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## Extract from the IHF report

### *Human Rights in the OSCE Region: Europe, Central Asia and North America, Report 2006 (Events of 2005)*

#### SERBIA<sup>1</sup>

**IHF FOCUS: good governance; national human rights protection; access to information; freedom of association; judicial system and the independence of the judiciary; torture, ill-treatment and police misconduct; freedom of religion and religious tolerance; conscientious objection to military service.**

The functioning of institutions at the state union level deteriorated during 2005 due to uncertainty caused by the undecided issue of a referendum on Montenegro's independence and, as a result, on the future of the union. The expiry of the mandates of members of parliament at the beginning of the year led to a stalemate in work of the State Union Assembly. As both member states failed to call direct elections according to the Constitutional Charter – with Montenegro explaining the situation was not viable since the referendum was its highest priority issue – the situation threatened to further weaken union institutions and to make their operation illegitimate.

This serious situation, created by the lack of sufficient political power and will in both member states, was overcome by the initiative of the EU Foreign Policy and Security Commissioner Javier Solana, under whose mediation a revision of the Constitutional Charter was agreed on 7 April and adopted by the assemblies of both member states on 29 June 2005. The revision established the legitimacy of the incumbent union parliament by providing for direct elections for the deputies in both member states when parliamentary elections were to be held in one particular member state.

The competencies of the union parliament were rendered invisible. Mutual accusations between the main political parties of Serbia and Montenegro continued and resulted in the Montenegrin deputies refusing to participate in parliamentary sessions. Due to the fact that 95% of the state union's budget was provided by the Republic of Serbia, the influence of the main Serbian political parties on the union institutions became increasingly visible. The situation was additionally complicated by the formal opening of the negotiation process on Kosovo's status by the UN Security Council on 24 October, with regard to which member states had different opinions.

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<sup>1</sup> As reported by the Helsinki Committee for Human Rights in Serbia (IHF member). The section on freedom of religion and religious tolerance was provided by Human Rights Without Frontiers (IHF cooperating organization). On other human rights issues in Serbia, see the website of the Helsinki Committee, at <http://www.helsinki.org.yu/>.

In Serbia, nationalism continued to direct national politics. In order to stay in power and obtain the necessary majority in the parliament, the minority government of the Democratic Party of Serbia (DSS) formed a coalition with Serbian Radical Party and the Socialist Party of Serbia, which further slowed down democratic reforms and led to the adoption of laws not always in line with European and international human rights standards.

The Serbian parliament became the central stage for political trade-offs and corruption scandals. Covered by the Constitutional Court decision of 2003 stating that mandates belong to the parliamentarians and not to the political parties that appointed them, members of parliament started switching political parties and even joined non-parliamentary parties, at the same time holding their seats in parliament. The second half of 2005 was thus characterized by the fact that political parties that had not won elections or passed the necessary threshold to enter the parliament nevertheless became parliamentary parties. Such trade-offs were followed by public suspicion of corruption and led to the further deterioration of public confidence in state institutions. Suspicions and scandals also resulted in a formal investigation by the police into possible corruption in voting on the 2006 budget during the December session.

At the same time, no progress was made in the adoption of the new Serbian Constitution. The work that was started in 2003 by the Constitutional Commission and the three subcommittees was stalled throughout the year in spite of attempts to revive its work in September.

The proclaimed priority to follow the European agenda in bringing Serbia closer to EU accession marked a change in the earlier rhetoric of the leading political parties that started to officially promote a pro-EU process. Thanks to efforts by the international community, the European Commission was able to conclude in its feasibility report of 12 April that Serbia and Montenegro was sufficiently prepared to negotiate on the Stabilization and Accession Agreement (SAA). The report was endorsed by the EU Council. The negotiation process was officially announced on 10 October and the first two rounds of talks were held in November and December.

With regard to international treaties and conventions, the state union parliament ratified during 2005 the UN Convention Against Corruption (on 22 October) and the Optional Protocol to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (on 1 December).

## **Good Governance**

### *Corruption and Organized Crime*

The fight against organized crime in Serbia continued in 2005, notably in relation to the criminal procedure brought against members of the Special Operations Unit and “Zemun“ gang accused of Prime Minister Zoran Djindjic’s assassination in March 2003. The procedure, that had been ongoing for already two years as of the end of 2005 made visible to the public that some political parties (including the DSS, the radicals, etc.) had been making efforts to diminish the authority of the Special Department for Organized Crime at the Belgrade District Court as well as to compromise the work of the special prosecutor and the indictment itself. Supported by some of the media, lawyers and experts (mostly from among the former police forces and regime supporters), these politicians tried to convince the public that the indictment was not well founded and that the indictees had not committed the assassination. This so-called patriotic block thus seriously jeopardized the criminal procedure.

Further, the mandate of the special prosecutor focusing on the assassination expired in July 2005; he was not re-appointed but instead moved to the position of deputy special prosecutor

after the former deputy special prosecutor was placed in detention on charges of revealing official secrets on surveillance activities concerning another criminal case – alleged corruption within the Supreme Court of Serbia. While these personnel changes were explained as normal professional requirements, the public believed them to be politically motivated and the reasons fabricated.

The assassination case was ongoing at the end of 2005, pending an additional forensic expertise requested from the Wiesbaden Institute of Criminology in Germany. Meanwhile, there were many speculations about the possible outcome of the trial and the perpetrators. Although the police conducted official inquiries into many of the allegations, media continued their campaign to compromise the official indictment and the whole process, misleading the public in regard to the most serious murder case in Serbia.

## **National Human Rights Protection**

### Ombudsman Institution

A formally positive development was the adoption of the law on the ombudsman, officially named the Act on Citizens' Defender, in September 2005. The act provides that the ombudsman shall be appointed by the Serbian parliament for a period of five years, with the possibility of re-election. Furthermore, four deputies shall be appointed, with special focus on the protection of the rights of convicts, children, minorities, the disabled and other vulnerable groups, as well as on the promotion of gender equality. The act further stipulates that the ombudsman shall be authorized to supervise the respect of human rights within the republic's administration by controlling governmental agencies' work, acts, failures to act, and decisions. The competencies of the ombudsman also include the right to initiate amendments to laws and adoption of new ones, as well as to make suggestions about draft laws submitted to the parliament, provided they relate to the domain of human rights.

However, the ombudsman is not allowed to supervise and control the work of the parliament, government and president of Serbia nor the functioning of courts and public prosecutor offices.

In addition, the act empowers the ombudsman to take action only if an applicant has exhausted all legal remedies. Since the act came into force only in September 2005, it remained to be seen how it will be implemented. As of early 2006, no steps had been taken with regard to nominating candidates for the office, let alone securing the necessary financial and human resources.

### *Human Rights Defenders*

Pressure and harassment against the coalition of eight NGOs comprised of the Helsinki Committee for Human Rights in Serbia, the Lawyers' Committee for Human Rights, the Humanitarian Law Center (HLC), the Center for Cultural Decontamination, the Youth Initiative for Human Rights, the Belgrade Circle, the Civic Initiatives and the Women in Black continued in 2005 especially in the wake of their appeal to the Serbian parliament to adopt a resolution addressing the responsibility of Serbian forces for the genocide committed at Srebrenica. The government failed to denounce such campaigns and to protect the activists.

In particular women leaders of some of these organizations were increasingly exposed not only to an orchestrated, verbal media lynch campaign and threats, but also to physical attacks by people in the street. At the same time some officials stigmatized them as traitors and "disseminators of evil for the sake of the American and Anglo-Saxon project," and charged them with undermining the identity of the Orthodox community, among other things.

- Sonja Biserko, chairwoman of the Helsinki Committee for Human Rights in Serbia, was repeatedly physically attacked and verbally assaulted, her apartment was invaded, she was threatened and newspapers printed inflammatory allegations that were incitements to violence against her. Investigations of the crimes against her led nowhere and the police failed to protect her. On 8 September, the newspaper *Tabloid* published an inflammatory article accusing Biserko of being, among other things, a Croatian spy. The dates of birth of her parents were published, information that suggested cooperation from secret service agencies. The article also included Biserko's home address. Lawyers of the Helsinki Committee filed criminal charges with the office of the public prosecutor about the article but proceedings had not been started as of end of 2005.<sup>2</sup>
- At its press conference on 23 July, the Serbian Radical Party openly threatened the Humanitarian Law Centre executive director, Nataša Kandić and television B92 editor-in-chief, Veran Matić after the Fourth Municipal Prosecutor's Office in Belgrade had dismissed the Radical Party's complaint that Kandić and Matić intended to undermine the public law and order. The party's secretary general, Aleksandar Vučić said: "Today we're setting a deadline for them, and on Monday Tomislav Nikolić is going to file a civil suit as well..., so we're giving them until 15 October...if the proceedings are not brought to a close [by that date], I promise them half a million people in the streets of Belgrade, so let them see for themselves whether or not they have put in jeopardy and undermined the public law and order."

Many other similar statements were issues by politicians and published by the media.

### **Access to Information**

The Law on Free Access to Information of Public Interest adopted in 2004 was generally in line with internationally recognized standards and principles governing access to information, but failed to provide the right to appeal against the highest authorities' decision to refuse, on whatever grounds, access to requested information (article 22). These highest authorities included the national parliament and government, the president of the republic, the government of the Republic of Serbia, the Supreme Court of Serbia, the Constitutional Court and the republican public prosecutor. For such cases, the law provided for the possibility of initiating an administrative lawsuit. Furthermore, the law's vague wording made it possible for the authorities to delay providing a requested piece of information under various pretexts.

"Transparency Serbia" conducted a ten-month survey by sending requests to different state bodies and agencies, according to the law. The results published at a roundtable were disappointing. More than 40% of ministries and agencies at republican level and more than 60% of local governments never replied to the requests and out of those who did, the majority had misunderstood the request. At the same time, a public survey conducted by the same organization indicated a low level of awareness and knowledge among the public of the content, procedure and rights provided by the law.

### **Freedom of Association**

The Human Rights Charter and the Constitution of Serbia guarantee freedom of association. According to the constitution, the freedom of political, trade union and other association and

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<sup>2</sup> IHF, "Serbia: Government Should Denounce Hate Speech and Violence Against Human Rights Defenders," 16 September 2005, at [http://www.ihf-hr.org/documents/doc\\_summary.php?sec\\_id=3&d\\_id=4132](http://www.ihf-hr.org/documents/doc_summary.php?sec_id=3&d_id=4132).

activities shall be guaranteed without the requirement of a permit and only be subjected to registration with the competent authorities.

The draft Law on Associations was submitted to the parliament in 2004 after which the Ministry of Public Administration and the Local Self-Government of Serbia amended the initial version, taking into consideration expert comments by the Council of Europe. A one-day conference was organized in November under the auspices of the OSCE Mission to Serbia and Montenegro, enabling the public, notably NGO representatives, to provide further comments and suggestions.

Although improved,<sup>3</sup> the draft law at the end of 2005 continued to raise serious questions about the main purpose of the law. There was still no clear definition of non-profit organizations and the role of the state remained strongly regulative. Some of the proposed solutions did not comply with other national and international standards, especially those concerning the property rights of NGOs and associations, and their financial obligations.

## **Judicial System and the Independence of the Judiciary**

### *Judicial Reform*

The Serbian government continued its judicial reform at a slow pace. Instead of carrying out a thorough reform to ensure the genuine independence of the judiciary, the reform's progress was characterized by pressure exerted by the executive and legislature and attempted political influence on the process from political parties. All undue pressure reduced the reform to personnel changes only: dismissal and appointments of presidents of courts and public prosecutors thus became the most important issue within the reform process.

In June the Serbian parliament dismissed more than 100 nominated presidents of municipal and district courts in Serbia, as well as municipal and district prosecutors. All of them had been initially appointed by the Djindjic administration. Another round of nominations followed in December. According to the Law on the High Judicial Council, the Law on Judges and the Law on Public Prosecutor's Office, the High Judicial Council as an independent expert body recommends and nominates candidates for judges, prosecutors and presidents of courts. However, it became clear that the High Judicial Council was influenced by political interests. Instead of following professional criteria and appointing the best-qualified candidates, the appointments were done on the basis of the candidates' close links to the leading political parties. Furthermore, the parliament voted out 20 of the 100 candidates nominated by the High Judicial Council, again all of them persons earlier appointed to their positions by the Djindjic administration and individuals who had shown strong commitment to reforms and professional standards. In contrast, some of the new appointees had held offices in the Milosevic administration.

The above-described appointment process thereby diminished all attempts by the High Judicial Council to be independent and professional. They also prompted critical reactions from former judges accusing political leaders of sending a dangerous political message of wanting to keep the judiciary under influence of the political leadership.

### *Operation of Courts*

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<sup>3</sup> The original draft of 2004 showed that protection of human rights and development of democracy were either intentionally omitted or at least considered to be less important and, therefore, suitable for the category labeled "miscellaneous."

With regard to judicial proceedings, court procedures continued to be protracted and court sentences and decisions were subject to corruption scandals. Pressure from the executive branch and politicians on courts to proceed with certain cases or delay others became evident.

- One high-profile case was the arrest and 48-hour police detention of a former minister of justice and government critic Vladan Batic in September on allegations of having influenced the release of a member of a criminal gang. The action, however, was seen as a politically motivated move to further discredit the members of Djindjic government. During interrogation at the police station, Batic requested that a lie detector test be used, which was granted but the official results were not given to him. Yet, his detention was issued on the grounds of failing to pass the polyphonic test, a reason that does not exist by law to detain a person. The investigating judge however released Batic and dropped all charges against him. Nevertheless, the general impression was that it was done only under public pressure as the entire incident turned out to be a serious embarrassment to the government.

Controversies concerning the legality of proceedings before courts and prosecutors were additionally heated by court actions in regard to the Milosevic family.

- The indictment of Marko Milosevic's, son of Slobodan Milosevic, in 2001 for extortion of a statement by making a serious threat to the life of the victim was dropped by the district prosecutor in Pozarevac in August. The district prosecutor cited mandatory instructions issued by the republican prosecutor. The decision provoked strong protests accusing the government of having struck a bargain with the Socialist Party. The protests coincided with the revocation of an arrest warrant against Milosevic's wife. The arrest warrant was reissued in September after she failed to appear in front of the court, but this only added to a bitter impression of it being done under public pressure only, and not to follow legal regulations.

### *New Criminal Law*

In September, the Serbian parliament adopted the new Criminal Code, the Code on Execution of Criminal Penalties, the Code on Juvenile Offenders and the Code on Protection of Parties to the Criminal Procedure. For the first time, a separate code was enacted with regard to juvenile offenders providing for special treatment, measures and punishments for juveniles.

The main novelties in the Criminal Code include new definitions of some criminal acts in accordance with European legal standards, as well as newly regulated penalties. The code for the first time regulates torture as a criminal act and protects intellectual property, environment and computer databases. In compliance with international standards, the new code provides for shorter prison terms for some criminal acts such as theft, robbery or drug dealing. On the other hand, the maximum prison terms were increased to 20-40 years. The changes also included a new model for issuing fines, introducing the calculation on daily rates according to the salary of the indicted reported by the Tax Revenue Office.

The Code on Execution of Criminal Penalties regulates more precisely the rights of the convicts as well as the judicial protection of their rights in regard to decisions made by prison administration. In establishing standards of living while serving the sentences the code follows international standards, notably those set forth by the Council of Europe's Committee for the Prevention of Torture, Inhuman or Degrading Treatment (CPT).

The Law on the Protection of Parties to a Criminal Procedure is a novelty in the Serbian legal system. The government initiated its adoption in the face of the spread of organized crime and the need to effectively prosecute the perpetrators. The code *inter alia* provides for a witness

protection program for those who make important statements or reveal information of essential importance to help solve a crime, thereby placing themselves at risk.

All the above-mentioned new laws came into force as of January 2006.

## **Torture, Ill-Treatment and Police Misconduct**

### *Law on Police*

The new Law on Police<sup>4</sup> was adopted in November after many delays and controversies emerging when it was still a draft, which could be explained by the attempts to ensure that the law was in line with international standards and, at the same time, in the interest of the political leadership. The law was generally regarded as a positive step in transforming the police force into a professional and more transparent service.

Some articles of the law, however, gave raise to serious concern and prompted criticism from civil society. The law vests the minister of interior with extensive discretionary powers, including issuing regulations and decrees regarding police operation but failing to provide for any control mechanism on the legality of such decrees. Public access to information related to police work was made more restrictive than in the law on access to public information, thus creating confusion about the applicability of both laws. In addition, provisions concerning the competencies of police officers do not fully comply with other domestic legislation, notably with regard to the protection of juvenile offenders and minors in general, the use of firearms and physical force and the search of premises.

Positively, the law for the first time regulates the internal control of police work and includes a separate section dealing with the organization and competencies of the Internal Affairs Unit. According to article 172, the “Internal Affairs Unit controls the legality of the police work especially in relation to respect and protection of human rights in performing the police work and authorities.”

The law came into force as of January 2006, so it was not clear at the time of writing how the Internal Affairs Unit would be organized and staffed. Concern was voiced about the fact that the law gives the interior minister a supervisory role over the unit, thus diminishing its independence: after the unit has investigated a complaint, it is obliged to submit a written report and recommendations for action to the minister of interior and the police director who will decide on each case. Therefore, the head of the unit does not have the authority to initiate his own procedures before the competent state authorities against officials who have violated the law. The minister is also authorized to set up guidelines, instructions and orders for the unit.

Such broad authorities and competencies of the minister do not provide for sufficient assurances for the effective control of the police work in protecting and respecting human rights.

No independent police control mechanism was in place outside the Ministry of Interior.

### *Torture and Ill-Treatment*

In its efforts to comply with international human rights standards and obligations, Serbia adopted legislation that for the first time provides for protection to individuals from torture and ill-treatment in

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<sup>4</sup> *Official Gazette of the Republic of Serbia*. 101/05 21 November 21 2005

article 137 of the new Criminal Code.

Another formally positive development was the ratification in December of the Optional Protocol to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. By ratifying the optional protocol the state accepted the obligation to establish a system of regular visits undertaken by independent international and national bodies to places of detention in order to prevent torture and inhuman treatment or punishment and to establish a body at the domestic level for the prevention of such treatment or punishment.

While it remains to be seen what effect the legal measures have on police conduct, torture and ill-treatment by the police remained a serious problem during 2005.

Media frequently published cases of brutal police actions that caused serious bodily injuries or even resulted in the death of the victims. The Helsinki Committee for Human Rights in Serbia noted that, as in previous years, prosecutors as a rule remained inactive – only in a couple of most serious cases which raised public attention did they take action.

According to information given by the inspector general of the police at a press conference at the end of the year, of 97 criminal cases submitted against police officers 67 were related to corruption and only eight were allegations of torture. His statistics, however, did not give information about the outcome of the criminal proceedings or as to whether the indicted police officers remained on duty.

In one case, however, judicial proceedings were initiated against a police general for alleged torture.

- Milan Obradovic, a police general and former head of the Belgrade police department was charged with torture in a case submitted by the police organized crime unit. He was allegedly responsible for torturing members of an organized criminal gang while they had been arrested and interrogated by police during 2003-2004 in respect to the murder of police general Bosko Buha. In the light of the fact that the defendant was one of the closest associates of the late Prime Minister Djindjic and was holding the top position in the police during operation “Sabre” (undertaken by the government to crack down on the mafia after the assassination of Prime Minister Djindjic) some politicians, NGOs and the public criticized that the criminal proceedings had been initiated as a revenge of the current government and not as a sincere attempt of the state to deal with police torture issues. The district prosecutor insisted that the case was not politically motivated and qualified public criticism as interference in the investigation and unlawful pressures on the judiciary. Nevertheless, it was remarkable that this was the only case in which criminal proceedings for torture were launched against a police officer and the suspect was even detained.

Contrary to this case, the authorities did little to solve other cases of alleged torture and ill-treatment. In November, the UN Committee Against Torture (CAT) issued two statements on violations of articles 12 and 13<sup>5</sup> of the Convention against Torture. CAT found that the Serbian authorities had not conducted thorough and effective investigations into two alleged cases of torture (Nikola Nikolic and Danilo Dimitrijevic).<sup>6</sup> These statements added to the widespread suspicion that the above-mentioned case of the police general was politically

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<sup>5</sup> Systematic review interrogation rules, methods, practices as well as arrangements for the custody and treatment of detainees, with a view to preventing any cases of torture (12), and prompt and impartial investigation by competent authorities of alleged cases of torture (13).

<sup>6</sup> See [www.hlc.org.yu/tortura/izvestaji](http://www.hlc.org.yu/tortura/izvestaji) 24/11/2005/CAT/C/35/D/174/2000 I 16/11/2005/CAT/C/35/D/172/2000.

motivated and that in other cases, the government and other officials were ready to turn a blind eye to police misconduct if it suited their political interests.

### **Freedom of Religion and Religious Tolerance<sup>7</sup>**

The constitution and other laws of Serbia provide for freedom of religion and the governments generally respected this right in practice. There was no official state religion in Serbia but there were attempts to grant the Serbian Orthodox Church a privileged status and to categorize religions, thereby introducing a discriminatory division, through a new law on religious organizations. The law has been redrafted several times.

In late 2004, parliament amended article 12(3) of the Serbian Property Tax Law in such a way that it granted tax exemption no longer to “religious organizations” but only to the seven “traditional” religious communities.<sup>8</sup> However, the Serbian religion minister asked the tax authorities not to begin enforcing the amendment before it could be reconsidered and by the end of 2005 tax officials reportedly abided by this order. *Another example of discrimination was the restriction of grants of taxpayers’ money to repair or build places of worship in the northern province of Vojvodina to the seven “traditional” religious faiths.*

The fourth draft of the Law on Religion, which was open to public debate in the summer of 2005, also provided for a distinction between “traditional” and “non-traditional” religions. This draft law was criticized *inter alia* by minority religions (Baptists, Pentecostals, Methodists, Seventh-Day Adventists, etc.), human rights NGOs, the Council of Europe’s Venice Commission and the OSCE because, if adopted, it would affect other laws and areas of life, including rights to religious education in public schools, taxes and property, social security and pension funds.

Also widely criticized was the high threshold of 700 adult members needed since 1993 to register a new religious organization.

Serbia has not had a law on religious communities since 1993. For the last 13 years, religious communities trying to gain legal status in Serbia have had to register as citizens' associations.

Regarding the return of property to religious communities, a commission was set up and was charged with the task of collecting data on all the properties claimed by religious communities. A law regulating this process separately from property of individuals and profit-making organizations was still in preparation at the end of 2005.

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<sup>7</sup> This section was provided by Human Rights Without Frontiers (IHF cooperating organization). Its sources are: 2005 US Department of State Report <http://www.state.gov/g/drl/rls/irf/2005/51578.htm>; Forum 18 News Service <http://www.forum18.org>; Venice Commission, *Opinion 334/2005, The Draft Law on Religious Organisations in Serbia*, at [http://www.venice.coe.int/site/dynamics/N\\_Opinion\\_ef.asp?L=E&OID=334](http://www.venice.coe.int/site/dynamics/N_Opinion_ef.asp?L=E&OID=334). For violent attacks on religious (and other) minorities, see also Human Rights Watch, *Dangerous Indifference - Violence against Minorities in Serbia*, October 2005, at <http://hrw.org/reports/2005/serbia1005/>.

<sup>8</sup> The seven “traditional” religions are the Serbian Orthodox Church, the Islamic Faith Community, the Roman Catholic Church, the Slovak Lutheran Church, the Lutheran Church of Serbia, the Jewish Community, the Hungarian Reformed Church. Approximately 78% of the population of Serbia and Montenegro are Serbian Orthodox; Muslims represent about 5%, Roman Catholics about 4%, Protestants 1%. Jews number about 4,000 and Jehovah’s Witnesses as well. According to Montenegro’s 2003 census, almost 70% of its population is Orthodox, 21% is Muslim and 4% is Catholic. The categorization of religions dates back to the Kingdom of Yugoslavia (1918-1941). Other religious communities which also had legal status at that time but without individual laws regulating their relations with the state - such as the Baptists, Methodists and the Nazarene Christian Community - are not considered “traditional” or “historical.”

The Serbian government began requiring all religious organizations to submit annual financial statements such as those required from businesses. Some Baptist and Adventist churches were prosecuted for failing to submit such a statement.

According to the latest census results (2002), the number of non-religious people was four times less than in 1991<sup>9</sup> and non-traditional religions as well as new religious movements experienced growing popularity.<sup>10</sup>

Hate speech toward minority religions continued to be a problem in the Serbian media. Religious leaders noted that reports of vandalism against church buildings, cemeteries and religious premises often occurred soon after press reports on “sects” in the media. Adventist and Pentecostal churches were specifically targeted. Graffiti and threats were spray-painted on the walls of their buildings in Pancevo and Smederevo, such as “death to the sects” or “death to Adventists.” In May 2005, police in Sremska Mitrovica filed a criminal complaint against two minors who allegedly threw rocks at the local Adventist church, breaking windows and damaging a wooden fixture.

A number of municipalities were suspicious with regard to certain religious groups.

- In Leskovac, the municipality set up a Council for the Prevention of Addictions and Religious Sects and promoted propaganda against Adventists, Baptists, Pentecostals, Evangelicals and Jehovah’s Witnesses.

Religion and ethnicity were closely intertwined throughout the country and sometimes it was difficult to make a distinction between the religious or ethnic nature of the acts of intolerance.

In 2005, the harassment of the Romanian Orthodox Church was a new focus of attention. The Serbian government continued to refuse to recognize it as a diocese (with 39 parishes) in Serbia – it was only recognized as a vicariate confined to ethnic Romanians in the Banat region in the northern province of Vojvodina.

- In March, local authorities insisted that a deacon had to demolish a Romanian Orthodox church he had built in his home village of Malajnica (Malainita in Romanian) in eastern Serbia. They argued that the building needed planning permission and permission from the Serbian Orthodox Church, though neither is required by law. Police also questioned the deacon about his religious activities. The deacon said that he had received a personal promise from Serbia’s religion minister Milan Radulovic at a meeting in early February that the church would not be demolished but he had not received any written document confirming this promise.

Acts of anti-Semitism were also recorded.

- During the night of 26-27 January (60<sup>th</sup> anniversary of the liberation of Auschwitz), fascist symbols were spray-painted on a memorial to Jewish Holocaust victims in Novi Knjezevac. A week before, anti-Semitic graffiti had appeared in the Jewish cemetery of Belgrade, on buildings owned and used by Western-leaning TV/Radio B-92, and two human rights NGOs. In addition, anti-Semitic posters targeting B-92 appeared in several highly visible downtown areas. The posters were signed *Nacionalni Stroj* (National Formation). The authorities quickly painted over the

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<sup>9</sup> Their number went down from 160,000 to 40,000. *Politika* (Branislav Radivojsa), “Povratak Tradiciji,” (Return to Tradition), Belgrade, 31 May 2003.

<sup>10</sup> The number of those belonging to religions not mentioned in the census has increased three and a half times.

graffiti at the cemetery and arrested three people caught putting up the posters and the government and democratic political parties denounced the incident. On 31 March police arrested another person caught writing graffiti on the wall of the Jewish cemetery in Belgrade.

- In March, a tabloid attacked the president of the Serbian Supreme Court because of her "Jewish origin," and provided her address, a photo of the building where she lives, and her home phone number.

Muslim were also targets of acts of ethnic-religious intolerance.

- In April, one of these persons involved in the March 2004 attack on the Belgrade mosque, was sentenced to three months' imprisonment. Police had arrested 110 persons. A trial of eleven other persons indicted in the attack was ongoing at the end of 2005. The Serbian government repaired the outside of the mosque and has also pledged funds to repair other buildings in the mosque compound. In a separate attack on a mosque in Nis (southern Serbia), which occurred during the same night as the attack on the Belgrade mosque, 11 people were arrested and indicted. Because of the failure of defendants to appear, the trial had not started by year's end.

### **Conscientious Objection to Military Service<sup>11</sup>**

Alternative civilian service to regular military service was first enacted by the Regulation on Civilian Service in 2003 and amended in January 2005 by a decree adopted by the union Council of Ministers. Despite the fact that the old regulation already fell short of international standards, the 2005 amendments further deteriorated the right to conscientious objection.

Article 4 of the new decree provides that those who requested to perform civilian service must do so within eight days of receiving the summons to serve military duty, thereby removing the right to change to civilian service after already being recruited. Further, on the basis of the new decree, appeals against a negative decision will not delay call-up, and thus those awaiting the results of such an appeal will have to do so from within the military.

Furthermore, there was no permanent body within the armed forces to apply for the granting of conscientious objector status, as recommended by section 5.2 of the PACE's Recommendation 1518.

Article 27a of the 2003 regulations already imposed restrictions on the right to carry out civilian service. It excluded *inter alia* people who have a license to carry weapons; who have been sentenced to criminal acts involving violence in the three-year period before submitting an application; who have applied for a license to carry weapons within this same three-year period; and members of hunting and rifle associations or whose work is to sell or repair weapons. In the 2005 decree these restrictions remained largely unchanged.

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<sup>11</sup> Based on Amnesty International, Serbia and Montenegro: A wasted year. The continuing failure to fulfil key human rights commitments made to the Council of Europe, EUR 70/005/2005, 22 March 2005, at <http://web.amnesty.org/library/Index/ENGEUR700052005?open&of=ENG-345>.

## KOSOVO<sup>12</sup>

**IHF FOCUS: decentralization; freedom of expression and the media; judicial system and independence of the judiciary; law enforcement: conditions in prisons; missing persons; freedom of movement; returnees and IDPs; inter-ethnic relations and accountability; ethnic minorities; property rights; international humanitarian law (accountability for war crimes).**

The overall political and security situation in Kosovo in 2005 continued the trend of further consolidation. This resulted in additional strengthening of democratic institutions and the rule of law. The on-going implementation of the “Standards for Kosovo”<sup>13</sup> significantly increased positive political dynamics and contributed to the crucial opening of the status issue. This progress was achieved only with the increased engagement of the Kosovo political establishment and UNMIK<sup>14</sup> under the guidance of the Special Representative of the Secretary General (SRSG) Soren Jessen-Petersen, and other relevant key international factors. These positive trends were nevertheless accompanied by expected serious difficulties.

The efficiency of the work of most Provisional Interim Self-Governing Institutions (PISG) of Kosovo – i.e., Kosovo domestic institutions – was further enhanced and their structure was expanded with the December 2005 establishment of two additional key ministries –the Ministry of Order and the Ministry of Justice. This was in compliance with the UNMIK policy of transfer of competencies to domestic institutions. So-called “Reserved Powers” of UNMIK and the SRSG remained in the area of foreign relations and security under UNMIK and KFOR respectively. UNMIK also retained the supreme authority over key issues of the two new ministries.

The main developments that characterized Kosovo in 2005 included the intense action with regards to in the implementation of the “Standards for Kosovo”; the opening of internationally mediated status negotiations for Kosovo between Prishtina and Belgrade; and the announcement of the rapidly deteriorating health of President Rugova in August, leading to his death in January 2006.

In the implementation of the “Standards for Kosovo,” the emphasis was put on the improvement of the situation of local Serbs and other minorities. The issue of “standards” was accompanied and closely interrelated also to the issue of decentralization, which was high on Kosovo’s political agenda throughout 2005. This was demanded by the government of Serbia and local Serbs, and in principle supported also by the international community as an issue of high priority. However, despite understanding for such demands, Albanians continued to remain suspicious of decentralization plans, fearing that the Serbian government could try to abuse this process to further a functional ethnic partitioning of Kosovo and creation of a Serb entity<sup>15</sup> within Kosovo, similar to the model of Republika Srpska in Bosnia and Herzegovina.

The opening of status negotiations for Kosovo between the governments of Serbia and Montenegro and Kosovo was decided by the UN Security Council in October 2005. It was the

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<sup>12</sup> Based on Kosovo Helsinki Monitor for Human Rights (KHM), *Report on Human Rights Situation in Kosovo in 2005*, and KHM periodic reports.

<sup>13</sup> “Standards for Kosovo” are a comprehensive set of concretely elaborated and internationally defined standards to be fulfilled in eight major fields: functioning of democratic institutions, rule of law, freedom of movement, return and integration of refugees and IDPs, sustainable economic development, (re)establishment of property rights, political and technical dialogue with Belgrade, and transformation of the Kosovo Protection Corps into an effective civilian emergency response organization.

<sup>14</sup> UNMIK is the acronym for the United Nations Interim Administration Mission in Kosovo.

<sup>15</sup> Territorial and political autonomy or a Kosovo Serb entity has been endorsed and adopted as official policy by the Serbian government and parliament. It is considered that it could potentially lead to permanent political instability in Kosovo and the surrounding region.

most important single development concerning Kosovo in 2005. The decision was based on the comprehensive report on the situation in Kosovo by the special envoy of the UN secretary general, Norwegian ambassador Kai Eide, whose assessment of the overall situation in Kosovo was conditionally positive, albeit relatively critical.

The unexpected announcement of the grave health condition of President Rugova in August caused serious concern and uncertainty among the Albanian population in Kosovo. Rugova had been an icon figure of the peaceful Kosovo Albanian aspirations for freedom and independence since the late eighties, and the head of the largest Kosovo party LDK. He was also part of the Kosovo negotiating team for the status issue. Rugova's death<sup>16</sup> raised fears of a potential escalation of tensions and destabilization of Kosovo, which fortunately did not happen thanks to the measured reaction of the Kosovo political establishment, the prompt election of the new president, Fahir Sejdiu, and a smooth transfer of power. The election of the new president gave new impetus to the process of implementation of the "Standards for Kosovo" – which had slowed down toward the end of the year – and preparations for the status negotiation process, which started in February 2006 in Vienna. This was all the more important because the UN Security Council quarterly report had assessed the progress in the decentralization process as insufficient especially in terms of improving the situation of Serbs and Roma minorities in Kosovo.

The comprehensive implementation of "standards" was once again reconfirmed by the international community as essential for the successful completion of the status negotiation process. The status issue raised major hopes for Kosovo Albanians and their aspirations for independence. In contrast, it caused equally strong uncertainty and fear among local Serbs who generally wanted to see Kosovo under the control of the Serbian government. These hopes and fears were also clearly manifested after the January 2006 ministerial level Contact Group statements, which elaborated its guidelines and principles for the resolution of the future status of Kosovo. Among them were also the political will of the majority population in Kosovo and securing regional stability.

Another serious problem was the continued boycott of the Kosovo parliament by the largest Kosovo Serb party, the so-called Serb List for Kosovo and Metohija (SLKM). Its policy was openly supported by the government of Serbia, including its call for boycotting the parliamentary elections in the fall of 2005. The SLKM maintained that Serb participation in Kosovo institutions would amount to mere window dressing and cover up the real situation of Kosovo Serbs. However, a smaller Serb party called *Povratak* (Return) moved away from this course. It accepted the offer of the former prime minister Haradinaj in January 2005 to end the boycott and its representative, Slavisa Petkovich, to become minister for returns in the Kosovo government.

However, the general Serb attitude among Kosovo Serbs was to stay out of the central Kosovo institutions and to maintain their parallel structures.

At the same time, the continued lack of security for Serbs and Roma, especially their freedom of movement, remained a major concern. The unsatisfactory security situation was also manifested by incidents of ethnically motivated violence. The lack of security and the separately functioning "parallel Serb society" in Serb enclaves<sup>17</sup> were cited by Serbs when insisting on ethnically based decentralization – a proposal unacceptable to Kosovo Albanians.

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<sup>16</sup> The KHM issued a statement on the occasion of the death of President Rugova.

<sup>17</sup> Enclaves thus continue to be an issue of concern reflecting the still intensely strained inter-ethnic relations in Kosovo and the related volatility. The KHM has noted that the uncertainty over the final political status of Kosovo has continued to seriously undermine the readiness of both Albanians and Serbs to genuinely reconcile and look forward to a common future in Kosovo.

Additional difficulties included the almost stalled process of return of internally displaced persons (IDP) belonging to minorities, primarily Serbs and Roma, to their homes in Kosovo, as well as the lingering issue of missing persons that continued to be a burden for both public and political life in Kosovo.

In addition, the economic situation remained bleak with an unemployment rate assessed at close to 60% of the overall work contingent. However, it was hoped that the favorable resolution of the status issue, the modern and internationally compatible legislation, new economic structures and the reactivated privatization process would provide a momentum for boosting the economy in Kosovo.

Prime Minister Haradinaj's term in office was short: he was indicted by the International Criminal Tribunal for the Former Yugoslavia (ICTY) as a war crime suspect in March 2005 and surrendered voluntarily to the court.<sup>18</sup> He appealed to his supporters to remain calm, which happened despite the very tense and volatile situation – also after an assassination attempt on President Rugova<sup>19</sup> that occurred in broad daylight in the center of Prishtina a few days later. Haradinaj was succeeded by his party vice-president, Bajram Kosumi, who, however, was not able to further the implementation of the “Standards for Kosovo” as efficiently as his predecessor. Nevertheless, the percentage of employed Serbs in Kosovo institutions in 2005 stood at over 10%, whereas the overall minority employment was at 16.5%.

The Kosovo Helsinki Monitor (KHM) underscored the necessity of vigorous implementation of the “Standards for Kosovo” especially after the promising opening of the status negotiations. In this context it maintained that top priority should be given to efforts to provide full protection and security for minorities and the consequent establishment of a genuine multi-ethnic Kosovo.

### **Decentralization**

Decentralization represented one of the main challenges faced by Kosovo in 2005. The variety of concepts and decentralization plans created a stumbling block for progress in this field during the entire year. The first version of a decentralization plan was adopted by Kosovo institutions in February. This anticipated, responding to Serb demands, also the establishment of decentralized pilot municipalities – as proposed by the Kosovo government and UNMIK and drawn up with expertise of the Council of Europe. They were to a considerable degree ethnically based. Two of them were to have Serb majorities: one in Grachanica, a Serbian enclave near Prishtina, and another in Partesh, an enclave in eastern Kosovo. However, Kosovo Serbs rejected this plan and opted for decentralization concepts put forward by the Serbian government, which provided for a virtually autonomous Serb entity in Kosovo linked territorially and politically to Serbia.

Kosovo Serbs also rejected a later amended plan of the Kosovo government and UNMIK, which envisaged the establishment of six new pilot municipalities. The amended plan was rejected on grounds that these municipalities would not have an overwhelming Serb majority. The issue continued to be negotiated in the Vienna talks as of February 2006.

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<sup>18</sup> The KHM issued a statement on the indictment and voluntary and responsible surrender and behavior of Haradinaj.

<sup>19</sup> The KHM issued a statement on the occasion of the assassination attempt on President Rugova.

## **Freedom of Expression and the Media**

Freedom of expression and media freedom were generally respected without restrictions. Following criticism of some of the major media outlets for having contributed to tensions by inflammatory reporting related to the March 2004 outbreak of ethnic violence, most Albanian media exercised a much higher level of professional and responsible reporting.

The media was considerably developed, with 12 daily and weekly newspapers (up from eight a year earlier), three nation-wide TV stations (including the most influential Kosovo public broadcaster, Radio and Television Kosovo, RTK) and a multitude of regional radio and TV stations. The law on the public broadcaster was adopted in 2005 following public debate, while all print media endorsed a press code on reporting standards.

Minority language programs made up 10% of the broadcast time on public TV and 12% on the radio, which was in line with the estimated 10% of Kosovo's minority population.

By the end of the year the law on the Independent Media Commission (IMC) was promulgated in parliament, as provided for in the Constitutional Framework of Kosovo. The process of appointment of the Council of Commission had not been completed at year's end and was contested by a number of independent media representatives. The Temporary Media Commissioner (TMC), an interim institution that had the role that the IMC was to assume, assessed that a number of the Albanian print media reported with a negative bias on minority issues, primarily those related to Serbs. This was the case also with Serbian-language newspapers (that were printed in Serbia and were available in Serbian enclaves in Kosovo) reporting about Kosovo Albanians.

- On 25 June, Bardhyl Ajeti, a prominent journalist of one of the major Kosovo newspapers, died of gun shot wounds he had sustained on 3 June: he was shot by unidentified assassins while traveling toward Prishtina from his home town of Gjilan. The Ajeti case was the gravest case of violence against a media representative in Kosovo in 2005.

## **Judicial System and Independence of the Judiciary**

The judiciary continued to be regarded as the weakest and most fragile of Kosovo institutions. It neither managed to live up to the nominal standards of independence (due to pressure from outside), nor did it manage to be efficient. A backlog of over 42,300 cases in civil courts, and attempts to intimidate witnesses and judicial employees reflected the weakness of the judicial system, as did lack of efficiency in dealing with organized crime, corruption and trafficking, and an insufficient crime clearance rate. The backlog could be attributed to the lack of professional local capacities and inefficient mechanisms of management and control.

A major structural development for the judiciary was the UNMIK approval to promote it from an UNMIK-led Department of Justice to a fully-fledged Kosovo Ministry of Justice at the end of the year. However, while the operational control of the Ministry of Justice will be vested with the PISG, the judiciary will remain part of the so-called reserved rights of UNMIK with the SRSG maintaining supreme authority over key decisions.

The establishment of the Ministry of Interior is expected to enhance the efficiency of the administration of justice.

The capacities of the Kosovo judicial system were supported by international judicial personnel which included, as of the end of 2005, 18 judges and 10 international prosecutors and other international legal experts. UNMIK was authorized to assign international judges

and prosecutors to any cases in which there was a reasonable doubt of impartiality or potential intimidation and especially in handling delicate inter-ethnic and other highly sensitive cases, such as war crimes and organized crime cases. They were dispatched in order to enhance the level of competence and efficiency of the judiciary, to avoid and remedy potential bias and partiality of the judiciary and to provide the necessary experience of a modern judiciary. While their number was judged to be too small for the challenge that the Kosovo judiciary faced, their presence, competence, objectivity and experience were indispensable for a more efficient functioning of the judiciary.

There were allegations of corruption, bribery and intimidation, especially in politically and inter-ethnically related court cases. Reports continued to be received of attempts to intimidate and influence the judicial authorities as well as witnesses. Killings of key witnesses in grave crime cases, especially those with potential political motivations or related to war crimes were also reported. In one such case, all municipal court judges withdrew from a case after receiving threats. It was clear that intimidation jeopardized the rule of law and the independence of the judiciary.

There were also over 300 licensed attorneys organized in the local bar association, the Kosovo Chamber of Advocates. UNMIK and the OSCE had established and continued to run the so-called Kosovo Judicial Institute (KJI) that was engaged in training judges and prosecutors.

Despite efforts taken to improve the freedom of movement of – also – judicial professionals, the parallel Serbian judicial system continued to operate. It remained integrated in the overall Serbian judiciary and its staff was funded and managed by the Serbian Ministry of Justice, in violation of Resolution 1244 of the UN Security Council. The shadow system had five Serbian-run courts and a district court of higher instance located in Kraljevo, Serbia. These courts employed about 35 judges and prosecutors.

## **Law Enforcement**

Despite continued efforts and improvements in 2005, law enforcement, along with administration of justice, continued to remain relatively fragile and presented one of the most serious challenges. The overall crime rate decreased by 10% in comparison to 2004. However, law enforcement and the rule of law were in general hampered by an insufficient capability and readiness to enforce legislation at all levels, starting from securing full freedom of movement for minorities all the way to fighting corruption and organized crime and other forms of violence.

According to official UNMIK police data, a high number of criminal acts against police officers in Kosovo was registered, both against domestic Kosovo Police Service (KPS) (533 cases) and UNMIK police officers (90 cases). Among these cases were two killings of KPS police officers, 10 attempted murders, and 57 assaults. During 2005 there was also a marked increase in attacks with explosive devices in comparison to the previous year: 107 registered cases of various types of explosions, i.e., 21% more than in 2004.

One of the most significant developments in Kosovo law enforcement in 2005 was the transfer of all operational authorities in the field of security and rule of law from UNMIK to the two new ministries within the government of Kosovo: the Ministry of Justice and the Ministry of Interior. The supreme authority of UNMIK in these two key areas, however, will be retained with respect to the most delicate cases (especially ethnically related cases). Gradually, the UNMIK transferred almost complete police authority and functions to the KPS.

KPS officers continued to receive basic training and further specialization in the OSCE-run Kosovo Police Service Academy in Vestrj. As of the end of 2005, the total number of OSCE-trained KPS police officers stood at some 7,500, bringing the number closer to the 8,000 to 10,000 estimated to be necessary to handle security matters efficiently in Kosovo. In addition, as of the end of 2005, there were about 2,150 international police officers in Kosovo. An additional 1,700 KPS officers were trained for riot control.

The percentage of minority representation in the KPS stood at 15.2, with over 20% of higher-ranking officers belonging to minorities. Particularly positive was the increased percentage of policewomen that moved close to 14%.

The lack of security was reflected also in some mafia-style high-profile assassinations (or attempts) of prominent public figures and key witnesses in major crime cases of ethnically and politically motivated crimes, including the assassination attempts on ministers and the president of Kosovo.

### *Crime Rates*<sup>20</sup>

The number of murders, killings and/or violent deaths remained the same as the previous year and stood at 62 cases (56 Albanian, 3 Serbs, 1 Bosnian and 2 unknown) – down from 72 in 2003. The ethnic distribution of the murder, harassment and intimidation cases was proportional to the population percentages. In the category of crimes against property, 85.4% of victims were Albanians and 6.4% Serbs. Among them were 257 cases of arson against Albanians, and 41 against Serbs. This indicates an over-proportional percentage of Serb as victims of arson.

The lack of efficient law enforcement resulted in considerable distrust among the population in the authorities' capability to ensure their security, especially that of Serb and Roma minority members. This in turn led to insufficient cooperation of the population with law enforcement because people feared possible revenge and retaliation.

The lack of efficient witness protection programs and a number of grave threats and casualties of some key witnesses of grave crime cases added to fears. In addition, there was a widely perceived problem of corruption in Kosovo relating not only to domestic but also to international officials in law enforcement.

### **Conditions in Prisons**

The network of prison and correctional facilities in Kosovo was comprised of five district prisons and detention facilities (Prishtina, Mitrovica, Peja, Prizren, Gjilan) as well as prison and correctional facilities in Dubrava near Istog (two units) and Lipjan (near Prishtina). All prison and correctional facilities were under the authority of UNMIK. The official prison capacity was 1,356 inmate places.

At the beginning of 2005, UNMIK handed over the complete management of detention centers in Kosovo to local officials, as envisioned by the policy of gradual transfer of competencies from the international administration to domestic Kosovo institutions.

Prisons, detention and correctional facilities generally met international standards, which could be verified by independent human right observers. Some long-term prisoners, however, complained of occasional harsh procedures and practices in the Dubrava prison facilities.

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<sup>20</sup> For details on crime rates, see UNMIK Police, MHQ Operations, Central Database Support Unit, 24 January 2006.

## **Missing Persons**

The issue of missing persons in Kosovo continued to have an impact on the overall political situation in 2005. The number of persons still recorded as missing as of 19 December 2005<sup>21</sup> stood at 2,464 (down from 3,192 one year earlier), out of whom 1,774 (72%) were Albanians and 690 (28%) non-Albanians, mostly Serbs.

The UNMIK Office for Missing Persons and Forensics (OMPF) continued its work on exhumations and DNA-based identifications of the human remains recovered. About 850 bodies were exhumed in mass graves in Serbia, most of them believed to be Albanians killed in Kosovo and transported and buried secretly in Serbia in order to conceal traces of war crimes. The known mass gravesites were in Batajnica near Belgrade, Petrovo Selo, Peruchac and others.

- On 21 April, the OMPF discovered the human remains of 13 people in a cave near Klina believed to belong to the Serb minority. On 27 May, human remains of 64 Albanians killed during the war by Serbian forces were identified. They had been buried in Serbia to conceal the traces of crime and were returned to Kosovo. On 9 August, human remains of another 84 missing Albanians were returned from Serbia to Kosovo.

In 2005, 560 sets of identified human remains were returned to their families by the OMPF, with 138 additional sets of remains identified but not yet returned. From the beginning of this difficult process 679 bodies had been identified and 300 bodies returned by the end of 2005. The stopping of the returns process during the winter caused a number of protests by the families who demanded their immediate return and opening of Serbian government files on missing persons. The enlarged photos of the missing persons were placed by the protesters and continued to remain for months on the fence of the Kosovo parliament as a bitter reminder of the tensions generated by the issue.

Unverified assertions that emerged in Serbia and Kosovo some years ago about an unspecified number of Albanian bodies having been disposed of by burning them in industrial furnaces in southern Serbia, persisted in 2005.

## **Freedom of Movement**

Freedom of movement, primarily pertaining to the Serb and Roma minorities, improved markedly in 2005 but remained significantly restricted. The freedom of movement of minority members was even more limited in the wake of incidents that were believed to be ethnically motivated due to additional fear for their safety. The same held true with regard to Albanians in the Serbian-controlled north of Kosovo or their other enclaves.

Due to curtailed freedom of movement, the availability of access to social services, education, and health care was additionally restricted.

Concerns about lack of security were fully legitimate and could only be alleviated and fully remedied with improvement of the overall political situation, including a fair resolution of the status issue.

Half a dozen inter-urban transport connections were established for the needs of minority communities, primarily Serbs, subsidized by the Kosovo budget. These connected the four large municipalities of Prishtina, Mitrovica, Gjilan and Prizren with sizable Serb

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<sup>21</sup> UNMIK Office on Missing Persons and Forensics, Statistical Report, 2005

communities. There were no reported incidents or intimidation attempts related to such transportation but such incidents continued to occur outside these organized transportations.

- On 5 November, a bus of Serb IDPs visiting their cemetery in Kosovo on All Souls Day was stoned.
- On 3 December, a rocket-propelled grenade was fired at a bus traveling from Belgrade to Prizren and the Bosniak minority area of Dragash. The grenade did not explode but only ripped through the bus and the 11 passengers (seven Albanians, three Bosniaks and one Serb) remained unhurt. There was another such attack one month later on 4 January 2006.

### **Returnees and IDPs**

The rate of return of IDPs and refugees belonging to minorities dropped further in 2005. Out of the UNHCR-estimated number of 225,000 IDPs after the war, most of them Serbs and Roma, less than 5% had returned by the end of 2005 and their overall number stood at 14,146. The total number of returnees in 2005 was 1,749, down from about 2,500 in 2004 and over 4,000 in 2003. Out of them, 725 were Serbs, 672 Ashkali, 230 Roma, and 123 Bosniak Gorani IDPs. The stall in the number of returns was attributed largely to concerns about the expected starting of the status negotiations and their final outcome.

The number was low despite government supported financial and organizational assistance for organized returns.

- There were organized returns of 16 Serb displaced families to Klina in central Kosovo in 2005, with housing and basic needs having been provided for them by the government. However, even these returns were not complete family returns as usually the family elders returned, apparently first to check out the new situation.
- In June the government of Kosovo allocated EUR 1.8 million for the building and reconstruction of 44 Serbian houses in the village of Zoqishte near Rahovec.
- On 4 July, UNMIK, NDP and the Kosovo Ministry for Returns signed a Memorandum of Understanding for facilitating returns of displaced persons and other refugees to Kosovo.
- On 17 November, a group of six refugees belonging to the Roma/Ashkali community returned for the first time and participated in the work of a task force on returns aimed at facilitating the return of an additional seven Roma families with 38 members from Macedonia.
- On 19 December, the Kosovo Ministry for Returns along with UNMIK and UNDP signed a document for a EUR 4.5 million project for organized returns of minority IDPs.
- On 20 December, 22 Serb IDP families were handed over the keys of their newly built houses in the village of Dresnik.

The question of usurped and/or in the meantime sold property of Serbs and minorities was also one of the important reasons influencing the rate of returns of Serb and other IDPs (see Property Rights, below).

## **Inter-Ethnic Violence and Accountability**

Despite several grave mafia-style assassination attempts and other violent incidents believed to be politically and ethnically motivated, the number of inter-ethnically related and ordinary crimes remained significant but lower than in 2005. This was a continuation of the downward trend that started after the March 2004 inter-ethnic violence as a result of a more determined international approach to enhancing security in Kosovo, especially concerning the protection of minorities.

The new determination was reflected in more efficient action on the part of the international and domestic police with regard to any potential dangers and in enhanced law enforcement, which was fully supported by public opinion and the political establishment. These measures were partly taken to improve the implementation of the “Standards for Kosovo,” especially pertaining to the protection of Serbs. This was set also as a precondition by the international community for the opening of the status issue of Kosovo.

During 2005, charges were pressed against 426 individuals suspected of having participated in the March 2004 violence. Of them 210 were convicted in the course of the year (including to long prison sentences), 110 cases were pending at year’s end, 12 were acquitted, and in 95 cases the charges were dropped. The majority of the cases were adjudicated with strong involvement of international judicial and law enforcement officials. Nevertheless, there was criticism that the Kosovo judiciary was not particularly efficient in processing the cases related to these incidents, which represented the most serious post-war ethnically motivated violence in Kosovo.

One year after the March 2004 violence, most of the destroyed and damaged Serb houses were reconstructed: 853 out of 897.<sup>22</sup> The issue of reconstruction of the damaged or destroyed Serb Orthodox churches, however, moved on at a much slower rate due to disagreements about their reconstruction as who would be in charge of the process.

In the course of 2005, some additional high-profile cases of suspected perpetrators of earlier ethnically and politically motivated-violence were arrested and/or brought to justice.

- On 7 April, the District Court in Gjilan under an international judicial panel concluded the trial against the 12 accused Albanians for the killing of the five-member Hajra family and sentenced them to imprisonment between six and 30 years. The Hajra family was machine-gunned to death in their car because the family father was implicated in collaboration with Serbian secret services. The family was killed in August 2001 and the trial started in November 2003. The defense called the process and the sentencing a politically motivated act against members of the former Kosovo Liberation Army (UCK).
- On 19 May, the same judicial panel convicted six Albanians charged with the killing of Slobodan Perich and his mother during the March 2004 ethnic violence.

Among the violent incidents that occurred in 2005 and were believed to be politically and/or ethnically motivated were the following:

- On 15 April, Enver Haradinaj, the brother of the former prime minister of Kosovo was shot and killed while driving in his car. As the incident occurred immediately after the indictment of former prime minister, potential acts of retaliation were prevented only due to calming words from Haradinaj himself during the funeral.

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<sup>22</sup> According to UNMIK and Kosovo government statistics.

- On 17 April, the head Prishtina office of the reformist party ORA of Veton Surroi was demolished by an explosive device. The perpetrators were not identified.
- On 11 May, an explosion demolished the uninhabited house of a Serb in Klokot, near Vitina. On 14 May, a powerful explosive device went off near the Serb Orthodox church in Vitina.
- On 17 June, two explosive devices went off in the vicinity of the house of a recently returned Serb family in Klina.
- On 4 July, a bomb planted in the car of the Kosovo Serb minister for returns, Slavisha Petkovich went off in the Serbian controlled north of Mitrovica. Petkovich declared a couple of days later that the head of the so-called Serbian National Council of northern Kosovo Marko Jakshich was behind the blast. The case remained unsolved at the end of 2005.
- On 11 September, three Serb officers of a KPS patrol were shot at while driving along the road from Ferizaj to Shtpce. One of them was wounded.
- On 4 November, an explosive device was thrown at the house of a Kosovo Albanian in the Serb-controlled north of Mitrovica.
- On 27 December, shots were fired by unknown perpetrators in the only ethnically mixed apartment building complex in the north of Mitrovica in what seemed to have been an attempt at intimidation.

## **Ethnic Minorities**

### *Conditions of Roma/Ashkali Minority in IDP camps*

The situation of Roma/Ashkali/Egyptian (RAE) minority continued to be poor despite – belated – domestic and international efforts to improve it.

The emergency camps that were established for IDPs immediately after the war, in Plementina, near Obilic, continued to function in dismal conditions. The conditions in the IDP camps in the Mitrovica area were even worse, especially in Zhitkovac.

The Plementina camp had been established to accommodate some 1,300 displaced minority members, a large number of whom were of the RAE minority. By the end of 2005, some 99 minority families (447 individuals) remained there. Due to the intolerable conditions in the camp, the UNHCR and the Kosovo government took measures to provide housing for the IDPs in the camp by building an apartment complex. As of early 2006, two social housing projects were underway, one in Obilich, in the immediate vicinity of the camp, with 36 flats, and one in Lipljan, consisting of 22 flats. The projects are funded by the Kosovo budget and supported by the European Agency for Reconstruction. It was believed that by summer of 2006 the Plementina camp would be closed and its IDPs would have been moved to the new housing projects.

The conditions of RAE camps of Zhitkovac in the northern part of Kosovo were even worse as these camps were situated on grounds contaminated by lead from the nearby Trepcha lead mine processing complex. After having conducted long overdue investigations into the camps' conditions, UNMIK, the WHO and the UNICEF warned that the lead levels in these camps were so high that “no amount of remediation of these sites can protect its residents,”

and called for the immediate relocation of the IDPs to a safer location. The UN agencies cited amounts of lead that are “highly toxic to humans,” with children being the most vulnerable.

The UN agencies have urged the RAE IDPs to move to the safe UN-run camp of Osterode. However, as of the end of 2005, the Roma IDPs from Zhitkovac resisted moving to another camp, demanding the return of their own land and houses, fearing that once relocated to another camp, the authorities would forget about them and their demands to return to their own homes.

- On 26 April, some 200 Roma living in lead-contaminated grounds of the Zhitkovac camps protested in the northern part of Mitrovica demanding that they be returned to their homes instead of being compensated for the loss of their property.

## **Property Rights**

The year 2005 saw significant progress in the return of property rights, which was acknowledged also by a number of international agencies: 99.4% of the residential property cases claimed had been adjudicated. However, a large number of agricultural and commercial properties remained illegally occupied.

The KPS and the UNMIK police fully supported the implementation of these adjudications of the UNMIK Housing and Property Directorate (HPD), commonly referred to as the HABITAT. This progress was achieved primarily due to the return of the Serb property illegally occupied by Kosovo Albanians after the war.

Such a rate of adjudication of cases could not be reached overall though. The backlog of other property related cases in the Kosovo courts rose to some 8,500 in 2005, as non-ethnic related civil cases continued to be received at a faster pace than they were adjudicated. The rate of repossession of illegally occupied property stood at 11.5% and the rate of voluntarily released property was 13.2%. These rates indicated the low level of civic respect for rule of law in this domain. The number of properties administered by the HABITAT was relatively stable and stood at some 6,500.

The phenomenon of usurpation of property remained present especially as pertaining to commercial property and agricultural land. It was present, albeit on a different scale, also in Serbian-controlled northern Kosovo, where Albanian property was adjudicated but only a fraction of adjudications were carried out. While the intake of Serb claims in Kosovo stood at about 30,000 cases, that of Albanians in Serb-controlled areas was about 1,500 cases. The latter pertained mostly to illegal occupation of the Kosovo Albanian property by Kosovo Serbs.

## **International Humanitarian Law**

### *Accountability for War Crimes*

The Kosovo authorities continued to fully cooperate with the ICTY and uphold international humanitarian law and accountability for war crimes. The UNMIK police and KFOR, along with the KPS, handled several highly sensitive cases of arrest and/or delivery of war crime suspects either to the Kosovo judicial system or to the ICTY. Some of the suspects were higher-ranking members of the former UCK. Many of these arrests and the ensuing trials were under charges of serious war crimes and crimes against humanity that had been committed before, during and after the war in Kosovo.

On 8 March, in the most sensitive and high-profile case of accountability for war crimes committed in Kosovo, the ICTY indicted the former prime minister of Kosovo, Ramush Haradinaj, along with former UCK officers Idriz Balaj and Lahi Brahimaj. Haradinaj voluntarily surrendered to the ICTY the day after having received the indictment for war crimes and crimes against humanity on 37 counts. His cooperative attitude along with his calls for peace and calm made it possible to hinder the escalation of protests in the already tense situation in Kosovo. On 6 June, the ICTY released Haradinaj temporarily to prepare his legal defense.

Other alleged war crime related cases included, for example, the following:

- Legal proceedings were continued against four former members of the Kosovo Protection Corps, among them also the zone commander, General Selim Krasniqi. They had been arrested on war crimes charges in February 2004. The case was pending at year's end.
- On 12 May, the District Court of Prishtina concluded the marathon legal proceedings against the so-called Kachanik group of former UCK officers on charges of war crimes and sentenced three of its members to prison sentences of six to eight years.
- On 22 July, the Supreme Court of Kosovo suspended the verdict the execution of the prison sentences handed down by the District Court of Prishtina on July 2002 to the so-called Llapi Group of former high UCK officers. They had been sentenced to up to 35 years imprisonment and had been serving their sentences for over three years. The Supreme Court also ordered the case to be retried.
- On 18 September, four local Serbs were arrested in the Serbian enclave of Grachanica near Prishtina on suspicion of war crimes against Albanian civilians in the village of Sllovi, near Lipjan, during April 1999.
- On 30 November, the ICTY acquitted Fatmir Limaj and cleared him, and Isak Musliu, from any charges of war crimes and crimes against humanity contained in the indictment that had led to Limaj's three-year detention and trial. Limaj was one of the most prominent former UCK commanders and later head of the PDK parliamentary fraction in the Kosovo parliament. The other co-defendant Haradin Bala was sentenced to a 13-year prison term.

## MONTENEGRO<sup>23</sup>

**IHF FOCUS: constitutional and legislative reform; civilian control over the armed forces; freedom of expression, free media and access to information; torture and ill-treatment; freedom of religion and religious tolerance; intolerance and hate speech; right to cultural heritage; property rights.**

The general political, economic and social situation in 2005, as well as democratic developments, failed to meet the expectations of the population in Montenegro. The issue of the political identity of Montenegro – i.e., defining the character of the future relationship between Serbia and Montenegro – dominated political discourse more than ever before, culminating in the question of whether or not a referendum should be held about the Montenegro's future status.

The uncompleted process of disintegration of the former Yugoslavia – including non-defined status issues and the incapability of both political leaderships and the population at large – continued to have a decisively negative impact on all reform processes. As most political energy was spent on the referendum question, other issues of crucial importance, such as promoting legal, institutional or social reforms, were left aside.

Two options on how to solve Montenegro's status were at the focus of political discussions: first, the reestablishment of Montenegro as a sovereign state, and, second, a model of a joint state composed of Serbia and Montenegro. According to opinion polls, the first option enjoyed a majority and was advocated by the governing coalition made up of the Democratic Party of Socialist (DPS), the Social Democratic Party (SDP) and the Citizens Party (GP), as well as predominantly ethnic Albanian parties and some NGOs.<sup>24</sup> This option promoted the idea of Montenegro as a civil state of all citizens regardless of their ethnic, national, or religious background.

The option of a joint Serbian-Montenegrin state was supported by a coalition of the Socialist People's Party (SNP), the Serbian People's Party (SNS), the People's Party (NS), the Democratic Serbian Party (DSS), as well as the Movement for the European State Union of Serbia and Montenegro and some other movements and organizations. This option was not clearly defined; its adherents supported various forms of unions, ranging from the "Greater Serbia" idea to a functional federation, or preserving the *status quo*, i.e., the union of Serbia and Montenegro based on the Belgrade Agreement of 2002. This model saw Montenegro as one of the Serbian states. The political coalition behind this option included the most faithful followers of the "Greater Serbia" policy represented by Slobodan Milosevic. It was also supported by the Liberal Alliance of Montenegro, which split into two fractions in mid-2005.<sup>25</sup>

According to the Belgrade Agreement, a referendum on the status of Montenegro should have been held three years after the agreement was signed. This did not happen, however, initially because the EU's interpretation of the agreement was that a referendum could be held three years after the adoption of the Constitutional Charter of Serbia and Montenegro – and not

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<sup>23</sup> Based on a report by the Montenegrin Helsinki Committee for Human Rights.

<sup>24</sup> The coalition was also supported by the Albanian national parties – the Democratic Alliance in Montenegro (DSCG) and Democratic Union of Albanians in Montenegro (DUA). Later the coalition was also supported by Liberal Party of Montenegro (LPCG) which was created after the disintegration of the former Liberal Alliance of Montenegro (LSCG). The coalition for independence is also supported by some movements such as Movement for Independent European Montenegro and some NGOs.

<sup>25</sup> For details of pro- and contra independence, see the full report of the Montenegrin Helsinki Committee.

after the signing of the Belgrade Agreement. This view *de facto* supported the opponents of the referendum. On the other hand, the EU also supported the delaying of direct elections to the parliament of Serbia and Montenegro, thereby supporting pro-referendum forces.

At the end of the year it became obvious that the referendum was inevitable, particularly after the international community changed its attitude and put aside its objections to holding a referendum. At that point, international actors – e.g. the Council of Europe’s Venice Commission and the OSCE/ODIHR – became involved in the process. The Venice Commission issued its pro-referendum opinion and recommendation in December 2005. From that moment onwards, the main issue no longer was whether a referendum should be held or not but rather how it should be held and with what consequences.

The functioning of the institutions at the level of the union, the state of Montenegro and local administration remained in the shadow of the referendum issue, thereby hindering reforms and contributing to the failure of these institutions to fulfill their obligations regarding human rights and the rule of law.

During 2005 it became clear that Serbian authorities had established relatively efficient control over the union’s institutions, virtually transforming them into Serbian institutions. Serbia controlled the three key ministries of the union – foreign affairs, defense and human rights – which functioned virtually as if they were ministries of the Republic of Serbia. In violation of the Constitutional Charter, which prescribed a biannual change in the ministries (they should have been led by Montenegro in 2005) no change took place in 2005. In addition, another violation of the Constitutional Charter was committed by appointing Zoran Stankovic the new minister of defense; as an officer, he should not have been eligible for that office.

The authorities at union level created serious obstacles to furthering human rights. Many important international human rights instruments were not ratified despite the fact that deadlines set by the Council of Europe upon Montenegro’s accession had long expired. Many urgently needed reforms, including placing the military force under democratic civilian control, had essentially not started by the end of 2005. In addition, the union army was even directly used to destroy Montenegrin cultural heritage, and some army structures, particularly the secret police, were accused of preventing cooperation with the International Criminal Tribunal for the Former Yugoslavia (ICTY).

Despite all the above-mentioned obstacles, there was some progress in the field of human rights, especially with regard to legislation. A large number of important laws were passed and international standards on human rights and fundamental freedoms were incorporated in them. This included the Law on the Police, the Law on the National Security Agency and especially to the Law on Free Access to Information. However, the necessary constitutional reform was still to be launched to harmonize the Constitution of Montenegro with the Constitutional Charter and, even more importantly, to move away from the previous non-democratic political system. At the same time, however, a number of very important laws were not adopted, including a law on minority rights, anti-discrimination, barristers, and pro-bono legal aid, and a law on petty offences. In addition, police conduct improved markedly after a new law regulating police activities came into force in April.

Moreover, the already adopted laws, the European Convention on Human Rights and Fundamental Freedoms (ECHR) as well as many other ratified international instruments were not adequately implemented. While legal provisions concerning freedom of expression and the media were improved, the improvements were not put into practice. In contrast, the criminal insult, libel and defamation provisions continued to be applied to obstruct legitimate critical reporting.

Judicial reform slowed down in the course of 2005 and numerous complaints were received about the operation of courts. On a positive note, the former military judiciary that was co-responsible for mass and systematic human rights violations was finally abolished at the beginning of 2005. Nevertheless, the process of dealing with serious war crimes did not move forward and many other crimes remained unsolved as well.

Intolerant and discriminatory policies by some local authorities, and even open hate speech, gave rise to serious concern, especially in the municipality of Herceg Novi, which took measures to restrict the freedom of religion and belief of its inhabitants.

Montenegro's economic situation improved somewhat during 2005, with tourism in particular growing rapidly. The privatization process continued intensively, with concern voiced about incidents of manipulation and the lack of transparency. Nevertheless, salaries remained low, a large number of people lived on the verge of poverty and about one third in poverty.

General political developments were characterized also by permanent attempts by the opposition, with support from officials in Serbia, to annul the results of major changes that had taken place in 1997 and 1998, including rejecting "Greater Serbian" nationalistic war projects and cooperation with the ICTY.

## **Constitutional and Legislative Reform**

### *Constitutional Reform*

The Council for Constitutional Issues was established in 2004 and it produced one initial document on which the Venice Commission gave its opinion. Subsequently, however, the council's work came to a standstill. Politicians announced from time to time that work on constitutional reform – as provided by the Belgrade Agreement – was underway but they also claimed that due to the undecided referendum issue it was impossible to submit constitutional reform to a regular parliamentary procedure.

The Constitution of Montenegro needs to be harmonized both in order to bring it into line with the Constitutional Charter and to take move away from the former non-democratic system in an adequate legal manner. The current constitution was passed in 1994 and was from early on problematic in terms of legality and legitimacy as it was passed within the framework of the realization of the "Greater Serbia" project and was inspired by the former communist system. As a result, the constitution fails to provide protection for fundamental human rights and freedoms as provided by international treaties.

### *Legislative Reform*

During 2005, several important laws were adopted, including the Law on the Police, the Law on the National Security Agency and the Law on Free Access to Information (see Freedom of the Media, below). While these laws represented a step forward compared to previous legislation, they were not completely in line with international standards.

The Law on Police and the Law on the National Security Agency do not provide for full civilian control over the military forces. The Law on the Police sets forth the establishment of a body to oversee police work and prescribes participation by elected representatives of civil society. However, this mechanism is poorly planned. For example, the election procedure for civil society representatives is inadequate, enabling manipulation and appointment of persons favored by the government, thereby watering down the body's independence and impartiality. This is especially important in light of the fact that Montenegro has more than 3,500 NGOs, a

number of which have actually been established by the government representatives or people close to the government, and which are therefore not genuinely non-governmental.

The adoption of other important legislation was still pending at year's end, including that on minority rights, anti-discrimination, work of barristers, classification of information, and a law on petty offenses.

### **Civilian Control over the Armed Forces**

No significant progress was made in the reform of the armed forces, in particular of the different structures of the army's secret services.

The armed forces remained outside civil and democratic control and some parts of the secret services acted completely outside any system of control, either independently or to the benefit of informal anti-Hague lobby. The reform of the military force is essential also due to the historical burden they still bear as part of the Serbia-led army that served the "Greater Serbia" project and committed war crimes and human rights violations. A reform, however, will be impossible without a process of facing the past – which has so far not happened in Montenegro.

The ICTY accused on several occasions the military forces, particularly the secret police, of obstructing its cooperation with the union of Serbia and Montenegro. According to the ICTY, army structures prevented arrests of indicted war criminals, particularly the indicted general, Ratko Mladic.

A series of other important incidents also showed that the armed forces had not cut its ties with the past. One of them was the "Florist's affair," during which a luxurious apartment in Belgrade was given to the family of an ICTY convicted war criminal, General Radislav Krstic, sentenced for participation in the Srebrenica genocide. In another case, the military forces, claiming to operate at the request of the Serbian Orthodox Church, intentionally destroyed Montenegrin cultural heritage in Rumija in July (see Right to Cultural Heritage, below), and were involved in other incidents in which they appeared to act at the service of the Serbian Orthodox Church. A financial and possible corruption scandal discovered within the Serbian-Montenegrin Ministry of Defense also suggested an intention on the part of the Serbian government to establish control over the Serbian-Montenegrin army and prevent it from being placed under civil control.

Evidence emerged during 2005 that that military secret police had established some media outlets and kept them under their control. According to this information, the *Dan* daily and the Elmag radio and TV were set up for this purpose during the time of Prime Minister Zoran Djindjic.

The failure to place the army under civil control had a negative impact also on other reform processes and represented a danger for the democracy-building measures and human rights.

### **Freedom of Expression, Free Media and Access to Information**

Freedom of expression, media freedom and access to information were regulated mainly by the Constitution of Montenegro, the Law on Radio Diffusion, the Law on Public Radio Diffusion Services, the Criminal Code, and the Law on Obligation Relations. Some legal provisions regulating media freedom (e.g. the Law on Social Information System) dated back to the communist era and were completely incompatible with international standards.

At the end of the year the Law on Free Access to Information was adopted as a result of a long preparatory process involving representatives of the civil sector and the government, as well as with support from international experts. The original text of the draft law – a compromise – was acceptable from the human rights perspective but it was weakened by the fact that the government structures showed lack of capacity and willingness to genuinely cooperate with civil sector. The adopted law contains several serious deficiencies such as unacceptable exemptions from free access to information, contradictions with other laws, which factually lead to an even wider scope of exemptions, and poorly formulated harm test (i.e., with regard to harm that the disclosure of information might cause). In addition, due to a legal loophole in this new law, other, old laws could also be applied with regard to access to information. An additional problem was the fact that Montenegro did not have a Law on Classified Information.

Media laws that were adopted five years ago were generally in line with international standards, although some of their provisions fell short of them. The problematic provisions regulated the election of members of key bodies of radio diffusion services, particularly the Council of Radio Diffusion Services. While the law provides that persons holding no political offices are eligible, it fails to define criteria for their selection and the whole election process is easily subject to manipulation – which has proven true in all elections of these bodies so far. For example, the election of two members to the Council of Public Service Radio TV Montenegro, which started at the end of 2005, turned into a political farce. This process showed that the efforts taken to free Public RTV services from the influence of political parties again failed.

In addition, some local RTV services had not been transformed into public outlets in accordance with the law, including Radio Ulcinj. Also, TV Budva had not managed to harmonize its operation with legal regulations and free itself of strict former political control even though there were local elections in Budva and a change of local authorities.

The journalists associations adopted a code of ethics, which generally meets international standards, however, the code does not provide for a self-regulation mechanism. The associations tried to solve the problem by establishing an NGO to take on this task, which, however, did not manage to start operating.

### *Criminal Defamation*

Attempts to reform the criminal code provisions pertaining to defamation, insult, violation of the reputation of a state, flag, coat of arms and national anthem failed. The Montenegrin criminal code did not provide for imprisonment for these acts but imposed excessive fines that ranged from EUR 1,200 (simple insult) to EUR 14,000 for defamation in the media, and EUR 8,000 to the maximum of EUR 100,000 for the most serious form of defamation with serious consequences. If the fine was not paid it could be turned into a prison sentence, with a maximum term of more than six months. Such high fines and the existence of a crime of defamation of states, international organizations and state symbols, are *per se* in violation of international standards. Criminal charges for defamation and insult could be brought up privately, but in some case also *ex officio*.

Apart from criminal procedures, it was possible to instigate litigation for compensation for damages in defamation and insult cases. There was, however, some confusion in the implementation of these provisions at courts, which, in addition to the Law on the Media, also applied the Law on Obligation Relations to such cases. These two laws regulated the matter in different ways in some aspects.

A considerable number of defamation cases were initiated in 2005, particularly by public officials or politicians. The Montenegrin Helsinki Committee continued to observe about 30 defamation cases before different courts. It noted that the trials were characterized by lengthy proceedings that usually stretched over many years and in many cases the first-degree verdicts were overturned by higher courts and remitted to the first-degree court – sometimes on several occasions. This had a negative affect on lower courts, leading to a practice of self-censorship.

One high-profile case with wider implications was the following:

- The Regional Water Supply (a publicly owned company) and its director Predrag Bjelobrkovic sued Don Branko Sbutega, a priest of the Roman Catholic Church in Kotor, for criminal defamation after Sbutega had criticized in several media outlets the water supply company and its director for human rights violations in the so-called Lovanja case.<sup>26</sup> The charges were brought on 12 December 2003 but the case was still pending at the end of 2005. Sbutega had asked the court to reject the charges on the ground that the plaintiffs were not private persons but persons of public law and as such had no right to bring charges under the criminal code. In addition, he said he had only criticized a company that was financed from public funds. On 25 April 2005, the first instance court found Sbutega guilty and fined him EUR 2,400, claiming that the fine could be turned into a prison sentence of 60 days. This verdict, however, was not in accordance with Montenegrin laws and international standards.

### **Torture and Ill-Treatment**

Visible changes in police conduct were observed after new legislation regulating police activities came into force on 27 April 2005. Fewer complaints about alleged possible misconduct were received, including about ill-treatment or torture. Nevertheless, one high-profile case in particular continued to give rise to concern:

- On 30 August, Slavoljub Scekcic, the head of the General Crime Department, was shot dead in front of his house while on his way back from work. His killing shocked the population and bore the marks of organized crime in all aspects. The Montenegrin police launched a large-scale investigation in order to find the murderers and those who had ordered the crime. As part of the investigation, Judge Hamid Ganjola ordered that the detention unit in the Spuz prison be searched. The order was carried out by a special police unit that, according to media reports, specifically looked for a mobile phone card that had been used to communicate between persons suspected of the murder of Scekcic. During the search the police failed to follow the provisions of the Law on Criminal Procedure and other legal regulations, thereby resorting to violations of the rights of a number of detainees. Specifically, the special police unit used excessive physical force, which appeared to go well beyond the necessary, justified and proportional use of force, according to the Montenegrin Helsinki Committee. Several detainees were injured during the police operation – some sources cited 18 persons – many seriously enough to require emergency care. For example, Damir Mandic, who was accused of the murder of Dusko Jovanovic (the owner, director and the editor-in chief of the *Dan* daily) was beaten on this occasion. As a result, a high court judge in Podgorica refused to continue the judicial proceedings against Mandic, citing, among other reasons, his illegitimate beating by

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<sup>26</sup> Don Branko Sbutega claimed that the construction of the waste disposal site in Lovanja, near Kotor, violated the property rights of citizens and the Catholic Church, which had title to part of the land. In addition, some media reports implicated the government in legal speculations to secure funding from the World Bank for the construction.

the police. The police at first denied that any illegitimate force had been used and the minister of police ordered an investigation. State Prosecutor Vesna Medenica promised that all policemen who had broken the law would be punished. Judge Ganjola also protested the police brutality. It appeared that the police behavior was motivated by solidarity with the murdered colleague and represented a collective revenge act by the police against the criminals.

### **Freedom of Religion and Religious Tolerance**

Practices by the government and local authorities violated the right to freedom of religion or belief. The situation even deteriorated in some aspects compared to the situation a year before.

Despite many requests, Montenegro failed to draw up a new law on the legal status of religious communities. The deadline set by the 1992 Law on the Enforcement of the Constitution for passing a new law expired more than ten years ago but still in 2005, religious freedom issue was regulated by a law from 1977, the former SFRY era, which was completely outdated and largely incompatible with international human rights standards.

The authorities continued their biased policy that favored the Serbian Orthodox Church in Montenegro, which had *de facto* state church status. While the Constitution of Montenegro obligates the authorities to treat all religious communities in an equal manner, the government vested the Serbian Orthodox Church with a special legal status and other privileges. Thus, for example, it did not require that church to register in accordance with the law, which prescribes obligatory registration to all other religious communities. The issue was taken up in parliament on many occasions by the Citizens' Party but the government failed to take any steps to remedy such unequal treatment. The Serbian Orthodox Metropolitan Amfilohije openly declared that Montenegrin laws did not apply to him but only those of God did.

In a similar vein, the government failed to take measures to put an end to the unacceptable behavior of the Serbian Orthodox Church toward other churches, religious communities and organizations in Montenegro. During 2005, the Serbian Orthodox Church and particularly Metropolitan Amfilohije intensified their political activities making its mission in Montenegro reminiscent of that of a political party. Local and international human rights monitors accused it of being part of the anti-Hague lobby and of hiding indicted war criminals, including Radovan Karadzic, in its religious buildings. These accusations were reiterated by the chief prosecutor of ICTY, Carla del Ponte.

The Serbian Orthodox Church also played a central role in the efforts to assimilate Montenegrins with Serbian national and cultural identity, often going so far as to deny Montenegrin cultural and political identity and engaging in pro-Serbia politics. Within this framework, the church continued its policy of deliberate destruction of Montenegrin cultural heritage, sometimes resorting to military measures, without any attempts by the government to hinder them (see Right to Cultural Heritage, below).

Adherents of the Montenegrin Orthodox Church continued to face problems in gaining access to Orthodox church buildings in Montenegro. Serbian Orthodox religious leaders prevented them from using these buildings for worship despite the fact that the churches had been built jointly by Serbia and Montenegrins. Apart from this, the priests and believers of the Montenegrin Orthodox Church were exposed to blatant hate speech, which remained unpunished. This kind of hate speech was also practiced by some members of parliament, particularly from the NS, SNS, and the DSS.

During 2005 the Montenegrin Helsinki Committee received complaints also from members of other religious communities. Thus, an attack on the buildings of the Muslim Religious Community in Bar was reported and remained unresolved. There were several complaints from Jehovah's Witnesses as well as members of the Adventist Church about various forms of harassment against them; one case concerned the destruction of a building owned by Jehovah's Witnesses and preventing them from rebuilding it. The case remained unresolved although it had been pending for many years already. The case on the ownership of the St. Petka church was finally resolved – a court decided to restore the traditionally shared ownership rights of the Catholic Church and the Serbian Orthodox Church to this building. However, the execution of the court decision was prevented by the Serbian Orthodox Church and the authorities failed to insist on a legal solution to the issue.

Some local authorities, such as those in Herceg Novi, violated the right to freedom of religion or belief.

- The local assembly in Herceg Novi decided to make a religious celebration of the Serbian Orthodox Church an obligatory municipal celebration for all citizens in spite of the fact that Herceg Novi is a multi-confessional community and not all inhabitants are Orthodox. A large number of citizens complained to the Montenegrin Helsinki Committee citing discrimination on ethnic and religious grounds. The committee filed a complaint with the Constitutional Court, which ruled that the decision of the municipality violated human rights and was therefore unconstitutional.

### **Intolerance and Hate Speech**

While modest progress was made to decrease widespread intolerance, discrimination and hate speech toward minorities, the situation in Montenegro remained unsatisfactory and local monitors feared that any escalation could lead to a reverse with old models of national, ethnic, and religious intolerance and discrimination.

In addition to domestic political groups such as pro-Milosevic opposition parties and associations advocating extreme "Greater Serbian" nationalism, Montenegro was also exposed to negative influence from the outside, particularly from Serbia. The Serbian Orthodox Church played an important role in promoting nationalism and intolerance.

The aim of these forces appeared to be to prevent and discredit progress in inter-ethnic and inter-confessional relationships and tolerance in general. These groups targeted especially those Montenegrins who were committed to the Montenegrin national identity and opposed to any kind of forced assimilation of in Montenegro. The government and others were also attacked for furthering good relationships with the neighboring countries. This was also seen as a part of a wider anti-Serbian policy of the governing groups in Montenegro.

#### *Hate Speech*

Hate speech remained commonplace in a number of media outlets. It was particularly present in Elmag TV, the *Dan* daily, the *D Review*, and the Voice of Boka, among others, and in many Serbian printed media sold in Montenegro.

The targets of hate speech were ethnic, national and religious minorities, including the Montenegrin Orthodox Church, and ethnic Montenegrins who had publicly committed themselves to Montenegrin traditions.

Of particular concern was hate speech present in the parliament. Many MPs of the parties that advocated extreme nationalistic views (such as the SNS, NS, DSS, etc.) took advantage of the

fact that parliamentary sessions were broadcast on public Montenegrin TV and radio, and intentionally included hate speech in their debates. What is more, the leadership of the parliament failed to take adequate measures to stop this kind of hate propaganda. Moreover, defamatory parliamentary speeches were often directed against ordinary citizens who did not have any possibility to defend themselves or, in the worst cases, to sue the MPs who enjoyed absolute immunity for speeches delivered in parliament.

The Montenegrin Helsinki Committee was one of the targets of hate speech in parliament.

- At the end of September, Predrag Andjelic, MP from Herceg Novi, used his whole speech to criticize the Helsinki Committee and its president. Although the speech was entirely outside the agenda of the session, the chair refrained from bringing the speaker back to the issue.

Hate speech was also common in local municipal assemblies, particularly in Herceg Novi.

- In addition to trying to introduce a compulsory celebration of Orthodox traditions (see Freedom of Religion, above), the municipality rejected a proposal to place an inscription on a house where Leopold Mandic, a well-known Catholic priest and proponent of dialogue between different religions was born. Pro-Serbian parties that made up the majority in the municipal assembly rejected the proposal citing the fact that Mandic was Catholic. Open hate speech was used by many representatives during the session.

Several persons who considered themselves victims of hate speech, insults and defamation initiated court procedures.

### *Anti-Semitism*

While no anti-Semitic incidents were recorded in 2005 by the Montenegrin Helsinki Committee, anti-Semitic literature was readily available in bookshops. An increase in literature was monitored during the summer season in temporary street bookstalls on the coast. Many such books were published by the IHTUS publisher, a Christian publishing house in Belgrade.

In many cases, additional anti-Semitic texts were added to books such as *The Protocols of the Elders of Zion*. Other widespread anti-Semitic books included *Criminals of Mankind – the Hidden History of Judean Villains*, *The Judean Ritual Murder*, *Judean Bankers and the Rise of Hitler*, etc., written by Bishop Prince Nikolaj Velimirovic.

### **Right to Cultural Heritage**

During 2005 problems concerning the preservation of tangible<sup>27</sup> and intangible<sup>28</sup> cultural heritage grew increasingly. The basic problem started in the early 1990s and gradually grew more serious with the government and other public institutions showing a lack of capacity or political will to tackle the problem.

In the course of 2005 the problem escalated to the extent that it could be characterized as a systematic and deliberate destruction of cultural heritage in Montenegro. These developments – and the inactivity on the part of the government – were heavily criticized not only by human

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<sup>27</sup> Including building, monuments, historic places, etc.

<sup>28</sup> Include traditions, customs and practices, beliefs, languages, artistic expression, etc.

rights organizations but also prominent individuals as amounting to clear violations of domestic laws and UNESCO conventions, among other international standards.

In many cases, officials of the Serbian Orthodox Church and its organizations in Montenegro were involved in the incidents. However, according to the Montenegrin Helsinki Committee, it was reasonable to believe that the political leadership in Serbia (as well as its para-governmental institutions) stood behind some acts of intentional destruction of cultural heritage in Montenegro. These incidents included, for example, the destruction of the archeological sites of Doclea, Martinicka Gradina, and Zlatica.

The Serbian Orthodox Church attempted to gain sole ownership rights of some churches from the early Christian period although they belonged to the churches of western type and to which the Serbian Orthodox Church enjoyed no legal property rights. The most serious of such cases occurred on the mountain of Rumija.

- On 18 June, a union army helicopter unit (SiCG) damaged an unexplored archeological site on the top of the Rumija mountain and erected a Serbian Orthodox church building on the site. The archeological site was estimated to be about 2500 years old, containing a grave of a high-ranking person from the Illyrian period. Rumija is the highest mountain on the Montenegrin coast, near the town of Bar. The army operation at the site was in violation of both local and international law.

Apart from the destruction of tangible heritage, there was also intentional destruction of intangible heritage.

- For hundreds of years, religious ceremonies have been conducted by local people at the archeological site of Rumija. The participants belong to different ethnic, religious and cultural communities that have existed in the area for centuries. Experts believe that these rites date back to the Illyrian times but were modified by Christianity. The rites are an important part of tradition and culture shared by local people and valued by many as one of the most important features of local traditions. The old local tradition was interrupted by erecting a Serbian Orthodox church on this site and declaring it sacred by Serbian Orthodox standards on 31 July. What is more, the Orthodox ceremonies were used by participants to demonstrate support for indicted war criminals – they were wearing T-shirts with pictures of Ratko Mladic, Radovan Karadzic, and Slobodan Milosevic and holding placards with slogans such as “This is Serbia.” All this showed clear political, pro-Serbia, intentions behind the incident and constituted a blatant insult against the cultural and religious coexistence in the area. Minority members in Montenegro perceived this act as a direct attack on them and as a message that in Montenegro they would not be accepted as equal citizens.

The immediate reaction from Montenegrin authorities was entirely inadequate: first the Ministry of Culture and the Media and the Republican Institution for the Protection of Cultural Monuments remained passive, claiming that they were not competent to address the issue. Courts did not react either, citing lack of evidence that criminal acts had been committed. The Ministry of Environmental Protection and Physical Planning only stated that the church building was illegal and ordered it to be removed – which did not happen.

The only person who suffered some consequences was the head of the army, Dragan Paskas, who was removed from the position by the Supreme Council of Defense, because of his responsibility in the military operation in Rumija. The case was still pending as of early 2006.

In the wake of the Rumija incident, however, the Montenegrin government eventually took some action: the Ministry of Culture and the Media issued in September a report about the

cultural heritage in Montenegro and submitted it to the government. At the end of October, the government concluded that the acts of destruction had stopped and that the Montenegrin cultural heritage was protected.

### **Property Rights**

There were serious problems regarding the protection of private property and the peaceful enjoyment of possessions.

Moves to implement the Law on the Return of Expropriated Property Rights and Compensation (concerning property expropriated in the decades following WWII) did not make desired progress. Only 237 of the 6,640 submitted requests were decided on and compensation was provided. In 25 cases only the return of property was decided

The legislation pertaining to property rights remained confusing and contradictory, in particular because the Law on the Basis of Property and Legal Relationships stems from the communist era and bears the mark of a negative approach to private property. In addition, the Law on Expropriation, which regulates the limits of the right to property, contains provisions that are incompatible with international standards.

A particularly problematic provision was the one that allowed the state or local authorities to take custody of the expropriated property already before they had paid off the former owner. This practice placed a private owner in a disadvantaged position. In some cases observed by the Montenegrin Helsinki Committee, local authorities even took the private property without starting an official expropriation procedure.

- Local authorities of the Podgorica municipality demolished a garage belonging to Nikola Pejovic without any official proceedings as prescribed by the law. The garage had been built in 1965 based on a permission issued by local authorities and it was registered in the cadastre as Pejovi's ownership. Local authorities and the mayor of Podgorica confirmed to the Helsinki Committee that they had not started the process of expropriation, justifying their illegal action by a change in the detailed town plan. They offered to pay compensation to the owner but the sum was unacceptably low.