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Honouring of obligations and commitments by Serbia

Addendum to the 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 present addendum takes stock of key developments that occurred in Serbia between September 2008 and March 2009 and thus updates the report on the honouring of obligations and commitments by Serbia ([Doc. 11701](#)), which was adopted by the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee) on 11 September 2008.

1. Foreword

1. The report on the honouring of obligations and commitments by Serbia ([Doc. 11701](#)) was adopted by the Monitoring Committee on 11 September 2008 and was due to be debated during the 2008 fourth part-session (29 September-3 October). However, due to last-minute changes in the agenda, the debate on our report was postponed until the 2009 second part-session. The committee, therefore, instructed us to pay another visit to Serbia and prepare an addendum to the report and propose draft amendments to update the draft resolution in the light of recent developments. The fact-finding visit took place on 9 and 10 February 2009 (with only Mr Gross participating as Mr Goerens was unable to join the delegation due to other commitments).

2. The present addendum aims at taking stock of key developments that occurred in Serbia between September 2008 and March 2009. It does not replace in any manner the draft report on the honouring of obligations and commitments by Serbia ([Doc. 11701](#)) and, in our opinion, the conclusions contained therein remain to a large extent valid. The addendum was drafted on the basis of written information we received as well as taking into account the conclusions of the February 2009 fact-finding visit to Serbia. The press release issued after the visit is reproduced in Appendix II.

3. In the preparation of this addendum, we were greatly assisted by the Serbian delegation to the Parliamentary Assembly, which organised the programme for our visit. We are also grateful to the representatives of the diplomatic community accredited in Belgrade for their useful input into our analysis, as well as to the Special Representative of the Council of Europe in Belgrade, Ambassador Constantin Yerocostopoulos, and to his team, for their practical assistance and informed advice.



2. Political developments

2.1. European integration

4. The general commitment of the ruling coalition to pursue European integration appears to have been maintained, as exemplified by the adoption of a number of key laws relating to European integration. This resulted, on 30 January 2009, with the start of the unilateral implementation of the Interim Trade Agreement, pending its ratification (together with the Stabilisation and Association Agreement) by the member states of the European Union.

5. We also welcome the continuation of discussions between the European Union and Serbia on visa liberalisation and hope that all technical matters relating to this issue will be solved in the course of 2009 to enable a political decision to be taken in early 2010. The eventual abolition of visas will be an extremely important step forward in making the benefits of European integration accessible to all citizens of Serbia.

6. We took note of the progress report of the European Commission on Serbia,¹ issued on 5 November 2008, the main conclusions of which follow the general lines of our report. In this progress report, the European Commission noted that, "since the presidential and legislative elections, there has been increased stability in government and greater consensus on European integration. ... Serbia made significant progress on co-operation with the International Criminal Tribunal for the former Yugoslavia (ICTY), including the arrests of Radovan Karadžić and Stojan Župljanin. ... Civil and political rights in Serbia are generally protected. ... Serbia has good capacity in its public administration."

7. That said, the European Commission also noted that "further efforts need to be taken to ensure the independence, accountability and efficiency of the judicial system. Corruption remains widespread and constitutes a serious problem."

8. Generally, the conclusions of the European Commission concerning Serbia's compliance with the Copenhagen criteria fully join our assessment of the state of development of democracy, rule of law and human rights in this country. Many problems identified by the European Commission are directly related to the implementation of Council of Europe commitments and obligations. We hope that our report will help the Serbian authorities define a concrete road map for strengthening democratic institutions, rule of law and human rights, in order to implement the remaining accession commitments and general statutory Council of Europe obligations, thus paving the way for fulfilling the Copenhagen criteria. At the same time, we call on the member states and the institutions of the European Union to resolutely continue the policy of European Union enlargement in the Western Balkans. European integration is an important stimulus to the continuation of democratic reforms. During times of global economic crisis, this stimulus should not be weakened.

2.2. Developments around Kosovo²

9. This issue has continued to dominate Serbian politics, though in a different manner. We welcome the fact that, in line with the recommendation contained in our report, the Serbian authorities have continued to defend their position with respect to Kosovo by peaceful and diplomatic means. The request for an advisory opinion addressed to the International Court of Justice by the United Nations General Assembly, at the proposal of the Serbian delegation, confirms this.

10. We commend the Serbian authorities for their constructive approach in the negotiations on the deployment of the European Union Rule of Law Mission (EULEX) in Kosovo, which culminated in the conclusion of an agreement between the UN, the EU and Serbia on the modalities of the operation of EULEX in Kosovo. The UN Security Council, on 26 November 2008, unanimously adopted a presidential statement that took note of the report of the UN Secretary-General on the reconfiguration of the UN civil presence in Kosovo, which included this agreement in its entirety. EULEX is to function as a status-neutral mission, under the authority of the UN.

11. In our opinion, this constructive move by all parties concerned is extremely important as it creates the basis for taking a number of concrete steps in order to improve the situation of people living in Kosovo, irrespective of their ethnic origin and convictions. While respecting the positions of all parties, we welcome this

1. See:

http://ec.europa.eu/enlargement/pdf/press_corner/key-documents/reports_nov_2008/serbia_progress_report_en.pdf.

2. All reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood to be in full compliance with United Nations Security Council [Resolution 1244](#) and without prejudice to the status of Kosovo.

pragmatic approach and hope that it will contribute to greater co-operation between all sides concerned on concrete issues relating to the well-being of the population of Kosovo, in line with our recommendations contained in the draft resolution.

2.3. Domestic politics

12. We would like to commend the members of the governing coalition³ for their pragmatic attitude and constructive co-operation around key priorities of national policy. The top priorities of the new government are European Union integration and the defence of the territorial integrity and sovereignty of Serbia, along with the strengthening of the national economy, the enhancement of social responsibilities of the government, the strengthening of the fight against corruption and respect for international law.⁴ We welcome the signing, in October 2008, of the Declaration of Political Reconciliation by the Democratic Party (DS) and the Socialist Party of Serbia (SPS) and hope that this solemn act will create a concrete basis for developing a strong and sustainable partnership between these two political forces.

13. We also commend all members of the governing coalition for their ability to compromise, in the light of national interests, while preserving their individual political positions, as exemplified by the lengthy negotiations on the signing of the Energy Agreement with the Russian Federation and of the contract on the selling of the national oil company NIS. As we noted in our report, over the past couple of years, the ruling coalitions in Serbia have suffered from too many internal divisions, which prevented them from functioning effectively and led, at times, to pre-term elections. We believe that Serbia has had too many elections. Now the time has come to preserve the newly established political stability and move ahead with long-awaited reforms.

14. That said, we still remain concerned about the fact that the parliament is not functioning efficiently. In particular, the debate continues to be affected by obstructionist tactics of the opposition, while the response of the ruling majority does not always appear to be adequate. One of the issues at dispute is the live broadcasting of parliamentary sessions on the second public television channel. While the majority claims that the opposition is abusing the floor to address the general public, talking about general issues not related to the agenda, the opposition asserts that the suspension of live broadcasting of the sessions would jeopardise the basic democratic right of the MPs to have their views made known to the electorate. We acknowledge the importance of live broadcasting of parliamentary sessions in Serbia, because, historically, this has been seen as a direct expression of democracy, as opposed to the period of Milosevic's authoritarian rule, when the parliament was used to rubber-stamp legislation. However, we consider that the risks of abusing the parliamentary process in front of television cameras are equally very high. Therefore, we call upon all actors to adopt a constructive attitude in order to find a compromise solution. The discussions about the establishment of a parliamentary channel, initiated by the Speaker of the Parliament, could help resolve this issue.

15. Another issue that is preventing the parliament from functioning effectively is the ongoing conflict between the MPs who joined the Serbian Progressive Party (SNS) and the parliamentary group of the Serbian Radical Party (SRS). The split of the SRS occurred after the former leader of its parliamentary group and SRS candidate in the 2008 presidential election, Mr Tomislav Nikolić, resigned, on 6 September 2008, from the post of group leader. It is believed that his resignation was motivated by strong disagreements with the leader of the SRS, Mr Vojislav Šešelj, currently in custody at the ICTY, regarding, in particular, the issue of the ratification of the Stabilisation and Association Agreement.

16. Mr Nikolić, together with another 21 MPs elected on the list of the SRS, soon formed a new parliamentary group, "Napred, Srbijo" ("Forward, Serbia"). Subsequently, on 21 October 2008, he founded a new political party called the "Serbian Progressive Party". The SRS is currently contesting the legitimacy of the mandates of the members of the "Napred, Srbijo" parliamentary group, claiming that the MPs who had joined this group should have resigned from parliament, by virtue of blank resignations given after the elections, according to Serbian parliamentary practice. In particular, they filed a law suit against Mr Tomislav Nikolić for destroying official documents (namely, the blank resignations of MPs).

3. Composed of a large group of different political forces and, in particular, the "For a European Serbia" electoral coalition (Democratic Party, G17+, Serbian Renewal Movement, League of Social Democrats of Vojvodina, and Sandžak Democratic Party) and the electoral coalition formed around the Socialist Party of Serbia (which includes the Party of United Pensioners of Serbia, the United Serbia Party and the Movement of Veterans of Serbia).

4. See: www.srbija.gov.rs/pages/article.php?id=46940.

17. We call upon the members of the Serbian Radical Party to put an end to the dispute and respect the political choice of individual MPs who decided to disagree with the party line and form their own parliamentary group. The spirit of pluralism, dialogue and constructive co-operation should prevail over formalism and obstructionist tactics.

3. Democratic institutions

3.1. Functioning of the parliament and pluralist democracy

18. It is regrettable that, more than two years since the adoption of the new constitution, the parliament has still not adopted the law on the National Assembly of Serbia. The Rules of Procedure of the National Assembly of Serbia (hereafter "rule book") have not been revised either. We were informed by the Speaker of the Parliament of the establishment of two working groups to draft, respectively, the draft law on the national assembly and the new rule book.

19. During our visit, the parliament was expected to debate a number of amendments to the existing rule book which are necessary to streamline the parliamentary debate, pending the drafting and adoption of a completely new rule book. The discussion on the amendments started on 10 February 2009, during our visit to Belgrade. The debate was interrupted several times because of procedural omissions and obstructionism by the opposition MPs and ended eventually on 17 February 2009 with the adoption of the amendments to the rule book, without the participation of the representatives of the opposition (who did not attend the session on that day because they decided to go to Kosovo to provide support to the Kosovo Serbs on the day of the first anniversary of the adoption by the Kosovo Assembly of the unilateral declaration of independence).

20. While we welcome the adoption of the amendments that introduce more stringent time limits for discussing draft laws in plenary and streamline the parliamentary procedure, we do not believe that adopting amendments to the rule book without the participation of the opposition is a good example of a healthy parliamentary process. We call upon all political forces in the parliament to participate constructively in the drafting of the new rule book. We recall our recommendation to the National Assembly of Serbia to make full use of PACE's Parliamentary Assistance Programme in the drafting process. In particular, we would like the working group responsible for the drafting of the rule book to make full use of the relevant Council of Europe expert report that was made available to the national assembly in summer 2007.

21. More fundamentally, we consider that the transparent and efficient functioning of democratic institutions, which citizens can trust, should be a top priority objective of the Serbian authorities. The adoption of the new legislation on the National Assembly and of the new rule book is only part of the process of strengthening pluralist democracy in Serbia. The constitutional provisions introducing a "party-administered mandate" of the MPs⁵ and the provisions of the electoral legislation on the allocation of mandates, which make the members of parliament fully dependent on the goodwill of the leadership of political parties, have to be revised. As we noted in our report, we consider that the members of parliament elected by the citizens should act as free representatives of the electorate and not as mere tools of the political parties to which they belong. Therefore, a constitutional revision is required to bring Serbia's democratic institutions up to the standards of the Council of Europe.

22. Naturally, we are aware that the constitutional reform is a time-consuming and complex process, which requires building a vast consensus among the key actors on the proposed changes. However, we believe that one cannot sit and do nothing about this problem, using the stringent provisions governing constitutional amendments as an excuse. We call on the authorities to start working with the European Commission for Democracy through Law (Venice Commission) of the Council of Europe, in order to find concrete ways of implementing the Commission's recommendations contained in the appraisal of the constitution (CDL-AD(2007)004), in line with the recommendations contained in our report.

5. The Constitution of Serbia provides that MPs are free to put their mandates at the disposal of political parties. As a result, according to current parliamentary practice, MPs hand over blank resignations to group leaders, when they take up their duties. This is a powerful tool to control MPs that the leaders of political parties have at their disposal. Reportedly, this system of "party-administered mandates" was invented by Mr Vojislav Šešelj and introduced during the times of Milosevic's rule.

3.2. Status of Vojvodina

23. In our draft report, we noted that the Assembly of the Autonomous Province of Vojvodina was expected to adopt the new statute of Vojvodina, in accordance with the law on the implementation of the constitution. The statute was adopted by the provincial assembly on 15 October 2008 and now has to be confirmed by the National Assembly of the Republic of Serbia. However, the statute of Vojvodina and the necessary accompanying law on the delimitation of competences between the central authorities and the autonomous province have not yet been put on the agenda of the parliament. The opposition is strongly opposing the new statute, claiming that it would give to the autonomous province certain attributes of the state. The members of the ruling coalition are not in total agreement on the statute either: while the DS asserts that the statute contains no incompatibilities with the Constitution of Serbia, the SPS members of the coalition have so far shown strong reservations against the current version of the statute, claiming that it would be in violation of the constitution.

24. We regret that the statute of the Autonomous Province of Vojvodina has not yet been confirmed and call upon all key actors to resolve this issue promptly, in the spirit of constructive dialogue. We believe that possible misunderstandings and alleged violations of the constitutional order could be eliminated in the law on the delimitation of competences, in line with the principles of autonomy and with due respect to the constitutional norms.

4. The rule of law

4.1. The reform of the judiciary and the public prosecutor's office

25. We note that the national assembly finally adopted, on 22 December 2008, a whole set of laws on the reform of the judiciary and of the public prosecutor's office. The Venice Commission provided advice on the legislation governing the judiciary.⁶ As we noted in our report, the Venice Commission stressed in its opinions that the "Constitution of Serbia endangered judicial independence and created a major risk of politicising the judiciary by providing for the election of judges and of the High Judicial Council in the National Assembly, and by creating a discontinuity between the existing judiciary and the new judiciary to be chosen, once the High Judicial Council is established". The recently adopted legislation attempts to provide a response to these problems. In particular, the law on the High Judicial Council gives a powerful role to the judges in the election of the majority of the council. That said, the national assembly still remains the final decision-making body.

26. The law on judges did not resolve all our concerns either, as Article 50 of this law provides in its paragraph 4 that "the High Judicial Council shall propose to the National Assembly one or more candidates for each judge's position". This means that, ultimately, the national assembly will still be able to exercise political discretion over the appointment of judges, which puts the independence of the judiciary at risk. Moreover, despite assurances given to the Council of Europe experts at the stage of the drafting, the final version of the law on judges does not include the detailed procedure and criteria for the initial re-election of all judges in the country. We were assured by the minister of Justice and her team that the advice from the Venice Commission would be sought in the drafting of the criteria and procedure for the re-appointment of judges. We call upon the authorities to make full use of the expertise of the Venice Commission in order to establish clear legal guarantees allowing the serving judges, against whom there are no allegations of incompetence or behaviour incompatible with the function of the judge, to remain in office.

27. The laws on the State Prosecutorial Council and on public prosecution do not provide an adequate response to our concerns either, as the national assembly will ultimately still have a degree of discretion in electing public prosecutors. This creates a risk of politicisation of the appointment process, which is not acceptable in a democratic country governed by the rule of law. We understand that this problem can only be resolved by the adoption of amendments to the constitution, which is a lengthy and complex process requiring, as we mentioned earlier, a broad consensus in society about proposed changes. Therefore, we reiterate our recommendation to the Serbian authorities to work further on the strengthening of legislation governing the judiciary and the public prosecution, making full use of the Council of Europe expertise.

6. Opinion on the draft law on the High Judicial Council of Serbia (CDL-AD(2008)006), and opinion on the draft law on judges and on the organisation of courts in the Republic of Serbia (CDL-AD(2008)007).

4.2. The fight against corruption

28. We take note of the first and second round evaluation reports adopted by the Group of States against Corruption (GRECO) in June 2008. In GRECO's opinion, approximately half of the recommendations made were satisfactorily implemented by Serbia; the remaining recommendations were partially implemented. We learned from our Serbian interlocutors that they are currently actively working on preparing the GRECO third round evaluation.

29. We also welcome the adoption, on 23 October 2008, of the law on the Anti-Corruption Agency, which should increase co-ordination among different bodies dealing with the fight against corruption. However, we note that the efficient functioning of independent institutions requires not only the adoption of good legislation, but also the provision of appropriate material and financial resources to these institutions. We, therefore, hope that the Anti-Corruption Agency will be granted appropriate resources to become fully operational soon.

30. On a positive note, we welcome the adoption of a series of laws dealing with various corruption-related issues, namely, amendments to the law on financing political parties, the law on criminal liability of legal entities, the law on seizure of property/confiscation of property obtained through criminal acts, and the law on public procurement.

5. Human rights

5.1. Civil society

31. We note that the co-operation between the authorities and the NGO sector has substantially improved since the establishment of the new government, which is a welcome development. We were particularly pleased to learn that NGOs took a very active part in the public debate on the national defence strategy at the end of 2008, which was extended at the request of NGOs in order to give the possibility for all voices to be heard.

32. That said, we learned with disappointment that, on 19 December 2008, the government withdrew the draft law on associations from the parliament's agenda, in order to provide more time for the debate on the budget law, to make sure that the latter was adopted on time for the beginning of the new financial year. The adoption of the law on associations is one of the long-standing commitments of Serbia which has not been fulfilled yet. While we understand that, in times of crisis, the imperatives of the national interests may justify changes in the normal legislative agenda, we regret that the NGO sector is, yet again, adversely affected by the changing immediate priorities of the government. We hope that the authorities will very soon put the draft law on associations again on the agenda and proceed with its prompt adoption.

5.2. Anti-discrimination

33. We welcome the adoption, on 26 March 2009, of the anti-discrimination law. However, the discussion on this law was affected by the strong opposition to its adoption by the religious communities. Reportedly, the leaders of the religious communities objected to the provisions of this law that concern the freedom of religion and the prohibition of discrimination on the grounds of gender identity and sexual orientation. While we welcome the fact that the authorities resisted well the pressure from the religious communities and adopted the law, without any substantial changes, we are concerned by the fact that the issues of freedom of religion, gender identity and sexual orientation continue to be a factor of division in society, as the opposition parties proposed some 450 amendments to the draft law during the parliamentary procedure.

34. In this respect, we reiterate our call to the authorities to fully implement the recommendations of the European Commission against Racism and Intolerance (ECRI) contained in its report adopted in August 2008. In particular, we recommend developing a comprehensive anti-discrimination policy that will help society develop a culture of respect for diversity.

35. Moreover, we were informed by the representatives of the lesbian, gay, bisexual and transgender (LGBT) organisations that LGBT activists often experience harassment, intimidation, threats and violence. Although the authorities have always condemned violence against LGBT persons, it is believed that the law enforcement agencies and the courts are reluctant to deal with these cases and only a few perpetrators of attacks have actually been brought to justice and punished. The LGBT community thinks that the authorities and, in particular, the police should take more positive actions to protect them. Cases of hate speech in electronic and print mass media also have to be publicly condemned and sanctioned. Furthermore, in the view of LGBT organisations, a general law on gender equality needs to be adopted.

36. Most recently, we learned that, on 24 February 2009, the administration of the “Sava-Centar” conference centre banned the organisation of a press conference by the LGBT organisation “Gay Straight Alliance”, which was supposed to be held on the occasion of the projection of a film about gay rights activists, within the framework of the Belgrade film festival FEST. The “Gay Straight Alliance” intended to present its 2008 annual report at this press conference. Although the decision of the administration of “Sava-Centar” was publicly denounced by the State Secretary for Human and Minority Rights, Marko Karažić, we are extremely concerned by this flagrant act of discrimination against LGBT activists, which cannot be tolerated in a Council of Europe member state.

37. We reiterate our call to the authorities to condemn and investigate all attacks against human rights defenders, including LGBT activists, as well as develop a comprehensive anti-discrimination policy to eliminate all forms of discrimination, including against sexual minorities.

5.3. Rights of national minorities

38. We take note of the report by Mr Herrmann on the situation of national minorities in Vojvodina and of the Romanian ethnic minority in Serbia ([Doc. 11528](#)) and of the relevant [Resolution 1632 \(2008\)](#), adopted by the Assembly on 1 October 2008, and subscribe to all the recommendations contained therein.

39. It appears that, since the adoption of [Resolution 1632 \(2008\)](#), no major developments have occurred with respect to the enhancement of the legislative framework for the rights of national minorities. We, therefore, reiterate our call to the authorities to implement the Assembly recommendations contained in [Resolution 1632 \(2008\)](#), as well as the recommendations contained in our draft report.

6. Co-operation with the International Criminal Tribunal for the former Yugoslavia (ICTY)

40. We welcomed in our report the clear improvements in the co-operation with the ICTY, which led in 2008 to the arrest and extradition of two of the remaining most wanted indictees, Radovan Karadžić and Stojan Župljanin. This was confirmed by the report of the ICTY Chief Prosecutor, Serge Brammertz, which he delivered to the UN Security Council on 12 December 2008.

41. On the basis of our recent discussions in Belgrade, we believe that the co-operation with the ICTY has been significantly improved and that the political commitment to completing co-operation is now strong. That said, the co-operation with the tribunal can only be completed when the two remaining indictees, Ratko Mladić and Goran Hadžić are apprehended and extradited. We gained the impression that our Serbian colleagues are aware of this and are working hard to bring about concrete results. We encourage them to intensify their efforts.

7. Conclusions

42. As we mentioned in our draft report, we believe that Serbia is moving forward and making progress in the process of democratic reforms and European integration. A great deal of the formal accession commitments have now been completed. Several issues still remain open, in particular, the ratification of the revised European Social Charter, the signing and ratification of the European Outline Convention on Transfrontier Co-operation between Territorial Communities and Authorities and its additional protocols, the adoption of the law on associations, as well as the adoption of the law on alternative service and conscientious objectors. We believe that the authorities are capable of, and committed to, fulfilling these commitments promptly and expect some concrete steps in this direction to be taken soon.

43. We have noted the strong political commitment of the authorities to co-operate with the ICTY and that this co-operation has recently significantly improved. However, we consider that this specific accession commitment can only be fulfilled when the remaining indictees, Ratko Mladić and Goran Hadžić, are apprehended and extradited to the tribunal. Therefore, we would like to encourage the authorities to intensify their efforts aiming at completing the co-operation with the ICTY.

44. That said, although important, the implementation of formal commitments is only part of the process of building a democratic society complying with European standards. The democratic functioning of institutions, the respect of the principles of rule of law and the effective enjoyment of human rights by all citizens of Serbia are essential factors in the implementation by the Council of Europe member states of their obligations and commitments. In this respect, we have to note that Serbia's democratic institutions are still not functioning in accordance with the standards of our Organisation. In particular, parliamentary democracy has to be strengthened, the members of parliament have to act as free representatives of the citizens and not of political

parties, the practice of allocation of parliamentary mandates has to be brought into line with European standards, the guarantees of independence of judges and prosecutors have to be strengthened and positive actions enhancing human rights and the rights of national minorities have to be taken.

45. Appendix I to the present addendum contains a number of amendments that we propose to table to the draft resolution contained in [Doc. 11701](#), in order to update it in accordance with recent developments. If approved by the committee, these amendments will be tabled on its behalf. With these amendments, the draft resolution will address a number of concrete recommendations to the Serbian authorities relating to the functioning of democratic institutions, the rule of law and human rights. We would invite our Serbian colleagues, on the basis of these recommendations, to elaborate a concrete road map for completing the implementation of the remaining obligations and commitments to the Council of Europe. We believe that the implementation of this road map will help the Serbian authorities and our Assembly prepare the way for closing the monitoring procedure for Serbia and opening the post-monitoring dialogue.

Appendix 1 – Amendments to the draft resolution on the honouring of obligations and commitments by Serbia (contained in Doc. 11701) unanimously adopted by the Monitoring Committee

Amendment No. 1

In paragraph 2, last sentence, delete the words “most recently”.

Amendment No. 2

After the third sentence of paragraph 5, insert the following sentence:

“Moreover, the Assembly takes note of the decision of the Serbian authorities to apply the Interim Trade Agreement unilaterally, pending the completion of the ratification process of the Stabilisation and Association Agreement by all European Union member states.”

Amendment No. 3

Replace paragraph 7 with the following text:

“The Assembly understands the frustration of the Serbian people with respect to the developments in Kosovo. It welcomes the fact that the Serbian authorities are defending their position by peaceful and diplomatic means, in accordance with international law, as exemplified by the request for an advisory opinion addressed to the International Court of Justice by the United Nations General Assembly, at the proposal of the Serbian delegation. Furthermore, the Assembly congratulates the Serbian authorities on their constructive approach with respect to the deployment of the European Union Rule of Law Mission (EULEX) as an essential step in ensuring the respect of human rights and rule of law in Kosovo.”

Amendment No. 4

Replace sub-paragraph 9.1 with the following text:

“continue to defend their position with respect to Kosovo only by peaceful and diplomatic means;”

Amendment No. 5

In the first sentence of paragraph 10, after the word “establishment”, add the following words: “, in June 2008,”.

Amendment No. 6

In the first sentence of paragraph 11, replace the word “clear” with the word “significant”.

Amendment No. 7

Replace sub-paragraph 12.1 with the following text:

“apprehend and promptly extradite the two remaining indictees, Ratko Mladić and Goran Hadžić;”

Amendment No. 8

Delete sub-paragraph 12.4.

Amendment No. 9

After sub-paragraph 13.1, insert the following new sub-paragraph:

“believes that the problems which the National Assembly of Serbia is facing are, to a large extent, rooted in the existing constitutional framework, which establishes a ‘party-administered mandate’ of MPs, as well as in the arrangements for the allocation of seats in parliament, which make the MPs dependent on the decisions of their parties’ leadership and prevent them from expressing their views freely, as democratically elected representatives of the citizens of Serbia;”

Amendment No. 10

In sub-paragraph 13.3, delete the words “newly appointed”.

Amendment No. 11

In sub-paragraph 13.4.2, replace the words “the imperative mandate” with the words “party-administered mandate”.

Amendment No. 12

Delete sub-paragraph 14.1.

Amendment No. 13

After sub-paragraph 14.3, insert the following new sub-paragraph:

“takes note of the adoption, in December 2008, of the legislative package governing the reform of the judiciary and of the Public Prosecutor’s Office; the Assembly regrets that not all of the recommendations of the Venice Commission and of the Council of Europe experts concerning these laws have been taken on board;”.

Amendment No. 14

After sub-paragraph 14.3, insert the following new sub-paragraph:

“notes, furthermore, that Serbia’s constitutional and legal order does not establish sufficient guarantees against the politicisation of the judiciary and of the prosecutorial service;”.

Amendment No. 15

In sub-paragraph 14.5, replace the words “in particular” with the word “therefore”.

Amendment No. 16

Replace sub-paragraph 14.5.1 with the following new text:

“continue to work with the Venice Commission on the establishment of clear legal guarantees allowing the serving judges, against whom there are no allegations of incompetence or behaviour incompatible with the function of the judge, to remain in office;”.

Amendment No. 17

After sub-paragraph 14.5.1, insert the following new sub-paragraph:

“continue to work on the improvement of the constitutional and legal framework for the judiciary and the Public Prosecutor’s Office in order to establish sufficient guarantees against political interference in their activities;”.

Amendment No. 18

At the end of sub-paragraph 15.3, insert the following words: “, while regretting that this draft law was, once again, taken off the agenda of the parliament in December 2008;”.

Amendment No. 19

After sub-paragraph 15.3, add the following new sub-paragraph:

“welcomes the recent adoption of the anti-discrimination law;”.

Amendment No. 20

At the beginning of sub-paragraph 15.5.1, add the word “urgently”.

Amendment No. 21

In sub-paragraph 15.5.3, delete the words “enact a law on anti-discrimination and”.

Amendment No. 22

In sub-paragraph 15.5.7, after the word “against”, add the word “all”.

Amendment No. 23

In sub-paragraph 15.5.7, after the word “activists”, insert the words “, including those dealing with the rights of the lesbian, gay, bisexual and transgender population,”.

Amendment No. 24

In sub-paragraph 15.5.8, delete the words “publish the report of the Committee for the Prevention of Torture and Inhuman and Degrading Treatment (CPT) and”.

Amendment No. 25

At the end of sub-paragraph 15.5.8, replace the word “CPT” with the words “European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment”.

Amendment No. 26

In sub-paragraph 16.1, replace the figure “58” with the figure “59”.

Amendment No. 27

Replace paragraph 17 with the following new text:

“On the basis of the above recommendations, the Assembly invites the Serbian authorities to draw a road map for the implementation of the remaining obligations and commitments in the field of co-operation with the ICTY, the functioning of democratic institutions, rule of law and human rights. This road map should help the Serbian authorities and the Assembly pave the way for the closing of the monitoring procedure and the opening of the post-monitoring dialogue.”

Amendment No. 28

After paragraph 17, add the following new paragraph:

“Pending progress in the implementation of the above recommendations, the Assembly resolves to continue the monitoring procedure with respect to Serbia.”

Appendix 2 – Press release on the results of the fact-finding visit to Belgrade on 9 and 10 February 2009

Serbia: Transparent and efficient functioning of democratic institutions, which citizens can trust, is an essential precondition for closing the monitoring procedure

Strasbourg, 11.02.2009 – “Transparent and efficient functioning of democratic institutions, which citizens can trust, is an essential pre-condition for closing the monitoring with respect to Serbia,” yesterday said Council of Europe Parliamentary Assembly co-rapporteur on Serbia Andreas Gross (Switzerland, SOC) at the end of a two-day visit to the country.

“Since the last parliamentary elections of May 2008, Serbia has made noticeable progress in a number of reform areas -he continued- commending the current political stability as well as the adoption of a number of key laws relating to European integration, reform of the judiciary and fight against corruption.

“However, in a genuine democracy, the country’s future cannot be decided by the leaders of political parties alone and the members of Parliament should engage in a constructive dialogue about various political options, as free representatives of the citizens and not mere ‘tools’ of political parties. Guaranteeing the rights of the opposition is an essential element of democracy, but the opposition should not be able to block the parliamentary process,” he stressed.

“The revision of parliamentary rules of procedure is only part of the solution. Most importantly, the electoral system should be reformed to make sure that the views of all citizens of Serbia are represented in parliament, for example, by introducing open regional lists,” Mr Gross noted.

“With respect to the co-operation with ICTY, I do believe the authorities are doing everything possible to apprehend the remaining ICTY indictees Ratko Mladić and Goran Hadžić and hope to see this chapter of the monitoring process closed as quickly as possible,” he stressed.

The honouring of obligations and commitments by Serbia will be debated during the April Part-session of the Assembly. For this purpose, the co-rapporteurs Andreas Gross (Switzerland, SOC) and Charles Goerens (Luxembourg, ALDE) will prepare an addendum to their last report dated September 2008. If necessary, they are ready to pay another visit to Belgrade to talk with the country’s leadership at the highest level in order to agree on a roadmap aiming at the closing of the monitoring procedure.

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 239 \(2002\)](#)

Approved by the committee on 31 March 2009

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 Luc **van den Brande**, Mr Mevlüt **Çavuşoğlu**, Mr Sergej Chelemendik, Ms Lise **Christoffersen**, Mr Boriss Cilevičs, Mr Georges **Colombier**, Mr Telmo Correia, Mrs Herta Däubler-Gmelin, Mr Joseph **Debono Grech**, Mr Juris Dobelis, Mrs Josette Durrieux, Mr Mátyás **Eörsi**, Ms Mirjana **Ferić-Vac**, Mr Giuseppe **Galati**, Mr Jean-Charles Gardetto, Mr József Gedei, Mr Marcel Glesener, Mr Charles Goerens, Mr Andreas **Gross**, Mr Michael **Hagberg**, Mr Holger Haibach, Ms Gultakin Hajibayli, Mr Michael **Hancock**, Mr Davit **Harutyunyan**, Mrs Olha **Herasym'yuk**, Mr Andres **Herkel**, Mr Raffi **Hovannisian**, Mr Kastriot **Islami**, Mr Mladen **Ivanić**, Mr Miloš **Jevtić**, Mrs Evguenia **Jivkova**, Mr Emmanouil **Kefaloyiannis**, Mr Hakki **Keskin**, Mrs Katerina **Konečná**, Mr Andros Kyprianou, Mr Jaakko **Laakso**, Mrs Sabine Leutheusser-Schnarrenberger, Mr Göran **Lindblad**, Mr René **van der Linden**, Mr Eduard **Lintner**, Mr Pietro Marcenaro, Mr Bernard Marquet, Mr Dick Marty, Mr Miloš **Melčák**, Mr Jean-Claude Mignon, Mr João Bosco Mota Amaral, Mrs Yuliya **Novikova**, Mr Theodoros Pangalos, Mr Alexander **Pochinok**, Mr Ivan **Popescu**, Ms Maria Postoico, Mr Christos Pourgourides, Mr John Prescott, Mrs Mailis Reps, Mr Andrea **Rigoni**, Mr Ilir **Rusmali**, Mr Armen **Rustamyan**, Mr Indrek **Saar**, Mr Oliver Sambevski, Mr Kimmo **Sasi**, Mr Samad Seyidov, Mr Christoph **Strässer**, Mrs Chiora **Taktakishvili**, Mr Mihai **Tudose**, Mrs Özlem **Türköne**, Mr Egidijus **Vareikis**, Mr José Vera Jardim, Mr Piotr Wach, Mr Robert Walter, Mr David Wilshire, Mrs Renate Wohlwend, Mrs Karin S. Woldseth, Mrs Gisela Wurm, Mr Boris Zala, Mr Andrej **Zernovski**.

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

Secretariat of the committee: Mrs Chatzivassiliou, Mr Klein, Ms Trévisan, Mr Karpenko