

Information Documents

SG/Inf(2006)15
(restricted)

28 November 2006

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

Document presented by the Secretary General

First report (January –October 2006)

SUMMARY

This is the first report on Serbia as a fully sovereign country coming at a crucial juncture in its reform process which was highlighted by the political consensus on a long-awaited new Constitution now confirmed by referendum. Following the adoption of the new Constitution and the Law on the Implementation of the Constitution, Serbia will have to swiftly adopt and/or amend legislation in order to ensure the proper functioning of its new institutions notably in the area of the judiciary.

The forthcoming months coincide with preparations for Serbian chairmanship of the Committee of Ministers of the Council of Europe, providing for an excellent opportunity to fulfil outstanding post accession commitments, in particular full co-operation with the International Criminal Tribunal for the former Yugoslavia (ICTY).

Bearing in mind that a Venice Commission opinion on the new Serbian Constitution will be forthcoming, particular attention should be paid to ensuring that the principle of supremacy of international law, independence of judiciary and human and minority rights be fully in line with Council of Europe standards and norms, notably the European Convention on Human Rights. In this context the Secretariat reiterates its readiness to offer all expertise available to work with the authorities to ensure that the essential work they have begun with the new Constitution will be consolidated to equip Serbia with the very best tools to

continue its democratic reform process successfully.

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I. INTRODUCTION

1. The present document is the 1st report with respect to Serbia since the State Union of Serbia and Montenegro ceased to exist and Serbia continued the membership in the Council of Europe. It follows a series of 10 reports¹ prepared by the Secretariat which dealt with the monitoring of commitments entered into by the State Union of Serbia and Montenegro.

2. The report is based, inter alia, on information gathered during a Secretariat visit to Belgrade from 23 to 27 October 2006, the programme of the visit and the composition of the Secretariat delegation are reproduced in Appendix II to the report. The Secretariat is particularly thankful to the Permanent Representative of Serbia to the Council of Europe, Ambassador Sladjana Prica, for the excellent preparatory work done before the mission and for her participation and openness in most of the meetings and exchanges held in Belgrade. The Secretariat mission also provided the opportunity to introduce Denis Huber, newly appointed Special Representative of the Secretary General to the Serbian authorities.

3. Since the last Secretariat mission in December 2005 and the recommendations contained in the 10th report SG/Inf (2006)1, a number of key events have occurred which need to be recalled in order to place the findings of the current report in the right framework.

4. Following the declaration of independence of the Republic of Montenegro on 3 June 2006, and in accordance with Article 60 of the Constitutional Charter of the State Union of Serbia and Montenegro, the Committee of Ministers at their 967th meeting adopted a declaration on the continuation of Serbia's membership of the State Union of Serbia and Montenegro in the Council of Europe and the continuation of ensuing obligations and commitments.

5. At the GR-DEM meeting of 28 September 2006, the Group approved the continuing process of monitoring Serbia's compliance with its commitments and obligations, through a forthcoming visit to the country by the Secretariat and the drafting of a new monitoring report.

6. In order to carry out its task, the Secretariat relied on the guidelines that were contained in the decisions adopted by the Deputies in the light of the 10th monitoring report on compliance with obligations and commitments and implementations of the post-accession co-operation programme (SG/Inf(2006)1):

“The Deputies (...)

2. welcomed ongoing progress in a number of areas, in particular regarding the signature and ratification of Council of Europe conventions and the adoption of specifically requested legislation, where compliance is almost completely achieved;

¹ Documents:

SG/Inf(2003)28 – First quarterly report (April-June 2003), SG/Inf(2003)38 – Second quarterly report (July-October 2003), SG/Inf(2004)8 – Third quarterly report (November 2003-February 2004), SG/Inf(2004)14 – Fourth quarterly report (February-April 2004), SG/Inf(2004)23rev2 – Fifth report (May–August 2004), SG/Inf(2004)33 – Sixth report (September-November 2004), SG/Inf(2005)5 final – Seventh report (December 2004-February 2005), SG/Inf(2005)13 – Eight report (March-June 2005), SG/Inf(2005)16 final – Ninth report (July-September 2005), SG/Inf(2006)1 – Tenth report (October 2005-January 2006)

3. *called upon the authorities to intensify work on outstanding commitments of a broader and longer-term nature, giving in particular an appropriate follow-up to the general conclusions and recommendations contained in paragraphs 107 to 111 of the report. They should give priority attention to completing as soon as possible the constitutional reform, which remains the key to fundamental progress in areas such as the independence of the judiciary, decentralisation, and balanced democratic institutions, as well as to the actual implementation of the adopted legislation;*

4. *firmly reiterated that full co-operation with the International Criminal Tribunal for the former Yugoslavia (ICTY) must be achieved without any further delay in order to bring to justice all indictees still on the run, especially Mladic and Karadzic. It is essential, in that respect, that efforts made by the authorities of Serbia and Montenegro to isolate Ratko Mladic, to arrest and transfer him to The Hague should be brought to a conclusion in the near future;*

5. *agreed to continue monitoring co-operation with the ICTY on an ongoing basis and to follow developments concerning a possible referendum in Montenegro and the future status of Kosovo on the same ongoing basis;*

6. *agreed to continue monitoring and to resume consideration of progress on the other outstanding commitments in September/October 2006 on the basis of a new visit and report by the Secretariat;*

7. *invited the authorities of Serbia and Montenegro to continue their good practice of informing the Secretariat on a regular basis (...)."*

NOTA BENE:

i. In view of the timing of the mission, just days before the adoption of the new Constitution a specific section of the present report sums up discussions held by the Secretariat delegation in Belgrade on key provisions.

ii. Though outside the scope of the monitoring report, the issue of Kosovo² was discussed with a number of interlocutors, including Ms S. Raskovic-Ivic, Head of the Co-ordination body for Kosovo and Metohija.

II. GENERAL CONTEXT AND POLITICAL AGENDA

7. At the time of the Secretariat mission a number of "existential" questions that were still blocking the country a year ago have either been put safely behind, or are being dealt with within the appropriate frameworks.

➤ The process of *Montenegro's independence* and its consequences, have been dealt with successfully by the authorities and have ensured a rather smooth handling of the transfer of responsibilities from the State Union level to the Republic level without causing any major disturbances or disruptions. Bilateral relations between Serbia and Montenegro have been set on a firm basis, notably by the reciprocal visits of the Presidents.

➤ *The constitutional process*, another key requirement for enhanced stability, has provided an unequalled opportunity to reach a broad-based consensus on the issue of

² According to the terms of UN Security Council Resolution 1244

Kosovo and on the fundamental values and institutions shaping the country, which have been laid out in the new Constitution (see section below)

- *Status talks on the future of Kosovo*, under the guidance of M. Ahtisaari and his team, have been on going for almost a year. They are providing the framework for both the Serbian authorities and the Provisional Institutions of Self Government of Kosovo to engage in a dialogue on a number of issues, both of a technical and political nature, which still need to be resolved.

8. The Secretariat visit coincided with the last days of the campaign on the referendum, on the confirmation of the draft Constitution overwhelmingly adopted by the Parliament on 30 September 2006. A delegation of observers from the Parliamentary Assembly was present in Belgrade in preparation for their observation mission.

9. The proximity of the voting days (28 and 29 October) and the high stake attached to the adoption of a new Constitution by the main political forces, following a deadlock of six years, made it inevitable for the Secretariat delegation to discuss both the constitutional process and the content of the text. However, it should be underlined that commenting on the provisions contained in the new Constitution is clearly outside the scope of the present report. At the request of the Monitoring Committee of the Parliamentary Assembly, the Venice Commission is preparing an Opinion on the new Serbian Constitution³.

10. The new Constitution was solemnly promulgated following the successful referendum procedure on 8 November in an extraordinary Parliament ceremony.

11. The Law on the Implementation of the Constitution was adopted on 10 November 2006⁴ providing for, inter alia:

- *Parliamentary elections* to be called in an interval between 60 and 120 days from the entry into force of this Law. Parliamentary elections will take place on 21 January 2007.
- *Presidential, local and provincial elections* to be scheduled before the end of 2007 or 60 days after the adoption of related organic laws (inter alia on: status and elections of the President, defence, foreign affairs, security, territorial subdivision, local self-government, local elections)
- The new Parliament to *amend/adjust laws* in line with the new Constitution during their first sitting after the formation of the Government on:
 - Ombudsman (and elect the person)
 - Free access to public information (and elect the body in charge)

And at the second Parliamentary sitting:

³ The adoption of the opinion is not expected before March 2007.

⁴ Adopted by 210 votes (22 against).

- Set of laws on the Judiciary (Organisation of Court and Public Prosecutor's Office)
- The *Province of Voivodina* is to continue functioning according to the present Status until the new Statute is adopted
- Parliament to elect members of the *High Judicial Council and State Prosecutor Council*, within 90 days of the entry into force of related legislation. The President and the judges of the *Supreme Court of Cassation* are to be elected within 90 days after the High Judicial Council has been established. Judges and presidents of other courts are to be elected within at least a year following the establishment of the High Judicial Council.

12. Many interlocutors, notably from human rights NGOs, complained about the lack of a proper debate and consultation which have, in their views, tainted the whole process and undermined its legitimacy. Similar views have been expressed by leaders of opposition parties – under the leadership of the Liberal Democratic Party – and by representatives of international NGOs and think tanks active in Belgrade.

13. Other positive developments concern *regional co-operation*, which has significantly increased covering a large number of areas from economic, environment to the more sensitive ones such as the judiciary and police. Just as an example, the Minister of Justice signed co-operation Agreements with Croatia, Bosnia and Herzegovina, Montenegro, Slovenia, Greece, Albania and Austria in the field of modernisation of the judiciary; staff training for the civil servants of the Ministry of Justice, reform of the penitentiary, cooperation in the fight against organised crime, terrorism, trafficking, money laundering, corruption and other serious crimes. In 2005, a framework memorandum between Serbia, Croatia and Bosnia and Herzegovina was signed in order to facilitate co-operation in relation to all serious criminal offences that have inter-state aspects. These memoranda have so far facilitated co-operation in some individual war crimes cases.

14. Special mention should be made of the excellent bilateral relations with Croatia, which are seen by many interlocutors as the future motor of an enhanced role for the region in the wider European space.

15. The general context is one in which Serbia, with the *upcoming Chairmanship of the CM*, should take major steps towards greater European integration, negotiations on SAA and NATO's Partnership for Peace. However, this process is held back by unresolved problems and the influence of strong forces in the society which are not ready to face the past. All of the interlocutors from the government and the political parties stressed that they would like to take over the Chair of CM with the monitoring procedure behind them, clearly pointing to the need to raise to the challenge of fulfilling all of the outstanding obligations to CoE before taking up the CM Chair in May 2007.

16. The release of the *European Commission's progress report* on Serbia on 8 November was seen in Serbia as another important confirmation of the progress made by the country in a number

of areas including an increase in the transparency of the government's action and adoption of key laws. The progress report is a powerful reminder of the outstanding commitments to be fulfilled by Serbia, including through direct reference to the CoE's post accession commitments and obligations.

Constitutional provisions of interest

17. Many interlocutors in Belgrade, from the Prime Minister, to representatives of the International Community, to judges' association and other interest groups, were very eager to discuss with the Secretariat delegation specific provisions in the new Constitution from the angle of their compatibility with CoE's standards and norms. The points below, sum up the exchanges held during the visit in this respect.

➤ *Hierarchy of norms: supremacy of international law over national legislation*

18. The question of the supremacy of international law over national legislation was raised in a number of meetings with a view to clarifying the meaning of Article 16 and of Article 194 of the new Constitution, which address this issue. All the interlocutors, including PM Kostunica confirmed that the provisions in question express the principle of supremacy of international law, albeit in an ambiguous way, which he pledged should be made clearer. However, the leader of the Serbian Radical Party, T. Nikolic was adamant in asserting that the constitutional provisions in question confirmed the supremacy of the Constitution over any other law.

➤ *MPs' Mandates*

19. The constitutional provision (Article 102) providing for a deputy to irrevocably put his/her mandate at the disposal of political parties, has been discussed amply, in particular with leaders of the major political parties present in the current Serbian Assembly. Whilst most interlocutors recognised that the provision is not in line with European parliamentary practice, there was a wide recognition of the need to introduce such a clause in order to reinforce the fragile and volatile party-system and to put an end to practices of stripping party mandates, deals over changing of party caucus, sales/purchase of votes, etc. The party leaders who met the Secretariat seemed to believe that the need for such a clause may prove superfluous in a few years time.

➤ *Human rights and minority rights*

20. The Secretariat delegation was given confirmation of the direct applicability of the European Convention on Human Rights and of the fact that the State Union Law on the Protection of Rights and Liberties of National Minorities (developed in close co-operation with the Council of Europe) has now become Serbian law. The provisions on human rights in the Constitution, whilst fairly detailed, are in line with international standards.

➤ *Independence of judiciary*

21. The most widely examined chapter was the one on judiciary. In October 2005 the Venice Commission issued a Partial Opinion on the judiciary, based on the then government draft. Some of the comments in the opinion on the excessive interference by Parliament in the appointment procedures of judges and prosecutors have been taken into account in the new Constitution in particular, through the role assigned to the High Judicial Council. However, many interlocutors, including the highest court representatives raised a number of questions as to, inter alia:

- The Strong influence of Parliament in the High Judicial Council (9 out of eleven members) and lack of clarity of criteria for appointment of HJC members
- Need to clearly define the criteria for dismissing and appointing judges, i.e. of a probable future “lustration”
- Exact meaning of the prohibition for a judge to engage in political actions (Article 152)
- effective independence of the Prosecution

➤ *Local self government*

22. The provisions on the territorial organisation introduce new concepts such as citizens’ right to provincial autonomy. The setting up of autonomous provinces requires a reinforced constitutional revision procedure including a referendum. The real degree of self government afforded by the new Constitution will only be clear once the laws on territorial organisation, on self-government and on local elections are adopted.

➤ *Constitutional revision*

23. The newly introduced method of amending the Constitution by a two-third majority of the total number of deputies has been welcomed by all of the interlocutors as a substantial improvement to the current system. However, the revision continues to require a republic referendum when the amendment concerns the preamble, human and minority rights, the organisation of government and the proclamation of a state of emergency and war.

Kosovo situation

24. The on going status talks, under the umbrella of the United Nations Office of the Special Envoy of the Secretary-General for the future status process for Kosovo (UNOSE), are still dominating Serbia’s political agenda. The formulation on Kosovo contained in the preamble to the Constitution could prove to be an additional obstacle on the road for a possible compromise on the final status. International representatives share the concern of possible difficulties arising in harmonising the constitutional provisions on Kosovo with the requirements of implementing a future international settlement. The Secretariat delegation had the opportunity in Belgrade to inform the authorities about Council of Europe work related to Kosovo.

III. DEMOCRACY AND INSTITUTION-BUILDING

1. From the State Union to continued membership of Serbia

25. On 5 June 2006 the National Assembly of Serbia adopted the decision “On Obligations of public authorities of the Republic of Serbia as State which continues the State and legal identity of the State Union of Serbia and Montenegro”. This decision required the government and other public authorities to adopt within 45 days all necessary measures to ensure the resolution of all open issues. A Law on the Government of the Republic of Serbia has not been adopted due to political considerations related to the adoption of the new constitution and the expected early legislative elections. This has left the government of Serbia with an “Acting Foreign Minister” and “Acting Minister of Defence” from June 2006 and most probably until a new government is formed after the legislative elections of 21 January 2007.

26. Serbia recognised Montenegro on 15 June 2006 and the legal and political processes dealing with the consequences of the fact that the State Union ceased to exist have mostly been successfully completed. Some important items are still outstanding though, including issues related to citizenship, voting rights and status of IDPs.

2. Effective functioning of democratic institutions

27. The National Assembly of the Republic of Serbia continued to be weakened during the reporting period. The MPs of the Democratic Party persisted, since November 2005, in their decision to boycott work in the parliamentary commissions, but continued to perform their duties until the adoption of the Constitution. The MPs of the G17+ resigned along with their government colleagues on 1 October due to the continued disruption of Stabilisation and Association Agreement (SAA) negotiations with the EU. Disagreements continued over the issue of MPs mandates. A ruling by the Constitutional Court clarified that mandates belong to the individual MPs and not the parties – resulting in increased bargaining over votes and pressure on MPs by the party leadership. The level of concern over this question is reflected in the text of the new Constitution. Most interlocutors in Serbia and in the National Assembly in particular did not see the constitutional provision as fundamentally at odds with the role of the MP in a democratic society – but rather as a necessary means to fight corruption and “horse-trading” in the Parliament. The larger concern is about the role of political parties in Serbia today in ensuring the proper functioning of the Parliament.

28. The work of the National Assembly (NA) was dominated during the reporting period by the acts required by the continuation of the legal personality of the State Union and by the adoption of the new Constitution. The Secretariat found/got a more positive assessment by national and international interlocutors of the increased transparency of the work of the NA – notably due to the implementation of the law on free access to information of public importance and the work of the Commissioner for public information. There is still however room for continued improvement and complementary legislation is still needed to ensure adequate protection of personal data and to cover the area of archives. Additionally, the Secretariat was informed by NGO sources that there is concern over the future of these positive developments in light of provisions in the Constitutional law.

29. Important legislation was adopted during the reporting period, including several pieces of legislation concerning the judicial system, fight against corruption, ratification of the European

Charter for regional and minority languages, as well as the modification of the parliamentary Rules of Procedure. The amendments adopted to the broadcasting law during the reporting period have proven controversial as they were adopted under urgent procedure at the initiative of a group of MPs (i.e. without the implication of the Ministry of Culture) and the vote was held in the early hours of the morning with very little participation. Subsequent actions of the Republican Broadcasting Agency have brought further controversy.

30. With a view to strengthening the national Parliaments through fostering their administrative capacity, efficiency and knowledge of usual European parliamentary procedures and practices, a joint programme between the Council of Europe Parliamentary Assembly and the European Agency for Reconstruction (EAR) was launched in spring 2006 for the parliaments of Serbia and Montenegro. In this context the Council of Europe is ready to provide expertise on electoral legislation and on the law on the National Assembly to be adopted according to the new Constitution.

31. The Serbian Government governed throughout the reporting period with a highly unstable majority in the National Assembly which affected its authority and capacity for action. Amongst the weakening factors was the non-adoption by the National Assembly of the law on government - required to confirm the positions of the Minister of Foreign Affairs and the Minister of Defence – as well as the resignation on 1 October 2006 of the G17+ members of the government (Deputy Prime Minister, Ministers of Finance, Agriculture and Health). In spite of this, the government managed to move forward with important legislation and the new Constitution. The former G17+ Ministers will not be replaced before the January elections, but the government appointed co-ordinators to head the relevant ministries.

32. The international observations of the electoral cycles over the past several years have confirmed that Serbia is clearly capable of organising free and fair elections. With the adoption of the new Constitution new electoral legislation will be required and in this regard the Joint Recommendations of the Venice Commission and OSCE/ODIRH of 23 March 2006 (CDL-AD (2006) 013) should be taken as a basis for the new legislation.

33. Public administration/civil service reform has been continuing, in particular with the entry into force in July 2006 of the law on Civil Servants. The Human and Minority Rights Department provided the Secretariat with the Government Resolution (1169) “On measures to enhance participation of ethnic minorities in public administration bodies” dated 11 May 2006. This resolution foresees monitoring, with safeguards for personal data and choice, of the ethnic affiliation of public servants, measures related to the language of advertising of vacancies, of written examinations and the requirements for minority language proficiency for posts localised in areas of minority populations.

34. The Minister of Justice pointed out that the provisions of the new Constitution include the right to use the national minority languages in communications with the public administration. This will require more speakers of these languages within the civil service and in the judiciary to deal with the increased expectations. Positive discrimination measures are foreseen to this effect in the government resolution 1169.

3. Local and regional democracy

35. The new Constitution requires the adoption of new legislation and the amendment of the existing legislation on local self-government. In particular, three key laws have to be reviewed to ensure the implementation of the constitutional provisions. These are the law on local self-government, the law on local elections and the law on territorial organisation. Moreover, as from 1 January 2007, three new functions will be devolved to municipalities: collection and administration of local taxes, capital investments in primary healthcare and organisation of transport for pre-school children. The recently adopted law on local finance establishes a sound basis for financing local authorities, but the devolution of new functions requires the development of new arrangements for financing these responsibilities through general and specific grants.

36. Moreover, as decentralisation progresses, new functions are expected to be devolved to the local authorities in the field of social services (e.g. education, social welfare etc.). The new sectoral laws and the arrangements for financing these functions will have to be developed in accordance with the European Charter of Local Self-Government, whose ratification remains an outstanding accession commitment for Serbia.

37. Due to the adoption of the law proclaiming the Constitution, the Government of Serbia was not represented at the Second South-Eastern Europe Regional Ministerial Conference on Effective Democratic Governance at Regional and Local Level held in Skopje on 8-9 November 2006. Therefore, no report on the implementation of Serbia's Work Programme for Better Local Government for 2004 – 2006 was presented at the Conference. The Minister declared however, his readiness to pursue co-operation within the framework of the Zagreb Process, the Secretariat received on 15 November, the New National Work Programme for 2007-2008. Following the Parliamentary elections and the appointment of a new Government, the Council of Europe stands ready to provide support to Serbia in the preparation of an updated Work Programme and its implementation, in particular, within the framework of the Joint EAR-CoE Initiative on strengthening local self-government in Serbia.

38. Serbia has not yet signed or ratified the European Outline Convention on Transfrontier Co-operation and its additional protocols, as already suggested before.

4. Reconciliation and Facing the Past

39. The President of Serbia, Mr Boris Tadic, has played a major role in reinforcing positive relations with neighbouring countries and sending a consistently clear signal on the need to arrest indictees and to face the crimes committed "in the name of Serbs". He has visited most if not all neighbouring countries in the region, in many cases also concluding agreements for co-operation on this matter.

40. However, the Secretariat unfortunately cannot report significant progress in this area, at least not on the part of the public authorities. The former State Union Minister for Human and Minority Rights, Mr Rasim Ljajic had indeed initiated some awareness-raising efforts on the work of the ICTY prior to the dissolution of the State Union. The Secretariat has also been

informed of the willingness of the Minister of Education to work closely with the Council of Europe in the areas of civic and human rights education as well as introducing multi-perspective approaches to history teaching. Non-governmental organisations continue to be the main voices for reconciliation and facing the past, at some risk to their members. Furthermore, the political environment surrounding the adoption of the new Constitution was not conducive to facing the past initiatives.

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

42. Full co-operation with ICTY remains the most fundamental criteria to evaluate Serbia's progress not only with respect to the CoE's accession requirements but also with respect to other major international organisations.

43. Some progress has been registered by ICTY in the field of access to archives and witness protection, notably thanks to the efforts deployed by Rasim Ljajic, President of the National Council for Cooperation with ICTY and Head of the Coordination Centre for South Serbia. However, the lack of a coherent investigative strategy and of a strong and open public commitment by the Serbian leadership to locating, arresting and surrendering Ratko Mladić to the International Tribunal are to be deplored.⁵

44. Following the suspension of negotiations on a Stabilisation and Association Agreement with the EU on 3 May 2006 which was due to the failure in handing over R. Mladic to the Tribunal, the Serbian authorities had accepted to implement an "*action plan*" designed in co-operation with ICTY's Chief Prosecutor. Short of having produced the expected result, the action plan has been nevertheless widely recognised as a step forward in relation to past practices as it guarantees better co-operation within the civilian and military authorities and enhances the role of the prosecutor general and its co-ordination functions.

45. According to recent polls published in Serbia 38,7 % of the public surveyed are "absolutely against" the transfer of R. Mladic to ICTY (the figure was 42% in August), whilst only 12, 5 % are "fully in favour" and 17,2% are "in favour". In this context, the only genuine efforts at explaining to the public the basis and the implications of Serbia's co-operation with ICTY are carried out rather courageously by a number of human rights NGOs, in collaboration with international organisations, including the CoE.

⁵ See report by ICTY's President, F. Pocar to the UN Security Council

V. RULE OF LAW

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

46. The key commitment undertaken upon accession “to continue the reforms initiated with regard to the independence and impartiality of the judiciary and the relationship between judges, prosecutors and the police”⁶ remains the basis for evaluating progress in the area of the rule of law. As underlined in the last monitoring report, the completion of the constitutional reform was a pre-condition to furthering reform in the judiciary and firmly anchor its independence vis-à-vis the political forces.

47. The *new Constitution* has indeed provided some of the answers to a number of basic choices, notably in the realm of appointment/dismissal of judges, constitutional court competences, role and place of the prosecutors, etc. (see supra). However, questions still remain as to: the effective ways in which the new provisions will guarantee the independence of the judiciary, notably in the event of a “lustration” process and the harmonisation of laws to be adopted following the Constitution with the European Convention on Human Rights. The forthcoming opinion by the Venice Commission will no doubt touch upon these questions as they are of crucial importance for the future development of the Serbian judiciary system and the balance of powers with the other branches of power.

48. Positive steps have been noted with the *adoption of a series of new laws* in this field, including:

- Law on the witness protection in the criminal proceedings
- Law on the amendments of the Law on courts
- Law on the amendments of the Law on judges
- Law on amendments of the Criminal procedure Code
- Decision on the National Judicial Reform Strategy
- Criminal Procedure Code
- Law on training of judges, public prosecutors

49. However, as the Secretariat had the occasion to reiterate with its interlocutors in the Ministry of Justice, that it was regrettable that comments provided by the Council of Europe experts have either, not been properly taken into account (as in the case of the criminal code) or have not been requested at all.

50. Important *draft laws* are being elaborated within the Ministry of Justice – including amendments to the model law on judges, law on court and criminal procedural code - others will have to be modified/adopted following the adoption of the new Constitution. Special attention should be given in order to ensure that these texts are harmonised with CoEs standards and more specifically with the European Convention on Human Rights. The Secretariat reiterated its standing offer to the authorities to pursue its co-operation with the MoJ and to provide CoE expert advice on these texts.

⁶ Opinion 239(2002)

51. The *National Strategy for Judicial Reform* was adopted on 25 May 2006. The aim of the Strategy is to establish the rule of law and legal security, enhance citizens' confidence in the judiciary and to implement reforms at all levels of the judiciary. The strategy is based on four principles: independence, transparency, liability and efficiency, dealing with the role of the High Judicial Council, independent budget, transparent election of judges and public prosecutors, a more active role of prosecutors in collecting evidence, solution for backlogs – proper assignment of cases, a new system of scheduling trials and the creation of new courts of appeal.

52. On 22 June the government set up a Commission for the implementation of the Strategy with members from the Ministry of Justice, the Supreme Court, Parliament, the Republican Public Prosecutor's office, the Association of judges, the Bar association, the Judicial Training Centre, the Faculty of Law, the Ministry of Finance and prosecutors. On 6 July the government adopted an Action Plan for the implementation of the strategy, defining priorities, deadlines and calendar of activities, which was presented to the CoE as a basis for future co-operation.

53. The successful implementation of the Strategy is instrumental in the fulfilment of the commitment on the independence and efficiency of the judiciary. With this in mind, it would be desirable that the Serbian authorities make full use of the CoE expertise in this area in order to ensure full adherence to CoE's standards and practices and benefit from experience developed in comparable situations.

54. The subject of a possible "*lustration*" is being widely debated and was touched upon during the mission, notably by the Minister of Justice, the President of the Supreme Court and the Prime Minister. Whilst none of them deny the need to restore trust in a largely discredited profession including through a re-appointing and grading procedure, appeals have been made for a clear and broad-based consensus on the criteria to be followed in the process which should fully respect the principles of the rule of law.

2. Reform of police

55. A new law on police was adopted on 14 November 2005 and entered into force in July 2006. At the time of its drafting, Council of Europe's experts had made comments that were not reflected in the final version of the law. The last monitoring report had already indicated a number of shortcomings in the law mainly related to the lack of a clear organisational structure, lack of transparent control mechanisms in order to prevent and punish possible abuses and insufficient definition of the powers of police officers in performing their duties. A few months after its entry into force some positive steps have been noted:

- a new police director has been appointed as a non-party candidate with stronger guarantees of independence
- some key bylaws on the responsibility of members of the police and on complaints against police behaviour have been introduced
- police members from minority groups have been increased in particular in the Sandjak area
- efforts to set up a more professional training scheme have begun.

56. During the period covered by this report, two key documents on Serbia have been released, the GRECO (released on 23 June 2006) and CPT (released on 18 May 2006) reports. Both contain points concerning the shortcomings within the police and outline/give recommendations in particular: for more professional training, the setting up of diligent investigations on allegations of ill-treatment by police, improve the system of safeguards for potential victims notably in police detention facilities.

57. Given the close relationship that has developed with the Ministry of Interior, notably through the CARPO project, and following the recommendation already made in the last monitoring report (paragraph 49), it would be very useful to do an overall assessment of the implementation of the law on the police one year after its entry into force with regard to its full compatibility with the ECHR, its case-law as well as other relevant European standards on good policing. Such an assessment, should be jointly carried out and could also cover the criminal procedural code and the package of laws on the functioning of judges and prosecutors to be amended following the adoption of the new Constitution (see also paragraphs 53. and 62. on judiciary and human rights)

3. Prosecution of war crimes

58. In stark contrast with the lack of progress on co-operation with ICTY, the Secretariat noted the confirmation of the positive trends on domestic prosecution of war crimes already mentioned in the last monitoring report. Furthermore, important developments with respect to regional co-operation in area of war crimes prosecution are to be mentioned.

59. The state prosecutors of Serbia and Croatia (Chief State Attorney of Croatia and the War Crimes Prosecutor of Serbia) reached a landmark agreement on September 17 on the prosecution of war crimes. The Croat-Serb agreement will allow indictees to be tried in the country where they currently have citizenship or residence status – removing the final barrier to processing war crimes in the former Yugoslav countries. (To date, individuals residing in Serbia or Croatia and wanted for war crimes in any of the three states concerned have often been able to evade such charges, as Serbian and Croatian legislation prohibits the extradition of their own citizens to other countries). The Agreement will function within the existing legal frameworks of both States. These currently ban the extradition of nationals and the formal transfer of war crime proceedings between the courts of these States. Given these legal restrictions on judicial co-operation, the two parties stated their intention to prosecute suspected war crime perpetrators residing in their respective States through the exchange of information and any evidence that they may have in their possession.

4. Fight against corruption, organised crime and terrorism

60. The UN Convention against corruption has been ratified and the National strategy in the fight against corruption has been adopted. GRECO's Evaluation report on Serbia has been adopted and outlines to the progress achieved in fighting corruption, however the recommendations contained in the report need to be given careful attention and follow up,

including by the Commission for the implementation of the corruption strategy in charge of drafting the action plan and monitoring procedure.

61. A Law on the Anti-corruption Agency has been sent to Parliament recently. Furthermore, a Working group for drafting the Law on Ratification of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing Terrorism, and drafting the Law on the prevention of the terrorist financing, has also been set up as well as a Working group for drafting the National Anti-Money Laundering and Counter Terrorist Financing Strategy.

VI. HUMAN RIGHTS

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

62. The Republic of Serbia has continued membership as party to these and all other Council of Europe conventions previously ratified by the State Union. The first Chamber judgement against Serbia was delivered in September 2006 in relation to the presumption of innocence. The Government Agent is now located in the Department for Human and Minority Rights. Although this in itself is not a problem, all the necessary efforts should be made to ensure that the Agent may liaise with all relevant implementing partners, such as the Ministry of Justice, Ministry of Interior, Prime Minister or National Assembly, and co-ordinate the efforts required to execute judgements of the Court, including where pecuniary damages have been awarded. Whereas the ECHR has been directly applied in domestic law and shall continue to be under the new Constitution, there continues to be a lack of sufficient training and education of legal professionals and judges in this regard. The Council of Europe will continue to support training of judges and prosecutors in Serbia as an important contribution to domestic application of the ECHR thereby reducing the potential number of cases before the court in Strasbourg. Additionally more attention should be paid to ensuring the compatibility of new legislation with the ECHR. The Council of Europe reiterates its willingness to provide support and expertise in this area, notably in the near future as concerns *inter alia* the law on alternative service, law on conscientious objection, amendments to the law on religious organisations and amendments to the Criminal Procedural Code.

63. The fact that the State Union has ceased to exist has also meant the end of the State Union level Ministry for Human and Minority Rights. This has been replaced in Serbia by the Department for Human and Minority Rights.

64. Serbia has still not appointed a human rights Ombudsperson, or Protector of Citizens. While the Council of Europe notes that the establishment of this office in the Constitution does provide a stronger framework for the functioning of this office, further delay in the nomination of a suitable candidate is not conducive to a vigorous defence of human and civic rights. Consideration should also be given to ensuring co-ordination with the decentralised Ombudspersons, notably in Voivodina and at the municipal levels.

65. The Committee for the Prevention of Torture published its first report in May 2006 concerning a visit to Serbia and Montenegro in 2004. The Council of Europe welcomes the decision of the authorities to make this report and the response of the Government public and also encourages them to make public their follow-up response. The recommendations focussed in particular on measures to combat abuse during police detention and to safeguard fundamental rights of persons held in police detention, such as access to a lawyer, notification of a third party and access to a doctor. Since the State Union ceased to exist, there is currently no member of the Committee for the Prevention of Torture in respect of Serbia. A list of candidates should be put forward as soon as possible.

66. Although the State Union Charter on Human and Minority Rights is no longer valid, the new Constitution does contain detailed provisions for human and minority rights. Major concerns about the level of human rights protections in the new Constitution as compared to the former so-called “Small Charter” have been expressed by numerous NGOs, amongst which the introduction of gender limitation on the right to marriage, ambiguity with regard to the eventual termination of pregnancy, protection of displaced persons, and to the primacy and level of human rights protections guaranteed by international agreements or international law. These aspects shall be considered, also in light of the law on the implementation of the Constitution, by the Venice Commission when it prepares its Opinion on the Serbian Constitution.

2. National Minorities

67. The former Federal Framework Law on the Protection of National Minorities has become the law of the Republic of Serbia. The Secretariat was informed that Constitutional Court jurisprudence has already established this fact in application. A technical intervention will soon be made in the NA to correlate the text to its Serbian context (as opposed to a federal law).

68. The second monitoring cycle of the Framework Convention for the Protection of National Minorities will commence with the submission of the second state report on 1 September 2007. As this will be the first time that the Serbian authorities will be directly responsible for producing the report, work should begin as soon as possible. With regard to the European Charter for Regional or Minority Languages, the instrument of ratification was deposited on 15 February 2006 and entered into force in Serbia on 1 June 2006. In view of the effective implementation of the treaty and in particular the preparation of the first periodical report, due in June 2007, the Council of Europe is providing support through information seminars and technical working meetings. As to the question of why the Macedonian and Vlach languages were not included in the list of languages benefiting from the provisions of the Charter, the response was that, following the experience gained with implementing the Charter for the original list of languages, it is the intention of the authorities to broaden the list to include these languages.

69. The Department for Human and Minority rights provides expertise and technical support to the Council for National Minorities. Laws on the functioning and on the elections of the national minorities’ councils need to be drafted in order to complete the legislative framework for national minorities. The impact of the provisions in the new Constitution and the expected legislation on the national minorities’ councils will of course be seen only in relation to their implementation and the involvement of the national minority representatives in the processes.

The Secretariat took note of the initiative of the Republic Electoral Committee to facilitate the submission of lists of candidates for political parties of national minorities.

70. The human rights situation of the Roma population in Serbia is still one of the most pressing in the region, particularly concerning Roma IDPs, refugees and returnees. Roma who were IDPs in Montenegro will now be qualified as refugees from Serbia, which will add a new burden to Serbia's stretched capacity to deal with displaced people, notably with those who cannot return to Kosovo. Implementation of action plans in the fields of education, health, employment and housing has begun in the framework of the Roma Decade. More funding will be needed, however, to ensure their effective implementation, while other action plans, in the fields of media, romani women, readmission and IDPs, culture, social welfare and anti-discrimination remain to be adopted.

71. Although the Secretariat did not visit regions of significant national minority populations, it has taken note of some improvements in this regard. The Serbian authorities at the highest level have been very active during the reporting period improving relations with Hungary, Romania and Croatia and building solid bases for co-operation over mutual interests for national minorities and their relations with kin-states. Furthermore, there have been little or no incidents of inter-ethnic violence or serious intolerance reported from Voivodina, Sandzak and South Serbia, even during the potentially divisive campaign for the Constitution referendum.

2. Freedom of the media

72. Whereas the formal commitments regarding the media have been fulfilled by the enactment of broadcasting legislation and the legislation on public information, the Secretariat remains concerned by practices which tend to contradict the spirit of the commitments: notably as concerns media independence and pluralism. The amendments to the broadcasting law which were adopted in July 2006 through the questionable use of an urgent procedure were seriously criticized by professional associations and the international community, both for the substance of the amendments and for the procedure. Following the second passage of the amendments the President was obliged to sign it into law on 29 September.

73. The allocation of the broadcasting licenses by the Republic Broadcasting Authority was also highly controversial. The Ministry of Culture has forwarded its complaints about the process to the government and parliament and a decision of the Supreme Court is expected soon with regard to the allocations of the national frequencies. In spite of a very strong crackdown on some illegal users of frequencies, notably the BK television, the Broadcasting Authority subsequently announced it would not shut down pirate operators until after the upcoming parliamentary elections. Considering that at least one (independent) media outlet, out of the five outlets which did receive a national frequency allocation, has complained of its inability to make use of its frequency due to pirate operators, the RBA announcement would seem to be a selective use of its intervention authority. In light of the controversies surrounding the legislation and the decisions of the RBA, the Secretariat recommends that the expertise of the international community and in particular of the Council of Europe be made use of in the eventual re-drafting of or amending of the law on Broadcasting. Additionally, further legislation is still required to

complete the legal framework for freedom of the media and of information, notably legislation on prevention of media concentration and on the transparency of media ownership.

74. The Secretariat was informed of the progress made by the Ministry of Culture with regard to the transformation of the Public Company Radio Television of Serbia into a public broadcasting service and of its work for the eventual accession of Serbia to the European Convention on Transfrontier Television. Furthermore the Ministry of Culture has made significant efforts with regard to the availability and accessibility of print and broadcast media in the languages of the national minorities and for the representation of national minorities in the governing boards of the public broadcasting services.

75. The Secretariat also noted that serious concerns remain about the freedom and independence of the media, both as regards the consequences of the privatizations and the political climate in which independent journalist and media outlets work. In much the same terms as voiced by NGO representatives, representatives of the media professions evoked an environment at times hostile to independent press and to the expression of unpopular information or opinions. Legislation to protect personal data, to encourage accountability by the media and to ensure a fair market for media competition, as well as enhanced professionalisation of the role of government or public authorities' spokespersons would all contribute to eliminating the atmosphere of fear and the impunity with regard to attacks on the media or of the media. These issues should be addressed as a matter of urgency in particular in light of the upcoming elections.

4. Freedom of Association and civil society, NGOs:

76. Serbia possesses a vibrant and active civil society. In fact, democratic Serbia owes a lot to its civil society and non-governmental organizations, this fact is in part demonstrated by the decision of Time Magazine to include Natasha Kandic, Executive Director of the Humanitarian Law Centre, in its list of "60 heroes for 60 years".

77. The enactment of legislation on citizens' associations and non-governmental organizations, consistent with European standards, has been an outstanding commitment to the Council of Europe since April 2004. The Council of Europe has been requested by the Speaker of Parliament to provide an expertise on the draft law on Associations, which was sent to the Serbian authorities during the first half of October 2006. While this draft law is very largely in line with European standards, incorporating the recommendations of the CoE expertise into the draft should ensure that the position of associations in Serbia is fully compatible with European standards. It will remain highly important that the appropriate arrangements for the implementation of the law are made and monitored.

78. The Secretariat could not help but be aware during the monitoring visit, which took place during the final days of the constitutional referendum campaign, that NGOs voicing unpopular opinions were harshly criticized by the press and politicians. Many NGOs are engaging in work which may be unpopular with majority opinions, notably in relation to protection of social, religious or sexual minorities, gender equality or to promoting inter-ethnic dialogue and co-operation with ICTY. Accusations, only thinly veiled and widely relayed in the media, implying

that these NGOs work with the “west” against Serb interests can be and have been used as justifications by some for violence or intimidation towards NGOs and their members.

5. Freedom of Religion:

79. The Law on churches and religious communities was adopted in spring 2006. The Council of Europe and the OSCE expressed at that time concern over certain provisions which appear to be inconsistent with the ECHR. Although acknowledging the improvement in the text from previous drafts, specific shortcomings had been pointed out in the Opinion of the Venice Commission (Opinion 379/2006). In particular there is a need for more precise criteria to define the discretionary powers provided by the law to state and religious authorities; for clarification of the effects of “non-registration” on some basic guarantees of freedom of religion, and the need for a more precise definition of the legal status of canon laws and ecclesiastical decisions.

80. In addition, concerns remain about incidents of violence towards buildings and members of minority religions and measures taken by the Ministry of Religion which make it difficult for smaller or non-traditional religious communities to become registered. The Council of Europe stands ready to assist the authorities with revisions to this legislation in order to ensure its full compatibility with European standards and the ECHR.

6. Social Rights:

81. The Republic of Serbia has signed but still not ratified the European Social Charter (Revised).

7. Conscientious objection and alternative service:

82. The Secretariat took note of the provision of the new Constitution which recognizes the right to conscientious objection and to alternative service. Nevertheless legislation on conscientious objection and on alternative service remains necessary and should be prepared without further delay. The draft law on alternative service prepared by the State Union Ministry of Defense represents a good basis for this work. The Council of Europe remains ready to provide expertise and support for the new legislation.

8. Civilian control of the armed forces:

83. The Secretariat similarly took note of the relevant provision of the new Constitution which provides for civilian and democratic control of the Army of Serbia.

VII. MAIN CONCLUSIONS AND RECOMMENDATIONS

84. Bearing in mind the clear wish of the Serbian authorities to put an end to the monitoring procedure, the period prior to their CM Chairmanship should be used to secure full implementation of outstanding commitments:

- full co-operation with ICTY, notably handing over of most wanted fugitives;
- opt for a clear and unequivocal position by the leadership in favour of full co-operation with ICTY;
- take initiatives to raise public awareness on facing the past;
- ratification of the European Charter of Local Self-Government;
- ratification, as soon as possible, of the European Social Charter (Revised).

In addition:

- Take into account the recommendations contained in the forthcoming CoE-Venice Commission opinion on the Constitution and relevant/related laws
- Make an overall assessment with Council of Europe's expertise on the *criminal justice system* (including on : criminal procedural code, role of prosecution, police) to ensure compatibility with the ECHR and other relevant European standards
- In order to guarantee *independence of judiciary* ensure that the new laws on High Judicial Council and model law on judges are in line with European standards.

Appendix I

COUNCIL OF EUROPE CO-OPERATION AND ASSISTANCE

In 2006, Serbia was one of the most important beneficiaries of EC/CoE JPs funding in the Western Balkans. 4 specific country EC/CoE JPs are underway in Serbia.

After the publication of the last Secretariat report, 2 new specific country EC/CoE joint projects have been signed:

- Support to promote freedom of expression, information and freedom of media in Republic of Serbia in accordance with CoE/EU standards 10/04/06 - 10/04/08 (total budget: € 286,701)
- Strengthening local self-government in the Republic of Serbia 27/07/06 - 26/07/08 (total budget: € 1,638,577)

In addition, Serbia continues to be involved in 4 regional JPs, which started in 2004 and 2005.

The 24 months JP “Support to parliamentary institutions in Republic of Serbia and Republic of Montenegro - Joint Initiative by PACE and EAR”, signed in 18/11/05 (€ 1,588,889), have been adapted (separation of activities and budget) after the independence of Montenegro.

A new project has started this year in Serbia in cooperation with the Canadian International Development Agency (CIDA) - “Assistance for the reform of the prison system in the Republic of Serbia”. This project is running from 15/04/06 - 31/03/07 with a total budget of € 724,484.

Appendix II

Council of Europe Monitoring Mission visit to Serbia 23-27 October 2006

Members of the delegation:

Mr Jean-Louis LAURENS, Director General of Political Affairs

Ms Claudia LUCIANI, Head of Division I, DGAP

Ms Mary Ann HENNESSEY, Political Adviser, Division I

Mr Denis HUBER, Special Representative of the Secretary General in Serbia

Ms Nadia CUK, Deputy Head of the Council of Europe Office in Serbia

Monday, 23 October

- | | |
|-------------|---|
| 14:30 | Arrival to Belgrade |
| 16:15-17:15 | Meeting with the staff members of the CoE Office in Belgrade |
| 20:00-21:30 | Dinner with Ms. Sonia Licht, Belgrade Fund for Political Excellence |

Tuesday, 24 October

- | | |
|-------------|---|
| 10:00-10:45 | Meeting with Mr. Zoran Stojkovic, Minister of Justice |
| 11:00-11:45 | Meeting with Mr. Dragan Kojadinovic, Minister of Culture |
| 12:00-12:30 | Meeting with Mr. Nenad Cekic, President of the Republic Broadcasting Agency Council |
| 12:45-13:15 | Meeting with Mr. Zoran Loncar, Minister of Public Administration and Local Self-Government |
| 13:30-14:50 | Working lunch hosted by Mr. Milos Aligrudic, President of the National Delegation of the Parliament of Serbia to PACE, and Mr. Miroslav Albijanic from G17+ |
| 15:00-16:00 | Meeting with Mr. Predrag Markovic, Speaker of the Parliament |
| 16:00-16:30 | Meeting with Mr. Milan Markovic, Vice Speaker of the Parliament from DS |
| 16:30-17:00 | Meeting with Mr. Tomislav Nikolic, Head of SRS Caucus |

- 17:00-17:30 Meeting with Mr. Branko Brankovic, Head of SPS Committee for international affairs
- 20:00 – 21:30 Dinner with NGOs:
Ms. Sonja Biserko, Helsinki Committee for Human Rights in Serbia
Ms. Natasa Kandic, Humanitarian Law Centre
Ms. Vesna Petrovic, Belgrade Centre for Human Rights
Ms. Dubravka Velat, Civic Initiatives
Ms. Jadranka Jelincic, Open Society Fund
Mr. Ivan Stojanovic, Youth Initiative for Human Rights

Wednesday, 25 October 2006

- 10:00-10:50 Meeting with Ms. Sanda Raskovic-Ivic, Head of the Coordination Body for Kosovo and Metohija
- 11:00-11:50 Meeting with Mr. Rasim Ljajic, President of the National Council for Cooperation with ICTY and Head of the Coordination Centre for South Serbia
- 12:00-12:45 Meeting with Mr. Petar Ladjevic, Head of Agency for Human and Minority Rights
- 13:00-13:45 Meeting with Mr. Vojislav Kostunica, Prime Minister
- 14:00-14:45 Meeting with Mr. Dusan Spasojevic, Advisor to the President of Serbia, Mr. Boris Tadic
- 16:30-17:15 Meeting with Mr. Milorad Veljovic, Director of Police and Mr. Drazen Maravic, Head of the office for international cooperation
- 17:30-18:15 Meeting with Ms. Vida Petrovic-Skero, President of the Supreme Court
- 20:00-21:30 Dinner hosted by Mr. Dejan Sahovic, Assistant Minister of Foreign Affairs, Directorate General of Multilateral Affairs

Thursday, 26 October 2006

- 09:00 – 09:50 Meeting with H.E.Ms. Anna-Maija Korpi, Ambassador of Finland and Mr. David Cullen, First Secretary, Delegation of the European Commission

11:15-11:45 Meeting with Mr. Deyan Mihov, Head of Office and Ms. Alexandra Milenov, Outreach Coordinator, ICTY Liaison Office in Belgrade

12:00-12:45 Meeting with Mr. Vuk Draskovic, Minister of Foreign Affairs

13:15-14:15 Meeting with H.E.Mr. Hans Ola Urstad, OSCE Ambassador to Serbia

14:30-15:30 Lunch break

16:00-16:45 Interview with Ms. Dragana Aleksic, Diplomatic Editor, News Agency Tanjug

17:00-18:00 Meeting with Media Associations ANEM and NUNS
Mr. Sasa Mirkovic, ANEM
Mr. Dragan Janjic and Veljko Samolov, NUNS

18:00-19:00 Meeting with Ms. Dragana Boljevic and Mr. Omer Hadziomerovic,
Judge Association of Serbia

Friday, 27 October 2006

08:30 Meeting with Mr. Rasim Ljajic, President of the National Council for Cooperation with ICTY and Head of the Coordination Centre for South Serbia

09:15 Briefing with the H.E.Mr. Alexander Alexeev, Russian Ambassador to Serbia

10:00 Debriefing for the Diplomatic Missions hosted by the Embassy of the Russian Federation in Belgrade

14:00 Departure to Belgrade Airport "Nikola Tesla"

15:15 Departure from Belgrade,