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Montenegro: Compliance with obligations and commitments

Third Secretariat Monitoring Report

(from May 2008 through August 2009)

Document presented by the Secretary General

Executive Summary

Montenegro continues to progressively implement its accession commitments and obligations. There have been significant positive developments in the reform of the justice system and the fight against corruption over the past year. These efforts should be continued. The Venice Commission's concerns about potential political influence on the appointment of judges, the Supreme State Prosecutor, the State Prosecutors and the Ombudsman are still valid and should be addressed at the earliest opportunity.

The Parliament can be a more effective and influential institution if it makes full use of the working methods available to it and the talents of all its members. A more functional relationship between the parliamentary majority and the opposition, as well as openness to the participation of non-partisan experts, for example from specialised NGOs, would contribute to a stronger parliamentary input to law and policy in Montenegro.

With a successful experience of transition to independence and of European integration behind it, with a full mandate and a solid majority in the Parliament ahead of it, the new Government has an excellent opportunity to focus on delivering concrete and visible results for the people of Montenegro. This will require additional emphasis and investment in the implementation of legislation and policies, increased participation of NGOs and of civil society in public affairs, and reinforced transparency and accountability of the Government's work.

CONTENTS

	Pages
I. Introduction.....	3
II. General Political Context.....	4
III. Democratic Institutions	7
IV. Rule of Law.....	11
V. Human Rights and Minorities	16
VI. Conclusions and Recommendations.....	20
VII. Decisions of the Committee of Ministers	22
Appendix: Programme of the Secretariat monitoring mission.....	24

I. Introduction

1. Montenegro became a member State of the Council of Europe (CoE) on 11 May 2007. The Committee of Ministers (CM) continues to monitor Montenegro's progress in relation to its accession commitments and obligations¹ on the basis of CM Resolution (2007) 7 and the exchange of correspondence between the Chair of the Committee of Ministers and the President, Prime Minister and Speaker of Parliament of Montenegro². The first monitoring report covered events during the brief period between Montenegro's accession and July 2007 and the second report covered the period from July 2007 to May 2008.
2. This third report is based, *inter alia*, on a Secretariat visit to Montenegro which took place from 11 to 15 May 2009 and covers the period from May 2008 to August 2009. The monitoring mission took place during the second anniversary of Montenegro's accession to the Council of Europe. The Secretariat would like to emphasise the excellent co-operation with the Montenegrin authorities, in particular from the Permanent Representation of Montenegro to the Council of Europe. The Council of Europe Office in Montenegro and the Special Representative of the Secretary General took an active part in the mission.
3. The current state of implementation of the accession commitments is outlined in the Addendum to this document, SG/Inf (2009) 13 Addendum. This report will not attempt to describe the developments in relation to all accession commitments and obligations during the reporting period, or to describe all the developments during this time. More substantial information regarding specific areas can be found in the relevant recent reports from the Council of Europe, such as the report of the Human Rights Commissioner's visit which was published in October 2008; the Joint First and Second Evaluation Rounds Compliance Report adopted by the Group of States against Corruption (GRECO) in December 2008; the Third Round Detailed Assessment Report on Montenegro: Anti-Money Laundering and Combating the Financing of Terrorism, adopted by Moneyval in March, the second CEPEJ overview of efficiency and quality of justice in European judicial systems, published in October 2008; the opinions of the Venice Commission and reports of other bodies of the Council of Europe. The Secretariat has also taken note of the European Commission's (EC) progress report for 2008, which was issued on 5 November 2008, as well as reports of other international organisations, regional and Montenegrin non-governmental organisations.
4. 11 May 2009 was the deadline specified in PACE Opinion 261 for the ratification of a number of CoE Conventions, not all of which have yet taken place. The ratifications for which the deadlines given by PACE have passed are listed in Part VI of this report, Conclusions and Recommendations. The ratifications which did take place during the reference period for this report are:
 - General Agreement on Privileges and Immunities of the Council of Europe and its Protocol Nos. 1 and 6;
 - Convention on Action against Trafficking in Human Beings;
 - Convention on the Prevention of Terrorism;
 - Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism;
 - Charter on Local Self-Government;

¹ The list of commitments and obligations is contained in the Parliamentary Assembly (PACE) document Opinion 261.

² Letter by the Chairman of the Committee of Ministers dated 3 May 2007 and reply given by the President, Prime Minister and Speaker of Parliament dated 4 May 2007.

- Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters.

II. Political context

5. The political context in Montenegro is one of continuity and transformation, at the same time. The same political party has been in power since 1991. The ruling parties have adapted themselves to the changing circumstances of their country, rather than the more usual case of changing circumstances leading to a change of ruling party. The adjustments to post-socialist economic transition, the break-up of Yugoslavia, independence and the demands of European Union (EU) integration have affected every sector of Montenegrin society. Montenegro is facing its challenges, such as the changing relations between ethnic communities, the increased scrutiny of public affairs by civil society, the strengthening independence of the judiciary, not to mention the economic crisis, with an astounding level of serenity, as well as ambition, for such a young country.

Recognition of Kosovo³

6. On 9 October 2008, Montenegro recognised Kosovo as an independent State. The timing of this move, one day after the United Nations General Assembly decided to forward the question for opinion to the International Court of Justice, added to the bitterness of Serbia's diplomatic response. Montenegro's Ambassador to Serbia was declared *persona non grata* and asked to leave, although Serbia did not withdraw its Ambassador from Montenegro. A new Ambassador has not yet been appointed, but this is expected soon. Following the announcement of recognition of Kosovo, Serb opposition party leaders called for a peaceful demonstration in Podgorica. Fanned by provocative rhetoric, however, the demonstration turned into clashes with law enforcement and more than 30 people were hurt, most of them police officers. Police detained 28 people, some of whom have alleged ill-treatment or abuse by the police. Internal ethnic and political tensions on this subject have since mostly died down.

Parliamentary elections, 29 March 2009

7. Parliamentary elections were required by the new Constitution before the end of 2009. This provision was the result of an agreement between the ruling coalition and some opposition parties, in order to gain their approval for the text of the Constitution. In the period prior to the announcement of the date for the elections, the opposition parties attempted to find a common platform, so as to enter the elections in one coalition in the hopes of finally wresting the parliamentary majority away from the ruling coalition of the Democratic Party of Socialists (DPS) and the Social Democratic Party (SDP). This would have required a joining of forces between the Movement for Changes (PzP), a party primarily focused on fighting corruption and improving the economic situation in the country, the Socialist People's Party (SNP) and the several Serb parties whose platforms were evolving in the post-independence period. The negotiations failed and the opposition found itself more fragmented than before in the run-up to the parliamentary elections called for 29 March 2009.
8. On 27 January 2009, President Vujanovic called for early parliamentary elections, following the decision of the Montenegrin Parliament to shorten its mandate. In the light of the

³ All reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

looming effects of the economic crisis and the high level of popularity of the ruling coalition, calling the elections for 29 March was a well-calculated strategic move on the part of the Government. However, calling the elections so early was controversial from the start, not least because the electoral legislation has not yet been put into conformity with the Constitution. Prior to these elections, clear rules for the financing of election campaigns, for broadcast media fairness, for processing electoral complaints and for the procedures for modifications to the voters' register should have been adopted, but this was not the case. The Law on the Implementation of the Constitution was amended on 26 January 2009 so as to postpone the deadline fixed for the revision of the electoral legislation to October 2009. Therefore, the first parliamentary election held under the new Constitution of Montenegro was held under the old election rules.

9. In fact, both the ODIHR and PACE statements after the elections pointed out that most of the recommendations made by previous election observation missions had not been addressed. They concluded that the postponement of the electoral reforms, the continued blurring of state and party structures, a relatively uncritical media, a lack of adequate redress for complaints of electoral violations and opacity of the financing of parties' electoral campaigns all contributed to a real challenge to public confidence in the elected institutions. At the same time, the observation missions found a high level of confidence in the electoral administration itself. The State Election Commission, the Municipal Election Commissions and the Polling Boards have been praised for the organisation and transparency of the candidate registration, voting and vote counting processes. The international observers concluded that the parliamentary elections "met almost all OSCE and Council of Europe commitments, but the process again underscored the need for further democratic development⁴".
10. The results of the elections consolidated the previous ruling majority which, as the Coalition for a European Montenegro (Democratic Party of Socialists, Social Democratic Party, Bosniak Party and Croatian Civic Initiative), won nearly 52% of the votes and 48 out of the 81 seats in Parliament. The other 33 seats were split between the Socialist People's Party (SNP) 16 seats, New Serbian Democracy (NOVA) 8 seats, Movement for Changes (PzP) 5 seats and 4 small Albanian parties (1 seat each). Although the weight of the opposition is somewhat lessened in the new Parliament, the opposition finds itself paradoxically also consolidated. Since a smaller number of parties have passed the electoral threshold, they find themselves with a more solid mandate, each as an individual party with its own character and platform, as well as collectively as a potentially more cohesive opposition.

Post-electoral political context

11. The 24th Parliament of the Republic of Montenegro was constituted on 23 April 2009 and promptly recessed. On 6 May 2009, the Speaker of the Parliament, Mr Ranko Krivokapic (SDP), was elected, while his two Deputy Speakers from the ruling parties were only elected on 9 June. The opposition parties have refused to nominate a candidate for the third Deputy Speaker until there is an agreement on the distribution of committee chairmanships. The new Government of Prime Minister Milo Djukanovic was elected on 10 June. In his presentation of the Government's programme, the Prime Minister emphasised that the strategic goals and ambitions of the new Government remain the same as those of the previous Government: full integration in the EU and NATO, economic development and the implementation of European standards. In keeping with the theme of continuity, there has been little change in the composition of the Government.

⁴ International Election Observation Mission, preliminary conclusions, 30 March 2009.

European integration process

12. Montenegro submitted its application for EU membership on 15 December 2008. On 23 April 2009, the Council decided to invite the Commission to prepare an Opinion on Montenegro's application. The Commission's questionnaire was delivered to the Montenegrin authorities at the end of July 2009 and, based on previous experience, the Commission expects to deliver its Opinion in the course of 2010.
13. Montenegro is on the path to achieving a visa liberalisation agreement with the European Union soon. The Council of the European Union, in its General Affairs and External Relations meeting on 15 and 16 June, invited the European Commission to prepare a text which would put in place a visa-free regime, for those countries having met the benchmarks, by the end of 2009. Montenegro has received an overall positive assessment from the European Commission and has very nearly met all of the benchmarks, putting it in a good position to benefit from the visa liberalisation scheme, perhaps as early as January 2010.
14. Montenegro has been intensifying its co-operation with NATO, through the Partnership for Peace and the Individual Partnership Programme. Currently, there is still no consensus in Montenegrin society about membership in NATO. With the tenth anniversary this year of the 1999 NATO bombings of the former Yugoslavia, which included some severe strikes in Montenegro, it may not be overly surprising that a large percentage of the population is against membership of NATO. Nevertheless, Prime Minister Djukanovic has stated that he expects, through dialogue and respectful argument, to secure a majority support in the near future, as the European and Euro-Atlantic integration are "processes based on the same underlying values⁵".

Regional co-operation

15. Montenegro participates actively in all the relevant regional co-operation fora, notably the South-East European Co-operation Process (SEECP), which Montenegro will chair from June 2010, the Regional Co-operation Council (RCC) and the Central European Free Trade Agreement (CEFTA), which Montenegro is chairing in 2009. Montenegro is hosting the Regional School of Public Administration for the Western Balkans, in partnership with the European Commission.
16. Overall, Montenegro maintains very good relations with its neighbours and continues to play a moderating role in the region. Relations with Serbia have had their ups and downs over the past three years, and deteriorated further following Montenegro's recognition of Kosovo. The visit to Serbia by President Vujanovic in May 2009 served to highlight the large spectrum of areas, from education to social security to business, where relations between the two countries, and between the citizens of the two countries, are extremely vibrant. Bilateral discussions on the question of dual citizenship, ongoing since 2007, have not yet been successful. Montenegro continues to negotiate within a constructive diplomatic framework, with Croatia and with Bosnia and Herzegovina, on border issues and dual citizenship. Relations with Kosovo are also good; the main issues for discussion are the status of the Montenegrin minority in Kosovo and the conditions for return to Kosovo of displaced persons now residing in Montenegro.

⁵ keynote speech of Prime Minister designate Milo Djukanovic in the Montenegrin Parliament on 9 June 2009, Montenegrin government website : <http://www.vlada.cg.yu/eng/vijesti.php?akcija=vijesti&id=173998>

III. Democratic institutions

Parliament

17. The new Parliament is made up of a smaller number of political parties than the previous one. Eight Members of Parliament (MPs) have been elected from national minority parties, and at least 9 additional MPs of national minority origin have been elected from other parties, mainly the DPS. This is without counting the 8 MPs from the New Serb Democracy (NOVA). It is expected that in autumn 2009 the technical means for simultaneous interpretation will be available in Parliament, which will notably allow for the Albanian language to be used in plenary sessions and committee meetings. The new Parliament, in spite of a new law and an increasing awareness of gender equality, has not seen any increase in the very low percentage of women MPs. There is no enforceable provision which could ensure a more adequate and equitable representation of women on the candidate lists or in Parliament.
18. During the reference period, the Parliament has focused on legislation related to EU integration and the visa liberalisation process. Many laws have been adopted, often in rapid succession, however with little debate or public discussion, leading some civil society and opposition party representatives to liken the Parliament's work to a "rubber stamping" of Government decisions. Several important aspects of the legislative work required by the Law on the Implementation of the Constitution have been postponed. The new Parliament was officially constituted on 23 April 2009, and until July, the Parliament elected two Deputy Speakers, established its committees and elected the new Government of Montenegro. Two committees were left without Chairs and the third Deputy Speaker was not elected, however, due to the disagreement between the majority and the opposition parties over the role that the opposition shall play in Parliament. The third session of the Parliament, which is the first session to deal with draft laws, began on 7 July 2009.
19. A November 2008 public opinion poll, by the National Democratic Institute (NDI), found that, amongst the public institutions, the public had the lowest level of trust and the highest level of distrust in the Parliament. A similar poll, published by the Centre for Democracy and Human Rights (CEDEM) before the parliamentary elections in March 2009, showed that there was a slight upward trend in the level of trust. The intention to launch, in autumn 2009, the TV broadcasting of the sessions and committee meetings could help improve transparency and foster greater public interest in the Parliament's work. The EC/CoE Joint Programme of support for the Montenegrin Parliament, started in 2005, will finish in October 2009. In its last few months, the project will focus on some specific policy areas and study visits to other Parliaments.
20. At the start of its new mandate, there are now three major challenges for the Parliament in order to capitalise on the potential for increased trust in the institution. First, Parliament should increase its efficiency and its substantial input into the law and policy-making exercise. The administration of the Parliament's work could be improved through consensus on the Rules of Procedure, timely publication of the agenda and working documents for the sessions. The Secretary General of the Parliament resigned in June 2009. The new Secretary General was appointed in late July 2009 and should receive a clear mandate to oversee a renewed professionalism, openness and inclusiveness in the organisation of Parliament's work. The Secretariat was informed that an NGO has been producing the Parliament's annual report of its activities, belying a serious lack of administrative support or personnel. The work of the committees is undervalued and their capacity for fostering political

consensus, harnessing expertise and involving a broader spectrum of civil society into discussion of draft laws is under-used.

21. Secondly, an improved and more functional relationship between the parliamentary majority and the minority/opposition should be negotiated. In spite of the comfortable majority of the ruling coalition, some important legislation, notably the revision of the electoral laws, will require a two-thirds majority to be adopted. Giving adequate time, space and visibility to the opposition to formulate its positions and participate in debates, both in committees and in plenary, is not just fair play, it is a sign of respect for those voters who elected those MPs to serve. The role of the opposition is traditionally also very important in ensuring accountability of the ruling parties, notably in relation to Parliament's oversight functions. An active and constructive opposition will contribute to enhancing the image of the Parliament as one of the essential branches of Government.
22. Thirdly, Parliament should greatly enhance its important function of governmental oversight. This requires thorough debate and consideration of draft laws and of budgets, genuine scrutiny of secret services, of Government performance and of potential conflicts of interests. Greater use could be made of the existing possibility for "control hearings" of public or government officials. The Prime Minister's Hour, when MPs can put questions to the Prime Minister, is required only once per two months, but could be held more often. Parliament should also be a guarantor of the allocation of necessary financial and human resources for implementing legislation, as well as of the autonomy of independent oversight bodies. The President of the Parliament informed the Secretariat that Parliament is committed to concentrate more on monitoring the Government's implementation of laws.

Government

23. A new Government, under Prime Minister Milo Djukanovic, was sworn in on 10 June 2009. There is only one woman member of the Government. As with the previous Government, this Government will focus on European integration and economic development. This will necessarily include completing the tasks required by independence and the new Constitution. Over the past year, the Government has continued to co-operate very well with the international community and has continued to work towards fulfilling its obligations and commitments to the Council of Europe. Since Montenegro's accession to the CoE, successive Governments have been very effective at producing the necessary reports, strategies, action plans and draft laws to illustrate the political determination to meet its European ambitions. The weakness of the Montenegrin governance system, notably the executive branch, as pointed out in most international monitoring reports, is a lack of institutionalised *ex ante* transparency and *ex post* accountability. Over the past year, several important pieces of legislation were adopted quickly, without public discussion and also without taking account of the comments received from experts, including CoE. These laws have been subject to criticism and are thus even more difficult to implement, for example the Law on Electronic Communication.
24. *Ex ante* participation of stakeholders, of civil society and of the relevant parliamentary committees, including the opposition, in the formulation of legislation or policies will improve the transparency of the process and garner support for implementation. *Ex post* scrutiny, by independent or external bodies, of governmental actions and results provides a more balanced measure of impact, but also enhances the perception of the public that the implementation of public policies and laws is effective. Independent public bodies should be strengthened and consideration given to new bodies to oversee important processes, such as the implementation of anti-corruption measures. Civil society, citizens and the media also

play this role, albeit with varying means and motives. Improved access to public information could help transparency of governance in Montenegro. The implementation of the law on free access to information has been particularly difficult, due to the non-response of the administration to requests for information, lengthy delays in the courts and a lack of enforcement of the judgments. Montenegro signed the CoE Convention on Access to Official Documents in June 2009.

25. The new Government of Montenegro benefits from a large amount of confidence that it will successfully lead the country into the EU, but there is much less public confidence that the Government's economic policies, the fight against corruption or the democratic reform processes (judiciary, decentralisation) are benefiting the general public rather than the interests of a group or of individuals. The main challenge for this new Government is to secure that missing confidence, through a serious and concerted effort at increased transparency in the work of Government and an enhanced role for independent oversight bodies providing genuine accountability for its actions.

Political parties

26. Montenegro has a healthy plurality of political parties representing a diversity of political views. The spectrum of political parties is still evolving and the past year has seen the creation of several new parties and the splitting or re-branding of others. The parties are individually evolving as well. All parties in Montenegro, like other countries in the region, have not yet developed a level of active party membership to maintain a political identity or agenda completely independent from their leadership. The parties are largely personified in their leaders. There have been many changes within the Serb parties which formerly rallied against Montenegro's independence. After the independence referendum, the adoption of a new Constitution and the recognition of Kosovo, the New Serb Democracy Party (NOVA), emerged with a new political profile and a renewed, more inclusive, message in Montenegrin politics. The evolution towards increasingly civic and policy-oriented parties is perhaps most notable in the Socialist People's Party (SNP), under its current President, Mr S. Milic. The SNP, having broken away from the DPS when it marked its distance from Slobodan Milosevic, the Federal Republic of Yugoslavia and finally from Serbia, was opposed to Montenegro's independence and to its new Constitution. Following a change in leadership in 2006, the party adopted a pro-European position and is working to demonstrate itself as a credible, civic and social-democratic alternative to the current ruling parties (DPS, SDP).
27. Some political parties in Montenegro, however, appear to be more equal than others. International reports consistently point out the blurring of State and Party structures in Montenegro, most visibly in relation to electoral campaigns. Some blurring of identification by the public is not really surprising after 18 years of DPS governments, or even longer if one takes into account the fact that the Democratic Party of Socialists (DPS) is the successor of the Yugoslav Communist League's Montenegrin branch. It is this fact that has allowed the DPS to inherit a significant patrimony, giving it financial security, which is uncommon to most political parties. The fact that the DPS is paid a substantial rent by the Government of Montenegro for the use of a party-owned building is a major contributing factor to the blurring of State and party structures, as well as to the widespread perception that there is not a level playing field for political competition in the country. The PACE report on its election observation mission noted that this practice contradicts Montenegro's commitment under paragraph 5.4 of the 1990 OSCE Copenhagen Document. The Venice Commission's *Code of Good Practice in Electoral Matters*⁶ and *Guidelines on the Financing of Political Parties*⁷

⁶ CDL-AD(2002)023rev [Code of Good Practice in Electoral Matters: Guidelines and Explanatory Report - Adopted by the Venice Commission at its 52nd session \(Venice, 18-19 October 2002\) in English](#)

insist upon the importance of equality in the matter of public funding for political parties, which is not respected in this case. The implementation of the new Law on Financing Political Parties and, importantly, the new Law on State Property, including the establishment of a State Property Agency, should aim to resolve this situation as soon as possible.

Local self-government

28. The European Charter of Local Self-Government was ratified on 12 September 2008 and entered into force on 1 January 2009. The Government launched, at the end of July 2009, a 60-day public debate on its draft laws on Territorial Organisation and on Amendments to the Law on Local Self-Government. Both drafts were discussed at different stages with Council of Europe experts and a number of comments and recommendations were made, particularly regarding the provisions concerning town municipalities, administrative supervision, local elections and status of local government staff. The two laws are expected to be adopted during the second half of 2009. The Action Plan for Reform of Local Self-Government for 2009, adopted in February 2009, gives additional priority to the amendment of the Law on Inspection Supervision, which has also been discussed with the Council of Europe experts. The amendments were forwarded to the Parliament in June 2009. In the field of local finance, the amendment to the Law on Financing Local Self-Government entered into force in January 2008, and subsequently a review of the Law on Communal Fees was carried out. A report prepared by CoE experts was presented to the Ministry of Finance in November 2008, with recommendations on ways to address the substantial loss in revenue incurred by some municipalities following the amendments made to the law in 2007. No follow-up has yet been given by the Ministry of Finance. Co-operation on a review of the Law on the Tax on Immovable Property is under discussion. In the area of local property, the Law on State Property was adopted and entered into force in March 2009.
29. The Secretariat mission had the opportunity to travel to Ulcinj and to meet with the Mayor, the municipal council and several NGOs. The concerns expressed by representatives of the municipality for the most part probably echo the concerns of other coastal municipalities. They are not satisfied with the level of participation by the local authorities in decision-making on coastal development, privatisation and management. Although they are satisfied with the distribution of tax revenue, the local authorities would like to have more input on decisions concerning human resources and management of public services in their municipality, notably schools. Municipal council members pointed out that the locally-financed primary schools are maintained much better than the State-financed higher schools. Because Ulcinj is a municipality with a national minority majority population, they also expressed concern regarding the use of minority languages locally, in the administration, but also in relation to local courts, police, etc. They also expressed the wish to be able to use the national minority symbols on public buildings on special holidays. For the representatives of Ulcinj, the uneven economic development across the country affects ethnic Albanians more than most other communities, and increased local autonomy could help improve this situation.

Civil society and media

30. Montenegro's NGO sector is large and includes a healthy number of active and expert organisations, which strive for the genuine realisation of European values in Montenegrin society and Government. These NGOs are, in many ways, insufficiently involved in public

⁷ CDL-INF(2001)008 [Guidelines and Report on the Financing of Political Parties adopted by the Venice Commission at its 46th Plenary Meeting \(Venice, 9-10 March 2001\)](#).

policy development in the country. There has been a modest improvement of civil society participation in policy-making and law-drafting working groups, after the adoption of the Strategy and Action Plan for Co-operation between Government and NGOs, in January 2009. Nevertheless, there is a need for increased support for the Government Office for Co-operation with NGOs, increased participation of NGOs in the work of parliamentary committees and hearings, increased public financial support for NGOs and enhanced participation of civil society in the work of municipal authorities. An increased exercise of restraint by public officials to avoid stigmatising, denigrating or stereotyping NGOs and their representatives, would also go a long way to ensuring that the civil society in Montenegro can play its genuine role in a democratic society.

31. Montenegro continues to benefit from a lively and diverse media environment, both broadcast and print. However, there are several factors which, if left unchecked, could lead to a serious decrease in independent journalism and freedom of expression, thus weakening access to independent information by citizens. On 4 June, the Prime Minister posted a statement, on the website of the Government of Montenegro, in reaction to press articles which alleged illegal sources of the Prime Minister's personal wealth. The Prime Minister claims that the lies about him are in fact being spread by "local NGOs, opposition parties and journalists" who are local "malcontents who seek their support abroad"⁸. A series of very high fines have been imposed by courts on individual journalists and on media outlets, for defamation of public officials, in particular politicians, including the Prime Minister. This could lead to self-censorship of journalists and media, direct and indirect political influence on the work of journalists and media outlets and, potentially, lead to financial insolvency for media companies. The fact that defamation remains in the Criminal Code, even if only fines and not detention are imposed, is contrary to European media standards.
32. Since the second monitoring report the Montenegrin Parliament adopted the Law on Electronic Communications in July 2008 and the Law on the Public Broadcasting Service in December 2008. A draft law on electronic media is in preparation and has been submitted to the CoE for comments. Unfortunately, the adoption of these new laws has brought less clarity to overall public responsibility for broadcast media. The new Agency for Electronic Communications and Postal Activity will not benefit from the same level of independence as the previous Broadcasting Agency and, in the meantime, there is general confusion over the responsibility for allocation of frequencies. The popular television broadcaster Vijesti is, in particular, running the risk of bankruptcy due to its continued inability to receive frequencies, notably for Podgorica, which would allow national coverage. The OSCE Representative on Freedom of the Media has recommended that the Law on Electronic Communications be amended in close co-operation with the CoE.

IV. Rule of law

Courts and prosecution

33. The CEDEM poll published in March 2009 showed that, of all branches of government, the justice system rates lowest in public trust. The reform of the justice system has rightly remained one of the highest priorities of the Government. Since 2007, it has been implementing a Strategy for the Reform of the Judiciary, which aims to enhance the

⁸ Website of the Government of Montenegro, "Reaction by Prime Minister of Montenegro, Milo Djukanovic, in regard of lies carried over in some local media on his property", 4 June 2009.
<http://www.vlada.cg.yu/eng/vijesti.php?akcija=vijesti&id=173847>

independence, autonomy and efficiency of the judiciary, improve access to justice and increase public trust in the judiciary. There has been a tremendous amount of effort and energy put into making the Montenegrin justice system more efficient over the past 12 months. The main concerns have been to reduce the backlog of cases, control the excessive length of proceedings and address the public perception of a lack of independence and of widespread corruption within the courts.

34. The High Judicial Council (HJC) was constituted in April 2008. It is currently functioning without the two parliamentary members who should be appointed by the majority and the opposition. The HJC adopted its Rules of Procedure in June 2008 and has since adopted the Rulebook on Orientation Criteria for Determining Needed Number of Judges and Other Court Employees and the Code of Ethics for the Judiciary, in July 2008, and set up the Office for Reporting Corruption in Judiciary, in May 2009, within the Supreme Court. This Office and the telephone hotline are useful tools for fighting corruption and improving the public image of the judiciary. The HJC is carrying out its duties for appointing and dismissing judges and presidents of courts and has instituted disciplinary proceedings against six judges.
35. The level of success in reducing in the backlog of cases in courts is impressive. An Annual Programme of Reducing Backlogs in the Judiciary was set up in early 2009 and included the transfer of cases from overburdened to less burdened courts, as well as the temporary re-assignments of judges and staff to the courts most in need. As a result, the overall backlog of pre-2008 cases has been reduced by 66% (or 33,533 old cases were resolved) and there is no pre-2008 backlog at all in the Supreme Court and the Appellate Courts.
36. The Law on Amendments to the Law on the State Prosecutor came into force in July 2008, giving the Prosecutorial Council the competence to appoint and dismiss Deputy Prosecutors. Although the legislation removes the State Prosecutor from representing the State in civil matters, as per the Venice Commission Opinion and PACE Opinion 261, this continues to be the practice. The Law on State Property, adopted in February 2009, defines a new organ for representing the State's legal and property interests, but this State Attorney function has not yet been established. The new Criminal Procedure Code, adopted in July 2009 by the Parliament, will give prosecutors a much broader competence for investigations when it enters into force next year. This will certainly be the main challenge for the prosecutorial services in Montenegro in the coming months.

Access to justice

37. Implementation of the Law on the Protection of the Right to Trial within a Reasonable Time has begun. To date, under this law, there have been 61 requests to the Presidents of courts (first instance) for review, in order to accelerate the proceedings. Subsequently, in the second instance, under this law, there have been 11 actions for fair redress submitted to the Supreme Court, out of which 9 have been rejected. The successful implementation of this law will certainly have an impact on Montenegro's relations with the European Court of Human Rights, as the registered cases so far mostly concern the length of proceedings, as well as non-enforcement of judgments and alleged inconsistency between domestic courts.
38. Montenegro has taken action to implement a policy of alternative mechanisms for dispute resolution and has set up a Centre for Mediation in Podgorica, with branch offices in Bijelo Polje and Cetinje. Following a comprehensive analysis of the current system and an analysis of the financial impact of the new system, the Ministry of Justice has started work, in close co-operation with the CoE, on legislation on free legal aid. Although a Strategic Implementation Plan for the Probation Service has been adopted and a Head of the Probation

Service has been appointed, the Probation Service will not be established until the amendments to the Law on Execution of Criminal Sanctions (LECS) are adopted. The Ministry of Justice is preparing reforms of the juvenile justice system and of misdemeanours during the course of 2009.

War crimes

39. Montenegro has co-operated consistently with the International Criminal Tribunal for the former Yugoslavia (ICTY) and with its Office of the Prosecutor. The February 2009 report of the United Nations Working Group on Enforced or Involuntary Disappearances stated that the Government of Montenegro has provided a communication on the 15 outstanding cases, although the reply was insufficient to clarify them. The Working Group also congratulated the Government for its efforts to clarify the general allegation in regard to the deportation of Muslims in 1992. In December 2008, the Government took the decision to pay financial compensation in settlement of some 40 civil suits to the families of those 83 Bosnian victims deported by Montenegrin police to Republika Srpska and killed in 1992. This has been a very good message to minorities in the country that Montenegro does not avoid facing its past. This positive message has been somewhat diminished, however, by the very slow proceedings with the criminal trial, which is still in the preparatory phase with nine defendants indicted and four in detention. Two war crimes trials are currently under way and one other is still in the process of investigation. Special departments for war crimes, corruption, organised crime and terrorism have been created in two Higher Courts in Podgorica and Bijelo Polje.
40. The Parliament adopted a declaration in July 2009 condemning the 1995 Srebrenica massacre and other atrocities committed during the conflicts in the former Yugoslavia. This declaration, which accepts the January 2009 European Parliament Resolution on the same subject, was particularly welcomed by the muslim community of Bosnia and Herzegovina. Montenegro has significantly strengthened its bilateral co-operation with neighbouring countries in relation to prosecution of war crimes, crimes against humanity, terrorism and organised crime. There remains difficulty in the region for extradition of nationals, and although it is a CoE accession commitment of Montenegro, there has still been no review of the restrictive declarations it made on the European Convention on Extradition. Montenegro has not signed or ratified European Convention on the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crimes.

Fighting economic crime and corruption

41. There has been significant progress, as well as commendable and successful effort, made in the area of fighting economic crime and corruption during the reporting period. The Law on the Prevention of Conflicts of Interest was adopted in December 2008 and the Law on State Property, which includes the establishment of a State Property Agency was adopted in February 2009. The new Criminal Procedure Code was adopted in July 2009. In addition, relevant provisions in the Laws on Public Servants (July 2008), on Salaries and Other Incomes of State and Public Officials (May 2008) and the Codes of Ethics for Different Professional Areas, contribute to a rather complete legislative and administrative system for preventing corruption. The reforms in the judiciary and the prosecution also contribute to this with the establishment, in September 2008, of the Division of the Special Prosecutor for organised crime, corruption, terrorism and war crimes, reporting directly to the Supreme State Prosecutor. The National Commission against Corruption and Organised Crime has set up a tripartite committee comprising representatives of the police, prosecution authorities and courts which should co-ordinate the information on all cases processed by the three

institutions with elements of corruption or organised crime. The number of final judgments for corruption cases is steadily increasing and in 2008 more than 400 corruption-related cases were adjudicated, 56% of which were final binding judgments. As yet, there is, however, no track record of high-level prosecution for corruption-related offences.

42. The Law on Financing of Political Parties was adopted in July 2008 and the Law on Prevention of Conflict of Interest in Performing Public Functions was adopted in December 2008. The Council of Europe provided expert opinions and met with the Working Group assigned to draft the Law on Prevention of Conflict of Interest, however, many of the recommendations were not reflected in the final version of the law. The new Commission for the Prevention of Conflicts of Interests, under the new law, was appointed in July 2009. Amendments to the Criminal Code are also being prepared with regard to cybercrime, aimed at the ratification and implementing in the near future of the CoE Convention on Cybercrime and its Protocols.
43. In February 2008, following the recommendation of the National Commission⁹, assigned with monitoring and reporting on the implementation of the Action Plan on Combating Corruption and Organised Crime, the Ministry of the Interior established a working group responsible for preparing the Innovated Action Plan (IAP) covering the period 2008-2009. The Innovated Action Plan was approved by the Government in May 2008. This document further elaborates the priorities established in the Programme on Combating Corruption and Organised Crime¹⁰, recommendations of the National Commission, international organisations and other national institutions involved in implementation of the anti-corruption measures. The Innovated Action Plan foresees that the new Programme on Combating Corruption and Organised Crime, for the period 2010-2012, should be drafted and finalised by the end of 2009.
44. The Law on Access to Public Information should be seen as an important tool for fighting corruption by promoting transparency and public accountability. It is, however, weakly enforced by the public administration, especially in relation to privatisation processes and even though the administrative court is improving its efficiency in delivering judgments. NGOs and civil society face a long, difficult and expensive process in order to have access to various types of public documents. The most frequent obstacle to accessing information is the non-acting, or silence, of the administration upon receiving requests. A competent and independent mechanism dealing with transparency and public oversight, a Commissioner or similar body, could potentially play a useful role in dissuading the kind of abuses or omissions which give rise to suspicions of corruption.
45. The compliance report for the joint first and second-round evaluation was adopted by GRECO in December 2008. In the report, GRECO concluded that Montenegro had implemented satisfactorily, or dealt with in a satisfactory manner, two-thirds of the recommendations contained in the Joint First and Second Round Evaluation Report. Compliance with the recommendations assessed as “partly implemented” will be assessed in the second half of 2010. GRECO has acknowledged the efforts made to put into place a legislative framework to fight corruption (e.g. introduction of criminal corporate liability and establishment of a register of convicted legal persons, upgrading of public procurement processes), but has stressed the need to assess the degree of effective implementation of the new standards and their actual impact on levels of corruption in Montenegro. GRECO took note of the extensive training and public information campaigns on anti-corruption policies

⁹ National Commission is an ad hoc body composed of representatives of the public institutions and NGOs and its mandate is to monitor and report on the implementation of the Action Plan measures.

¹⁰ The Programme against Corruption and Organised Crime was adopted in 2005

developed in the last two years, and welcomed, in particular, the initiatives pursued to actively involve local authorities, as well as the general public, in the development of anti-corruption policies as a way to foster increased ownership and overall support of the process. Additional efforts are required with respect to, *inter alia*, the ongoing reform of the judicial system, the simplification and speeding up of licensing/permit procedures, the development of rules on conflicts of interest. The new Criminal Procedure Code, once in force, will further facilitate the prosecution of corruption offences by enabling the seizure of property at early stages of investigation, by expanding the application of special investigative techniques to cover a wider number of corruption offences and by consolidating the leading role of the prosecutor in criminal investigations.

46. The recent Moneyval assessment, published in March 2009, on money laundering and combating the financing of terrorism was generally positive - out of 40 recommendations and 9 special recommendations, only 6 were rated as “non compliant”. Overall, the Montenegrin authorities have achieved considerable progress in establishing a legal structure and law enforcement and regulatory systems to counter money laundering and the financing of terrorism. Money laundering and terrorist financing are criminalised under the Criminal Code although the definition of offences is not fully consistent with international standards and there is not yet a track record of convictions for money laundering. An effective mechanism to freeze terrorist funding has not yet been created and the Administration for the Prevention of Money Laundering and Terrorist Financing and many of the law-enforcement and supervisory bodies are relatively new, with their real effectiveness yet to be proven. The low number of suspicious transaction reports which were filed by a limited number of financial institutions and the absence of reports from designated non-financial businesses and professions raised concerns about the effectiveness of the reporting requirements. There were no reports on financing of terrorism. More work should be done in monitoring the compliance of designated non-financial businesses and professions. The framework for international judicial co-operation in money laundering and terrorist financing cases is generally comprehensive and offers all the necessary solutions for rapid and effective legal assistance.
47. The necessary legislative framework is now in place, the relevant CoE conventions have been ratified and most of the necessary institutions and bodies have been established. While the general picture shows progress in the right direction, the fight against high-level corruption is the weakest point. There remains a need for visible results and a consistent track record of prosecution, notably of high-level offenders. The Directorate for the Anticorruption Initiative (DACI) can be very effective, within its mandate, in promoting standards and good practice to prevent corruption, as evidenced by the success of its recent month-long campaign with the OSCE, “Report corruption, the rest is our concern”. DACI’s mandate, however, limits it to a role of prevention and of co-ordination of anti-corruption efforts. It does not have the resources, the mandate or the functional independence to play a serious role in exposing or rooting out corruption. The National Commission is responsible for co-ordinating the Government’s efforts to fulfil the Action Plan, not for assessing the impact of the Government’s anti-corruption policies. The Commission for the Prevention of Conflicts of Interests is limited in its scope and in its perceived independence. A non-partisan commission, with reinforced independence and functional capacities, could play a vital role in reinforcing the transparency of governance in Montenegro. There is a need for a credible advocate of transparency and integrity in public affairs and for effective, independent oversight of the implementation and impact of anti-corruption measures.

Electoral legislation

48. The ODIHR/PACE reports of the previous election observation missions all indicate that there is an urgent need for reform of the electoral legislation. It is necessary to implement the new Constitution, but also to guarantee genuine clarity of the electoral process, notably between the Constitution and the applicable laws, as well as of the functioning of the political system and the relationship between the ruling and the opposition parties. Several important laws have been adopted during the reference period; the Law on Electoral Lists in June 2008, the Law on Financing of Political Parties in July 2008 and the Law on Financing of the Campaign for the Election of the President of Montenegro, Mayor and President of Municipalities in January 2009.
49. The concerns of the Venice Commission concerning the electoral provisions of the Constitution, regarding the party list distribution of a portion of the elected mandates, remain. Reform of campaign financing, improvement of the mechanisms for dealing with electoral complaints and clarification of the membership in the Republic Electoral Commission membership should all be addressed without further delay and in line with European standards. The constitutional requirement for “authentic representation” of national minorities in Parliament could be met through various means. The Advisory Committee of the Framework Convention for the Protection of National Minorities has advised caution in approaching this question¹¹. The important balance in Montenegro between civic equality and respect for ethnic diversity could be jeopardised if ethnic political parties were to become the sole or privileged avenue of communication for national minorities. The Secretariat was assured by the President of the Parliament that the Venice Commission would be consulted on all of the forthcoming pieces of electoral legislation.

V. Human rights and minorities*Legislative framework and human rights protection mechanisms*

50. During the reference period, Montenegro appointed its Government Agent to the European Court of Human Rights and the processing of complaints against Montenegro began. The first judgment was delivered in April 2009 - *Bijelic v. Montenegro and Serbia*. This judgment is an important one, because it clarifies once and for all the applicability of the European Convention on Human Rights (ECHR) in Montenegro: “the Court considers that both the Convention and Protocol No. 1 should be deemed as having continuously been in force in respect of Montenegro as of 3 March 2004, between 3 March 2004 and 5 June 2006 as well as thereafter¹²”. Although the direct application of the ECHR by the Montenegrin courts is not yet adequate, it is improving.
51. The Law on the Constitutional Court was adopted in October 2008, following a rather positive evaluation of an earlier draft by the Venice Commission. A follow-up assessment of the adopted law will be presented at the Venice Commission’s plenary session in October 2009. The individual constitutional complaint mechanism is defined as the last domestic remedy in relation to the ECHR. This type of complaint has rapidly become a large portion of the Constitutional Court’s agenda. Further efforts will be necessary to ensure the

¹¹ “The implication of the constitutional right to ‘authentic representation’ of national minorities in Parliament needs to be approached with all due caution so as to avoid any excessive polarisation of politics along ethnic lines and the monopolisation of discussions on national minorities by certain political parties.” Resolution CM/ResCMN(2009) 2, 14 January 2009.

¹² *Bijelic v Montenegro and Serbia Judgment, Strasbourg, 28 April 2009, paragraph 69.*

application of the ECHR and its case law in lower court judgments, through the translation of the case law and the continued training of judges, court staff and law students, in order to avoid swamping of the Constitutional Court with this type of complaint to the detriment of its other functions. The Constitutional Court has so far struck down two laws, due to procedural violations, on the initiative of the Socialist People's Party (SNP).

52. During the reporting period, Montenegro ratified the CoE Convention on Action against Trafficking in Human Beings and signed the European Convention on the Exercise of Children's Rights, the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, and the Convention on the Adoption of Children. Although the principles of the European Social Charter (Revised) have been incorporated into Montenegrin law already in 2008, the Charter itself remains unratified, thus depriving Montenegrin citizens of the possibility to submit collective complaints to the European Committee of Social Rights.
53. A draft Law on Anti-Discrimination has been prepared by the Ministry of Human and Minority Rights and sent to the CoE for comments. The urgent adoption of an anti-discrimination law is an accession commitment. It will also be a real breakthrough for equality in Montenegro, particularly for the more vulnerable, less visible minorities who suffer a disproportionate amount of discrimination, lesbian, gay, bisexual and transgender (LGBT) people and persons with disabilities. The Government has drafted legislation on mobility of disabled persons which should serve to avoid the kind of scandal which saw a blind employee of the Municipality of Podgorica unable to access her place of work with her guide dog for 10 months, until the Court ruled in her favour in July 2009. The Ministry of Education and Science is implementing a strategy for inclusive education (2008-2012) for children with special needs. Homophobia is a deep and widespread phenomenon in Montenegro, so much so that the Secretariat was unable to find any specialised NGO or LGBT rights activists to speak with during its monitoring mission.
54. Montenegro has begun to adopt the necessary legal and institutional frameworks for the implementation of European standards for personal data protection and access to official information. The Law on Protection of Personal Data was adopted in December 2008, the Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, regarding supervisory authorities and transborder data flows, was signed in February 2009 as was the CoE Convention on Access to Official Documents.
55. The Protector of Human Rights and Freedoms, or Ombudsman Institution, exists since 2003 in Montenegro and benefits from good relations with the public authorities. A draft law on amendments to the Law on the Ombudsman has been sent to the CoE for consultation. The amendments should harmonise the legislation with the Constitution and add additional functions to the Ombudsman's office, in relation to anti-discrimination and the prevention of torture. In the light of the increasing numbers of complaints concerning children's rights, the Ombudsman is also asking for at least one additional Deputy for children and one for prevention of torture, in addition to the existing two, one of whom deals with national minorities. In order for the impact of the Ombudsman to meet the level which could be expected from its definition in the Constitution and the law, both the independent mandate and the operational capacity of the institution should be strengthened. More professional staff is needed, notably with expertise in anti-discrimination, children's rights and procedural aspects of criminal and civil law. The CoE Committee for the Prevention of Torture (CPT) carried out a periodical visit in September 2008 and adopted its report in March 2009. The report has been transmitted to the authorities, who have six months to make a response if

they so wish. In either case, the authorities are encouraged to approve the publication of the CPT report as soon as possible.

National/ethnic minorities

56. The CoE Committee of Ministers adopted a Resolution on the implementation of the Framework Convention for the Protection of National Minorities by Montenegro on 14 January 2009. The Resolution, based on the Opinion of the Convention's Advisory Committee, welcomed the positive framework provided by Montenegro's Constitution and the genuine political will to enhance national minority rights protection demonstrated by the Ministry of Human and Minority Rights and its work with the National Strategy on Roma, the Fund for Minorities and the National Minority Councils. The Committee of Ministers also reiterated the call of the Convention's Advisory Committee for more detailed legislation, using all due caution with regard to the Constitutional provision for "authentic representation" of national minorities in Parliament and ensuring more concrete implementation in relation to the use of minority languages, and the representation of national minorities in public service.
57. Montenegro submitted its initial periodical report on the application of the European Charter for Regional or Minority Languages in July 2007. The Committee of Experts, however, was unable to carry out its monitoring work until Montenegro suggested candidates for the Montenegrin expert on the Committee of Experts, who was finally elected by the Committee of Ministers in December 2008. The first on-the-spot visit of the Committee of Experts to Montenegro took place from 10 to 12 June 2009. The first evaluation report on Montenegro is to be adopted in September 2009, and will be made public at the beginning of 2010.
58. Legislative reforms are needed in the short term, in order to work out issues related to political representation, access to the protection of national minorities by non-citizens, use of national minority languages and symbols. It is important to find adequate solutions for these legal and political questions, in order for attention to be re-directed to the real daily concerns of the national minorities. The Montenegrin approach to ethnic minority issues was described to the Secretariat as "integration without ghettoisation", and, to a large extent, this can be observed in practice. The real exception to this is the Roma community. The Roma community of Montenegro remains at a huge disadvantage in relation to schooling of children, employment and, worryingly, access to identity documents. The Ministry of Education and Science is implementing an Action Plan for education of Roma children within the National Strategy for the Decade of Roma Inclusion (2005-2015). NGOs working with Roma children emphasised the need for real enforcement at local level of the obligation of schooling for all children. A Serb National Minority Council was established in December 2008. This will now give the Serb community access to the Fund for Minorities. It may perhaps also give a less politicised voice to pressing Serb concerns, notably regarding citizenship and dual citizenship. The Albanian community is the largest language minority group in the country and is particularly concerned about access to quality education and media in their own language.

Displaced persons and persons at risk of statelessness

59. Montenegro has been hosting a population of people displaced by the wars in the former Yugoslavia. The vast majority of these people have been Serbs from Bosnia and Herzegovina and Croatia and Serbs and Montenegrins from Kosovo. Currently, the data of the Government of Montenegro, provided to the Secretariat by the UNHCR, indicates that there are 8,023 people from Bosnia and Herzegovina and Croatia, who have been given the

status of “Displaced Persons” (DPs) and 16,259 people from Kosovo who have been given the status of “Internally Displaced Persons” (IDPs). Following the independence of Montenegro, the DPs and IDPs have not been granted the legal status of refugees, which represents a serious obstacle for their access to basic public services and, for IDPs, an almost insurmountable obstacle to their chances for local integration.

60. Two of Montenegro’s accession commitments relate directly to this issue and currently there is insufficient evidence of a real intention to fulfil them. One of the accession commitments¹³ requires issuing identity documents to refugees and displaced persons and repealing all discriminatory provisions in relation to labour, education, health care, legal redress and access to property rights and citizenship. Most of the persons concerned by the DP or IDP status have identity documents, although some difficulties remain for documentation of Roma, Ashkali and Egyptian (RAE) IDPs. The Law on Asylum provides only for an uncertain future possibility to gain refugee status for DPs, while IDPs are not covered by the law. Although the new Law on Employment and Work of Foreigners, which entered into force in January 2009, does provide “avenues for fair employment of recognised refugees¹⁴”, this leaves the DPs and IDPs without the right to work. In fact, in replacing the 2003 Decree on Working Engagement of Non-Residents, the new law has even removed the one possibility for employment of DPs and IDPs which previously existed. Under that Decree, DPs and IDPs could take seasonal employment, although under unfavourable conditions because of an additional tax on their employment. In February 2009, the United Nations High Commissioner for Refugees (UNHCR) Representation in Montenegro addressed its concerns over the de-facto exclusion of refugees with DP or IDP status from the right to work under Article 17 of the new law to the Minister of Health, Labour and Social Welfare. Following UNHCR’s lobbying of the Government, the Prime Minister accorded a right to seasonal work for 2009, perhaps alleviating the immediate crisis, but leaving the longer-term problem intact.
61. Another of Montenegro’s accession commitments¹⁵ concerns the law on citizenship, which should prevent statelessness and, in particular, address the situation of the IDPs from Kosovo. A new Law on Citizenship was adopted in February 2008, but IDPs are specifically excluded from its strict naturalisation criteria, and most DPs, although theoretically eligible, will face significant obstacles to meet them. In spite of 10 or 15 or more years of residence in Montenegro, all IDPs and most DPs will not be able to meet the naturalisation requirements for lawful and uninterrupted residence, secure accommodation, guaranteed source of income, or proof of renunciation of previous citizenship. The slim likelihood of the acquisition of citizenship can be seen in the date for naturalisation: between 5 March 2008 and 6 July 2009, out of the 2,011 people granted citizenship, only 203¹⁶ were DPs, mainly through marriage with Montenegrin citizens.
62. The Government of Montenegro, under Article 75 (2) of the Law on Asylum, is registering people with DP status (from Bosnia and Herzegovina, Croatia) for a review of their status, in order to determine whether they would qualify for refugee status. The UNHCR is concerned

¹³ PACE Opinion 261 (2007) para 19.4.5: to issue identity documents to refugees and displaced persons and repeal all discriminatory provisions in the fields of labour, education, access to property rights, legal redress and access to citizenship and health services.

¹⁴ UNHCR Background note on the protection of persons of Concern to UNHCR in Montenegro, UNHCR Representation in Montenegro, April 2009.

¹⁵ PACE Opinion 261 (2007) para 19.4.6: to enact and implement a law on citizenship to prevent statelessness in accordance with the relevant Council of Europe instruments and addressing in particular the situation of displaced persons from Kosovo.

¹⁶ Information supplied by the UNHCR Representation in Montenegro on 6 July 2009: 10,379 applications for Montenegrin citizenship through naturalisation, 2,011 granted, 141 rejected, the rest are still in procedure.

about the future status of the persons who will lose the DP status, without being recognised as refugees through this process, as there is no legal provision recognising the rights they acquired through their extensive stay in Montenegro. A similar registration process for the IDPs (from Kosovo) is also envisaged; however, it is not clear if a revision of their status is being considered. It is clear that the Montenegrin Government places political priority on returns and hopes to clarify the citizenship status of the DPs and IDPs through this process eventually leading to bilateral agreements with Bosnia and Herzegovina and Croatia. The Montenegrin authorities informed the Secretariat that they expect to establish very soon a similar agreement concerning the IDPs from Kosovo³. The statistics on returns since 2003, however, illustrate a declining number of voluntary returns: none at all to Croatia for the past two years (down from a high of 23 in 2003), 2 so far in 2009 to Bosnia and Herzegovina (down from a high of 74 in 2003) and only 64 to Kosovo so far in 2009 (down from a high of 387 in 2003). It would appear that those who were keen to return have mostly already done so, and in order to find a sustainable solution for the approximately 24,000 DPs and IDPs still residing in Montenegro, an option for local integration is necessary.

63. Montenegro has not yet ratified the CoE Convention on the Avoidance of Statelessness in relation to State Succession, which was signed on the date of accession (11 May 2007). Many of the displaced people (DPs or IDPs) are at risk of *de facto* statelessness, due to the combination of the real inability to exercise their rights to citizenship in their home country and the lack of a mechanism to gain Montenegrin citizenship. The most pressing risk of statelessness in Montenegro, however, is for the RAE population, both those who are IDPs from Kosovo and those who have always lived in Montenegro. The total number of RAE IDPs from Kosovo is approximately 4,500 and the UNHCR estimates that approximately 2,200 lack civil registration and documents which would allow them to prove their original citizenship. An additional 1,500 RAE from Montenegro are also estimated to be at risk of statelessness due to their lack of proof of Montenegrin or any other citizenship.

VI. Conclusions and recommendations

64. Montenegro continues to progressively implement its accession commitments and obligations. Some ratifications did intervene during the reporting period, although the parliamentary elections in March 2009 significantly hampered the work of the Parliament and the Government for several months.
65. Conventions not yet ratified which were required to be ratified without delay or within one year of accession (11 May 2008):
- Convention on the Avoidance of Statelessness in relation to State Succession;
 - Protocol Amending the European Convention on the Suppression of Terrorism.
66. Conventions not yet ratified which were required to be ratified within two years of accession or 11 May 2009:
- European Convention on the Exercise of Children's Rights;
 - European Convention on Nationality;
 - European Social Charter (Revised);
 - European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities;

³ All reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

- European Convention on the International Validity of Criminal Judgments;
- Convention on the Compensation of Victims of Violent Crimes;
- European Convention on the Non-Applicability of Statutory Limitations to Crimes Against Humanity and War Crimes.

67. There have been significant positive developments in the reform of the justice system and the fight against corruption over the past year. These efforts should be continued. The Venice Commission, in its Opinion on the Constitution of Montenegro (CDL-AD (2007) 047), expressed concern about potential political influence on the appointment of judges, the Supreme State Prosecutor, the State Prosecutors and the Ombudsman. These concerns are still valid and should be addressed at the earliest opportunity.
68. The Parliament can be a more effective and influential institution if it makes full use of the working methods available to it and the talents of all its members. A more functional relationship between the parliamentary majority and the opposition, as well as openness to the participation of non-partisan experts, for example from specialised NGOs, would contribute to a stronger parliamentary input to law and policy in Montenegro.
69. With a successful experience of transition to independence and of European integration behind it, with a full mandate and a solid majority in the Parliament ahead of it, the new Government has an excellent opportunity to focus on implementing its CoE accession commitments and delivering concrete and visible results for the people of Montenegro. This will require additional emphasis and investment in the implementation of legislation and policies, increased participation of NGOs and of civil society in public affairs, and reinforced transparency and accountability of the Government's work.

Specific recommendations for the next reporting period:

70. Ratify all those Conventions (listed in paras 65, 66 above) which were called for in PACE Opinion 261 within one or two years after accession.
71. Adopt the Law on Non-Discrimination, in line with CoE standards.
72. Find an appropriate solution in order to end the current situation of political party ownership of government buildings.
73. Adopt legislation guaranteeing transparency of media ownership and remove the offence of defamation from the Criminal Code.
74. Revise the electoral legislation in close consultation with the Venice Commission.
75. Amend the Law on Protection of Rights and Freedoms of National Minorities, in order to avoid undue restrictions, notably based on citizenship.
76. Enact appropriate measures, in order to ensure genuine gender equality in relation to political life, including elected office and public administration.
77. With regard to the people, displaced by the wars in the former Yugoslavia, currently residing in Montenegro:

- take proactive measures, in line with the 2007 Government strategy for improvement of the situation of RAE to deliver identity documents without delay to those not yet in possession of them within the RAE population, both for IDPs and local RAE;
- review the status of IDPs and DPs with a view to ensuring a clear legal status for all which should facilitate their genuine enjoyment of a right to return, or, if this is not practicable, of meaningful local integration in Montenegro for themselves and their children;
- in the meantime, review the Government's interpretation of the Law on Employment and Work of Foreigners, to ensure reasonable access to the labour market by people with DP or IDP status;
- ratify the CoE Convention on Avoidance of Statelessness and take immediate measures to guarantee the prevention of *de facto* as well as *de jure* statelessness amongst the IDP, DP population, as well as of local, Montenegrin, RAE.

VII. Decisions of the Committee of Ministers

1066th meeting – 23 September 2009

Item 2.1bis a

Current political questions

a. Activities for the development and consolidation of democratic stability

Decisions

The Deputies

[...]

Concerning Montenegro

In the light of the third Secretariat report on compliance with obligations and commitments by the Republic of Montenegro (document SG/Inf(2009)13):

3. welcomed the considerable progress made by the Montenegrin authorities in meeting the accession commitments and obligations since the last report;
4. called on the government and parliament of Montenegro to promptly ratify those Council of Europe conventions which were called for within one or two years after accession;
5. recognised that there have been positive developments in the reform of the justice system and the fight against corruption over the past year. These efforts should be continued. The Venice Commission, in its opinion on the Constitution of Montenegro (CDL-AD(2007)047), expressed concern about potential political influence on the appointment of judges, the Supreme State Prosecutor, the State Prosecutors and the Ombudsman. These concerns are still valid and should be addressed at the earliest opportunity;

6. invited the Montenegrin authorities to follow up and implement the third report's specific recommendations for the next reporting period with a view to demonstrating significant progress in the fourth report. The Committee of Ministers will pay particular attention in the next report to:

- a. the adoption of the Law on Non-Discrimination, in line with Council of Europe standards;
- b. the adoption of legislation guaranteeing transparency of media ownership and remove the offence of defamation from the Criminal Code;
- c. the revision of the electoral legislation in close consultation with the Venice Commission;
- d. the amendment of the Law on the Protection of the Rights and Freedoms of National Minorities, in order to avoid undue restrictions, notably based on citizenship; and
- e. with regard to the people displaced by the wars in the former Yugoslavia, currently residing in Montenegro:
 - i. the adoption of proactive measures, in line with the 2007 government strategy for improvement of the situation of Roma, Ashkali and Egyptian (RAE), to deliver identity documents without delay to those not yet in possession of them within the RAE population, both for "Internally displaced persons" (IDPs) and local RAE;
 - ii. to review the status of IDPs and "Displaced persons" (DPs) with a view to ensuring a clear legal status for all which should facilitate their genuine enjoyment of a right to return or, if this is not practicable, of meaningful local integration in Montenegro for themselves and their children; and
 - iii. to review the government's interpretation of the Law on Employment and Work of Foreigners, to ensure reasonable access to the labour market by people with DP or IDP status.

Appendix:

**Monitoring Mission of the Council of Europe Committee of Ministers
visit to Montenegro
11-15 May 2009**

Agenda

Monday, May 11

14:00 Arrival

16:00 Meeting with OSCE Mission in Montenegro

Tuesday, May 12

Morning meetings will be held in the CoE office

09:00 Center for Civil Education

09:30 MANS

10:00 NDC and Juventas

11:00 CEDEM

11:30 CDT

12:30 Institute Alternative

Lunch Break

14:30 UNDP, (UNDP premises)

15:30 EC, (EC premises)

19:30 Dinner with Ambassadors
venue: Forum Restaurant, walking distance from the hotel

Wednesday, May 13

08:00 UNCHR (UNHCR Office)

09:00 Departure for Ulcinj

11:30 *Arrive Ulcinj, all meetings to be held in the municipal building*

12:00 Meeting with the Mayor of Ulcinj

- 13:00** Meeting with municipal councillors
- 14:00** NGO New Horizons
- 14:30** NGO Plima
- 15:00** Association of Roma, Egyptians and Ashkalia
- 15:30** Association of Women Anima

Late lunch/Early dinner

Thursday, May 14

Meetings / discussions to be held in the Parliament

- 08:00** Meeting with Ms Valentina Radulović-Šćepanović, Member of PACE Delegation
- 08:40** Discussion with Mr Srđan Milić, President SNP
- 09:20** Discussion with Mr Andrija Mandić, President NOVA
- 10:00** Discussion with Mr Nebojša Medojević, President PzP
- 10:40** Discussions with Albanian Parties in Parliament:
- discussion with representative of DUA
 - discussion with representative of FORCA-Nazif Cungu
 - discussion with representative of Albanian List
 - discussion with representative of Albanian Coalition – Perspektiva
- 12:00** Meeting with Mr Ranko Krivokapić, Speaker of Parliament
- 12:40** Working lunch at Parliament
- 14:00** **Departure for “Villa Gorica”**
- 14:10** Meeting with Mr Šefko Crnovršanin, ombudsman
- 14:50** Meeting with Mr Zoran Pazin, State agent to European Court of Human Rights
- 15:30** Meeting with Ms Ranka Čarapić, Chief State Prosecutor
- 16:10** Meeting with Ms Vesna Medenic, President Supreme Court
- 17:00** Meeting with Mr Milan Marković, President Constitutional Court

Friday, May 15

- 08:00** Meeting with Mr Željko Šofranco, Director Institute for protection of refugees

- 08:40** Meeting with Ms Vesna Ratković, Director of Directorate for Anti-corruption Initiative
- 09:20** Meeting with Mr Fuad Nimani, Minister for Human and Minority Rights Protection
- 10:00** Meeting with Mr Miraš Radović, Minister of Justice
- 10:40** Meeting with Mr Jusuf Kalamperović, Minister of Interior Affairs and Public Administration
- 11:20** Meeting with Mr Milan Roćen, Minister for Foreign Affairs
- 12:00** **Departure for the airport**