



# Information Documents

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## Serbia and Montenegro:

### Compliance with obligations and commitments and implementation of the post-accession co-operation programme

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Document presented by the Secretary General

### Seventh report (December 2004 – February 2005)

#### *Summary*

**Democracy and Institution-Building:** *Despite the improved functioning of the State Union Court, the failure to organise direct elections for the State Union Parliament in February 2005 has further increased the questioning of the future of the State Union. In late February 2005, the President and the Prime Minister of Montenegro circulated a proposal for the dissolution of the State Union and creation of a Union of independent states. In Montenegro, several opposition parties returned to Parliament. In Serbia, no agreement has yet been reached on a single final draft Constitution or on the manner of its adoption, while in Montenegro two drafts are being prepared.*

**Co-operation with the International Criminal Tribunal for the former Yugoslavia (ICTY):** *During the period covered, there has been an encouraging sign in terms of surrenders and transfers. Four ICTY indictees were transferred to The Hague. The surrender of two other generals and a senior police officer indicted in October 2003, as well as other prominent ICTY indictees, is still expected, under increased international pressure.*

**Rule of Law:** *The adoption of a Serbian Law on the transfer of competence of military justice to civilian courts is to be welcomed. Adoption of legislation on police and security forces in line with CoE standards must remain a priority in both member states. Appropriate implementation of legislation remains a problem in both member states. Major reforms of criminal legislation are being undertaken in Serbia.*

**Human Rights:** *The judge in respect of Serbia and Montenegro to the European Court of Human Rights was elected on 26 January 2005. The Decree on Government Agent was adopted in February 2005. At the level of the State Union, the Decree on military service was amended in late January, with a lack of prior public debate and transparency. In Serbia, the adoption of a Law on Ombudsman in line with CoE recommendations is awaited. As concerns freedom of the media, in Serbia, the Broadcasting Council was finally elected; implementation of the laws on Broadcasting and on Free Access to Information must still be ensured. In Montenegro, consensus has still not been achieved on the draft Montenegrin legislation on national minorities; the problematic issue of trafficking in human beings has re-surfaced.*

**Education:** *In Serbia, the draft Law on Higher Education should be adopted by May 2005. The adoption of a draft Strategy on Roma Education is to be strongly encouraged.*

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*The deadline to comply with Council of Europe commitments to sign and ratify a number of Conventions and in particular to adapt legislation accordingly expires on 3 April 2005.*

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## INTRODUCTION

1. In the context of the accession of Serbia and Montenegro to the Council of Europe on 3 April 2003, the Committee of Ministers decided to set up a specific monitoring procedure, under the authority of its Rapporteur Group on Democratic Stability (GR-EDS), which provides for a regular review of progress achieved and difficulties encountered in the fulfilment of commitments and obligations accepted when joining the Organisation, as well as the implementation of the post-accession co-operation programmes, on the basis of *inter alia* quarterly reports by the Secretariat.

2. The present document is the 7<sup>th</sup> report prepared by the Secretariat in this context<sup>1</sup>.

3. On 12 January 2005, in light of the 6<sup>th</sup> report, the Committee of Ministers took the following decision:

*“The Deputies (...)*

*2. asked the authorities of Serbia and Montenegro to step up reforms in accordance with the obligations and commitments to be fulfilled before the end of Serbia and Montenegro's second year of membership of the Council of Europe and to strengthen cooperation with the Council of Europe;*

*3. insisted on obtaining tangible signs of progress in cooperation with the International Criminal Tribunal for the Former Yugoslavia (ICTY).”<sup>2</sup>*

## PART I: MAIN CONCLUSIONS AND RECOMMENDATIONS

4. As mentioned in the Deputies' decision, strong expectations remain for Serbia and Montenegro to fulfil a number of its commitments by the end of the second year of membership, namely to prepare legislation in conformity with Council of Europe standards with the view to signing and/or ratifying, by 3 April 2005, a number of treaties. This includes: the signature and ratification of the European Charter on Local Self-Government, the European Outline Convention on Trans-frontier Co-operation and the protocols thereto, the European Charter for Regional and Minority Languages and the signature of the Revised European Social Charter.

5. Compliance with commitments and obligations is necessary for an effective integration of Serbia and Montenegro into European structures (see in this connection Parliamentary Assembly of Council of Europe Opinion No. 239 (2002) of 24 September 2002, para. 14). The need for a strong political commitment and legislative measures (and their adequate implementation) were highlighted in the last report (see in this respect [SG/Inf\(2004\)33](#), pp. 4-6). However, although some progress has been made since December 2004, the main recommendations remain valid. It is important, in this context, to put emphasis on the following issues:

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<sup>1</sup> 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](#) (available on the following websites: <http://www.coe.int/sg> and <http://dsp.coe.int/monitoring>).

<sup>2</sup> Committee of Ministers' decisions, 911th meeting, 12 January 2005.

*At the level of the State Union of Serbia and Montenegro*

- to pursue efforts and to find an acceptable solution to arrangements concerning the future of the State Union through dialogue between the authorities of Serbia and of Montenegro;
- whilst expressing satisfaction with the recent surrender of several indictees, to enhance co-operation with the ICTY (especially arrest and transfer of indictees) in order to prove full and effective co-operation;
- to sign and ratify or to sign the treaties enumerated in para. 4 by 3 April 2005;
- to urgently establish the Government Agent institution before the European Court of Human Rights;
- to adopt without further delay appropriate legislation *inter alia* on asylum seekers to enable the implementation of the 1951 Geneva Convention relating to the Status of Refugees and the 1967 Protocol thereto;

*At the level of member states of the State Union*

***Republic of Serbia:***

- to show evidence of continued and improved co-operation with the ICTY;
- to draft and adopt a new Serbian Constitution harmonised with the Constitutional Charter;
- to enact relevant legislation as regards the reform of police and security forces in compliance with Council of Europe standards;
- to ensure that the draft Criminal Code is reconsidered and that it does not contain *inter alia* provisions broadly restricting freedom of expression and freedom of the media, in particular as regards defamation;
- to ensure, among other laws, the appropriate application of the Law on Free Access to Public Information;

***Republic of Montenegro:***

- to pursue full and effective co-operation with the ICTY;
- to draft and adopt a new Montenegrin Constitution or a constitutional amendment in harmonisation with the Constitutional Charter;
- to adopt, following Council of Europe experts' recommendations, the Law on Free Access to Information and subsequently ensure its effective implementation;
- as regards trafficking in human beings, to comply with the Council of Europe/OSCE experts' recommendations, notably implement the Government Action Plan and undertake appropriate and diligent investigations into allegations of trafficking.

## **PART II: OVERVIEW OF SERBIA AND MONTENEGRO'S COMPLIANCE WITH ITS OBLIGATIONS AND COMMITMENTS**

### **A. DEMOCRACY AND INSTITUTION-BUILDING**

#### **1. EFFECTIVE FUNCTIONING OF DEMOCRATIC INSTITUTIONS**

6. At the level of the State Union, the questioning of the viability of Serbia and Montenegro as a state union has intensified. The failure to organise elections for the State Union Parliament in February 2005 is a breach of the Constitutional Charter (Article 20), whose consequences now need particular attention. According to the Law on the Implementation of the Constitutional Charter (Article 9), the President of Serbia and Montenegro "shall schedule the direct election of deputies to the Assembly of Serbia and Montenegro, so that such election is conducted upon the expiration of two years from the date of constitution of the first convocation of the Assembly of Serbia and Montenegro". In Montenegro, previous attempts by the main opposition parties to adopt the draft Law on the Election of the Members of Parliament (MPs) of the State Union remained unsuccessful. In Serbia, relevant legislation for the direct election of MPs of State Union Parliament was adopted in December 2004. The prolongation of the MPs' mandates after 3 March 2005 could create a loss of legitimacy for the State Union Parliament and the Council of Ministers of the State Union. Efforts should be pursued by both member states to comply with the Constitutional Charter and to find mutually acceptable solutions on the holding of direct elections to the State Union Parliament. As concerns other State Union institutions, the State Union Court started to function in December 2004, with financial resources ensured by both member states. It has transferred a large number of cases to different courts of the member states (see in this connection para. 29).

7. In Montenegro, the organisation of a referendum on independence, according to the Constitutional Charter, i.e. not earlier than March 2006, has been extensively advocated in the past months (see also previous report [SG/Inf\(2004\)33](#), para. 10). It is to be noted that the Montenegrin society as a whole remains divided on this question. At the end of January 2005, a Movement for the preservation of the State Union, together with a Movement advocating independence, were created. The proposal by the President and the Prime Minister of Montenegro to the Serbian authorities - in late February 2005 - of an agreement to transform the State Union of Serbia and Montenegro into a Union of internationally recognised independent states represents another initiative for the dissolution of the State Union.

8. In Serbia, the continued insufficient co-operation of the Serbian Government with the ICTY, taking into account the importance of this issue for the EU Stabilisation and Association process (SAP), has become an additional impetus to opposition parties, mainly the Democratic Party (DS), to call early elections in the spring. The draft Law amending the Law on Government - mentioned in the previous report - was withdrawn from Parliament at the beginning of December 2004, as a result of the lack of consensus among the MPs.

9. The possible lack of impartiality of the military investigation, following investigations in the deaths of two conscripts in Topcider in October 2004, has been the subject of extensive public debate at the end of 2004 (see for example Amnesty International, [Press Release](#), 17.12.2004). It has resulted in an increasing lack of confidence in state security and armed

forces. Rumours persist that the alleged suicides and killings of soldiers in military barracks were linked to the army's protection of war crimes indictees. A third investigation into the Topcider incident was proposed in mid-February by the Belgrade District Public Prosecutor.

10. In Montenegro, by December 2004, several opposition parties have returned to Parliament; the newly-established Liberal Party of Montenegro is expected to do the same after the early local elections in Niksic in mid-March 2005.

## 2. CONSTITUTIONAL ISSUES

11. As regards harmonisation of the Constitutions of both member states with the Constitutional Charter, it goes without saying that the pace of constitutional reform is conditioned by the uncertain future of the State Union. In Serbia, no agreement has yet been reached on a draft Constitution and progress has remained slow. There are on-going negotiations in the parliamentary Committee on Constitutional Issues on finalising a single draft which would take into account the two main proposals: the first drawn up by the Serbian government and the second one by a team of experts commissioned by the President and published in January 2005. Questions related to the procedure for the election of the President as well as decentralisation issues remain unresolved. There is still uncertainty on the procedure for the adoption of the new Constitution (by the present Parliament with a qualified majority and a constitutional referendum or by holding elections for a constituent assembly prior to the adoption). In addition, criticism of the draft proposed by the Serbian Government was made in Vojvodina, because the draft allegedly contains an inappropriate definition of competences, it does not enshrine legislative powers or the province's own regulation of property or income. The President of the Serbian Parliament repeatedly indicated that a final draft should be completed by the end of March. The Venice Commission is to be consulted, once the final text is ready.

12. In Montenegro, following expert assistance from the Venice Commission, a round-table was organised in November 2004. The Council for Constitutional Issues is expected to send the consolidated Report on Alternatives of Constitutional Reform in Montenegro to Parliament by the first session of 2005. As mentioned in the previous report, the issue of a referendum on independence of Montenegro is linked to the question of whether the current Constitution is to be harmonised with the Constitutional Charter or if a new Constitution is to be adopted. Consequently, there is on-going work on two distinct drafts.

## 3. LOCAL AND REGIONAL DEMOCRACY

13. In the field of local and regional democracy, promises to initiate the ratification of the European Charter of Local Self-Government - which is one of the commitments to be fulfilled by Serbia and Montenegro by 3 April 2005 - have been made by both Serbian and Montenegrin responsible ministers.

14. In Serbia, the Parliament amended the Law on Local Self-Government to adjust it to the new fiscal regulations which entered into force on 1 January 2005. In early February, the preparation of new legislation - in compliance with the Law on Local Self-Government of 2002, which provides for the adoption, within six months, of special legislation regulating the position of the capital and the administration of the City of Belgrade - was announced. This amendment would require new elections for the Belgrade Municipal Assembly. As concerns

Vojvodina, in the second half of December 2004, the Serbian Government increased its budget with the sum of 360 million dinars (approx. 4.5 million euros), a sum which had been previously cut from the budget.

15. In Montenegro, the draft Law on Administrative and Territorial Organisation, which has been under Council of Europe experts' appraisal, was approved by the Government in late November 2004.

16. As regards the *Work Programmes for Better Local Government* in Serbia, progress was made on drafting a Work Programme which contains a number of sound specific initiatives on legislative reform. However, it appears that its component on 'capacity-building' is weak. An increased effort of co-operation with the Standing Conference of Towns and Municipalities could improve the current situation. The adoption by the Government of the Work Programme should be a priority, taking into account the deadline set, i.e. the 14<sup>th</sup> Conference of European Ministers responsible for Local and Regional Government, which took place on 24-25 February 2005 (see for more details <http://www.coe.int/T/E/Com/Files/Ministerial-Conferences/2005-budapest/>). Co-ordination within different ministries, as well as on the creation of a platform to monitor the implementation of the Work Programme, is needed. The Council of Europe stands ready to provide assistance in this respect.

17. In Montenegro, the draft *Work Programme* which had already been prepared in November 2004 was revised and approved by the Government on 10 February 2005. This *Work Programme* (WP) is to develop a comprehensive decentralisation strategy, make an analysis of the legal framework and planning of legislative reforms, in accordance with the aims of decentralisation, enhance institutional dialogue between the government and national associations of local authorities, etc.. According to the WP, a Co-ordination Body, composed of representatives of Government, Parliament and of local self-government, will be established in order to supervise the process of decentralisation and evaluation. Adoption or amendment of a considerable number of laws and regulations is foreseen throughout 2005.

#### **4. RECENT DEVELOPMENTS IN THE REGIONS (VOJVODINA, SOUTHERN SERBIA, SANDZAK)**

18. In mid-January, several analysts underlined the potential effect of the rise of tension in Southern Serbia, as well as the situation in Kosovo, on inter-ethnic relations in Vojvodina. At the end of January 2005, a delegation of the European Parliament visited Vojvodina, following a Resolution adopted in September 2004. The delegation highlighted the importance of education to achieve inter-ethnic tolerance, and assessed that inter-ethnic relations were at present satisfactory. This concurs with the conclusions reached by the Secretariat delegation following a visit held in mid-November 2004 (see [SG/Inf\(2004\)33](#), paras 23-27)<sup>3</sup>.

19. A Declaration on the establishment of a Joint Tolerance Programme was concluded between the Parliament Speakers of Serbia and Hungary in Szeged, in early February 2005, with the aim of reducing and eliminating inter-ethnic tensions. Agreement was also reached

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<sup>3</sup> According to information provided by the authorities, extensive investigations have been undertaken by the authorities following the escalation of inter-ethnic incidents. These resulted in 48 indictments, with nine of them classified as incitement to national, racial and religious intolerance.

on the creation of an inter-parliamentary cultural committee to enhance the peaceful coexistence of Serbs and Hungarians in the region.

20. At the beginning of January 2005, the security situation worsened in **Southern Serbia**, with the shooting of an ethnic Albanian minor who was in the process of illegally crossing the border near a village between “the former Yugoslav Republic of Macedonia” and Serbia. Following the incident on 7 January, the Albanian majority in the municipal assembly of Presevo called for the Serbia and Montenegro army to withdraw its troops and the international community to send armed forces to stabilise the region. In response, the Serbian Government reinforced the security in the Presevo Valley and started negotiations with the representatives of three southern municipalities in order to re-establish the Co-ordination Centre for Southern Serbia. In early March, the main ethnic Albanian political parties announced their decision to participate in the activities of the Co-ordination Centre. It is to be recalled that their decision had been conditioned on the agreement of the Serbian Government with their demands to *inter alia* demilitarise the Presevo region, open additional border crossings to Kosovo and “the former Yugoslav Republic of Macedonia” and reduce the size of the border security zone. The border security zone has now been reduced from 5 km to 300 meters and a decision on opening of three new border crossing points has also been taken.

21. On 9 February 2005, the Serbian Government adopted a Programme of political and security stabilisation, economic and social development of the Co-ordination Centre, from January 2005 to December 2007, which is to be implemented in the municipalities of Bujanovac, Presevo and Medvedja (see [Serbian Government](#), Press Release, 09.02.2005).

22. The geographical position of **Sandzak**, divided between Serbia and Montenegro, is relevant to the debated question of independence of Montenegro. The large Bosniak population in Sandzak, including the Bosniak National Council, is increasingly concerned by the possibility of seeing the Sandzak region split between two states no more part of the State Union. Lack of political consensus between various Bosniak parties - mainly following the local elections in October 2004 - explained continuous serious tensions.

#### **B. CO-OPERATION WITH THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA (ICTY)**

23. The issue of full co-operation with the International Criminal Tribunal for the former Yugoslavia (ICTY) remains a central issue for the international community, as well as within domestic political debate. In January 2005, the EU assessed that progress on the integration to the EU of Serbia and Montenegro is “still more than limited” and the most problematic issue in this respect is a full and complete co-operation with the ICTY (see in this connection EU Troika – Serbia and Montenegro, [Press Release](#), 01.02.2005). In addition, the European Commission (EC) conditioned the success of a Feasibility Study - to be issued in April 2005 - to the fulfilment of obligations towards the ICTY.

24. During the period covered by the present report, the main event to be welcomed was the surrender and transfer to the ICTY on 3 February 2005 of one of the army generals indicted in October 2003, namely General Vladimir Lazarevic. The surrender was in compliance with the position of the Serbian Government to favour voluntary surrenders, instead of arrests, with an objective to domestically prosecute war crimes in the near future (see paras 43-46). It was



welcomed by the international community as a first step in transferring other ICTY indictees believed to reside on the territory of Serbia and Montenegro.

25. Two retired generals suspected of war crimes, Milan Gvero and Radivoj Miletic, surrendered and were transferred to The Hague Tribunal respectively on 24 February and 28 February 2005. There are indications that another general indicted by the ICTY, General Momcilo Perisic, would surrender and be transferred to The Hague on 7 March 2005. It is also to be recalled that another ICTY indictee, Dragomir Milosevic, was transferred to The Hague on 3 December 2004. Two generals (Nebojsa Pavkovic and Vlastimir Djordjevic) and a senior police officer (Sreten Lukic) indicted in October 2003 are still expected to be arrested or to surrender. In late February 2005, a medical evaluation by the ICTY of two of them, namely Sreten Lukic and Nebojsa Pavkovic, took place.

26. During January and February 2005, the National Council on Co-operation with the ICTY granted a number of confidentiality waivers for witnesses and responded to requests from the ICTY to provide documents. The expectations on the full and effective co-operation with the ICTY still remain.

## C. RULE OF LAW

### 1. ACTION TO REFORM THE JUDICIARY, THE PROSECUTION AND THE PENITENTIARY SYSTEM

- *The transfer of competence of the **military justice** to the civilian judicial authorities of member states*

27. Following the adoption of a State Union Law on the transfer of competence of military justice to the civilian judicial authorities of member states, a Serbian Law on Assumption of Jurisdiction of Military Courts, Military Prosecution and Judge Advocate General was adopted on 22 December 2004 and entered into force on 24 December 2004. It is to be noted that the Law was not submitted for Council of Europe experts' appraisal, as it had previously been decided. A Law in this respect has also been adopted in Montenegro.

28. Military courts have been abolished by Serbian Law, in accordance with the Constitutional Charter, and military departments have now been created in the district courts of Belgrade, Novi Sad, Nis, as well as within the Supreme Court. Similar transfer measures were taken for the prosecution system. The general Laws on the Organisation of Courts, on Judges and on Public Prosecutor will apply to the military special departments within the judiciary and prosecution, as well as to judges and prosecutors. In addition, according to the Law, the effective transfer of cases is to be carried out on the basis of specific by-laws by the Supreme Court President, the Public Prosecutor and the Attorney-General. The Secretariat has no information concerning the implementation of the new Law.

- *At the union level*

29. In early December 2004, the State Union Court approved its standing orders and a budget for 2005. The announced budget for 2005 will be of approximately 735,000 euros (500,000 for Serbia and the balance for Montenegro). The Court also decided to transfer a number of its cases to other courts and kept 421 out of 2,999 cases inherited from the federal judiciary.

The remaining cases have been transferred to the Serbian Constitutional Court, the Montenegrin Constitutional Court, the Serbian Supreme Court, the Montenegrin Supreme Court, and to other courts.

- *At the level of member states of the State Union*

30. During the period covered, the recommendations made in the previous report (see [SG/Inf\(2004\)33](#), paras 39-50) remain valid, although a number of events need to be mentioned. In both member states, priority should be given to appropriate consideration of Council of Europe experts' recommendations on draft legislation and subsequent implementation of legislation. Reform of the judiciary should be pursued in Serbia - in close co-operation with the Council of Europe - in particular through the implementation of the National Strategy for Judicial Reform. In Montenegro, in the field of justice, appropriate implementation of the already adopted laws, and drafting of related regulations and by-laws is also recommended.

31. The slow pace of judicial procedures caused by a huge backlog has been registered in both Serbia and Montenegro. In this respect, the Serbian Law on Mediation, which was drafted in co-operation with the Council of Europe, was adopted on 17 February 2005. The Law should contribute to the improvement of the efficiency of the judiciary. In Montenegro, a similar draft Law was approved by the government on 24 February 2005 and sent to Parliament for adoption.

32. In Serbia, in early March 2005, the Parliament elected the new President of the Supreme Court following the proposal of the High Judicial Council. Concerns have been raised with respect to the functioning of the Constitutional Court, due to unfilled positions and absence of judges.

33. Co-operation and relations between the Serbian Ministry of Justice with the Associations of Judges and Prosecutors should be strengthened. New proposals to enhance the impartiality and independence of the judiciary, responsibility of judges, court system and competences, internal organisation of courts and adequate human resources were put forward at a round-table on the Strategy for the Reform of the Judiciary, organised by the Association of Judges at the end of January 2005.

34. Also in Serbia, work is continuing on the drafting of the Criminal Code and the Criminal Procedure Code. As regards the draft Criminal Code, Council of Europe experts' appraisal was made in December 2004 and was followed by a round-table at the end of the year. Reconsideration and/or withdrawal of the draft Code from parliamentary procedure is necessary; its adoption in its present form would potentially create a subsequent need for revision (see also para. 59).

35. The Criminal Procedure Code is being drafted by a working group created by the Ministry of Justice. It is expected to be finalised by September 2005, and should be sent for Council of Europe experts' appraisal before the text is adopted before the end of the year. Following an expert meeting early this year (see para. 93), the working group is expected to take into consideration the requirements set in the ECHR and its case-law and draft the Code in compliance with them. The Code is also among the main pieces of legislation governing police conduct, police investigation and public order powers and addresses *inter alia* the

question of police surveillance and witness protection (see in this connection para. 42). The draft Law on the Execution of Criminal Sanctions has recently been withdrawn from Parliament.

36. In Montenegro, the procedure of election of the judges of the Administrative Court has been completed and the Court created; it started to function on 31 December 2004. The Court of Appeal has not been created, as expected, by the set deadline, i.e. 31 December 2004. However, the judges have been selected and their appointment by the Parliament should take place in March 2005.

37. The signature and ratification on 9 February 2005 of the European Agreement on the Transmission of Applications for Legal Aid ([CETS 092](#)), and appropriate harmonisation of the domestic legislation, is expected to make easier, in both member states, access to legal aid. In this respect, a reform of the legal aid system is being undertaken in Montenegro; the Council of Europe could provide assistance in support of the reform.

38. As regards the penitentiary reform, legislative and capacity-building assistance has been provided in both Serbia and Montenegro. In Serbia, Council of Europe experts' recommendations which have been provided on the Law on Juvenile Justice should be taken into account. In Montenegro, capacity-building for prison staff and on community sanctions should be further pursued with Council of Europe assistance.

## **2. POLICE AND SECURITY FORCES: NEED TO ENACT ADEQUATE LEGISLATION, INCREASE THE EFFICIENCY AND ENSURE SUPERVISION**

39. In Serbia, the long-expected draft Law on Police and the draft Law on External Oversight were sent to the Council of Europe for expert appraisal. A joint Council of Europe and OSCE round-table took place on 18 February. The new draft Law represents a step forward in comparison with the three previous drafts; however, both Council of Europe and OSCE experts indicated that improvements are needed, in particular in chapters dealing with the protection of fundamental human rights.

40. In Montenegro, the draft legislation on police and security forces has still not been adopted in Parliament, but discussion has been on the agenda - at the request of opposition parties - since early February. According to the Parliament Speaker, the draft legislation should be adopted during the regular parliamentary session in March 2005. A draft Code on Police Ethics was finalised at the beginning of 2005, with Council of Europe experts' appraisal. A round-table scheduled for the beginning of March 2005 should permit the incorporation of the experts' recommendations into the draft Code, in line with the European Code of Police Ethics.

41. In the region of Sandzak, allegations of widespread abuse of persons detained by police, as well as allegations of ill-treatment, have been registered. According to human rights NGOs, the inter-ethnic tensions between police and the population contribute to serious human rights violations. An ethnically balanced composition of police forces will contribute to reduce such incidents.

### 3. MEASURES TO PROTECT WITNESSES

42. Effective protection of witnesses against intimidation remains an important goal, especially in the perspective of forthcoming domestic war crimes prosecution. In Serbia, the draft Law on Protection of Witnesses has not yet been adopted in Parliament. In the absence of a comprehensive legislative framework, procedural protection measures remain very weak. Limited witness guarantees already exist in the Law on the Organisation and Jurisdiction of Government Authorities in Prosecution of Perpetrators of War Crimes of June 2003. Amendments to this Law were made in mid-December 2004 to *inter alia* allow evidence presented before the ICTY to be also used in domestic courts, and guarantee full protection to witnesses coming to testify in Serbia. The issue of witness protection was of particular importance in the Sjeverin and Podujevo trials, which highlighted a general need for a more thorough witness protection system (see also para. 45). In Montenegro, following the adoption of a Law on Witness Protection in October 2004, the Council of Europe continues to provide relevant assistance for the development of an implementation strategy for an effective witness protection unit (including training).

### 4. DOMESTIC PROSECUTION OF WAR CRIMES AND ORGANISED CRIME

43. The Serbian Law on the Organisation and Jurisdiction of Government Authorities in Prosecution of Perpetrators of War Crimes adopted in June 2003 was amended in December 2004 with the objective to permit the use of evidence presented before the ICTY in Serbian courts, guarantee access to domestic proceedings to ICTY representatives and ensure witness protection. The amendment is part of the sustained efforts by the Serbian Government to enable the transfer of trials from the ICTY to domestic courts. Evidence of such sustained effort is the arrest - in mid-February 2005 - of six war crimes indictees out of a total of nine, whose indictments were passed to domestic courts by the Prosecutor of ICTY in October 2004. In order to increase public awareness on domestic war crimes trials, a series of roundtables are being organised by the National Council for Co-operation with the ICTY, with the support of the Council of Europe.

44. Since the end of 2004, concerns have been raised with respect to the dismissal or non re-appointment of the judge and prosecutor of the Special War Crimes and Organised Crime Department of the Belgrade District Court, nominated to this position for a two-year term to end in March 2005. The media and opposition political parties have made a link between the additional pressure on the specialised Court and the extradition, on 2 February 2005, from Greece to Serbia and Montenegro, of a suspect allegedly implicated in the assassination of the late Serbian Prime Minister Zoran Djindjic.

45. As regards the Sjeverin and Podujevo trials (see also in this respect [SG/Inf\(2004\)14](#), para. 25; [HRW](#), 14.10.2004, 13.01.2005), in November 2004 the Supreme Court overruled the sentences and called for a retrial in both cases. The retrial in the Sjeverin case started on 17 January 2005, while the Podujevo case retrial has not yet started (see for more details HLC, [Newsletter No. 6](#), 03.02.2005).

46. At the moment of the drafting of the report, a decision by the ICTY Trial Chamber was pending on the appropriateness, as well as the place of transfer (Croatia or Serbia), of the trial of three generals, who *inter alia* face charges of crimes against humanity in the massacre of civilians in Vukovar in 1991. An agreement on co-operation between the judiciary and

prosecution authorities of Serbia and of Croatia was signed on 5 February 2005; it is expected to allow for direct contacts between the prosecutors from both countries in pre-trial proceedings and exchange of documents on questions related to war crimes, organised crime, trafficking in human beings and other forms of criminal activity. A similar agreement was signed with Bosnia and Herzegovina on 24 February 2005.

47. The discovery - at the end of 2004 - of alleged State complicity related to mass graves and incineration of Kosovo Albanian bodies in the Mackatica factory in May 1999 was followed by a police and state security investigation. NGOs raised concerns on the poor quality of the investigations conducted, as well as on alleged illegal action committed by police and security service agents in Surdulica, Vladicin Han and Vranje (see *inter alia* HLC, [Press Release](#), 03.02.2005). Several NGOs appealed to the Serbian Parliament to set-up an *ad hoc* investigation commission or committee, in accordance with the Statute of the Parliament.

48. Considerable improvements are expected concerning the implementation of ratified conventions and domestic anti-money laundering legislation in both member states (see [MONEYVAL \(2005\)2](#), 21.01.2005). A State Commission to implement plans to combat organised crime was created in mid-December 2004 to co-ordinate the activities covered by the Serbian Government Action Plan for Organised Crime.

#### **5. ACTION TO FIGHT AGAINST CORRUPTION AND REGULATE CONFLICT OF INTEREST**

49. Corruption remains a source of concern in both member states. However, during the period covered by the present report, positive developments should be welcomed. In Serbia, the draft National Strategy on Anti-Corruption elaborated with support from the Council of Europe and the OSCE was finalised at the end of December 2004. Following its presentation in a round-table on 31 January 2005, the National Strategy is expected to be adopted in Parliament in the first half of 2005. An Action Plan should also be adopted by the end of the year. At the beginning of February 2005, the Anti-Corruption Council raised concerns on proposed amendments to the Law on Privatisation, which could *inter alia* give even broader discretionary powers to the director of the Privatisation Agency, thus creating additional conditions favouring corruption. Accusations of corruption have also been made regarding the privatisation of the state-owned company Knjaz Milos; an investigative parliamentary commission was formed to enquire in this case.

50. In Montenegro, the first part of the Programme for Fight against Corruption and Organised Crime was finalised by the Ministry of Interior. A final draft should be approved by the Government in the early months of 2005. It should be followed by the drafting of a related Action Plan. The National Anti-Corruption Commission has still not been created; its legal basis, inter-disciplinary composition, competence and role are being debated.

51. In Serbia, following the adoption and entry into force of a Law on conflict of interest in April 2004, the constitution - with several months delay - of the Republic Board for resolving conflict of interest on 18 January 2005 is to be welcomed. A number of recommendations for changes were made on the said Law by a Council of Europe expert in December 2004. In that respect, concrete measures to amend and implement the Law, as well as to provide the Board with all resources needed (financial, material, human), are expected from the authorities.

52. In Montenegro, on 26 January 2005, the Constitutional Court decided on the unconstitutionality of Article 15 of the Law on Conflict of Interest. The controversial Law on Conflict of Interest, which is being re-drafted, should be submitted to the Council of Europe for expert opinion. A positive development is the creation of a Commission for the identification of the conflict of interest on 21 December 2004.

#### **D. HUMAN RIGHTS**

##### **1. MEASURES TO ENSURE FULL IMPLEMENTATION OF THE EUROPEAN CONVENTIONS ON HUMAN RIGHTS (ECHR) AND ON THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (ECPT)**

53. Progress was achieved in the human rights field with the election, on 26 January 2005, by the Parliamentary Assembly of the Council of Europe (PACE), of Mr. Dragoljub Popovic as a judge to the European Court of Human Rights in respect of the Union of States of Serbia and Montenegro, for a term expiring on 31 October 2010 (ECHR, Registrar, [Press Release](#), 26.01.2005).

54. The nomination of a Government Agent is still expected. Following a Council of Europe experts' appraisal, the Decree on the Government Agent of Serbia and Montenegro was adopted on 18 February 2005. The authorities confirmed their intention to appoint the Government Agent, as a matter of urgency.

55. As concerns Kosovo<sup>4</sup>, note can be taken of an agreement reached between the Council of Europe with the United Nations Interim Administration Mission in Kosovo (UNMIK) on the access of the Committee for the Prevention of Torture (CPT) to visit places of detention. Moreover, consultations on similar arrangements with the North Atlantic Treaty Organisation (NATO), which are conditional for the entry into force of the agreement with UNMIK, have not progressed. Another agreement with UNMIK related to the monitoring of the Framework Convention for the Protection of National Minorities (FCNM) was concluded on 23 August 2004; the first report was expected by the end of February 2005 (for more details, see Council of Europe, [Human Rights Information Bulletin](#), July-November 2004, pp. 35 and 39).

##### **2. NEED TO STRENGTHEN SOCIAL RIGHTS**

56. During the period covered by the present report, progress was achieved with respect to the completion of the compatibility study of the legislation of both member states with the Revised European Social Charter (RESC). The compatibility study with the RESC hard-core provisions was finalised in November 2004, submitted to Council of Europe experts' appraisal, and amended following discussions held in mid-February 2005. As concerns non hard-core provisions, the report was finalised on 20 January 2005; Council of Europe experts' appraisal will also be provided following its translation. The whole study should be ready for publication by the end of April 2005. The authorities have expressed their readiness to comply with the second year of membership commitment and sign the RESC by 3 April 2005.

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<sup>4</sup> Since 1999, Kosovo has been placed under UN administration in compliance with UN Security Council Resolution 1244.

### 3. FREEDOM OF THE MEDIA

57. In Serbia, the procedure of appointment of the eight members of the Broadcasting Council by the Parliament was finally completed on 17 February 2005. The ninth member from Kosovo was due to be elected by the eight members of the Council on 4 March 2005. This concludes a controversial and long-debated process including the amendment of the Law on Broadcasting at the end of August 2004, disagreement and protests of the main media associations and constant postponement of nominations, which were completed in early December 2004 (see *inter alia* previous report [SG/Inf\(2004\)33](#), para. 65 and related recommendations). There is now high expectation that the Broadcasting Council will operate in an independent and transparent manner, and that it will proceed *inter alia* with the allocation of broadcasting licences<sup>5</sup> and adoption of a broadcasting development strategy (see also OSCE, [Press Release](#), 24.02.2005). The Telecommunications Agency is also expected to be formed - following a debate in Parliament - after approval of its composition by the Serbian Government in late January 2005.

58. As mentioned in previous reports, the establishment of an independent national Radio and Television broadcaster is crucial. As regards media in general, observance of professional standards is to be scrutinised by a Press Council established by the Media Center, which started its activities in February 2005. Also, a Code of Conduct of the media was presented in January 2005 by the Independent Journalist Association of Serbia (NUNS). Hate speech and radicalisation of the Serbian society through media remain problematic; in this connection education of the media on professional standards is needed (see also HCHRS, [The Press, An Unchanged Matrix](#), 12.2004).

59. The draft Criminal Code still contains defamation and insult provisions entailing prison sentences. The OSCE Representative on Freedom of the Media expressed concern over the draft provisions. Expectations lay on the Serbian Minister of Justice to withdraw the Code, which has been in parliamentary procedure for several months, and to amend the draft accordingly. In this connection, a Serbian court recently condemned a journalist to a one-year suspended prison sentence in a libel case (see *inter alia* RSF, [Press Release](#), 23.02.2005).

60. In Montenegro, the tender competition for broadcasting licences was postponed at the beginning of February 2005 *inter alia* because of the disagreement between a number of TV and radio stations and the Broadcasting Agency on certain provisions of the tender. The procedure should be continued and broadcasting licences soon granted. The independence of Radio and Television Montenegro (RTCG) broadcaster has still not been ensured. In this respect, appropriate implementation of the Law on Broadcasting and the Statute of RTCG should be achieved without further delay.

61. There are indications that the draft Law on Media Transparency and on the Prevention of the Media Concentration, on which Council of Europe experts' appraisal has been provided, will be adopted by June 2005. An analysis of the structure of media ownership, undertaken by the NGO Group for Changes with Council of Europe assistance, should soon be ready.

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<sup>5</sup> An example of the establishment and functioning of such a body is the Communication Regulatory Agency in Bosnia and Herzegovina <http://www.cra.ba/index.aspx>.

62. At the level of the State Union, the privatisation of state-owned media will be carried out according to the Serbian Law on Privatisation. An Agreement on the privatisation process was signed at the beginning of January 2005 by the Serbian and Montenegrin Ministers of Culture and Media, at the proposal of the Council of Ministers of the State Union.

63. As concerns freedom of access to information, adoption of legislation in Montenegro and implementation of the existing legislation in Serbia is strongly recommended. In Serbia, a Commissioner for free access to information was appointed by the Parliament on 22 December 2004. The Commissioner, although he started receiving complaints, indicated a lack of basic work conditions, as well as a lack of readiness of state institutions to implement the Law. In addition, Transparency Serbia assessed the implementation of the Law so far as unsuccessful, with only one sixth of the answers to information requests received within in an appropriate time-frame. Sufficient resources should be provided by the authorities in order to secure implementation of the Law. Amendment of the Law on Public Information, adopted during the state of emergency in 2003, was approved by the Government in mid-February 2005 and the draft sent to Parliament. Media organisations raised concerns with respect to the introduction of a press registration requirement, which would potentially create interference by the authorities (see for more details Media Center, [Press Release](#), 24.02.2005). The amendments are also destined to extend the deadline for the privatisation of print media founded by the state, local authorities and state-owned companies for a year. The necessity to amend the Law in line with Council of Europe experts' recommendations and in general with European standards, as already mentioned in previous reports, is increasingly urgent.

64. As regards Montenegro, NGOs which participated in the drafting of the Law on Free Access to Information indicated that, after adoption of the final draft by the working group, in line with Council of Europe experts' recommendations, the draft was significantly changed by the Ministry of Culture and Media. The competent authorities are called to adopt legislation in line with Council of Europe standards and experts' recommendations.

65. Investigations and trials into the killing of journalists have continued during the period covered by this report. In Serbia, the revelation that the killer of the journalist Slavko Curuvija in 1999 was known for a year raised substantial confusion in the public in December 2004; some critics attributed the absence of disclosure of information on Curuvija's killer to motives of a political nature. In Montenegro, the trial into the murder of journalist Dusko Jovanovic was postponed until the end of March 2005. The media criticised the manner in which the trial was being conducted, alleging the absence of the main suspects from the trial, as well as a lack of proper pre-trial investigation.

#### **4. CONSCIENTIOUS OBJECTION AND ALTERNATIVE SERVICE**

66. At the level of the State Union, the Decree on conscientious objection and alternative service was amended - without prior public debate - and entered into force upon publication on 28 January 2005. Lack of transparency seems the most important problem. According to the Minister of Defence, the proposed changes represent an effort to counter the tendency of an increasing number of requests for alternative military service, which might seriously endanger the filling of the army (VSCG) units, and prevent massive abuses related to conscientious objection. It is also to be recalled that enforcement of legislation concerning conscientious objectors as well as the enactment of legislation on an alternative type of



service should be adopted by Serbia and Montenegro within three years after accession (3 April 2006).

##### 5. MEASURES TO ENSURE EFFECTIVE PROTECTION OF MINORITIES

67. In Serbia, the Ministry of Education introduced - starting with February 2005 – optional Bosnian-language courses in elementary schools in regions where the Bosniak population represents at least 15% of the local community. This measure applies particularly in Sandzak, where the government's decision has raised substantial debate, notably among the main Bosniak political parties - the List for Sandzak Coalition and the Sandzak Democratic Party (SDP) - and also the Serbian Radical Party (SRS). The measure is meant to respect a proposal made by the Council for National Minorities of the Republic of Serbia, and would also be in line with the European Charter on Regional and Minority Languages, which has to be signed and ratified by the second year of membership deadline, i.e. 3 April 2005.

68. As regards Montenegro, consensus has still not been achieved on the draft legislation on national minorities. A number of provisions of the draft Law are still subject to negotiations between the different political parties, including the representatives of ethnic communities. The Council of Europe Venice Commission experts' recommendations adopted in June 2004 (see [Opinion no.270/2003](#), doc. CDL-AD(2004)026, 30.06.2004) have partially been incorporated in the latest draft Law. In its present formulation the text *inter alia*:

- (i) maintains the requirement of citizenship for the application of the law, although the experts recommended its withdrawal;
- (ii) its implementation is contingent on the financial resources available in the Republic;
- (iii) does not comply with recommendations related to the representation of national minorities in state institutions and local authorities (as well as to education of national minorities in their languages);
- (iv) and only partly complies with recommendations on the participation of the minorities in Parliament. There are now indications that the draft will be approved by the government in the first quarter of 2005.

69. In both member states, the situation of the Roma minority is particularly disturbing, especially the Roma IDPs, refugees (see below, D.8) and returnees. The Roma continue to be faced with problems such as the absence of resettlement programmes in both member states, racial discrimination and limited access to state facilities including education, housing and health care, and are subjected to police brutality (see also in this connection a recent decision of the UN Committee Against Torture, [CAT/C/33/D/207/2002](#), 29.11.2004). As concerns education of Roma children, see para. 84.

70. Improvement of the situation of the Roma should be a priority, following the Serbian Prime Minister's Declaration on 2 February 2005, at the launch of the Decade on Roma Inclusion 2005-2015 in Sofia. The South-Eastern Europe governments engaged, under the Declaration, to include the Roma as full and equal members of European society, by *inter alia* eliminating the discrimination against them in their countries, and improving the economic and social status of the Roma through better education, health care, housing and job opportunities. The Declaration sets the requirement of drafting and implementing National Action Plans which contain precise targets for improvements to be met by 2015. In Montenegro, the National Action Plan was approved by the government on 20 January 2005.

The recent Council of Europe Committee of Ministers' Recommendation Rec(2005)4 on improving the housing conditions of Roma and Travellers in Europe of 23 February 2004 should also constitute a basis for the elaboration of the Action Plans (see [Rec\(2005\)4](#), 23.02.2005). In this connection, the public presentation of the Action Plan of the Roma National Strategy, before its adoption, by the State Union Ministry of Human and Minority Rights on 18 January 2005 represents an encouraging step forward.

## 6. MEASURES TO PROTECT FREEDOM OF ASSOCIATION AND STATUS OF NGO'S

71. It is to be recalled that Serbia and Montenegro committed to enact, within one year of its accession, legislation on associations of citizens and non-governmental organisations consistent with European standards for non-profit organisations. In Serbia, at the end of November 2004, a first new draft of the Law on Associations of Citizens was submitted to public debate by the Ministry of Public Administration and Local Self-Government. Following strong criticism by international organisations and NGOs, the draft Law was withdrawn and is to be redrafted. According to several NGOs, it constitutes a drawback from the previous draft presented in 2002 and is deficient in many respects: *inter alia* it does not provide for tax exemption, creates control by the authorities on the activities of NGOs and a large number of its provisions violate the principle of voluntariness. The authorities are encouraged to amend the draft in order to ensure its compliance with the ECHR and its case-law, as well as with internationally accepted standards. Also, in order to find solutions to the present legal *vacuum* with regard to international NGOs, the authorities of Serbia and Montenegro could consider the possibility to sign and ratify the European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations ([CETS No.: 124](#)).

72. In Montenegro, one positive example of effective participation of civil society in the decision-making process was the adoption by the Parliament of a Declaration on the Protection of Tara River on 14 December 2004.

## 7. TRAFFICKING IN HUMAN BEINGS

73. The problematic issue of trafficking in human beings – especially in Montenegro – has been raised in previous reports. The Montenegrin Government Commission formed in April 2004 - following Council of Europe/OSCE expert recommendations - to enquire into the actions of police and prosecution system in the trafficking case involving a Moldovan woman in late 2002, released its report in December 2004. The conclusions reached in the report are not in line with the experts' recommendations made in late 2003 and make derogatory references to the character of the victim, portraying her as a criminal rather than as a victim. Disappointment in regard of the conclusions of the report, and the lack of response to the issues of general functioning of the police and judicial system raised in the Council of Europe/OSCE expert recommendations was also noted by the OSCE ([Press Release](#), 30.11.2004). Suspicion on the existence of an attempt to cover-up complicity by the authorities in the trafficking of women and girls was suggested by Amnesty International at the beginning of February 2005 (see AI, [Press Release](#), 01.02.2005). It is to be noted that following international pressure, disciplinary and criminal measures have been initiated against seven suspects in January 2005.

## 8. MEASURES TO PROTECT REFUGEES AND INTERNALLY DISPLACED PERSONS (IDPS)

74. Serbia and Montenegro committed itself to enact, within one year of its accession to the Council of Europe, legislation to enable the implementation of the 1951 Geneva Convention on the Status of Refugees and the 1967 Protocol thereto (see also [SG/Inf\(2004\)14](#), para. 65). At the level of the State Union, a draft Law on Asylum was approved by the Council of Ministers and sent to Parliament for adoption at the beginning of February. The process of adoption of the Law should be speeded up and the legislation adopted without further delay.

75. In Serbia, during the latest registration process of refugees and internally displaced persons (IDPs) which lasted from 27 November 2004 to 25 January 2005, there were almost 140,000 registered persons. The decrease by 50% of the number of registrations since the last census in 2001 is explained by the Serbian Commissioner for Refugees by the fact that around 100,000 people have been granted citizenship, a small number of them returned to their places of origin or immigrated to third countries (see Serbian Government, [Press Release](#), 27.01.2005). At the end of December 2004, a new Law on Citizenship, with the aim of fostering and making easier the process of gaining citizenship, was adopted by the Serbian Parliament.

76. In early February, concerns were raised to the planned eviction of refugees residing in a collective centre in Nova Pazova (Vojvodina). According to the media, several other 140 collective centres - in which live approximately 11,000 refugees - are going to be closed. Efforts should be pursued in solving *inter alia* housing problems. In this respect, UN-Habitat is providing funds for the construction of 670 apartments for refugees and IDPs in seven Serbian towns, starting in April 2005. As regards IDPs from Kosovo, their situation remains difficult, despite efforts made by Serbia and Montenegro (see in this connection UNHCR, [IDP Interagency Working Group](#), October 2004).

77. In Montenegro, the draft Laws on Asylum, on Citizenship, on Identification Cards, as well as the Law on Foreigners were approved by the Government in late December 2004. The public debate on their adoption is to be pursued.

78. A Declaration on finding a solution to the refugee problem in Serbia and Montenegro, Bosnia and Herzegovina and Croatia was concluded by the three countries on 31 January 2005 in Sarajevo.

## 9. OTHER IMPORTANT MEASURES

79. As regards the *protection of human rights by the institution of Ombudsman* in Serbia, the draft Law on Ombudsman has still not been adopted. An expert opinion was provided by the Council of Europe and discussed in a round-table with the relevant authorities in November 2004. Preference is to be given to the constitutional guarantee of the institution of Ombudsman, as well as to the appointment and dismissal of the Ombudsman by a qualified majority in Parliament. Following this round-table, it was expected that the draft would be reviewed in line with the commonly approved comments *inter alia* to remove the restrictive criteria to become Ombudsman and the requirement of exhaustion of judicial remedies prior to making a complaint, enable the Ombudsman to visit all places of detention administered by public authorities and provide for assistance to individuals on filling a complaint. Adequate

follow-up should be pursued by the Serbian authorities in order to accelerate steps for the creation of an institution essential for the protection of human rights.

80. As regards the *protection of the freedom of conscience and religion*, Council of Europe expertise was requested by the Serbian Minister of Religion on the new draft Law on Religious Organisations at the end of January. An expertise is being prepared by Council of Europe experts and a round-table should be organised subsequently.

81. *Civilian democratic control of the military* should be enhanced with the adoption of the National Defence Strategy in November 2004; its real impact will be assessed in the future. In mid-February 2005, the State Union Parliament adopted amendments to the Law on the Army, with the effect of reducing the number of employees and increasing efficiency and organisation of the armed forces. Civil society has also an important role to play in the reform of the legal security sector; thus co-operation with the authorities should be further strengthened.

82. Efforts by the Serbia and Montenegro Ministry of Human and Minority Rights to achieve *reconciliation with the past*, by organising, with the assistance of the OSCE, awareness-raising and education activities on the atrocities committed during the war, are to be welcomed. In early December 2004, Serbian President Boris Tadic made a first step towards reconciliation when he apologised in Sarajevo, in his own name, to persons against whom crimes were committed by the Serbian people. The creation of a regional Programme for transitional justice by a coalition of local NGOs from Serbia and Montenegro, Bosnia and Herzegovina and Croatia is also to be mentioned. The aims of this coalition are to document and reveal the truth about the conflicts of the 1990s, end impunity for past gross humanitarian law violations, and bring justice to the victims (for more details see HLC, [Newsletter No. 8](#), 22.02.2005).

## E. EDUCATION

83. In Serbia, a working group established by the Ministry of Education finalised a first draft Law on Higher Education. The draft Law is presently before Parliament and its adoption is expected by May 2005, in time before the Bergen Ministerial Meeting within the Bologna Process, which is to take place in mid-May 2005. The Council of Europe has offered its assistance in the implementation of the Law and of related higher education reforms, as well as on history teaching activities of minority groups.

84. As regards education of Roma, the Serbian Ministry of Education has prepared a comprehensive draft Strategy on Roma Education. The adoption of such a Strategy is to be encouraged; it would represent an improvement of the education of the Roma pupils, which are subject of discrimination and often enrolled into special schools for mentally disabled children.

### **PART III: COUNCIL OF EUROPE CO-OPERATION AND ASSISTANCE**

85. A total of more than 200 Council of Europe activities for Serbia and Montenegro were carried out in 2004, at the levels of the State Union or its two member states. The reporting period, December 2004 through February 2005, was marked by a certain slowdown because of the long Christmas holiday period. Nevertheless, more than 50 assistance activities were completed in this period, most of them directly relevant for the commitments and obligations that Serbia and Montenegro undertook when it joined the Council of Europe.

#### Rule of Law

##### **Criminal law, police and prison systems**

86. Several activities have been completed with respect to the fight against economic crime and the development of a regional strategy in South-East Europe against economic and organised crime. In December 2004, in the context of the CARDS Regional Police project, study visits were organised for analysts and intelligence officers from Serbia and Montenegro respectively to the United Kingdom and Spain on criminal intelligence systems, crime analysis and pro-active policing, as well as data protection. In January and February 2005, a series of activities were organised on the oversight mechanisms in the use of Special Investigative Means (SIMS) and on information exchange among financial intelligence units (FIUs) of South-East Europe. A regional seminar took place at the end of February 2005 in Belgrade to review the gaps in legislation and institutional capacities for the ratification and elaboration of implementation strategies of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters ([CETS 182](#)).

87. In Montenegro, the European Code of Police Ethics was presented in late 2004, in connection with a Council of Europe experts' appraisal of the domestic draft Code.

88. Development of the prison systems is high on the agenda: in Serbia, Council of Europe experts prepared written comments on the draft Law on Juvenile Justice and a round-table discussion with the drafters took place in Belgrade on 6 December 2004. Furthermore, the Prison Project Management Meeting (former Steering Group meeting) for Serbia took place in Strasbourg on 22 February and for Montenegro on 23 February 2005. Progress in prison reform was assessed, new priorities were identified and activities for the year ahead planned. This mechanism has been in place since 2001.

89. Furthermore, an assessment visit on health care in prison took place on 14-18 February 2005. Two Council of Europe experts visited health care facilities in a number of prisons in Serbia to assess the situation. Their visit is to be followed by a report with recommendations.

90. The Council of Europe has also been taking an active part in activities led by other stakeholders, for instance regarding the functioning and efficiency of justice: in particular the regional CARDS Regional Justice project, led by the Austrian Ministry of Justice.

#### Local Government

91. As mentioned earlier in the report (para. 16), the Council of Europe is ready to continue to assist the authorities with the *Work Programmes for Better Local Government*, which were

discussed by the Conference of European Ministers responsible for Local Government at the end of February in Budapest.

### Human Rights

92. Work in preparation for signature and ratification of the Revised European Social Charter is also underway. In December 2004-January 2005, a second report (on so-called non hard-core provisions of the Charter) from two national experts' working groups was prepared; both working groups met in Podgorica in December 2004 to finalise the compatibility study on domestic legislation with the non hard-core provisions. A process of translation and dissemination of Social Charter materials was also completed in December 2004 (see also para. 56 above).

93. Regarding Serbia, an expert meeting on the reform of criminal procedure in line with the requirements of the ECHR took place in Strasbourg on 31 January and 1 February 2005 (see also para. 35 above). The members of the working group, established by the Ministry of Justice and entrusted with the preparation of a new draft Code, received in-depth information on the case-law of the European Court of Human Rights. It is now expected that the working group will take these requirements into consideration during their drafting (according to government information, the new Criminal Procedure Code should be adopted by the end of 2005).

94. Regarding Montenegro, the ECHR compatibility exercise, which complements the earlier compatibility study which focused on Serbia and the State Union, is coming to an end. The report has been printed, an addendum is underway and the whole exercise should be completed by August 2005.

95. Throughout the year 2004, the Council of Europe provided for translation, editing, printing and distribution of human rights materials (in paper and electronic format), including a monthly bulletin on the European Convention on Human Rights and the case law of the Strasbourg Court, in national language for government and public institutions, the judiciary and NGOs.

96. The Council of Europe is also trying to ensure that a certain parallelism is kept between its support to Serbia and Montenegro and to the UN-administered area of Kosovo. As an example, a training workshop was organised in December 2004 on the European Convention on Human Rights and trial proceedings under the provisional Criminal Procedure Code of Kosovo.

97. Similarly, preparations for the reconstruction of religious sites in Kosovo were carried out in 2004. In December 2004 there was a joint Council of Europe/European Commission technical assessment mission for rehabilitation projects in Montenegro. These activities aim at the development of communities through due recognition of their cultural heritage. The European Commission and the Council of Europe have established region-wide co-operation in this field through a Regional Programme for cultural and natural heritage of South East Europe.

## Social Cohesion

98. The new three-year Joint Programme Council of Europe/European Commission for support to national social institutions commenced in 2004, with the establishment of a regional centre in Skopje. This programme aims at improved regional co-operation in the social sector, through the creation of a regional hub for social security information, best-practices, training and co-ordination. Serbia and Montenegro is taking part in the use of models for sound and sustainable social policies.

99. The long-term work on development of Roma national strategies and policies also continued in the reporting period, with a December 2004 seminar in Belgrade on the situation of Roma refugees, IDPs and returnees in the Balkans (with UNHCR). This seminar will be followed-up with further clarifications regarding the reception of returnees at the airport, the identification papers issue and the schooling of children.

100. Mention should also be made of several interesting initiatives recently taken by the State Union-level Ministry for Human and Minority Rights, in order to increase the information on the ICTY and help the population face the recent past. The Council of Europe is supportive of these initiatives which fall in line with the commitment and obligations that Serbia and Montenegro undertook at accession in 2003 and is currently looking at possibilities to concretely support them.

101. In this respect it can also be mentioned that the Council of Europe supports a network of schools of political studies in South East Europe, in co-operation with the European Commission. These schools aim to build and promote a sustainable, new, responsible leadership in the political and civil society spheres. The participants are mostly practitioners and the curriculum is flexible and practically-oriented. The Belgrade School – the Belgrade Fund for Political Excellence – forms an integral part of this network and started with its series of core seminars in 2004 (see also [www.bfpe.org](http://www.bfpe.org)). The new seminar cycle will end with a joint seminar with other schools in Strasbourg, in the second half of 2005.

102. And last but not least, a good sign of Serbia and Montenegro making full use of its membership is the recent accession to the Partial Agreement for the European Support Fund for the Co-production and Distribution of Creative Cinematographic and Audio-visual Works (EURIMAGES) of the Council of Europe. Mention should also be made of the signature by Serbia and Montenegro of the Convention for the protection of Human Rights and dignity of the human being with regard to the application of biology and medicine: Convention on Human Rights and Biomedicine ([CETS 164](#)) and its Additional Protocols on 9 February 2005.