruption training for civil servants; establishment of the ombudsperson's office at national level; extension of the application of the Law on Conflict of Interests to all public officials who perform public administration functions; adoption of codes of conduct for public officials, etc.);

– strengthening of the implementation of the Law on Public Procurement, by provision of appropriate training to civil servants;

– simplification of procedures and regulations governing the granting of licences and permits;

– strengthening financial control by establishing a public auditing institution.

191. We shall carefully study the conclusions of the GRECO on the implementation of these recommendations and take them into account in the monitoring process.

4.4.3. Forthcoming developments

192. The previous Government of Serbia prepared a law on the Anti-Corruption Agency. According to the draft, the future agency would replace the currently existing bodies, namely the Council for the Fight against Corruption and the Republican Committee for the Prevention of Conflict of Interest. It would also exercise control over the financing of political parties and implement the Anti-Corruption Strategy according to the agreed action plan. The agency would also have "normative" functions and be responsible for preparing opinions on laws and by-laws, thus ensuring the detection of "risks of corruption" in draft legislation.

193. We welcome the development of this law and encourage the Serbian authorities to speedily adopt it to prepare the ground for reforming the current institutions responsible for fighting against corruption and streamlining the implementation of anti-corruption policies.

4.4.4. Money laundering

194. Anti-money laundering policies in Serbia and Montenegro were assessed by the Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures (commonly known as MONEYVAL) in late 2003. A detailed assessment report was prepared and approved at the plenary meeting of the committee on 21 January 2005. A summary of the report was subsequently prepared and published on the MONEYVAL website.[47]

46. The present list is not exhaustive. A complete list of the recommendations is contained in GRECO's "Evaluation report on the Republic of Serbia", op. cit.
47. MONEYVAL(2005)2 Summ (see www.coe.int/moneyval).

195. Since the adoption of the first report on Serbia and Montenegro, the situation in Serbia has evolved. A new Law on Anti-Money Laundering was adopted in 2005. The new law aims at improving the efficiency of detecting and preventing money laundering. In practical terms, the new law introduced a new definition of money laundering, an obligation of identification of clients and beneficial owners when opening bank accounts as well as the obligation of reporting cash transactions amounting to and exceeding €15 000 to the Financial Intelligence Unit (Anti-Money Laundering Agency). There is also a general obligation to report suspicious financial transactions to the FIU, irrespective of the amount. Customs authorities are now obliged to report on cross-border transfers of cash, cheques and securities above the amounts specified in regulations governing cross-border financial transfers in local and foreign currencies. The list of obligors has been extended to include investment funds, dealers in high-value goods, travel agencies, casinos, etc. A Financial Intelligence Unit was established within the structure of the Ministry of Finance with an independent budget.

196. Some changes with respect to the criminalisation of money laundering were also introduced into the Criminal Code and the Code of Criminal Procedure. The legislation on banks, insurance, games of chance, securities and financial instruments, investment funds, foreign exchange operations, training of judges, public prosecutors and deputy public prosecutors was amended, to bring the regulations into line with the new law on anti-money laundering.

197. An important change was made to the Code of Criminal Procedure, which is expected to strengthen the role of public prosecutors in the investigation. According to the new code (adopted in June 2006), the investigation will be conducted by the public prosecutor. This novelty is expected to make the proceedings more expedient. The new Code of Criminal Procedure will, however, be effective only from 31 December 2008 (and not from 1 June 2007 as was foreseen in the original version of the law).

198. Measures to combat terrorist financing were also strengthened in criminal legislation.

199. Although the new Law on Anti-Money Laundering was welcomed by all actors concerned, some of its features were criticised by domestic and international organisations. We were informed that the Anti-Corruption Agency made a rather critical assessment of the law, stressing in particular that the concept of money laundering could have been better defined and challenging the independence of the Anti-Money Laundering Agency, which functions as a body of the Ministry of Finance. Equally, the role of the Ministry of Finance in regulating anti-money laundering methodology and procedures as well as the right of the ministry to grant reporting exceptions to certain obligors was criticised. The sanctions foreseen by the law were considered weak and the number of transactions to be controlled by the agency excessively large, which may in practice result in the inability of the agency to react effectively to cases of money laundering.[48]

200. The OSCE and the United Nations Interregional Crime and Justice Research Institute (UNICRI) made a somewhat more balanced assessment of the law, stressing, however, among the drawbacks of the law and current legal regime of prevention of money laundering:

a. the lack of clarity in the list of obligors;

b. an unclear situation in relation to money laundering in privatisation;

c. problems related to the role of the Financial Intelligence Unit, particularly its lack of independence, insufficient clarity in relations with other institutions, and problematic quality of information collected; and

d. the lack of harmonisation of penalties prescribed for money laundering and similar offences.[49]

201. This being said, we were informed that MONEYVAL would soon make an assessment of the compliance of the Serbian legislative framework and practice with European standards on anti-money laundering measures and measures to counter the financing of terrorism. We invite the Serbian authorities to co-operate fully with MONEYVAL in the organisation of the assessment as well as in the implementation of recommendations. From our side, we shall carefully study the conclusions of MONEYVAL as soon as they are available and take them into account in the monitoring process.

48. Begović, B. and Mijatović, B., op. cit.

49. "Money laundering and the legislation of the Republic of Serbia", May 2007, report by the UNICRI and the OSCE (www.unicri.it/wwd/money_laundering/docs/MoneyLaunderingSerbia_LegalReport.pdf).

5. Human rights

5.1. Reform of the army, security services, police and penitentiary institutions

5.1.1. Democratic oversight

202. We welcome the comprehensive set of provisions concerning democratic oversight over the activities of the police, security services and army of Serbia established by the constitution and the sectoral legislation. We look forward to receiving further information about the actual functioning of these procedures within the framework of the monitoring process.

203. The modalities of the supervision are defined in the Law on the Basic Organisation of the Security Services of the Republic of Serbia adopted on 11 December 2007. According to the law, the National Assembly, *inter alia*, checks the constitutionality and legality of the operations of the security services; the harmonisation of the operations of the security services with the strategy of national security, the strategy on defence and the security and intelligence policy of the Republic of Serbia; the legality of the implementation of particular procedures and measures for clandestine gathering of intelligence data, etc. The National Assembly adopts reports on the operations of the security services on the basis of reports presented by the head of the security services, at least once a year. The National Assembly may also consider proposals, petitions and requests of citizens in connection with the operations of the security services and takes appropriate measures for their solution. The head of the security services is obliged, upon an request by the competent committee of the National Assembly, to make it possible for the members of the committee to access the premises of the service, to allow consultation of documentation, to produce data and information on the operation of the service, and to answer their questions in connection with the operation of the service.

204. The democratic oversight of the army of Serbia is regulated by the new constitution and the Law on the Army of Serbia adopted on 11 December 2007. The democratic civilian control over the army of Serbia comprises, in particular, the control over the use and development of the army, internal and external supervision over military expenses, monitoring of, and the informing of the public about, the state of preparation of the army, provision of free access to information of public interest and definition of responsibilities for the performance of military obligations in accordance with the law. The democratic civilian control over the army is performed by the National Assembly, the office of the ombudsperson and other state organs within the framework of their competences as well as directly by the citizens.

205. Equally, the activities of the police are also subject to democratic control. According to the new Law on Police adopted in 2005, the Directorate of Police was granted administrative autonomy within the structure of the Ministry of the Interior. The director of police is a civil servant appointed on the basis of a competitive examination, thus excluding any political influence in the appointment process. The director of police submits reports on the activities of the police to the National Assembly's Committee on Defence and Security every six months. This is a welcome practice. We were told that the committee organised public discussions during consideration of the reports.

5.1.2. Work of the police

206. In organisational terms, the police is divided into 15 branches. It is organised in 26 districts, including the capital, Belgrade. The salaries of police officers have been increased in the past years. We were informed that on average the salary of a policeman in Belgrade amounted to 30 000 Serbian dinars (RSD) (approximately €385), which was higher than the national average (which is RSD 26-28 000). However, the terms of employment of police officers are still poor and the risks of corruption are high.

207. By and large, the director of police was satisfied with the work of the police. Good co-operation was maintained between the police and the prosecutorial services. One of the top priorities in the work of the police was the fight against corruption and organised crime. In this field, the police closely co-operates with the Special Prosecutor for Fighting Organised Crime and the Belgrade district court which is competent to try corruption – and organised – crime-related cases. The Organised Crime Service and the Criminal Police Directorate both deal with investigating corruption cases on a daily basis. Special teams of trained police officers are deployed in the regional branches of the police in order to investigate cases of corruption and organised crime using special investigation techniques (including work with "undercover" agents). Among the most recent and serious cases, the director of police referred to the corruption case at the University of Kragujevac, whereby 18 university professors are currently under investigation for bribe taking.

208. According to Mr Milorad Veljović, Serbian police actively participate in various training events on human rights organised by the Council of Europe and the OSCE. Direct contacts were established with the police and law enforcement agencies of the countries of the region and co-operation develops on a daily basis.

209. The strengthening of internal control mechanisms is an important task of the Directorate of Police. The Internal Control Section of the police supervises the legality of police operations, particularly regarding the respect and protection of human rights. As an organ of internal control, the section ensures that the discretionary rights of the police officers are strictly controlled and limited, as well as based upon the law, the code of behaviour and international conventions ratified by Serbia. The Internal Control Section is headed by an Assistant Minister of Internal Affairs appointed by the Government of the Republic of Serbia on the basis of a public competition. The head of the section is responsible to the Minister of the Interior and submits to him regular periodical reports on the operations of the section. In the course of 2007, the Internal Control Section initiated 122 criminal indictments and provided additional evidence to 12 criminal indictments against 159 police officers and 80 citizens. The most common criminal indictments were initiated for abuse of an official position, counterfeiting of official documents, and accepting and giving bribes. It is worth noting that in the course of 2007, the Internal Control Section was considerably engaged in the detection of serious and more complex criminal acts. In addition to its independent operations in the detection of such criminal acts, the section took part in the activities the district police administrations were carrying out. The Internal Control Section pays particular attention to the education of its police officers through various forms of both domestic and foreign professional training. Most of the training is focused on the fight against corruption.

5.1.3. Prevention of torture and inhuman or degrading treatment or punishment

210. The issue of violence by police officers, as well as the conditions of detention in penitentiary institutions, are being addressed separately by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). A delegation of the committee travelled to Serbia on 19 November 2007 for a two-week second periodic visit. The CPT delegation reviewed the action taken by the Serbian authorities to improve the treatment of persons detained by the police and the practical operation of the safeguards in place. The treatment and regime of prisoners held in the closed, high-security and remand sections of three prisons (in Belgrade, Požarevac and Sremska Mitrovica) was also examined. The CPT delegation also carried out a follow-up visit to Serbia's only prison hospital.

211. Furthermore, the CPT team examined the situation of psychiatric patients at the specialised neuro-psychiatric hospital in Kovin. In addition, the delegation visited – for the first time in Serbia – an establishment for people with learning disabilities, the Special Institution for Children and Juveniles in Stamnica.

212. We recommend that the Serbian authorities publish the CPT report as soon as it is available in order to facilitate implementation of the CPT's recommendations, in co-operation with the Council of Europe.

5.1.4. Trafficking in human beings

213. Serbia has yet to ratify the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197). We strongly recommend that Serbia ratify this convention at the earliest opportunity.

214. On the domestic legislation front, trafficking in human beings is a criminal offence, according to the Criminal Code. A National Strategy for Combating Trafficking in Human Beings was adopted in December 2006 and its implementation is progressing smoothly. According to the information provided by the Serbian authorities to the Council of Europe Secretariat delegation that prepared the second report on compliance with obligations and commitments and implementation of the post-accession co-operation programme, in the first half of 2007, numerous arrests in relation to human trafficking were made and several cases are under investigation.[50]

215. We would encourage the Serbian authorities to pursue their efforts aiming at combating trafficking in human beings and organs.

50. "Compliance with obligations and commitments and implementation of the post-accession co-operation programme – Second report: update on developments (November 2006-June 2007)", SG/Inf(2007)05 final.

5.2. Case law of the European Court of Human Rights

216. In 2006-07 the European Court of Human Rights adopted 13 judgments against Serbia. The most recurrent violation of the Convention identified by the Court relates to the excessive length of proceedings and ineffectiveness of domestic remedies in violation of Articles 6, paragraph 1, and 13 of the Convention (right to a fair trial and right to an effective remedy before a national authority). There were also two cases of violation of Article 10 of the Convention concerning freedom of expression. Another two cases dealt with the violation of Article 1 of Protocol No. 1 to the Convention (right to property).

217. We hope that the Serbian authorities will eliminate deficiencies in the domestic legal order, in particular with regard to the judicial proceedings and effective remedies against violations of human rights. This specific problem has to be dealt with in the context of the reform of the judiciary.

5.3. Ratification of the revised European Social Charter

218. Serbia signed the revised European Social Charter on 22 March 2005. However, ratification has yet to be completed. This is one of the outstanding commitments of Serbia.

219. We were informed that the Council of Europe held, on 20 November 2007, a seminar on the European Social Charter, which was organised in co-operation with the Ministry of Labour and Social Affairs. We were informed that the discussions between the experts participating in the seminar showed that there were no obstacles in the Serbian domestic legal order for the ratification of the Charter.

220. In the margins of the seminar, the Minister for Labour and Social Affairs, Rasim Ljajić, informed the Council of Europe delegation that preparation of the ratification was ongoing. In the course of the preparation, advice from the Council of Europe will be sought and consultations with social partners will be conducted.

221. We welcome this positive approach and look forward to congratulating Serbia on the ratification of the Charter in the nearest future.

5.4. Freedom of expression and pluralism of the media

5.4.1. General context

222. The provisions of the new Constitution of Serbia governing freedom of expression and freedom of the media are in line with European standards. Article 46 guarantees the freedom of thought and expression and specifies that it may be restricted by law only to protect the "rights and reputation of others, uphold the authority and objectivity of the courts and protect public health, morals of a democratic society and national security of the Republic of Serbia". Equally, Article 50 guarantees the freedom of everyone "to establish newspapers and other forms of public information without prior permission and in a manner laid down by law". The freedom to establish electronic media is also guaranteed. The freedom of mass media may be restricted according to paragraph 3 of Article 50 only by a court decision and "when it is necessary in a democratic society to prevent incitement to violent overthrow of the system established by the constitution or to prevent a violation of the territorial integrity of the Republic of Serbia, to prevent propagation of war or instigation to direct violence, or to prevent advocacy of racial, ethnic, or religious hatred enticing discrimination, hostility or violence".

223. However, despite this protective constitutional framework, journalists do not feel secure in Serbia. The Independent Journalists' Association of Serbia (NUNS) expressed concerns about the increase in violence against journalists, especially those engaged in investigatory work.[51] The most notorious recent case of a murder attempt against the *Vreme* journalist Dejan Anastasijević is a good example of this overall climate of insecurity.[52] Mr Anastasijević reported extensively about war crimes, organised crime and the activities of the Serbian security services. He testified before the ICTY in the Milosevic trial. A hand grenade exploded on 13 April 2007 below the windows of his flat located on the ground floor. The assault on Mr Anastasijević was strongly condemned by all officials and in particular by President Tadić and Prime Minister Koštunica. The case is still being investigated, however, and the perpetrators of the assault have not been found.

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51. *Dosije o medijima*, Issue No. 22, Nezavisno Udruženje Novinara Srbije, April-July 2007.
52. For more information, please see *Political violence in Serbia*, a publication by the Youth Initiative for Human Rights with the support of the Swedish Helsinki Committee for Human Rights, Belgrade, 2007.

224. In 2007, NUNS inquired 17 times with the authorities about the progress of the investigation into the deaths of three journalists (Radislava "Rada" Vujasinović, Slavko Ćuruvija and Milan Pantić) without receiving any clear reply. Apparently, most letters were not replied to. When a reply was given, it was considered "unsatisfactory" and came only after the intervention of the Commissioner on Access to Information of Public Interest, Rodoljub Šabić.[53]

225. We strongly condemn the cases of violence against journalists. Assaults on journalists cannot be tolerated in a democratic society. We call upon the Serbian authorities to investigate the cases of violence against journalists at the earliest opportunity and invite them to provide further information in respect of the progress of the investigations in the above-mentioned cases of murder within the framework of the monitoring process.

5.4.2. Media concentration

226. Although the Serbian media context is relatively diverse in terms of number of printed and electronic mass media, there are serious concerns about the lack of pluralism and the monopolisation of mass media by political groups and businessmen. According to the Independent Journalists' Association of Serbia, "today's mainstream news media in Serbia are controlled by Milosevic's people".[54] This was shown by a survey recently conducted by NUNS. Although the most prominent media are owned by "local businessmen and tycoons", the state influence in media still remains very high. According to the survey, there are only two completely foreign-owned media outlets in Serbia (Blic and 24 Sata, owned by Ringier, Switzerland, and TV Fox, owned by American News Corporation).

227. We would strongly encourage the Serbian authorities to take appropriate measures to increase the pluralism of the media, in particular, by encouraging the privatisation of existing media outlets and establishment of new ones.

5.4.3. Electronic media: work of the Republican Broadcasting Agency (RBA)

228. The Republican Broadcasting Agency was established in 2002 as an independent regulatory authority of the broadcasting sector. It was created on the basis of the Broadcasting Law adopted in 2002 and subsequently amended in 2005. According to the law, the RBA is responsible for:

– controlling and ensuring the consistent application of the provisions of the Broadcasting Law;

– issuing broadcasting licences and prescribing the licence form;

– supervising the work of broadcasters in the Republic of Serbia;

– imposing adequate sanctions against broadcasters in keeping with this law;

– prescribing rules binding on broadcasters that ensure the implementation of broadcasting policy in the Republic of Serbia.

229. The Council of the Republican Broadcasting Agency was not elected upon establishment of the agency in 2003 because of a controversy over the disputed appointments of three out of its nine members. Subsequently, the law was amended and a new council was elected at the beginning of 2005 by an almost unanimous decision of the parliament – with over 200 deputies voting. Many domestic and international observers argue that the agreement on the election of the members of the council was a deal amongst the major political parties.

230. The activities of the RBA in the field of licensing appear to be controversial. Domestic and foreign experts, professional associations, broadcasters and international organisations expressed serious concerns about the RBA Council's decisions on the awarding of national broadcasting licences. As a result of a public competition for national and Belgrade regional frequencies, the RBA awarded licences to five broadcasters, namely TV Avala, Television B92, TV Pink, TV Fox, TV Happy and TV Košava, for the joint use of one frequency.

231. In total, 13 broadcasters participated in the competition. The frequencies were awarded in the proportion of 3:2 in favour of fully domestically owned broadcasters. We were informed that one of the reasons for such a distribution of frequencies was the protection of national broadcasters, in line with the Strategy of Development of Radio Broadcasting in Serbia until 2013.

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53. *Dosije o medijima*, op. cit.
54. Padejski, Đ., "Miloševićev medijski amanet", in *Dosije o medijima*, op. cit.

232. Some of the broadcasters that lost the competition appealed against the decision of the RBA. The Supreme Court of Serbia identified some procedural irregularities in the decisions taken, which, in the view of the court, could have influenced the decision-making process. We were informed that the RBA Council corrected the procedural irregularities, while confirming its decisions on the merits. Apparently, the only appeal that is still pending before the Supreme Court for consideration on the merits is the one submitted by RTL. In our meeting with the RBA Council we were not provided with clear information about the legal situation with respect to the procedural irregularities and subsequent appeals.

233. We had the impression from our meetings with the media representatives and NGOs that the procedure for allocating frequencies was far from fully transparent. While we commend the legitimate aspiration of the RBA Council to put some order into the allocation of frequencies and support domestic broadcasters, we consider that this work should be done in full transparency and in compliance with the legislation. We appeal to the Serbian authorities to work further in this respect.

234. Finally, we learned that in September 2007 the RBA Council issued a binding instruction to RTS (Radio Televizija Srbije – national public broadcasting company) to transmit live parliamentary sessions on its second channel from 10 a.m. to 6 p.m. during the week. While the live transmission of parliamentary sessions is not a problem in principle, the fact that the broadcasting regulatory authority is obliging a public service broadcaster to perform certain activities may, in our view, compromise the editorial independence and institutional autonomy of a broadcaster, as required in accordance with Committee of Ministers' Recommendation No. R (96) 10 on the guarantee of the independence of public service broadcasting.

235. There were indications in the press that the RBA Council decided on 20 November 2008 to change the binding instruction on direct transmissions of parliamentary sessions on RTS into a recommendation. Apparently, however, the RBA Council "still believe[s] that the transmission of sessions should be continued, because it had been a practice for the past sixteen years".

236. Such instructions would represent, in our view, an undue interference of a regulatory authority in the work of the public service broadcasters. We recommend that the RBA should avoid issuing such instructions and leave it to the public service broadcaster to decide the daily programme of broadcasting.

5.5. Freedom of association

237. The Ministry of Public Administration and Local Self-Government of Serbia, in co-operation with the Task Force of Non-Governmental Organisations, drafted a new Law on Associations. This draft law was approved by the government and tabled in parliament on 15 October 2007. It is intended to replace the currently existing laws on social organisations and associations of citizens and on citizens joining associations, as well as on social and political organisations. Several versions of the draft law were prepared over the past couple of years and submitted to the Council of Europe for appraisal.

238. The final version of the draft law was appraised by the Council of Europe experts in October 2006.[55] According to the experts, the authors of the law have taken into consideration the criticism of the Council of Europe experts and redrafted practically all problematic provisions of the law. It now complies with European standards on the freedom of association.

239. The draft law was extensively discussed with key actors in seminars and round tables, some of which were organised in co-operation with the Council of Europe. It was considered by the Committee on European Integration of the National Assembly of Serbia on 30 October 2007. We hope that parliament will soon be able to adopt the law in order to create a new legal framework for associations in Serbia, complying with European standards.

5.6. Situation of refugees, internally displaced persons and asylum procedures

240. According to information provided by Mr Dragiša Dabetić, Serbia's Commissioner for Refugees, and the Office of the United Nations High Commissioner for Refugees (UNHCR) in Serbia, as of July 2007 there are 97 701 refugees and 206 607 internally displaced persons (IDPs) living in Serbia. Most of the refugees and IDPs live in private accommodation, while a small percentage remain in 79 collective centres and 89 specialised institutions.

55. PCRED/DGI/EXP(2006)44.

241. In the past couple of years, the Serbian authorities have made considerable efforts to improve the situation of refugees and IDPs, by removing several obstacles to durable solutions. As a result, the number of refugees in Serbia has been substantially reduced.[56] Additional efforts should be deployed, however, to create an environment conducive to sustainable return, as well as to enable the full integration of those refugees choosing to remain. Eight years after the end of the armed conflict in Kosovo, the IDPs in Serbia remain stuck between uncertain return prospects and the lack of local integration perspectives. They are also faced with many obstacles in the full enjoyment of their basic rights as citizens. The total number of returnees from Serbia to Kosovo since the end of the conflict remains low (since 2002, approximately 7 500 returns[57]).

5.6.1. Situation of refugees

242. The voluntary repatriation of refugees to Croatia still remains problematic. We were informed that the UNHCR was assisting the returnees, in particular, by providing legal advice on property restitution and naturalisation issues. While a considerable number of refugees have returned to Croatia in an organised manner or spontaneously, unresolved property-related issues still hamper the return process and dissuade the refugees from moving to Croatia.

243. The implementation of the Sarajevo Declaration (the so-called “3 x 3” initiative, which became a “3 x 4” process after the independence of Montenegro) did not progress as well as it could. The lack of consensus on the remaining “open issues” – in particular restitution/compensation of former tenancy rights for Croatian refugees has delayed the process and the completion of the “road maps”.

244. This being said, we have gained the impression from our discussions with the Serbian Commissioner for Refugees and the officials of UNHCR that some progress was made in achieving durable solutions for refugees in Serbia. Their number has been decreasing and, as we mentioned earlier, at the moment, there remain 97 701 refugees in Serbia. However, despite significant efforts by the government, local integration of the most vulnerable refugees continues to be a difficult process (particularly in the housing sector), mainly due to the lack of proper institutional capacity, inefficient implementing mechanisms for existing national development strategies (for instance, the Poverty Reduction Strategy) and shortage of funding.

5.6.2. Situation of internally displaced persons from Kosovo

245. The overall security situation in Kosovo, lack of freedom of movement and inadequate conditions for sustainable reintegration (limited access to employment and public services, resolution of housing, land and property issues) continued to affect the prospect for the sustainable and safe return of IDPs. Minimal or no progress in returns was observed in 2005 and a decline was observed in 2006.

246. In this situation, the efforts deployed by the UNHCR to facilitate individual returns for those wishing to do so, as well as to provide assistance and protection for the most vulnerable IDPs remaining in Serbia, are commendable. In particular, the UNHCR focused on provision of reliable information to the IDPs assisting them to make a free and informed choice on a durable solution, providing legal aid through implementing partners and promoting active IDP participation in the institutional processes. Discussions between Belgrade and Pristina are ongoing since the signing in June 2006 of the Protocol on Voluntary and Sustainable Return and within the Direct Dialogue Working Group chaired by the UNHCR, but there has been no significant progress on returns. However, a technical sub-group tasked with facilitating the return process and addressing obstacles in it was formed. The group met three times, and some progress has been noted, including the joint support of the Belgrade and Pristina delegations to particular projects. However, much remains to be done for the technical sub-group to be truly effective.

247. The human rights situation of IDPs in Serbia continues to be a matter of concern, although the government, assisted by the UNHCR, has invested a lot of effort in improving the situation. The Roma IDPs represent a particularly marginalised, disadvantaged and vulnerable segment of the IDP population, facing serious obstacles to access to legal protection, civil registration, documentation and basic social and economic rights.

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56. The total number of refugees in the Federal Republic of Yugoslavia in 1996 amounted to 548 000. Source: UNHCR statistical data.

57. The number of returnees from Serbia and Montenegro between 2002 and April 2007 was approximately 7 500. Source: UNHCR statistical data.

248. The lack of personal documents represents a particularly serious problem for the IDPs. However, this problem is in the process of being solved. According to the Serbian authorities, the survey, carried out towards the end of 2007 in co-operation with the UNHCR and UNDP, showed that the number of IDPs without personal identification cards is considerably lower than in 2000. At present, 10.6% of IDPs have problems in procuring personal documents.

5.6.3. Citizenship and statelessness

249. While the Republic of Serbia is a party to the 1954 Convention relating to the Status of Stateless Persons, it has yet to sign the 1961 Convention on the Reduction of Statelessness, and the European Convention on Nationality (ETS No. 166). The new Citizenship Law generally complies with international legal standards and has favourable provisions granting Serbian citizenship to a large number of refugees from Bosnia and Herzegovina and Croatia.[58]

250. It is worth noting that amendments to the Citizenship Law were adopted by the Serbian Parliament in September 2007. According to these amendments, Serbian citizenship can be granted to "all persons over 18 years of age, able to work and signing a statement that they consider Serbia their country".[59] A special procedure for granting Serbian citizenship to Montenegrin citizens is also foreseen. Montenegrin citizens who were registered as residing on the Serbian territory on 3 June 2006 may acquire Serbian citizenship upon submission of an application and of a written statement saying that they consider themselves Serbian citizens.

251. At present, there is no official data about the number of stateless people in Serbia. The UNHCR estimates that there are about 17 000 stateless people living in Serbia.

252. It appears that the main challenge for the prevention of statelessness lies in the complicated, long and sometimes unsuccessful administrative procedures for civil registration and residence registration. Citizens are only able to fully access civil, political, social and economic rights when they hold a valid ID card *(lična karta)*. In order to obtain a *lična karta* a person must have undergone civil registration and registered an officially recognised residence. This problem has a serious impact on citizens' access to state protection. It is particularly serious for the IDPs who, in order to access civil registration and/or residence registration procedures, need personal documents that must be extracted from registry books. These may be destroyed or missing and, if they exist, they are located in one of the seven municipalities in southern or central Serbia. However, according to the Serbian authorities, work is currently being carried out in order to restore the destroyed or missing registration books and so far 105 195 renewed entries of appropriate data were made. Another commendable measure is the decision of the Ministry of Education of Serbia to provide every child, irrespective of whether he or she has a citizenship certificate, with elementary education.

253. It appears that Roma, Ashkali and Egyptian IDPs are further at risk as many people among them have never been registered in birth or citizenship records. However, we were informed that the Law on Registration Books and the Guidelines on Keeping Registration Books allow birth registrations to be made at a later stage.

254. While these efforts of the authorities are commendable, we believe that there is a need to make a systematic revision of the legislation governing civil registration and residence registration procedures. We would encourage the Serbian authorities to launch this revision as soon as practicable.

5.6.4. Asylum procedures

255. On 24 November 2007, the National Assembly of the Republic of Serbia adopted the Law on Asylum. According to the Serbian authorities, this law has brought domestic legislation into line with international standards.

256. The law has provided for a detailed procedure of granting asylum adapted to the special position and needs of the people concerned. It has also enabled the state to protect itself from possible massive abuses of the right to asylum. The law provides for the creation of three specific bodies in the process of granting asylum: the Asylum Office within the Ministry of the Interior with the authority to decide in the first instance; the Asylum Commission established by the Government of the Republic of Serbia with the authority to bring second instance decisions; and the Asylum Centre within the Office of the Commissioner for Refugees where accommodation, food and other services are provided to the asylum seekers during the whole course of the asylum procedure.

58. A total of 143 000 refugees were naturalised between 1996 and 2005. Source: UNHCR statistical data.
59. www.srbija.sr.gov.yu/vesti/vest.php?id=38768.

257. The new law is effective as of 1 April 2008.

5.6.5. Readmission

258. Along with the signing of the Stabilisation and Association Agreement with the EU, Serbia ratified on 7 November 2007 the agreement between the Republic of Serbia and the EU on the readmission of people with illegal residence. According to most analysts, in the coming months, a significant number of people will be returned to Serbia from western Europe.

259. We recommend that the Serbian authorities should develop a comprehensive strategy to tackle the issue of returnees. We commend the Serbian authorities for developing the "Instruction handbook for the integration of returnees". This document could provide the basis for the development of a strategy and of an action plan.

5.7. Combating racism and intolerance

260. 260. We were informed that the Serbian authorities have prepared a law on anti-discrimination. The law was sent to the Council of Europe and appraised by the Venice Commission.[60] We invite the Serbian authorities to fully take into account the recommendations of the Venice Commission and adopt the law as soon as possible.

261. Furthermore, we shall closely follow the work of the European Commission against Racism and Intolerance (ECRI), which recently prepared its first report on Serbia.[61] The report stresses that the Serbian Constitution establishes the principles of non-discrimination and protection of minority rights and provides for the state to promote understanding, recognition of and respect for ethnic, cultural, linguistic and religious diversity. The 2006 new Criminal Code prohibits racist offences and racial discrimination. The authorities have taken a number of measures to improve the situation of Roma, particularly in the area of access to health care, which are beginning to bear fruit. We strongly welcome these positive measures.

262. At the same time, we note that some problematic areas still remain. The draft law on anti-discrimination has yet to be adopted and Serbia has not yet enacted exhaustive provisions against racial discrimination in the area of civil and administrative law. The Law on Churches and Religious Communities and its implementation do not allow all religious communities living in Serbia to fully enjoy their right to freedom of thought, conscience and religion enshrined in Article 9 of the European Convention on Human Rights. The Criminal Code is still too seldom applied to persons who commit racist offences against national or ethnic minorities, religious minorities or anti-Semitic offences. The situation of Roma, Ashkalis and Egyptians displaced inside the country remains precarious. Furthermore, we are concerned by the information provided by NGOs and human rights activists about cases of discrimination against lesbian, gay, bisexual, and transgender/transsexual people.

263. We shall closely follow the implementation of ECRI recommendations in the further stages of the monitoring procedure.

5.8. Rights of national minorities

5.8.1. Constitutional and legal framework

264. 264. The rights of national minorities are protected by the new Serbian Constitution. The constitution protects "special individual or collective rights" of minorities, "in addition to rights guaranteed to all citizens" of Serbia (Article 75, paragraph 1). Furthermore, the constitution grants to the representatives of national minorities the right to "take part in decision making or decide independently on certain issues related to their culture, education, information and official use of languages and script" (Article 75, paragraph 2). Discrimination against national minorities is prohibited (Article 76). Special measures are foreseen in order to ensure that the representatives of national minorities are appropriately represented in state bodies, public services, and provincial and local self-government bodies (Article 77, paragraph 3).

60. See Opinion 453/2007 of 22 January 2008 (CDL-AD(2008)001).
61. See Document CRI(2008)25.

265. 265. Another important provision of the constitution is the prohibition of forced assimilation (Article 78). In particular, the constitution "strictly" prohibits "measures which would cause artificial changes in the ethnic structure of the population in areas where members of national minorities live traditionally and in large numbers".[62]

266. Article 79 contains a comprehensive catalogue of rights guaranteed to minorities in order to preserve their specificity. We welcome this extensive list of rights. Their implementation is defined by the Law on the Protection of Rights and Freedoms of National Minorities, as well as several sectoral laws and regulations of the autonomous provinces, for instance the Law on Elementary Education, the Law on Secondary Education, the Law on the Foundations of the Educational and Upbringing System, the Law on Official Use of Language and Alphabet, the Law on Election of Representatives, the Law on Activities of General Interest in the Area of Culture, the Law on Broadcasting, the Law on Public Information, the Decision of the Assembly of the Autonomous Province of Vojvodina on Detailed Regulation of Individual Issues of Official Use of Languages and Alphabets, the Decision of the Assembly of the Autonomous Province of Vojvodina on the Election of the Referendums of the Assembly, etc.

267. The participation of national minorities in political life has been facilitated by the abolition of the 5% electoral threshold in parliamentary elections. As a result, a number of minority representatives were elected into parliament and formed their own group. As regards local and provincial assemblies, Article 180, paragraph 4, of the constitution says that "in those autonomous provinces and local self-government units with a population of mixed nationalities, a proportional representation of national minorities in assemblies shall be provided for, in accordance with the law". This is a welcome provision.

268. The rapporteur of the Committee on Legal Affairs and Human Rights, Mr Jürgen Herrmann (Germany, EPP/DC), has prepared a report that specifically focuses on the situation of national minorities in Serbia (and in Vojvodina, in particular, as well as on the situation of the Romanian ethnic minority in Serbia) to be discussed shortly by the Assembly. We subscribe to Mr Herrmann's conclusions and invite the authorities to implement the recommendations contained in his report.

5.8.2. The role of the national councils of minorities

269. According to Article 75, paragraph 3, of the constitution, "persons belonging to national minorities may elect their national councils in order to exercise the right to self-governance in the field of culture, education, information and official use of their language and script, in accordance with the law". National councils of minorities have been operating in Serbia for some time already. The Advisory Committee of the Framework Convention for the Protection of National Minorities emphasised, in its 2003 opinion, the potential value of such councils in enhancing participation of minorities in the decision-making process. It also drew the attention of the authorities to the need to ensure their adequate funding and avoid their undue politicisation.

270. The Department for Human and Minority Rights of the Government of Serbia produced a draft law on elections for, and powers of, national councils of minorities, which was subsequently appraised by Council of Europe experts. A round table was organised on 27 May 2007 to discuss the draft law. During the round table, the Council of Europe experts stressed that some of the provisions of the draft law were not sufficiently clear and that too much emphasis was given in the law to the obligations of the councils, while the obligation of state authorities to involve the councils in the decision-making process was not sufficiently articulated. Furthermore, the experts criticised the fact that the law included a citizenship criterion for membership and participation in the councils. This criterion is likely to have a negative impact on the protection of rights of Roma and stateless persons who may be prevented from participating in the activities of the councils. The Serbian authorities informed us that the citizenship criterion was introduced in the draft law on the basis of the definition of a national minority contained in the Law on the Protection of Rights and Freedoms of National Minorities. While we understand the position of the Serbian authorities, we recommend considering alternative legal solutions in order to give the possibility to the representatives of ethnic communities who do not have Serbian citizenship but live in the territory of Serbia to participate in the work of the councils.

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62. In this respect, we would like to note that the representatives of all minor ity communities we met during our visit to Vojvodina expressed concerns about the changes in the ethnic structure of the region that had occurred in the last ten years. We were assured by the Serbian authorities that the refugees and IDPs did not move to Vojvodina in a planned manner and their free settlement on the territory of the province does not influence the exercise of minority rights. We believe that, taking into account the constitutional obligation of refraining from causing artificial changes in ethnic structure of the population in areas where members of national minorities live traditionally and in large numbers, the Serbian authorities will find ways of addressing the concerns of the minorities, especially in the light of possible consequences of the implementation of the agreement on readmission.

271. We were informed that the Ministry of Public Administration and Local Self-Government took over the development of the law from the department and is preparing a revised draft. We hope that the experts of the ministry will take into account the Council of Europe recommendations in the drafting process and submit a revised version of the law to the Council of Europe experts for assessment.

272. The adoption of a new law on the national councils of minorities is essential, as the mandate of the current councils will soon be expiring. Although all councils we met received assurances that their mandate will remain valid until a new law is adopted and a new election is organised, it is very important to complete the development of the legislative framework at the earliest opportunity in order to confirm the status of the councils, thus reassuring the minorities.

273. There is also a Republican National Minority Council, which operates in Belgrade and is chaired by the prime minister. However, according to the information that was provided to us, this council has never met during the past two years. This is a matter of concern for the representatives of the minority communities who feel that their interests are not sufficiently taken into account in Belgrade. Furthermore, the representatives of the minorities estimate that the level of implementation of the protective legislation is not sufficiently high and that in practice additional efforts are required from the central government in order to enable them to exercise their rights fully. We were told that the budgetary allocations for the functioning of national councils of minorities were left out of the first draft proposal of the budget submitted by the government to parliament. According to the Serbian authorities, this has not been the case and the Department for Human and Minority Rights of the Government of Serbia proposed a significant increase in the budgetary appropriations for the operation of the national councils in 2008 (the appropriations were increased by 138% from RSD 63 million in 2007 to RSD 150 million in 2008). We welcome this positive measure to support the activities of the national councils and look forward to good co-operation between the government and the councils in 2008, so that the 2009 budgetary appropriations will not give rise to rumours and speculations.

274. Equally, the implementation of bilateral agreements on the protection of national minorities Serbia has concluded with neighbouring states[63] is not proceeding as well as it should because the representatives of Serbia and of the states concerned have not been nominated yet for the joint commissions established by the agreements. We recommend that the Serbian authorities and the authorities of the states concerned should promptly engage in consultations to make the joint commissions operational at the earliest opportunity.

275. By and large, we gained the impression from our meetings with the representatives of national minorities that they had a quite different perception of the implementation of their special rights guaranteed by the constitution than that of the authorities. We acknowledge the fact that the Serbian authorities are making commendable efforts to protect and promote the rights of minority communities. However, the fact that the minority communities are not fully satisfied with these measures indicates that the dialogue between Belgrade and the minority communities should be improved. In the current situation, following the adoption of the unilateral declaration of independence by the Kosovo Assembly, the concerns of the minorities are likely to be aggravated by the fear that nationalistic feelings will rise. Several violent incidents against minorities have already occurred in the days that followed the adoption of the unilateral declaration of independence. It is extremely important in this context to send a reassuring message to the members of minorities, clearly and unequivocally condemning violence and investigating the cases of violent attacks. We call upon the Serbian authorities to take positive steps in this respect.

276. We acknowledge the fact that the Serbian authorities have already taken a number of positive steps to fully ensure the implementation of minority rights. These include: the adoption of the Constitution of Serbia; the abrogation of the 5% electoral threshold for parties of national minorities participating in the parliamentary election; the adoption of the conclusions of the Serbian Government concerning measures for increasing participation of minorities in public administration bodies, which are being implemented in partnership with the national councils (one of the measures foreseen is the translation of public competition announcements into minority languages and their publication in minority media selected by national councils); the special measures that are being taken by the authorities to increase the participation of minority representatives in judicial bodies; the transfer of certain mass media management rights to the national councils; and the state financing of minority mass media as well as the exclusion of minority mass media from the compulsory privatisation process.

277. We recommend that the authorities continue to work with the national minorities and their national councils in the implementation of these measures, in a spirit of dialogue and partnership.

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63. To our knowledge, Serbia has concluded such agreements with Hungary, “the former Yugoslav Republic of Macedonia”, Romania and Croatia.

5.8.3. Implementation of the Framework Convention for the Protection of National Minorities

278. A first Advisory Committee opinion on the then Serbia and Montenegro was adopted in 2003. The second state report was due on 1 September 2007. The Advisory Committee is expecting the prompt submission of the second report by Serbia in order to launch the second monitoring cycle. The second cycle report was received by the secretariat of the Advisory Committee on 4 March 2008. Shadow reports prepared by NGOs are also publicly available.

279. We shall closely follow the work of the Advisory Committee of the Framework Convention for the Protection of National Minorities in the monitoring process.

5.8.4. Implementation of the European Charter for Regional or Minority Languages

280. Serbia has been a State Party to the European Charter for Regional or Minority Languages since March 2005. Upon ratification in February 2006, the charter became effective on 1 June 2006.

281. Upon ratification, Serbia decided to apply specific protection measures foreseen by Part III of the charter to the following languages: Albanian, Bosnian, Bulgarian, Hungarian, Romani, Romanian, Ruthenian, Slovakian, Ukrainian and Croatian languages.

282. When ratifying the charter, Serbia made a statement providing that the term "territory in which the regional or minority languages is used" will refer to areas in which regional and minority languages are in official use in line with the national legislation.[64] The Law on the Protection of Rights and Freedoms of National Minorities introduces the obligation of the official use of languages and alphabets of national minorities that constitute more than 15% of the total population. Moreover, it also introduces the obligation of the official use of languages and alphabets of national minorities in self-government units in which the official use of the language existed at the time of adoption of this law, even if the percentage of members of national minorities is below 15%.

283. The authorities submitted the first periodic report on the implementation of the charter on 11 July 2007. The report totals about 400 pages. A "shadow" report was prepared by the Vojvodina Centre for Human Rights. The report was made public and is available on the website of the Vojvodina Centre for Human Rights.[65]

284. The committee of experts of the European Charter for Regional or Minority Languages is considering the authorities' report. We shall carefully study the conclusions of the committee of experts and take them into account within the framework of the monitoring process.

5.9. Education reform

285. The reform of the education sector is a particularly complex task Serbia has to face. According to the authorities, the reform process should not be limited to structural challenges only, including the devolution of responsibilities to local authorities for management of education institutions, investment in infrastructure, development of new curricula and training of teachers. It also requires a complete rethinking of the difficult heritage relating to the conflicts on the territory of the former Yugoslavia Serbia has to live with. In this context, there is a need to develop a comprehensive reform strategy in the field of education.

286. Unfortunately, we were not provided with information about the measures the authorities are taking to teach the principles of tolerance and respect for others and all their differences at school. We hope to be able to discuss these measures in the further stages of the monitoring process. In the meantime, we recommend that the authorities should continue the educational reform and make arrangements to teach the principles of tolerance, respect for others, intercultural dialogue and reconciliation.

6. Conclusions and further steps of the monitoring procedure

287. In the last couple of years, Serbia has been going through a turbulent period of transformation. In this context, the implementation of obligations and commitments entered into upon accession to the Council of Europe slowed down, primarily because of the inefficient functioning of the institutions of the state union of Serbia and Montenegro.

64. http://conventions.coe.int/Treaty/Commun/ListeDeclarations.asp?NT=148&CM=2&DF=12/4/2007&CL=ENG&VL=1.
65. www.vojvodina-hrc.org.

288. However, with the independence of Montenegro and the dissolution of the state union, new challenges for democratic reforms in Serbia arose. The adoption of the new constitution has changed the political and institutional context. It requires from the authorities the launching of a complete restructuring of key democratic institutions. Two parliamentary elections in two calendar years, subsequent presidential, provincial and local elections, as well as lengthy and tough negotiations about governing coalitions have prevented the country from speedily implementing the necessary democratic reforms. Last but not least, the adoption of the unilateral declaration of independence by Kosovo has put a serious challenge before the authorities.

289. Despite these developments, we believe that Serbia is moving forward and making progress on the road to European integration. The country's European perspective was clearly confirmed in the presidential elections of 20 January and 3 February 2008 as well as the resounding victory of the pro-European bloc in the 11 May parliamentary elections. Time has now come to transform the democratic and European aspirations of the country into concrete actions in order to implement long-awaited reforms and complete the necessary democratic transformations. These reforms have to be implemented in close co-operation with all political actors, for European integration to become a shared-by-all vision of the country's future.

290. Today, as never before, our Assembly stands ready to support this process. For this purpose, we are addressing to the authorities a number of recommendations that will help them complete co-operation with the ICTY, strengthen democratic institutions and the rule of law, as well as enhance the protection of human and minority rights.

291. Pending the implementation of these recommendations, the Assembly should continue to monitor the implementation of obligations and commitments by Serbia, while providing all the necessary political support to the engaged reforms.

Reporting committee: Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee).

Reference to committee: Resolution 1115 (1997) and Opinion No. 239 (2002).

Draft resolution and draft recommendation unanimously adopted by the committee on 11 September 2008.

Members of the committee: Mr Serhiy **Holovaty** (Chairperson), Mr György **Frunda** (1st Vice-Chairperson), Mr Konstantin **Kosachev** (2nd Vice-Chairperson), Mr Leonid **Slutsky** (3rd Vice-Chairperson), Mr Aydin Abbasov, Mr Avet **Adonts**, Mr Pedro **Agramunt**, Mr Miloš **Aligrudić**, Mrs Meritxell **Batet Lamaña**, Mr Ryszard **Bender**, Mr József Berényi, Mr Aleksandër **Biberaj**, Mr Luc **Van den Brande**, Mr Jean-Guy Branger, Mr Mevlüt **Çavuşoğlu**, Mr Sergej Chelemendik, Ms Lise Christoffersen, Mr Boriss **Cilevičs**, Mr Georges Colombier, Mr Telmo Correia, Mr Valeriu Cosarciuc, Mrs Herta Däubler-Gmelin, Mr Joseph Debono Grech, Mr Juris Dobelis, Mrs Josette Durrieu, Mr Mátyás **Eörsi**, Mrs Mirjana Ferić-Vac, Mr Jean-Charles Gardetto, Mr József Gedei, Mr Marcel **Glesener**, Mr Charles **Goerens**, Mr Andreas Gross, Mr Michael Hagberg, Mr Holger Haibach, Ms Gultakin Hajiyeva, Mr Michael **Hancock**, Mr Davit **Harutyunyan**, Mr Andres **Herkel**, Mr Raffi Hovannisian, Mr Kastriot Islami, Mr Miloš **Jevtić**, Mrs Evguenia **Jivkova**, Mr Hakki Keskin, Mr Ali Rashid Khalil, Mr Andros Kyprianou, Mr Jaakko **Laakso**, Mrs Sabine Leutheusser-Schnarrenberger, Mr Göran **Lindblad**, Mr René **van der Linden**, Mr Eduard **Lintner**, Mr Younal **Loutfi**, Mr Pietro **Marcenaro**, Mr Mikhail Margelov, Mr Bernard Marquet, Mr Dick **Marty**, Mr Miloš **Melčák**, Mrs Assunta Meloni, Mrs Nursuna **Memecan**, Mr João Bosco **Mota Amaral**, Mr Theodoros **Pangalos**, Ms Maria Postoico, Mr Christos Pourgourides, Mr John Prescott, Mr Andrea Rigoni, Mr Dario Rivolta, Mr Armen **Rustamyan**, Mr Indrek Saar, Mr Oliver **Sambevski**, Mr Kimmo **Sasi**, Mr Andreas Schieder, Mr Samad Seyidov, Mrs Aldona Staponkienė, Mr Christoph **Strässer**, Mrs Elene **Tevdoradze**, Mr Mihai Tudose, Mr Egidijus Vareikis, Mr Miltiadis Varvitsiotis, Mr José Vera Jardim, Mrs Birutė Vėsaitė, Mr Piotr **Wach**, Mr Robert **Walter**, Mr David **Wilshire**, Mrs Renate **Wohlwend**, Mrs Karin S. **Woldseth**, Mr Boris Zala, Mr Andrej **Zernovski**.

NB: The names of those members present at the meeting are printed in bold.

The draft resolution and draft recommendation will be discussed at a later sitting.