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Extract from the IHF report

Human Rights in the OSCE Region: Europe, Central Asia and North America, Report 2005 (Events of 2004)

SERBIA AND MONTENEGRO (SERBIA, KOSOVO and MONTENEGRO)

Serbia[1]

IHF FOCUS: constitutional reform; national human rights protection; elections; access to information; judicial system, independence of the judiciary, and right to a fair trial; torture, ill-treatment and police misconduct; national and ethnic minorities; racism, intolerance and xenophobia; international humanitarian law (accountability for war crimes).

In 2004 the high hopes of Serbia's potential to move towards transition were totally dashed. Slobodan Milosevic's legacy turned out to be a serious obstacle, penetrating the society's basic values. Regardless of the changed constellation of forces in the region and at the global level, the Serbian nationalists would not accept that the policy driven by radical nationalism they had followed for 15 years has been defeated.

Political and economic systems developed 15 years ago still predominated in 2004. Anachronistic nationalism continued to influence national interests. Arguments surrounding a new Constitution best reflected dilemmas about the future of the state union of Serbia and Montenegro, the status of Kosovo and the attitude towards Republika Srpska.

It was not clear, therefore, when the country would sign the Stabilization and Association agreement with the EU. Political restoration – a process followed by the actual cabinet – undermined efforts at economic transformation. The restoration of the political system of Milosevic's era ran counter to the proclaimed reformist policy. To all appearances, Serbia has opted for a strategy that could be labeled "reforms to begin with, democracy to ensue." This indicated that rule of law and democracy were not on the priority list.

Citizens' expectations for 2004 and 2005 are probably best illustrated by the findings of the survey publicized by the TNS Medium Gallup agency in November 2003. Thirty-two percent of respondents believed that the year 2004 would be better than the year 2003, while 25% said it would be worse. An identical poll conducted in late 2004 indicated that 22% of respondents expected the year 2005 to be better, while as many as 43% of respondents thought that it would be worse than 2004. On the list of 65 countries in which the same poll was conducted, Serbia ranks fourth in terms of highly pessimistic citizens.

According to the findings of the December 2004 poll conducted by the Strategic Marketing agency, 8% of respondents with the voting right trusted the republican government, 6% the republican parliament, 22% had no faith in the Serbian president, 17% in the police and 8% did not lend credence to the judiciary

[1] As reported by the Helsinki Committee for Human Rights in Serbia to the IHF, 2005. For issues not covered by this chapter (e.g. minority rights), please see the full *Annual Report 2004* of the Serbian Helsinki Committee, at www.helsinki.org.yu.

In its program, the Serbian cabinet failed to offer a vision or resolutions to problems such as Kosovo, the status of Serbia or a new Constitution. The cabinet did not even wish to discuss the possibility of an independent Kosovo, advocating the maintenance of the state union of Serbia and Montenegro and reaffirming its commitment to association with the European Union. Furthermore, in spite of numerous indications of its entropy, the army continued to be regarded as an untouchable institution.

In his speech to the parliament in March 2004, Premier Kostunica said that, when it came to Kosovo, Serbia should firstly resolve its own status and vehemently renounced any possibility of Kosovo's independence. He said, "Serbia will insist that UNMIK [United Nations Interim Administration Mission in Kosovo] and the international community change the institutional framework for the protection of the Serbian community in Kosovo." Throughout 2004, and particularly after the March 2004 violence in Kosovo, this meant nothing but Serbia's insisting on Kosovo's decentralization. The decentralization itself was meant to have Kosovo partitioned, as "the only way of guaranteeing safety to the Serbian minority in Kosovo."

Referring to Serbia's policy on Montenegro, Kostunica stated that, "Serbia will strengthen its status within the union with Montenegro by strengthening the union itself in keeping with the Constitutional Charter." The Serbian Orthodox Church and the Council of North Montenegro's Municipalities were major exponents of this tendency. Their activities were aimed at undermining the process of Montenegro's independence. Given that the state union of Serbia and Montenegro failed to consolidate, the Feasibility Study – a precondition for the association process with the EU – remained unfinished.

As in 2003, the functioning of the state union of Serbia and Montenegro in 2004 was marked by non-operation and mutual accusations. The first series of problems concerned the election of MPs to the union's parliament. Pursuant to provisions of article 9 of the Act on Implementation of the Constitutional Charter, parliamentary elections shall be conducted through direct elections two years after the charter's adoption – in other words, the elections should have been held by February 2005. On 24 December 2004, Serbia passed the Act on Election of Delegates to the Serb-Montenegrin Parliament, which stipulates direct elections. Montenegrin authorities opposed such a solution, fearing that a parliament resulting from direct elections would simply dissolve in the event of a successful referendum on Montenegrin independence (the referendum may take place after the expiry of a three-year period; that is in March 2006 or even earlier).

Failure to hold direct elections to the state union's parliament would be tantamount to a gross violation of the Constitutional Charter and would further weaken common institutions. However, the gist of the problem lies in the fact that a large part of the public opinion in Montenegro supports the idea of an independent state and its independent road to integration into Europe. The fact that integration of Serbia and Montenegro into European and international processes, notably economic ones, is conditioned by an enhancement of Serbia's cooperation with the International Criminal Tribunal for the Former Yugoslavia (ICTY) – which was practically non-existent in 2004 – indicates that the Montenegrin claim for independence is utterly legitimate and justified.

Disharmony between Serbian and Montenegrin governmental bodies was also reflected in the patchy implementation of the commitments taken upon by the ratification of the European Convention on Human Rights (ECHR), which took effect on 3 March 2004. Though Serb-Montenegrin authorities took some steps towards setting up the office of the state agent before the European Court of Human Rights (ECtHR), a consensus on modalities of the set-up of the office are yet to be agreed upon as Montenegro proposes that each member-state has its own agent. An expert analysis of the draft decree through which the Council of Europe regulates the issue was underway as of early 2005.

National Human Rights Protection

Legislation Affecting Human Rights

One of the key and much-contested laws is the Act on Access to Citizens Files, relating to files compiled by the secret services over a long period of time. While on 19 June 2003 the Constitutional Court overruled the government's Decree on Free Access to Some Security Services' Files (issued on 22 May 2001) by stating that "matters related to social relations or personal data should not be governed by decrees, but by bylaws," no such act had been drafted by early 2005.

This also affected the implementation of the Act on Responsibility for Violations of Human Rights (lustration) passed as early as in June 2003 in the face of stiff opposition from MPs of the Democratic Party of Serbia (DSS). The so-called lustration act provides that "lustration proceedings shall be instituted against persons who have occupied high posts or are candidates for such offices."

The lustration commission, as well as organizations authorized to propose such candidates, are entitled to institute vetting proceedings. The commission launches an inquiry by checking the files kept by the Security-Information Agency's (BIA) predecessor (the State Security), judicial documents, as well as documents of other state bodies and public organizations. While the parliament elected eight out of nine members of the commission as early as July 2003, the commission itself has practically never become operational. It was denied secure and proper working conditions and was repeatedly put under pressure. The commission's plan to vet 250 newly elected MPs was rejected and once the Serbian Parliament was constituted, the Serbian Radical Party immediately tabled a motion to repeal of the lustration act.[2] Consequently, in early November 2004, the commission handed in its collective resignation, to which there was no response from the parliament that had established it in the first place.

The Act on Ombudsman, which for the past three years was the subject of many public debates as well as OSCE, Council of Europe and UN expert analyses, was still pending. The importance of such an act was best illustrated by the draft's provision: "the Ombudsman, as an independent state body, protects citizens' rights and controls the work of the state and governmental agencies, that is, takes care of protection and promotion of human rights and freedoms."

Though the Law on NGOs drafted by the Federal Justice Ministry[3] and the Law on Associations submitted by the Serbian government were in force in 2001 and were, moreover, subsequently harmonized with international standards, the incumbent authorities sought a new direction. This was embodied in the Draft Act on Associations, submitted to the Serbian Parliament by the Ministry of State Administration and Local Self-Government in November 2004. Article 2 of the draft defines an association as "a voluntary, non-governmental and non-profit organization based on freedom of association of several natural and legal persons, founded to attain and promote certain cultural, humanitarian, ecological, sports, professional, craft, social, scientific, educational, health, developmental, philanthropic and other common, public or general interests and goals." In this precise listing of various interests, protection of human rights and development of democracy were either intentionally omitted or at least considered to be less important and, therefore, suitable for the category labeled "miscellaneous."

Conclusions of the 26 November round table on the draft act, drawn up by the OSCE and circulated to all participants, contained the following assessment: "Participants agreed that the work on the elaboration of the law on citizens' associations was unjustifiably procrastinated, while, on the other hand, the working version of that law submitted as the material for the round-table, was not suitable, or slated to become a starting point for determination of the law's wording."

2 *Srpska Rec*, 11 November 2004.
3 That model was swiftly revoked due to a new concept of arrangement of the state union of Serbia and Montenegro.

European Court of Human Rights

As of early 2005, the ECtHR had received about 400 complaints filed by citizens of Serbia. These were related to issues of unregulated property and ownership rights, protracted judicial proceedings, miscarriage of justice, corruption in the state bodies, etc. Many of these complaints were in fact cases pending in the courts of both countries.

After a yearlong process, a special commission selected three candidates for the post of a judge of the ECtHR. Their candidacies were accepted by the Council of Ministers of Serbia and Montenegro and forwarded to Strasbourg.

As regards commitments under the European Convention on the Prevention of Torture, the incumbent authorities provided the Committee for the Prevention of Torture with information about domestic bodies authorized to deal with the issue, and named liaison officers.

Constitutional Reform

On 11 April 2003, the Serbian Parliament adopted the Act on the Mode and Procedure of the Amendment of the Constitution of the Republic of Serbia. The Constitutional Commission, formed under the act, was tasked to lay the groundwork for a new Constitution within 60 days from the day the act came into force.

The relevant procedure envisaged a public debate on the basis of which the Constitutional Commission was to word a new Constitution and submit it to the parliament. Further, the parliament was to adopt the new Constitution by majority vote, and then call a referendum to verify the constitution vote. However, partly due to political upheavals and partly to the political elite's slowness, none of the foregoing were passed in 2004. By the 26 March 2004 decision of the Constitutional Court of Serbia, the aforementioned act was proclaimed anti-constitutional. Thus the situation reverted to the procedure envisaged under the 1990 Constitution (requiring two-thirds majority of the total number of MPs and a vote in favor of more than 50% of voters in a referendum).

In early June 2004, the government drew up a draft Constitution of the Republic of Serbia and submitted it to the republican parliament for deliberation. In addition to the government's draft, several other drafts/models, including that of January 2005 elaborated by an expert team of President Tadic, were also submitted for the parliament's consideration.

Those models/drafts envisaged different concepts of the state arrangement, and manifested once again crucial discords over the following issues: character of the Republic of Serbia (national or civilian); status of provinces (autonomous provinces, regions, or asymmetrical provinces); de-centralization (provinces, regions or asymmetrical provinces); procedure for electing a president of the republic and his/her prerogatives (direct or indirect, weak or strong), and other.

After being in power for an entire year, new authorities had made almost no progress in drafting a Constitution that would be acceptable to all parties.

Elections

Following the parliamentary elections of 28 December 2003, which recorded a 59% turnout, Serbia had a new parliament. As no majority government could be formed, after long inter-party negotiations and pressure, as well as warnings coming from the international community that all options, barring a coalition with the Serbian Radical Party (SPS), were acceptable, a tentative coalition between the Democratic Party of Serbia, the G17 Plus, the Serbian Renewal Movement-New Serbia and the Socialist Party of Serbia was formed.

When two rounds of the 2003 presidential elections failed due to low turnout, it became evident that Serbia would get a president only if election legislation was amended. Amendments to the Act on the Election of the President of the Republic of Serbia, adopted on 25 February 2004, suspended a provision on a mandatory 50% turnout. After two rounds of the June 2004 presidential elections, Boris Tadic, candidate of the Democratic Party, (DP) was elected president with 53% of votes (his rival, Tomislav Nikolic, from the Serbian Radical Party, won 45% of votes).

In September and October 2004, local elections were held. Though free and fair, the elections recorded the lowest turnout in the past 14 years (34 %), and strongly indicated citizens' plummeting distrust in the system

Access to Information

An impassioned public debate on the need for the adoption of the Act on the Free Access to Information lasted two years. Finally, after strong pressure from the media, NGOs, and international organizations, the act was promulgated on 2 November 2004. Generally, it was in line with internationally accepted standards and principles governing that sphere, but it is still not harmonized with the Recommendations of the Council of Europe (2002) relating to access to official documents.

The new act fails to provide the possibility of the right to appeal against the highest authorities' (national parliament, president of the republic, government of the Republic of Serbia, the Supreme Court of Serbia, the Constitutional Court and the republican public prosecutor) decision to refuse, on whatever grounds, access to requested information (article 22). In such cases protection is envisaged in the shape of filing an administrative lawsuit.

The second problem concerns the provision stating, "The official body is duty-bound to inform the claimant, without unnecessary delay, and within 15 days from the day it received the claim at the latest, whether or not it possesses the required information, and allow the claimant access to the documents containing that information, that is, issue to him or her a copy of that document. If an official body, on justifiable grounds, fails to act as stated above, it is duty-bound to immediately inform the claimant and set a subsequent term, that is, forward the requested information no later than 40 days after receiving the claim" (article 16). Phrases such as "without unnecessary delay" and "on justifiable grounds" in practice may be very loosely interpreted. But in the said context they, in fact, make a piece of information provided after over two-month delay practically useless. A research conducted by Transparency Serbia indicated that two months after the act's entry into effect, only 18 out of 151 requests were properly met.[4]

Judicial System, Independence of the Judiciary and the Right to a Fair Trial

Though high on the agenda of all election campaigns over the past five years, the judiciary did not undergo a thorough reform to make it independent. Pressure on courts from the executive and legislative continued in 2004, although it was no longer as open and strong as it used to be in the Milosevic era.

In principle, legislation regulating the operation of courts and other judicial bodies guarantees at least minimal preconditions for the right to a fair trial. In practice, however, this was usually not the case. For example, the trial of the person accused of the assassination of Premier Zoran Djindjic violates most of the fundamental fair trial standards. The trial itself is under constant influence of various political parties, politicians and the media.

Leglslation

4 *Glas Javnosti*, 21 January 2005.

The amendments to the Act on Criminal Proceedings of 28 May 2004 resulted from a compromise between the necessity to bring some of its provisions into conformity with the ECHR,[5] and to accelerate the proceedings, tighten procedural discipline of involved parties, and ensure extended detention of those accused, but not convicted, of the gravest offences.

Amendment to articles 5 and 144 of the Act on Criminal Proceedings more precisely defined and expanded the rights of detainees, and declared null and void article 15 b of the Act on Organization and Competence of State Bodies in Combating Organized Crime, providing that an arrestee shall not be kept in police detention longer than 24 hours.

Amendments to article 43 of the Act on Criminal Proceedings introduced a possibility of rejection of motion for the exclusion of judges, without appeal, if a motion as such is aimed at protracting the proceedings, while amendments to articles 108, 115, 173, 218, 263, 299, 305 and 307 envisaged severe punishments for procedural negligence, protracted proceedings, and contempt of court, lawyers, witnesses and court experts.

An amendment to article 146 envisaged a detention period of up to two years after filing of indictment or four years for offences entailing 40-year prison terms. In case of non-suspension of the first-instance ruling by the second-instance within a year, detention may be maximally prolonged for another two years after the second-instance ruling.

In the context of normative establishment of conditions for efficient work of the judiciary, in early November 2004, the following acts were adopted: the Act on Lawsuit Proceedings, the Act on Final Proceedings and the Act on Peaceful Resolution of Labor Disputes. All of them are in keeping with the demand that trials be held and completed within a reasonable time frame. On the same grounds, adoption of the Act on Mediation-Brokering is imminent.

In keeping with a mandatory reconciliation between domestic criminal legislation and the standards of the Council of Europe, the Serbian Parliament will soon have to discuss the Penal Code of Serbia, the Law on Enforcement of Criminal Sanctions, the Law on Juvenile Offenders, and the Law on Protection of the Parties in Criminal Proceedings. These bills, as the result of failures in the Ministry of Justice, were only partially harmonized with European standards, and have not been subjected to public and expert debates or to an appraisal by the Council of Europe. If they receive the parliamentary seal of approval, their texts will be modifiable only through amendments, which has never been a satisfactory legal solution.

As regards a new Act on Misdemeanors, the situation is even worse. The draft was still under preparation as of early 2005 and will be submitted to the parliament "in due course," the lawmakers say. The actual Act on Misdemeanors dates back to 1989, and though it was repeatedly amended (mostly because of the severity of proscribed penalties) it falls seriously short of principles enshrined in the ECHR. Due to this, Serbia and Montenegro were compelled to indicate their reservations on the occasion of the convention's ratification.

Though adopted in June 2003, the Act on the Court of Law of Serbia and Montenegro has not been implemented so far. With a yearlong delay, in May 2004, seven judges were elected. With the appointment of the eighth judge, in June 2004, the court was formally constituted. However, official inauguration of the court was delayed for months, allegedly because "no adequate building to house the court's Podgorica seat is available for the time being," but essentially on political grounds.

According to the court's president, Slobodan Perović,[6] the first cases on the court's agenda would be 421 cases that had not been decided by the Federal Constitutional Court and Federal Court. The backlog of

5 On the occasion of ratification of the ECHR, Serbia and Montenegro voiced four reservations. The first one was that provisions of article 5, paragraph 1 (c) and paragraph 3 of the ECHR would not impact enforcement of the mandatory detention rules in force. The same reservation applies to article 142, paragraph 1 of the Act on Criminal Proceedings, envisaging mandatory detention in the event that there is a reasonable doubt that the indictee has committed a criminal offence entailing 40-year imprisonment.
6 *Politika*, 3 December 2004.

unresolved cases totaled 3,000 in early 2005. According to Perović, some cases will be handed over to the constitutional courts of the two member-states, including the cases before military courts that were disbanded on 31 December 2004.

Further, the status of the Court of Law of Serbia as the last judicial instance of appeals, figured as a serious problem. Some domestic experts viewed the court as the last judicial instance, preceding the ultimate recourse to the ECtHR, while others deemed that any appeal to the latter was not preconditioned by the court's prior ruling. Due to the ongoing problems with putting in place the union's court, the second opinion gained ground. That opinion was also in line with a reservation voiced by Serbia and Montenegro on the occasion of ratification of the ECHR, namely, that "provisions of article 13 of the Convention (the right to an efficient legal remedy) would not be applied with respect to legal remedies within the competence of courts of Serbia and Montenegro, until the Union's Court becomes operational."

After strong pressure from the international community, domestic and foreign NGOs, and an 18-month delay, on 18 November 2004, the Act on Transfer of Military Courts, Military Prosecution and Military Defense Counsels on Bodies of Member-States, was adopted (it came into force on 1 January 2005). The union thus met an obligation deriving from its membership in the Council of Europe. According to estimates, special military departments set up within district courts in Belgrade, Nis, and Novi Sad, and the special military department formed within the Supreme Court of Serbia, will have to deal with 8,000-11,000 lawsuits. In view of such an increased workload, it was decided to process only urgent, mostly detention, cases and those that are in the public eye (death of two soldiers in Topcider garrison, death of a soldier in Ladjevci near Kraljevo and death of an Albanian youngster at the border between Serbia, Montenegro and Macedonia.) The foregoing suggests that the law was adopted without sufficient preparations for its enforcement.

As regards the commitments stemming from its Council of Europe membership that are still to be met, the union is expected to sign/ratify the European Charter on Local Self-Government, the European Charter on Regional or Minority Languages, the European Framework Convention on Cross-Border Cooperation and the accompanying Protocol, and the Amended European Social Charter by 3 April 2005.

Torture, Ill-treatment and Police Misconduct

Five years after the ousting of Slobodan Milosevic and two years after accession to the Council of Europe, there was still no new law on the police. Hence, the police still had prerogatives envisaged under the 1991 Act on Internal Affairs, which had only slightly been amended in the meantime. In addition, the Act on the Security-Information Agency (passed in 2002) only introduced some cosmetic changes and was published using a new name for the State Security Service. Overall, however, no progress was made when it came to the establishment of the new legislative framework for the police and security services.

It appeared that the incumbent authorities understood the reform moves as personnel changes, that is, as replacement of the DOS-appointed officials by the coalition's "politically suitable" personnel. In March 2004, Vladimir Bozovic, who has never officially worked in the police, was appointed general inspector of the Public Security Department. The work and prerogatives of the inspectorate were still not legally regulated by late 2004, and no official report on its activities was made public. The general inspector and his department are accountable only to the minister of the interior and the government.

While it was a well-known fact, that police torture was commonplace in Serbia, the general inspector briefly commented on the body's work by saying, "Since I came to the office, and that was nine months ago, the Services have filed 71 charges against 83 policemen... Some were suspended, while in some cases our actions are still pending due to the outdated the Act on Internal Affairs."[7]

7 *Kurir*, 31 January 2005

Judicial proceedings in torture cases were apparently mishandled, and investigations into cases in which confessions had been extracted under duress were incomplete and biased. In this regard the situation was similar to the one in 2003. Prosecution remained passive in such cases. The police and prison administrations responded to charges pressed against their officers by filing countercharges against the victims "for obstruction of the work of officers." Courts tended to lend more credence to the latter.

- Z.G. from Grocka was taken into custody on 27 November 2003, for "disturbing public order and peace in a drunken state." He refused to undergo the regular alcohol test and demanded a blood test and the presence of his lawyer during interrogation. This angered several policemen who started beating him. Kicks and blows were so heavy that Z.G. lost consciousness and when he recovered, he began vomiting. Only several hours later, after his repeated pleas, was a doctor called in. She established that Z.G. had a severe concussion and large bruises to his head and body. Due to his critical condition, upon the doctor's insistence, Z.G was immediately transferred to the Emergency Medical Center. Several days after his release from hospital, he was summoned to report to the police station. There he was "instructed" by the police commander to forget the "unpleasant incident." When he declined to do so, the commander threatened him with "much worse things." Months later, he turned to the Serbian Helsinki Committee, which filed charges against the policemen on his behalf on 22 June 2004. But the prosecutor's office failed to promptly look into the case and check the veracity of the allegations. It was only seven months later, on 4 February 2005, that the prosecutor informed the Serbian Helsinki Committee in writing that it had requested Grocka police station and Belgrade Police Department for Control of Legality to report on the above case.

- The case of the beating up of D.A. by six prison wardens on 18 March 2003 in the detention unit of the Vrsac department of the Pancevo District Prison continued in 2004. The municipal public prosecution office in Vrsac, first protracted, and then refused to institute proceedings against the accused. Thus, on 5 November 2003 the Helsinki Committee filed criminal charges against six warders. On 16 April 2004, the Municipal Court in Vrsac decided to dismiss the charges and ruled out any compensation for the plaintiff. In addition to the mishandled proceedings and the presiding judge's bias, eyewitnesses' testimonies were misinterpreted and any ill-treatment denied. The ruling of the higher court on the 4 August 2004 appeal was still pending as of early 2005.

- On 24 November 2004, the UN Committee against Torture (CAT) ruled that Serbia and Montenegro had violated several provisions of the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishments in the case of Dragan Dimitrijevic. Dimitrijevic, a Rom, was arrested by policemen on 27 November 1999 in his house in Kragujevac in connection with a criminal investigation. After taking him to a police station and handcuffing him to a radiator grill, several policemen, some of whom were Dimitrijevic's acquaintances, started kicking him in the ribs, head, and legs, insulting him on ethnic grounds, and cursing his "Gypsy mother." Then they tied him to a bicycle and beat him with batons and metal rods. They did not stop their torture even when his ears began to bleed. Dimitrijevic sustained severe arm, leg and back injuries and an open head wound. His ears bled for days, and he had swellings on his ears and lips. He was bed-ridden for several days. Fearing police retribution, he did not dare to go to a hospital for treatment. Policemen obviously tortured Dimitrijevic to make him confess a criminal offence. However, no one pressed charges against Dimitrijevic. In January 2000, Dimitrijevic filed a complaint for police brutality to the prosecutor's office. As no official reply ensued, the Fund for Humanitarian Law and the Budapest-based European Roma Rights Center on behalf of Dragan Dimitrijevic submitted the case to the CAT in December 2001. The CAT ruled that the police brutality to which Dimitrijevic was subjected was tantamount to torture, and assessed the beating as a "major pain and suffering intentionally incurred to him by public servants." CAT also established that Serbia and Montenegro had violated their commitment to conduct a swift and unbiased investigation into the victim's report on torture, and that due to its failing to launch a probe into allegations the state union of Serbia and Montenegro de facto deprived Dimitrijevic of any possibility to file compensatory damage claims, which could have been successful. In its conclusion, CAT established a violation of article 2 in connection with articles 1, 12, 13 and 14 of the convention against torture and demanded that the

authorities launch an adequate investigation into the torture case and inform CAT of measures taken in that regard at the latest within 90 days.[8]

In view of the above, the Serbian Helsinki Committee argued that the state union of Serbia and Montenegro should urgently ratify the Optional Protocol of the UN Convention against Torture (signed on September 2003) and establish control mechanisms envisaged in the protocol. In the long run, the priority is to launch a fundamental overhaul of the system of education and training of police officers, with a special emphasis on the issues of protection and respect of human rights, professional ethics, and contemporary and lawful methods of gathering material evidence.

The same recommendations apply to prosecutors and judges, the Serbian Helsinki Committee continued. Large sums recently invested in their education, notably in terms of article 3 (prohibition of torture) of the ECHR, have not yet produced the desired effect so far.

Racism, Intolerance and Xenophobia

In 2004, anti-Semitic manifestations were not only a result of "nationalism" but also part of the Serbian elite's attempt to rehabilitate Nazi collaborators in the World War II and their ideology, and discredit the forces siding with the anti-Hitler coalition. In addition to infamous organizations such as Obraz, St. Justin or Svetozar Miletic and other notorious domestic adherents of the Third Reich, a number of new organizations emerged, propagating racism and Nazism as "a vision of the future."

International Humanitarian Law

Accountability for War Crimes

The assassination of Premier Djindjic practically put an end to cooperation with the ICTY. This was to be in view of Kostunica's well-known position on the tribunal and the fact that the so-called patriotic bloc – i.e., the anti-Hague lobby – had once again come to power. In his aforementioned speech to the parliament, Premier Kostunica promised that his cabinet would do its utmost to turn cooperation with the ICTY into "a two-way process." He also said he would endeavor to "secure all legal, material and personnel preconditions to allow for those accused of war crimes to be tried before domestic courts, to obtain from the tribunal specific evidence against our citizens, and to provide adequate assistance to all defendants standing trial in The Hague."[9]

When the USA and other Western governments announced that they would cut off financial assistance, the "two-way cooperation" had to be activated. In three months only, nine indictees "voluntarily gave themselves up" to the ICTY. All of them were given the red carpet treatment as heroes sacrificing themselves for the society's well-being. Minister of Justice Zoran Stojkovic said that the obligations to the ICTY had to be "fully met." Referring to the state guarantees,[10] he said, "Those people realized that the state backed them as its citizens. This is the first government ever that has decided to help their families. That's the least we must do. This is why people have finally begun to trust their state."[11]

Several human rights related laws were adopted. The Act on the Rights of War Crimes Indictees Detained by the ICTY and Members of Their Families was adopted on 30 March 2004. The act, inter alia, envisaged that

8 Humanitarian Law Center, 9 December, 2004.
9 *Ekonomist*, 8 March 2004.
10 In an interview with the TV B92, Dragan Bujosevic, a journalist with the *NIN* weekly, said that as much as EUR 500,000 were set aside for each indictee. The state paid for Gen. Lazarevic's surrender EUR 500,000, a portion of which went to his family. According to some sources, certain businessmen (Miodrag, Peconi, Rankovic)provided the funds. Allegedly, a group of businessmen has established a fundraising foundation for other indictees as well.
11 Danas, 19-20 March 2005.

an indictee enjoys special cash compensation, partial compensation of defense expenses, and compensation of the expenses incurred in defense expertise. Members of their families may exercise the following rights: to financial assistance; to compensation of transport expenses and those incurred during their visits to the ICTY indictees; to compensation of expenses for communication with a detainee.

Before promulgation of the said act, the Lawyers' Chamber of Vojvodina and the Lawyers' Committee for Human Rights initiated a procedure for the appraisal of its constitutionality, since "it invested those persons and their families with special rights that have never been granted to other detainees and their families, and thus violated citizens' equality before courts of laws and equal protection of citizens by the state and other bodies."

The 16 April 2004 Constitutional Court ruling suspended enforcement of acts or actions passed or taken on the basis of provisions of the aforementioned act.

Kosovo[12]

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

Developments in Kosovo continued toward post-war consolidation. Democratic institutions were further stabilized and their capacities enhanced and expanded. [13] This was made possible by the transfer of nearly all authorities previously under the United Nations Interim Administration Mission in Kosovo (UNMIK) to domestic Kosovo institutions except for the so-called "Reserved Powers." However, the substantial progress was disrupted by negative developments, such as the two-day large-scale inter-ethnic violence that erupted in March 2004.

The stabilization process was demonstrated by the success of the second Kosovo-wide parliamentary elections in October 2004. The elections held under the auspices of the OSCE and closely monitored by international and domestic observers were assessed by all sides to have been free and fair. However, the success of the elections was undercut by the fact that Kosovo Serbs largely boycotted the elections, as recommended by the government in Belgrade, allegedly in response to the March 2004 violence against Kosovo Serbs. A minimal number of some 0.2% of local Serbs nevertheless participated and on this basis two participating Serb coalitions were allocated the proportional number of the granted minimal quota of 10 seats reserved for Serbs irrespective of their participation. The elections resulted in the prompt formation of a new Kosovo parliament and the election of a president and government that eventually also included a Serb minister. In its first 100 days the new government was effective in implementing international standards for Kosovo, especially in the area of providing for multi-ethnicity and security of Serbs and minorities.

However, the post-war trend of stabilization in Kosovo suffered a serious setback with the eruption of mass riots and inter-ethnic violence on 17-18 March. The violence was triggered by the drowning of three Albanian children in the river Ibar in Mitrovica. Before this, local Serbs had organized a three-day blockade of the central highways, which had seriously disrupted traffic. The blockades were protests against an unsolved shooting incident of a Serbian juvenile, blamed on Albanians. After the initial Kosovo Albanian media reports blamed the drowning on unspecified Serbs, the situation became increasingly dangerous. Given the persistent, latent inter-ethnic and political tensions, coupled with the frustration of Albanians due to the unresolved status of Kosovo for which Albanians generally blame Serbs and Belgrade, the situation became volatile and susceptible to manipulation by extremist Albanian circles. The tensions erupted in massive protests by Albanians and violent riots against the Kosovo Serb community, which soon swept across Kosovo. Twenty people were killed, among them 8 Serbs and 12 Albanians. Nearly one thousand people were injured, some 4,000 Serbs and Roma were evacuated and displaced, and some 800 homes and apartments of Serbs were burnt down, destroyed and/or damaged. As a result, inter-ethnic relations between Albanians and Serbs worsened dramatically and the violence damaged Kosovo's international image.

The new Kosovo coalition government was formed by the end of the year shortly after the elections. The coalition was formed by the Democratic League of Kosovo (LDK) as the senior partner and the Alliance for the Future of Kosovo (AAK) as the junior. The LDK, the largest Kosovo Albanian party headed by president Rugova, won 45% of the votes, while the smaller AAK party of Ramush Haradinaj won 8% of the votes. The two parties thus forming the majority then had to form a government. Haradinaj became prime minister, which left the LDK the post of the president of Kosovo and the president of the parliament. Apart from the LDK and the AAK, six other small non-Serb minority parties – Bosniak, Turkish and Roma – became members of the governing coalition, which was expanded in early 2005 to include the smaller of the two Kosovo Serb parties. The Kosovo Albanian opposition block was led by the Democratic Party of Kosovo (PDK) of Thaci with some 29% of the votes and the ORA of Surroi that in its first run received 6% of the

[12] Based on Kosovo Helsinki Monitor for Human Rights (KHM), *Report on Human Rights Situation in Kosovo in 2004.*
[13] Kosovo domestic institutions are frequently referred to as Provisional Institutions of Self-Government (PISG).

votes. While the PDK and ORA, emphasizing the major challenges that Kosovo will have to face in the coming period regarding the opening of the status issue, endorsed a broad-based national-unity type of governing coalition, the LDK opted for a narrow-based one with the AAK citing enhanced governing efficiency.

The Haradinaj government's course towards consolidation of the situation in Kosovo and implementation of the internationally demanded standards for Kosovo as a prerequisite for opening discussions on the status of Kosovo turned out to be unexpectedly short. Haradinaj was indicted by the International Criminal Tribunal for the Former Yugoslavia (ICTY) as a war crime suspect in mid-March 2005 and surrendered voluntarily to the court. [14] He appealed to his supporters to remain calm, which happened – also after an assassination attempt on President Rugova a few days later. Haradinaj was succeeded by his party vice-president Bajram Kosumi.

Despite positive developments in 2004, a multitude of problems remained in Kosovo. These included the continuation of the *de facto* partitioning of northern Kosovo across the river Ibar, which was overwhelmingly Serb-populated and remained under the effective control of Belgrade. Another issue was the fate of missing persons, which was still not fully clarified by the end of 2004 despite progress achieved during the year. The lack of security and freedom of movement, primarily for Serbs, persisted as well as the problems related to property rights. Of deep concern were also the latent tensions and occasional waves of inter-ethnic intolerance and violence.

The Kosovo Helsinki Monitor (KHM) concluded that there was still a lot to be done for the full implementation of standards for Kosovo. The establishment of a genuine multi-ethnic Kosovo should thereby be one of the top priorities. Another important issue is providing for full security for Serbs and all other citizens. The lack of security, real or only perceived, continued to be reflected in the limited freedom of movement. This, together with the prevailing political aspirations of Serbs for an autonomous ethnically based Serb entity in Kosovo (which would mean partitioning Kosovo along ethnic lines) has resulted in the creation of Serb enclaves in Kosovo. These enclaves, including the northern part of Kosovo that has Serbia as its hinterland, constitute some 23% of the Kosovo territory. In these isolated enclaves local Serbs continue to lead a life generally separated from the rest of the Kosovo population, which is facilitated institutionally and politically by the Belgrade government. A territorial and political autonomy or entity of Kosovo Serbs, a scenario that has officially been endorsed by the Serbian government and parliament in early 2004, would potentially lead to permanent political instability in Kosovo and the surrounding region.

Enclaves thus continued to reflect strained inter-ethnic relations in Kosovo and related volatility. The KHM noted that the uncertainty over the final political status of Kosovo has continued to undermine the readiness of both Albanians and Serbs to reconcile and look forward toward a common future in Kosovo. While Albanians continued to fear political developments and arrangements that could lead to any form of the return of Serb rule, Serbs have continued to cherish hopes and carry out political initiatives aimed at the return of the Serbian state in Kosovo – or, alternatively, aimed at the partitioning of at least the northern and even some of the eastern parts, including other Serb enclaves.

Apart from the increasing frustration about Kosovo's future, the majority of the Kosovo population was negatively affected by the poor economic situation, unemployment and related existential fears. The slow pace of economic development, characterized by a comparatively modest rate of 3.5% annually, compared to an unemployment rate of close to 50%, was attributed in part to the privatization process which remained practically stalled during the entire year of 2004. The reason lay in the privatization concepts and legal interpretations between domestics and internationals in the management board of the Kosovo Trust Agency (KTA), which is in charge of the process. The privatization process was continued only in February 2005 after a one and a half year long stalemate following personnel changes at the helm of Pillar IV of UNMIK and KTA respectively and has yet to develop any proper momentum.

[14] The KHM issued a statement on the indictment and voluntary surrender of Haradinaj to the Hague tribunal.

The KHM insisted that the successful implementation of Standards for Kosovo is the key to further positive developments. The next UN Security Council technical assessment of implementation of Standards for Kosovo is scheduled for May 2005. If positive, it will expand to the political assessment of the implementation of standards. These standards are divided into eight major areas: functioning of democratic institutions, rule of law, freedom of movement, return and integration of refugees and IDPs, sustainable economic development, (re)establishment of property rights, political and technical dialogue with Belgrade, and transformation of the Kosovo Protection Corps. If substantial progress is achieved on the implementation of these standards, which have been defined in sets of concrete and measurable priorities, the internationally sponsored negotiations on the status issue of Kosovo will be started. Tentatively, they are expected to start in the fall of 2005.

Freedom of Expression and the Media

The Kosovo Constitutional Framework and UNMIK regulations provided for the freedom of expression and the media. However, the overall situation sometimes required certain interference with some of these granted freedoms. Such was the situation during the March riots when some Albanian electronic and print media were justifiably criticized by the Temporary Media Commissioner (TMC) for inflammatory reporting that was assessed to have provoked the initial sparks for the outburst of violence. Following this criticism most Albanian media exercised a much higher degree of professional and responsible reporting. All the more so as the TMC is authorized with mandating sanctions over media, if and where needed, all the way up to closing down media. UNMIK regulations explicitly prohibit hate speech and incitement of ethnic or other violence or criminal activity.

An attempt to establish an Independent Media Commissioner (IMC), as provided for in the Constitutional Framework, instead of the TMC, caused a flurry of controversial public debates. Criticism was also directed at the domestic Kosovo institutions for their alleged effort in trying to put media under government control and censorship.

Generally, the media showed more commitment to independent and more responsible reporting than in the previous years – perhaps also due to the lessons learnt during and after the March outbreak of violence. Particularly the three Kosovo-wide TV networks, together with some print media, had to face criticism for biased and inflammatory reporting which contributed to sparking ethnic violence. The matter was, however, settled not by fining these media outlets, but instead constructively by mandating additional professional journalistic training for media reporters and editors.

The media landscape continued to flourish further. By the end of the year there were already eight daily newspapers – three new ones were established in 2004 although their circulation was not very large. The average daily circulations of the two largest daily newspapers did not usually exceed 10,000 copies. Much more influential were the electronic media, especially the Kosovo Public Radio and Televison (RTK) and the other Kosovo-wide broadcasters. In addition, there was a multitude of local radio and TV stations broadcasting primarily in Albanian, but also in Serbian and other minority languages, as well as in foreign languages.

UNMIK regulations for media prohibit distribution of personal information that could pose a threat to life, property or security of persons. Hence the Municipal Court in Prishtina found Bajrush Morina, the editor of the daily newspaper *Bota Sot* (a newspaper believed to be close to the LDK), guilty of publishing false information that could prove to be dangerous for the life and/or security of the plaintiff. Morina had indirectly and unfoundedly accused a member of a rival political formation, Xhavit Haliti, of the assassination of Tahir Zemaj, former advisor of President Rugova. This was assessed by the court as endangering the security and life of the plaintiff. *Bota Sot,* was also in some other cases criticized and charged for inflammatory reporting and hate speech. *Epoka e Re*, believed to be close to the PDK, was also criticized of inflammatory reporting.

Missing Persons

The issue of missing persons in Kosovo remained a serious problem. As of the end of 2004, their number stood at 3,192 persons, with about 76% Albanians, 17% Serbs and 7% belonging to other ethnic groups.

The UNMIK Office for Missing Persons and Forensics continued its examination of the bodies recovered after the war for DNA. About 850 bodies were exhumed in 2004 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 any war crime traces. Such mass graves were found, for example, in Batajnica near Belgrade, Petrovo Selo, and Peruchac.

The majority of the identified remains of these missing persons had been returned to Kosovo by the end of 2004, but some 200 had not. The prolongation of their return caused a number of protests by their families in Kosovo who demanded their immediate return and the opening of Belgrade government files on missing persons. The enlarged photos of the missing persons were placed by the protesters on the Kosovo parliament fence as a bitter reminder of the tensions generated by the issue and the inexpediency in resolving it.

In 2004, credible but still unverified assertions emerged among some prominent Belgrade human rights activists about an unspecified number of Albanian bodies having been burned in industrial furnaces in southern Serbia.

International Humanitarian Law

Accountability for War Crimes

Kosovo authorities continued their efforts to uphold international humanitarian law and accountability for war crimes. UNMIK police and KFOR[15], along with the Kosovo Police Service (KPS), made highly sensitive individual and group arrests of war crime suspects. They also initiated legal proceedings against them in the Kosovo judicial system and/or transferred them to the authority of the ICTY. The suspects were mostly high-ranking members of the former UCK, which was later transformed to the Kosovo Protection Corps (KPC). Many of these arrests and the ensuing trials were on charges of serious war crimes and crimes against humanity that had been committed before, during and after the war in Kosovo. Their victims were Serbs, but also Albanians who had been suspected of collaboration with Serbian authorities.

- In February, four high-ranking members of the KPC, among them also the zone commander, General Selim Krasniqi, as the leader of the so-called ”Rahovec group” were arrested on war crimes charges. Their trial had not ended by the end of 2004.

- In April, three Albanians were arrested as suspects for the machine-gun killing of an international and a domestic policeman who were driving on patrol near Podujevo on 23 March, soon after the March inter-ethnic violence. The arrested were still awaiting trial as of the end of the year.

- In May, five former UCK officers were indicted by the District Court in Prishtina for war crimes committed in April 1999 as part of the so-called “Kachanik group.”

- In May, two other former UCK officers, Isuf and Islam Gashi, were arrested as war crime suspects whose victims were reported to have been Albanians. The two were related to the “Rahovec group,” which had been arrested earlier.

- On 20 September, the trial against another war crimes suspect, Genc Zogaj, began at the District Court in Gjilan. Zogaj was accused of the killing of two Serbs and the abduction of another four Serbs in the period immediately after the ending of the war in Kosovo, on 19 June 1999.

[15] Acronym for the NATO-lead peace-keeping force for Kosovo.

- In December, the former member of the Serbian security service in Kosovo Dejan Mihajlovich of Vushtri was being tried in northern Mitrovica as a war crime suspect in the case of the killing of three Albanians and attempted killing of another two Albanians in April 1999.

However, the most sensitive and high profile case of accountability for war crimes committed in Kosovo was the ICTY indictment of prime minister of Kosovo, Ramush Haradinaj, (along with two former UCK officers Lah Brahimaj and Idriz Balaj) in March 2005. Haradinaj surrendered voluntarily to the ICTY the day after having received the indictment for war crimes and crimes against humanity on 37 counts.

Inter-Ethnic Violence and Accountability

The post-war trend of stabilization in Kosovo suffered a serious set-back with the fierce eruption of mass riots and inter-ethnic violence on 17-18 March. The violence was triggered by a set of circumstances that culminated in the drowning of three Albanian children in the river Ibar in Mitrovica. The initial Kosovo Albanian media reports blamed unspecified Serbs in northern Mitrovica for the accident. Just prior to the drowning accident there had been a three-day blockade of the central Kosovo main highways – Prishtina-Skopje as well as Prishtina-Gjilan – by local Serbs. They were protesting against an unsolved shooting incident of a Serbian juvenile, which they blamed on Albanians. The road blockade had seriously disrupted communication to and from Prishtina, which made the situation dangerous. Given the persistent, latent inter-ethnic and political tensions, coupled with the frustration of Albanians due to the unresolved status of Kosovo, the situation became very volatile and susceptible to manipulation by extremist Albanian circles.

The tensions erupted in massive protests of Albanians and violent riots against the Kosovo Serb community, which soon swept across Kosovo. Nearly 100,000 people took part, leaving 20 people killed, among them eight Serbs and 12 Albanians. Close to one thousand people were injured on both sides, including international police officers and KFOR soldiers; some 4,000 Serbs and Roma were evacuated and displaced from the offensive crowds; and some 800 homes and apartments of Serbs were burnt down, destroyed and/or damaged. The UNMIK police force, KFOR and the KPS appeared to have been caught by surprise by this violence, as it took them – after initial hesitation and disorientation – two days to effectively end it.

Following the March inter-ethnic violence, some prominent former UCK officers were arrested suspected of involvement in its organization, including generals Sami Lushtaku and Shukri Buja, head of the UCK war veterans of western Kosovo Avdi Mushkolaj, and many others. They were later released. Altogether some 300 persons were arrested as suspects for involvement in the organization of the violence. Some of them had been tried and sentenced by the end of 2004 after the first indictments were filed in May. The investigation process and respective legal proceedings against the suspected perpetrators and organizers continued in early 2005.

According to UNMIK, less serious crimes, which were believed to have been ethnically motivated, increased by some 18% in Kosovo in 2004 (for crime rates, see below). Altogether there were 172 of such cases in 2004, excluding the March violence.

In the course of 2004, some additional high-profile suspected perpetrators of earlier ethnically and politically motivated-violence were arrested and/or brought to justice.

- In June, Florim Ejupi was arrested. He was the main suspect of the unsolved blowing up of a Serbian bus near Podujevo in 2001. The blast had left 11 Kosovo Serbs dead and 40 wounded. This was the worst single case of violence in the post-war period in Kosovo. Ejupi was a fugitive as he had earlier escaped from a KFOR prison.

- In June, former commander of UCK in the Preshevo valley Shefqet Musliu and five other high-ranking members of his units were tried and sentenced to long prison terms of up to 12 years in the District Court of Gjilan in eastern Kosovo on criminal charges of kidnappings and torture, and

violation of peace and order. Musliu was the head of the so-called UCPMB, paramilitary formations of Kosovo Albanians in the Preshevo Valley in southern Serbia.

- In September, the international prosecutor of the District Court in Prishtina pressed charges against two young Albanians, Labinot Gashi and Albert Krasniqi, for the random drive-by murder of the young Serb Dimitrije Popovic (17) in the village of Graçanica, on 5 June. Both were arrested by the KPS immediately after the shooting and confessed to the crime. The killing raised tensions and grief among Kosovo Serbs. According to the UNMIK Police, it was an ethnically motivated crime. The killing of Popovich was the last grave crime against Kosovo Serbs in 2004. Their trial had not yet been completed by the end of 2004.

- In December, twelve Albanians, most of them former members of the UCK were being tried in the District Court of Gjilan as suspects in the 2001 machine-gun ambush killing of an entire five-member family of Hamez Hajra, including three of their children. Hamza was known to have been a collaborator of the Serbian security service in Kosovo until the end of the war. In April 2005 the accused were sentenced to 185 years imprisonment; three of the main accused received 30-year sentences each.

- Also in December, five Albanians accused of the killing of a KPS policeman in March 2004 and the wounding of another one were sentenced to long-term prison sentences of up to 21 years.

While the above-mentioned cases were successfully completed in 2004 and early 2005, there was no progress in the clarification of a number of other high profile cases such as the August 2003 sniper killing of the UNMIK policeman Satish Menon in northern Kosovo, in the killing of Tahir Zemaj, the former counselor of President Rugova in January 2003 and of Ilir Selimaj, both key witnesses in the so-called "Dugagjini group" case; or in the killing of KPS police officers Sebahate Tolaj and Isuf Haklaj, who had been investigating war crime cases in the area, in November 2003, as well as the killings of two other KPS officers. By the end of 2004, seven KPS police officers had been killed.

Law Enforcement

Law enforcement remained one of the prime tasks and challenges of UNMIK and KFOR as well as of the KPS. This was especially the case after the March 2004 inter-ethnic violence. Law enforcement is an essential part of the so-called "Reserved Powers" of UNMIK as provided for in the Kosovo Constitutional Framework. Based on this, the supreme legal responsibility for law, order and security rested with the Special Representative of the UN Secretary General (SRSG), i.e., the head of UNMIK.

Within this framework the UNMIK police continued to transfer police authority and functions to the KPS while maintaining its supreme and principal role. The KPS applicants and police officers continued to receive basic training and further specialization in the OSCE-run Kosovo Police Service Academy in Vushtri. As of the end of 2004, the total number of OSCE-trained KPS police officers was some 7,000, thus moving closer to the 8,000 to 10,000 policemen that are estimated to be needed to handle security matters in Kosovo efficiently. The percentage of minorities in the KPS increased up to the targeted 15%. Particularly encouraging was also the increased percentage of policewomen in the KPS, which moved close to 20% in 2004. In addition, there were approximately 5,000 CIVPOL officers in Kosovo originating from about 50 countries.

Nevertheless, the continuing lack of security was reflected, for example, in some mafia style high profile cases of assassinations (or attempts) on prominent public figures as well as on some key witnesses in major cases of ethnically and politically motivated crimes. These cases include still unsolved attempted assassination attacks on some top Kosovo political and institutional leaders such as ministers and the president of Kosovo.

Crime Rates

The crime rates in Kosovo in 2004 did not experience any major changes in comparison with the previous year, if certain incidents related to the outburst of the March inter-ethnic violence are excluded. Thus the number of murders, killings and/or violent deaths stood at 62 cases – including the 20 deaths that resulted from the March violence. The rate decreased from 72 in 2003. Of these 62 cases, 18% of the victims were Serbs (in 2003 –20%), including the eight Serbs that were killed in the March violence.

Although the majority of victims of crime were Albanians, the number of victims belonging to the Serb minority was disproportionately high given that they comprise some 5% of the overall population. Less serious crimes, which were believed to have been ethnically motivated (according to UNMIK police), increased by some 18%. Altogether there were 172 of such cases in 2004, excluding the March violence. Property crimes also increased significantly in comparison with the previous year. According to some experts, this indicated the increasingly difficult economic situation and high unemployment rate in Kosovo.

Crime rates also increased regarding traffic offences and arson, with about 20% of the latter believed to have been ethnically motivated. In addition, organized crime was on the rise, including trafficking in women, despite having been fought more efficiently by, for example, the Trafficking and Prostitution Investigation Unit (TPIU) of CIVPOL.

Thus, despite considerable improvements and capacity enhancement, the overall performance of law enforcement, including the judiciary in Kosovo, was generally assessed to be insufficient. This resulted in considerable distrust among the population, especially among minority communities. As a result, the climate of insecurity increased, particularly among Serbs and Roma. Despite significant progress made in both police and judiciary segments, law enforcement continued to remain the weakest link in the complex chain of Kosovo institutions. This in turn also led to insufficient cooperation of the population with law enforcement bodies as people feared possible revenge and retaliation. The lack of efficient witness protection programs added to the fears. In addition there was a widely perceived problem of corruption in Kosovo relating not only to domestic but also to international officials in most areas of public service, including law enforcement. Several high profile cases of alleged corruption in the highest governmental circles were revealed.

Judicial System and Independence of the Judiciary

The Constitutional Framework provides for an independent judiciary in Kosovo, which remained under the supreme and direct authority of UNMIK as part of the "Reserved Powers." Nevertheless, in practice, the judiciary did not manage to live up to this standard and did not prove to be immune from outside influence and pressure. There were allegations of corruption, bribery and intimidation, especially in inter-ethnic cases. Political influence over the local judiciary was considered to be relatively strong. In fact, the judiciary was generally seen as one of the weakest links in the Kosovo institutional framework despite the remarkable improvements in the past years and especially in 2004.

One such major improvement was achieved with the adoption of a new Criminal Code and Criminal Procedure Code that took effect on 6 April 2004. The adoption of these codes represents an important milestone in the further development of Kosovo's judicial system as they are fully in line with European and international human rights standards. The codes were drafted by reputable international and domestic experts under the auspices of international institutions.

The Kosovo judicial system is comprised of the Supreme Court, five district courts, 24 municipal courts, and the Court for Economic Affairs. In addition, there is a separate system of 25 municipal misdemeanor courts, and the High Court for Misdemeanors as their appeals instance. Kosovo has 13 public prosecutors' offices.

Courts were overburdened with the influx of post-war cases whose volume exceeded the quantitative and qualitative capacity of the given judicial personnel. These capacities were, however, being built up and

facilitated by international judicial personnel and legal expertise. Nevertheless, the insufficient capacities of the judiciary at the end of 2004 left a pile of 21,662 criminal cases unresolved in municipal courts and 2,370 criminal cases unresolved in district courts. On a positive note, the efficiency in processing cases was said to have improved markedly in 2004.

In addition to domestic personnel, there were 18 international judges and 10 international prosecutors handling primarily inter-ethnic and other major and highly sensitive cases such as cases of war crimes and organized crime. This international judicial enhancement corpus was appointed and managed by the UNMIK Department of Justice. UNMIK was authorized to assign international judges and prosecutors to any cases in which there was a 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 challenge that the Kosovo judiciary faces and met the needs only partially. Their presence, competence, objectivity and experience were indispensable for a more efficient functioning of the judiciary. Hence, after the March inter-ethnic violence, a batch of some 60 additional international judicial personnel were sent to Kosovo, including investigating judges and prosecutors personnel, to handle the related criminal and other cases. By the end of the year they had initiated some 300 criminal proceedings related to the March riots.

There were over 300 licensed attorneys organized in the local bar association known 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.

A parallel Serbian judicial system continued to function in Kosovo in 2004. It remained integrated in the overall Serbian judiciary and its staff was funded and managed by the Serbian Ministry of Justice, in violation of Resolution 1244 of the UN Security Council.[16] 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.

Conditions in Prisons

The network of prisons and correctional facilities in Kosovo in 2004 comprised five district prisons and detention facilities (Prishtina, Mitrovica, Peja, Prizren, Gjilan) as well as prison and correctional facilities in Dubrava near Istog (two units) and Lipjan (near Prishtina). All of them were headed by UNMIK. The official prison capacity stood at 1,356 inmate places. During certain periods of 2004, the capacities were exceeded and the facilities were overcrowded. This pertained especially to the period following the March inter-ethnic violence when some 300 suspects were apprehended. Prisons generally met international standards, which could be verified by independent human rights observers who were allowed to visit them.

Some long-term prisoners, however, complained of harsh treatment and practices in the Dubrava prison facilities. Such frustrations reportedly led to riots, in which the use of force left five dead and dozens injured. This was one of the worst prison riots in Kosovo's recent history. An independent commission set up by the former head of UNMIK to investigate the matter had not presented its report by the end of 2004.

Freedom of Movement

The Constitutional Framework of Kosovo provides for full freedom of movement. In practice, this freedom was still significantly restricted for Kosovo Serbs. This was due to the still prevailing inter-ethnic tensions and the related lack of existing or perceived security.

[16] See http://www.un.int/usa/sres1244.htm

Security concerns in this respect were fully legitimate and can only be alleviated and fully remedied with the improvement of the overall political situation, including the just and stable resolution of the issue about the status of Kosovo. Particularly Serbs and Roma enjoyed the freedom of movement in Kosovo only in a very restricted manner in 2004. Thus, despite considerable improvements, especially in the second half of 2004, the freedom of movement of Serbs remained "below the acceptable minimum," as was stated by the Kosovo Ombudsperson Marek A. Nowicki. This reflected persisting inter-ethnic tensions, hostility, and lack of security and mutual distrust between Kosovo Serbs and the majority Albanian population, especially with regard to the issue of the final status of Kosovo.

With the exception of the Serbian enclaves, Serbs usually needed round-the-clock KFOR protection to exercise their freedom of movement in the prevailing Albanian populated Kosovo, especially during and after the March riots. In the Gjilan area of the eastern Kosovo, however, significant improvements were achieved in this respect.

- In December, a bus convoy of Serbs was stoned by Albanian youngsters when passing through the town of Dechan despite having been escorted by KFOR. Such stoning and other low-level violence occurred in many other instances making Kosovo Serbs demand security escorts almost regularly when moving out of their enclaves.

In addition to restrictions on their freedom of movement and related security hazards and concerns, economic opportunities were generally very scarce in Kosovo, especially for Serbs. This was also true for access to social services, education and health care – all problems resulting from the lack of free movement.

Vice versa, in the Serbian-controlled enclaves, freedom of movement for Albanians was also considerably restricted, mainly due to security concerns. Of particular concern in this regard were the Serbian-controlled enclaves in northern Kosovo.

Property Rights

In 2004 there was significant progress regarding the protection of property rights. The issue of the return of Serb property illegally occupied by Kosovo Albanians after the war reflected the improvements achieved in Kosovo in the area of rule of law, security and the return of displaced persons. The phenomenon of usurpation of property was also present, albeit on a different scale, in northern Kosovo, where Albanian property had been seized by Serbs.

The issue of the return of property to their legal owners was dealt with by the UNMIK Housing and Property Directorate (HPD) commonly referred to as HABITAT. The latter was set up at the end of 1999 to deal with restitution and the payment of compensation for usurped property resulting from the war in Kosovo. It dealt primarily with illegally occupied Serbian homes and apartments, but also with their shops, business premises and similar.

The HPD continued to adjudicate property claims increasingly efficiently. During 2004, it reached an average efficiency of resolving an impressive number of some 1,000 claims per month. This brought the number of resolved cases of property claims to some 23,000 out of the overall intake of 29,000 claims. These numbers also include 730 resolved cases out of the 1,324 property claims in the Serbian-controlled northern Kosovo. They pertain mostly to illegal occupation of the Kosovo Albanian property by Kosovo Serbs.

Returnees and Displaced Persons

The total number of estimated IDPs after the war stood at 225,000. According to UNHCR statistics, by the end of 2004, the overall number of non-Albanian returnees since the war was slightly over 12,000.

The outburst of the March inter-ethnic violence caused the already existing precarious inter-ethnic relations and security situation in Kosovo to deteriorate significantly for a period of time. As a result, the slow trend of increasing returns of displaced Serbs to Kosovo in 2004 was reversed.[17] An additional number of some 4,000 Serbs and Roma were internally displaced due to this violence, only half of whom had returned as of the end of 2004. An appeal by the highest-ranking Kosovo Albanian institutional and party leaders in April, calling IDPs to return to Kosovo, did not produce any significant results.

Only after the UNMIK, KFOR and the domestic Kosovo institutions managed to improve the security and political situation in Kosovo in the second half of 2004, did the rate of returns of IDPs increase. By the end of the year, there were some 2,500 returned Serbs, down from 3,700 that had returned in 2003. The number marked the first reversal of the trend of increased returns of IDPs in post-war Kosovo.

The question of usurped property of Serbs and minorities was also one of the important reasons influencing the rate of returns of Serb and other IDPs.

Montenegro[18]

IHF FOCUS: proposed constitutional reform; freedom of expression and the media; judicial system and independence of the judiciary; right to a fair trial; freedom of religion and religious tolerance; property rights; intolerance, xenophobia and racial discrimination; international humanitarian law.

During 2004, no significant progress was made regarding the general political and human rights situation in Montenegro, nor was there any significant progress in the economic and social field. The most dominant issues in Montenegrin political life were the future status of Montenegro, the relationship between Montenegro and Serbia, and future status of Kosovo. Political energy was mainly focused on these issues rather than promoting legal, institutional, economic or social reforms.

Regarding the future status of Montenegro and its relationship with Serbia, two options were put forward. One option, supported by the governing coalition of the Democratic Party of Socialists (DPS), the Social Democratic Party (SDP) and the Citizens Party (GP), advocated the reestablishment of Montenegrin independence from Serbia in the form of a union of independent states. The other option, mainly supported by the opposition – including the Socialist People's Party (SNP), the People's Party (NS), the Democratic Serbian Party (DSS) and the Serbian People's Party (SNS) – promoted the idea of creating a variant of Greater Serbia. This coalition was known for its activities to help re-establish Greater Serbian nationalism in Montenegro. In mid-2004, the coalition started using harsh nationalist rhetoric, supported by the Serbian Orthodox Church and by some academics from the Serbian Academy of Science and Arts.

While the governing coalition directed its political activity toward organizing a referendum on the future status of Montenegro, the opposition focused its efforts on preventing the referendum at all costs, aware of the existing majority in favour of the reestablishment of independence. The opposition was also supported by the international community, particularly the EU, which wanted to temporarily postpone the sensitive issues. As a result, the referendum was postponed for another year, which was understood by many people in Montenegro as a concession to Serbia.

A prevailing problem was the lack of capacity to start a serious political dialogue between Montenegro and Serbia. While Serbia continuously asked for the strengthening of the union, Montenegro clearly favoured an association of independent states, which the government of Serbia refused even to discuss. In addition, some

[17] The rate of returns of IDPs in 2003 was 3,700 returns, close to 40% higher than in 2002.
[18] Based on a report by the Montenegrin Helsinki Committee for Human Rights to the IHF, March 2005.

decisions adopted in Serbia, such as the so-called Chetniks Law,[19] widened the gap and disagreements between Montenegro and Serbia.

There were no positive developments regarding the transformation of Montenegrin political parties into parties of Western European style. Additionally, many parties continued to be burdened with the past as their highest officials were often involved in various illegal affairs, including trafficking in women, smuggling cigarettes, etc.

The Union of Serbia and Montenegro could not meet the expectations of various parties as these were understood completely differently in Montenegro and in Serbia. While in Montenegro, the union was understood as a step towards independence, in Serbia it was seen as a solution to form a unified state. The goals of the Union formulated in article 3 of the Constitutional Charter were not achieved. Neither was the equality of member states or of citizens. Even the right to Montenegrin identity was denied by state and non-state institutions. The charter was systematically violated in some key areas such as Serbia having the most important ministries – those of foreign affairs and defence – contrary to the charter. The Ministry of Foreign Affairs functioned de facto as the ministry of Serbia. The union bodies were also used in order to avoid taking measures to meet international obligations such as cooperation with the International Criminal Tribunal for the Former Yugoslavia (ICTY) and facing the past.

The reform process continued at a slow pace. The opposition continuously obstructed the work of the parliament and other institutions. In late fall, it boycotted the parliament, trying to reduce the legitimacy of passed laws. After returning to the parliament, the opposition used a strategy of long discussions to slow down legal reforms. However, the laws adopted by the Montenegrin Parliament included many OSCE standards and so were a step forward in improving Montenegrin legislation. Nevertheless, they were often still not fully in line with international standards and their implementation was very slow or they were not implemented at all.

The economic situation in Montenegro showed slight progress in 2004. The privatization process continued, but was criticized for being inadequate and non-transparent. The unemployment rate decreased slightly as a result of legalizing the "gray economy." The average salary went up somewhat compared to 2003 and was modestly higher than in Serbia.

Proposed Constitutional Reform

During 2004 there were no serious efforts in Montenegro to start the process of constitutional reform. The reform is necessary for two reasons: in order to harmonize the Montenegrin Constitution with the Constitutional Charter of the Union, and, more importantly, to reform the very form and content of the Montenegrin Constitution.

The Constitution was passed in 1992 as an imposed revolutionary constitution for the realization of the Greater Serbia project, the legitimacy of which was questionable. Additionally, it contains a series of serious deficiencies, including the competences of Montenegro as a state and guarantees for the respect of human rights. Therefore, it is thought necessary to adopt a new, essentially different Constitution, which, in an adequate legal form, would promote a democratic system and ensure the establishment of stable institutions. This, in turn, would secure the rule of law and a clear division of power, which are preconditions for the protection of human rights and freedoms.

In 2004, a Council for Constitutional Issues was established in Montenegro. It drafted an initial document about options for future constitutional reforms. Subsequently, the document was reviewed by the Council of

[19] The law was seen in Montenegro as an intention to build the country upon "Chetniks principles," i.e., a homogenous Serbia, as opposed to a multi-national, multi-confessional and multi-cultural state, which would cherish European traditions.

Europe Venice Commission. In November 2004, a round table was held with representatives of the parliament, government, courts, judiciary, NGOs and the representatives of the Venice Commission, but no conclusions or recommendations were made at the meeting.

Freedom of Expression and the Media

Freedom of expression and media freedoms were regulated by, *inter alia*, the Montenegrin Constitution, media laws and the Criminal Code. Constitutional provisions on freedom of expression were mostly in accordance with international standards. Media laws were less harmonized and some provisions of the Criminal Code concerning media were still not completely in accordance with international standards. In addition, Montenegro did not have a law on free access to information.

Implementation of Media Laws

The media laws, passed at the end of 2000, were a step forward in the transposition of international standards into Montenegrin legislation. The laws were created with the support of experts of international organizations and NGOs. These improved laws, however, were not implemented in Montenegro in an adequate manner. This was particularly true in relation to the transformation of the state electronic media (and the media owned by municipalities) into public media outlets.

The transformation of the former state-owned Radio Montenegro and TV Montenegro into public outlets was not done in accordance with the media legislation. This became particularly obvious during the elections to the key body of the radio service – the Council of Radio Diffusion Service. The law provides that non-political persons (independent from any government bodies), journalists, lawyers, sociologists, NGO representatives, media experts, etc. are to be elected as members of the council. However, these criteria were not applied in the election of one of its members, who was the chairman of the State Association of Journalists that was formed in the Molosevic era. He was well known in the public for his war propaganda and hate speech campaigns. However, in terms of programming, some improvements took place, although these changes were neither sufficient in quality nor dynamic enough.

Regarding the transformation of former municipality radio and TV stations into public radio services the situation was even worse. In several cases, the law was clearly violated, which constituted an attack on freedom of expression and media rights. One of the most obvious examples for this practice was the case of Niksic RTV.

- The opposition parties, NP, NS, LSCG and SNS, which were in power in the municipality of Niksic, elected as members of the Niksic RTV TV council persons who were clearly recognized as their supporters. The majority of employees at Niksic RTV objected to this political pressure seeing it as an attempt to turn the station into an organ of some political parties. On 8 March, they went on strike, which led to the almost complete closure of the station.

Attacks on Journalists

In 2004, there were several serious attacks on journalists in Montenegro, including the murder of Dusko Jovanovic, the editor-in-chief of the *Dan* daily.

- On 27 May, when leaving the *Dan* editorial office, Dusko Jovanovic, co-owner of the YU Media Mont Company, director and editor-in-chief of the Dan daily, was killed. He had been the only journalist indicted by the ICTY for uncovering the identity of protected witnesses K 32 and K 41 in the Milosevic process. The indictment was withdrawn after his public apology. The killing had not been solved completely as of early 2005. The authorities promised that the crime would be investigated independently and impartially and that all persons involved would be brought to justice. They also asked for international police support. However, charges were brought against only one person as an accomplice in a criminal act. The trial was pending in a higher court in Podgorica as of

early 2005. The members of the family and many others were dissatisfied with the investigation and accused the authorities of its obstruction, believing that they were trying to protect the people who orchestrated the murder. The Montenegrin Helsinki Committee (MHC, IHF member) also believed that the investigation was neither efficient nor successful.

- Andrej Nikolaidis, a well-known writer and journalist who has written e.g. for the *Monitor* weekly and *Slododna Bosna,* received threats, including death threats, after publishing several articles about "facing the past." During a talk show on Radio Antena M, one of the listeners, while he was on air, said that he would kill Nikolaidis.

- On 30 November, Sead Sadikovic, a journalist with Radio Free Europe, was indicted for violating law and order and for distracting a police officer on duty in July 2003. The incident took place in the center of Bijelo Polje, where he was watching a police officer dealing with traffic problems. When he asked the officer what the problem was, he was told to leave. When Sadikovic tried to take pictures of the incident, the policeman called special forces, who ordered Sadikovic to produce his ID. As he did not have the card on him, he was taken to a police station where he spent two hours and was released only after an intervention from his colleagues. While under arrest, the police took his voice recorder, which was later returned to him, but the recordings were deleted. His trial violated fair trial standards on the equality of parties. The court allowed the policeman to be present at the trial uniformed and armed and denied the journalist the right to defense. The case was still pending as of early 2005.

Access to Information

Montenegro does not have a special law on classification of and access to information. A working group of NGOs, including the MHC, and representatives of several ministries drew up a draft law on theses issues, which was sent to the Ministry of Culture in September 2004. The draft was created with expert support from the Council of Europe and the NGO Article 19.

However, the Ministry of Culture completely changed the draft, making it unacceptable for the representatives of the working group, particularly those of the NGOs. The future of the draft remained uncertain at the time of writing.

Criminal Defamation

Montenegrin criminal legislation has been reformed several times, most recently at the end of 2003, when a new Criminal Code was adopted. This came into force at the beginning of April 2004. Positively, the new code no longer provides for a prison sentence for defamation and it abolished the privileged position of high officials as victims of defamation.

However, many of the Criminal Code's provisions are still not in compliance with international standards, such as unacceptably high fines for defamation. Fines vary from EUR 1,200 (simple insult) to EUR 14,000 for defamation in the media. In cases in which the defamation is seen to have caused serious consequences, the fines can amount from EUR 8,000 to the maximum penalty of EUR 20,000 to 100,000, depending on the case. If these fines cannot be paid, they can be transformed into a prison sentence of up to six months.

In addition, the Criminal Code still includes defamation of the state and state symbols, such as the flag, coat of arms and the national anthem. Moreover, some of the provisions on defamation question the right to a fair trial, particularly in regard of the burden of proof, which in some cases lies with the defendant.

It appeared that provisions on defamation, libel and violation of reputation were often used for illegitimate and unacceptable limitations on the freedom of expression, very often with political motivation.

In several cases the MHC concluded that some defamation trials might have been motivated by the policy of "counter-lustration", i.e., to punish those who promoted dealing with past abuses. Many people,

predominantly journalists, who asked questions about accountability for past abuses, were accused of defamation, libel and other criminal acts. In some cases, courts made unacceptable decisions or prolonged the – often rather obvious – cases for years. This practice forced many people to remain silent and refrain from asking questions and criticizing the present policy regarding accountability for the past. Moreover, Montenegrin courts had not by year's end opened a single case on war propaganda and hate speech, although hate speech and war propaganda are prohibited by law.

- Since 1994, there have been eight procedures (criminal and civil) against Veseljko Koprivica, journalist of the weekly *Liberal.* While being the editor-in-chief, Koprivica had given permission to publish a text about the alleged investigation of 16 journalists from Montenegro for war propaganda and hate speech. The cases lasted for an unacceptably long period of time – some of the civil procedures were still pending at the time of writing – and trials were not in accordance with international standards.

- A well-known film director, Emir Kusturica, sued a journalist of the *Monitor* weekly, Andrej Nikolaidis, for publishing a text in the *Monitor* entitled "The Devil's Apprentice." In the article Nikolaidis claimed that Kusturica had supported Slobodan Milosevic and his policy over the past fifteen years. He also criticised Kusturica's current "political" activities. The court sentenced Nikolaidis to a fine of EUR 5,000 and to cover the expenses of the court procedure (EUR 600). The case had wide public and political implications, particularly in the context of "facing the past." The right to a fair trial was not respected as the judge acted in favor of the prosecution. Furthermore, the burden of proof was on Nikolaidis and the plaintiff Kusturica did not appear in court, nor was he asked to do so. He was not even asked to present any evidence to prove that Nikolaidis's allegations were false. The verdict was announced on 9 November 2004, but was written down and sent to the sentenced only at the end of February 2005, following an intervention by the MHC. The verdict was contrary to national law and international standards and provoked harsh criticism both in Montenegro and abroad.

- Milo Djukanovic, the prime minister of the Republic of Montenegro, brought private criminal defamation charges against Miodrag Zivkovic, an MP in the Montenegrin Parliament at the time of the "crime" and leader of the Liberal Alliance of Montenegro (today a president of the newly founded Liberal Party). The reason was Zivkovic's statement, made as an MP and political leader at a press conference on 1 October 2003, when Zivkovic claimed that the prime minister was directly involved in the case of a possible trafficking of a young woman from Moldova. In accordance with a court request, the parliament removed Zivkovic's immunity. The court sentenced Zivkovic for defamation and ordered him to pay a fine of EUR 8,000. However, the trial violated international standards and regulations for a fair trial; for example, the witnesses of the defendant were not heard. It appeared, that the court was put under political pressure. The verdict was passed on 5 July 2004, but sent to MP Zivkovic in writing as late as the end of February 2005. At the time of writing, the process was on appeal.

Court Practice

In monitoring the implementation of Montenegrin legal regulations on freedom of expression, and, in particular, the application of the defamation provision, the MHC has frequently encountered serious problems in gaining access to court documentation, making it difficult to asses all the problems the trials involved. It is clear, however, that the observed cases were usually characterized by extensively and unreasonably long proceedings. It seemed unlikely, that the entry into force of new laws, which formally shortened the deadlines that courts are supposed to meet, would improve the situation.

The verdicts passed in defamation cases differed significantly, but most of them were not in compliance with international standards. There are various reasons for this. One might be the fact that many judges in charge of the cases had conservative views about defamation (and many were elected during the Milosevic era). At

times it was also noticeable that some judges were not aware of their obligation to directly apply international standards in accordance with the Constitutional Charter and Montenegrin laws.

Judicial System and Independence of the Judiciary

There was no substantial progress in the reform of the judicial system, particularly concerning a necessary constitutional reform, which is supposed to include important provisions regarding the independence of the judiciary and the right to a fair trial. The Law on Courts, which was passed three years ago, does not contain all necessary guarantees for these rights and is in many aspects out of date. Additionally, some of its provisions, particularly those that refer to the establishment of the Court of Appeals, have not yet been implemented. The Administrative Court itself was finally established after several deadlines were not met.

An important issue for the reform of the judiciary was the ratification of the European Convention on Human Rights and Fundamental Freedoms (ECHR) in March 2004. The courts are now obliged to directly apply the ECHR as it has priority over national laws.

The MHC's proposals to establish a special department for war crime investigations within the police, the prosecutors' offices, the Higher Court, the Court of Appeals, and the Supreme Court for war crime trials were not accepted.

Although the Constitution provides for the division of power into a legislative, executive and a judicial branch, this division was never put into practice. In practice, the executive and legislative powers dominated over the judiciary. A particular problem was the election process of judges. Some of the still active judges were appointed during the era of the military judiciary or even as Milosevic's court-martials. This fact discredited the judicial system and reduced citizens' confidence in courts. Additionally, it seems that one of the criteria that dominated the election of judges was party affiliation. All these problems represented serious obstacles for essential reforms of the judicial system.

Right to a Fair Trial

The Montenegrin Constitution and the Law on Courts do not contain clear regulations on the right to a fair trial. However, the March 2004 ratification of the ECHR changed the situation fundamentally, as courts are now obliged to directly apply the provisions of the ECHR. However, a reservation was made to the ECHR to exclude the Law on Petty Offences from its implementation. The law is frequently applied and can be used to sentence a person to up to 60 days imprisonment under procedures, which do not provide for the elementary guarantees for a fair trial. Human rights have often been violated under the Petty Offence procedures.

Other problems concern, for example, some provisions in the Criminal Code, the Law on the Criminal Procedure, the Law on the Litigation Procedure, and the Law on Police, which are not fully in line with international standards for the right to a fair trial. Furthermore, judges often apply these provisions instead of the ECHR, although the latter is provided by the Constitutional Charter.

At the beginning of 2004, a new law on the Criminal Procedure came into force, which represented an improvement regarding decisions on detention. Nevertheless, a major problem with respect to the right to a fair trial remained; the execution of court verdicts. In some cases, courts simply failed to inform the parties of their decisions. In addition, trials often lasted unreasonably long and sometimes even expired before the verdict was passed.

Freedom of Religion and Religious Tolerance

The Constitution, the international treaties ratified by Montenegro, and national legislation guarantee freedom of religion, however, this right was not respected, neither in terms of legal regulations nor of implementation.

The most important of the national laws in this respect is the Law on Legal Position of Religious Communities. This law, however, was adopted in 1977 and is completely out of date. According to this law, there is an obligation for all churches and religious organizations to register with the Ministry of Interior at municipality level. All churches, religious communities and organizations in Montenegro had to meet with this requirement – except the Serbian Orthodox Church, which constituted an act of discrimination.

The government considered the Serbian Orthodox Church to have a special legal status, thereby granting it the position of an official state church – a status not provided by the Montenegrin Constitution. According to the Constitution, Montenegro is a secular state. Furthermore, the Constitution provides for a strict division between state and churches, religious communities and organizations.

Additionally, the authorities allowed the Serbian Orthodox Church to take part in the political life of the country almost in the same way as if it were a political party. Furthermore, the authorities did not adequately investigate serious accusations of the international community and many others (including the chief prosecutor of the ICTY) that the Serbian Orthodox Church misused its position by even hiding indicted war criminals, including Radovan Karadzic, in their religious buildings.

During 2004, the dispute over the protection of the cultural heritage of Orthodox Christian tradition in Montenegro escalated. Namely, the Serbian Orthodox Church tried to reconstruct buildings under its control – but of Montenegrin Orthodox origin – to make them look like churches in Serbia. By doing so, they destroyed authentic characteristics of the Montenegrin Christian heritage. The political background for this was the fact that the Serbian Orthodox Church openly supported the idea of a Greater Serbia and disapproved of the idea of the Montenegrin nation and identity.

Authorities usually tolerated the appropriation and illegal usurpation of old and historic sites by the Serbian Orthodox Church, although it could not be connected to these sites (e.g, Doclea, Martinicka Gradina, Zlatica, the archaeological remains of an old church in Ulcinj, etc.). Such behavior caused dissatisfaction among many citizens and threatened to turn into a more serious conflict. Furthermore, authorities tolerated the construction of new religious buildings by the Serbian Orthodox Church without any building permission and on state land (Podgorica and Bar), whereas the requests of other churches and religious communities for building permissions were not approved. The request for the rebuilding of a Roman Catholic Cathedral in Bar was submitted for the first time in 1936, and renewed ever since, but has not been approved. The Muslim community has had similar problems regarding the building of a mosque in Bar.

The Montenegrin Orthodox Church and its followers faced many problems in 2004. They did not have access to Orthodox churches in Montenegro although these churches were not built by the state of Serbia but by Montenegrins. In some cases, citizens were prevented from entering a church, e.g., the Ostrog monastery.

During 2004, after the March violence in Kosovo, there were several attacks on buildings of the Muslim community (the mosque in Bijelo Polje, the seat the of local Moslem Community in Bar, and an attempt of an attack on Podgorica mosques). Also the problems of the Jehovah's Witnesses community and the Adventist Church believers continued in the territory of Niksic municipality and the municipalities in the north of Montenegro.

Property Rights

There was no adequate protection of private property in 2004. Problems arose because the relevant legislation was not fully harmonized with international standards and the implementation of the existing legislation by Montenegrin courts and other state bodies was insufficient.

The Law on Expropriation was at the center of criticism. This provides that the dispossessor (e.g. the state, local self management etc.) has the right to access expropriated private property before the former owners have been paid any compensation. This puts many private owners in an unfortunate position as it is difficult to get compensation for the expropriation of their property.

- In 1995, Montenegrin authorities decided to build a huge military base and war port at Valdanos, near Ulcinj. However, many private owners of the land refused to accept the expropriation and those that accepted it got a compensation payment that was below the market price. Meanwhile, the authorities gave up the idea of building any military buildings there, but instead of returning the land to the original owners (or making arrangements with those who had already received compensation) they decided to sell the land. By doing so, the authorities violated international standards and Montenegrin laws. According to present law it is not possible to expropriate property from a private owner in order to sell it to another private individual.

Intolerance, Xenophobia and Racial Discrimination

The year 2004 saw increasing intolerance, discrimination, hate speech campaigns, and anti-Semitism, greatly influenced by many circles in Serbia and supported by a part of Montenegrin residents who promoted aggressive nationalism. This was particularly obvious after the outbreak of violence in Kosovo in March 2004. The growth of aggressive nationalism in the public was further influenced by the desire for a clear decision about the future relationship between Montenegro and Serbia and the protection of the Montenegrin national identity.

March Events in Kosovo

In the wake of the March violence in Kosovo, some parts of the Serbian Orthodox Church tried to organize mass protests and to incite intolerance and violence toward members of minority groups and religious communities in Montenegro. In Podgorica, demonstrations were organized with school children carrying aggressively worded, anti-Albanian banners, having been indoctrinated in Serbian Orthodox churches on the issue.

The Ministry of Education asked the children and school authorities not to endanger the education process and appealed to political parties and the Serbian Orthodox Church to stop political manipulations of the children. Nevertheless, the demonstrations went on for several days. There was even an attempted attack on some mosques in Podgorica, which were prevented by the police. Several minors were arrested. Similar events were organized in some other localities in Montenegro but they were not as intense and numerous.

Anti-Semitism

Anti-Semitism was in particular demonstrated in some media reporting and in books sold in bookshops. Montenegro has a very small Jewish community. Anti-Semitism was not directed only against Jews, but also served as an expression of opposition to so-called Western or European values, including human rights standards. Anti-Semitic content was occasionally to be seen in, for example, in *Istok Review* and some of the media outlets founded by the Yu Media Mont Company.

Many Montenegrin bookshops sold books with flagrant anti-Semitic content. Among them were books such as *The Protocols of the Elders of Zion*, *Criminals of Mankind – Hidden History of Judean Villains*, *Judean Ritual Murder*, *Judean Bankers and the Rise of Hitler,* etc. They also sold books by Bishop Prince Nikolaj Velimirovic who was known for his anti-Semitic views.

Hate Speech

During 2004, hate speech increased in some media outlets such as Elmag TV, *Dan* daily, *D Review*, some Serbian newspapers sold in Montenegro, in statements of political parties and their senior officials, and in statements of a number of representatives of the Serbian Orthodox Church. The targets of such attacks were ethnic and religious communities such as the community of the Montenegrin Orthodox Church.

In 2004, a campaign against the members of the Montenegrin national community was intensified because it had taken a clear stand for the preservation of its national identity. The campaign particularly culminated after the decision of the Ministry of Education to give ethnic Montenegrins the right to call their language Montenegrin and the right to preserve their linguistic characteristics.

International Humanitarian Law

There was no substantial progress in 2004 with regard to cooperation with the ICTY. This was particularly true for the Union of Serbia and Montenegro and the Serbian part of the union, but the situation at the governmental level in Montenegro was not satisfactory either.

The Union of Serbia and Montenegro

One of the goals for the creation of the Union of Serbia and Montenegro was to meet international requirements, including cooperation with ICTY. This had not been achieved by the end of 2004. Instead, steps were taken to avoid the requirements. Namely, it was decided on the union level, that a law was necessary to regulate the cooperation with ICTY. In practice, however, the implementation of the law was delayed. The National Council for Cooperation with ICTY virtually ceased its operation in mid-2004, largely due to pressure form Serbia. The council continued its work only with members from Serbia and therefore lost the legality and legitimacy as a union body, factually becoming a body of the Republic of Serbia. The Council of Ministers of the union did not take up the work of the National Council in order to cooperate with the ICTY, neither did the State of Montenegro.

The union bodies did nothing to come to terms with the past, nor did they stop the apparent policy of covering up war criminals, who were sometimes still seen as national heroes. Cooperation with the ICTY was explained in terms of a condition for Euro-Atlantic integration and not as a pre-condition for coming to terms with the past.

State of Montenegro

The authorities of Montenegro repeated their promise to cooperate fully with the ICTY and that they would arrest and transfer any person indicted by the tribunal found on Montenegrin territory. They also announced their intention to meet the ICTY requirements that refer to war crime investigations, access to relevant documents, and the access to witnesses and their protection. The authorities, however, failed to fully keep this promise.

During 2004 several persons indicted by the ICTY were on Montenegrin soil without being arrested and sent to The Hague. The activists of the MHC confirmed the presence of the indicted General Pavkovic who stayed in Montenegro for a long period of time in 2003. They informed the president of the Republic of Montenegro, Filip Vujanovic, and the public of Montenegro at a press conference, without any reaction by the authorities to address the issue. Nor did the authorities check the accusations referring to the role of the Serbian Orthodox Church in helping and hiding war criminals. This particularly refers to the indicted Radovan Karadzic.

Furthermore, the authorities did nothing to implement the policy of putting an end to anti-ICTY networks and lobbying, as demanded by the international community. No measures were taken against persons

recognized as members of the network, even though certain measures had already been taken against them internationally (e.g. blocking of accounts, prohibition of entering the country, etc.). Some of these persons, such as Tomislav Kovac, minister of interior in Karadzic's government, still enjoyed many privileges in Montenegro.