

Yugoslavia (the Federal Republic of)¹

Serbia²

IHF FOCUS: judicial system and the independence of the judiciary; fair trial and detainees' rights; torture, ill-treatment and police misconduct; death penalty; intolerance, xenophobia, racial discrimination and hate speech; refugees and immigrants; international humanitarian law.

Many Serbian observers regard the year 2002 as “a year lost” because nearly all of the political capital gained from the October 5, 2000 political turnaround was squandered: the coalition that had brought about the downfall of an autocratic regime bogged down in futile infighting.

Established for the specific purpose of ousting President Milosevic, the Democratic Opposition of Serbia (DOS) went on to shoulder the formidable task of transition, a burden its heterogeneous political makeup proved ill-equipped to bear. For all the 2001 enthusiasm, which had characterized the political scene, it became clear in 2002 that the prevailing concept of democracy as a multi-party system devoid of proper institutions and the rule of law alone could not change the overall political atmosphere weighed down by Milosevic's legacy, institutions mired in old attitudes and methods, and resistance to reform. The Federal Republic of Yugoslavia (FRY) – now Serbia and Montenegro – was not admitted to the Council of Europe, nor did the DOS leaders' promises of an association and stabilization agreement with the EU materialize. Consequently, there was no appreciable headway in the domain of human rights.

The intrinsic limitations of the DOS surfaced in 2002, and the general credibility and influence of political parties suffered as a result of numerous affairs and scandals. The political parties' aversion to transparency was adopted as a model of behavior in other spheres as well. The failure of two rounds of presidential elections through voter abstention indicated that citizens were determined to punish politicians for their conduct. At the same time, it was disturbing to see no alternative political model able to re-formulate their interests and generate reforms accordingly.

The political environment was unfavorable and discouraging, particularly for private enterprise. The region's long isolation, high unemployment and absence of economic progress were conducive to a resurgence of populism hostile to reforms. The forces behind the phenomenon were spearheaded by the Socialist Party of Serbia (SPS), the Serbian Radical Party (SRS), the Democratic Party of Serbia (DSS), and some smaller parties. With regard to the direction and speed of reforms, “pro-reform” and “legalist” blocs firmly entrenched themselves in 2002. Differences between the two blocs personified by Serbian Premier Zoran Djindjic and Federal President Vojislav Kostunica firstly came to public notice through the media and then divided society as a whole.

The republican parliament went through a stormy period marked by numerous scandals, a chronic absence of quorum (notably during the 2003 budget vote at the end of the year), and obstruction by deputies mostly coming from DSS, SRS, and SPS. Therefore, the parliament had

¹ Now officially called "Serbia and Montenegro."

² Based on information from the Helsinki Committee for Human Rights in Serbia to the IHF.

to amend the rules of procedure in the first half of the year. In spite of the obstruction, the parliament succeeded in adopting 47 new laws and 17 decisions and other bylaws. However, this was only a small quota of legislation required for accession to the Council of Europe.

In the first half of the parliamentary year two laws were adopted: an "omnibus" law, which restored certain powers to the Vojvodina provincial parliament, and a law on local self-government under which municipalities too were given back some powers. The two laws were designed to facilitate decentralization of Serbia and harmonization of domestic legislation with that of the EU. Under the Law on the Security-Informative Agency, the state security department was detached from the Serbian Ministry of Internal Affairs (MUP) to allow for more efficient civil control of the police and the state security department. Another step towards European standards was the amendment of the Penal Code abolishing the death penalty.

In February, the DSS firstly walked out of the republican government and then left the DOS. In May, the DOS presidency decided to remove from the republican parliament 50 MPs (including 23 from the DSS) who had been obstructing the adoption of major laws. Frequent clashes between the two blocs met with strong public disapproval and severely damaged their reputation, which was later borne out by the outcome of elections.

Serbia and Montenegro signed an agreement on the initial steps leading to a union on March 14. Already the first reactions to the "Belgrade agreement" bore out fundamentally different perceptions of the emerging union: while Belgrade advocated a modern federation, Podgorica had in mind two sovereign states. This slowed down the drawing of the Constitutional Charter and affected the outcome. In spite of the pressure from many European governments, members of the Venice Commission and Javier Solana himself, who acted as mediator, Montenegro managed to defend its case. The victory of Milo Djukanovic in the October 2002 early parliamentary elections gave him the upper hand vis-à-vis Belgrade and the international community and amounted to a referendum by which citizens of Montenegro actually deprived Serbia of yet another illusion that it could keep Montenegro under its patronage.

The DSS insisted, *inter alia*, on a constitutional reform although the conditions for such an undertaking were not ripe considering the uncertain status of Kosovo and Vojvodina. The object of regionalization (whereby Vojvodina itself would consist of three regions) is to modernize a centralist concept and prevent questioning Vojvodina's autonomy. A constitutional reform would, in the absence of a social consensus, create a constitutional crisis and thus fuel tension between Belgrade and Novi Sad and, of course, between Belgrade and Pristina. The debate on a constitutional reform forced in without proper justification confused the public and made it possible to manipulate reform-oriented potential. The fact that the question of the state was being kept open indicated that the *de facto* defeated "Greater Serbia" project was still considered an option, as well as that the two principal decision-makers, the DSS and the Democratic Party (DS), were at a deadlock.

For all the changes made, human rights were insufficiently respected because the prerequisites for improvement in this vital domain were lacking: no reforms were launched in the judiciary in 2002 to ensure its independence and professionalism; the rights of both ethnic minorities and other minority groups suffered because of the society's radicalization; and, the atmosphere of intolerance and overt discrimination, if not racism, was most drastically manifested in the overall attitude towards the Romani population.

The problems in the media sphere sharpened and became more transparent in 2002. There was no legal framework to ensure the unhindered functioning of the media and enhance the

standing of this profession. The Broadcasting Act passed in July had not been implemented as of the end of 2002. Furthermore, the sharp polarization within the DOS – groups clustered around the DS and the DSS – affected the media, more or less influenced by these two strongest parties. The variegated media scene became a battleground upon which feuding political parties fought.

Cooperation with the International Criminal Tribunal for the Former Yugoslavia (ICTY) in The Hague had become a key issue of Serbia's relations with the international community. It was also crucial for the crystallization of the political scene in Serbia. Except for extraditing Slobodan Milosevic, Serbia made no substantial headway in its cooperation with the ICTY despite much pressure, including visits by Carla del Ponte and UN Secretary General Kofi Annan. Those who went "voluntarily" to The Hague in 2002 were Dragoljub Ojdanic, the former chief of the General Staff, Nikola Sainovic, the former federal deputy prime minister, and Milan Martić, a leader of the so-called Republic of Serb Krajina (RSK). Another indictee, former interior minister Vlatko Stojiljkovic, shot himself on the steps of the federal parliament building on April 11.

The federal law on cooperation with the ICTY, passed after much wrangling, was more a sign of political impotence than a signal that the FRY and/or Serbia fully recognized the obligation to cooperate. The law reflected the balance of forces within the political elite because, by virtue of its article 39, it related only to persons indicted before the law's enactment. However, the law was strongly criticized by the Serbian academic community: as many as 51 professors and lecturers of the Belgrade Faculty of Law urged the Federal Constitutional Court not only to declare the law unconstitutional, but also to stay the execution of all individual acts under the law pending the court's final ruling.

Throughout 2002 the trial of Slobodan Milosevic was a major source of controversy in the country. The public reactions to his trial showed that Serbia had not broken with his policy and was unwilling to come to grips with war crimes and justice. For instance, the Serbian media depicted Milosevic's exchanges with witnesses in connection with the Kosovo indictment as TV duels, which he invariably won. Nearly all of them omitted to give the wider context in which the crimes had been committed and chose to present Milosevic as a figure able to debunk the ICTY by his own skillful defense. However, the initial stages of the Croatia indictment brought about a substantial change of attitude towards the tribunal because of far better prepared witnesses, who proved to be a match for Milosevic. Actually, having taken the stand his associates in the "Greater Serbia" project threw light on Belgrade's prime responsibility and thus indirectly underlined the tribunal's indisputable relevance for the region.

Biljana Plavšić's guilty plea on count three of the indictment (incorporating all the elements of genocide) was received with consternation by the Serbian public and was mostly viewed as treason. Law Professor Kosta Cavić said that by pleading as she did, Plavšić had "betrayed her own personality" and turned herself into a "doormat."

As layers of the "Greater Serbia" project were laid bare in The Hague one after another, the Serbian Academy of Sciences and Arts (SANU) organized an international conference entitled "Greater Serbia - Truth, Fallacy and Abuse" with the objective of minimizing the significance of the *Memorandum*, which was being increasingly referred to in The Hague as Milosevic's warring platform. On the other hand, even those who acknowledged that crimes had been committed, sought to rationalize them by blaming them on communists.

It was no coincidence that a report on Srebrenica was made public in Republika Srpska at a time when Milosevic was confronted with charges of genocide in Croatia and Bosnia. If the

Serb nationalists were to succeed in marginalizing the Srebrenica tragedy and divesting it of its ethnic background, they would both prevent the “collection of war dues” and help Belgrade’s strategic objective of swapping Kosovo for Republika Srpska. The statement by FRY President Vojislav Kostunica that “the Drina River only temporarily separates our family” was a trial balloon aimed at the international community.

The killing of the Assistant Chief of the Department of Public Security, Bosko Buha, bore the hallmarks of the relationship between the mafia and the authorities. Many attributed the murder to the fact that Buha had for some time been publicly referring to five well-organized mafia groups in Serbia and warning that new close links were being forged between them and some people in government. Having been systematically supported by key power center, corruption turned out to be a major problem Serbia had to come to grips with. The accomplishments of the Anti-Corruption Board set up by the government were negligible. The two draft laws it submitted to the Serbian government – the law on preventing the clash of public and private interests in the exercise of public functions and the law on the financing of political organizations – had not reached parliament by the end of 2002.

Judicial System and Independence of the Judiciary

The efforts to establish the rule of law and an independent judiciary bore the stamp of a confrontation between Premier Zoran Djindjic and Minister of Justice Vladan Batic on one side and representatives of the judiciary on the other. The clash bore out the fact that the principle of the separation of powers continued to be violated: also, as the Law on the Judiciary showed, that the executive strove to control the judiciary.

In practice no judge was relieved of office during 2002 and some who stood up against the executive were “kicked upstairs.” The judiciary lacked the strength – apparently due to the absence of political will – to try war crimes in a professional manner: a case in point was the trial of Cvjetan Demirovic of Prokuplje, which had to be transferred to Belgrade owing to the lack of evidence and witnesses, and because of an anti-trial atmosphere in the town.

Problems faced by the Serbian judiciary in the immediate post-October 5 period were basically the same two years later. A lustration of compromised cadres, tackling of major criminal cases relating to war crimes and misconduct, war crimes trials and restoring the population’s trust in judicial bodies, were not carried out to a satisfactory extent.

One of the key reasons for such partial measures was due to the fact that a clean break with the former regime's practice in almost all segments of the country's legal system had not made. A crucial prerequisite for establishing a reform-gearred judicial framework should have been a promulgation of a new Constitution, a step tantamount to a consistent division of power and the rule of law. Added to that, the much-delayed adoption of the Constitutional Charter, failed presidential elections, usurpation of parliamentary functions by the executive and turning of parliament into a mere stage for intra-party jockeying for power, as well as the 15-month stall of the Constitutional Court clearly indicated that key institutions could hardly be labeled as operational.

Some positive measures taken in 2001, such as the adoption of a new set of judicial acts, were to a large extent invalidated in 2002 by unconstitutional moves of the executive aimed at taking full control over the judiciary. The peak of such arrogant meddling were amendments to the set of judicial laws. Through the parliament, like in the Milosevic era, the new government

tried to put in place a legal possibility for its decisive influence on the appointment of presidents of courts, judges and prosecutors. This caused uproar among the judiciary and legal experts, but the still weak and "not purged" judicial bodies failed to adequately respond.

The half-hearted reform of much humiliated and undermined judiciary was stalled, if not regressed. Initial impetus for changes and tacit compromise between the executive and the judiciary to kick-start the reform without radical changes and a clear break with the former regime was soon dispelled by squabbles and overt discord between representatives of the judiciary and executive.

In order to facilitate the implementation of the set of judicial laws a number of significant by-laws were passed in late 2001 and throughout 2002. This refers to the Rules of Procedure and Establishment of the Supreme Court of Serbia, the Rules of Procedure of the High Personnel Council, the Rules of Procedure of the High Judicial Council, the Rules for Appraisal of Extra-Judicial Activities of Judges, the Framework Rules on Professional Training, and the Guidelines for Training of Judicial Trainees. After 15 months of paralysis, the Constitutional Court of Serbia was finally constituted in July 2002.

Besides, after a long struggle, in July 2002 the pay rises to judges and prosecutors were given the go-ahead and then averaged at €500 monthly. Thanks to the expertise and financial assistance of international NGOs and some foreign governments, the Judicial Center for Vocational Training of Judges and Prosecutors was inaugurated in Belgrade. The center organized general and specialized courses for judges, prosecutors, judicial associates, trainees and other clerical staff, as well as computer and English language courses and seminars. The process of computerization of courts of law was also stepped up.

On the other hand, the longstanding and rather hushed-up conflict between the executive and the judiciary suddenly caught the public eye when on June 10 representatives of the Justice Ministry accompanied by cameras of the private BK Television turned up in the Belgrade District Court to inspect whether judges were in their workplaces. The raid was intended to demonstrate to the public that courts' inefficiency was to be ascribed to judges' sluggishness. On the same day the meeting between representatives of the executive, judiciary and legislative power issued a harsh communiqué on the work of courts of law. The Ministry of Justice drafted a document entitled "Reform of the Judiciary" (later declared an internal, rather than official act) listing the measures and deadlines to be met "in order to restore the trust in the national judiciary."

The document caused uproar among judges. They qualified "the monitoring mission" as "a breach of law, the Constitution and the District Court's Rules of Procedure, as the presence of cameramen should have been approved the Supreme Court president." The president of the Belgrade District Court rebutted all accusations by saying that the court increased its efficiency with respect to 2001 by 100%. She added that some cases were still pending due to non-existent laws providing for more efficient proceedings, underfunding, and slow work of the police and the prosecution.

The July 18, 2002 decisions taken by the Serbian parliament indicated the lethal nature of the conflict between the executive and the judiciary. Thanks to its parliamentary majority, the executive forced through the parliament amendments to the Act on the Judiciary, only 200 days after its adoption in 2001. While in the previous period the executive had limited itself to piling pressure on and insulting the judiciary, this time it undermined the very principle of division of power and laid the groundwork for anti-constitutional influence on the judiciary. By a move as such the judiciary was regressed to the status marking Milosevic's era.

According to these novel amendments, the High Judicial Council, an independent and expert body, ceased to be the only authority in charge of putting forth candidates for judicial offices. Namely, should the parliament turn down the council's candidate, its special committee, governed by the parliamentary majority, was entitled to propose another person for any post. Thus it may be assumed that only politically suitable candidates would be voted in, even those whose expertise has not been certified by the High Judicial Council. A solution as such is without precedent in judicial systems of democratic countries, not to mention that it implicitly provided for the possibility of having over 200 presidents of courts dismissed by spur-of-the-moment decisions. In addition, under these new amendments the High Personnel Chamber was no longer the body of the Supreme Court of Serbia, but was named by the parliament at the proposal of the High Judicial Council, while the Minister of Justice was allowed to institute proceedings for dismissal of any judge, including court presidents, and suggest candidates of his own.

The Law on Public Prosecution Offices was amended in a similar fashion. Namely, the Minister of Justice was empowered to take decisions on dismissal of the republican public prosecutor on grounds of "his or her unprofessional and non-conscientious discharge of duties." Another amendment ruled that the executive power shall have precedence in proposing candidates for public prosecutors. Thus criteria for the election of candidates for top judicial posts were once again unrelated to expertise, integrity and professionalism.

Judges and presidents of courts were outraged by new amendments. The Association of Judges of Serbia publicly protested against these reforms, while the Supreme Court of Serbia, the Public Prosecutor Office, the Belgrade District Public Prosecutor's Office and all the five Belgrade-based Municipal Prosecutors' Offices took most concrete anti-amendments steps. The Supreme Court of Serbia appealed to the republican Constitutional Court to appraise constitutionality of controversial provisions of the Law on Judges and demanded that the provisions be temporarily put out of force pending the final decision.

At its September 19 session the Constitutional Court of Serbia passed a decision on "suspension of some acts and actions envisaged by the disputed legal provisions, in view of their harmful effect on functions of courts of law." Final decision was to be taken after the parliament convened to discuss the disputed amendments. The Law on Public Prosecution Offices was challenged on the same grounds. Since former provisions were annulled, while novel amendments were still not in force, all judicial bodies were practically paralyzed in late 2002. By extension in this legal interregnum both recalls and appointments of judges and presidents of courts could not be effected. Added to that, many judges who had reached the retirement age could not retire due to the nonfunctioning High Personnel Chamber.

Apart from some lustration-related provisions incorporated in other laws that only additionally confused the public, a specific lustration law had not been passed as of the end of 2002. The lack of genuine measures could be ascribed to non-existent political consensus on this delicate matter and the fact that all the talk about lustration of former power-holders proved to be nothing but political marketing.

All expectations as to a thorough lustration in the judiciary were unrealistic against such backdrop. Besides, in 2002 the executive and the judiciary were deeply split over that issue. While the government, i.e. the Minister of Justice, kept accusing the judiciary of shying away from purges of compromised and corrupt judges, presidents of courts – on the carpet for not triggering the lustration process – went on explaining that they wished not to see a repeat of the Milosevic era when lists of "unwanted" or "unsuitable" judges had been drawn. In their mind the

new lustration-related provisions were flawed, while a lustration act should be adopted on the state level covering, with clear-cut criteria, all public service.

Fair Trial and Detainees' Rights

The Act on the Criminal Proceedings (adopted on December 28, 2001) was enforced on March 1, 2002. The law drafted after the October 5 changeover by domestic and foreign legal experts met high standards of a fair trial and, unlike its predecessor, envisaged novel solutions relating to citizens' rights in the so-called pre-trial proceedings, limited the power of the police, expanded the rights of defense counsels, and introduced proper detention terms. However, implementation of the act was still problematic. According to the police, the focus of these provisions was on the rights of suspects/detainees, and they were intended to limit the powers of the police. This indicated that most of the police still took torture and coercion to be the most effective evidence-gathering tools.

The stance taken by some politicians and certain media with regards to the principle of presumption of innocence additionally hampered the act's implementation. Politicians often used the print and broadcast media to publicize "their verdicts" in instituted or pending lawsuits and to call on judges to "take into account higher political interests" when making their decisions. On their part, the sensation-hungry and circulation-bent media tended to carry unreliable information which they termed "irrefutable evidence."

Torture III-Treatment and Police Misconduct

In a way, the new Act on Criminal Proceedings, notably its section dealing with limiting the power of the police in pre-trial proceedings, proved to be counter-productive. Instead of decreasing police torture and harassment, it directly led to the increase of both. However, torture could not be statistically gauged, firstly because of reluctance of tortured people to report such malpractice, and secondly because of the general social climate in which more faith was placed in the police, than in individuals' testimonies. Besides, most victims of torture feared reprisals and did not trust the state's proclaimed intention to protect them.

On the other hand, thanks to the considerably liberalized social climate, people were more ready to report misconduct on the part of the police, while the media were more willing to carry stories about police torture and harassment. Some turnaround was also noted in lawsuits instituted for damages to victims of police torture and harassment. Most of such charges were filed by members of Otpor (a student movement) brutally attacked by police during 2000.

In line with the practice of some European countries, the Serbian parliament on July 18 adopted the Act on the Organization and Powers of Bodies Combating Organized Crime (popularly called the Anti-Mafia Law), which introduced the institution of a special prosecutor. However, the act could not take effect immediately, due to restrictive provisions of the act on Criminal Proceedings. On December 17, both houses of federal parliament adopted the Act on Amendments to the Act on Criminal Proceedings, thus paving the way for the enforcement of a republican Act on Combating Organized Crime.

Conditions in Prisons and Detention Facilities

Human rights of prisoners and conditions under which they served their sentences were but a few segments of the reform-oriented policy in which considerable progress was made. The reform of penitentiaries launched shortly after the October 5 events and ensuing prison revolts, was carried out throughout 2002. Conditions in prisons were greatly improved – a major step towards attaining EU standards. Many prisons were renovated and reorganized (or work was still underway as of the end of the year), torture and harassment of prisoners decreased, although a new act on the enforcement of criminal sanctions, aimed at securing full respect of prisoners' rights, had not yet been adopted. In the second half of 2002, the OSCE and the Serbian Ministry of Justice began to organize in-service trainings, notably for security personnel.

The Helsinki Committee for Human Rights in Serbia was engaged in proactive prison monitoring in 2002. Its team visited 11 prisons and detention homes, four of which were monitored twice over the one-year period.

In order to carry out a comprehensive evaluation, the team examined six aspects, relevant to the enforcement of criminal sanctions: quality and conditions of life, security, social resettlement, contact with the outside world, legality of prison regime and prison personnel.

Appropriateness of floor space, dormitories, lighting, ventilation, heating, food and medical services differed from prison to prison. However, despite longstanding neglect and non-investment in prisons, the level of hygiene in most of them was satisfactory. Meals were mostly prepared by professional cooks in accordance with weekly or two-day menus approved by directors of institutions. According to 80% of interviewed prisoners, meals were too small, of poor quality and did not meet the standards of dietetics and hygiene. Medical services depended on the size/capacity of prisons – large ones included well-equipped in-house hospitals staffed with full-time medical officers. However, generally speaking, the level of health protection in Serbian prisons was not adequate due to a shortage of qualified personnel, chronic underfunding, meager supplies of medical material and lack of equipment.

The team viewed the issue of security from the perspective of external (real or hypothetical threats prisoners pose to the outside community) and internal security (safety of both prisoners and institutional personnel). Generally, external security measures were inexpedient as they mostly included concrete walls, watchtowers and guards armed with machine guns authorized to shoot in cases of escape attempts, rather than state-of-the-art equipment. As to internal security, although no assaults of prison personnel were recorded, the feeling of danger and insecurity among detainees often resulted in clashes and fights. In addition, thefts, racketeering and blackmail were frequent among prisoners. In 2002 prison administrations tried to break with such practice by transferring gang-leaders to other institutions.

The team concluded that rules of conduct were understandable and accessible to every newcomer. The majority of prisoners said institutional personnel were unbiased, disciplinary measures were justly meted out, and appeal proceedings were fairly conducted. But through informal interviews they voiced their discontent with the way they were treated by prison administrations. None of the interviewees complained about torture or harassment, but did when it came to excessive coercion by security officers.

As for social resettlement, the main prerequisites such as fair treatment, work, education, vocational training, leisure activities, recreation, exercise of religion and reintegration into society

differed from institution to institution, but were primarily determined by the fact that pre-release programs had been developed in no institution whatsoever.

Contact with the outside world implied prisoners' communication with their families, lawyers, relevant domestic authorities, international organizations, and diplomatic-consular missions in the case of foreign nationals through phone calls, correspondence, visits, stays in "special rooms," receipt of money orders and parcels, and overnight outings. Correspondence and complaints to authorities were censored, but rarely seized, while parcels were regularly checked. Visits lasted between one to two hours, and their frequency depended on regimes to which prisoners were classified. Stays in "special rooms," wherever they existed, were restricted to three hours every three months. Prisoners were by and large content with the exercise of this right, but thought that it should be extended in order to have a beneficial impact.

Death Penalty

Under the Act on Amendments to the Penal Code of the FRY, adopted in late 2001, the death penalty may be delivered if so provided in republican (Serbian and Montenegrin) laws. However, in late February the Serbian parliament voted on the Act on Amendments to the Penal Code of the Republic of Serbia and abolished the death penalty. The death penalty was replaced by a 40-year prison term as the maximum sentence (previously the maximum prison term was 20 years).

Intolerance, Xenophobia, Racial Discrimination and Hate Speech

The reluctance of the Serb elite to come to terms with war crimes also gave rise to a spate of recriminations in an atmosphere of intolerance, anti-communism, xenophobia, and anti-Semitism. In the aftermath of October 5, the Serbian elite put a rehashed version of Serb nationalism across to the world, labeling it as "civil or liberal nationalism," something the West temporarily swallowed as moderate nationalism. However, two years later the West too began to call things by their names, increasingly referring to the October revolution as "the so-called" or "nationalistic."

The absence of any modern vision of Serbia was fertile ground for the resurgence of the Chetnik movement and Serb conservative thought, while negation of the anti-fascist tradition (personified in the victorious partisan movement) was actually an attempt to nullify the republican borders laid in the aftermath of the WW II.

National and Ethnic Minorities

Although the pressing minority question remained a key issue of Serbia's internal organization, its solution was nowhere in sight. Serbia did not accept its minorities as equals; its Law on Minorities, a requirement for accession to the Council of Europe, was more a result of international pressure than of sincere belief. Radicalization of minorities was a response to a strategy pursued at their expense for over a decade.

Disappointed with the results of the latest census of March 2002, the nationalists increasingly demanded that persons belonging to minority communities should declare themselves Serbian citizens with full individual rights. Given that minorities, disconcerted by the absence of a regulated state and by what the authorities had to offer them, began searching for

their identities on other accounts, the pursuit of an abortive strategy may rebound on Serbia. This had already happened in relation to the Albanian minority in southern Serbia (the area bordering Kosovo), where the international community had to intervene. The tensions subsided also thanks to a great many confidence-building projects and investment in this notably underdeveloped region.

Sandzak was another tense region because of all that had happened during the preceding ten years, notably the unsolved murders and “disappearances” of Bosniaks in incidents such as those at Strpci and Sjeverin. The information gathered left no doubt that the murders were organized with the knowledge of the state as part of a wider project connected with the war in Bosnia. Actually, the areas adjacent to Bosnia had been completely cleansed of Muslim-Bosniaks, while the inhabitants of the bordering villages were still prohibited from returning to their homes. When Yugoslavia won the world basketball championship, cheering Serbs in cars, shouting and firing, swarmed into downtown Novi Pazar, threatening to turn the incident into an open conflict. Fortunately, the police intervened, but the incident itself alerted the public to the possibility of a serious confrontation as an outcome of the region’s years-long marginalization.

Preliminary results of the latest population census in Serbia painted a disappointing demographic picture as far as the nationalists are concerned. According to the report carried in the *Danas* daily, Serbia’s population ranges among the “ten oldest in the world”; the average age in Serbia is 40; underage persons make up 19.7% of the population; there are more people over 60 years of age than young people under 15. The data on the national or ethnic structure of the population show a significant increase in the number of Wallachians and Roma, something the Statistics Administration saw as a result of choice, rather than birth rate. Minorities accounted over 20% percent of the population.

Vojvodina was the battleground of two opposite kinds of rhetoric – nationalist and autonomist. There were, of course, deeper conceptual differences behind such avowals of “affection” for the province: the nationalists, who regarded Vojvodina as an exclusive Serbian domain although they granted that it was specific in terms of its ethnic heterogeneity, viewed the autonomy demands as a desire to insulate the province from the rest of Serbia; the autonomists, on the other hand, argued that greater autonomy would enhance Vojvodina’s transition potential and that its greater openness to its neighbors would benefit not only Vojvodina’s citizens but all those living in Serbia.

Refugees and Immigrants

Throughout the preceding decade, the question of refugees in the former Yugoslavia was manipulated solely for the purpose of establishing ethnic states, this being particularly evident as regards their repatriation. As it turned out, the enormous funds set aside by the international community for humanitarian aid to ensure the survival of this most vulnerable group of the population in all the parts of the former state gave the authorities of the new states an opportunity for endless manipulation.

Belgrade paraded the refugees before the world as Serb victims on the one hand, and encouraged their integration into Serbia and discouraged repatriation on the other. This policy proved disastrous for the refugees because it merely added to their confusion as to whether to stay or return. Aware of the constant misuse of their problem, the refugees developed a hypocritical attitude towards the present government as their only chance of survival and adaptation. Other than somewhat expediting the granting of citizenship to those who apply, the DOS continued the

policy of the former regime. Its strategy of heavy reliance on foreign donations proved unrealistic. Rather than seek a viable and comprehensive solution to the refugee problem, the authorities were merely interested in their permanent integration into Serbia. No serious repatriation-oriented effort was made in 2002 either. In view of Serbia's transition potentials, prospects for an adequate solution to the refugee problem were slight. In addition, since their status as "innocent victims" was refuted by numerous witnesses in the ICTY, the refugees were resented both in their countries of origin and in Serbia, whose population wished to shift the blame for the wars in Croatia and Bosnia onto them.

International Humanitarian Law

Cooperation with the ICTY

Animosity towards the ICTY and insufficient cooperation with it continued throughout 2002. Unfortunately, strong pressure and the threat of sanctions from the international community proved to be the only effective tool to compel the FRY and Serbian authorities to step up cooperation with the ICTY.

In the face of the US administration's threat to suspend financial aid to Yugoslavia by March 31, the federal parliament in April finally adopted the Act on Co-Operation with the ICTY. The delay in the act's adoption was nothing but buying time under the pretext of unregulated domestic legislation in the area of co-operation with foreign judicial bodies. The act laid down norms for handovers of war crimes indictees and access to the FRY archives and other pertinent legislation of major bearing on the collection of evidence. But it became once again clear that the lack of political will was the main hurdle to unimpeded cooperation.

An uncooperative attitude of the FRY and Serbia was also evident in another area of compliance with the ICTY-related obligations and commitments: access to archives and other documents that may serve as an invaluable source of information-gathering or shed light on proceedings in progress in The Hague. In line with provisions of the Act on Cooperation with the ICTY, the National Council for Co-operation with the ICTY was established with a view to "cooperate with the ICTY, especially in matters such as the status of indicted Yugoslav citizens and their right to defense, the status of witnesses who are Yugoslav nationals, the ICTY access to archives and other pertinent matters."

As it turned out, all these provisions actually marginalized the obligation to cooperate with the ICTY. The old guard of the Yugoslav army, deeply entangled in the wars, had a final say in the selection of documents required by the ICTY, as did the Supreme Defense Council, which appraised the priority interests of national security and determined which documents were to be considered as confidential. However, in the course of the Milosevic trial it transpired on several occasions that for the sake of "the exercise of Milosevic's right to defense" he and his lawyers, *amicus curiae*, have been regularly allowed access to documents supportive of their arguments.

Trials for War Crimes in Serbia and Montenegro

An analysis of past and ongoing war crimes trials in Serbia from any perspective, including those of political readiness, disposition of the general public, media coverage, adequacy of the relevant legislation, expertise of judicial personnel, technical facilities, etc., showed that prerequisites for fair and competent war crime trials in Serbia were far from being met.

Scarce, inexperienced, if not biased, media coverage of such trials on the one hand, and maximum publicity given to statements issued by various committees for defense of indicted war criminals on the other, created an inauspicious climate for staging trials as such, notably in provincial milieus. This was best illustrated by the first war crime trial in post-Milosevic Serbia, held in Prokuplje, which had to be moved to Belgrade.

In addition, strong pressure from the executive and chronic understaffing of courts of law were hardly conducive to the judiciary's ability to hold proper and impartial proceedings against war crimes indictees. Only token lustration in the ranks of the police and compromised prosecution officers alerted many holdovers from both public services that further steps in that direction might open up the issue of their responsibility. This was probably best illustrated by the slow-paced unearthing of mass graves throughout Serbia.

In 2002 just two cases related to crimes committed during the wars in the territory of the former Yugoslavia, and three cases of crimes committed in Kosovo were brought before domestic courts. All indictees were charged under article 142 of the Penal Code either for "crimes against civilians" or "misconduct." However, all sentences meted out to the accused (some of which were still not in effect as of the end of the year) devaluated the principle of justice and deeply humiliated both the victims and their families.

Kosovo³

IHF FOCUS: elections; freedom of the media; law enforcement; judicial system and independence of the judiciary; criminality; national and ethnic minorities; returnees and displaced persons; property rights; missing persons.

The overall developments in 2002 were characterized by a full institutionalization of political life following establishment of the parliament and central government of Kosovo, after the November 17, 2001 general elections. Another main feature in the course of the year was the significant decline in ethnically motivated violence and a relative improvement in the security situation of Serbs and minorities, which, however, remained precarious.

A multinational, representative parliament of Kosovo representing all national communities was established in December 2001. Its multi-ethnic make-up was a clear expression of the UNMIK-led endeavor and necessity of inter-ethnic co-existence. The new parliament includes representatives of the following parties: the Democratic League of Kosovo (LDK, 47 seats) of President Ibrahim Rugova, the Democratic Party of Kosovo (PDK, 26 seats) and the Alliance for the Future of Kosovo (AAK, 8 seats), the latter two being the largest Kosovo Albanian parties originating from the former Kosovo Liberation Army (UCK). The Kosovo Serb coalition "Return" and other five minority parties that also participated in the elections, gaining 35 seats, were over-proportionally represented in the 120-seat parliament, based on the principle of positive discrimination provided for in the Constitutional Framework. Due to a lack of democratic tradition in Kosovo and the given distribution of seats in the parliament, as well tense relations between the LDK and the "war wing parties" on one side, and the Albanian block and the Serb coalition on the other, the formation of the coalition government proved to be a difficult task. It lasted for over three months, was worked out as a compromise package in combination

³ Based on Kosova Helsinki Committee for Human Rights (KHC), *Report on Human Rights Situation in Kosova in 2002*.

with the election of the president of Kosovo and followed only after three failed parliamentary votes.

The formation of the government in February was decisively facilitated by the new Special Representative of the UN Secretary General (SRSG) for Kosovo, the German diplomat Michael Steiner, as well as by the Quint-state representatives (diplomats of five Western countries: the US, France, Germany, Italy and Canada) in Kosovo. The coalition government was formed of the three largest Kosovo Albanian parties, headed by the Prime Minister Bajram Rexhepi (PDK), whose appointment was a compromise solution. Eight of the ten ministerial posts in the cabinet were shared among the three largest Albanian parties, and the Serb coalition "Return" received one post as did the Bosniak party Vatan. The Serb coalition did not succeed in their demand to establish a special ministry for the return of refugees and displaced persons, but its representative was appointed as inter-ministerial coordinator for returns within the Office of the Prime Minister as well as another special advisor for return in the office of the SRSG.

The functioning government and parliament of Kosovo as well as the judiciary comprised the so-called Provisional Interim Self-Government (PISG) administrative structures as defined in the Constitutional Framework. The formal establishment of PISG took place on March 4, 2002.⁴ The PISG exercises its functions under the ultimate authority of the SRSG.

In addition to its original constitutional principles, the Constitutional Framework includes a number of international human right treaties and conventions that are directly applicable to Kosovo, as well as guarantees and mechanisms for minority communities that provide for their positive discrimination through political over-representation. The SRSG, together with the UN Interim Administration Mission in Kosovo (UNMIK) and KFOR, continued to retain supreme authority in key functions such as security, external relations, judiciary and minority and human rights issues. All these areas comprised the so-called "Reserved Powers" under the ultimate authority of the SRSG. The rest of the executive and legislative authority is in the process of being transferred to the PISG, a process to be completed by the end of 2003 as decided by UNMIK administrator Steiner in March 2003. The SRSG has conditioned the gradual transfer of authority with progress the PISG makes in the areas already under its authority. The PISG and the local authorities, overseen and administrated under the auspices of UNMIK, has managed to stabilize the political landscape of Kosovo leading to a considerable normalization of vital segments of life.

All important sectors of life and infrastructures, such as the judicial system, policing, health care, education, etc., were strengthened further during 2002 although considerable deficiencies and shortages remained. International and domestic experts completed the work on drafting new Criminal, Civil and Procedural Codes that are in line with European standards. The parliamentary procedure, in conjunction with the complex UNMIK-administered procedure for enacting these codes, was initiated only in spring 2003. The Ombudsperson Marek Nowicki was re-appointed for another two-year term and continued reporting on specific segments of human rights violations.

With a dynamic administrative, political and pragmatic approach and a clearly defined set of concrete objectives, i.e., concrete political and institutional standards to be achieved, the SRSG Michael Steiner managed to dispel political stagnation and certain reservations of the Kosovar

⁴ It is composed nominally of the prime minister, ten ministries and the inter-ministerial coordinator for returns.

political establishment toward UNMIK and brought strong positive dynamics to the developments in Kosovo.

One landmark achievement of the SRSG was considered to be the definition of the so-called benchmark criteria for measuring the progress of PISG through the fulfilment of the set of eight principle objectives. These were to be reached before Kosovo could move towards addressing its status issue, an issue that is considered as the most important one by Kosovo's population. This policy was symbolically represented with the slogan "standards before status." The eight principal objectives to be reached are: the functioning of democratic institutions, rule of law (police and judiciary), freedom of movement, return of refugees and IDPs and their reintegration, sustainable economic development, establishment of property rights, dialogue with Belgrade, and transformation of Kosovo Protection Corps.

In contrast to key Kosovo Albanian political and institutional figures who sought the parallel promotion of standards and status – which marked a compromise of their initial wish to first solve the status issue (i.e. granting independence) and only then deal with standards – the Kosova Helsinki Committee (KHC) was in full support of Steiner's policy of "standards before status."⁵ All key members of the international community also strongly and unambiguously supported Steiner's policy, which he announced during his speech to the UN Security Council on April 24, 2002.

During 2002 all remaining 1,400 Albanian political prisoners were released from Serbian prisons with the strong engagement of administrator Steiner.

Despite positive developments, a multitude of problems still remained. First, the overwhelmingly Serbian-populated northern Kosovo on the river Ibar, remained *de facto* partitioned and effectively under Belgrade control despite steps taken to overcome this situation. On November 25, 2002, SRSG Steiner, in an agreement with the Belgrade authorities, managed to establish formal UNMIK authority and begin to introduce its administration to the northern part of Kosovo. In practice, however, by early 2003, Kosovo Serbs had established new parallel mono-ethnic institutions such as the community of Serb municipalities in northern Kosovo, as well as in eastern Kosovo, in addition to their parallel shadow local governments as well as a judicial system which had been set up soon after the war and continued to operate in 2002. These shadow structures have been dismissed by PISG and UNMIK as unacceptable and declared null and void.

Secondly, the fate of an estimated 3,700 missing persons remained a serious problem.

Third, the lack of security and freedom of movement for Serbs and some other minorities remained a major problem, despite considerable improvements. This was reflected also in the existence of ethnically-based enclaves which was a clear expression of inter-ethnic tensions, hostility and lack of mutual trust between Kosovo Serbs and the majority Albanian population. The KFOR Commander General Fabio Mini referred to the enclaves as reminiscent of "concentration camps" and "unworthy of human beings,"⁶ a statement which caused strong negative reactions in some Albanian media.

⁵ See KHC statement after meeting with SRSG Michael Steiner and deputy SRSG Charles Bryshaw on July 18, 2002.

⁶ See interview with General Mini in *Vecernje Novosti* (Belgrade), March 28, 2003 ; *Zeri* (Prishtina), March 29, 2003.

Lack of efficient law enforcement and the operation of the judiciary and consequential lack of sufficient cooperation of citizens with these vital segments in establishing efficient rule of law also contributed to a climate of residual insecurity in Kosovo, especially in Serb and minority communities. Many locals hesitated to cooperate and provide necessary information fearing possible revenge and retaliation in the absence of efficient rule of law and witness protection programs – despite significant improvements also made in this field. In addition, tense inter-ethnic relations prevailed throughout Kosovo, a situation, which did not provide suitable conditions for the return of refugees and internally displaced persons.

All the above problems were coupled with the lack of economic development and a high unemployment rate estimated at over 60%.

The principle and overwhelming issue for the great majority of the population, however, remained the unresolved issue of the future final status of Kosovo. It continued to overshadow and influence indirectly all developments in Kosovo, particularly those related to security. According to the KHC, the uncertainty over the final political status of Kosovo seriously undermined the readiness of both the Albanians and the Serbs to reconcile genuinely and look forward towards a common future in Kosovo. As a result, Albanians continued to fear political developments and arrangements that could lead to a return of the Serb state in whatever form, while Serbs continued to cherish hopes and to undertake political initiatives for the return of a Serbian state in order to settle scores with Albanians for the post-war injustices, or aimed at least for a partitioning of (northern) Kosovo based on ethnic divisions. This tense political situation also had a very negative impact on potential investments which could contribute to improving the very poor economic situation in the country.

While the unsolved problems negatively affected all Kosovars, they related particularly to Serbs and some other minorities and the security and freedom of movement of the latter in Kosovo. Serbs and other minorities continued to feel insecure and faced ethnically and politically motivated violence and hostility, although at a significantly lower scale than in the previous years. The mere existence of the enclaves and the parallel shadow life of Serbian communities, as well as the fact that Serb parliamentarians still needed the Kosovo Force (KFOR) escort and transportation to sessions of parliament in armored personnel carriers were clear signs of a pathological and unacceptable security situation.

Despite general improvements in the security situation, KFOR and UNMIK occasionally faced aggressive confrontations with Kosovo Serb and Albanian extremist groups. One of the hottest security spots remained the ethnically partitioned north of Mitrovica under *de facto* Serbian control. An attempt by UNMIK police in early 2002 to arrest two extremists of the plainclothes Serb militia formation called “bridge watchers” (who guarded the bridge between the UNMIK-controlled and Albanian southern part and the Serbian-controlled northern part of the city) triggered a wave of vandalism and attacks against international forces. When later in April 2002 UNMIK police arrested their leader Slavoljub Jovich, local Serbs rioted wildly against the UNMIK police and attacked them with firearms and hand grenades. The incident resulted in 22 injured international police officers. Among those attacking the police was Milan Ivanovich, head of the Serbian National Council of northern Kosovo who was reportedly filmed throwing an explosive during these riots. He fled to Belgrade but was only handed over to UNMIK in October. He faced trial, but was immediately released on bail. Kosovo Albanians saw this as a lenient attitude towards Serb criminal suspects and complained of discriminatory treatment. Arrests of Albanian leading former UCK personalities were followed by scores of protests against internationals, some of which turned violent as well, notably in Dechan.

Elections

The second municipal elections in post-war Kosovo were held on October 26, 2002. They were deemed fair and free by international observers and the KHC, which observed these elections with its 40 monitors. Also in these elections, the LDK won the relative majority.

The positive impressions of the elections were overshadowed, however, by the still unclarified killing of the LDK mayor of Theranda (Suhareka) Uka Bytyqi and two of his bodyguards one day after the elections.

In contrast to the general elections, the majority of Kosovo Serbs boycotted these elections, called for by some radical nationalist Serb circles such as the Serbian National Council of northern Mitrovica. The boycott was a setback to the UNMIK efforts to integrate Serbs into the political process. However, the municipal elections were not boycotted in the Serb enclave commune of Shterpce in central Kosovo and the Serbian communes Leposavich, Zubin Potok and Zvechan in the north of Kosovo that were almost exclusively Serb-populated and thus their local government despite being practically mono-ethnic was considered legitimate.

Freedom of the Media

A large number of Albanian-language media outlets, particularly printed media, operated in Kosovo in 2002. However, despite the attempts of UNMIK and the OSCE to re-establish a print and broadcast media system representing all ethnic groups in Kosovo, Serbian- and other minority-language media experienced difficulties. Serbian-language printed media continued to be available only in enclaves.

The main electronic media continued to be the public Radio Television Kosova (RTK). Its full day programming broadcast scheme doubled the broadcast time in Serbian, Bosnian and Turkish language to ten minutes daily including additional special weekly 45-minute program in these languages.

Media were generally free: no censorship was reported, but there was self-imposed restraint on reporting on certain delicate topics such as organized crime, ethnically and politically motivated violence and other politically sensitive issues, due to fear of potential retaliation by those affected. Several print media were fined by the OSCE supervising board for violations of journalists' ethical codes as well as unbalanced and biased reporting during the pre-electoral campaign.

Law Enforcement

Providing for law, order and security was one of the prime concerns and challenges of UNMIK and KFOR authorities in 2002. The supreme formal and actual legal responsibility for law and order and security rested with the UNMIK, i.e. the SRSG as the so-called "Reserved Powers." The local Kosovo Police Service (KPS) was in a continuous process of assuming greater duties and responsibilities as well as in the parallel process of training and further specialization. The KPS was overwhelmingly selected, trained and monitored by UNMIK international police (CIVPOL), but it increasingly received more and more authority.

According to international police data, there were 4,468 CIVPOL police officers stemming from about 50 countries in Kosovo as of the end of 2002. Most of them came from the US (535), followed by India (506). As of mid-April 2003, the KPS contingent numbered 5,685 domestic police officers, of them 84% men and 16% women. The largest number of police officers were concentrated in the Prishtina region (c. 1,400 officers), followed by the eastern Kosovo town of Gjilan (1,100 officers).

The national make-up of the KPS was: Albanians 85%, Serbs 8.5%, Bosniaks 3.6% and others 2.8% .

Experts assessed that the necessary number of KPS police officers to deal efficiently with the law, order and security issues in the prevailing circumstances in Kosovo stood between 8,000 and 10,000 domestic officers. The shortage of law enforcement officers, coupled with the modest functioning of the judicial system, resulted in deficiencies in security.

In 2002, the international police and KFOR started making some highly sensitive arrests, including members of the Kosovo Protection Corps (TMK) who were former members and commanders of the former UCK. Several such groups were arrested.

- One such group was the so-called “Llapi group” arrested in Podujeva on January 28, comprising of former UCK officers Latif Gashi, Nazif Mehmeti and Naim Kadriu. They were accused of kidnappings, torture and murder of civilians before and after the war. On August 11, the international police arrested former TMK general Rustem Mustafa – one of the prominent former UCK commanders known as commander Remi as head member of the group. The “Llapi group” was standing trial as of May 2003.
- Earlier in June five members of the so called “Dugagjini group,” including General Daut Haradinaj, Major Idriz Balaj and several others, were arrested on similar charges as the “Llapi group.” Its members were sentenced in December to long prison terms.
- A number of high level officers of the TMK, including General Sali Veseli, were arrested as suspects of the assassination of the prominent former UCK Commander Ekrem Rexha-Drini two years earlier. The marathon trial against them was concluded in March 2003 with conviction and long prison sentences.

These arrests and the ensuing trials were made on charges of serious (war) crimes against individuals and humanity committed before, during and after the war, primarily against Serbs, but also against some Roma and Albanians suspected of collaboration with Serbs. The arrests continued to increase in volume and intensity as well as the former UCK hierarchy.

Most of the arrests were followed by protests of war-wing supporters with most of them demanding their release. Protests against the conviction of the UCK commanders continued in early 2003. Protesters called for their release labelling the convictions unjust and politically motivated by internationals and artificial balancing and distribution of guilt among all the parties involved in the conflict. According to them, the victim and the perpetrator were being artificially equated and the struggle for liberation of the Albanians against the Serbian occupiers was being incriminated.

A number of the indicted former UCK men were acquitted by international judges due to the lack of sufficient evidence.

Judicial System and Independence of the Judiciary

Based on the Constitutional Framework for the Provisional Self-Government in Kosovo, the Administrative Department of Justice included three directorates: the Directorate for Administration of Courts and Public Prosecuting Offices, the Directorate of the Correctional Service and the Directorate of Professional and Legal Development. The justice department remained under the direct authority of UNMIK and SRSG as supreme authority and “Reserved Powers.”

Legislation in Kosovo remained also in 2002 a complex and rapidly changing mixture of the laws which were applicable until March 1989 when Kosovo’s autonomy was suspended by Belgrade, combined with continuously expanding UNMIK regulations and international legal standards that have precedence should different provisions be contradicting.

The 2002 Kosovar judiciary was comprised of the Supreme Court, five District Courts, 29 Communal Courts, 23 Courts for Misdemeanors, one High Court for Misdemeanor, 13 Public Prosecutors’ Offices, plus five district-level and seven communal-level Prosecutor’s Offices. One section of the Supreme Court dealt with constitutional questions. In addition, there was the Court for Economic Matters. Five investigative district prisons existed as well as prison and correctional facilities in Dubrava and Lipjan. Nominal prison capacity constituted of 1,318 places. All prison and correctional facilities were headed by internationals.

The judicial system of Kosovo recuperated gradually from the consequences of the war and with the help of the international community managed to reach its full-blown institutional form by the end of 2002. However, there were still major shortcomings and deficiencies particularly in terms of staffing and functioning. In addition, judicial personnel were vulnerable to intimidation and political influence, ethnic bias and bribery. As of April 2003, there were 312 Kosovar judges and 43 prosecutors, in addition to 27 international judges and prosecutors. Serbs account for some 5% of judges and 2% of prosecutors. At the time of writing, there are more than 100 reported vacancies for the 420 posts for judges and prosecutors foreseen in the Kosovo budget.

Judges were appointed in a complex procedure by the SRSG on recommendation based on set criteria by the independent Judicial and Prosecutorial Council of Kosovo which is comprised of domestic and international judges. A number of courts and other judicial organs had to operate under poor overall conditions.

The international community dispatched international judges and prosecutors to Kosovo in order to enhance the level of competence and efficiency of the judiciary, to avoid and/or remedy potential bias and partiality of the judiciary in cases where parties were of different ethnicity, and to provide the necessary experience of a modern judiciary. As of April 2003, twenty international judges and seven public prosecutors worked in the District Courts, the Supreme Court and the Public Prosecutors Offices dealing with the most grave and delicate criminal cases including war crimes, inter-ethnic and other more complex cases. Their number, however, was still judged to be too small for the challenge that the Kosovar judiciary faced. Their presence, competence, objectivity and experience were indispensable for the more efficient functioning of the judiciary. It is expected that more personnel would be hired in 2003 to improve the efficiency of the judicial system.

The legal system was operational and functional, although had considerable difficulties. Despite the appointment of multi-ethnic judges, the personnel was still overwhelmingly mono-ethnic and staffed with Albanian judicial personnel. Risks and difficulties faced by judges and other judicial personnel representing minorities discouraged non-Albanians from serving in the judicial system

Serb judges and judicial personnel generally rejected jobs within the Kosovar judicial system and set up a parallel Serbian judiciary in Serb-controlled parts and enclaves. As a result, there were five Serbian-run parallel courts in Kosovo and a District Court of higher instance located in Kraljevo, Serbia. These courts employed some 35 judges and prosecutors who were paid directly from Belgrade, amounting to a parallel judicial system surrogate to Serbia and overlapping jurisdiction in Kosovo which was contrary to UNMIK provisions.

The judiciary moved along more vigorously in 2002 and stepped up efforts in prosecution of crimes committed against Serbs and other civilians before, during and after the war.⁷

- In February, two Albanians, Mentor Arbana and Halit Guri, were convicted and sentenced by the District Court in Prizren to long prisons sentences for the murder of two and the wounding of another two Serbs in Prizren after the war.
- On April 14, the District Court in Prizren sentenced Albanian Arton Hasani (23) to a 15-year prison term for the murder of a Serb woman Stana Serdich (70) after the war.
- On April 10, the District Court in Prishtina convicted and sentenced the German citizen Roland Bartzeko to 23 years imprisonment. He was known to have fought as a volunteer on behalf of the former UCK, and assisted in the car bomb killing of the former head of the Yugoslav office in Prishtina on April 18, 2001. On that occasion three other Serbs were wounded.
- In October, the District Court of Mitrovica convicted and sentenced the local Serb Miroslav Vuchkovich to 12 years imprisonment for war crimes committed against Albanian civilian population in the period of September 1998-May 1999. A number of other Serbs, Radovan Apostolovich from Mitrovica, Sava Matich from Rahovec, and others, tried on similar charges, were acquitted due to lack of evidence.

Certain segments of the judiciary seemed in some instances to be frustrated with a rather large number of acquittals of the indictees in high profile cases for lack of evidence that would secure the conviction before a court of law, lack of consistent witness testimonies (possibly due to intimidation, threats and fear) that would confirm their earlier statements as well as refusal to testify in courts due to fear. As a result, the courts embarked on developing a witness protection program as well as specialized structures for gathering and analyzing evidence in sensitive and high profile cases.

Criminality

Based on the UNMIK international police report for the year 2002, the crime rate decreased significantly in Kosovo. Thus, during 2002, 68 cases of murder, violent deaths or

⁷ See also Law Enforcement.

killings were reported, which indicated a 50% drop and was the lowest in the last three decades in Kosovo.⁸ As of mid-April 2003, 43 Albanians and two Serbs had been arrested and charged with these killings.

The ethnic make-up of the victims of the killings in 2002 was: 60 Albanians, six Serbs, and two other minority members. This improvement could be attributed to enhanced overall security due to higher efficiency of police work, and, partly also to other factors such as parallel and separate living of Serbs in their own enclaves.

The number of attempted killings in 2002 stood at 144, down significantly from 225 in year 2001. Further, 106 cases of kidnappings were registered, as well as 64 kidnapping-attempts and 365 armed robberies and 463 serious assaults.

However, the overall number of criminal acts of 1,807 cases increased in 2002 in comparison to the 1,695 cases in 2001 indicating a slight expansion of general crime. Cases of arson (477) and assaults (463) also registered an increase in comparison to one year earlier.

Enhancement of law and order was reflected also in the decrease of fatal victims in traffic related accidents. While the number in year 2000 stood at 250, it went down to 160 in 2001, with the rate falling further in 2002 to 132 despite the increased number of cars in the streets. The traffic police issued in 2002 a total of 222,351 fines for traffic violations, a fact that was believed to have contributed to the lower rate of fatalities in the traffic.

In contrast to the positive developments, organized crime increased, including trafficking in women, and more efficient measures were taken to combat it.

Despite some improvements, the overall performance of both international and local police and judiciary in crime prevention was assessed generally as poor. The modestly functioning judicial and law enforcement systems represented the greatest challenge and at the same time the weakest links also in year 2002 of the post-war Kosovo.

Ethnic Minorities

As in previous years, security and protection of ethnic communities continued to remain a central concern. The communities primarily affected were Serbs and Roma. Restrictions on the freedom of movement of minorities persisted, despite improvement compared to 2001.⁹ Risks for personal safety and other factors forced them to live within the borders of their enclaves – outside the enclaves, they were escorted by KFOR convoys to secure their safety. Such restrictions resulted also in the deprivation of basic rights such as the right to employment, health care, property, etc.

While about 6.2% of the Kosovar population were Serbs (97,000), international sources estimated that other minorities made up some 73,000 people or 4.6% of the total population.

⁸ The number of killings in 2000 had been four times lower than in the immediate post-war period i.e. in the period June to December 1999 when 500 cases of killings and violent deaths had been reported during only a half-year period.

⁹ See, for example, interview with Ombudsman Nowicki in *Kosova Live*, April 21, 2003.

Violence against Serbs

Following the war, the number of Serbs in Kosovo sank by about 50% of the pre-war number. They lived primarily in the northern part of Kosovo and in enclaves in the central part of Kosovo such as Grachanica near Prishtina, Gjilan, Vitina, Kamenica, Shterpce, Obiliq, Fushe Kosove, Lipljan, and Rahovec.

In 2001, UNMIK and interim authorities in Kosovo had approved a program for the return of Serbs. By the end of 2002, some 300 Serbs had returned to Osojane. Their houses were repaired by the UNHCR and protection was provided by KFOR. In Prizren the number of Serb returnees in 2002 was reported to be 158.

Reports of violence against Serbs and attacks on Serb property were received throughout the year, although at a markedly lower scale than in previous years.

- In January through March, three Serbs were killed in a case that remained unresolved by the end of the year. Lubica Kovachevich was shot and killed by an unknown assailant in front of her house in Lipjan. Another Serb, Dragoljub Markovich was killed when an explosion rocked his cafe in the center of Kamenica. Branko Milovanovich, also a Serb, was found killed under a bridge in the road from Mitrovica to Zubin Potok.
- On January 22, a group of Serb school children waiting for a bus were shot at by an unknown assailant in the village of Plemetin near Obilich.
- On March 11, twelve gravestones were knocked down at a Serb cemetery in Podujevo.
- On March 15, a group of Albanians set fire to a Serbian house in Shterpce causing serious damage.
- On June 28, a grenade was thrown into the house of Zhivorad Ristich. He was wounded and the house was seriously damaged.
- On July 14, the local Serbian Orthodox church in the village of Zokishte near Rahovec was set ablaze after a mass served by the Serbian Bishop Artemije.
- July 31, explosions rocked five Serbian houses which had just been reconstructed in the village of Klokot near Vitina. They were blown up by planted explosives. Two American KFOR soldiers who happened to be on the site during the blast were wounded.
- On October 10, a group of young Albanians threw stones and Molotov cocktails at a bus carrying elderly Serb returnees from the village of Osojane near Istog to Peja under KFOR protection to settle their papers with the local administration. Several Spanish KFOR soldiers and Serbs were injured. The police arrested five suspects.
- On November 7, a group of Albanian youngsters stoned a convoy of buses transporting Serbs to in the village of Germova near Vitina to visit their property. A KFOR soldier was injured in the incident.

- On December 22, Trajan Trifunovich was shot and killed while working in the field in the village of Cernica near Gjilan.

Such assaults contributed to a collective fear of being targeted by ethnic Albanians even when traveling under KFOR-security escort.

Violence against Roma

In the post-war period, the Roma population was generally perceived by Kosovar Albanians as Serbian collaborators, and they became targets of indiscriminate and arbitrary violence by some extremists groups. Despite improvements in the course of 2002, their security situation still remained precarious and fragile and their lack of freedom was seriously restricted.

Moreover, some 300 Kosovo Roma refugees who were still sheltered in Macedonian refugee camps complained continuously of intolerable conditions and demanded that they be provided security and rights to return to their homes in Kosovo.

- On January 17, a Rom was assaulted and injured by a group of Albanians in Ferizaj.
- On February 1, a hand grenade was thrown into a house belonging to a Rom.
- On April 23, a 17-year old Ashkali (Roma subgroup) was seriously wounded in Ferizaj after having been shot by unknown persons.
- On August 27, 29 and 30, two houses belonging to Ashkalia were set on fire in the village of Mali Alas near Lipjan while a hand grenade was thrown into another house wounding four. An abandoned Romani home was set on fire and completely destroyed.
- On October 4, in Gjilan a Romani man was found dead dumped on the street. His body had multiple stab wounds.

In addition, other forms of attacks, intimidations and harassment were directed at members of Roma communities.

Violence against Albanians

Ethnically and politically motivated violence was directed at the Albanian population as well, particularly in the Serbian-controlled northern Mitrovica. Two cases of killings and three of wounding of Albanians were registered along with 36 cases of assault, beatings and other physical maltreatment. Their security and freedom of movement were severely restricted almost in the same manner as that of ethnic Serbs in the rest of Kosovo. Albanians fell victims also to inner-Albanian politically motivated violence and killings.

- On January 12, a hand grenade was thrown into a house of an Albanian in the Serb-controlled north of Mitrovica.
- On January 17, Smajl Hajdaraj, an LDK member of parliament of Kosovo, was assassinated by unknown gunmen in front of his home.

- On March 26, a group of Serbs – assumed to be so-called “bridge-watchers” – assaulted an Albanian after he had crossed the bridge into the northern part of Mitrovica.
- On October 12, two former UCK members, Avni Elezaj and Bekim Mustafa, were killed in Peja.
- On October 27, one day after successful local elections, Uke Bytyqi, the re-elected mayor of Theranda/Suhareka and member of presidency of LDK was assassinated along with two of his bodyguards.
- On November 4, Ibish Hoti, one of the best-known lawyers in Kosovo, was assassinated in front of his house in Peja.
- On December 13, a large car bomb exploded in the center of Prishtina. Some 40 people were wounded. The case has remained unclarified with speculation that it might have been directed against a couple of witnesses who were to testify in a high-profile case.

Politically motivated violence continued in early 2003. In January, Tahir Zemaj, President Rugova’s counsellor designate for security issues, was assassinated in the center of Peja. He was the former head of an LDK affiliated wing of the former Armed Forces of the Republic of Kosova (FARK) known to be a rival of the UCK group. Zemaj was also one of the key witnesses at the trial of the former UCK “Dugagjini” group. Zemaj’s son and cousin (a prominent LDK official) were also killed. Large peaceful demonstrations were held in Kosovo to protest at the assassinations. In April 2003, another key witness at the “Dugagjini” trial, Ilir Selimaj, was assassinated, while one of his family members was also killed and three others wounded.

Returnees and Displaced Persons

Due to the continuing precarious security situation, only initial steps were made in 2002 towards the return of Serb internally displaced persons (IDPs).

For the first time the number of returnees, assessed at some 2,000, was greater than the number of Serbs who continued to leave Kosovo – despite ethnically motivated incidents that still occurred against Serbs. In practice, however, with the exception of the Serbian enclaves, Serbs needed in most cases round-the-clock KFOR protection. In addition to their limited freedom of movement and related security hazards and concerns, economic opportunities for them were very scarce, and their access to social services, education and health care was limited due to problems with movement.

The attitude towards Serbs and some minorities such as Roma had markedly improved since the immediate post-war period when, driven by revenge and ethnically motivated reasons, crimes against them were intensive and generally went unpunished due to lack of law enforcement and a functioning judiciary. In 2002, serious investigations into similar crimes committed against minorities (particularly Serbs and Roma as well Kosovar Albanians suspected of collaboration with Serbs) since the beginning of the armed conflict in Kosovo received much higher attention by the police and the judiciary. Hence a number of rather sensitive and high

profile arrests of main suspects (some of them former commanders of the former UCK) of such crimes were carried out by international police.¹⁰

Property Rights

Another key issue pertaining to the rule of law, security and return of displaced persons to Kosovo was related to property rights. Usurped property of Serbs and other minorities ranked among top reasons for the very low rate of returns of Serb IDPs.

The main part of Serb property consisted of apartments and houses which had been illegally occupied mainly by Albanians whose homes and property had been destroyed or damaged during the war. A special UNMIK agency, the Housing and Property Directorate (HPD, run by the UN HABITAT), was set up at the end of 1999 to deal with property-related issues and to process the claims for the return of unjustly occupied property. However, the HPD was initially understaffed, underfinanced and overwhelmed by the multitude of claims which by the end of March 2003 had reached over 25,000 cases. By the summer of 2002, however, financing and competent staffing for the HPD was enhanced and the processing of the claims started at a much higher pace. Thus, while the number of resolved cases by summer 2002 was 664, by the end of March 2003 the number of resolved cases had reached over 2,000, with a strongly increasing trend.

Missing Persons

The issue of missing persons from the time of the war continued to remain a burning issue generating inter-ethnic tension and hostility. The International Committee of the Red Cross (ICRC) had documented names of some 3,700 Kosovars still missing, of whom about 2,750 were ethnic Albanians and 850 Serbs. Most of them were presumed – but not yet confirmed – dead.

Some 4,600 bodies had been exhumed after the war, of which 2,100 had been identified.

- In Batajnica, in the vicinity of Belgrade, 162 bodies were exhumed during 2002. They were believed to be Kosovo Albanians who had been killed during the war in Kosovo and transported and buried secretly in Serbia. Hundreds of additional bodies were believed to be buried in the surrounding grounds.
- Also in Petrovo Selo, another site in Serbia, bodies were exhumed and identified as Albanians killed in the Izbica massacre in Kosovo on March 28, 1999, by Serbian forces. Remnants of eight of the identified bodies were returned to Kosovo for burial.

¹⁰ See Law Enforcement.

Montenegro¹¹

IHF FOCUS: military forces; elections; freedom of expression and the media; freedom of association; torture, ill-treatment and police misconduct; religious intolerance; conscientious objection; intolerance, xenophobia, racial discrimination and hate speech; international humanitarian law.

The political, economic and social situation became increasingly complex in Montenegro in 2002, which also affected the process of democratic consolidation and human rights developments in the country. The issue of the country's legal status dominated the political agenda and distracted attention from much-needed reforms.

As for the attitude of ordinary citizens, the number of those who supported the re-establishment of independence increased, a trend which was clearly expressed in the elections that were held during the year. However, a considerable number of citizens remained skeptical about the idea of independence. Several anti-independence political organizations advocated extreme nationalist views, including calling for an "ethnically clean Greater Serbia." Foremost among these organizations were the political parties that belonged to the political bloc called a Coalition for Yugoslavia (later renamed a Coalition for Reforms).

Regrettably, most political leaders failed to enter into constructive discussions about the status of the state and related issues. Furthermore, none of the political groups that in principle favored independence – including those in the government – had developed a clear vision of the country's future.

According to the Montenegrin Helsinki Committee, the lack of a well-formulated strategy on the part of the political leaders in Montenegro allowed the political elite in Serbia to control developments in the Federal Republic of Yugoslavia (FRY). The federal authorities exercised only nominal power, while all real power lay with the Serbian authorities. During the year, Federal President Vojislav Kostunica, who is Serbian, actively promoted the "Greater Serbia" idea in Montenegro, for example by lending support to the Coalition for Yugoslavia/Reforms.

The international community – particularly the EU – backed the concept that Montenegro and Serbia remain one state. According to the Montenegrin Helsinki Committee, this led to the absurd situation that the international community *de facto* aligned itself with the Coalition for Yugoslavia/Reforms and other extremist political groups.

According to opinion polls, a majority of the Montenegrin citizens wanted that a referendum be held on the question of independence. However, the authorities chose not to consult citizens, and on March 14, the president and the prime minister signed an agreement with the Serbian authorities on the creation of a state union – Serbia and Montenegro. The EU had actively pushed for this agreement and many Montenegrins felt that the EU had forced the agreement on their country.

In their bid to obtain government power in the country, the parties of the Coalition for Yugoslavia/Reforms, supported by the Liberal Alliance, embarked upon a strategy of severe

¹¹ Based on Helsinki Committee for Human Rights in Montenegro, *Human Rights in Montenegro in 2002*, March 2003.

obstruction after the state union agreement was signed. These parties, which managed to gain a controlling majority in the parliament, blocked the adoption of a number of progressive laws and initiated politically-motivated strikes in schools and major companies. However, this policy did not pay off: the parties belonging to the two blocs lost the parliamentary elections on October 20.

With disorder and a lack of long-term planning characterizing the political scene in the country, the economic situation deteriorated further. Many companies went bankrupt and no significant foreign investment was made during the year. The unemployment rate remained high¹², and the number of people living below the poverty line increased. A great number of young people left the country since they saw no future at home.

Military Forces

According to the Federal Constitution, the military forces of the FRY were to be jointly organized by Serbia and Montenegro. However, in reality they were almost entirely Serbian.

As in previous years, there was no transparent and democratic control of the military forces stationed on the territory of Montenegro. It appeared that the forces were primarily controlled by Federal President Kostunica. However, there were also allegations that some army structures enjoyed an independent position or were under the influence of persons still loyal to former President Slobodan Milosevic. The army continued to cooperate illegally with the military forces of Republika Srpska (of Bosnia and Herzegovina). Such cooperation was particularly strong between secret military services as well as secret police services.

Moreover, the military administration continued its efforts to create an “ethnically clean” army, consisting exclusively of ethnic Serbs. This process, which the Montenegrin Helsinki Committee called “soft ethnic cleansing,” was mainly carried out through arbitrary and discriminatory policies when hiring permanent army staff. The army also continued to involve the Serbian Orthodox Church in its activities, for example by inviting priests representing this church to speak at public events that it organized.

Furthermore, the military administration obstructed the process of bringing war criminals to justice and offered protection to a number of former high-ranking military officers indicted by the International Criminal Tribunal for the Former Yugoslavia (ICTY), including Ratko Mladic and Veselin Sljivancanin. An extremely nationalistic atmosphere pervaded the army, and young recruits who were opposed to nationalist ideas often experienced great difficulties while completing their period of military service. As a result, many young men fled abroad to escape compulsory military service.

Military investigating bodies, military prosecutors and military courts continued to operate in the country. The FRY Constitution foresaw these offices, but the manner in which they had been established and in which military judges and prosecutors were appointed violated the law. Moreover, while the military courts enjoyed broad powers to try both military officials and civilians, they did not enjoy any true independence, but were used for political purposes. As a result, military trials were neither fair nor impartial.

¹² According to official information, about 80,000 people were unemployed in the country as of the end of the year.

- The cases against Ljubisa Mitrovic, the former editor-in-chief of the *Vijesti* daily, were still pending before the military courts in Podgorica and Belgrade as of the end of 2002. Mitrovic had been accused of revealing a military secret and disseminating false information after he published a military document in *Vijesti*. This document contained plans regarding the possible use of military force against civil authorities and the citizens of Montenegro.

In October it was disclosed that the FRY had cooperated militarily with Iraq despite the fact that the UN Security Council had prohibited any such cooperation. A number of FRY companies had illegally exported weapons, nuclear materials and technology, chemical weapons technology, cruise missile technology, etc. to Iraq. Part of this trade had apparently been carried out from the territory of Montenegro and one of the companies involved was a military company based in the Montenegrin city of Tivat. Another similar case (the so-called Bokastar case) was also revealed during the year. It was believed that the Montenegrin Ministry of Interior was involved in the cases, although it denied the allegation.

Elections

During the year, local elections, early parliamentary elections and presidential elections were organized in Montenegro. All the elections were held in the tense political situation that developed after Serbia and Montenegro officially agreed to establish a state union in March.

Local Elections

Regular local elections were held on May 15. Prior to the elections, a new Law on Local Self-Government was considered by parliament. The draft law had been drawn up in cooperation with international organizations and largely corresponded to international standards. If adopted, the law would have meant an important step toward establishing an adequate system of local self-government in the country. However, the Coalition for Yugoslavia/Reforms (which was comprised of the Socialist People's Party (SNP), the Serbian People's Party (SNS) and the People's Party (NS)), supported by the Liberal Alliance, prevented the law from being adopted.

During the election campaign, hate speech was used particularly by the parties belonging to the Coalition for Yugoslavia/Reforms and a number of other political parties advocating nationalist views. Such speech was typically given unrestricted coverage by media, which thereby contributed to escalating hateful sentiments.

In spite of this, on the election day, electoral proceedings were carried out in a peaceful manner. No serious irregularities were registered and, according to international observers, the elections were free and fair and reflected the true will of the citizens.

However, the Montenegrin Helsinki Committee criticized the fact that the Law on the Election of Municipal Councilors and MPs provided for an undue party control of mandates in local representative bodies and in the parliament.¹³ According to this law, municipal councilors and MPs were elected on the basis of lists of candidates submitted by political parties, coalitions of political parties and groups of citizens prior to the elections. Following the elections, each list

¹³ The text of the law is available in English at <http://www.legislationline.org/get.php?id=1173&dots=4.0.0.&country=16&inst=0&topic=1&subtopic=0&subsubtopic=0>

was allocated a number of seats proportionate to the total number of votes it received. Out of these seats, 50% were allocated to the highest-ranked candidates on the list, while 50% were allocated to candidates selected by those who had submitted the list (normally party leaders) irrespective of their ranking on the list. Moreover, if the term of office of a municipal councilor or MP was terminated between elections for any of a number of stated reasons, including if he/she ceased to be a member of the party on whose lists he/she was elected, those who had submitted that list could decide to what other candidate the vacant seat might be allocated.

In the elections, the Coalition for Yugoslavia/Reforms scored well in many municipalities.

Early Parliamentary Elections

Early parliamentary elections were held on October 20, only about a year after the previous parliamentary elections took place. One of the major reasons why the government decided to call early elections was that it was no longer able to operate effectively after the Coalition for Yugoslavia/Reforms, with the support of the Liberal Alliance, gained control of the parliament in spring and started systematically to block reform efforts.

Shortly beforehand, the elections amendments to the Law on the Election of Municipal Councilors and MPs were discussed in the parliament. According to the Montenegrin Helsinki Committee, the Coalition for Yugoslavia/Reforms, supported by the Liberal Alliance, attempted to use its controlling majority in the parliament to enforce amendments that would have granted it electoral advantages, for example in terms of access to media and in terms of the administration of elections.

However, these amendments were not adopted but instead, as a result of mediation by the international community, a number of compromise amendments were passed. Most of the compromise amendments provided for improvements to the electoral process. However, the Montenegrin Helsinki Committee sharply criticized one of them, which reduced the quota of seats reserved for ethnic Albanians in the parliament from five to four.

In the run-up to the local elections, the electoral campaign preceding the parliamentary elections was marred by hate speech. However, on election day itself, the proceedings were carried out in a peaceful atmosphere and, according to the OSCE Office of Democratic Institutions and Human Rights (ODIHR) and other international observers, the elections were generally in line with international standards.

The Coalition for a European Montenegro (which was comprised of the Democratic Party of Socialists (DPS) and the Social Democratic Party (SDP)) won the elections and subsequently formed a government, with support by two Albanian minority parties. The Coalition for Yugoslavia/Reforms and the Liberal Alliance achieved very bad results.

Presidential Elections

Because of the defeat they suffered in the parliamentary elections, the Coalition for Yugoslavia/Reforms and the Liberal Alliance decided to boycott the presidential elections held on December 22, apparently in the hope that less than 50% of the electorate would go to the polls, which would mean that the results of elections would be declared invalid. This, indeed, proved to be the case as only 46% of the electorate participated in the vote.

Although ODIHR and other international observers concluded that the elections were carried out in a regular manner and in accordance with international standards, they criticized the 50% requirement for being far too high. The Montenegrin Helsinki Committee believed that the efforts of the Coalition for Yugoslavia/Reforms and the Liberal Alliance to encourage citizens not to vote in the elections contributed to the low voter turnout.

A new round of presidential elections was scheduled for February 2003. However, the voter turnout again proved to be too low. Only in the fourth round, and after a change of law, was a new president elected on May 11, 2003: Filip Vujanovic, representing the Coalition of a European Montenegro.

Freedom of Expression and the Media

New Media Law

During 2002, the Montenegrin government, the EU and the Council of Europe made a joint effort to reform the country's media legislation. Representatives of the media, journalists' associations and NGOs were invited to participate in the drafting process. Three draft laws – the Law on the Media, the Law on Radio Transmission and the Law on Public Radio and TV Transmission Services – were submitted to the parliament in the summer of 2002.

However, the newly-formed parliamentary majority of the Coalition for Yugoslavia/Reforms and the Liberal Alliance refused to allow the draft laws to be considered in parliament. These parties instead presented new draft laws that were aimed at strengthening party control of state media and at restricting the free operation of private media and that fell seriously short of free media standards. The parties argued that these proposals would ensure that all parties running in elections had equal opportunities to communicate their views through media.

Following pressure from the public and the international community, the Coalition for Yugoslavia/Reforms and the Liberal Alliance yielded and agreed to put the draft laws drawn up in cooperation with international organizations on the agenda of the parliament. This debate was postponed nine times, after which time the Montenegrin parliament adopted the laws on September 16. The new laws represented significant progress in the media field. An attempt by the Coalition for Yugoslavia/Reforms and the Liberal Alliance to delay implementation of the laws until May 2003 was thwarted when the two blocs lost their parliamentary majority in the October elections, and the new media laws immediately entered into force.

Libel

As things stood in early 2002, insult and defamation were criminalized and could result in up to three years in prison under the Montenegrin Criminal Code. These provisions were contrary to international standards and unduly restricted freedom of expression in the country. However, in response to a campaign to decriminalize defamation, in which the Montenegrin Helsinki Committee was actively involved, parliament voted to amend the Criminal Code in June. The amendments abolished the right of state prosecutors to initiate legal proceedings against persons or entities suspected of defamation and provided that a person believing him/herself to be the victim of defamation should initiate a private lawsuit. The amendments also meant that insults targeting the president of the republic, the speaker of the parliament, the prime minister and other high-ranking officials were no longer defined as separate criminal offences. In accordance with

the amendments, if persons holding these offices consider themselves to have been insulted, they must bring a defamation suit as ordinary citizens. The amendments entered into force in July.

The Federal Criminal Code continued to criminalize defamation targeting the FRY or its flag, coat of arms, anthem, army, president, parliament, government or prime minister. Such crimes carried a penalty of up to three years in prison. In addition, the Federal Criminal Code criminalized defamation targeting a foreign state or a foreign organization, which may also result in up to three years in prison.

As in previous years, several lawsuits for libel against journalists were brought before Montenegrin courts in 2002.

- Tomislav Kovac, former deputy minister of interior of Republika Srpska (of Bosnia and Herzegovina), brought a lawsuit against Zoran Radulovic, journalist of the weekly *Monitor*. The lawsuit concerned an article authored by Radulovic, which alleged that Kovac had been involved in illegal business dealings during his tenure as a minister in the government of Radovan Karadzic. The case was still pending at the end of 2002.
- Elmag TV and its former Chief Editor, Zoran Predic, brought a libel suit against Drasko Djuranovic, director of the weekly *Monitor*, and four members of the NGO CEDEM for a number of statements that these had made in a joint report. In this report, Djuranovic and the four CEDEM members claimed that Elmag TV and Predic had close links to the SNP and the army and that they received financial and staff support from the Serbian government. They also claimed that Elmag TV had engaged in hate speech. Court proceedings were still pending at the end of 2002.
- The trial against journalist Veseljko Koprivica of the weekly *Monitor* proceeded throughout the year and a decision was still pending by the end of 2002. He was charged with libel in 2001 for an article that had been published in the weekly *Liberal* several years previously, when he was the publication's chief editor. The article in question discussed the cases of 16 Montenegrin journalists who allegedly had spread war propaganda and hate speech during the wars in Croatia and in Bosnia and Herzegovina. Although Koprivica presented convincing evidence to support his claims, the court had so far refused to find him not guilty. The Montenegrin Helsinki Committee severely criticized the court, concluding that its attitude had a negative impact not only on freedom of expression but also on attempts to bring alleged war criminals to justice. The ICTY was reportedly investigating the 16 journalists mentioned in the *Liberal* article.
- In December, the Podgorica Higher Court upheld a ruling of the Podgorica Municipality Court, which had convicted Vladislav Asanin, former chief editor of the daily *Dan*, and the Yumedia Mont Company, which owns *Dan*, of defamation and had fined them €15,500. Asanin and the Yumedia Mont Company were brought to court after the Montenegrin President Milo Dukanovic sued them for reprinting some articles and editorial comments from the Zagreb publication *Nacional*, which alleged that he had been involved in cigarette smuggling.

Appointments

In the summer, the parliamentary majority pushed through decisions to replace the chief editors of the national Montenegrin Television, Radio and the *Pobjeda* daily. Among the new

editors appointed were Milorad Rasovic (*Pobjeda*) and Slavisa Djordjevic (Montenegrin TV Channel 2), both of whom had repeatedly engaged in hate speech and propaganda. According to the Montenegrin Helsinki Committee, these measures were typical of a broader tendency of the authorities to replace high-ranking opponents of the Milosevic regime with people who had played a questionable role in the war in the 1990s and who had close relations to persons indicted for war crimes.

Freedom of Association

The right to freedom of association was guaranteed by article 40 of the Montenegrin Constitution. Articles 41 and 42 laid down a number of restrictions of this right, but these were in accordance with international standards. However, several provisions of the 1999 Law on Non-Governmental Organizations¹⁴ violated both the provisions of the Constitution and international standards.

According to the Constitution, citizens had the right to establish NGOs without prior permission from the authorities. Although they had to apply for registration, the authorities could not reject their application. Only the Constitutional Court could decide to remove NGOs from the official register of NGOs, for example if it deemed that a particular NGO was actually a paramilitary group.

However, in contradiction to the provisions of the Constitution, the Law on NGOs granted the Ministry of Justice the power to decide whether to grant NGOs registration. This law also allowed the government to adopt a decree on registration procedures and to determine criteria for the allocation of state support to NGOs. In another provision that contradicted the Constitution, the law gave the authorities the right to appropriate the property of NGOs that ceased to exist.

In early 2002, the Montenegrin Helsinki Committee asked the Constitutional Court to declare unconstitutional several provisions of the Law on NGOs. At the end of February, the Constitutional Court in its ruling partly accepted the requests of the committee and declared unconstitutional the provisions empowering the government to decide on NGO registration procedures and to appropriate the property of dissolved NGOs. However, it upheld the provision empowering the Ministry of Justice to approve or disapprove of the registration of an NGO.

In practice the government continued to use the Law on NGOs to restrict NGO activities. It also appeared that a considerable number of the country's NGOs (about 2,000 in total) had been set up by the government in order to indirectly support its policies. The Montenegrin Helsinki Committee concluded that such measures undermined genuine efforts to strengthen civil society in the country.

Torture, Ill-Treatment and Police Misconduct

Little progress was made during 2002 in terms of establishing effective civilian control of the country's police forces, including the national security service. The special parliamentary body established in 2001 to oversee the work of the national security service remained inactive in 2002, or at least did not inform the public about its activities. Internal control mechanisms within

¹⁴ *Official Gazette of Montenegro*, 27/99.

the police forces lacked both efficiency and transparency. Representatives of several parliamentary parties accused the national security service of engaging in politically-motivated illegal activities, such as wiretapping. However, none of them took these allegations to the parliamentary monitoring body.

By law, citizens had the right to complain to court about alleged police ill-treatment, but no such complaints were made in 2002. The Montenegrin Helsinki Committee also registered a lower number of reports of police violence than in previous years.

- On June 26, 1995, two police officers abused Miljan Despotovic (then a minor) during a concert at the F.C. Buducnost Stadium in Podgorica. Following a lengthy trial, the Podgorica Municipality Court gave the two officers a four-month suspended prison sentence in February 2001. The verdict was upheld by the Podgorica Higher Court in May 2001. As the victim was not awarded any financial compensation, Miljan Despotovic and his father filed a civil suit against the two police officers in 2002. Court proceedings began but were beset by undue delays, and the case was still pending at the end of the year. In another development, at the end of 2002, the Federal Court illegally annulled the verdict reached by the Podgorica Higher Court in the criminal case, allegedly because one of the convicted police officers, Dejan Knezevic, was the son of the former Federal Minister of Justice, Zoran Knezevic.
- On August 5, Feriz, Esad and Ramiz Skrijelj, Faiz Adrovic and Saudin Babacic, were allegedly subjected to police abuse in Petnjica. The five young men were involved in a traffic accident and alerted the police. When the police arrived, a patrol of six officers started beating the young men, and thereafter handcuffed them and took them to another location where they continued beating them for half an hour. The victims sustained numerous injuries from the abuse. Internal disciplinary proceedings were subsequently initiated against the six policemen. The victims also filed a complaint with the municipality prosecutor in Berane and the higher prosecutor in Bijelo Polje. The case was still under investigation at the end of 2002. There were suspicions that the police officers had abused the five men on ethnic or religious grounds since the officers were all Orthodox Christians and all the victims were Muslims.

Religious Intolerance

Freedom of religion and belief continued to be infringed in the country. Not only did the practices of the authorities violate relevant provisions of the Montenegrin Constitution and international standards, but there were also a number of laws on religion that were not in accordance with these standards. These included The Law on Celebrating Religious Holidays and the Law on the Legal Position of Religious Communities.

The Serbian Orthodox Church enjoyed a privileged position, and virtually functioned as a state church. The Serbian Orthodox Church has existed in Montenegro in its present form since 1920, when the then ruler of Yugoslavia, Prince Aleksandar Karadjordjevic, abolished the autocephalous Montenegrin Orthodox Church and expanded the jurisdiction of the Serbian Orthodox Church to the territory of Montenegro. At the end of 1993, a large number of believers re-established the autocephalous Montenegrin Orthodox Church, which was subsequently registered by the authorities. However, the authorities have never granted the church the same privileges as the Serbian Orthodox Church, and have refused to return church property confiscated by the Serbian royal family in 1920. The Montenegrin Helsinki Committee concluded

that the preferential treatment the authorities afforded the Serbian Orthodox Church was contrary to the Constitution, which stated that Montenegro was a secular state.

The Serbian Orthodox Church continued to campaign actively against the Montenegrin Orthodox Church, sometimes resorting to extreme nationalist rhetoric.

- The Coalition for Yugoslavia/Reforms, together with representatives of the Serbian Orthodox Church, organized a New Year's celebration that was characterized by hate speech targeted at the Montenegrin Orthodox Church and extreme nationalist propaganda. On this occasion, the Metropolitan Bishop of the Serbian Orthodox Church delivered a speech that could be interpreted as an open call for violence against people and institutions opposed to the idea of a Greater Serbia.
- The local authorities in Berane and priests from the local Serbian Orthodox Church encouraged a large group of citizens to forcibly prevent members of the local Montenegrin Orthodox Church from organizing a traditional public celebration on Christmas Eve. The group carried arms and was led by the local mayor.

Moreover, the Serbian Orthodox Church, which already occupied many Montenegrin Orthodox church buildings, made attempts to take control of additional ones. The Serbian Orthodox Church used the occasion of rebuilding premises that had previously belonged to the Montenegrin Orthodox Church to systematically destroy architectural features and religious ornaments in the typical Montenegrin style. In doing so, it caused irreparable damage to Montenegrin cultural heritage. The director of the state office for the protection of cultural and historical heritage, Cedomir Markovic, expressed concern about this development in the media and in talks with the Metropolitan Bishop of the Serbian Orthodox Church, without success. The government took no steps to prevent the destruction.

During 2002, the attitude of the authorities toward the country's Roman Catholic Church and the Muslim community improved somewhat, although these communities also continued to suffer discrimination in relation to the Serbian Orthodox Church.

- The St. Petka church, in Spicansko Field, close to Sutomore, is one of several churches in Montenegro that were jointly built by Orthodox and Roman Catholic Christians in the 15th century. Believers from these two faith communities shared the church over several centuries. However, in 1994, members of the local Serbian Orthodox Church forbade Catholics to use the church. As it was not possible to settle the matter by agreement, the Catholic Church initiated legal proceedings against the Serbian Orthodox Church. After eight years, the trial was finally concluded at the end of 2002, when the Higher Court in Podgorica ruled that the church legally belonged to both religious communities. After the Serbian Orthodox Church refused to accept this verdict, the Catholic Church initiated new proceedings to demand that effective measures be taken to implement the verdict.

Conscientious Objection

The Federal Constitution guaranteed the right to conscientious objection as well as the right to carry out compulsory military service without weapons. However, the law regulating military service restricted these rights, stipulating that they should only be recognized for young men summoned for the first time to report for compulsory military service. During 2002, a

considerable number of young men reported to the Montenegrin Helsinki Committee that they had been arbitrarily denied the right to conscientious objection.

Intolerance, Xenophobia, Racial Discrimination and Hate Speech

Several media outlets, including *Dan*, *Glas Crnogoraca*, and Radio Svetigora continued to spread hate speech. The federal television station YU info, which was controlled by the military and operated illegally, often broadcast programs that featured hate speech.

Moreover, hate speech intensified in the Montenegrin parliament, in particular after the informal Coalition for Yugoslavia/Reforms was formed and secured support from the Liberal Alliance in the spring. According to the Montenegrin Helsinki Committee, the speaker of the parliament, a member of the Liberal Alliance, used her position to allow the use of hate speech by deputies. She was replaced as speaker after the October elections.

Among the primary targets of hate speech were ethnic and religious minorities, particularly priests and members of the Montenegrin Orthodox Church, members of the Doclean Academy of Science and Arts, and independent intellectuals and NGOs, including the Montenegrin Helsinki Committee.

International Humanitarian Law

There was no progress in 2002 in terms of cooperation with the ICTY. While the federal authorities were primarily responsible for this issue, the Montenegrin authorities failed to do their part, particularly the Supreme Military Council and the Montenegrin President Milo Djukanovic, who participated in its work. While Montenegro showed more political will to cooperate with the ICTY than Serbia, readiness to cooperate was apparently of a theoretical rather than of a practical character.

According to unconfirmed media reports, some indicted war criminals resided at least occasionally in Montenegro, including Radovan Karadzic and Veselin Sljivancanin.

At the end of the year, the newspaper *Dan* revealed the identity of two protected witnesses from Montenegro, who had given evidence in the case against Slobodan Milosevic for crimes in Kosovo. The paper also published some protected documents of the ICTY that were related to the testimony of Former Montenegrin Foreign Minister Nikola Samardzic in the case against Milosevic for crimes committed in Croatia and in Bosnia and Herzegovina. The Montenegrin Helsinki Committee was concerned that these incidents of irresponsible reporting had a negative impact on the security of protected witnesses and their families as well as a chilling effect on other potential witnesses.

There was only one war crimes-related trial before the courts in Montenegro in 2002:

- The trial against Nebojsa Ranisavljevic continued for the sixth year. Ranisavljevic was tried on charges related to his involvement in the so-called Strpci case. In 1993, a group of 19 Muslims and one Croat, traveling by train from Bosnia and Herzegovina to Montenegro, were abducted and murdered in Strpci in Bosnia and Herzegovina, which at that time was controlled by Bosnian Serbs. In September 2002, Ranisavljevic was sentenced to 15 years in prison. The Montenegrin Helsinki Committee welcomed this

verdict, but criticized the fact that the authorities had failed to properly investigate the case and to bring to court all those involved in the case, including Dobrica Cosic, who was the president of FRY at the time when the crime occurred.

During the year, the FRY ratified the Rome statute of the International Criminal Court, but neither Montenegro nor Serbia passed any laws on its implementation.