

## SERBIA

While the year 2006 was generally marked by the consolidation of stability in the Balkans, Serbia remained politically insecure mostly due to its stalled cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY) in The Hague. The action plan for cooperation with ICTY announced by Serbian policymakers in July neither produced tangible results nor impressed the international community despite the ongoing trial of a group of "Ratko Mladic's accomplices."

Therefore, the fact that the European Union (EU) cancelled the association and stabilization negotiations with Serbia did not come as a surprise. The new constitution, which the Serbian parliament adopted overnight and put to referendum on 28-29 October without a proper democratic pro-

cedure, demonstrated that Serbia had yet to develop full respect for political rights and break up with its authoritarian tradition.

The constitution's preamble earmarked Kosovo as Serbia's inalienable part and thereby inferred Serbia's refusal to partake in the search for a compromise with regard to the province's status. The Serbian Helsinki Committee for Human Rights noted that such an attitude could easily confront Serbia with its neighbors in the near future, and alienate it from the international community.

The ruling coalition kept manipulating international factors by claiming it was the increasing popularity of the Serbian Radical Party that would jeopardize Serbia's movement toward the EU. The decision to admit Serbia to the NATO program Partnership



*A billboard urging people to vote "Yes" for the new Serbian constitution. Yet, both its provisions and the drafting and adoption process were heavily criticized by civil society groups for violating human rights and democratic principles. October 2006. © AP/Ilic*

for Peace (PfP), the purpose of which was to round off the security structures of the Balkans, moved Serbia closer to European norms as it implied the establishment of mechanisms that could play an important role in Serbia's stabilization. Therefore, membership in the PfP could be characterized as a victory over the army's conservative bloc standing in the way of a reform of the military.

Similar to all Balkan countries, Serbia made progress in the economic sphere. However, it failed to invest local self-governments with more authority in economic questions and so create a legal framework conducive to foreign investment and healthy market economy.

The judiciary still remained among the biggest stumbling blocks in the way of Serbia's respect for human rights and the rule of law. The same applies to a variety of secret services whose activities hindered consolidation in Serbia's political scene. Closely cooperating with largely tycoon-owned media, these services systematically fabricated scandals in an attempt to discredit differently-minded people and what they considered "hotbeds of resistance," including some NGOs and small political parties such as the Liberal-Democratic Party, the Social Democratic Union and the Civic Alliance of Serbia.

### **Constitutional referendum and the new constitution**

The manner in which Serbia's new constitution was first announced, how it was submitted to the parliament for adoption, and put to referendum in October - let alone a number of its provisions - was probably most illustrative of the overall ambience determining the human rights situation: it was drafted by a small circle of people, adopted overnight as a product of the parliamentary parties' bargain, illegally campaigned for, and verified in a doubtful procedure. As a result, Serbia's new con-

stitution mirrors the political climate that "secures continuity to a traditionalist, illiberal political thought and behavior, entrenches the society and upholds its autism vis-à-vis the world and modern times [...] and testifies that Serbia still lacks political capacity to modernly articulate the life of people and their communities, i.e., to grasp the complexity and diversity of its self-identity."<sup>1</sup>

The procedure by which the constitution was passed failed to respect the basic democratic principle of public participation and transparency by bypassing any form of proper public debate. Moreover, despite the fact that copies of the draft constitution were circulated to parliamentarians only two hours before the vote the constitution was adopted unanimously. The very fact that none of the 242 MPs present at the session discussed or criticized any constitutional provision left no doubt about purely political motives behind this consequential legal act.

The pro-referendum campaign and the way the draft constitution was marketed by scores of public figures and politicians were tailored to appeal to citizens' patriotism on the one hand, and to condemn any opposition to it on the other. Parties and individuals calling for a referendum boycott or voting against the constitution were labeled unpatriotic and undemocratic - a discourse reminiscent of Milosevic's era. This was particularly evident in the afternoon hours of 29 October, the second referendum day, when statistics indicated extremely low voter turnout.

◆ During the state-orchestrated and financed pro-referendum campaign, people assembled at a rally in the northern Kosovska Mitrovica (Kosovo) on 26 October were carrying posters of Ratko Mladic and chanting the name of the infamous Hague fugitive. Serbian officials never distanced themselves from the incident or condemned it.

The procedure and regulations applied to the referendum substantially differed

from the one for elections. For instance, pre-referendum silence was not observed, international observers were not allowed to monitor polling stations in Kosovo, and any surplus of ballots over the official number of voters was not considered to be a problem. Such irregularities, and the heavy media campaign until the moment the polling stations were closed, gave rise to serious suspicions over the official results showing a 51.5- percent support for the constitution.

Although the new constitution's preamble emphatically asserts Kosovo as Serbia's integral and inalienable part, Kosovo Albanians were excluded from the referendum voting lists. The preamble also underlines the duty of "all state institutions to represent and protect Serbia's interest in Kosovo."

By defining Serbia as "the state of the Serbian people and all citizens living in Serbia" (article 1), the constitution asserts the existence of a "native" nation and indirectly differentiates between citizens on the basis of their ethnic origin. For contrast, even the 1990 constitution passed in Milošević's era referred to Serbia as "a democratic state of all citizens living in it"

Article 2 of the new constitution stipulates: "Sovereignty shall be invested in citizens who shall be exercising it in referendums, popular initiatives and through their elected representatives," and, "No state body, political organization, group or individual shall appropriate sovereignty from citizens or establish governance without citizens' free will." Yet, article 102 practically "appropriates citizens' sovereignty" as it vests political parties with the authority to revoke the mandates of the members in parliament. In other words, according to the new constitution, elected members of parliament are nothing but "guards of mandates engaged on contractual basis."<sup>2</sup>

The level of the protection of human and minority rights and freedoms was con-

siderably reduced from that provided by the Charter of Human and Minority Rights and Freedoms (2003), which was practically turned null and void when the state union of Serbia and Montenegro ceased to exist in May 2006. Though admitting that this domain is relatively well regulated, many critics of the new constitution indicate that some restrictive provisions and problematic phrasings make it open to questions. For example, criticism has been directed at the poorly worded ban on torture<sup>3</sup> and the failure to clearly provide for the right to conscientious objection in article 45. In addition, article 62, which deals with "the right to marry and equality between spouses," discriminates against homosexual couples by defining "spouses" as "a man and a woman." This article contradicts with article 21 that explicitly prohibits any form of discrimination.

Further, the constitution virtually restricts women's right to freely decide on their own bodies by stating that "anyone" - i.e., also potentially women's partners and other people - shall have the right to freely decide on giving birth. In addition, the statement that "the Republic of Serbia urges parents to give birth" may lead to arbitrary interpretation, and even to discriminatory laws and bylaws. Also, the constitution's provisions on churches and religious communities are formulated in a manner that they can be used as pretexts for banning religious communities on grounds that would be at variance with the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Among other incongruous constitutional provisions are those dealing with the incorporation of international treaties into Serbian legislation; the status of Vojvodina; the election and removal of the president of the republic; the election of judges and the republican public attorney; and the adoption of amendments to the constitution. Amending the constitution necessi-

tates approval by at least two thirds of the total number of MPs – which implies a consensus of all parliamentary parties – and a national referendum, the validity of which does not require the turnout of a simple majority of registered voters.

These requirements demonstrate that Serbian politicians misguided the people when claiming during the referendum campaign that it would be easy to amend the constitution: in fact it will be as difficult as it was to amend the 1990 constitution.<sup>4</sup>

## Kosovo

Politics and discussion of Kosovo's future status, as in years past, dominated the Kosovo landscape in 2006. Ongoing and serious human rights concerns continued to be eclipsed and broad-brushed by national and international authorities eager to show that Kosovo is ready for some form of independence. Particular human rights concerns included security and freedom of movement for minorities, a virtual halt in returns of refugees and internally displaced persons, a poorly functioning justice system, widespread discrimination, and inadequate progress on ensuring access to quality education for all.

The year began with the untimely death of long-time moderate LDK leader Ibrahim Rugova and a shake-up of the PISG<sup>5</sup> government. The start of discussions between Pristina and Belgrade over Kosovo's future status—talks to be led by UN special envoy Martti Ahtisaari, who was appointed by the UN secretary-general in the fall of 2005—were delayed until February. As Fatmir Sejdiu was elected in as the new president of Kosovo, former head of the Kosovo Protection Corps Agim Ceku replaced Bajram Kosumi as prime minister after his resignation. Kole Berisha, LDK vice-president, replaced Nexhat Daci as president of the Assembly.

The new leadership made a positive start, seeming to re-invigorate the standards process and in particular support for rule of law efforts and outreach to minorities. Throughout spring and early summer there were high hopes on the part of the

ethnic Albanian majority that 2006 would be the year of independence in Kosovo

As time passed, however, the local population's sense of disenfranchisement from the process grew, with particularly strong criticism from women's groups and Roma, Ashkaeli and Egyptian (RAE) platforms that their issues were not being directly addressed within the status negotiations process. The absence of dialogue on serious rule of law and justice concerns, including dealing with the past, was also raised.

By mid year it had become clear that a solution acceptable to both Pristina and Belgrade was unlikely to be achieved through negotiations and that Ahtisaari would need to make his own proposal to the Security Council during the autumn months. On 10 November Ahtisaari announced that he would postpone revealing his proposed solution until after parliamentary elections in Serbia to be held on 21 January 2007. He argued that the delay would serve to prevent the possibility of unduly influencing the elections.

Much to the irritation of UNMIK<sup>6</sup> and PISG, Kosovo Serbs largely continued their boycott of PISG institutions.

Mitrovice remained a flashpoint. In May, the northern municipalities formally ceased relations with the PISG and called for independent security measures. UNMIK and KFOR<sup>7</sup> have since substantially increased their security presence north of the Ibar.

The *Vetevendosje* ("Self-Determination") movement continued its vehement

protests against negotiations in any form, garnering additional support from citizens disappointed in the lack of communication and transparency of the process displayed by the Albanian leadership. Their public protests on 28 November – the Albanian Flag Day – included throwing stones and bottles of red paint symbolizing blood at UNMIK, EU, and PISG government buildings (see photo).

The late summer and fall marked an increase in serious incidents against minorities, particularly in Mitrovica in the north and Klina in the western part of the province. In addition, a number of incidents that appeared politically motivated took place, receiving widespread publicity and condemnation. There were also reported incidents in western Kosovo of armed and uniformed men wearing masks - claiming to be a guerilla offshoot of the Kosovo Libera-

tion Army (KLA), the AKSH (Albanian National Army) - stopping travelers to ask for their documents and in some cases stealing personal items. In December, the police confiscated the largest cache of illegal armaments—including a 12.7mm anti-aircraft gun and military uniforms and masks—since the end of the conflict in 1999. Two senior officials from Ramush Haradinaj's political party AAK were arrested.

December also saw the election of the second leader of the LDK in its 17-year history. During the convention a row arose between camps supporting the winning candidate President of Kosovo Fatmir Sejdiu and his close second Nexhat Daci, ending in a violent brawl.

The year ended with record lows in the public's confidence and trust in both national and international officials. Key actors, governmental and non-governmental,



*The Vetevendosje ("Self-Determination") movement protested against all Kosovo negotiations on 28 November by throwing stones and bottles of red paint symbolizing blood at UNMIK, EU, and PISG government buildings. © SHC/Berggren*

warned that delay in resolving the status of Kosovo could result in violence in the province in 2007. Russia and Serbia suggested the implication amounted to blackmail. In Kosovo, speculation over the timing and contents of Ahtisaari's proposal abounded, with renewed focus on the drafting of Kosovo's constitution and the creation of national symbols and an army. In contrast, Belgrade continued to insist that international law does not allow for the international community to grant Kosovo genuine independence.

Key human rights concerns included the security and protection of minorities, justice system failures, and discrimination. These issues, coupled with ongoing concerns about the equal access and quality of education available to children in the province, raised serious concern about Kosovo's viability as a "state" regardless of the status outcome.<sup>9</sup>

### **National and ethnic minorities**

Security for minorities in Kosovo remained fragile, despite a decrease in the official number of reported incidents of ethnically motivated violence against minorities in 2006. Local monitors cautioned that the decrease may have more to do with the lack of interaction between Kosovo Serb and ethnic Albanian communities and minorities' reluctance and fear of reporting incidents than anything else.

Frequent intimidation and harassment, such as spitting, cursing, stone-throwing, and property destruction, continued to take place, including for ethnic Albanians living in a minority situation. Vandalism of Orthodox Serb religious and cultural heritage sites, including grave sites also increased.

Freedom of movement and access to public services such as health care, education, employment, courts and public administration offices were limited. The policy of decentralization and addressing minority rights remained a policy of segrega-

tion rather than inclusion or integration. Consequently, many minority communities still lived physically, socially, and economically segregated from other communities.

A dramatic increase in serious highly visible public incidents of violence against minority communities further cemented this reality.

A grenade attack in August on a café at the northern end of the bridge over the Ibar in Mitrovice injured nine people and resulted in mass protests and temporary closure of the bridge. This incident was closely followed by a grenade attack on a Kosovo Serb family home in the urban center of Klina in September. Four persons were seriously injured. In the same area—previously touted as one of the biggest returns success stories in Kosovo—there have been reported shootings of Kosovo Serbs and the destruction of reconstructed houses belonging to Kosovo Serbs.

Other public incidents include for example the stoning of a bus of Serbs going to Strpce and the explosion of 3-5 meters of railway track on the main railway line connecting Kosovo Serbs from south of the Ibar to Mitrovice in the north in early December.

RAE communities continued to be among the most marginalized of minority communities in Kosovo, living in abject poverty and facing routine discrimination. More than 30% of the 30,000-strong RAE community in Kosovo were estimated to be unregistered, preventing their access to basic documentation and public services. Upwards of 70% of the population did not attend school beyond the age of 12, and the illiteracy rate was estimated at more than 16% of the population. The displaced Roma living in lead-contaminated camps near the Trepca mines in north Mitrovice continued to live in displacement, albeit in new camps just next to the contaminated sites.



## Returns of refugees and displaced persons

The returns process in Kosovo was virtually nonexistent in 2006. The number of returns of refugees and IDPs has decreased four years running, with a meager 1,608 returns in 2006.<sup>9</sup> UNHCR estimated that more than 220,000 Kosovo Serbs and Roma remained displaced in Serbia and Montenegro, with an additional 20,000 minority members still living in displacement in Kosovo.

While some attributed the stall in returns to the uncertainty of the political process and the generally poor economic situation in Kosovo, the increase in visible serious inter-ethnic attacks apparently also discouraged return.

As in years past, the returns that did take place were primarily to rural, mono-ethnic areas with minimal interaction between communities. The returns were frequently incomplete (e.g., only the head of the household) and partial (e.g., for alternating weekends or months), and with few children or youth.

The trend of minorities selling their homes to ethnic Albanians continued. A similar trend of property sales of ethnic Albanian homes took place in the northern part of the province. Though not officially recorded, there was speculation that more minorities had departed the province than returned throughout the year.

In March, UNHCR stated that members of the Ashkaeli and Egyptian communities were no longer considered to be at risk. In contrast, Roma, Kosovo Serbs, and Albanians in a minority position continued to be considered at risk of persecution and benefit from international protection. Their return should be on a strictly voluntary basis.

UNHCR cautioned that forced return of Ashkaeli and Egyptians should be undertaken in a "phased manner due to the limited absorption capacity of Kosovo." Nevertheless uncoordinated and unassist-

ed forced returns from Western Europe continued to increase, raising serious concern about the ability of Kosovo's fragile social and security structures to deal with this influx.<sup>10</sup>

## Impunity and the judicial system

The consistent failure of the criminal justice system in Kosovo to hold to account many of those responsible for serious crime has created a climate of impunity that will be difficult to reverse. As UNMIK continued to transfer additional competencies to the PISG Ministries of Justice and Interior established in 2006, the EU stepped up its efforts to take over in UNMIK's stead in the post-status period.

The justice system continued to suffer from, among other concerns, an extreme backlog of cases, coupled with a lack of oversight and case management tracking mechanisms in courts; virtually non-existent witness protection and relocation mechanisms in an environment where regular incidents of witness intimidation took place; a lack of qualified judges and prosecutors; passive investigative practices; poor coordination among police, prosecutors, and judges; poor collaboration between international and national elements of the system; and problematic detention and sentencing practices. The consequence was extraordinarily lengthy and inefficient proceedings with unsatisfactory and rarely visible results that sent the message to all communities that the justice system had little power to address its concerns.

The poor track record on prosecuting war crimes and post-war inter-ethnic and politically-motivated crime continued. In seven and one-half years only twenty-three war crimes cases have been brought before the Kosovo courts (dealt with exclusively by international judges and prosecutors at this point). Of these, the vast majority were filed in the immediate after-

math of the arrival of the international community and tried by panels of national judges whose judgments raised such serious concern that most cases were retried, with a number of these cases ultimately acquitted, dismissed, or suspended. Since mid 2002 only six cases have been filed, with only a few still active.

One of these cases—a high-profile case of three former KLA officers, including Gen. Selim Krasniqi, a regional commander in the post-war Kosovo Protection Corps—was decided in August. The men were all found guilty of war crimes for the unlawful detention and abuse of ethnic Albanians at the Drenovac camp in 1998 and sentenced to seven years imprisonment. Prime Minister Ceku visited General Krasniqi in detention, telling him that Kosovo needed more good men like him. Soon after, the general was released pending his appeal and remained free as of year's end, despite a later Supreme Court decision re-ordering his detention. The 2005 murder of a prosecution witness in the case remained unsolved.

Cases relating to the March 2004 riots were another example of fleeting justice. Despite the severity of the damage caused during the riots, which left more than 4,000 displaced and 19 dead only 323 criminal charges were made in local courts (excluding minor offenses courts). At the end of 2006, less than 200 of the 323 cases had led to indictments, with only 28 of these cases still under investigation. The vast majority of the cases were for minor

charges and resulted in what appeared to be symbolic sentencing. An additional 31 defendants were charged in more serious cases handled by international prosecutors and judges, 26 of whom have been found guilty and another four of whom still awaited trial at year's end. These judgments have also suffered from lenient sentencing practices.

The issue of missing persons remained a highly charged and emotional issue. As of the end of November 2006, 2,150 people (of the original reported 5,206) remain missing from the Kosovo conflict. This number includes Albanians, Kosovo Serbs, and members of the RAE and other minority communities.

Other issues of concern were the lack of inadequate pre-trial facilities to separate the populations and the absence of any facility for the detention of persons deemed to require psychiatric treatment, which resulted in the release of certain accused persons despite the potentially large public threat this raises. Judges, prosecutors, and lawyers also complained on a number of occasions that pre-trial detention was arbitrary in its length—sometimes for inordinately long periods of time—and legal justification.

Kosovo's civil courts also suffered from a severe backlog of cases (estimates ranged from 45-60,000 cases). In addition, there were concerns about minorities' access to the courts and the failure of municipalities to implement decisions, thus negating the justice effort.

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## Endnotes

- <sup>1</sup> *Helsinki Charter*, Stanko Pihler, "Bad for Serbia, Worse for Vojvodina," no. 99-100, September-October 2006.
- <sup>2</sup> *Helsinki Charter*, Radivoj Stepanov, "Autonomy Bullied into Statehood," no. 99-100, September-October 2006.
- <sup>3</sup> "No one shall be subjected to torture, inhuman or degrading treatment or punishment, or medical and scientific experimentation without his/her free consent" (underline by the IHF).
- <sup>4</sup> Yucom /Lawyers' Committee for Human Rights, "Critical Remarks on the Draft Constitution of the Republic of Serbia," 1 November 2006, at [yulaw@eunet.yu](mailto:yulaw@eunet.yu).
- <sup>5</sup> Kosovo's provisional institutions of self-government
- <sup>6</sup> United Nations Interim Administration Mission in Kosovo
- <sup>7</sup> NATO-led Kosovo Force
- <sup>8</sup> The seriousness of human rights concerns in Kosovo is compounded by the lack of human rights monitoring and reporting capacity in the province, both from a non-governmental and quasi-governmental perspective. The institution established early on in the international community's presence in Kosovo to monitor human rights compliance—the Ombudsperson Institution of Kosovo—was nationalized at the end of 2005. A year later an ombudsperson and deputies for the post had yet to be elected. In February 2006 UNMIK limited the institution's jurisdiction to oversight of the PISG. Shortly after, a Human Rights Advisory Panel was established to address claims against UNMIK officials and to provide a mechanism of accountability for the international community in Kosovo. As of the end of the year, however, the advisory panel was still not functioning because its members had yet to be appointed. Moreover, the UN Human Rights Committee noted in July that the panel "lacks the necessary authority and independence" from UNMIK to carry out its mandate.
- <sup>9</sup> Overall only about 16,000 of the estimated 250,000 Serb and other minorities displaced from the province since 1999 have returned to their homes (less than 7%).
- <sup>10</sup> UNMIK reported approximately 2,700 involuntary returns in the first eight months of 2006 alone, with more than one thousand RAE returns.