Parliamentary Assembly
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COUNCIL OF EUROPE
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**Opinion 239 (2002)**[1]

# Federal Republic of Yugoslavia's application for membership of the Council of Europe

Parliamentary Assembly

1. The Parliament of the Federal Republic of Yugoslavia requested Special Guest status with the Parliamentary Assembly on 7 November 2000 which was granted it on 22 January 2001. Since then, its Special Guest delegation has participated in the work of the Parliamentary Assembly and its committees.

2. The Federal Republic of Yugoslavia applied for membership of the Council of Europe on 9 November 2000. In its Resolution (2000) 15 on the Federal Republic of Yugoslavia of 22 November 2000 the Committee of Ministers invited the Parliamentary Assembly to give its opinion on this application in accordance with Statutory Resolution (51) 30.

3. The Assembly has examined the situation in this country on many occasions and, in November 2000, adopted its Resolution 1230 and its Recommendation 1481 on the situation in the Federal Republic of Yugoslavia. An ad hoc committee also observed the elections to the national assemblies of Serbia on 23 December 2000 and of Montenegro in April 2001. The Congress of Local and Regional Authorities of Europe (CLRAE) has also observed the elections in the municipalities.

4. In early 2001 a Council of Europe office was opened in the Federal Republic of Yugoslavia. At the same time the Secretary General of the Council of Europe appointed a Special Envoy for the Federal Republic of Yugoslavia. These decisions have helped the Council of Europe's dialogue with the authorities of this country and made it possible to implement a number of co-operation programmes and projects aimed at developing and consolidating democratic stability there.

5. The Federal Republic of Yugoslavia has acceded to several of the Council of Europe's legal instruments, including the European Cultural Convention and the Framework Convention for the Protection of National Minorities.

6. The Federal Republic of Yugoslavia has revised its Code of Criminal Procedure, which is a federal responsibility, and adopted a federal act on the protection of national minorities. It also recently enacted legislation on procedures governing the transfer of indicted persons to the International Criminal Tribunal for the former Yugoslavia (ICTY) in The Hague. This legislation, which was the result of a compromise and received only a lukewarm reception in certain circles, could be rendered more effective by rigorous implementation founded on a more marked political will.

7. As far as the two constituent republics of Serbia and Montenegro are concerned, the reform programmes have not been pursued with the same vigour in both. Whilst in Serbia a battery of legislative reforms has been implemented at a sustained pace, including abolition of the death penalty, in Montenegro energies were for a long time concentrated on the referendum on possible independence.

1. Assembly debate on 24 September 2002 (26th Sitting) (see Doc. 9533, report of the Political Affairs Committee, rapporteur: Mr Frey, and Doc. 9539, opinion of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Lippelt). Text adopted by the Assembly on 24 September 2002 (26th Sitting).

8. The agreement which was signed on 14 March 2002 between Serbia and Montenegro, with the good offices of the European Union's High Representative for the Common Foreign and Security Policy, and which laid the foundations for reorganising relations between Serbia and Montenegro, opens up abundant prospects for rapprochement with Europe. It will encourage both sides to renew and step up their reform programmes.

9. The new "constitutional charter" to be born of this agreement could offer a chance of survival for a federal state whose institutions were showing signs of tiredness. Nevertheless, the successful establishment of a truly operational federal union will require much good will, dialogue and creativity and the support of the international community. The Council of Europe's Venice Commission could probably make a constructive contribution to this process.

10. As far as Kosovo is concerned, it is too early to put forward ideas as to its future status. At the present time, and no doubt for some time to come, Kosovo is governed by the United Nations in pursuance of Security Council Resolution 1244. It is important, nonetheless, to stress that, whatever form the union between Serbia and Montenegro may take, and without prejudice to the decisions which may be made in the future concerning Kosovo, the Federal Republic of Yugoslavia ought, as of now, to contribute to the creation of a climate of confidence by co-operating as extensively as possible both with the United Nations Special Representative and the elected authorities in Kosovo. The transfer to Kosovo of almost all of the Albanian prisoners is a sign of détente in this respect.

11. The Assembly considers that the Federal Republic of Yugoslavia has made considerable progress towards democracy and political pluralism. The country recognises the principle of the rule of law and respect for human rights and has declared its readiness to continue its democratic reforms within the Council of Europe, in accordance with the Council's principles and standards.

12. The Parliamentary Assembly takes note of the letters from the President of the Federal Republic of Yugoslavia, the presidents of the two chambers of the Parliament and the Prime Minister, and notes that the Federal Republic of Yugoslavia is determined to honour the following commitments:

*to ratify the Dayton Peace Agreements and to co-operate fully and effectively in their implementation, which notably requires the settlement of internal and international disputes by peaceful means;*

*as regards conventions:*

*a. to sign, at the time of its accession, the European Convention on Human Rights, as amended by Protocol No. 11 thereto, and Protocols Nos. 1, 4, 6, 7, 12 and 13;*

*b. to ratify the European Convention on Human Rights and Protocols Nos. 1, 4, 6, 7, 12 and 13 thereto within one year of its accession;*

*c. to sign and ratify, within one year of its accession, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, as amended by its protocols;*

*d. to sign and ratify, within two years of its accession, the European Charter for Regional or Minority Languages;*

*e. to sign and ratify, within two years of its accession, the European Charter of Local Self-Government;*

*f. to sign and ratify, within two years of its accession, the European Outline Convention on Trans-frontier Co-operation and the protocols thereto, the European Convention on Extradition, the European Convention on Mutual Assistance in Criminal Matters, the Convention on the Laundering, Search, Seizure and Confiscation of the Proceeds of Crime, and the Convention on the Transfer of Sentenced Persons, and in the meantime to apply their fundamental principles;*

*g. to sign, within two years of its accession, the Council of Europe's European Social Charter, to ratify it as soon as possible and to endeavour forthwith to implement a policy in keeping with the principles enshrined in it;*

*h. to become a party to the General Agreement on Privileges and Immunities and Protocols Nos. 1 and 6 thereto;*

*as regards domestic legislation:*

*a. to enact legislation or, preferably, to include provisions in the constitutional charter to bring the army under civilian control;*

*b. to enact, within one year of its accession, legislation on the reform of the police, comprising a redefinition its functions, the implementation of the European Code of Police Ethics and the establishment of training structures, and in particular the reorganisation of the secret police and its submission to control by the government and parliament;*

*c. to enact, in sufficient time for its implementation before the next elections the draft broadcasting law in Serbia, which has been adopted by the Serbian Government, agreed upon by the experts of the Council of Europe and was recently referred to the Serbian Parliament with urgency, and to enact, in sufficient time for its implementation before the next elections, legislation on public information in Serbia, placing particular emphasis on guarantees of independence and pluralism;*

*d. to enact, within one year of its accession, legislation to enable the implementation of the Geneva Convention on the Status of Refugees and the 1967 Protocol thereto to be implemented;*

*e. to enact, within one year of its accession, legislation on citizens' associations and non-governmental organisations consistent with European standards for non-profit organisations;*

*f. to revise, in co-operation with Council of Europe experts, the legislation and regulations concerning the prison system, war crimes and torture, so as to ensure prosecution before the courts of crimes which are not prosecuted by the ICTY, and also to prevent ill-treatment of citizens by the police;*

*g. to amend the law governing elections with a view to the next presidential elections or, at the latest, in time for the elections to the federal parliament, so as to make the process more transparent, and, in particular, to bring it into line with the constitutional charter which is presently being drafted;*

*as regards human rights:*

*a. to continue co-operating with the ICTY and in this context:*

*to do its utmost to track down all sixteen indicted persons who are still at large and to hand them over to the ICTY. The authorities must not give in when confronted with any indicted person who threatens them by whatever means;*

*to co-operate with the ICTY in giving witness protection if required;*

*to give clear instructions to the police and prosecutors to enable them to make immediate arrests, as the law on extradition is deficient as regards time required for taking action;*

*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;*

*b. to co-operate in establishing the facts concerning the fate of missing people and hand over all information concerning mass graves;*

*c. to inform the people of Serbia about the crimes committed by the regime of Slobodan Miloševic, not only against the other peoples of the region but also against the Serbs;*

*d. to continue the reforms initiated with regard to the independence and impartiality of the judiciary and the relationship between judges, prosecutors and the police;*

*e. to enforce legislation concerning conscientious objectors and, within three years, to enact legislation on an alternative type of service;*

*f. to enact, within one year of its accession, legislation creating the office of ombudsman;*

*as regards the functioning of the institutions:*

*a. to resolve at the earliest opportunity the fundamental constitutional question as to the nature of the state between Serbia and Montenegro, on which a series of other questions hinges, including the rights inherited from the existing federation and representation of the new state in international organisations;*

*b. to draft the constitutional charter in accordance with democratic, transparent and sound principles, and in this context to constitute the new federal parliament, which will have the task of adopting the charter, by means of elections;*

*c. to ensure that, should a referendum on independence take place at the end of the three-year trial period provided for in the agreement between Serbia and Montenegro, that it is organised in conditions of the utmost transparency, in fullconformity with the law, after a population census and in the presence of international observers;*

*d. once the constitutional charter has been adopted, to amend the constitutions of Serbia and Montenegro to bring them into line with it and to harmonise the whole of the legal system so as to avoid the overlapping of responsibilities between the federation and the republics, paying great heed to Council of Europe standards in this matter;*

*e. to improve the constitutional and legislative provisions concerning decentralisation and the organisation of local authorities and the autonomous regions;*

*as regards Kosovo:*

*a. to continue to comply with United Nations Security Council Resolution 1244 of 10 June 1999 and with the arrangements made under this resolution, in particular the international administration of Kosovo;*

*b. to undertake to settle disputes over the future status of Kosovo by peaceful means and solemnly to renounce any use of force;*

*c. to contribute to the efforts aimed at building a democratic, multi-ethnic entity in Kosovo with a view to creating a political climate conducive to reflection and dialogue on its future status;*

*as regards the monitoring of commitments:*

*to co-operate fully with the implementation of Parliamentary Assembly Resolution 1115 (1997) on the setting up of an Assembly committee on the honouring of obligations and commitments by member states of the Council of Europe (Monitoring Committee) and of a monitoring process set up in pursuance of the Committee of Ministers' declaration of 10 November 1994*

13. The Assembly realises that although some of these commitments are a direct federal responsibility, others may require specific implementation measures in Serbia and Montenegro. It nonetheless considers that the Federal Republic of Yugoslavia commits itself vis-à-vis the Council of Europe to ensuring that the commitments accepted are honoured, including the provisions of conventions ratified, throughout the territory under the effective jurisdiction of the authorities of the Federal Republic of Yugoslavia.

14. The Assembly furthermore considers that, whatever the outcome of the repartition of competences between the federation and the republics following the adoption of the constitutional charter, as long as there subsists a common state, the federation remains bound by its international obligation to honour the list of commitments referred to above.

15. With a view to ensuring that these commitments are honoured, the Assembly resolves, as of the Federal Republic of Yugoslavia's accession, to monitor the situation there closely in accordance with its Resolution 1115.

16. Furthermore, the Assembly wishes that the responsibility for the protection of human rights and of the rights of national minorities remain on federal level and that the existing level of the protection of these rights will be maintained and the Federal Act on the Protection of National Minorities will be duly implemented. In the post-accession monitoring procedure, special attention should be paid to combating discrimination against, and promoting equal treatment of, Roma.

17. The Assembly recommends that, on the basis of the commitments set out above, the Committee of Ministers:

*invite the Federal Republic of Yugoslavia to become a member of the Council of Europe as soon as the Constitutional Charter is adopted by the Parliaments of Serbia and Montenegro;*

*allocate the Federal Republic of Yugoslavia seven seats in the Parliamentary Assembly;*

*in the light of this opinion, reinforce its support for the Federal Republic of Yugoslavia, in particular in the context of the Council of Europe's co-operation programmes, and provide these programmes with the requisite financial resources.*

18. The Assembly considers that the population of Kosovo should enjoy the full protection of the European Convention of Human Rights and other Council of Europe conventions, including their supervisory mechanisms, and therefore recommends that the Committee of Ministers invite the Secretary General of the

Council of Europe to explore with the authorities in Belgrade and with UNMIK ways to guarantee the applicability of the substantive norms contained in Council of Europe conventions and of their supervisory mechanisms in Kosovo, including access to the European Court of Human Rights, bearing in mind the special legal situation resulting from UN Security Council Resolution 1244.