

Serbia and Montenegro

Serbia¹

IHF FOCUS: freedom of the media; judicial system and independence of the judiciary; fair trial, torture and ill-treatment; conditions in prisons; national and ethnic minorities; intolerance, xenophobia, racial discrimination and hate speech; international humanitarian law (accountability for war crimes).

The outcome of the early parliamentary election in late December 2003 and, before it, of the third, failed run for the Serbian presidency, opened eyes to the misconception about Serbia's democratic potential and elucidated the political scene that had been rather blurred up until then. The Serbian elite's endeavor over the past twenty years to create a new cultural model—marked by totalitarian thought—still figured as the biggest obstacle to democratization. Nationalism did not disappear in “post-October 5”² Serbia but just appeared in a new form. It was easily detectable, however, whenever the issues of facing the recent past or a reformist breakthrough were on the table.

The past has been rationalized—ranging from negation of crimes and the “Greater Serbia project” to blaming the communists for everything. Military defeat and past developments that never resulted in a bottom line, persistence in the “Greater Serbia project,” identity crisis and overall frustration all revived traditional conservativeness. Serbian conservativeness was characterized as follows: an absolute lack of economic thought, reluctance to make economic progress, absence of political pluralism, democracy being perceived as anarchy, and xenophobia. This is why today's Serbia moves about without a definite destination, without a vision, unwilling to face its recent past, wars and war crimes, and without the idea about how to build its social system.

The Democratic Opposition of Serbia (DOS) as a heterogeneous coalition (composed of anti-war and radically nationalistic parties alike) had just one common denominator: to oust Milosevic. This explains its stumbling when it came to making fundamental political decisions and to steering Serbia's reformist course. Over the past three years, Serbia's political scene was flooded with scandals that not only weakened political parties, but also turned the very idea of a parliamentary system senseless. And yet, a reformist wing emerged from the coalition, strategically planned and promoted by Premier Zoran Djindjic. It was strongly supported by the international community, became rather efficient, managing even to push forward Serbia's relations with its neighbors—a fact that greatly influenced the region's dynamism. However, Djindjic's assassination not only blocked or slowed down the entire reformist endeavor, but also dealt a deathblow to such an alternative trend.

Unwillingness to face the past obstructed the establishment of a much needed moral backbone for society. Commercialization and vulgarization of the International Criminal Tribunal for the Former Yugoslavia (ICTY) in The Hague made it possible for the “defeated forces” to consolidate their power and make a political comeback. The fact that Milosevic and Seselj figured on two candidates' lists for the early parliamentary election of 23 December 2003, perfectly fit into such perception of the recent past.

An unrealistic assessment of international developments and of the situation in the region, a misguided perception of neighbors and a faulty self-perception have persisted though the overall discourse and have taken another form. True, the “Greater Serbia project” was routed but Milosevic's logic won: the multiethnic and multicultural fiber of the Balkans

¹ Based on the *Annual Report 2003* of the Helsinki Committee for Human Rights in Serbia.

² Referring to the 5 October 2000 uprising that resulted in the ousting of Slobodan Milosevic.

was torn asunder, and it will take decades to recover. Milosevic's logic emerged victorious because of, among other things, the delayed reaction of the international community, its failure to grasp the process that led to disintegration of ex-Yugoslavia, and the fact that the very existence of Republika Srpska (RS) still weighs down the completion of the same process. For, by establishing RS, the international community has practically sanctioned the war crimes and genocide that are now in the docket before The Hague Tribunal.

Along with a non-existent democratic tradition and lack of democratic accountability, poverty is the stumbling block in the way of true democratization in most of the Balkan countries. It boils down democracy to a meaningless form. An increasingly unified Europe is permanently running ahead of the Balkans—the Balkans can simply not attain European standards which are growing higher and higher. Apparently, the Balkans lack the enlightenment that would make it possible to accept European standards. The demands, such as allowing a free market and the rule of law that the Balkan societies are faced with will do nothing but further radicalize them, as they are incompetent to genuinely modernizing. Therefore, the fundamental transformation of these societies requires “historical patience.”

Serbia has always been in latent conflict with Europe. It seems that this conflict is now stronger than ever before. Its resistance to the world, particularly to the part of it that lends it a helping hand, is twofold: Serbia feels that Europe should help, but it wants to have the final say about how Europe should do it.

In addition, in an attempt to further work its way up, the Serbian elite relies on a possible conflict between Europe and the United States (US), and on Serbia's indisputable geo-strategic significance. Serbia's inability to come face to face with itself results in both apathy and rationalization. So, some circles, particularly those within the Serbian Academy of Arts and Sciences, are nowadays claiming that Yugoslavia should not have been destroyed at all. The academician, Djuretic, is of the opinion that “the Yugoslav option is the only way out for all ex-Yugoslav nations.”

Freedom of the Media

The continuing tension between politicians and the media further intensified in 2003, and was marked by overt pressure on the media from various interest groups and institutions.

The appointment of members to the Broadcasting Council gave birth to fierce disputes between authorities and the media. Members of the council are invested with significant power in issues dealing with broadcast media. Representatives of NGOs and the media argued that the electoral procedure in the case of two council members had been violated, and, therefore, called for the re-election of all nine members of the council. Under pressure from NGOs and the media, the Serbian legislature called a vote of confidence with respect to the two disputed members. Though they were once again voted in by a parliamentary majority, the NGOs and media organizations still countered their legitimacy.

The Broadcasting Council continued to function under the relevant law, in spite of the fact that two of its members had resigned. However, the truncated council was perpetually obstructed by the civil sector and was unable to make some crucial decisions such as those relevant to the state-run television's transformation into a public broadcasting service or the issuance of broadcasting licenses. Neither the authorities nor media representatives displayed readiness to reach a compromise that would put to bed the months-long crisis. The dispute also indicated that some interest groups outside the government were intent upon hindering the process of establishing this regulatory body.

The allocation of radio and television frequencies, a source of tension during the Milosevic era, implied that the government appointed members of the Telecommunications Agency. The Agency had not been set up by the end of 2003.

As for media legislation, a law on free access to information should have been passed as a precondition to having independent, investigative journalism. According to July 2003 statistics, some 200 lawsuits against editors and journalists were instituted before Serbian courts. The defendants were charged with “inflicting mental pain” on the people referred to in news stories. Such misdeeds were punished by enormous fines and could financially destroy media outlets, particularly local ones throughout Serbia.

The flood of complaints against media professionals, as well as sensationalism in the media targeting governmental officials which, in a way, provoked early parliamentary elections, de-legitimized not only the government complainants, but also some media outlets. Namely, media sensationalism was aimed at overthrowing the government, rather than at spurring crucial reforms. The way the media covered the beginning of the trial against the person accused of Premier Djindjic’s murder showed that the tendency to connect the premier with the mafia continued after his death. The influence of some interest groups from within the government was evident in the fact that some print media carried classified documents such as statements of collaborating witnesses, without being subjected to punishment or ban as proscribed by law.

The growing tension between journalists and politicians was evident in open insults some high-ranking officials threw at members of the media.

At the time of the state of emergency imposed after the Djindjic assassination, freedom of the media was partially restricted, while editors of major media outlets were briefed daily by governmental officials. The dailies such as *Identitet* and *Nacional* were banned. *Identitet* used to be financed by the people who were later accused of complicity in the Djindjic assassination, and its editor-in-chief was arrested in the course of the “Saber operation” (see below). The *Nacional*, which was banned until the end of the state of emergency, reappeared in late 2003 under the name *InterNacional*, the offspring of which was yet another daily, *Centar*. The editor-in-chief of the banned *Nacional* was editor-in-chief of *Centar*.

The Public Information Law was passed during the state of emergency. Media representatives protested against the fact that a public debate on some major amendments backed by the government was bypassed in the process.

Judicial System and Independence of the Judiciary

Legislation setting down the competence and status of judicial bodies (Law on High Judicial Council, Law on Public Prosecutor and Law on Judges) was again amended in 2003. These amendments followed the trend of restricting the independence of the judicial branch, and of simultaneously strengthening the legislative and executive branches’ influence on the judicial branch. The state of emergency imposed on 13 March, the day after Premier Zoran Djindjic’s assassination, and the authority with which certain governmental bodies were thereby invested not only furthered, but also exposed this trend.

The suspected involvement of high judicial officials in organized crime and in the premier’s assassination, combined with pressure on the judiciary and alleged retirement age some judges have reached, resulted in a number of personnel changes high on the judicial ladder. The Serbian legislature’s first relevant decision was to disbench 32 judges (including seven Supreme Court judges). Only seven days after the state of emergency was imposed, the

president of the Supreme Court of Serbia tendered her resignation. Shortly after her resignation, the acting president of the Republic of Serbia passed a Decree on Special Measures in the Domain of Judiciary To Be Applied During the State of Emergency. Based on the decree, new people were appointed to the following positions: president of the Supreme Court, Serbian public prosecutor, president of the Belgrade District Court, public prosecutor of the Belgrade District Prosecution Office, and president of the Novi Sad District Court, among others.

On 11 April, the Serbian legislature unseated two public prosecutors and 15 general jurisdiction and special court judges on the grounds of pensionable age. The same parliamentary session elected nine judges to the Supreme Court of Serbia and 14 judges to the Belgrade District Court.

The explanation that was given, under which most actions referred to in the paragraphs above were taken, quoted the necessity to efficiently combat organized crime and to improve the quality of judicial bodies' performance. However, as taken under summary procedure, these measures violated the standards of human rights and freedoms and the principle of the separation of powers. The fact that they were taken in difficult circumstances implied in a state of emergency cannot fully justify them, particularly when one bears in mind that only one judicial official was charged with complicity in organized crime.

Fair Trial, Torture and Ill-Treatment

The initial success of the "Saber operation" launched by the police in the aftermath of Premier Djindjic's assassination and of the first investigations against people suspected of being involved in organized crime turned less convincing once indictments were submitted. Judging by the indictments submitted as of the end of 2003, the "Saber operation" had not managed to track down organized crime's cash flow nor was it able to disclose political-financial connections between security services, both military and state, and the people who gunned down Premier Djindjic, or to provide proof of close ties between organized crime and groups within judicial or other governmental bodies.

However, given that major trials began in late 2003, (e.g. the Djindjic case), and others were scheduled for 2004, it is only natural to expect that new and more valid evidence would be presented. That would be valuable not only for proving the responsibility of the accused, but also for shedding light on political and social circumstances that provided a hotbed of organized crime.

The first proceedings against organized crime (against the group accused of the murder of Police General Bosko Buha) were marked by the defendant's claims that the police physically tortured them with a view to extract confessions or to obtain other information relevant to investigation. This will probably characterize the majority of trials against organized crime. Regardless of scores of such complaints, only one semi-official investigation into torture had been conducted by late 2003.

- In the case of Milan Sarajlic, former republican public prosecutor, the investigation resulted in a release saying: "The initial findings of the investigation into alleged torture and ill-treatment in the course of the Saber operation as conducted by officials from the Inspector General Service, refute claims as such."³

Passivity of internal control services within the police force, Prosecutor's Offices and courts when it came to digging into the alleged cases of torture and police misconduct in the

³ Press conference of the Serbian Ministry of the Interior, 10 September 2003.

course of the state of emergency and the “Saber operation” indicated that victims will probably turn to the European Court of Human Rights. It is that court that will have the final say in whether these people are entitled to file their complaints before it. On the day of its admission to the Council of Europe, on 3 April 2003, the Union of Serbia and Montenegro signed the European Convention on Human Rights. This convention, along with the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, was ratified on 26 December.

Conditions in Prisons

In 2003, a team of the Helsinki Committee in Serbia visited 12 institutions where persons convicted of or accused of crime were confined (one strictly closed prison, three closed prisons, three open prisons, two district prisons, one penitentiary-hospital institution, one juvenile reformatory and one juvenile prison).

Based on these visits, the Helsinki Committee believes that measures taken by new authorities—such as dismissal of prison directors appointed by the former regime, providing civil and expert entities access to prisons, renovation of existing detention facilities, startup of prisoners’ education, etc.— manifest their readiness to improve conditions of life in prisons. However, there are still requirements to be met in order to substantively improve conditions of life and adjust the respect for human rights in prisons to international standards: the Law on Execution of Criminal Sanctions (LEPS) and relevant bylaws should be amended to meet internationally recognized standards; subsidies and prison personnel should be increased; and administrations should be given intensive training in human rights and freedoms guaranteed to convicted and untried prisoners.

By the end of 2003, the biggest progress had been made in terms of subsidies. Though such assistance was not fully adequate, it helped improve the condition of life in prisons. In tandem with the OSCE, the Justice Ministry launched *ad hoc* seminars, but did nothing to provide regular training to qualify prison personnel to properly carry out their specific duties.

The fact that the Law on the Execution of Criminal Sanctions and relevant bylaws were not amended remained the biggest problem of all in this domain. Therefore, in 2003, the legal framework for punishment by imprisonment was still obsolete and out of line with international standards. This testified that new authorities had still not recognized the significance and urgency of having this domain regulated in a different way.

National or Ethnic Minorities

The social ambience in which the government attempted to further regulate the status of minority communities was marked by growing rightist radicalization and threatening conflicts. In spite of an extensive campaign launched to promote tolerance, ethnic and religious intolerance was still manifest in 2003. In addition, a huge interethnic distance resulted from the almost non-existent break with the past and Milosevic’s legacy. The lack of political will for a more radical change was evident in the electoral legislation.

The electoral rules laid down in Milosevic’s era imposed an extremely high electoral threshold of 5% for minority communities, which they were hardly able to attain. The possibility to have a parliament without representatives from minority communities testified to the meager democratic potential of Serbian society.

On the other hand, limited funds and social opportunities burdened some ambitious projects such as the national strategy for Roma integration. Scarce funds also stood in the way of the proper functioning of national councils, representational bodies of minority communities. This problem turns even more serious when one bears in mind that the Vojvodina Information Secretariat announced that the rights deriving from ownership of the print media would be transferred from the Vojvodina legislature to national councils. Though the first national council was set up in late 2002, a law that would detail the relevant election procedure had not been passed by the end of 2003. The solution was undemocratic, given that members of national councils were elected indirectly, i.e. through electoral assemblies.

The situation of the so-called small minority communities was particularly problematic. Due to their small size, such communities were unable to establish national councils or promote their interests. Not only were they subjected to assimilation, but also, more often than not, they were exposed to violence. This particularly refers to Ashkalia who are usually confused with Roma and whose mother tongue resembles the Albanian language.

Generally, members of minority communities were not aware of their rights and were suspicious of the state's intentions. The latter was most evident in the case of the Bosniak community, more so since its problems were closely connected with the issue of the Sandzak region. Interethnic incidents and the region's meager economic progress may easily turn it into a new hotbed of crisis.

More progress was made in the domain of minority legislation than in the overall social climate. The Law on Protection of the Rights and Freedoms of National Minorities was followed by the Constitutional Charter and the union's Charter of Human and Minority Rights and Civil Liberties. Serbia and Montenegro's admission to the Council of Europe opened the door to the hope that the attained standards in minority protection in Serbia would not be lowered.

Intolerance, Xenophobia, Discrimination and Hate Speech

The failure to uproot the remnants of the former regime and the inadequate performance of the legal system led to a revival of the "defeated policy" and helped extreme radicals to consolidate their power. The assassination of Premier Djindjic exposed this danger and dramatically forced the administration to face reality. Harsh economic circumstances and overwhelming poverty perfectly suited the revival of ideology based on populism and demagoguery. This ideology was promoted by rightist and conservative forces aimed at taking Serbia back to the pre-October 5 era.

The halfway dismantlement of Milosevic's war apparatus and the virtual amnesty for his entire administration figured as the ruling coalition's biggest mistake. Such a mistake seriously affected the society as a whole and the already fragile process of democratization. Lack of readiness to have the issue of war crimes in the open, to disclose the masterminds of the warmongering policy, to come public with information about financial wrongdoing and to prosecute the culprits, seriously affected Serbia's democratic potential and encouraged extreme nationalistic and radical forces to once again place the "Serbian national issue" on the table.

Such a social atmosphere revived nationalistic and discriminatory stands, as well as hate speech, more so since the latter was promoted by partisan and public figures and then carried by the Serbian media with the highest circulation. In parallel, the unwavering stand of the international community, particularly when it came to cooperation with The Hague Tribunal, was manipulated so as to incite anti-Western and anti-American feelings. "Great disillusionment" led to people's distrust in the ruling coalition. Attempting to attract the

impoverished strata, some political leaders reached for a populist demagogy. Their rhetoric belittled the idea of Serbia's Europeization, while their continuous, narrow-minded criticism of the EU and the US assistance and influence boosted xenophobia.

Not only the Constitutional Charter of Serbia and Montenegro, but also several republican laws of the two member states provided for sanctions for ethnic, racial and religious discrimination, and the spreading of hate speech. In addition, the union of Serbia and Montenegro joined a number of major UN conventions such as the Convention for Elimination of All Forms of Racial Discrimination and the Convention for Elimination of All Forms of Gender Discrimination, as well as some Council of Europe conventions, including the Framework Convention for Protection of National Minorities. Also, many regulations dealing with education, healthcare, socio-economic relations, the use of language, etc. provided punishment for various forms of discrimination. Unfortunately, some laws with discriminatory provisions remained in force due to the delayed legislative reform. More often than not, relevant bodies such as the Ministry of Justice and the Prosecutor's Offices, did not react adequately to overt discrimination or hate speech even though such acts were explicitly banned under legislation.

Though in the "post-October 5 period" considerable progress was made in the practical implementation of human rights standards, various forms of discrimination and intolerance toward different ethnic groups were manifested almost daily. Though no longer as violent and brutal as they used to be at the time of the former regime, such manifestations took more subtle and perfidious forms.

As a rule, racial discrimination targeted the Roma in almost all spheres of life, and was most evident when it came to the rather large Chinese community in Serbia. Overt discrimination based on gender, national minorities, disabled persons, refugees, etc. was frequently not perceived or publicly treated as such. This demonstrated the need to raise public awareness in these matters, and called for the prompt response from governmental institutions, public figures and NGOs.

International Humanitarian Law

Accountability for War Crimes

The first step taken after the passing of the Law on Organization and Competence of State Bodies in Proceedings against War Criminals on 1 July 2003 was the appointment of the prosecutor for war crimes on 22 July.

As of the end of 2003, a special agency for detection of war crimes, trial chambers and departments within the Belgrade District Court to exclusively deal with war crimes were being established. The dynamics of establishing these bodies was such that first war crime trials did not take place in 2003. War crime trials pending as of December 2003, including among others, the Sjeverin case and the trial of Sasa Cvjetan (see below) who is charged with the Podujevo crime, will proceed in keeping with regular judicial procedure, given that the new law's provisions are applied just to cases wherein indictments had not entered into force as of the adoption of the law

According to the Special Prosecutor's Office, the first cases to be brought before the war crime court are Ovcar (the massacre of Croat civilians in Vukovar in 1991 for which three officers of the former Yugoslav People's Army, YPA, had already been indicted by The Hague Tribunal) and the mass graves in Petrovo Selo, Batajnica and other places where bodies of Albanian Kosovars killed by Serbian forces during the 1999 NATO intervention were discovered in 2001 and 2002.

There are many shortcomings in the newly passed law and in domestic legislation, particularly when it comes to non-existent provisions about command responsibility. The trial and ensuing judgment in the Sjeverin case—the same as in the Strpci one⁴— showed the state’s unwillingness to have its responsibility for war crimes committed during the wars in former Yugoslavia critically reviewed.

- According to the indictment, defendants Milan Lukic (fugitive), Oliver Krsmanovic-Orlic (fugitive), Dragutin Dragicevic-Bosanac and Djordje Sevic, were charged under article 142(1) of the Criminal Code of the FRY, with committing war crimes against civilians. The defendants were members of the “Revengers” paramilitary formation under Lukic’s command. On 22 October 1992, in the village of Mioce, they stopped a bus driving passengers from Priboj to Rudo, stepped in and required the passengers to show them their IDs. Then they forced 17 Bosniaks (Muslims) out of the bus and ordered them to enter a truck with Krsmanovic at wheel. They drove the abducted people to Visegrad where a number of assembled citizens who watched the scene in front of the “Vilina Vlas” motel said they thoroughly searched them and took away all their personal belongings. In the motel lobby they began to psychologically abuse them. They separated the only women, Mevlida Koldzic, from the group in order to torture her in private. After that, the defendants took the abducted people to the Drina riverbank where they mistreated them and then shot them all from a distance of 3-5 meters. Lukic and Dragicevic stabbed those showing signs of life with knives, and then threw them all into the river.

Though the responsibility of defendants Lukic, Krsmanovic, Dragicevic and Sevic was asserted beyond any reasonable doubt during the proceedings (for which they were appropriately punished by 20 and 15-year imprisonment respectively) the trial chamber refused to discuss and clarify circumstances and motives behind the crime. Almost all motions by the complainants’ counsels were overruled. The counsels asked for presentation of evidence that would lead to the conclusion that the crime was a part of “the Serbian army’s strategic operation the purpose of which was to create conditions for the exchange of prisoners and the dead” that had been devised and ordered by top state and military officials of the FRY and Serbia, rather than as a voluntary action undertaken by “an armed group.”

What was even more concerning in this particular case was the way public prosecutor, Vladimir Vukcevic, recently appointed war crimes prosecutor as well, acted throughout the trial. Not only did Prosecutor Vukcevic change the indictment once the evidence had already been presented by stating that the defendants had been members of “an armed group, rather than members of Republika Srpska’s para-military troops,” but he also opposed presentation of evidence that could have shown the responsibility of the people who had given orders and planned the crime. On the one hand, this directly showed the tendency to have the case just partially solved, and on the other, it indirectly closed the door on future criminal proceedings against all accomplices in the crime.

The process of facing the past and the accountability for the crimes committed in the course of the wars in the territory of ex-Yugoslavia should not be put to bed by punishing direct executioners only, but calls for asserting the responsibility of top police and military commanders of the former regime. Apparently, current authorities were still unwilling to come to grips with this problem, which was evidenced by the administration’s growingly reluctant cooperation with The Hague Tribunal.

However, some progress was made in the issue of war crime trials in 2003.

⁴ The masterminds of the abduction and subsequent murder of 20 Muslim passengers from the Strpci station (controlled by Bosnian Serbs), in 1993, have not been tracked down up to now.

- For the first time, witnesses of Albanian origin took the stand before a domestic court in the trial of Sasa Cvijetan (in custody) and Dejan Demirovic (fugitive) that was underway at the end of 2003 in the Belgrade District Court. The counts of the indictment submitted on 5 April 2002 charged Sasa Cvijetan and Dejan Demirovic with killing and wounding a number of Albanian civilians on 28 March 1999 in Podujevo. The two were tried for war crimes against civilians under article 142 of the Criminal Code of the FRY. Until 9 July, when these witnesses took the stand, not a single ethnic Albanian had ever been summoned to testify in proceedings against Serbs who had committed war crimes in Kosovo.
- In its decision of 5 July 2003, the Supreme Military Court reversed shamefully mild sentences pronounced on four officers and soldiers of the Yugoslav Army, charged with war crimes. Namely, on 11 October 2002, the Nis Military Court declared Lt. Col. Zlatan Mancic, Captain Rade Radojevic and privates Danil Tesic and Misel Seregi guilty of crime against civilians. Originally, Mandic was sentenced to seven-years imprisonment, while Radojevic, Tesic and Seregi were sentenced to 5, 4 and 3 years respectively. In determining these sentences, the court had asserted that in early April 1999, in the village of Kusnin near Prizren, Mancic ordered private Tesic to shoot two Albanians. He also ordered Captain Radojevic to assign yet another private to join Tesic in executing his orders, for which the former picked up private Seregi. The two followed their orders and then burnt the bodies to cover any traces of crime. At the prosecutor's appeal, the Supreme Military Court sentenced Mancic to a 14-year prison term and Radojevic, Tesic and Seregi to 9, 7 and 5 years respectively.

Kosovo⁵

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

In 2003, public institutions in Kosovo were further stabilized and their capacities and responsibilities enhanced and expanded. This was characterized in particular by the transfer of all authorizations of the United Nations Interim Administration Mission in Kosovo (UNMIK), which were not defined as “Reserved Powers,”⁶ to the domestic Kosovar institutions, the so-called Provisional Institutions of Self-Government (PISG).⁷ As a result, all vital areas of life and the infrastructure of the Kosovo central authorities were strengthened further during 2003. These included the functioning of the parliament, the government, the education, health care and social care systems, law enforcement, judiciary, and local governments. Nevertheless, despite significant improvements in these fields, considerable deficiencies and shortages still remained.

A major achievement was the adoption of the so-called “Kosovo Standards Implementation Plan (KSIP),” which was to serve as a principal and elaborated road map

⁵ Based on Kosova Helsinki Monitor (KHM), *Report on Human Rights Situation in Kosova 2003*.

⁶ The SRSG and UNMIK as well as KFOR continued to retain supreme authority in key functions such as security, both internal (i.e. police) and external (KFOR), foreign relations, judiciary as well as minority and human rights issues. These areas remained the exclusive “Reserved Powers” of the SRSG. The rest of the executive and legislative authority were in the process of being transferred to the PISG.

⁷ The government and parliament of Kosovo, as well as the judiciary comprised the PISG administrative structures as defined in the Constitutional Framework. The PISG exercised its functions under the ultimate authority of the SRSG.

toward the full normalization and creation of basic premises for addressing the final political status of Kosovo. This was based on the “Benchmark Criteria,” i.e., standards developed by the former UNMIK administrator, Special Representative of the Secretary General (SRSG), Michael Steiner. These standards were further elaborated and sanctioned by the new SRSG Harri Holkeri in 2003, and officially presented by him on 10 December. The KSIP was politically initiated by the current deputy US Secretary of State for Political Affairs Marc Grossman in consultation with the EU Commissioner for External Relations.

The “Benchmark Criteria” were developed by SRSG Steiner to measure the progress made by the PISG toward fulfilment of the eight principal objectives: functioning of democratic institutions; rule of law; freedom of movement; return of refugees and IDPs and their reintegration; sustainable economic development; (re)establishment of property rights; dialogue with Belgrade; and transformation of the Kosovo Protection Corps (KPC). All objectives had to be reached before the status issue could be addressed. This policy was summed up in the slogan “Standards before Status” and was reaffirmed by all high-ranking international instances in 2003.

The Kosova Helsinki Monitor (KHM, formerly the Kosova Helsinki Committee, IHF member) declared its full support for the “Standards before Status” policy since its introduction. However, most Kosovo Albanians viewed the policy as intentionally obstructing and indefinitely prolonging any moves to address the status issue. For the great majority of Kosovo’s population, the status was the most important and critical issue that needed to be solved as soon as possible and for most, sovereignty was the only acceptable option. Several key political and institutional figures among Kosovo Albanians officially preferred a policy of parallel promotion of both the standards and the status. As the issue became increasingly heated, the KHM proposed the principle “Standards *towards* Status” as a way of overcoming existing tensions. The KHM proposal was well received both by representatives of the international community and domestic authorities as well as the Kosovar media.

The KHM noted that the uncertainty over the final political status of Kosovo seriously undermined the readiness of both Albanians and Serbs to genuinely reconcile and look toward a common future in Kosovo. While Albanians continued to fear political developments and arrangements that could lead to any form of return of a Serb state to or over Kosovo, Serbs continued to cherish hopes and carry out political initiatives aimed at the partitioning of northern Kosovo along ethnic lines or the return of a Serbian state. These aspirations were reflected in the Kosovo Serb local assembly, which on 18 December adopted the so-called “Declaration of St. Nicholas Day” demanding a re-structuring of Kosovo based on the Bosnian model of a two-entity system, a Serbian and an Albanian one, or Serbian autonomy in Kosovo.

An important landmark initiative was the UNMIK-facilitated dialogue between Prishtina and Belgrade. Officially, this was supposed to focus on important practical and technical issues between the two capitals such as the issue of missing persons, communications and mutual recognition of documents, without raising or referring to the status issue. In addition, it was perceived as being an initiative for confidence-building measures that would eventually pave the way toward internationally mediated talks on the status issue.

The political dimension of the dialogue was indirectly but strongly pronounced by a meeting between high level delegations from both Serbian and Kosovo Albanian sides in the presence of high-ranking international figures in October in Vienna. However, Kosovo’s Prime Minister Rexhepi was unable to participate in the meetings as the Kosovo parliament and its President Daci would not authorize the Kosovo delegation’s participation or mandate it with an appropriate platform for negotiations.

Despite positive developments, a multitude of problems still remained. These included the *de facto* partitioning of northern Kosovo across the river Iber that was overwhelmingly Serb-populated and was under effective Belgrade control; the fate of missing persons; the lack of security and freedom of movement; problems related to property rights; and mounting inter-ethnic tension. While in all these fields improvements were recorded, they remained central issues of concern.

The strained inter-ethnic relations were best reflected in the very existence of ethnically-based enclaves. The Serb enclaves in northern Kosovo, which were *de facto* under Belgrade control, had developed a parallel shadow life—including a judicial system of its own. It was feared that the “enclavization” of Kosovo would provide grounds for a Belgrade and Serb-aspired move to restructure Kosovo along ethnic lines. This would, in practice, mean the territorial and political autonomy of Kosovo Serbs—a scenario officially endorsed by the Serbian government and parliament in early 2004. Should this become reality, it would potentially lead to permanent political instability in Kosovo and the surrounding region.

The arrest and 24-hour temporary detention of PDK leader Hashim Thaci and KPC head General Agim Cheku, as well as a similar case of the well-respected human rights activist Adem Demachi, contributed to the strained situation. All of them were held in detention on Belgrade issued international arrest warrants.

Thus, despite general improvements in the overall security situation, the KFOR and UNMIK occasionally faced aggressive confrontations with Kosovo Serb and Albanian extremists groups. One of the hottest security spots remained the *de facto* ethnically partitioned north of Mitrovica under virtual Serbian control.

Northern Mitrovica was also the hotbed that triggered the eruption of the large-scale ethnic violence in March 2004 under. The immediate trigger for the escalation of violence was the unconfirmed reports of some Albanian media outlets about the tragic drowning of three Albanian children while allegedly fleeing local Serbs with dogs. This kind of politically and professionally irresponsible reporting contributed to the outbreak of violence in the latent inter-ethnic tensions present in Kosovo. The result was the worst post-war ethnic violence, which raged for almost three days and left 19 Kosovar citizens dead, out of whom 11 were Albanians and 8 Serbs. Almost a thousand people were wounded on both sides, including international police officers, KFOR soldiers, and TMK officers. In addition, 38 Serbian Orthodox churches and monasteries as well as some 800 Serbian homes and apartments were burned down, destroyed and/or damaged, while some 4,300 Serbs and other minorities were evacuated and displaced.⁸ The material damage was assessed at ca. €40 million.⁹ The IHF and the KHM strongly condemned the ethnic violence.

The ethnic violence shook up the fragile post-war foundation on which the Kosovo society was being built and damaged the stabilization and reconciliation processes between Albanians and Serbs. In addition, it damaged massively both the international and the domestic image of Kosovo. The events seemed to bring the international community to toughen up somewhat its handling of the Kosovo situation.

In addition to the all above-mentioned problems, the majority of the Kosovo Albanian population were particularly affected by the economic situation, unemployment and

⁸ See the Kofi Annan report on Kosovo, prepared for the UN Security Council meeting on Kosovo for 11 May 2004, posted at <http://www.reliefweb.int/w/rwb.nsf/9ca65951ee22658ec125663300408599/558c6a7a697984ef85256e8b006b9e80?OpenDocument>.

⁹ See the statement of UNESCO delegation after a week-long mission for the assessment of the damage done to the world cultural heritage (i.e, Serbian Orthodox churches and monasteries in Kosovo).

consequent existential fears due to their increasing frustration about the uncertainty of Kosovo's future. Fear of a possible ethnically motivated partition between Serbs and Albanians grew and contributed to a highly inflammable climate—which led to the above-mentioned large-scale ethnic violence in 2004.

The persisting problems were coupled with the slow pace of economic development and a high unemployment rate estimated at close to 60%. These economic hardships appeared to be aggravated by the fact that privatization of the economy was stalled since October 2003 following changes to the management team, the Kosovo Trust Agency (KTA). The new management led by Marie Fucci tried unsuccessfully to impose a new privatization concept but this was strongly opposed by the PISG Kosovo institutions and domestic public opinion. The stalemate continued as of early 2004 despite the fact that the head of the KTA leadership was dismissed.

Missing Persons

The tragic fate of missing persons and their families remained a serious problem. According to the UNMIK bureau for missing persons and forensics, the total number of missing persons in Kosovo was 4,233 as of early 2004. Out of them, 3,324 were Albanians and 909 others (most of them Serbs). In the post-war period since 1999, the total number of bodies, i.e., persons found killed or dead as a consequence of the Kosovo conflict, stood at 4,019. Of this total, 2,212 bodies were identified. About 900 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 the crime traces. Only nine of the exhumed 900 were identified through DNA analysis. The known mass grave sites of these Albanians in Serbia were in Batajnica near Belgrade, Petrovo Selo and Peruchac near Bajina Bashta. The issue of missing persons thus remained a very delicate political issue in Kosovo.

International Humanitarian Law

Accountability for War Crimes

The law enforcement agencies (CIVPOL and KFOR) continued making some highly sensitive group arrests of former high-ranking UCK members, who were later members of the Kosovo Protection Corps (TMK). At the same time, courts dealt with high-profile cases of crimes committed during the armed conflict.

Many arrests and the ensuing trials were under charges of serious war crimes and crimes against humanity as well as individuals, committed before, during and after the war. The victims were Serbs and Albanians who were suspected of collaboration with Serbs.

- In February, an ICTY indictment was issued against four Albanians for the alleged abduction, illegal detention, torture and killing of 14 Albanians and nine Serbs during the armed conflict in 1998-1999. The first ICTY indicted among the four high-ranking former leaders of the UCK was Fatmir Limaj, later head of the parliamentary fraction of the PDK party. He was charged with “crimes against humanity and violation of the laws of war laws” on 18 February. He surrendered to the ICTY to face these charges.
- In October, five former leaders of the UCK were arrested in the southern Kosovo zone around Kachanik and charged with war crimes against civilians, including kidnapping, torturing and murdering several persons. A trial against this so-called “Kachanik Group” began in November in the Prishtina District Court.

The arrests kept increasing in number and intensity as well as in terms of ranking of the former UCK members. Most of them were followed by protests of ‘war-wing’ supporters. The largest was held in Prishtina on 26 February, following the indictment of Fatmir Limaj, which gathered some 100,000 people onto the streets.

In 2003, the judiciary stepped up efforts to prosecute war crimes and other grave and high-profile cases of crimes committed against Serbs and Albanians before, during and after the 1998-1999 war.¹⁰ They included 32 alleged cases of war crimes.

- A northern Kosovo Serb leader Milan Ivanovich was arrested in April and tried in September and October 2003. He received a suspended sentence for his active participation in Serb-perpetrated violence against international police officers in the north of Mitrovica, which left 22 injured.
- On 16 July, General Rrustem Mustafa-Remi, former UCK officer, and his top aides (the so-called “Llapi Group”) were charged with war crimes against civilians, including arrest, detention, inhuman treatment, torture and murder. An international panel of judges in the Prishtina District Court sentenced Mustafa-Remi to 17 years imprisonment while Nazif Mehmeti received a 13-year sentence, Latif Gashi a ten-year sentence and Naim Kadriu a five-year sentence.
- The so-called “Dugagjini Group,” including General Daut Haradinaj and his aide, Major Idriz Balaj, as well as some others, were also sentenced to long prison terms. Their case was taken up for re-consideration by the Supreme Court of Kosovo in 2003.
- The District Court in Prizren tried and sentenced Jetullah Kryeziu to a prison term of 20 years for killing former LDK mayor of Sava Reka, Uke Bytyqi, and two of his body guards in 2002, following Bytyqi’s electoral victory.
- The District Court of Prizren also tried the former pre-war and war mayor of Rahovec Andjelko Kolashinac and found him guilty of war crimes. He received an eight-year prison sentence.

Law Enforcement

Law enforcement remained one of the prime tasks and challenges of UNMIK and KFOR as well as of the Kosovo Police Service (KPS) as part of the so-called “Reserved Powers.” The supreme legal responsibility for law, order and security rested with the SRSG.

The KPS was in the continuous process of assuming greater responsibilities and basic police functions as granted and transferred to it by the UNMIK International Police (CIVPOL). The KPS applicants and police officers were at the same time in basic training and further specialization that was carried out in the OSCE-run Kosovo Police Service School in Vushtri. As of the end of 2003, the total number of OSCE-trained KPS police officers was 6,264, an increase of some 15% from 2002. The required number of KPS police officers to deal efficiently with the law, order and security issues—given the still precarious circumstances in Kosovo—was assessed by experts to stand at 8,000 to 10,000 officers. Eighteen percent of KPS officers were women, 84% Albanians, 9 % Serbs, 4 % Bosniaks and 3% others. The target objective for minorities has been set at around 15%.

¹⁰ See also Law Enforcement.

In addition, there were approximately 5,000 CIVPOL officers in Kosovo originating from about 50 countries.

The largest number of police officers were concentrated in the Prishtina region, followed by the eastern-Kosovo town of Gjilan, while the municipality of Peja in the west of Kosovo was reportedly understaffed.

On 3 August, an international police officer was killed for the first time in post-war Kosovo. UNMIK major Satish Menon from India was assassinated by an unknown sniper while driving off-duty in his police car in the Serbian-controlled northern part of Kosovo near Leposavich. The case remained unresolved as of the end of 2003.

The lack of security was reflected also in mafia style assassinations of key witnesses in major cases of political crimes and other high profile cases of ethnically and politically motivated violence, including attempted violence also against top Kosovo political and institutional leaders.

Crime Rates

Based on CIVPOL data for 2003, the crime rate increased slightly in comparison with 2002. The number of murders, killings and/or other violent deaths was 72, only four cases more than in 2002. Seventy-six percent of the victims were Albanians and 24% members of minorities, thus revealing a disproportionately high number of minorities. While many of these cases remained unresolved, it was believed that at least half of them were ethnically and/or politically motivated.

As regards other crimes (including assaults, kidnappings, etc.), the level remained largely the same as 2002. It is noteworthy, that in the three years prior to 2002, the crime rate had halved each year, meaning that it was at its lowest in the last three decades in Kosovo. The improvement could mainly be attributed both to CIVPOL and KPS activities, but also to other factors such as the fact that Albanians and Serbs lived in separate communities and enclaves.

Two sectors where the crime rate had increased were traffic offences and arsons, with about 10% of the latter believed to be ethnically motivated. In addition, organized crime increased, including trafficking of women, despite having been fought against more efficiently by, *inter alia*, the Trafficking and Prostitution Investigation Unit (TPIU) of CIVPOL.

Despite considerable improvements and capacity enhancement, the overall performance of law enforcement and judiciary in Kosovo was generally assessed to be insufficient. Lack of efficient law enforcement and the inadequate operation of the judiciary resulted in continued distrust among the population and a climate of increasing insecurity, particularly among Serbs and Roma. Despite significant progress made in both fields, both of them—and particularly law enforcement—remained the weakest link in the complex chain of Kosovo institutions. This also led to lack of co-operation on the part of the population with law enforcement officials and the courts because people feared possible revenge and retaliation. The lack of witness protection program added to fears.

Prisons

There were five investigative district prisons as well as prison and correctional facilities in Dubrava and Lipjan. The official prison capacity was 1,318 places, and by the end of 2003

there were 1,250 prisoners serving their sentences. All prison and correctional facilities were headed by internationals.

Inmates in the Dubrava prison protested the poor prison conditions by going on hunger strike and staging a riot. As the guards tried to force their way into the prison by using tear gas and other riot control methods (including excessive force), the stand-off turned violent and resulted in the deaths of five prisoners, 17 wounded, and some hundred needing some form of medical assistance. This represented one of the worst cases of prison rioting in the recent past in Kosovo.

Judicial System and Independence of the Judiciary

Based on Chapter VIII of the Constitutional Framework for Provisional Self-Government, the Administrative Department of Justice remained under the direct authority of the UNMIK head as one of the “Reserved Powers.” Albanian political parties called for the establishment of a Ministry of Justice under the Kosovo government to which some of these powers and authorizations could be transferred. These demands were, however, resolutely denied by UNMIK, which insisted on strict adherence to the Constitutional Framework until the final political status of Kosovo is resolved.

One major achievement was the adoption of a new Criminal Code and Criminal Procedure Code in the summer of 2003, which entered into force in April 2004. The adoption of these codes represented an important milestone in the further development of Kosovo’s judicial system as they were fully in line with European and international human rights standards and were drafted by reputable international and domestic experts under the auspices of international institutions.

The Constitutional Framework provides for the independence of the Kosovar judiciary. In practice, however, the judiciary failed to prove to be immune from bias, outside pressure, bribery and intimidation, especially in inter-ethnic cases.

The Kosovar judicial system was relatively well-structured comprising of the Supreme Court, 5 District Courts, 24 Municipal Courts, and 13 Public Prosecutors’ Offices. In addition, there was a Court for Economic (Commercial) Affairs. One section of the Supreme Court dealt with constitutional questions. As of the end of 2003, there were 323 judges, 6% Serbs and 5% belonging to other ethnic minorities. Of 53 prosecutors 4% were Serbs and 6% represented other minorities. In addition, there was a separate system of 25 Municipal Misdemeanor Courts, including a High Court for Misdemeanors as its appeals instance.

Judges were appointed according to a complex procedure by the SRSG on the recommendation of the independent Judicial and Prosecutorial Council of Kosovo. The council comprised domestic and international judges. However, despite the fact that the judiciary was multi-ethnic, other judicial personnel remained overwhelmingly mono-ethnically Albanian.

In addition, some members of the judicial personnel were vulnerable to intimidation and political influence, ethnic bias and bribery. Moreover, courts were overburdened, with many cases pending since 2001. On a positive note, the efficiency in processing them improved markedly in 2003.

The number of licensed attorneys stood at some 300 and were organized as the Kosovo Chamber of Advocates. UNMIK and the OSCE established and ran the so-called Kosovo Judicial Institute (KJI) that was engaged in training judges and prosecutors.

In addition to domestic personnel, there were 17 international judges and 10 international prosecutors managed by the UNMIK Department of Justice who were handling primarily inter-ethnic and other major and highly sensitive cases such as war crimes and organized crime cases. The SRSG was authorized to assign international judges and prosecutors to any cases in which there was reasonable doubt of impartiality or potential intimidation. International judges and prosecutors were dispatched in order to enhance the level of competence and efficiency of the judiciary, to avoid and/or remedy potential bias and partiality of the judiciary and to provide the necessary experience of a modern judiciary. Their number, however, was still judged to be too small for the challenges faced by the Kosovar judiciary only partially meeting its needs. Their presence, competence, objectivity and experience were indispensable for a more efficient functioning of the judiciary.

Serb judges and judicial personnel generally rejected jobs within the Kosovar judicial system and continued to function within the shadow Belgrade-run judicial system in Serb-controlled parts of Kosovo. The very existence of this parallel system was a clear sign of a major failure of the efforts to create one judicial system for Kosovo as a whole. This shadow system was integrated in the overall Serbian judiciary and its staff was paid by the Serbian Ministry of Justice. It appeared that this shadow system worked in tacit coexistence with UNMIK despite the fact that its existence contravened UNMIK provisions. The Serbian shadow system had five Serbian-run courts and a District Court of higher instance located in Kraljevo, Serbia. These courts employed some 35 judges and prosecutors.

Despite several trials and convictions, a large number of high-profile, ethnically or politically motivated cases remained to be clarified: it was estimated that only nine out of some 60 cases were resolved as of the end of 2003. This very low detection rate was another indication of the problems of law enforcement in Kosovo.

In addition, some segments of the judiciary seemed frustrated with the relatively large number of acquittals of indictees in high-profile cases on the grounds of the lack of evidence: this was due to lack of consistent witness testimonies (possibly due to intimidation, threats and fear) as well as refusal to testify in courts due to fear. As a result, the courts embarked on developing a witness protection program as well as specialized structures for gathering and analyzing evidence in sensitive and high profile cases.

Inter-Ethnic Relations and Violence

Serbs made up some 6.2% of the total population of Kosovo, while other minorities made up some 4.6%.

Inter-ethnic relations remained tense throughout Kosovo during the entire year and were a central cause of concern. Numerous violent incidents took place, many of which appeared to be politically or ethnically motivated, others results of inner-Albanian tensions. While it could be said that ethnically motivated violence decreased somewhat in 2003, there were several high profile cases that attracted much attention and severely affected the strained inter-ethnic relations.

One of the hottest security spots remained the *de facto* ethnically partitioned north of Mitrovica under virtual Belgrade control as well as the Peja region where a number of high-profile cases of violence took place in 2003.

The failure of law enforcement officials to clarify such cases was a great cause of concern for the public and diminished confidence in their efficiency. At the same time, it increased the sense of insecurity and frustration in parts of Kosovo. In addition, such incidents did not provide conditions for the return of refugees and internally displaced persons

As some violent incidents coincided with major political events, it was believed that they were aimed at negatively influencing the developments in Kosovo. Such incidents included the blowing up of a Serbian orthodox church in the night before the arrival of the UN Secretary General Kofi Annan to Kosovo in the summer of 2003; the brutal killing of the Serbian family Stolich in Obilich just days before the EU Summit Meeting in Thessaloniki in June; and particularly the killing of Serbian children in Gorazhdevac on the day of the arrival of SRSG Holkeri. The Albanian side suggested that these incidents were framed by the “Serbian secret service” in order to worsen the international image of Kosovo and Albanians and to prevent a favorable solution of the future political status of Kosovo. At the same time, the Serbian side qualified these incidents as massive threats and intimidating messages by Albanian extremists against all Serbs in Kosovo. At any rate, the incidents again increased inter-ethnic tensions, destabilizing seriously the political situation in Kosovo.

The KHM stated that the primary role and responsibility for the efficient establishment of the rule of law and security in Kosovo should continue to rest with UNMIK and KFOR. At the same time, however, they should promote much higher political and civic responsibility on the part of political parties, the media and NGOs in Kosovo, all of which had in the past resorted to unselective, uncritical and irresponsible activities that served various political purposes. A positive example of their role was the public call of 2 July of high-level Kosovo Albanian leaders to all refugees and IDPs from Kosovo, appealing to Serbs and other minorities to return to Kosovo and to build their future there together.

Violence against Serbs

Most Kosovar Serbs lived in their own enclaves in Northern Kosovo, Grachanica near Prishtina, and parts and suburbs of Gjilan, Vitina, Kamenica, Shterpce, Obiliq, Fushe Kosove, Lipljan, and Rahovec. While an increased number of Serb IDPs returned to Kosovo in 2003 within an UNMIK program, reports of violence against Serbs and attacks on Serb property were almost continuously received throughout the year, although at a lower scale than previous years.

- On 17 May, the body of Zoran Mirkovich, a Serb in Vitina municipality was found dumped in a trench by the road. Two bullets had been fired into his head by unknown assailants.
- On 3 June the Stolich family—father (80), mother (70) and reportedly retarded son (50)—were killed with knives, axes and similar objects in the middle of the night in their own house in Obilich, near Prishtina. After that, the house was set on fire. The case happened just before the holding of the EU Balkan Summit in Thessaloniki at which a meeting of the Kosovo and Serbian delegation had been anticipated. The meeting was cancelled. The perpetrators were not caught.
- On 13 August, unknown perpetrators machine-gunned a crowd of Serbian youngsters who were swimming in the river in the Serbian enclave Gorazhdevac, near Peja. Three were killed and at least four wounded. The incident significantly increased the level of tension in Kosovo as well as between Prishtina and Belgrade—both of which seemed to be the very objective of the unknown perpetrators as the incident happened on the day when the new international administrator, SRSG Harri Holkeri, arrived in Kosovo for the first time to get acquainted with the situation before he assumed duty.
- In August, a grenade attack by an unknown assailant on a Serbian shop in the Cernica village near Gjilan was reported to have killed one, and wounded four Serbs.

Violence against Roma

In the post-war period, the Roma population was generally perceived by Kosovar Albanians as having served as Serbian collaborators against Albanians. As a result, they became targets of indiscriminate and arbitrary violence by some extremists groups. While there were considerable improvements in their overall security situation in 2003, it still remained precarious. As a result, some 300 Kosovar Roma refugees remained in Macedonian refugee camps and demanded asylum in EU countries.

- On 17 July, a Roma old man was found killed in the village of Nabergjan near Peja.

In addition, Roma fell victim to other forms of attacks, intimidation and harassments.

Violence against Albanians

There was also politically and ethnically motivated violence against Albanians, much of which was believed to be inner-Albanian tensions between rival political blocks: the so-called “war wing” originating from the former UCK and their supporters and the so-called “institutional block” with supporters close to the LDK party. The ethnically motivated cases of violence occurred mostly in the Serb-controlled northern Mitrovica, where the security of Albanians and their freedom of movement were severely restricted almost in the same manner as that of ethnic Serbs in the rest of Kosovo.

- On 4 January, Tahir Zemaj, designated counselor for security issues of President Rugova, was ambushed and assassinated by unknown assailants in the center of Peja. He was formerly the head of the LDK-close wing of the former Armed Forces of the Republic of Kosova (FARK) that was considered a rival of the former UCK. Along with him, his son and his cousin (also a prominent local LDK official) were killed. Earlier in the summer, there was an assassination attempt against Zemaj, in which he and nine other people were wounded. Zemaj was also one of the key witnesses in the trial of the former UCK “Dugagjini Group.”
- On 15 April, Ilir Selimaj was ambushed and gunned down near Peja while driving back home with his family. Another family member was killed while three others were wounded. Selimaj was one of the key witnesses in the trial of the “Dugagjini Group.” Several other witnesses in similar high-profile case were killed or attacked.
- On 2 October, a former UCK fighter Avni Muja was assassinated in front of his house. Three of his brothers and cousins were seriously wounded.
- UNMIK police reported a telephone death threat against Kosovo President Rugova if he appeared at a public event on 12 April in Peja. In early 2004, an attack with fire arms and explosives on the presidential residence took place. No one was hurt but the premises were damaged.
- On 6 December, Prime Minister Rexhepi was attacked by a Serbian mob of some two hundred Serbian extremists while visiting the north of Mitrovica along with a World Bank delegation. His official car and the restaurant in which the meeting was taking place were stoned and seriously damaged. A member of the international delegation was injured.

There were a number of ethnically and politically motivated attacks against Albanians living in northern Mitrovica.

- On 3 March, unknown assailants threw a hand grenade into an Albanian-Bosniak neighbourhood in northern Mitrovica, injuring four people. On 4 May, a 60-year-old Albanian was severely beaten by a group of unidentified Serb extremists and ended up in a coma for a week. On 24 November, a group of Serb extremists attacked the house of Bedri Beka in the north of Mitrovica with an explosive device while he and his family were asleep. When he went out to see what was happening he was beaten up severely. No fatalities were reported in the above cases.

Freedom of Expression and the Media

There was a large number of Albanian-language media outlets in Kosovo, particularly electronic media, reporting mostly in Albanian, but also in Serb and other minority languages. Six dailies were published, all in Albanian, however with limited circulation. Three were independent while the others were *de facto* affiliated to the three largest Kosovo Albanian parties.

The most important media outlets in terms of opinion building were radio and television stations. The most influential media was the public Radio and Television Kosovo (RTK). This also broadcast programs in minority languages, albeit only a few hours a week. There were also two additional Kosovo-wide private TV stations, both in Albanian, as well as four radio stations.

UNMIK and the OSCE continued their efforts to re-establish a print and broadcast media system that would represent equally all ethnic groups in Kosovo. As a result, two newspapers in Serbian were published in Kosovo, as well as a Bosniak weekly. Nevertheless, Serbian- and other minority-language media experienced difficulties and Serbian-language newspapers continued to be available only in Serb enclaves.

UNMIK regulations prohibited hate speech in the media as well as incitement to ethnic or other violence or criminal activity. Media were generally free from such speech, but some of them resorted to false and inflammatory reporting. In 2003, the Temporary Media Commissioner (TMC) reprimanded the daily newspaper *Bota Sot*, which was known to be closely linked to the leading Kosovo Albanian party LDK, for a number of reports that were assessed to have comprised faulty and inflammatory reporting (see TMC report on this issue). It was later fined on two counts.

No direct censorship of the media was reported in 2003, but reporters resorted to self-censorship when reporting on certain delicate topics such as organized crime, potentially dangerous ethnically and politically motivated violence, and sensitive political issues. This self-censorship was practiced due to fear of potential retaliation by the objects of critical reporting.

Freedom of Movement

Full freedom of movement was guaranteed by the Constitutional Framework of Kosovo. However due to the tense inter-ethnic and political situation, these rights were restricted for Serbs and Roma. Despite considerable improvements, freedom of movement of Serbs remained “below the acceptable minimum,” as stated by the Ombudsman Nowicki. This reflected persisting inter-ethnic tensions, hostility and lack of mutual trust between Kosovo Serbs and the majority Albanian population.

In practice this meant that, with the exception of the Serbian enclaves, Serbs usually needed round-the-clock KFOR protection. Besides their limited freedom of movement and related security hazards and concerns, economic opportunities were scarce, and access to social services, education and health care limited—all problems resulting from the lack of free movement.

In the Serb-controlled enclaves, freedom of movement for Albanians was also very restricted due to security concerns. This was particularly so in the Serb-controlled enclaves in northern Kosovo.

- On 22 September, a convoy of buses transporting Serb children back home to their village of Gorazhdevac from a visit to Belgrade, was stoned by Albanian youngsters near Skenderaj.
- On 7 May, a crowd of some fifty Serbs blocked the road which was used by Albanians of the neighboring village of Gushavc and Vinarce in the Albanian enclave of Suhodoll in the northern Serbian-controlled part of Kosovo. The Serbs threw stones and bits of metal at passing Albanians and also injured a couple of Danish KFOR soldiers.

Returnees and Displaced Persons

Due to the continued precarious inter-ethnic and security situation, only very modest results were achieved in 2003 regarding the return of internally displaced persons (IDPs), primarily of Kosovo Serbs and Roma minorities. Nevertheless, some improvements were recorded since 2002, with some 3,700 returnees registered, marking an increase of some 30% from 2002.

In total, some 225,000 IDPs were estimated to have been displaced after the war in 1999. According to UNHCR statistics, the overall number of non-Albanian returnees since the war was just below 10,000 (as of the end of 2003), with approximately 5,000 Serbs. However, the March 2004 ethnic violence triggered another forced displacement of Serbs: close to 4,000 people were estimated to have left their homes.

An increased number of Serb IDPs returned to Kosovo in 2003 within the framework of an UNMIK program. Their houses were being repaired by UNHCR and special attention was paid to their protection.

The question of usurped property of Serbs and minorities was also one of the main reasons for the very low rate of returns of Serb IDPs (see below).

In an highly unusual move, high-ranking Kosovo Albanian political leaders, including former UCK leaders such as the head of PDK, Thaci, appealed in 2003 an to all IDPs from Kosovo, especially to Serbs, to return. The Kosovo parliament followed suit by adopting a package of ten recommendations to the PISG to create a more favorable security and political climate in Kosovo for the return of IDPs. A similar appeal of Kosovo Albanian leaders was made also in 2004. The effect of the appeals was, however, not expected to be very encouraging, given the continued lack of security and freedom of movement for Serbs due to the tense inter-ethnic relations that prevailed in Kosovo. This was reflected clearly in the continuation of ethnically motivated incidents against Serbs in 2003.

- On 13 November, a group of ten Kosovo Serb IDPs visited their former home village of Mushitishte that they were considering to return to. They were encountered by an

angry crowd of some hundred Kosovo Albanians protesting against this visit and their potential return.

Property Rights

Property rights, i.e., the usurpation of property, continued to be another key issue which clearly reflected the state of rule of law, security and return of displaced persons to Kosovo. The failure to solve the problem also contributed to the persisting inter-ethnic gap and hostility between Albanians and Serbs. This, although at a hardly comparable scale, was also a problem with Albanian property in Serb-controlled northern Mitrovica.

The issue of the return of property to original owners was dealt with by the special Housing and Property Directorate (HPD), also known as HABILAT, an UNMIK-established agency. HABILAT was set up at the end of 1999 to deal with the return of unjustly occupied property, primarily of Serb apartments and houses, but also of their shops, business premises and similar. These had been illegally occupied in the post-war period by Albanians whose homes and property had been destroyed or damaged during the war.

The HPD was in its initial phase understaffed, underfinanced and overwhelmed by the multitude of claims, which were rarely processed due to the priority given to other issues in the post-war period. In 2003 the HPD massively increased its capacity and efficiency and thus, by the end of 2003, the number of filed cases of usurpation of property had reached 28,812, while the number of resolved cases was over 12,000. The HPD carried out some 600 evictions of usurpers in 2003 making clear that it was resolved to fulfil its mandate. This new efficiency was seen by the fact that by summer 2002, it had resolved only 664 cases, and by the end of March 2003, over 2,000. The issue of return of usurped property rights was given special emphasis by UNMIK and it was hence anticipated that within the next two years all cases filed with HABILAT would be resolved.

Montenegro¹¹

IHF FOCUS: freedom of expression and the media; judicial system and independence of the judiciary; fair trial and detainees' rights; torture, ill-treatment and police misconduct; freedom of religion; intolerance, xenophobia, racial discrimination, anti-Semitism and hate speech; international humanitarian law; trafficking in and smuggling of human beings; property rights.

During 2003 human rights and democracy in Montenegro and the region were far from complying with international standards. Following the compromise reached on a temporary solution for the relationship between Montenegro and Serbia on 14 March 2002, which led to the creation of a Constitutional Charter and other legal documents in early 2003, it appeared that a broader social consensus regarding the solution of many other vital internal issues of Montenegro as a state community would be reached. However, instead issues regarding the status of Montenegro dominated political life either directly or indirectly. The governing coalition of the Democratic Party of Socialists (DPS), the Social Democratic Party (SDP) and the Citizens' Party failed to reach a broader consensus for the necessary legal, economic and social reforms. The opposition coalition—including the Socialist People's Party (SNP), the Serbian People's Party (SNS), the People's Party (NS) and the Liberal Alliance of Montenegro (LSCG)—made up of mainly Milosevic supporters, also displayed

¹¹ Based on the *Annual Report 2003* of the Montenegrin Helsinki Committee for Human Rights (MHC).

an inability to formulate any clear alternative reforms and began instead to obstruct parliament's work and the work of other institutions.

Many important laws (e.g. the Criminal Code and the Law on the State Prosecutor) were passed without the participation of the opposition parties. Whilst experts from the Council of Europe and the OSCE participated in the drafting of the laws, and which undoubtedly meant a step forward, they were still not fully in line with international standards and implementation was slow.

During the year the political campaign regarding criminality in Montenegro, including organized crime and trafficking in human beings, continued. In political life, demagoguery and political propaganda dominated, instead of any attempts to solve burning issues.

Montenegro, and in particular the Union of Serbia and Montenegro, did not fulfil their obligations regarding full cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY) in The Hague. Persons indicted before the tribunal were not arrested and extradited to it despite the authorities' promise to do so. There was also information that Radovan Karadzic occasionally entered Montenegro's territory. In December 2003, indicted General Nebojsa Pavkovic was in Montenegro, but the authorities did not arrest him even though he was very much present in the public eye. In addition, access to the archives for the investigators continued to be limited, and no witness protection was put in place for witnesses K32 and K41 who had given evidence in the Milosevic trial and their identities were consequently revealed.

At the level of the union many basic human rights were not respected. Ratification of the European Convention on Human Rights and Fundamental Freedoms (ECHR) had long been postponed and only on 26 December did parliament adopt a law enabling its ratification. Reform of the armed forces at the union level was also delayed and failed to be carried out in an acceptable manner. Some structures such as the secret military police remained outside of civil and democratic control and former military judiciary continued their work, contravening both provisions in the Constitutional Charter and the Law on Implementation of the Constitutional Charter. Rights of the citizens to an independent and impartial court were thereby violated.

Extreme nationalism also increased in 2003, in particular following the December elections in Serbia. It spread especially in the municipalities where the pro-Milosevic opposition held power. Some positive values—such as the re-establishment of mutual life in Montenegro and building of Montenegro as a multi-ethnic, multi-religious and multi-cultural state community—were frequently attacked.

The judiciary remained under the influence of the executive and the work of the courts continued at a slow pace, with many cases dragging out for years. Whilst unemployment decreased, the economic and social situation did not improve markedly and corruption was felt to be a widespread phenomenon, even though no corruption cases were brought to court. Illegal privatisation of property continued.

A population census was conducted from 1-15 November. Despite the fact that the authorities declared that the census would be carried out in accordance with international standards, this was not the case.

The census was politicized at every stage. The opposition coalition, together with the Serbian Orthodox Church, used the census to start up a campaign aiming to exert pressure on citizens to decide that their nationality was Serbian and not Montenegrin. The idea of their campaign was that if citizens decided on being Montenegrins instead of Serbs this would

serve as a substitute for a referendum on Montenegro's future status and be a sign of their political support to Prime Minister Djukanovic and his party.

The opposition threatened to permanently boycott the parliament and to organize mass protests and boycotts against other institutions and the census if they were not allowed control over it. The authorities consequently permitted them to control all phases of the census, particularly the questionnaires and data given by every citizen. This represented a flagrant violation of the freedom of citizens to decide on their ethnicity and was perceived as a demonstration of continuing policy of forced assimilation of Montenegrins.

Freedom of Expression and the Media

Freedom of expression and the media were regulated by, *inter alia*, the Montenegrin Constitution, media laws, and the Criminal Code. Whilst constitutional provisions on freedom of expression were mainly in accordance with international standards, media laws and provisions in the Criminal Code referring to limitations to freedom of expression continued to fall short of these. In 2003, a draft law on free access to information was elaborated by a working group consisting of NGOs, including the Montenegrin Helsinki Committee (MHC), representatives of several ministries and with expert support from the Council of Europe and ARTICLE 19.

Criminal Code, Defamation and Libel

In December, the Montenegrin parliament adopted a new Criminal Code containing several provisions on the protection of honor and reputation of individuals. The provisions referring to defamation represent a step forward toward harmonization with international standards. A number of proposals that were the result of the joint campaign for the decriminalization of defamation led by the MHC and ARTICLE 19 were accepted by parliament. These included the abolishment of prison sentences for defamation and similar acts with only the possibility of fines remaining. However, fines remain unacceptably high and can still be used to restrict freedom of expression. Also, defamation of the state (Montenegro and the union) and its symbols as well as foreign states and international organizations remain criminal acts, which is contrary to international standards.

During the year the MHC observed around 30 defamation cases that did not meet international standards. Several courts prolonged the trials—in some cases long past any reasonable deadline, which put pressure on journalists and in practice led to restrictions on their freedom of expression.

- Stanko Subotic sued Vladislav Asnin (former editor-in-chief of the daily newspaper *Dan*) for publishing texts about Subotic's alleged involvement in international cigarette smuggling. A number of the texts were taken from the Zagreb weekly *Nacional*. The initial verdict was three months imprisonment but following appeal this was reduced to one month.
- Danilo Vuksanovic, a high representative of the Socialist People's Party and former ambassador of the Former Republic of Yugoslavia in Moscow, sued journalist, Nebojsa Redzic, for publishing an article in which Vuksanovic was mentioned in the context of illegal work on an aluminum plant in Podgorica. Redzic was sentenced to one month imprisonment but the verdict had not been carried out by the end of 2003. Meanwhile, Redzic has asked for pardon from the president of the republic.

- Milo Djukanovic, now a premiere, initiated private charges against Vladislav Asanin, former editor-in-chief of *Dan*, for publishing several texts (some of which were taken from *Nacional*), which mentioned that Djukanovic was connected to international cigarette smuggling. In this case the court decided on a very high fine.
- Tomislav Kovac, former minister of interior in the Karadzic government in RS, in 2003 a successful businessman in Montenegro and Serbia and recently on Paddy Ashdown's international list of those who helped Karadzic to avoid international justice, sued a journalist of the *Monitor*, Zoran Radulovic for connecting him with a number of criminal and illegal activities. The case has been pending for several years and there was no first verdict at the end of 2003. According to the MHC, there was no criminal act in this case and the court should have dropped the charges, instead of prolonging the case.

Media Laws

While media laws drafted in cooperation with the Council of Europe represented a positive step forward in complying with international standards in this area, implementation was slow and unacceptable. Implementation of provisions relating to the transformation of state and local media into public services (Montenegrin TV, Montenegrin radio and Municipal TV and radio stations) was particularly problematic. Some media had not yet carried out the changes (Budva TV and radio) and others had not done so in accordance with the law (Montenegrin TV and radio). It was felt that failure to comply with the law was an attempt to retain political control over the media.

Access to Public Information

Montenegro had no special law on state secrets and classified information but this issue was regulated by provisions laid down in several other laws passed during 2003, including the Criminal Code, Law on Public Prosecutor, Law on Criminal Proceedings and Law on General Administrative Procedure. However, provisions of these laws relating, for example, to military, state and official secrets were not in accordance with international standards and clearly violated the public's right to know. They were also contrary to the draft law on free access to information and will create inconsistencies when the law is adopted.

Judicial System and Independence of the Judiciary

During 2003 several laws referring to the judicial system were passed, including the Law on State Prosecutor, the Law on Criminal Proceedings and the Criminal Code. These laws represented a positive step forward, but still did not fully comply with international standards. Very few of MHC's proposals to incorporate international standards were accepted, including those to prohibit war propaganda, hate speech, racist and anti-Semitic propaganda, and the promotion and glorification of Nazi and Fascist ideology and war criminals. Also, there were still no laws governing the police or the National Security Agency.

In addition, it was felt that little progress was made in practice to achieve the rule of law and the division of powers as stated in the Constitution: the judiciary continued to be under the influence of both the executive and legislative powers.

One major problem was the insufficient application of laws in the field of the judiciary, in particular implementation of the 2002 Law on Courts. Despite being provided for in law, neither the Administrative Court nor the Court of Appeals had been established by the end of 2003 and there were problems concerning the election of judges. Any reform of the

law was blocked due to constitutional limitations that referred to judicial power and the Constitution itself had not been amended even though there was an obligation to do so following the 14 March 2002 agreement between Montenegro and Serbia. The right to a fair trial was not precisely defined in the Constitution, and the independence and impartiality of the judiciary not defined as a basic human right.

The length of both criminal and civil cases also presents a major problem as procedures last for several years, making it difficult for many citizens to attain justice.

Following adoption of the agreement on the new relations between Montenegro and Serbia and adoption of a Constitutional Charter on 4 February 2003, the judicial system comprised a Union Court with very limited competence and the judicial systems of the member states of the union (Montenegro and Serbia).

A positive development was that the new constitutional and legal arrangements did not include military judiciary. This was important because the so-called military judiciary had never been constituted in accordance with international standards. It was used as a mechanism for illegitimate political repression and given extensive competences, including the competence to try civilians. The control over this kind of judiciary that the Milosevic regime had established resulted in the obstruction of justice in respect of war crimes trials—one of the main reasons for the establishment of the ICTY.

The Constitutional Charter and the law on its implementation meant that the competence of the former military judiciary would be transferred to civil courts of the member states within a period of six months. The reform did not, however, progress at the expected pace and it became clear that military forces were trying to avoid democratic and civil control by retaining the option of independent political action. Military courts and army prosecutors continued their work in a completely illegal way. According to a statement made by the army prosecutor himself, these courts sentenced more than 8,000 young Montenegrin men because they refused to go to the army. MHC believed that the real figure was considerably higher, as according to the army sources, in the Podgorica municipality alone around 35% of young men refused military draft last year. The operation of military courts was problematic also because these were not only illegal courts, but also because they failed to apply any standards of fair trial.¹²

Fair Trial and Detainees' Rights

There were no clear provisions on the right to a fair trial in the Montenegrin Constitution or the Law on Courts. However, on 26 December the Law on Ratification of the ECHR was adopted. This was a fundamental change, as it means that courts will have to apply the provisions of the ECHR. On adoption of the law, however, the union parliament excluded the application of the ECHR to the Law on Petty Offences. The latter was frequently applied and provided the possibility to sentence a person to up to 60 days' imprisonment following a procedure lacking any guarantee of a fair trial. In view of this exclusion, citizens will have no mechanism of protection against these violations.

In December, a new Law on Criminal Procedure was adopted. This marked an improvement on the previous law, which had failed to meet international standards regarding decisions on detention.

¹² The MHC stated their pleas at several press conferences and in conversation with the President of Montenegro, Filip Vujanovic and other officials. This has so far yielded no results. The military forces threatened the MHC president that he would go to court for his role in the campaign to stop the illegal work of former military judiciary.

Torture, Ill-treatment and Police Misconduct

In 2003 the Montenegrin parliament failed to adopt new laws on police and national security. This proved problematic as the new Law on Criminal Procedure, which came into force at the beginning of April 2004, includes several provisions, which contradict those in the laws on police and national security. The failure to adopt the new laws hindered the establishment of effective mechanisms of democratic and civil control over the police, security services and the army and in particular over different types of secret military police. On 26 December the union parliament ratified the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which will considerably improve legal standards in this field.

In general, fewer cases referring to misconduct by police towards citizens were reported to the MHC during 2003 than in previous years. However, it was still difficult to clarify efficiently suspicious cases and define disciplinary, criminal and civil responsibility of the police officer involved.

- Goran Ojdanic claimed that police had used illegal force when arresting his brother Bogdan Ojdanic on 25 December. The brother was accused of selling drugs. The family informed the MHC that the police beat him up and seriously injured him, breaking his jaw. MHC began monitoring the case and provided free legal aid. Meanwhile, an investigation was started and Bogdan Ojdanic was placed in detention. His brother brought criminal charges against the policemen that were involved in the incident. The charges were pending as of the end of 2003.
- On 18-19 July, police intervened to stop a fight in Budva. They used excessive and uncontrolled force against one of those involved and injured him seriously. Some time later, the Ministry of Interior admitted that the policemen had broken the law, stating that disciplinary proceedings against them had been initiated. The parents of the injured boy brought criminal charges against the policemen and the municipal prosecutor indicted him. The case was still pending the end of 2003.

MHC also continued to observe some earlier cases (Petnjica, Knezevic and Despotovic), all of which were still pending at the year's end.¹³

Freedom of Religion

Freedom of religion or belief was not respected in accordance with international standards during 2003. The authorities failed to respect the Constitution and the relevant laws regarding this issue and gave the Serbian Orthodox Church a privileged position, something that resulted in discrimination against other churches and religious communities.

At the end of the year, government officials and the Ministry of Interior answered several questions referring to the legal status of the Serbian Orthodox Church. They stated that the church enjoyed a special legal status and thus it was not necessary for it to be registered in accordance with the law while other religious communities were obliged to do. However, both the Constitution and Montenegrin law prohibited any discrimination and did not allow the government to give the status of a state church to any church or religious organization.

¹³ See IHF, *Human Rights in the OSCE Region: Europe, Central Asia and North America, Report 2003 (Events of 2003)*, at http://www.ihf-hr.org/documents/doc_summary.php?sec_id=3&d_id=1322.

Priests and believers of the Montenegrin Orthodox Church experienced problems regarding worship and celebration of religious holidays in many towns in Montenegro (e.g. Berane, Bijelo Polje, Bar, Kolasin). Members of other churches and organizations also had problems: for example, the buildings of the Muslim Religious Community in Bar was attacked.

A long-time problem was the issue of the protection of the cultural heritage of the Orthodox and Christian traditions on the territory of Montenegro. All Orthodox church buildings belonged to the Serbian Orthodox Church, on the basis of the decision of Serbian King Alexander more than 80 years ago, when the Autocephalous Montenegrin Orthodox Church was abolished by his decree. During 2003, the Serbian Orthodox Church continued to carry out illegal constructional repairs in many church buildings in Montenegro, contrary to international standards. This was allegedly to restore them, but in fact much of the work was done to remove the architectural and cultural elements that clearly proved specific Montenegrin heritage. The government and its ministries remained deaf to the requests to stop these attacks on the cultural heritage, blaming the fact that the Law on Protection of Cultural Heritage was limiting and that they were therefore unable to do anything. While they claimed they would work on amending the law, the MHC found the law to be in line with international standards established by UNESCO, thus underscoring the fact that the problem was rather an absence of political will of the government to apply the law.

- In 2002, the Serbian Orthodox Church lost the lawsuit against it for removing the Catholic altar from the church of St. Petka and changing the lock in order to prevent Catholic believers and priests from using the church. The church was built in the 15th century and was the joint property of both Catholics and Orthodox and it had two altars. The church had been used by both religions for 500 years without any disputes and this kind of joint ownership and use was an established tradition along the Montenegrin coast. Now, however, the Serbian Orthodox Church claimed that it was the exclusive owner of the church. The case started in 1995 and has been pending for an unacceptably long period of time.

Intolerance, Xenophobia, Racial Discrimination, Anti-Semitism and Hate Speech

2003 saw an escalation of intolerance, together with a strengthening of extreme nationalism, trends that were connected with the radicalization of political life in Serbia. The Montenegrin authorities failed to acknowledge the problems of attacks on the values of human rights, and the multi-ethnic, multi-confessional and multi-cultural character of Montenegro as a state community. In addition, they did not take the opportunity to formulate adequately hate speech, racial discrimination, and anti-Semitism restrictions in the laws that were adopted at the end of the year. Existing legal avenues for sanctioning drastic cases of hate speech and anti-Semitism were not used.

- In mid-May, the museum director, Djordje Capin, supported by the local authorities of Herceg Novi, refused to organize an exhibition of a well-known Croatian painter and sculptor Vasko Lipovac, originally from Boka Kotorska, Montenegro. The exhibition was part of a program entitled “Days of Istra in Boka,” a trans-border regional cooperation project aimed at reestablishing trust and reconciliation between Montenegro and Croatia. The refusal appeared to be ethnically and religiously motivated, as the Herceg Novi authorities were well-known for their nationalist attitudes.
- In December, the municipal authorities in Kotor prevented Don Brnako Sbutega, a local Catholic priest, from participating in the opening of an exhibition of pictures

and presentation of books dedicated to Mother Theresa. The exhibition was organized by Natasa Markovic, a publisher from Belgrade and the owner of the publishing company Blue Rider. The exhibition was held in rented rooms, which were the property of the municipality of Kotor. The municipal officials objected to her idea that Don Branko Sbutega participate in the opening of the exhibition stating that they had decided to excommunicate him from public life. Later, they changed their attitude a little, but on the opening day, the employee in charge of the rented space announced that Don Branko Sbutega was not allowed to speak at the opening of the exhibition. The organizer of the exhibition had to accept the decision.

Although there is a very small Jewish national community in Montenegro, anti-Semitism was constantly present in some media. MHC noted that anti-Semitism in some media was directed against the values of Western civilization in general, including human rights values. Several cases were recorded during the year.

- The *Istok Review* April 2003¹⁴ published a text entitled “May Day—Judean Fraud” containing anti-Semitic content. The same review in November published an anti-Semitic text entitled “The Riddle of Zion Protocols” with the subtitle “War Plan against Christians.”¹⁵

The daily *Dan* also published a number of jokes against Jews. In addition to the glorification of the brochure *Protocol of the Wise Men of Zion*, the media built their theory of conspiracy and hatred toward Jews by mocking the victims of the Holocaust.

Hate speech was still present in some media, including statements of some politicians (particularly from the pro-Milosevic opposition coalition) and in the speeches of some high representatives of the Serbian Orthodox Church. The targets of these attacks were mainly members national and religious minorities but also those members of the Montenegrin community who rejected the “Greater Serbia” idea and who identified themselves with the first Montenegrin state Doclea (and later Zeta). In addition, believers and priests of the Montenegrin Orthodox Church were targeted.

International Humanitarian Law

During 2003 there was no substantial progress in the cooperation with the ICTY, neither at the level of the state of Montenegro nor at the level of the union. The government and other authorities repeated on many occasions their promise that Montenegro would cooperate with the ICTY and that it would arrest and transfer any person indicted by the tribunal found on Montenegro territory. The authorities, however failed to keep this promise: they did not provide sufficient evidence that some of the indicted, including Radovan Karadzic, were not on Montenegro territory in 2002, something the Main Prosecutor of the Tribunal Carla Del Ponte claimed. The MHC had reliable evidence that the indicted General Nebojsa Pavkovic was on Montenegro soil at the end of 2003. However, no arrest was made.

The authorities also failed to do enough to assist with decisions made at the level of the union. These referred to access of documents and archives by the ICTY. Another problem was access to witnesses. Among those who refused to give evidence at the tribunal was the Montenegrin Prime Minister Milo Djukanovic.

A particular problem was the protection of witnesses who had given evidence at the ICTY in the Milosevic case: witnesses K32 and K41. In both cases the authorities failed to

¹⁴ No. 73/2003.

¹⁵ No. 77/2003.

provide any form of protection for them. This was understood as an action to discourage other potential witnesses and to prevent the resolution of all other war crimes at lower level before national courts in the future. Both witnesses' identity was revealed and consequently they and their families had serious problems because of the testimony given before the ICTY. The identity of K32 witness was revealed in the *Dan* daily on 30 August 2002. The ICTY brought an indictment against the editor-in-chief of the daily, Dusko Jovanovic, for failing to respect the court. On 22 May 2003, another article about the K32 witness was published and his identity revealed again in the *D Review* weekly. Details about the way the witness came to the tribunal were also given, stating that he had been given support by the MHC president. Following this, the MHC became a target of hate speech in different media and some political groups and of verbal threats.

The authorities initiated criminal proceedings against the protected witness K41 based on unclear circumstances and problematic evidence. He was sentenced in the first degree procedure and there was reason to believe that it had been as a result of his testimony.

During 2003, MHC led a campaign to create a legal framework to investigate, accuse and try individuals for war crimes before national courts where there is no competence of the ICTY. It proposed that a special branch should be established in the State Prosecutor's Office, that a special branch for investigating war crimes should be established in the police, and that at the Higher and Supreme courts of Montenegro in Podgorica, councils for war crimes trials should be established. The representatives of the governing coalition gave their support to the proposal, but as of the time of writing no steps had been taken to implement it.

Trafficking in and Smuggling of Human Beings

Trafficking in human beings was a prominent problem during 2003. The adoption of a new Law on the Public Prosecutor, the Criminal Code and the Law on Criminal Procedure, meant that the legal framework was considerably improved in order to fight all forms of organized crime, including trafficking in human beings. In practice, however, there was a large number of cases of trafficking of human beings and an inability on the part of the judiciary system to solve those that were before the courts as well as some in the pre-court procedure.

- The case related to the boat "Miss Pat," which was shipwrecked in August 1999 when trying to smuggle a group of Kosovar Roma IDPs from Montenegro to Italy, was still pending as of the end of 2003. Thirty-seven bodies were found in the wreckage, but it is believed that the actual number of the dead was 104. Seven people were accused of several serious crimes such as the illegal crossing of state borders, an act against general security and causing general danger. In addition, the defendants, who were mainly from Montenegro, were accused of the death of 37 people. According to the MHC, the slow pace of proceedings has proved the Montenegrin judicial system unable to cope with this kind of organized crime. The case is compounded by the fact that at the time of the crime not all these criminal acts existed in law.
- Irfan Kurpejovic and Ekrem Jasavic faced charges on suspicion of sex trafficking after an alleged victim reported to the police in November 2002. In addition, Zoran Piperovic, deputy state prosecutor at the time, and Bajram Orahovac were also arrested and an extended investigation was initiated on suspicion that they had committed the criminal act of trafficking in human beings and forced prostitution. Under court order, all four were placed in detention but released on 27 January 2003. In April 2003, the investigating judge completed the investigation as she had already decided that that the possible trafficking victim would have to leave the territory of Montenegro. The case was closed in May. Meanwhile, the barristers of the defendants

brought criminal charges against the witness for false testimony. The procedure was pending at the end of 2003.

From the beginning the case of Kurpejovic et al. had strong public and political implications, both in Montenegro and the international community. There were several problems: the case was not conducted professionally and in accordance with the law from the very beginning, and it was manipulated by the political scene in Montenegro. MHC lawyers argued that the police, the investigating judge and particularly the state prosecutor had made mistakes in the case. The media also failed to respect the rules of the investigation, i.e. the confidentiality of many issues related to the case. In addition, both municipal and higher courts held press conferences on the cases in violation of secrecy. Moreover, there were claims of illegal involvement of the police in the case and the investigating judge claimed that she was put under pressure by the secret police. In addition, several direct and open comments made by representatives of the international community had a counterproductive impact on this case: these comments were used as an additional argument by those who claimed that the case was based on a conspiracy against the defendants and that the charges had been fabricated.

As the case had strong international implications, the vice prime minister invited the OSCE and Council of Europe to appoint a team of independent experts to investigate the case and find out if everything had been carried out by law. One of the conclusions of their report was that the procedure should be initiated again. This was possible in accordance with Montenegrin laws under two conditions: if new evidence appears, and if it is proven that the prosecutor closed the case by committing a criminal act—i.e., misused his position. A new State Prosecutor, Vesna Medenica, has since been appointed and has taken over the case.

Property Rights

There was no adequate legal framework, nor political will for the complete protection of private property. MHC had information on several cases where private property was turned into state property contrary to international standards by establishing new records of real estate. Consequently real estate owners faced severe difficulties to reinstate their rights. Court proceedings were lengthy and expensive and courts tended to be partial, taking the side of the state or in most cases the side of the municipalities.

- The municipalities of Budva and Kotor and the Regional Water Supply Company “Montenegrin Coastline” from Budva started a project to build a temporary regional sanitary dump for solid waste in the Lovanja-Sinjarevo, the municipality of Kotor, near the town of Tivat. The project was partly financed by the World Bank. Work on the building commenced illegally and violated the fundamental human rights of a large number of citizens in the village of Kavac and several other villages nearby. Property disputes were not addressed and there was no urban planning. In September those citizens whose right to property had been violated, including representatives of the Roman Catholic Church, initiated court proceedings before the Municipal Court in Kotor demanding urgent temporary measures. The court passed a verdict in the citizens’ favor three months later even though it was supposed to do so in a matter of days. However, the municipality of Kotor issued a temporary illegal building permit for the building of the dump in Lovanja-Sinjarevo. The court, under pressure, modified its temporary decision in January 2004 and permitted the work. However, the dispute over the ownership of the property had not been solved by early 2004. The citizens and representative of the Roman Catholic Church, priest Don Branko Sbutega, organized a peaceful protest against the wrongdoings, but the police arrested Sbutega and criminal proceedings were brought against him with no legal basis. He was eventually fined. The court also allowed the legal representative of the Ministry

of Interior to participate in the trial armed, which was viewed as an attempt to put pressure on and intimidate the court. The court denied the citizens their right to be informed about the project and expert opinion regarding protection of the environment. There was also reason to believe that the case discriminated against citizens on the basis of their religious, ethnic or political affinity (the majority of the people were members of the Croat national minority and Catholics). In other similar cases, problems of this kind always ended in the termination of the work until the proceedings had been completed.¹⁶

¹⁶ Cases of Zelenika, Podgorica and Pljevlja. Some dumps were also closed after citizens had protested, e.g. the dump Tresnjevi Mlin on the territory of Kotor, which was built in accordance with the plan and without property disputes.