Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Resolution 1397 (2004)[1]

Functioning of democratic institutions in Serbia and Montenegro

Parliamentary Assembly

1. Serbia and Montenegro became a member of the Council of Europe on 3 April 2003, less than a month after the tragic assassination of Serbian Prime Minister Zoran Djindjic. This crime was a hugely traumatic event which affected the efforts to carry out comprehensive democratic reforms in line with Council of Europe standards.

2. Since accession, and after the end of the state of emergency imposed following the assassination of Mr Djindjic, Serbia and Montenegro formally succeeded in creating the institutions of the state union, which was set up under the auspices of the European Union. Today, the state union Parliament and the Council of Ministers are meeting regularly and the judges to the state union court were recently appointed.

3. Serbia and Montenegro has signed and ratified the European Convention on Human Rights (ETS No. 5), the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ETS No. 126) and the Framework Convention for the Protection of National Minorities (ETS No. 157) and is on track with regard to other formal commitments to the Council of Europe.

4. In Serbia, the new government of Prime Minister Vojislav Kostunica is engaged in ambitious legislative reform, adopting a series of key laws in the area of the political system and the judiciary. In doing so, the government regularly seeks Council of Europe expertise. A similar process is in place in Montenegro.

5. In June this year, after almost two years and three invalidated elections, Serbia also finally succeeded in electing its new President, Boris Tadic. This was made possible by the changes in the electoral law introduced by the new parliament, which eliminated the requirement of a minimum turnout in order for elections to be valid. On the same occasion, it also eliminated the minimum threshold for political parties representing national minorities.

6. The achievements of the authorities in Serbia and Montenegro are even more important because they took place against the very difficult background of the legacy left by the Milosevic regime and the poor economic and social situation in both member states of the state union.

7. The situation in Kosovo and the lack of security of the remaining members of the Serbian and other non-Albanian communities, particularly after the eruption of the ethnic violence in March this year, are also negatively affecting the situation in Serbia. Large numbers of internally displaced persons represent an additional financial burden for a country that is already hosting several hundred thousands of refugees from Croatia and Bosnia and Herzegovina. The settlement of a large number of Serbian refugees and internally displaced persons in areas inhabited mainly by national minorities has changed the ethnic structure of Vojvodina. The social situation is deteriorating and the personal tragedies of these people are often being exploited by populist politicians advocating radical and intolerant policies and ideas.

1. Assembly debate on 5 October 2004 (26th Sitting) (see Doc.10281, report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), co-rapporteurs: Mr Budin and Mr Cekuolis). Text adopted by the Assembly on 5 October 2004 (26th Sitting).

8. While the situation in Kosovo is, to a large extent, outside the influence of the authorities in Belgrade, the Parliamentary Assembly is of the view that this is not the case for most of the other problems which are slowing down the process of democratic reforms and social and economic recovery. This is particularly true for the political infighting between moderate, pro-European and democratic political leaders in Serbia which has helped to give a new breath of life to extremist forces in the country after they had all but disappeared from the political scene following the first democratic elections to the Serbian Parliament in December 2000.

9. Serbia and Montenegro's compliance with its obligations under the Statute of the International Criminal Tribunal for the former Yugoslavia (ICTY) is stagnating, and even deteriorating. A public campaign against the tribunal, which has been conducted since 5 October 2000 by some leading Serbian politicians, resulted in overwhelming public hostility against the ICTY and a refusal to proceed with new extraditions. The Assembly considers that such attitudes not only contribute to the denial of justice for the hundreds of thousands of victims of crimes committed during the wars on the territory of the former Yugoslavia, but also perpetuate self-deluding myths about Serbia being unfairly and unjustly treated by the outside world. Such ideas, which were popular with the previous regime, are an insurmountable obstacle on Serbia's path to democratic stability and its reconciliation with itself and with its neighbours.

10. Since the fall of Milosevic's regime less than four years ago, Serbia has conducted two parliamentary elections and four presidential elections. Municipal and regional elections (Vojvodina), for the first time providing for the direct election of city mayors, took place on 19 September 2004. Moreover, there are some signs that new early parliamentary elections may be called before the end of the year, and in early 2005 voters may also be called to directly elect Serbian representatives in the state union Parliament. While democratic elections are undoubtedly the foundation of any democracy, the Assembly warns that they cannot become a substitute for policy; the steadily declining election turnouts clearly show that excessive voting is causing serious electoral fatigue, which undermines citizens' confidence in democratic institutions.

11. While the legislative reform, in co-operation with the Council of Europe, is well under way both in Serbia and Montenegro, a number of critically important laws in the field of police and media are yet to be adopted or made fully compliant with Council of Europe standards. This is a matter of concern and the Assembly considers that the authorities in Belgrade and Podgorica should do much more to achieve a genuine reform which will effectively prevent any attempt to exploit the police and the media for political purposes.

12. Recently, there have been reports of an increase in the number of incidents against members of the Hungarian and other minority communities in Vojvodina. Given the difficult legacy of the past, the politically volatile situation and the deteriorating social conditions, it is clear that even a single ethnically-motivated incident may have far-reaching and seriously damaging consequences.

13. In this context the Assembly notes that as a consequence of the policy of the Milosevic regime the ethnic composition of Vojvodina, where many national and religious communities used to coexist peacefully, has substantially changed. The Assembly draws the attention of the authorities in Serbia and Montenegro to the relevant provisions of the Framework Convention for the Protection of National Minorities of the Council of Europe, in particular to Article 16, which recommends refraining from changing the ethnic composition in geographical areas where a substantial national minority is living.

14. The independence of the judiciary is formally guaranteed by law in both Serbia and Montenegro. Yet, particularly in Serbia, judges complain of excessive interference of the executive power and of media campaigns aimed at discrediting the judiciary through allegations of corruption and links with organised crime. This is happening at the time when two Serbian special courts are conducting two crucially important trials: one for organised crime, which is judging those accused of the assassination of Djindjic, and one for war crimes, which is judging those accused of crimes committed in Ovcara in Croatia, immediately after the fall of Vukovar. In Montenegro, a significant number of judicial nominations have been blocked by parliament, which raises some concern about political interference in the independence of the judiciary.

15. In its present form and under present circumstances the state union of Serbia and Montenegro, which was created on the initiative and with the assistance of the European Union to help the process of democratic and economic reforms and speed up its integration in the European Union, is not meeting expectations. The Assembly considers that the main reason for this is the failure of both Serbia and Montenegro to amend their respective constitutions to make them compatible with the Constitutional Charter. More than a year after the expiration of the agreed six month deadline, there are few signs of genuine intention to proceed with the necessary constitutional changes in the near future. The status quo is resulting in a constitutional vacuum and in ensuing constitutional, legal, administrative and political contradictions, which is preventing the state union and its institutions from being all but a nearly powerless shell.

16. The Assembly, fully conscious of the importance of a properly functioning state union for the success of democratic reforms in Serbia and Montenegro and its integration into the European Union, calls on:

16.1. the governments, parliaments and all political forces in Serbia and Montenegro to recommence and rapidly complete their constitutional reform in order to create the constitutional and legal preconditions necessary for the normal functioning of the state union before the expiration of the three-year period set by the Constitutional Charter;

16.2. the Council of Ministers and the Parliament of the state union to intensify their activities, with a special focus on areas where there has so far been little or no progress, such as:

a. the removal of obstacles to free circulation of goods and services between Serbia and Montenegro;

b. the adoption of legal and administrative decisions necessary for the compliance with obligations resulting from the country's membership in the Council of Europe, starting with the selection of candidates for the post of judge at the European Court of Human Rights and the nomination of the state agent before the European Court of Human Rights;

c. the return of Serbian refugees and internally displaced persons to their orginal homeland;

d. the dismantling of the military courts and the transfer of their competence to civilian courts;

e. compliance with all other obligations resulting from the Constitutional Charter, which are under their competence and have not yet been met.

17. The Assembly also calls on the political leadership in Serbia and Montenegro, and on the European Union, to begin talks aimed at finding solutions to the obstacles in the functioning of the state union, including those related to the obligation to carry out direct elections to the state union Parliament within two years after the entry into force of the Constitutional Charter.

18. With regard to Kosovo, the Assembly calls on the authorities in Serbia and Montenegro to adopt a constructive attitude in the search for a lasting solution to this problem. They should maintain and reinforce the dialogue with the provisional institutions of self-government in Kosovo and with Unmik, encourage the Kosovo Serbs to take part in the political process, including in the forthcoming elections, and help to dismantle the parallel structures of government in the Mitrovica area. The leaders of the Kosovo Albanian community and the international community should, for their part, do much more to create sustainable and secure conditions for the return of Serbs and other non- Albanians to Kosovo and to ensure their full participation in the political process. Immediate and substantial progress in dealing with the consequences of the ethnic violence of March this year – both in terms of justice and reconstruction – is a precondition for the success of any such efforts.

19. The Assembly encourages the authorities in Serbia and Montenegro to continue their legislative reforms and to focus on the critically important laws, which should be adopted in the shortest possible period. These laws – and the list is not exhaustive – include:

19.1. in Serbia, the law on the police, the law on non-governmental organisations and the law on the ombudsman. In addition, the package of media laws should be revised or completed with regard to the following: the prevention of improper influence of the executive powers, media concentration, transparency of media ownership, and criminal libel provisions in the penal code;

19.2. in Montenegro, laws on the police, the state intelligence agency and public access to information.

20. The Assembly calls on the authorities in Serbia and Montenegro to refrain from any attempt to control, influence or intimidate the media. The Serbian Government should not use the state budget in order to maintain its political influence over the remaining state-owned media outlets at the expense of the independent media organisations. It should also proceed with the full transformation of the Serbian Radio and Television into a public broadcaster. In Montenegro, the number of libel cases against the media and the size of the fines imposed is a matter of serious concern.

21. The Assembly calls on the authorities of Serbia and Montenegro to ensure that the specific crime of torture, as defined under the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, is introduced into law, as recommended, inter alia, by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment in 1998.

22. The Assembly is concerned by the risk of deteriorating inter-ethnic relations in Serbia, and particularly in Vojvodina. It calls on the authorities to properly investigate and sanction any ethnically- motivated incidents, but also to reinforce the dialogue with the representatives of the minority in order to prevent any attempt to damage the inter-ethnic relations in the country. On the other hand, all attempts to politically exploit inter-ethnic tensions for political purposes, whether locally, nationally or internationally, should be immediately stopped and unconditionally condemned. The Assembly also notes with concern continuing reports of the ill-treatment of Roma by law enforcement officers, continued unlawful evictions and the absence of any real progress in addressing discrimination against Roma with regard to their gaining access to basic social and economic rights.

23. The Assembly calls on the international community to do more to help Serbia and Montenegro, which has to care for several hundreds of thousands of refugees from Croatia and Bosnia and Herzegovina. This should include the creation of conditions for the sustainable return of those willing to go back to their countries of origin. The Assembly also fully endorses the recent call by the Kosovo Ombudsperson, Marek Nowicki, asking the authorities of the state union of Serbia and Montenegro to grant internally displaced persons from Kosovo some of the rights and benefits that are enjoyed by refugees.

24. With regard to the independence of the judiciary, the Assembly calls for an immediate end to any attempts by the executive power to influence, pressurise or discredit the judiciary. Any justified allegations of corruption, criminal ties or political bias should be dealt with on the basis of law, not through the media. In Serbia, the government is responsible for creating conditions under which the two special courts will be able to carry out their tasks in an independent and professionally adequate manner. In Montenegro, the political forces should abstain from any attempts to influence the judiciary, through their role in judicial nominations or any other means.

25. The Assembly calls on the authorities in Serbia and Montenegro to step up their fight against organised crime and corruption, which continue to hamper full democratic reform and economic recovery.

26. The Assembly calls on the authorities at all levels to immediately and unconditionally comply with the country's obligations under the Statute of the ICTY, starting with the arrests and extraditions of all indicted persons who openly reside on the territory of Serbia and Montenegro and the intensified search for those who may be hiding in the country. The authorities should also bring to justice in domestic courts all those suspected of war crimes but who have not been indicted by the ICTY, and in particular, make progress towards indicting those suspected of the murder of some 800 ethnic Albanians, whose bodies were transferred to Serbia, where they were reburied in Batajnica and other sites, and later exhumed by investigators. In addition, the authorities should immediately comply with the commitment to inform the public of the crimes committed by the Milosevic regime through a public campaign, but above all through a change of attitude of many of the political leaders, which is negatively influencing the public opinion with regard to the tribunal.

27. Noting that continuing impunity, "disappearances" and abductions contribute to inter-ethnic tension in Kosovo, the authorities should fully co-operate with Unmik in resolving the fate of the other ethnic Albanians who "disappeared" after being arrested by Serb police or paramilitary forces in 1999.

28. In conclusion, the Assembly calls on all moderate, pro-European and progressive political forces in Serbia and Montenegro to engage in dialogue and co-operation with the aim of stabilising and consolidating democratic institutions within and between the two member states of the state union. This is a precondition for the success of democratic, economic and social reforms.

29. The Assembly resolves to continue to monitor the honouring of commitments and obligations by Serbia and Montenegro.