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Serbia:

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

2nd Report: Update on developments (November 2006 – June 2007)

Document presented by the Secretary General

Executive Summary

The period under review has been characterised by anticipation and uncertainty over the parallel processes of elections/formation of a government and the determination of the future status of Kosovo (Serbia). Under these circumstances, little has been achieved in terms of legislation or public policy.

However, the period covered by this update ended on several positive notes, most notably the beginning of Serbia's Chairmanship of the Committee of Ministers (CM) of the Council of Europe (CoE) on 11 May, the election of a new government on 15 May, the arrest and transfer to The Hague of two of the most prominent indictees wanted by the International Criminal Tribunal for the former Yugoslavia (ICTY) and the announcement of the resumption of Stabilisation and Association Agreement (SAA) talks with the European Commission (EC) from 13 June.

The next six months of 2007 will likely see a very busy period of legislative, political and judicial activities towards fulfilling the requirements of Serbia's new Constitution, implementing the priorities of its CM Chairmanship, honouring its remaining commitments to the CoE and making progress in the SAA talks.

Therefore, in the coming weeks and months, the Serb authorities should pay particular attention to:

- establishing full co-operation with ICTY and closing the chapter of ICTY fugitives at large, including further initiatives for facing the past;
- taking full account of the recommendations of the CoE Venice Commission in relation to the Constitution;
- ensuring the functioning of the Constitutional Court;
- adopting legislation on the territorial organisation of the country, ratifying the European Charter for Local Self-Government and establishing the necessary conditions for local elections;
- improving living conditions and access to social services for Internally Displaced Persons (IDPs) in Serbia (especially Roma);
- adopting a law on Non-Discrimination in line with the relevant European standards;
- improving the procedures for registration of Churches and religious communities, improving communication with religious communities and improving the guarantees of freedom of religion and belief;
- signing and ratifying the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities, ratifying the European Social Charter (Revised), and the remaining CoE Conventions which have previously been signed.

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I. Introduction

The present document is an update of the first report (SG/Inf (2006) 15) with respect to Serbia, which itself follows a series of 10 reports¹ prepared by the Secretariat of the CoE in the context of the monitoring of commitments entered into by the State Union of Serbia and Montenegro.

The report is based on information at the disposal of the Secretariat in particular from the CoE Office in Belgrade. The Permanent Representation of Serbia to the CoE has been particularly helpful in the preparation of this report and regularly provided information, for which the Secretariat is grateful.

On the basis of the first report, the Ministers' Deputies highlighted priority issues where they expected significant progress²:

- to co-operate fully with the ICTY, notably by handing over the most wanted fugitives;
- to opt for a clear and unequivocal position by the leadership in favour of full co-operation with the ICTY;
- to take initiatives to raise public awareness on facing the past;
- to ratify the European Charter of Local Self-Government;
- to progress in the ratification process of the revised European Social Charter;

- to pay particular attention to the recommendations contained in the [forthcoming] Council of Europe Venice Commission opinion on the constitution and related laws (in particular with regard to the primacy of international law over domestic law);
- to make an overall assessment, drawing on the Council of Europe's expertise, of the criminal justice system to ensure its compatibility with the ECHR and other relevant European standards;
- to ensure that the new laws on the High Judicial Council and the model law on judges are in line with European standards in order to guarantee the independence of judiciary;

The lengthy procedure for setting up the new Government and the difficult political climate linked to the negotiations on the future status of Kosovo, meant that little or no progress has been made on most of these issues during the period under review.

Although the process for determining the future status of Kosovo was a major issue for Serb politics and public life during the reporting period, the question of the future status of Kosovo and developments in Kosovo fall outside the scope of this report.

II. General Political Context

The political context in Serbia between November 2006 and mid-May 2007 was one of great expectations and small realisations. After the adoption of the new Constitution by referendum in October, the electoral campaign and then the parliamentary elections of January 2007 soon overwhelmed the political sphere to the exclusion of almost everything else. Following those elections, which left no one party in a position to govern, but provided a clear majority for the pro-European group of parties, and practically until the very last day possible for forming a government,

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 – Eighth report (March-June 2005), SG/Inf(2005)16 final – Ninth report (July-September 2005), SG/Inf(2006)1 – Tenth report (October 2005-January 2006)

² Decisions of the Ministers' Deputies at their 983rd meeting –13 December 2006, item 2.1a

the overall context has been one of speculation over coalitions, cabinet posts, and possible consequences of failure. The process for determining the status of Kosovo has been another source of speculation on an almost daily basis and has coloured the electoral and political atmosphere more than any other subject.

In spite of the internal political turmoil, which has produced criticism and concerns both domestically and internationally, the Republic of Serbia is not suffering from any instability. In fact, the results of the January 2007 elections have not been contested by anyone, the legitimacy of the care-taker government has not been called into question and all of the services and functions of the State have been fulfilled. In the face of multiple uncertainties: about the government, about Kosovo, about the future of its Euro-Atlantic integration, the faith of Serbia's citizens in their own institutions and democratic processes has been unwavering. This reality is a vital strength which should be acknowledged.

Following the appointment of the new government on 15 May 2007, the pace of developments has begun to increase. Against this background, the six-month Chairmanship of the CoE CM (May – November 2007) will be an opportunity for Serbia to further strengthen its European and democratic policy and to uphold its international standing. One of the priority objectives of this Chairmanship, under the slogan "One Europe - Our Europe", is to strengthen good-neighbourly relations and co-operation between the countries of South East Europe, promoting the CoE values in the region and thereby enhancing the European prospects for the region. Signature and ratification of the Madrid Convention on transfrontier co-operation, as well as close co-operation with the South East Europe Co-operation Process and the newly created Regional Co-operation Council could be instrumental in this respect.

III. Functioning of democratic institutions

Constitution

The Constitution of the Republic of Serbia was endorsed by 52.31% of registered voters in a popular referendum on 28-29 October 2006. Turnout was low in Vojvodina, where political leaders called for a boycott in response to the provisions concerning the autonomy of the province which did not take account of the platform of the Vojvodina parties. Kosovo Albanians, not being registered on Serbian electoral rolls, were not eligible to vote.

The Constitutional Law on the Implementation of the Constitution of the Republic of Serbia was adopted on 10 November 2006 by the National Assembly. The Venice Commission adopted its opinion on the Constitution at its plenary session 17-18 March 2007. The Serb Minister of Public Administration and Local Self-Government attended the session and took part in the discussions. Serb media reported on his statement that "Serbia is prepared to acknowledge some of the suggestions of the Venice Commission that might have a positive effect on the constitutional and legal shaping of the state's new legal system".

The Venice Commission Opinion recognised that it was indeed a positive development that the Milosevic era constitution had been replaced by a more democratically oriented text. It nevertheless pointed out that in comparison to the well drafted texts of the State Union Constitutional Charter and Charter on Human and Minority Rights, the Serbian Constitution was overly rigid in some important areas and too vague in others, belying a perhaps hasty drafting of the final text. The main concerns of the Venice Commission are:

- the independence of the judiciary, namely the excessive role of Parliament in judicial appointments;

- the mandates of members of parliament, both in their allocation (art. 100) and in their status in relation to party leadership (art. 102).

Very many aspects of the new Constitution will be dependent upon the provisions for its implementation. The Serbian authorities are therefore encouraged to make full use of the expertise and assistance of the CoE, including the Venice Commission, to ensure that these are fully in line with European standards. The Constitutional Court has appointed a liaison person to maintain communication with the Venice Commission. The new authorities, including the Speaker of the Parliament and the Minister for Public Administration and Local Authorities, have indicated their willingness to pursue a dialogue with the Venice Commission on these issues.

Parliament

Parliamentary elections were held on 21 January 2007. Although the Serbian Radical Party (SRS) won the highest number of seats for a single party (81 out of 250), a majority of seats were won by parties clearly defining themselves as “pro-European”³. The Parliamentary Assembly of the Council of Europe (PACE) and the Office for Democratic Institutions and Human Rights (ODIHR) of the Organisation for Security and Co-operation in Europe (OSCE) declared that the elections were free and fair and held in line with European standards. The PACE also considered that “the efficient and transparent manner in which these elections were organised contributed to the high level of confidence of the public and electoral stakeholders in the election administration and impartial conduct of these elections.”⁴ The PACE nevertheless called upon the newly elected Parliament to address shortcomings in the Law on the Election of Representatives in consultation with the Venice Commission, and in particular to abolish the provisions in the Election Law which allow the parties to arbitrarily distribute their mandates among the candidates on their list after the elections have taken place.

It is this provision which is responsible for the fact that although women represented slightly more than 30% of all candidates, the constituted Parliament is made up of only 20.4% of women Members of Parliament (MPs). Of those parties having more than one MP elected only the G17+, the Union of Vojvodina Hungarians and the Civic Alliance of Serbia (part of the Liberal Democratic Party (LDP) caucus) have achieved the pre-electoral target of at least 30% of women. The lowest percentage of women MPs are to be found in the Serbian Radical Party (SRS), the Socialist Party of Serbia (SPS) and most of the parties of the national minorities.

The participation of national minorities in the election, both in presenting candidates and in winning electoral mandates, represents a significant progress from past Parliaments. The removal of the 5% threshold for participation in the distribution of mandates for parties representing national minorities has allowed MPs representing national minorities to become sufficiently numerous to form a parliamentary caucus. The participation of Albanian parties from South Serbia and the election of Roma MPs is to be considered as a real political breakthrough.

Following the January elections, and until 8 May, the Parliament was basically not functioning. It had begun to be constituted, but had only validated the MPs’ mandates, established party caucuses and adopted a resolution on the Kosovo status process. It had elected no Speaker or Vice-Speakers nor established its working bodies. The constituent session continued on 8 May and Mr Tomislav Nikolic (SRS) was elected Speaker. Only the SRS, the SPS and the Democratic Party of Serbia (DSS)-New Serbia (NS) presented candidates for Deputy Speaker. The parliamentary committees

³ These are the Democratic Party (DS) led by Boris Tadic, the Democratic Party of Serbia (DSS) led by Borislav Kostunica in coalition with the New Serbia party (NS) led by V Ilic, the G17+ led by M Dinkic, the Liberal Democratic Party (LDP) led by C Jovanovic in coalition with the Civic Alliance, and several parties of national minorities.

⁴ Parliamentary Assembly document AS/BUR/AHSER (2007) 1, 26 January 2007

were also constituted only with these parties. The election of the hard-line nationalist to the second most powerful position in the country provoked strong reactions from the international community. The coalition of the Democratic Party (DS), DSS-NS and G17+ finally put forward a proposal for a new speaker and a new government and, on 13 May, Mr Nikolic resigned from the post. The Parliament elected the new Government, which was sworn in on 15 May - less than 30 minutes before the midnight deadline for dissolving the parliament and calling new elections. Mr Oliver Dulic (DS) was elected Speaker of the Parliament on 23 May.

The Parliament will have a heavy agenda following the appointment of the government. Within the timeframes set out in the Constitutional Law on Implementation of the Constitution of the Republic of Serbia, the Parliament will have to *inter alia*: harmonise legislation concerning the courts, the public prosecutors, the appointment and dismissal of judges and prosecutors, high judicial council, state prosecutorial council, elect the Ombudsman (done in the meantime), the Governor of the national Bank and members of the National Auditing Agency, and elect the members of the high judicial council and state prosecutorial council.

The PACE is implementing a joint programme with the EC - European Agency for Reconstruction (EAR) to support the Parliament of Serbia. Even in the absence of a constituted parliament, activities for the civil servants and MPs were being carried out. Following the establishment of the Parliamentary bodies and committees, the project will certainly speed up in the coming months.

Government

Although the Government of Serbia has been for the most part of this period either fully engaged in electoral campaigns (referendum, legislative) or acting in the post-election period in the capacity of a caretaker government (limited by law), some substantial legislation has been produced. The most notable and important is the Constitutional Law on the Implementation of the Constitution of the Republic of Serbia, which provides an important agenda of work for both the Parliament and the Government in the coming months. The Government had furthermore submitted to Parliament prior to the elections a draft law on ratification of the European Charter of Local Self-Government, draft law on Economic Crime and a draft law on Territorial organisation of the Republic of Serbia. The draft law on Denationalisation and Building Land was adopted by the Government on 10 May. Expertise from the CoE has been requested during this period on the draft law on the Elections for and Powers of National Councils of National Minorities, the draft law on Gender Equity and the draft law on Civil Servants.

The capacity for action of the caretaker government has been subject to interpretation in relation to the limits of the law. The Government adopted a decree extending the temporary financing of the state budget in contradiction to the 3 month limit set by the law on the budget. This particular case brought to light the fact that since the dissolution of the previous Parliament and until the constitution of the new Parliament and the subsequent election of the new Government, Serbia had been governed without a functioning legislative branch, *de facto* without a Constitutional Court⁵, without a State Audit Agency to oversee the use of public funds, and with only the President of the Republic as a genuinely legitimate elected official fulfilling his duties in the regular way. In fact, an un-checked or balanced executive branch, the outgoing, caretaker government was quite alone in running the business of Serbia.

In spite of the months of uncertainty and of relatively minimal governmental activity, there were no signs of social unrest, demonstrating a great amount of stability and, especially, of public faith in

⁵ the former President of the Constitutional Court retired in autumn 2006 and has not yet been replaced. Only the President can call sessions of the Constitutional Court – therefore the Court has not met and could not rule the constitutionality of measures taken by the government.

Serbia's democratic institutions. Indeed even the prospect of failed government negotiations and new parliamentary elections, which would have prolonged the uncertainty for several more months, although not the desired outcome, was not perceived with excessive worry or foreboding. This said, during the reporting period a number of milestones were nevertheless met in relation to further European integration, most notably Serbia's joining the Central European Free Trade Agreement on 19 December, signing the Partnership for Peace framework with the North Atlantic Treaty Organisation (NATO) in December 2006 and the initialling on 16 May of a visa facilitation and readmission agreement with the European Union (EU). Technical preparations for SAA negotiations, although the formal talks were suspended in May 2006, continued, which could lead to rather rapid progress being made once those talks resume on 13 June.

Preparations for Serbia's Chairmanship of the CM were launched in autumn 2006, followed by the decision of the government on 28 December 2006 to set up the National Council for the preparation and realisation of the Serbian Chairmanship of the Committee of Ministers. This Council, which held its first meeting in February 2007, is comprised of both governmental and non-governmental actors.

The new Government, in particular the Ministry of Justice, faces a full agenda of drafting or revising legislation in accordance with the new Constitution. There are several urgent appointments to ensure, especially the judges of the Constitutional Court and the State Auditor. In addition, given that the SAA negotiations have resumed on 13 June, the harmonisation of legislation and policy with European standards should take on an even greater pace.

Local and Regional Democracy

There have been no major developments to date with regard to local and regional democracy since the adoption of the new Constitution. The preparation of 3 pieces of implementing legislation is expected: a new law on local self-government, legislation on local elections and a new law on territorial organisation. The Government approved at its 173rd session held on 28 December 2006 the draft law on territorial organisation, however, it has not been introduced into parliamentary procedure yet. The CoE was not involved in the drafting of this law.

The CoE is implementing a joint programme with the EC on strengthening local self-government in Serbia. In this context, the CoE and the Ministry of Finance are currently working together on the preparation of new legislation on municipalities' property ownership rights. An expert working group bringing together the key stakeholders is tasked with preparing draft proposals.

With respect to the devolution of new responsibilities to municipalities, the transfer of tax collection and administration functions has so far been the most contested project. Despite an initial agreement, the tax administration service failed to secure the development of new software for municipalities. This has resulted in a delay which is causing problems to some municipalities which had planned to take over the function from 1 January 2007 and, therefore, planned increased revenues in their budgets.

Work on of new arrangements for the devolution of responsibilities in other sectoral areas (primary healthcare, social welfare, education) is in progress. The CoE is working together with the Ministry of Finance and the sectoral Ministries on the development of new financial mechanisms. However, the devolution of new functions will not be effective if the transfer of responsibility is not followed by the transfer of assets (not only financial and staff, but also property). The devolution of ownership rights cannot be operated in the absence of legislation governing municipalities' property ownership rights.

The new Work Programme for Better Local Government 2007 – 2008 (prepared by the Ministry of Public Administration and Local Self-Government after 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) was not given official status. Its implementation has not formally started yet.

The Serbian authorities have informed the CoE that preparations for the signature of the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (Madrid Convention) is underway.

IV. Co-operation with ICTY and facing the past

Full and sincere co-operation with the ICTY has been clearly reiterated by the CoE and the international community as a major obligation of the Republic of Serbia. For most of the reporting period no real progress was made in regard to apprehending fugitive indictees. Serbian authorities, notably the National Council for Co-operation with the Hague Tribunal have, however, been responding to the requests of the Tribunal and delivering documentation, both to the Office of the Prosecutor and to the defence teams, and relieving witnesses of their obligations to keep state secrets.

Clearly there are very high expectations of the new security arrangements within the new Government, in particular, through delivering fugitives, to pave the way for resuming SAA discussions with the EC. Full co-operation with the Hague Tribunal is one of the 5 priorities of the new Government. The National Security Council was established on 31 May under the chairmanship of the President of the Republic. The arrest of Zdravko Tolimir in a joint operation by Serbian and Bosnia-Herzegovina (BiH) Republika Srpska (RS) services on 31 May will certainly provide a boost of confidence in these new arrangements and of credibility for the political will of the relevant parties in tracking down and arresting the remaining 5 fugitives. In a significant development for Serbia's relations with the international community, the ICTY Prosecutor, Ms Carla Del Ponte, went to Belgrade on 4 June 2007 at the invitation of the President and the Prime Minister, and came away with a positive assessment of the level of co-operation with the Tribunal, afterwards encouraging the resumption of talks with the EU.

The Legal Affairs and Human Rights Committee of the PACE has adopted the report prepared by Mr Tony Lloyd, "Prosecution of offences falling within the jurisdiction of the International Criminal Tribunal for the former Yugoslavia (ICTY)"⁶, which will be debated with its draft resolution at the PACE part-session in June 2007.

On 26 February, the United Nations International Court of Justice (ICJ) ruled in the case of BiH vs. Serbia and Montenegro that the Federal Republic of Yugoslavia (FRY), and therefore now, Serbia, was not directly responsible for the crimes committed during 1992-95 war in Bosnia-Herzegovina. The Court did find, however, that Serbia has violated the Convention on the Prevention and Punishment of the Crime of Genocide by failing to prevent the genocide in Srebrenica and failing to bring the perpetrators to justice. On this basis, the Court rejected Bosnia's claim for monetary reparation. On the same day as the ruling, President, Mr Boris Tadic, urged the adoption of a declaration unequivocally condemning the crime committed in Srebrenica, but the initiative did not receive sufficient support in the Parliament. President Tadic also emphasised that the judgment demanded Serbia's immediate and full cooperation with the Hague Tribunal. The Prime Minister, Mr Vojislav Koštunica, stressed that "The ICJ judgment in Bosnian lawsuit against FRY is particularly important as it clears Serbia of the heavy accusation of genocide". He added that Serbia

⁶ PACE document 11281, 4 May 2007.

was “undertaking and will continue to undertake” all the necessary measures leading to the full cooperation with ICTY”.

Those reactions from public officials to the February ICJ ruling which tended to consider Serbia exonerated because it was acquitted of being directly responsible for the Srebrenica genocide gave rise to domestic and international criticism. Human rights activists and non-governmental organisations (NGOs) called publicly for Serbia to hand over all relevant documents to the relevant courts and for the authorities to publicly denounce denials of the genocide or glorification of war criminals. These concerns, expressed in particular by the ICTY Prosecutor and by Amnesty International, were widely echoed in the international press, emphasising the fact that the previous government was significantly ineffective in its co-operation with the Tribunal, in spite of its obligations to the very Organisation it was soon to Chair. The CoE’s own monitoring of Serbia’s fulfilment of its commitments and obligations has consistently drawn attention to the same fact: that in failing to bring the ICTY indictees to justice Serbia is failing in its duty to the Council of Europe.

In keeping with the commitment of Serbia to “inform the people of Serbia about the crimes committed by the regime of Slobodan Milosevic”, the Humanitarian Law Center, in co-operation with the CoE, organised on 24 February a conference entitled: “Celebici 1992: Beyond a Reasonable Doubt”. Another event supported by the CoE will be organised by the Center in June on the ICJ ruling in *Bosnia vs. Serbia and Montenegro*. Even though mass graves continue to be found containing the bodies of people murdered because of their ethnic belonging, no real general societal effort can yet be seen which would effectively implement that commitment.

Domestic prosecution of war crimes

The Serbian prosecution service and courts have been very active in the domestic prosecution of war crimes in the reporting period. Several high-profile cases were prosecuted by the Office of the War Crimes Prosecutor before the Belgrade District War Crimes Chamber. The most notable of these cases were: the “*Zvornik Group*” trial of six men accused of war crimes in the Zvornik municipality of Bosnia and Herzegovina in 1992, the “*Suva Reka*” trial of eight former police officers for the 1999 murders of 48 ethnic Albanians in Kosovo, and the “*Bytqi brothers*” trial of former Serbian special police officers accused of war crimes for handing three US citizens over to the officers who allegedly killed them. On 10 April 2007, the Belgrade District War Crimes Chamber sentenced the Commander and three members of the Scorpions paramilitary unit for the murder of Bosnian civilians in 1995. Although the Commander and one member received maximum 20 year sentences, the judgment came under criticism for the light sentences of the other two members and the acquittal of the fifth defendant.

The work of the Office of the War Crimes Prosecutor and the Belgrade War Crimes Chamber have demonstrated the capacity of the Serbian judiciary and prosecutorial services to deal with even the most sensitive and difficult cases. Indeed, the ICTY prosecution continues to hand over cases for investigation and prosecution to Serbia. The Hague Tribunal has started to hand over cases to the Serbian judiciary with the 17 November 2006 referral of the case against the former Yugoslav Army officer Vladimir Kovacevic who is charged in relation to the shelling of Dubrovnik in 1991.

The War Crimes Chamber has begun producing judgments in domestic war crimes proceedings, but the Supreme Court of Serbia has, so far, overturned all but one of the first instance war crimes rulings which have come before it. In December 2006, the Supreme Court overturned the first instance judgment of December 2005 in the *Ovcara 1* case, to much criticism from the international community and human rights defenders, some of whom questioned the political independence of the Supreme Court, especially just ahead of the parliamentary elections. In April 2007 the Supreme

Court also overturned the 20 year sentence of Sasa Radak (Ovcara 3), handed down in September 2006, for participating in the murder of 200 Croatian prisoners in Ovcara, Croatia, ordering a re-trial.

V. Rule of Law

Judiciary and reform of justice system

The Constitutional Court of Serbia has not been operational since October 2006. The President of the Court retired and a new president has still not been elected, leaving Serbia for more than eight months without a definitive jurisdiction for interpretation of constitutionality. The adoption of the new law on the Constitutional Court and the election of the new members of the Constitutional Court in accordance with the procedure stipulated in the new Constitution and according to Article 9 of the law on its implementation should be an immediate priority for the Parliament.

After the adoption of the Constitution and the law on its implementation, judges and prosecutors in co-operation with number of local and international NGOs organised round tables and conferences dedicated to improving their future legal position within the framework imposed by those two legislative texts. The Judges Association expressed, in particular, its objection to the implications for re-election of all sitting judges (lustration), and its concerns for insufficient guarantees of the independence of the judiciary and for the lack of precise criteria for the election/dismissal of judges and members of the High Judicial Council.

The Secretariat for the Judicial Reform Strategy Implementation organised, on 28 February 2007, a discussion on “Basic principles for the drafting of systemic judicial legislation in line with Constitution of the Republic of Serbia and international standards”. The delay in forming the government slowed down the process, but the Secretariat continued to work on drafting judicial legislation. In April 2007 the CoE began implementing a four month joint programme with the EC/EAR to assess the implementation of judicial reforms. The aims of this project are:

- compatibility of the National Judicial Reform Strategy with the new Constitution of the Republic of Serbia and Law on the Implementation of the Constitution
- evaluation of legislative initiatives regarding so called judicial package (Law on High Judicial Council, Law on judges, Law on Courts, Law on State Prosecutorial Council, and Law on Prosecutors)
- assessment of the Law on Judicial Academy and Law on Judicial Exam.

The Serbian Parliament amended on 29 May the Criminal Procedure Code in order to ensure that detention decisions are taken by courts. The amended Code was scheduled to be replaced by a new Criminal Procedure Code which was adopted in May 2006 and should have entered into force on 1 June 2007. However, the entry into force of the new Code was delayed until 31 December 2008 and the old Code was amended in the interim.

Police and Prisons

Press reports have mentioned several instances of action taken by the Ministry of the Interior and/or courts against misconduct, criminal actions or corruption of police officials. It has not been possible to gain precise information on any of these cases because of the confidentiality of on-going procedures and of the presumption of innocence. There have been several incidents involving Wahhabis (Islamic fundamentalists) in the Sandzak region, most recently in March and April 2007 there were several arrests and one fatal shooting by police of Islamists suspected of plotting terrorist acts.

The CoE has been working on the implementation of a project financed by the Canadian International Development Agency (CIDA) to contribute to the reform of the correctional system in Serbia. Started in April 2006 initially for one-year, the project was subsequently extended to 31 March 2008. The project's activities aim to increase the knowledge and the respect of the relevant European standards, promote the juvenile justice system, support the implementation of alternatives to imprisonment, develop the probation service and enhance the complaints and inspection systems in Serbia. In March 2007, the CoE organised a Prison Programme Management Meeting to assess progress in prison reform and agree on priority activities to be implemented for future co-operation in 2007-2008.

A joint CoE/EC project on prison reform in the Western Balkans countries, "Developing a reliable and functioning prison system respecting fundamental rights and standards and enhancing co-operation in South East Europe", is being implemented in 2007. The overall objective of the project is to enhance regional co-operation and develop a reliable and well functioning prison system in the Western Balkan countries based on the rule of law and respect for European democratic values and standards.

Fight against corruption and organised crime

In December 2006, Serbia adopted a National Strategy for Combating Trafficking in Human Beings. In the reporting period there have been numerous arrests in relation to human trafficking and drug smuggling. According to Serbian police, 33 human trafficking cases were discovered in 2006, and 16 cases between January and May 2007, and the women who were the victims of the criminal activity have for the most part been placed in safe houses. On 12 March a Belgrade Court convicted 12 people to a total of 45 years for running a human trafficking ring smuggling Chinese nationals through Serbia.

The Prosecutor's Office for Combating Organised Crime is dealing with two high profile cases in the area of corruption regarding customs officials and the Faculty of Law in Kragujevac. The six separate cases of the customs case (67 defendants) are in the investigation phase for abuse of office, bribery, soliciting and accepting bribes, forging of documents, smuggling and criminal alliance i.e. organising a group to commit serious offences. Under the authority of the District Court in Smederevo, 24 defendants (21 of whom are in detention) from the Kragujevac law faculty are being investigated for bribery related offences. In May, the trial of the so-called "highway mafia" began with 53 defendants, including employees of the Serbian Public Road Enterprise, who are facing charges of abuse of office and stealing 6.5 million euros from highway users through bogus toll cards. In spite of the volume of activity in the investigation and prosecution of corruption and trafficking crimes, serious problems remain, in particular due to political influence on the workings of the justice system. The President of the Council for the Fight Against Corruption, Ms Verica Barac, has stated publicly that the financing of political parties is the cause of systematic corruption in Serbia and that the warnings of the Council have been ignored by the Government. She pointed in particular to the division of state functions between the parties, including public and state-owned companies, as a major source of political party funding.

Two important trials representing attacks on the country's political institutions by organised crime were completed during the reporting period. In the "Ibarska" case, the third retrial of the perpetrators of the 1999 assassination attempt against Vuk Draskovic, which killed his brother in law and three bodyguards, concluded on 16 February 2007 with 10 guilty verdicts and two acquittals. The sentences were much the same as in the first two trials, which were previously overturned by the Supreme Court. After almost 4 years of proceedings, the "Djindic" case culminated on 23 May 2007 with guilty verdicts and heavy sentences for all 12 defendants accused of assassinating the former Prime Minister on 12 March 2003. The trial brought to light the role of

organised crime, but left a cloud over the possible political connections of the accused. Both the defence and prosecution have indicated they will appeal the sentences.

VI. Human Rights

Council of Europe Human Rights Mechanisms

The first judgment of the European Court of Human Rights (ECtHR) against Serbia (*Matijasevic v. Serbia*) has been fully implemented. The judgment, dated 19 September 2006, found a violation of Art 6.2 of the European Convention on Human Rights (ECHR) and required just satisfaction and payment of costs.

The second judgment against Serbia (*V.A.M v. Serbia*) was delivered on 13 March 2007. The complaint concerned the length and fairness of civil proceedings and the inability of the complainant to see her child and exercise parental rights. The Court found unanimously that there had been a violation of Article 6.1 and Article 8 of the ECHR as a result of the length of the civil proceedings and the non-enforcement of the interim access order. It also held that there was a violation of Article 13. The local media covered the judgment extensively.

The CoE 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 (i.e. implementation of 10 cascade seminars for prosecutors on Art. 3, 5 and 6 of the ECHR organised in co-operation with the Judicial Training Centre of Serbia by the end of June 2007; 2 seminars on the ECHR implementation took place in May 2007 for judges of the Supreme Court of Serbia).

The CM elected the member of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in respect of the Republic of Serbia on 13 June 2007. Serbia's seat on the European Commission against Racism and Intolerance (ECRI) remains vacant, but the procedure to fill the seat is underway and a focal point has been appointed. ECRI is scheduled to monitor Serbia in 2007 and to publish its report in 2008.

Other Human Rights issues

The Ombudsperson or Civic Defender for Serbia was appointed on 29 June 2007. The draft law on Anti Discrimination was publicly presented to the conference organised by the United Nations Development Programme (UNDP) and the Agency of Human and Minority Rights, held in Belgrade on 5-6 December 2006. Comments and suggestions from the Conference were included in the final text and submitted to the Agency. During the conference, the Agency expressed an interest in a CoE expertise on the draft before the adoption process, but there has been no official request yet.

Refugees and IDPs

The United Nations High Commissioner for Refugees (UNHCR) presented its "Analysis of the Situation of Internally Displaced Persons from Kosovo in Serbia: Law and Practice"⁷ with 19 recommendations to the Serbian Government, including *inter alia* simplified registration procedures, easier access to housing, health and education, improved communication with local authorities in Kosovo, and specific recommendations for the protection and assistance of vulnerable IDP groups (i.e. Roma, Ashkaeli and Egyptian, and the persons who have been returned into

⁷ UNHCR, March 2007.

secondary displacement in Serbia). The recommendations were generally well received by Mr. Dragisa Dabetic, Serbian Commissioner for Refugees. However, he highlighted, that the Serbian authorities can not be blamed when people fail to come forward to register, and that a housing policy for IDPs started one year ago. On the issue of Roma, Ashkaeli and Egyptian, the position of the Commissioner is to avoid ethnic differentiation in the assistance to IDPs. Finally, the Serbian authorities do not consider persons who have been returned into secondary displacement in Serbia from countries where they have sought asylum following the Kosovo conflict as IDPs, since they have crossed an international border.

In light of the particular past of the region of the former Yugoslavia, it would be to the advantage of the citizens of the whole region if all the States of the region, including Serbia, would sign and ratify the CoE Convention on the Avoidance of Statelessness in relation to state succession.

National minorities

Political parties representing minorities participated very actively in the January 2007 parliamentary elections, and won eight seats, enabling the formation of a minorities' caucus. When all minority parties, including those who ran on a combined national party ticket, are counted, there are 12 minority party MPs. It should be pointed out that following 14 years of political boycott, the political parties representing the Albanian community in Serbia (South Serbia) stood for election for the first time since 1993 and won one seat. Roma parties won two seats. Furthermore, a representative of the minorities' caucus, Mr Esad Dzudzevic, has been elected Deputy Speaker of the Parliament. The outcome of the elections was not completely satisfactory for minorities, however, since the SRS won the largest number of seats on a nationalist and xenophobic platform. The national minority representatives, as well as many NGOs and even some public officials, have expressed disappointment that the new Government did not include a Ministry for Human and Minority Rights, and the wish that it would be re-established in future.

The Agency for Human and Minority Rights has officially requested an expertise of the draft law on Elections and Powers of National Councils of National Minorities. This law is called for by the 2002 Law on the Protection of Rights and Freedoms of National Minorities. The CoE provided a preliminary expertise which was discussed in Belgrade on 24 May 2007 with the participation of the National Councils.

Like the CoE expertise, the minority council representatives were rather critical of the draft, some of them saying that it would be a step back from *status quo*. The main criticisms of the draft related to the definition of the councils' tasks as obligations rather than as rights. The Agency argues that the councils have delegated public authority which implies increased obligation and control; whereas the expertise and the minority representatives consider that most powers envisaged in the law are merely consultative, not involving public power *per se*. It was felt that the councils should be given adequate scope to decide on their priorities and areas of work as opposed to the current provision that they have to work on a certain number of issues or they will be closed down. This would likely be especially difficult for smaller minorities, or for those communities who may not wish to engage in all areas mentioned. The authorities are encouraged to revise the draft law, taking into account the CoE expertise and the comments of the minorities' representatives to ensure that the authorities have corresponding obligations to provide the conditions necessary to the success of the national councils, and to ensure close involvement of the national councils in decision-making processes.

The draft law on the National Councils of National Minorities, which currently obliges national councils to establish legal entities as founders of minority language newspapers, is rather vague on the issue of audio-visual media. This question is of some urgency as some minority associations

seem to be falling through the cracks between the legislation on minorities and the legislation on media. The “Voice of Roma” radio/television station based in Belgrade has been effectively shut down by a decision of the (RBA) because the broadcasting law foresees only local radio or television licenses for NGOs - and Belgrade is designated as a region. Therefore the Belgrade based station is expected to relocate to Grocka and leave the large Roma population of Belgrade without access to radio or television in their language. This decision, while perhaps in keeping with the broadcasting law, seems to be in contravention to the spirit of the law on the draft law on the National Councils and the 2002 Law on the Protection of Rights and Freedoms of National Minorities.

Freedom of religion:

The Law on Churches and Religious Organisations of the Republic of Serbia⁸ which was adopted in April 2006 and entered into force on 7 May 2006, gave a deadline of one year following its entry into force for re-registration of Churches and religious communities, or they should lose their legal status as a religious organisation as prescribed by this law. There was much confusion on the part of religious communities surrounding the procedures for registration, which was not helped by the Minister’s regulations which modified some parts of the law, including increasing the number of signatures required to gain registration. The seven “traditional” churches of Serbia, so designated in the law, were registered automatically. Although the CoE did not receive any official information on the registration of churches⁹ by the deadline, it is possible to note from unofficial sources that only a small number have been registered and that many requests have not yet been finalised. The deadline for re-registration has passed and it is not clear whether the consequences foreseen in the law will be put into practice. In any case most religious communities are awaiting information on the status of their requests.

At the same time, the Law on the Restitution of Property to Churches and Religious Communities is being implemented very slowly, as a result of delays in setting up the responsible Directorate for Restitution and the difficulties faced by religious communities in collecting the required documentation.

The preponderant role of the Serb Orthodox Church in religious, social and political life continues to occasionally smudge the line between Church and State and to create a relatively unfavourable environment for new or smaller religious communities. Incidents continue to take place against buildings or members of minority religions, in particular Roman Catholic or evangelical protestant churches¹⁰, mostly involving vandalism and graffiti.

Freedom of the media

In a draft report and ratings issued on 1 May 2007, the American NGO Freedom House describes Serbia as a country with partly free media: “The constitution of the newly independent Serbia,

⁸ It should be recalled that the law in question was the object of comments and recommendations from the Venice Commission in its draft forms in 2005 and 2006 (see Opinions no. 334/2005, no. 379/2006). In both documents the Venice Commission expressed reservations about the discretionary powers of the ministry, the scope of the draft law, the legal consequences of non-registration, the legal status of canon laws, as well as the level of guarantees for freedom of religion and protection of pluralism.

⁹ In the meantime, the Council of Europe has received official information from the Ministry of Religion, in which it is stated that “apart from traditional churches and religious communities 7 more religious communities have been registered. Request for registration has been denied in 11 cases since those churches and religious communities did not fulfil the criteria prescribed by Law”. In addition, in each and every case submitted, the reasons for denying registration would be given.

¹⁰ According to the Youth Initiative for Human Rights, the Christian Adventist Church was the object of 5 separate attacks in the month of May 2007 in Kikinda, Sombor, Novi Sad and Belgrade.

adopted in October 2006, provides for freedom of the press”, adding that “the government, media owners, local officials, and businessmen continue to place undue pressure on journalists.” The constitutional referendum in October 2006 highlighted a context of political pressure and of insecurity for independent journalism. Complaints in the media related concerns over pressure on the media to incite voters to go to the polls¹¹ or to demonise the opposition as unpatriotic. In general, media reporting on organised crime and/or war crimes issues complain of an atmosphere of political pressure¹².

In a context where several murders of prominent journalists are still unresolved, and where threats and attacks against journalists do occur, even soft forms of intimidation can take on ominous proportions. In April 2007 alone the most notable incidents included: the Chairman of the Independent Journalists’ Association of Vojvodina (NDNV), who is also head of the “Beta” news agency branch in Vojvodina, received death threats from a known neo-nazi group; a grenade exploded at the home of the journalist Dejan Anastasijevic; the journalist Zeljko Bodrozic was sentenced to 80 days prison for non-payment of fines for libel; and a group of eight NGOs complained that the publisher and distributor of “Status” magazine obstructed the distribution and advertising of the new issue of the magazine for political motives.

The RBA issued the necessary media reporting rules for electronic media during the pre legislative election campaign. The RBA has monitored the process and after the elections posed interim measures to some electronic media. According to the Centre for Free Elections and Democracy (CeSID) report from January 2007, printed media were outside of any monitoring process.

Two cases before the Supreme Court of Serbia regarding the national frequency tender are still pending. The first judgment should be expected very soon in the Radio Television Luxembourg case. The RBA called a public tender for issuing the regional broadcasting licences on 15 November 2006. It has received 177 applications for radio and television frequencies and they will issue 28 television and 24 radio regional licences. On 30 May, the public tender for three regional television and two regional radio frequencies was repeated. The RBA called a public tender for issuing the local broadcasting licences on 21 March 2007. A total of 148 local television and 276 local radio licences will be awarded (Belgrade not included). The advertisement specifies the tender requirements.

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, on the transparency of media ownership and on the protection of personal data. These were already noted in the first report as being matters of particular urgency. On 16 March 2007, the CoE organised with the Ministry of Culture a round table on the need to regulate media ownership and promote transparency. Participants agreed that current regulation of media concentration is deficient and pointed out that it would be better to draft a new law instead of making amendments to the existing regulations. The Ministry of Culture indicated that it will start drafting the law in the near future and is encouraged to make use of the CoE’s assistance and expertise.

Freedom of association

Serbia is well known in the region for having a vibrant and active civil society and a large number of NGOs. The civil society sector is not immune however to political influence and even inter-

¹¹ The referendum took place over two days – by the mid morning of the second day turnout was still too low – at least 50% of registered voters was required to validate the poll – the final hours of the polling saw rapid increase in turnout, in part due to media relaying the politicians’ predictions of disaster should it fail.

¹² Protests, statements of the Association of Independent Electronic Media (ANEM), the Independent Association of Journalists of Serbia (NUNS) and the Independent Journalists’ Association of Vojvodina (NDNV) October – May 2007.

NGOs disputes. This fact was illustrated in the spring of 2007 when two groups of NGOs publicly advocated opposing views on the approach the EU should take to the Government of Serbia, which nevertheless also demonstrates a healthy diversity of opinion within the NGO sector.

The tension between civil society associations, the media and politics, especially as concerns NGOs dealing with war crimes, reconciliation or “facing the past” issues, goes beyond the level of tension which is natural to most societies. There is a tendency for some NGOs to be designated as less than patriotic, mostly due to connections with, or funding from, “western” governments, NGOs or European institutions. It is still not uncommon for those NGOs to complain of intimidation or threats, through the media or from extreme nationalist groups, such as neo-nazis or skinheads which have even been responsible for violent attacks.

Civic associations and NGOs took an active part in the committee preparing the Serbian Chairmanship of the CM and they contribute directly to its implementation. There is less direct participation from civil society however in relation to the SAA or the pre-accession process with the EU. A recent initiative is striving for a more active role for Serbian and regional NGOs in European issues, possibly through gaining participatory status with the CoE Conference of International NGOs. The European Movement in Serbia and the Foundation for Peace and Conflict Resolution founded in early June “CIVIS - Association of NGOs from South East Europe”, in order to become an international NGO enjoying participatory status with the CoE.

VII. Conclusions/recommendations

In spite of the fact that during the reporting period relatively little was achieved in terms of concrete fulfilment of obligations and commitments, it can be concluded that Serbia’s democratic institutions function in a stable manner and with the confidence of its citizens. The lengthy delay in establishing the new Parliament and Government following the January elections may have caused some inconvenience to Serbian institutions and to their European or international partners, but did not cause any shortcomings which could not be overcome in the very near future.

The next few months will necessarily include much work preparing draft legislation, or revisions to legislation, in order to catch up with the requirements of the new Constitution and of European obligations. Nevertheless, attention should also be paid to the overall environment for exercising the rights to freedom of religion, association and expression and to the manner in which the public authorities actively seek to improve that environment. Increased dialogue with the civil society sector in relation to further European integration would be beneficial to all. Increased dialogue and participation of the representatives of national minorities would contribute positively to the process of setting up the legal framework for the functioning of the National Councils of the National Minorities.

Having taken over the Chair of the CM in May for a six month period, the Serbian authorities will have an excellent opportunity to demonstrate the strength of Serbia’s commitment to CoE values (“One Europe - Our Europe”) and its determination to completely fulfil its accession obligations.

The recommendations for the period until the next monitoring mission are ostensibly the same as those of the 1st report, namely:

- Co-operate fully with ICTY, notably handing over the remaining fugitive indictees;
- Raise public awareness on facing the past;
- Ratify the European Charter for Local Self-Government, and, as soon as possible, ratify the European Social Charter (Revised);

Additionally:

- Ensure the functioning of the Constitutional Court in the interim of the new legislation and court appointments;
- Adopt legislation on the territorial organisation of the country and put the conditions in place to allow for local elections;
- Sign and ratify the Madrid Convention on transfrontier co-operation;
- Improve living conditions and access to social services for IDPs in Serbia (especially Roma);
- Adopt a Law on Non-Discrimination in line with the relevant European standards;
- Improve the procedures for registration of Churches and religious communities, improve communication with religious communities and improve the guarantees of freedom of religion and belief;

And emphasising:

- Take full account of the recommendations of the Venice Commission Opinion on the Constitution;
- Make full and appropriate use of the Council of Europe's assistance and expertise with regard to the important legislative agenda required by the new Constitution and relevant laws.

The next monitoring mission, to be held by the end of the year, will be an opportunity to assess the progress achieved on all these issues.

VIII. Decisions

1002nd meeting – 11-12 July 2007

Item 2.1a

Current political questions

a. Activities for the development and consolidation of democratic stability

- *Moldova*

- *Serbia*

(GR-DEM(2007)CB9, SG/Inf(2007)1 final, SG/Inf(2007)5 rev)

Decisions

The Deputies

1. took note of the synopsis of the GR-DEM meeting held on 4 July 2007 (document GR-DEM(2007)CB9);

Concerning Moldova

2. asked the Secretariat to draw up a detailed action plan in connection with the stocktaking to be prepared for the end of the year;

Concerning Serbia

In the light of the second report on the Republic of Serbia concerning compliance with obligations and commitments and the implementation of the post-accession co-operation programme (document SG/Inf(2007)5 final);

3. welcomed the positive developments which have taken place following the appointment of the new Serbian Government, in particular the arrest and transfer to the International Criminal Tribunal for the former Yugoslavia (ICTY) of two fugitive indictees and the positive evaluation of Serbia's co-operation by the ICTY Prosecutor, which led to resumption of the Stabilisation and Association Agreement (SAA) negotiations with the European Commission;

4. recognised the readiness of the new Serbian authorities to fulfil the remaining commitments and called upon them to secure full implementation of their remaining commitments, in particular:

- to co-operate fully with the ICTY, including handing over all the remaining fugitive indictees, especially Ratko Mladic;
- to raise public awareness on facing the past;
- to ratify the European Charter for Local Self-Government, and, as soon as possible, to ratify the revised European Social Charter;

5. invited the Serbian authorities to follow-up the recommendations contained in the second report;

6. invited the Serbian authorities to continue the good practice of keeping the Secretariat informed on a regular basis with a view to the preparation of the next monitoring report due by the end of the year.