Parliamentary Assembly
Assemblée parlementaire
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Doc. 12813
09 January 2012

The honouring of obligations and commitments by Serbia

Report[1]
Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)
Co-rapporteurs: Mr Davit HARUTYUNYAN, Armenia, European Democrat Group, and Mr Indrek SAAR, Estonia, Socialist Group

Summary

The Monitoring Committee congratulates Serbia on the significant progress made since the adoption of Resolution 1661 (2009) of the Parliamentary Assembly. The committee acknowledges that Serbia has met a great number of obligations and commitments and achieved considerable progress, notably in the field of regional co-operation and co-operation with the International Criminal Tribunal for the former Yugoslavia, while continuing the dialogue with Pristina by peaceful and diplomatic means. Commendable efforts have been made by Serbia to reform the electoral law and the justice system, launch the decentralisation process, increase the protection of minority rights and set up and consolidate independent regulatory bodies. Serbia has ratified a high number of Council of Europe conventions and is committed to pursuing its progress towards integration into the European Union.

However, with a view to closing the monitoring procedure, the committee considers that the Serbian authorities need to make further progress to adopt the necessary legislation and ensure its effective implementation in four essential areas: the setting-up of an independent and efficient justice system, independent media, the fight against corruption and the fight against discrimination.

The committee therefore recommends that the Assembly continues its monitoring procedure in respect to Serbia and encourages the parliament and government to be set up after the 2012 parliamentary elections to make further progress on the four essential issues highlighted by the committee.

1. Reference to committee: Resolution 1115 (1997).

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A. Draft resolution[2]

1. The Parliamentary Assembly recalls its Resolution 1661 (2009) on the honouring of obligations and commitments by Serbia. It welcomes the significant progress achieved by Serbia over the past two years in order to comply with Council of Europe standards and norms by steadily implementing the obligations and commitments entered into at the moment of its accession in 2003. The Assembly praises Serbia for the political stability achieved over the past years, the progress achieved, its strive towards integration into the European Union and its co-operation with the International Criminal Tribunal for the former Yugoslavia (ICTY).

2. The strengthening of democratic institutions and human rights, the reform of the judiciary and the prosecutor's office, the fight against crime and corruption and the situation of the media have been on the state's political agenda and should remain key priorities in the coming years. In this respect, the Assembly welcomes the submission by the Serbian parliament of a roadmap for the completion of commitments and implementation of its statutory obligations, in line with Resolution 1661 (2009), which has proved to be instrumental in measuring the progress achieved and the commitments yet to be fulfilled.

3. As regards regional co-operation:

3.1. The Assembly acknowledges the positive and constructive role Serbia can play in the stabilisation of the region and welcomes the steps taken by the Serbian authorities to enhance Serbia's relations with its neighbours. The Assembly would like, in particular, to highlight the role of the parliament in that process and the adoption by the Serbian National Assembly, on 31 March 2010, of a declaration condemning the crimes committed in Srebrenica. The Assembly encourages the Serbian authorities to continue to implement a foreign policy aimed at strengthening dialogue, reconciliation and co-operation in the region, especially with Montenegro, Bosnia and Herzegovina and Croatia, and to maintain dialogue and promote good neighbourly relations based on respect for the sovereignty of the neighbouring countries.

3.2. The Assembly praises the efforts deployed by Serbia to reactivate the process to find long-term solutions for refugees and internally displaced persons launched in Sarajevo in 2005. The Assembly also welcomes the signature of a joint declaration by the Foreign Ministers of Serbia, Bosnia and Herzegovina, Croatia and Montenegro on 14 November 2011 aimed at identifying concrete steps to remove the remaining obstacles to a durable solution for the return of refugees and displaced persons and urges the international community to support the process at the Donors' Conference foreseen in 2012.

4. As regards co-operation between Serbia and the ICTY:

4.1. The Assembly congratulates the Serbian authorities on the arrest of the two indicted war-crimes fugitives, Ratko Mladić in May 2011 and Goran Hadžić in August 2011, and their extradition to the ICTY, and expresses its firm conviction that these arrests will contribute to bringing justice to the victims of the war.

4.2. The Assembly congratulates Serbia for the ratification of the European Convention on the non-applicability of statutory limitation to crimes against humanity and war crimes (ETS No. 82). It welcomes the signature of the Convention on the compensation of victims of violent crimes (ETS No. 116) and encourages Serbia to ratify it without further delay.

4.3. The Assembly takes note of the Serbian authorities' intention to improve the witness protection system by transferring the powers and responsibilities concerned to the Ministry of Justice and to provide witnesses with proper protection; the Assembly asks Serbia to draft and adopt the relevant legislation without further delay, in line with Assembly Resolution 1784 (2011) on the protection of witnesses as a cornerstone for justice and reconciliation in the Balkans.

5. The Assembly has followed the developments concerning the status of Kosovo[3] and the Belgrade-Pristina dialogue. The Assembly strongly condemns the violent incidents that occurred in July 2011 in northern Kosovo leading to a number of casualties. It welcomes the resumption of the Belgrade-Pristina dialogue and the agreement reached in July 2011 on freedom of movement of persons and vehicles, the exchange of information concerning civil status and the agreement in November 2011 on the mutual recognition of school and university diplomas and degrees. The Assembly invites all stakeholders to implement these agreements in good faith. Such practical agreements will have a positive effect on citizens.

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2. Draft resolution adopted unanimously by the committee on 15 December 2011.

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

6. The Assembly reiterates the appeal launched in Resolution 1661 (2009) and firmly hopes that the political parties will use peaceful and democratic means and make the necessary compromises to reach a solution agreed by all stakeholders with a view to ensuring the safety of the people living in the region.

7. The Assembly notes that integration into the European Union has remained a goal for Serbia in recent years and has boosted a number of reforms in the field of human rights, the rule of law and democracy. The decision of the European Commission of 12 October 2011 to propose that Serbia be granted candidate status is a clear acknowledgement of the progress achieved.

8. The Assembly welcomes Serbia's commitment to pursue its integration into the European Union and reiterates its support to Serbia on this path. In this respect, the Assembly takes note of the conclusions adopted by the European Council on 9 December 2011 acknowledging the considerable progress Serbia has made towards fulfilling the political criteria set by the Copenhagen European Council and the Stabilisation and Association Process requirements. It also notes that the European Council will decide in February/March 2012 to grant the candidate status to Serbia after it has examined and confirmed that Serbia has continued to show credible commitment and achieved further progress in moving forward with the implementation in good faith of the agreements reached in the dialogue with Pristina, and in co-operating actively with European Rule of Law Mission in Kosovo (EULEX) and KFOR.

9. As regards the functioning of democratic institutions, the Assembly stresses the progress achieved in compliance with Resolution 1661 (2009). In particular, the Assembly:

9.1. notes the political stability that has prevailed since the last parliamentary elections in 2008 which creates a favourable environment for society to progress and implement the necessary reforms in the field of democracy, human rights and the rule of law. The Assembly reiterates its call to the opposition to adopt a constructive attitude and to the majority coalition to create conditions for a meaningful dialogue with the opposition on key issues;

9.2. welcomes the adoption of the Law on the National Assembly on 26 February 2010, of its new Rules of Procedure on 28 July 2010, and the Rules on the organisation and work of the services of the parliament on 5 July 2011, which should make the Serbian Parliament a more efficient and modern institution, strengthen its role and turn it into a proper arena for democratic debate;

9.3. encourages the National Assembly of Serbia to continue to develop, in co-operation with the Parliamentary Assembly, a follow-up Parliamentary Assistance Programme, making full use in particular of funding opportunities within the framework of the European Union's Instrument for Pre-accession Assistance and further strengthen the capacity of the National Assembly to play an increasingly active role in the political process and improve the quality of the parliamentary output and the role of the opposition in the parliament;

9.4. congratulates Serbia for adopting, in 2011, the Law on altering and amending the law on election of members of Parliament of the Republic of Serbia in accordance with the Joint Recommendations of the European Commission for Democracy through Law (Venice Commission) and OSCE/ODIHR, which has brought the system of allocation of mandates in the parliament into line with European standards; it abolished the "party-administrated mandates" and the "blank resignations", as requested by the Assembly in its Resolution 1661 (2009); in addition, the Assembly praises the fact that these amendments will increase women's participation in parliament to 30%. The Assembly notes, however, that the Serbian Constitution still contains a provision allowing for imperative mandates;

9.5. welcomes the amendments adopted on 20 June 2011 to the 2007 Law on Local Elections, which formally abolish "blank resignations" at local level, in line with the decision of the Constitutional Court of 20 April 2010;

9.6. considers that the adoption of the 2009 Law on a Single Voters' Register (which entered into force in December 2011) is a positive step to improve the accuracy and security of data; it regrets, however, that the Law on the State Election Commission could not be adopted in time and will not be in force for the 2012 parliamentary elections;

9.7. welcomes the adoption of the Law on the Financing of Political Activities on 14 June 2011, in line with the recommendations of the Group of States against Corruption (GRECO) and the Venice Commission;

9.8. welcomes the consolidation of local self-government and, in particular, the adoption of the Law on the jurisdiction of the Autonomous Province of Vojvodina in November 2009 and the subsequent enactment of the Vojvodina Provincial Assembly's Statute; the Assembly also welcomes the adoption of

the Law on Public Property in September 2011 and the Law on Amendments to the Law on Local Government Finance in July 2011, amending the method of transfer calculation and percentage of local government share in revenues from taxes on salaries;

9.9. congratulates Serbia for setting up and strengthening independent regulatory bodies, such as the Offices of the Defender of Citizens' Rights (Ombudsman), the Commissioner for the Protection of Equality and the Commissioner for the Protection of Free Access to Information. It considers such bodies are comprehensive and effective mechanisms to enhance the protection of citizens' rights and ensure the effective functioning of democratic institutions in Serbia and encourages Serbia to continue on this path;

9.10. therefore calls on the Serbian authorities to:

9.10.1. eliminate from the Constitution the provisions establishing the imperative mandate of members of parliament;

9.10.2. take the necessary steps to revise the electoral law and adopt the Law on the State Election Commission after the 2012 parliamentary elections, with a view to setting up an independent and autonomous authority to supervise elections;

9.10.3. strengthen the oversight role of the parliament;

9.10.4. ensure that the Anti-Corruption Agency is provided with sufficient resources to control the funding of political parties and take the appropriate sanctions when necessary;

9.10.5. implement Recommendation 316 (2011) of the Congress of Local and Regional authorities of the Council of Europe, to continue to implement a comprehensive decentralisation reform in compliance with the European Charter of Local Self-Government (ETS No. 122), and to adopt the Law on Local Government Staff to increase the capacity of local authorities;

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

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

10.1. takes note of the comprehensive reform of the justice system carried out since 2008 that has resulted in the adoption of the Law on the Organisation of Courts, the Law on Judges, the Law on the High Judicial Council, the Law on the Public Prosecution, the Law on the State Council of Prosecutors, and the Law on Court and Public Prosecutors Seats and Districts; the Assembly welcomes the fact that Serbia sought expertise from the Venice Commission on most of this legislation;

10.2. considers that the amendments to the Law on the Judicial Academy adopted in July 2011 will reinforce a merit-based recruitment of judges and encourages the Serbian authorities to further reinforce their initial and in-service training;

10.3. remains preoccupied by the lack of independence of the judiciary and stresses the need to reinforce the institutions and restore the confidence of the people in their justice system;

10.4. as regards the review of the cases of 800 non re-elected judges and 150 non re-elected prosecutors as a result of the reform of the justice system and the decisions of the High Judicial Council and the State Prosecutorial Council:

10.4.1. observes that the review process initiated in December 2009 was delayed but that, finally, in co-operation with international organisations, it is being carried out based on more transparent criteria;

10.4.2. considers that, despite shortcomings, this process should ensure a fairer re-appointment procedure of judges and prosecutors;

10.4.3. urges the High Judicial Council and the State Prosecutorial Council to complete the re-appointment procedure of judges and prosecutors based on objective, undisputed, transparent and unbiased criteria, within a reasonable time and in compliance with European standards;

10.5. welcomes the planned revision of the Law on the Constitutional Court with a view to increasing its efficiency and invites the Serbian authorities to take into account the forthcoming opinion of the Venice Commission on that draft law;

10.6. remains highly concerned about the corruption which is still widespread in Serbia and affects many sectors of society, including political life, the judiciary and the health and education sectors;

10.7. welcomes the co-operation between the Serbian authorities and the Council of Europe in the fields of the reform of the judiciary and the fight against corruption, money laundering and the financing of terrorism;

10.8. in particular, calls on the Serbian authorities to:

10.8.1. develop and implement the legislation on the judiciary in accordance with European standards, guaranteeing in particular that the judiciary and the prosecutors are immune from political influence; in that respect, the Assembly expresses its concern over the political influence exercised by the parliament and the President over the judiciary;

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

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

10.8.4. adopt the legislation which will enable the implementation of the new Criminal Procedure Code of 2011, in line with Council of Europe standards;

10.8.5. continue to work with the Council of Europe in the consolidation of the Anti-Corruption Agency, which will play an increased role in the implementation of different policies and measures to combat political and administrative corruption;

10.8.6. set up an efficient and effective system of protection for “whistle-blowers” employed not only in the public but also in the private sector;

10.8.7. spare no efforts to strengthen the legislation and policies aimed at preventing money laundering and the financing of terrorism, in line with the recommendations of the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL).

11. As regards human rights, the Assembly:

11.1. welcomes the adoption of the 2009 Anti-Discrimination Law and the development of a comprehensive anti-discrimination policy to eliminate all forms of discrimination, including against sexual minorities;

11.2. welcomes the adoption of the Law on the Residence and Domicile of Citizens in November 2011, as well as the adoption of the Law amending the Law on Identity Cards (in force since June 2011) and the Law amending the Law on State Administrative Fees in July 2011;

11.3. believes that the adoption of the Law on National Councils of National Minorities in August 2009 and the subsequent election of 19 councils on 6 June 2010 – concerning more than 400 000 members of 16 national minorities – can contribute to the promotion of dialogue and co-operation between the central government and the minority communities, in particular in the fields of use of minority languages, education, and the representation of minorities in political and administrative bodies at all levels;

11.4. regrets that, to date, it has not been possible to organise in a proper way the election of the national council of the Bosniak minority and invites the Serbian authorities to foster interethnic, interreligious and intercultural dialogue and strengthen its efforts to promote the social and economic development of this region;

11.5. welcomes the adoption by the parliament, on 28 July 2011, of the Law supplementing the law ratifying the Optional Protocol to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment;

11.6. welcomes the adoption of the 2009 Law on Civilian Service governing matters relating to conscientious objection and alternative civilian service, as requested by the Assembly in its Resolution 1661 (2009);

11.7. strongly condemns the threats and attacks against independent journalists and media outlets;

11.8. in particular, calls on the Serbian authorities to:

11.8.1. put into effect the 2009 Anti-Discrimination Law by implementing Committee of Ministers Resolution CM/ResCMN(2011)7 of March 2011 on the implementation of the Framework Convention for the Protection of National Minorities (ETS No. 157), the recommendations of the European Commission against Racism and Intolerance (ECRI) of 23

March 2011, the conclusions of the report of the Commissioner for Human Rights of September 2011 and the upcoming Committee of Ministers Resolution on the implementation of the European Charter for regional or minority languages (ETS No. 148);

11.8.2. pursue the educational reform and make arrangements to include in school curricula the principles of tolerance, respect for others, inter-cultural dialogue and reconciliation;

11.8.3. review the achievements of, and challenges faced by, the national councils of national minorities one year after they started to operate;

11.8.4. publish, in due course, the report of the Committee for the Prevention of Torture and Inhuman and Degrading Treatment (CPT) and co-operate with the Council of Europe on the implementation of the CPT's recommendations;

11.8.5. investigate and prosecute all cases of violence and harassment against journalists and take positive steps to ensure their protection;

11.8.6. ensure, when implementing the new media strategy adopted on 28 September 2011, that the legislation to be adopted complies with Council of Europe standards, and in particular to:

11.8.6.1. ensure that the state withdraws from media ownership in a set time frame;

11.8.6.2. decriminalise defamation, in line with Resolution 1577 (2007) "Towards decriminalisation of defamation";

11.8.6.3. secure the freedom of information and financial and editorial independence of media outlets;

11.8.6.4. in particular make sure that the future media legislation contains well-developed measures for securing independent editorial policy;

11.8.7. amend the criminal code and include the criminal offense of "hate speech", in line with Committee of Ministers Recommendation No. R (97) 20;

11.8.8. 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);

11.8.9. pursue their efforts to implement the Roma Advancement Strategy, paying particular attention to Roma's personal identity documents, access to employment, health care, education and housing.

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

12.1. welcomes the fact that, to date, Serbia has signed and ratified 77 Council of Europe conventions and fulfilled, in that area, all its commitments, with the exception of the signature and ratification of the European Outline Convention on transfrontier co-operation between territorial communities or authorities (Madrid Convention, ETS No. 106);

12.2. calls on the Serbian authorities to ratify, without further delay, the six conventions signed but not yet ratified.

13. In conclusion, the Assembly acknowledges the significant progress made by Serbia to fulfil its obligations and commitments. The Assembly congratulates the Serbian authorities on the impressive reforms carried out and encourages Serbia to further co-operate with the Council of Europe to improve its legislation and practice in the field of the rule of law, democracy and human rights. The Assembly hopes that the next parliament and government will pursue these reforms, remain committed to the fulfilment of the remaining commitments and obligations and pursue the dialogue with Pristina by peaceful and diplomatic means.

14. With a view to fulfilling some essential remaining commitments and obligations that still need to be fully addressed, the Assembly resolves to pursue its monitoring of the honouring of obligations and commitments by Serbia, and sets the following objectives to complete the monitoring procedure and launch a post-monitoring dialogue:

14.1. full implementation of the justice reform in order to guarantee its independence and efficiency, including the completion of the review process of the non re-elected judges and prosecutors;

14.2. adoption and implementation of effective anti-corruption policies;

14.3. adoption of amendments to the criminal code in line with GRECO recommendations;

14.4. improvement of the situation of the media;

14.5. full implementation of the rights of minorities, especially Roma.

B. Explanatory memorandum by Mr Harutyunyan and Mr Saar, co-rapporteurs

1. Introduction

1. On 28 April 2009, the Parliamentary Assembly adopted Resolution 1661 (2009) on the honouring of obligations and commitments by Serbia and decided to continue the monitoring procedure with respect to Serbia. In order to monitor the implementation of this resolution, the Monitoring Committee appointed Mr Davit Harutyunyan (Armenia, EDG) co-rapporteur on 1 October 2009 and, to replace Mr Andreas Gross (Switzerland, SOC), co-rapporteur since 2006, Ms Sinikka Hurskainen (Finland, SOC) on 27 April 2010, followed by Mr Indrek Saar (Estonia, SOC) on 31 May 2011.

2. Three fact-finding visits were organised in Serbia from 20 to 22 January 2010, from 29 November to 2 December 2010[4] and from 19 to 22 September 2011 to assess the latest political and legal developments.

3. We commend the Serbian parliamentary Foreign Affairs Committee for preparing and adopting a Roadmap for the completion of commitments and implementation of statutory obligations, in line with Resolution 1661 (2009). In this resolution, the Assembly invited the Serbian authorities "to draw up a roadmap for the implementation of the remaining obligations and commitments in the field of co-operation with the International Criminal Tribunal for the former Yugoslavia (ICTY), the functioning of democratic institutions, the rule of law and human rights". We thank the delegation of Serbia to the Parliamentary Assembly and its secretariat for their co-operation and for sending the Monitoring Committee a roadmap approved by the Serbian Parliament on 16 March 2011 and updated in October 2011.[5] The co-rapporteurs would also like to thank the Serbian delegation for the comments submitted to the Monitoring Committee on 30 November 2011.

4. The preparation of this report and the organisation of the fact-finding visits to Serbia were possible thanks to the co-operation of the Parliament of Serbia, the Serbian delegation to the Parliamentary Assembly and the Council of Europe Office in Belgrade, which the co-rapporteurs warmly thank for their invaluable assistance.

2. Recent developments

2.1. Regional co-operation

5. In the past months, Serbia has made progress in the field of regional co-operation. A series of diplomatic visits improved the regional ties of Serbia with neighbouring countries. The Serbian President, Mr Tadić, visited Montenegro on 7-8 July 2010 for the first time since the dissolution of the State Union of Serbia and Montenegro in June 2006. President Tadić attended the commemoration of the Srebrenica massacre on 11 July 2010, expressing regret for the crimes committed in Srebrenica. The Croatian President, Mr Josipović, paid his first official visit to Serbia on 18-19 July 2010. President Tadić and President Josipović expressed their strong wish to improve relations between their countries and agreed that both neighbours are on the right path to resolving the remaining open issues (namely the return of Serb refugees from Croatia, the question of the state border, as well as missing persons, minorities and the protection of their rights). During his visit to Vukovar on 4 November 2010, President Tadić paid tribute to victims of war atrocities committed in 1991 and, together with Croatian President, Mr Josipović, offered apologies to the families of those killed. On 6 July 2011, during his first official visit to Sarajevo for five years, President Tadić gave an assurance that Serbia wished to respect Bosnia and Herzegovina's territorial integrity and sovereignty. In recognition of his political action for the reconciliation of the Balkans and the integration of his country in the process of European construction and his support for international justice, Boris Tadić was awarded the Council of Europe North-South Prize on 2 November 2011.

6. We are convinced that Serbia can play a positive and constructive role in the stabilisation of the region and would like the Serbian authorities to continue to implement a foreign policy aimed at strengthening dialogue, reconciliation and co-operation in the region, especially with Montenegro and Croatia. We urge them to maintain dialogue and promote good neighbourly relations based on respect for the sovereignty of the neighbouring countries.[6]

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4. See document AS/Mon (2010) 34 rev, information note by the co-rapporteurs on their fact-finding visits to Belgrade and Novi Pazar (28 November – 2 December 2010).
5. AS/Mon (2011) 10 – Hereinafter: "the parliament's roadmap, March 2011".

7. Following the adoption of Resolution 1786 (2011) on reconciliation and political dialogue between the countries of the former Yugoslavia,[7] we encourage the Serbian authorities to support the creation of a regional commission tasked with establishing the facts about the war crimes and other serious human rights violations committed in the territory of the former Yugoslavia (RECOM), by bringing together all the countries involved in those conflicts in order to improve mutual understanding of past events and honour and recognise all the victims. We are pleased that this initiative has gained the support of President Boris Tadić, the Speaker of the Parliament, Slavica Đukić Dejanović, and many leaders of political parties.[8]

8. We welcome an initial agreement reached on 19 June 2011 on distributing the assets of the former Socialist Federal Republic of Yugoslavia among the successor states and urge the authorities of the countries concerned to continue the negotiations under way and bring them to a conclusion.[9]

2.2. Co-operation with the Council of Europe

9. We welcome Serbia's ratification of several Council of Europe conventions since June 2009, including:

– the European Social Charter (revised) (ETS No. 163);

– the Convention on Cybercrime and its Additional Protocol (ETS Nos. 185 and 189);

– the Convention on Action against Trafficking in Human Beings (CETS No. 197);

– the Convention on the Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and the Financing of Terrorism (CETS No. 198);

– the Convention on the Prevention of Terrorism (CETS No. 196);

– the Protocol amending the European Convention on the Suppression of Terrorism (ETS No. 190);

– the Convention on Transfrontier Television (ETS No. 132);

– the Convention on the Protection of the Archaeological Heritage (revised) (ETS No. 143);

– the Framework Convention on the Value of Cultural Heritage for Society (CETS No. 199);

– the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201);

– the European Convention on the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crimes (ETS No. 82);

– the Convention on Human Rights and Biomedicine (ETS No. 164);

– the European Landscape Convention (ETS No. 176);

– the Third Additional Protocol to the European Convention on Extradition (CETS No. 209).

10. In the same period, the following conventions were signed by the Serbian authorities, and we urge them to ratify them as soon as possible:

– the European Convention on the Compensation of Victims of Violent Crimes (ETS No. 116);

– the European Convention on the Exercise of Children's Rights (ETS No. 160);

– the European Convention on the Adoption of Children (Revised) (CETS No. 202);

– the Council of Europe Convention on Access to Official Documents (CETS No. 205).[10]

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6. The recent discussion of a constituent nation status for Serbs living in Croatia and Montenegro mentioned in the Strategy for the Diaspora drawn up in January 2011 resulted in numerous protests from the Croatian and Montenegrin authorities. These controversial provisions were set aside in March 2011 (BBC Monitoring International Reports, 11 March 2011; V.I.P. Daily News Reports, 16 March 2011).

7. Resolution 1786 (2011), adopted on 26 January 2011 (rapporteur: Mr Pietro Marcerano, Italy, SOC).

8. See www.zarekom.org/news/Political-Support-to-RECOM-in-Serbia.en.html.

9. Serbia, which will keep 39% of the assets under a quota system, thus obtains the Prague Embassy and residences in Washington and Ottawa. The agreement relates to the distribution of immovable property: embassies, consulates, residences, etc. The distribution of the assets situated in the OECD member countries should be completed by mid-2012 according to statements by the Secretary General of the Ministry of Foreign Affairs, Vladimir Curguz (V.I.P., 5 July 2001, "Distribution of Part of Former Yugoslavia's Property Abroad Agreed").

10. Status of signatures and ratifications of Council of Europe treaties by Serbia at 24 November 2011, www.conventions.coe.int.

11. Further to paragraph 14.5.6 of Resolution 1661 (2009), Serbia is invited to sign and ratify the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (Madrid Convention, ETS No. 106). We had been informed in December 2010 that the ratification process was envisaged in the near future. We encourage the Serbian authorities to carry out this process as soon as possible.

2.3. Co-operation with the European Union

12. The last few months have seen intense activity aimed at speeding up Serbia's accession to the European Union. The European Union Foreign Ministers agreed, on 25 October 2010, to ask the European Commission to prepare an opinion on Serbia's candidacy to the European Union. The European Commissioner for Enlargement and European Neighbourhood Policy, Mr Štefan Füle, handed Serbia the Commission's questionnaire to which Serbia replied by the end of January 2011. The questionnaire contained about 2 500 questions divided into 33 policy areas.

13. Serbia adopted in December 2009 a national programme for the integration of Serbia in the European Union and, in March 2010, an action plan focusing on core activities[11] (and "ten commandments" of the European Union) with a view to obtaining the status of candidate country by the end of 2011. We have noted that many of these core activities (such as co-operation with ICTY, funding of political parties, reform of the judiciary, regulatory bodies, inclusion of Roma, etc.) are part of the remaining obligations and commitments identified in Resolution 1661 (2009).

14. We also note that the Stabilisation and Association Agreement was ratified by the European Parliament on 19 January 2011 and has been ratified by 23 European Union countries since 14 June 2010.[12]

15. It cannot be denied that the desire expressed by the Serbian authorities to join the European Union has been a driving force for carrying out the reforms. This is illustrated by the legislative progress achieved in the last few months, as well as by the arrest of the fugitives Mladić and Hadzić (see 2.4 below), and we encourage the Serbian authorities to continue their efforts to complete the process of joining Europe.

16. We have taken note of the progress report published by the European Commission, released on 12 October 2011. In its conclusion, the European Commission recommended that "the Council should grant Serbia the status of candidate country, taking into account progress achieved so far and on the understanding that Serbia reengages in the dialogue with Kosovo and is moving swiftly to the implementation in good faith of agreements reached to date" and recommended that "negotiations for accession to the European Union should be opened with Serbia as soon as it achieves further significant progress in meeting the following key priority: – Further steps to normalise relations with Kosovo in line with the conditions of the Stabilisation and Association Process by: fully respecting the principles of inclusive regional co-operation; fully respecting the provisions of the Energy Community Treaty; finding solutions for telecommunications and mutual acceptance of diplomas; by continuing to implement in good faith all agreements reached; and by co-operating actively".[13] On 9 December 2011, the European Council decided to re-examine, in February 2012, the decision to grant the status of candidate country to Serbia, subject to further progress.[14]

2.4. Co-operation with the International Criminal Tribunal for the former Yugoslavia and the prosecution of war criminals

17. In its Resolution 1661 (2009), the Assembly called on Serbia to co-operate fully with the International Criminal Tribunal for the former Yugoslavia (ICTY). We wish to congratulate the Serbian authorities on the arrest and extradition of the last two war fugitives sought by the ICTY, Ratko Mladić and Goran Hadzić (arrested on 26 May 2011 and 20 July 2011 respectively). These arrests are a decisive step and open up new prospects of justice for the victims of the conflict, reconciliation in the region and integration into Europe.

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11. www.seio.gov.rs.
12. www.seio.gov.rs/serbia-and-eu/ratification-of-the-saa.61.html.
13. Conclusions and Recommendations of the Commission's Opinions on the membership applications by Serbia (extract from the Communication from the Commission to the Council and the European Parliament "Enlargement Strategy and Main Challenges 2011-2012", COM(2011)666).
14. See the conclusions of the European Council of 9 December 2011, EUCO 139/11, paragraph 13, www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/126714.pdf.

18. The co-rapporteurs hope that the ratification of the European Convention on the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crimes (CETS No. 82) will enable justice to continue its course and encourage Serbia to ratify the European Convention on the Compensation of Victims of Violent Crimes (ETS No. 116), signed on 12 October 2010, in accordance with Resolution 1661 (2009) (paragraph 12).

19. We also welcome the adoption, on 31 March 2010, by the Serbian National Assembly of a declaration condemning the crimes committed in Srebrenica. This declaration is an important step in the programme of reconciliation and in strengthening good neighbourly relations in the region, in keeping with the spirit of Resolution 1661 (2009).

20. We hope that this reconciliation process will continue and that the crimes committed during the conflict in the former Yugoslavia will be prosecuted. We urge the Serbian authorities to investigate individuals suspected of war crimes, crimes against humanity and genocide and prosecute them if there is sufficient evidence.

21. In this respect, we think that the signature of a protocol on co-operation and mutual extradition by the war crimes prosecutor's offices in Serbia and Bosnia and Herzegovina could contribute to a more effective prosecution of war-related crimes in the region.

22. We would also like to reiterate the need to provide witnesses with proper protection, in accordance with Assembly Resolution 1784 (2011) on the protection of witnesses as a cornerstone for justice and reconciliation in the Balkans. Together with the Commissioner for Human Rights, we welcome the authorities' intention to improve the witness protection system by transferring the powers and responsibilities concerned to the Ministry of Justice.[15]

2.5. Events related to Kosovo

23. Co-operation with Kosovo since the adoption of Resolution 1661 (2009) has been marked by continuing dialogue and the search for a peaceful solution. This is reflected in the signing of a Protocol and annex on technical co-operation between the Serbian Ministry of the Interior and the European Union Rule of Law Mission in Kosovo (EULEX) on 11 September 2009. However, the tragic events that took place this summer in northern Kosovo show that the relations between Belgrade and Priština remain tense. We wish to recall at this point a number of developments since the adoption of Resolution 1661 (2009).

24. At Serbia's request, the United Nations General Assembly had asked the International Court of Justice to give an advisory opinion on the accordance with international law of the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo. The Court stated on 22 July 2010 that Kosovo's declaration of independence is not contrary to international law.[16]

25. At its special session of 26 July 2010, the Serbian Parliament adopted a resolution on Kosovo and voted (by 192 votes out of 220) in favour of "the continuation of Serbia's activities in the defence of its sovereignty and territorial integrity". The Serbian Radical Party, the Democratic Party of Serbia and the Liberal Democrats voted against.

26. On 9 September 2010, the United Nations General Assembly adopted by consensus a joint Serbia-European Union resolution on Kosovo. The resolution acknowledges the International Court of Justice's advisory opinion on the above-mentioned issue and calls for dialogue between Belgrade and Priština. President Tadić stressed that the resolution paves the way for a dialogue on future solutions to the Kosovo problem and preserves Serbia's right to defend its territorial integrity and legitimate interests in Kosovo, by peaceful and diplomatic means, while respecting the legitimate rights of the Albanian people.[17]

27. In a resolution approved on 1 December 2010, the Committee on Foreign Affairs of the European Parliament urged that talks with Kosovo start "without delay" and welcomed Serbia's willingness to engage in dialogue within the European Union framework, underlining that the commitment and readiness of both sides to compromise is needed for long-term stability and for improving people's well-being.

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15. Press release of the Commissioner for Human Rights, Thomas Hammarberg, of 16 June 2011 (CommDH 007(2011)), "Serbia has a key role to play in ensuring transitional justice and social cohesion in the Western Balkans". The Commissioner's report was published on 22 September 2011 (CommDH(2011)29).
16. See Doc. 12281 on the situation in Kosovo and the role of the Council of Europe (Rapporteur: Mr Björn von Sydow, Sweden, Socialist Group) and www.icj-cij.org.
17. DPA/Inf(2010)33.

28. We welcome the discussions between the representatives of the Serbs and Kosovo Albanians which took place in the first six months of 2011 and favoured a pragmatic approach focusing on the daily problems encountered by the citizens of the region, without prejudice to the position of the parties concerned on the status of Kosovo. We also welcome the agreement secured on 2 July 2011 on freedom of movement of persons and vehicles[18], the exchange of information concerning civil status registers (with the technical co-operation of EULEX). An agreement on the mutual recognition of university diplomas and degrees (that would be certified by the European University Association) was reached on 22 November 2011, while "some progress" was also noted by the EU mediator on Kosovo's right to participate in regional fora under its own flag and emblems, which Serbia opposes on the grounds that it would mean recognition of Kosovo's independence.[19] We hope that the tripartite bodies provided for will soon be operational so as to ensure the implementation of this agreement.

29. This agreement has had a mixed reception in Serbia: while the head of the Serbian delegation in charge of the negotiations, Borislav Stefanović, stressed that it mainly benefited the Serbs living in the enclaves south of the river Ibar, the Democratic Party of Serbia (DSS), the Serbian Radical Party (SRS) and the Serbian Progressive Party (SNS) thought that it was tantamount to a gradual loss of Kosovo. The Liberal Democratic Party (LDP), on the other hand, regards it as initiating a new policy that will benefit the citizens.[20]

30. We urge Serbia to continue to emphasise this pragmatic and concrete approach and to bring the forthcoming discussions on trade, telecommunications and energy supplies to a successful conclusion.

31. At the same time, we wish to express our deep concern in the light of the violence that has occurred this summer and continues to date,[21] which shows that relations between the parties concerned remain tense and fragile. As Serbia (and Bosnia and Herzegovina) have refused to recognise customs stamps bearing the symbols of Kosovo or the inscription "Kosovo Customs Services" (as recognised by UNMIK), Kosovo ordered a boycott of products from Serbia and Bosnia and Herzegovina on 20 July 2011, a measure that triggered protest demonstrations in the four Serb municipalities in northern Kosovo. On 25 July 2011, Priština attempted to deploy its own customs and police officers at the two border posts Jarinje and Brnjak to ensure compliance with the trade embargo ordered five days earlier, thus arousing the anger of the Serbs of northern Kosovo. Violent and tragic incidents ensued, with the death of a Kosovo police officer and the burning down of one of the two border posts.

32. On the night of 30 to 31 July 2011, the Serbian parliament adopted a declaration on Kosovo by 181 votes (out of 207)[22] condemning the violence and calling for the resumption of dialogue to find a peaceful solution to the crisis created by Priština's unilateral action and the attempt by the Kosovo police to control the border posts.

33. On 4 and 5 August, the Commander of KFOR concluded agreements with the authorities in Belgrade and Priština: the two border posts will be renamed "military security zones" and controlled by KFOR troops until mid-September. KFOR will ensure the passage of vehicles weighing a maximum of 3.5 tonnes, humanitarian convoys and food.

34. In mid-August 2011, several buses carrying passengers between Belgrade and eastern Kosovo were turned back by Kosovo police.[23]

35. We call on all the parties concerned to resume dialogue, condemn all acts of violence and comply with international agreements on the movement of persons and goods – United Nations Security Council Resolution 1244 and the Central European Free Trade Agreement (CEFTA) to which Serbia and UNMIK (representing Kosovo) are parties.

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18. These vehicles must have licence plates bearing the letters "KS" (issued by UNMIK) or "RKS" (issued by the Kosovo authorities), subject to the use of temporary plates for travel in the territory of Serbia.
19. Fatmir Aliu, Gordana Andric, Kosovo, Serbia Reach Higher Education Deal, www.balkaninsight.com, 22 November 2011.
20. V.I.P., "Serbia closer to recognizing Kosovo independence, opposition accuses", 4 July 2011.
21. About thirty KFOR soldiers were injured on 28 November 2011, some by small firearms, when hundreds of Serbs resisted an attempt by KFOR soldiers to remove roadblocks erected by Serbs in village of Jagnjenica. V.I.P., 5 December 2011.
22. The government coalition and the opposition parties SRS, SNS and the New Serbia party (NS). The DSS, the LDP and Riza Halimi, the only Albanian MP from southern Serbia, voted against. The four MPs from the Alliance of Vojvodina Hungarians abstained.
23. www.B92.net, "Buses prevented from entering Kosovo", 16 August 2011.

36. The co-rapporteurs also recommend that the Serbian authorities continue the dialogue with Priština based on a pragmatic approach focusing on the needs and security of the citizens, and, in this connection, facilitate participation by the representatives of Kosovo in the relevant international and regional bodies. We would also like to recall that the Assembly's Political Affairs Committee is currently preparing a report on the situation in Kosovo and we are fully supporting the rapporteur, Björn von Sydow, who, after his visit to the region in early November 2011, emphasised that "a solution to the current stalemate in the North of Kosovo lies in seeking a compromise, with all sides making concessions".[24] We also stress that a peaceful solution requires the involvement and goodwill of all parties, and their readiness to reach compromises.

37. Finally, we take note of the fact that the Kosovo issue has recently been at the heart of the debate on the integration of Serbia into the European Union. During her official visit to Serbia on 23 August 2011, German Chancellor Angela Merkel invited Serbia to dismantle the Serbian "parallel institutions" operating in northern Kosovo.[25] This request was considered unacceptable by President Tadić (who does not envisage abandoning northern Kosovo) and was perceived as a new condition for obtaining candidate status and opening negotiations with a view to joining the European Union. The Kosovo issue is also becoming an increasing topical issue in domestic politics, as the 2012 parliamentary elections approach. We are quite concerned that the DSS has decided to boycott the plenary sessions of the parliament since 20 October 2011, expecting a new declaration on Kosovo to be debated in parliament.

38. We note that an agreement on crossing points was in principle reached on 2 December 2011 with the mediation of the European Union. According to the announcement of the Council of Ministers of the European Union, the parties should gradually set up joint, integrated, single and secure posts at all their common crossing points, in the presence of EULEX, in line with its mandate.[26] The new round of discussions between Belgrade and Pristina also addressed the implementation of the agreements which have already been signed. Full implementation of the freedom of movement agreement is expected on 26 December 2011, resulting in free travel for everyone, while the parties should start copying documents on 5 December 2011, in line with the agreement on civil registry. We hope that these agreements will contribute to easing the tensions in northern Kosovo and allow the continuation of the dialogue between Belgrade and Pristina by peaceful and diplomatic means.

3. Functioning of democratic institutions

3.1. Reform of the electoral law

39. Two substantial issues were identified in Resolution 1661 (2009). The first issue relates to party-administrated mandates. According to the opinion of the European Commission for Democracy through Law (Venice Commission), "members of Parliament are regarded as representatives of the whole people and are responsible only to their conscience. As a consequence, they should abide only by the rules and no other orders or instructions can be binding on them".[27] In its Resolution 1747 (2010), the Assembly urged the Parliament of Serbia "to amend the existing constitutional framework with a view to abolishing a party-administered mandate and amend the electoral legislation accordingly, in order to increase the transparency for voters of the allocation process for seats from party lists" and "to abrogate constitutional and legislative provisions providing for the recall of peoples' representatives by the political parties (the so-called 'imperative mandate'[28]) and legislative provisions … that allow for the reordering of candidates on the party lists after the elections have taken place".[29] In addition, OSCE/ODIHR and the Venice Commission underlined in their Guidelines on political party regulations[30], that "there are instances where candidates elected from a party list

24. See http://assembly.coe.int/ASP/NewsManager/EMB_NewsManagerView.asp?ID=7117.
25. We refer back to Mr von Sydow's report: "Throughout Kosovo, Serbian structures receiving funding from Belgrade (so-called parallel structures), provide basic services to the Serbian community in key areas for everyday life such as administration, justice, health and education. Also at the political level, local authorities elected through Kosovo elections operate aside local authorities elected through Serbian elections. Recently, in a new development, the Judicial Council of Serbia has announced its decision to appoint judges and prosecutors to Kosovo municipalities. In the North of Kosovo, where the majority of the population is of Serbian ethnicity, Serbian structures are the main reference for ordinary people." (Doc 12281, ibid, paragraph 18).
26. V.I.P., 5 December 2011. According to media reports, all sides would honour the abbreviation IBM, but interpret it in their own way. For Pristina, the abbreviation would mean "integrated border management", and Belgrade would interpret it as "integrated boundary management".
27. Opinion of the Venice Commission 423/2007, CDL(2007)026rev, paragraph 7.
28. Concerning the imperative mandates of the members of the Serbian parliament, see the report on Honouring of obligations and commitments by Serbia of 2008 (co-rapporteurs: Mr Charles Goerens, Luxembourg, Alliance of Liberals and Democrats for Europe, and Mr Andreas Gross, Switzerland, Socialist Group), Doc. 11701, section 3.1.2.1.

renounce their party membership or change parties during their term in office. … Elected officials are elected by votes cast by citizens. Political party legislation should not transfer control of the voter bestowed mandate to a political party".[31]

40. It was explained to us that party-administrated mandates were established historically to secure political stability. We were also informed that the electoral system should soon be reviewed and a mixed system should be set up (with directly elected parliamentarians and parliamentarians elected on party lists). However, changing to a mixed system may not *per se* solve the issue of party-administrated mandates, unless the reordering of candidates on the party lists after the elections was forbidden. Reforming the party-administered mandate system was an essential element of Serbia's post-accession commitments and statutory obligations to the Council of Europe, as underscored in Resolution 1661 (2009).

41. The draft law on Altering and Amending the Law on Election of Members of Parliament of the Republic of Serbia drawn up in spring 2011 provided for the establishment of this mixed system. In its opinion adopted in March 2011,[32] the Venice Commission reiterated the position it had taken jointly in 2006 with the OSCE/ODIHR, specifying that "Article 84 of the law allows a party to arbitrarily choose which candidates from its list become members of parliament, after the elections, instead of determining the order of candidates beforehand. This limits the transparency of the system and gives political parties a disproportionately strong position vis-à-vis the candidates". The Venice Commission thus pointed out that the proposed amendment only "tempered" Article 84, which says that "at least half of the seats won by a political party will be allocated to candidates according to the order of the list, while the remainder of seats will be allocated through the previous system of discretionary designation by the parties".

42. In 2009, the Assembly had requested that the Serbian authorities revise this draft law and ensure that the electoral law fully complies with European standards and abolish the system of mandates administered by the political parties (see Resolution 1661 (2009), paragraph 14.5.1). We note with satisfaction that the Law on the Election of Members of Parliament of the Republic of Serbia, as amended on 25 May 2011, now foresees that all the seats won by a political party will be allocated to candidates according to the order of the list, in compliance with the recommendations of the Venice Commission.

43. Finally, to complete this electoral reform, and reiterating the requests made by the Assembly and the Venice Commission[33], we call on the Serbian authorities to amend Article 102.2 of the Constitution and repeal the constitutional provisions relating to mandates administered by the political parties.

44. The other pending issue concerns blank resignations – whereby MPs hand over blank resignations to group leaders before or after the elections. During our visit in November 2010, we were informed that this practice has no longer existed since 2006 and that blank resignations are no longer accepted: parliamentarians who wish to resign from their political party need to submit a personal request to the Administrative Committee. It should be noted that, on 22 April 2010, the Constitutional Court ruled the practice of "blank resignations" by municipal councillors, which effectively ensured party ownership of the elected mandate, unconstitutional. We therefore welcome the adoption on 25 May 2011 of the law abolishing blank resignations.

45. The Law on the Voter Register was passed on 11 December 2009. On 20 June 2011, the parliament passed amendments to the 2007 Law on Local Elections, which will enable the use of blank resignations at the local level to be formally abolished.

46. During our visit in September 2011, we had been informed that the Law on the State Election Commission was being drafted and should have permitted the creation of an independent and autonomous authority to supervise elections. Bearing in mind the parliamentary elections to be held in spring 2012, we had encouraged the Serbian authorities to put the legislative framework in place in good time. However, we have been informed that the Ministry of Human and Minority Rights, Public Administration and Local Self-Government decided not to submit a draft law governing a new electoral system and a draft Law on the State Election Commission in order to avoid any substantial change to the electoral system in the year preceding the year of regular elections.

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29. Resolution 1747 (2010) on the state of democracy in Europe and the progress of the Assembly's monitoring procedure, paragraphs 19.1.10 and 19.1.12.
30. CDL-AD(2010)024, adopted by the Venice Commission at its 84th Plenary Session (Venice, 15-16 October 2010).
31. CDL-AD(2010)024, paragraph 139.
32. CDL-AD(2011)005 adopted on 25-26 March 2011, paragraphs 11 and 16.
33. See the Venice Commission's Opinion CDL-AD(2007)004 (paragraph 53) and its report on the Imperative mandate and similar practices adopted at its 79th plenary session on 12-13 June 2009 (CDL-AD(2009)027).

47. In addition, we call on all political players to contribute to the smooth running of the future election campaign and stress the need to respect democratic procedures and continue the political negotiations in the institutional framework.

3.2. Reform of the parliament

48. We welcome the Serbian Parliament's adoption of the Law on the National Assembly on 26 February 2010 and of its new Rules of Procedure on 28 July 2010, in accordance with the call made by the Assembly in Resolution 1661 (2009), paragraph 14.5.3. On 5 July 2011, the legislature also adopted rules on the organisation and work of the services of the parliament. These reforms aim to make the parliament a more efficient, modern institution and strengthen the role of parliament and reinforce its budgetary and administrative autonomy. The parliament is now entitled to adopt its own budget. The adoption of new rules of procedure has made it possible to improve the operation of parliamentary committees and introduce public hearings and has made it easier for disabled parliamentarians to carry out their duties. The aim is to increase the efficiency of proceedings by reducing the time allocated to debates on the adoption of laws to harmonise legislation with the Community *acquis*, although this was condemned by the opposition and reflected in the European Commission 2011 Progress report, which called for stricter criteria to be applied to urgent and fast-track procedures aimed at harmonisation with the EU *acquis* in order to limit their application to measures of technical alignment with the *EU acquis*.[34]

49. We had extensive exchanges of views, with MPs from both the ruling coalition and the main opposition parties, on the new rules introduced in the parliament, namely the organisation of the work, the speaking time of parliamentarians, television coverage, the role of the opposition, etc. While the ruling parties highlighted the pace of reforms and high number of laws adopted, the opposition parties deplored excessive use of the urgent procedure to pass laws, limited speaking time, etc.

50. We also welcome the adoption, on 14 June 2011, of the Law on the Financing of Political Activities by 133 MPs (out of 250) from the government coalition and the Liberal Democratic Party (LDP). This law provides for the allocation of 0.1% of the national budget to the funding of election campaigns and of 0.15% to the activities of political parties (the latter provision will take effect on 1 July 2012). In particular, this law limits the financing of political parties through private funds.[35]

3.3. Setting-up of state regulatory bodies

51. We welcome the setting-up or the strengthening of several independent bodies in recent months: the Anti-Corruption Agency, the Ombudsman, the Commissioner for the Protection of Equality, the Commissioner for the Protection of Free Access to Information.

52. We note with satisfaction that the institution of the Ombudsman is functioning well, with qualified staff, at offices in Belgrade and southern Serbia. The Ombudsman has received almost 6 000 complaints from citizens, two thirds of which have been resolved. The majority of complaints relate to social and economic rights and to the lack of responsiveness on the part of the administration. Since 2007, the State Ombudsman has issued some 270 individual and 50 general recommendations[36] to the relevant authorities, 80% of them being implemented within the given deadline. The Ombudsman submits annual and specific reports and can appeal to courts to challenge laws and regulations that are considered to breach constitutional norms.

53. State regulatory bodies need to be secured in order to allow sustainable democracy. In this respect, the adequate allocation of financial and human resources is indispensable to enable these institutions to function properly and become efficient bodies in the fight against discrimination, corruption and other abuses.

54. These state regulatory bodies also need to be independent and influential for the decision-making process to be successful. After our visit to Serbia in December 2010, we were concerned by the new Rules of Procedure adopted in July 2010 by the parliament which allowed parliamentarians to reject the reports of these regulatory bodies, whose work they may unduly influence. We are pleased to note that this provision was altered after the Rules of Procedure of the parliament was amended on 28 February 2011: the reports are reviewed by relevant parliamentary committees. They are submitted to the National Assembly which adopts proposed conclusions and recommendations of measures to improve the conditions in the relevant fields.

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34. EC conclusions and recommendations on Serbia, op. cit., 12 October 2011.
35. Tanjug, 14 June 2011.
36. EC conclusions and recommendations on Serbia, op. cit., 12 October 2011.

3.4. Local self-government

55. Following the adoption of the 2006 Constitution, new laws on territorial organisation, local self-government, local elections, and the capital city, were adopted on 29 December 2007. The Law on the Jurisdiction of the Autonomous Province of Vojvodina was adopted in November 2009, allowing the Provincial Assembly's Statute of Vojvodina (which had been adopted in October 2008) to be enacted.[37] The issue of financial autonomy and restitution of properties to local authorities and the Autonomous Province of Vojvodina remains pending however.

56. The Law on Public Property was finally adopted in September 2011.The Serbian authorities are seriously behind schedule in solving one specific problem Serbia is confronted with, namely the restitution of public property to local authorities. The adoption of the Law on Amendments to the Law on Local Government Finance in July 2011 amended the method of transfer calculation and percentage of local government share in revenues from taxes on salaries.

57. The Ministry of Economy and Regional Development initiated the setting up of regional statistical units (to comply with the EU standards), pointing out, however, that these units would not lead to the setting up of political regions.

58. The Congress of Local and Regional Authorities of the Council of Europe adopted, on 18 October 2011, Recommendation 316 (2011) on local and regional democracy in Serbiato assess the state of local and regional authorities since the signing of the European Charter of Local Self-Government in 2007.

59. In his explanatory memorandum[38], the Congress rapporteur Odd Arild Kvalöy (Norway, NR) notes that Serbian local government legislation is on the right path and that considerable progress has been made regarding the participation of citizens and minorities in local affairs, the establishment of local offices responsible for Roma affairs or the institution of ombudspeople at local level or, in some towns or the autonomous province of Vojvodina, offices for refugees and displaced persons.

60. However, the Congress rapporteur points out the need to strengthen the legislative framework and improve the local authorities' financial resources, adopt a law on municipal property and the restitution of property to the local authorities, increase local finances and strengthen administrative capacities at the local level.

61. We refer to the Congress Recommendation 316 (2011) and invite the Serbian authorities to implement it and to lift the reservations formulated by Serbia at the time of its ratification on the articles of the European Charter of Local Self-Government dealing with the principle of subsidiarity and the principle of proportionality in administrative supervision. We take good note of the recent progress achieved in the area of local democracy and of the adoption, on 27 June 2011, of amendments to the Law on Local Authority Financing by 108 votes (out of 127). The aim of these amendments is to increase the resources of the local and regional authorities, which will, from 1 October 2011, receive 80% of income tax revenues (compared with 40% previously), with the capital Belgrade receiving 70%. A system of financial equalisation should enable the poorest local authorities to be supported through the setting-up of solidarity funds. However, these amendments have been criticised by the Tax Council and the International Monetary Fund owing to the cost of the measures and the risk of increasing the public deficit.[39]

4. Rule of law

4.1. Reform of the judiciary

62. In its Resolution 1661 (2009), the Assembly invited the Serbian authorities to intensify their efforts particularly with regard to enhancing the transparency and the efficiency of the judicial system. In 2009, the European Commission expressed concerns as to the lack of transparency, the performance and efficiency of the judicial system.

63. Judiciary reforms based on the 2006 National Judicial Reform Strategy (NJRS) include the adoption of the Law on the Constitutional Court adopted on 24 November 2007. On 22 December 2008, the parliament adopted the Law on the Organisation of Courts (leading to the restructuring of the courts system and the

37. DPA/Inf(2010)34add.
38. CG/MON(20)5, Report on local and regional democracy in Serbia, adopted by the Monitoring Committee of the Congress of Local and Regional Authorities on 4 July 2011.
39. Tanjug, 27 June 2011, and V.I.P., 29 June 2011.

setting-up of 34 Basic Courts, 26 Higher Courts, 4 Appellate Courts and the Supreme Court of Cassation[40]), the Law on Judges, the Law on the High Judicial Council, the Law on the Public Prosecution, the Law on the State Council of Prosecutors, and the Law on Court and Public Prosecutors Seats and Districts.

64. We would like to express our appreciation for the excellent co-operation established by Serbia with the Venice Commission, whose expertise, since 2009, has been sought on a number of pieces of legislation.[41]

65. The final report of the project "Support to the Reform of the Judiciary in Serbia in the light of Council of Europe standards" (commissioned by the Directorate General of Human Rights and Legal Affairs (DGHL) of the Council of Europe) was published on 19 August 2010. The report addresses the extent to which the NJRS has or has not been implemented in Serbia, the obstacles preventing full implementation of the NJRS, and what is needed to reach this objective.

66. The NJRS foresees the setting-up of two self-governing bodies, namely the High Judicial Council (HJC) (which is the guarantor of the autonomy and independence of courts and judges, and is the management and oversight body for the court system) and the State Prosecutorial Council (SPC), which should guarantee the independence and autonomy of the public prosecution service.

67. The final report of the DGHL underlines the efforts made by the Serbian authorities to carry out this comprehensive reform. At the same time, it points out a number of concerns, including lack of human and financial resources, need for training, need for co-operation between the Ministry of Justice and the HJC and SPC, need for transparent procedures, etc.

68. Serbia launched the elections for the permanent composition of the HJC, however, without proper and transparent preparations and consultations. Further to difficulties encountered in the preparation of the elections of the HJC and SPC members, the Serbian authorities decided to amend the laws and prepare a proper legal background. These elections were completed in March 2011 and observed by the European Union and the OSCE.

69. The Constitutional Court, established in 2008, comprises 15 judges with a renewable nine-year term of office, the composition of which remains political.[42] Given the backlog faced by the Constitutional Court (for example 8 549 pending cases on 15 September 2011 compared to some 7 000 in September 2010) and the limited efficiency of the Court, we welcome the steps taken to reform the Court and note with satisfaction that the Venice Commission was invited to adopt an opinion on the draft law on amendments and additions to the Law on the Constitutional Court of Serbia[43] and encourage the Serbian authorities to take into account the upcoming recommendations of the Venice Commission when revising the legislation.

70. We need to acknowledge that a comprehensive reform of the judiciary has been undertaken. However, we would like to encourage the Serbian authorities to pursue their efforts to ensure the independence of the judiciary. As pointed out by the European Commission in 2011, "the constitutional and legislative framework still leaves some room for undue political influence on the judiciary as the Parliament appoints and dismisses the President of the Supreme Court (who is also ex officio president of the High Judicial Council) and the Republic Public Prosecutor for a renewable six-year term of office, upon a proposal from the government and the opinion of the relevant parliamentary committee. Parliament also appoints court presidents and public prosecutors for a renewable six-year term on the basis of non-binding proposals by the respective Councils, as well as first time judges and deputy prosecutors for a probation period of three years. The prosecution service is vulnerable to political influence due to its hierarchical organisation and the ongoing practice of issuing oral instructions, despite the legal obligation for written instructions".[44]

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40. EC conclusions and recommendations on Serbia., op. cit, 12 October 2011.

41. The Venice Commission adopted opinions on legislation related to the Criteria for judges/prosecutors in Serbia; Electoral Laws of Serbia; the Law on Referendums; the Law on Assembly of Citizens of Republic of Serbia; the Financing of political parties; Judicial appointments; the Draft Law on altering and amending the law on election of members of Parliament of the Republic of Serbia; the Draft Law on financing political activities; the Constitutional Court law amendments. See www.venice.coe.int.

42. Five judges are appointed by the parliament, five by the President of the Republic and five by the general session of the Supreme Court of Cassation.

43. CDL-REF(2011)060.

44. EC conclusions and recommendations on Serbia, op. cit., 12 October 2011.

4.2. Re-appointment of judges and prosecutors

71. The Venice Commission commented the rules for general election (re-election) of judges and prosecutors. However, additional changes were introduced later on and the issue became highly politicised. General elections were completed by 1 January 2010 and the authorities stressed that the procedure was based on the criteria of professionalism, competence and worthiness.[45]

72. In accordance with the previously adopted package of laws on the reform of the judiciary, the High Judicial Council (HJC) decided, in December 2009, not to reappoint about one third of the Serbian judges (more than 800 out of 3 000). In addition, 150 public prosecutors out of 700 were not re-elected. This decision was severely criticised by the Association of Judges of Serbia. In particular, it was argued that the procedure in the HJC was not transparent and that the criteria for confirming the judges were rather political.

73. The Association of Prosecutors also expressed concerns about their re-appointment process and submitted concrete proposals to the State Prosecutorial Council (SPC) as to how the procedure could be improved. An agreement with the Republic Prosecutor of Serbia reached in March 2010 enabled non-re-elected prosecutors to apply for newly created positions of deputy prosecutors.[46]

74. Appeals against decisions made by the HJC were filed to the Constitutional Court by 827 judges who were not reappointed to their functions. Some of the judges have been reappointed whereas some joined the Bar Council in the meantime. In a first ruling issued in May 2010, the Constitutional Court upheld the appeal of a judge and instructed the HJC to reconsider his application as an appeal court judge, considering that the decision of terminating the judge's service failed to offer proper justification.[47]

75. In order to lift the burden from the Constitutional Court, the Minister of Justice, Ms Snezana Malović, announced that the HJC would review every decision on the re-election of judges once the HJC is formed with permanent members.[48] This decision was criticised by the Association of Serbian Judges owing to the lack of transparency in the method of appointing members of the HJC (it was subsequently decided that the ex officio members of the HJC will not sit when these cases are heard) and in the criteria established by the HJC and, accordingly, the arbitrary nature of the procedure.[49] The Serbian delegation added that the election procedure of the permanent members of the HJC and the SPC was launched in November 2010 and conducted within legally prescribed time limits, all interested parties being informed, not only in the Official Gazette, but also through the web site and information stored on bulletin boards in each of the courts.[50]

76. The Association of Serbian Judges challenged, however, the “rules for the implementation of the decision on criteria and indicators, and for the review of the decisions of the first composition of the High Judicial Council on the cessation of the judicial duty” adopted on 23 May 2011 by the HJC after a negotiation process facilitated by the mediation of Judge Reisner, who had been proposed by the European Commission. We note that appeals may be made to the Constitutional Court against the decisions of the HJC.

77. On 15 July 2011, the HJC and the SPC launched a review of the procedure for non-appointed judges and this was to be completed in September 2011. The review procedure, an audio record of which is being made, is being observed by the Council of Europe, the OSCE and the European Union.

78. The Association of Serbian Judges has deplored the lack of transparency in the procedure as well as its duration: at the end of July 2011, the HJC had heard 164 judges and ruled on 26 cases.[51] 102 hearings have been scheduled up to 12 August 2011. Moreover, in a communication dated 25 July 2011 addressed to several international organisations, the Association of Serbian Judges denounced the fact that the HJC did not comply with its own functioning rules.

79. The fair and objective conduct of the review process was also questioned by the Dutch foundation Judges to Judges and the association European Magistrates for Democracy and Freedoms (MEDEL), which have been observing the process. In their letter addressed to the President of the European Commission, Mr

45. Comments of the Serbian delegation of 30 November 2011.
46. DGHL Final report (see paragraph 65 above), p. 34.
47. Ibid., p. 35.
48. V.I.P. Daily News Report, No. 4500, 7 December 2010.
49. V.I.P., 25 May 2011.
50. Comments of the Serbian delegation of 30 November 2011.
51. 10 judges were reinstated, 10 cases were dismissed, 4 appeals were dismissed, and in 2 cases the procedure was discontinued. V.I.P., “Ten judges return to work”, 25 July 2011.

Barroso, these two associations deplore the fundamental (material and procedural) flaws, the appeals to be expected to the Constitutional Court and to the European Court of Human Rights and the shadow that this procedure could cast on the Serbian judicial system for the years to come.[52]

80. During our September 2011 visit, concerns were also raised about the role that the ex officio members play in the HJC when deciding about the re-appointment of judges – these members do not have a voting right, however they are present and their presence might influence the final output.

81. These two non-governmental organisations (NGOs) pointed in particular to the fact that the HJC no longer have the required majority (namely 6 out of 11 members, excluding those who participated in the first composition of the Council) to take a decision. The dismissal of two elected judges, namely Mr Jaksic (after his arrest and detention since 23 September 2011 for an alleged 13-year old case of abuse of office[53]) and Professor Dimitrijevic (whose position of Dean of the Faculty of Law of Belgrade was considered a conflict of interest by the Anti-Corruption Agency), followed by the resignation of a third HJC member, Mr Milimir Lukic, make it more difficult for the HJC to reach the quorum.

82. The latest figures received from the Ministry of Justice, on 18 November 2011, indicate that out of a total number of 810 objections received, 640 interviews were conducted, 282 decisions were reached out of which 73 objections of candidates were accepted, 206 objections were dismissed and 3 cases were deferred.[54] Some 127 decisions related to prosecutors had been taken by mid-September 2011.[55]

83. We urge the HJC to complete this procedure within a reasonable time and in compliance with European standards and competence criteria. The review process of elected and non-elected judges and prosecutors was a long and controversial process. It is, however, indispensable to ensure that objective, undisputed and transparent criteria guide the completion of the process by the HJC, the SPC and the Constitutional Court when considering the appeals. The setting-up of an independent judicial system based on European standards and not biased by political decisions is a sine qua non to ensure that people trust their judicial institutions.

4.3. Other recent legislative developments or developments under way in the judicial system

84. We welcome the adoption by the National Assembly of the Criminal Procedure Code and the Civil Procedure Code (26 September 2011), the Law on Enforcement and Security (5 May 2011), the Law on Public Notaries (5 May 2011) and the Law on Advocacy (5 May 2011). The effective implementation of these newly adopted laws should significantly reduce the number of cases in courts. The New Law on Enforcement and Security should improve both the trial and the enforcement of court decisions and ensure that trials do not last for more than two years.[56] Further legislation will need to be adopted and we encourage the Serbian authorities to make use of Council of Europe expertise to ensure that the legislation fully complies with Council of Europe standards.

85. The revision of the Criminal Code is currently under preparation and we invite the Serbian authorities to ensure its compliance with Council of Europe standards, and in particular the recommendations formulated by GRECO.

86. Initial and continuing training programmes have been provided by the Judicial Academy since 1 January 2010 and specialised training is offered on youth crime or in the field of family law. Continuing training courses are also provided on the subject of the confiscation of property deriving from criminal activities, organised crime, corruption and money laundering.[57]

87. The Law on Public Property and the Law on Restitution of Property[58] confiscated after the Second World War – requested by the European Commission with a view to obtaining candidate status – were adopted in September 2011, but they remain a sensitive subject. On 24 November 2011, the parliament

52. Letter of 9 October 2011 addressed by the MEDEL and the Dutch foundation Judges to Judges to the European Commission President, Mr Barroso.
53. The dismissal of Mr Jaksic was very much questioned by the Association of Serbian Judges (which pointed out that this judge had the highest score in dealing with complaints) and the DSS (complaining that the dismissal was politically motivated, as Mr Jaksic had been appointed to the HJC by the Kostunica-led government).
54. Communication from the Ministry of Justice to the Council of Europe Secretariat, 18 November 2011.
55. EC conclusions and recommendations on Serbia, op. cit., 12 October 2011.
56. Comments of the Serbian delegation of 30 November 2011.
57. Information provided by the parliament in its roadmap, March 2011.

decided to amend the law on restitution of property nationalised between the Communist takeover in 1945 and 1968 (or payment of equivalent compensation), in order to overcome objections from Hungary, which could have imperilled Serbia's bid for EU candidate country status[59].

88. The Law on the Restitution of Property Belonging to the Churches and Religious Communities adopted in 2006 is still posing problems as it continues to draw a distinction between the "traditional" and non-traditional churches and religious communities and still only provides for the restitution of property confiscated in or after 1945, which is still causing difficulties for the Jewish and Islamic communities dispossessed before 1945.[60] Together with ECRI, we urge the Serbian authorities to amend this provision and ensure the application of this law.[61]

89. The Serbian Parliament adopted the Law on Rehabilitation on 5 December 2011, which – following agreement with the Alliance of Hungarians in Vojvodina – addresses *inter alia* the specific concerns of the Hungarian minority related to the law on restitution.

90. We were also pleased to learn that a parliamentary prison monitoring commission tasked with monitoring the enforcement of criminal decisions was set up, in accordance with Article 278 of the Law on the Execution of Criminal Sanctions. A commission composed of five members of parliament will monitor the execution of criminal sanctions, ensure the improvement of the living conditions, treatment and protection of persons serving prison sentences. This commission should submit a report to the National Assembly and propose amendments to the legislation with a view to enhancing the protection of the rights of detainees. This commission will be able to request information from the relevant authorities and independent NGOs, visit detention centres and prepare reports. We consider the setting-up of the commission as a positive example of parliamentary oversight.

5. Human rights

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

91. A delegation from the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) carried out its third periodic visit to Serbia from 1 to 11 February 2011. It was able to examine the progress made since its last visit in 2007 and the measures taken to implement its recommendations, especially with regard to police detention, imprisonment and legal guarantees for patients in psychiatric establishments. The delegation also carried out a follow-up visit to the country's only prison hospital and to the Dr Laza Lazarević special psychiatric hospital in Belgrade. It also went for the first time to the Požarevac women's prison, the Gornja Toponica special psychiatric hospital and the Educational Institution for Juveniles in Niš. At the end of the visit, the delegation presented its preliminary observations to the Serbian authorities.[62]

92. Pending publication of the report by the CPT in 2012, we invite the Serbian authorities to continue their co-operation with that committee and authorise the publication of the report in due course.

93. We also welcome the adoption by the parliament on 28 July 2011 of the law supplementing the Law ratifying the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

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58. The law regulates the rights of those natural persons and legal entities whose property was confiscated after 9 March 1945 on the territory of the Republic of Serbia with the application of regulations on agrarian reform, nationalisation, sequestration, and other regulations, and transferred into all private, national, state, social or co-operative property. The law comprehensively regulates the issue of confiscated property. Information provided by the Serbian delegation in its comments of 30 November 2011.

59. The draft law originally envisaged excluding people who had served in any of the armed forces that occupied Serbia during the Second World War, and their descendants. Bojana Barlovac, Serbia meets Hungarian complaints in restitutionwww.balkaninsight.com, 24 November 2011.

60. ECRI Report on Serbia (fourth monitoring cycle), adopted on 23 March 2011 and published on 31 May 2011, CRI(2011)21, paragraph 12.

61. The representatives of the Orthodox, Jewish and Catholic communities deplore the failure to implement the Law on the Churches (which provides for the restitution of property) and say they are concerned about the deputy prime minister's statements on the economic consequences of these restitutions ("Government Criticized by Churches Due to Property not Returned Yet", V.I.P., 22 July 2011).

62. Council of Europe anti-torture Committee visits Serbia, 15 February 2011, www.cpt.coe.int.

5.2. Situation of the media

94. During our visits to Serbia, a number of problems relating to the situation of the media were brought to our attention. The Serbian media, like the media in many other countries, are facing economic challenges that may jeopardise media pluralism and freedom. In particular, media ownership poses a problem today, but also the role of the state in the media landscape, the economic viability of the media, transparency of media ownership, the operation of the National Telecommunications Agency and the digitisation of means of communication.

95. In its October 2011 Report on Pressure on and Control of Media in Serbia,[63] the Anti-Corruption Council, published the results of an inquiry carried out from January 2008 to June 2010 to determine the ways in which government bodies influence the media. The Anti-Corruption Council concluded that:

– "there is not a single media source from which the public can receive full and objective information, as due to the strength of pressure from political circles, events are passed over or reported selectively and incompletely;

– among 30 major media outlets (12 dailies, 7 weeklies, 6 television stations and 5 radio stations) the ownership of 18 is still insufficiently transparent and the real owners are not known to the public;

– besides 15 million euros received for advertising and promotion, the media receives via public tender an additional 21 to 25 million euros, depending on the source … It transpires that the media receives close to a quarter of its income from government institutions. Public relations, marketing and production agencies play a special role in media financing and holding them in the grip of economic dependency. These are for the most part owned by party activists, or persons connected with them. Government bodies exercise a special influence through RTS which, instead of being a public service, serves the political structures closely connected with the leaderships of the ruling parties ...".

96. The Law on Electronic Communication, adopted by the parliament on 28 June 2010, raised serious concerns: this law would have entitled the secret service to have access to private information available in the electronic media without the prior authorisation of a court. The ombudsman lodged a complaint with the Constitutional Court, which declared this law unconstitutional in July 2010. However, when we visited Serbia in December 2010, we were informed that the publication of the decision in the official journal had been delayed (due to staff-related problems according to the ombudsman) and therefore this law, although unimplemented, had remained in force until the publication in the official journal in November 2010. This created legal uncertainty, in particular among journalists.

97. The Public Information Law adopted in 2009 was also perceived by journalists as additional pressure.[64] Most of its provisions, including those allowing excessive fines for defamation, were struck down by the Constitutional Court – on the initiative of the ombudsman – in July 2010.

98. In addition, a number of incidents and acts of violence have been reported: on 15 April 2011, for example, several individuals hurling nationalist and extreme right-wing abuse attacked Csaba Szögi, a journalist on the Hungarian-language daily newspaper Magyar Szó based in Novi Sad.[65] Two journalists from the B92 television channel, Vera Matić, director in chief, and Brankica Stanković, an investigative journalist, are living under permanent police protection, as is Vladimir Mitrić, a journalist on Večernje Novosti who was beaten up by a police officer in 2005. The South East Europe Media Organisation (SEEMO/IPI) has deplored that the courts have been slow to act against the perpetrators of attacks on or the assassination of journalists, including Slavko Curuvija (1999), Milan Pantić (2001) and Dada Vujasinović (1994), in respect of whom there is now doubt concerning the official claim of suicide.[66]

99. Journalists also condemn the inadequate punishments imposed in cases of physical attacks on them since they do not act as a deterrent for the perpetrators of this violence: at the end of a three-year trial, the person who attacked the B92 cameraman Boško Branković was sentenced to 10 months' house arrest.[67] Vera Matić pointed out that the Criminal Code imposes more severe punishments for threats (not carried out) against journalists than for actual attacks on them (from one to eight years' imprisonment compared with six months to five years).

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63. Excerpts of this report were published by V.I.P. on 5 October 2011.
64. See the position of the International Federation of Journalists, www.ifj.org/en/articles/ifj-opposes-repressive-amendments-to-media-law-in-serbia.
65. Press release of 19 April 2011 issued by SEEMO/IPI, the South East Europe media organisation.
66. SEEMO contribution entitled "Press freedom in the West Balkans and Turkey" at the "Speak Up" conference held by the European Commission in Brussels on 6 May 2011.
67. SEEMO/IPI, press release of 13 May 2011.

100. A much expected, new “Development strategy of the public information system in the Republic of Serbia until 2016” (Media strategy) was adopted on 26 September 2011 by the government, after a two-year process involving media and journalists' associations, national minority councils, state authorities and international organisations. The strategy – a non-binding document – sets the ground for defining new concepts, such as the public interest in the field of information and the applicability of state aid rules to state financing of the media. The strategy should bring more transparent and balanced financing of public interest programmes, decrease media market distortions caused by the state funding of the media, and provide conditions for producing better quality programmes for the citizens.

101. However, the journalists we met in September 2011 were very concerned by the possibility envisaged in the strategy to create six regional public service broadcasters while public funds are lacking for the two existing public service broadcasters. They also pointed out that the state funds provided to these regional broadcasters might hamper the independence of the editorial board.

102. While the media strategy should be considered as a positive step, it seems also that some issues remain insufficiently addressed, such as state aid rules and exceptions, the regulation of media concentration, etc. We therefore urge the Serbian authorities to ensure that the legislation that will have to be adopted in order to implement the media strategy is in line with European standards and we encourage Serbia to make use of the expertise of the Council of Europe in this field.

103. For the moment, we welcome the amendments to the Law on Free Access to Information of Public Importance adopted by the parliament in April 2010. These amendments will enable the Commissioner for the Protection of Freedom of Access to Information to take action in cases involving a breach of the law.[68]

104. We also welcome the announcement by the State Secretary at the Ministry of Justice that defamation and libel are to be decriminalised, in line with the positions adopted by the Parliamentary Assembly[69]. As pointed out by SEEMO/IPI, the fact that such acts are punishable by law has often been used against journalists in Serbia, including when they quote from official statements by political figures or leaders of political parties, and this has led some journalists to practise self-censorship. The Commissioner for Human Rights believed that the mere existence of criminal defamation provisions intimidates journalists and causes unfortunate censorship.[70]

105. We were also concerned about the disproportionate fines that may be imposed in civil proceedings and jeopardise the economic survival of the media, and therefore freedom of expression. These are measures that particularly affect investigative journalism dealing with sensitive issues. We therefore welcomed the decisions of the Constitutional Court of 22 July 2010 and 5 May 2011 which declared unconstitutional the provisions of the amendments to the Law on Public Information related to the unacceptable high fines for violations by journalists and media executives, and those provisions infringing the rights to freedom of thought and expression. These decisions were welcomed by journalists and press associations. We encourage the Serbian authorities to ensure that future media legislation will further strengthen the freedom of expression and of the media and incorporate the Council of Europe standards and the case law of the European Court of Human Rights.

106. We call on the Serbian authorities to take all necessary measures to provide journalists with effective protection, to combat the impunity of perpetrators of violence against journalists, to prosecute, with due diligence, and punish those who threaten or commit attacks on representatives of the media, and to amend the Criminal Code to ensure greater protection for journalists and media representatives. We wish to point out at the same time that an amendment to the Criminal Code concerning “posts of considerable importance” (in the public information, public health, education, public transport sectors, etc) would make it possible to grant special legal protection in connection with the discharge of these functions and to provide for more severe penalties.[71]

5.3. Fight against corruption

107. We wish to emphasise the measures taken by Serbia to combat corruption. These efforts have also been stressed by the Group of States against Corruption (GRECO), which established in its Third Round Evaluation Report on Serbia that Serbian criminal law was in conformity with the Council of Europe’s Criminal Law Convention on Corruption (ETS No. 173) and that Serbia was involved in a promising reform process

68. CommDH 007(2011).
69. Resolution 1577 (2007) “Towards decriminalisation of defamation”.
70. CommDH(2011)29.
71. The parliament’s roadmap, March 2011, p. 12.

aimed at improving accountability with regard to the financing of political parties. GRECO has made a total of 15 recommendations to Serbia concerning: the bribery of arbitrators; the ability to prosecute corruption abroad; the detection, investigation and prosecution of cases of corruption; securing convictions not only for petty bribery but also for high-level corruption in the public sector; increased vigilance with regard to trading in influence and corruption in the private sector; the verification of party accounts; punishing illegal practices; the regulation of donations in cash and in kind; and public access to information, including political parties' reports on their financial situation.[72]

108. Progress on fighting corruption has continued thanks to the work of the Anti-Corruption Agency since January 2010. In particular, the agency has compiled a database of public representatives' asset declarations, adopted decisions on conflicts of interest and guidelines on assessing the risks of corruption in public bodies. A majority of public officials submitted asset declarations to the new agency as required. However, corruption remains prevalent in many areas (in particular in the justice and health system) and continues to be a serious problem.

109. At the same time, we are quite concerned following the publication of the 2011 annual report of the NGO Transparency International, in which Serbia slipped from 78th to 86th position. According to Transparency International, the slow reform of the judicial system, the weakening of institutions and the political parties that are under no one's control and which are seen by Transparency International as "generators of corruption" are the main reason for such a high level of corruption in Serbia. Breaches of anti-corruption laws, the adoption of contradictory regulations, the implementation of the law on a discretionary basis, the unregulated lobbying process and legal regulations being adopted in a non-transparent way further contribute to the spread of corruption[73].

110. We had a series of meetings focusing on the fight against corruption. From the information we collected from NGOs and the Anti-Corruption Council, and the explanations received from the Anti-Corruption Agency, we have understood that corruption remains widespread. We took note that a number of high-profile cases of former officials of the health, judicial and energy sectors were prosecuted in recent months.

111. We are pleased to see that the revised Criminal Procedure Code and the Law on the Funding of Political Activities will give a prominent role to the Anti-Corruption Agency. It is therefore essential that the agency be allocated sufficient means to monitor the effective implementation of the laws and apply sanctions in cases of violation – in particular the law on the funding of the political activities.

112. We were also impressed by the work carried out by the Anti-Corruption Council. The expertise of this Council ought to be better incorporated into the efforts of the Serbian authorities to fight corruption. The prosecution of documented, alleged cases of corruption brought to the attention of the Public Prosecutor and the Anti-Corruption Agency – be it by the Anti-Corruption Council or by NGOs – remains an open question.

113. We urge the Serbian authorities to comply with the GRECO recommendations and thus strengthen their mechanisms for fighting corruption. We welcome in this connection the adoption on 14 June 2011 of the Law on the Financing of Political Parties, which broadly follows the recommendations of the Venice Commission.[74] This law should improve the transparency of the funding of political parties and election campaigns and strengthen the role of the Anti-Corruption Agency.

114. Other legislative progress has been made in the area of combating corruption: broadening of the definition of employees to whom the anti-corruption law applies to include judges and prosecutors; extension of the powers of the Office of the Special Prosecutor for Organised Crime in cases involving criminal wrongdoing in the exercise of official duties to include employees who carry out public functions;[75] amendment to the Criminal Code in September 2009 concerning money laundering and combating terrorism.

115. We also wish to note that the Law on the Confiscation of Property Acquired by Criminal Means was declared to be in conformity with the constitution by the Constitutional Court on 30 June 2011.[76]

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72. Evaluation Report on the Republic of Serbia, Greco Eval III Rep (2010) 3E, Theme I and Theme II, 1 October 2010, www.coe.int/Greco.
73. V.I.P., 2 December 2011.
74. CDL-AD(2011)006, joint opinion of the Venice Commission and the OSCE on the revised Draft Law on Financing the Political Activities of the Republic of Serbia, 30 March 2011.
75. Amendments to the Law of September 2009 on the Organisation and Competence of State Bodies in the Suppression of Organised Crime.
76. V.I.P., "Constitutional Court: Law on Seizing Property Acquired through Criminal Acts Is Not Unconstitutional", 1 July 2011.

116. Other measures and activities are being considered by the public prosecutor's office and its department responsible for dealing with organised crime, for example the establishment of specialised units to prosecute cases of corruption, including corruption within the office itself, by adopting "integrity plans" based on guidelines issued by the Anti-Corruption Agency, setting up specialised training courses and strengthening inter-institutional co-operation with other public bodies responsible for combating corruption.[77]

117. We urge the Serbian authorities to continue combating corruption, to draft and implement an effective anti-corruption strategy and provide the Anti-Corruption Agency with the resources to implement these policies and obtain results. The number of final convictions, especially in high-level cases, remains low. Public procurement, privatisation and public expenditure remain areas of concern. We welcome the efforts being made by the public prosecutor's office to verify the legal compliance of the controversial privatisation of some 20 companies, such as the Port of Belgrade Company or the daily newspaper Večernje Novosti.[78]

118. We also think it is essential to increase the protection of people who denounce abuses.[79] We note with interest the drawing up by the Anti-Corruption Agency of rules on the protection of individuals who report cases of suspected corruption in the public sector.[80] We call on the Serbian authorities to set up an efficient and effective system of protection on this basis for "whistle-blowers" employed not only in the public but also the private sector.

5.4. Refugees and asylum seekers

119. In its Resolution 1661 (2009), the Assembly called on Serbia to "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" (paragraph 16.6.14).

120. According to the Commissioner for Refugees of the Republic of Serbia, 700 000 people (10% of the population) found refuge in Serbia after the conflicts in the former Yugoslavia. In 2010, there were nearly 65 000 refugees (including 45 000 living below the poverty line) and more than 210 000 internally displaced persons (IDPs). 3 358 persons, described as a "very vulnerable group" by the Commissioner for Human Rights at the end of his last visit to Serbia[81], were living in 54 collective centres. The number of IDPs who have returned to Kosovo is very low (12 145 between 2000 and 2009 according to the UNHCR office in Priština).[82]

121. We urge the Serbian authorities to continue their integration programmes in the context of the current negotiations between Belgrade and Priština in order to find lasting solutions for these people, ensure their access to social and economic rights and, in the case of the IDPs, encourage their return or access to their abandoned properties.

122. In this respect, we believe that the organisation of the Ministerial Review Conference on Refugees held in Belgrade on 7 November 2011, under the initiative of the United Nations High Commissioner for Refugees' Special Envoy for Protracted Displacement in the Western Balkans, as a follow-up to the international conference on "long-term solutions for refugees and internally displaced persons and co-operation between the countries in the region" organised by Serbia in March 2010 and Montenegro in June 2010, could reactivate the implementation of the "Sarajevo Declaration" signed in 2005. We congratulate the Foreign Ministers of Serbia, Bosnia and Herzegovina, Croatia and Montenegro for signing a joint declaration on 14 November 2011 expressing their support for a work plan that sets out concrete steps for removing the remaining obstacles to a durable solution for the remaining refugees from the conflict of 1991-1995 and to step up efforts to resolve Europe's most protracted refugee situation. This agreement should accelerate the provision of civil documentation allowing refugees and returnees to enjoy their rights and resume normal lives. We appeal to all donors to support the Regional Programme and its goal over the next five years of finding solutions for people currently living in collective centres and other vulnerable refugees, including former tenancy rights holders.[83]

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77. The parliament's roadmap, March 2011.
78. V.I.P., "EC Asking Serbia to Review Privatization of over 20 Companies", 20 June 2011.
79. See also the Communication from the Commission to the European Parliament and the Council entitled "Enlargement Strategy and Main Challenges 2010-2011", COM(2010)660 final.
80. V.I.P., 14 July 2011: "There is no System Protection for Those who Report Corruption".
81. CommDH 007(2011).
82. Assessment of the needs of internally displaced persons in the Republic of Serbia, www.kirs.gov.rs//docs/Assessment_of_the_Needs_of_IDPs_in_Serbia.pdf, February 2011, Serbian Statistical Office.
83. www.unhcr.org.

123. We also want to draw attention to the increasing number of asylum seekers in Serbia. According to information from the United Nations High Commission for Refugees (UNCHR), 28 900 asylum applications from Serbia were recorded in 2010, which is a 54% increase over the previous year.[84] Serbia ratified the 1951 Geneva Convention relating to the Status of Refugees on 12 March 2001.

124. We would like to thank the Serbian authorities for providing us with extensive information on the Law on Asylum No. 109/07, which regulates the status of refugees, the subsidiary protection and the temporary protection granted to asylum seekers. The asylum procedure is conducted in two-phase administrative proceedings. The first-instance proceedings are conducted by the Asylum Office (which is part of the Ministry of the Interior), whilst the Asylum Commission is competent for the second-instance proceedings. There are two asylum centres in Serbia, located in Banja Koviljaca and Bogovadja.

125. We were informed that, from January to November 2011, 2 731 people expressed their intention to seek asylum in Serbia[85]. 178 requests were submitted but none succeeded: 37 requests (concerning 68 asylum seekers – as a unified application is requested for members of the same family) were declined (these applicants were said to have arrived from a safe third country), two requests were rejected, 95 requests (concerning 124 persons) were suspended, as their new residence on the territory of Serbia was not known (according to the law, a person has to inform the authorities of his or her new address within three days of a change of the address). The Serbian authorities also acknowledged that existing human resources are not sufficient for an up-to-date and high-quality performance of the current scope of activities within the competence of the Asylum Division. The new classification of jobs within the Ministry of the Interior is expected to resolve the existing difficulties. The existing Asylum Division should also be transformed into an Asylum Office that will be a separate organisational unit within the Border Police and should be allocated more staff.

126. Our attention was also drawn to the measures taken by the Ministry of the Interior to combat the influx of bogus asylum seekers who left Serbia for countries in the European Union in 2010[86] following the liberalisation of the visa regime.[87] A Commission for the Monitoring of Visa-free Travel to the European Union was set up in February 2011. Detailed regulations for the work of border police officials and the duties of individuals passing the state border were adopted on 2 June 2011. Some of the activities of the commission relate to the decrease in the number of false asylum seekers, including the enhanced control of passengers leaving the country and heading to the Schengen zone, data collection of prospective organisers of journeys to EU countries, the fight against organised groups of false asylum seekers, the adoption of the Strategy for the Reintegration of Returnees based on the Readmission Agreement, the adoption of a National Strategy for the Improvement of the Status of Roma, and the prevention of the forgery of documents submitted during the filing of requests for visa issuance for EU countries.[88]

127. We understand that Serbia is willing to honour the commitments taken under the visa liberalisation regime and to avoid abuses. However, we need to draw the Serbian authorities' attention to the fact that the measures taken should be in full compliance with Council of Europe standards and should not breach people's right to leave their country.[89] Abuses of visa-liberalisation regimes have been noted in other countries of the region. We would like here to highlight the comment published by the Commissioner for Human Rights entitled “The right to leave one’s country should be applied without discrimination”. We share the Commissioner's view that “the increase in asylum applications in some countries is a symptom rather than the core problem. It represents another sign that Europe has failed to break the cycle of anti-Gypsyism, discrimination and marginalisation of Roma populations”.[90]

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84. Asylum seekers from Serbia represented 8% of all the asylum applications lodged in industrialised countries. 80% of the countries of destination make specific reference to asylum seekers from Kosovo. According to the UNHCR, 45% of applications registered in these countries come from people who have arrived from Kosovo (compared with 74% in 2009). UNHCR figures, quoted in the 29 March 2011 issue of the electronic publication V.I.P..
85. These persons are mostly from Afghanistan, Iraq and some African countries.
86. In 2010, Sweden received 7 900 applications from persons coming from Serbia while Germany and France received 6 500 and 5 800 respectively. Almost all applications received a negative answer. The Commissioner for Human Rights notes that the Roma are overrepresented in this category.
87. On 23 May, the Interior Minister Ivica Dacić announced stricter border controls and an obligation on Serbian nationals travelling to an EU member country to possess a return ticket, travel insurance and sufficient funds. V.I.P., 24 May 2011.
88. Comments of the Serbian delegation of 30 November 2011.
89. Article 2 of Protocol No. 4 to the European Convention on Human Rights (ratified by Serbia on 3 March 2004) reads as follows: “Everyone shall be free to leave any country, including his own”.
90. See www.commissioner.coe.int, 22 November 2011.

5.5. Freedom of association

128. The parliament adopted a law on associations in July 2009 and set up the Office for Co-operation with Civil Society in April 2010. However, this body is not yet operational and co-operation between the authorities and civil society remains uneven.[91]

129. The Venice Commission and OSCE/ODIHR prepared a joint opinion on the Public Assembly Act in October 2010 (CDL-AD(2010)031) and identified certain shortcomings. Key recommendations relate to the title of the law, the notification requirements, the application of the law to both nationals and non-nationals and other categories of persons, the removal of blanket restrictions on time and location, the limitation of the reasons for suspension and the ban or termination of assemblies. We call on Serbia to pass this law in the light of the Venice Commission's recommendations.

5.6. Alternative civilian service

130. In its Resolution 1661 (2009), the Assembly regretted that the legislation on alternative service and conscientious objectors had not yet been passed (paragraph 16.6.2). We therefore welcome the adoption by the parliament on 26 October 2009 of the Law on Civilian Service governing matters relating to conscientious objection and alternative civilian service.

6. National minority rights and the fight against discrimination

6.1. General trend

131. There has been considerable progress on combating discrimination. We would refer in this connection to the report published on 31 May 2011 by the European Commission against Racism and Intolerance (ECRI), which stresses the institutional and legislative progress made, especially the adoption of an anti-discrimination law in March 2009.

132. We welcome the election of the first Commissioner for Equality, Ms Nevena Petrešić, by the parliament, in line with the March 2009 Law on the Prohibition of Discrimination. This institution is destined to become the key body for protecting minority rights and promoting full implementation of the anti-discrimination law. Adequate means should be allocated to this institution to reinforce the fight against racism and anti-Semitism and, like ECRI,[92] we regard it as a priority to strengthen the Office of the Commissioner for Equality.

133. However, the discrimination suffered by certain specific groups must be addressed even more effectively by the Serbian authorities (see below).

134. There is still room for improvement to prosecute and penalise hate speech. The Commissioner for Human Rights has pointed out that the current criminal legislation does not include a specific provision on hate speech, only the criminal offence of "incitement to national, racial or religious intolerance" which however does not include all forms of hate speech provided for by the Council of Europe Committee of Ministers' Recommendation No. R (97) 20 on "hate speech". The Law on Public Information and the Law on the Prohibition of Discrimination contain provisions on hate speech. ECRI expressed concerns in 2011 that the implementation of the relevant provisions appears to be rather slow as few proceedings have been initiated so far compared to the alleged frequent occurrence of hate speech, including in the media".[93]

135. We urge Serbia to implement all the measures for preventing and punishing discrimination and to step up its programmes to promote the principles of tolerance, respect for others, reconciliation and intercultural and interreligious dialogue.

136. We note in this connection that the European Court of Human Rights ruled against Serbia in the case of *Milanović v. Serbia* for failing to prevent the repeated attacks on Mr Milanović, a member of the Hare Krishna community, and to investigate the incidents concerned. The Court held on 14 December 2010 that "(t)reating religiously motivated violence and brutality on an equal footing with cases that have no such overtones would be turning a blind eye to the specific nature of acts that are particularly destructive of fundamental rights" and concluded that there had been a violation of Article 14 (ban on discrimination) in conjunction with Article 3 (ban on torture and inhumane treatment) of the European Convention on Human Rights.[94]

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91. The parliament's roadmap, March 2011, p. 5.
92. CRI(2011)21, pp. 15 and 35.
93. Comm DH(2011)29, 22 September 2011.
94. Application No. 44614/07. Serbia's request to refer the case to the Grand Chamber was dismissed on 20 June 2011.

6.2. The situation of Roma in Serbia

137. The number of Roma in Serbia is estimated at between 100 000 and 500 000. Lack of identity documents is a serious problem and prevents Roma from benefiting from social rights. Roma face multiple discrimination, even though several interlocutors acknowledged that their access to education and health care was in progress. Cases of forced removal have been observed in Belgrade.

138. For the moment, we welcome the setting-up in October 2009 of working groups to implement the Strategy and Action Plan for improving the situation of the Roma and of a Council tasked with improving the situation of the Roma and implementing the 2005-2015 Decade for Roma Integration. We also welcome the publication of a guide on "The protection of Roma children who are victims of discrimination in education", the continuation of integration programmes in schools and universities and the introduction of positive discrimination towards Roma.[95]

139. We would like to acknowledge the concrete results linked to the implementation of the above-mentioned Strategy and Action Plan, which include the recruitment of co-ordinators on Roma issues in 54 units of local self-government; the recruitment of 179 Roma pedagogical assistants, both male and female and 74 female Roma as health mediators; the enrolment of 854 students and 1 580 high school students in educational institutions by applying affirmative action since 2002/2003; the development of affirmative action measures with 380 high school students, 154 university and college students enrolled in the academic year 2011/1; financial assistance provided to 176 Roma students who enrolled in the first year of undergraduate studies; support to an awareness-campaign launched by the Serbian authorities, a campaign supported by the National Council of Roma and the Roma Inclusion Office of the Assembly of the Province of Vojvodina to encourage Roma to participate in the 2011 census.

140. However, the Roma are still being subjected to multiple discrimination, and we call on the Serbian authorities to implement the recommendations published on 31 May 3011 by the European Commission against Racism and Intolerance.[96] In particular, obtaining identity documents and access to social rights and housing is still problematic.

141. According to the Commissioner for Human Rights, about 5% of the Roma in Serbia fail to have their children's details recorded in the civil status registers and have no identity documents.[97] The 2009 Law on Birth Records aims to enhance eligibility to register births in the birth register and contains a provision that enables the registration of a birth even after the expiry of the legal deadline. However, as was recognised by the authorities, the campaign to educate Roma about the procedures of registration and legal assistance are not enough and we therefore welcome the initiative of the Ministry of Human and Minority Rights, Public Administration and Local Self-Government to launch a tender and allocate €40 000 to support NGO projects with a view to identifying persons who are not enrolled in the registry of births and legal assistance for the subsequent registration of births. Other administrative measures have also been taken to ease the court procedures and facilitate the issue of personal documents.

142. We are pleased to learn that the Ministry of the Interior has drafted the Law on the Residence and Domicile of Citizens which suggests a simplified procedure for the reporting of residence and the issuing of personal identification documents. We believe that such a law should also enable the beneficiary to have full access to social rights. The adoption of the Law Amending the Law on State Administrative Fees in July 2011 – abolishing the administrative fees for documents and actions relating to the rights of subsequent registration of births in the birth records – and the adoption of the Law amending the Law on Identity Cards which entered into force on 4 June 2011 – which facilitates the issue of identity cards[98] – should also facilitate the process of birth registration.

143. Housing and sanitary conditions in the Roma camps located in the suburbs of Belgrade, especially Gazeta and Antena, are a concern, as is the information received on forced expulsions or the non-voluntary return of Roma populations expelled from Belgrade to the villages of southern Serbia.[99] Alternative housing

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95. The parliament's roadmap, March 2011, p. 11.
96. CRI(2011)21.
97. CommDH 007(2011).
98. According to Article 5 of the Law Amending the Law on Identity Cards, every citizen entitled to an identity card and who has not reported residence in the territory of the Republic of Serbia, is to be granted an identity card based on the confirmed residence with the validation period of two years.
99. See the Amnesty International Briefing to the 78th session of the United Nations Committee for the Elimination of Racial Discrimination (February 2011). In April 2011, AI also condemned the rising number of forced evictions, motivated in particular by a 2009 City of Belgrade Assembly plan envisaging large-scale infrastructure projects. See www.amnesty.org, "Serbia urged to stop forced evictions of Roma", 7 April 2011.

proposals seem limited or non-existent. In this context, we will need to obtain information on the present situation in Belgrade and the implementation of the Law on Social Housing adopted on 31 August 2009, which provides for the adoption of spatial development plans in several municipalities to improve the housing conditions of Roma. The revision of the Law on Permanent and Temporary Residence permits seemed necessary to make it easier for Roma to obtain identity documents and have their details recorded in the civil status registers.

144. During our September 2011 visit, in co-operation with the UNHCR Office in Belgrade, we visited two Roma settlements in Pancevo and Krnjača. We remain concerned by the situation of the Roma community, which has, despite steps taken by the authorities, insufficient access to education, housing and social rights and faces multiple forms of discrimination. We therefore welcome the adoption of the Law on Permanent and Temporary Residence on 17 November 2011 which should secure the rights of internally displaced persons and ensure that they can be provided with identity documents, be registered and be able to exercise their social and economic rights.

6.3. The situation of the Albanian minority in southern Serbia

145. The situation in southern Serbia remains precarious. Unemployment and poverty accelerate the internal migration of the Albanian minority. There has been some progress in this region, with the creation of a local government in Bujanovac in December 2010 and a national council for the Albanian minority in 2010.

146. In this context, we welcome the opening of a multi-ethnic department of economics on 28 October 2011 by the Faculty of Economics in Subotica and the signature of a co-operation agreement with the Faculty of Economics of the State University in Tetovo ("the former Yugoslav Republic of Macedonia") to provide higher education in two languages. Sixty-nine students, of which 40 are Albanians and 29 are Serbs, started to study on 31 October 2011.

147. The Co-ordinating Body for the towns of Preševo, Bujanovac and Medvedja comprises, in its broad composition, the Ministry of Human and Minority Rights, Public Administration and Local Self-Government (which is chairing the body), six vice-presidents representing the government and the three municipalities, the Director of the Co-ordinating Body, the mayors and deputy mayors of the municipalities, the Presidents and Vice-Presidents of the municipal assemblies, the members of parliaments of the three municipalities and other civil servants. The broad composition of the Co-ordinating Body adopts working strategy and monitors its implementation.

148. The withdrawal, in July 2011, of the president of the Albanian Democratic Progress Party (PDP) did not affect the work of the Co-ordinating Body, according to the Serbian authorities. He had deplored the fact that all the requests made by the Albanians (including a greater Albanian presence in public institutions, beginning with the police, the customs service and customs administration) had been ignored by the Co-ordinating Body.[100] The Party of Democratic Action (PzDD) is thus now the only Albanian party on the Co-ordinating Body and its leader (and member of parliament), Riza Halimi, has also threatened to resign because of the failure to respect the principles on which the body's operation is based.[101] As a sign of protest, Albanian leaders called for a boycott of the 2011 census. According to the provisional results published by the National Statistics Office, less than 10% of citizens in the municipalities of Presevo, Bujanovac and Medvedja participated in the census.

149. Employment is indeed one of the main concerns in the region. In this context, we would like to mention the multilingual promotional campaign launched by the Ministry of the Interior to encourage members of national minorities to enrol in the Centre for Basic Police Training (COPO) in Sremska Kamenica. A call for the enrolment of 50 students to fulfil positions in the Police Administration Leskovac and Police Administration Vranje (territorially encompassing the police stations in Preševo, Bujanovac and Medveđa) was issued in March 2011. A total of 223 candidates responded to the call issued in March 2011, with 91 representatives of the Albanian national minority. The Minister of the Interior decided to retain 21 candidates to attend a police training centre in Sremska Kamenica (COPO), 12 being of Albanian nationality, as an affirmative measure to achieve a proportional representation of members of all national communities, in line with the constitutional obligation to keep in mind the national composition of the population and proportional representation when employing people in state authorities, public services, autonomous province bodies and units of local self-government.

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100. B92, "Ethnic Albanian party leaves co-ordinating body", www.b92.net, 6 July 2011.
101. www.balkaninsight.com, '"Ethnic Albanian Party May Withdraw From Coordination Body", 6 April 2011.

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

150. Serbia has been a party to the European Charter for Regional or Minority Languages (ETS No. 148) since March 2005. After being ratified in February 2006, the Charter entered into force on 1 June 2006 in Serbia. Special protection measures provided for in Part III of the Charter are taken in respect of the following languages: Albanian, Bosnian, Bulgarian, Hungarian, Romani, Romanian, Ruthenian, Slovakian, Ukrainian and Croatian.

151. In September 2010, the Serbian authorities presented the second periodical report on the implementation of the Charter.[102] We await the publication of the conclusions of the Committee of Experts of the European Charter for Regional or Minority Languages and will take them into account in the monitoring process.

6.5. National Councils of National Minorities: general considerations

152. We welcome the adoption of the Law on National Councils of National Minorities in August 2009 which sets up national minority councils.[103] The election of these 19 councils on 6 June 2010 was a positive move. 436 334 members of 16 national minorities (Albanians, Ashkalis, Bosniaks, Bunjevacs, Bulgarians, Czechs, Greeks, Egyptians, Hungarians, Germans, Roma, Romanians, Ruthenians, Slovaks, Ukrainians, and Vlach) directly elected the members of the National Councils of National Minorities in 883 polling stations. Three national minorities (Croatians, Macedonians and Slovaks) elected their national councils the same day through the electronic assembly.[104]

153. National minority councils have equal responsibility in their domain of competence, namely culture, education (development of school curricula, election of minority representatives in management boards in schools, providing classes in the minority language, etc.). National councils of those minorities whose language is not represented in the educational process in the Republic of Serbia cannot apply, in practice, most of the statutory responsibilities of the national councils in the field of education.

154. During our fact-finding visit to Serbia in December 2010, we were informed that irregularities and errors were observed during these elections relating to the data protection of registers, the lack of clear requirements concerning the registrations of voters, the role of the Ministry for Human and Minority Rights Public Administration and Local Self-Government in setting up the councils, etc. During our meeting in December 2011, the Ombudsman confirmed that he had launched an investigation into these issues. We have also been informed by the Serbian authorities that the registration of voters in separate voting rolls is entrusted to the units of local self-government in electronic form according to Article 51, paragraph 2, of the Law on National Councils of National Minorities. The requirements for the registration of voters in the special electoral rolls are prescribed by the Law on National Councils of the National Minorities and by the regulations on keeping a separate electoral roll of the national minorities.

155. One year after the elections to the national minority councils, we note that some people criticise the lack of public funds allocated to the councils, which is jeopardising the continuation of their work.[105] Further to the amendment of the legislation and the adoption of the regulation on the allocation of funds from the state, which began to be implemented in January 2011, the amount of funds allocated to each national council was changed. In total, the budget of allocated funds by Serbia to the National Councils of National Minorities amounted in total to 141 615 000 dinar (RSD) (in 2009), RSD 145 148 000 in 2010 and RSD 224 400 000 in 2011. An assessment of that work would be welcome in order to improve the operation of these bodies.

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102. MIN-LANG/PR(2010)7, Second periodical report presented to the Secretary General of the Council of Europe in accordance with Article 15 of the Charter.

103. We refer to the report of Mr Charles Goerens and Mr Andreas Gross, Doc. 11701, section 5.8.2 on the role of the National Councils of Minorities, paragraphs 269-277.

104. MIN-LANG/PR(2010)7, op. cit.

105. Mr Nećak, of the Alliance of Jewish Municipalities, accordingly called on 13 national minority councils to freeze their activities to protest against the lack of public funds, which, he said, represent less than 10% of the councils' budget. Interview with RTS Radio Belgrade, 6 June 2011.

6.6. The Bosniak National Minority Council

156. The Bosniak National Minority Council (BNC) was the only minority council which was not established following the elections, which were held against the background of the split between the "Islamic community *of* Serbia" (headed by Adem Zilkić) and the "Islamic community *in* Serbia" (headed by Muamer Zukorlić), which has existed since 2007 – even though, formally, the setting-up of the national minority council and the divisions within the religious communities are separate issues.

157. Three lists took part in the elections in June 2010. The Bosniak Cultural Community (led by Mufti Zukorlić) won 17 mandates, the Bosniak List (close to Minister Uglianin) 13 and the Bosniak Revival (close to Minister Ljajić) 5. Two members of the Bosniak Revival list decided to join Mufti Zukorlić's camp at the constituent meeting.[106]

158. The council was to be formed on 7 July 2010. However, the day before, the Ministry for Human and Minority Rights Public Administration and Local Self-Government intervened and issued a new rule requiring that two thirds of the members be present at the opening session, instead of 50%. The boycott of the minority lists (Bosniak List and Bosniak Revival) at the constitutive session did not allow the formation of the council. The Assistant Minister Antić explained the changes were made to the voting system on the Bosniak National Minority Council "to provide stability".[107] This decision was criticised by the newly appointed Commissioner for the Protection of Equality, who stated that changing the rules for forming the BNC was a clear act of discrimination.[108]

159. The Bosniak Cultural Community, led by Mufti Muamer Zukorlić, formed the council, which is not, however, recognised by the Serbian Ministry for Human and Minority Rights, Public Administration and Local Self-Government.[109] Since then, discussions have been organised by the ministry under the auspices of the OSCE to help find a consensus with a view to setting up a council before 6 December 2010, as required by the law, but to no avail: new elections were to be held on 17 April 2011 but were in the end postponed as the contending parties had not registered by the deadlines specified. We regret that the situation is currently stalled. In the meantime, in accordance with the Law on National Councils of National Minorities[110], the National Council of the Bosniak national minority[111] elected in 2004 continues to operate until the elections and constitution of the national council.[112] We invite the Serbian authorities to thoroughly prepare and hold the elections without further delay and ensure that the national council of the Bosniak minority is able to operate

160. During our visit to Novi Pazar in December 2010, we met the key players. We were informed of a number of incidents, intra-ethnic tensions and radicalisation of speeches that could lead to an alarming situation. These ethnic or religious tensions are becoming acute in an economically depressed region, where unemployment reaches 50%.[113] We therefore note with interest that attempts to bring the two "Islamic communities" closer together are under way on the initiative of Turkey, which despatched a delegation to the region in June 2011.[114] However, even though an agreement was announced (but not disclosed) with a view to reunifying the Islamic community in Sandzak, no result was achieved, as a number of issues (seat of the future Islamic community, role of the current leader of the two communities) remain pending.

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106. The opinion of the Legislative Committee of the National Assembly of the Republic of Serbia was requested in relation to an interpretation of Article 98 of the Law on National Councils of National Minorities as to whether the mandates of these two members of the council belong to the persons, or the party/community.
107. www.yucom.org.rs/rest.php?tip=vest&idSek=4&idSubSek=4&id=118&status=drugi.
108. DPA/Inf(2010)27.
109. www.b92.net, "EP official in Belgrade over Bosniak Council", 27 September 2010.
110. Article 137.3 of the law stipulates that "national councils that have been elected before the entry into force of this Law, whose mandate has expired, continue to operate until the elections and constitution of the National Council under the provisions of this Law".
111. This council was elected under the provisions of the Law on Protection of the Rights and Freedoms of National Minorities at electronic session of the assembly for election of the national council on 6 September 2004.
112. Comments of the Serbian delegation of 30 November 2011.
113. The Muslim leaders of Serbia (Mr Zukorlic) and Bosnia and Herzegovina, for example, founded a "Bosniak Academy for Sciences and Arts" (BANU) on 9 June 2011 in Novi Pazar. The composition of its board – which includes former BiH President Ejup Ganić (against whom Serbia filed an international arrest warrant for alleged war crimes) or the Great Mufti of Sarajevo Cerić – raised many protests and its legitimacy is being challenged by the academic communities in Serbia and Bosnia and Herzegovina. See http://news.sciencemag.org/.
114. V.I.P., 20 June 2011: "Turkey Mediates in Reconciliation of Islamic Communities, Zukorlić Seeks Primacy; Zilkić: Single Islamic community should operate solely within Serbia."

161. We call on the Serbian authorities to create the necessary environment and promote the values of interreligious, interethnic and intercommunity dialogue. We urge all stakeholders involved in the settlement of the dispute between the two competing “Islamic communities” to reach an agreement and hence defuse the tensions which are detrimental to the development of the region. We encourage the players in the region to overcome their current divisions, place the emphasis on dialogue and a constructive approach that is based on respect and mutual tolerance and upholds Serbia‘s sovereignty.

162. We reiterate our firm conviction that the social and economic development of this region is the key to achieving peaceful co-existence and social cohesion. We urge the Serbian authorities to increase their efforts in this direction.

6.7. The National Council of the Vlach Minority

163. In December 2010, our attention was drawn to difficulties encountered during the election of the National Council of the Vlach Minority. We therefore met representatives of three Vlach groups from eastern Serbia. The situation of the Vlach/Romanian ethnic community in Serbia has been well described in the report of Mr Jürgen Herrmann (Germany, EPP/CD),[115] which highlighted that the situation of the members of the Vlach/Romanian minority in Eastern Serbia is significantly less favourable than that of the inhabitants of Vojvodina.

164. In its Resolution 1632 (2008), the Assembly reaffirmed the principle set out in Article 3 of the Framework Convention for the Protection of National Minorities (ETS No. 157) that any attempt to impose an identity on a person, or on a group of persons, is inadmissible. It encouraged the members of the Romanian and Vlach minorities in eastern Serbia to combine their efforts and overcome their internal disagreements in their own interest and in order to preserve the distinctive traits that make up their identities (the Serbian authorities have a duty not to impede but to support initiatives in that direction). It urged the Serbian authorities to co-operate with both the Serbian Orthodox Church and the Romanian Orthodox Church in finding a practical solution whereby freedom of religion would be made a reality in eastern Serbia, as is already the case in Vojvodina.[116]

165. An NGO, the Committee of Human Rights of Negotin, referred to difficulties faced by one fraction of the Vlach community in eastern Serbia and the interference of mainstream political parties in the electoral process. Intimidation of voters, illegal interventions in the voters registry, fraud and other violations of the law were mentioned. These difficulties were discussed with the Ombudsman during our visit in December 2010. The Ombudsman concluded that there were some omissions during the electoral process which were conducive to the breach of the citizens’ right to the protection of personal information in regard to registration in special electoral rolls of national minorities, since a certain number of citizens were registered in special electoral rolls without their knowledge and against their will. Further to the recommendation from the Ombudsman of 11 February 2011, the Minister for Human and Minority Rights, Public Administration and Local Self-Government issued an instruction on the process of registration of national minorities in special electoral rolls, which stipulates that the request for registration of a member of a national minority in a special electoral roll may be submitted personally or via mail, which excludes the possibility of having requests for registration in special electoral rolls made by third parties. The Ombudsman, however, did not confirm the existence of illegal interventions in electoral rolls.[117]

166. The Minister for Human and Minority Rights, Public Administration and Local Self-Government acknowledged that the Romanian identity of the Vlach community should be discussed and envisaged setting up an expert committee to carry out research on the Vlach community. The president of the newly established National Council of the Vlach Minority indicated that the council had decided to work on the harmonisation of the Vlach language, the use of which remains a matter of dispute. The Serbian authorities explained that the Vlach language is not standardised. Some of the guaranteed minority rights are therefore not implemented in practice for the members of Vlach national minority, which is the main obstacle for the introduction of the Vlach language in all spheres of social life in Serbia, and prevents the creation of a department for Vlach language and training of teachers who could teach in Vlach language and disables the implementation of those rights which are the prerequisites for the introduction of the Vlach language in official use. However, this does not impede the working of the Vlach minority council. It has adopted its statute, has elected its bodies,

115. Doc. 11528, The situation of national minorities in Vojvodina and of the Romanian ethnic minority in Serbia.
116. Resolution 1632 (2008) on the situation of national minorities in Vojvodina and of the Romanian ethnic minority in Serbia, paragraphs 19-21.
117. Comments of the Serbian delegation of 30 November 2011

organises its sessions on a regular basis and implements planned activities, with a budget of RSD 7 282 726 in 2011.[118] We hope that a pragmatic compromise can be found at local level to enable the council to work properly, guided by the principle of free self-identification contained in Article 3 of the Framework Convention.

167. The Serbian authorities also pointed out that the 2002 census showed that, in the Republic of Serbia, but excluding the Autonomous Province of Vojvodina and the City of Belgrade, there is a total number of 2 778 Romanians, but they do not make up 15% of the population in any of the units of local self-government. Bearing in mind Article 14.2 of the Framework Convention for the Protection of National Minorities, the legal prerequisites have not been met for the Romanian language to be introduced in official use in any of the units of local self-government of the Republic of Serbia, except in the Autonomous Province of Vojvodina.[119]

168. We encourage all the parties concerned to promote dialogue and seek pragmatic solutions that will enable the National Council of the Vlach Minority to discharge its functions.

6.8. The situation of lesbians, gays, bisexuals and transsexuals (LGBTs)

169. Concerning the rights of sexual minorities, we welcome the fact that the Gay Pride Parade took place on 10 October 2010 with the support of the political leadership of Serbia and the full protection of the State. *Pro memoria*, in 2009, the Belgrade Gay Pride was cancelled a day before it was scheduled after the authorities assessed that they would not be able to protect the participants. The 2010 Parade proceeded smoothly under tight police protection. However, groups of extremists (some 6 000 members of right-wing organisations and football hooligan groups according to the police) simultaneously attacked the police in different locations of the city, official buildings (the offices of the Democratic Party and the Socialist Party and the state television) and vandalised cars and shops in the city centre. At the time, the Minister of the Interior indicated that thorough investigations were under way and the Ministry of Justice proposed changes to the Law on Criminal Proceedings, which were adopted by parliament under urgent procedure.[120]

170. During our meetings in November 2010, NGO representatives acknowledged that the organisation of the Gay Pride Parade was a positive development. They felt protected by the police. However, they felt that the statements of the Mayor of Belgrade and the Minister of the Interior, asking that the organisation of another such parade be avoided, shows that society remains divided on the issue. They also deplored that the very nature of the grounds for violence, motivated by hate, was not explicitly recognised. They therefore called for the institution of a law on hatred. Further rights related to family issues and the administrative recognition of transgender persons were also requested by LGBT NGOs.

171. Together with the Commissioner for Human Rights,[121] we welcomed the Constitutional Court's decision to ban an extremist organisation and encouraged the Serbian authorities to take all necessary measures to promote an atmosphere of tolerance, prosecute cases of discrimination against LGBT people and ensure through the concerted action of the local and national authorities the necessary security conditions for the organisation of a Gay Pride Parade that was scheduled for 2 October 2011. In the week prior to this event, the declarations of the Mayor of Belgrade[122] and the statement issued by the Serbian Police Union expressing its unwillingness to secure the security of the forthcoming parade because of poor working conditions[123] were worrying. Moreover, there were several attacks against members of the LGBT community which are to be deplored and must be prosecuted.[124]

172. Due to the pressure of a number of extremist groups and the risk assessment performed by the State National Security Council, the Minister of the Interior decided to cancel the organisation of the Gay Pride Parade and all other public events that were scheduled on 1 and 2 October 2011, raising a number of concerns among international organisations[125] and Assembly members.[126] We can understand that this

118. Ibid.
119. Ibid.
120. DPA/Inf(2010) 39, p. 21.
121. CommDH 007(2011).
122. www.b92.net, "Serbia has more important problems than gay parade", 18 August 2011.
123. www.balkaninsight.com, "Serbian Police Oppose Pride Parade", 29 August 2011.
124. www.b92.net, "Gay rights group calls for prevention of violence", 28 July 2011.
125. In a public letter of 3 October 2011, Council of Europe Secretary General Thorbjørn Jagland requested that President Mr Tadić explain the measures Serbia would take to guarantee freedom of assembly and association of all social groups, in order to dissipate all concerns surrounding the Serbian authorities' dedication to promoting and efficiently strengthening high standards of human rights. In response to the letter, President Tadić reiterated Serbia's strong support for "all sexual and gender cultures and diversity", explaining that the decision to ban all public gatherings on 2 October was based on security threats and risks.
126. See Doc. 12750, written declaration on the banning of the Belgrade Pride march by several Assembly members.

decision was motivated by a high risk of riots and potential human and material damages. However, we regret that freedom of assembly could not be exercised in accordance with the laws, including the anti-discrimination law, and urge the authorities to take all necessary measures to ensure freedom of speech and association.

173. We also disapprove of the statements made by some politicians. We note in that respect that the First Municipal Court in Belgrade issued a judgment against the Mayor of Jagodina – and president of the party United Serbia (JS) – Dragan Markovic "for serious discrimination against the LGBT population" on 2 November 2011, for a declaration made on 15 August 2011.[127] We stress the responsibility that politicians have in fostering a culture of tolerance and promoting respect for human rights.

7. Conclusions

174. Undoubtedly, Serbia has made significant progress in many areas and is heading towards the full completion of its commitments. However, some key issues remain unresolved or incomplete, or have not yet been completely implemented: reform of the justice system, electoral law, fight against corruption, etc.

175. In this connection, we wish to stress the excellent co-operation established with the Serbian authorities, as shown by the adoption of a roadmap in March 2011 by the parliament's Foreign Affairs Committee. It aims to measure both what has been accomplished and what progress needs to be made to fulfil Serbia's commitments and statutory obligations (in accordance with Resolution 1661 (2009)). This roadmap is meant to be a strategic policy document, which represents the authorities' vision of key reform processes as well as the criteria and benchmarks these reform processes must comply with, in the view of the Assembly, and includes a detailed plan of action and measures which the authorities intend to take in order to fulfil the commitments, recommendations and obligations to the Council of Europe.

176. We are fully aware that Serbia's aspiration to join the European Union has resulted in considerable efforts to adopt numerous laws under tight deadlines and to meet the accession conditions imposed. In the run-up to the next parliamentary elections scheduled for spring 2012, Serbia awaits a positive opinion from the European Commission and the opening of accession negotiations. The policy of bringing Serbian legislation into line with European standards and the Community *acquis* in order to meet the conditions laid down by the European Union – including co-operation with the ICTY and the dialogue with Priština – is ambitious and courageous. We, for our part, believe that the efforts made by Serbia to honour its commitments and obligations and bring itself into line with European standards in the areas of human rights, the rule of law and democracy should be recognised and supported by the Council of Europe.

177. In conclusion, we can say that Serbia remains on the right track and has adopted an impressive number of laws. The adoption of such a significant number of laws in fundamental areas (such as the judiciary) in such a short period of time is quite unusual, and we should ensure that this new legal framework is operational and functioning well. However, we will have to monitor the implementation of these laws and ensure that the democratic and legal institutions and national monitoring mechanisms are in place.

178. Nevertheless, we believe that it is crucial for us to make sure that the legislation passed produces the desired results and that the structural changes required by the transition from a post-Yugoslav country to a democratic state are firmly anchored. Therefore, our attention will focus particularly on the mechanisms to establish a sustainable democracy based on Council of Europe standards and include, among others, the reform of the judicial system (including a transparent procedure for the (re)appointment of judges and the setting-up of the highest judicial courts), the building-up of a transparent party funding system, independent media, and the full compliance of the laws on freedom of speech, association, etc, in conformity with Council of Europe standards and their full implementation.

127. V.I.P., 3 November 2011.