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Serbia and Montenegro: Compliance with obligations and commitments and implementation of the post-accession co-operation programme

Document presented by the Secretary General

Tenth report (October 2005 – January 2006)

Summary

While a lot of work towards full compliance with obligations and commitments could be ascertained, the 10th monitoring report still presents a contrasted picture, which to a large extent reflects the complexities of the political context.

In recent months, Serbia and Montenegro has come close to full implementation on commitments relating to the signature and ratification of European conventions and the required adoption of very specific pieces of legislation. When it comes to broader and longer-term commitments, the record is mixed and a lot of work is still to be done.

At the end of 2005, Serbia and Montenegro is still a country with an uncertain future, as the procedure for withdrawal from the State Union, 3 years after the entry into force of the Constitutional Charter, is likely to be initiated by Montenegro in coming weeks.

The future status of Kosovo is of course another source of existential concern for Serbia.

Both factors have major consequences on the political agenda, the functioning of institutions and the reform process. At the same time, the proper handling of the Montenegro issue and a constructive contribution to a solution on Kosovo constitute in themselves key commitments, which require great attention in coming months.

Linked to the uncertainties concerning the future of the State Union, the failure to reform constitutions in both Republics remained one of the most central problems in that context, with repercussions on key issues like the independence of the Judiciary, decentralisation, balanced democratic institutions. No effort should be spared to allow completion of constitutional work as soon as the issue of a possible independence of Montenegro is settled, one way or the other, and to finalize the ancillary legislation.

Devising and/or implementing the re-organisation of the court systems remains a high priority in both Republics. Training judges and prosecutors is still a big challenge in Serbia. Important reforms begin to bear fruits in the fight against organised crime, with special prosecutors and courts achieving concrete results. While the structures for a fight against corruption are basically there, they do not yet yield results.

Further legislative progress was made in the area of minorities. Though partial, they are welcome but more active inclusion of ethnic communities into State structures should be pursued.

In most areas, attention should now focus on giving full effect to ratified conventions and adopted legislations. Implementation is the key word.

Above all, full co-operation with ICTY should be achieved without any further delay. Authorities must restore their credibility in that respect. Furthermore, positive developments on domestic prosecution of war crimes should be expanded. Serious work on facing the past and re-conciliation must become a high priority. Good examples exist, but much more is needed.

The required work on several of the outstanding commitments is now of a broader and longer-term nature. This might warrant some change in the way progress is being assessed.

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I. INTRODUCTION

1. Serbia and Montenegro joined the Council of Europe (Council of Europe) on 3 April 2003. Accession to the Council of Europe followed the adoption of Opinion No. 239(2002) of the Parliamentary Assembly (PACE), as well as an exchange of letters between the Chair of the Committee of Ministers and the authorities of Serbia and Montenegro, which list a number of commitments and obligations accepted by the new member when joining the Organisation. The Committee of Ministers decided to set up a specific monitoring procedure, under the authority of its competent Rapporteur in the form of regular review of progress achieved and difficulties encountered as well as the implementation of the targeted post-accession co-operation programmes, on the basis of *inter alia* quarterly reports by the Secretariat.

2. The present document is the 10th report prepared by the Secretariat in this context.¹ This report is based in particular on information collected during a Secretariat visit to Belgrade, Novi Sad and Podgorica from 12 to 16 December 2005. The programme of the visit and the composition of the Secretariat Delegation are reproduced in the Appendix to the report. The Secretariat appreciated the quality and depth of the exchanges with the overwhelming majority of interlocutors and would like to thank the ambassador of Serbia and Montenegro and the permanent delegation in Strasbourg for their support in putting together an ambitious programme and maintaining a regular flow of information throughout the period under review.

3. It should be recalled at the outset that, over the first 30 months of membership, Serbia and Montenegro had already fulfilled a large number of specific commitments and obligations, mostly in accordance with the agreed calendar. The present report naturally focuses, as did the visit, on those areas where compliance was partly or wholly outstanding. They still included a number of important commitments, most of them of a long-term nature, notably in the field of the judiciary.

4. The guiding line for the visit may be found in the following decisions taken by the Committee of Ministers on 13 October 2005, in the light of the 9th report and the Addendum:

“The Deputies (...)

2. welcomed recent positive developments in Serbia and Montenegro, in particular the nomination of a Government Agent before the European Court of Human Rights;

3. called upon the authorities of Serbia and Montenegro to continue to fully co-operate with the International Criminal Tribunal for the former Yugoslavia (ICTY) in order to bring to justice all indictees still on the run, amongst whom Karadzic and Mladic;

¹ As concerns previous reports, see documents [SG/Inf\(2003\)28](#), [SG/Inf\(2003\)38](#), [SG/Inf\(2004\)8](#) and [Addendum, SG/Inf\(2004\)14](#) and [Addenda I](#) and [II](#), [SG/Inf\(2004\)23rev.2](#), [SG/Inf\(2004\)33](#), [SG/Inf\(2005\)5final](#), [SG/Inf\(2005\)13](#), [SG/Inf\(2005\)16final](#) and [Addendum](#) (available on the following websites: <http://www.Council of Europe.int/sg> and <http://dsp.Council of Europe.int/monitoring>).

4. called upon the authorities of Serbia and Montenegro to give appropriate follow-up to the recommendations included in Part IX of document SG/Inf(2005)16 final, in particular to increase efforts to reform the justice system, improve the independence and impartiality of judges and prosecutors and effectively pursue the fight against corruption and organised crime;

5. invited the authorities of Serbia and Montenegro to inform them of this follow-up by January 2006 (...)."

5. While an impressive amount of work should be acknowledged, the report still presents a contrasted picture of compliance, which to a large extent reflects the complexities of the general context and the overloading of the political agenda.

II. GENERAL CONTEXT AND POLITICAL AGENDA

6. At the end of 2005, Serbia and Montenegro is still a country with an uncertain future, as the procedure for withdrawal from the State Union, 3 years after the entry into force of the Constitutional Charter, is likely to be initiated by Montenegro in coming weeks. In that Republic, negotiations between the majority and the opposition are now about to start, with the help of a EU representative, Ambassador Lajcak, on matters of principle concerning the conduct of the referendum required by the Constitutional Charter. This follows the report² adopted by the Venice Commission at its December 2005 session. While considering that the Montenegrin legislation did not violate applicable international standards, the Commission strongly recommended the opening of such negotiations in order to achieve a consensus on key issues, in particular the majority that should be required to ensure that the outcome of the referendum is accepted by all political forces. The declared goal of the Montenegrin Government is to hold a parliamentary debate in February and to organise the referendum in April, before the general elections to take the place in October 2006. The way each of the Republic, notably Montenegro, and the State Union will further handle the sensitive issue of independence is of course central in any global assessment of compliance with commitments made when the country joined the Council of Europe.

7. The same goes for the Kosovo issue. The recent opening of talks on the future status of Kosovo is adding to existential concerns and dominating, if not absorbing, the political agenda in Serbia. Beginning of January 2006, the Serbian Government's negotiating team unanimously adopted a platform for negotiations. First contacts with UNSG special envoy Mr Ahtisaari were deemed encouraging. A debate is currently unfolding about the authority and legitimacy of any government for concluding talks, with some insisting on earlier elections, while many would recommend postponing elections until both the Montenegro and the Kosovo questions have been settled. Control over parliamentary votes is becoming an important issue (see paras. 13 and 14).

² Opinion n° 343/2005 on the compatibility of the existing legislation in Montenegro concerning the organisation of referendums with applicable international standards.

8. Co-operation with the ICTY remains the defining test for greater European integration. The lasting failure to deliver key indictees, notably Ratko Mladic, receives maximum attention and, as suggested by various EU authorities, might lead to a suspension of the talks opened in October 2005 with the European Union towards a Stabilisation and Association Agreement (SAA).

9. This difficult situation carries a number of consequences. The State Union institutions remain very weak. More importantly, as most competences lie with the Republics, authorities at all levels cannot always concentrate as they should on reform. This is notably true in the economic area, where the country is confronted with an average 25% unemployment rate and the largest burden of refugees and displaced persons in the whole region. In a country unsure about its future and still divided about its recent past, building the necessary popular support for reform is particularly difficult. Necessary as it may be, the ongoing re-balancing of public finances in Serbia, with a dramatic reduction in the number of public employees, is likely to contribute in the short-term to prevailing pessimism and a low confidence in politics.

10. That being said, an impressive amount of reform is under way. This report offers a succinct stock-taking in areas of commitments. In a dynamic regional context, in which all countries are now involved in formal relations with the European Union, from SAA talks to applicant status or opening of membership talks, governmental efforts have been further boosted. Simultaneously, relationships between neighbours have further developed, in particular with Croatia. Yet, as was noted during a Conference³ organised in early October 2005 on Serbia, five years after the demission of Milosevic, many of the positive results of ongoing reforms are not yet visible, nor felt by the “ordinary” citizen. Winners and losers in the transition process do not seem to live in the same world. Moreover, there seems to be scant information and little debate on the fundamental political issues, which will define the future of the country.

11. In a context of uncertainty, particularly prevailing in Serbia, about identity and both political and economic future, citizens are loosing confidence in most institutions. The Orthodox Church, for one, increasingly appears as a reassuring institution, one that remains trusted, but concerns are voiced in some circles about the risk of the Church progressively exercising undue influence on the political agenda.

³ Serbia, 5 years after. Conference organised by the Belgrade Fund for Political Excellence and the Balkan Trust for Democracy, a project of the German Marshall Fund.

III. DEMOCRACY AND INSTITUTION-BUILDING

1. Effective functioning of democratic institutions

12. At the level of the State Union, the already cumbersome process of reinforcement of the institutions has followed the slow-down tendency noted in previous reports. Notwithstanding the Agreement amending the Constitutional Charter reached in April 2005 with the help of the EU Special Representative, Mr Solana, the State Union Parliament continued to be perceived as a temporary body, until the future of the Union is cleared. Many interlocutors suggest that, should any referendum not lead to the independence of Montenegro, the competences and means of the State Union would need major overhaul and strengthening, starting with the creation of a proper budget.

13. In Serbia, while radical parties basically refrained from blocking governmental action, divergences grew in recent months between the ruling coalition and the democratic opposition parties, both at the level of the Government and within Parliament. One example is the partial boycott of the Parliament – since November 2005 – by the Democratic Party (DS). The boycott was caused by a dispute related to the fact that two deputies from List of Sandzak, elected in December 2003 on DS voting lists, joined the ruling coalition and were offered positions in the Government, incompatible with their member of Parliament (MPs) status. The Secretariat delegation was informed that the boycott of the Parliament had no impact on the adoption of legislation, but had a real impact on the work of a number of committees. Another example is the revocation of mandates of two MPs from G17 Plus, who had declared their intention not to support the adoption of the 2006 budget.

14. In reality, the Serbian Parliament has progressively been weakened, lately to a concerning degree, by a number of different factors:

- There has never been a real consensus on the role of the party leadership with regards to single MP's mandates. Some have interpreted it as a party property, going as far as to require written agreements by the single MPs, and the taking of an oath in the Church (Radical Party), to resign in case of conflicting positions; others have understood it as allowing for deals, meaning the exchange of party caucus and the possibility of buying MPs to vote in favour of certain texts. Parties have been stripping MPs of their mandates and replaced them with others for failing to follow party discipline.
- The underpinning legal framework is lacking or confused. There appears to be a discrepancy between the present Constitution and the Law on Elections. The seizure of the Constitutional Court in 2003 for the stripping of a large number of DSS mandates by the then DOS coalition only confirmed that the electoral law does not allow the party to do so, but did not prevent further incidents.

- A number of investigations have been opened on the role of tycoons in buying votes and MPs in exchange for specific voting behaviour. There have been allegations of Telephone tapping of MPs by the government, though the matter has not been finally cleared yet.

These developments point to a challenge of the legislative branch's independence. A genuine debate on the draft of a new Constitution may be a welcome opportunity to clarify the legal basis for the functioning of the Parliament and the role of political parties.

15. In Montenegro, the Speaker of the Parliament is now regularly consulting with leaders of both majority and opposition on all procedural aspects of parliamentary work. The opposition is still frustrated that its proposals on substance are almost never accepted. In coming weeks, the central debate concerns the principles and conditions for the referendum on independence, an issue that is deeply dividing political forces. The personal representative of Mr Solana, Ambassador Lajcak, has started to help them finding elements of an agreement, which would eventually be confirmed by the Parliament itself.

16. With a view to strengthening the 3 Parliaments and fostering their efficiency, a joint programme worth 1.5 million Euros has recently been proposed by the PACE and the EAR. Following consultations in Strasbourg with representatives of the 3 Speakers in late December 2005, implementation should start in Spring 2006.

2. Constitutional issues

17. In both member States, the adoption of new Constitutions - harmonised with the Constitutional Charter of Serbia and Montenegro and in line with European standards – is still outstanding. Of course, the uncertainties concerning the future of the State Union were no incentives and they partly explain a continued failure to comply with commitments. Yet, constitutional reform is an important pre-condition for a number of reforms in either member States. It should notably provide the basis for decentralisation and the organisation of local authorities, for the independence and impartiality of judges and prosecutors and for the protection of minorities.

18. In Serbia, the main issues which remain under debate concern the definition of the statehood of the Republic of Serbia, the mode of election of the President, the voting procedures for adoption of a new Constitution, as well as decentralisation and the question of the status of the province of Vojvodina. The timing of parliamentary elections is also at issue. While agreement has been reached on other topics, it does not necessarily follow that the draft texts are yet all in line with European standards. The Council of Europe, and in particular its Venice Commission, stands ready to provide further advice in this reform process, in line with an obligation to seek its opinion entered into by the Country. In that context, the Venice Commission recently reviewed the draft provisions on the judiciary and the prosecutor's office.

In its [Opinion no. 349/2005](#) of 24 October 2005, the Commission assessed that the draft was considered to generally seek to implement the overriding principle of the rule of law (including judicial independence) and be in accordance with European standards, but contained a number of outstanding issues (for more yellow details see below para.41).

19. In Montenegro, the adoption of a number of reforms is also pending on a reformed Constitution which, in turn, is pending on the outcome of the referendum on independence. The Secretariat delegation was informed that a constitutional draft is under active preparation and would be ready for the summer 2006. The authorities reiterated the need to benefit from Venice Commission's assistance, once a draft Constitution is finalised.

3. Local and regional democracy

20. Although the majority of the Council of Europe instruments mentioned in the post-accession commitments have been ratified, this was not yet the case in the field of local democracy. The European Charter on Local Self-Government was signed on 24 June 2005, but not yet ratified. The authorities confirmed that legislation on the ratification of the Charter at the level of the State Union should soon be adopted. The European Outline Convention on Trans-frontier Co-operation is expected to be soon signed, following the conclusions of a working seminar on the Madrid Outline Convention in Belgrade, 5 October 2005.

21. In both Serbia and Montenegro, a comprehensive improvement of the existing constitutional and legislative provisions concerning decentralisation and the organisation of local authorities is needed. Constitutional reform is a key element in this process, but its slow pace should not prevent progress on the organic legislative reforms. In both Republics, as a follow to the Zagreb Regional Conference of October 2004, plans of action had been adopted, based on their respective *Work Programmes for Better Government*. In Montenegro implementation of the action plan has now started. A 'Co-ordination Body of the Local Government Reform' - a joint central-local government Commission charged with the co-ordination and monitoring of the implementation of the *Work Programme* - is expected to become operational in early 2006. In Serbia, a more resolute implementation of the action plan is needed, altogether with a need of a Government co-ordinated action between the different ministries concerned

22. In the meantime, in Serbia the review of the legislation on fiscal decentralisation and municipal property and management is in progress. A draft law on the transfer and management of municipal property was finalised in 2005 and appraised by the Council of Europe. Although positive in principle, the Council of Europe expert appraisal has pointed to a number of transfer-related issues which could be substantially improved. The Council of Europe stands ready to provide further advice on the drafting of this law to bring it closer to European standards. When adopted, the law on municipal property and management would transfer property and management from central government to local authorities, which will stimulate foreign investment in the near future. A Law on fiscal decentralization is expected to be approved in the second quarter of 2006. As from 1

January 07, local taxes would be directly managed by local authorities. The Council of Europe stands ready to assist the Serbian Government in drafting this important legal instrument. The co-operation between the Ministry of Public Administration and Local Self-Government and the Standing Conference of Towns and Municipalities on a number of legislative reforms should be pursued (see also SG/Inf(2005)16final, para. 20), with a view to enhancing the reform process notably within the *Work Programme for Better Local Government*.

23. On the other hand, questions have been raised with respect to the legislative content and implementation of (1) the Law on Local Self-Government and (2) the Law on Local Elections, which provides for a proportional vote system. More precisely, lack of clarity with respect to the Municipal Councils' role, which have a mere competence to make budget proposals, as well as representation and accountability of the owners of mandates, especially in small municipalities, have been questioned. The preparation of guidelines and recommendations on enhancing the distribution of powers and responsibilities between local executive and deliberative bodies is an important objective of the Serbian Work Programme for Better Local Government. The Council of Europe is prepared to support this initiative by providing advice and expertise.

24. In Montenegro, reforms in the field of local self-government show a real willingness to achieve progress. Positive developments are to be acknowledged with the ongoing legislative reforms, for example the draft Law on Administrative and Territorial Organisation, which is at present in parliamentary procedure. In addition, the Law on the Capital Podgorica, adopted on 27 October 2005, introduces the possibility for the Albanian community living in Tuzi to form a so-called 'city municipality', providing for the establishment of intra-municipal "deconcentrated" representative and management structures, which will reinforce neighbourhood democracy. Within the field of fiscal decentralisation, an analysis of the competences transferred to local government and of the system of local finances is now in preparation. Council of Europe stands ready to continue to provide expert assistance in the legislative drafting.

4. Visit to Vojvodina

25. The Secretariat delegation visited the town of Novi Sad in Vojvodina. The purpose of the visit was to evaluate the situation of the region a year after the previous visit, in November 2004 (see SG/Inf(2005)33, paras.23-27). The Secretariat then concluded to an important need of reform of the education system, in particular the reform of history teaching and the integration of civic education in the curriculum, the training of police and law enforcement forces, the strengthening of the judicial system and its independence and the training of media professionals.

26. The Secretariat's delegation's visit confirmed positive efforts towards improving the situation. On the basis of the "Omnibus legislation", progress has been made concerning education in the mother tongue and in minority languages. With a financial contribution of the central government, regional authorities are promoting a combination of in-school and out-of-school activities such as theatres in minority languages and inter-community sport activities, etc. On the other hand, due to the wars and the propagandist

character of the ancient education system, there is a growing distance between young people from different ethnic communities. Urgent action is needed here, with international assistance to integrate the younger generations with diverse ethnic backgrounds in Vojvodina, through *inter alia* education for democratic citizenship.

27. In recent months, there had been a number of ethnic incidents in Vojvodina, including disturbance of public order by extremist groups, chauvinistic graffiti, destruction of religious property, violation of graves. From a large number of exchanges, it appears that the incidents were generally treated as serious individual incidents, calling for tough reaction against each offender, but that the authorities resisted over-dramatisation and did not deliberately fuel tension. Although the central and the regional authorities devoted a considerable attention and effort to actions that would prevent ethnic confrontation, responses to incidents were some time delayed due to a centralised police and law enforcement system. It further seems that a lack of public information on police action occasionally resulted in misinterpretation of the events.

28. Recent developments are reflected in an ongoing debate concerning the autonomy and the constitutional status of Vojvodina. Positions range from ethnic autonomy (proposed by some leaders of the Hungarian minority) to regional autonomy of Vojvodina (proposed by the current regional government). The ruling parties, some opposition parties and many NGOs insist that autonomy based on ethnicity would worsen the situation in the region and would encourage extremist or nationalistic tendencies in the country. Therefore they support the regional autonomy of the Vojvodina with legislative, executive, financial and cultural aspects and powers which would be determined in the framework of the future Constitution of Serbia.

29. In the short term to overcome a “divided society” syndrome, as described to the monitoring mission by a number of counterparts, consideration could be given to a partial or administrative decentralisation of the police and law enforcement bodies, further encouragement to minority population towards joining police and Justice, international support for programmes designed to bridge the gap between the younger generations of different backgrounds. The constitutional reform is indeed necessary for the adaptation and the implementation of the reforms of local self-government and decentralisation and it is the Secretariat delegation’s impression that the people of Vojvodina see the future autonomous status as a chance for better economic development for the region.

5. Reconciliation and facing the past

30. Taken together, facing the past and reconciliation are not only a main requirement of the Council of Europe but also a must for the future development of the society and for the peaceful co-existence among the people and countries in the region. They have not yet been fully addressed.

31. The civil society in Serbia and Montenegro is very active on that issue but until now there had been limited government effort (see in this connection SG/Inf(2005)13, para. 32-37). Moreover a number of institutions such as the Serbian Orthodox Church, individual members of civil society and some politicians had obstructed the process.

32. The initiative of the State Union Minister for Human and Minority Rights Rasim Ljajic (also the chairman of the Council on Co-operation with the ICTY), on an awareness-raising project on the work of the ICTY - supported by the Council of Europe as well - is a step in the right direction which should be further pursued (see also para. 38). The Government and the politicians should take a more active role in helping the Serbian society come to terms with its history, establishing the truth about the events that led to the dissolution of Yugoslavia and the subsequent wars in the 90s. This initiative would serve as the primary example for the other people and countries in the region. The efforts in this field must be taken up at a regional platform that would further allow reconciliation process in the region.

33. Education, in particular history teaching and education for democratic citizenship, has an important role in this process and should be further supported by the authorities and international organisations. One positive example in Serbia is the recent translation into Serbian and distribution to a number of schools at the initiative of the Ministry of Education of an alternative history manual, drafted within the framework of Stability Pact and the Centre for Democracy and Reconciliation in South Eastern Europe.

IV. CO-OPERATION WITH THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA (ICTY)

34. A full and effective co-operation with the ICTY is one of the most important post-accession commitments of Serbia and Montenegro. To quote the Chair of the Committee of Ministers, the Council of Europe expects “not only words but deeds” (see Exchange of letters between the Chair of the Committee of Ministers and the authorities of Serbia and Montenegro, 19 March 2003).

35. In spite of major improvements in the first part of 2005 and whatever the efforts still made at the political level, especially by the Minister of Human and Minority Rights Rasim Ljajic, the fact that the two top indictees, in particular Ratko Mladic almost certainly believed to be hiding in Serbia, according to the ICTY Prosecutor’s Office, are still at large, and the finding that Mladic was receiving pension from Serbia until recently, undermine the credibility of the authorities of Serbia and Montenegro.

36. The new State Union Minister of Defence assured the Secretariat that he would play a positive role in providing access to documents and a better co-operation with the ICTY, but until today not much has been achieved in overcoming the existing problems. There are still gaps in the co-operation of the Serbian authorities concerning access to documents, especially military documents, for example the documents related to Kosovo (requested in 2002). A recent example was the incomplete delivery of the files on Ratko Mladic case (8 pages were missing from the file). In spite of the decision of the Council of Ministers and of the ICTY Trial Chamber, the missing 8 pages were not delivered and instead some unrelated photocopies of other files were sent.

37. The creation by the Serbian government in January 2006 of a National Security Council, a new body aimed to step up the transfer to The Hague of the ICTY indictees appears as a welcome development. It is foreseen that the new Council will follow the work of all security bodies, make recommendations and oversee their full co-ordination.

38. The State Union Ministry of Human and Minority Rights has initiated a number of awareness-raising projects on the work of the ICTY. One of these projects is being supported by the Council of Europe. Two tribunals have been organised to inform judicial authorities and civil society about the work of the ICTY in November and December 2005 (in Nis and in Novi Pazar) within the framework of this project. A third tribunal will be organised in January 2006 in Belgrade for the media representatives and lawyers.

V. RULE OF LAW

39. At the time of accession, Serbia and Montenegro undertook “to continue the reforms initiated with regard to the independence and impartiality of the judiciary and the relationship between judges, prosecutors and the police” (Opinion No. 239(2002), para.12, iv.d.). While a number of reforms have been either initiated or adopted, utmost importance must be given to their actual implementation. At the same time, constitutional reform in both Serbia and Montenegro must be brought to good end as regards the independence and impartiality of the judiciary.

1. Reform, independence and impartiality of the judiciary and prosecution and prison reform

40. In Serbia, as underlined above, constitutional reform is a pre-condition for a full reform in several fields, most importantly the judiciary. The conditions for the appointment and dismissal of judges and prosecutors are undoubtedly at the core of the issue as they have a direct impact on the independence and impartiality of the judiciary and prosecution. Dialogue is continuing and different approaches are being discussed to find appropriate solutions, notably in the constitutional draft. In this context, the Venice Commission concluded that the involvement of the Parliament in the appointment procedures of judges and prosecutors and their dismissals was not in line with the European standards protecting judicial independence (see [Opinion no. 349/2005](#), 24 October 2005).

41. The National Strategy for Judicial Reform, a longer term commitment to reform in the field of the judiciary, is hoped to carry outstanding developments in this field. In preparation since the autumn 2004, appraised by the Council of Europe experts in September 2005, it was finalised at the end of 2005 and submitted to the Council of Europe for final comments. The Strategy will focus on Serbian court system, with the aim to achieve an independent, transparent, accountable and efficient judicial system, whose implementation will be overseen by a Strategy Implementation Commission. Another longer term commitment, the fight against corruption within the judiciary and the prosecution is among the priorities of the Ministry of Justice (see below V.4; see also SG/Inf(2005)16final, para. 29).

42. As regards adoption of legislation, during 2005, a number of laws were adopted in the field of judiciary. Most notably, a new Criminal Code, including new definitions of crimes, was adopted on 29 September 2005; its implementation should start soon. Legislation on enforcement of criminal sanctions, on juvenile justice and on misdemeanours has also been adopted in the autumn 2005. The Secretariat delegation was informed that the reforms in the field of criminal legislation would be completed with the reform of the Code of Criminal Procedure in the forthcoming months.

43. On the other hand, there has been no real progress on the drafting of legislation on initial and continuous training of judges and prosecutors. Much time has been wasted on this issue. With the help of Council of Europe expertise, the process of preparation of draft legislation, to which the Ministry of Justice appears committed, must be forcefully resumed and brought to good end.

44. In Montenegro, the lack of constitutional reform is also considered as an important impediment to a genuine reform and establishment of an independent and impartial judiciary. The involvement of the Parliament in the appointment of judges and prosecutors is problematic. In past years, there were several instances of refusal by the Parliament to appoint the persons proposed by the High Judicial Council and selected by the relevant parliamentary Committee (see also previous SG/Inf documents).

45. Positive developments have been acknowledged in the past years concerning adoption of legislation in the field of judiciary, for a large part with Council of Europe assistance. Attention should now be focused on the implementation of adopted legislation. The action undertaken by the authorities to reduce the excessive length of proceedings and the court backlog deserves praise. With Council of Europe assistance, new laws were adopted on alternative conflict-resolution as well as on mediation or on public notaries.

46. Several interlocutors, including professionals from the field of justice, indicated the further need of training of judges, prosecutors and police officers, notably on the ECHR standards. The Judicial Training Centres in Serbia and Montenegro, which have gained a lot of effectiveness during past years, should be further supported. However, legislation on the organisation and institutionalisation of training destined to judges, prosecutors, lawyers and other professionals from the legal field represents a key element in the implementation of the reforms. In this context, legislation on initial and continuous training was drafted with Council of Europe assistance and should be adopted during the first months of 2006.

47. As regards prison reform, concrete action is ongoing in both Serbia and Montenegro with Council of Europe assistance. In Montenegro, further progress is expected on the legal framework on prisons and the implementation of legislation in the criminal field, including the newly introduced community service sanctions and probation enforcement structures.

2. Reform of police and security forces

48. With respect to the post-accession commitment to enact legislation to reform the police, legislation was enacted in both Serbia and Montenegro. As concerns the establishment of training structures for the police officers, further efforts are needed on the part of the authorities in both Republics. The fight against organised crime has been stepped up in recent months.

49. In Serbia, after a long preparation process, legislation on police was eventually adopted on 14 November 2005. However, the legislation does not seem to fully reflect expert opinions provided by the Council of Europe. There remained a number of shortcomings, including (1) a lack of clear organisational structure; (2) a lack of a transparent control mechanism, as concerns internal oversight in order to prevent and punish any abuses, and external oversight of the police and (3) an insufficient definition of the powers of police officials in performing their functions. The legislation will enter into force in July 2006 and would be accompanied by secondary legislation ("implementing decrees"). The Council of Europe stands ready to provide further assistance to the authorities, notably by organising a round-table – early in 2006, before the secondary legislation is drafted – on the implementing decrees as well as on its compatibility with the European Convention on Human Rights and its case-law.

50. In Serbia, rather small numbers of police officers from the national minorities' communities work in the police forces in regions with a diversified ethnic composition (see above, para.27); see also SG/Inf(2005)13, paras.28, 57). The need to encourage participation of the representatives of minorities in the police forces is to be reiterated. Similar recommendations are to be made in respect of Montenegro.

51. In Montenegro, following the adoption of the laws on Police and on the National Security Agency in April 2005, full implementation of these new pieces of legislation is expected. The reform comprises a reorganisation of the secret police and its submission to control by the government and parliament (part of the post-accession commitments). Organisation of an efficient and regular scrutiny is now under the responsibility of the Parliament. The investigation in the murder of the senior police officer Slovoljub Scekić on 31 August 2005 is ongoing. Fight against organised crime has been stepped up by the authorities in recent months with the help of the special police forces and the Special Prosecutor on Organised Crime (see also para.65).

3. Domestic prosecution of war crimes

52. Local trials of war criminals in Serbia are now being handled in a more efficient way after a rather slow beginning, as stressed in the previous reports of the Secretariat. On 12 December 2005, the Belgrade District Court Specialised War Crimes Department sentenced 14 persons for war crimes against Croats in Vukovar committed in 1991. The trial which had started in March 2004 is the first verdict since the inauguration of the Court Specialised Department in June 2003 and was positively assessed by the public and the media.

53. On 20 December 2005, five members of the Scorpions paramilitary group who filmed their execution of six Bosnians in Srebrenica in 1995 went on trial before the same court's War Crimes Specialised Department.

54. These examples in Serbia are very important developments as the investigation, prosecution and the trials of the war crimes would contribute to establishing the truth and realising justice, a process which is especially important for the victims and their families. The professional and the fair work of the judiciary is therefore a required objective in order to achieve a complete justice. This not only requires the adaptation and implementation of legislation regulating the functioning of domestic war crime trials or procedural questions but it also requires a special training for the judges and the prosecutors that deal with these cases. A special transparent policy on these trials and a non-biased coverage of the media would be crucial in helping to establish the truth.

55. Protection of witnesses remains an important issue with regards to domestic prosecution of war crimes, but also when trying, for instance, organised crime, including the cases of trafficking in human beings (see also para.66). In Serbia, legislation on witness protection was adopted on 19 September 2005, while in Montenegro, efforts towards implementation should be pursued with the support and training by international organisations, notably the Council of Europe.

4. Fight against corruption and organised crime

56. Fight against corruption and organised crime represents one of the greatest challenges of European countries and in particular of transition countries. In the past months, a number of positive developments need to be underlined.

57. In Serbia, the adoption of the long-awaited National Anti-corruption Strategy - aimed to curb corruption through prevention and adequate educational programmes - on 8 December 2005 - is to be welcomed. Many interlocutors indicated that the adoption of the Strategy represents a good step in the right direction, which needs to be followed up by concrete implementation and elaboration of Action Programmes, as well as adoption of a Law on Anti-corruption establishing an independent Anti-corruption Agency. These measures have been accompanied in the past years by the adoption of a set of legislation which includes provisions aimed to better enable the fight against corruption, such as the Criminal Code, legislation on conflict of interest, on money-laundering or on free access to information. The adoption of a Law on the State Audit Institution in December 2005, followed up by the creation of the Institution, is expected to promote an increased level of transparency and a better system of planning and oversight of implementation of the Serbian budget (see also OSCE, [Press Release](#), 02.12.2005). Effective implementation of the legislation and Strategy is now crucial.

58. Resolute action from the law enforcement bodies and a better co-ordination between the police and prosecuting authorities is needed. The absence of prosecution in corruption cases, in spite of the information provided to the Public Prosecutor's Office *inter alia* by the Anti-Corruption Council, has also been raised (see also previous report

SG/Inf(2005)13, paras.70-71; see also V. Barac, I. Zlatic, "Corruption, Power and State", RES PUBLICA, 2005).

59. In Montenegro, the drafting of an Action Plan on anti-corruption and organised crime, following the adoption of the relevant Strategy is ongoing. As regards legislative framework, a Law on Public Procurement is also in the process of being amended. As concerns the new draft Law on Conflict of Interest, the present version incorporates recommendations made by the Council of Europe and the Organization for Economic Co-operation and Development/Sigma, while adequately complying with international norms and reflecting the local political and administrative context (see also in this connection SG/Inf(2005)13, para.73 and SG/Inf(2005)16final, para.44).

60. Difficulties have been noted with the implementation of the Law on Financing of Political Parties. The constitutionality of a recent amendment of the legislation related to the allocation of resources for financing electoral campaigns is currently challenged. A similar lack of accountability related to the state financing of political parties has also been raised in Serbia.

61. Legislation on free access to information has an instrumental role in the fight against corruption. In Montenegro, the adoption of long-awaited legislation on this subject-matter in November 2005 represents a positive development. Its implementation represents a challenge for the whole society, and should be closely observed in the forthcoming year. In Serbia, implementation of the legislation adopted in November 2004 started during the summer 2005. Public information campaigns, publication of manuals, general awareness-raising activities and training of staff should be pursued (for more details see also Youth Initiative for Human Rights, "Implementation of Transitional Laws in Serbia", Report No. 15, 05.12.2005). One issue remains the lack of a mechanism for access to information at the level of State Union institutions.

62. As regards the fight against organised crime, in both Republics, implementation and effective follow-up of the specific objectives set for both Serbia and Montenegro in the Project Area Specific Actions of the Joint Declaration and the Regional Strategy on Tools against Organised and Economic Crime adopted on 23 September 2005 (see also SG/Inf(2005)16final, para.42).

63. In Serbia, significant efforts have been undertaken by the authorities with the creation of the special court and prosecutor office departments for organised crime, following the assassination of late Prime Minister Djindjic in March 2003. More than two years after their setting up, the perception of the public of their creation and functioning was very positive. The Secretariat delegation was informed that a good level of co-operation was achieved between the Organised Crime Special Prosecutor's Office and the special police organised crime department. In terms of figures, more than 300 procedures have been opened, with verdicts pronounced in around 114 cases since the setting up of the organised crime special departments. A considerable test of the Belgrade District Court Special Department on Organised Crime remains the trial in the murder of late Prime Minister Zoran Djindjic.

64. In Montenegro, as underlined in the previous report, the fight against organised crime, following the murder of Slavoljub Scekic end of August 2005, has become a priority for the authorities. The Special Organised Crime Prosecutor's Office created in the summer 2004, has been well perceived ever since. In the past months, for the first time, three high profile judgements on weapons and narcotics trade and human trafficking have led to heavy prison terms sentences.

65. Trafficking in human beings remains an issue of utmost importance in both Republics and further regional co-operation with neighbouring countries is necessary. Serbia and Montenegro signed the Council of Europe Convention on Action against Trafficking in Human Beings on 16 May 2005. Ratification should be encouraged to permit the entry into force of the Convention's specific monitoring mechanism. In Serbia, trafficking in human beings is one of the crimes the most investigated by the Special Prosecutor Department on Organised Crime. In Montenegro, an improved legal definition of the crime, more effective witness protection and an important investment in sheltering for the victims are all encouraging developments. Efforts to fight against trafficking by criminal prosecution of traffickers, prevention of trafficking and protection of victims have improved in the past year and trafficking activities have reportedly reduced.

VI. HUMAN RIGHTS

1. Implementation of the European Convention on Human Rights (ECHR) and the European Convention on Prevention of Torture (ECPT)

66. Following the signature and ratification of the ECHR within the time frame set out in the post-accession commitments, the election of a judge in respect of Serbia and Montenegro on 26 January 2005 and the appointment of a Government Agent to the ECHR in September 2005, the appointment of a Deputy Government Agent (from Montenegro) is still expected. Nevertheless, the Secretariat delegation was informed that the Government Agent Office would become operational in January 2006. The Council of Europe supports the newly created institution and assists the authorities *inter alia* with training, documentation and study visits. Training of judges, prosecutors, as well as police officers on the ECHR and its standards continue to be much needed.

2. Protection of human rights by the Ombudsman

67. In accordance with the post-accession commitments, legislation was enacted on the institution of Ombudsman on 8 July 2003 in Montenegro, and with certain delay on 14 September 2005 in Serbia.

68. In Serbia, a first step in the implementation of the Ombudsman-type legislation is the appointment of the Protector of Citizens, which has to be done, according to the Law, within a six months delay of its adoption. Outstanding issues identified in the Council of Europe comments to the newly adopted legislation should be re-considered in due course

in the constitutional drafting process (see in this context Venice Commission Opinion no. 349/2005 and SG/Inf(2005)13, para.77).

69. In addition, an Ombudsman institution, created at the level of the Province of Vojvodina in January 2004, and a number of local municipal institutions complete the picture of human rights protection by the Ombudsman institution in Serbia. Improved co-operation between these institutions at all levels should be ensured in order to avoid overlap of competence.

70. In Montenegro, since its creation at the end of 2003, the Office of the Ombudsman has been active in dealing with around 650 applications from citizens, made 30 recommendations to the Parliament and rendered 20 opinions on court decision-making and the execution of judgements. Many of the applications concern the excessive length of judicial proceedings, the non-execution of decisions and the general slowness and inefficiency of the Montenegrin judicial system. Awareness-raising and visibility of the work and competences of the Ombudsman have been enhanced since previous reports and should be pursued (see in this respect SG/Inf(2004)14, para.61). Regional co-operation of Ombudsman institutions from Serbia and Montenegro with other similar institutions in the Balkans is to be welcomed and should be pursued.

3. National minorities

71. In Serbia and Montenegro, the protection of national minorities' rights remains a core issue. The deposit of the ratification instrument of the European Charter for Regional or Minority Languages is soon expected, following the adoption of relevant legislation by the State Union Parliament on 21 December 2005. It also is important to recall that Serbia and Montenegro acceded to the Framework Convention for the Protection of National Minorities on 1 September 2001 before acquiring membership to the Council of Europe. See in this respect the Committee of Ministers [Resolution \(2004\)12](#) and the Opinion of the Advisory Committee on the Framework Convention for the Protection of National Minorities doc. [ACFC/INF/OP/I\(2004\)002](#).

72. In Serbia, no legislation at Republican level has been drafted to implement the Framework Law on Protection of Rights and Freedoms of National Minorities (the "Framework Law") of 2002. This legal gap creates problems with implementation and has an impact on the legal protection of minority rights before the courts (for more details on the implementation of the Framework Law, see also Youth Initiative for Human Rights, "Implementation of Transitional Laws in Serbia", Report No. 15, 05.12.2005). One illustration of the legal gap is the creation in September 2004 of a Council for National Minorities (the "Council") at the level of the Republic of Serbia and not at the State Union level, as foreseen in the Framework Law. The Council is composed of the Serbian Prime Minister, six ministers and representatives from each National Minority Council. Created by a Government Decree, it has an advisory role to the Serbian Government, and competence in the fields of language, education and culture.

73. A number of twelve National Minority Councils (NMCs) with competences in the fields of use of language and script, education, public information and culture have been created on the basis of the 2002 Framework Law. So far, the Albanian community is the only big community which could not agree to form a National Minority Council. In addition, the Assembly of Vojvodina delegated the NMCs located in the province the founding rights over printed media in the national minorities' languages. In addition, the creation of a federal Fund for the promotion of social, economic, cultural and overall development of national minorities, foreseen in the Framework Law, has not been achieved so far. The explanations given relate (1) to the lack of a budget on the part of the State Union and (2) to the uncertainty related to the future of the State Union.

74. Although the relations between the NMCs and the Council for National Minorities of the Republic of Serbia are good, the absence of a clear Strategy and legal loopholes providing for the implementation of legislation at the State Union, provincial and local level, as well as the absence of legal establishment of the Council, create a need for a re-shaping of the existing policy. Enactment of legislation on the NMCs' competence and financing and also on election rules, which could enhance their operational capacity, is needed. This legislation has been finalised but its adoption is still pending on some outstanding issues *inter alia* related to the implementation of the new Law on Government which entered into force on 1 January 2006. The members and the secretariat of the Council for National Minorities indicated that consensus needs to be achieved to enable the adoption of this draft legislation not before mid-February 2006.

75. The positive attitude of the Ministry of Education as regards education in the national minorities' languages is to be welcomed. Past months have seen an increased commitment of the authorities notably with respect to the import of textbooks in minority languages, especially in Southern Serbia.

76. In Montenegro, the 2002 Framework Law has never been recognised or implemented since its adoption. Much needed draft legislation on the protection of national minorities at the level of the Republic of Montenegro has been in preparation since 2003. Following a series of public discussions and round-tables *inter alia* on the basis of Council of Europe expert appraisal in the course of 2004, the long-awaited draft was finalised in the autumn 2005. A consensus among all minorities is being actively sought and might indeed be round the corner on the long-debated issue of political representation of minorities. The Secretariat delegation was informed that the draft Law would soon be approved by the Government and that a final draft version would be sent to the Council of Europe for a second expert appraisal at the beginning of 2006. Further efforts are needed from the authorities to adopt the legislation, implement it and put in place a sound system of protection of minorities.

77. In both Republics, the process of integration of the representatives of national minorities in the judiciary, prosecution and police, as well as in the public institutions should be continued.

78. As concerns Roma people, they remain the most vulnerable minority, not only in Serbia and Montenegro, but also on the European scale. It is necessary to recall that at the time of accession to the Council of Europe, the Parliamentary Assembly in its Opinion No. 239(2002) indicated that “[i]n the post-accession monitoring procedure, special attention should be paid to combating discrimination against, and promoting equal treatment of, Roma”. So far, no anti-discrimination legislation has been adopted, although a draft has been presented by NGOs. The sustained efforts of both Republics to implement the National Strategies and Action Plans elaborated within the Roma Inclusion Decade 2005-2015 (see also SG/Inf(2005)5final, para.70) are to be welcomed and should be further pursued with international assistance.

4. Freedom of the media

79. In both Serbia and Montenegro, a number of improvements in the field of media have been registered since the accession of the country to the Council of Europe. However, some shortcomings still need to be overcome. Effective implementation of the adopted legislative reforms, altogether with an increased professionalism of journalists and respect of media conduct represents a challenge for the forthcoming years. As concerns conduct of the media in times of election campaigns, the Council of Europe standards should be closely followed in Montenegro (see in this connection the [CM Recommendation \(1999\)15](#)) in the forthcoming months.

80. The post-accession commitments in respect of the legislative framework mainly concern Serbia. Laws on broadcasting and public information were adopted respectively on 19 July 2003 and 22 April 2003. As regards implementation of this legislation, the past two years and a half registered the creation of the Broadcasting Council, after a long process of appointment of its members (see in this context previous SG/Inf reports), as well as the recent formation of an Agency for Telecommunications. Allocation of frequencies to different broadcasters has become an urgent need, hence the importance to adopt relevant regulations and grant frequencies in an impartial manner.

81. As regards media independence, Radio-Television Serbia (RTS) was expected to become an independent public broadcasting service within six months after the adoption of the Law on Broadcasting, i.e. by the end of 2003. However, the process is still going on and the transformation of as an independent PBS is expected to take place until 1 April 2006. Public discussion of the transformation process should be encouraged, altogether with an increased involvement of the media organisations.

82. In Serbia, training and self-regulation of the profession, notably by a joint code of journalist ethics represent long-term solutions to the lack of professionalism of journalists. Several initiatives on the part of media organisations exist, including the creation of a Media Council to monitor and implement the code. According to several interlocutors, there is not much evidence of transparency in the field of media in Montenegro. The package of media legislation adopted in 2002 is in line with the European standards; however, the lack of experience in the media field, especially the lack of knowledge of the code of conduct appears to cause problems. The Secretariat

delegation was informed both by representatives of Government and civil sector that there is still a lack of media professionalism in the country.

83. In Montenegro, the Radio-Television Montenegro (RTCG) has not yet been transformed in a genuine independent public broadcasting service.

84. The independence of the media and transparency is indeed important in the coming days with a view to the future referendum. The referendum needs to be organised in an environment of democratic and fair voting with a balanced and impartial media reporting. At present, there has been no agreement on how the RTCG and the Broadcasting Agency are going to cover and handle the questions related to media coverage during the referendum period.

5. Freedom of association and civil society/status of NGOs

85. In this respect, the specific commitment was to enact within a year of the accession, legislation on citizens' associations and non-governmental organisations consistent with the European standards for non-profit organisations. In Serbia, recent developments acknowledge positive advances with the drafting of a law on associations of citizens, positively received by civil society. Some observations relate to property rights of associations, but in general the draft legislation represents a better tentative to implement the European standards, including Article 11 ECHR, compared to a previous draft appraised by Council of Europe experts in 2002. In Montenegro, a Law on NGOs was enacted in July 1999. The Law would benefit from a more clear definition of founding NGO rules, in order to avoid the possibility to found non-profit organisations with the purpose to encourage corruption or money-laundering.

86. Contrasting with the existence of a vibrant civil society in Serbia, a sizable number of attacks, hate speech and in some cases criminal suits have been directed against several human rights NGOs in the course of 2005. In Montenegro, representatives of the civil society do not seem to display, at least at a comparable level, the kind of initiative and critical dialogue with authorities, which is to be found in Serbia.

6. Protection of refugees and internally displaced persons

87. In respect of the commitment undertaken at the time of accession, Serbia and Montenegro adopted a Law on Asylum on 24 March 2005, enabling the implementation of the 1951 Geneva Convention on the Status of Refugees and its 1967 Protocol and setting up basic principles of refugee protection, rights and obligations of refugees and asylum seekers, as well as the minimum procedural safeguards.

88. In Serbia, a first draft of the Asylum Law has been produced by the drafting Working Group (it is a WG formed at the level of the Ministry of Interior of Serbia, to which UNHCR participates) and was discussed with UNHCR in November 2005. Based on UNHCR's recommendations, a second draft is to be produced. It is hoped that, during the first quarter of 2006, the second draft be produced, to which UNHCR will then present its official comments. It is expected that a final draft be issued by mid 2006.

However, its endorsement by the Government and subsequent adoption by the Parliament would most likely happen during the second half of 2006, in view of the above and the present uncertain political scenario in Serbia.

89. As regards Montenegro, a final draft of the Asylum Law was produced in December 2005 and it is now at the level of the Montenegro Government for endorsement before it is submitted to the Parliament. It is expected that the draft Law be considered by the Parliament during the first quarter of 2006.

90. On June 2005, UNMIK requested UNHCR "to assist regarding the count of IDPs and other displaced non-majority communities" in the context of the population census UNMIK has planned to conduct in 2006/07. UNHCR agreed to take a leading role and to conduct a re-registration of IDPs from Kosovo within Serbia proper and Montenegro, provided that the Serbia and Montenegro authorities are in agreement. In that respect, they have been informed of UNHCR's response to UNMIK's request. The financial aspect of the exercise and, in particular, who will be funding it, should also be taken into account."

7. Social rights

91. The Social Charter (Revised) was signed on 22 March 2005. After the completion of the compatibility studies of the practice in both Serbia and Montenegro to the Social Charter (Revised) which did not reveal major shortcomings in the legislation and practice of Serbia and Montenegro in the field, the relevant Ministries confirmed their commitment to ratify the Charter in the close future (see also SG/Inf(2005)13, paras.112-114; SG/Inf(2005)16final, para.65).

8. Conscientious objection and alternative service

92. Following the adoption of the *Decree on Amendments to the Decree on Military Service adopted by the Council of Ministers of the State Union of Serbia and Montenegro pursuant to Article 320 of the Army of Yugoslavia Act: compatibility with the norms and standards of the Council of Europe* in October 2003, no follow-up was made to the Council of Europe experts' comments provided in September 2003. In 2005, the decree was amended, but it is still not in full conformity with the European standards, *inter alia* reducing considerably the possibilities of conscientious objectors (CO). For example, at present, the Ministry of Defence cannot finance the placement of CO in various institutions, but would leave this responsibility to the institutions themselves, thus reducing the number of institutions (see also SG/Inf(2005)13, paras.110, 111). Council of Europe stands ready to provide further advice and assistance in this process of legislative reform. It should be welcomed that legislation on amnesty was recently adopted, permitting the amnesty of large numbers of persons having previously refused to do military service.

9. Civilian control of armed forces

93. Although the Constitutional Charter contains provisions aimed to bring the army under civilian control (see Articles 54, 66), much necessary implementation efforts are needed. The discussion with the newly appointed State Union Minister of Defence revealed that the issue of the civilian control of armed forces had so far not reached the top of his political agenda. It was agreed that the Council of Europe would make experts available to assess what has been done or has not been done in this field, in consultation with the relevant international organisations.

VII. COUNCIL OF EUROPE CO-OPERATION AND ASSISTANCE

94. During the period from October 2005 to January 2006, the Council of Europe completed more than 65 assistance activities in Serbia and Montenegro, of which 17 were within the Joint Programmes. The EIDHR Joint Programme with the European Commission ended on 16 August 2005. The final external evaluation report of the Joint Programme is to be provided in March 2006.

95. At the beginning of this year the following Joint Programmes for Serbia and Montenegro with the European Agency of Reconstruction are under way: Support to Belgrade Fund for Political Excellence - Network of Schools of Political Studies (03/2005-03/2007 with a total budget of € 882,120); Project against economic crime (PACO) (12/2005-12/2007 with a total budget of €1,578,200); Support to parliamentary institutions (11/2005-11/2007 with a total budget of €1,588,888).

96. During the reporting period and due to close cooperation between Serbia and Montenegro and the Council of Europe Development Bank, two loans were granted to Serbia and Montenegro: one loan partially covers housing construction for refugees, former refugees and vulnerable groups in Serbia; the second one was granted for the construction and rehabilitation of housing affected by the April 2005 flooding in the province of Vojvodina.

97. Serbia and Montenegro continues to participate in the regional Joint Programmes such as: the Justice CARDS; the Police CARDS; the Integrated Rehabilitation Project Plan – the Survey on Architectural and Archaeological Heritage in SEE; Advancing equality, tolerance and peace: the Equal rights and treatment for Roma; the Social Institutions Support in SEE.

98. The Council of Europe activities in Serbia and Montenegro have been focused on the functioning of Parliamentary Institutions. Regarding Local democracy, the Council of Europe proposed to the Ministry of Justice and the Ministry of Finance of Montenegro a number of drafted texts to amend legislation in this field.

99. Human Rights were another priority area for the Council of Europe. In October 2005, a follow-up Seminar on the implementation of the Framework Convention for the protection of National Minorities took place in Serbia. As a part of the project on truth and reconciliation, the Council of Europe and the Ministry of Human and Minority rights,

organised a second public debate on cooperation with the ICTY on war crime trials before the national courts, on 2 December 2005 in Novi Pazar.

100. Activities were organised in Montenegro by the Council of Europe on freedom of expression and professional standards in journalism, the right to respect private life and the right to a fair trial under the European Convention on Human Rights.

101. Rule of Law. In Serbia, the Council of Europe in cooperation with the Ministry of International Economic Relations of Serbia organised a Seminar on the Madrid Outline Convention on Transfrontier Cooperation in Belgrade. In November together with the OECD the Council of Europe organised a regional thematic seminar on “Anti-corruption Services and the Implementation of Conflict of Interest Law”, which was also held in Belgrade, under the PACO Impact project.

102. A Regional Seminar to promote international cooperation in the field of witness protection, gathering together representatives from the Witness Protection Units, prosecutors and judges from the CARPO project areas, was held in Podgorica in November. This was followed in December by a Round Table Discussion for the members of the CARPO Working Group on Special Investigative Means. In Montenegro, under the framework of the PACO Impact Project, a Conference on Anti-Corruption (held on 19 October) reviewed the progress made in combating corruption.

103. Regarding legislation expertise, in Montenegro, the Council of Europe expert’s appraisals on the Draft Law on Access to Secret Files was sent to the Working Group of the Ministry of Interior in October 2005. The Study on Compatibility of Serbia and Montenegro Legislation and Practice with the Revised European Social Charter was reprinted and redistributed. Within the Regional Thematic Seminar on “Anti-corruption Services and the Implementation of the Conflict of Interests Laws”, the Draft Law on the “Conflict of Interest” was appraised.

104. In 2006 the Council of Europe will continue implementing the Emerald Network (ecological network made up of “areas of special conservation interest” which was launched by the Council of Europe as part of its work under the Bern Convention) in cooperation with the Ministry of Environment and Physical Planning of Serbia and Montenegro.

VIII. MAIN CONCLUSIONS AND RECOMMENDATIONS

105. Joining the Council of Europe, Serbia and Montenegro undertook to sign and ratify a number of European Conventions. The country has now almost completely delivered, within the set deadlines. Ratification of the European Charter for Regional and Minority languages was approved by the State Union Parliament in December 05. Ratification of the Revised Social Charter is supported by competent ministries in both Republics. Only the *European Charter of Local Self-Government awaits ratification, while the Outline Convention on Transfrontier Co-operation has not yet been signed.*

106. Serbia and Montenegro also undertook to adopt a *number of very specific pieces of legislation*. Here too the compliance rate is now very high. In spite of shortcomings, a required Law on Police was adopted in Serbia in November 05. A required law on citizen's associations has been finalized in Serbia and is expected to be adopted in early 2006.

107. The country further accepted a number of *much broader commitments*, defined in programmatic terms, such as «to improve constitutional and legislative provisions concerning *decentralisation*» or «to continue the reforms initiated with regard to the *independence and impartiality of the judiciary*» or indeed «to *amend the constitutions* of Serbia and Montenegro, to bring them into line with the Constitutional Charter». As was discussed in the body of this report, such broad reforms are still on-going. While fresh progress had been noted, full compliance will *continue to require steady and serious efforts*.

108. Linked to the uncertainties concerning the future of the State Union, the failure *to reform constitutions in both member States* remained one of the most central problems in that context, with repercussions on key issues like the independence of the Judiciary, decentralisation, balanced democratic institutions. *No effort should be spared to allow completion of constitutional work as soon as the issue of a possible independence of Montenegro is settled, one way or the other, and to finalise the ancillary legislation.*

109. Devising and/or implementing the *re-organisation of the court systems* remains a high priority in both Republics. *Training judges and prosecutors remains* a great necessity and is still a big challenge, particularly in Serbia. Important reforms begin to bear fruits in the fight against organised crime, with special prosecutors and courts achieving concrete results. While the structures for a *fight against corruption* are basically there, they do not yet bite.

110. A lot of political attention was given to and further legislative progress was made in the area of *minorities*. Though partial, they are welcome but more active inclusion of ethnic communities into State structures should be pursued.

111. In most areas, attention should now focus on giving full effect to ratified conventions and adopted legislations. *Implementation is the key word*. This not only means taking implementing decrees but also: informing and training, empowering. Ensuring that bodies and authorities created by law are effectively put in place and receive the necessary means, whatever their purpose: investigating, prosecuting, mediating, securing access to public information or fair distribution of licenses, reviewing conflicts of interest, etc.

112. Above all, *full co-operation with ICTY* should be achieved without any further delay. Authorities must restore their credibility in that respect. Furthermore, positive developments on domestic prosecution of war crimes should be expanded. Serious work on facing the past and re-conciliation must become a high priority. Good examples exist,

like the awareness-raising project on the work of the ICTY or the wide dissemination of an alternative history book, but much more is needed.

113. As suggested in the body of the report, the required work on several of the outstanding commitments is now of a broader and longer-term nature. This might warrant some change in the way progress is being assessed. However, *the very way Serbia and Montenegro and the constituent Republics will handle the issue of a possible withdrawal of Montenegro from the State Union, will contribute to finding a status for Kosovo and will ensure full co-operation with ICTY, constitute the most decisive tests of compliance. They will require close scrutiny and dialogue in coming months.*

Appendix

Programme of the Secretariat's visit to Belgrade, Novi Sad and Podgorica (12-16 December 2005)

Monday, 12 December 2005 (Belgrade)

- 08h00-09h00 Working breakfast with the Chairperson of the Working Table 1, Stability Pact for South East Europe, Mr. Goran SVILANOVIC
- 10h00-10h30 Meeting with the Minister of Finance of the Republic of Serbia, Mr. Mladjan DINKIC
- 11h00-11h30 Meeting with the Secretary of the Council for National Minorities of the Republic of Serbia, Mr. Petar LADJEVIC and Representatives of the Councils for National Minorities
- 12h00-12h30 Meeting with the Minister of Education and Sport of the Republic of Serbia, Mr. Slobodan VUKSANOVIC
- 13h00-13h30 Meeting with the Special Prosecutor for Organised Crime, Mr. Slobodan RADOVANOVIC
- 14h00-14h45 Lunch
- 15h00-15h30 Meeting with the Speaker of the Parliament of Serbia and Montenegro, Mr. Zoran SAMI
- 16h00-16h45 Meeting with the Vice President of the Anti-Corruption Council, Government of Serbia, Mr. Miroslav MILICEVIC
- 17h00-17h45 Meeting with the Speaker of the Parliament of the Republic of Serbia, Mr. Predrag MARKOVIC and the President of the Committee for European Integrations, Ms. Ksenija MILIVOJEVIC
- 18h00-20h00 Attendance of the farewell reception for the Head of the OSCE Mission to Serbia and Montenegro, Ambassador Maurizio MASSARI

Parallel meetings with NGOs, media representatives and professional associations

- 09h00-11h00 Meeting with the representatives of NGOs:
Helsinki Committee for Human Rights, Ms. Sonja BISERKO
Belgrade Center for Human Rights, Mr. Borko NIKOLIC
Youth Initiative for Human Rights, Mr. Dragan POPOVIC
- 11h30-13h00 Meeting with the representatives of NGOs:
Civic Initiatives, Mr. Miljenko DERETA
Fund for an Open Society, Ms. Jadranka JELINCIC
Center for Democratic Foundation, Ms. Svetlana VUKOMANOVIC

- 13h00-14h00 Lunch break
- 14h00-15h00 Meeting with the representatives of the Association of Prosecutors, Ms. Branislava VUCKOVIC and Mr. Aleksandar MILOSAVLJEVIC
- 15h00-16h00 Meeting with the representatives of the Association of Judges, Ms. Dragana BOLJEVIC and Mr. Omer HADZIOMEROVIC
- 16h00-17h00 Meeting with the representatives of:
Strategic Marketing, Mr. Srdjan BOGOSAVLJEVIC
Center for Free Elections and Democracy, Mr. Marko BLAGOJEVIC
- 17h00-18h00 Meeting with the representative of the Alternative Academic Network, Ms. Srbijanka TURAJLIC

Tuesday, 13 December 2005 (Belgrade)

- 09h00-10h00 Meeting with the Public Prosecutor of the Republic of Serbia, Mr. Slobodan JANKOVIC
- 10h00-11h00 Meeting with the Minister of the Interior of the Republic of Serbia, Mr. Dragan JOCIC
- 11h00-11h45 Meeting with the Minister of Public Administration and Local Self-Government of the Republic of Serbia, Mr. Zoran LONCAR
- 12h00-12h45 Meeting with the Minister of Foreign Affairs of Serbia and Montenegro, Mr. Vuk DRASKOVIC
- 13h00-13h45 Meeting with the president of the Constitutional Court, Mr. Slobodan VUCETIC
- 14h00-14h45 Meeting with the Minister of Justice of the Republic of Serbia, Mr. Zoran STOJKOVIC
- 15h00-15h45 Meeting with the Minister of Culture of the Republic of Serbia, Mr. Dragan KOJADINOVIC
- 16h00-16h45 Lunch break
- 17h00-18h00 Meeting with the President of the Special Department for Organised Crime of the District Court of Belgrade, Mr. Milan RANIC
- 18h00-19h00 Meeting with the Minister of Defence of Serbia and Montenegro, Mr. Zoran STANKOVIC
- 20h00-22h00 Dinner with the Head of the EAR Office in Belgrade, Mr. Daniel GIUGLARIS and the Acting Head of the EC Delegation to Serbia and Montenegro, Mr. David HUDSON

Parallel meetings with NGOs, media representatives and professional associations

- 09h00-10h30 Meeting with the representatives of media organisations:
- Mr. Nebojsa BUGARINOVIC, NUNS
- Ms. Sibina GOLUBOVIC, ANEM
- Mr. Miodrag ZUPANC and Mr. Dragan MILANOVIC, RTS Trade Union
- 11h00-11h45 Meeting with the President of the Standing Conference of Towns and Municipalities in Serbia, Mayor of Novi Beograd, Mr. Zeljko OZEGOVIC
- 12h00-13h00 Meeting with the Commissioner for the Access to Public Information of the Republic of Serbia, Mr. Rodoljub SABIC

Wednesday, 14 December 2005 (Novi Sad)

- 08h30 Departure from Belgrade
- 10h00-10h45 Meeting with the Ombudsman of the Province of Vojvodina, Mr. Petar TEOFILOVIC
- 11h00-11h45 Meeting with the Speaker of the Parliament of Vojvodina, Mr. Bojan KOSTRES
- 12h00-12h45 Meeting with the Provincial Secretary of Education and Culture, Mr. Zoltan BUNJIK
- 13h00-13h45 Meeting with the Provincial Secretary of Regulation, Administration and National Minorities, Mr. Tamas KORHEC
- 14h00-14h45 Lunch hosted by the Executive Council of Vojvodina
- 15h00-16h00 Meeting with the President of the Executive Council of Vojvodina, Mr. Bojan PAJTIC
- 16h00 Departure from Novi Sad
- 17h30 Arrival to Belgrade
- 20h00-22h00 Dinner hosted by the Ministry of Foreign Affairs, Assistant Minister, Mr. Zeljko PEROVIC

Parallel meetings with representatives of NGOs in Novi Sad

- 12h00-14h00 Meeting with the representatives of NGOs:
- Centre for Regionalism: Mr. Aleksandar POPOV
- Centre for Development of Civil Society: Ms. Snezana ILIC
- Helsinki Committee for Human Rights in Serbia: Mr. Pavel DOMONJI
- Panonija: Ms. Danica STEFANOVIC

N.B.: A meeting with Mr Jozsef KASZA, President of the Vojvodina Alliance of Hungarians had taken place in Strasbourg two weeks earlier.

Thursday, 15 December 2005 (Podgorica)

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| 06h30 | Departure to Podgorica |
| 09h30-10h30 | Meeting with the Deputy Prime Minister of the Republic of Montenegro, Mr. Dragan DJUROVIC |
| 10h30-11h30 | Meeting with the Speaker of the Parliament of Montenegro, Mr. Ranko KRIVOKAPIC |
| 11h30-12h30 | Meeting with the President of the Republic of Montenegro, Mr. Filip VUJANOVIC |
| 12h30-13h15 | Meeting with the Supreme State Prosecutor of the Republic of Montenegro, Mrs. Vesna MEDENICA and the Special Prosecutor for Organised Crime, Mrs. Stojanka RADOVIC |
| 13h15-14h00 | Meeting with the National Coordinator for Combating Trafficking in Human Beings, Mr. Bojan OBRENOVIC |
| 13h30-14h30 | Meeting with Mr BULATOVIC, leader of the main opposition party |
| 14h30-15h30 | Meeting with the Minister of Justice of the Republic of Montenegro, Mr. Zeljko STURANOVIC |
| 15h30-16h30 | Meeting with the Prime Minister of the Republic of Montenegro, Mr. Milo DJUKANOVIC |
| 16h30-17h30 | Meeting with the President of the Supreme Court, Mr. Ratko VUKOTIC |
| 17h30-18h20 | Meeting with the Minister of Interior of the Republic of Montenegro, Mr. Jusuf KALAMPEROVIC |
| 18h20-19h10 | Meeting with the Minister for Culture and Media of the Republic of Montenegro, Mrs. Vesna KILIBARDA |
| 19h10-20h00 | Meeting with the Minister for the Protection of Minorities and Ethnic Groups of the Republic of Montenegro, Mr. Gezim HAJDINAGA |
| 20h00- | Dinner with the Minister of Foreign Affairs of the Republic of Montenegro, Mr. Miodrag VLAHOVIC |

Parallel meetings with NGOs, media representatives and professional associations

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| 12h30-13h00 | Meeting with Mr. Srdjan DARMANOVIC, Political Analyst |
| 13h00-13h45 | Meeting with the representatives of the: <ul style="list-style-type: none">- Centre for Rule of Law: Ms. Mirjana POPOVIC- Association of Public Prosecutors: Mr. Mitar MUGOSA- President of the Bar Chamber: Mr. Dejan VUJANOVIC |

13h00-13h45 Meeting with the representative of the Human Rights Centre, Mr. Nebojsa VUCINIC

13h45-14h15 Meeting with the Ombudsman of Montenegro, Mr. Sefko CRNOVRSANIN

13h45-14h30 Meeting with the representatives of the NGOs:
- Centre for Election Monitoring (CEMI): Mr. Zlatko VUJOVIC
- Network for Affirmation of NGO Sector (MANS): Ms. Vanja CALOVIC

16h30-17h30 Meeting with the representatives of the media organisations:
- Independent Self-Regulatory Body, Mr. Branko VOJICIC
- Radio-Television Montenegro (RTCG), Mr. Veljo JAUKOVIC
- Media Institute, Mr. Vojo RAONIC
- Association of Young Journalists, Mr. Boris DARMANOVIC

Friday, 16 December 2005 (Belgrade)

09h00 De-briefing for diplomatic missions hosted by the Embassy of Romania in Belgrade

10h30 Meeting with the Head of the ICTY Office in Serbia and Montenegro, Mr. Deyan MIHOV

Composition of the Secretariat Delegation:

Mr. Marc SCHEUER, Director, Directorate of Political Counsel and Co-operation, Directorate General of Political Affairs (DGPA)

Ms. Claudia LUCIANI, Head of Division, Directorate of Political Counsel and Co-operation, Directorate General of Political Affairs (DGPA)

Mr. Can OZTAS, Directorate of Political Counsel and Co-operation, Directorate General of Political Affairs (DGPA)

Ms. Dana PESCARUS, Monitoring Department, Directorate of Strategic Planning (DSP)

Mr. Stefano VALENTI, Special Representative of the Secretary General (SRSG) in Serbia and Montenegro

Mr. Vladimir RISTOVSKI, Head of Council of Europe Office in Podgorica