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Serbia and Montenegro: compliance with obligations and commitments
and implementation of the post-accession co-operation programme
Document presented by the Secretary General

Second quarterly report (July - October 2003)

Executive summary

During the period covered by the present report, very little progress was registered by Serbia and Montenegro in the fulfilment of its commitments. At the same time, there has been a significant increase in co-operation activities, which eventually should facilitate progress.

- Democratic institution-building: *At the Union level, some institutions have still to be created. In Serbia, presidential elections are to be held on 16 November, although such elections already failed in the recent past. In addition, there is an increasing pressure on the Government so that early parliamentary elections be held in the near future. In the context of the work on a new Constitution, there is still a lack of political consensus and a limited number of political parties actively participate. In Montenegro, the boycott of parliamentary sessions by opposition political forces hinders the reform process. Work on constitutional amendments should also be carried through.*

- Co-operation with the International Criminal Tribunal for the former Yugoslavia (ICTY): *although the government committed itself to co-operate with the ICTY and its Prosecutor General, further progress is necessary on a number of issues such as action to arrest indictees, access to documents and archives, responses for waivers for witnesses. When domestic courts examine war crimes cases, judges and prosecutors should ensure that no impunity be tolerated.*

- Rule of law: *At the Union level, the ratification of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime in October is a positive step.*

In Serbia, no substantial progress has been made in order to strengthen the judiciary and the prosecuting bodies and to ensure their independence, notably by preventing interference from the executive. The Council for Judicial Reform particularly lacks effectiveness whereas transparency and consultation of legal experts is needed in the further drafting of laws. In this connection, more serious consideration should be given to Council of Europe recommendations and comments. In addition, concerns have been expressed about the continued functioning of military courts without any legal basis. In Montenegro, further measures are needed to strengthen the judiciary and to ensure its independence. Both in Serbia and in Montenegro, there is a pressing need for training of judges and prosecutors.

- Human rights: *the European Convention for the Prevention of Torture has not been signed during the summer as foreseen. However, the authorities confirmed their intention to sign and ratify it by the end of the year. The authorities pursue their efforts to ensure ratification of the ECHR and its Protocols. In the meantime, the respective Governments of the Union and of the constituent republics are expected to act in the light of Council of Europe human rights instruments.*

Serious efforts have been made in the field of conscientious objection with the adoption of a decree by the Ministry of Defence in late August. In Serbia, no tangible progress has been made in the media sector. Urgent measures should be undertaken to set up a legitimate and effective Broadcasting Council. Both in Serbia and in Montenegro, the executive and legislative authorities should fully take into consideration Council of Europe recommendations in the field of freedom of expression and information.

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As concerns principal Council of Europe texts and list of commitments accepted by Serbia and Montenegro, see Addendum to the previous report, document [SG/Inf\(2003\)28 Addendum](#) of 9 July 2003.

I. INTRODUCTION

1. On 26 March 2003, following the adoption of Opinion 239 (2002) of the Parliamentary Assembly (PACE) and the subsequent exchange of letters between the Chairman of the Committee of Ministers and the Minister of Foreign Affairs of Serbia and Montenegro (SCG), the Committee of Ministers adopted Resolution (2003)3 inviting Serbia and Montenegro to become a member of the Council of Europe (CoE). The accession ceremony and signature of the CoE Statute took place on 3 April 2003.
2. The present document is the second report prepared by the Secretariat further to the Committee of Ministers' decision to set up a specific monitoring procedure, under the authority of the Rapporteur Group on Democratic Stability (GR-EDS), which provides for a regular review of the progress achieved (and difficulties encountered) in the fulfilment of commitments and implementation of the post-accession programme, on the basis *inter alia* of quarterly reports by the Secretariat and to adopt a post-accession co-operation programme¹.
3. This report is principally based on information provided by the Ministry of Foreign Affairs of Serbia and Montenegro, by the Special Representative of the Secretary General and the Council of Europe Office in Belgrade, the Council of Europe Office in Podgorica and information obtained through direct contacts made with representatives of the Serbian and Montenegrin civil societies and media².

II. DEMOCRATIC INSTITUTION-BUILDING

4. As indicated in the first quarterly report, most institutions of the Union, as provided by the Constitutional Charter, have been put in place. However, the Union's Court has still not been established, although judges should be elected by the Union's Parliament in the nearest future. In this regard, the Council of Europe could be invited to provide specific assistance for the setting-up of the Court (in particular legislative expertise).
5. The SCG authorities acknowledge that they face a number of obstacles, notably in terms of co-ordination between the institutions of the two constituent member states of the Union. In this context, they indicate that the setting-up of a completely new system of government and the nature of the democratic process may explain the current situation.

¹ The first report was presented in July 2003 further to a Secretariat's visit to Belgrade and Podgorica in June (see document [SG/Inf\(2003\)28](#) and [Addendum](#) ; both the report and its addendum can be found on the Secretary General's website: www.coe.int/sg).

² As concerns Serbia, information has been provided by representatives of the *Serbian Association of Judges, the Serbian Association of Prosecutors, the Helsinki Committee for Human Rights in Serbia, the Humanitarian Law Centre, the Belgrade Human Rights Centre, the International Crisis Group, B92 (radio and television), the Association of Independent Journalists (NUNS)*. As concerns Montenegro, information has been provided by representatives of the *Montenegrin Association of Judges, Humanitarian Law Centre, Montenegrin Helsinki Committee, NGO Group for Changes, University Human Rights Centre, the newspaper "Dan"*.

6. Nevertheless, representatives of NGOs pointed out that conflicts within or between the existing institutions sometimes result from little commitment to their effective functioning. In Montenegro, the boycott of the parliamentary work by opposition political forces is increasingly seen as a way to impede the effectiveness of democratic institutions rather than a way to ensure that principles of a pluralistic democracy be observed. In Serbia, the institution-building process is particularly unstable and complex. The holding of presidential elections on 16 November 2003 might be considered as a new impetus to the institution-building process. However, elections, in similar conditions, failed twice in the past as the fifty per cent voter threshold may not be reached. According to the Office for Democratic Institutions and Human Rights of the Organisation for Security and Co-operation in Europe (OSCE/ODIHR), the legal framework still consists of provisions that allow for a cycle of failed elections (for more details, see [OSCE/ODIHR Needs Assessment Mission](#), 22-23 September 2003). Likewise, mention should be made that parliamentary elections are scheduled for the end of 2004. However, there is an increasing pressure on the Government, notably through a motion of non-confidence, so that early parliamentary elections be held in the near future.
7. In this context, little progress has been made as regards harmonisation of the Constitutions of both constituent States of the Union, in accordance with Article 65 of the Constitutional Charter (expected in July 2003). In Serbia, the lack of political consensus on certain political issues, such as territorial organisation, as well as the limited number of political parties actively working within the Constitutional Commission, chaired by Mr Vladan BATIĆ, Minister of Justice, remain major obstacles to further progress on this matter. According to the authorities, the draft Constitution could be adopted by early 2004.
8. In this connection, Serbian lawyers and representatives of NGOs allege that the absence of constitutional expertise within the Commission is particularly regrettable, which may impede the quality of its work. Whenever experts are consulted, they raise doubts that their recommendations are effectively taken into account. In their view, political objectives should be determined by political actors, but it is highly desirable that the Commission needs to work more closely with national constitutional experts. They stressed that human rights standards as indicated in the Union's Charter of Human and Minority Rights and Civil Liberties should be reflected in the text of the Constitution. Likewise, according to Serbian lawyers, more emphasis should be put on the establishment of the High Judicial Council and election of judges in accordance with Council of Europe standards (see also Part IV. A. and B.).
9. These issues were also discussed at a joint OSCE/Council of Europe Venice Commission workshop on judicial power and the new Serbian Constitution in Belgrade on 25 September 2003. The Venice Commission representatives questioned in particular the advisability of Parliament

electing all judges and urged to give a stronger role to the High Judicial Council.

10. At its last plenary session of October 2003, the Venice Commission agreed with a delegation of the Constitutional Commission to intensify co-operation on drafting the Constitution. As a first step a workshop on territorial organisation will be held at the end of November 2003.
11. In Montenegro, drafting of constitutional amendments is still expected. The Parliament has formed a Council for Constitutional Changes, in addition to the existing Committee for Constitutional Issues, to facilitate work on the constitutional reform. However, no concrete results have been achieved until now.

Specific concerns and proposals

At the Union's level, the effective setting-up of the Union's Court is still expected. The Council of Europe could be invited to provide specific assistance in this respect.

In Serbia, action should be taken to reach a political consensus within the Constitutional Commission. In this connection, the Venice Commission will provide technical assistance starting with a workshop on territorial organisation. In addition, a number of measures should be undertaken to consult national constitutional experts, to give an effective follow-up to their recommendations and to the transparency of the Commission's work.

In Montenegro, the boycott of parliamentary sessions by opposition political parties should stop and political dialogue should start again within the democratic institutions. More political attention should be paid to this issue. Measures should be undertaken to start the work on amendments to the Constitution.

III. CO-OPERATION WITH THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA (ICTY) AND PROSECUTION OF OTHER WAR CRIMES

12. The commitment of the authorities of Serbia and Montenegro to co-operate with the ICTY has been confirmed during the visit of Mr Nicolae DUDAU, Chairman of the Committee of Ministers on 8-9 September (see doc. [CM/Inf\(2003\)41](#)). The fact that the ICTY President, Mr Theodore MERON, made a first visit to Belgrade in mid-September is a positive element in itself. In accordance with the Law on Co-operation with The Hague Tribunal, a National Co-operation Council has been established. In early October 2003, the authorities informed the Secretariat that, up to now, nine indictees have been arrested and handed over and efforts are pursued to co-operate effectively with The Hague Tribunal. However, on the occasion of his visit to Belgrade on 23 October 2003, the European Union High Representative for the Common Foreign and Security Policy, Mr Javier SOLANA, indicated that co-operation with ICTY deserves special attention and that some tough and difficult decisions should still be taken by the authorities.
13. On 9 October 2003, the ICTY Prosecutor General, Ms Carla DEL PONTE, informed the United Nations Security Council that co-operation with the authorities of Serbia and Montenegro remains very difficult. Among the 17 fugitives remaining at large, Ms DEL PONTE declared that she had reason to believe that well over half of them, including Ratko Mladic, reside in Serbia and Montenegro. The ICTY Prosecutor General indicated that she faces serious problems regarding access to documents, in particular those held in various archives. Moreover, some important witnesses still have to go through a lengthy process to be granted waivers by the authorities. This process, which exists only in Serbia and Montenegro, has proven to be extremely slow and cumbersome.
14. During his visit to Belgrade in September 2003, the ICTY President met with a number of Serbian judges and the prosecutor of the new War Crimes Chamber established in Serbia. He indicated that the fact that Serbian courts assume a more important role in bringing offenders to account is to be welcomed. However, it was also recalled that they can only do so if they are

not used for political ends and if they meet international standards of due process and fair trial.

15. In this context, Amnesty International welcomed the conviction, on 29 September in Belgrade, of four men - two of them were convicted *in absentia* – for the abduction and subsequent murder of 16 Muslims from Sjeverin (SCG) in October 1992. However, Amnesty International believes that justice will not be done until all those responsible for this and other such abductions are brought to justice. In this respect, the Helsinki Committee for Human Rights in Serbia warns that the trial and sentence ruled in the Sjeverin case – as in the Strpci case – shows that Serbia is still unwilling to allow re-examination of its responsibility for and the role it played in the crimes committed during the wars in the territory of the former Yugoslavia. In addition, the execution of judgments should imply a genuine and effective co-operation with neighbouring States and entities, notably the Republika Srpska of Bosnia and Herzegovina. For instance, Oliver Krsmanovic, who was sentenced *in absentia* to 20 years imprisonment after being found guilty of kidnapping, torturing and murdering the victims allegedly resided in Republika Srpska (BiH) when the trial started.

Specific concerns and proposals

The commitment of the authorities to co-operate with the ICTY and its Prosecutor General has been reiterated.

However, further progress is needed on issues such as action to arrest indictees, access to documents and archives, responses for waivers for witnesses.

Cases relating to war crimes are examined by domestic courts. However, judges and prosecutors should ensure that no impunity will be tolerated. This objective would also require proper co-operation with the authorities of Bosnia and Herzegovina and its entities, in particular Republika Srpska.

IV. RULE OF LAW

A. KEY LEGISLATION AND JUDICIAL REFORM

16. In Serbia, concerns already expressed during the Secretariat's visit in June 2003 remain fully valid also for the period covered by the present report. Serbian judges and prosecutors even indicated that the situation has deteriorated since the current legislation curtails the independence of the judicial system.
17. Judges and prosecutors still deplored that there is a lack of clear strategy in the judicial reform process. The Serbian authorities several times amended the same laws, resulting in a substantial destabilisation of the judicial authorities.

18. Nevertheless, the Serbian authorities have at their disposal mechanisms to implement a strategy for judicial reform and to consult experts from the judicial profession, notably through the Council for Judicial Reform, chaired by the Minister of Justice. A strategy paper has been adopted in close co-operation with the Ministry. However, no follow-up action has been taken in the light of this document. The Council for Judicial Reform and its members still needs to be more action-oriented. However, it has been rarely consulted on important pieces of legislation. Judges and prosecutors suggested that a genuine stock-taking of results obtained by the authorities be made on the basis of the objectives identified in the strategy paper.
19. Judges and prosecutors regretted that the authorities do not give enough consideration to methodology when amending laws, in particular with respect to consultation of legal experts and transparency. According to them, this results in the adoption of low-quality or inapplicable laws.
20. In order to assist the Serbian authorities to remedy the above-mentioned issues, a Memorandum of Understanding between the Ministry of Justice and the Council of Europe was signed in June 2003. Subsequently, several pieces of legislation have been transmitted to the Council of Europe for expert appraisal. Likewise, a working group has been established to prepare recommendations with a view to ensuring compatibility of the Code of Criminal Procedure with the requirements of European Convention of Human Rights (ECHR). However, judges and prosecutors complained that comments and recommendations made by Council of Europe experts are generally not taken into account by the Serbian authorities. This concerns *inter alia* the strengthening and the independence of the High Judicial Council and election/appointment of judges and prosecutors in accordance with Council of Europe standards.
21. In Montenegro, the authorities have set up a working group to draft new a Criminal Code, a Code of Criminal Procedure and a Law on the Public Prosecutor. Council of Europe experts made a number of recommendations and comments, which should be taken into account by the Montenegrin authorities.

Specific concerns and proposals

In Serbia, concerns already expressed in the first report remain fully valid. The authorities should take resolute action to ensure that the Serbian legislation will be put in line with Council of Europe experts' comments and recommendations.

Steps should also be taken to ensure the effectiveness of the Council for Judicial Reform. The Council and its members should follow a more action-oriented approach and should be consulted more often. In the near future, consideration should be given to a stock-taking of the judicial reform, taking into account the objectives fixed and the results obtained.

B. EFFECTIVE FUNCTIONING OF THE JUDICIARY

22. There is a certain lack of co-ordination and communication between Serbian and Montenegrin judges. However, there have been encouraging initiatives to create an Association of Judges of Serbia and Montenegro.
23. In Serbia, judges indicated that the judicial system still faces serious difficulties, notably due to corruption or a lack of competence inherited from the past regime. They also stated that a number of judges tend to take decisions in a way that is suitable for the executive power by fear of negative reaction from the latter. They therefore pointed out the need for strengthening the judiciary and ensuring its independence, in particular through intensive training on Council of Europe standards with respect to the rule of law and human rights, improved education, concrete implementation of ethical principles and statutory guarantees.
24. However, judges underlined that measures undertaken by the executive power continue to weaken the judicial system and to restrict its independence. Serbian judges explained this situation with the authorities' distrust vis-à-vis the courts. The Government usually tries to resolve problems faced by the judiciary through quick legislative measures, which often proved to be detrimental (see above). In addition, representatives of NGOs indicated that the Ministry of Justice often uses citizens' complaints relating to court verdicts to increase its influence and supervision over the judicial decisions.
25. The length of judicial proceedings is a growing concern and judges indicated that further action is needed particularly in this area. Cases opened during the Milosevic regime are still being examined.
26. During its previous visit, the Secretariat's delegation was told that cases referred to military courts should have been transferred to civilian courts. However, representatives of NGOs and of the judiciary stressed that military courts are still functioning without any adequate legal basis.
27. As concerns the "Lustration Law", Serbian judges reiterated their concern about its inadequate implementation. A commission has to examine thousands of cases in a short period of time. They thus pointed out that room is left for possible error or abuse. Implementation of the lustration law should respect fully the principles of the rule of law and of a fair trial.
28. The first trials relating to organised crime (further to the "Sabre" police operation) should take place in spring 2004. The ECHR is therefore most likely to be in force at that time.
29. In Montenegro, although a number of steps have already been taken, measures are still needed in order to improve the effectiveness of the judiciary. According to Montenegrin judges, the implementation of the legislative framework, notably the Law on Courts of February 2002, is incomplete. Likewise, the lack of financial independence of Montenegrin

courts impedes their effectiveness. In this connection, emphasis should also be put on training of judges (education of future judges and in-service training). Finally, judges pointed out that there is need for more transparency, in particular through co-operation between the democratic institutions, the courts and the media.

30. According to representatives of NGOs, the lustration law is virtually not implemented in Montenegro.

Specific concerns and proposals

Both the Serbian and the Montenegrin authorities should work actively to strengthen the judiciary and ensure its independence from the executive. They should also take further corrective measures to reduce the length of judicial proceedings.

The Serbian and Montenegrin authorities should continue to encourage training of judges in co-operation with the Council of Europe.

In Serbia, all cases being examined by military courts should be transferred to civilian courts.

In Serbia and in Montenegro, the implementation of the Lustration Law should be transparent and respectful of the rule of law.

C. EFFECTIVE FUNCTIONING OF THE PROSECUTING BODIES

31. In Serbia, according to prosecutors, the situation continues to deteriorate as the amendments to the Law on Public Prosecutors' Office adopted during the state of emergency are still being implemented (in this connection, see para. 21). In September 2003, some deputy prosecutors have not been re-appointed without any explanation. Prosecutors said that some of their colleagues are reluctant to prosecute criminal suspects connected to the Government as they may not be re-appointed. In some cases, prosecutors indicated that some of their colleagues were urged to stop their investigation when it concerned political figures. As for prosecutors, there is a strong need for transparency for their appointment. Decisions to appoint or not to appoint prosecutors should be taken by a High Judicial Council that is representative of both judges and prosecutors.
32. Prosecutors also raised the issue of payment of salaries and indicated that the Law on Judges should be applied for prosecutors as well. Instead, payment of the prosecutors' salaries is based on the Law on Civil Servants, which is less favourable. Furthermore, the implementation of this law also requires a good co-ordination between the Ministry of Justice and the Ministry of Finance, which is not always the case. As a result, there are some cases in which district prosecutors could not be paid due to lack of funds.

33. The Special Prosecutor is seen as a key actor in the fight against organised crime. However, judges and prosecutors reiterated their concern about his/her lack of authority and independence as he/she can be dismissed without explanation. His/her responsibilities and independence should be strengthened.

D. EFFECTIVE FUNCTIONING OF POLICE AND SECURITY FORCES

34. In September 2003, Serbia's Minister of Interior, Mr Mihajlovic, indicated that the "Sabre" police operation broke up 123 organised criminal groups. Members of these groups were arrested and are awaiting trials.
35. In October 2003, a draft law on police has been sent to the Council of Europe for expert appraisal. Comments and recommendations made by the experts should be discussed in Belgrade by the end of the year.
36. Legislation has been passed in July 2003 in order to create a State Security Service within a separate Security and Information Agency.
37. A national action plan on the fight against organised crime is expected soon.

E. THE FIGHT AGAINST CORRUPTION AND MONEY-LAUNDERING

38. On 9 October 2003, the authorities of Serbia and Montenegro took a step forward by signing and ratifying the European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. [141](#)). In Serbia and in Montenegro, anti-corruption laws and laws on conflict of interests should be adopted in the near future. A Law on the Prevention of Money-Laundering has already been adopted in Montenegro.

Specific concerns and proposals

Following recent ratification, particular attention should now be paid to the concrete implementation of the CoE Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime.

The authorities of Serbia and Montenegro should sign and ratify other relevant Council of Europe instruments, particularly in the field of corruption.

V. HUMAN RIGHTS

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

39. The authorities of Serbia and Montenegro have reiterated that the European Convention of Human Rights (ECHR) and relevant Protocols will be ratified by April 2004 and underlined that efforts would be pursued to achieve compatibility before that date. Whereas the compatibility exercise has come to initial completion for Serbia, a similar exercise for Montenegro is expected to be completed before April 2004.
40. Contrary to their announced intention, the authorities of Serbia and Montenegro did not sign the European Convention for the Prevention of Torture (ECPT) during the summer 2003. The Secretariat was recently informed that the Convention should be signed and ratified by the end of the year and that no reservation would be made.
41. The applicability of several Council of Europe human rights treaties, including the ECPT and the Framework Convention for the Protection of National Minorities, in Kosovo is at present being considered by the CoE Committee of Ministers.
42. Representatives of NGOs indicated that there is a number of documented cases of torture and ill-treatment, which the authorities should look into. In Serbia, Amnesty International expressed its deep concern about detailed allegations of torture of detainees by security forces in connection with the "Sabre Operation" and made specific recommendations to address the issue (for more details, see Amnesty International's [Report](#), September 2003). Serbian NGOs underlined that the representatives of the Ministry of Interior deny the existence of the issue and refuse to make public results obtained by internal supervisory bodies. By contrast, there is generally a good cooperation between NGOs and prosecutors. In Montenegro, individual cases of torture are still reported by NGOs (see, for instance, Humanitarian Law Centre, "A Man Tortured by Police in Bar", 17.9.2003).

Specific concerns and proposals

The authorities of Serbia and Montenegro should pursue their efforts in order to ratify the ECHR and its Protocols by April 2004 at the very latest. The authorities should now pay particular attention to the setting-up of the Office of the Agent representing Serbia and Montenegro before the European Court of Human Rights.

The compatibility exercise in Montenegro should be completed before April 2004.

The ECPT is expected to be signed and ratified before the end of the year. In the meantime, specific measures in Serbia and in Montenegro should be undertaken to address all alleged cases of torture or ill-treatment. Both disciplinary and judicial mechanisms should be used in this respect. Precise statistical data on disciplinary

measures undertaken should be made public, especially as concerns alleged cases of torture and ill-treatment during “Sabre Operation” in Serbia.

B. NATIONAL MINORITIES

43. The authorities of Serbia and Montenegro underline that the implementation of the Charter of Human and Minority Rights and Civil Liberties has set new standards for the Union. In Serbia, Serbian lawyers considered that further measures are needed to implement the 2002 Law on the Protection of the Rights and Freedoms of National Minorities adopted by the former federal parliament. In Montenegro, contrary to assurances given to the Secretariat, the draft Law on national minorities has still not been submitted to the Council of Europe for expert appraisal before being sent to Parliament.

Specific concerns and proposals

The Serbian authorities could consider Council of Europe assistance in the implementation of the 2002 law on the Protection of the Rights and Freedoms of National Minorities.

The Montenegrin authorities have still not sent the draft Law on national minorities to the Council of Europe for expert appraisal.

C. FREEDOM OF THE MEDIA

44. In the media field, concerns already expressed further to the Secretariat's visit in June 2003 remain valid. There is a climate of distrust between the authorities and the media. In Serbia in particular, priority should be given to the establishment and the functioning of a legitimate and effective Broadcasting Council. In August 2003, an exchange of letters has taken place between the Minister of Foreign Affairs of Serbia and Montenegro and the Deputy Secretary General of the Council of Europe on this issue. This question has become particularly acute in the light of the necessary allocations to broadcasting licences and the forthcoming presidential elections. According to various sources, including representatives of the media, the election process of members of the Council should start again from the beginning in accordance with the Serbian law in order to be done in full legality and transparency.
45. Still in Serbia, the authorities underlined that the Law on Public Information has been adopted. Council of Europe experts indeed provided comments on the draft text (see doc. [ACTM\(2003\)003](#)). Concerns have been expressed about amendments passed during the state of emergency. The Council of Europe is ready to review the text as adopted in the light of European standards.
46. Both in Serbia and in Montenegro, access to official information remains a serious issue to be urgently tackled by the respective authorities. Draft laws

have been prepared in both constituent states of the Union. Council of Europe experts have submitted a number of recommendations with respect to these draft laws (see documents [ACTM\(2003\)010](#) and [ACTM\(2003\)021](#)). In Serbia, very few of them have been taken into account by the drafters so far. Council of Europe experts could provide further assistance for the discussions in Parliament. In Montenegro, the adoption of the law on access to information has been delayed. Council of Europe expert will provide additional expertise to the drafters. In this context, next to the adoption of the law on access to information, journalists and NGOs emphasise that a law on secrecy is particularly needed to define precisely state secrets.

47. Defamation is an issue in both constituent states. The governments should display restraint in resorting to criminal proceedings, particularly when other means of responding to the unjustified attacks and criticisms are available. In Serbia, journalists indicated that there is an increasing pressure on the media through criminal proceedings for libel. In Montenegro, decriminalisation of defamation has received some support from various actors, including officials. However, relevant criminal provisions are still kept in the draft Criminal Code and representatives of the civil society fear that these provisions be used to restrict freedom of the media.
48. In the meantime, representatives of the Serbian media indicated that media professionals meet increasing financial difficulties and that journalists' social rights are violated.
49. Both in Serbia and in Montenegro, there are cases of incitement to hatred and intolerance. However, representatives of NGO's indicated that relevant criminal provisions are virtually never implemented.

Specific concerns and proposals

In Serbia, confidence building measures should be adopted in order to promote a mutual understanding between the authorities and the media. In the context of elections, the Serbian authorities should refrain from interfering in the activities of journalists and other media personnel with a view to influencing the electoral process and media coverage.

Urgent measures should be taken to set up a legitimate and effective Broadcasting Council in accordance with the Serbian law as soon as possible.

The current draft law on access to information should be adopted in accordance with relevant Committee of Ministers' recommendations [in particular Rec(2002)2] and Council of Europe experts' comments in this regard. Council of Europe experts could provide assistance before the text is adopted by Parliament.

The Council of Europe is ready to review Law on Public Information as adopted.

As concerns Montenegro, the authorities must continue their efforts to co-operate with the Council of Europe on media issues.

Both in Serbia and in Montenegro, the respective authorities should display restraint in resorting to criminal proceedings. They should be encouraged to create or use other means of responding to unjustified attacks and criticisms.

By contrast, criminal provisions on incitement to hatred should be implemented when necessary.

D. HUMAN TRAFFICKING

50. Further to the invitation of the Montenegrin Government, a Council of Europe/OSCE team of experts visited Montenegro on 21-24 July 2003 to review the way in which the authorities had dealt with the case of trafficking in human beings which was reported by a Moldovan citizen. The expert team was composed of four international experts from Germany, the Netherlands and Slovenia. The assessment is based on the factual elements gathered and the recommendations are both specific to the case in question and of a general nature for future action in this field. The Montenegrin authorities were given an opportunity to make their comments, including an indication of the measures that have been or will be taken, with respect to the conclusions reached and recommendations made by the experts. The comments of the Montenegrin authorities are currently being examined in view of future follow-up action.

Specific concerns and proposals

The Montenegrin authorities should pursue their efforts to comply with the OSCE/Council of Europe experts' recommendations as regards the fight against human trafficking

E. INTERNALLY DISPLACED PERSONS (IDPs) FROM KOSOVO

51. As indicated in the previous report, the return of IDPs to Kosovo still gives rise to serious concern. The small number of IDPs returning to Kosovo is explained by security concerns and by material causes, such as housing and access to social services and schools. In mid-October, representatives of the Serbian authorities and of the Kosovo Provisional Institutions of Self-Government launched talks in Vienna and agreed that working groups would be set up in November for the return of IDPs, the tracing of missing persons and problems of transport and power supply.

F. CONSCIENTIOUS OBJECTION AND ALTERNATIVE SERVICE

52. Substantial efforts have been made by the Ministry of Defence of Serbia and Montenegro on the matter of conscientious objection and alternative service. The Ministry has co-operated closely with the Council of Europe and held a series of consultations with experts, representatives of NGOs,

religious communities, state bodies and the media. On 27 August 2003, the Union Council of Ministers adopted a Decree on Civil Military Service, which took effect in mid-October 2003. The authorities indicated that it could be possible for conscientious objectors to work for humanitarian and welfare organisations, including health care institutions and centres for the rehabilitation of disabled persons.

53. On 29 October 2003, a round-table “on the way to conscientious objection in Serbia and Montenegro” was organised by the Council of Europe in co-operation with the Ministry of Defence. Representatives of the Ministry, the Union Parliament, NGOs from Serbia and from Montenegro held a discussion with Council of Europe experts on the recently adopted Decree and its concrete implementation.

54. In this context, the Ministry of Defence has also established a working group on the modification of the legislation on the army.

Specific concerns and proposals

The adoption of a Decree on Civil Military Service constitutes a significant step forward in solving the issue of conscientious objection and alternative military service. Particular attention should now be paid to the concrete implementation of the newly adopted Decree in the light of Council of Europe experts' recommendations.

In this context, the Council of Europe remains ready to provide assistance within the framework of the elaboration of further legislation on the armed forces.

G. SETTING-UP OF THE OFFICE OF OMBUDSMAN

55. A law on the institution of Ombudsman has been adopted in Montenegro in early July 2003. Election of the future Ombudsman has taken place on 21 October. However, a number of complaints were lodged with the Constitutional Court of Montenegro with respect to the lack of observance of the election procedure. The Court ruled that it had no jurisdiction in this respect. In Serbia, a similar law is still expected. However, note should be taken that an ombudsman institution was created in the autonomous province of Vojvodina.

Specific concerns and proposals

In Serbia, a law on the institution of Ombudsman is still expected.

In Montenegro, efforts should be pursued to set-up and ensure an effective functioning of the future institution of Ombudsman.

VI. COUNCIL OF EUROPE POST-ACCESSION CO-OPERATION PROGRAMME

56. A significant increase in co-operation marked Serbia and Montenegro's accession to the Council of Europe. Some 100 assistance activities were completed, or are underway, since April 2003, with an emphasis on supporting the fulfilment of the commitments of Parliamentary Assembly's Opinion 239 (2002).
57. As stated above, a number of draft laws have been scrutinised by the Council of Europe, for instance the draft decree on conscientious objection in Serbia and Montenegro (see para 39). In mid-October an expert appraisal of the revised draft Serbian law on police was completed (see also para. 35).
58. In Montenegro a round table on the Criminal Procedure Code, Criminal Code and Law on public prosecutors was held at the end of October (an appraisal of the draft law on public prosecutors has also been provided). Advice has also recently been offered on the Code of Civil Procedure and the draft law on free access to information. Improving the functioning of the justice system is a priority and a recent workshop dealt with case backlog situations.
59. Human rights material has been distributed extensively in Serbia and in Montenegro, ECHR training is on-going, in part by national trainers. Recently the third out of four training events was held in Belgrade, bringing experienced judges and prosecutors together to discuss the ECHR and measures against organised crime. In the field of the fight against trafficking, several activities have taken place, in addition to the above mentioned CoE/OSCE expertise for Montenegro. Serbia and Montenegro participated in recent events within the LARA programme (drafting legislation on protection of victims and of victims-witnesses of trafficking; expert appraisal of relevant provisions of the draft criminal and criminal procedure codes in Montenegro).
60. Education (including a history teaching seminar) and cultural policy have also figured on the co-operation agenda. A feasibility study for the establishment of a teacher training centre in Belgrade was recently carried out.
61. In part the significant increase in co-operation is due to a new Joint Programme between the Council of Europe and the European Commission (European Initiative for Democracy and Human Rights) which started in February 2003 (budget €1,5 M). A first Steering Committee meeting for this programme was held in Belgrade on 11 June 2003 (the conclusions are reproduced in document [DSP \(2003\)17](#)). Another positive development with the European Union is the Council of Europe concluding a framework agreement of co-operation with the European Agency for Reconstruction (EAR), the assistance arm of the European Union in Serbia and Montenegro (including Kosovo) and in 'the Former Yugoslav Republic of Macedonia',

which will open new opportunities for extended co-operation. In this context, a new joint initiative in the field of the media in Montenegro was concluded with the Agency in August 2003 and a conference on "the application of Article 10 of the ECHR: implications for Montenegro" was already arranged.

62. Some assistance activities in Serbia and Montenegro were carried out under the Stability Pact for South-East Europe (such as training on witness protection and a course in Serbia on issues regarding proceeds of crime). There has also been participation from Serbia and Montenegro in regional Council of Europe activities, for instance a regional seminar on the reform of the judicial procedures in the civil and criminal fields and in a meeting within the South-East Europe Health Network.
63. These are just a few examples of a steadily increasing co-operation, following from Serbia and Montenegro's accession to the Council of Europe.