Parliamentary **Assembly**
Assemblée parlementaire

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COUNCIL OF EUROPE CONSEIL DE L'EUROPE

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Honouring of obligations and commitments by the Republic of Serbia[1]

Draft report
Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)
Co-rapporteurs: Mr Charles GOERENS, Luxembourg, Alliance of Liberals and Democrats for Europe, and Mr Andreas GROSS, Switzerland, Socialist Group

The present document was finalised on 7 March 2008. Since then, developments have occurred in Serbia which are not reflected in this document. In particular, on 10 March 2008, the government adopted a "Proposal to dissolve the National Assembly of Serbia and hold early parliamentary elections on 11 May 2008".

[1] This draft report was made public by decision of the Monitoring Committee dated 18 March 2008. It has not yet been approved by the Committee and therefore only reflects the position of the co-rapporteurs. The co-rapporteurs shall update this draft report in the light of the results of the parliamentary election

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A. Preliminary draft resolution

1. Serbia is a member state of the Council of Europe since 2003, succeeding in 2006 to the State Union of Serbia and Montenegro. Over this period, Serbia has been steadily implementing the obligations and commitments entered into at the moment of its accession. It actively co-operates with the Council of Europe and chaired the Committee of Ministers from May to November 2007.

2. The Assembly recalls its Resolution 1514 (2006) on the Consequences of the referendum in Montenegro and takes note of key political developments which have occurred in Serbia since the dissolution of the State Union of Serbia and Montenegro in June 2006: a new Constitution was approved by referendum on 28 and 29 October 2006; a parliamentary election was held on 21 January 2007 and, most recently, a presidential election was held on 20 January and 3 February 2008.

3. The Assembly refers to the reports of its Ad Hoc Committee on the Observation of the Parliamentary election and of the Election Assessment Mission for the Presidential election (Second round) and congratulates the Serbian people and Serbian authorities for having conducted the votes in accordance with Council of Europe standards for democratic elections.

4. The Assembly considers that, in political terms, Serbia is still at a crossroad. In the 2007 parliamentary election and 2008 presidential election, the majority of the Serbian citizens made a clear choice in favour of European integration. However, an important minority of voters cast their ballots for a different vision of the country's future.

5. The Assembly welcomes Serbia's ambition to pursue European integration and the fact that this is a strategic goal of the coalition government and a key foreign policy objective. In this respect, the Assembly welcomes the initialling of the Stabilisation and Association Agreement between the EU and Serbia and calls upon the Serbian authorities to sign the Political Agreement on Co-operation with the European Union at their earliest opportunity. This Agreement will give a fresh impetus to the necessary reforms aiming at bringing the Serbian legal order closer to the European *acquis* in the field of democracy, rule of law and human rights. At the same time, the Assembly calls upon the leadership of Serbia to work with all stakeholders to build much-needed bridges in the society for European integration to become a shared vision of the country's future.

6. The Assembly is closely following the developments concerning the status of Kosovo. It has taken note of the Resolution adopted by the Kosovo Assembly on 17 February 2008 declaring Kosovo to be independent and of the fact that several countries, including a number of Council of Europe member states, have already recognised the independence of Kosovo. Equally, the Assembly has taken note of the rejection of this Resolution by Serbia and several Council of Europe member states as being illegal and contradicting international law.

7. The Assembly understands the frustration of the Serbian people with respect to the recent developments in Kosovo. It welcomes the commitment of the Serbian authorities to defend their position by peaceful means and in accordance with international law.

8. It strongly condemns the violent incidents which have occurred in the Northern areas of Kosovo as well as in Belgrade and, in particular, the attacks against some foreign Embassies, which are totally unacceptable in a country adhering to democratic principles and international law.

9. Therefore, the Assembly calls upon the Serbian authorities to

9.1 send a clear and unequivocal message condemning violence in any circumstance;

9.2 ensure that in defending their position with respect to Kosovo only peaceful means will be used;

9.3 take effective measures to ensure the right of all political parties to express freely their views on developments with respect to Kosovo;

9.4 continue dialogue with all international and regional actors in order to promote peace, stability and reconciliation in the Western Balkans, in the spirit of European integration;

9.5 continue co-operation with the international civil presence in Kosovo with a view to preserving and promoting the cultural, linguistic and religious rights of all communities in Kosovo.

10. The Assembly believes that now the time has come when the Serbian authorities should concentrate all their efforts on several key issues, which have been overshadowed by the Kosovo issue, in order to make Serbia a better place to live in: European integration, co-operation with the ICTY, the fight against crime and corruption and the improvement of the citizens' living standards.

11. In this respect, the Assembly is deeply concerned by the fact that, five years after accession to the Council of Europe, the commitment relating to co-operation with the ICTY has not been implemented in full and that the remaining four indictees are still at large.

12. Therefore, as regards co-operation between Serbia and the ICTY, the Assembly

12.1 considers that this co-operation can only be judged sufficient when all the indictees, notably Radovan Karadžić, Ratko Mladić, Goran Hadžić, and Stojan Župljanin, have been brought before the Tribunal, while welcoming the recent improvements in this co-operation which resulted in the handing over to the Tribunal of Zdravko Tolimir and Vlastimir Djordjević;

12.2 calls upon the Serbian authorities to

12.2.1. step up their efforts to track down the indicted persons who still remain at large and hand them over to the ICTY at the earliest opportunity;

12.2.2. to make all documents and archives of the Ministry of Defence and of the Security Services available to the ICTY, for the purposes of conducting investigations within its mandate;

12.2.3. to sign and ratify, without further delay, the European Convention on the Non-Applicability of Statutory Limitations to Crimes against Humanity and War Crimes (ETS no° 082) and the Convention on the Compensation of Victims of Violent Crimes (ETS no° 116);

12.2.4. to lift the ban on the extradition of nationals charged with committing war crimes.

13. As regards the functioning of democratic institutions, the Assembly

13.1. regrets that Serbia's democratic institutions are still not strong enough and underlines the need that they should be further strengthened in the fields of electoral legislation, parliamentary democracy and decentralisation;

13.2. encourages the National Assembly of Serbia to develop, in co-operation with the Assembly, a follow-up Parliamentary Assistance Programme, making full use in particular of new funding opportunities within the framework of the European Union's Instrument for Pre-accession Assistance (IPA).

13.3. therefore, it calls upon the Serbian authorities to

13.3.1. amend the electoral legislation, in accordance with the Joint Recommendations of the Venice Commission and OSCE/ODIHR, in particular, to bring the system of allocation of mandates in the Parliament and in municipal assemblies into line with European standards;

13.3.2. eliminate from the Constitution the provisions establishing the imperative mandate of Members of Parliament and strengthen the capacity of the National Assembly to play an increasingly active role in the political process;

13.3.3. adopt a new law on the National Assembly of Serbia and the new Rules of Procedure of the Parliament, in close co-operation with the Assembly, within the framework of the Parliamentary Support Programme;

13.3.4. further strengthen the legislative basis for, and the operational capacity of, the Office of the Defender of Citizens' Rights and of the Office of the Commissioner for Freedom of Information;

13.3.5. continue to implement a comprehensive decentralisation reform, with a view to effectively devolving sectoral competences to local authorities and autonomous provinces,

strengthening fiscal decentralisation, improving administrative supervision over local authorities' action and building up the capacity of local authorities;

13.3.6. sign and ratify, without further delay, the European Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS no° 106).

14. As regards the rule of law, the Assembly:

14.1. regrets that the reforms of the judiciary and of the Public Prosecutor's Office are yet to be implemented;

14.2. welcomes the adoption of the law on the Constitutional Court and the appointment of the judges from the quota of the Parliament and of the President;

14.3. welcomes the co-operation between the Serbian authorities and the Council of Europe in the fields of the reform of the judiciary and of the Public Prosecutor's Office, the fight against corruption, money laundering and counter-terrorism financing;

14.4. notes that the new Constitution requires the adoption of a whole set of new laws governing the judiciary and the Office of the Public Prosecutor, which should be done in co-operation with the Council of Europe;

14.5. in particular, the Assembly calls upon the Serbian authorities to

14.5.1. develop and implement the legislation on the organisation of courts of law, status of judges, status of the High Judicial Council, organisation of the Public Prosecutor's Office, status of Public Prosecutors and State Prosecutorial Council, in accordance with European standards, guaranteeing in particular that the judiciary and the prosecutors are immune from political influence;

14.5.2. increase the effectiveness and professionalism of judges and prosecutors, in particular, by reinforcing their initial and in-service training through the Academy of Jurisprudence;

14.5.3. enact specific measures to combat corruption within the judiciary, while preserving the fundamental guarantee of independence of judges;

14.5.4. implement in full the recommendations of the Council of Europe Group of States Against Corruption (GRECO);

14.5.5. work with the Council of Europe in the development and establishment of the Anti-Corruption Agency in order to intensify and streamline the implementation of different policies and measures to combat political and administrative corruption;

14.5.6. spare no efforts to strengthen the legislation and policies aiming at preventing money laundering and counter terrorism financing, in line with the recommendations of MONEYVAL.

15. As regards human rights, the Assembly:

15.1. welcomes the comprehensive catalogue of human and minority rights guaranteed by the new Constitution;

15.2. welcomes the new mechanisms of democratic control over the armed and security forces introduced by the new Constitution and the Laws on the Army of Serbia and on Security Forces, while regretting that the legislation on alternative service and conscientious objectors has not been enacted yet;

15.3. welcomes the development of new legislation on the freedom of association in co-operation with the Council of Europe;

15.4. strongly condemns threats and attacks against human rights defenders, independent journalists, media outlets and representatives of national minorities which have occurred over the

last couple of years and especially the recent incidents following the adoption on 17 February 2008 by the Kosovo Assembly of the Resolution declaring Kosovo to be independent;

15.5. in particular, the Assembly calls upon the Serbian authorities to:

15.5.1. enact the Law on Associations, taking into account all recommendations of the Council of Europe experts;

15.5.2. enact legislation on alternative service and conscientious objectors, in consultation with the Council of Europe;

15.5.3. enact a law on anti-discrimination and develop a comprehensive anti-discrimination policy to eliminate all forms of discrimination, including against sexual minorities;

15.5.4. further develop the minority rights policy by strengthening confidence and trust between the representatives of different communities and implementing effectively the rights of national minorities, in the spirit of dialogue and co-operation between the central government and the minority communities, in particular, in the fields of use of minority languages, education, as well as representation of minorities in political and administrative bodies at all levels;

15.5.5. enact a law on the Councils of national minorities, clarifying their responsibilities, election modalities, their role vis-à-vis the central government, as well as the methods of their financing;

15.5.6. investigate and prosecute all cases of violence and harassment against human rights activists, members of the minority communities and journalists and take positive steps to ensure their protection;

15.5.7. publish the report of the Committee for the Prevention of Torture and Inhumane and Degrading Treatment (CPT) and work with the Council of Europe in the implementation of the recommendations of the CPT;

15.5.8. take appropriate measures to increase the pluralism of the media, ensure the proper application of the Broadcasting law and ensure transparency in the work of the Republic Broadcasting Agency;

15.5.9. continue the educational reform and make arrangements to teach the principles of tolerance, respect for others, inter-cultural dialogue and reconciliation;

15.5.10. sign and ratify the European Convention on Nationality (ETS n° 166) and the Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession (CETS n°200);

15.5.11. continue working to ensure permanent, safe and sustainable return of refugees and displaced persons, where possible, and spare no efforts to find durable solutions for those who decide to stay in Serbia.

16. As regards accession to the Council of Europe conventions, the Assembly:

16.1 welcomes the fact that, to date, Serbia has signed and ratified 58 Council of Europe conventions;

16.2 calls upon the Serbian authorities to ratify, without further delay, the 14 conventions signed but not ratified to date and, in particular, the (Revised) European Social Charter.

17. The Assembly resolves to pursue its monitoring of the honouring of obligations and commitments by Serbia, pending progress in the fields of co-operation with the ICTY, functioning of democratic institutions, rule of law, and human rights.

B. Preliminary draft recommendation

1. The Assembly refers to its Resolution … (2008) on the honouring of obligations and commitments by Serbia in which it fully supports Serbia's European aspirations and calls upon the authorities to concentrate all their efforts to improve co-operation with the International Criminal Tribunal for the former Yugoslavia, as well as complete the necessary reforms in the field of democratic institutions, rule of law and human rights.

2. The Assembly recommends that the Committee of Ministers

2.1. takes Assembly Resolution … (2008) into account in its own periodic reporting procedure conducted by the Group of Rapporteurs on Democracy (GR-DEM);

2.2 continues and reinforces existing assistance programmes to support Serbia in the implementation of obligations and commitments to the Council of Europe, by allocating appropriate financial resources and making use of bilateral donor funding, where necessary;

2.3 works with the Serbian authorities to develop, where appropriate, new targeted co-operation programmes in the fields of strengthening of democratic institutions, local and regional democracy, reform of the judiciary and of the Public Prosecutor's Office, the fight against corruption, human rights, mass media, and education, making full use in particular of new funding opportunities within the framework of the European Union's Instrument for Pre-accession Assistance (IPA).

C. Explanatory memorandum by Mr Goerens and Mr Gross

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1. Introduction

1. The State Union of Serbia and Montenegro joined the Council of Europe on 3 April 2003. As a successor of the State Union of Serbia and Montenegro, Serbia continued its membership in the Council of Europe. In accordance with Assembly Opinion 239(2002) on "The Federal Republic of Yugoslavia's application for membership of the Council of Europe", the country had undertaken a number of specific commitments, in addition to general obligations resulting from membership in the Organisation. The monitoring procedure was opened and a first assessment of the implementation of the obligations and commitments was made in Resolution 1397(2004) on the functioning of democratic institutions in Serbia and Montenegro.

2. Since then, the co-rapporteurs travelled to Serbia twice, on 17-20 April 2005, for a fact-finding visit which focused specifically on the situation of national minorities and certain aspects of the functioning of the institutions of the State Union of Serbia and Montenegro, and on 8 – 11 April 2006, for a fact-finding visit concerning the preparation of the referendum on independence in Montenegro.

3. Several developments have occurred since, the most important being the referendum on independence organised in Montenegro on 21 May 2006 and the adoption by the National Assembly of Montenegro of the Declaration of Independence on 3 June 2006 which subsequently led to the dissolution of the State Union of Serbia and Montenegro.

4. In the light of these developments, the Assembly instructed the Monitoring Committee in its Resolution 1514(2006) to "review and redefine the commitments originally entered into by the state union of Serbia and Montenegro, to make them applicable to the Republic of Serbia". The Monitoring Committee appointed Andreas Gross (Switzerland, SOC) and Charles Goerens (Luxemburg, ALDE) as two co-rapporteurs to complete this task.

5. The preliminary draft report on the honouring of obligations and commitments by Serbia was prepared by the co-rapporteurs and presented to the Monitoring Committee on 18 December 2007. The report was then transmitted to the Serbian authorities who were requested to provide comments within a maximum of three months.

2. Political developments since the adoption of Assembly Resolution 1514(2006)

2.1. Parliamentary elections and formation of the new Government

6. In the last one and a half years, Serbia's political life has been marked by important political developments. After the adoption of the new Constitution by the National Assembly of Serbia on 30 September 2006 and its subsequent approval by referendum on 28 and 29 October 2006, the Parliament adopted on 10 November 2006 a Decision on the proclamation of the Constitutional Law on the implementation of the Constitution of the Republic of Serbia. Among other things, the Constitutional Law established the basis for the organisation of a general parliamentary election, election of the President of the Republic and election of the members of the Assembly of the Autonomous Province of Vojvodina and of the municipal councils.

7. The parliamentary elections were subsequently held on 21 January 2007. As was the case in previous elections, the Serbian Radical Party got the highest percentage of votes cast securing 81 seats out of a total of 250 (just one seat less than in the previous legislature). The Democratic Party (DS) of President Boris Tadić considerably improved its position with 60 seats (against 37 mandates in the previous legislature). The Democratic Party of Serbia (DSS) secured 33 mandates (against 53 in the previous legislature) and G17+ obtained 19 mandates (against 34 in the previous legislature). The remaining 57 seats were shared between the Socialist Party of Serbia (SPS 14 mandates), New Serbia (NS 10 mandates), the Liberal Democratic Party (6 mandates), the League of Social Democrats of Vojvodina (4 mandates), the Alliance of Vojvodina Hungarians, the Civic Alliance and the Sandžak Democratic Party (9 mandates), the Serbian Democratic Party of Renewal and the United Serbia (4 mandates), and Social Democratic Union (1 mandate). The Union of Roma of Serbia, the Roma Party, the Demo-Christian Party of Serbia, the Democratic Alliance of Croats in Vojvodina, the Bosnjak Democratic Party of Sandzak, the Party for Democratic Action, the Movement of Veterans of Serbia, the Social Liberal Party of Serbia and the "no party" lists obtained 1 mandate each[2].

[2] According to Serbian electoral legislation, while in general the lists of political parties have to obtain a minimum of 5 per cent of votes to be allocated seats in the parliament, the so-called "minority parties" benefit from more favourable arrangements. Please see *infra*, section 5.8.1.

8. No party in the National Assembly could secure a sufficient majority to appoint the Government alone. Coalitions therefore had to be formed. The coalition talks were lengthy and tough. Immediately after the certification of the results of the election, President Tadić began consultations with a view to establishing a "democratic block" comprising DS, DSS, G17+. While G17+'s key interest in the negotiations was to secure control over the key economic ministries, the DS targeted the post of Prime Minister as well as key Ministries with responsibilities relating to European integration, and the DSS platform for negotiations was clearly centred on the issue of Kosovo status[3].

9. In the meantime, the former Government continued to ensure the day to day management of the country. As no budget for 2007 was approved by the previous legislature, the Government adopted a decree on interim financing for 3 months (January – March 07), which was further extended until June 2007. No legislative activity was carried out in this period, which delayed the preparation of legislation whose adoption is required by the law on the implementation of the Constitution.

10. On 7 May 2007, just eight days before the expiration of the deadline for appointing a government, the Parliament started a debate about the election of the Deputy Head of the Serbian Radical Party Tomislav Nikolić to the post of Speaker of the Parliament. DSS/NS, SPS and SRS unanimously supported Nikolić's election, thus forming a majority coalition of 145 deputies (out of a total of 250). In this context, President Tadić was obliged to ask the newly formed coalition to propose a candidate for the post of Prime Minister at the earliest opportunity in order to comply with the constitutional deadline[4]. In the meantime, on 9 May 2007, the newly elected Speaker Tomislav Nikolić made a strong declaration about the possibility of declaring a state of emergency, should Kosovo become independent[5]. Interestingly enough, he retracted his statement on the next day, saying that he had only raised a "theory"[6]. These alarming developments must have pushed the DS, DSS/NS, and G17+ to come to a final agreement on the future cabinet. Tomislav Nikolić resigned from the post of Speaker of the Parliament on 13 May and after a two-day debate a new Government was voted just half an hour before the expiration of the official Constitutional deadline.

11. The new Government, led by Prime Minister Koštunica, from the DSS, has a fairly balanced composition. The DS holds most of the key ministries, including the Ministry of Finance (Mirko Cvetković), the Ministry of Defence (Dragan Šutanovac), the Ministry of Foreign Affairs (Vuk Jeremić), the Ministry of Justice (Dušan Petrović), the Ministry of State Administration and Local Self Government (Milan Marković), as well as the post of Deputy Prime Minister for European Integration (Božidar Đelić). The DSS keeps under its control the Ministry of Interior (Dragan Jočić), the Ministry of Trade (Predrag Bubalo), the Ministry of Education (Zoran Lončar) and the Ministry for Kosovo and Metohija (Slobodan Samardžić). The G17+ got control over the Ministry of Economy and Regional Development (Mlađan Dinkić), the Ministry of Health (Tomica Milosavljević), the Ministry of Sport (Snežana Marković Samardžić), as well as the Ministry of Science (Ana Pešikan).

12. An agreement was reached to share the post of the Head of Information and Security Agency (Security Services) between the DS and the DSS, but the Director in office of the Agency Rade Bulatović (apparently loyal to DSS) remains in power until otherwise decided.

13. During our visits, we met almost all key Ministers from the new Government, including Prime Minister Koštunica and Deputy Prime Minister Responsible for European Integration Đelić. We were particularly impressed by the enthusiasm and commitment of the Deputy Prime Minister Đelić, Minister of Justice Petrović, Minister of Foreign Affairs Jeremić. The strong and genuine democratic and European aspirations of these young and very competent politicians deserve a particular appreciation. Our discussions with DSS members of the Government were somewhat less emotional and more technical, but left a generally positive impression. The meeting with Prime Minister Koštunica was positively open and constructive.

14. We would like to commend the Government for the first positive results achieved after its formation. The resumptions of negotiations and the initialling of the Stabilisation and Association Process is certainly one of these results, as is the improvement of co-operation with the International Criminal Tribunal for former Yugoslavia (ICTY). We welcome the ratification of the Central European Free Trade Agreement and the ratification of the European Charter of Local Self-Government, one of the Council of Europe conventions which were signed by the State Union and were not ratified before its dissolution. We commend the Office of

[3] See in particular «Platforma DSS-a za pregovore», B92, 31 January 2007.
[4] According to article 109 of the Constitution, the National Assembly shall be dissolved if it fails to appoint a Government within 90 days from the date of its constitution.
[5] "Nikolić ponders state of emergency", B92, Beta, 10 May 2007.
[6] "Vanredno stanje samo teorija", *Blic*, 10 May 2007.

the Deputy Prime Minster Đelić for launching an ambitious plan of harmonisation of national legislation with the European Union *acquis* and hope that the Government and the Parliament will be able to adopt the anticipated legislation in time.

15. This being said, we are aware that these important and positive steps are in fact just the beginning of the new phase of democratic transformations in Serbia. As will be seen further below, important reforms are needed in the field of electoral legislation, functioning of parliamentary democracy, reform of the judiciary and prosecutor's offices, the fight against corruption, local and regional self-government, education.

2.2. Negotiations about the future status of Kosovo and Metohija

16. The issue of the status of Kosovo and Metohija has dominated the political agenda in Serbia for the last couple of years. The adoption of the new Constitution, which specifies in its Preamble that "the Province of Kosovo and Metohija is an integral part of the territory of Serbia" and stipulates that "the substantial autonomy of the Autonomous Province […] shall be regulated by a special law which shall be adopted in accordance with the proceedings envisaged for amending the Constitution" was seen as an important step in the direction of the definition of the final status of Kosovo within the territory of Serbia.

17. The representatives of all political parties we met during our visits (with the exception of the so-called "minority parties") mentioned that the status of Kosovo and Metohija was one of the most complex and burning challenges Serbia had to face, along with European Integration and social and economic development. The new round of negotiations started in August 2007 after several unsuccessful attempts to pass a new resolution in the United Nations Security Council based on the Plan proposed by the Special Envoy of the UN Secretary General Marti Ahtisaari. Supplementary talks were mediated by a Troïka comprising the representatives of the European Union, the United States and Russia. The Troïka held intensive consultations with the Serbian and Kosovo leadership until end of November 2007. Six meetings with the participation of both parties were held. With the last meeting held on 26-28 November 2007, the supplementary round of negotiations ended and the Troïka presented a report about the results of the negotiations to the United Nations Secretary General on 10 December 2007.

18. In its statement about the final meeting between the parties the Troïka specified that "regrettably, the parties were unable to reach an agreement on Kosovo's future status. Nevertheless, the Troika believes that the parties benefited from this period of intensive dialogue. It was an opportunity for them to build trust and to identify shared interests, in particular their desire to seek a better future through achievement of a European perspective".

19. The United Nations Security Council could not agree on the future status of Kosovo on the basis of the report presented by the Secretary General on the conclusions of the Troïka. Subsequently, on 17 February 2008 the Kosovo Assembly adopted a Resolution declaring Kosovo to be independent. The Government of Serbia immediately adopted the Decision on the annulment of the illegitimate acts of the provisional institutions of self-government in Kosovo and Metohija on their declaration of unilateral independence. In this Decision, the Government of Serbia annulled “the acts and actions of the Provisional Institutions of Self-government of Kosovo and Metohija whereby unilateral independence is declared” “as they violate the sovereignty and territorial integrity of the Republic of Serbia guaranteed by the Constitution of the Republic of Serbia, the United Nations Charter, Security Council Resolution 1244 (1999), other relevant Security Council Resolutions as well as by international law in force”[7]

20. Nevertheless, promptly after the adoption of the Kosovo Assembly Resolution declaring Kosovo to be independent, several states, including a number of Council of Europe and EU member states, recognised the independence of Kosovo. The Serbian authorities delivered to the Ministries of Foreign Affairs of the States concerned protest notes as well as recalled their Ambassadors for consultations from these countries. President Tadić and the Serbian Foreign Minister Vuk Jeremić made statements before the UN Security Council, the OSCE Permanent Council, the Council of Europe Committee of Ministers and the European Parliament expressing their position with respect to the Resolution adopted by the Kosovo Assembly.

21. On the domestic political front, the parties of the ruling coalition strongly condemned the Resolution adopted by the Kosovo Assembly. A massive rally to protest against the unilateral declaration of independence by Kosovo was held in Belgrade on 22 February 2008. The rally was followed by several violent incidents including attacks against the Embassies of the United States, Canada, United Kingdom, Germany and Croatia. The Serbian authorities are investigating the attacks. All political stakeholders condemned the violent incidents which apparently were conducted by isolated groups of hooligans.

[7] http://www.srbija.sr.gov.yu/kosovo-metohija/index.php?id=43159

However, some high-ranking officials of the Government of Serbia made statements which could interpreted as legitimising the attacks. Isolated attacks against representatives of national minorities were also reported.

22. Moreover, there was information in the press that human rights defenders and some politicians who expressed views on the developments in Kosovo different from the authorities' official position were harassed by some political stakeholders. In particular, the Socialist Party of Serbia announced that it would collect signatures to lodge a criminal complaint against the prominent Human Rights activist Nataša Kandić, Executive Director of the Humanitarian Law Centre, for "acting against the constitutional order and threatening the State's independence and integrity". A massive campaign against Nataša Kandić was launched in the media. Equally, B92 – one of the country's key media outlets – received threats and its office was attacked on the evening that followed the 22 February rally.

23. We strongly condemn violent protests as well as attacks against human rights activists, minorities and media outlets. We are strongly concerned about the attacks against foreign Embassies in Belgrade. Such attacks are totally unacceptable in a counry adhering to democratic principles and international law. We call upon the Serbian authorities to clearly and unequivocally condemn violence and to investigate and prosecute all those responsible for violence, attacks and harassment against human right defenders, minority representatives and politicians.

24. Equally, we condemn violent protests of Serbs in Northern areas of Kosovo which happened after the adoption by the Kosovo Assembly of the Resolution declaring Kosovo to be independent. Violence will not resolve the concerns of the Serbian community neither will it help build confidence between the representatives of various ethnic communities living in Kosovo.

25. We welcome the commitment of the Serbian authorities to refrain from the use of force and to defend their position with respect to Kosovo only by peaceful and legal means. We call upon Serbia to continue co-operation with the international civil presence in Kosovo with a view to promoting the cultural, linguistic and religious rights of all communities living in Kosovo.

26. Irrespective of the developments in Kosovo, we hope that the Serbian authorities will continue their strategic course towards European integration, while continuing to implement the necessary key democratic institutional, economic and social reforms to make Serbia a better place to live in. Many officals and NGO representatives we met during out visits spoke about the need to tackle more effectively some urgent social and economic problems, reducing unemployment, strengthening democratic institutions and creating a favourable environment for foreign investments. We believe that now is the time for the Serbian authorities to concentrate on these important issues, while acknowledging their willingness to continue to defend their position with respect to the developments in Kosovo.

2.3. Relations with the European Union

27. Serbia is a potential candidate to EU membership. Negotiations about a Stabilisation and Association Agreement (SAA hereinafter) were officially opened in October 2005. However, they were put on hold in May 2006 due to the failure of the Serbian authorities to fully co-operate with the International Criminal Tribunal for former Yugoslavia (ICTY hereinafter). The talks resumed in June 2007 after the formation of the new coalition Government. The negotiations about the SAA are led from the Serbian side by Deputy Prime Minister Božidar Đelić. While the technical part of the negotiations was completed rather quickly, the political precondition of the signing of the SAA, i.e. full co-operation with the ICTY, has yet to be achieved.

28. Several improvements in the co-operation with the Tribunal have been detected recently however and reported to the European Commission by Ms Carla Del Ponte, Chief Prosecutor of the ICTY. Taking into account the positive dynamic, the Stabilisation and Association Agreement between Serbia and the European Union was initialled on 6 November 2007. The EU Commissioner for Enlargement Olli Rehn noted however that the signing of the SAA could happen only when the political conditions for the signing were met, that is, as soon as Belgrade arrested and extradited the remaining four Hague fugitives to the tribunal[8].

29. All domestic and international stakeholders saw the initialling of the SAA as an important step forward on the path of integration of Serbia into the European Union.

30. In the meantime, the European Commission issued on 13 November 2007 the 2007 Serbia Progress Report. While the Progress report acknowledges some progress Serbia has made in the fulfilment of the

[8] V.I.P. Daily News Report, No. 3715, 7 November 2007.

Copenhagen political criteria, it points at a number of weaknesses and shortcomings of democratic institutions in Serbia. In particular, the European Commission joins the opinion of the Venice Commission in that the new Constitution of Serbia contains a number of provisions which are not in line with European standards, including the political party control over mandates of individual members of Parliament and the excessive role of the Parliament in judicial appointments.

31. The Commission also noted that "limited progress has been made in the fight against corruption. Corruption is widespread and remains a serious problem in Serbia."[9] There are also serious problems with respect to the reform of the judiciary, in particular, "the provisions of the new constitution on judicial appointments have not been implemented as new laws on courts and prosecution have yet to be adopted. Clear criteria and procedures for judicial appointments have not yet been established. There are concerns about the level of influence of parliament over the judiciary. Parliament is responsible for the appointment of judges and prosecutors for the initial probationary period following a proposal from the High Judicial Council and State Prosecutors' Council. Several members of the High Judicial and Prosecutors' Councils are also elected by parliament."[10]

32. It is worth noting that the European Parliament adopted on 25 October 2007 a recommendation to the Council on relations between the European Union and Serbia[11]. The explanatory report points on a number of areas where additional efforts are expected from the authorities (the key being, co-operation with ICTY, protection and promotion of minority rights, reform of the judiciary, fight against corruption).

33. Serbia ratified the revised Central European Free Trade Agreement (CEFTA) in September 2007 and the Agreements on visa facilitation and readmission of persons illegally residing on the territory of the EU in November 2007.

34. In November 2007, the EU Commissioner for Enlargement Olli Rehn declared that "resolving of Kosovo future status, strengthening of democratic forces in Serbia, and building of state institutions in Bosnia and Herzegovina" were the key challenges the EU had to face in Western Balkans. He said that "Serbia had tangible perspective of joining Europe, and added that the signing of the Stabilisation and Association Agreement (SAA) would open the door to Serbia's membership in the EU." Strengthened co-operation with the ICTY and, in particular, the arrest of the former Commander of the Army of the Republic of Srpska Ratko Mladić was an important condition for Serbia's moving closer to EU membership. "The ball is in the court of Serbian government now" Mr Rehn was quoted to be saying[12].

35. On 28 January 2008, pending the completion of all necessary conditions for the signing of the SAA, the European Union offered to Serbia to sign an interim political agreement on free trade, visa liberalisation and other issues. Serbia was invited to sign the agreement on 7 February. It did not do so however, as the Government did not give the necessary authorisation to Deputy Prime Minister Djelić.

36. In the meantime, the European Union appointed Mr Peter Feith EU Special Representative in Kosovo and authorised the deployment of the European Union Rule of Law Mission (EULEX) to take over the competences from UNMIK. The Serbian authorities disputed the legality of the deployment of the Mission, in the absence of a decision by the UN Security Council. The Serbian Radical Party tabled a resolution in the Parliament condemning “in the strongest terms the European Union's unlawful decision to deploy its mission, EULEX, to Serbia, specifically to Kosovo.” The Resolution further asks the European Union “to revoke its unlawful decision” and “invites those EU countries that have recognised the unilaterally declared independence against all international laws to rescind their decisions”. The resolution also specifies that “Serbia, in conformity with the Serbian Constitution, can enter into agreements with the European Union only as an integral state with Kosovo as its integral and inseparable part.”[13]

37. The DSS and SPS declared that they would give support to the resolution if it were put to the vote. It was put on the agenda of the regular session of the National Assembly which started on 5 March 2008. However, the Speaker of the Parliament adjourned the Session of the National Assembly to obtain the opinion of the Government on the resolution. The Government gave a negative opinion on 6 March. President Tadić in a press interview said that the adoption of the resolution would make it impossible for

[9] European Commission's Serbia 2007 Progress Report. SEC(2007)1435, 6 November 2007.
[10] Op. cit.
[11] European Parliament recommendation to the Council of 25 October 2007 on relations between the European Union and Serbia (2007/2126(INI)) http://www.europarl.europa.eu/sides/getDoc.do?Type=TA&Reference=P6-TA-2007-0482&language=EN
[12] V.I.P. Daily News Report, No. 3725, 22 November 2007.
[13] V.I.P. Daily News report, Issue No. 3795, 5 March 2008.

Serbia to sign the SAA and continue the process of European Integration, which would contradict the strategic policy objectives of the coalition government.

38. We are concerned about these developments. This resolution as well as recent political developments in the country seem to indicate that European Integration is becoming a factor of division in the ruling coalition. We believe that Serbia has no other alternative than European Integration. European Integration will give a new impetus to the process of reforms of democratic institutions, rule of law, human rights. It will bring the Serbian domestic legal order closer to the European acquis. We call upon the members of the majority coalition to reconfirm their stand with respect to European Integration and continue the necessary reforms in order to sign the SAA.

2.4. International context and relations with neighbours

39. Apart from the resuming of negotiations with the European Commission on the conclusion of the Stabilisation and Association Process, the first six months of the new coalition Government were marked by the Serbian Chairmanship in the Committee of Ministers of the Council of Europe. The Chairmanship was prepared in a particularly complex context of adoption of the new Constitution, parliamentary election and formation of a new Government. However, the preparations were well handled by the Ministry of Foreign Affairs: an inter-sectoral working group bringing together all key stakeholders was established and a programme of the chairmanship was prepared in time. The priorities of the Serbian Chairmanship in the Committee of Ministers included:

– Promoting the Council of Europe core values: human rights, democracy and the rule of law, including, the further strengthening of conventional and monitoring mechanisms and the consolidation of democracy and rule of law throughout Europe;

– Enhancing the security of persons - especially combating terrorism, organised crime and corruption;

– Building a more humane Europe – Towards more active participation of all citizens, including fostering European identity and unity based on shared fundamental values, respect for our common heritage and cultural diversity and building the capacities of local communities and individuals;

– Strengthening cooperation and good neighbourly relations through full respect of values and implementation of Council of Europe standards in South Eastern European countries, thus fostering the European perspective of the Region.

40. The results of the Chairmanship were highly assessed by the Council of Europe as well as domestic and international politicians. The Council of Europe Secretary General was quoted saying that the country proved it is a "capable European leader" that "deserved to wear the European colours." We congratulate the Serbian authorities on the successful completion of this important task

41. Serbia took an active part in the regional co-operation initiatives. From November 2006 until May 2007 Serbia chaired the Black Sea Co-operation Council. Serbia also actively participated in the Stability Pact for South-Eastern Europe and its transformation into a more regionally based co-operation framework of South East European Co-operation Process (SEECP). Within the framework of the Chairmanship Serbia facilitated the establishment of contacts between the Council of Europe and the newly formed Regional Co-operation Council.

42. Serbia participated constructively in the in the negotiations on the amended Central European Free Trade Agreement (CEFTA) which it ratified in September 2007.

43. Co-operation in the implementation of the UN Security Council Resolution 1244 on Kosovo was somewhat less encouraging. The Serbian authorities called upon the Serb communities living in Kosovo to boycott the elections held on 17 November 2007. Not surprisingly, voter turnout in municipalities where the Serb communities live was very low. It has not hampered the organisation of the election however which was considered valid.

44. Since the independence of Montenegro and the dissolution of the State Union, Serbia has developed good cooperative relations with its new independent neighbour. An agreement on Social Security was signed between the two countries. Montenegro also entrusted to Serbia the responsibility for the protection of Montenegrin citizens abroad. This being said, the relations between the Serbian and the Montenegrin Orthodox churches still remain tense. The issue of dual citizenship also generated a negative reaction in Montenegro. The recent amendments to the Serbian citizenship law providing for a simplified procedure of

granting Serbian citizenship to citizens of Montenegro who resided on the territory of Serbia on the day of independence were seen as interference in the domestic affairs in Montenegro. We hope that the authorities of both countries will find a constructive solution to this problem.

45. Relations with Croatia are good. An agreement on co-operation on the prosecution of war crimes was signed in 2007. However, both countries have yet to sign an agreement on the border. Croatia also continues to pursue its case of genocide against Serbia before the International Court of Justice.

46. The International Court of Justice adopted a ruling in February 2007 in the case Bosnia and Herzegovina vs. Serbia. The Court found that acts of genocide were committed in Srebrenica. However, the Court ruled that Serbia did not commit genocide against Bosnia and Herzegovina. Nevertheless, the Court considered that Serbia had failed to take all measures necessary to prevent Srebrenica genocide and bring the perpetrators to justice.

47. Serbia continues to develop good relations with "the former Yugoslav Republic of Macedonia" despite some persisting tensions between the Serbian and Macedonian Orthodox Churches.

48. Relations with Romania, Bulgaria and Slovenia are generally good.

2.5. Presidential, Provincial and Local elections

49. The law on the implementation of the Constitution provides that the date for the organisation of Presidential, Provincial and Local elections should be set by the Speaker of the Parliament before 31 December 2007 and within 60 days of enactment of a number of key laws.

50. The coalition partners held intensive consultations throughout October 2007 about the date of the election. While the DS appeared to argue in favour of the holding of the presidential election before the end of 2007 (on the eve of the closing of the supplementary round of talks about the status of Kosovo and Metohija), the DSS considered that the elections should be organised after the final definition of the status of the province and Mr Miloš Aligrudić, Head of the DSS parliamentary group and Chair of the Serbian delegation to the PACE, was quoted saying that "elections were not what was needed in this phase of resolving the future status of Kosovo"[14].

51. As a result of the consultations, an agreement between the main partners in the coalition was reached on 3 November 2007. According to this agreement, the Presidential election were supposed to be called after the end of the supplementary round of talks about Kosovo (i.e. after 10 December) unless there is an immediate threat to territorial integrity of the country (for example, proclamation or a unilateral recognition of Kosovo's independence). The agreement apparently included a detailed timetable of adoption of legislation necessary for the holding of the election. The adoption of the legislation was supposed to be done in two stages: firstly, the Parliament was to adopt the law on the President of the Republic and the law on the election of the President; secondly, laws on the Defence and Army of Serbia, Foreign Affairs, and Security Services were to be adopted.

52. The adoption by the Parliament on 24 November 2007 of the law on Constitutional Court prepared by the Ministry of Justice and endorsed by the Government was seen as a positive step in the implementation of the agreement. It is worth noting that the Parliament worked exceptionally on Saturday in order to adopt this important law.

53. All laws necessary for holding the presidential election were adopted on 11 December and the Speaker of the National Assembly called the presidential election for 20 January.

54. The Assembly observed the Second round of the Presidential election held on 3 February 2008. In this respect, we refer to the Assembly report on the Observation of the Presidential election which contains a detailed description of the modalities of the voting.[15] We join the conclusions of the Election Assessment Mission in that “the second round of voting in Serbia’s Presidential Election was conducted in line with Council of Europe commitments for democratic elections”. This election confirmed one more time Serbia’s strategic course towards European integration. It showed however that the “European integration project” is not shared by all the sectors of the society at the moment. It is now the responsibility of Serbia’s leadership to work with all stakeholders to build much-needed bridges in the society for European integration to become a shared vision of the country’s future.

[14] V.I.P. Daily News Report, Issue No. 3695, 11.10.2007.
[15] AS/BUR/AHSERB (2008) 3.

55. The legislation necessary for the holding of provincial and local elections, i.e. the law on territorial organisation, the law on the capital city, the law on local elections and the law on local self-government, was adopted on 29 December 2007 and the elections were subsequently called for 11 May 2008.

3. Functioning of democratic institutions

3.1. Constitutional reform

3.1.1. Adoption of the Constitution

56. Work on the new Constitution of Serbia has been ongoing since the overthrow of the Milošević regime, but the final version of the Constitution was in fact drafted within a very short timeframe. The final text was prepared very quickly and apparently represented a compromise between the top leaders of the four main political parties (DSS, DS, G17+ and SPS). Other political forces and the expert community seem to have been excluded from the drafting process.

57. The Constitution was approved on 30 September 2006 by some 242 members of the National Assembly participating in the special session. The constitution was approved unanimously and submitted for approval to a referendum scheduled to be held on 28 and 29 October 2006 (less than one month after the adoption of the Constitution). The referendum was held in two days in order to ensure the 50% voter turnout.

58. Given the short timeframe, the Venice Commission did not analyse the Constitution before its approval by referendum[16]. It was not properly discussed with the citizens either. The preparation of the new Constitution was not a good example of constitution-making.

59. In the couple of weeks which followed the adoption of the Constitution, electronic and printed media organised a massive campaign in favour of the Constitution. Some claimed that the Constitution would bring a final solution to the status of Kosovo and Metohija. Others argued that the Constitution would help Serbia break with its past and move ahead from the Milošević era into a new brighter future. The activities of Prime Minister Koštunica and President Tadić aiming at promoting the Constitution were largely publicised in all TV news bulletins. But overall, none of the TV programmes and talk shows offered a forum for serious debate.

60. Although according to the PACE delegation observing the voting "the Constitutional Referendum […] was, in general, conducted with due respect for Serbia's democratic commitments to the Council of Europe"[17], the organisation of the voting appears to have been flawed by serious irregularities. The PACE observers identified some of these which included, inter alia, inaccuracies in voters' lists, improper sealing of the ballot boxes, ballot box stuffing etc. Specific problems relating to the two-day voting were also identified, whereby the protocols were not properly signed and sealed upon the closing of the polling stations on the first day and subsequently verified on the morning of the following day, upon the re-opening of the polling stations.

61. As a general remark, we would like to note that the PACE delegation visited only 318 polling stations out of 8600 open nationwide, which represented some 3,7%. The OSCE – ODIHR did not observe the referendum because apparently it was not invited to send an observation mission. Only two parliamentary parties which opposed the Constitution were allowed to deploy observers (the Civic Alliance of Serbia posted 670 observers and the Social Democratic Union deployed 335 observers). The Belgrade-based Centre for Free Elections and Democracy (CeSID) monitored the voting at 600 polling stations only[18].

62. The PACE delegation was informed that a group of NGOs (Helsinki Committee for Human Rights, Lawyers' Committee for Human Rights, Youth Initiative for Human Rights and the Humanitarian Law Centre) has produced an "Analysis of irregularities that occurred during the Referendum". According to this analysis, the process of confirming the Constitution was marked by the following irregularities: Albanians from Kosovo were not included in the voters' register and they received a barely formal call for signing in the voters' register; the authorities in charge of the referendum process included only the representatives of parties that supported the endorsement of the Constitution; the referendum process was accompanied by a highly

[16] At the request of the Monitoring Committee, the Venice Commission produced subsequently an opinion on the Constitution of Serbia to which we shall refer further below in this report. (CDL-AD(2007)004)
[17] Doc. 11102, Observation of the constitutional referendum in Serbia (28 and 29 October 2006), report of the *Ad hoc* Committee of the Bureau of the Assembly.
[18] Serbia's New Constitution: Democracy Going Backwards. International Crisis Group, Europe Briefing no.44, Belgrade/Brussels, 8 November 2006.

aggressive and negative campaign directed against a group of political parties and NGOs that called for the boycott; the turnout was very poor until the afternoon hours of the second day, when it surprisingly improved; the greatest number of incidents occurred in the period of several hours before the closing of the poling stations etc. The PACE observation mission did not take a position on these finding however as it reported only on the situation at the polling stations where it had observed the voting.

63. This being said, although the voting appears to have been flawed by a number of irregularities, the adoption of the long-awaited new Constitution for Serbia should be welcomed, provided that this new Constitution complies with European standards and creates the legal basis for the country's advancement on the path to European integration. This however has yet to be fully guaranteed by the adopted text.

3.1.2. Analysis of the provisions of the new Constitution in the light of Council of Europe standards

64. In its subsequent opinion on the Constitution of Serbia, the Venice Commission noted that "the Constitution contains many positive elements, including the option for a functional parliamentary system of government and a comprehensive catalogue of fundamental rights. While it would have been preferable to have clearer and less complicated rules on restrictions to fundamental rights, it is possible for the courts and in particular the Constitutional Court to apply these rights in full conformity with European standards"[19]. It was also noted that the new Constitution had adopted many criticisms made by the Venice Commission in its 2005 Opinion[20].

65. However, there are several fundamental sections of the Constitution which must be further improved in order to comply with European standards of constitutional law. We shall more specifically focus on six issues in the present report, i.e. excessive influence of political parties on the Members of Parliament, status of the Judiciary, status of Public Prosecutors' Offices, provincial autonomy and local self-government, place of international law in the domestic legal order, and modalities of amending the Constitution.

3.1.2.1. Imperative mandate of Members of Parliament

66. In our view, this is one of the most worrying provisions of the new Constitution as it represents a direct threat to the development of a functioning and efficient parliamentary democracy in Serbia. Section 2 of Article 102 provides that "under the terms stipulated by the law, a deputy shall be free to irrevocably put his/her term of office (*mandat*, in the local language which means "*mandate*")[21] at the disposal [of] a political party upon [whose] proposal he or she has been elected a deputy". The Venice Commission estimated that this provision was intended to tie the deputy's position on all matters at all times to the instructions from political parties. This is a serious threat to the freedom of the Members of Parliament to express their views on any issue debated in Parliament.

67. Furthermore, this provision, seen from the angle of electoral arrangements (which enable the parties to choose the candidates who will actually sit in the Parliament, irrespective of the voters' choice – please see *infra* Section 3.2), gives to the political parties an excessive role in the political process. It is a major threat to the functioning of democratic institutions, especially, given the excessive role of the Parliament in judicial appointments (please see *infra*, paragraph b.).

68. Some of the interlocutors we met during our visits argued that the strong role of the political parties was justified in the current situation in Serbia in order to prevent corruption and excessive influence of business or criminal circles on the political life. However, many people we met condemned this practice, as hindering transparency of the political process and preventing the citizens from actually bringing their elected representatives to account.

69. While commending the good intentions of those who strive to fight corruption in politics, we do not think that making the elected Members of Parliament prisoners of political parties' leaderships is a legitimate solution to this problem. There are other ways of building a strong, democratic and transparent parliamentary democracy. Making the Members of Parliament entirely depended on the good will of party leaderships is against European standards of parliamentary democracy. On the contrary, the Members of Parliament must

[19] Venice Commission's opinion on the Constitution of Serbia, p. 22. CDL-AD(2007)004.
[20] *Op. cit.*, page 3.
[21] In fact, the official translation of the Constitution which was provided to the Venice Commission and posted on the Government's web-site (http://www.srbija.sr.gov.yu/cinjenice_o_srbiji/ustav_odredbe.php?id=105) contains a number of inaccuracies. We shall therefore refer in this report to the text in the local language, where this appears appropriate.

be free and have the right to oppose their party leaders. Lack of freedom destroys political dialogue and prevents the society from learning and moving ahead with democratic changes.

70. This provision of the Constitution must be changed.

3.1.2.2. independence of the judiciary

71. According to article 147, judges are elected by the National Assembly. The Venice Commission condemned this practice in its opinion on the Constitution of Serbia, endorsing the remarks it had made already in its previous opinion on the Section on Judiciary of the draft Constitution of Serbia approved by the Government in 2004. According to the Venice Commission, "the involvement of parliament in judicial appointments risks leading to a politicisation of the appointments and, especially for judges at lower court level, it is difficult to see the added value of a parliamentary procedure. […] Elections by a parliament are discretionary acts and political considerations will always play a role" in judicial appointments.

72. According to Recommendation 94(12) of the Committee of Ministers of the Council of Europe On the independence, efficiency and role of judges, "all decisions concerning the professional career of judges should be based on objective criteria, and the selection and career of judges should be based on merit, having regard to qualifications, integrity, ability and efficiency. The authority taking the decision on the selection and career of judges should be independent of the government and the administration. In order to safeguard its independence, rules should ensure that, for instance, its members are selected by the judiciary and that the authority decides itself on its procedural rules." Therefore, in the light of European standards, the appointment of judges should not be made on the basis of political considerations. The Venice Commission suggested in this respect that judges be appointed by the President on the basis of proposals submitted by the High Judicial Council.

73. The High Judicial Council is established by the Constitution in article 153. Its composition appears to be balanced (3 ex-officio members, i.e. President of the Supreme Court of Cassation, Minister of Justice, Chair of the relevant Committee of the Parliament, 6 judges, 1 practicing lawyer and 1 professor of law). According to the information which was provided to us by the Serbian delegation to the Assembly, a Law on High Judicial Council was prepared by the Ministry of Justice and sent to the Council of Europe for appraisal. According to this draft law, the High Judicial Council has “to propose to the National Assembly two candidates for each single position for a member of the High Judicial Council. The National Assembly MUST elect a person from the proposed list and is not allowed to return the list of candidates to the [High Judicial Council]”. This procedure indeed reduces to the minimum the influence of political parties on the election process. However, it does not eliminate the risk of politicisation completely, as it is difficult to ascertain on what grounds the National Assembly will choose between one or the other candidate, elected by the representatives of the judiciary.

74. The Constitutional Law on the Implementation of the Constitution introduces an additional element of concern. In fact, Article 7, paragraph 2 provides that "judges and presidents of other courts [excluding the Supreme Court of Cassation] shall be elected no later than one year from the date of the constitution of the High Judicial Council". This provision opens the door for different interpretations. In its opinion on the Constitution of Serbia the Venice Commission interpreted this provision as the legal basis for the re-appointment of all judges in the country. This approach could be motivated by the desire to get rid of judges who in the past were appointed for political reasons and have seriously compromised their impartiality. Indeed, some of our interlocutors quoted examples of judges appointed in the times of Milošević rule that had on previous occasions taken politically motivated decisions or were allegedly involved in cases of corruption. We agree with this legitimate aim, in principle. However, we join the Venice Commission in that the reappointment process has to be carried out on the basis of clear and transparent criteria, providing for the right of appeal by the persons concerned. We also support the Venice Commission's opinion in that a High Judicial Council totally dependent on the Parliament cannot be a body which would be able to conduct this procedure in a fair, impartial and transparent manner. This being said, the Basic Principles on the Reform of the Judiciary provide the ground for a different interpretation of this provision (please see *infra*, section 4.1.).

75. Whatever the political choice of the Serbian authorities will be with respect to the (re-) appointment of judges, we consider that the appointment process should in any case be immune from interference of political bodies. We therefore strongly recommend strengthening the status of the Judiciary in ordinary legislation, as will be described further below (please see infra, section 4.1), as well as amending the Constitution in the medium term in order to bring it into line with European standards on independence of judiciary and eliminate vague provisions opening the door for different interpretations.

3.1.2.3. Status of Public Prosecutors' Offices

76. In its opinion on the Constitution of Serbia, the Venice Commission noted that the meaning of the Public Prosecutors' Office's function to "take measures in order to protect constitutionality and legality" was not clear. The Serbian delegation to the Assembly explained in the comments on the present report that this provision was about "introduc[ing] extraordinary legal means in accordance with the provisions of the Law on Criminal Procedure". In accordance with this procedure, the Public Prosecutor only initiates the procedure where the final decision shall be brought by the court, that is, a competent organ, thus respecting fully the principle of legal security". Furthermore, it is added that "the Public Prosecutor of the Republic of Serbia […] has the right to introduce legal means, among other things, the request for the protection of legality, even against the judicial procedure preceding the effective sentence in case the law has been violated (Article 419 of the Law on Criminal Procedure), with the final decision brought by the Supreme Court of Serbia. It should be noted that the court, at the time of bringing the decision, is bound by the ban *reformation in peius* so that, if the request for the protection of legality has been introduced at the expense of the defendant, and the court finds it valid, it will just decide that the violation of the law has been committed, without touching the effective court decision (Article 423, Paragraph 3, and Article 425, Paragraph 3, of the Law on Criminal Procedure). The provision of Article 22 of the Law on Criminal Procedure clearly states that the court charged with bringing the decision upon the request for the protection of legality may, taking into account the contents of the request, decide to postpone, that is, terminate the implementation of the effective court decision. It is obvious that the Public Prosecutor only has the right to submit a proposal, while the decision is brought by the court".

77. We take note of this detailed explanation. Our lack of knowledge of Serbia's Law on Criminal Procedure does not allow us to make the analysis of the above provisions, taken out of the context. We hope that the described "legal means" do not enable the Public Prosecutors to exercise "supervision" over court decisions, by challenging final decisions of courts of law on the grounds of illegality. If it were the case, there could be a risk to legal certainty which could give rise to the violation of the right to a fair trial, as protected by the European Convention for the Protection of Human Rights and Fundamental Freedoms. We shall study the opinion of the Council of Europe experts on the legislation governing the functioning of the Public Prosecutor's Office and take it into account in the monitoring process.

78. Besides, we share the concerns of the Venice Commission about the possible interference of the Parliament in the work of Public Prosecutors resulting from their double accountability to the Republic Public Prosecutor and the National Assembly.

79. The procedure of election of Public Prosecutors and Deputy Public Prosecutors by the National Assembly upon the proposal of the State Prosecutorial Council (which, just as the High Judicial Council, is composed of members elected directly or indirectly by the National Assembly) is also disturbing because of interference of the Parliament.

80. These shortcomings should be eliminated in ordinary legislation, as will be indicated below (please see *infra*, section 4.2.) in order to guarantee the independence of prosecutors and avoid political interference. We would also recommend amending in the medium term the Constitution in order to implement the European standards for public prosecution at constitutional level.

3.1.2.4. Provincial autonomy and local self-government

81. In fact, the Chapter of the Constitution on provincial autonomy and local self-government (Chapter Seven) contains a number of declarations of principles. The actual substance of these principles will however have to be defined in specific legislation. The constitutional provisions about Kosovo and Metohija are particularly interesting in this respect. While one of the aims of the Constitution was to define the autonomy of the Province, it fails to do so, simply saying in article 182 that "the substantial autonomy of the Autonomous Province of Kosovo and Metohija shall be regulated by the special law which shall be adopted in accordance with the procedure envisaged for amending the Constitution".

82. From the legal technique view point, it would have been wiser to lay down in the Constitution a regulatory framework based on the principles of the European Charter of Local Self-Government (ETS 122), signed and ratified by Serbia, applicable to all Autonomous Provinces (taking into account the fact that the Constitution expressly authorises in section 3 of article 182 the establishment of new autonomous provinces).

83. The same could apply to the status of municipalities.

3.1.2.5. Place of international law in the domestic legal order

84. Article 16, section 3 provides that "ratified international treaties must be in accordance with the Constitution". This is not disturbing in principle as many Council of Europe member-states give higher rank to the national Constitution with respect to international law. However, in practice, if a treaty signed and ratified by Serbia is found not to be in compliance with the Constitution, the authorities will have to either denounce the treaty or amend the Constitution (which is a particularly complex procedure, as will be seen below), as, according to the Vienna Convention on the Law of International Treaties, the provisions of internal law cannot be used as a justification for not applying the treaty.

85. We subscribe to the recommendation of the Venice Commission in that to avoid these problems, it is necessary to introduce a special procedure of verification of the constitutionality of the treaty prior to its ratification before the Constitutional Court.

3.1.2.6. Complex procedure of amending the Constitution

86. As we have seen earlier, the Constitution of Serbia contains a number of problematic provisions which have to be brought into line with European standards. This, however, will be a rather complex process as the Constitution provides in its Article 203 for a two-level procedure of confirming amendments. Firstly, the "proposal to amend the Constitution" must be approved by a two-third majority of the total number of Members of Parliament. If the proposal is approved, "an act on amending the Constitution" has to be drafted and approved again by a two-third majority of the Members of Parliament.

87. There is a third, additional, procedural safeguard: amendments to the Preamble of the Constitution and Chapters dealing with "principles of the Constitution, human and minority rights and freedoms, the system of authority, proclamation of state of war and emergency, derogation from human and minority rights in the state of emergency or war or procedure for amending the constitution" have to be endorsed by the majority of the voters participating in a referendum.

88. We understand the intention of the legislator to preserve a certain stability of the constitutional order. However, the Constitution, as any other law, should evolve over time, as new legal challenges emerge (e.g. European integration). The procedure for amending the Constitution should, without any doubts, be rigid. But it should not make it virtually impossible to introduce any amendments to the Constitutional order.

89. In practical terms, in the current political context in Serbia, it will be extremely difficult for the majority coalition to introduce amendments to the Constitution required to bring its provisions into line with European standards. We hope that this obstacle will be eventually overcome.

3.2. Electoral legislation

90. As we already mentioned earlier, the electoral legislation in Serbia does not fully meet European standards.

91. The law on the election of representatives of the Republic of Serbia adopted in 2000 and last amended in 2004 was substantially improved in the light of the joint recommendations by the Venice Commission and OSCE/ODIHR[22]. It now "provides important safeguards to promote democratic election practices, including measures to enhance the transparency in the organisation and conduct of the election and to protect the secrecy of vote"[23].

92. It does however contain a number of problematic points, especially with regard to the composition of electoral lists (while authorising the submission of lists by political parties and other political organisations and groups of citizens, it does not precisely define which organisations can be defined as "political"; while the law does not prohibit the submission of lists with just one candidate, it does not expressly provide for self-nomination by an individual independent candidate) and allocation of mandates.

93. The latter problem is particularly disturbing.

[22] Joint recommendations on the laws on parliamentary, presidential and local elections, and electoral administration in the Republic of Serbia. CDL-AD(2006)013.

[23] Doc. 11238 Addendum 2. Observation of the parliamentary elections in the Republic of Serbia (21 January 2007). Report of the *Ad hoc* Committee to the Bureau of the Assembly. 11 October 2007.

94. Firstly, the law introduces a 5% threshold for electoral lists to be entitled to the apportionment of mandates (this requirement is waived however for "parties of ethnic minorities" which is a welcome development). It does not however define exactly how the 5% threshold is calculated. According to article 81, electoral lists which receive the support of "5% of the voters who have voted" shall be allocated mandates. It does not say whether these 5% are calculated by reference to the number of signatures on the voter list or by counting the total number of ballot papers in the ballot boxes (valid or invalid) or by some other means. The Venice Commission and the OSCE/ODIHR recommended that this article be amended to specify that the 5% should be calculated by reference to the total number of valid votes cast. Otherwise, the voters who sign the voter register but do not cast a valid vote are allowed to influence the ballot, as was the case in previous elections because the Central Election Commission was calculating the 5% threshold on the basis of the number of signatures in voter lists.

95. Secondly, as we mentioned earlier, article 84 allows the parties to *arbitrarily* choose the candidates from their lists to become members of parliament *after the election* instead of determining the order of candidates beforehand. We share the view of the Venice Commission and of the OSCE/ODIHR in that "this limits the transparency of the system and gives political parties a disproportionately strong position vis-à-vis candidates"[24]. Seen together with the Constitutional provision on imperative mandate of the Members of Parliament, this provision constitutes a serious violation of European standards and a threat to the good functioning of democratic institutions.

96. We also note that virtually the same procedure of allocation of mandates applies to the allocation of seats in municipal assemblies (except that 1/3 of the mandates are allocated to the candidates according to their sequence on the list and the allocation of remaining mandates is left to the discretion of the political party, political organisation or group of citizens which had submitted the list). Although this procedure is slightly better than the system of allocation of mandates at the National Assembly, it undermines transparency and disproportionately increases the influence of political parties on politics at local level.

97. We strongly recommend that these problems as well as others identified in the joint opinion of the Venice Commission and OSCE/ODIHR should be eliminated at the earliest opportunity and, in any case, before the next parliamentary elections.

98. Otherwise, the Members of Parliaments and local councillors will always remain "prisoners" of the views of their parties' leaderships and the Parliament will not be able to play its role of major forum for political debate and key actor of the legislative process.

3.3. Functioning of the Parliament

99. During our first visit we met the representatives of most of the political parties represented in the National Assembly (with the exception of G17+ and SRS whose representatives cancelled their participation at the last moment). We had a particularly interesting meeting with the President of the Parliament Oliver Dulić who has provided us with extensive information about the functioning of the Parliament and the work agenda for the forthcoming months.

100. Following the adoption of the new Constitution, a new law on the National Assembly has to be prepared and a new set of Rules of Procedure adopted. We were informed that the new law on the National Assembly was being prepared but that consensus between political parties on the main features of the draft had yet to be reached and its adoption should not be expected soon[25]. We were informed that the draft law fails to correct one of the key problems we mentioned earlier, i.e. the imperative character of mandate of the Members of Parliament. Apparently, the draft law defines the mandates of MPs as "free, in accordance with the constitution," which in fact confirms the practice which bounds the MPs by instructions given by political parties' leaders. This practice is manifestly in conflict with European standards of parliamentary democracy**.**[26] The future of the country cannot depend on the will of three or four people. The Parliament must be a forum

[24] CDL-AD(2006)013, p.12.

[25] We note that another draft was tabled by a group of MPs. It was not put on the agenda however. We have not seen the draft therefore cannot evaluate whether it could strengthen the Parliament, in accordance with European standards.

[26] We note that a Council of Europe expert appraisal of the draft Rules of Procedure of the National Assembly of Serbia made available to the Serbian Parliament contains a very comprehensive and clear overview of key European standards for parliamentary democracy. It contains express references to the Rules of Procedure of the CoE's Parliamentary Assembly, Rules of Procedure of the European Parliament as well as case-law of the European Court of Human Rights and the Court of Justice of the European Union concerning the MPs' exercise of their mandate. We strongly hope that this appraisal and the recommendations therein will be seriously considered by the Serbian legislator and used in the preparation of the law on the National Assembly.

of political dialogue where the Members of Parliament discuss various political options and alternatives as free elected representatives of citizens.

101. Once again we have to stress that the current Constitution of Serbia contains a number of problematic provisions which constitute an obstacle to further reforms. A comprehensive revision of the Constitution is necessary in order to bring ordinary legislation / draft new legislation in compliance with European standards.

102. In the absence of new rules of procedure, the debate in the Parliament is governed by the Revised Rules of Procedure of the National Assembly of the Republic of Serbia, as amended on 28 June 2005[27]. The current rules of procedure do not make the parliamentary debate very efficient and streamlined. The role of committees in parliamentary procedure is particularly weak which means that practically all draft laws and decisions are extensively discussed by the National Assembly in plenary. The adoption of the Law on the Ratification of the European Charter of Local Self-Government was a particularly striking example: we were told that the draft law was debated in plenary during several days while in a normal parliamentary system laws on the ratification of international instruments are passed very quickly, if the preparatory work by the Government is completed and the competent committee of the parliament issues a favourable opinion.

103. Deficiencies in the rules for parliamentary procedure are not the only reason for the weakness of parliamentary committees. More importantly, the Parliament dramatically lacks staff that could provide the MPs with expert support not only on procedural matters but also on the substance of the proposals discussed.

104. We strongly recommend that the staff of the National Assembly be further reinforced in order to enable the Parliament to become a full actor of the legislative process.

3.4. Functioning of the National Human Rights Institution (Office of the Defender of Citizens' Rights)

105. We were positively impressed by our discussion with the newly appointed Defender of Citizens' Rights (Ombudsperson) Saša Janković. He was elected by the National Assembly on 29 June 2007 by 143 votes out of the total of 250. His appointment was welcomed by all key stakeholders; we therefore gained the impression that there was a broad agreement about the need to establish a National Human Rights Institution in Serbia, especially knowing that all previous attempts to appoint an Ombudsperson failed since the adoption of the law in 2005.

106. The appointment of the Ombudsperson should be welcomed. Mr Janković appeared to have a lot of new projects and ideas about how his Office's work could be organised. We particularly welcome his intention to collect data about human rights violations, focusing in priority on cases of discrimination and violations of rights of national minorities. We commend the new Ombudsperson's intention to make full use of his right of legislative initiative in order to work on long-awaited and badly needed legislation, for example, relating to the Code of Conduct of Public Officials.

107. These welcome projects will however not be implemented in practice if the office of the Ombudsperson is not given appropriate means to operate properly.

108. At the time of our meeting with the Ombudsperson (September 2007) his Office was not fully operational then. Mr Janković was temporarily located in the building of the National Assembly. Equally, the Ombudsperson did not have sufficient staff at that moment to be able to fulfil his statutory functions. We were informed that the draft staffing organigram providing for some 62 staff and 4 Deputies to second the Ombudsperson was forwarded to the competent committee of the National Assembly at the beginning of September and put on the agenda of the Parliament as one of the last items for the current session. We were particularly surprised to find out that the parliamentary committee wanted to ask the Government's opinion on the staffing table. This appears to be totally inappropriate, as an Ombudsperson is primarily a parliamentary institution.

109. However, subsequently, the Serbian Delegation to the Assembly informed us that the Government of the Republic of Serbia and the National Assembly of the Republic of Serbia adopted the budget proposed by the Ombudsperson in the amount of 92 million dinars (approximately 1.1 million euros) for the year 2008. The National Assembly also adopted the act on the establishment of the institution of the Ombudsperson. The Office of the Ombudsperson began operations on 24 December 2007 with 15 employees seconded from

[27] http://www.parlament.sr.gov.yu/content/eng/akta/poslovnik/poslovnik_ceo.asp

other public services for a fixed period of time in order to carry out the elementary operations of the institution of the Ombudsperson. At the same time, a competition for the recruitment of 22 additional staff was opened and 5 additional employees were engaged outside the normal recruitment procedure. When the procedure is completed, 27 additional staff members will reinforce the Office of the Ombudsperson, who has already received a large number of both written and oral citizens' complaints and requests for advice and assistance. Soon the Office of the Ombudsperson will be permanently installed in the building whjch is being used at the moment by the Supreme Court of Serbia (which will be moved to larger premises). It is expected that the National Assembly will soon elect Ombudsperson's deputies who will be, in accordance with the law, specialised in the rights of persons deprived of their freedom, gender equality, rights of the child, rights of the members of national minorities and the rights of disabled persons. We welcome these positive steps.

110. However, although important, the provision of appropriate material conditions is not the only challenge the institution of the Ombudsperson has to face in Serbia. In the medium term, the legislation governing the functioning of the Ombudsperson could be further improved in the light of European standards.

111. In its opinion on the Constitution of Serbia the Venice Commission noted that it was regrettable that there was no protection of the Ombudsperson against unjustified pre-term dismissal by the National Assembly. While the Ombudsperson should indeed present reports to the National Assembly, it seems questionable to state that the National Assembly supervises the Ombudsperson (Article 99) and that the Ombudsperson shall account for his/her work to the National Assembly.[28]

112. Further concerns are raised by the Law on the Defender of Citizens' Rights (Ombudsperson) which was adopted in 2005 and subsequently amended in June 2007. This law was jointly appraised by the Venice Commission and the Office of the Council of Europe Commissioner for Human Rights in 2004[29]. We welcome the fact that several important recommendations of the Council of Europe experts were taken on board in the final version of the law. Some problematic aspects remained unchanged however.

113. Three aspects of the law could be improved, in our view.

114. Firstly, the Ombudsperson is appointed by the National Assembly by an absolute majority vote (article 4). This is indeed an improvement with respect to the previous version of the law which provided for a simple majority. This procedure does not, however, follow the recommendation of the Council of Europe experts in that the Ombudsperson should be appointed by a qualified majority of Members of Parliament (2/3 or 3/5). We agree with the Council of Europe experts in that a broad consensus for the choice of the Ombudsperson is important in order to ensure public trust in the independence of the Ombudsperson. We also join the Venice Commission in that it is important to provide for guarantees against unjustified pre-term dismissal by the National Assembly. According to the law, the Ombudsperson can be dismissed by an absolute majority of votes cast on the basis of a number of criteria, some of which are rather vague (e.g. Article 12, paragraph 12, sub-paragraph 1, which says that an Ombudsperson can be dismissed "due to incompetence or negligence in discharging duties"). A procedure involving a qualified majority vote would definitely be better.

115. Secondly, we are concerned that the criteria for the selection of the Ombudsperson are somewhat restrictive. According to article 5, a candidate must hold a "bachelor's degree in law; [prove] at least ten years of professional experience in jobs related to the purview of [the Ombudsperson], [possess] high moral character and qualifications (?); significant experience in protection of civil rights." We agree with the Council of Europe experts in that the requirement to hold a law degree should not be a precondition for being an ombudsperson and that the requirement of professional experience is vague and could potentially be interpreted restrictively. It could discourage competent candidates from applying for lack of specific professional experience. We would have liked the first two criteria to be left out of the law; the two remaining criteria appear to be broadly in line with the requirements of most national and international mandates of Human Rights Defenders.

116. Thirdly, we are concerned by the rigidity of the procedure of filing a complaint which is very much court like (article 27). Although the procedure has been improved (and, in particular, it is welcome that the staff of the Ombudsperson is now obliged to provide technical assistance to the complainant in writing the complaint, if the complainant so requests), we believe that too strict requirements concerning the complaints contradict the very idea of the institution.

[28] CDL-AD(2007)004, p.13.
[29] CDL-AD(2004)041, Opinion 318/2004 of 6 December 2004.

3.5. Functioning of the Office of the Commissioner for Access to Information of Public Interest

117. The Commissioner for Access to Information of Public Interest has to face broadly the same problems as the Ombudsperson. Mr Rodoljub Šabić was appointed Commissioner by the National Assembly on 12 December 2004 but his office became fully operational only in late May 2005, almost 6 months after his appointment. At present, Mr Šabić works with just 6 employees, while the staffing table approved by the Parliament provides for as many as 21 staff members to second the Commissioner.

118. We were particularly impressed by Mr Šabić's personal commitment to his work. A practicing lawyer, during the first 6 months, he invested his personal resources into work in order to speed up the operation of his office. A valuable assistance was provided by the OSCE in terms of training of the staff of the Commissioner.

119. The Commissioner's Office was established on the basis of the Law on Free Access to Information of Public Interest which was adopted on 2 November 2004 and further amended on 13 June 2007. The law defines the concept of "information of public interest" as well as regulates the manner in which the citizens can exercise their right to obtain information of public interest and the obligation of public authority bodies to provide such information to the citizens. The Office of the Commissioner is established to monitor the respect of the public authorities' obligation to provide information of public interest to the citizens and consider complaints against the decisions of public bodies concerning the provision of such information. The Commissioner is appointed and dismissed by the National Assembly by an absolute majority of votes. The criteria for appointing and dismissing the Commissioner are very similar to those applicable to the Ombudsperson. In order to be appointed, the candidate must hold a bachelor's degree in law, possess at least 10 years of work experience as well as demonstrate renowned reputation and expertise in the field of protecting and promoting human rights. The Commissioner can be dismissed by the National Assembly at the initiative of 1/3 of the Members of Parliament and, *inter alia*, for performing his / her "duties unprofessionally and unconscientiously".

120. While we understand that the function of the Commissioner requires a certain professional competence, we doubt that the requirement of holding a law degree, possessing 10 years of experience, and demonstrating human rights expertise are justified. Just as in the case of the Ombudsperson, these requirements appear to be restrictive and may discourage competent candidates from running for the post.

121. Equally, we are concerned about the fact the decisions on appointment and dismissal are taken by an absolute majority. It means that the Commissioner can in practice be appointed and dismissed by a majority coalition, without consultations and possible agreement with the opposition. The Commissioner performs a very important function of protecting and promoting transparency in the work of public administration and protecting citizens' right to information. The appointment and dismissal of the Commissioner must meet the consensus of all political stakeholders representing the majority and the opposition.

122. Therefore, we recommend in future modifying the law and introducing a qualified majority requirement for the appointment and dismissal of the Commissioner.

123. This being said, the results of the work of the Commissioner are commendable. All information about the activities of the Commissioner can be easily accessed on the Commissioner's website (http://www.poverenik.org.yu/) in Serbian and in English. Information request and complaint forms can also be downloaded in Serbian and in English. Statistics, monthly and yearly reports are also available.

124. We welcome in particular the availability on the website of the Guidebook on the Law on Freedom of Access to Information of Public Interest which is published not only in Serbian but also in English as well as in several minority languages (Albanian, Bulgarian, Hungarian, Romanian, Ruthenian, and Slovak).

125. A recent positive example of the Commissioner's work is his role in the scandal about the publication of the concession contract for the construction and maintenance of the Horgoš – Požega motorway. The contract for the construction of the motorway was signed in March with the Spanish – Austrian FCC-Alpina Consortium. Immediately after the signing of the contract, rumours circulated about some allegedly preferential financial arrangements granted to the consortium in terms of collection and utilisation of toll fees. The authorities of Vojvodina at highest level confronted the Government of Serbia claiming that the terms of the contract violated the interests of the Autonomous Province and requested the annulment of the contract. In the meantime, the Government refused to make the agreement public claiming that a special confidentially provision prevented it from declassifying the contract without express agreement of the foreign partners. The

Commissioner for Freedom of Access to Public Information made a public statement stressing that such confidentiality rules would be contrary to the Serbian Constitution and Law on Freedom of Access to Information of Public Interest which guarantee the right of citizens to access public information and establish the basis for restricting the exercise this right only "for the purpose of protecting superior interests in democratic society from severe determent". He also noted that it was the obligation of public authorities to make sure that these constitutional and legal principles are applied by all institutions, including foreign partners operating within the Serbian legal framework. Failure to respect this fundamental obligation would be particularly harmful in the current context of harmonisation of Serbian legal order with the *acquis* of the European Union[30].

126. As a result of the Commissioner's intervention, the Government finally decided to disclose the terms of contract, restricting access however to some annexes of the agreement, which, apparently, regulate some financial aspects of the implementation of the contract and banking guarantees.

127. It is not our mandate to investigate the technical and financial aspects of granting concessions for the construction of motorways in Serbia. We will therefore refrain from making comments on this particular matter. We cannot help but stress however that in a democratic society governed by the Rule of Law, all public institutions have to abide by the rules and that the citizens must have the possibility of checking public spending in order to bring politicians to account. We therefore hope that the issue of access to full information about the construction of the motorway will be eventually resolved in full transparency and in accordance with the law.

3.6. Local democracy

128. The ratification of the European Charter of Local Self-Government (ETS 122) is a very welcome development. The ratification of the Charter was one of the long overdue commitments that the State Union had entered into and failed to implement before its dissolution. We commend the Serbian authorities for ratifying the Charter which will now create the appropriate legal basis for strengthening local democracy.

129. In the meantime, local democracy should be further strengthened.

3.6.1. Institutional arrangements

130. The status of municipalities is governed by the Constitution and the new Law on Local Self-Government adopted on 29 December 2007. This law, together with the Law on Territorial Organisation, the Law on Local Elections and the Law on the Capital City, introduced some changes in the local self-government system. In particular, the law on territorial organisation gave the status of city to additional 19 municipalities; at the moment, Serbia is divided into 150 municipalities, 23 cities and the Capital City (Belgrade). The National Assembly of the Republic of Serbia is competent to decide on the establishment of new municipalities and cities as well as on the changing of borders or dissolution of existing units of local self-government. Any territorial changes can be implemented only following a consultative referendum called by the Municipal Assembly or by 10% of the inhabitants of the municipality.

131. According to the new legislation, the Municipal Assembly is the highest organ of the local self-government unit; the mayors are elected from among the assembly members by secrete ballot for a four-year term. The local elections are organised on the basis of the proportional system with a 5% electoral threshold (which is waived for parties and coalitions of parties of national minorities). These changes appear to be in line with the standards of the European Charter of Local Self-Government. The institutional and financial arrangements for local government require, however, some substantial improvements.

3.6.2. Devolution of new competences

132. From 1 January 2007, the municipalities were allowed to take up new functions in the field of administration and collection of local taxes, purchase and maintenance of equipment in primary healthcare, transportation of pre-school children, and management of Centres of Social Work. The transfer of new functions is phased in over time; the process should be completed by 2009.

133. While the transfer of the responsibility for organising transport for pre-school children has virtually no incidence on municipal budgets, the transfer of other responsibilities requires the development of complex and effective financial mechanisms. This does not apply however to the collection and administration of local taxes. This function is highly lucrative and can potentially increase local own revenue potential.

[30] http://www.poverenik.org.yu/saopstenja_eng.asp

134. The transfer of functions in the field of primary health care and social sector can potentially create more complications for municipalities. Apart from designing new financial mechanisms for covering the costs of these new functions, the devolution requires the transfer of equipment and staff used at the moment by central government ministries to perform the very same functions. This is tricky because the transfer process has to be closely co-ordinated with the revision of the overall public service delivery strategies and network master plans.

135. In this context, we believe that the development of a comprehensive integrated strategy of transferring service delivery functions from central level to municipalities under strong leadership of the Ministry of Public Administration and Local Self-Government, Sectoral Ministries and the Ministry of Finance is required to guarantee a smooth and effective transfer process.

3.6.3. Fiscal decentralisation

136. The development of fiscal decentralisation is closely related to the devolution of new sectoral responsibilities to the municipalities. The transfer of new functions should not be operated at the expenses of local authorities. Funding should follow the competence and new financial mechanisms have to be designed to cover the costs of new responsibilities to be taken over by municipalities (e.g. block grants, matching grants etc.).

137. The law on local government finance adopted in 2007 introduced a new financial equalisation scheme based on objective criteria. Simulations made at the stage of preparation of the law hint at a substantial improvement of horizontal fiscal equalisation between municipalities. But the long-term effects of the new equalisation scheme have to be monitored over time, as local government responsibilities (and spending) increase.

138. The new law on local finance made the property tax one of the most important own resources of municipalities. The administration of this tax is problematic however because of the lack of up-to-date cadastral data on property and the absence of a modern and efficient property valuation system. Some municipalities are making attempts to design their own systems with the assistance of foreign donors. A comprehensive nation-wide system has yet to be developed.

139. We consider that the recently established Commission for Inter-Governmental Finance has to take an active part in the monitoring of the implementation of the new financial arrangements for local government, making recommendations for possible improvements where appropriate.

3.6.4. Devolution of property

140. After the adoption of the Law on Assets of the Republic of Serbia in 1995, which had "nationalised" all local government property, the municipalities were suffering for years of systematic interference of central authorities in all property transactions at local level. This has created substantial obstacles to local economic development and discouraged potential investors from launching projects with local authorities.

141. The new Constitution appears to be enabling municipalities to own property, but it leaves it to ordinary legislation to define the rules governing ownership rights of local authorities. A law on the delimitation of state and local government property is therefore required. In parallel with this, legislation governing the use of property governed by the public law regime and private law regime needs to be enacted. The devolution of property is closely linked to the issue of restitution of property nationalised upon the establishment of Socialist Yugoslavia.

142. We believe that the preparation of a comprehensive package of laws on property and ownership rights should be one of the top priorities of the Government in order to enable the municipalities (and the central authorities) to freely dispose of their property, within the limits of the law, in order to promote local and regional development, especially in the context of pre-accession programmes of the EU.

3.6.5. Relations between central and local authorities

143. The system of administrative supervision over local authorities' action established by the Law on Local Self-Government appears to be rather complex. There is no mandatory supervision of local government acts, but the Government through the Ministry responsible for local self-government may initiate proceedings before the Constitutional Court if it considers that a particular act of a municipality contravenes

the Constitution or the law, creates an irrevocable damage or violates citizens' rights and freedoms. Pending the decision by the Constitutional Court, the challenged act is suspended by decision of the Government.

144. The Ministry responsible for local self-government may also challenge a local government act before the Supreme Court, if it deems that the act in question violates the Statutes of the municipality.

145. The Ministry is allowed to annul administrative acts of minor importance issued by municipalities following a 'conciliation procedure'. It is assumed that the decision of the Ministry may be challenged in a court of law, although this is not clearly spelled out in the law.

146. Although formally complying with European standards, the existing legal arrangements do not seem to provide adequate protection to municipalities as the Constitutional and the Supreme Courts may not be in a position to handle all cases effectively and in a timely manner. A more efficient and streamlined procedure of legality supervision, guaranteeing an effective and timely intervention of the judiciary, is required to satisfy the principles of the European Charter of Local Self-Government.

147. Local authorities can also challenge the constitutionality or legality of a law or general act of the Republic or of the Autonomous Province of Vojvodina before the Supreme Court. Individual acts of state organs may also be appealed against before the Supreme Court.

3.6.6. Provincial autonomy

148. In the time of Milošević's rule, the wide autonomy traditionally granted to the Autonomous Province of Vojvodina was substantially decreased. The 2006 new Constitution has failed to rectify the situation and the current competences of the Province are in fact not different from the competences exercised under the former Constitution. This is in fact the reason why the Provincial authorities advocated against the Constitution and called for boycotting the referendum. It transpired from our meetings with the Provincial authorities that, although they were not satisfied with the provisions of the new Constitution, they accepted to work within the new constitutional context proposing amendments and new legislation aiming at increasing the autonomy of the Province. We welcome this positive and constructive attitude.

149. This being said, the new Constitution contains some important guarantees of the "acquired rights" of the Province, especially in the financial sphere. Notably, article 184 guarantees that the budget of the Autonomous Province of Vojvodina shall amount to at least 7% of the budget of the Republic of Serbia. We are not in favour of such relatively volatile thresholds when it comes to financial resources of regional or local authorities and would have preferred to have a different formulation, possibly based on the principle of "commensurability" of financial resources to devolved competences, in accordance with the European Charter of Local Self-Government. However, we acknowledge that this is a positive element and an important guarantee which should be further strengthened as decentralisation progresses.

150. The authorities of the Autonomous Province of Vojvodina are currently working on the new draft Statute of the Province which, according to the law on the implementation of the Constitution, should be submitted to the National Assembly of Serbia no later than 90 days from the constitution of the new Provincial Assembly. We invite the authorities of the Autonomous Province and the Belgrade authorities to work in close co-ordination on the draft Statute. Asking Council of Europe's advice in the drafting of this important legal document would also be advisable.

151. Besides, we were informed that there are discussions at various levels about the possibility of establishing additional Provinces in Serbia, thus creating a new intermediate tier of government between Belgrade and local authorities. We welcome such discussions, as regionalisation is a good way to improve the standards of democracy.

152. Regionalisation will improve the capacity of public authorities to manage devolved competences more efficiently, in line with the principle of subsidiarity. It will furthermore create an appropriate basis for managing structural reforms, thus increasing the capacity of Serbian authorities to absorb EU pre-accession funding. We encourage all the stakeholders to continue to consider this issue. Without prejudice to the special position of Vojvodina, its current status could be used as model to stimulate further discussions.

4. Rule of Law

4.1. Reform of the Judiciary

153. The reform of the judiciary is governed by the National Judicial Reform Strategy adopted in April 2006. The Strategy appears to be a comprehensive and well written document which sets priority reform objectives for the period 2006 – 2011. It provides for the establishment of a Strategy Implementation Commission bringing together the representatives of the Ministry of Justice, Supreme Court, National Assembly, Public Prosecutor's Office, Judicial Training Centre as well as professional associations of judges, prosecutors and practicing lawyers[31].

154. The Strategy focuses on four main pillars of the judiciary, i.e. independence, transparency, accountability and efficiency. It aims at strengthening the role of the High Judicial Council in order to transform it into a powerful and independent structure to be responsible in the medium term for managing the Judiciary, with the Ministry of Justice performing only those functions which cannot be delegated to the High Judicial Council.

155. While we commend these legitimate goals, we are concerned about their actual implementation in practice. The effectiveness of the implementation of Reform Strategies depends to a major extent on the availability of concrete and well articulated Action Plans and good co-operation between the key stakeholders within the framework of small and operational implementing bodies (i.e. Task Forces to supervise specific elements of the Strategy, working groups to draft legislation, expert teams to propose alternative options). Some of our interlocutors complained about the slow pace of the implementation of reform and argued that the Strategy Implementation Commission was paralysed since its establishment.

4.1.1. Legislative framework

156. During our visits we had the opportunity to extensively discuss the drafting of new legislation on the Judiciary and Public Prosecutor's Offices with Mr Dušan Petrović, Minister of Justice. Mr Petrović was very enthusiastic in front of a very complex challenge his Ministry has to face in particular with respect to the drafting of new legislation on the status of the Constitutional Court, organisation of courts of law, status of judges, status of the High Judicial Council, organisation of the Public Prosecutor's Office, status of public prosecutors and State Prosecutorial Council. He informed us that according to his Ministry's plans, all laws necessary for the implementation of the judicial and prosecutorial reform would be ready by end of 2007 and put into procedure by March 2008 for the reform to be completed by end of 2008.

157. We welcome the good co-operation developed between the Ministry of Justice and Council of Europe experts within the framework of a Joint CoE-EAR Initiative on the Implementation of the National Judicial Reform Strategy[32]. The approach adopted by the Ministry appears to be sensible. It consists of agreeing in the first place on a number of Basic Principles with respect to the reform of the Judiciary and of the Public Prosecutor's Offices. These will lay the basis for further legislative drafting.

158. We shall concentrate in this section of the report on the examination of the Basic Principles relating to the reform of the Judiciary; the Basic Principles of the reform of the Public Prosecutor's Officer will be addressed further below in Section 4.2.

159. The Basic Principles relating to the Reform of the Judiciary is a long and comprehensive document aiming at laying the foundations for drafting legislation governing the status of judiciary. It describes the key principles upon which the judiciary should be built, the basic features of the status of judges, the organisation of the courts of law, the status and mandate of the High Judicial Council, the principles of election of Judges and Court presidents, the rights and duties of Judges and Court presidents, the principles of measurement of performance of Judges and Court presidents, the disciplinary responsibility of Judges, as well as the modalities of termination of their office.

160. The Basic Principles aim at developing further a number of Constitutional guarantees of the independence of the Judiciary in line with a number of international standards enshrined in various

[31] We note that the Association of Judges and the Association of Prosecutors consider that the composition of the Commission is not sufficiently balanced. Out of 11 members, there are just 2 judges and 1 prosecutor. It transpired from our meeting with the professional associations that the judges and prosecutors felt that they were not sufficiently included in the consultation process.

[32] The implementation of this Joint Initiative started in April 2007.

international Conventions and recommendations. We welcome in particular the express references to the key Council of Europe legal instruments on the independence of the Judiciary which form the European *acquis* in this field.[33] The Basic Principles were appraised by the Council of Europe experts within the framework of the Joint CoE-EAR Initiative.

161. According to the Basic Principles, the reform of the Judiciary in Serbia has to respond to the new requirements of the Constitution which establishes a number of essential guarantees of the independence of the judiciary. The Constitution confirms in its Article 3 the principles of separation of powers and independence of the judiciary. It guarantees further in Article 32 the right to a fair trial defined as "the right to a public hearing before an independent and impartial tribunal established by the law within reasonable time". The independence of the judges is guaranteed by the provisions of Article 146 which stipulates that "a judge shall have a permanent tenure" and that "exceptionally, a person who is elected a judge for the first time shall be elected for the period of 3 years".

162. This approach is in line with the Council of Europe standards. According to paragraph 60 of Opinion No. 1(2001) of the Consultative Council of European Judges, "the irremovability of judges should be an express element of the independence enshrined at the highest internal level".

163. We share however the concerns of the Council of Europe experts with respect to the election of judges for the first "probationary" 3-year term of office. In fact, according to the Basic Principles, "the National Assembly [is expected to] elect a judge for the first time from among the candidates nominated by the High Judicial Council". This principle would give to the National Assembly a discretionary power to elect a judge on the basis of some abstract criteria. As we mentioned earlier, the National Assembly's role in judicial appointments should be mere ceremonial: it should officially confirm the candidatures proposed by the High Judicial Council without having the right to choose among the candidates. The room of manoeuvre which may be given to the National Assembly may result in an undue politicisation of the process.

164. Moreover, from a pure logic standpoint, it would seem awkward for the National Assembly to double check the competences of candidates who will have received training and successfully graduated from the Academy of Jurisprudence to be established and passed all selection procedures at the level of the High Judicial Council.

165. Equally, as we mentioned earlier, the election modalities of the members of the High Judicial Council (HJC) should be rethought. In particular, we share the experts' opinion that the National Assembly should play a mere ceremonial role in confirming the candidates elected directly by the judges, by the practicing lawyers as well as by the deans of law faculties. The proposals should be binding upon the National Assembly which should not be allowed to choose among the proposed candidates.

166. We also join the experts' recommendation to reconsider the "distribution of seats" among elective members of the HJC in that the members should be elected by degrees of jurisdiction and not appointed as representatives of particular types of courts. In fact, the majority of judges are appointed in first instance courts; they should therefore be entitled to more seats in the High Judicial Council.

167. We very much welcome the approach of the Basic Principles on the implementation of Article 7 of the Law on the implementation of the Constitution. Only judges for newly established courts should be elected in the manner prescribed by the law on the implementation of the Constitution. The re-appointment of all judges in the country would go against the principle of permanent tenure of office of the judge guaranteed by the Constitution and contradict the European *acquis* on the independence of the judiciary.

168. For the rest, the Basic Principles appear to be in line with the European *acquis*. The court system is divided into the courts of general and special jurisdiction and the organisation of the courts appears to be defined in a sound manner. We particularly welcome the anticipation of the establishment of a comprehensive system of performance measurement and appraisal of judges based on objective criteria and conducted by the High Judicial Council. The appraisal reports could indeed become an efficient mechanism of fighting corruption within the judiciary, as it is anticipated that a negative appraisal report (as well as serious or repeated disciplinary offences) could give rise to the initiation of proceedings for dismissing judges. The right of appeal to the Constitutional court is recognised as well.

[33] These are the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Committee of Ministers' Recommendation R(94)12 on the independence, efficiency and role of judges, the European Charter on the Statute for Judges, as well as Opinion no. 1(2001) of the Consultative Council of European Judges (CCEJ) on standards concerning the independence of the judiciary and the irrevocability of judges.

169. This being said, the Basic Principles for the Reform of the Judiciary will remain a set of sound declarations of principles, unless they are translated into specific legislation. We hope that the Ministry of Justice, with the help of the Council of Europe experts, will promptly complete the drafting process in order to finalise the legal foundations for building a modern, efficient and independent judiciary in Serbia.

170. We were informed that the preparation of the Law on the Academy of Jurisprudence is being co-ordinated by a Task Force established by the Ministry of Justice, in co-operation with the OSCE. The Academy will supervise all stages of education and training in the judiciary. This Law will be sent to the National Assembly for consideration and adoption in October 2008.

171. We welcome the adoption by the Parliament on 24 November 2007 of the law on Constitutional Court. The adoption of this draft law is crucial, as the Constitutional Court was not operational since autumn 2006, when the President of the Court retired. Since then, the President was not replaced and the Court has not met a single time, as according to the rules of procedure it is the task of the President to call sessions. At the same session, the Parliament elected 5 judges of the Court from the list of 10 candidates submitted by the President. At the same time, the Parliament approved a list of 10 candidates to be submitted to the President for the appointment of 5 judges from the Presidential "quota". Subsequently, the President appointed five members of the Court from his quota and the Court became operational[34].

172. The text of the law on the Constitutional Court was not available to us. We are therefore not in a position to analyse the compliance of the finally adopted law with the Council of Europe standards and recommendations of the Council of Europe experts. We shall therefore address in this report a number of concerns expressed by the Venice Commission with respect to the draft law on the Constitutional Court. We reserve the right to modify this analysis further, as soon as the text of the finally adopted law will be made available to us.

173. By and large, the draft law, appraised by the Venice Commission, is a serious and comprehensive piece of legislation which addresses practically all aspects of functioning of the Constitutional Court. It appears to establish a strong Constitutional Court with a balanced composition. It clarifies, at least to a certain extent, the concerns of the members of the Venice Commission about the right of the National Assembly to dismiss the judges of the Constitutional Court. This can be done only under some exceptional conditions (i.e. when the judge violates the principles of conflict of interests, permanently loses the ability to discharge the function of judge, is sentenced to a penalty of imprisonment or convicted of a criminal offence which makes him/her ineligible for the post of judge at the Constitutional Court) and the Court reserves the right to decide whether these conditions are fulfilled.

174. Some of the provisions of the law could be further improved however. This applies in particular to some procedural norms, relating to the application of procedural legislation by analogy, parties to the proceedings, modalities of abstract control of norms, consideration of cases of conflict of competences, judicial deadlines as well as role of state institutions responsible for overseeing the exercise of human rights in introducing constitutional complaints.

175. A special remark should be made with respect to the effects of the decisions of the Constitutional Court on non-compliance with the Constitution of ratified international treaties. According to the draft law, the act of ratification ceases to be effective on the day of publication of the decision of the Constitutional Court. While this may be true for the domestic legal instrument confirming the ratification (i.e. law on the ratification of the treaty), Serbia will continue to be bound by the treaty internationally, until it denounces the treaty in accordance with the provisions of the treaty itself or on the basis of the Vienna Convention on the Law of International Treaties. Such situations should in principle be avoided in as much as possible. We therefore reiterate our recommendation to introduce a procedure of assessing the constitutionality of an international treaty prior to its ratification.

176. We hope that the drafters of the law have eliminated these deficiencies in the final version of the law. In the current context of important legislative reforms relating to the interpretation of the provisions of the Constitution, it is essential that the Court becomes operational without delay, in order to protect the constitutional order in the country.

[34] According to Article 172 of the Constitution, the Constitutional Court is composed of 15 Judges, 5 of whom are appointed by the President, 5 – by the National Assembly, and 5 – by the Supreme Court of Cassation, from a joint list submitted by the High Judicial Council and the State Prosecutorial Council. The Court becomes functional if two thirds of its members are appointed (e.g. 10 Judges from the Presidential and Parliamentary quota), in order to avoid delays relating to the establishment of the High Judicial Council, State Prosecutorial Council and Supreme Court of Cassation, which cannot operate in the absence of appropriate legislation.

4.1.2. Judicial practice and functioning of courts

177. Legislative changes are not the only challenge the judiciary has to face in Serbia. Corruption in the judiciary is seen as one of the major obstacles to the efficient administration of justice. Although according to Minister Petrović the judges who have compromised their impartiality and independence represent a minority, thorough work is required to cleanse the judicial corps which is composed of around 2400 judges.

178. According to the statistics of criminal justice, judges tend to apply penalties *a minima*. To give but two examples: in 58% of murder cases, the criminals are sentenced to 5 years of imprisonment (the legal penalty being from 5 to 15 years) and in 52% of aggravated murder cases, the criminals are sentenced to 10 years of imprisonment (which is below the minimum provided by the law, i.e. between 30 and 40 years of imprisonment!); while according to the law drug traffickers can be sentenced from 2 to 12 years of imprisonment (and from 5 to 15, in case they operate as a part of an organised network), in practice, in 70% of cases the courts apply conditional sentences and out of 30% of remaining cases, 48% concern sentences of 1 year and 43% - sentences ranging between 1 and 3 years of imprisonment. This could, no doubts, be a matter of judicial practice (with a view to avoiding overcrowding of detention facilities); it could also be seen as an indication of corruption, especially for cases of aggravated murder and drug trafficking.

179. In practice, the Ministry of Justice has no tools to combat effectively corruption in the judiciary. According to the existing legislation, the Minister of Justice cannot initiate proceedings to dismiss a judge. This is the competence of the High Personnel Council of the Supreme Court composed of 9 judges. So far, one judge of the Supreme Court was convicted for taking bribes from organised criminal groups and another judge was found guilty of corruption but still performs his functions.

180. While not denying the fact that corruption within the judiciary exists, the judicial community does not feel secure. Many judges complain about pressure being exercised on them from political and business circles. Many competent judges leave the judicial function to work for Government agencies or run a private practice. According to the judges themselves, they work for years in a situation of legal uncertainty because their appointment and dismissal is decided by the National Assembly composed of elected members representing the various interests of political parties. A reform of the judiciary and the reinforcement of the guarantees of independences of judges are badly needed.

4.2. Reform of the Prosecutor's Office

181. Currently, the status of the Public Prosecutor's Office is governed by the new Constitution of Serbia. Legislation on the organisation of prosecutor's offices, appointment and cessation functions of public prosecutors and deputy public prosecutor as well as the status of the State Prosecutorial Council is expected to be adopted soon.

182. In the meantime, the Ministry of Justice has drafted a set of Basic Principles on the reform of the Public Prosecutors' Office to lay the basis for the drafting of specific legislation. Subsequently, two draft laws on Public Prosecution and State Prosecutorial Council were prepared and sent to the Council of Europe for appraisal. The Council of Europe experts appraised both draft laws within the framework of the Joint CoE-EAR Initiative on the Implementation of the National Judicial Reform Strategy.

183. While both draft laws appear to be well drafted they raise a number concerns with respect to European standards on the status of public prosecutors' offices enshrined in particular in Recommendation (2000)19 of the Committee of Ministers of the Council of Europe on the role of public prosecution in the criminal justice system and Assembly Recommendation 1604 (2003) on the role of public prosecutor's office in a democratic society governed by the rule of law. These concerns stem from the provisions of the new Constitution, which, as we mentioned earlier, should be brought into line with European standards.

184. We have noted already the explanation provided by the Serbian delegation to the Assembly concerning the function of the Public Prosecutors concerning the protection of constitutionality, legality, human rights and civil liberties. We hope that the “legal means” conferred on the Public Prosecutors do not enable them to exercise “supervision” over court decisions, by challenging final decisions of courts of law on the grounds of illegality. If it were the case, there could be a risk to legal certainty which could give rise to the violation of the right to a fair trial, as protected by the European Convention for the Protection of Human Rights and Fundamental Freedoms.

185. The proposed draft laws have not fully resolved the concerns expressed by the Venice Commission concerning the modalities of election of the Republic Public Prosecutor, Public Prosecutors and deputy

public prosecutors (for an initial period of 3 years however, with the possibility of confirmation of appointment for an indefinite duration by the State Prosecutorial Council). It is anticipated that, in line with the Constitution, these will be elected by the National Assembly upon submission of a proposal by the Government and upon consultation of the competent committee of the National Assembly. The Government makes a proposal on the basis of a list of candidates prepared by the State Prosecutorial Council. If the role of the National Assembly was mere ceremonial, this would not have created any problems. However, the law appears to indicate that the National Assembly may choose between the candidates proposed by the Government or refuse to elect any of the candidates proposed by the Government, in which case a new "election" is organised. This procedure gives to the National Assembly a discretionary power to take a political decision on the appointment of the prosecutors, thus making the prosecutors "dependent" on the parliament. This is especially true for the Republic Public Prosecutor and the Public Prosecutors who are elected for 6 years and may be re-elected. The re-election procedure gives to the National Assembly means for exercising pressure on the Prosecutors; the latter will inevitably be influenced by politics in their actions, if they want to be re-elected. Or the majority in the National Assembly could "sack" a prosecutor if his / her actions were not corresponding to the political interests of the majority.

186. With respect to the election of the 6 members of the State Prosecutorial Council by the National Assembly, we were informed by the Serbian delegation to the Assembly that the draft law on the State Prosecutorial Council provides that the Council should propose to the Government of the Republic of Serbia three candidates for each position of an elective member of the Council and that the Government MUST propose to the National Assembly two candidates of the proposed three for each position of the elective member of the Council. The National Assembly MUST elect one person from the list of candidates and is not allowed to return the list of candidates to the Government and the State Council of the Prosecutors for new proposals. This procedure indeed reduces to the minimum the influence of political parties on the election process. However, it does not eliminate the risk of politicisation of the process completely, as it is difficult to ascertain on what grounds the National Assembly will choose between one or the other candidate proposed by the Government.

187. Just as for the modalities of election of the members of the High Judicial Council, we would recommend making the proposals submitted by the State Prosecutorial Council binding for the Government and the National Assembly, limiting its role to a mere ceremonial confirmation of the appointments. This would help build a strong and autonomous Public Prosecution Service.

4.3. Prosecution of war crimes

188. Prosecution of war crimes and co-operation with the ICTY were key commitments of the State Union of Serbia and Montenegro, which were subsequently taken on by Serbia. In particular, the authorities committed themselves to "- do the utmost to track down […] indicted persons who are still at large, and to hand them over to the ICTY. […] – to revise the law on co-operation with ICTY in accordance with the statute of the ICTY and the relevant United Nations Security Council resolutions. […] – to make documents and archives, including military documents and archives, available to the ICTY without further delay."[35]. The implementation of this commitment did not however progress as well as it should.

189. While the new Serbian Constitution does not ban the extradition of Serbian nationals anymore, such ban was not removed from legislation. This remains to be a matter of great concern for the Assembly, which recommended in its Resolution 1564 (2007) on Prosecution of offences falling within the jurisdiction of the International Criminal Tribunal for the former Yugoslavia (ICTY)[36] that the ban imposed on the extradition of nationals charged with committing war crimes be removed immediately. In practical terms, the Rapporteur suggested that the application of international treaties on extradition could remove the obstacles created by the domestic legislation, as international law takes precedence over national law.[37] Indeed, as we mentioned earlier, international treaties signed and ratified by Serbia take precedence over national law, in as much as they comply with the Constitution (which appears to be the case for extradition). In this respect, the Assembly recommended that Serbia should withdraw the restrictive declaration made upon ratification of the European Convention on Extradition (ETS No. 24) for the purpose of prohibiting extradition of its nationals[38]. We firmly support this recommendation of the Assembly.

[35] Assembly Opinion 239 (2002) on the Federal Republic of Yugoslavia's application for membership of the Council of Europe.
[36] Text adopted by the Assembly on 28 June 2007 (25th Sitting).
[37] Assembly Doc. 11281, Prosecution of offences falling within the jurisdiction of the International Criminal Tribunal for the former Yugoslavia (ICTY), Report by Mr Tony Lloyd (UK, SOC) for the Committee on Legal Affairs and Human Rights, p. 20.
[38] Recommendation 1803(2007) on Prosecution of offences falling within the jurisdiction of the International Criminal Tribunal for the former Yugoslavia (ICTY), adopted by the Assembly on 28 June 2007 (25th Sitting), paragraph 1.2.

190. On the conventions front, we welcome the fact that Serbia recently signed and ratified the European Convention on International Validity of Criminal Judgements (ETS No. 070)[39] and the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (ETS. No. 182)[40]. However, it has yet to become a state party to the European Convention on the Non-Applicability of Statutory Limitations to Crimes against Humanity and War Crimes (ETS No. 082) and the European Convention on the Compensation of Victims of Violent Crimes (ETS No. 116).

191. Besides, in practical terms, until very recently, the co-operation with ICTY was slow and insufficient, which led the European Commission to suspend the negotiations about a Stabilisation and Association Agreement with Serbia in May 2006. The negotiations resumed however in June 2007 after the formation of the new Government. Since then, an improvement in the co-operation with ICTY has been detected. In particular, thanks to a good co-operation between the security services of Serbia, Bosnia and Herzegovina and Montenegro, two indictees were handed over to the Hague Tribunal, i.e. Milocevic's ex head of security services General Zdravko Tolimir was apprehended on 30 May 2007 and General Vlastimir Đorđević, a senior Serbian police officer indicted for crimes against humanity and war crimes committed against Kosovo Albanians in 1999, was transferred to the Tribunal on 17 June 2007.

192. To date, 42 of 46 indictees were transferred to the ICTY. We welcome this good result. We regret however that the 4 indictees still at large are in fact the key figures of the conflicts in former Yugoslavia who stand accused of the most serious war crimes and crimes against humanity (these are Radovan Karadžić, President of Bosnian Serbs until 1996, General Ratko Mladić, former Commander of the Main Staff of the Bosnian Serb Army ("VRS"), Goran Hadžić, Former Premier of the "Republic of Srpska Krajina" and Stojan Župljanin, Commander of the Bosnian Serb police during the war).

193. We appreciate the statements by the President of the National Council for Co-operation with the ICTY Rasim Ljajic and the Chief Prosecutor for War Crimes Valdimir Vukčević about the intensive efforts deployed by the authorities in order to track down the remaining indictees. We gained the impression from our discussions with all key stakeholders that there was a strong political will and readiness of the authorities to do their utmost to capture and extradite the indictees. We hope that the measures recently taken by the authorities (and in particular, intensive searches in military facilities as well as the promise to grant a reward of one million Euros for information that would lead to locating and arresting Ratko Mladić and of 250,000 Euros for Stojan Župljanin and Goran Hadžić) will bring their fruits in the nearest future.

194. The existence of this political will and the intensification of efforts were also confirmed by the Chief Prosecutor of the International Criminal Tribunal for former Yugoslavia Carla Del Ponte who paid several visits to Belgrade since the establishment of the new Government. During the June 2007 Part Session of the Assembly she stated that "the authorities have […] taken a number of concrete steps in this direction. A National Security Council has been established. It is chaired by President Tadić and will be the central organ in dealing with the fugitive issue."[41] An agreement on gaining insight into the archives of state bodies was also reached, although the practical modalities of its implementation are still not fully settled and the Tribunal still experiences difficulties in accessing certain documents.[42]

195. We would like to encourage the Serbian authorities to pursue efforts in this direction, especially, in the light of positive signs given by the European Union in the implementation of the stabilisation and association process. The European Commission and the Government of Serbia represented by Deputy Prime Minister responsible for European integration Božidar Đelić initialled the Stabilisation and Association Agreement on 7 November 2007. Good co-operation with the ICTY was one of the pre-condition for the launching of the SAA. It will be a condition for the final signing of the Agreement however. Therefore, it is, as never before, important that Serbia takes further steps in order to apprehend in the nearest future the remaining indictees believed to be still in Serbia.[43]

[39] Signed and ratified on 26/4/2007 and effective from 27/7/2007.
[40] Signed and ratified on 7/4/2007 and effective from 1/8/2007.
[41] http://assembly.coe.int/Main.asp?link=/Documents/Records/2007/E/0706281000E.htm
[42] ICTY Press Release from 3 October 2007. OK/OTP/1187e. We note however that discussions were recently held between Chief Prosecutor Carla Del Ponte and the authorities about the modalities of accessing documentation from the archives of the Ministry of Defence as well as those of the BIA. *V.I.P. Daily News Report*, No. 3706, 26 October 2007.
[43] It is believed that at least 3 indictees who are still at large remain on the territory of Serbia (these are Ratko Mladić, Stojan Župljanin and Goran Hadžić). The Serbian authorities claim that they have no information about the whereabouts of Radovan Karadžić and assert that he might not currently be within the territory of Serbia.

4.4. The fight against corruption and money laundering

4.4.1. Legislative and institutional framework

196. the fight against corruption has been cited as a priority of Serbian Governments over the past 6 years. Several important legislative and practical measures were taken to fight against corruption. In terms of legislation, the fight against corruption is regulated by the Law on the Prevention of Conflict of Interest adopted in 2004, the Law on the Financing of Political Parties adopted in 2003, the Law on Public Procurement adopted in 2002 and subsequently amended in 2004, the Law on Civil Servants adopted in 2005, the Law on Government Auditing Institution adopted in 2005, the law on the Defender of Citizens' Rights, adopted in 2005, the Law on Free Access to Information of Public Interest adopted in 2004, as well as the Criminal Code and the Code of Criminal Procedure[44]. The implementation of this comprehensive legislative package is co-ordinated within the framework of the National Anti-Corruption Strategy adopted in 2005.

197. An Action Plan on the implementation of the Strategy was adopted in 2006. The implementation of the anti-corruption measures progresses smoothly and several new cases involving corruption by civil servants, police and customs officials were opened during 2006. However, the action plan on the fight against corruption lacks clear deadlines, concrete actions and the necessary resources for its implementation.

198. According to Transparency International, Serbia's Corruption Perception Index for 2007 is 3,4, which places the country on 79th position, above other countries of South-Eastern Europe with the exception of Croatia which has a CPI of 4.1[45]. However, it is generally acknowledged that "corruption is still widespread and constitutes a serious problem in Serbia"[46]. Although the legislation establishes a sound basis for developing an anti-corruption policy, it needs to be further improved in several respects. The Law on the financing of political parties contains a number of sound principles but measures for supervision and control are weak: for example, political parties' reports on the financing of the election campaign in January 2007 were mostly incomplete and unsatisfactory[47]. The Law on the prevention of conflict of interest does not cover all officials who are involved in the decision making process; there are also problems with its enforcement, as the sanctions foreseen by the law are rather weak (i.e. confidential warning and public announcement of the case of violation of the law by an official with a recommendation to resign). The law on public procurement introduces complex procurement procedures and the role of the public procurement agency is not strong enough. The auditors to the Supreme Audit Institution were appointed only in September 2007. The material and procedural criminal legislation could be further improved, in line with the recommendations of the Council of Europe experts.

199. On the conventional front, Serbia is a state party to the Council of Europe Criminal Law Convention on Corruption (ETS 173), the Council of Europe Civil Law Convention on Corruption (ETS 174), the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191), the Council of Europe Convention on Laundering, Search, Seizure, and Confiscation of Proceeds from Crime (ETS 141), European Convention on Mutual Assistance in Criminal Matters (ETS 030) and its Additional Protocol (ETS 099). However, it has yet to ratify the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (ETS 198), and the Council of Europe Convention on Cybercrime (ETS 185).

200. At institutional level, the fight against corruption is concentrated in the relevant Council. It was established by the Government decision in 2001 and comprises 13 members. It is an advisory body whose mandate is to provide support to the government in the implementation of anti-corruption policies. It examines activities related to the fight against corruption, proposes measures that need to be taken for more efficient policies against corruption and follows their implementation. The Council may also make proposals of new legislation, programmes and other activities to fight against corruption[48].

201. The Council has taken a number of sound initiatives to fight against corruption in the past couple of years. It has focused primarily on so-called "political corruption". The cases of "administrative corruption", i.e.

[44] *Begović B., Mijatović B. (editors)* Corruption in Serbia Five Years Later. Centre for Liberal-Democratic Studies, 2007.
[45] This is an improvement however, as Serbia's CPI for 2006 was 3.0, putting it on the 90th place among the countries monitored. http://www.transparency.org/policy_research/surveys_indices/cpi/2007
[46] European Commission's Serbia 2007 Progress Report. SEC(2007)1435, 6 November 2007.
[47] *Begović B., Mijatović B.* Op. cit.
[48] GRECO's Evaluation report on the Republic of Serbia. Adopted by GRECO at its 29th plenary meeting (Strasbourg, 19-23 June 2006). Greco Eval I-II Rep (2005) 1E Revised.

corruption of civil servants, such as corruption in the health sector, judiciary, tax administration and customs, appear to have been neglected in the work of the Council[49].

202. In order to achieve greater efficiency in investigating and prosecuting criminal acts with elements of corruption and money laundering, the Department for the Fight Against Corruption was established as part of the 2008 yearly plan and programme of the Prosecutor's Office of the Republic of Serbia. The task of the Department is to co-ordinate its activities with the District Prosecutor's Offices, as well as with other state organs (the Ministry of the Internal Affairs, Tax Police and other inspection services) and, if needed, to take part in the first instance criminal proceedings. The experience of a number of European states is being used in the establishment of this department. The OSCE Mission in Serbia also announced its readiness to provide expert and material support. This being said, it appears that there is a need to create a more operational structure to strengthen the enforcement of measures to fight against corruption, as well as ensure a better co-ordination between different anti-corruption policies and mechanisms.

4.4.2. GRECO's recommendations

203. The Council of Europe Group of States against Corruption (commonly known as GRECO) adopted an Evaluation Report on the Republic of Serbia in June 2006. The Group formulated a number of concrete recommendations and invited the Serbian authorities to report about the implementation of these recommendations by end of 2007.

204. In total, 25 recommendations were addressed to the Serbian authorities. Summing up, these could be divided into the following categories and include *inter alia*[50]:

– *Institutional aspects* (improving the transparency of appointment of judges and prosecutors and eliminating political influence in the appointment process in order to build confidence in the judicial and prosecutorial function; make the tenure of deputy public prosecutors permanent; strengthen the terms of office of the Special Prosecutor for organised crime; improve co-operation between the police and the Prosecutor's Office; strengthen in-service training for police officers and prosecutors dealing with corruption and organised crime; develop efficient mechanisms of monitoring of the implementation of the action plan of the Anti-Corruption Strategy etc).

– *Investigation* (establish special investigation techniques and provide training; develop a fully-fledged witness protection programme; temporary freezing of suspicious transactions; seizure and confiscation of illicit property transferred to third parties etc).

– *Money laundering* (developing guidelines containing money laundering indicators, increase awareness of suspicious transaction reporting and monitor progress etc).

– *Prevention of corruption* (anti-corruption training for civil servants; establishment of the Ombudsperson's office at national level; extension of the application of the law on Conflict of Interests to all public officials who perform public administration functions; adoption of codes of conduct for public officials etc..).

– *Strengthening of the implementation of the law on Public procurement,* by provision of appropriate training to civil servants.

– *Simplification of procedures and regulations governing the granting of licences and permits*.

– *Strengthening financial control* by establishing a Public Auditing institution.

205. We were informed by the Minister of Justice Dušan Petrović that the preparation of the report on the implementation of GRECO's recommendations was ongoing. We shall carefully study the conclusions of the GRECO and take them into account in the monitoring process.

[49] *Begović B., Mijatović B.* Op. cit.
[50] The present list is not exhaustive. A complete list of the recommendations is contained in GRECO's Evaluation report on the Republic of Serbia. Adopted by GRECO at its 29th plenary meeting (Strasbourg, 19-23 June 2006). Greco Eval I-II Rep (2005) 1E Revised.

4.4.3. Forthcoming developments

206. The Government of Serbia has prepared a law on the Anti-corruption Agency, which is expected to be adopted by the Parliament soon. According to the draft, the future Agency will replace the currently existing bodies, i.e. the Council for the fight against corruption and the Republican Committee for the Prevention of Conflict of Interest. It will also exercise control over the financing of political parties and implement the Anti-corruption strategy according to the agreed Action Plan. The Agency would also have "normative" functions and be responsible for preparing opinions on laws and bylaws, thus ensuring the detection of "risks of corruption" in draft legislation.

207. According to Minister Dušan Petrović, the law is expected to be adopted in beginning of 2008. We welcome this initiative and encourage the Serbian authorities to speedily adopt the law to prepare the ground for reforming the current institutions responsible for fighting against corruption to streamline the implementation of anti-corruption policies.

4.4.4. Money laundering

208. Anti-money laundering policies in Serbia and Montenegro were assessed by the Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures (commonly known as MONEYVAL) in late 2003. A detailed assessment report was prepared and approved at the plenary meeting of the Committee on 21 January 2005. A summary of the report was subsequently prepared and published on the MONEYVAL website[51].

209. Since the adoption of the first report on Serbia and Montenegro, the situation in Serbia has evolved. A new Law on Anti-Money Laundering was adopted in 2005. The new law aimed at improving the efficiency of detecting and preventing money laundering. In practical terms, the new law introduced a new definition of money laundering, an obligation of identification of clients and beneficial owners when opening bank accounts as well as the obligation of reporting cash transactions amounting to and exceeding 15,000 Euros to the Financial Intelligence Unit (Anti-Money Laundering Agency). There is also a general obligation to report suspicious financial transactions to the FIU, irrespective of the amount. Customs authorities are now obliged to report on cross-border transfers of cash, cheques and securities in the amounts specified in regulations governing cross-border financial transfers in local and foreign currencies. The list of obligors has been extended to include investment funds, dealers in high-value goods, travel agencies, casinos etc. A Financial Intelligence Unit was established within the structure of the Ministry of Finance with an independent budget.

210. Some changes with respect to the criminalisation of money laundering were also introduced into the Criminal Code and Code of Criminal Procedure. The legislation on banks, insurance, games of chance, securities and financial instruments, investment funds, foreign exchange operations, training of judges, public prosecutors and deputy public prosecutors was amended, to bring the regulations into line with the new law on anti-money laundering.

211. An important change was made to the Code of Criminal Procedure, which is expected to strengthen the role of public prosecutors in the investigation. According to the new Code (adopted in June 2006) the investigation will be conducted by the Public Prosecutor. This novelty is expected to make the proceedings more expedient. The new Code of Criminal Procedure will, however, be effective only from 31 December 2008 (and not from 1 June 2007 as was foreseen in the original version of the law).

212. Measures to combat terrorist financing were also strengthened in criminal legislation.

213. Although the new Anti-Money Laundering Law was welcomed by all stakeholders, some of its features were criticised by domestic and international organisations. We were informed that the Anti Corruption Council made a rather critical assessment of the law, stressing in particular that the concept of money laundering could have been better defined and challenging the independence of the Anti-Money Laundering Agency, which functions as a body of the Ministry of Finance. Equally, the role of the Ministry of Finance in regulating anti-money laundering methodology and procedures as well as the right of the Ministry to grant reporting exceptions to certain obligors was criticised. The sanctions foreseen by the law were

[51] http://www.coe.int/t/e/legal_affairs/legal_co%2Doperation/combating_economic_crime/5_money_laundering/evaluations/ MONEYVAL (2005)2 Summ.

considered as weak and the number of transactions to be controlled by the Agency excessively large, which may in practice result in the inability of the agency to react effectively to cases of money laundering[52].

214. The OSCE and the United Nations Interregional Crime and Justice Research Institute (UNICRI) made a somewhat more balanced assessment of the law, stressing however among the drawbacks of the law and current legal regime of prevention of money laundering: a) the lack of clarity in the list of obligors; b) an unclear situation in relation to money laundering in privatisation; c) problems related to the role of the Financial Intelligence Unit, particularly its lack of independence, insufficient clarity in relations with other institutions, and problematic quality of information collected; and d) the lack of harmonisation of penalties prescribed for money laundering and similar offences[53].

215. This being said, we were informed that MONEYVAL would soon make an assessment of the compliance of the Serbian legislative framework and practice with European standards for anti-money laundering measures and measures to counter the financing of terrorism. We invite the Serbian authorities to co-operate fully with MONEYVAL in the organisation of the assessment as well as in the implementation of recommendations. From our side, we shall carefully study the conclusions of MONEYVAL as soon as they are available and take them into account in the monitoring process.

5. Human Rights

5.1. Reform of the Army, security services, police and penitentiary institutions

5.1.1. Democratic oversight

216. We welcome the comprehensive set of provisions concerning the democratic oversight over the activities of the Police, Security Services and Army of Serbia established by the Constitution and the sectoral legislation. We look forward to receiving further information about the actual functioning of these procedures within the framework of the monitoring process.

217. The modalities of the supervision are defined in the Law on the Basic Organisation of the Security Services of the Republic of Serbia adopted on 11 December 2007. According to the law, the National Assembly, *inter alia*, checks the constitutionality and legality of the operations of the security services; the harmonisation of the operations of the security services with the strategy of the national security, the strategy of the defence and the security and intelligence policy of the Republic of Serbia; the legality of the implementation of particular procedures and measures for clandestine gathering of intelligence data etc. The National Assembly adopts reports on the operations of the security services on the basis of reports presented by the Head of the security services, at least once a year. The National Assembly may also consider proposals, petitions and requests of the citizens in connection with the operations of the Security Services and takes appropriate measures for their solution. The Head of the Security Service is obliged, upon the request by the competent Committee of the National Assembly, to make it possible for the members of the Committee to access to the premises of the service, to allow insight into the documentation, to produce data and information on the operation of the service and to answer their questions in connection with the operation of the service.

218. The democratic oversight of the Army of Serbia is regulated by the new Constitution and the Law on the Army of Serbia adopted on 11 December 2007. The democratic civilian control over the Army of Serbia comprises, in particular, the control over the use and development of the Army of Serbia, internal and external supervision over military expenses, monitoring of, and the informing of the public about, the state of the preparation of the Army of Serbia, provision of free access to information of public interest and definition of responsibilities for the performance of military obligations in accordance with the law. The democratic civilian control over the Army of Serbia is performed by the National Assembly of Serbia, the Office of the Ombudsman and other state organs within the framework of their competences as well as directly by the citizens.

219. Equally, the activities of the police are also subject to democratic control. According to the new Law on Police adopted in 2005, the Directorate of Police was granted administrative autonomy within the structure of the Ministry of the Interior. The Director of Police is a civil servant appointed on the basis of a competitive examination, thus excluding any political influence in the appointment process. The Director of the Police submits reports on the activities of the Police to the National Assembly's Committee on Defence

[52] *Begović B., Mijatović B.* Op. cit.
[53] Money Laundering and the Legislation of the Republic of Serbia, May 2007. Report by UNICRI and OSCE. http://www.unicri.it/wwd/money_laundering/docs/MoneyLaunderingSerbia_LegalReport.pdf

and Security every 6 months. This is a welcome practice. We were told that the Committee organised public discussions in the process of consideration of the reports.

5.1.2. Work of the police

220. In organisational terms, the police is divided into 15 branches. It is organised in 26 districts, including the capital Belgrade. The salaries of the police officers have been increased in the past years. We were informed that on average the salary of a policeman in Belgrade amounted to 30 000 RSD (approximately 385 Euros) which was higher than the national average (which is 26-28 000 RSD). However, the terms of employment of police officers are still low and the risks of corruption are high.

221. By and large, the Director of the Police was satisfied with the work of the police. Good co-operation was maintained between the police and the prosecutorial services. One of the top priorities in the work of the police was the fight against corruption and organised crime. In this field, the police closely co-operates with the Special Prosecutor for Fighting Organised Crime and the Belgrade District Court which is competent to try corruption- and organised-crime-related cases. The Organised Crime Service and the Criminal Police Directorate are both dealing with investigating corruption cases on a daily basis. Special teams of trained police officers are deployed in the regional branches of the police in order to investigate cases of corruption and organised crime using special investigation techniques (including work with "under-cover" agents). Among the most recent and serious cases the Director of the Police referred to the corruption case at the University of Kragujevac, whereby 18 university professors are currently under investigation for bribe-taking.

222. According to Mr Milorad Veljović, the Serbian Police actively participates in various training on human rights organised by the Council of Europe and the OSCE. Direct contacts were established with the police and law enforcement agencies of the countries of the region and co-operation develops on a daily basis.

223. The strengthening of internal control mechanisms is an important task of the Directorate of the Police. The Sector of Internal Control of the Police supervises the legality of police operations, particularly regarding the respect and protection of human rights. As an organ of internal control, the Sector ensures that the discretionary rights of the police officers are strictly controlled and limited, as well as based upon the law, the code of behaviour and international conventions ratified by Serbia. The Sector of Internal Control is headed by an Assistant Minister of Internal Affairs appointed by the Government of the Republic of Serbia on the basis of a public competition. The Head of the Sector is responsible to the Minister of the Interior and submits to him regular periodical reports on the operations of the Sector. In the course of 2007, the Sector of Internal Control of the police initiated 122 criminal indictments and provided additional evidence to 12 criminal indictments against 159 police officers and 80 citizens. The most numerous criminal indictments were initiated for abuse of official position, counterfeiting of official documents, accepting and giving bribes. It is worth noting that in the course of 2007 the Sector of Internal Control was considerably engaged in the detection of heavy and more complex criminal acts. In addition to its independent operations in the detection of such criminal acts, the Sector took part in the activities the district police administrations were carrying out. The Sector of Internal Control of the police pays particular attention to the education of the police officers of the Sector by means of various forms of professional training in-country and abroad. Most of the training is focused on the fight against corruption.

5.1.3. Prevention of torture and inhumane or degrading treatment or punishment

224. The issue of violence by police officers, as well as the conditions of detention in penitentiary institutions, are being addressed separately by the Council of Europe Committee for the Prevention of Torture and Inhumane or Degrading Treatment or Punishment (CPT). A delegation of the Committee travelled to Serbia on 19 November 2007 for a two-week second periodic visit. The CPT delegation reviewed the action taken by the Serbian authorities to improve the treatment of persons detained by the police and the practical operation of the safeguards in place. The treatment and regime of prisoners held in the closed, high-security and remand sections of three prisons (in Belgrade, Požarevac and Sremska Mitrovica) was also examined. The CPT delegation also carried out a follow-up visit to Serbia's only prison hospital.

225. Furthermore, the CPT team examined the situation of psychiatric patients at the Specialised Neuro-Psychiatric Hospital in Kovin. In addition, the delegation visited – for the first time in Serbia – an establishment for persons with learning disabilities, the Special Institution for Children and Juveniles in Stamnica.

226. We wish the Serbian authorities to publish the report of the CPT as soon as it is available in order to facilitate the implementation of the CPT’s recommendations, in co-operation with the Council of Europe.

5.1.4. Trafficking in Human Beings

227. Serbia has yet to ratify the Council of Europe Convention on Action against Trafficking in Human Beings (CETS 197). We strongly recommend that Serbia should ratify this Convention at the earliest opportunity.

228. On the domestic legislation front, trafficking in human beings is a criminal offence, according to the Criminal Code. A National Strategy for Combating Trafficking in Human Beings was adopted in December 2006 and its implementation is progressing smoothly. According to the information provided by the Serbian authorities to the Council of Europe Secretariat delegation which prepared the 2nd report on Compliance with obligations and commitments and implementation of the post-accession co-operation programme, in the first half of 2007, numerous arrests in relation to human trafficking were made and several cases are under investigation[54].

229. We would encourage the Serbian authorities to pursue their efforts aiming at combating trafficking in human beings and organs.

5.2. Case-law of the European Court of Human Rights

230. In 2006-2007 the European Court of Human Rights adopted 13 judgments against Serbia. The most recurrent violation of the Convention identified by the court relates to the excessive length of proceedings and ineffectiveness of domestic remedies in violation of article 6 § 1 and 13 of the Convention (right to a fair trial and right to an effective remedy before a national authority). There were also two cases of violation of Article 10 of the Convention on freedom of expression. Another two cases dealt with the violation of Article 1 of Protocol 1 to the Convention (right to property).

231. We hope that the Serbian authorities will eliminate the deficiencies in the domestic legal order, in particular with regard to the judicial proceedings and effective remedies against violations of human rights. This specific problem has to be dealt with in the context of the reform of the judiciary.

5.3. Ratification of the Revised European Social Charter

232. Serbia signed the Revised European Social Charter on 22 March 2005. However, ratification has yet to be completed. This is one of the outstanding commitments of Serbia.

233. We were informed that the Council of Europe held on 20 November 2007 a seminar on the European Social Charter which was organised in co-operation with the Ministry of Labour and Social Affairs. We were informed that the discussions between the experts participating in the seminar showed that there were no obstacles in the Serbian domestic legal order for the ratification of the Charter.

234. In the margins of the seminar, Minister of Labour and Social Affairs Rasim Ljajić informed the Council of Europe delegation that the preparation of the ratification was ongoing. In the course of the preparation, advice from the Council of Europe will be sought and consultations with social partners will be conducted.

235. We welcome this positive approach and look forward to congratulating Serbia on the ratification of the Charter in the nearest future.

5.4. Freedom of expression and pluralism of the media

5.4.1. General context

236. The provisions of the new Constitution of Serbia governing freedom of expression and freedom of the media are in line with European standards. Article 46 guarantees the freedom of thought and expression and specifies that it may be restricted by law only to protect the "rights and reputation of others, uphold the authority and objectivity of the courts and protect public health, morals of a democratic society and national security of the Republic of Serbia". Equally, article 50 guarantees the freedom of everyone "to establish newspapers and other forms of public information without prior permission and in a manner laid down by law". The freedom to establish electronic media is also guaranteed. The freedom of mass media may be

[54] Compliance with obligations and commitments and implementation of the post-accession co-operation programme – 2nd Report: Update on developments (November 2006 – June 2007). SG/Inf(2007)05 final.

restricted according to paragraph 3 of article 50 only by a court decision and "when it is necessary in a democratic society to prevent incitement to violent overthrow of the system established by the Constitution or to prevent a violation of the territorial integrity of the Republic of Serbia, to prevent propagation of war or instigation to direct violence, or to prevent advocacy of racial, ethnic, or religious hatred enticing discrimination, hostility of violence".

237. However, despite this protective Constitutional framework, journalists do not feel secure in Serbia. The Independent Journalists' Association of Serbia (NUNS) expressed concerns about the increase of violence against journalists, especially, those engaged in investigatory work[55]. The most notorious recent case of a murder attempt against the *Vreme* journalist Dejan Anastasijević is a good example of this overall climate of insecurity[56]. Mr Anastasijević reported extensively about war crimes, organised crime and the activities of the Serbian Security Services. He testified before the ICTY in the Milošević trial. A hand grenade exploded on 13 April 2007 below the windows of his flat located on the ground floor. The assault on Mr Anastasijević was strongly condemned by all officials and in particular by President Tadić and Prime Minister Koštunica. The case is still being investigated however and the perpetrators of the assault have not been found.

238. In 2007, NUNS inquired 17 times with the authorities about the progress of the investigation in the deaths of 3 journalists (Radislava "Rada" Vujasinović, Slavko Ćuruvija, and Milan Pantić) without receiving any clear reply. Apparently, most letters were not replied to. When a reply was given, it was considered "unsatisfactory" and came only after the intervention by the Commissioner on Freedom of Access to Information of Public Interest Rodoljub Šabić[57].

239. We strongly condemn the cases of violence against journalists. Assaults on journalists cannot be tolerated in a democratic society. We call upon the Serbian authorities to investigate the cases of violence against journalists at the earliest opportunity and invite them to provide further information in respect of the progress of the investigations in the above-mentioned most notorious cases of murder of journalists within the framework of the monitoring process.

5.4.2. Media concentration

240. Although the Serbian media context is relatively diverse in terms of number of printed and electronic mass media, there are serious concerns about the lack of pluralism and the monopolisation of mass media by political groups and businessmen. According to the Independent Journalists' Association of Serbia (NUNS), "today's mainstream news media in Serbia are controlled by Milošević's people"[58]. This was shown by a survey recently conducted by NUNS. Although the most prominent media are owned by "local businessmen and tycoons", the state influence in media still remains very high. According to the survey, there are only two completely foreign-owned media outlets in Serbia (*Blic* and *24 casa*, owned by Ringier, Switzerland, and *TV Fox*, owned by American News Corporation).

241. We would strongly encourage the Serbian authorities to take appropriate measures to increase the pluralism of the media, in particular, by encouraging the privatisation of existing media outlets and establishment of new ones.

5.4.3. Electronic media: work of the Republican Broadcasting Agency

242. The Republican Broadcasting Agency was established in 2002 as an independent regulatory authority of the broadcasting sector. It was created on the basis of the Broadcasting Law adopted in 2002 and subsequently amended in 2005. According to the law, the RBA is responsible for:

– controlling and ensuring the consistent application of the provisions of the Broadcasting Law;
– issuing broadcasting licences and prescribing the licence form;
– supervising the work of broadcasters in the Republic of Serbia;
– imposing adequate sanctions against broadcasters in keeping with this Law;
– prescribing rules binding on broadcasters which ensure the implementation of the broadcasting policy in the Republic of Serbia.

[55] Dosije o medijima. Issue 22, April – July 2007. Nezavisno Udruženje Novinara Srbije.
[56] For more information, please see "Political Violence in Serbia". Publication by the Youth Initiative for Human Rights with the support of the Swedish Helsinki Committee for Human Rights. Belgrade, 2007.
[57] Dosije o medijima. *Op. cit.*
[58] Padejski Đ. Miloševićev medijski amanet. In Dosije o medijima. *Op. cit.*

243. The Council of the Republican Broadcasting Agency (RBA) was not elected upon the establishment of the Agency in 2003 because of a controversy over the disputed appointments of three out of its nine members. Subsequently, the law was amended and a new Council was elected in the beginning of 2005 by an almost unanimous decision of the parliament – with over 200 deputies voting. Many domestic and international observers argue that the agreement on the election of the members of the Council was a deal amongst the major political parties.

244. The activities of the RBA in the field of licensing appear to be controversial. Domestic and foreign experts, professional associations, broadcasters and international organisations expressed serious concerns about the RBA Council's decisions on the awarding of national broadcasting licenses. As a result of a public competition for national and Belgrade regional frequencies, the RBA awarded licences to five broadcasters i.e. TV Avala, Television B92, TV Pink, TV Fox, TV Happy and TV Košava, for the joint use of one frequency.

245. In total, 13 broadcasters participated in the competition. The frequencies were awarded in the proportion of 3:2 in favour of fully domestically owned broadcasters. We were informed that one of the reasons for such distribution of frequencies was the protection of national broadcasters, in line with the Strategy of Development of Radio Broadcasting in Serbia until 2013.

246. Some of the broadcasters which lost the competition appealed against the decision of the RBA. The Supreme Court of Serbia identified some procedural irregularities in the decisions taken, which, in the view of the Court, could have influenced the decision making process**.** We were informed that the RBA Council corrected the procedural irregularities, while confirming its decisions on the merits. Apparently, the only appeal which is still pending before the Supreme Court for consideration on the merits is the one submitted by RTL. In our meeting with the Republican Broadcasting Council we were not provided clear information about the legal situation with respect to the procedural irregularities and subsequent appeals.

247. We had the impression from our meetings with the media representatives and NGOs that the procedure of allocation of frequencies was far from being fully transparent. While we commend the legitimate aspiration of the RBA Council to put some order in the allocation of frequencies and support domestic broadcasters, we consider that this work should be done in full transparency and in compliance with the legislation. We appeal to the Serbian authorities to work further in this respect.

248. Finally, we learned that in September 2007 the RBA Council issued a Binding Instruction to RTS (*Radio Televizija Srbije* – national public broadcasting company) to transmit live parliamentary sessions on its second channel from 10h00 to 18h00 during the week. While the live transmission of parliamentary sessions is not a problem in principle, the fact that the broadcasting regulatory authority is obliging a public service broadcaster to perform certain activities may, in our view, compromise the editorial independence and institutional autonomy of a broadcaster, required in accordance with Committee of Ministers' Recommendation (1996)10 on the guarantee of the independence of public service broadcasting.

249. There were indications in the press that the RBA Council decided on 20 November to alter the binding instruction on direct transmissions of parliamentary sessions on the Radio Television of Serbia (RTS) into a recommendation. However, apparently, the RBA Council "still believe(s) that the transmission of sessions should be continued, because it had been a practice in the past 16 years".

250. Such instructions would represent, in our view, an undue interference of a regulatory authority in the work of the public service broadcasters. We recommend that the RBA should avoid issuing such instructions and leave it to the public service broadcaster to decide the daily programme of broadcasting.

5.5. Freedom of association

251. The Ministry of Public Administration and Local Self-Government of Serbia in co-operation with the Task Force of Non-Governmental Organisations drafted a new Law on Associations. This draft law was approved by the Government and tabled in Parliament on 15 October 2007. It is intended to replace the currently existing laws on social organisations and associations of citizens and on joining citizens into associations, as well as on social organisations and political organisations. Several versions of the draft law were prepared over the past couple of years and submitted to the Council of Europe for appraisal.

252. The final version of the draft law was appraised by the Council of Europe experts in October 2006[59]. According to the experts, the authors of the law have taken into consideration the criticism of the Council of

[59] PCRED/DGI/EXP (2006)44.

Europe experts and redrafted practically all problematic provisions of the law. It now complies with European standards on the freedom of association.

253. The draft law was extensively discussed with key stakeholders in seminars and round-tables some of which were organised in co-operation with the Council of Europe. It was considered by the Committee on European Integration of the National Assembly of Serbia on 30 October 2007. We hope that the Parliament will soon be able to adopt the law in order to create a new legal framework for associations in Serbia, complying with European standards.

5.6. Situation of refugees, internally displaced persons and asylum procedures

254. According to information provided by Mr Dragiša Dabetić, Serbia's Commissioner for Refugees, and the UNHCR Office in Serbia, as of July 2007, there are 97,701 refugees and 206,607 internally displaced persons (IDPs) living in Serbia. Most of the refugees and IDPs live in private accommodation, while a small percentage remains in 79 collective centres and 89 specialised institutions.

255. In the past couple of years the Serbian authorities have made considerable efforts to improve the situation of refugees and internally displaced persons, by removing several obstacles to durable solutions. As a result, the number of refugees in Serbia has been substantially reduced[60]. Additional efforts should be deployed, however, to create an environment conducive to sustainable return, as well as to enable the full integration of those refugees choosing to remain. Eight years after the end of the armed conflict in Kosovo, the IDPs in Serbia remain stuck between uncertain return prospects and the lack of local integration perspectives, and they are faced with many obstacles in the full enjoyment of their basic rights as citizens. The total number of returnees from Serbia to Kosovo since the end of the conflict remains low (since 2002 – approximately 7,500 returns[61]).

5.6.1. Situation of refugees

256. The voluntary repatriation of refugees to Croatia still remains problematic. We were informed that the UNHCR was assisting the returnees, in particular, by providing legal advice on property restitution and naturalisation issues. While a considerable number of refugees have returned to Croatia in an organised manner or spontaneously, unresolved property-related issues still hamper the return process and dissuade the refugees from moving to Croatia.

257. The implementation of the Sarajevo Declaration (the so-called "3 x 3" initiative which became a "3 x 4" process after the independence of Montenegro) did not progress as well as it could. The lack of consensus on the remaining "open issues" – in particular restitution/compensation of former tenancy rights for Croatian refugees - has delayed the process and the completion of the "Road Maps".

258. This being said, we have gained the impression from our discussions with the Serbian Commissioner for Refugees and the officials of UNHCR that some progress was made in achieving durable solutions for refugees in Serbia. Their number has been decreasing and, as we mentioned earlier, at the moment, there remain 97,701 refugees in Serbia. However, despite significant efforts by the Government, local integration of the most vulnerable refugees continues to be a difficult process (particularly in the housing sector), mainly due to the lack of proper institutional capacity, inefficient implementing mechanisms for existing national development strategies (i.e. Poverty Reduction Strategy) and shortage of funding.

5.6.2. Situation of internally displaced persons from Kosovo

259. The overall security situation in Kosovo, lack of freedom of movement and inadequate conditions for sustainable reintegration (limited access to employment and public services, resolution of housing, land and property issues) continued to affect the prospect for the sustainable and safe return of IDPs. Minimal or no progress in returns was observed in 2005 and a decline was observed in 2006.

260. In this situation, the efforts deployed by the UNHCR to facilitate individual returns for those wishing to do so as well as to provide assistance and protection for the most vulnerable IDPs remaining in Serbia are commendable. In particular, UNHCR focused on provision of reliable information to the IDPs assisting them to make a free and informed choice on a durable solution, providing legal aid through implementing partners

[60] The total number of refugees in the Federal Republic of Yugoslavia in 1996 amounted to 548,000. Source: UNHCR statistical data.
[61] The number of returnees from Serbia and Montenegro since 2002 to April 2007 amounts to approximately 7,500. Source: UNHCR statistical data

and promoting active IDP participation in the institutional processes. Discussions between Belgrade and Priština are ongoing since the signing in June 2006 of the Protocol on Voluntary and Sustainable Return and within the Direct Dialogue Working Group chaired by UNHCR, but there has been no significant progress in the implementation of the returns. However, a Technical Sub-Group aimed at facilitating the return process and addressing obstacles in it was formed. The Group met three times, and some progress has been noted including the joint support of the Belgrade and Priština delegations to particular projects. However, much remains to be done for the Technical Sub-Group to be truly effective.

261. The human rights situation of IDPs in Serbia continues to be a matter of concern, although the Government, assisted by the UNHCR, has invested a lot of efforts in improving the situation. The Roma IDPs represent a particularly marginalised, disadvantaged and vulnerable segment of the IDP population, facing serious obstacles to access to legal protection, civil registration, documentation and basic social and economic rights.

262. The lack of personal documents represents a particularly serious problem for the IDPs. However, this problem is in the process of being solved. According to the Serbian authorities, the survey, carried out towards the end of 2007 in co-operation with UNHCR and UNDP, showed that the number of IDPs missing their personal identification cards is considerably lower in relation to the year 2000. At present, 10.6% of IDPs have problems in procuring personal documents.

5.6.3. Citizenship and statelessness

263. While the Republic of Serbia is a Party to the 1954 Convention relating to the status of Stateless Persons, it has yet to sign the 1961 Convention on the Reduction of Statelessness, and the European Convention on Nationality (ETS 166). The new Citizenship Law generally complies with international legal standards and has favourable provisions granting Serbian citizenship to a large number of refugees from Bosnia and Herzegovina and Croatia[62].

264. It is worth noting that amendments to the Citizenship Law were adopted by the Serbian Parliament in September 2007. According to these amendments, Serbian citizenship can be granted to "all persons of over 18 years of age, able to work and signing a statement that they consider Serbia their country"[63]. A special procedure for granting Serbian citizenship to Montenegrin citizens is also foreseen. Montenegrin citizens who were registered as residing on the Serbian territory on 3 June 2006 may acquire Serbian citizenship upon submission of an application and of a written statement saying that they consider themselves Serbian citizens.

265. At present, there is no official data about the number of stateless persons in Serbia. The UNHCR estimates that there are about 17,000 stateless persons living in Serbia.

266. It appears that the main challenge for the prevention of statelessness lies in the complicated, long and sometimes unsuccessful administrative procedures for civil registration and residence registration. Citizens are only able to fully access civil, political, social and economic rights when they hold a valid ID card (*lična karta).* In order to obtain a *lična karta* a person must have undergone civil registration and registered an officially recognised residence. This problem has a serious impact on citizens' access to state protection. It is particularly serious for the IDPs who, in order to access civil registration and/or residence registration procedures, need personal documents that must be extracted from registry books. These may be destroyed or missing and, if they exist, they are dislocated in one of the seven municipalities in Southern or Central Serbia. However, according to the Serbian authorities, work is currently being carried out in order to restore the destroyed or missing registration books and so far 105,195 renewed entries of appropriate data were made. Another commendable measure is the decision of the Ministry of Education of Serbia to provide every child, irrespective of whether he or she has a citizenship certificate, with elementary education.

267. It appears that Roma, Ashkalie and Egyptian IDPs are further at risk as many persons among them have never been registered in birth and citizenship records. However, we were informed that the Law on Registration Books and the Guidelines on Keeping Registration Books allow birth registrations to be made at a later stage.

268. While these efforts of the authorities are commendable, we believe that there is a need to make a systematic revision of the legislation governing civil registration and residence registration procedures. We would encourage the Serbian authorities to launch this revision as soon as practicable.

[62] A total of 143,000 refugees naturalised from 1996 to 2005. Source:UNHCR statistical data
[63] http://www.srbija.sr.gov.yu/vesti/vest.php?id=38768

5.6.4. Asylum procedures

269. On 24 November 2007, the National Assembly of the Republic of Serbia adopted the Law on Asylum. According to the Serbian authorities, this law has brought domestic legislation into line with international standards.

270. The law has provided for a detailed procedure of granting asylum adapted to the special position and needs of the persons concerned. It has also enabled the state to protect itself from possible massive abuses of the right to an asylum. The Law provides for the creation of three specific bodies involved in the process of granting of an asylum: the Asylum Office within the Ministry of the Interior with the authority to decide in the first instance; the Asylum Commission established by the Government of the Republic of Serbia in charge with the authority to bring second instance decisions; the Asylum Centre within the Office of the Commissioner for Refugees where accommodation, food and other services are provided to the asylum-seekers during the whole course of the asylum procedure.

271. The new law will be effective as of 1 April 2008.

5.6.5. Readmission

272. As we mentioned earlier, along with the initialling of the Stabilisation and Association Agreement with the EU, Serbia ratified on 7 November 2007 the Agreement between the Republic of Serbia and EU on the readmission of persons with illegal residence. According to most analysts, in the coming months, a significant number of persons will be returned to Serbia from Western Europe.

273. We recommend that the Serbian authorities should develop a comprehensive strategy to tackle the issue of returnees. We commend the Serbian authorities for developing the Instruction Handbook for the Integration of Returnees. This document could provide the basis for the development of a strategy and of an action plan.

5.7. Combating Racism and Intolerance

274. We were informed that the Serbian authorities have prepared a law on anti-discrimination. The law was sent to the Council of Europe for expert appraisal and one of the experts of the Venice Commission has already prepared a first report. We shall wait until the preparation of the consolidated opinion by the Venice Commission to make an assessment of the compliance of the law with European standards.

275. Furthermore, we shall closely follow the work of the European Commission against Racism and Intolerance (commonly known as ECRI) which is in the process of preparing its first report on Serbia. A Contact visit for the preparation of ECRI's first report on Serbia was organised on 24-28 September 2007 and the report of the Commission should be available in 2008. We are particularly concerned by the information provided by NGOs and human rights activists about cases of discrimination against lesbian, gay, bisexual, and transgender/transsexual persons. We shall study and take into account the conclusions of ECRI within the framework of the monitoring procedure.

5.8. Rights of national minorities

5.8.1. Constitutional and legal framework

276. The rights of national minorities are protected by the new Serbian Constitution. The Constitution protects "special individual or collective rights" of minorities, "in addition to rights guaranteed to all citizens" of Serbia (article 75, paragraph 1). Furthermore, the Constitution grants to the representatives of national minorities the right to "take part in decision-making or decide independently on certain issues related to their culture, education, information and official use of languages and script" (article 75, paragraph 2). Discrimination against national minorities is prohibited (article 76). Special measures are foreseen in order to ensure that the representatives of national minorities are appropriately represented in state bodies, public services, provincial and local self-government bodies (article 77, paragraph 3).

277. Another important provision of the Constitution is the prohibition of forced assimilation (article 78). In particular, the Constitution "strictly" prohibits "measures which would cause artificial changes in the ethnic

structure of the population in areas where members of national minorities live traditionally and in large numbers"[64].

278. Article 79 contains a comprehensive catalogue of rights guaranteed to minorities in order to preserve their specificity. We welcome this extensive list of rights. Their implementation is defined by the Law on the protection of rights and freedoms of national minorities, as well as several sectoral laws and regulations of the Autonomous provinces, i.e. the Law on Elementary Education, the Law on Secondary Education, the Law on the Foundations of Educational and Upbringing System, the Law on Official Use of Language and Alphabet, the Law on Election of Representatives, the Law on Activities of General Interest in the Area of Culture, the Law on Broadcasting, the Law on Public Information, the Decision of the Assembly of the Autonomous Province of Vojvodina on Detailed Regulation of Individual Issues of Official Use of Languages and Alphabets, the Decision of the Assembly of the Autonomous Province of Vojvodina on the Election of the Members of the Assembly, etc.

279. The participation of national minorities in the political life is facilitated by the abolition of the 5% electoral threshold in parliamentary elections. As a result, a number of minority representatives were elected into parliament and formed their own group. A minority representative was elected Deputy Speaker of the Parliament (Esad Džudžević, representing the Bosnian Democratic Party of Sandžak). As regards local and provincial assemblies, article 180, paragraph 4 of the Constitution says that “in those autonomous provinces and local self-government units with the population of mixed nationalities, a proportional representation of national minorities in assemblies shall be provided for, in accordance with the law”. This is a welcome provision.

280. The Rapporteur of the Legal Affairs Committee Mr Jürgen Herrmann, (Germany, EPP/DC) has prepared a report which specifically focuses on the situation of national minorities in Serbia (and in Vojvodina, in particular, as well as on the situation of the Romanian ethnic minority in Serbia). We shall study Mr Herrmann's conclusions and take them into account in the further stages of the monitoring procedure.

5.8.2. The role of the National Councils of Minorities

281. According to article 75, paragraph 3, of the Constitution, "persons belonging to national minorities may elect their national councils in order to exercise the right to self-governance in the field of culture, education, information and official use of their language and script, in accordance with the law". National Councils of Minorities are operating in Serbia for some time already. The Advisory Committee of the Framework Convention on the Protection of National Minorities emphasised in its 2003 Opinion the potential value of such councils in enhancing participation of minorities in the decision making process. It also drew the attention of the authorities to the need to ensure their adequate funding and avoid their undue politicisation.

282. The Department for Human and Minority Rights of the Government of Serbia produced a draft law on Elections for, and Powers of, National Councils of Minorities which was subsequently appraised by Council of Europe experts. A Round Table was organised on 27 May 2007 to discuss the draft law. During the Round Table the Council of Europe experts stressed that some of the provisions of the draft law were not sufficiently clear and that too much emphasis was given in the law to the obligations of the Councils while the obligation of state authorities to involve the Councils in the decision-making process was not sufficiently articulated. Furthermore, the experts criticised the fact that the law included a citizenship criterion for membership and participation in the councils. This criterion is likely to have a negative impact on the protection of rights of Roma and stateless persons who may be prevented to participate in the activities of the Councils. The Serbian authorities informed us that the citizenship criterion was introduced in the draft law on the basis of the definition of a national minority contained in the Law on the Protection of Rights and Freedoms of National Minorities. While we understand the position of the Serbian authorities, we recommend considering alternative legal solutions in order to give the possibility to the representatives of ethnic communities who do not have Serbian citizenship but live in the territory of Serbia to participate in the work of the Councils.

[64] In this respect, we would like to note that the representatives of all minority communities we met during our visit to Vojvodina expressed concerns about the changes in the ethnic structure of the region which occurred in the last ten years. We were assured by the Serbian authorities that the refugees and IDPs did not move to Vojvodina in a planned manner and their free settlement on the territory of the Province does not influence the exercise of minority rights. We believe that, taking into account the constitutional obligation of refraining from causing artificial changes in ethnic structure of the population in areas where members of national minorities live traditionally and in large numbers, the Serbian authorities will find ways of addressing the concerns of the minorities, especially, in the light of possible consequences of the implementation of the agreement on readmission.

283. We were informed that the Ministry of Public Administration and Local Self-Government took over the development of the law from the Department and is preparing a revised draft. We hope that the experts of the Ministry will take into account the Council of Europe recommendations in the drafting process and submit a revised version of the law to the Council of Europe experts for assessment.

284. The adoption of a new law on the National Councils of Minorities is essential, as the mandate of the current Councils will soon be expiring. Although all Councils we met received assurances that their mandate will remain valid until a new law is adopted and a new election is organised, it is very important to complete the development of the legislative framework at the earliest opportunity in order to confirm the status of the Councils, thus reassuring the minorities.

285. There is also a Republican National Minority Council which operates in Belgrade and is chaired by the Prime Minister. However, according to the information which was provided to us, this Council has never met during the past two years. This is a matter of concern for the representatives of the minority communities who feel that their interests are not sufficiently taken into account in Belgrade. Furthermore, the representatives of the minorities estimate that the level of implementation of the protective legislation is not sufficiently high and that in practice additional efforts are required from the Central government in order to enable them to exercise their rights fully. We were told that the budgetary allocations for the functioning of National Councils of Minorities were left out of the first draft proposal of the budget submitted by the Government to Parliament. According to the Serbian authorities, this has not been the case and the Department for Human and Minority Rights of the Government of Serbia proposed a significant increase in the budgetary appropriations for the operation of the National Councils in 2008 (the appropriations were increased by 138% from 63 million Dinars in 2007 to 150 million Dinars in 2008). We welcome this positive measure to support the activities of the National Councils and look forward to good co-operation between the Government and the Councils in 2008, so that the 2009 budgetary appropriations will not give rise to rumours and speculations.

286. Equally, the implementation of bilateral agreements on the protection of national minorities Serbia has concluded with neighbouring states[65] is not proceeding as well as it should because the representatives of Serbia and of the states concerned to the Joint Commissions established by the agreements have not been nominated yet. We recommend that the Serbian authorities and the authorities of the states concerned should promptly engage in consultations to make the Joint Commissions operational at the earliest opportunity.

287. By and large, we gained the impression from our meetings with the representatives of national minorities that they had a quite different perception of the implementation of their special rights guaranteed by the Constitution than that of the authorities. We acknowledge the fact that the Serbian authorities are making commendable efforts to protect and promote the rights of minority communities. However, the fact that the minority communities are not fully satisfied with these measures indicates that the dialogue between Belgrade and the minority communities should be improved. In the current situation, following the adoption by the Assembly of Kosovo on 17 February 2008 of the Resolution declaring Kosovo to be independent, the concerns of the minorities are likely to be aggravated by the fear of that nationalistic feelings will rise. Several violent incidents against minorities have already occurred in the days which followed the adoption of the Resolution. It is extremely important in this context to send a reassuring message to the members of minorities, clearly and unequivocally condemning violence and investigating the cases of violent attacks. We call upon the Serbian authorities to take positive steps in this respect.

288. We acknowledge the fact that the Serbian authorities have already taken a number of positive steps to fully ensure the implementation of minority rights. These include: the adoption of the Constitution of Serbia; the abrogation of the 5% electoral threshold for parties of national minorities participating in the parliamentary election; the adoption of the Conclusions of the Serbian Government concerning measures for increasing participation of minorities in public administration bodies which are being implemented in partnership with the National Councils (one of the measures foreseen is the translation of public competition announcements into minority languages and their publication in minority media selected by National Councils); the special measures which are being taken by the authorities to increase the participation of minority representatives in judicial bodies; the transfer of the management rights over certain mass media to the National Councils; the state financing of minority mass media as well as the exclusion of minority mass media from the compulsory privatisation process.

289. We recommend that the authorities should continue to work with the national minorities and their National Councils in the implementation of these measures, in the spirit of dialogue and partnership.

[65] To our knowledge, Serbia has concluded such agreements with Hungary, Macedonia and Romania and Croatia.

5.8.3. Implementation of the Framework Convention for the Protection of National Minorities

290. A first Advisory Committee opinion on the then Serbia and Montenegro was adopted in 2003. The 2nd State Report was due on 1 September 2007. The Advisory Committee is expecting the prompt submission of the second report by Serbia in order to launch the second monitoring cycle. We were informed that the report was sent to Strasbourg and will soon be issued.

291. We shall closely follow the work of the the Advisory Committee of Framework Convention on the Protection of National Minorities in the framework of the monitoring process.

292. The key recommendations of the Advisory Committee from the 1st cycle evaluation are contained in the Resolution of the Committee of Ministers (2004)12 on "The implementation of the Framework Convention for the Protection of National Minorities by Serbia and Montenegro". The conclusions and recommendations were addressed to the State Union, but some specific points apply to Serbia as well.

293. We are grateful to the Serbian authorities for having provided us with a detailed overview of the measures taken in the implementation of the Committee of Ministers' conclusions and recommendations (contained in the comments of the Serbian delegation on the Preliminary draft report). We take note of these commendable efforts and shall closely follow the work of the Advisory Committee of Framework Convention on the Protection of National Minorities which will assess measures taken in the framework of the second monitoring cycle.

5.8.4. Implementation of the European Charter of Regional or Minority Languages

294. Serbia is a state party to the European Charter of Regional or Minority Languages since March 2005. Upon ratification in February 2006, the Charter became effective on 1 June 2006.

295. The Charter protects Albanian, Bosnian, Bulgarian, Hungarian, Romany, Romanian, Ruthenian, Slovakian, Ukrainian and Croatian languages. *Inter alia*, the following level of protection is granted:

– the provision of full, or parts of thereof, pre-school, primary, secondary, technical and vocational education in the regional or minority languages or parts of thereof, only if the families of the pupils so request and if the number of pupils is considered sufficient;

– the provision of facilities to study regional or minority languages as university and higher education subjects;

– arrangements to ensure the teaching of the history and culture which is reflected by the regional or minority languages;

– guarantees of use of the regional or minority languages in judicial proceedings (criminal, civil and administrative);

– the validity of legal documents drawn up in regional and minority languages;

– the use of regional or minority languages in the proceedings before administrative bodies and in public services;

– measures aiming at ensuring freedom and pluralism of media in regional or minority languages;

– measures aiming at encouraging and promoting the use of regional and minority languages in cultural activities and facilities.

296. Moreover, when ratifying the Charter, Serbia made a statement providing that the term "territory in which the regional or minority languages is used" will refer to areas in which regional and minority languages are in official use in line with the national legislation[66]. The Law on the Protection of Rights and Freedoms of National Minorities introduces the obligation of the official use of languages and alphabets of national minorities which constitute more that 15% of the total population. Moreover, it also introduces the obligation of the official use of languages and alphabets of national minorities in self-government units in which the

[66] http://conventions.coe.int/Treaty/Commun/ListeDeclarations.asp?NT=148&CM=2&DF=12/4/2007&CL=ENG&VL=1

official use of the language existed at the time of adoption of this law, even if the percentage of members of national minorities is below 15%.

297. The authorities submitted the first periodic report on the implementation of the Charter. The report totals about 400 pages. A "shadow" report was prepared by the Vojvodina Centre for Human Rights. The report was made public and is available on the web-site of the Vojvodina Centre for Human Rights[67].

298. The Committee of Experts of the European Charter of Regional and Minority Languages is considering the authorities' report. We shall carefully study the conclusions of the Committee of Experts and take them into account within the framework of the monitoring process.

5.9. Education reform

299. The reform of the education sector is a particularly complex task Serbia has to face. According to the Minister of Education Zoran Lončar, the reform process should not be limited to structural challenges only, including the devolution of responsibilities to local authorities for management of education institutions, investments in the infrastructure, development of new curricula and training of teachers. It also requires a complete rethinking of the difficult heritage relating to the conflicts on the territory of the former Yugoslavia Serbia has to live with. According to the Minister, there is a need to develop a comprehensive reform strategy in the field of education.

300. Unfortunately, we were not provided with information about the measures the authorities are taking to teach the principles of tolerance and respect for others and all their differences at school. We hope to be able to discuss these measures in the further stages of the monitoring process. In the meantime, we recommend that the authorities should continue the educational reform and make arrangements to teach the principles of tolerance, respect for others, inter-cultural dialogue and reconciliation.

6. Conclusions and further steps of the monitoring procedure

301. In the last couple of years Serbia has being going through a turbulent period of transformation. In this context, the implementation of obligations and commitments entered into upon accession to the Council of Europe slowed down, primarily because of the inefficient functioning of the institutions of the State Union of Serbia and Montenegro.

302. However, with the independence of Montenegro and the dissolution of the State Union, new challenges for democratic reforms in Serbia arose. The adoption of the new Constitution has changed the political and institutional context. It requires from the authorities the launching of a complete restructuring of key democratic institutions. The parliamentary election and the lengthy formation of the new coalition government have prevented the country from speedily implementing the necessary democratic reforms. Last but not least, the adoption by the Kosovo Assembly on 17 February 2008 of the Resolution declaring Kosovo to be independent has put a serious challenge before the authorities.

303. Despite these developments, we believe that the Serbian people are strongly committed to pursue democratic reforms in line with European standards. The country's European perspective was clearly confirmed in the Presidential election of 20 January and 3 February 2008. Time has now come to transform the democratic and European aspirations of the country into concrete actions in order to implement long-awaited reforms and complete the necessary democratic transformations. These reforms have to be implemented in close co-operation with all the political stakeholders, for European Integration to become a shared-by-all vision of the country's future.

304. The Council of Europe stands ready to support this process. For this purpose, the Assembly should address to the authorities a number of recommendations which will help them complete co-operation with the ICTY, strengthen democratic institutions and the rule of law, as well as enhance the protection of human and minority rights.

305. Pending the implementation of these recommendations, the Assembly should continue to monitor the implementation of obligations and commitments by Serbia.

[67] http://www.vojvodina-hrc.org/