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Post-monitoring dialogue with "the Former Yugoslav Republic of Macedonia"¹

Information report on the visit by the Chair from 15 – 17 January 2007

Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe
(Monitoring Committee)

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¹ In this document, the term «Macedonia» is used for descriptive purposes and for readers' convenience, without prejudice to the Assembly's position on the name of the state.

1. INTRODUCTION

1. Macedonia became a member of the Council of Europe on 9 November 1995. The monitoring procedure, opened in July 1996, was closed by Resolution 1213 (2000) on 5 April 2000. It is widely accepted that the decision to close was largely political and motivated by the desire to calm down the inter-ethnic tensions which deteriorated into a conflict in late 2000 and early 2001. The Assembly continued to deal with the situation in Macedonia in the framework of its post-monitoring dialogue, and decided to intensify it, following the outburst of violence². Mrs Durrieu, my predecessor in the Chair of the Monitoring Committee, visited the country twice³ and produced two information notes on those visits⁴. Her latest report proposed to continue the post-monitoring dialogue, which she saw as "*an asset in this critically important phase in which the still fragile new institutions based on the Ohrid agreement are being set up and start to function*". On 6 June 2005, the Assembly adopted Resolution 1440 (2005) on "Recent political developments in "the former Yugoslav Republic of Macedonia" in the context of regional stability", which made further recommendations in the implementation of outstanding important commitments.

2. This document is a summary of information gathered during my recent visit to Skopje from 15 – 17 January 2007. During this fact-finding visit, I concentrated on the following key issues: political developments in the country since the parliamentary elections of 5 July 2006; consolidation of good governance and democratic institutions; inter-ethnic relations and the implementation of the Ohrid Framework Agreement; progress made by Macedonia in honouring its obligations and outstanding accession commitments to the CoE, and solving outstanding bilateral issues such as the name issue.

3. I wish to thank the Macedonian Parliament, and especially the Chairman and the staff of the Macedonian delegation to the Parliamentary Assembly, the German Ambassador H.E. Mr Ralf Andreas Brett as well as the CoE resident expert in Skopje Michel Rivollier and Head of CoE Information Office Gjorgji Jovanovski for their assistance in the organisation of the visit.

2. POLITICAL ENVIRONMENT AND KEY CHALLENGES

4. In 2005, Macedonia went through a period of positive trends both in implementing the Ohrid Framework Agreement as well as in the rapprochement of its legislation to the EU standards, resulting in the European Council granting Macedonia candidate country status on 17 December 2005. This momentous step merits full praise: no other country has managed to pull itself in less than five years from the brink of civil insurgence into the waiting room of EU accession. Unfortunately the first year of the *fiançailles* has not been that rosy. Some difficulties have occurred in sustaining the process of reforms, which can be largely attributed to the political upheavals around the parliamentary elections and painstaking process of new government formation.

5. The parliamentary elections were held on 5 July 2006. An ad hoc committee of the Assembly observed these elections together with OSCE/ODIHR experts and considered them mostly in line with Council of Europe commitments and standards for democratic elections⁵. However instances of violence and intimidation during the first half of the campaign, as well as isolated instances of serious irregularities during Election Day, tainted the democratic process. On the whole, voters could decide on the political direction of their country in a democratic fashion and the irregularities observed did not overshadow the democratic progress made⁶. Repeat elections were held on 19 July in 29 polling stations where the first round result had been cancelled by the Supreme Court due to irregularities. The Public Prosecutor's Office initiated procedures for 11 criminal acts during the pre-election period and investigations of eight cases of electoral fraud as a result of police reports⁷. ***It is important that all these cases be properly investigated and brought to justice.***

6. The ethnic Macedonian right-wing party VMRO-DPMNE⁸ won the elections, yet with a small margin to the incumbent Social-Democrats and 16 seats below the majority needed to form a government⁹. The

² See Assembly Resolutions 1255 and 1261 (2001) adopted on the basis of a report prepared by Roman Jakic (Slovenia, LDR) on behalf of the Political Affairs Committee.

³ from 16-18 December 2002 and from 24-26 November 2004.

⁴ AS/Mon (2003) 06 and AS/Mon (2004) 51 respectively.

⁵ See Doc. 11015.

⁶ Idem.

⁷ European Commission "The former Yugoslav Republic of Macedonia 2006 Progress Report", SEC (2006)1387.

⁸ The abbreviation VMRO-DPMNE stands for "Internal Macedonian Revolutionary Organization – Democratic Party for Macedonian National Unity".

⁹ Following the elections, the 120 parliamentary seats were distributed as follows: **VMRO-DPMNE** – 38; Social Democratic Union (SDSM) – 23; Democratic Union for Integration (DUI) – 13, **Democratic Party of Albanians (DPA)** –

Democratic Union for Integration (DUI) won 13 MPs with the majority (about 60%) of Albanian votes. The Democratic Party of Albanians (DPA) – a traditional coalition partner of VMRO – obtained 2 seats less than DUI. Nikola Gruevski, leader of the VMRO-DPMNE, was appointed Prime Minister on 27 August 2006.

7. An unwritten practice exists in Macedonia of forming multi-ethnic political coalitions with an Albanian party. The election results suggested that the new Prime Minister would team up with the DUI (lead by the former guerrilla fighters) to secure government coalition majority, and then negotiate the entry of the smaller parties to reinforce it. But that move would have been risky for VMRO's credentials, for DUI was the party whose military wing staged the 2001 ethnic strife and eventually brought VMRO to a defeat in the 2002 elections. The new incumbent PM found it therefore more opportune to ally with the DPA. The fact that DPA asked for very little in terms of distribution of offices and of the ethnic agenda also suited VMRO's political programme, which prioritises economic growth, fight against poverty and corruption, and moving forward Euro-Atlantic integration rather than accentuating the ethnic issues as the country's foremost goals. The new Prime Minister must have, however, underestimated the extent to which his coalition choices have led him and the Macedonian government parties to an intra-Albanian feud. The constant infighting has had severe consequences on the government's – and subsequently the whole country's – success.

8. Although neither the Macedonian Constitution nor the 2001 Ohrid Agreement has any explicit requirement for the winner of the Macedonian ballot to choose the winner of the Albanian ballot for their coalition partner, DUI believes that the spirit of the accords suggests that. It also argues that, having won the most votes/seats of the Albanian parties, they are a majority party and not an opposition party and should be in the government. In addition, having delivered the Framework Agreement, they believe to have the backing of the international community. Consequently, being left out of the government, DUI has refused to participate in the work of the parliament and is calling for constitutional reform to guarantee that the Albanian "majority" party be represented in government. It is using its strength both in the parliament and in local governments¹⁰ to block legislation and to undermine the legitimacy of the government.

9. Upon taking office, the new government intended to present itself as the "new blood" that would inject fresh energy and commitment to the major challenges facing the country. However, the key actors' political inexperience, at times too forceful approach and little understanding of consensus-building, have not contributed to efficient bargaining, compromise and bridge-building without which an effective multi-party system could not work. This in turn has widened the fissures between the leading political parties in the government and opposition, as well as within some of those parties. Some improvement has nevertheless taken place in the relations between VMRO-DPMNE and DUI since the government reshuffling in mid-February¹¹, which has created a better climate for understanding. On the other hand, the current quarrel between President Branko Crvenkovski and PM Nikola Gruevski does not contribute to a good image for the country.

10. The domestic situation is not helped either by the widespread pessimism and very low public confidence in national policy decisions. Confronted with various socio-economic problems, people have lost their confidence in democratic institutions of the state, and in their leadership, both on institutional/party level and on a personal level. Unemployment (nearly 40%), poverty and corruption overshadow all other public concerns. According to the observations of our international interlocutors, differently from many other countries of Central and Eastern Europe, Macedonia has not gone through a real regime change and thus the impoverished population is to a certain extent feeling a certain nostalgia for the heavily-subsidised Yugoslavian period. This also explains why the measures required by the EU accession process (seen as a new guarantee for assistance and subsidies) appear to be the only ones on which all political forces of the country agree. And even there, the enthusiasm of the Macedonian public opinion has considerably

11; **New Social-Democratic party** (NSDP) – 7; **VMRO-National Party** (VMRO-NP) – 5; Liberal Democratic Party (LDP) – 5; Party of Democratic Prosperity (PDP) – 3; **Socialist Party** (SDP) – 3; **Liberal Party** (LPM) – 2; Democratic Party of Turks (DPTM) – 2; **Democratic Renewal of Macedonia** (DOM) – 1, **Party of European Future** (1), Roma Union (SR) – 1; Democratic Party of Serbs (SPSM) – 1; United Party for Emancipation (OPER) – 1; Democratic Union (DS) – 1; independents – 2 [the majority coalition partners are marked in bold]

¹⁰ DUI's mayors control an overwhelming majority of 33 out of the 34 municipalities with ethnic Albanian majority in Macedonia. There are altogether 84 municipalities in Macedonia.

¹¹ At its regular 33rd session, held on 20 February, the Parliament supported the proposal of the Prime Minister for changes in the government. The government reshuffling included rotating the former Minister of Environment Aliu to Minister without Portfolio in charge of the Ohrid Framework Agreement, whereas the Vice Prime Minister Selmani, who combined the functions of Minister of Health and Minister without Portfolio in charge of the Ohrid Framework Agreement will retain the post of Minister of Health. At the same session, the Parliament reelected Xhelil Bajrami (DPA) as new Minister of Environment and Physical Planning. According to the new alterations, the Government Cabinet is now composed of 14 ministers and 8 ministers without portfolio.

dampened since the publication of the latest European Commission report in November 2006 which did not state a firm date for starting accession negotiations with Macedonia.

11. Meanwhile, the EU is expecting wide-ranging reforms in public administration, law enforcement, judiciary, internal markets, etc. Itself suffering from ill-effects of the "enlargement fatigue" and having serious concerns over Bulgaria and Romania's recent accessions, the EU is not in a hurry to open its doors; and yet it is getting impatient. On 8 February, the European Commissioner responsible for Enlargement Mr Olli Rehn went to Skopje to tell the leadership that the developments over the last year had become "alarming". *"It seems that the constructive and determined approach from all parties now has given way to obstruction and lack of faith. You need to turn this development around. You can ill afford political stalemate"*¹², he said. The European Commission and some of the EU member states share the perception that the new government has not fully understood the importance of focusing on the Copenhagen criteria and on the full implementation of the Ohrid Framework Agreement (OFA).

12. The Macedonian side is hoping to receive a date for negotiations with the EU in the first half of 2008 when Slovenia takes over the EU presidency. Suffering from its long dispute with Greece over the name issue and feeling somewhat uneasy with its other neighbour, Bulgaria, which has historically held territorial ambitions and ethnic claims upon Macedonia now in the Union, the country has long felt itself without proper allies to support its candidacy and is now counting on the golden chance of having its former Yugoslav partner chair the EU.

13. Feeling the fading opportunities for fast-track EU membership prospects, many government ministers indicated during our discussions that NATO membership would be first on their agenda. Macedonia expects an invitation for NATO membership next year. In June Macedonia will host a meeting of the Euro-Atlantic Partnership Council in Ohrid, which is a good opportunity for the country to show its progress. However, NATO is delivering the same message to Macedonian authorities that unless there is co-operation between the government and the opposition, and tangible progress in the reform agenda, the country will not enter in 2008.

14. Two further issues will have a huge impact on Macedonia's internal stability in the coming months: *i)* the way the judiciary will be able to deal with the return of the four cases from The International Criminal Court on Former Yugoslavia (ICTY) in the Hague and *ii)* the impact of the determination of the final status of Kosovo. The first is rather disquieting, for two of the four cases are directly aimed at the DUI leadership. If not handled in a legally competent and politically mature way, the political confrontation may effectively turn into an inter-ethnic conflict. International institutions in Skopje are also worried about the risk of upsetting the delicate balance created by the 2001 law on Amnesty.

3. REVIEW OF PROGRESS ON OUTSTANDING COMMITMENTS

15. Since the publication of the previous progress report on the post-monitoring dialogue, Macedonia has continued to undertake credible legislative initiatives, not only to meet commitments made to the Council of Europe but also to reach the targets on the EU and NATO accession agendas. The last remaining outstanding Council of Europe accession commitment undertaken by Macedonia in Opinion No. 191 (1995) is the ratification of the European Charter for Regional and Minority Languages (signed in 1996). However, a number of recommendations referred to in paragraph 13 of Resolution 1213 (2000), which closed the full-scale monitoring procedure, have still not been fully observed or require improved implementation. The latter concern in particular the areas of reforms of the judiciary, public prosecutor's office and law-enforcement bodies, combating corruption and full integration of ethnic minorities. These coincide in turn with the requirements of the EU Copenhagen criteria as well as with the provisions of the Ohrid Framework Agreement (OFA).

16. It should be recalled that the OFA contains many of the key requirements expressed in Assembly Resolution 1213 (2000) which had closed the monitoring procedure some year and a half earlier. In April 2000, the Assembly stressed the importance of the integration of the Albanian and other minorities with regard to education, the use of language, their proportional representation in the police and other state institutions. It may therefore be concluded that the honouring of the terms of the Ohrid Agreement is equally a manifestation of complying with an important part of the country's commitments to the Council of Europe. For this particular reason, I will take a closer look at the state of progress of the implementation of the OFA within this Chapter.

¹² Speech delivered at the opening of a conference on the Ohrid Framework Agreement titled "Ohrid Agreement: Vital for European Path", 8 February 2007 in Skopje.

3.1. Consolidation of good governance and of democratic institutions

17. The conduct of local elections in 2005 and parliamentary elections in July 2006 showed that in Macedonia the population can choose their future leaders through a democratic process. However, the country can not yet be regarded a genuinely sustainable democracy managing change of power without upsetting the major processes or institutional balance and allowing voters to affect the behaviour of the leadership during their term of office. Macedonia's political system remains based on personal gain. Those in power control all the institutional sources of benefits and favours.

18. Good governance relies on trust and reliable public service continuity. It was brought to my attention however that the new government had followed its predecessors' line replacing officials in the ministries and public bodies with its own members and sympathisers on a massive scale. Such a decision is an illustration that governmental changes go along with staff changes at all levels. Besides, they challenge the promotion of a non-politicised civil service and merit based career system and negatively impacts the progress of equitable representation in the public administration, a key aspect of the OFA. This negative trend has also created frustration among many of Macedonia's international partners who have made considerable investments in human capacity building in state administration only to see the well-trained public servants recently dismissed. ***In order to bring a mentality change into the existing political culture and build up trust inside the institutions, the Civil Servants Agency should be strengthened to be able to play its full role in assessing performance of civil servants.***

19. Second, good governance also builds on confidence-boosting measures. Unfortunately, ***a lack of effective independent oversight of political parties and their financing, as well as the absence of a truly independent media to act as a watchdog, deepen the mistrust in Macedonian public authorities today.***

20. Third, the deep fissures between the leading political parties in the government and those in the opposition as well as emerging conflicts both within the government coalition and within some of the opposition parties, and the high tensions between the two major ethnic Albanian parties, call for an urgent need to engage in a meaningful dialogue and consensus building on all sides. Unless this is seriously dealt with, the country may end up compromising its stability as well as its greatest common goal on which there is national consensus – its Euro-Atlantic aspirations. ***The ruling government and parliamentary majority should foster stronger political dialogue with the opposition, especially DUI, and seek consensus on a number of critical reforms in the interest of political stability of the country. However, the opposition must also assume its role fully and constructively, be prepared to cooperate within the parliament and at local level, and be careful not to damage major state interests.*** I am glad to note that since my visit in mid-January there have been attempts to come to terms and to renew political dialogue between the leading majority party and DUI. DUI has recently announced that it may return to the parliament's work; however, it has conditioned its return to highly sensitive issues which are not easily acceptable to the ruling coalition partners¹³. Indeed, DUI's return implicates a high price to pay; however, DUI's return would certainly help in creating the necessary joint approach for carrying out the reforms necessary for the country.

21. Fourth, the Parliament in Macedonia badly needs ***new parliamentary rules of procedure, which would take account of a proper language balance, reasonable time frames for debates and MPs' work with their electorate.*** I find it very strange that the Macedonian Parliament is in session five days a week and all round the year, which does not leave any time for the MPs to meet with their electorate in their constituencies. I find it equally bizarre that there exists no limit of speaking time at any stage of legislative procedure. It was explained to me that delaying and obstructing undesired legislation by means of endless discussions was an old "blocking" tactic of any successive opposition in the Macedonian Parliament. In autumn 2006 the new government updated its own Rules of Procedure and attempted to reach an agreement with the opposition on draft rules of procedure made according to the example of German Bundestag; however, it did not gather sufficient support of the opposition. Thereafter, the ruling coalition has reactivated the text prepared by the previous Speaker (now in opposition), which was based on the Slovenian model. Nevertheless, under various pretexts, this draft has not garnered more support either. While the draft envisages that the parliamentary committees may be chaired in Albanian, DUI refuses to vote in its favour unless Albanian is used at all levels in parliament. The coalition partners VMRO-DPMNE and NSDP as well as the oppositional SDSM are convinced that the parliamentary committees may be chaired in Albanian but to them the idea of the parliament speaker or vice-speaker chairing the session in Albanian is

¹³ The conditions set by DUI are the disbanding of the Parliamentary Committee for Inter-Community Relations, the election of all future governments by the "Badinter" majority and the resolution of the Albanian language issue and political dialogue to be carried out with mediation of the international representatives.

unacceptable. DPA insists on Albanian being the second official language in the country at all levels, but they would insist on regulating this with the Law on Languages. None of the oppositional parties agree with the limitation of the time for MP discussions. **To me the parliamentary rules of procedure should be the basis on which the different political forces could start building up a new culture of compromise and constructive modern-day solution-seeking.**

22. Although some of the members of the parliamentary committee on inter-ethnic relations complained during our meeting that the Macedonian Parliament did not have the financial means to allow parliamentary committees to be chaired in Albanian, the parliament could find the required resources through improved efficiency of shorter plenary debates (but more thorough discussions in relevant committees) and four-day session weeks in order to allow MPs to work closer with their electorate. After all, how could they represent their voters' interest at national level if they never met them in between the election campaign? Enhanced contacts with the electorate could also encourage public debate on various important issues and increase voter-confidence in parliament's work.

23. Finally, it is regretful that political parties continue to be divided along ethnic lines and that no party exists that has a wide appeal among all ethnic groups. In the long run, this could be an obstacle for the continuing integration of all ethnic groups in society.

3.2. Implementation of the Ohrid Framework Agreement (OFA)

24. The Framework Agreement, concluded in Ohrid on 13 August 2001, has provided foundations for inter-ethnic reconciliation through a process of integration and institutional bargaining and compromise, both on local and state level, and without overwhelming dependence on international intervention. In this respect, the OFA is a unique model in the region for overcoming existing problems. It has definitely been the driving force of reforms.

25. The rationale of the OFA has focused on strengthening institutional integration using the following four basic policies: *i*) substantial **decentralisation of power** to the units of local self-government to ensure they have sufficient autonomy and resources to support their development and exercise community rights; *ii*) encouragement of **equitable representation** of minorities in public administration, and especially security services, to guarantee non-discrimination, access to institutions and inclusive security; *iii*) creation of **special constitutional and legal procedures** to prevent marginalisation of minority interests in legislative procedures, both at the local and the state level; and *iv*) creation of a legal framework that would allow greater **use of national symbols and languages**¹⁴.

26. Notwithstanding the complex challenges that the OFA has had to face over the last six years, the formal obligations of the accord have been fulfilled or are close to completion:

- All constitutional changes have been completed, albeit some with delay.
- A nationwide census has been carried out, and its results have stopped controversies about the real percentages of minorities in the total population of Macedonia¹⁵.
- Although the removal of the vast quantities of illicit small arms and light weapons remains unfinished¹⁶, an escalation of violent inter-ethnic conflict has been prevented and transformed into political and institutional accommodation.
- The process of decentralisation is progressing towards its second phase.
- Substantial progress has been achieved in the rate of equitable representation of minorities in public administration, despite this having been a subject of political controversy and administrative hindrance. A survey of 170 institutions and organisations under the authority of the government, the president, and the parliament has been carried out to determine the composition and characteristics of state employees with a view to achieving the "equitable and appropriate" representation of minorities by providing a "roadmap for future action". According to that survey, the percentage of minorities in public administration has risen from under 3% in 1991 to 18.66% today. In the most delicate areas, such as the security forces, the number of

¹⁴ Pasztory, C., "The Applicability of the Ohrid Framework Agreement as Model for Kosovo", *Forum Analytica*, No.6, August/September 2006, p. 48.

¹⁵ According to the 2002 Census figures, ethnic Macedonians comprised 64.18%, Albanians 25.17%, Turks 3.85%, and Serbs, Vlachs, Romas and others comprised the rest of the total population.

¹⁶ www.seesac.org

minorities in the armed forces has risen to about 20 percent in 2006. Minorities represent 12.65% of the employees of the judicial administration and 14.31 of judges.

– The Law on use of national symbols and flags has been successfully passed and implemented, although the legislation concerning the use of minority languages is still under political debate. Albanian-language education opportunities in the country have dramatically improved, although the general conditions of education in the country are in poor shape.

27. Today the OFA that six years ago most Macedonians denounced as an act of treason is no longer disputed. Once loud calls for OFA to be revised or abolished have also faded. The big political players all stand behind the Agreement now. Ironically, the roles have been reversed: VMRO-DPMNE and DPA who were in power when the conflict started in 2001 now seem to be likely to finalise the OFA during their mandate, whereas the Albanian ethnic opposition that delivered the OFA in the first place is the one that now shows the greatest resistance to its successful implementation – understandably as part of a political game for mobilising opposition to the government.

28. The strength of the Ohrid model is its "loose end" nature, which relies on the political capacity of the ethnic groups to continually renegotiate and bargain solutions to their problems. However, this is also the Achilles' heel of the model as can be seen with the fierce tug of war over the **application of the "Badinter" principle** of double majority voting¹⁷ on laws affecting culture, the use of language, education, personal documentation, local finances, etc. Since the OFA does not clearly define which legislation the principle has to apply to, it serves as a weapon in the hands of the ethnic Albanian opposition who uses it for its own political manoeuvring. The government strategy, on the other hand, is to rely on the final say of the Parliamentary Committee on Inter-Community Relations which has the constitutional authority to determine when the "Badinter" majority is needed. DUI argues that the manner in which that committee was formed gives the ruling majority an upper hand in influencing all decisions. DUI leaders also argue that this voting principle should be applied in introducing equivalent legislation at both national and local level as that would further empower local ethnic minority populations. As mentioned before, more recently, DUI has conditioned renewed political dialogue with the ruling parties on the latter accepting that any future elections of government should be subjected to the "Badinter" principle. The EU proposes that the international community which negotiated the OFA in the first place could help settle the "Badinter" issue by defining the list of laws to which this principle should be applied. I see some danger here that an overly "interventionist" approach would go against the basic nature of the Agreement, the main objective of which was not to confine the parties to detailed and strictly defined procedures but to let them seek solutions to their inter-ethnic problems on their own.

29. It appears that the **decentralisation process** in Macedonia has in many ways evolved less painfully than in many other transformation societies. Nevertheless, the very high degree of the planned transfer of competence in virtually all areas of public authority has been a challenging task. Some serious challenges still remain to be addressed before the process can switch over to its second phase of the reform. To list but a few: the question of debt remains an issue as substantial debts could threaten the functioning of several municipalities. Smaller municipalities have difficulties delivering basic services. Municipal tax collection is a challenge in many municipalities. The fact that tensions and lack of mutual confidence persist among the communities makes co-operation between the DUI-dominated Albanian municipalities and the central government difficult. The question of giving special status to Skopje has not been decided as yet. Land reform has not been carried out – the ownership question is still an apple of discord which leads to many court disputes. The land cadastre, prepared with foreign donor support (World Bank), will be operational only in 2008. The goal is to have administrative documents delivered within 10 days after the request, which will help reduce the enormous bureaucracy and source of corruption, and it is an indispensable condition for safety of investment.

30. In order to surpass the economic and social differences between various regions of the country and between the urban and rural areas, the Government adopted a draft Law on Equal Regional Development on 21 February and submitted it for parliamentary reading. The Parliament has also started the debate on the amendments to the Law on Financing of Local Self-Government Units, the aim of which is to increase the VAT and personal tax percentage allocated to municipalities from the current 3 to 4.5%.

¹⁷ The "Badinter" principle stipulates that constitutional amendments resulting from the Ohrid Agreement and the law on local self-government cannot be approved by the Macedonian Parliament without a qualified majority of two-thirds of votes, within which there must be "a majority of votes of representatives claiming to belong to the communities not in the majority in the population of Macedonia".

31. The current problems notwithstanding, the decentralisation is a courageous and necessary step and the government deserves recognition for the work achieved so far. Apart from political benefits, the reform should also result in a more efficient and democratic form of local government.

32. The OFA has put in place the basic elements for a **multi-ethnic society**. And yet, in reality the established political order functions more like a power-sharing accord than a genuinely multi-ethnic civic paradigm. Regardless of OFA's relative success, its implementation has led to a new situation based heavily on ethnicity, which carries with it its own dangers of increasing segregation and fragmentation of Macedonian society. I was informed that the local communities are increasingly (voluntarily) mono-ethnic. Improved education in the languages of national minorities has left minority language groups with overall decreasing levels of fluency in the official state language while the Macedonian ethnic majority has almost no knowledge of any of the minority languages. The communication gap is thereby increasing, lessening the already scarce opportunities for inter-community interaction, not to mention co-operation. In addition, the application of the equitable representation criterion in public administration in a country where unemployment is reaching 40%, has greatly increased the fear among the ethnic Macedonian majority that they are becoming marginalised in their own country. Also smaller minorities, such as Roma, Vlachs, Serbs, etc. complain of discrimination and of being ignored. **In order to provide additional security to smaller ethnic groups, the Macedonian authorities should step up the ratification process of the European Charter for Regional or Minority Languages**¹⁸.

33. In conclusion, there has been steady progress in fulfilling the objectives of the Ohrid Framework Agreement, although effective implementation has remained weak in many aspects. **The Macedonian authorities should continue to pursue their goal of full implementation of the OFA. The latter is not only the key to a stable and confident relationship between the two main ethnic communities but also a sound basis for securing economic growth, investment and job creation in the country. This requires further efforts in ensuring equal representation of the minority communities in the public administration, the completion of the decentralisation process and the adoption of a new law on the use of languages.** And yet, without a common thread of shared citizenship and of mutual interdependence, the sustainability of stability in Macedonia is still at risk. I have the impression that rights and protection for minorities are still seen and functioning in opposition to a common public space or shared vision of a common future between the communities of Macedonia. Nevertheless the OFA is a living process of transforming perceptions and realities, which is its great strength.

3.3. Reform process towards enhanced rule of law – implementation and sustainability

34. The reform process in Macedonia has lost much valuable time with the elections last year, which the new government now needs to win back. Though the reforms seem to be moving ahead on paper, when looking below the surface, the process requires further consolidation and – most of all – implementation. In addition, many of the international contacts I met in Skopje mentioned that the young and energetic government tended to disregard public opinion; however, without bringing the public at large along with the reform process, the latter will not succeed.

35. Many representatives of international organisations, civil society and the magistrate were equally critical about the political authorities concentrating more efforts on trying to place their candidates to various elected functions than on the content and implementation of key reforms. In this regard, it should be emphasised that reforms are not about nomination of key personalities but rather about transforming the society. **The government and parliamentary majority will have to maintain the momentum of reform and continue to work seriously on political consensus to proceed with the reforms and their implementation.**

36. Although EU accession is in sight, **Macedonia should continue to make full use of the Council of Europe instruments and co-operation mechanisms to further support its reforms.**

3.3.1. Reform of the Judiciary

37. The December 2005 Constitutional amendments allowed a breakthrough in the judiciary reform, notably in terms of enhancing the independence and impartiality of the judges. In May 2006, new Laws on Courts, Judicial Council, Misdemeanours and Administrative Disputes were adopted. Thus the legislation

¹⁸ The Minister of Foreign Affairs explained to me that a working group on the ratification of the Charter had been re-established after a meeting in Vienna last October and that there was no other obstacle to the ratification than waiting for the adoption of the new Law on the Use of Languages.

regarding both structural changes and the functioning of the judiciary is today to a large extent in place but implementation has not followed to the desired effect.

38. The reform strategy foresees the creation of a fourth Court of Appeal in Kumanovo and special court departments in five basic courts to deal with cases of organised crime. A new Administrative Court will be established as the first instance for judicial review of administrative decisions so as to remove the burden of hearing administrative disputes from the Supreme Court.

39. The rules for the appointment of judges have been changed by the adoption of the Laws on the Academy for Training of Judges and Prosecutors (Academy of Magistrates), on Court and on the Judicial Council. These are to strengthen the independence of the judiciary. Parliament will no longer play a role in the selection of judges. Judges and presidents of courts will be elected by the Judicial Council with two thirds of the votes of its 15 members. The composition and role of the Judicial Council has also changed. Out of its 15 members, 8 will be judges elected by the judges, 3 will be elected by the Parliament, 2 by the Parliament upon a proposal by the President of the Republic. The principle of equitable representation is to be represented in the election of its members. The President of the Supreme Court and the Minister of Justice are *ex officio* members.

40. However, to date only the election of the 8 judges (of the judges' quota) has been completed, the Parliament having so far failed to elect the other 5 members of the Judicial Council. ***The National Assembly should do its utmost to proceed immediately to elect the remaining 5 members of the Judicial Council.*** The new Academy of Magistrates was established during the previous government, yet its setting up has seen many delays. Apart from the recent selection of its Director and executive Director, the Academy has not yet begun operating. ***In an environment where public opinion of the judiciary is very low and given the need to implement a number of new laws including the criminal code, penal procedural code, electoral code, law on courts, etc, it is crucial to boost public confidence and to get the Academy of Magistrates properly working. The efficiency of the work of the magistrates also has to be improved through increased budgetary resource allocations to courts.***

41. The large number of misdemeanour and enforcement cases remains a major reason for the inefficiency of the judiciary¹⁹. In order to relieve the heavily overburdened Supreme Court, 80% of the cases of which constitute administrative cases, an Administrative Court has been set up. The President of the Supreme Court expressed his concern, however, as to the delays occurring in setting up the Administrative Court. As of April 2007, the Supreme Court is no longer meant to deal with administrative cases, and yet there was no information available on the preparations for the setting up of the new court. The latter is to be composed of 19 judges who need to be elected.

3.3.2. Reform of the Public Prosecutor's office

42. One of the first decisions of the new government upon taking office was to request the removal by the Parliament of the incumbent Public Prosecutor, stating that a new Prosecutor will be named only after a new law on public prosecution is adopted.

43. The Constitutional amendments of 2005 have reduced the role of the government in electing the State Public Prosecutor. The latter is now appointed by the Parliament and the government will need the prior consent of the Public Prosecutors Council before proposing the Parliament a candidate. Appointment is for a period of six years renewable. However, the law on the conditions for appointment and dismissal of public prosecutors and their deputies is still not adopted.

44. Several individual political parties informed me that the new Public Prosecutor would be elected according to the old system (i.e. upon the proposal of the President of the Republic) and only then the new law will be put into parliamentary procedure. ***This order seems to go against the spirit of the reform even if it is understandable that a country cannot do forever without a State Public Prosecutor.*** I appreciate that the Macedonian authorities submitted the Law on Public Prosecution to the Venice Commission for review right after my return from Skopje and that the Venice Commission has adopted its opinion already at its plenary session of 16 March. I hope that the draft law will be reviewed along the lines of the recommendations of the Venice Commission and adopted without further delay.

¹⁹ The European Commission "The former Yugoslav Republic of Macedonia 2006 Progress Report", SEC (2006) 1387, p. 45 quotes the total number of pending cases in the basic courts in November 2006 as being 937 756. According to the same source, there were 534 548 cases registered in 2006.

3.3.3. Reform of the law enforcement bodies

45. The Ministry of the Interior and the Police have been restructured, though not altogether in line with the 2003 Police Reform Strategy²⁰. The late adoption of the Framework Law on the Police has impeded the decentralisation of the police and the creation of a new appointment system for police chiefs, delaying the implementation of the reform. According to the Minister of Interior, the country still needs to adopt at least 120 acts and by-laws before the Law on the Police can become applicable in October 2007.

46. Law enforcement bodies still continue to have very low public rating. Despite the positive steps taken by the Ministry of Interior through internal control and enhanced professional standards to investigate charges of police abuse and corruption, incidents of ill-treatment, particularly during arrest and detention, are reported to continue to occur. **Very strong political will is needed to improve the role and perception of the police in the society. One of the most effective ways could be through the promotion of community policing and twinning projects at local levels. The Council of Europe could offer valuable expertise in this field. Also, investigation mechanisms need to be further strengthened to fight abuse and corruption. Witness protection programme needs to be stepped up and brought to European standards. What is also crucial is reform inside the ranks of the police itself, including education and training and in particular in the field of human rights.**

3.4. Fight against corruption and organised crime

47. Fight against corruption is the number one priority of the new government, alongside the economic development of the country. The legal and institutional framework as regards corruption has been enhanced to a degree. Also the immunity rules have been changed in line with the recommendations of GRECO²¹. The Law on Free Access to Public Information has been adopted in view of increasing the transparency of public activities. Macedonia has ratified all relevant Council of Europe conventions in this field; however, the UN Convention against corruption still remains to be ratified. Effective implementation of anti-corruption measures is also easier said than done. Corruption remains widespread and is facilitated by the lack of good governance, transparency and accountability in public administration as well as well-defined rules of conflict of interest. The country's capacity to investigate and prosecute corruption are weak. Many cases are reported to be brought to court but then they disappear. Hardly any sentences have been handed down²². **The implementation of efficient anti-corruption legislation together with the strengthening of institutions and consolidation of strong independent oversight mechanisms remain thus the key urgency.**

48. Macedonia is a transit country of much of trafficking and organised crime crossing the Western Balkans. It has made some progress as regards human trafficking. A national strategy and action plan to combat trafficking has been adopted and training of judges, prosecutors, police and social workers has been carried out. **I encouraged the country's authorities, however, to ratify the Council of Europe Convention on Action against Trafficking in Human Beings.** In January 2007, the new Law on Weapons entered into force. Yet its **implementing legislation remains to be adopted. Also the witness protection programme and inter-agency co-operation need further development to reach European standards.** As regards international co-operation, agreements have been concluded with Slovenia, Switzerland and France, but other than that international operational co-operation remains underdeveloped²³. **Improved capacities of the justice system, law enforcement policies, and participation of Macedonia in the European initiatives to fight trafficking, organised crime and terrorism are also needed. To this end, Macedonia should closely follow up on the recommendations of GRECO²⁴ and PACO-Impact on upgrading its capacity to fight organised and trans-national crime.**

3.5. Education reform

49. Segregated classes and lack of sustainable cross-cultural integrated approaches in education remain predominant in the country. For the medium and long-term stability of Macedonia, it is very important how children – future European citizens – are educated today: how they learn their history, different community languages, etc. I got the impression from our discussions with the new Minister (himself an ethnic Albanian from DPA) that the inter-cultural aspect in education was not among the leading priorities of his

²⁰ European Commission "The former Yugoslav Republic of Macedonia 2006 Progress Report", SEC (2006)1387.

²¹ Council of Europe Group of States Against Corruption.

²² According to the European Commission report SEC(2006)1387, as of November 2006 only one police officer had been sentenced for receiving a bribe and one criminal procedure had been opened against a custom officer.

²³ EC 2006 Progress Report – SEC(2006)1387.

²⁴ See [Greco Eval II Rep \(2004\) 11](#).

Ministry, the latter concentrating on *i*) the fight against a huge drop-out rate from schools (proposal of making 9-year secondary education compulsory); *ii*) increasing the number of students regionally and *iii*) launching of "A computer for every child" project (which has been met with strong criticism from the opposition, yet with support from the international community).

50. As from September 2007, the government also intends to introduce optional religious classes to the school curriculum. It is somewhat difficult to understand why it is necessary to introduce religion as a subject other than for the purpose of promoting inter-religious and inter-cultural studies and thus mutual understanding of the ethnic communities. However, should that subject be indeed introduced, it is of paramount importance that at least three minimum threshold standards be observed: *i*) that religion would not be taught as alternative to civic education; *ii*) that the pupils have a free choice of whether to attend the classes or not; *iii*) that the Ministry of Education and not local churches be in charge of curriculum standards, quality assurance and training the teachers.

3.6. Independence of media

51. The international community in Skopje was very critical about the situation of the public broadcasting in Macedonia, calling it a "murky business where standards leave lots to desire". The new Broadcasting Law, enacted in November 2006, provided for greater independence of the regulatory body – the Broadcasting Council – which is however currently often accused of "political favouritism". The issue of strengthening the mechanisms necessary to ensure the economic and financial independence of the media remains to be addressed. Rigorous implementation of the new legislative framework is needed, especially to secure the funding of the regulatory body and the public service broadcaster²⁵. Unfortunately I had no occasion to meet with any media representatives or public media authorities during my stay²⁶.

4. OTHER ISSUES RAISED

4.1. Constitutional name issue

52. The name issue remains an open problem since there has been no breakthrough on it with Greece. Renewed efforts are needed, with a constructive approach, to find a negotiated and mutually acceptable solution, under the auspices of the UN, and within the framework of UN Security Council Resolutions 817/93 and 845/93, thereby contributing to regional cooperation and good neighbourly relations. The Foreign Minister stated during our meeting that his country's position on this matter was to use a double formula, whereby the constitutional name would be used in multilateral relations and another, mutually accepted name, in bilateral relations with Greece. This proposal has not however won the Greek support. The Greek Foreign Minister has repeatedly threatened that the Greek parliament would not ratify Macedonia's agreements for NATO and EU membership unless the name issue was solved²⁷. The same was implied in the [address](#) by Mr Kostas Karamanlis, Prime Minister of Greece, during the PACE January 2007 Part-Session, in which he mentioned that "*We support "the former Yugoslav Republic of Macedonia's" Euro-Atlantic aspirations and, in particular, the European perspective, but that comes with the condition that we find a mutually acceptable solution*".

4.2. Visa facilitation

53. After Bulgaria having become the 26th Member State of the EU, Macedonians can no longer travel anywhere visa-free. This is a paradox situation, given that the former Yugoslav citizens could previously travel visa-free everywhere in Europe; now that they have obtained a candidate status to the EU, the borders are blocked. EU countries – Council of Europe member States – should consider facilitating visas to certain categories of Macedonian citizens, e.g. students, researchers, scientists, etc.

4.3. New draft Law on Religion

54. The objective of this draft law is to modernise the current system and to place the court as the institution that recognises religious communities. Similarly to other countries of South-East Europe, the law also attempts to limit that one confession should have only one church (Article 8). This is explained by the

²⁵ EC 2006 Progress Report – SEC(2006)1387.

²⁶ Macedonia is in 45th position with a score of 11,50 in the "[Worldwide press freedom index 2006](#)" made by the non-governmental organisation [Reporters Without Borders](#) (in comparison, Finland, Ireland, Iceland and the Netherlands share the 1st position with a score of 0,50 while North Korea is on the 168th and last position with a score of 109).

²⁷ See also the [Address](#) by Mr Kostas Karamanlis, Prime Minister of Greece, during the January 2007 Part-Session. A motion for a recommendation on *the provisional name of the Republic of Macedonia in the Council of Europe* has been referred to the Political Affairs Committee which has appointed Mr Agramunt (Spain, EPP/CD) as rapporteur.

need to maintain peace and stability in the region through the protection of the already registered denominations (notably the Macedonian Orthodox Church and the Islamic Religious Community in Macedonia). Once again I appreciate the fact that the Minister of Justice decided to submit this draft law for expertise to the Venice Commission on 19 January. The Venice Commission adopted its draft opinion at the 70th plenary session of the Commission. The draft opinion underlined that, while "*in general, the draft law meets many of the highest international requirements in protecting the freedom of religion or beliefs and in providing a positive framework for its exercise and practice*," *certain issues remain problematic and do not comply with important international standards requirements*". The Venice Commission therefore urged the authorities to amend the draft law accordingly.

5. CONCLUDING OBSERVATIONS

55. Macedonia is standing at significant crossroads in its internal, regional and European evolution. It has undeniably made enormous strides to meet its international aspirations and commitments, including those to the Council of Europe. It has achieved considerable progress in the electoral process, the legal framework of the police and the judiciary, the adoption of almost all legislation prescribed in the Ohrid Framework Agreement, and in the decentralisation process.

56. Having obtained the EU candidate status in December 2005 and with the new government now in office for over six months, Macedonia is entering a critical period where it has to consolidate a bulk of basic, structural reforms, including the completion of the requirements of the Ohrid process and implementation of reforms linked to its EU accession negotiations. What the country needs is both improved immediate action and long-term sustainability in the reform process.

57. A key challenge for Macedonian leaders will be to ensure that short term political party interests do not cripple the effectiveness of democratic institutions or their accountability in administrative, legal or even criminal terms. The long-term functioning of the mechanisms of intra-ethnic and inter-ethnic consensus building and decision making, both at national and at local level, will also be important indicators of stability for the country.

58. The most pressing task for the new Macedonian authorities is to significantly speed up the implementation of reforms in the areas of justice, rule of law, decentralisation and fight against corruption and organised crime. Public confidence in the future European integration process will depend to a large degree on the pace and seriousness of transforming the functioning, effectiveness, independence and accountability of the judiciary, public prosecutors and all investigative bodies. Progress is needed in the organisation and functioning of the police, including its decentralisation and bringing the police close to communities. Tangible results should be achieved in curbing corruption and fight against organised crime. Further progress is also needed in the implementation of the Ohrid Framework Agreement, notably concerning the objectives of equitable representation of the communities in the public administration and public bodies. The respect of the principles and the spirit of the Agreement will remain crucial for Macedonia's full integration into Euro-Atlantic structures.

59. Although the various monitoring and reporting mechanisms of the Council of Europe and other international organisations provide significant indications of progress towards the observance and respect for democracy, human rights, the rule of law, national minorities, social cohesion, etc. in all transition countries, the real measure of successful reforms is the perception (both internally and externally) of a transformed, vibrant, stable and democratic society. It is not the adoption of one or another piece of legislation under the pressure of the international community that makes the difference but the perception of a truly functioning multi-ethnic society that is progressing in a predictable way towards consolidating sustainable reforms. This is also what, after 10 years of membership in the Council of Europe, the Parliamentary Assembly is expecting from the membership of Macedonia. For this purpose, Macedonia should continue to make full use of all the instruments and co-operation available that would enable it to firmly anchor the values of the Council of Europe into Macedonian society, to ensure the sustainability of the reforms, which are designed and carried out in conformity with its membership goals, and to eradicate the major threats to the longevity of democracy in Macedonia.

60. Before proposing any further steps, I would appreciate receiving, within three months, observations, as well as any supplementary information by the parliamentary delegation of Macedonia.