

# Information Documents

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## Serbia and Montenegro:

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

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Document presented by the Secretary General

#### Fifth report (May – July 2004)

##### *Summary*

*Positive steps previously undertaken led to concrete results during the period covered by the present report. However, despite good intentions expressed by the authorities, progress remained too slow in a number of areas.*

**Democracy and Institution-Building:** *the period covered by the present report was marked by the successfully organised presidential elections in Serbia. At the same time, although the constitutional processes in both constituent states of the Union merit priority treatment, little progress has been registered in this field. Likewise, as concerns local and regional democracy, a thorough reform is very much needed in Serbia whereas in Montenegro, Council of Europe expert recommendations should be used to the fullest extent. The lack of transparency and of appropriate consultations in the law-drafting process gives rise to continued concern in Serbia. The boycott of parliamentary sessions by the opposition still impedes the reforms in Montenegro.*

**Co-operation with the International Criminal Tribunal for the former Yugoslavia (ICTY):** *the National Council for Co-operation with the ICTY has been re-constituted after having been paralysed for months. This late, but encouraging development, as well as positive initial statements by the newly-elected President of Serbia, generate many expectations in terms of concrete results.*

**Rule of Law:** *serious efforts have been made to establish a State Union Court. A Union Law is being drafted to secure the transfer of military justice to the civilian authorities of member states. However, decisive measures are still expected in both member states to strengthen the judicial and prosecuting authorities and secure their independence and impartiality, to enact adequate legislation for police and security forces and to take action to fight against corruption.*

**Human Rights:** *further efforts are needed to ensure the concrete implementation of key human rights conventions. As regards the protection of national minorities concerns are expressed relating to the modalities of implementation of the legislation in Serbia and about the delays in the adoption of the law on national minorities in accordance with CoE expert opinion, in Montenegro. There are increasing problems of inter-ethnic tensions in particular in southern Serbia. In the media field, the drafting process of amendments to the Broadcasting Law (without due consultations) is of particular concern in Serbia. In Montenegro, the period covered by the present report has been marked by the killing of the editor-in-chief of the Dan daily newspaper and the worrying number of defamation cases brought before the courts.*

**Education:** *in Serbia, the authorities adopted legislative amendments, which simply questioned positive action previously undertaken.*

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## INTRODUCTION

1. In the context of the accession of Serbia and Montenegro to the Council of Europe on 3 April 2003, the Committee of Ministers decided to set up a specific monitoring procedure, under the authority of its Rapporteur Group on Democratic Stability (GR-EDS), which provides for a regular review of progress achieved and difficulties encountered in the fulfilment of commitments and obligations and the implementation of the post-accession co-operation programmes, on the basis of, *inter alia*, quarterly reports by the Secretariat.
2. The present document is the fifth report prepared by the Secretariat in this context<sup>1</sup>. It consists of an update of the previous report and is based on information available from various sources, including the Council of Europe Offices in Belgrade and Podgorica, the State Union, Serbian and Montenegrin governments, international organisations and non-governmental organisations.
3. In the light of the previous quarterly report (document SG/Inf(2004)14), the Committee of Ministers took the following decisions:

*“The Deputies [...]*

*i. drew the attention of the authorities of Serbia and Montenegro, in particular, to the need to co-operate fully with the International Criminal Tribunal for the former Yugoslavia and to produce, without delay, tangible evidence of their willingness to co-operate;*

*ii. invited the authorities of Serbia and Montenegro to co-operate actively with the Council of Europe on the reform of the judicial and prosecution systems and, more particularly, on the transfer of powers from the military to the civil courts of the states members of the Union”.*

4. In this connection, note should be taken that the GR-EDS held an exchange of views with the President of the International Criminal Tribunal for the former Yugoslavia, Mr. Theodor MERON, on 7 May 2004 (see Appendix I). On 28 May 2004, the OSCE Mission and the Council of Europe Office in Belgrade issued a joint statement on the need for an urgent transfer of military jurisdiction to civilian authorities in Serbia and Montenegro (see Appendix II).

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<sup>1</sup> As concerns previous reports, see documents [SG/Inf\(2003\)28](#), [SG/Inf\(2003\)38](#), [SG/Inf\(2004\)8](#) and [Addendum, SG/Inf\(2004\)14](#) and [Addenda I](#) and II (available on the following websites: <http://www.coe.int/sg> and <http://dsp.coe.int/monitoring>).

## PART I: MAIN CONCLUSIONS AND RECOMMENDATIONS

5. Positive steps registered in previous reports bore fruit during the period covered by the present document. The most striking example being the successfully organised presidential elections in Serbia thanks to legislative amendments made earlier this year.
6. Likewise, further steps have been undertaken to set up a State Union Court. However, despite all good intentions expressed by the authorities at the levels of the State Union and of member states of the Union, progress has been too slow in a large number of areas.
7. For this reason, all recommendations made in the previous reports remain valid: see in particular documents SG/Inf(2004)14, paras 4-6, and SG/Inf(2004)8, paras 4-8. In this regard, the following issues merits priority treatment in the coming months:

*At the level of the State Union of Serbia and Montenegro*

- 1. concrete evidence of improved co-operation with the ICTY (see paras 20-21 of the present report);**
- 2. transfer of military jurisdiction to civilian authorities, notably through the adoption and implementation of relevant Union legislation in compliance with Council of Europe standards;**

*At the level of member states of the State Union*

- 1. drafting and adoption of new Serbian and Montenegrin constitutions (including relevant organic laws where appropriate) in compliance with Council of Europe standards;**
  - 2. in-depth reforms to secure the impartiality of the judiciary, prosecuting bodies, police and security forces in compliance with Council of Europe standards;**
  - 3. in-depth reforms in the field of local and regional democracy in compliance with Council of Europe norms.**
8. In this context, a clear reform strategy on the one hand and transparency and appropriate consultations with relevant professionals and international organisations such as the Council of Europe on the other hand are key aspects of future reforms. Regrettably, in Serbia, serious critics have been made with respect to the lack of transparency of the drafting process (before any draft is sent to Parliament in particular). A decisive progress is therefore expected in the near future, notably in the following sectors: constitutional process, local and regional democracy, judicial and prosecuting authorities, police and security forces, freedom of the media, freedom of religion and education. On a more positive note, significant efforts have been recently made by the Ministry of Justice to co-operate with the Council of Europe, although a comprehensive judicial reform process is still lacking. In Montenegro, the democratic process is still hampered by the lack of political dialogue in Parliament as well as the on-going boycott of the parliamentary sessions by the opposition parties.

## **PART II: OVERVIEW OF SERBIA AND MONTENEGRO COMPLIANCE WITH ITS OBLIGATIONS AND COMMITMENTS**

### **A. DEMOCRACY AND INSTITUTION-BUILDING**

#### **1. EFFECTIVE FUNCTIONING OF DEMOCRATIC INSTITUTIONS**

9. In the context of the present report, particular emphasis should be put on the successfully organised presidential elections in Serbia on 13 and 27 June 2004 . According to the final results given by the Republican Electoral Commission, Mr. Boris Tadic, Democratic Party (DS), won 53.2 percent and Mr. Tomislav Nikolic, Serbian Radical Party (SRS), 45.4 percent of the vote. Mr. Boris Tadic became the new Serbian President. Following the second round of the election, the OSCE/Council of Europe Election Observation Mission considered that it was conducted essentially in line with OSCE commitments and Council of Europe standards for democratic elections.
10. The authorities therefore succeeded to break the cycle of failed elections thanks to amendments made to the electoral legislation earlier this year, one of them being the abolition of the fifty per cent voter threshold for the election to be valid. The 2003 Law on the Financing of Political Parties was also applied for the first time in the context of these elections and undeniably brought more transparency and accountability of party finances and campaign expenditures. Nevertheless, the OSCE/Council of Europe election observation mission pointed out that improvements are still needed, notably as concerns:
  - the Law on the Financing of Political Parties, in terms of clarity to facilitate its implementation in particular;
  - the Law on the Election of Members of Parliament (according to the authorities, new provisions have been drafted, but no text has been received yet by the Venice Commission for expert appraisal);
  - the review of voter registers (a law is being prepared in this context)<sup>2</sup>.
11. Consequently, the positive results obtained in the organisation of presidential elections should encourage the Serbian authorities to consult international organisation, and in particular the Council of Europe Venice Commission, in order to further identify weak points of the existing legislative framework pertaining to elections in Serbia, as suggested by international observers.
12. The election of a European-oriented political figure such as Mr Tadic has been considered as a particularly positive event by the international community. The latter saw it as a victory of the European and democratic option for Serbia over the nationalistic option represented by the Radical candidate. Expectations for President Tadic are therefore high, in particular as regards the need for a radical change of attitude towards co-operation with the International Criminal Tribunal for the former Yugoslavia as a pre-condition for further European integration.
13. In Montenegro, the opposition parties' boycott of Parliament continues to impede the effective functioning of democratic institutions. As the parliamentary debates are now broadcast by the Montenegrin TV, motives for the boycott have been clearly superseded by other political motivations.

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<sup>2</sup> For more detailed information, see OSCE/Council of Europe [preliminary findings and conclusions](#), 28/06/2004 (see also Statement of Preliminary Findings and Conclusions after the first round, 14/06/2004).

## 2. CONSTITUTIONAL ISSUES

14. In Serbia, although the authorities intended to prepare a comprehensive draft by the summer 2004, no significant progress has been made on this matter, since parliamentarians concentrated their attention on the June presidential elections. Failure to achieve concrete results in the drafting of a new Constitution would seriously hamper the pursuance of reforms in various fields, including local and regional democracy and the judiciary. The constitutional process should now be the highest priority for the Serbian authorities. In early June 2004, the Government forwarded a draft text to the parliamentary committee for constitutional affairs and the latter is likely to implement a fast-track procedure to produce a final draft as soon as possible, on the basis of the various proposals made so far. One possible option would split up the constitutional work by focusing on the finalisation and adoption of a "Framework Constitution" and leaving very complex issues, such as the question of territorial organisation, to special organic legislation. The Serbian authorities had previously promised that the first parliamentary draft would be sent to the Venice Commission for expert appraisal. However, given the fragmented nature the future Serbian constitutional order may have, it is crucial that all draft (organic) laws also be sent to the Venice Commission for expertise, at a stage where the opinions can still be taken into consideration before adoption.
15. According to Article 133 of the existing Constitution, the Parliament should adopt constitutional amendments by a two-third majority of the total number of representatives and should then submit them for referendum. The authorities indicated that the procedure for adopting the future constitutional text should be changed as soon as possible. A proposal to this effect was discussed in Parliament in mid-July. However, the Council of Europe, notably its Venice Commission, was not consulted.
16. In Montenegro, the work on a future constitution should also be given priority treatment as it remains a key aspect of future reforms. The Council for Constitutional Issues, which has been provided with comments and opinions from the Venice Commission, is still working on a new model for constitutional framework. Regrettably, not much progress has been achieved since the last report. A Joint Conference with the Venice Commission on constitutional reform should be held in the autumn 2004. The boycott of the Parliament by the opposition parties may still affect the constitutional process.

## 3. LOCAL AND REGIONAL DEMOCRACY

17. In Serbia, local elections should be held in 12 and 19 September 2004. At the same time, a thorough reform with a view to implementing principles of local and regional democracy is deeply needed, notably in view of the future signature and ratification of the European Charter of Local Self-Government, and partly depends on the current work carried out at the constitutional (or quasi-constitutional) level (see above). As concerns the latter, the authorities should notably find a way to ensure the necessary consistency with the principle of subsidiarity. It is therefore essential that all relevant partners, including associations of local and regional authorities, be fully involved in the drafting of the relevant provisions. In this context, the Council of Europe, notably through its Venice Commission and the Congress of Local and Regional Authorities, should be fully consulted. The same applies to the legislative level. The Standing Conference of Towns and Municipalities of Serbia highlighted that positive steps have been taken in this respect in the recent period. More specifically, the 2002 Law on Self-Government has brought significant improvements in terms of decentralisation. At the same time, certain aspects of the law, such as the role of municipal councils, need to be clarified and much remains to be done to complete the

legislative framework in order to provide the local authorities with adequate means to carry out their tasks as defined in the 2002 Law. Particular attention should be paid to the adoption of adequate legislation pertaining to:

- territorial organisation;
- local finances (in this respect, see Committee of Ministers Recommendation Rec(2004)1 on financial and budgetary management at local and regional levels);
- property issues;
- legislation on local elections (in this regard, the authorities should be invited to send their new draft text to the Council of Europe for expert appraisal).

18. In addition, concerns have been expressed that new legislative and other measures taken by the central authorities in fields partly falling within the competence of local authorities are not consistent with the Law on Local Self-Government. For instance, according to the Standing Conference, new amendments to the education legislation did not take into account competences of the local authorities in the education field (see also item II.E. in the present report).

19. In Montenegro, two mayors were elected (Tivat and Herceg Novi) in accordance with the new legislation. However, concerns expressed in previous reports as regards difficulties met by local authorities to carry out their tasks due to lack of means remain valid. In response, efforts are being made to complete the legislative framework (see document SG/Inf(2004)8). Council of Europe expert assistance continues to be given on a draft law pertaining to territorial organisation.

## **B. CO-OPERATION WITH THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA (ICTY) AND PROSECUTION OF OTHER WAR CRIMES**

20. In its decisions of 19 May 2004 and following the exchange of views with the ICTY President, Mr. Theodor Meron, the Committee of Ministers of the Council of Europe drew the attention of the Serbia and Montenegro authorities to the need to produce tangible evidence of their willingness to fully co-operate with the ICTY. On 8 July, the Council of Ministers of Serbia and Montenegro indicated that this was indeed a top political priority and that all efforts should be made to meet its commitments as defined in the Law on Co-operation with ICTY. It urged the National Council for Co-operation with ICTY, which was re-constituted on the same day after having been paralysed for months, to resume its work without delay in order that action is taken. On 16 July 2004, the Union Minister of Human and Minority Rights, Mr Rasim Ljajic, was elected as Chairman of the National Council.

21. This late, but encouraging development generates many expectations in terms of concrete results as no significant improvement could have been registered since the last report, notably as concerns:

- i. arrest or surrender of indictees: according to the ICTY Prosecutor, at least fifteen of twenty ICTY indictees still at large were regularly visiting or residing in the country (in addition to Mr Goran Hadzic, who has disappeared in mid-July just after his indictment by the ICTY Prosecutor);
- ii. transmission of documents;
- iii. the simplification of the procedure to grant waivers: according to the ICTY Prosecutor, more than fifty requests were still pending in late June 2004 and waivers were granted for a few defense witnesses only.

## C. RULE OF LAW

### 1. ACTION TO STRENGTHEN THE JUDICIAL AND PROSECUTING AUTHORITIES AND SECURE THEIR INDEPENDENCE AND IMPARTIALITY

22. In its decisions of 19 May 2004, the Council of Europe Committee of Ministers invited the authorities to co-operate actively with the Organisation on the reform of the judicial and prosecution systems and, more particularly, on the transfer of powers from the military to the civilian courts of the constituent states of the Union. In this context, a number of encouraging developments can be mentioned.

*The transfer of competence of the **military justice** to the civilian judicial authorities of member states*

23. The Serbian and the Montenegrin Ministries of Justice proposed to take action to secure the adoption of a draft Union Law on the transfer of military judicial powers to civilian justice system. On 1 July 2004, the Council of Ministers of Serbia and Montenegro decided to suspend all trials pending before military courts. However, the Council of Europe has still not received any draft legislation in this regard. In Montenegro, according to the authorities, normative pre-conditions have been created for civilian courts to process the cases in the area of military justice. The Law on Courts stipulates that regular courts shall pass judgements for criminal offences regardless of assets, profession and status of the individuals against whom the procedure is conducted and regardless of conditions of the offence.

*At the Union level*

24. Progress has been made in the setting-up of the State Union Court. All judges have been elected; the last one on 15 June. The Court held its first session in Podgorica and elected its Chairman. Exceptional funds should be allocated to the functioning of the Court for the next six months while it should then get its budget. According to the authorities, its rules of procedure have been adopted and the budget of Montenegro would include the necessary resources to secure the functioning of the Court.

*At the level of member states of the State Union*

25. As concerns Serbia, in previous reports, the absence of a coherent and general reform strategy and the lack of transparency and appropriate consultations had been highlighted. Since then, the Ministry of Justice has started to make serious efforts to increase transparency of its work and to consult legal professionals. In this context, the Ministry has taken a number of recent initiatives to co-operate with the Council of Europe through the drafting of a new Protocol on Co-operation with the Council of Europe and transmission of a number of draft laws (such as the Criminal and Criminal procedure Codes) for expert appraisal. Initiatives have also been taken to organise public debates on draft laws in the coming months. These welcome developments should be pursued and further developed.
26. Recent amendments to the Criminal Procedure Code in May 2004 illustrate the Ministry of Justice's willingness to improve the legislation, notably as concerns mandatory pre-trial detention. Thanks to these amendments, Article 15b of the Law on the fight against organized crime - pertaining to the so-called "police preventive custody" – also ceases to be applied. They constitute a first step towards the withdrawal of some reservations with

respect to the European Convention on Human Rights. At the same time, a comprehensive reform, in conjunction with the current constitutional process, is seriously lacking. In other words, the absence of genuine judicial reform and, in this connection, the particularly fragmented nature of changes made to the legislation continue to be detrimental to:

- the independence and impartiality of judges and prosecutors;
- the stability and the well functioning of the judiciary and prosecution systems.

27. One particular example concerns the (re-)appointment of prosecutors and deputy prosecutors in late June by Parliament, in accordance with judicial laws as amended last April. Although the amendments did prevent further influence from the executive power, it did not follow previous calls for “*measures in law and in practice, notably to prevent undue influence from the executive and legislative branches of power in the election/appointment of judges and prosecutors*” (document SG/Inf(2004)8). In addition, the Parliament’s failure to (re-)appoint a number of deputy prosecutors, including a deputy special prosecutor, had generated some instability within the prosecution institution.
28. In Montenegro, while the work continues at legislative level, with Council of Europe assistance, the implementation of laws remains particularly problematic. For instance, the Administrative Court and Court of Appeal have not been yet established in accordance with the 2002 Law on Courts, despite previous assurances given by the authorities that it would be set up by mid-June 2004. A new deadline has now been fixed to 31 December 2004 for the establishment of these Courts. According to the authorities the procedure for the selection of judges in these Courts has already been initiated. On a positive note, the rules of courts’ procedure have been adopted in early June 2004. All members of the Higher Council for Prosecutors have now been elected, including the Special Prosecutor for organised crime and corruption (see, in this connection, document SG/Inf(2004)14).

## **2. POLICE AND SECURITY FORCES: NEED TO ENACT ADEQUATE LEGISLATION, TO STRENGTHEN SUPERVISORY MECHANISMS AND TO INCREASE THE EFFICIENCY OF POLICE WORK**

29. Both in Serbia and in Montenegro, virtually no progress can be registered as concerns the legislative framework for police and security forces. In Serbia, in a recent decision, the Constitutional Court has confirmed concerns expressed in previous reports as regards excessive extension of police powers, reports of police abuse and the poor quality of police investigation during the 2003 state of emergency. This should prompt the authorities to construct a clear legislative framework for police and security forces in full compliance with Council of Europe standards. According to the authorities, draft legislation has been prepared and should be soon sent to the Council of Europe. In Montenegro, the authorities have failed to adopt in Parliament the draft legislation relating to police and security matters.
30. As concerns supervisory mechanisms, the need for more transparency has been underlined in previous reports. In Serbia, the authorities indicated that a number of police officers are under investigation; however, no further detailed information is yet available. According to the same authorities, there was no question of political pressure or revenge in any of the complaints being investigated.

## **3. ACTION TO FIGHT AGAINST CORRUPTION AND RELATED MATTERS**

31. Corruption remains a key issue of concern in both constituent states of the Union. In Serbia, in spite of the recent creation of a working group by the Ministry of Justice, a clear strategy to fight against corruption is still lacking. The Council of Europe will provide assistance on

this matter in the coming months. In this connection, action is also needed to establish new anti-corruption institutions in order to supplement the Anti-Corruption Council's monitoring activities. However, in mid-May 2004, the Vice-President of the Council, Mr. Ivan Lalic, underlined that the willingness of the authorities to fight against corruption more efficiently is still to be demonstrated. In Montenegro, the Director of the Anti-Corruption Agency, Mr. Veselin Sukovic, pointed out that the Montenegrin prosecuting bodies meet tremendous difficulties to establish the facts in corruption cases. This calls for an urgent implementation of the programme to fight against corruption and organised crime which should be finalised during the autumn following consultations with CoE experts.

32. In this context, the Serbian and Montenegrin authorities took part in activities carried out within the framework of the PACO Impact regional programme aimed at implementing national strategies in the fight against corruption and organised crime (see also previous reports). A first regional conference was held in Budva (Montenegro) in July 2004.

## **D. HUMAN RIGHTS**

### **1. MEASURES TO ENSURE THAT THE EUROPEAN CONVENTIONS ON HUMAN RIGHTS (ECHR) AND ON THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (ECPT) ARE FULLY OPERATIONAL**

33. Action is particularly needed to ensure that the ECHR and the ECPT are fully operational. As concerns the ECHR, which is in force since 3 March 2004, some efforts have been made by the authorities to co-ordinate possible action, but a number of difficulties have still not been overcome, notably as concerns the establishment of a Government Agent Office before the Court. The Council of Europe now provides assistance on this matter. A meeting between CoE experts and representatives of the relevant authorities in Serbia and Montenegro took place on 6 July 04. According to the authorities of Serbia and Montenegro, a special expert commission has already selected three candidates for the election of a judge to the European Court of Human Rights with respect to Serbia and Montenegro. The proposals should be approved by the Union Council of Ministers in the near future. As concerns the ECPT, which entered into force on 1 July 2004, the authorities explained that they will indicate to the Committee for the Prevention of Torture (CPT) which authority is competent to receive notifications to the Government, and to inform it of any liaison officer they may appoint in conjunction with the appointment of candidates for the future election by the Committee of Ministers of a member of the CPT with respect to Serbia and Montenegro. The authorities of Serbia and Montenegro have constructively contributed to the agreement reached between the United Nations Interim Administration Mission in Kosovo (UNMIK) and the Council of Europe concerning the applicability of the ECPT in Kosovo, under the UN administration by virtue of Security Council resolution 1244. This agreement will be implemented when a similar agreement is concluded with NATO concerning the places of detention under KFOR responsibility.

### **2. ACTION TO STRENGTHEN THE PROTECTION OF SOCIAL RIGHTS**

34. As reported previously, trade union representatives have pointed to a number of violations of rights guaranteed by the European Social Charter. Both Ministries of Labour expressed their willingness to secure the signature and the ratification of the Revised Social Charter as soon as possible. In this context, two expert groups (in Serbia and in Montenegro) have been constituted in order to initiate a compatibility exercise and submit their respective reports by the end of the year. Council of Europe experts should then provide their comments.

35. In Serbia, the authorities gave clear indications that they are willing to ensure that the legislation comply with European standards and social dialogue be established. Work on a new Labour Code has already started. It is particularly important that this work is carried out in conjunction with the compatibility exercise.

### **3. MEASURES TO ENSURE AN EFFECTIVE PROTECTION OF NATIONAL MINORITIES**

36. The Council of Europe Committee of Ministers is now examining the Opinion of the Advisory Committee of the Framework Convention for the Protection of National Minorities and the Comments provided by the authorities.
37. At the legislative level, the status of the 2002 Law on the Protection of the Rights and Freedoms of National Minorities, adopted by the then Federal Parliament, still raises a number of issues in view of its effective implementation in Serbia. In Montenegro, the draft legislation on national minorities has still not been adopted. Certain aspects of the draft law, such as those relating to the definition, had been identified by Council of Europe expert as requiring further amendment. According to the authorities, the draft law should be submitted to the Government in August 2004. Likewise, a draft Law on citizenship has been sent to the Council of Europe for expert appraisal. As for the ECPT, the authorities of Serbia and Montenegro have contributed to the agreement concluded between UNMIK and the Council of Europe concerning the applicability of Framework Convention for the Protection of National Minorities in Kosovo, under UN administration by virtue of Security Council Resolution 1244.
38. The implementation of norms in practice still remains of particular concern. Some efforts have been made in Serbia to address the question of funding of national minority councils. However, lack of action with respect to minorities that have not created their councils remains an issue. The authorities, including the Union Ministry of Human and Minority Rights, increasingly consider these councils as their sole interlocutors on minority issues.
39. During the period covered by the present report, some concerns have been expressed about several attacks against members of the Roma community (in Belgrade and in Nis for instance). Concerns over inter-ethnic tensions in southern Serbia have been increasingly raised.

### **4. ACTION TO PROTECT FREEDOM OF THE MEDIA**

40. In Serbia, the appointment of the members of the Broadcasting Council, which is the new regulatory authority for the electronic media, is a long-debated question. Both within Serbia and in the international community, concern has been expressed about partisan objectives interfering with the independence of this body. Thus, in early July 2004, the Government forwarded draft amendments to the Broadcasting Law to the Parliament for urgent adoption, in order to define a new procedure for the appointment of the members of the Broadcasting Council. However, the lack of transparency and proper consultations with professionals and the Council of Europe regarding the preparation of these draft amendments is of particular concern. In addition, a number of media organisations have complained that these proposed changes will not prevent possible future Government's influence over the media.

41. Likewise, a new draft law on free access to public information has now been prepared. As recommended in the previous report (document SG/Inf(2004)14), the Serbian authorities should ensure that this draft complies with European standards and send it to the Council of Europe for expert appraisal as soon as possible (see also, in this connection, Article 19's [Memorandum](#), July 2004).
42. In Montenegro, according to the authorities, the draft Law on Free Access to Information has been revised following Council of Europe recommendations. The authorities should be urged to adopt the draft law as soon as possible with due regard to recent Council of Europe expert comments as concerns exemptions contained in Article 9. In this context, the authorities should also take all necessary measures to secure the effective implementation of the future law.
43. The period covered by the present report has been marked by the murder of the editor-in-chief of the *Dan* newspaper, Mr. Dusko Jovanovic, in late May 2004. According to some NGOs, the murder might be connected to his professional activities. A number of individuals have been interrogated by the police. One person was accused of complicity and is now waiting for trial.
44. The Criminal Code of Montenegro provides that acts of defamation or insult are only subject to financial sanctions. The number of defamation cases brought before the courts is particularly disturbing, having regard to the chilling effect that defamation lawsuits may have on freedom of expression and investigative reporting, especially when such lawsuits are initiated by political figures or public officials. Over the last two years, 90 cases relating to defamation and insult have been examined by the Basic Court of Podgorica only. In early July, the Court ordered the daily *Dan* to pay a compensation of 6,000 Euros to the Head of the Montenegrin State Security Service (SDB), Mr. Dusko Markovic. In July, the Court also found that Mr. Zivkovic, the leader of Liberal Alliance of Montenegro, was guilty for defaming the Montenegrin Prime Minister and decided that he should pay 8,000 Euros .

## 5. MEASURES TO PROTECT FREEDOM OF CONSCIENCE AND RELIGION

45. In Serbia, the Ministry of Religions announced in early July that a draft law on religious freedoms, churches, religious communities and associations had been completed. According to non-governmental sources, certain provisions of the draft, such as Article 17 pertaining to immunity granted to church officers, flagrantly violates the principle of separation of Church and State as contained in the Union Charter on Human and Minority Rights and Civil Freedoms ("mini-Charter") and the existing Serbian Constitution (for more details, see Helsinki Committee for Human Rights in Serbia, [23/07/2004](#)). In this context, the authorities should send the draft law to the Council of Europe for expert appraisal with a view to ensuring its compatibility with the case-law of the European Court of Human Rights.

## E. EDUCATION

46. There is a clear and worrying deterioration of the situation of the education system in Serbia. The 2003 education system law provided a very good basis for a modern system. However, in May 2004, amendments to the law simply put into question positive action previously undertaken. In addition, the adoption procedure used by the Ministry of Education and Sport is still unclear as these amendments were not brought before the Council of Ministers. Serbian authorities indicated that the amendments to the 2003 Law on Education were motivated by the present difficult economic conditions of Serbia which would not permit to

fulfill the very ambitious objectives of the law. The fact that the authorities increasingly neglect Council of Europe expert input in this field is of particular concern and reforms undertaken therefore run the risk of being in full contradiction with European standards.

47. In March 2004, Serbia and Montenegro ratified the 1997 European Convention on the Recognition of Qualifications concerning Higher Education in the European Region (Lisbon Convention). It is therefore crucial that the authorities do their utmost to ensure that the future reforms in this field, including the draft University Law, comply with Council of Europe standards.

**APPENDIX I****Extracts from the Speech made by Mr. Theodor Meron, President of the International Criminal Tribunal for the former Yugoslavia before the Committee of Ministers' Rapporteur Group on Democratic Stability (GR-EDS) on 7 May 2004**

“Ambassador Joseph, members of the Rapporteur Group:

It is a pleasure to meet with you today, and I thank Ambassador Joseph for his kind invitation to express to the Group my views on the state of cooperation between the International Criminal Tribunal for the Former Yugoslavia, of which I am the President, and the states of the former Yugoslavia, all of whom have now been admitted into the Council of Europe.

First, I would like to emphasize that all states, and all states of the Former Yugoslavia are required, by virtue of Article 29 of the Tribunal's Statute, which was enacted by the UN Security Council under Chapter VII of the Charter, to cooperate with the Tribunal in both the investigation and the prosecution of persons accused of committing serious violations of international humanitarian law lying within the Tribunal's jurisdiction. The Security Council has reiterated this requirement in its recent Resolution 1534, adopted on March 26, 2004. There, the Security Council called on "all States, especially Serbia and Montenegro, Croatia and Bosnia and Herzegovina, and on the Republika Srpska within Bosnia and Herzegovina, to intensify cooperation with and render all necessary assistance" to the Tribunal.

Allow me now to begin with an overview of the state of cooperation between the Tribunal and Serbia and Montenegro. On April 29, 2004, I received from the Tribunal's Prosecutor a Report regarding the non-compliance on the part of Serbia and Montenegro with its obligations to cooperate with the Tribunal. In this Report, the Prosecutor complained of a consistent failure on the part of Serbia and Montenegro to comply with its obligations under Article 29. The Prosecutor's Report described Serbia and Montenegro's present cooperation as nearly non-existent. The Report also stated that the level of cooperation has declined following the December 2003 parliamentary elections in Serbia. I feel great personal sadness at the recent developments in Serbia and Montenegro with regard to cooperation with the Tribunal. When I visited Belgrade in September 2003, I had very useful and constructive meetings. In October 2003, I gave the Security Council a positive assessment of cooperation. I have, therefore, been greatly disappointed with regard to the developments concerning cooperation with the ICTY after the recent elections.

In her Report to me, the Prosecutor stated that the new Serbian Government officials have stated publicly that cooperation with the Tribunal is not a priority, that there must be "two-way co-operation," and that there will be no cooperation in respect of cases based solely on command responsibility as understood by the Serbian authorities. Moreover, the Prosecutor reported, the most senior officials in Serbia have made unsubstantiated allegations about the impact of cooperation with the Tribunal on the country's stability. In the Prosecutor's assessment, these statements demonstrate a lack of willingness by the new authorities to cooperate fully or in good faith with the Tribunal.

The Prosecutor also reported that new obstacles and bureaucratic barriers have been created at the operational level in areas where previously a reasonable level of communications existed. The Prosecutor stated that, despite several informal attempts it has not been possible for her office to establish any channel of communication at the higher levels. The Prosecutor believes that on all major issues requiring the cooperation of the Serbian and Montenegrin authorities, such as the arrest and transfer of fugitives, the production of documents and Tribunal's access to witnesses, the

Serbian authorities would appear to have renounced the provision of more than a minimal level of cooperation with the Tribunal.

In particular, the Prosecutor identified failures on the part of Serbia and Montenegro to execute arrest warrants issued by the Tribunal and to respond to requests made by the Registrar of the Tribunal pursuant to Rule 59 of the Tribunal's Rules of Procedure and Evidence to explain those failures. The Prosecutor states that this failure is despite requests by the Registrar, the latest of which was made in April 2004, for such reports to be submitted. The Prosecutor also believes, based on intelligence received in her office (and shared with the Serbian authorities), that out of 21 persons indicted by the Tribunal who have not been apprehended or surrendered, 15 either reside permanently in, or travel frequently to, Serbia and Montenegro. They include Radovan Karadzic and Ratko Mladic, for whose arrest and transfer to the Tribunal the Security Council called most recently in its Resolution 1534. The Prosecutor also indicates that these individuals include a number of accused charged for their role in the Srebrenica massacres in 1995. The Prosecutor also reports that the fugitives include Generals Vladimir Lazarevic, Sreten Lukic and Nebojsa Pavkovic, who were indicted in October 2003 and who continue to this day to move freely in Belgrade. The Prosecutor states that the new Serbian government has failed to show any intention to hand over these well-known and high-profile indictees.

The Prosecutor also identified failures on the part of Serbia and Montenegro to cooperate with her office in her attempts to secure witnesses' testimonies and documentary evidence, and to grant waivers to enable witnesses to either provide statements to the Office of the Prosecutor or to testify before the Tribunal. One particular obstacle identified by the Prosecutor in relation to securing the testimonies of witnesses from Serbia and Montenegro is the requirement that the Prosecutor obtain permission to conduct witness interviews, which often involves the service of summons to enable such interviews to take place. The Prosecutor also addressed the need for potential witnesses to obtain from the Belgrade authorities waivers of immunities to enable them to cooperate with the Tribunal without fear of domestic prosecution for revealing state secrets, which she viewed as a critical and problematic issue. The Prosecutor stressed that Serbia and Montenegro is the only state of the former Yugoslavia to have introduced such cumbersome procedures. The Prosecutor reported to me that there are still serious delays in the provision of such waivers, with over 50 of them currently outstanding, some for more than a year. In the Prosecutor's assessment, there is a specific problem with these waivers when they concern high-level witnesses, such as senior military or political leaders. The Prosecutor also stated that intimidation of witnesses is becoming an increasingly important problem in Serbia. She reported that in the past three months, two protected witnesses in the trial of former Yugoslavia President Slobodan Milosevic were threatened by members of the security services.

The Prosecutor also reported to me that her office experiences difficulties in gaining access to relevant documents. The Prosecutor stated that she has been given access to key documents only after protracted judicial proceedings. The Prosecutor informed me that her office has never received sufficient cooperation in gaining access to relevant documents or even obtaining an overview of the archival holdings that would enable her to make specific requests. The Prosecutor stated that although over the years Belgrade has produced several thousands of documents to the Tribunal, this has always been under pressure, and mainly as a result of binding orders. Even so, the Prosecutor believes that many highly relevant documents have not been produced. She indicated to me in the Report that there are currently over 120 requests for documents outstanding, this number representing over 20 per cent of all requests forwarded by her office since 2001.

I view the Report of the Prosecutor as indicating an extremely serious failure on the part of Serbia and Montenegro to comply with its obligations under Article 29 of the Statute of the Tribunal, and I have so informed, just a few days ago, the United Nations Security Council.

I should like to repeat that the Tribunal is committed to a meaningful engagement with all states of the former Yugoslavia, including Serbia and Montenegro. The Tribunal continues to hold its expertise and support available to those in Serbia and Montenegro interested in cooperation, such as some elements of the judiciary. For instance, next week the Tribunal will be hosting a visit by seven judges from the Department for War Crimes at the Belgrade District Court, established in 2003, which is commonly known as the "Special Court for War Crimes." The aim of the visit, organised by the United Nations Development Programme, is to facilitate the transfer of knowledge and experience from the practice of the Tribunal, to establish channels of communication between the Special Court and the Tribunal, and to make use of legal and practical resources of the Tribunal in addressing potential problems in processing war crimes at the Special Court. The Special Court began the first war crimes trial, known as the Vukovar case. While the trial is too recent for me to comment on, I should like to mention that the Office of the Prosecutor has been providing evidentiary materials for the use in that case. [...]"

## APPENDIX II

### **Joint statement made by the OSCE Mission and the Council of Europe Office in Belgrade**

*“OSCE, Council of Europe Missions urge transfer of military jurisdiction to civilian authorities in Serbia and Montenegro*

BELGRADE, 28 May 2004 - The OSCE and the Council of Europe (CoE) Missions in Belgrade have called on the Serbian and Montenegrin authorities to ensure a speedy transfer of military jurisdiction to civilian authorities as foreseen in the State Union Constitutional Charter.

The Missions expressed their concern at the serious legal vacuum within which military justice continues to operate.

Failure to implement the State Union Constitutional Charter provisions requiring the adoption of a Law to regulate the transfer of military justice to the civilian courts of the member republics has resulted in worrying breaches to the principle of the rule of law.

This is as illustrated by the investigations into the Vljakovic case which involves the confiscation of a book allegedly containing military secrets.

The OSCE and CoE Missions pointed out that the State Union of Serbia and Montenegro has recently ratified the European Convention on Human Rights which guarantees the right to be tried by independent and impartial tribunals established by law.”