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## Honouring of obligations and commitments by Bosnia and Herzegovina

### Report

Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)

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### *Summary*

After six years of membership in the Council of Europe, Bosnia and Herzegovina should step up efforts aimed at implementing the country's obligations and remaining commitments to the Organisation. While respecting the Entities' and the Brcko District's autonomy, the necessary reforms should be implemented on the basis of a shared vision of the development of the country's institutions. This requires a fully-fledged constitutional reform, without which the country's democratic institutions cannot function properly and Bosnia and Herzegovina cannot become a genuinely civic State of all its citizens.

The Monitoring Committee is concerned by the increase of nationalist and ethnic rhetoric, especially in the context of the election campaign for the October 2008 local election and in the wake of the adoption by the Kosovo Assembly of the unilateral declaration of independence. It strongly condemns all statements and actions, which weaken the State institutions, call for secession or put the existence of the State based on Entities into question.

The Monitoring Committee urges all political actors of Bosnia and Herzegovina to complete the necessary democratic reforms at the earliest opportunity, in the spirit of constructive dialogue and co-operation. Obstructionism cannot be used as a political tool. To fulfil the membership obligations and commitments, the committee expects Bosnia and Herzegovina to take a number of concrete actions, in accordance with the recommendations contained in the present report. Pending their implementation, it proposes that the Assembly continues the monitoring procedure with respect to Bosnia and Herzegovina.

**A. Draft resolution**

1. Bosnia and Herzegovina joined the Council of Europe on 24 April 2002. Since then, the authorities of Bosnia and Herzegovina have been steadily implementing the formal commitments entered into upon accession. To date, Bosnia and Herzegovina has signed and ratified 64 Council of Europe conventions.

2. The Parliamentary Assembly congratulates the authorities of Bosnia and Herzegovina on the signing, on 16 June 2008, of the Stabilisation and Association Agreement with the European Union, together with the interim trade agreement. It also welcomes the signing, on 17 September 2007, of the visa facilitation agreement, as well as the recent launching, on 5 June 2008, of the discussions between the European Union and Bosnia and Herzegovina about the introduction of a visa-free regime. The Stabilisation and Association Agreement offers new opportunities for the country, including trade and financial benefits. It should also give a fresh impetus to the long-awaited reforms aimed at bringing the domestic legal order closer to the European *acquis* in the field of democracy, rule of law and human rights.

3. The Assembly notes, however, that the effective implementation of the Stabilisation and Association Agreement requires close and efficient co-operation between various State and Entity level structures and institutions. This has yet to be achieved, given the complex political and constitutional set up of Bosnia and Herzegovina. Without proper reforms, the country will not be able to make full use of the benefits European integration can bring.

4. In particular, the Assembly notes with concern that key reforms are not advancing as well as they should. Since the adoption of Assembly Resolution 1513 (2006) on Constitutional reform in Bosnia and Herzegovina, no progress has been made on the constitutional reform front. Without a fully fledged constitutional reform, the police reform, which was one of the preconditions for the signing of the Stabilisation and Association Agreement with the European Union, will be blocked and the recently adopted legislation may become inoperative. Constitutional revision is also required to implement key reforms in areas where the distribution of competences between the Entities and the State needs to be changed. The entity voting system in the House of Representatives and the excessively broad scope of the "vital national interests" clause, together with the related veto mechanism in the House of Peoples, must be reformed for Bosnia and Herzegovina to become a genuine civic State of all citizens living in it. Members of Parliament should act as free and democratically elected representatives of all the citizens of Bosnia and Herzegovina and not as defenders of purely ethnic interests. The so-called "Others" should be given an effective opportunity to fully participate in political life, by competing for the election of the members of the Presidency and participating in the designation of the delegates to the House of Peoples.

5. Equally, the Assembly is concerned by the increase of nationalist and ethnic rhetoric, especially in the context of the election campaign for the October 2008 local election and in the wake of the adoption by the Kosovo Assembly of the unilateral declaration of independence. In particular, the Assembly strongly condemns the resolution adopted by the National Assembly of Republika Srpska on 21 February 2008, in which it referred to the possibility of holding a referendum on self-determination. Such declarations contradict the Dayton Peace Agreement, which does not give the Entities the right to secede. Therefore, the Assembly strongly urges all political stakeholders to refrain from statements and actions which would call for secession or put the existence of the State based on Entities in question. The Kosovo case cannot be used as a precedent.

6. Moreover, the Assembly condemns recent initiatives by the authorities of Republika Srpska (RS) which undermine and weaken the State institutions. This applies in particular to the adoption of the RS law on conflict of interests which entrusts implementation of the law to the RS Election Commission, which so far had not performed this function and has no real reason to exist after the codification of the electoral legislation at State level. Equally, the adoption in the first reading by the RS National Assembly of a draft law aimed at creating the office of an RS-specific Ombudsperson for children's rights undermines the powers of the merged BiH State Ombudsperson's Office, which is supposed to perform the very same function.

7. The Assembly considers that the authorities of Bosnia and Herzegovina should step up efforts aimed at implementing the country's obligations and remaining commitments to the Council of Europe. While respecting the Entities' and the Brcko District's autonomy, the necessary reforms should be implemented on the basis of a shared vision of the development of the country's institutions. Constructive dialogue should replace obstructionism. State structures in key reform areas should be reinforced and not undermined. Entity institutions, especially in the Federation of Bosnia and Herzegovina, should be further reformed in a spirit of cost-effectiveness and with the aim of ensuring coherent policy-making and enforcement of the legislation at all levels of public institutions.

8. In particular, as regards the constitutional reform, the Assembly calls upon all the political stakeholders to re-launch dialogue about the various reform proposals immediately after the October 2008 local election, in close co-operation with the European Commission for Democracy through Law (Venice Commission), with a view to drafting and adopting a new constitution before October 2010, as previously recommended by the Assembly in Resolution 1513 (2006).

9. As regards the strengthening of democratic institutions, the Assembly:

9.1. welcomes some improvements to the Election Code, while regretting that a number of substantive recommendations of the Venice Commission and of the OSCE/ODIHR have not been taken on board;

9.2. regrets that the Parliamentary Assembly of Bosnia and Herzegovina has once again failed to appoint the State Ombudspersons;

9.3. regrets that no steps forward have been made to strengthen local self-government in Bosnia and Herzegovina by harmonising the relevant Entity legislation and promoting cross-entity inter-municipal co-operation;

9.4. calls upon the authorities of Bosnia and Herzegovina to:

9.4.1. further improve the electoral legislation, in line with the joint recommendations of the Venice Commission and of the OSCE/ODIHR;

9.4.2. ensure proper implementation of the legislation on conflict of interests at state and entity level, in a spirit of coherence, efficiency and cost effectiveness;

9.4.3. complete promptly the procedure of appointment of the three State Ombudspersons;

9.4.4. implement a comprehensive local government reform, with a view to harmonising local government legislation at Entity level and, in the Federation of Bosnia and Herzegovina, between the different Cantons, with a view to effectively devolving sectoral competences to local authorities, strengthening fiscal decentralisation, building up the capacity of local authorities and promoting cross-entity inter-municipal co-operation;

9.4.5. finalise the Public Broadcasting reform without further delay; refrain from any attempt to weaken the independence of the Communications Regulatory Authority and take steps to protect journalists and NGOs from harassment and intimidation.

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

10.1. acknowledges the progress made in the field of judicial reform, in particular the recent adoption, at State, Entity and Brcko District level, of the judicial reform strategy, while noting the remaining problems, in particular, the poor material working conditions of the courts and the lack of consistency in judicial practice as between Entities;

10.2. welcomes the work carried out by the War Crimes Chamber of the State Court in prosecuting war crimes, while regretting the fact that inconsistencies still exist in the application of criminal law by various courts at State and Entity level with respect to war crimes, which leads to inequality of treatment of citizens, in the light of the European Convention on Human Rights (ECHR);

10.3. while welcoming the good co-operation between the Bosnian authorities and the Group of States against Corruption (GRECO), regrets the perceived high degree of political corruption and organised crime in the country;

10.4. calls upon the authorities of Bosnia and Herzegovina to:

10.4.1. further pursue the judicial reform, in particular, by improving the material conditions of courts, strengthening co-operation between judges, prosecutors and the police and promoting better consistency in the judicial practice at Entity and State level, notably by considering the creation of a State level supreme court as recommended by the Assembly in Resolution 1513 (2006);

10.4.2. ensure the uniform application of the Criminal Code of Bosnia and Herzegovina at Entity and State level, in particular with respect to war crime cases; finalise without further delay the strategy to deal with the remaining war crimes cases;

10.4.3. further intensify efforts to eradicate and prevent political corruption, by, in particular ensuring a harmonised application of the legislation on conflict of interests;

10.4.4. take further steps to harmonise the Entity level legislations and practice in the field of prison administration, in particular with regard to execution of criminal sentences, juvenile delinquency and the mentally ill; step up the construction of a State level high security prison.

11. As regards human rights, the Assembly:

11.1. welcomes the fact that the domestic legislative procedure relating to the ratification of the Revised European Social Charter (ETS No. 163) and of the European Convention on Nationality (ETS No. 166) has been completed and expects the authorities of Bosnia and Herzegovina to deliver promptly the instruments of ratification to the Council of Europe Secretary General. The Assembly expects the authorities of Bosnia and Herzegovina to ratify without further delay the Charter for Regional or Minority Languages in accordance with the commitment taken six years ago;

11.2. welcomes that, at last, six years after the accession, the agreement on the publication of the compatibility study of the domestic legislation and the European Convention on Human Rights (ECHR) was finally reached;

11.3. regrets that the procedures of appointing members or candidates on behalf of Bosnia and Herzegovina to several Council of Europe monitoring mechanisms or advisory bodies, in particular, the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (CPT), the Advisory Committee of the Framework Convention for the Protection of National Minorities, the European Commission against racism and intolerance (ECRI) and the Venice Commission have yet to be completed;

11.4. takes note of the current work of the Citizenship Review Commission and of the criticism expressed by several stakeholders concerning the respect of human rights standards in the work of the commission;

11.5. regrets that, contrary to the letter of the President of the United Nations Security Council and to the recommendations of the Council of Europe Commissioner for Human Rights, the decertified police officers are still prevented from applying for vacant jobs in the police;

11.6. strongly condemns the still existing practice of "ethnic segregation" in primary and secondary schools, while welcoming the adoption of the new framework law on higher education;

11.7. calls upon the authorities of Bosnia and Herzegovina to:

11.7.1. eliminate from State and Entity legislation all shortcomings which, according to the compatibility study, may lead Bosnia and Herzegovina to be found in violation of the ECHR;

11.7.2. nominate members for all Council of Europe monitoring mechanisms and advisory bodies without further delay;

11.7.3. ensure that the norms of the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Additional Protocols 4 and 7, as well as the principles of the European Convention on Nationality, are fully respected in the work of the Citizenship Review Commission;

11.7.4. find, at the earliest opportunity, an appropriate and final solution to the problems faced by the decertified police officers;

11.7.5. fully implement the recommendations of the CPT and adopt the necessary general measures to execute the judgments of the European Court of Human Rights finding a violation of the ECHR in respect of Bosnia and Herzegovina;

11.7.6. put an end to the practice of “ethnic segregation” in primary and secondary schools as a matter of urgency, fully implement the 2003 primary and secondary education reform, and continue the reform of higher education, in line with the recently adopted framework legislation;

11.7.7. urgently find an appropriate and country-wide solution to the problem of repayment of the funds from the foreign currency saving accounts of citizens, which were frozen after the dissolution of the Federal Republic of Yugoslavia.

12. As regards co-operation with the International Criminal Tribunal for Former Yugoslavia (ICTY), the Assembly:

12.1. welcomes the recent arrests of Radovan Karadzic and Stojan Zupljanin;

12.2. calls upon the authorities to continue close co-operation with the Tribunal as well as with their partners in the region in order to apprehend and bring to justice the two remaining ICTY indictees Ratko Mladic and Goran Hadzic.

13. The Assembly recalls its previous recommendation concerning the organisation of a population census by 2010 and considers that the census should be launched as quickly as possible, using in particular the disaggregated data collection methodology, given the particular circumstances of Bosnia and Herzegovina. The Assembly also recalls its recommendation about the setting up of a truth and reconciliation commission and expects the authorities to take appropriate steps in this respect promptly.

14. Pending the implementation of these recommendations and the achievement of substantial progress in the fields of constitutional reform, functioning of democratic institutions, rule of law, and human rights, the Assembly resolves to pursue its monitoring of the honouring of obligations and commitments by Bosnia and Herzegovina.

**B. Draft recommendation**

1. The Parliamentary Assembly refers to its Resolution ... (2008) on the honouring of obligations and commitments by Bosnia and Herzegovina in which it calls upon the authorities of Bosnia and Herzegovina to step up efforts to complete the necessary reforms aimed at implementing the country's obligations and remaining commitments to the Council of Europe.
2. The Assembly recommends that the Committee of Ministers:
  - 2.1. takes Assembly Resolution ... (2008) in the context of the Secretariat's reporting procedure before the Rapporteur Group on Democracy (GR-DEM);
  - 2.2. continues and reinforces existing co-operation programmes to support Bosnia and Herzegovina in the implementation of obligations and commitments to the Council of Europe, by allocating appropriate financial resources and making use of bilateral donor funding, where necessary;
  - 2.3. works with the authorities of Bosnia and Herzegovina on an action plan to develop, where appropriate, new targeted co-operation programmes in the fields of strengthening of democratic institutions, local and regional democracy, reform of, and capacity building for, the judiciary, the fight against corruption, human rights, mass media, and education, making full use in particular of new funding opportunities, including within the framework of the European Union's Instrument for Pre-accession Assistance (IPA).

## C. Explanatory memorandum by Mr Çavuşoğlu and Mr Sasi, co-rapporteurs

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## 1. INTRODUCTION

### 1.1. Monitoring procedure

1. In becoming a member of the Council of Europe on 24 April 2002, Bosnia and Herzegovina accepted to honour the obligations placed on all member states under Article 3 of the Organisation's Statute, together with a number of specific undertakings set out in Opinion 234 (2002) on Bosnia and Herzegovina's application for membership of the Council of Europe. With a view to ensuring compliance with these commitments, the Assembly decided, pursuant to Resolution 1115(1997), to closely monitor the situation in Bosnia and Herzegovina as from its accession.

2. The first monitoring report was presented to the Assembly in June 2004 and led to the adoption of Resolution 1383 (2004) and Recommendation 1664 (2004) on 23 June 2004. Following the failure of the constitutional reform in April 2006, the Assembly also decided in June 2006 to hold a debate under urgent procedure on the constitutional reform in Bosnia and Herzegovina and adopted Resolution 1513 (2006).

3. This is the third report to be presented by the Monitoring Committee to the Parliamentary Assembly to take stock of the overall progress achieved by Bosnia and Herzegovina in honouring its obligations and commitments during its first six years of membership of the Council of Europe.

4. In accordance with Resolution 1115(1997), Mr Kimmo Sasi (Finland, EPP) was appointed co-rapporteur on 15 September 2004, in replacement of Mr Lazlo Surjan (Hungary, EPP) who had meanwhile been elected to the European Parliament. Mrs Naira Shakhtakhtinskaya (Azerbaijan, EDG), who had been appointed in January 2003, was replaced on 25 January 2006 by Mr Mevlüt Çavuşoğlu (Turkey, EDG).

5. This report is largely based on the interviews and information obtained during the co-rapporteurs' visits to Bosnia and Herzegovina from 16 to 18 December 2004, 16 to 20 October 2005, 3 to 5 April 2006, 23 to 27 September 2007, and, most recently, from 27 to 29 August 2008. It also takes into account the opinions and recommendations made by other Council of Europe monitoring bodies.

6. We extend grateful thanks to the Bosnia and Herzegovina parliamentary delegation for the excellent organisation of our visits and their hospitality. We were able to hold extremely frank and informative discussions at all levels. Our thanks are also due to the Office of the Special Representative of the Secretary General of the Council of Europe in Bosnia and Herzegovina for their active assistance.

### 1.2 Developments since Assembly Resolution 1383 (2004)

7. In retrospect it would appear that 2005 was a really good year for Bosnia and Herzegovina: on 12 January 2005, the State parliament adopted a law introducing a VAT at a single rate of 17% applicable throughout the country; both Entity parliaments agreed to constitutional changes allowing the transfer of entity defence powers to the State level; the State level Parliament passed on 5 October 2005 the legislation necessary for the creation of a single and unified army; conscription was abolished; the authorities of Republika Srpska (RS) transferred for the first time a total of 7 indicted war criminals to the International Criminal Tribunal for the former Yugoslavia (ICTY) and the ICTY for the first time referred a case to the jurisdiction of a domestic court in one of the countries of former Yugoslavia (the Stankovic case, which was sent to the BiH Court's War Crimes Chamber).

8. In the last year of his mandate, the High Representative, Lord Paddy Ashdown, lifted the ban on participating in political life for several individuals and allowed removed officials to hold non managerial public positions; on 19 July 2005, Paddy Ashdown publicly stated the time had come to transform the Office of the High Representative into an EU-led mission; Parliaments at Entity and State level adopted declarations in October 2005 committing themselves to a police reform according to the three principles defined by the EU<sup>1</sup>; negotiations for a future constitutional reform looked very promising and on 21 November 2005 the EU member States mandated the European Commission to start negotiations for a SAA (Stabilisation and Association Agreement).

9. While Lord Paddy Ashdown had been on occasion severely criticised for his somewhat colonial attitude towards the authorities of Bosnia and Herzegovina and for his extensive use of the Bonn Powers, his successor went into reverse gear as soon as he was appointed by the Peace Implementation Council (PIC) in December 2005. When the new High Representative Christian Schwarz-Schilling took up his duties on

<sup>1</sup> The three principles are: 1) all legislative and budgetary competences for all police matters must be vested at the State level; 2) there should be no political interference with operational policing and 3) functional local police areas must be determined by technical policing criteria, where operational command is exercised at the local level.

1 February 2006, he immediately announced that he would use the Bonn powers sparingly from now on and that he aimed at closing down the Office of the High Representative (OHR) in the foreseeable future.

10. Despite the failure of the constitutional reform in April 2006 and although Montenegro's independence in May 2006 prompted hints by the RS Prime Minister Milorad Dodik that a referendum could possibly also take place in the RS, the PIC nevertheless announced in June 2006 that the Office of the High Representative would close in June 2007, with a final decision to be taken in this respect in February 2007. This decision was seen by many as premature and indeed the political climate deteriorated sharply after April 2006, when the constitutional reform package failed in Parliament by just 2 votes. Although technical negotiations on the SAA proceeded well and were concluded by the end of 2006, both, the RS and the FBiH authorities, did not co-operate with the Directorate for police restructuring as well as they should.

11. Positive developments in 2006 included the successful introduction of VAT, although there were – and still are - squabbles about the formula used to calculate repartition of the proceeds, and Bosnia and Herzegovina's admission to NATO's Partnership for Peace (PfP) together with Serbia at the NATO summit of Heads of States held in Riga on 28-29 November 2006. Most recently, following the adoption by the State and Entity authorities of the agreement on the "Final disposal of all rights and liabilities over moveable defence property that will continue to serve defence purposes", the Heads of State and Government of NATO states invited Bosnia and Herzegovina, at the Bucharest Summit of April 2008, to begin an "intensified dialogue" with the Alliance. Little progress has unfortunately been made with regard to the immovable defence property. There is also no progress to be recorded with regard to the issue of Apportionment of Property between State and other levels of government although the State Property Commission had adopted compromise distribution criteria in October 2007.

12. The run-up to the October 2006 general elections was again marked by nationalistic rhetoric and demagogy unrelated to political programmes and social economic issues. Instead the most charismatic leaders – RS Prime Minister Dodik (SNSD) and the presidential Bosniak candidate Haris Siladzic (SBiH) raised the political temperature by fuelling ethnic fears and by presenting to the public mutually exclusive concepts of the country's future organisation.

13. Just as in 2002, after the October 2006 elections, several months were again wasted on political deals for government formation at all levels. The authorities became functional only around March 2007 and, in some cantons in the Federation, as late as August 2007. In February 2007, the PIC announced that the Office of the High Representative would not close down in June 2007 but would see its mandate extended until June 2008<sup>2</sup>. At this meeting Christian Schwarz Schilling also announced he would not request a prolongation of his mandate after June 2007. He was replaced as of July 2007 by Miroslav Lajcak, a Slovak diplomat who, like his predecessors, was also appointed EU Special Representative.

14. The judgment of the International Court of Justice of 26 February 2007 on the case brought by Bosnia and Herzegovina against Serbia in 1992 under the UN Genocide Convention, approximately one year after Milosevic's death in custody in the Hague before his trial was concluded in the ICTY, caused a major trauma especially among the Bosniak population, as genocide was recognised to have happened only in Srebrenica and Serbia found guilty only of not preventing it. The judgment led to the hardening of the Bosniak position with regard to police reform; it was used as an extra argument to claim that the RS police was a "genocidal" police force and needed to be dismantled and put under state control. This in turn prompted the RS authorities to claim that if faced with a choice between Europe and keeping the RS police, they would prefer keeping the latter.

15. The continued uncertainty about the outcome of the status talks on Kosovo also poisoned the political atmosphere in Bosnia and Herzegovina, notably because of declarations made by the Serbian authorities in October 2007 that preservation of the RS on the basis of the Dayton Peace Agreement was together with Kosovo their major priority. The adoption by the Kosovo Assembly on 17 February 2007 of the Unilateral Declaration of independence further hardened nationalistic rhetorics.

16. Because of protracted coalition negotiations for government formation and heated discussions about police reform, there was very little legislative activity: in the first ten months after the elections, the Council of Ministers adopted only 3 laws, including the long awaited law on higher education which was enacted by Parliament on 30 July 2007. After several extensions of the deadlines set for police reform, one of the major preconditions for initialising a SAA (together with public broadcasting reform, public administration reform and co-operation with ICTY), the last deadline set by the EU for 30 September 2007 was not really met. Last minute protocols submitted by Dodik and Silajdzic were not considered sufficient proof of the politicians'

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<sup>2</sup> However, it was decided at the meeting of the PIC Steering Board on 26-27 February 2008 that the mandate of the OHR would be terminated only when certain conditions are met. See paragraph 77.

willingness to respect the 3 EU principles on police reform. This failure was a major disappointment for the International Community but also for the public at large, especially because a SAA had been initialled with Montenegro in October 2007 and, more importantly, with Serbia on 7 November 2007.

17. We were in Sarajevo end of September 2007 and found the atmosphere rather depressing: there was a general ambience of hopelessness and a feeling that politicians had let themselves be trapped into such rigid and conflicting positions that it was unlikely that any compromise, even just a face-saving one, could be reached. There was also a lot of speculation as to the action that would be taken by the High Representative to "punish" those responsible for the failure of the police reform. Removal by virtue of the Bonn powers of both Dodik and Silajdzic by the High Representative was the most discussed option.

18. Instead, on 19 October 2007, the High Representative imposed amendments to the law on the Council of Ministers (CoM) in order to make it more functional (notably by changing the quorum rules) and required both houses of the State level Parliament to amend their Rules of Procedure by 1 December 2007 in the way he indicated or risk these amendments being imposed. His decisions were supported by the international community<sup>3</sup> and by the Bosniak and Croat parties but provoked an outcry by the Serb parties who threatened to withdraw from all State level institutions and argued that the High Representative was overstepping his Bonn powers.

19. On 24 October 2007, in a last minute effort to resolve the political crisis the six major political parties representing the 3 constituent people<sup>4</sup> met in Mostar and adopted the "Mostar declaration" committing themselves to the implementation of the police reform in line with the three principles set by the EU. This declaration however also stated that "the structure of the single police forces in Bosnia and Herzegovina shall be in line with the constitutional structure of the country" and that "the new and reformed police structure shall be based on the relevant provisions of the BiH Constitution which shall take form during the process of constitutional reform". To all practical purposes this means that the police reform will have to wait until completion of the constitutional reform, at least with regard to its most controversial part concerning the definition of policing regions. This declaration was seen as an encouraging first step by the international community but insufficient to justify the initialling of the SAA.

20. On 1 November 2007, the Chair of the Council of Ministers, Nikola Spiric (SNSD), resigned in protest over the decisions taken by the High Representative on 19 October but continued to exercise his functions in a care-taker capacity while the RS authorities began haggling with the High Representative over an "authentic interpretation" of his decision concerning the Council of Ministers. The RS National Assembly adopted a declaration stating that the RS would not accept the High Representative's decisions, demonstrations were staged in Banja Luka and early elections to get out of the institutional blockade were not to be excluded. The situation was described as the worst political crisis in Bosnia and Herzegovina since 1992, to the point where citizens, already plagued by the sharp price increase of basic commodities, started stocking up on basic products such as flour or cooking oil. The EUFOR Commander in Chief even stated that the 2 500 strong EU led Althea force, whose mandate had just been extended for one year in November, could be increased at short notice should the need arise.

21. However, on 22 November, the major political parties adopted a two phase<sup>5</sup> action plan for the implementation of the Mostar declaration on police reform; on 30 November both houses of the State level Parliament adopted the amendments to the Rules of Procedure as required by the decision of the High Representative; the Council of Ministers which had not met since 16 October started meeting again on 29 November, in particular to approve the budget appropriations necessary to organise early presidential elections in the RS<sup>6</sup> on 9 December, following the sudden death of President Jelic on 30 September, and to forward to parliament the documents necessary for the ratification of the visa facilitation and readmission agreement with the EU which had been signed on 18 September.

22. On 3 December 2007 the High Representative published a decision enacting the authentic interpretation of his decision on the Council of Ministers of 19 October (in effect he amended it somewhat to

<sup>3</sup> At the PIC meeting on 30-31 October 2007 the Russian Delegation dissented however on the timing of the decision, without opposing it.

<sup>4</sup> SNSD and PDP for the Serbs, HDZ and HDZ 1990 for the Croats, SDA and SBiH for the Bosniaks. These 6 parties are in a "coalition" in the State level Parliament while the other 2 major parties, the SDS (Serb) and the SDP (multi-ethnic), are in opposition and do not participate in the meetings of the 6 party leaders.

<sup>5</sup> In the first phase, laws establishing 7 police-related state level agencies were to be elaborated by 15 February 2008 and adopted by Parliament by June 2008 whereas other laws relating to the competence of the local level of police would be adopted within one year after constitutional reform.

<sup>6</sup> SNSD candidate Rajko Kuzmanovic won these elections with 41% of the vote, followed by SDS candidate Ognjen Tadic with 35% and by PDP candidate Mladen Ivanic with 17 %. The elections were observed by the Council of Europe Congress of Local and Regional authorities and assessed as generally free and fair.

take into account the Serb concerns) and on 4 December EU Commissioner for enlargement Olli Rehn travelled to Sarajevo to finally initial the SAA agreement with Bosnia and Herzegovina.

23. The initialling of the SAA, just before the long holiday season, calmed the political turmoil: it was hailed as a major success giving at long last to Bosnia and Herzegovina a clear perspective of European integration. It was also interpreted with relief as a clear indication of the politicians' willingness to finally overcome their ethnic divides and reach consensus on a common goal. Only a few dissenting voices noted that in effect the EU had given in on the 3 principles for police reform it had advocated so consistently over the last few years.

24. On 11 December 2007, the 6 main parties (SDA and SBiH for the Bosniaks, HDZ and HDZ 1990 for the Croats, SNSD and PDP for the Serbs) met again in Laktasi (near Banja Luka) and agreed to re-nominate Spiric as chairman of the Council of Ministers and to appoint a working group<sup>7</sup> tasked with submitting to the Council by 15 February 2008 draft laws creating 7 new state level agencies (a directorate for co-ordination of the police, an institute for forensics, an institute for education and professional upgrading of personnel, a police support agency, an independent board, a citizens complaint board and a police officials complaint board).

25. The political leaders also agreed to adopt the state budget for 2008 by the end of 2007<sup>8</sup>, resolve the issue of state property by end of February 2008, adopt the law on pharmaceuticals and "improve" the public administration reform. They also decided to "share" among the 3 constituent peoples the seats of already created state level agencies: 3 for Banja Luka (agency for pharmaceutical equipment, agency for identification documents and data exchange, agency for higher education and quality assurance), 3 for Mostar (agency for recognition of documents, agency for primary, elementary and secondary education, agency for pharmaceutical vigilance). Sarajevo got the regulatory agency for radiation and nuclear safety, the information technology society, the control laboratory for the agency on pharmaceutical equipment (total: 3) while Tuzla got the anti-doping control agency.

26. By mid-February 2008, however, it became clear that the surge of optimism that had marked the end of the crisis in December 2007 had been short-lived: on 26 January 2008, the main Board of the SNSD adopted its policy platform, stating unequivocally that its stance in the future constitutional reform would be an asymmetric federation with a right of self-determination for the federal units, including the RS in its current form, and that no entity or federal unit could be abolished against its will. All decision-making at the level of the state would be based exclusively on consensus. For good measure, the SNSD also asked for the relocation of the Central Bank to Banja Luka, the elimination of the armed forces, and the dismantling of the State-level High Judicial and Prosecutorial Council, the Indirect Taxation Authority and the Intelligence-Security Agency.

27. On 2 February, at the 6 party leaders' meeting in Siroki Brijeg, no agreement could be found as to how to proceed with constitutional reform and it was agreed to postpone any future constitutional talks until after the signing of the SAA. In Siroki Brijeg, the leader of the SDA (Sulejman Tihic) also announced he would no longer support the Mostar declaration on police reform nor agree with the draft laws prepared by the working group.

28. On 14 February 2008, the Council of Ministers therefore had to adopt the Draft Law on the Directorate for Coordination of Police Bodies and Agencies for Support of the Police Structure of BiH and the Draft Law on Independent and Supervisory Bodies of the Police Structure of BiH by majority vote<sup>9</sup>, the Bosniak members voting against. However, following additional negotiations, the two laws on police reform were finally adopted by the BiH Parliamentary Assembly in April 2008. These 2 laws do not change the competencies of the country's 14 police forces, which belong to the two entities, the 10 cantons of the Federation, and the Brcko District. The central government will continue to run only the State Border Police and the State Investigation and Protection Agency.

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<sup>7</sup> The working Group is composed of 4 State level representatives (from the Ministry of Justice, the Ministry of Security, the Council of Ministers and the border police), 2 entity ministers of Interior, 3 "personal" representatives of the Federation PM and RS Government, plus one from Brcko district mayor. The EUSR, the US embassy and the EUPM shall be observers.

<sup>8</sup> The State level budget for 2008, amounting to 1, 186 billion KM was at long last adopted by Parliament on 25 February 2008, after long and protracted discussions in the Presidency, with the RS insisting on a spending reduction. The RS budget, amounting to 1, 5 billion KM (20% increase as compared to 2007) was adopted in December 2007 while the Federation budget, also adopted in December 2007, amounts to 1, 757 billion KM (22 % increase as compared to 2007).

<sup>9</sup> The Council of Ministers however unanimously adopted the Draft Law on Pharmaceuticals.

29. The laws provide however for a second phase, which is to take place within one year after constitutional reform. It is only then that the three principles laid down by the European Union for such restructuring would come into play. Under these principles, the central government should exercise legislative and budgetary control over all police forces in the country. The adoption of the laws on police reform was judged by the EU a sufficient condition for concluding the Stabilisation and Association Agreement, which was signed on 16 June 2008.

30. Although we welcome the adoption of the key legislation necessary for the reform, we feel concerned about its practical implementation, given that prospects of a prompt implementation of the constitutional reform look rather gloomy. We are furthermore extremely concerned with the deterioration of the political climate in Bosnia and Herzegovina. Fears of each constituent people in BiH should by all means be openly discussed and addressed but constant mutual accusations and mutually exclusive nationalistic rhetoric are counter-productive and a recipe for future disaster. Bosniaks, Croats, Serbs and Others are all citizens of one and the same country, Bosnia and Herzegovina, and it is this country that will integrate Europe, not little fiefdoms run by narrow personal and party interests.

31. We also note with concern that the existing power sharing mechanisms, so far based on the mantra of consensus and dialogue, have hardened into obstruction for the sake of obstruction. Since October 2005 when solemn declarations adopted on the principles of police reform by all 3 Parliaments led to the opening of negotiations on the SAA only to be revoked or obstructed later, reforms were either obstructed, delayed or watered down to accommodate those who threatened to vote against. This cannot continue, not only because the authorities in BiH risk being perceived as unreliable partners in the process of European integration, but, more importantly, because European standards, values or best practices will not take root in society.

32. We believe that Bosnia and Herzegovina has no other option than European integration. On the other hand, Europe has no other option than to integrate Bosnia and Herzegovina. The so-called "enlargement fatigue" has weakened the credibility of the EU's integration strategy based on clear accession conditions and deadlines. It is therefore of fundamental importance that the International Community, and the EU in particular, stick to the standards they stand for and do not exchange them for short-term compromises. We will remind the domestic authorities as often as necessary that, as a member state of the Council of Europe, Bosnia and Herzegovina has accepted a number of commitments and obligations and pledged to abide by European standards. The implementation of the obligations and commitments entered into at the moment of accession to the Council of Europe will help BiH to fulfil the accession criteria of the European Union.

33. It is unfortunately most likely that the unilateral declaration of independence by Kosovo on 17 February 2008 will be abused by some politicians during the future constitutional talks in Bosnia and Herzegovina. In particular, we are concerned about the resolution adopted by the RS National Assembly on 21 February 2008, in which the RS National Assembly stated that it "consider[ed] that it [had] the right to determine [the RS'] stance about its state and legal status through a direct vote by a referendum"<sup>10</sup>. Such declarations go against the Dayton Peace Agreement which does not give the Entities the right to secede. We call upon all political stakeholders to refrain from statements and actions which would call for secession or put the existence of the Entities in question. The Kosovo case cannot be used as a precedent.

34. With the police reform implementation being linked to the constitutional reform, the political games around the independence of Kosovo, the forthcoming local elections in October 2008 and the overall tense political climate, it is unlikely that constitutional reform will proceed in any meaningful way and come to fruition before the next general elections in 2010, contrary to what the Assembly had recommended in Resolution 1513(2006). We very much regret this further delay because we believe that stability and further European integration cannot be achieved in Bosnia and Herzegovina without reforming the Dayton Constitution along the lines indicated by the Assembly in Resolution 1513.

### **1.2.1. International relations**

#### *1.2.1.1. Relations with the European Union*

35. The Stabilisation and Association Agreement with the European Union was signed on 16 June 2008, following the adoption of the two laws launching the police reform. The Agreement now has to be ratified by all EU member states. In the meantime, Bosnia and Herzegovina was granted trade benefits by an interim agreement which was supposed to become effective on 1 July 2008, on the condition that the authorities adopt appropriate amendments to the Law on Customs tariffs.

<sup>10</sup> <http://home.coe.int/wires/WiresLectureF.asp?WiresID=95256>

36. In parallel with the negotiations on the Stabilisation and Association Agreement, a visa facilitation agreement was elaborated and signed on 17 September 2007. This agreement reduced, and even eliminated for some categories of citizens, the visa processing fees. The agreement also simplified the conditions for granting visas to many groups of citizens, including students, businessmen, journalists, etc. Discussions about introducing a visa-free regime for BiH citizens were started by the European Union on 26 May 2008.

37. We warmly welcome the signing of the Stabilisation and Association Agreement and the visa facilitation measures for the BiH citizens. The Stabilisation and Association Agreement offers new opportunities for BiH, including trade and financial benefits. It provides a clear European perspective for the country's development. At the same time, the effective implementation of the SAA requires close and efficient co-operation between various State and Entity level structures and institutions. We are concerned that without a proper constitutional reform and in the current context of political division and rivalry between the Entities the country might not be able to use in full the potential benefits the SAA can bring. We therefore call upon the authorities to seriously consider all the implications of the implementation of the SAA, as an intermediate step on the road to full EU membership, and take the necessary steps to strengthen, where appropriate, State institutions and improve cross-entity co-operation.

#### 1.2.1.2. Relations with Croatia

38. A double citizenship agreement with Croatia was approved by the Parliamentary Assembly of Bosnia and Herzegovina in February 2008<sup>11</sup>. It is estimated that most of the around 400 000 Croats living in Bosnia and Herzegovina also have Croatian citizenship. On 2 January 2005, around 50,000 Croatian citizens resident in BiH came to the polls in the Croatian presidential elections at 42 polling stations. That number represented 2 % of the total turnout. Some analysts have suggested that the vote in BiH affected the outcome of the elections, since BiH-based electorate were reported to have cast their ballots by a large majority for the Croat Democratic Union candidate (HDZ), Jadranka Kosor. The effect was to deny incumbent President Stjepan Mesic (who won just under 49 % of the vote) the 50 % he needed to win outright in the first round.

39. On 15 October 2007 President Stjepan Mesic called elections to the *Sabor* (Croatian Parliament) for 25 November 2007, following the expiration of the 4-year mandate of the Parliament. For the general elections on 25 November 2007, around 400 000 Croats from the diaspora living in 53 countries (which constitute constituency no. 11) were called to vote. One of the major changes in the planning for *diaspora* voting was the significant increase in the number of polling stations being established in BiH, from 30 used for the 2003 elections to 124 in 2007, whereas the number of registered voters has stayed more or less the same (the turnout of BiH Croatian citizens in 2003 was 19.8% of the registered voters). These efforts to facilitate easier access to polling stations for Bosnian Croats became a political issue in the campaign due to the relationship between the turnout of out-of-country voters, particularly in Bosnia and Herzegovina, and the number of mandates awarded in that constituency (up to 6 mandates). A concern facing registration officials is that the *diaspora* voter lists are compiled from data acquired at the time of the person's last contact with Croatian officials. In the meantime many have moved or have temporarily taken up residence in another city or country. For example, it is estimated that of the 286,000 voters registered in BiH, as many as 110,000 may actually be working in Germany. Unless they have "pre-registered" they will remain on the lists for BiH based on their last claimed residence. Should they present themselves at the Embassy or one of the Consulates in Germany, they will not find themselves on the voter lists and will not be able to vote there.

40. We already noted in our previous reports that we consider the diaspora voting to be a problem in the particular circumstances of Bosnia and Herzegovina. The Croats cannot be a constituent people in BiH, claim minority rights, notably in the field of education<sup>12</sup>, and at the same time enjoy the right to vote and be elected in a neighbouring country. We also urge the Bosnian authorities to finally settle the remaining border disputes, to come to an agreement as regards the port in Ploce and to adopt a constructive attitude concerning the construction of the Peljesac bridge.

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<sup>11</sup> It is worth noting that the ratification of the agreement prompted the Bosniak member of the Presidency, Mr Haris Silajdzic, to ask the High Representative to repeal Art. 17 of the Citizenship law. This provision does not authorise the citizens of Bosnia and Herzegovina to hold the citizenship of another country, unless there is a special agreement for this purpose. Mr Silajdzic informed us that, in his opinion, half a million of citizens of Bosnia and Herzegovina would lose citizenship, if article 17 of the Citizenship Law was applied, because a significant proportion of citizens of the country hold dual citizenship in the absence of special agreements. In his opinion there should be not restrictions on dual citizenship.

<sup>12</sup> The Croatian Government has donated to BiH 50 million Euros for the promotion of the Croatian language in 2007, notably for the construction of a new university in Mostar.

### 1.2.1.3. Relations with Serbia

41. Relations with Serbia were marked by the adoption in February 2007 by the International Court of Justice of its ruling in the case Bosnia and Herzegovina vs. Serbia. The Court found that acts of genocide were committed in Srebrenica. The Court considered that Serbia had failed to take all measures necessary to prevent Srebrenica genocide and bring the perpetrators to justice. However, the Court ruled that Serbia did not commit genocide against Bosnia and Herzegovina.

42. As indicated earlier, the judgment caused a major trauma especially among the Bosniak population. However, by and large, this judgment did not adversely affect the relations between BiH and Serbia. We note that Serbia opened a Consulate in Banja Luka in May 2007. However, issues relating to the State border, property relations and trade remain unresolved<sup>13</sup>.

43. At Entity level, the Republic of Srpska continued co-operation with Serbia within the framework of the Special Parallel Relations Agreement of 2006.

### 1.2.2. Economic growth

44. The beginning of the year 2005 saw a significant step for BiH, namely the start of tax collection at the State level, thus furthering the establishment of a single economic space in the country. On 1 January 2005, the implementation of two new laws regarding the tax on turnover of goods and services and excise tax started; these taxes are now paid into a single bank account of the BiH Indirect Taxation Administration (ITA). This is expected to simplify the sale and transport of goods between the entities and prevent tax evasion. The State will claim its own administration costs, as well as make foreign debt payments, before distributing the balance to the entities and Brčko District according to an "agreed" formula.

45. Following the introduction of a Value Added Tax (VAT) at the beginning of the year 2006, legislation on revenue allocation was amended in the country's two entities. This has proved difficult in one of them — the Federation of Bosnia and Herzegovina which was for some time left without a mechanism to transfer funds from the central account to cantons and municipalities.

46. Despite the difficult political environment, BiH is now in its fourth year of stable economic performance, with growth in GDP estimated at 5.5% in 2008. Inflation in the first quarter of 2007 was just 1.5% but started to pick up in the second half of 2007, driven by an increase in food and transport prices and reached 4.9% in December, further accelerating above 6% in the spring of 2008. The current account deficit dropped from 21.3% of GDP in 2005 to 11.4% of GDP in 2006. The trade deficit fell from 49.6 % in 2005 to 37.1% in 2006, although further improvements are unlikely for the time-being as export expansion has slowed in 2007 and imports have again increased. The total fiscal surplus was 3% of GDP in 2006, which resulted mainly from a surge of revenues following the introduction of VAT.

47. The RS started catching up on the Federation in economic terms thanks in particular to increased revenues from sale of public companies. The Government accepted in 2007 an offer of "Telekom Srbija" for the purchase of 65% of Telekom Srpska", yielding a cash windfall of 646M € but raising the risk of fiscally unsustainable public spending commitments in the longer-term.

48. The windfall represented by high collection rates of indirect taxes has not, however, facilitated either an agreement on a permanent mechanism for revenue allocation between the entities (the percentage awarded to Brcko district had to be imposed by the High Representative) or provided a remedy for fiscal challenges. In particular, pre-election spending and the currently uncoordinated fiscal regime could cause a sharp deterioration in the state government's balance sheet. The state government registered a deficit of 0.3% of GDP in 2007, compared with a 2.2% surplus in 2006, which highlights the urgent need to establish a National Fiscal Council that would ensure proper fiscal coordination and macroeconomic stability. Statistics also still need to be improved. Finally it should be noted that the absence, since 1991, of a new census<sup>14</sup> impacts negatively on future macro-economic planning.

<sup>13</sup> Bosnia and Herzegovina 2007 Progress Report. Commission of European Communities. SEC(2007) 1430. Brussels, 6.11.2007.

<sup>14</sup> Officially preparations for a new census in 2010-11 are underway. This is a politically sensitive question since for the Bosniak parties, a census without prior full implementation of Annex 7 to the Dayton Peace Agreement on the return of refugees and IDP's would be akin to "legalising" the ethnic cleansing that took place during the war while for the Croats it would show a drastic reduction in numbers jeopardising the current repartition of posts in the civil service, which is based on the 1991 census.

49. Public-sector wages in both the entities and cantons have almost reached parity with those of state institutions. This disproportionately large public-sector wage bill still amounts to around 50 % of GDP and makes transfer of civil servants from the Entities to state-level less attractive. A state-level law on public salaries was adopted in July 2008. However, this law does not cover the staff of the BiH Parliamentary Assembly.

50. There has been little or no progress in reforming the business environment thereby discouraging investment and sustaining high unemployment rates. The latter is estimated to total 31.1 %, with 20 % of the population living below the poverty line and another 30 % hovering around it. This situation impacts negatively upon economic recovery and widens the gap between BiH and other transition countries. The country badly needs to attract new foreign investments to create new jobs, by for example, granting concessions for the building of the Vc corridor<sup>15</sup> or construction of new hydro-electric plants. Equally, privatisation of state owned property has to be stepped up.

## **2. ADHERENCE TO COUNCIL OF EUROPE STANDARDS AND INSTRUMENTS**

### **2.1. Signature and ratification of Council of Europe conventions**

51. As of 22 August 2008, Bosnia and Herzegovina has ratified 64 conventions of the Council of Europe and signed 11 other conventions. Compared to other States under a monitoring procedure, this is a particularly good record.

52. Since the last monitoring report of June 2004, Bosnia and Herzegovina has notably ratified the following conventions listed in the Assembly's accession Opinion 234(2002): the European Convention on extradition and its additional Protocol (CETS no. 024 and 086), the third Protocol to the general agreement on privileges and immunities (CETS no. 028), the European Convention on mutual assistance in criminal matters and its second additional Protocol (CETS no. 030 and 182), the European Convention on the transfer of proceedings in criminal matters and its additional Protocol (CETS no. 073), the Convention on the transfer of sentenced persons (CETS no. 112), the European Convention on the compensation of victims of violent crimes (CETS no. 116), the Convention on cybercrime and its additional Protocol (CETS no. 182 and 189). Most recently, on 28 March 2008, BiH ratified the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 106), thus implementing at last a long-standing accession commitment.

53. Bosnia and Herzegovina has also ratified Protocol no. 14 to the ECHR, the European Convention on transfrontier television, the Convention on human rights and biomedicine and the Convention for the protection of individuals with regard to automatic processing of personal data. On 11 January 2008, Bosnia and Herzegovina ratified the 3 "Warsaw" Conventions, namely the Convention on the prevention of terrorism (CETS no. 196), the Convention on action against Trafficking in Human Beings (CETS no. 197) and the Convention on Laundering, search, seizure and confiscation of proceeds from crime and on the financing of terrorism (CETS no. 198). On 30 June 2008 Bosnia and Herzegovina ratified the 6<sup>th</sup> Protocol to the General agreement on privileges and immunities.

54. However, contrary to its accession commitments, to date, the European Charter for regional or minority languages has not been ratified. The European Convention on nationality has been signed but not yet ratified. We were informed that the ratification procedure of the Revised European Social Charter (CETS No. 139) and the European Convention on Nationality (CETS No. 166) has been completed, and we expect that the authorities will soon deliver the instruments of ratification to the Secretary General of the Council of Europe.<sup>16</sup>

### **2.2. Co-operation with the Council of Europe**

55. Since accession in April 2002, various monitoring bodies have published reports on Bosnia Herzegovina:

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<sup>15</sup> Corridor Vc (*Corridor 5c*) is a branch of the fifth Pan-European transport corridor. It connects Budapest in Hungary to the Adriatic Sea at the Croatian port of Ploce. The corridor does not only feature the motorway, but rail upgrades and airports of significance along the way. The longest part of this corridor goes through Bosnia and Herzegovina and is widely touted as a road instrumental to the development of the country.

<sup>16</sup> See Comments by the members of the BiH Parliamentary delegation on the Preliminary draft report on the Honouring of obligations and commitments by BiH (AS/Mon...)



- the CPT carried out 3 visits, the last one in March 2007, following which it published in July 2007 its preliminary observations and the response of the Government of Bosnia and Herzegovina;<sup>17</sup>
- the ECRI published its first report on racism and intolerance in Bosnia and Herzegovina on 15 February 2005, the next one will be presented in 2010;
- the Commissioner of Human Rights, Thomas Hammarberg, published one report on the problem of decertified police officers and one country report in February 2008 following a visit in July 2007;
- the Congress of local and regional authorities (hereafter "the Congress") observed the local elections in 2004 and the presidential elections in the RS on 9 December 2007 and published a report on local and regional democracy in Bosnia and Herzegovina;<sup>18</sup>
- GRECO published its second round evaluation report on 8 December 2006;
- MONEYVAL published its first round detailed assessment report on 6 June 2005;
- the Secretariat of the Framework Convention on the Protection of National Minorities received the second State report on 31 August 2007. A visit to Bosnia and Herzegovina took place on 24-28 March 2008. The Second cycle opinion of the Advisory Committee of the FCNM will be adopted in October 2008.

56. The European Court of Human Rights delivered its first judgment against Bosnia and Herzegovina in 2006. Three further judgments were pronounced in 2007 and two in 2008 (as of 22 August). The Venice Commission also provided a number of opinions, mainly in 2005 and 2006 during the -aborted- attempt at constitutional reform. Three further opinions were adopted in June 2008 in respect of amendments to the electoral code, draft amendments to the Constitution of Republika Srpska and the draft amendments to the state level law on conflict of interests. We will rely to a large extent on the findings and recommendations, some of which very critical, made by these monitoring mechanisms in the relevant chapters of this report.

57. We welcome that, at last, six years after accession, the agreement on the publication of the compatibility study was reached. We expect the authorities of Bosnia and Herzegovina at all levels to take action in order to remedy the shortcomings of legislation and practice identified by the compatibility study. In view of the existing backlog in the European Court of Human Rights, we consider it of the utmost importance that the authorities take preventive measures in order to ensure that their legislation and practice are in line with the ECHR without waiting for judgments finding BiH in violation.

58. We also urge the authorities to speed up their internal selection procedures in order to come up with competent candidates for the various bodies of the Council of Europe. It is difficult to understand why, 6 years after accession, there is still no representative of Bosnia and Herzegovina on the CPT<sup>19</sup>. The seat in respect of BiH on the Advisory Committee of the Framework Convention on national minorities is vacant since June 2006 and the mandate of the current BiH member in ECRI has expired since 18 February 2008 without a new proposal being made by the authorities so far. The question of the appointment of a new member of the Venice Commission in respect of Bosnia and Herzegovina is also not yet solved. We also regret that it took the BiH Delegation to the Parliamentary Assembly more than a year to choose its chairperson and that the agreement found consists, once again, in a rotation of the three constituent people.

### **3. FUNCTIONING OF DEMOCRATIC INSTITUTIONS**

#### **3.1. Elections**

##### **3.1.1. Local elections in 2004**

59. The municipal elections in October 2004 were the first to be completely organised, conducted and funded by the BiH authorities – a sign of the successful transition of electoral processes to local ownership. For the first time, elections were also held in Brcko district. These elections were observed by the Congress<sup>20</sup>.

60. The Congress' observers concluded that the 2004 elections were administered in line with the international electoral standards of the Council of Europe. However, several shortcomings of the electoral process were identified, in particular the incompleteness of the voter registers and the complexity of the electoral system, which made it difficult for the citizens to understand the process. As will be seen later, some of these problems were eliminated in the process of reform of the electoral legislation.

##### **3.1.2. General elections in October 2006 and preparation of the October 2008 local election**

<sup>17</sup> See CPT (INF) 2007/34

<sup>18</sup> CG(13)30PART2, 19 October 2006.

<sup>19</sup> The post is vacant since 1 November 2002. A list of candidates was finally submitted to the Assembly in January 2006 but it was rejected. New vacancy notices were published only in March 2008

<sup>20</sup> CG/CP (11) 13, 29 November 2004.

### 3.1.2.1. Amendments to the electoral legislation

61. On 3 April 2005, the High Representative Paddy Ashdown issued a Decision withdrawing the three international members from the BiH Election Commission, effective from the end of June 2005.

62. In late March 2006, the two Houses of the State Parliament approved amendments to the Law on Elections. Thanks to this law, Bosnia and Herzegovina now has a Central Election Commission ; the Election Complaints and Appeals Council was abolished, the period of the official campaign in the electronic media was reduced from 60 to 30 days, and the threshold for representation is now three percent of the vote. The country now has a system of passive voter registration, which means that every citizen with a valid Citizens' Identity Protection System (CIPS)<sup>21</sup> document should automatically be registered as a voter.

63. Further amendments to the electoral legislation, to the law on political party financing and to the law on conflict of interest were adopted in preparation of the 2008 local election. The amendments were appraised by the Venice Commission.<sup>22</sup> The Venice Commission noted in its opinion that "for the major part, the [...] amendments [were] addressed towards technical issues, for purposes of clarification and improvement, and mainly positive results". The amendments also addressed some previously made substantive recommendations and were considered positive in this respect. However, according to the Venice Commission, the amendments still "do not address certain significant issues [...] regarding the national and entity election systems, which are based on ethnicity, the right to be elected, and transparency in the determination of rights in the electoral dispute proceedings".

64. We will not describe in this report all the recommendations made by the Venice Commission, which are contained in the above-mentioned opinion. We will address just one of the recommendations, which, in our view, is of crucial importance. According to the amended Electoral Law, a maximum of 2 reserved seats are granted to minorities, if they lived in a given municipality according to the 1991 census in a proportion higher than 3%. For municipalities where minorities represented (according to the last census) more than 3% of the population, one additional reserved seat is granted. The decision on the number of reserved seats is left to the discretion of the municipalities. In our opinion, this amendment is a step back with respect to the previous arrangements, which did not limit the number of reserved seats and guaranteed minority representation even in case minorities represented less than 3% of the population. We are concerned that in a country based on the constitutional division of the population into 3 Constituent peoples and Others, the already low participation of minorities in politics is likely to be further reduced. We call upon the authorities to seek alternative means of integrating the minorities into political life, especially at the local level, using Council of Europe expertise in this field as guidance.

### 3.1.2.2. The October 2006 general elections

65. Thirty-six registered political parties, with 8 formal coalitions, and 12 independent candidates, participated in the election. 2,736,886 BiH registered voters were under the new passive registration procedure. Voters were called upon to elect the three members of the BiH Presidency, the president and two vice-presidents of RS; delegates to the BiH and FBiH House of Representatives and to the RS Peoples' Assembly; delegates to the assemblies of the ten cantons in the BiH Federation. Up to € 4.5 million from the BiH and municipalities' budgets was spent for the organisation of the general elections.

66. Nationalist rhetoric marked the election campaign from the outset and intensified as the poll approached. This was mostly fuelled by calls from the RS Prime Minister, Milorad Dodik, for an RS independence referendum and by counter-calls from Bosniak parties wanting a stronger centralised state. Croat parties, already lacking a cohesive message after the founding, earlier that year, of the break-away HDZ 1990<sup>23</sup>, struggled to find a political pitch.

67. The general elections were held on 1 October 2006: the joint CoE/ODIHR election monitoring mission declared that "the manner in which the elections were held generally is in accordance with international standards", paid tribute to the BiH authorities, in particular the Central Election Commission for the organisation of this first domestically-managed poll, but recalled that the elections themselves, in certain

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<sup>21</sup> Issuing of the new, single identification documents to citizens under the "CIPS Project" began in 2003 and was completed in late 2005.

<sup>22</sup> See document CDL-AD(2008)012 of 20 June 2008.

<sup>23</sup> On 8 April 2006, former members of the Croat Democratic Union (HDZ), who had been expelled from the party in November 2005, met to found a new political party. They named it "HDZ 1990." Božo Ljubić, who lost the race for the presidency of the HDZ at the June 2005 party congress from Dragan Čović, was chosen as its head.

important respects, violated Protocol 12 of the ECHR (*inter alia* because only Serbs, Bosniaks and Croats can stand for election to the Presidency).

68. The BiH Central Election Commission (CIK) finally certified the election results on 27 October for the BiH House of Representatives (42 seats, comprising 28 seats from the FBiH, 14 from the RS). The SDA was the biggest winner with 9 seats (8 from FBiH and one from the RS). SBiH gained 8 (7 in the FBiH and one in the RS). From the FBiH, the SDP won 5 seats, HDZ/HNZ 3, and HDZ 1990 2. NSRZB, BPS, DNZ each gained one seat. From the RS, as predicted, the SNSD swept the board, winning 7 seats. The SDS won 3, while DNS and PDP one each.

69. Then came the results for the BiH Presidency. Two major surprises: first the size of the defeat – more than 2:1 – of the sitting SDA Presidency member Tihic by the SBiH Silajdzic, and, secondly, the election to the Croat seat of the SDP, and therefore non-ethnically-aligned, Zeljko Komsic. Predictably, the SNSD Radmanovic swept the board for the Serb seat.

### 3.1.2.3. Preparation of the October 2008 local election

70. The Central Election Commission decided that the next local election should be held on 5 October 2008. The political parties had until 23 May to register for the elections. The deadline for registration of electoral coalitions and independent candidates was until 25 June. The Congress will be observing the election. We shall take its report into account in the further stages of the monitoring process.

71. An interesting development of the electoral legislation occurred in connection with the preparation of the October local election. On 7 May 2008, the Parliamentary Assembly of Bosnia and Herzegovina adopted, under urgent procedure, amendments to the Election Code giving the possibility to all pre-war residents of Srebrenica to register to vote in this municipality, irrespective of their current place of residence. This change is valid only for the October 2008 local election and was made primarily because there was a risk that the Bosniaks, who were expelled from the region of Srebrenica as a result of the war-time genocide, would be outvoted by the Serbs who currently form the majority of the population of Srebrenica. We understand that Srebrenica has a particular moral and symbolic importance for the Bosniaks, as we understand the need to create in Srebrenica a political environment which would be conducive to sustainable returns. We welcome the fact that the country's politicians were able to find a pragmatic compromise solution to such a complex and sensitive issue. However, we consider that the adopted change can only bring a provisional solution. Additional confidence building efforts are required from all sides to build the population's trust in democratic institutions that will make Srebrenica, as well as other municipalities of the country, fully multi-cultural and multi-ethnic places.

72. The preparation of the election also brought forward another problematic issue of BiH politics, which is the implementation of the law on conflict of interests. This law, adopted by the BiH Parliamentary Assembly in 2002 and further amended in 2003 and 2004 is aimed at preventing the conflict of interests in BiH State institutions, as well as setting the framework for Entity policies and legislation in this field. According to the law, the Entities and the Brcko District are requested to adopt their own laws on conflict of interests, which should be consistent with the State law. The Brcko District has already adopted its own law on the prevention of conflict of interest and entrusted the implementation of the law to the State Central Election Commission. In April 2008, a draft RS law on the conflict of interest was tabled in the RS National Assembly. The draft law was subsequently examined by the Venice Commission. In the final version of the law, the RS decided to entrust the implementation of the law to the RS Election Commission and not to the State Central Election Commission, as was the case with the Brcko District. While in legal terms, this solution appears to be legitimate, it might not prove to be effective and efficient in practice. In fact, the RS Election Commission was not previously involved in these activities, while the BiH Central Election Commission has been performing these duties quite well since the adoption of the law until January 2008, when it suspended its activities with respect to the prevention of conflict of interest at the level of the Entities, further to an appeal to the Constitutional Court. We join the opinion of the Venice Commission in that "it would be preferable to entrust the implementation of [Entity] legislation on conflict of interests to the Central Election Commission", while we acknowledge that this would require a voluntary transfer of competences to the State level. Together with the representatives of the international community, namely, the OHR and the OSCE, we call upon the authorities of the RS to come back on their decision and transfer the competence for the enforcement of the law on conflict of interests to the Central Election Commission, so as to build upon the successful experience already developed by the latter and create effective safeguards against political corruption.

### **3.1.3. Government formation after the 2006 general election**

#### *3.1.3.1. At State level*

73. The BiH Presidency started functioning on 6 November 2006, when Nebojsa Radmanovic (SNSD) took the Chair for 8 months, with Haris Silajdzic (SBiH) and Zeljko Komsic (SDP) in the wings. The current Chair is Mr Silajdzic. The process of Government formation at State level finally gathered some momentum with the appointment early in the month of December of the Presidium of the House of Representatives and of Nikola Spiric (SNSD) as Chairman of the Council of Ministers and Prime Minister-designate.

74. On 9 February 2007, more than four months after the general elections, Bosnia and Herzegovina's Parliamentary Assembly appointed Bosnia and Herzegovina's new Council of Ministers. These new ministers and deputy ministers were the first to be vetted by the country's own institutions rather than by the Office of the High Representative<sup>24</sup>. The Council's ten ministerial positions were divided among the leading five political parties. The Union of Independent Social Democrats (SNSD), a party that draws its voters mainly from the RS, got the Chairmanship of the Council of Ministers, the Ministry of Foreign Trade and Economic Relations, and the Ministry of Civil Affairs. The Party for Democratic Action (SDA), traditionally the strongest Bosniak party, got the Ministry of Security and the Ministry of Defence. The Party for Bosnia and Herzegovina (SBiH), whose head, Haris Silajdzic, had defeated the SDA's president, Sulejman Tihic, in the race for the Bosniak seat on the presidency, was awarded the Ministry of Foreign Affairs and the Ministry of Human Rights and Refugees. The Croatian Democratic Union of Bosnia and Herzegovina (HDZ-BiH) got the Ministry of Finance and Treasury and the Ministry of Justice, while the break-away Croatian Democratic Union 1990 (HDZ-1990) received the Ministry of Transport and Communications.

75. The inaugural session of the BiH House of Peoples, which includes former Presidency member Tihic and ex-Minister of Foreign Affairs Ivanic, took place on 14 March 2007, completing the legislature at State level.

#### *3.1.3.2. In Republika Srpska*

76. In the RS the establishment of new government was smooth and quick, thanks to the resounding victory of the SNSD. RS President Milan Jelic was sworn in on 9 November 2006. The National Assembly of the RS (RSNA) became quickly functional and the re-elected Prime Minister Milorad Dodik established his government on 29 November in what amounted to a re-shuffle (with SP and DNS coalition partners), but with the SDS going into opposition and promising a more radical line in the future. SDS leader and former President Dragan Cavic was forced to resign from his position of leader of the Party.

#### *3.1.3.3. In the Federation*

77. The long deadlock at State level spilled over to the FBiH, since for the Croat parties especially, a setback in the State government could be partially compensated by executive leverage in the Federation. The FBiH House of Representatives did meet on time on 21 November, but the session was adjourned *sine die*. A similar situation prevailed in the Cantons.

78. FBiH legislation still provides for the Office of the High Representative (OHR) vetting of candidates for ministerial office. On 22 March 2007, the FBiH House of Representatives voted a government before receiving the green light from OHR on those nominations. As a result, the High Representative resorted to the Bonn powers the following day to annul the FBiH House of Representatives decision, noting that "there had been an attempt to manipulate the vetting process". In particular, OHR had concerns about the candidate put forward for the post of Minister of the Interior. Finally, after a new candidature had been vetted by OHR, the FBiH House of Representatives was able to approve a government on 30 March and at the same session adopted the FBiH 2007 budget. In two cantons, governments were not formed until the end of August 2007, i.e. 10 months after the elections, and then only after the High Representative had cut party financing of the four main political parties as a result of the delays.

#### *3.1.3.4 Government and Parliaments' performance*

79. We will not repeat here what we stated in our report on the constitutional reform in Bosnia and Herzegovina in April 2006: without a comprehensive reform of the Dayton Constitution, little progress will be made. The institutional set-up, multilayered as it is, is simply too complicated and slows down or even

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<sup>24</sup> The new procedures include a background check by Bosnia and Herzegovina's State Investigation and Protection Agency (SIPA), an eligibility check by the Central Election Commission, and a public hearing before the appropriate parliamentary committee.

impedes the decision-making process<sup>25</sup>. Although structural complexity and numerous levels of authority exist in other European states, such systems can work as long as there is a clear agreement on who does what, when and how. This is still not the case in BiH. Furthermore, without a minimum amount of trust, a willingness to achieve consensus and, most importantly, a sense of common interest, any complex system such as the one existing in BH is bound to fail.

80. Power sharing deals or repartition between the 3 constituent people of economic proceeds and posts are no substitute for a common vision of the country's future. Moreover, the monopolisation of political decision making through informal meetings of the 6 major political parties (SDA and SBiH for the Bosniaks, HDZ and HDZ 1990 for the Croats, SNSD and PDP for the Serbs, all in an unlikely coalition at the State level) deprives both the Council of Ministers and the Parliament of their constitutional responsibilities.

81. Lack of trust, more or less systematic obstruction, and narrow party interests have taken their toll on legislative and governmental activity: in 2007, only 27 pieces of legislation, of the 135 planned at State level, were in fact adopted<sup>26</sup>. According to the Centre for Civilian Initiative (CCI), the work of Bosnian institutions could be best described as "inefficient, indolent, and irresponsible". According to this NGO, the champion of poor performance is the Parliament of the BiH Federation which did not even adopt its own annual action plan for 2007 and adopted only 17 laws out of the 79 put before Parliament. One third of the Federation's parliament members did not participate in a single parliamentary debate. The situation was slightly better in RS where the RS National Assembly carried out 62% of its planned activities.

### 3.2. Powers of the High Representative

82. Lord Paddy Ashdown, who became the High Representative and EU Special Representative shortly after Bosnia and Herzegovina joined the Council of Europe in April 2002, was replaced by Dr Christian Schwarz-Schilling (Germany) on 31 January 2006. Dr Schwarz Schilling was replaced by Miroslav Lajcak (Slovakia) on 1 July 2007.

83. The High Representative (HR), Dr Christian Schwarz-Schilling, went into the 26-27 February 2007 PIC meeting in Brussels with a recommendation for a one-year extension of the OHR (and Bonn Powers) to June 2008. He argued that potential instability arising from the delay in the Kosovo Status talks, the stalled reform agenda in BiH and the anti-Dayton rhetoric and positioning, especially from some RS politicians, were such that the decision of principle to close OHR in June 2007, taken in June 2006, should be revised. BiH politicians were divided on this possible extension, broadly breaking down into those from the RS who believe the OHR should close and those from the FBiH who still appreciate the umbrella of security and stability that the OHR provide. The PIC accepted the OHR recommendation for extension, with only the Russian Federation dissenting, but stressed that 'transition' to domestic ownership remained the objective. It should be noted that Dr Schwarz-Schilling had clearly indicated ahead of the PIC that he would not be seeking to extend his own mandate beyond June 2007, and that the Office he held would remain 'double-hatted' – HR/EUSR – in 2007/8.

84. At its meeting held in Brussels on 26-27 February 2008, the PIC Steering Board set the conditions for closure of the Office of the High Representative, which must mark the end of the country's transition process. In a declaration adopted unanimously, the PIC considered that, to complete the transition process (initially foreseen in June 2008), the authorities of Bosnia and Herzegovina should meet five key objectives. These are: acceptable and sustainable resolution of the issue of apportionment of property between state and other levels of government, resolution of defence property, completion of the Brcko Final Award (administered to date by the international community), fiscal sustainability, and entrenchment of the rule of law. Two other conditions are added to this: positive assessment of the situation in Bosnia and Herzegovina in relation to the Dayton provisions, on one hand, and the signing of the Stabilisation and Association Agreement (SAA) on the other. The subsequent meeting of the PIC was held on 24-25 June 2008 in Sarajevo. The Final Communiqué took stock of the progress made reaching the 5 objectives and 2 conditions set in February. It concluded that the Office of the High Representative (OHR) should remain for now. The final communiqué was not signed by Russia, as it insisted on setting a date for the termination of the OHR mandate.

<sup>25</sup> In addition, we note that, so far, the establishment of new Agencies at State level has not reduced bureaucracy at Entity level. With the salary scales in public administration more or less harmonised between the State and the Entities, the officials have no motivation to move to State institutions. According to the latest data provided by the IMF, the country spends roughly 50% of its GDP on public administration costs.

<sup>26</sup> See the 2007 report of the Helsinki Committee for Human Rights in BiH, which also states that in the field of human rights, only 13% of the planned laws were sent to Parliament

### 3.2.1. Removals

85. On 4 March 2005, High Representative Paddy Ashdown announced that he was initiating a process to review some 100 decisions, made by his predecessors and himself between 1998 and 2003, that banned persons from public office for obstructing implementation of the Dayton Peace Agreement. Removals ordered by EUFOR and the former SFOR and UN IPTF (International Police Task Force) missions were not included in the process. On 4 May 2005, he lifted the bans on holding public office imposed by his predecessor on three relatively low-level officials.

86. On 28 October 2005, the High Representative nevertheless removed the Minister of Education of the RS, Milovan Pecelj, from office because of his failure to carry out the HR's Decision of 30 June 2004 removing Radomir Lukić<sup>27</sup>. Pecelj, in the High Representative's eyes, had not only failed to fulfil his ministerial duties with respect to Lukić's continued legal employment as Dean of the Faculty of Law at East Sarajevo, he had also failed even to make a clear public statement to inform the students that Lukić was barred by law from holding his current post, which meant among other things that the grades and examination results he had delivered to his students would not count as academic qualifications for them.

87. On 19 October 2005, on the occasion of the second anniversary of the death of Alija Izetbegović, the first Chairman of the three-person Presidency of Bosnia and Herzegovina and the first president of the SDA a decision was taken by local authorities to rename Sarajevo airport after Mr Izetbegović. Voices of protest were immediately raised, particularly in the RS. On 14 October, the High Representative 'suspended' the renaming of the airport, arguing that if BiH's international character is to be beyond dispute the names of its international airports must be accepted by all. In addition, on 28 October, the High Representative issued a Decision laying out the formal legal process that must be followed in the case of renaming public facilities in BiH that have an international or inter-Entity character, adding that naming of public facilities must be viewed in the context of reconciliation.

88. On 4 November 2005, the High Representative issued decisions rescinding the earlier decisions that had banned 23 individuals from participating in public and political life. Lord Ashdown, who dubbed this program of rehabilitation "Operation Phoenix," had embarked on this program in anticipation of the day when Bosnia and Herzegovina would no longer have a High Representative.

89. In one of his final decisions in office, Lord Ashdown used his powers to amend the Election Law. In doing so, he rehabilitated more than 140 politicians whom the former Provisional Election Commission (PEC) and former Election Appeal Sub-Commission (EASC) had caused to be removed from the electoral rolls or from office.

90. On 4 April 2006, and again on 7 July 2006, the High Representative, Dr Christian Schwarz-Schilling, took measures to rehabilitate officials previously removed from their positions. These measures, he said, "... will apply to all those who were removed by previous High Representatives - with the exception of those removed for reasons relating to the ICTY". Those who qualify are now able to apply to the Office of the High Representative (OHR) to have their removals reviewed. Dr Schwarz-Schilling added that "if the sanctions are lifted, these individuals would have the right to stand for, and hold, any public position, whether elected or appointed."

91. However, in the context of the ongoing investigation/prosecution of those responsible for the genocide in Srebrenica, 36 RS policemen were suspended on the order of the High Representative Miroslav Lajcak upon taking up his duties in July 2007. He also issued five decisions enacting legislation enabling investigations and prosecutions of the Srebrenica genocide and removed Dragomir Andan from his position (as Deputy Head of Administration for Police Education of the RS Ministry of the Interior) for contributing to the shielding from justice of fugitive ICTY indictees. In July 2007 and in January 2008, the High Representative moreover ordered seizing the travel documents of 93 persons threatening or obstructing the peace implementation process, notably of members of the Karadzic family. The BiH law providing for the freezing of assets of war crimes indictees and their supporters was applied in three cases by the BiH authorities, most notably against the families of Stojan Zupljanin and Radovan Karadzic.

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<sup>27</sup> On 30 June 2004, the HR had removed 59 RS officials from their political, administrative or economic posts, citing their obstruction of co-operation with the ICTY, financial wrongdoing, and covert or overt support for networks sustaining indicted war criminals. One of them, Radomir Lukić was removed from his position as a Member of the Main Board of the SDS and from other public and party positions he held, as a part of measures following NATO's decision to deny BiH entry into the Partnership for Peace.

### 3.2.2. Challenges to the use of the Bonn powers by the High Representative

92. Towards the end of February 2007, the BiH Constitutional Court at last published the text of its decision in the case of Milorad Bilbija *et al* which it had adopted on 8 July 2006. This case was brought by a number of individuals, including Dragan Kalinic, former President of the RS National Assembly, banned for life from public office for ICTY obstruction by decision of the High Representative in 2004. Citing the Venice Commission and the case-law of the European Court of Human Rights, the Court held that there had been a violation of Article 13 of the ECHR regarding the absence of an effective legal remedy against the removal decisions<sup>28</sup>.

93. On 23 March 2007, the High Representative issued an Order, with immediate effect concerning the implementation of this Decision. This Order establishes a process by which the authorities of Bosnia and Herzegovina will be "able to comply with the Decision of the Constitutional Court in a way that upholds Bosnia and Herzegovina's international obligations under Dayton and the UN Charter". Under the Order, the Presidency of Bosnia and Herzegovina shall address to the High Representative, as Chair of the Steering Board of the Peace Implementation Council, all matters addressed in the Decision of the Court that ought to be considered by the international authorities referred to in that Decision.

94. However, any step taken by any institution or authority in Bosnia and Herzegovina to establish any domestic mechanism to review the Decisions of the High Representative will be considered an attempt to undermine implementation of the civilian aspects of the Dayton Peace Accords and treated accordingly. The Order further confirms that any proceedings instituted before any Court in Bosnia and Herzegovina, which challenge decisions sanctioning individuals for violation of the Dayton Peace Accords enacted by the High Representative, will be inadmissible, unless the High Representative expressly gives his prior consent. In line with previous practice, the High Representative intends to continue to allow the judicial review of laws enacted by him in place of the legislatures within Bosnia and Herzegovina.

95. The Decision of the Court does not affect the decisions of the High Representative and individuals who have been banned from public life by such decisions, including both Milorad Bilbija and Dragan Kalanic, who will remain banned until the High Representative decides otherwise.

### 3.2.3. Imposition of legislation and other measures

96. Laws imposed by the High Representative are provisional: they remain in force until they are formally passed by both houses of parliament, be it at State, entity or cantonal level, without amendments. Contrary to decisions concerning individuals, which cannot be appealed before any court in Bosnia and Herzegovina or elsewhere (see above), the laws imposed by the High Representative can be challenged before the courts.

97. In 2004, the High Representative issued 158 decisions, in 2005 a total of 91 decisions were issued while in 2006 there were a total of 57 decisions (of which 14 laws or amendments to laws). This downward trend continued in 2007 with only 37 decisions (of which 24 laws or amendments to laws<sup>29</sup>).

98. State, entity and cantonal parliaments were asked after the October 2006 elections to adopt legal acts previously enacted by the HR. On 29 November 2007, three laws previously imposed by the HR were rejected in the BiH House of Peoples, while the HR's decision on the Council of Ministers of 19 October 2007 (see below) has not yet been put on the Parliamentary Assembly's agenda. The Federation Parliament's House of Representatives has not enacted any HR decisions since 29 May 2007, when it adopted two laws dating from 6 October 1999 and 24 April 2007. The Federation House of Peoples, meanwhile, has yet to adopt these laws. The RS National Assembly adopted four HR-enacted laws dealing with the judiciary and

<sup>28</sup> The European Court of Human Rights however declared a case brought by removed officials (Dusan Beric and Others, decision of 16 October 2007) inadmissible *ratione personae*. It considered that the removal decisions were not attributable to the authorities of BiH but to the High Representative exercising lawfully delegated powers of the UN Security Council.

<sup>29</sup> The deadline foreseen by the Law on temporary prohibition of disposal of the state property of BiH was extended three times in 2007 by amending the relevant State level law and the Entities' law, thus accounting for 9 decisions. The prohibition on the disposal of State property was originally imposed on 21 March 2005. The Commission established by the BiH Council of Ministers in December 2004 with a mandate to determine rights over state property, and to draft legislation for its management floundered because of high-level political intransigence. The State Commission was mandated to ensure that the rights to State property are apportioned in a way that is consistent with the respective responsibilities of the State, the Entities and Brcko District under the Constitution.

administration in March-April 2007. On 11 December 2007 the RS National Assembly adopted an initiative to amend the RS Constitution, which should also cover amendments to the RS Constitution previously enacted by High Representatives. Cantonal assemblies have not included any HR decisions on their agendas since October 2007.

99. With regard to the imposition of laws, the main event was the amendment, on 19 October 2007, of the law on the BiH Council of Ministers, following the failure of the police reform. The main changes are:

- the rule of the quorum: a session can be held whenever a majority of the members of the CoM are present; and
- the decision-making process: decisions on certain matters can be made by the majority of those present and voting while the simple majority needed for final decision of the Council shall only need to include one representative from each constituent people rather than the two currently required.

100. This will facilitate decision-making: the Government will be able to take decisions even if a minority of Ministers chooses to be absent. Ministers will still be able to vote in favour or against decisions, but they will have to come to the session to do so. At the same time, this decision continues to respect the right of each constituent people to protect its vital national interest in justified cases.

101. The High Representative also wrote to the joint Collegium of the BiH Parliamentary Assembly instructing them to amend their Rules of Procedure on the work of both Houses of the Parliamentary Assembly by 1 December indicating that he would use his powers and impose those amendments if they did not follow suit. The amendments focus on three areas:

- firstly, on what is commonly known as the "Entity voting": the Constitution stipulates that a majority vote necessary for decision-making should include at least one third of the votes of representatives from the territory of each Entity. The existing Rules of Procedure interpret that to be one third of the representatives elected from each Entity, instead of one third of the votes of the representatives present from each Entity;
- secondly, the amendments should also address the issue of quorum to hold a session of the BiH House of Representatives: the Constitution states simply that a quorum is a majority of all members of the House of Representatives – 22 of the 42 delegates. According to the current Rules of Procedure, there is an additional requirement for at least 10 delegates from the Federation of BiH and 5 from the RS to be present. This interpretation allows a small minority of delegates to prevent the House from holding a session, simply by not showing up to work;
- and finally, on how the Collegium of the Houses of the Parliamentary Assembly takes decisions: the Constitution stipulates that the role of the Chair and Deputy Chairs is to obtain approval, working as a commission, of the decision which could not gain the so-called entity majority. However, under the current Rules of Procedure, after harmonisation, the Collegium returns the law to the Parliament for yet another vote.

102. We welcome the fact that the Parliamentary Assembly of BiH changed its Rules of Procedure on 30 November 2007 in accordance with the request of the High Representative. It would have been more than unfortunate to have the rules governing the functioning of a democratically elected parliament imposed by the High Representative.

103. These measures, especially with regard to the Council of Ministers, created an outcry in RS. PM Milorad Dodik accused the High Representative of abusing his Bonn powers and threatened to withdraw all Serb ministers, parliamentarians and civil servants at State level if he did not rescind them. He argued that these changes make it possible for an ethnic community – notably the Serbs – to be easily outvoted, something which he considered unacceptable and dangerous in a multi-ethnic society like that of Bosnia and Herzegovina. PM Dodik received the full support of the Serbian Government who as a guarantor of the Dayton Peace Agreement indicated that "preserving Kosovo and the RS are now the most important goals of our [Serbian] state and national policy".

104. In our view, the strong reaction by the RS authorities show that it will become more and more difficult for the High Representative to use his "Bonn Powers": with a military force reduced to around 2 500 men<sup>30</sup> (compared to 60 000 in 1995), political players relying on a strong electorate like in the RS and consensus faltering in the Peace Implementation Council, it seems that almost 13 years after the end of the war the use of the "Bonn powers" is becoming less and less acceptable. This, of course, is not the view of the Bosniak

<sup>30</sup> The EUFOR mandate was extended for one year by the UN Security Council on 21 November 2006.



parties who have repeatedly called on the High Representative to be more assertive and to use the “Bonn powers” to curb the more and more open secessionist calls coming from the RS.

#### **3.2.4. Brcko district**

105. With regard to Brcko, we would like to make reference to our 2004 report. Two major events have occurred since: the holding for the first time since 1999 of elections in the Brcko district in 2004 and the abolition of all entity laws still applied in Brcko in 2007. This has led to a legislative vacuum in some areas which had to be filled by the Supervisor, currently Raffi Gregorian, an American diplomat like his predecessors.

106. Although both the Final Arbitration Award<sup>31</sup> and the supervisory regime were intended to protect Brcko from the entities, the district authorities came to view that the increased competences of the State were jeopardising its unique status. The United States government, which has provided considerable financial support as well as every Supervisor since 1997, proposed in November 2005 that a working party be established to forge a political agreement between the state and district that would obviate the need for the Arbitral Tribunal to decide the issue. In June 2007, however, the Arbitral Tribunal issued an Addendum to the Final Award that stipulated that: “...any two-Entity transfer to the State without an equivalent transfer by, or consent of, the Brcko District, would be contrary and illegal under the Final Award if that transfer had the effect of significantly diminishing the District’s ability to function as a single, unitary, multi-ethnic, democratic government for...Brcko.” In September 2007, both houses of the Parliamentary Assembly adopted amendments and an addendum to the Law on the Council of Ministers that establish the Brcko District Coordinator’s Office as a permanent body in the Council of Ministers.

107. On 6 May 2008 Brcko Supervisor Raffi Gregorian issued a Supervisory Order amending the Statute of Brcko District. Through the same Order, the Supervisor also enacted new Rules of Procedure for the District Assembly as well as a new Election Law of Brcko District harmonised with the Statute and the recently amended BiH Election Law. The amended Statute institutes a mechanism that prevents outvoting of a constituent people in the Assembly, establishes a more efficient system of voting in the Assembly, and provides for representation of national minorities by the addition of two seats to the Assembly.

108. In order to prevent outvoting of a constituent people in the Assembly, decisions on certain specified subjects will now require an affirmative vote of at least one-third of Councilors from each constituent people present and voting. These subjects are specifically listed in the Statute and include issues of religion, culture, education, language, budget, spatial planning, national holidays, and monuments. We believe that this approach with regard to the definition of Vital National Interest could usefully serve also as a model at State and Entity level.

109. To promote more efficient decision-making, from now on voting on many issues will be determined on the basis of Councilors present and voting, with only justified absences being able to delay decision-making on issues subject to outvoting protection. These provisions will serve to encourage Councilors to attend sessions while minimising prospects for blockages of decision-making by non-attendance or improper use of abstentions.

110. In order for international supervision to end in Brcko District, however, its unique status must be reflected in the Constitution which makes no mention of the existence of Brcko District at the moment because it was adopted as an Annex to the Dayton Peace Agreement in 1995 whereas the Final Arbitral Award was adopted in 1999. It is to be noted that the ending of supervision of Brcko is one of the 5 objectives listed in the PIC decision of February 2008 which need to be reached before contemplating closure of the OHR. It is therefore in the best interest of all parties anxious to dispense with the Office of the High Representative to agree to constitutional amendments with regard to Brcko District.

#### **3.2.5. Challenges to other decisions by the International community - Decertification of police officers**

111. This issue came up with the establishment of the UN International Police Task Force (IPTF) which was mandated to reorganise the police forces in BiH from 1996 to 2002. The IPTF was established within the framework of Annex 11 to the Dayton Peace Agreement. Within the framework of its mandate, the IPTF was conducting the vetting of police officers in BiH. The process included several phases: a comprehensive

<sup>31</sup> The Final Arbitral Award in 1999 provided for the creation of Brčko District as a ‘condominium’ under state sovereignty that was simultaneously a part of both entities and neither. The Final Award also extended international supervision of the district until such time as the Supervisor and High Representative could report to the PIC and Arbitral Tribunal that Brčko’s multiethnic and democratic institutions of local self-government were secure.

investigation of the background of every police officer, a verification of his/her past criminal record and of his or her war-time experience, checking whether the officer was illegally occupying property, completion of IPTF training, checking citizenship and verifying educational credentials. Specific criteria for certification or decertification of police officers were established by the IMPF in Policy 11-2002 (Certification of Law Enforcement Agencies Personnel) and Policy 10-2002 (Removal of Provisional Authorisation and Disqualification of Law Enforcement Agencies Personnel in BiH).

112. As of December 2007, as a result of the vetting process, 16,764 of police officers received certification. 687 were denied certification, 37 cases were still pending and 263 police officers challenged IPTF decisions. The Council of Europe Commissioner for Human Rights investigated the matter and produced a report on the issue of decertified police officers in Bosnia and Herzegovina<sup>32</sup>.

113. On the basis of his investigations and taking into account the Opinion of the Venice Commission<sup>33</sup>, the Commissioner concluded that there was a human rights problem in the process of decertification of police officers. In particular, the possibilities for the police officers to challenge the merits of the IPTF decisions were very limited, as there had not been an appropriate legal remedy. The decisions of not granting certification had detrimental social consequences to the individuals as certification was denied for life. It appeared that a great number of decertified police officers still remained unemployed. The Commissioner discussed several alternative solutions to the problem with key stakeholders in Sarajevo. He felt however that it was not his task to suggest a concrete formula for the precise solution. The decision on this matter should be ultimately taken by the UN Security Council.

114. On 30 April 2007, the Presidency of the UN Security Council addressed a letter to the authorities of BiH noting that legal standards and practices for recruitment of police officers had improved. In that context, the UN SC considered that the persons who were denied certification by IPTF could apply again for employment with the BiH law enforcement agencies, provided that the conditions laid down in the BiH Law on Police Officials were fully met. De facto, this would give the possibility for some persons to be hired again by law enforcement agencies. However, the UN SC stated that this procedure could be implemented only if the legislation at Entity and, where appropriate, Cantonal level were brought into line with the State Law on Police Officials. To our knowledge, this has not been done so far.

115. Moreover, we note that the UN SC did not support several appeals by the Bosnian authorities and the High Representative to set up a mechanism to review previously taken decisions, thus denying the right to a legal remedy to the officers who did not receive certification. The absence of any legal review process would be incompatible with the principles of democracy, rule of law and respect for human rights, as was stated by the Venice Commission in its opinion. It is true that the amendments to the legislation suggested in the letter of the Presidency of UN SC could in principle give a chance to some of the officers to be "re-integrated". However, they would have to go through the recruitment process once again, which would put them in an inequitable position vis-à-vis other already serving officers.

116. We join the analysis of the HR Commissioner and the recommendations of the Venice Commission. We call upon the UN SC to work together with the BiH authorities in order to find an appropriate solution to this problem, complying with the principles of democracy, rule of law and human rights. In the meantime, we expect the authorities of BiH to take appropriate legislative measures in order to harmonise the legislation on the recruitment of staff of the law enforcement agencies. To date, this remains to be done at State level (where a law amending the law on public officials passed the first reading in June 2008, following a hunger strike of the decertified police officers), at the RS level and in Canton 10.

### **3.3. Defence reform**

117. In accordance with the list of commitments to be fulfilled by Bosnia and Herzegovina after its accession to the Council of Europe, BiH was required to "adopt, within 3 years after its accession, laws on conscientious objection and alternative service". This commitment, we are happy to state, is no longer relevant because conscription was abolished thanks to the comprehensive defence reform piloted by the High Representative.

118. On 18 July 2005, the members of the BiH Defence Reform Commission (DRC<sup>34</sup>) signed a declaration that the draft BiH Defence Law and the draft Law on Service in Armed Forces met the technical

<sup>32</sup> CommDH(2007)2, 17 January 2007.

<sup>33</sup> "Opinion on a possible solution to the issue of decertification of police officers in BiH", Opinion no° 326/2004, October 2005.

<sup>34</sup> The DRC was a body created by the High Representative in 2004.

requirements of the DRC's mandate. These laws envisage a unified army for BiH under a single budget for 2006, the abolition of conscription, and the end of the entities' ministries of defence.

119. On 30 August 2005, the RS National Assembly approved the constitutional transfer of defence authorities to the State level, with the support of the major RS-based political parties, including the dominant Serb Democratic Party (SDS), with a vote of 61 delegates out of 74 present. This landmark constitutional transfer of authority provided the constitutional basis for the adoption of the state-level defence legislative package developed by the Defence Reform Commission (DRC). Similarly, the Federation of Bosnia and Herzegovina Government approved constitutional amendments, at its session in September 2005.

120. The BiH House of Representatives (State level) then adopted on 30 September 2005 a defence reform legislation package that at last unified the country's defence architecture in a single, state-level framework. The BiH House of Peoples followed suit on 5 October. The adoption of these laws by the BiH Parliamentary Assembly represents the most significant politico-military achievement in the history of BiH since the signing of the Dayton Peace Accords. The legislation consists of two laws: the Law on Defence of BiH and the Law on Service in the Armed Forces of BiH. These two laws provide the necessary state-level legislative framework and regulate the creation of a professional, single military force, organised and controlled by the State of Bosnia and Herzegovina.

121. The adopted Law on Defence of BiH put out of force the previous Law on Defence (passed at the end of 2003 as a result of the first Defence Reform Commission mandate) and took effect from 1 January 2006. The new Law on Defence of BiH also regulates the authority and functions of the BiH Ministry of Defence (MoD) and Armed Forces of BiH (AFBiH). It stipulates significant changes including: the cessation of the entity ministries of defence and entity armies; abolishment of general military obligation (conscription and passive reserves); creation of a single State-level defence budget; full parliamentary oversight over the AFBiH by the BiH Parliamentary Assembly; creation of three multi-ethnic operational brigades, and the formation of three infantry regiments. The second law, the Law on Service in the Armed Forces of BiH, reflects the increased administrative roles of the BiH MoD and the AFBiH. It defines those elements of the state-military relationship that create a professional AFBiH, including contractual obligations like terms of service, salary, other entitlements, and service awards.

122. On 14 February 2007, the Council of Ministers adopted one of the outstanding measures to complete defence reform, namely the Agreement on the final disposal of all rights and obligations over movable property that will continue to serve defence purposes (the Transfer Agreement) and authorised Council of Ministers Chair Spiric to sign it. The FBiH government has also adopted the Transfer Agreement. The RS government is expected to discuss the Transfer Agreement soon, although this discussion may be delayed because of the current RS focus on events in Kosovo.

123. The successful completion of the defence reform led to BiH's admission into NATO's Partnership for peace in November 2006. We congratulate the authorities for this major success. Bosnia and Herzegovina is also sending soldiers to Afghanistan and Irak.

### **3.4 Local self-government**

124. The local government reform in both entities did not progress as well as it could. The overall institutional set up of BiH complicates the furthering of the decentralisation reform, as the adoption of basic legislation on local self-government falls in the RS within the competence of the Entity and in the FBiH within the competence of the cantons. The RS adopted a new law on local self-government in April 2004, in close co-operation with the Council of Europe. The law was subsequently revised in 2007 but still falls short of a number of the requirements of the European Charter of Local Self-Government.

125. In the FBiH the proposal to amend the Constitution in order to bring the regulatory competences for local self-government to the level of the Federation, initiated in 2005, failed to secure sufficient majority. Nevertheless, a law on the principles of local self-government was adopted in 2006 at the Federation level, thus laying down a number of core rules along which decentralisation should develop in the Cantons. However, the adoption of this basic legislation is just the beginning of the process. Specific legislation on local self-government has to be enacted by the Cantons and Cantonal framework laws should ensure effective devolution of sectoral responsibilities. Equally, fiscal decentralisation needs to be further strengthened in both RS and FBiH in order to give to the local authorities effective means to exercise their competences. The issue of local government property has yet to be resolved as well.

126. The efficient functioning of local self-government would require, in the medium term, a degree of harmonisation of the basic and sectoral legislation in RS, FBiH and the Cantons in order to establish a basis

for cross entity co-operation between municipalities in service provision. Such harmonisation would of course be easier to implement within the framework of a wide constitutional reform at the level of the State. In particular, the constitutional reform should be followed by the adoption of a framework law on local self-government at State level in order to define the main principles of local self-government which have to be further implemented by the Entities. However, pending the implementation of the constitutional reform, we expect the authorities of the RS, the FBiH and the Cantons to closely co-operate in the harmonisation of local self-government legislation in order to build strong and effective local democracy in BiH.

127. With respect to the status of Mostar, no major developments have occurred since our previous reports. The administrative unification of city authorities is progressing, although at a rather slow pace.

#### **4. RULE OF LAW**

##### **4.1. The fight against corruption**

128. According to Transparency International, Bosnia and Herzegovina ranks 84<sup>th</sup> on the CPI (Corruption Perception Index) in 2007. Corruption is rife throughout the country and politicians are widely believed by the public to be the most corrupt. Despite the creation in 2005 in the State Court of a special department dealing with corruption and organised crime, this perception has not changed. Several high level corruption cases are a good illustration of the overall perceived level of political corruption in the country (brought, in particular, against Momčilo Mandić, the first Minister of Justice of the war-time RS, former Member of the Presidency of Bosnia and Herzegovina Ante Jelavić, former Croat Member of the Presidency of Bosnia and Herzegovina Dragan Covic or Mladen Ivanic, former Minister of Foreign affairs of Bosnia and Herzegovina). We call upon the authorities to intensify their efforts to combat political corruption.

129. This being said, Bosnia and Herzegovina co-operates actively with the Council of Europe's Group of States against Corruption (GRECO). The Second Round Evaluation Report on Bosnia and Herzegovina was adopted by GRECO on 8 December 2006<sup>35</sup>. The Second Round Evaluation focused on proceeds of corruption, public administration and corruption and legal persons and corruption. GRECO concluded that BiH was making substantial amendments to its criminal legislation and the organisation of judicial and prosecutorial systems. However, the implementation of the new legal framework requires better co-ordination between different agencies in the detection, investigation, and prosecution of corruption. The staff's need for training was also highlighted.

130. With regard to public administration, GRECO welcomed the adoption in 2006 of the Strategy for the Fight against Organised Crime and Corruption but noted that its success would depend on the establishment of an independent anti-corruption body responsible for monitoring the Strategy.

131. In practical terms, GRECO addressed a number of specific recommendations to the authorities of BiH and requested them to provide a report on the measures taken by 30 June 2008. We invite the authorities of BiH to pursue the implementation of GRECO's recommendations in order to submit a satisfactory report. We shall come back to the implementation of these recommendations in our future reports, as soon as GRECO makes its assessment.

##### **4.2. Functioning of the judiciary**

132. The "continuation of the reforms aimed at the establishment of a professional and independent judicial and prosecutorial system" was an accession commitment (para. 15.v.g of Opinion 234).

133. In November 2002, the OHR decreed that all judges and prosecutors would have to reapply for their positions. This decree made no exception for those judges who had been promised life tenure after passing an earlier comprehensive review in 2000. The High Judicial and Prosecutorial Councils (HJPCs), transitional bodies existing at State and entity level with international staffing, were entrusted with this countrywide reappointment process for all posts in the first- and second-instance courts<sup>36</sup> in the Entities and also at state level. By the end of 2004 all 260 prosecutors at every level of the judiciary and all 646 judges had been selected, interviewed and appointed.

134. In November 2002, the HR had also imposed a complete restructuring of the court system within Bosnia and Herzegovina, closing and consolidating courts throughout both Entities in order to achieve a more efficient and more accountable judicial system and amending the laws establishing Judicial Training Centres in order to make them operational and improve the provision of much-needed training to judges and prosecutors throughout Bosnia and Herzegovina.

<sup>35</sup> Greco Eval II Rep (2005) 8E, 8 December 2006.

<sup>36</sup> Judges in the supreme and constitutional courts are elected, not appointed.

135. The establishment of a single State High Judicial and Prosecutorial Council - necessitating a transfer of competences from the Entities to the State – was another important benchmark as this body is ultimately responsible for hearing disciplinary procedures against judges and prosecutors and for making any appointments as judicial vacancies arise. It was set up in June 2004. This represents a major achievement, notably because, since its creation, the HJPC despite initial teething problems has shown a high level of professional commitment.

136. In our 2004 report we had hailed this combined process of court restructuring and reappointment of judges and prosecutors as being the most ambitious and radical overhaul carried out so far in any post-communist judiciary, while regretting that all reforms aiming at establishing an independent, qualified and professional judiciary had been carried out by the HR.

137. We were therefore quite surprised to hear during our visit in September 2007 rather severe criticisms of the functioning of the judiciary. Co-operation between police and prosecutors was allegedly poor, cantonal and district courts were understaffed and under equipped and the courts' backlog had reached alarming proportions. There are more than 1,9 million cases pending before the courts, of which around 160 000 criminal cases. The cantonal court in Sarajevo for example is suffocating under 80 000 cases concerning non payment of utilities bills. Execution of court decisions was also referred to as a major problem, at all levels of jurisdiction.

138. In the field of criminal justice, in early 2003, new criminal procedure codes were introduced at the State and Entity levels in BiH as part of comprehensive legislation initiated by the High Representative to reform the criminal justice system. The new criminal procedure codes fundamentally changed the procedures governing criminal investigations and the administration of justice in the courts. Among the most significant were the elimination of the position of investigative judge, the shift to an adversarial trial procedure and the introduction of new procedures, such as plea bargaining.

139. At State level, new institutions have the competence and responsibility for reviewing laws, proposing amendments, professional training and administrative oversight of the courts. Two of the most important of these institutions are the Criminal Code Implementation and Assessment Team (CCIAT), established within the BiH Ministry of Justice, and the Judicial and Prosecutorial Training Centres.

140. We were told that there were still problems with different applications by the Entities of procedural norms, such as the statute of limitation for the prosecution of war crimes, and instances of diverging case-law. There seems to be a need for a Supreme Court at State level which could review the decisions of the Entities' supreme courts in order to provide guidance and ensure consistency.

141. Major efforts are also needed with regard to prison reform: the fact that 14 different prison administrations function in the country at the moment, that there is still no State level prison, that facilities for juvenile delinquents or mentally ill offenders are scarce and that most prisons are in dire need of refurbishment clearly indicates that a major strategy for reform is called for.

#### **4.3. Return of refugees and IDP's**

142. The return of over a million refugees and IDP's to Bosnia and Herzegovina, of which some 450 000 so-called minority returns, has often been hailed as one of the major successes of the Dayton Peace Agreement. The reality, however, looks slightly different. Accurate figures on refugee returns to Bosnia and Herzegovina are not often available, especially since local authorities are sometimes misrepresenting or inflating the numbers in order to attract additional subsidies. More than 10 years after the war, although laws restoring property to pre-war owners, occupants, and tenants have been enforced and repossession claims resolved, the number of returnees to the region is still very low. The vast majority of those who have returned are elderly and retired, and many of these receive pensions or entitlements for the disabled or for war veterans from the country's other entity, the Federation of BiH. In the RS, so-called "occasional returns" appear more common than lasting, sustainable returns.

143. "Real" returns usually take place in or near urban locations where the economic infrastructure and opportunities are more accessible. The lack of economic prospects is, however, not the only barrier to return. Pensions, health, and social assistance benefits are higher in the FBiH than in the RS, a factor that prevents some people from coming back. Access to electricity remains an issue as well, together with the access to other utility services, i.e. water supply, road network etc., Return-related security incidents on the other hand are becoming less frequent and, when they do occur, law enforcement agencies are growing more diligent about investigating and pursuing criminal charges within the judicial system. To support sustainable returns

further, we invite the authorities to intensify efforts aiming at reconstructing of the utility infrastructure in areas destroyed by the war as well as providing employment opportunities to the returnees.

#### 4.4. Prosecution of War Crimes

144. Following the official take over of ICTY's Rules of the Road Unit by the BiH State Prosecutor's Office, the Collegium of Prosecutors adopted on 28 December 2004 the Book of Rules on the Review of War Crimes Cases. This document effectively enables the BiH State Prosecutor's Office to proceed with reviewing the cases and selecting the ones to be prosecuted at BiH State level. As such, only highly sensitive war crimes cases (so defined on the basis of the nature of the crime, the position the perpetrator occupied at the moment of the crime or is presently occupying and other circumstances such as possible intimidation of witnesses) will be tried at the BiH State Court, while other cases will proceed before the entity courts.

145. The package of laws regulating the transfer of cases from ICTY to the BiH State Prosecutor and the establishment of the War Crimes Chamber within the State Court officially came into force on 6 January 2005. The chamber and a special war crimes department of the BiH Prosecutor's Office opened on 9 March. BiH has thus become the first of the former Yugoslav republics equipped and ready to try ICTY-approved cases.

146. On 1 July 2005, the six-month-old State Court of Bosnia and Herzegovina handed down its first war crimes verdict, sending Abdulrahim Maktouf, an Iraqi-born citizen of Bosnia and Herzegovina, to prison for five years for aiding the members of the Al Mujahid unit in the abduction of three Croat civilians in the area of Central Bosnia during the war.

147. The genocide trial against former Bosnian Serb officer Milorad Trbic opened in November 2005 in BiH. Trbic was assistant commander for security of the Bosnian Serb army's Zvornik Brigade in July 1995. He is charged with personally killing 55 Muslims and supervising the execution of over 7,000 others after the UN-Srebrenica protected enclave fell to Serbian forces. The UN war crimes tribunal at The Hague referred the case to the BiH courts in June, signalling increased trust in the judiciary and its ability to prosecute war crimes. Earlier that year, the court had opened proceedings against 11 former members of the RS Special Police Forces.

148. On 1 September 2005, the ICTY Appeals Chamber confirmed the decision to transfer the case against Radovan Stanković to the Court of Bosnia and Herzegovina under its Rule 11 bis<sup>37</sup> procedure. This is the first time the ICTY has referred one of its indictments to a national jurisdiction. Stanković stood accused of crimes against humanity and violations of the laws or customs of war and was sentenced to 20 years which he was supposed to serve in Foca (RS) prison. However he managed to escape on 25 May 2007 while he was being transferred to hospital for treatment and is now believed to hide in Serbia from where he cannot be extradited.

149. We welcome the work carried out so far by the War Crimes Chamber of the State Court. It is also encouraging that by 2009, its budget will no longer be funded by foreign donors but by the State of Bosnia and Herzegovina. We hope that in due course, it will no longer be necessary to have foreign judges and prosecutors operating in the State Court. We are concerned, however, with the long term capacity both of the State Court and the cantonal and district courts to effectively investigate and prosecute war crimes. We were told that there around 13 000 people which could still face charges for crimes committed during the war. As time goes by and no capacity is built up, there is a risk that many war criminals will never be brought to justice. A State level strategy to prioritise the cases which will be dealt with is therefore necessary.

150. We are also concerned by the fact that Entity and State courts in BiH use different criminal codes when trying war-crime cases. While the State Court applies the 2003 Criminal Code of Bosnia and Herzegovina, the Courts of the Republika Srpska, the District of Brcko and the Federation still use the Criminal Code of the Socialist Federal Republic of Yugoslavia, which was in force during the war. Several courts in the Federation have also used the 1998 Criminal Code of the Federation of Bosnia and Herzegovina. This is disturbing because the codes differ in the prescribed sentences and in the definitions of war crimes. A State Supreme Court could help unify the judicial practice of Entity courts. In the meantime, we call upon the judicial authorities in the Republika Srpska, the District of Brcko and the Federation of Bosnia and Herzegovina to apply the Criminal Code of Bosnia and Herzegovina in their war crime proceedings in order to establish a coherent judicial practice on war crime cases.

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<sup>37</sup> Rule 11 bis refers to cases where an indictment has been confirmed but where the trial has not started yet. It allows a Referral Bench of the ICTY to transfer those cases to national jurisdictions, *proprio motu* or at the request of the Prosecutor.

#### **4.4.1. Arrests and surrenders**

151. Within a five-day period at the end of February 2005, two generals of the wartime Republika Srpska Army (VRS), Milan Gvero and Radivoje Miletić, and the 1993-96 commander of the Army of the Republic of BiH (ABiH), Rasim Delić, surrendered to the ICTY. Gvero and Miletić are charged with war crimes and crimes against humanity committed in the Bosniak enclaves of Srebrenica and Žepa. For his part, Delić faces charges related to the murders of several dozen BiH Croat and Serb soldiers committed by foreign Islamic fighters who had been incorporated in the ABiH. These indictees will be among the last to be tried in The Hague. As the High Representative announced on 25 February, the ICTY will soon start transferring cases to the War Crimes Chamber of the BiH Court.

152. On 26 August 2005 the RS Government announced the issuance of guarantees for the temporary release of Stanislav Galić from ICTY custody, pending the outcome of his ICTY appeal. Galić, a former general officer in the RS Army, was sentenced by the ICTY on 5 December 2003 for his command role in the deliberate sniping and shelling attacks on the civilian population of Sarajevo during the period 1992 to 1994. The RS Government has provided an undertaking to respect ICTY's decisions and to monitor his whereabouts. Although not officially confirmed, it appears that the RS Government was involved in the arrest of Dragan Zelenović in Western Siberia in Russia on 25 August 2005. Zelenović, a deputy commander of the war-time Foča military police and leader of a Serb paramilitary formation in Foča, is indicted by the ICTY for war crimes (torture of civilian population and rapes) in Foča for the period April 1992 to February 1993.

153. On 31 May 2007, ICTY indictee ex-General Zdravko Tolimir, was arrested by the RS police in Bratunac close to the border with Serbia. In June 2008, Stojan Zupljanin, former war-time Chief of the Banja Luka Police, was arrested in Serbia near Belgrade by Serbian special police services. The former President of the war-time Republika Srpska Radovan Karadzic was arrested in Belgrade in July 2008. At present, only Mladic and Hadzic have not yet been arrested and sent to The Hague. We welcome the progress the countries of the region make in bringing ICTY indictees to justice. We urge the authorities of Bosnia and Herzegovina to continue close co-operation with the Tribunal and with their partners in the region in order to arrest and hand over to the Tribunal the remaining indictees.

#### **4.4.2. The verdict of the International Court of justice**

154. On 26 February 2007, the International Court of Justice delivered its long-awaited decision on the genocide case initiated by BiH against Serbia and Montenegro. It ruled that genocide had occurred in Srebrenica, but that Serbia was not responsible. It had, however, violated its obligations under the UN Convention on the Prevention and Punishment of the Crime of Genocide both in not acting to prevent it and in not acting to bring the perpetrators to justice.

155. The ICJ decision prompted the Srebrenica municipality to call for measures aiming at drawing the consequences from the ICJ verdict. The Bosniak leaders there threatened organising mass exodus; the Municipality adopted a Resolution calling for special status, which met with declarations of support from SBiH, SDA and SDP. The RS government responded to these various initiatives with a decision to make Srebrenica an area of 'special economic and social significance', promising an injection of government funding.

156. On 3 May 2007, the High Representative appointed Clifford Bond, former US Ambassador to BiH, as his 'Special Envoy to the Srebrenica region'. Bond's appointment was followed by the appointment by the Council of Ministers of Igor Davidovic, chief SAA negotiator, to the chair of a Srebrenica Coordination Board. This Coordination Board has now begun work, largely on the basis of the IC Assessment Group's report, which had been coordinated by OHR, although not all of the international recommendations met with support from RS leaders, including those concerning the future of the Srebrenica-Potocari Memorial Foundation and a proposal for a state-wide day-of-mourning on 11 July, the anniversary of Srebrenica's fall in 1995.

#### **4.5. Missing persons**

157. There are still around 13 500 missing persons in Bosnia and Herzegovina. Mass graves, including secondary and even tertiary mass graves, continue to be discovered on a regular basis.

#### **4.5.1. Work of the Missing Persons Institute**

158. In our last report we welcomed the preparation of the BiH Law on Missing Persons. This law was adopted in October 2004 and a Missing Persons Institute was subsequently established to improve the process of tracing missing persons and expedite identifications of mortal remains. The MPI was co-funded by the Council of Ministers of BiH and the International Commission on Missing Persons. We note that the transfer of functions from missing persons commissions of the FBiH and the RS to the national Missing Persons Institute (MPI) has been slow. It is only in June 2007 that the BiH Council of Ministers nominated its appointed members to the Steering Board of the MPI. We encourage the authorities to provide further support to the Missing Persons Institute in order to complete the process of its institutionalisation.

#### **4.5.2. The Palić Case**

159. Former Army of Bosnia and Herzegovina Colonel Avdo Palić disappeared in July 1995, when he was reportedly forcibly taken away by soldiers of the Bosnian Serb Army (VRS) from the UN Protection Forces compound in Žepa. He had gone there to negotiate the evacuation of civilians from the town which had surrendered to the VRS. His fate and whereabouts have remained unknown ever since.

160. In 2001, the Human Rights Chamber for Bosnia and Herzegovina ordered the RS authorities to carry out a full investigation into the fate of Colonel Avdo Palić from the date of his enforced disappearance. However, no progress was made in the investigation. The Palić Commission was formed after the BiH Human Rights Commission found, in January 2006, that the RS authorities had "failed to provide adequate details to establish the facts of the 'disappearance' of Colonel Avdo Palić after the fall of Žepa".

161. The report of the Palić Commission, presented in April 2006, appeared initially to contain important information on the fate of Avdo Palić, including on the whereabouts of his mortal remains. However, it did not lead to any significant progress in the location and exhumation of the body and in the criminal investigation into the enforced disappearance.

162. In December 2006 the Palić Commission was reactivated and, reportedly, the Office of the RS Prime Minister committed to provide the necessary assistance for it to finally complete its investigation and provide information on the fate and whereabouts of Avdo Palić. However, to date, such investigation has had no concrete results and the widow, Esma Palić, has now taken the case before the European Court of Human Rights.

#### **4.5.3. Regional cooperation for war crimes**

163. In an effort to enhance the inter-state co-operation in war crimes proceedings between Croatia, Serbia and Montenegro and BiH, a number of expert-level regional meetings have been organised since 2005. The aim of these meetings, known collectively as "the Palić Process" after the city in Serbia in which the first such meeting took place, is to promote inter-state dialogue and thus to help resolve the specific problems encountered by practitioners in past or ongoing cases. Participants have acknowledged the significance of ratification of the Second Additional Protocol to the 1959 European Convention on Mutual Legal Assistance in Criminal Matters. This would provide a harmonised set of guidelines for witness hearings through the use of video link facilities. Despite the difficulties in securing the participation of witnesses living elsewhere, Croatia and Serbia and Montenegro have signed but not ratified the Protocol, while BiH has ratified it.

#### **4.5.4. Truth and reconciliation Commission**

164. There have been three attempts to contribute to reconciliation by establishing a Truth and Reconciliation Commission (TRC). As early as 1997, only two years after war's end, the USIP (United States Institute for Peace) launched the first initiative for the establishment of such a commission. At the time, the International Criminal Tribunal for the Former Yugoslavia (ICTY) rejected this initiative, for it believed that the overlapping jurisdiction of the two institutions in documenting testimonies, collecting evidence, and interacting with witnesses and alleged perpetrators could potentially undermine the Tribunal's work.

165. In May 2001, a high level international conference on the topic took place in Sarajevo organised by a non-governmental organisation called the "Association of Citizens for Truth and Reconciliation" and led by Mr Jakob Finci, a prominent member of the local Jewish community. This NGO had even prepared a draft Law on a Truth and Reconciliation Commission. The ICTY then supported it but under the condition that the TRC not involve itself in the 'investigation of massive human rights violations' and that it confine its work to reconciliation issues. The initiative did not produce any results.



166. The need for a single and widely accepted truth about what happened during the armed conflict in Bosnia and Herzegovina again sparked initiatives in late 2005 to create an alternative route to war crimes prosecutions. Several organisations – the United States Institute for Peace (USIP), the United Nations Development Program (UNDP), and a group of prominent local citizens – worked on a law to establish a truth commission for this purpose. As a result, a working group of eight representatives of leading political parties met to draft a law on establishing a truth commission by March 2006. After the failure of the constitutional reform package in April 2006 and given the divisive pre-election political climate in 2006, the initiative was again shelved.

167. In the coming years it will be crucial to develop Bosnia and Herzegovina's capacity to prosecute war crimes further. To do so, lower courts (cantonal and district) will require more support, notably through outreach and victim support programs.

## **5. RESPECT FOR HUMAN RIGHTS**

### **5.1 Merger of the human rights Ombudsmen institutions**

168. The 1995 Dayton Peace Agreement<sup>38</sup> in Bosnia and Herzegovina set up the Office of the Human Rights Ombudsman and awarded the OSCE the responsibility for appointing the first Ombudsman for a non-renewable, five-year term. On 3 January 2001, the Law on the Human Rights Ombudsman of BiH entered into force, following a decision of the High Representative. On 25 June and 3 July 2002, this Law was endorsed by both Houses of the BH Parliament, paving the way for an Ombudsman Institution under complete domestic liability. This new domestic institution was, however, still partially funded by the International Community and the law provided that, for a transitional period ending on 31 December 2003, the Ombudsman would not be a citizen of BiH.

169. The international Ombudsman at State level was replaced as of 1 January 2004, by three nationals of BiH, in accordance with the relevant provisions of the Law. These three Ombudsmen were elected<sup>39</sup> by the BiH House of Representatives on 27 November, and by the BiH House of Peoples on 28 November 2003, following nomination proposals by the BiH Presidency. The commitment to work "towards establishing multi-ethnic ombudsmen" at State level has, therefore, been fulfilled.

170. However, Ombudsman institutions also existed at the level of the Entities<sup>40</sup>. Each of them was composed of three Ombudspersons, one from each constituent people. This meant that there were 9 Ombudspersons in BiH and three different and from each other independent institutions, with at least partly overlapping competences and different levels of remuneration<sup>41</sup>. This was unsustainable in a country already plagued with too many competing parallel institutions and low resources.

171. To consider establishing, in the long term, a single, unified Human Rights Ombudsman Office at state level, which would include the ombudsman institutions at entity level, was another accession commitment. It was partially fulfilled at the end of 2005, when both Houses of the State Parliament passed versions of a Law on Human Rights Ombudsmen of Bosnia and Herzegovina. Unfortunately, the two texts differed on a few significant points; in particular, the version approved by the House of Representatives continued, in the view of the international community, to violate certain of the recommendations of the Venice Commission.

172. On 1 February 2006, the Joint Harmonisation Committee of the State Parliament met to reach agreement on the final text of the Law. Unfortunately, the Committee failed to do so. A single member of the Committee, a delegate from the Socialist Party of the RS, despite remonstrations from various parties, refused to join consensus, insisting to the end that the existing Ombudsmen should continue in office until the end of their mandates in 2008.

<sup>38</sup> The Human Rights Ombudsman of BH was established through the BH Constitution as outlined in Annex 4 to the General Framework Agreement on Peace in Bosnia and Herzegovina of 14 December 1995, and further regulated through Annex 6 to that Agreement.

<sup>39</sup> One of the three ombudspersons resigned on 19 January 2004, barely 2 weeks after having taken up her duties. The new Serb member, Vitomir Popovic, was appointed at the end of February 2004.

<sup>40</sup> The Federation Ombudsmen have been operating since January 1995. The Republika Srpska Ombudsmen started functioning in 2000. One of the three RS Ombudsmen resigned in 2003 and has not been replaced.

<sup>41</sup> The status and rank of the Ombudsmen of the Federation of BH is assimilated to that of the President of the Supreme Court of the Federation whereas in Republika Srpska, their rank and salary are assimilated to that of a judge of the Supreme Court. The State Ombudsmen's rank and salary are equated with that of members of the Presidency of the Council of Ministers of BiH. This being considerably lower than the rank and status afforded to the Entity Ombudsmen, the first action taken upon their nomination by the State Ombudsmen on 14 January 2004 was to ask the Venice Commission for an opinion on this subject.

173. The law finally adopted under urgent procedure on 27 March 2006 is, as so often in Bosnia and Herzegovina, the result of a bad compromise: instead of providing for a one-person institution, the law stipulates that the Ombudsman institution is composed of three persons with a 6-year renewable mandate. They must come from each of the 3 constituents people "which does not exclude the possibility of appointing an Ombudsman from the rank of "Others". The chairmanship of the institution will rotate every 2 years in alphabetical order of the persons elected and the chairman has a "co-ordinating" role during his term of office. The seat of the institution was set in Banja Luka (RS) with offices in Mostar, Sarajevo and Brcko district or elsewhere as appropriate. The law also provided for a - in our view very short - transitional period until 31 December 2006 to allow the current State level Ombudsman institution and the Entities' ones to make the necessary administrative arrangements for the merger.

174. There was resistance in both Entities to this merger: the Federation Parliament adopted a law regulating the transitional period only on 19 April 2007 while the RS authorities simply refused to dismantle the RS Ombudsman institution, which, as we were told during our visit in September 2007 in Banja Luka, was working well. In any event, things came to a complete stand still because of the general elections in October 2006 and the ensuing trade offs for government formation at all levels and the deadline of 31 December was not kept.

175. In September 2007, during our visit, the House of Representatives could not agree on two out of three candidates for the position of State Ombudsmen. The whole procedure was therefore cancelled and it was decided to publish a new vacancy notice. The parliamentary committee which deals with the selection and appointment procedure has been re-formed only in February 2008.

176. The appointment procedure was completed, at last, at the level of the House of the Representatives on 14 July 2008 with the election of 3 Ombudspersons<sup>42</sup>. However, on 23 July 2008, the House of Peoples approved only one of the 3 candidates elected by the House of Representatives (only the Serb candidate was confirmed). The House of Peoples appointed instead two other candidates from the list on behalf of Croats and Bosniaks (i.e. Ivo Bradvica, on behalf of Croats and Jasminka Dzumhur on behalf of Bosniaks). In legal terms, this means that the appointment procedure has to be repeated again. We were informed that the OSCE and the OHR were trying to find an "alternative" interpretation of the law in order to resolve the issue without going through a new appointment procedure.

177. Equally, we are concerned about the recent move of the authorities of the Republic of Srpska aiming at creating an Entity Ombudsperson for children's rights. The appropriate law was recently adopted at first reading by the RS National Assembly. As children's rights fall within the scope of competence of the State level Ombudsman institution, we consider that the establishment of a separate institution at Entity level would undermine the State Institution, especially, given the fact that the Federation Ombudsmen have closed down their department for children's rights. In our opinion, the adoption of this law by the RS National Assembly would go against the commitment on "establishing, in the long term, a single, unified Human Rights Ombudsman Office at state level". We therefore urge the RS authorities to withdraw the draft law from procedure.

## 5.2. Cases before the European Court of Human Rights

178. More than 500 cases have so far been declared inadmissible. One case has been declared admissible (Suljagić) and 1 case has been settled (Hadžić<sup>43</sup>). Six judgments have been adopted so far (Jeličić on 31 October 2006, Šobota-Gajić on 6 November 2007, Karanović on 20 November 2007, Pejakovic and AI on 18 December 2007, Rodic and 3 others on 27 May 2008 and Tokic and Others on 8 July 2008). Around 800 cases against Bosnia and Herzegovina are currently pending (20 of them have been communicated to the Government). In one case the Court applied interim measures (under Rule 39 of the Rules of Court) ordering the applicants to terminate their hunger strike. The applicants complied with this request.

179. Among the pending cases against Bosnia and Herzegovina, there are several groups of cases:

- around 500 applicants complain because they cannot withdraw their "old" foreign-currency savings - the leading case is Suljagić, declared admissible on 20 June 2006 (the Suljagic case is the lead case for those "old" foreign-currency savers who did not obtain a final domestic judgment ordering a bank to release

<sup>42</sup> The candidates elected were Mariofil Ljubic, on behalf of Croats, Emina Halilovic, on behalf of Bosniaks, and Ljubomir Sandić, on behalf of the Serbs.

<sup>43</sup> This case concerned conditions in the Psychiatric Annexe of Zenica Prison (decision of 11 October 2005). However, Bosnia and Herzegovina has not yet transferred the patients from that Annexe to an appropriate institution, as promised. The Court has thus communicated 4 similar cases.

their savings; for those who obtained such a judgment, the lead case is Jeličić mentioned above, that is the first European Court's judgment against BiH);

- around 40 cases concern non-enforcement of final and enforceable domestic judgments ordering the payment of war-related (pecuniary or non-pecuniary) damages;

- around 10 applicants complain because they are not entitled to repossess their military apartments in the Federation of Bosnia and Herzegovina owing to their service in the armed forces of Serbia. One such case has been communicated (Đokić, 6518/04);

- 3 applicants (a Bosnian, a Roma and a Jew) complain about the constitutional arrangement according to which the so-called Others (the citizens of Bosnia and Herzegovina who do not declare themselves as Bosniaks, Serbs or Croats) cannot be members of the Presidency of Bosnia and Herzegovina and the Upper Chamber of the Parliament of Bosnia and Herzegovina;

- in the Palić case (no. 4704/04) the Court will decide whether it is competent *ratione temporis* to deal with complaints about people who went missing during the 1992-95 war;

- the Court has also communicated 6 cases concerning citizens or former residents of Bosnia and Herzegovina who have been detained in Guantanamo Bay since 2002;

- there are a large number of cases concerning non-enforcement of the decisions of the Human Rights Chamber or the Constitutional Court of Bosnia and Herzegovina. For example, in 3 out of the 6 cases in which a judgment has been adopted (namely, Jeličić, Šobota-Gajić and Karanović), the Human Rights Chamber found a violation of the Convention and ordered certain measures to be taken. However, those measures were not taken for years.

### **5.3. Human Rights Chamber and Constitutional Court**

180. The Human Rights Commission within the Constitutional Court of Bosnia and Herzegovina was the successor institution to the Human Rights Chamber for Bosnia and Herzegovina. According to the Agreement Pursuant to Article XIV of Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina entered into by the Parties on 22 and 25 September 2003, the Human Rights Chamber's mandate expired on 31 December 2003. This Agreement established the Human Rights Commission to operate between 1 January 2004 and 31 December 2004 within the Constitutional Court of Bosnia and Herzegovina.

181. The Human Rights Commission had jurisdiction to consider pending cases received by the Human Rights Chamber on or before 31 December 2003; after 1 January 2004, new cases alleging human rights violations are to be decided by the Constitutional Court. We are happy to note that, although the mandate of this HR Commission had to be prolonged, it has now finished the examination of all the cases (around 7 000) and has ceased to exist.

### **5.4. Prevention of Torture and Inhuman or Degrading Treatment**

182. In May 2003, the authorities of both the RS and the FBiH acknowledged to the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) that "a wide gap existed between the legal and regulatory norms and the realities prevailing in the prison system", indicating a lack of financial resources as the main reason for this situation. In December 2004, the CPT published a detailed report with recommendations based on findings gathered through prison visits and interviews with inmates and local authorities.

183. The CPT paid another visit to BiH in March 2007 to assess the progress made since the first periodic visit in 2003 and the ad hoc visit in December 2004. The Committee's delegation examined various issues related to prisons, including the regime and treatment of remand prisoners and those prisoners placed in isolation. Particular concerns were expressed concerning the unsafe nature of some of the prisons visited, notably those in Zenica and Dobož, where it appeared that prison staff were not in complete control.

184. The delegation also examined the situation of forensic psychiatric patients, looking into the treatment of patients at the Sokolac Psychiatric Hospital and the Zenica Prison Forensic Psychiatric Annex.

185. The situation of residents in two social care homes was examined for the first time, and the authorities were urged to improve the safeguards afforded to persons placed in such homes. The importance of

developing a proper legal framework for social care homes in the Federation of Bosnia and Herzegovina was also stressed. Particular attention was also paid to the treatment of persons detained by the police and to the practical operation of safeguards against ill-treatment.

186. The BiH authorities responded to the various matters raised in the preliminary observations made by the delegation on 31 May 2007. The preliminary observations and the response were published with the agreement of the authorities of Bosnia and Herzegovina. We welcome this development and will carefully study the report to be adopted by the CPT as soon as it is available.

## 5.5. Citizenship review

187. According to the Law on Amendments to the Law on Citizenship, which entered into force as amended in November 2005<sup>44</sup>, the BiH State Commission for the Revision of Decisions on Naturalisation of Foreign Citizens was tasked with reviewing the status of citizens who acquired BiH citizenship between 6 April 1992 and 1 January 2006. Its mandate was originally for one year but it was extended by another year by decision of the High Representative on 15 February 2007. It is composed of 9 experts appointed by the BiH Council of Ministers, 6 citizens of BiH (2 from each constituent people) and 3 internationals, whose candidatures are examined in consultation with the Committee of Ministers of the Council of Europe (CM) and other appropriate organisations. We were told during our visit in late September 2007 that one international member, although recommended by the CM already in July 2007, had still not taken up his duties.

188. Reportedly, the activities of the Commission may affect approximately 1,500 individuals, many of whom are reported as having come to BiH to join Bosnian Muslim (Bosniak) forces as volunteer foreign fighters during the 1992-95 war, or to work for Islamic charities during and after the war.

189. The Commission can propose to the BiH Council of Ministers to withdraw the citizenship of, among others, those who are deemed to have obtained it not in accordance with the relevant regulations, or on the basis of false information, in those cases where the individuals affected would not be rendered stateless.

190. The Commission started working in March 2006. By June 2007, it had reviewed 1 300 cases. As of September 2007, it had revoked the citizenship of 613 people originating from Turkey (137), Egypt (63), Syria (49), Algeria (37), Russia (23) and Ukraine (15). In 530 cases the citizenship was not revoked. The Law on citizenship provides for an appeal against the decisions of the Commission. If the revocation of citizenship is confirmed by a court of law, then the person in question acquires the status of an alien and falls under the provisions of the Law on movement and residence of aliens and asylum and may request either a residence permit or seek asylum. The law also foresees the possibility of granting residence for humanitarian reasons if the asylum request is rejected, inter alia on the basis of an alleged *prima facie* risk of inhuman or degrading treatment in the country of destination (Article 3 ECHR) or because of family ties in BiH (Article 8 ECHR). To date, there is only one (negative) decision by the Constitutional Court of BiH concerning the deportation of a Moroccan whose citizenship had been revoked (no. AP-1788/05, Said Atmani, 20 September 2006).

## 5.6. Roma

191. The Roma are the largest and most marginalised minority group in BiH. In order to fulfil their international obligations<sup>45</sup> as well as to implement domestic law, the BiH Ministry of Human Rights and Refugees (MHRR) proposed and in July 2005 the Council of Ministers adopted a National Strategy for Roma. The Strategy covers a number of issues affecting Roma, such as access to housing, employment, healthcare, social security, civil registration, and the census. It is aimed at promoting the equality of this minority group as well as their greater participation in public life in general.

192. However, it appears that the Strategy contains little or no reference to specific actions, responsible authorities, deadlines or budgetary implications. This concern was expressed by the Council of Europe as

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<sup>44</sup> The original Law on citizenship had been imposed by the High Representative in 1997 and provided already then for a State Commission for the review of naturalization decisions which was not set up until 2006.

<sup>45</sup> The authorities in BiH have ratified a number of international treaties, including the UN Convention on the Rights of the Child, thereby undertaking the positive obligation to ensure that every child born in its territory is registered at birth. The legal framework in BiH creates a unique environment to address these problems as the Constitution of BiH provides that the European Convention for the Protection of Human Rights and Fundamental Freedoms is directly applicable in BiH and take priority over domestic law. In addition, Annex 6 of the General Framework Agreement on Peace —the Agreement on Human Rights—provides that the Entities shall secure the human rights enumerated in various international agreements, including the International Covenant on Economic, Social and Cultural Rights.

well as a number of other international organisations involved in work with the Roma community<sup>46</sup>. We share this concern and call upon the authorities of BiH to develop a comprehensive Action Plan on the implementation of the Strategy.

193. We were informed that the lack of personal documents is one of the most burning problems affecting the Roma. The lack of personal documents creates additional problems in the exercise of property rights for many Roma who reside in informal settlements, since it prevents them from seeking the residency status that may help them legalise their titles to property. One of the primary reasons for the inability of Roma to gain access to personal documents is that their names do not appear in birth registers. People without birth certificates in BiH are unable to gain access to education, healthcare and social welfare. They are also unable to participate in civic life.

194. According to our information, there have been no cases in which the registration of a Roma child was denied. It transpired from our discussions that the problem lies more in the fact that the BiH government has not so far taken an active approach to ensure that Roma children are registered. We call on the BiH authorities to adopt a pro-active policy towards registration of Roma children by launching awareness raising campaigns with the Roma population and the municipal authorities responsible for registration.

## 5.7 Freedom of the Media

195. BiH has an advanced legal regime governing freedom of the media. Laws decriminalising libel and defamation have, for instance, been in force in the RS since June 2001 and in the Federation since November 2002.

196. BiH has one of the most advanced self-regulatory mechanisms in Europe. The Communications Regulatory Authority (CRA) is responsible for licensing and regulating broadcasting and telecommunications, while the Press Council, a voluntary and self-regulatory body, deals with complaints about the print press. Complaints about broadcasting are sent to the CRA, which has the right to consider a complaint in any case where a given programme, advertisement or broadcast appears to have been biased, incorrect, offensive or harmful; to have endangered privacy, harmed the physical, mental or moral development of children; or to have incited racial, religious or national hatred. All citizens, including officials, have the right to lodge a complaint. This complaints' mechanism is widely used by citizens, institutions, organisations, public officials and political parties<sup>47</sup>.

197. Currently BiH has three public broadcasters – BHRT (State level), RTF BiH (Federation of BiH), RTRS (Republika Srpska) – and three main commercial broadcasters – OBN, TV Pink BiH, and Mreza Plus.

198. The 2003 EC Feasibility Study outlining the conditions BiH would have to meet in order to enter into negotiations with the European Union on a Stabilisation and Association Agreement (SAA) required BiH to make significant progress in a number of areas, including broadcasting legislation. In particular, one of the requirements was the establishment of a unified public service broadcasting system with state-level management. For this purpose, four laws have to be adopted but only three of them have been passed to date. The absence of the fourth continues to block the completion of this new public broadcasting system.

199. The first law on the Public Broadcasting System of BiH (or System Law), outlines the structure, governance, financing, management of common resource base, and other responsibilities of the overall Public Broadcasting System. It was adopted on 5 October 2005. The law foresees the creation of the Corporation of Public Broadcasting Services (or Joint Corporation). It is conceived as an umbrella organisation over all three public broadcasters. It is supposed to set the development strategy, co-ordinate the technical and human resources of the three broadcasters, and harmonise the differing systems, policies, and procedures of the current three broadcasters. Some functions currently performed separately by the three public broadcasters would be centralised under this law. Among the most important of these are the collection of licence fees and the sale of advertising space. The new law would also make the three public broadcasters a single legal entity, while still providing each with a certain degree of autonomy.

<sup>46</sup> These are OHCHR, UNICEF, UNHCR, the World Bank, IOM, SIDA, Save the Children Fund, the EC Delegation in BH, and the OSCE/Department of Human Rights.

<sup>47</sup> See the special report by Miklos Haraszti, the OSCE Special Representative on the freedom of the media on "The State of media freedom in Bosnia and Herzegovina: the public service broadcasting", dated 29 March 2007. Mr Haraszti criticised in particular a two-week boycott in January 2007 of the State public television network by the RS government arguing that the RS Government could and should have complained instead to the CRA. There were also recent allegations of attempts of the RS Government to intimidate the media.

200. However, this State level law has not yet entered into force because the State Constitutional Court has still not delivered its decision on the appeal submitted in February 2006 by the Croat member at that time of the three-person presidency of Bosnia and Herzegovina, Ivo Miro Jovic, in which he requested a review of the constitutionality of twenty articles of the Public Broadcasting System Law. The long-standing Croat demand for an exclusively Croat-language public broadcaster appears to have been the central point of the complaint. The only decision taken so far by the Constitutional Court in September 2007 was to hold a public hearing.

201. The second law, on the state-wide Public Service Broadcaster of BiH (or BHRT), was adopted on 28 December 2005. The third law, on the entity Public Service Broadcaster of the Republika Srpska (RTRS), was adopted in May 2006.

202. The fourth and final is the law on the entity Public Service Broadcaster of the Federation of Bosnia and Herzegovina (RTFBiH), passed in the Federation Parliament in June 2006. The Croat members of the Parliament, however, voted against it. After it was adopted in the House of Peoples, the Croat members blocked its entry into force by invoking the Vital National Interest of the Croat constituent people. On 16 July 2006, the Constitutional Court of the Federation held that some elements of the law “do not guarantee that the Croat people will not be discriminated against in implementation of the rights guaranteed by the Constitution of the Federation of BiH.” In October 2006, the Bosniak caucus in the Federation House of Peoples submitted an appeal to the State Constitutional Court, asking it to annul the Federation Constitutional Court’s ruling. They argued that this ruling contradicted a ruling handed down in July 2005 by the same State Constitutional Court, to the effect that the Public Broadcasting System Law did not endanger the Croats’ vital national interest.

203. Finally, on 10 June 2008, the High Council for Protection of Vital National Interest of the Constitutional Court of the Federation of BiH decided that the Law on the Public Broadcasting Service of the Federation of BiH did not violate the vital national interest of Croat people, which opened the way for the adoption of the law by the Parliament. The law was finally adopted on 22 July 2008.

204. We welcome the completion of the legislative framework for public service broadcasting. The effective implementation of the new legislation is now crucial. We shall follow this issue closely in our future reports.

## **5.8. Education**

### **5.8.1. Primary and secondary education**

205. “Ethnic segregation” in BiH primary and secondary schools continues to be a matter of concern. Over the past twelve years schools - instead of promoting post-conflict reconciliation - have helped to separate the three so-called constituent peoples from one another. In practice, young Bosniac, Croat, and Serb students have largely sat – and continue to sit – in classrooms populated by members of the same ethnic group. As a consequence, many of these students have little understanding of the other ethnic groups or national minorities that also live in the country. Thanks to their schooling, some students develop allegiance not to the country as a whole but just to those parts in which their group forms the majority. Some also develop allegiance to the neighbouring countries to the east and west in which the members of their particular group predominate. The High Representative and EU Special Representative, Mr Miroslav Lajčak, addressed this trend in a recent speech to the Federation Parliament when he noted that “the underlying problem is that you have not found a way to keep party politics out of education and out of classrooms. The general trend is not towards post-war reintegration, but towards maintenance of discrimination either through assimilation or division along ethnic lines.”

206. The international community has supported the development of a common core curriculum (finding common elements between as much of the three curricula as possible), but the fact is that three distinct curricula exist in BiH, which support and codify ethnic segregation. One possible solution is moving to one core educational curriculum for the whole of BiH complemented by a set of culturally specific subjects.

207. This idea is slowly growing in support, e.g. by the United Nation’s Committee on Economic, Social and Cultural Rights and by the EU Parliament. Most recently, the UN Human Rights Council Special Envoy for Educational Rights Vernor Munoz stated that the “existence of various curricula enables discrimination in the educational sector and the segregation of students. One of the most important challenges for BiH is the creation of a unified curriculum”.

208. However, this is a highly sensitive political issue as each ethnic group feels it has a right to its own curriculum. Language is part of this issue, as there is a constitutional right to use the three official

languages. However, the curriculum can still be the same and take into consideration the language variants. It is particularly important to introduce elements of multi-language teaching as part of the curriculum, so that students from different ethnic groups can study some subjects in three official languages, which are understood by all the inhabitants of BiH.

209. We call upon the BiH authorities to pursue the reform of primary and secondary education, on the basis of principles of tolerance, respect for others, multi-ethnicity and reconciliation. The country's European future depends to a large extent on the ability of the authorities and different communities to develop a common educational framework.

### **5.8.2. Higher Education**

210. The 'Bologna Process' is a European-wide effort to standardise higher education by promoting the establishment of a three-cycle degree structure, the introduction of a European Credit Transfer System (ECTS) and the establishment of quality assurance systems among all its adherents<sup>48</sup>, while the related Lisbon Recognition Convention seeks to create mechanisms and to define procedures and criteria for the fair, non-discriminatory and transparent recognition of higher education qualifications. Bosnia and Herzegovina signed the Bologna Declaration in September 2003 and ratified the Lisbon Recognition Convention in January 2004. In doing so, it committed itself to reforming its system of higher education in line with these European conventions.

211. In addition to providing a legal foundation for the adoption and observance of Bologna standards and norms, not to mention of other international commitments, new higher education legislation is indispensable to ensuring that Bosnia and Herzegovina's universities keep pace with trends in Europe and the world. If such reform does not occur, this country will very likely continue to be faced with a costly and increasingly chaotic system of higher education (with 8 public universities instead of 4 before the war), one marked by an expanding number of private universities unregulated by any accrediting body as well as by an expanding number of branch faculties of the country's poorly-funded public universities. Bosnia and Herzegovina's students will thus be unable to receive recognition for the degrees they earn, will find it more difficult to study abroad and still return home, and will have no assurance that the domestic universities they do attend are at European levels of quality. All of this will do little to address one of the country's most pressing problems—the continuing out-migration of its best and brightest.

212. Originally, it was foreseen that a higher education law would be passed by mid-2004. Representatives of all the country's constituent peoples were however unable to agree on the authority for the accreditation of institutions of higher education, or on the level at which their financing should be managed. One faction wished both to remain at the level of the entities, while the other two preferred to place them at State level. In the meantime, most cantons in the Federation, the RS, and the District of Brčko, decided to adopt or amend *their own* higher education laws. These are not necessarily uniform across the country.

213. After years of protracted negotiations and intense lobbying by the International Community the framework law on higher education was finally adopted on 30 July 2007, with Croat delegates voting against it because it fails to integrally settle the field of higher education, i.e. leaving the issue of financing unresolved. This law is one of the very few positive developments to be noted for 2007.

214. It foresees the creation of an Agency for the Development of Higher Education and Quality Assurance, as an independent state level body managed by a nine-member board, which can pass decisions with agreement of two thirds of members of each constituent people. The agency will be competent for determining clear and transparent standards for quality assurance and criteria for accreditation of higher educational institutions. An expert commission composed of 5 members will make recommendations on the accreditation to the competent authorities while Decision making on accreditation will be made by the competent ministry, i.e. by the RS Government and the cantonal ministries in the Federation. The law also provides for the creation of State level Centre for Information and Recognition of Documents.

215. The law also regulates a two-year deadline for accreditation of all higher educational institutions. Present higher educational institutions will firstly gain a temporary accreditation, which will be replaced by a permanent one within two years. The law supports many Bologna principles at the state-level, including three cycle degrees, ENIC, ECTS, diploma supplement. It also establishes the rights and standards of students and professors and articulates how universities should be governed. A key factor in the law is the

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<sup>48</sup>The three-cycle degree structure recommended by the Bologna Declaration is based on the three cycles of the BA, MA and PhD. The ECTS is a system which allows the transfer of credits from one institution of higher education to another, thus underpinning the mobility of students throughout Europe.

integration of universities into one legal entity. This will have to be done within one year of the adoption of the law.

216. Another positive step has been the adoption by the Council of Ministers in December 2007 of the 7 key strategies and guidelines to implement the Bologna process in Bosnia and Herzegovina, elaborated with the help of the Council of Europe and the European Commission. These strategies and guidelines were agreed upon, developed and approved by a majority of directly concerned institutions and authorities of BiH (the rectors of the 8 public universities, the entity ministers responsible for education and the Ministry of Civil Affairs at state level).

217. The adoption of this framework law on higher education is a very welcome development: too much time had already been wasted. But it is just the beginning of a very long and complex process of implementation: state level agencies foreseen by the law must be set up with clear terms of reference, funded and staffed and political will to move forward is a pre-requisite.

## **6. CONCLUSIONS**

218. As was seen in the present report, the last couple of years have not been very rich in reforms in BiH. Although the police reform framework laws have been finally adopted, their effective implementation has yet to be achieved. The same applies to the implementation of the broadcasting and education reforms which have to be speeded up now, after the completion of the legislative framework. Although the SAA was signed, its implementation requires wide political consensus between the State and Entity authorities on key reform projects as well as practical compromise solutions.

219. Although we acknowledge that BiH has fulfilled a number of commitments, especially relating to the ratification of Council of Europe conventions, major reforms of the domestic legislation have yet to be completed. In addition, the country urgently needs to implement a constitutional reform to build strong and functioning democratic institutions. Regretfully, the current political context and the rivalry between the Entities does not help creating an appropriate environment for the implementation of the needed reforms.

220. The authorities of Bosnia and Herzegovina at all levels have to realise that there will be a time when the Office of the High Representative will close and that the role of the international community in the country will progressively evolve. Whatever the length of this transitional period will be, it is essential, from the outset, to build strong and efficiently functioning democratic institutions which will develop a shared vision of the country's future. Constructive and action-oriented co-operation between all political stakeholders and institutions should replace obstructionism and political rhetoric. Fears of each constituent people, constant mutual accusations and mutually exclusive nationalistic rhetoric are counter-productive and will slow down the process of European integration and prevent the country and its citizens of making full use of new opportunities offered by the signing of the Stabilisation and Association Agreement.

221. As we mentioned earlier, we believe that Bosnia and Herzegovina has no other option than European integration. On the other hand, Europe has no other option than to integrate Bosnia and Herzegovina. It is therefore of fundamental importance that the international community, and the European Union in particular, stick to the standards they stand for and do not exchange them for short term compromises. At the same time, BiH authorities have to abide by the obligations and commitments they entered into when joining the Council of Europe. For the sake of European integration, it is essential that the BiH authorities and the international community and the EU in particular continue to work together to make sure that European standards of democracy, rule of law and human rights are effectively implemented in BiH.



*Reporting committee:* Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)

*Reference to committee:* Resolution 1115 (1997) and Opinion No 239 (2002)

*Draft resolution* and draft recommendation unanimously adopted by the committee on 11 September 2008

*Members of the committee:* Mr Serhiy **Holovaty** (Chairperson), Mr György **Frunđa** (1<sup>st</sup> Vice-Chairperson), Mr Konstantin **Kosachev** (2<sup>nd</sup> Vice-Chairperson), Mr Leonid **Slutsky** (3<sup>rd</sup> Vice-Chairperson), Mr Aydin Abbasov, Mr Avet **Adonts**, Mr Pedro **Agramunt**, Mr Miloš **Aligrudić**, Mrs Meritxell **Batet Lamaña**, Mr Ryszard **Bender**, Mr József Berényi, Mr Aleksandër **Biberaj**, Mr Luc **Van den Brande**, Mr Jean-Guy Branger, Mr Mevlüt **Çavuşoğlu**, Mr Sergej Chelemendik, Ms Lise Christoffersen, Mr Boriss **Cilevičs**, Mr Georges Colombier, Mr Telmo Correia, Mr Valeriu Cosarciuc, Mrs Herta Däubler-Gmelin, Mr Joseph Debono Grech, Mr Juris Dobelis, Mrs Josette Durrieu, Mr Mátyás **Eörsi**, Mrs Mirjana Ferić-Vac, Mr Jean-Charles Gardetto, Mr József Gedei, Mr Marcel **Glesener**, Mr Charles **Goerens**, Mr Andreas **Gross**, Mr Michael Hagberg, Mr Holger Haibach, Ms Gultakin Hajiyeva, Mr Michael **Hancock**, Mr Davit **Harutyunyan**, Mr Andres **Herke**, Mr Raffi Hovannisian, Mr Kastriot Islami, Mr Miloš **Jevtić**, Mrs Evguenia **Jivkova**, Mr Hakki Keskin, Mr Ali Rashid Khalil, Mr Andros Kyprianou, Mr Jaakko **Laakso**, Mrs Sabine Leutheusser-Schnarrenberger, Mr Göran **Lindblad**, Mr René **van der Linden**, Mr Eduard **Lintner**, Mr Younal **Loutfi**, Mr Pietro **Marcenaro**, Mr Mikhail Margelov, Mr Bernard Marquet, Mr Dick **Marty**, Mr Miloš **Melčák**, Mrs Assunta Meloni, Mrs Nursuna **Memecan**, Mr João Bosco **Mota Amaral**, Mr Theodoros **Pangalos**, Ms Maria Postoico, Mr Christos Pourgourides, Mr John Prescott, Mr Andrea Rigoni, Mr Dario **Rivolta**, Mr Armen **Rustamyan**, Mr Indrek Saar, Mr Oliver **Sambevski**, Mr Kimmo **Sasi**, Mr Andreas Schieder, Mr Samad Seyidov, Mrs Aldona Staponkienė, Mr Christoph **Strässer**, Mrs Elene **Tevdoradze**, Mr Mihai Tudose, Mr Egidijus Vareikis, Mr Miltiadis Varvitsiotis, Mr José Vera Jardim, Mrs Biruté Vėsaitė, Mr Piotr **Wach**, Mr Robert **Walter**, Mr David **Wilshire**, Mrs Renate **Wohlwend**, Mrs Karin S. **Woldseth**, Mr Boris Zala, Mr Andrej **Zernovski**.

N.B.: The names of the members who took part in the meeting are printed in **bold**

*Secretariat of the committee:* Mrs Chatzivassiliou, Mr Klein, Ms Trévisan, Mr Karpenko