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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

First quarterly report (April - June 2003)

Executive summary

Accession to the Council of Europe is considered to be a major step in the process of Serbia and Montenegro's integration into Europe and a major incentive to pursue democratic reforms at all levels. In this context, the post-accession strategy (targeted co-operation and specific monitoring) is considered highly relevant by all partners.

*- **Democratic institution-building:** Not all the necessary action has been taken following the adoption of the Constitutional Charter: some institutions have still to be created and the distribution of responsibilities among the Union's authorities and constituent States is not always clear, nor is it understood in the same way by all the institutions.*

*- **Co-operation with the International Criminal Tribunal for the former Yugoslavia (ICTY):** Co-operation with the ICTY has improved over the recent period (the law on co-operation has been amended to facilitate co-operation, some indicted persons have surrendered or been handed over, access to documents has been improved), but progress is still considered to be slow and uneven.*

*- **Human rights:** Priority should be given to the signature/ratification of Council of Europe human rights instruments. Pending ratification, concrete implementation of human rights principles should be secured. This particularly concerns rights and freedoms as guaranteed by the European Convention on Human Rights and its Protocols and the European Convention for the Prevention of Torture, especially where the rights of persons held in custody or detained and the right to a free and fair trial are concerned.*

In Serbia, the situation of the media and its relations with public authorities are worsening, and this problem is becoming acute.

*- **Rule of law:** Reform of the judicial system is progressing very slowly throughout Serbia and Montenegro. In Serbia, the consequences of the state of emergency for the rule of law need to be fully offset. The Council of Judicial Reform should be more effective. The Code of Criminal Procedure should be revised, with possible Council of Europe assistance, in order to comply with European standards. Recent police operations seem to have achieved their initial objective. Particular attention should now be paid to the strengthening and independence of the judiciary in the context of the fight against organised crime. In Montenegro, a great number of draft laws have been prepared, some of which have been submitted for expert appraisal. However, these texts are unlikely to be passed in the near future due to political difficulties in parliament (opposition boycott).*

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I. INTRODUCTION

1. On 26 March 2003, following an exchange of views with the Minister of Foreign Affairs of Serbia and Montenegro (SiCG), the Committee of Ministers (833rd meeting, item 2.4b) adopted Resolution (2003)3 inviting Serbia and Montenegro to become a member of the Council of Europe (CoE). The accession ceremony and signature of the CoE Statute took place on 3 April 2003.

2. As well as adopting the resolution inviting SiCG to join the Organisation, the Committee of Ministers took another two decisions:

- to set up a specific monitoring procedure, under the authority of the Committee of Ministers (Rapporteur Group on Democratic Stability/GR-EDS), which provides for a regular review of the progress achieved (and difficulties encountered) in the fulfilment of commitments and implementation of the post-accession co-operation programme, on the basis *inter alia* of quarterly reports by the Secretariat;

- to adopt a post-accession co-operation programme, which includes a new EC/CoE Joint programme (see internet site: <http://jp.coe.int>).

3. In accordance with these decisions a first review of compliance with its commitments by SiCG is due in July 2003. In order to prepare the Committee of Ministers/GR-EDS examination, a first Secretariat post-accession mission visited Belgrade and Podgorica from 10 to 13 June 2003, meeting all the relevant Union and constituent States (Republic of Serbia and Republic of Montenegro) authorities. Bearing in mind the very close link between the monitoring of commitments and the implementation of co-operation programmes, the Secretariat delegation's visit was arranged to coincide with the first meeting of the Steering Committee of the newly concluded European Commission/CoE joint programme for Serbia and Montenegro, held in Belgrade on 11 June 2003. The full programme of the visit is appended. The report of the Steering Committee meeting will be published separately.

4. The programme of the Secretariat delegation's visit was arranged in co-operation with the Ministry of Foreign Affairs of Serbia and Montenegro and the authorities of the two constituent States. The Special Envoy of the Secretary General in SiCG and the staff of the CoE Secretariat Offices in Belgrade and Podgorica contributed greatly to the organisation of the mission, in particular that of meetings with representatives of international organisations and non-governmental organisations. The Secretariat also expresses its gratitude to the Embassy of the Kingdom of the Netherlands, which organised, on behalf of the Chairman of the CoE Committee of Ministers, a briefing at the end of the visit with representatives of CoE member states' diplomatic missions in Belgrade.

II. GENERAL CONTEXT

5. The level of both Union and constituent States participants in the discussions, as well as the quality and frankness of the discussions, are evidence of the seriousness with which the authorities regard the obligations accepted on joining the Organisation. The Secretariat delegation also appreciated the open nature and co-operative spirit of all the meetings, even when the most sensitive matters were discussed. This augurs well for the future work in the context of this monitoring procedure.

6. When progress in compliance with the obligations and commitments of Serbia and Montenegro as a member state of the CoE is assessed, the following elements should be taken into consideration:

- i. It is only 3 months since SiCG joined the CoE; in such a short period of time, it is difficult to expect major developments in the honouring of commitments which often require substantial legislative reform and parliamentary decisions;
- ii. SiCG went through radical constitutional change with the adoption of the Constitutional Charter on 4 February 2003, and not all the reforms and institutions resulting from the new constitutional order have yet been introduced ;
- iii. A major crisis affected Serbia with the assassination of Prime Minister Zoran DJINDJIC, which resulted in the imposition of a state of emergency and major police operations against organised crime;
- iv. Both Republic of Serbia and Republic of Montenegro, have experienced a succession of inconclusive presidential elections which have delayed the reform and legislative processes, and both Republics are approaching parliamentary elections, which could also delay further some unpopular decisions.

7. Two factors directly influence the reform process in SiCG (and the two constituent States) and could affect the efficient and speedy honouring of commitments:

- i. The very complex political situation in both Republics (internal tensions within the ruling majority, DOS, in Serbia and the refusal of the opposition to take part in parliamentary activity in Montenegro), which affects the capacity for action of the Union Parliament, in which there is no clear majority. In several cases, the Union Parliament has not been in a position to take decisions, as a result of the absence of a few members;
- ii. The still very tense situation in a society which has not yet assimilated the lessons of recent history: war criminals are still regarded as 'national heroes' in some circles (see the demonstrations and riots connected with the arrest of former Major Veselin Sljivancanin on the evening of Thursday 12 June), and nationalist tendencies are still very strong.

8. A decade of the Milosevic regime, four successive wars and three years of political/constitutional instability have had negative consequences for society at all levels, not all of which have yet been offset. It is not surprising that, only a few months after the adoption of a new constitutional order which was the result of very complex negotiations, there are still doubts and uncertainties about the future of the country and the respective roles and responsibilities of the components of the Union. But this will certainly be a factor to be taken into consideration when an analysis is made of the progress achieved in fulfilling the obligations and commitments accepted when the country joined the Council of Europe.

9. At the time of the visit, political forces were mobilised to prepare for the EU Thessaloniki Summit, and expectations about the results of this meeting were very high. An Action Plan for the strengthening and further development of relations between SiCG and the EU had been prepared under the guidance of the Ministry of Foreign Affairs. This is a signal that, following accession to the CoE, SiCG intends to pursue the process of European integration.

III. DEMOCRATIC INSTITUTION-BUILDING (in particular the implementation of the Constitutional Charter)

10. The institutions of the Union for which the Constitutional Charter provides are now in place, with the notable exception of the Union's Court, to be established in Podgorica. However, even before the setting up of this Court, there are diverging views about its position in the legal order of SiCG and its powers. In Podgorica, in particular, the officials met by the Secretariat's delegation affirmed the supremacy of the Montenegrin judiciary and rejected any subordination of the Montenegrin Supreme Court to the Union's Court, whose role would be limited to interpretation of the provisions of the Constitutional Charter. However, the Constitutional Charter and the Charter of Human and Minority Rights and Civil Liberties provide for possibilities of direct appeal by citizens in specific cases where there is no other effective domestic remedy. No doubt, one day, this question will be submitted to the European Court of Human Rights (ECHR) when it has to decide on the question of the exhaustion of domestic remedies. It would certainly be preferable for the matter to be clarified directly by the authorities of SiCG beforehand.

11. The Union's Parliament is experiencing great difficulty in functioning efficiently. As members of the Union's Parliament are delegated from the Serbian and Montenegrin Parliaments, its meetings and working conditions depend on the availability of the members with a dual mandate. Bearing in mind the very small majority in Parliament, President Micunovic mentioned several instances when the Union's Parliament was unable to take decisions on pressing reforms because of the absence of a handful of members.

12. The difficulties in the functioning of the Union's Parliament are also illustrated by the lack of agreement on the membership of the delegation of Serbia and Montenegro to the Parliamentary Assembly of the CoE (PACE). SiCG will have 7 seats (and 7 substitutes) in the PACE. President Micunovic had proposed to allocate 5 seats to Serbian parliamentarians and 2 to Montenegrin parliamentarians, in order to ensure the representation of both majority and opposition forces in both constituent States. At the time of the visit, the ruling forces in Montenegro had refused this compromise, requesting 3 seats (2 seats for the ruling forces and 1 for the opposition).

13. Also unclear are the role and responsibilities of the Union's Ministry of Human Rights and Minorities. It is not yet clear what will be the relationship of this Union Ministry with the equivalent Ministry for Minorities in Montenegro, or what will be the role (if any) of the Ministry in the implementation of the ECHR (will the Government Agent be attached to this Ministry?) and other human rights treaties. Minister LJAJIC expressed a lot of good will, but the impression given is that his Ministry lacks clear responsibilities and concrete means of action.

14. According to Article 65 of the Constitutional Charter, the constituent States should amend their constitutions "to harmonize them with the Constitutional Charter within 6 months of the adoption of the Constitutional Charter". The 6-month deadline will soon be passed, and neither of the constituent States' Constitutions has been amended and brought into line with the Constitutional Charter.

15. In Serbia, a Constitutional Commission has been set up under the chairmanship of Mr Vladan BATIĆ, Minister of Justice. The Venice Commission has been invited to co-operate in this process. However, progress in the Commission's work is slow, and some major political decisions must be faced, such as:

- the definition of the State along ethnic or citizenship lines;
- territorial organisation, which raises the issues of Vojvodina and Kosovo.

16. In Montenegro, constitutional work has not started. Certainly, the Venice Commission could usefully contribute to the harmonisation of the constituent States' constitutions with the Constitutional Charter.

17. Another point to be considered in this context, is the fact that the adoption of the new Constitutions will be followed by elections in the two constituent States, and this will certainly affect the progress of the constitutional work.

Specific concerns and proposals

The institutions of SiCG, as defined in the Constitutional Charter, are progressively being put into place. However, there are still several shortcomings:

- the Union's Court to be established in Podgorica has not yet been created, and there are already some divergences as regards the Court's responsibilities and its relationship with the Supreme Courts of the constituent States;*
- the distribution of responsibilities among the Union's authorities and constituent States' authorities is still unclear; in particular the responsibilities of the Union's Ministry of Human Rights and Minorities remain to be clearly defined;*
- the Union's Parliament does not function efficiently and is sometimes unable to take decisions due to quorum problems;*
- lack of co-operation mechanisms and of consultation between Union and State-level institutions causes confusion about their respective responsibilities.*

The deadline for harmonisation of the constituent States' Constitutions with the Constitutional Charter has not been met, and constitutional reform is progressing very slowly in both constituent States.

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

18. Co-operation with the ICTY has been one of the crucial issues discussed during the process of accession of Serbia and Montenegro to the CoE. In a letter dated 19 March 2003, the then Chairman-in-Office of the Committee of Ministers, Minister of Foreign Affairs of Malta, Mr Joe BORG, recalled "the fundamental importance of co-operation with the International Criminal Tribunal for the former Yugoslavia (ICTY). Compliance with this key commitment of the authorities of Serbia and Montenegro and of its two Republics will be proof of their genuine willingness to join the European structures and organisations". The Committee of Ministers requested the authorities of Serbia and Montenegro and of its two Republics, in particular:

- 'to comply unconditionally with the Tribunal's orders and requests by arresting and handing over, without further delay, the indicted persons still at large and by guaranteeing full and loyal co-operation concerning access to archives and documents upon request of ICTY';
- 'to ensure the conformity of the law on co-operation and its implementation mechanism with the Tribunal's Statute';
- 'to ensure prosecution before domestic courts of crimes not directly prosecuted by ICTY';
- 'to show unambiguous commitment and to abstain from any declaration or act which could be prejudicial to the legitimacy of the Tribunal in the eyes of the public opinion'.

19. Undeniably, progress has been recorded over the recent period on each of the above-mentioned issues. However, diverging views are expressed about the content and speed of this progress. Positive developments concern:

- i. the amendments to the law on co-operation with the ICTY adopted on 14 April 2003 in order to harmonise it with the Tribunal's Statute and allow for full implementation of its orders, as such fulfilling one of the specific requests of the Committee of Ministers;
- ii. several indicted persons have surrendered or been transferred to The Hague; during the Secretariat visit, one such person was arrested in a police operation which led to some public demonstrations by supporters;
- iii. co-operation with the General Prosecutor has improved, and the authorities have made clear commitments to take further steps in this direction;
- iv. some requests for documents submitted by the General Prosecutor have been satisfied.

20. However, several interlocutors, particularly from the ICTY Office in Belgrade, whilst not denying the progress recorded, considered that it was still slow and uneven. They said that public commitments and political declarations had not yet been fully translated into action. They underlined in particular:

- i. insufficient action to arrest indicted persons. It was noticed that among the 10,000 or so people interrogated after the introduction of the state of emergency, only one indicted person had been arrested;
- ii. in spite of very concrete assurances given by the SiCG authorities, very scattered responses to requests for documents and for access to archives. In this context it should be noted that, in a recent ruling, the ICTY decided that the General Prosecutor could only address specific requests, referring to individual cases;
- iii. still very insufficient responses to requests for waivers for witnesses. Some waivers have been obtained, but the process is very slow and cumbersome;
- iv. delays in establishing the judicial procedures and institutions to deal with cases at domestic level.

Specific concerns and proposals

Undeniably, co-operation with the ICTY and its General Prosecutor is improving. The adoption of the Law on co-operation with the Tribunal, the arrest and handing over of several indicted persons bear witness to this improved co-operation.

However, progress is slow, and political commitments have not yet been fully translated into facts, in particular as regards access to documents and archives.

Questions were raised concerning the very small number of persons indicted by the ICTY arrested during the state of emergency and the police operations which followed.

V. HUMAN RIGHTS

A. COUNCIL OF EUROPE HUMAN RIGHTS TREATIES: EUROPEAN CONVENTIONS ON HUMAN RIGHTS AND ON THE PREVENTION OF TORTURE

21. Serbia and Montenegro signed the ECHR and relevant protocols upon accession to the CoE on 3 April 2003. The Secretariat delegation was assured that the European Convention on the Prevention of Torture (ECPT) would be signed during the summer of 2003.

22. These instruments should be ratified by April 2004, bearing in mind the question of their implementation in Kosovo and the responsibilities of UNMIK under United Nations Security Council Resolution 1244. The latter issue is the subject of separate discussions.

23. Before that date, the authorities of Serbia and Montenegro are expected to act in accordance with the instruments they have signed. In this context, the Secretariat delegation recalled that it is first and foremost for the national authorities, in particular the judiciary, to implement the ECHR principles. An effort to achieve compatibility should also help the Serbian and Montenegrin authorities to harmonise their respective legal orders with the ECHR and other human rights treaties.

24. In Serbia, all persons met by the Secretariat's delegation underlined that the declaration of the state of emergency after the assassination of Prime Minister Zoran Djindjic pursued a legitimate aim. However, serious concerns were expressed about the conduct of the Serbian authorities during the state of emergency, in that measures taken were not required by the exigencies of the situation and did not fully comply with CoE standards, in particular the ECHR, or with the Serbian Constitution. After legislative amendments had been adopted by the Serbian National Assembly in April 2003, the police were granted extended powers to fight organised crime and the power to hold persons in custody for up to 30 days. If it was deemed necessary, the Minister of the Interior was allowed to prolong custody for another 30 days. International and local NGOs criticised both the lack of judicial control of such detention and the fact that these long periods of custody could take place *incommunicado* and therefore left room for police abuse (see in particular Amnesty International's letter to the Serbian Minister of Justice, Mr Vladan Batic, dated 21 May 2003).

25. Similarly, the Supreme Court of Serbia could decide to place an arrested person in pre-trial detention for another three months, whereas depriving the detained person of the right to file a complaint against the court's decision.

26. In practice, police forces, with the logistical support of the military, held in custody some 10,000 persons. According to the information provided by the Government, all of them were in pre-trial detention or had been released at the time of the Secretariat's visit. In April, representatives of the Office of the United Nations High Commissioner for Human Rights and the OSCE visited several detention centres and made some critical observations to the Serbian authorities. According to Human Rights Watch, consistent reports from those released suggest widespread abuse of detainees, in some cases amounting to torture (for more details, see [HRW](#), 04/06/2003). In this context, the Secretariat delegation underlined the particular significance of the future signature and ratification of the ECPT, in order to indicate the authorities' will to put an end to these practices.

27. In Montenegro, NGOs reported alleged cases of torture and death during police custody and therefore stressed the need to speed up reforms of the police and security forces and to set up an ombudsman's office. In this context, the Montenegrin Minister of the Interior emphasised that the future legislation pertaining to criminal procedure, the police and national security, with the CoE's assistance, should meet these concerns and enable the

authorities to implement ECHR principles and to prevent torture, notably through a reasonable maximum duration of custody, access to a lawyer of a person's choice and timely judicial supervision of detention (see also 43 and 57).

Specific concerns and proposals

Ratification of the ECHR and its Protocols is under consideration, and should take place before April 2004, bearing in mind the question of human rights protection in Kosovo and the responsibilities of UNMIK under UN Resolution 1244.

Signature of the ECPT is expected during the summer.

In the meantime, the authorities should ensure that legislation and practice comply with CoE human rights instruments.

According to the Government of Serbia, all persons arrested during the state of emergency – which was lifted on 22 April 2003 – have now been released or placed in pre-trial detention, with access to a lawyer. Concrete action is needed to secure the rights of detainees and to prevent and prosecute alleged cases of torture and ill-treatment during custody/detention.

B. NATIONAL MINORITIES

28. A Law on the Protection of the Rights and Freedoms of National Minorities, prepared with CoE assistance, was adopted by the then federal parliament in February 2002. According to the Union Minister for Human and Minority Rights, the constitutional framework of the Union provides the constituent States with the minimum standards in terms of minority rights, while he indicated that the constitutional principles in this field were implemented at the level of the two Republics.

29. In Serbia, emphasis is laid on the implementation of the above-mentioned 2002 law, and specific Serbian legislation was considered unnecessary. A number of National Minority Councils have now been set up.

30. In Montenegro, a draft law on national minorities has been under preparation for years. According to government sources, it should be adopted by the end of 2003. The draft, which provides for the setting-up of National Minority Councils in Montenegro, should be harmonised with the 'federal' legislation and the Constitutional Charter. However, critical comments were made, notably as concerns the preferential treatment given in the draft law to the Albanian community. The Minister assured the Secretariat delegation that the draft would be sent to the CoE for expert appraisal before being submitted to Parliament. For the sake of efficiency, several interlocutors met by the Secretariat's delegation expressed a wish for members of the Montenegrin Parliament to be associated with this expert analysis of the draft law.

Specific concerns and proposals

Implementation of the Framework Convention for the Protection of National Minorities and of the Union's legal order pertaining to minorities, including the 2002 Law on the Protection of National Minorities, is being pursued in different ways by the constituent States.

The Serbian authorities should pursue their efforts to improve implementation of the 2002 law, possibly with CoE assistance, if need be.

The Montenegrin authorities should ensure that the draft Law on national minorities is submitted to the CoE for expert appraisal.

C. FREEDOM OF THE MEDIA

31. In Serbia, representatives of the media whom the Secretariat delegation met expressed their concerns with respect to many aspects of their professional activities (specific recommendations can be found in a report of May 2003, available on the Internet: <http://www.b92.net/english/special/rds/media.php>). Members of the media community complained that recent changes to the Broadcasting Law permitted the Serbian authorities to exert direct influence on media that were critical of the authorities. Serbian parliamentarians also indicated that the law had several shortcomings, notably as concerns deadlines. Implementation of the law does indeed give cause for concern, in particular with regard to the setting-up and the functioning of the Broadcasting Council. At the time of the Secretariat's visit, four of the nine members of the Council resigned in protest against failure to observe the law. In the light of the 2004 elections, serious efforts should be made in order to resolve the present crisis in accordance with European principles, and to set up a Telecommunications Agency as soon as possible. It should also be stressed that the crisis is also hampering the timely transformation of State TV into a genuine public broadcasting service.

32. Media representatives emphasised that the 2002 Public Information Law should be revised in order to comply fully with European standards, and expressed regret that no law on access to information had yet been adopted by the Serbian authorities, in spite of a pressing need in this area.

33. Critical comments were made with respect to criminal-law provisions pertaining to defamation, as they had been used by the former regime to silence independent journalists. According to members of the media community, these provisions remained an obstacle to investigative journalism, as judges were often reluctant to accept that they broadened the limits of acceptable criticism of political figures (for more details, see doc. Monitor/Inf(2003)3). The media representatives also considered that measures undertaken during the state of emergency period were disproportionate, and particularly harmful to media freedom, although a certain lack of professionalism was acknowledged among some editors (see concerns expressed, notably by the Committee for the Protection of Journalists, <http://www.cpj.org/protests/03ltrs/Serbia12june03pl.html>).

34. In Montenegro, progress had been made in the media field in 2002. Despite resistance in Parliament, the laws adopted on the media and on radio transmission and the Law on Public Radio and TV Transmission Services were considered to represent positive steps by the authorities. As concerns defamation, some amendments were also introduced to the Criminal Code, in order to ensure that insulting the President of the Republic or other political figures was no longer defined as a separate offence. Likewise, prosecutors are no longer entitled to initiate criminal proceedings against individuals suspected of defamation. Now the main task ahead concerns the proper implementation of this legislative framework. This is precisely the main objective of the newly concluded agreement with the European Agency for Reconstruction (EAR).

Specific concerns and proposals

The media situation is confused in Serbia. The appointment of members of the national broadcasting council did not respect the legal provisions, and resulted in the resignation of several members. Measures should be taken to set up an effective and credible broadcasting council as soon as possible. Relations between the media and politicians are very tense and have deteriorated, notably in the light of the continued consequences of the measures taken under the state of emergency. The authorities should revise the Law on Public Information in accordance with European standards. A law on access to information should be adopted in accordance with Committee of Ministers' recommendations in this regard.

In Montenegro, particular attention should be paid to adequate implementation of the recently adopted legislative framework.

D. HUMAN TRAFFICKING

35. In Montenegro, serious concerns have been expressed by the international community after the prosecutor of the City of Podgorica decided to drop charges against four persons suspected of trafficking, although the investigation revealed the involvement of several high-ranking officials. The case was begun in November 2002, after a victim of sex trafficking, a 28 year-old Moldovan woman, escaped after being held in captivity for almost three years. The judge of the Podgorica Municipal Court found that sufficient evidence had been found in the course of the investigation. According to the Committee of Ministers Recommendation R(2000)11 on action against trafficking in human beings for the purpose of sexual exploitation, member States are invited to take action to apprehend, prosecute and punish all those responsible for trafficking, and to prevent sex tourism and all activities which might lead to forms of trafficking.

36. On 10 June 2003, the Deputy Secretary General addressed a letter to the Minister of Foreign Affairs of Serbia and Montenegro to express her concerns in this matter and her hope that all necessary measures would be taken to clarify this case and, more generally, to combat the scourge of human trafficking. During the Secretariat's visit, and subsequently, in a letter of 27 June 2003, the Montenegrin Government invited the Secretary General to set up a team of independent experts to assess its policy against human trafficking and the action taken to apprehend, prosecute and punish all those responsible for trafficking. According to the Deputy Prime Minister, Mr. Dragan Djurovic, the experts should examine, together with experts from national and other international institutions, whether the case of the Moldovan woman was conducted in accordance with the law. In a joint letter of 2 July, the Secretary General of the Council of Europe and the Secretary General of OSCE accepted this invitation. The visit of the team of experts should take place in the very near future.

37. The Minister of the Interior of Montenegro emphasised that the trafficking of human beings is a relatively new phenomenon in the Republic. Since 2002, seven criminal cases had been started. In two cases, the accused persons had been convicted, but the majority of cases had been discontinued due to lack of evidence. In the past 5 to 6 months, no new case had been initiated.

Specific concerns and proposals

Human trafficking is giving rise to growing concern, in particular in Montenegro. The fact that the Montenegrin authorities asked for Council of Europe assistance to assess their policy against human trafficking and to examine the action taken to apprehend, prosecute and punish all those responsible for trafficking is to be welcomed. A joint visit of Council of Europe and OSCE experts should take place in the near future. Maximum use of the expert advice should be made in the context of the authorities' fight against trafficking.

E. INTERNALLY DISPLACED PERSONS (IDPs) FROM KOSOVO

38. The return of IDPs to Kosovo is still an issue of serious concern. The social and educational conditions of Roma/Gypsy IDPs are particularly worrying. The Union's Minister for Human and Minority Rights said that opinion polls showed that the majority of IDPs were afraid to go back mainly for security reasons.

Specific concerns and proposals

The situation of IDPs from Kosovo, in particular the Roma/gypsy population, still gives cause for concern.

F. CONSCIENTIOUS OBJECTION AND ALTERNATIVE SERVICE

39. The Union's Ministry of Defence has worked actively on new provisions on conscientious objection and alternative service. A draft decree on conscientious objection should be sent to the CoE for expert advice. The decree will be ratified by the Union's Parliament at a later stage.

Specific concerns and proposals

The CoE is co-operating with the Union's Ministry of Defence to review a regulation concerning conscientious objection and alternative service.

G. SETTING-UP OF THE OFFICE OF OMBUDSMAN

40. No Ombudsman institution is planned at Union level. At constituent States' level, adequate laws on the Office of Ombudsman are being prepared in both Serbia and Montenegro. Various interlocutors underlined that the setting-up of such institutions would be particularly relevant to human rights protection.

Specific concerns and proposals

Adoption of the Serbian and Montenegrin laws on the institution of Ombudsman is still pending.

IV. RULE OF LAW

A. KEY LEGISLATION

41. In Serbia, prior to the assassination of the Prime Minister, measures had been initiated in order to fight against organised crime. In December 2002, an Anti-Mafia Law was passed and the office of Special Prosecutor was put in place. However, after the declaration of a state of emergency, the authorities adopted some controversial amendments to the Code of Criminal Procedure that seriously restricted human rights guarantees (see above) and would not guarantee a free and fair trial in accordance with ECHR provisions and the European Court's case-law. On 11 June 2003, the Serbian Constitutional Court suspended the retroactive nature of these amendments. However, judges, prosecutors and NGOs fear that these amendments will remain during future trials of persons detained in the context of the state of emergency and the fight against organised crime.

42. In the light of the lifting of the state of emergency on 22 April 2003, and of criticism voiced by NGOs, the authorities indicated that relevant changes would be made to the legislation in order to comply with European standards. It is highly desirable that the CoE be consulted without delay, before draft amendments are submitted to Parliament.

43. In Montenegro, the authorities emphasised that a number of draft laws, in particular a draft Criminal Code and Code of Criminal Procedure, have been prepared and submitted to international organisations for expert appraisal. Most of these drafts have been transmitted to Parliament, but the boycott of parliamentary work by the opposition political forces will not facilitate the adoption of these laws.

Specific concerns and proposals

In Serbia, concerns had been expressed about the possibility that future trials will be based on the amended Code of Criminal Procedure, which would not guarantee a free and fair trial. The willingness of the authorities to review the relevant provisions in accordance with ECHR provisions and the Strasbourg Court's case-law in the near future should be welcomed. In this respect, it is highly desirable that the CoE should be consulted before amendments are sent to Parliament.

B. FUNCTIONING OF THE JUDICIARY

44. In Serbia, the state of emergency has slowed down the process of reform of the judiciary. The Council of Judicial Reform met for the first time after several months during the Secretariat's visit, and concerns were raised about its future effectiveness, as it was not consulted by the Ministry of Justice when important pieces of legislation were drafted and adopted, notably as regards the controversial provisions of the Code of Criminal Procedure (see paras 24-26 above). The Secretariat's attention was also drawn to the recent changes in the membership of the Council.

45. Serbian judges expressed their concerns about the process for the election of judges, notably that of court presidents. Relevant provisions had been changed several times in a year. In January 2002, the Higher Council of the Judiciary elected presidents of courts. In March, the Assembly elected four judges. The law was again amended so that elections were carried out by an Administrative Board (comprising the four judges already elected by the Assembly, the President of the Supreme Court, the Minister of Justice and the President of the Justice Commission). The Serbian Association of Judges underlined that the election of

judges is thus subject to growing influence from the other branches of authority, and called for a more coherent approach through the drafting of relevant provisions.

46. Judges also pointed out that the state of emergency had turned the Serbian criminal procedure into an inquiry system, as the courts are somehow requested to find the evidence that prosecutors should have provided. The presumption of innocence was not observed during investigations. Serbian judges also complained that, unlike prosecutors during the investigation, they were not entitled to ask for the protection of witnesses during court proceedings.

47. There are a number of problems in the judiciary itself, primarily as regards judges' professionalism. The Serbian Association of Judges recalled that, under the former regime, judges were recruited on political criteria and not according to their professional merits. The idea that enduring action was needed, notably through the Higher Judicial Council, was favoured.

48. In parallel, a "lustration law" has been adopted by the Serbian Parliament. A first group of 19 judges was recently submitted to the Parliament for possible dismissal. The Serbian Association of Judges fears that existing problems will be used as a pretext to justify a general campaign against the judiciary, including through the media, in the context of the state of emergency and the fight against organised crime.

49. In Montenegro, a number of steps have been taken relating to the judiciary. The Law on Courts, of February 2002, should be re-drafted with CoE assistance. Two new courts should be set up by June 2004. The Montenegrin Council of the Judiciary, established in late 2002, is composed exclusively of representatives of the judiciary. However, some undue pressure has been revealed in very sensitive cases, such as the above-mentioned sex trafficking case. On 9 June 2003, the Field Office of the United Nations High Commissioner for Human Rights in Serbia and Montenegro highlighted the fact that inappropriate accusations had been made against a judge of Podgorica Municipal Court, which had threatened to compromise the independence of the judiciary.

Specific concerns and proposals

In Serbia, the reform of the judiciary is progressing very slowly as the Council of Judicial Reform has yet to produce tangible results. Particular attention should be paid to the reinforcement and the independence of the judiciary in the context of the fight against organised crime.

In Montenegro, a number of steps have been taken in this field. Further efforts should be encouraged.

C. FUNCTIONING OF LAW-ENFORCEMENT AGENCIES

1. Functioning of the prosecuting bodies

50. In Serbia, although appropriate legislation was adopted with CoE assistance, Serbian prosecutors emphasised that the state of emergency had a detrimental effect on their independence from the executive, particularly after the adoption of a number of amendments to the Law on the Public Prosecutor. Prosecutors explained that they are no longer represented in the Higher Council of the Judiciary and that the appointment of prosecutors is now based on political criteria rather than professional skills (appointment proposed by the Government and validated by the Assembly as concerns prosecutors, and by the President as

concerns their deputies). Serbian prosecutors underlined the urgency of the situation, as the shortage of deputy prosecutors encourages the authorities to recruit more staff through this procedure. In the context of the fight against crime, Serbian prosecutors also underlined that the special prosecutor lacks authority. They emphasised that the Law on the Public Prosecutor should be revised in order to comply with the Serbian Constitution and European standards.

51. In Montenegro, a new Law on the Public Prosecutor has been prepared by the Montenegrin authorities, but its adoption in the near future may be affected by problems relating to the functioning of the Parliament.

Specific concerns and proposals

In Serbia, the independence of the prosecutors deserves particular attention, in particular as regards appointments.

2. *Functioning of the police and security forces*

52. In Serbia, the Minister of the Interior explained that the assassination of the Prime Minister was a direct attack against a young democracy and aimed at provoking chaos in the country. He indicated that this should be connected to recent measures taken by the Serbian authorities to fight organised crime.

53. The Minister of the Interior of Serbia underlined that the police operation conducted during the state of emergency had led to impressive results. The investigation had revealed that there were close ties between the judicial authorities, some police forces, such as the Special Police Operation Unit (“Red Berets”), and organised crime, in particular the “Zemun clan”, suspected of the assassination. A process of removal of criminals from the police forces, from top to bottom, has been therefore initiated. About 2,000 policemen have been dismissed. A new police force (*Gendarmerie*) has been set up in order to cope with particular security risks. The “Red Berets” have been disbanded. Just after the assassination of the Serbian Premier, the names of a number of suspects were made public. About 10,000 persons were interrogated, 3,000 were arrested and 3,600 criminal charges were brought, involving 390 people. The Minister of the Interior described the police operation under the state of emergency as a real success. 45 persons were accused of being involved in the assassination, and some criminal groups had been disbanded. However, most of the persons with whom discussions took place agreed that the forthcoming trials, due to start in the autumn, would be a stern test of the success of the operation.

54. However, the Montenegrin Minister of the Interior underlined that the declaration of a state of emergency in Serbia had had little impact on the situation in Montenegro, as no requests for arrests or information had been made by the relevant Serbian authorities.

55. The Minister of the Interior also stressed that the police reform process was under way. Draft Laws on Internal Affairs and Police Education had been submitted to Parliament, but were unlikely to be adopted before autumn 2003. He explained that these drafts would play a significant role in transforming the police into a public service for the protection of life and property. The Ministry had also adopted a Code of Police Ethics, taking into account relevant CoE texts, such as Committee of Ministers Recommendation Rec(2001)10 on the European Code of Police Ethics. The OSCE had been asked to co-ordinate activities on the police (community policing, reorganisation of the local police, etc).

56. As concerns security forces, the Minister of Interior indicated that a Law on Security Information was adopted in July 2002, and that the security services now constituted a separate government intelligence agency.

57. In Montenegro, a draft Law on the Police was to be finalised, with CoE assistance. According to the Montenegrin authorities, appropriate internal supervision mechanisms would be set up in order to monitor police activities. Parliamentary and citizens' supervisory bodies would also ensure external supervision of the police.

Specific concerns and proposals

In Serbia, most institutions considered that the recent police operations had produced substantial results and seemed to have achieved their initial objective. A complete evaluation of the results will be made in the context of the forthcoming trials, which are due to start in the autumn of 2003. Strong measures to reform the police in Serbia and in Montenegro should be encouraged. Several pieces of legislation should be adopted by the respective parliaments.

APPENDIX**PROGRAMME OF THE SECRETARIAT'S VISIT TO BELGRADE AND PODGORICA
(10-13 JUNE 2003)****Tuesday, 10 June 2003**

11.35 am Arrival of the Delegation in Belgrade.

Talks with the Union of Serbia and Montenegro officials

1.00 – 1.45 pm Major-General Mr. D. Radovanovic, Assistant Defence Minister of Serbia and Montenegro, in charge of military cooperation and defence policy.

2.00 – 3.00 pm Mr. R. Ljajic, Minister for Human and Minorities Rights of Serbia and Montenegro.

3.10 – 4.00 pm Mr. G. Svilanovic, Minister of Foreign Affairs of Serbia and Montenegro.

Talks with the Republic of Serbia officials

4.00 – 5.00 pm Meeting at the National Assembly of the Republic of Serbia with Mr. Ivan Andric, Culture and Media Committee; Bojan Pajtic, Legislative Affairs Committee; Mr. Dragor Hiber, Judicial Affairs Committee; Ms Natasa Milojevic, Foreign Affairs Committee and with the Constitutional Commission members.

5.00 – 6.00 pm Mr. D. Mihajlovic, Minister of the Internal Affairs of the Republic of Serbia.

8.00 pm Dinner in honour of the Delegation, hosted by Ambassador Ms S. Prica, Head of the OSCE and CoE Department at the Ministry of Foreign Affairs of Serbia and Montenegro.

Wednesday, 11 June 2003

9.30 am Meeting of the Steering Committee of the European Commission/Council of Europe Joint Programme with Serbia and Montenegro.

1.30 pm Press Conference at the Palace of the Council of Ministers.

2.00 pm Lunch for all Steering Committee participants.

4.00 – 5.00 pm Meeting with Mr. V. Batic, Minister of Justice of the Republic of Serbia.

Union Parliament

5.10 – 6.00 pm Meeting with Mr. D. Micunovic, President of the Parliament of Serbia and Montenegro.

8.00 pm Departure of the Delegation from Belgrade for Podgorica.

9.15 pm Arrival at Podgorica airport.

Meetings with the officials of the Republic of Montenegro

9.30 pm Working dinner with Mr. D. Burzan, Minister of Foreign Affairs of the Republic of Montenegro.

Thursday, 12 June 2003

9.15 am Meeting with Mr. Zeljko Sturanovic, Minister of Justice in the Government of the Republic of Montenegro.

10.00 am Meeting with Mr. Slobodan Backovic, Minister of Education in the Government of the Republic of Montenegro.

10.45 am Meeting with Mr. Gzim Hajdinaga, Minister for Protection of National Minorities in the Government of the Republic of Montenegro.

11.30 am Meeting with Mr. Sasa Mostrokol, National Coordinator for the Fight against Trafficking in Human Beings.

12.30 pm Meeting with Mr. Rifat Rastoder, Deputy Speaker of the Parliament of the Republic of Montenegro.

1.15 pm Meeting with Mr. Milan Filipovic, Minister of Interior Affairs in the Government of the Republic of Montenegro and Mr Dragan Pejanovic, Chief of Cabinet.

2.00 pm Meeting with Mr. Filip Vujanovic, President of the Republic of Montenegro.

3.00 pm Meeting with Mr. Milo Djukanovic, Prime Minister of the Republic of Montenegro (in the presence of Mr. Milan Rocen, Main Political Adviser to PM and Mr. Vesko Garcevic, Deputy Minister of Foreign Affairs).

4.00 pm Meeting with Mr. Luigi Sandrin, Head of the European Agency for Reconstruction (EAR) Operation in Montenegro and Ms Regina de Dominicis, EAR.

4.30 pm Meeting with representatives of Montenegrin NGOs: Mr. Stevo Muk, Director of the Centre for Development of NGOs; Mr. Srdjan Brajovic, Member of the Executive Board of Group for Changes and Mr. Aleksandar Zekovic, Coordinator of the Humanitarian Law Centre in Montenegro.

6.30 pm Departure to Belgrade.

Meetings in Belgrade**Thursday, 12 June 2003**

9.00 pm Dinner with Mr. Veran Matic, Director of B92 and Association of Independent Media (ANEM).

Friday, 13 June 2003

9.00 am Concluding talks at the Ministry of Foreign Affairs of Serbia and Montenegro with Ambassador Ms S. Prica, Head of the OSCE and CoE Department.

10.00 am Meeting with Heads of Diplomatic Missions of the Council of Europe member states in Belgrade.

12.00 pm Meeting with the Director of the EAR Belgrade Office.

1.00 pm Meeting with Mr. Deyan Mihov, Head of the Belgrade Office of the ICTY.

3.15 pm Departure from Belgrade.

Additional Programme**Wednesday, 11 June 2003 – Belgrade****Meetings with Representatives of the Judiciary, NGOs and the Media**

9.30 am Meeting with representatives from the Belgrade Centre for Human Rights, Institute for Comparative Law, Humanitarian Law Centre and Helsinki Committee for Human Rights in Serbia.

10.30 am Meeting with the President of the Judges Association, Mr. Omer Hadzimerovic and the President of the Prosecutors' Association, Mr. Zoran Sulovic.

12.00 pm Meeting with Ms Sonja Licht, Open Society Fund (OSI).

1.00 pm Meeting with Ms Milica Lucic-Cavic (President), Association of Independent Journalists (NUNS).

3.00 pm Meeting with Mr. Oliver Schmidt-Gutzat, Liaison Officer of the OSCE High Commissioner for Minorities.