

THE FEDERAL REPUBLIC OF YUGOSLAVIA

The period covered by this report saw dramatic political changes in the Federal Republic of Yugoslavia. President Slobodan Milosevic was ousted by a peaceful popular uprising after 13 years in power. Although he was at first not willing to accept the results of the September 24 elections, Milosevic was ultimately forced by popular pressure to step down. The newly elected President Kostunica established an interim government. He reinstated diplomatic relations with several western countries and his neighbours. The FRY was admitted to the UN and the OSCE. Reforms of the judiciary are underway in the Republics of Serbia and Montenegro. The UN is transferring greater power to the people of Kosovo and the province is on its way to greater self-rule.

The Federal Republic of Yugoslavia (FRY) is a constitutional republic that comprises the Republics of Serbia and the Republic of Montenegro and the two autonomous provinces Vojvodina and Kosovo. Serbia and Montenegro proclaimed the establishment of the FRY on 11 April 1992 and claimed to be the sole successor to the former Socialist Federal Republic of Yugoslavia.

On 27 April 1992, the Constitution of the FRY came into force. According to Articles 96 and 97 of the Constitution, the President of the Federal Republic is the head of state and cannot be from the same republic as the Prime Minister, who is the head of the government.

The Federal Assembly (*Savezna Skupstina*) consists of the Chamber of Citizens (*Vece Gradjana*) and the Chamber of Republics (*Vece Republika*). Deputies to the Chamber of Citizens represent the citizens of the Federal Republic, while deputies to the Chamber of Republics represent the member republic from which they were elected.

The period covered by this report saw dramatic changes in the FRY. Serbia's opposition united for the first time on 10 January 2000 with 16 anti-Milosevic parties calling for early elections and joint street protests.

On 6 July 2000 the Constitution was amended by the Milosevic-dominated federal parliament in order to allow Milosevic to seek two new four year terms of office through popular ballot. Previously, the president of Yugoslavia was elected by the legislature for only one term. The other amendment provided that the upper house of the legislature would be directly elected. The power to organise the elections was shifted from the two states Serbia and Montenegro to the Federal Government.

Milosevic announced the holding of federal and legislative elections on 24 September 2000. The political establishment of Montenegro boycotted the elections, complaining that its role in the federation had been diminished by the constitutional changes. In August 2000 15 Serbian opposition parties nominated the Democratic Opposition of Serbia (DOS) candidate Vojislav Kostunica, the leader of the Democratic Party of Serbia, as their joint candidate for the September elections. On 21 September 2000, boxes of completed ballot slips were discovered, which suggested attempts by the ruling regime to rig the vote.

The results of the voting on 24 September 2000 were unclear, with widely divergent outcomes reported by different sources. The turnout was at around 75 per cent, but due to the call to boycott the elections by the government of Montenegro, only 25 per cent of the registered voters of Montenegro participated. The Centre for Free Elections and Democracy gave the results as 58 per cent for Kostunica and 33 per cent for Milosevic. However, the Federal Election Committee, which was controlled by the government, announced that Milosevic had won 40.23 per cent and Kostunica had won 48.22 per cent. This result meant that a second round of voting would be necessary because none of the candidates had reached the 50 per cent necessary to avoid a runoff. Kostunica immediately rejected participating in a second round of voting and called the elections fraudulent. The OSCE commented in a preliminary statement on 24 September 2000 that “the elections (...) were fundamentally flawed.”

While Milosevic insisted on a second round of voting, pressure on him to accept defeat grew. The Serb Orthodox Church declared Kostunica President on 28 September 2000 and the military chief, Gen. Nebojsa Paskovic, declared that the military would not intervene. On 29 September 2000 Vjislav Seselj, leader of the Serbian Radical Party, a coalition party in the former government, offered his support to the opposition. The opposition called a general strike on 2 October 2000 to force Milosevic to accept his defeat. The protesters included over 20,000 miners and technicians from Serbia’s two largest coal mines, students in all major cities, who walked out of classes, and workers from all over the country, who joined the strike. On 4 October 2000 the Constitutional Court of Yugoslavia, which was allegedly politically manipulated, annulled the election results and declared that Milosevic was to complete his term until June 2001.

After Milosevic had failed to comply with an ultimatum issued by the opposition to step down by 3 p.m. on 5 October 2000, supporters of the opposition stormed the parliament building, took over the state television station and official news agency Tanjug and started negotiations with the security forces. The same evening Tanjug announced that Kostunica was the elected president. This news was welcomed by world leaders immediately. In a television address on 6 October 2000 Milosevic finally admitted defeat and congratulated Kostunica.

On 7 October 2000 Kostunica was formally sworn in as president. On 16 October 2000 the DOS and Milosevic’s Socialist Serbia (SPS) agreed on the formation of a transitional government which included the four main political parties and groupings. The new transitional Cabinet of the FRY was sworn in on 4 November 2000. The new Prime Minister of the FRY is Zoran Zizic of the Socialist People’s Party of Montenegro.

On 24 May 1999, the International Criminal Tribunal for the former Yugoslavia (ICTY) indicted Milosevic and four other senior officials and officers for war crimes and crimes against humanity committed by Yugoslav and Serbian troops under their command in Kosovo in early 1999. The Government of the FRY under Kostunica at first arrested Milosevic in a national corruption investigation, but later under the pressure of the international community, including donor countries, adopted a bill on cooperation with the ICTY. Although the Constitutional Court of the FRY had declared the bill unconstitutional, the Government of the FRY on 28 June 2001 finally respected the international obligations of the country and handed Milosevic over to the ICTY. The International Commission of Jurists (ICJ) issued a Press Release on the same day describing the handing over as a legal watershed. The ICJ stated that this “... marks the first time that the international community will hold a former head of state to account for war crimes and crimes against humanity. It sends an unequivocal signal that impunity for these gross violations of international law will not be tolerated, irrespective of the office of the perpetrator.” The ICJ also commented that the obligation under international law is absolute and that “(c)oncerns that the government side-stepped the objections of the Constitutional Court in transferring Milosevic to the Hague are misplaced,”

Republic of Serbia

The National Assembly of Serbia was dissolved awaiting early parliamentary elections. Elections for the legislature (National Assembly) of the Republic of Serbia were held on 23 December 2000. The Democratic Opposition of Serbia (DOS), an alliance of 18 parties and headed by Kostunica polled 64 per cent and thereby won 176 of the 250 seats in the Assembly of Serbia. The SPS (former party of Milosevic) polled only 14 per cent and thereby won only 37 seats. The OSCE commented that “(t)he election was conducted largely in line with accepted international standards for democratic elections.” The only matter of concern was the situation in Kosovo because some 900,000 Kosovar Albanians were wiped from the voting register. The DOS formed a new government in Serbia in February 2001.

Republic of Montenegro

The President of the Republic of Montenegro is Milo Djukanovic, who was elected in 1997 and heads a reform coalition that has been governing Montenegro since the 1998 parliamentary elections. The Constitution of 1992 grants equal status to the Republic of Montenegro and the Republic of Serbia. In reality, Serbia has dominated Montenegro politically and there has been a growing movement for independence. Serbia did not recognise the 1997 presidential elections and the 1998 parliamentary elections in Montenegro and excluded representatives of Montenegro’s elected majority party from federal decision-making bodies in 1998. Since then, Montenegro has not recognised the authority of the Federal Assembly or associated institutions.

Montenegro has its own currency, central bank, customs and diplomatic service, thereby enjoying a certain degree of de facto independence.

The amendment of the Constitution of the Federal Republic of Yugoslavia on 6 July 2000 violated the required legal procedures. The illegitimate changes reduced the role of the Republic of Montenegro even further and led to the boycott of the upcoming federal, presidential and legislative election. When Kostunica won the elections, the opinion of the international community, which had previously supported the democratic changes in Montenegro, changed and support for Montenegro’s drive for independence cooled.

The relationship between Serbia and Montenegro did not change considerably after the victory of President Kostunica. The ruling coalition became increasingly strained between those favouring compromise with Serbia and those striving for independence.

On 22 April 2001 legislative elections were held in Montenegro. President Djukanovic was seeking a clear majority for his pro-independence Democratic Party of Socialists (DPS) in order to mount a referendum later in the year to split from Serbia. However, the DPS-SDP “Victory belongs to Montenegro” coalition did not win a decisive majority. The coalition polled 42.04 per cent of the vote, while the pro-Yugoslav coalition of Predrag Bulatovic and his Socialist People’s Party (SNP) gained 40.56 per cent of the vote. In relative terms, the DPS-SDP coalition “Victory of Montenegro” won the election, but failed, however, to get an absolute majority of votes. The pro-independence parties consisting of the DPS, SDP, Liberal Alliance and the Albanian Parties represented in parliament, altogether concentrate 44 out of 77 seats in parliament. On 28 May 2001 the DPS signed a cooperation agreement with the Liberal Alliance, whereby the latter would support a DPS-SDP minority government. On 29 May 2001 President Djukanovic named the current Prime Minister, Filip Vujanovic, to head the new Government. Vujanovic had served in the post since February 1998.

The transfer of Milosevic to the UN International Criminal Tribunal for Former Yugoslavia (ICTY) has put a further strain in the relationship between the two Republics, because the representatives of Montenegro on the federal level opposed this move. However, it is not the ruling coalition on the republican level in Montenegro that opposed the cooperation with the ICTY. Due to the boycott of the federal elections by the political establishment of Montenegro in September 2000, the then (and now) opposition led by the SNP, who participated in the federal elections, won 19 out of 20 seats in the Chamber of Republics of the Yugoslav government. Thus, the SNP, which is an opposition party on the republican level, is a strong component of the federal government holding the seat of the Prime Minister.

Kosovo

The province of Kosovo, in the south of Serbia, with a mainly ethnic Albanian population, was given almost complete autonomy by the 1974 Constitution of the former Yugoslavia. In 1989 President Milosevic of Serbia reduced Kosovo to an administrative region of Serbia and the Albanian language and cultural institutions were suppressed. The Kosovo self government was dissolved by Serbia in 1991 after ethnic Albanian leaders had proclaimed an independent “Republic of Kosovo”.

In 1996 the Kosovo Liberation Army (KLA) emerged to fight for independence. An armed conflict between the Serbs and the Kosovo Albanians erupted in January 1999. The ethnic cleansing by Serb and Yugoslav forces that followed between January and June 1999 forced thousands of ethnic Albanians to flee. When no peace deal could be brokered in February 1999 at an international meeting in Rambouillet, NATO on 24 March 1999, began a campaign of daily air-strikes against military targets in the FRY, followed by an EU oil embargo, beginning on 30 April 1999. The NATO military campaign lasted until early June 1999.

UN Security Resolution 1244 established the UN Interim Administration Mission in Kosovo (UNMIK), whose mandate is to organise a civil administration, coordinate humanitarian assistance, promote democratisation and institution-building and restore the economy. On 10 June 1999, NATO deployed a peacekeeping force, K-FOR, in the province as the Yugoslav military withdrew from Kosovo in accordance with the Military Technical Agreement.

During the period covered by the report, Kosovo remained under the administration of UNMIK. In protest against the killing of Serb civilians by radical Kosovar Albanians, Serb leaders withdrew from the UNMIK on 4 June 2000 but returned later that month.

On 28 October 2000, the first democratic elections for 30 municipal assemblies were held in Kosovo in an effort to enhance local self-government. The Democratic League of Kosovo (LDK), headed by Ibrahim Rugova, polled 58 per cent of the vote. According to the OSCE, which ran the elections, the Democratic Party of Kosovo (PDK) polled 27 per cent and the Alliance for the Future of Kosovo (AAK) won just 8 per cent. In the end, the LDK gained control over 21 municipalities and the PDK over six. Since the PDK and the AAK are both parties that are headed by former KLA fighters, the result demonstrated minority for the nationalist hard-line parties. The overall participation by political parties and by voters was high, but the elections were generally boycotted by the Serb population, due to security concerns on their part. The election observers stated that the elections were held in accordance with international democratic standards and met the criteria for credible elections. The elected municipal assemblies commenced work in November 2000. Bernard Kouchner appointed members of three municipal assemblies with a Serb majority and they took their seats in December 2000.

On 27 November 2000 Bernard Kouchner announced his resignation as head of UNMIK. The Danish Defence Minister Hans Haækkerup succeeded him on 15 January 2001.

HUMAN RIGHTS BACKGROUND

Republic of Serbia

The human rights situation throughout the Federal Republic of Yugoslavia during the first seven months of the year 2000 was dominated by Milosevic's attempts to stay in power. Opposition politicians and opponents of the regime suffered harassment and prosecution. Vuk Draskovic, the leader of the Serbian Renewal Movement (SPO), was shot at on 16 June 2000. He claimed the assassination attempt was committed by Serbia's state security. The *Otpor* (Resistance), an opposition movement composed mainly of students and young persons, suffered a raid on its headquarters in Belgrade on 4 September 2000 as a consequence of their support for the opposition in their campaign for the upcoming elections. Opposition activists and members of *Otpor* were beaten by the Serb police on several occasions. Independent television and radio stations throughout the country that were controlled by the opposition were closed down or had their signals disrupted by the Yugoslav authorities. Authorities hindered the work of human rights defenders. In May 2000, financial inspectors accompanied by police investigated several NGOs under the pretence of looking at their finances, while in fact they were interrogating the activists and confiscating documents that did not deal with financial matters.

Republic of Montenegro

In the period before the election of President Kostunica, journalists, politicians and political opponents were prosecuted for openly criticising the Serbian regime. The military forces that in theory come under the control of both republics were controlled de facto by Serbia. Serbia imposed sanctions on Montenegro and the military forces stationed in Montenegro committed human rights violations on the citizens of Montenegro. For its part, the Government of Montenegro generally respects the human rights of its citizens. Nevertheless, there are reports of some arbitrary arrests and detentions by the Montenegrin police and Units of the Yugoslav Army. Furthermore, restrictions on freedom of speech and freedom of the press by federal and republic authorities in some areas were reported.

Kosovo

The human rights situation in Kosovo throughout the period covered by this report continued to be poor. It was marked by numerous violent incidents against the ethnic minorities of the province. The Serbs, Roma and Muslim Slavs were the most affected minority groups. Nevertheless, ethnic Albanians also continued to be the victims of attacks in areas with a significant Serb population, such as the Serb-dominated north of the divided city of Mitrovice. Many incidents of attacks on Albanians were politically motivated and committed by former KLA members on Albanians belonging to the moderate Democratic League of Kosovo (LDK). Mitrovice has been the scene of many violent clashes between Serbs, ethnic Albanians and the KFOR peacekeepers which attempted to keep them apart. The KFOR peacekeeping forces had to be reinforced several times.

INTERNATIONAL HUMAN RIGHTS MECHANISMS

International obligations

The FRY is party to the International Covenant on Civil and Political Rights and its Optional Protocol, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Elimination of All Forms of Discrimination against Women and the International Convention on the Elimination of All Forms of Racial Discrimination.

Commission on Human Rights

On 30 March 2001, President Kostunica was the first Yugoslavian President in nine years to appear before the Commission on Human Rights (CHR). He acknowledged the shortcomings of the previous government with regard to the independence of the judiciary and pledged to undertake reform of the judiciary immediately.

The 56th Commission on Human Rights in its Resolution 2000/26, adopted in April 2000, noted that “the situation in the Federal Republic of Yugoslavia (Serbia and Montenegro) remains a source of grave concern” and condemned “the continued repression of the independent media, political opposition and non-governmental organisations”. Furthermore the CHR urged the FRY in more than one paragraph of that resolution to cooperate fully with the International Criminal Tribunal for the Former Yugoslavia (ICTY).

In resolution 2001/12, the 57th CHR welcomed “the political change undertaken by the democratically elected Government of the Federal Republic of Yugoslavia, which shows the clear decision of the people to choose democracy, respect for human rights and fundamental freedoms and integration into the international community over dictatorship and isolation.”

Special Rapporteur

The mandate of Jiri Dienstbier, the Special Rapporteur on the situation of human rights in Bosnia and Herzegovina, the Republic of Croatia, and the Federal Republic of Yugoslavia, was renewed for another year by ECOSOC on 28 July 2000. The 57th CHR in resolution 2001/12 requested the appointment of a special representative with the mandate to examine the situation of human rights in Bosnia and Herzegovina and the FRY, thereby removing Croatia from the mandate.

In his report to the 57th CHR the Special Rapporteur stated that:

Freedom of movement within and between Serbia and Montenegro (excluding Kosovo) has improved and cases of violation of the right to personal security, unlawful detention, allegations of ill-treatment in custody, lack of due process and threats to freedom of expression, conscience and assembly appear to have declined, although serious cases continue to arise. (...) Nonetheless, deeply troubling human rights problems remain across the Federal Republic of Yugoslavia, many the result of the still-uncorrected abuses of the Milosevic years(...). In Serbia (excluding Kosovo) the cases of many individuals arrested and subject to trial for political views during the Milosevic years remain unresolved, and hundreds of Kosovar Albanian political prisoners and thousands of Serbs who resisted service or deserted the security forces remain in prison or under threat of

prosecution. (...) and the administration of justice remains mired in its dysfunctional, politicised past.

With regard to Kosovo Mr. Dienstbier noted in his report, that:

In Kosovo ... the functioning of the judiciary and prison systems remains far below acceptable international standards. ... As before, the Special Rapporteur expresses deep concern over the difficulty UNMIK has had in establishing a judiciary that functions in accordance with international standards governing fair trial. Most problematic have been trials involving ethnic minorities, particularly Serbs, where bias on the part of Kosovo Albanian judges and prosecutors has been evident, and trial procedures poor. UNMIK efforts to address the problem of bias – hiring international judges and prosecutors to handle proceedings involving Serb defendants – has foundered, as few international legal professionals have been recruited or are willing to remain for more than six months. In addition, UNMIK still has not adopted regulations incorporating basic due process protections into the applicable law in Kosovo. No habeas corpus right – the ability to challenge the lawfulness of arrest and continued detention – is currently available ...

European Union

Prior to the presidential, federal and legislative elections of 24 September 2000 the EU promised financial and trade concessions in case of Milosevic's defeat during the elections. On 9 October 2000 the EU lifted the oil embargo, flight ban and several financial and travel restrictions.

Membership in the UN, the OSCE and the Council of Europe

On 27 October the FRY applied for membership in the United Nations. The membership was formally restored on 1 November 2000, eight years after the General Assembly of the UN had decided that Serbia and Montenegro could not automatically retain the membership of former Yugoslavia. On 27 November 2000 the FRY was also admitted into the OSCE. The FRY has also entered into accession discussions with the Council of Europe.

THE JUDICIARY

The federal Constitution regulates the jurisdiction and the composition of the Federal Constitutional Court and the Federal Court. The constitutions and laws of the respective republics govern the remaining part of the judiciary system.

At the federal level, a Federal Court and Federal Constitutional Court exist to which certain Supreme Court decisions may be appealed. In other cases the Supreme Courts decisions are final. The Federal Constitutional Court rules on the constitutionality of laws and regulations and on the conformity of the Constitutions of the member republics with the Constitution of the Federal Republic of Yugoslavia. The court system at republic level consists of municipal, district and supreme courts. The republics are responsible for enforcing the decisions of the Federal Constitutional Court. A military court system also exists.

Republic of Serbia

The Courts of general jurisdiction in Serbia are the Municipal Courts (138), the District Courts (30) and one Supreme Court composed of 74 judges. There are also 16 Commercial Courts and one High Commercial Court.

Serbian judiciary under Milosevic

The judiciary under the Milosevic regime was far from independent. The executive had extensive control over the judiciary and blocked any legislative reform. Although the Constitution of the Republic of Serbia declared that the judiciary was independent in practice its judiciary was highly prone to political influence.

The campaign of intimidation against the Association of Judges of Serbia (the “Association”) demonstrates the obstacles confronted by judges seeking to create an independent judiciary. The Association was founded by Serbian judges in 1997 as a voluntary professional non-party and non-political association to improve the judicial system and the independence of the courts. The Association was denied its request to join the register of associations of citizens by the administrative authorities, and consequently was not able to obtain the status of a legal person. This denial was confirmed by a decision of the Supreme Court of Serbia of 17 February 1999 that in effect banned the work of the Association. Nevertheless, the Association continued its activities, such as drawing attention to the financial dependence of judges and the political pressure to which they were subject.

The former President of the Supreme Court of Serbia, Mr. Balso Govedarica, threatened members of the Association of Judges of Serbia with removal from office in October 1999 unless they revoked their membership in the Association. All judges were asked to declare their membership or non-membership in the Association at staff meetings, and those who admitted their membership were immediately dismissed. Over 40 proceedings for dismissal of judges and presidents of courts were instituted. The National Assembly of Serbia dismissed the President and two members of the Governing Board of the Association of Judges of Serbia without any legal procedure on 21 December 1999. These included: **Slobodan Vucetic**, judge of the Constitutional Court of Serbia, **Zoran Ivosevic**, judge of the Supreme Court, and **Bozo Prelevic**, judge of the Fifth Municipal Court in Belgrade. On 12 July 2000, the National Assembly dismissed 20 judges in the same manner, among them all remaining judges that were members of the Association. The direct reason allegedly being an open letter analysing the situation of the judiciary and condemning the influence of the executive over the judiciary written by 13 judges who were members of the Association on 17 June 2000. However, it is more likely that the dismissals were prompted by the judges’ participation in the Association and the regime’s efforts to ensure the loyalty of the judiciary in the election period

These measures were in violation of international norms pertaining to the independence of the judiciary, and more specifically of Principles 8 and 9 of the 1985 UN Basic Principles of the Independence of the Judiciary. These Principles guarantee, *inter alia*, the freedom of expression and the freedom of association of judges.

Among the judges dismissed in July 2000 were: **Leposova Karamarkovic**, judge of the Supreme Court of Serbia from 1991 - July 2000 (now President of the Serbian Supreme Court), **Vida Petrovic Skero**, judge of the District Court of Belgrade from 1995 - July 2000 (now President of the Belgrade District Court) and **Radmilla Dragicevic-Dicic**, judge of the District Court of Belgrade

from 1994 - July 2000 (now Deputy President of the Belgrade District Court). They are now Board members of the Association of Independent Judges of Serbia, which is currently reconstituting itself.

In a report submitted at a conference before the OSCE Office for Democratic Institutions and Human Rights the judges gave a detailed account of the shortcomings of the judiciary of Serbia under Milosevic. The report states that “(p)olitically significant cases or those in which the interest of individuals from the governing parties was involved were assigned to already chosen suitable judges” to guarantee the “right” outcome of a trial. The report further describes how “(f)requently, suitable judges were temporarily transferred to other courts, even to other towns, where they would deliver “correct” decisions under the instruction of the executive. In the past few years, high government officials would publicly declare an individual guilty even though no criminal proceedings had been initiated. The presumption of innocence was not respected. Furthermore, the executive would obstruct or constrain the enforcement of legitimate decisions delivered by a court.” The report also described how the executive controlled the financial autonomy of judges by keeping their salaries beneath a minimum standard. The court budget was part of the state budget and hence under complete control of the executive. The financial status of the judges encouraged corruption in the Serb judiciary. The ruling parties were involved in the corruption by granting loans and promotions to obedient judges. Another means of controlling the suitability of the judges was the process of the election and dismissal of judges. The judges were elected on political grounds. The dismissal of judges was in theory governed by the Courts Act. In reality this act was not implemented. The report summarises that “(a)t the end it came to the point where not one judge who was not loyal could be elected; moreover if the judge was disloyal he/she could be dismissed.”

Necessary steps for a reform of the judiciary - Improvements and shortcomings since the election of Kostunica

After 13 years under the regime of Milosevic, where the rule of law was generally not respected, it is not realistic to expect the instant reform of the judiciary of the Republic of Serbia. However, certain normative and personnel changes are pressing and immediate. Measures should be taken in this regard.

The OSCE, which has a Mission in the Federal Republic of Yugoslavia, is mandated, *inter alia*, to support the reform of the justice system. The OSCE held a workshop on 9 April 2001 to facilitate and promote the legal reform process by engaging in a dialogue with relevant Ministries, judges and prosecutors, as well as domestic NGOs and international organisations, with the objective of defining common goals.

Overall, workshop participants expressed the view that the judiciary is weak and de-moralised and hence ill-equipped to face the numerous challenges ahead, such as possible war crimes trials, corruption cases, complex cases of organised crime, restitution and compensation cases and new issues such as internet criminality. A legal framework providing for the full independence of the judiciary must be established as a precondition for addressing these issues.

One of the main problems remains the extremely low income of the judges and the resulting danger of corruption in the judicial system. The judicial budget remains part of the state budget and therefore the judges are still captive to decisions made at the political level. The salary of judges was increased by 30 % in December 2000 to a monthly income of 170.- DM (5,000 dinars) for a Municipal Court Judge, 200.- DM (6,000 dinars) for a Belgrade District Court judge and 270.- DM (8,000 dinars) for a Supreme Court judge. This salary range is beneath the price of a minimal consumer basket, valued at 320.- DM (9,600 dinars) in November 2000. The shortage of funds is not

only reflected in the low salaries; there is also a severe shortage with regard to the technical equipment of the judicial personnel and the physical working conditions. A lack in computers, fax, dictaphones and other vital equipment is acute.

Other issues that need to be tackled are the procedures for appointment and dismissal of judges, the way in which cases are assigned to individual judges, and the budgetary autonomy of the judiciary. The drafting of a law regarding these issues was underway by the Serbian Ministry of Justice at the time of writing.

Another main problem is the personnel composition of the judiciary. Several observers noticed the obedient mind-set of many judges as a long-standing problem. Some judges, who in the past abused laws and judicial authority and are currently handling cases which have political implications, have a tendency to please the new authorities, even at the expense of fair trials. There will have to be training of judges and judicial personnel, notably in the area of human rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms.

The prosecutors also suffered from political influence and the influence of the police on the conduct of investigations. The role of the investigative judge is also currently under scrutiny with voices calling for a more enhanced role of the prosecutor in the investigation. The procedure of appointment of prosecutors will have to be reviewed. Furthermore, prosecutors also lack sophisticated investigation equipment and have low salaries.

Republic of Montenegro

The Government of the Republic of Montenegro respects the constitutional provisions for an independent judiciary in practice.

With regard to the reform of the judiciary, the Republic of Montenegro is further advanced than the Republic of Serbia. However, the reform process is also not instantaneous and Montenegro currently faces problems distinct from those confronting Serbia and Kosovo.

There remain lengthy pre-trial periods and inefficiencies in the judiciary. There are procedural and institutional shortcomings, stemming from a variety of factors, that result in the “denial of justice”. As in Serbia, Montenegro had to choose between two options: whether to replace all the judges from the old regime or to keep most of them. Montenegro opted for the latter choice, but in order to assist the “old” judges in their application of contemporary legislation, judges are being trained in democracy and human rights. The OSCE is playing a very active role in this field and in the reform of the judiciary of Montenegro.

With the assistance of the OSCE, the adoption of several pieces of legislation is presently under consideration, *inter alia*, the Law on Courts, the new draft law on Petty Crimes (Misdemeanours), and the Law on Public Prosecutors. Preparations to reform the law on execution of criminal sanctions are also ongoing.

The Court structure

The organisation and jurisdiction of the courts of Montenegro are regulated by the Law on the Courts, passed in 1995, which provides for the separation of powers and the independence of the judiciary.

The court system of the Republic of Montenegro is divided into Basic Courts (15), Higher Courts (2), Commercial Courts and the Supreme Court. The jurisdiction of each of these Courts corresponds to its Serbian equivalent.

The new Law on Courts

The draft of the new Law on Courts had been finalised at the time of writing and some last opinions by a pool of experts, including among others the Council of Europe, ODIHR/OSCE and ABA/CEELI, had been forwarded to the Ministry of Justice for consideration and implementation into the draft. The law was expected to be presented to the parliament in the fall of 2001.

The main goal of the new law is to establish a more independent judiciary and to enable the beginning of fair trials within a reasonable time. The reforms envisaged include the introduction of an Appeal Court and Administrative Court (1st level and appeal courts), thereby improving the existing organisation of the courts. The Appeal Court would be the Court of Second Instance for criminal cases and commercial cases, while the Administrative Court would only deal with administrative cases. Another important change in the law is the independent budgeting of courts and the implementation of European standards, such as the right to a fair trial.

Working conditions for judges and lawyers

Due to the poor economic situation in general, judges, lawyers and prosecutors face problems similar to those of their counterparts in Serbia. Low salaries, poor technical equipment and often no computers or access to the internet reflect the general situation of the society in Montenegro.

Kosovo

According to UN Security Council Resolution 1244 (1999), UNMIK was to be composed of four pillars. The United Nations High Commissioner for Refugees (UNHCR) was the lead agency for humanitarian assistance. Since the emergency stage in Kosovo came to an end, this pillar had been phased out by the end of June 2000. The United Nations (UN) leads the civil administration, the Organisation for Security and Cooperation in Europe (OSCE) leads the democratisation and institution-building and the European Union (EU) covers reconstruction and economic development. The UN Security Council also set up the international military force KFOR (Kosovo Force).

The Special Representative of the UN Secretary-General (SRSG), Mr. Hans Haekkerup, is the head of UNMIK and the highest international civilian official in Kosovo. His role is to coordinate the work of the remaining three pillars and to assist the development of the political process designed to determine Kosovo's future status.

UNMIK completed setting up the Joint Interim Administrative Structure (JIAS) in February 2000 to achieve greater inclusion of Kosovars in the civil administration. The JIAS is headed by the Office of the SRSG. The highest-level consultative body of JIAS is the Kosovo Transitional Council (KTC), with 36 members reflecting the pluralistic ethnic and political range of Kosovo's society. The Interim Advisory Council (IAC) is the executive board of the JIAS and also serves as an advisory cabinet for the SRSGS. It makes recommendations for amendments to the applicable law and regulations, and proposes policy guidelines for the 20 administrative departments. Each of the 20 administrative departments are led by two Co-Heads, one Kosovar and one UNMIK international

staff. They provide social and administrative services. There is a similar structure at the local level, where 30 municipal councils were elected on 28 October 2000.

According to UN Security Council Resolution 1244 (1999) all legislative and executive powers, including the administration of the judiciary, are vested in UNMIK. The laws of the Federal Republic of Yugoslavia and the Republic of Serbia are respected by UNMIK as long as they do not conflict with internationally recognised human rights standards or regulations issued by the Special Representative.

The JIAS Administrative Department of Justice (DOJ) has been established and is responsible for the overall management of the judicial system. The Special Representative has the authority to appoint or dismiss any person in the interim administration, including the judiciary, and can issue regulations that will be in force until repealed by UNMIK or by the Kosovo Transitional Council.

Applicable Law in Kosovo

UNMIK Regulation No. 1999/1 of 10 June 1999 provides that the laws in force in Kosovo prior to 24 March 1999 should continue to apply in the province, insofar as they did not contravene internationally recognised human rights standards. This regulation was, however, amended by Regulations 1999/24 and 1999/25 that state that the applicable law in Kosovo will be those regulations promulgated by the Special Representative, including subsidiary rules, and the law in force in Kosovo on 22 March 1989. The reason behind these amendments is a sensitivity in applying Serbian criminal law which was used for the revocation of the autonomous status of Kosovo and the repression of the Kosovo Albanians.

Federal law is applicable in any situation where neither UNMIK regulations nor the law in force in Kosovo on 22 March 1989 can be applied. In criminal trials the defendant will have the benefit of the most favourable provisions of the laws in force in Kosovo between 22 March 1989 and the date of issuance of a new regulation. Legal actions taken under UNMIK Regulation 1999/1 will remain valid.

Judicial system in Kosovo

The judiciary in Kosovo failed to function after the end of the conflict, as almost all the Kosovo Serb judicial officials had left and the Kosovo Albanian judicial personnel did not return to Kosovo. Before the conflict the Kosovo judiciary consisted mainly of Serbian judges and prosecutors. During the Serb regime, 30 out of 756 judges and prosecutors were Kosovo Albanians.

The law applicable in Kosovo provides for an independent judiciary, but due to years of ethnic conflict and oppression by the regime of Milosevic true judicial independence has not been achieved yet. Some judges and prosecutors were the victims of pressure, in particular in cases involving ethnic disputes.

One of the main tasks after the war in 1999 was the reestablishment of the court system in Kosovo. The Supreme Court of Kosovo, which had been abolished in 1991, was re-established under the auspices of UNMIK. In the meantime 65 judicial organs have been re-established. UNMIK set up five district courts, 18 municipal courts, the Commercial Court, 13 offices of the Public Prosecutor, a number of misdemeanour courts, the Appeals Instance for Misdemeanours Courts and the district attorney offices.

Three decrees were issued with regard to the judicial system in Kosovo: one that established a Joint Advisory Council for judicial appointment, one that appointed the members of this council and one that appointed four prosecutors, two investigating judges and a three-judge panel approved by the Judicial Panel.

Regulation NO. 2000/38 of 30 June 2000 established the Ombudsperson Institution in Kosovo. On 12 July 2000 Bernard Kouchner appointed Mr. Marek Antoni Nowicki for this position. Section 3 of regulation NO. 2000/38 states that “The Ombudsperson shall have jurisdiction to receive and investigate complaints from any person or entity in Kosovo concerning human rights violations and actions constituting an abuse of authority by the interim civil administration or any emerging central or local institution. The Ombudsperson shall give particular priority to allegations of especially severe or systematic violations and those founded on discrimination.” This independent body began operating free of charge on 22 November 2000. Unfortunately, KFOR is not included in the bodies whose actions can be criticised.

The OSCE and the Council of Europe and other partners also established the Kosovo Judicial Institute (KIJL) to strengthen the independence of the judiciary and rule of law in Kosovo. This is a training institute for Kosovo judges and prosecutors. Training in international human rights law and other subjects relevant for the development of the new judiciary is provided by Kosovo and international experts. The KIJL is currently part of the OSCE Rule of Law Division, but the OSCE envisages handing the KIJL over to the local Kosovo administration and establishing a permanent and independent institute which will provide continuing legal education to current and future members of the Kosovo judiciary.

The Department of Human Rights and Rule of Law has developed the Legal System Monitoring Section (LSMS), an independent programme that monitors the functioning of the legal system in Kosovo. The LSMS releases periodic reports accessing different areas of the legal system of Kosovo. These reports have included issues such as, *inter alia*, the material needs of the emergency judicial system, the expiration of detention periods for current detainees, the treatment of minorities by the judicial system and access to effective counsel.

In its most recent report entitled “Kosovo: A Review Of The Criminal Justice System” the LSMS noted that “the Kosovo criminal justice system still falls short of international standards, despite recent improvements.” The report lists as UNMIK successes the establishment of a functioning judicial system in less than a year, the appointment of international judges and prosecutors to avoid bias, guidance provided by UNMIK to courts on applicable law including international human rights standards, and translation and interpretation support services.

However, the report also listed several shortcomings of the current system. With regard to the applicable law it notes that the various sources of law create confusion as to which law to apply and how to apply the law, which results in inconsistent approaches by courts and authorities. Furthermore, some provisions of the applicable law may conflict with human rights standards. With regard to the impartiality of courts, the report documents bias by the courts against Kosovo Serb defendants. Another main issue is detention of individuals in violation of international standards. There reportedly exists no legal framework to challenge illegal detentions.

State of the judiciary in Kosovo

In an update to his report to the 57th session of the CHR the Special Rapporteur on the situation of human rights in Bosnia and Herzegovina, the Republic of Croatia, and the Federal Republic of Yugoslavia noted that

One reason the violence (in Kosovo) persists unchecked is the continuing struggle UNMIK is having to establish the rule of law. The judiciary remains plagued by poorly trained judges - often biased or subject to intimidation - and ineffectual administration. For example, the judiciary has still not been able to redress the unfairness of trials of Serbs charged with war crimes. ... In the face of clear bias on the part of Albanian judges and prosecutors and intense pressure from United Nations and international human rights organs, UNMIK finally adopted a regulation authorising panels of majority-international judges and an international prosecutor in cases involving minorities. Unfortunately, however, the regulation has been applied arbitrarily and its application has been inexplicably denied in a number of controversial cases Longstanding efforts to bring judicial norms in Kosovo into conformity with international human rights standards have still not borne fruit. Serious problems remain with long pre-trial detention periods and the lack of habeas corpus right - the mechanism for challenging the legality of detention.

UNMIK constitutional framework

On 14 May 2001 UNMIK unveiled a constitutional framework for provisional self-government in Kosovo and announced elections to a legislative assembly for 17 November 2001. This assembly will have powers in health, education, and environment, but ultimate executive authority will remain with the head of UNMIK, Hans Haekkerup. He will have the power to dissolve parliament. UNMIK will also keep control over taxes and the budget of the province, the judiciary, and the Kosovo Protection Corp (the civilian successor of the KLA). It is envisaged that the legislative assembly will have 120 seats, 100 seats elected directly, ten reserved for the Serb minority and ten for the other ethnic groups (including Ashkali Roma, Egyptian Roma, Turkish, Bosniac and Gorani). The assembly will elect a President of the region, who will have a representative role and will in turn appoint a Prime Minister. The Prime Minister will then be in charge of nominating a Government. The Government will not comprise the ministry of defence, nor the ministry of foreign affairs.

Since Kosovo became a UN protectorate in 1999 this is the greatest step so far to transfer power from the international body to the people of Kosovo. It is the latest in a series of provisions set up by UN Resolution 1244 to provide autonomy for the province. Hans Haekkerup is reportedly of the opinion that the taking care of day-to-day problems by the citizens themselves will contribute to reducing violence in the province.

CASES

The judges that were dismissed by the National Assembly of Serbia on 12 July 2000 because of their activities in the Association of Judges of Serbia are: **Leposava Karamarkovic**, Supreme Court; **Jelisaveta Vasilic**, Superior Commercial Court; **Radmila Dragicovic-Dicic**, **Miroslav Todorovic**, **Ivan Bajazit**, **Dusan Slijepcevic**, **Neda Antonic**, **Goran Cavlina**, **Ravijojla Kastratovic** and **Vida Petrovic-Skero** of the Belgrade District Court; **Gordana Mihajlovic**, **Mirjana Pavlovic**, and **Sanja**

Lekic of the Second Municipal Court in Belgrade; **Vlasta Jankovic**, Fifth Municipal Court in Belgrade; President of the Municipal Court in Novi Sad **Djuro Pilipovic**; **Djordje Rankovic** and **Bosko Papovic** of the District Court in Pozarevac; and **Jovan Stanojevic**, District Public Prosecutor in Pozarevac.

Bosko Papovic {investigative judge of the Pozarevac District Court}: He was assigned the case involving charges against two *Otpor* members Momcilo Veljkovic, Radojko Lukovic and legal practitioner Nebojsa Sokolovic who were accused of attempted murder and assistance in attempted murder of Milosevic's son Marko Milosevic. He dismissed the charges due to lack of evidence but was ordered to bring charges against them. He resigned in protest and was formally relieved of duty by the Serbian Parliament.

Husnija Bitici {ethnic Albanian lawyer and member of the Belgrade Bar Association}: Mr. Bitici and his wife were threatened and seriously injured on 17 March 2000 by four masked men who entered their Belgrade apartment. Mr. Bitici was representing Kosovar Albanian prisoners that were held in detention in Serbia at the time this attack occurred, and this was allegedly the reason for the attack. On 3 May 2000 the UN Special Rapporteur on the Independence of the Judiciary sent a communication regarding Mr. Bitici. This incident is similar to the abduction of lawyer **Teke Bokshi** in December 1999 (see last year's edition of *Attacks on Justice*), who was also representing Kosovar detainees in Serbia.

Nebosja Simeunovic {investigative judge of the Belgrade District Court}: He went missing on 7 November 2000 and his body was found on 3 December 2000 on the right bank of the river Danube. The cause of his death has not yet been established; there are many speculations, ranging from suicide to murder by State Security Agents. Simeunovic had dealt with delicate investigations for the regime. The cases he was assigned included the investigation of political murders. The last case he was assigned was the investigation of the strike of 11 "Kolubara" miners. He had to establish beyond reasonable doubt that they committed sabotage and misused their right to strike. Furthermore, he had to establish that the two prominent DOS leaders, Nebosja Covic and Boris Tadic, assisted in committing that offence. When he refused to take the case he told friends that he received constant threats. He did not give anymore details fearing for the safety of his friends.