

# ATTACKS ON JUSTICE – SERBIA AND MONTENEGRO

## *Highlights*

**Serbia and Montenegro (the Federal Republic of Yugoslavia until February 2003) entered the process of democratic transition, the creation of a system based on the rule of law, much later than other former socialist countries. On 4 February 2003 the new state union of Serbia and Montenegro was proclaimed. Under the Constitutional Charter of the State Union of Serbia and Montenegro, there is only one instance of Serbia and Montenegro having a common judiciary – the Court of Serbia and Montenegro. Otherwise, each state – the Republic of Serbia and the Republic of Montenegro – has its own internal courts system. A set of important judicial reforms came into force on 1 March 2002 in the Republic of Serbia and in July 2002 amendments to these laws were made that violate the principle of separation of powers and the independence and impartiality of the judiciary. In Montenegro, several laws relating to the judiciary were passed or amended during 2003. On 19 March 2003, the National Assembly of the Republic of Serbia dismissed 35 judges from office, including seven Supreme Court judges, amid accusations that the judiciary had failed to take tougher measures in dealing with remnants of the former regime as well as in prosecuting organized crime. The legal system in Serbia and Montenegro is still characterized by a number of contradictory and inconsistent regulations, resulting in legal insecurity.**

## BACKGROUND

On March 2002 officials of the Republic of Serbia and the Republic of Montenegro signed a procedural agreement for the restructuring of relations between both states in Belgrade, in the presence of the high representative of the EU,. Disagreements between the followers of Yugoslav Federal President Kostunica and Serbian Prime Minister Zoran Djindjic in 2002 delayed political and judicial reforms and contributed to the continuing instability in the federal state before the 2003 creation of the new union: neither Serbia nor Montenegro were able to elect a new president in this year. In 2002 executive, legislative or judicial branches did not succeed in functioning with any degree of normality in either state.

On 4 February 2003 the new State Union of Serbia and Montenegro was proclaimed through the adoption of its Constitutional Charter by the Yugoslav Assembly. The judicial system in Serbia and Montenegro is based on the state union's constitutional and legal orders. The member states' judicial systems differ to a great extent. This trend gained momentum in the latter half of the 1990s when the Montenegrin political authorities openly distanced themselves from Milosevic's regime in Serbia and when the Montenegrin legal system and judiciary began increasingly to resemble the legal system and judiciary of an

independent state.

The state union is based on the equality of the two member states, the Republic of Montenegro and the Republic of Serbia, which includes the Autonomous Province of Vojvodina and the Autonomous Province of Kosovo and Metohija, the latter currently under the international administration of UNMIK and OSCE in accordance with UN *Security Council Resolution 1244*. An agreement was reached to permit a referendum on full independence in each state member in three years' time. The Constitutional Charter established the structure of union-level institutions: a unicameral Parliament (or assembly) which was constituted on 3 March 2003, a President (Svetozar Marovic), who was elected for a four-year term on 7 March 2003, a five-minister Council of Ministers which was formed on 12 March 2003 for a four-year mandate, and the Court of Serbia and Montenegro, which is vested with judicial power. In addition to the joint parliament, the Council of Ministers, the President and the Court, each member state has its own parliament, president and government.

Following the assassination in March 2003 of the Serbian Prime Minister and Speaker of the Serbian Parliament, Djindjic, Nataša Mičić, the acting President of Serbia, imposed a state of emergency in Serbia on 12 March. In the December 2003 parliamentary elections in the member state of Serbia, the Serbian Radical Party, which had supported Milosevic's war campaigns, won 81 seats in the 250-seat Parliament. On 3 March 2004 Vojislav Kostunica was appointed Prime Minister of the Republic of Serbia by its General Assembly. The pro-Western candidate of the Democratic Party, Boris Taxiways, was elected President of the state of Serbia in June 2004.

In the state of Montenegro, parliamentary elections were held in October 2002, and the moderates, with a long-term goal of independence, won an absolute majority of seats. Milo Djukanović became Prime Minister of the Republic of Montenegro and left his position of President. Filip Vujanovic, former president of the General Assembly of the Montenegrin Parliament, was then elected the new president.

On 3 April 2003, Serbia and Montenegro were admitted to the Council of Europe, and on 26 December 2003, they ratified the *European Convention for the Protection of Human Rights and Fundamental Freedoms*.

Former Federal Republic of Yugoslavia (FRY) President Slobodan Milosevic was arrested and extradited to the International Criminal Tribunal for Former Yugoslavia (ICTY) on 28 June 2001. The indictment against him was brought for crimes committed in Croatia, Bosnia and Herzegovina and Kosovo.

### *Kosovo*

In 2003, public institutions in Kosovo, which were governed by the UN Interim Administration Mission in Kosovo (UNMIK) since June 1999, under the authority of UN Security Council Resolution 1244, were further stabilized. All the authority of UNMIK that was not characterized as "reserved powers" was transferred to domestic Kosovar institutions. The vital institutions of parliament, government

and the judiciary were functioning in 2003. However, an outbreak of large-scale ethnic violence in March 2004 proved the fragility of post-war foundations and the necessity to decide on the final political status of Kosovo. Its future status remains an unresolved issue with Kosovo Albanians supporting and Serbian officials opposing Kosovo independence. On 26 March 2004 the Serbian Parliament adopted a resolution on Kosovo-Metohija, obliging the Serbian government to prepare a programme to resolve problems in the province.

Kosovo Assembly elections, organized by the OSCE Mission in Kosovo (OMIK) were held on 23 October 2004, providing an opportunity to vote for representatives in Kosovo's provisional institutions. The elections were regarded by the Secretary-General of the UN, Kofi Annan, as a significant step in the consolidation of Kosovo's representative and democratic provisional institutions of self-government and Kosovo's progress towards normalization and stability. Of the main Kosovo Albanian parties, the LDK won 45.4 per cent, the PDK 28.9 per cent and the AAK 8.4 per cent of the votes. The Serbian Prime Minister stressed the gravity of the outcomes as Kosovo's Serbians boycotted the election, protesting against the unbearable living conditions in multiethnic Kosovo. The Contact Group (composed of the US, UK, France, Germany, Italy and Russia) agreed to review the situation around mid-2005.

## THE JUDICIARY

Under the [Constitutional Charter of the State Union of Serbia and Montenegro](#) there is only one common judicial institution – the Court of Serbia and Montenegro. The member states (the Republic of Serbia and the Republic of Montenegro) have their own internal court systems. The Republic of Serbia has courts of general jurisdiction and specialized courts (see *Law on Organization of Courts*, Official Gazette of the Republic of Serbia, Nos. 63/01, 42/02, 17/03, 27/03 and 29/04), among which are 187 commercial, municipal and district courts and the Supreme Court of Serbia with about 2,500 judges in total. The Republic of Montenegro has courts of general jurisdiction and specialized commercial and administrative courts (see *Montenegrin Law on Courts*, Official Gazette of the Republic of Montenegro, No. 5/02).

### Judicial and legal reform

#### a) State Union of Serbia and Montenegro

##### *Military courts*

The *Law on the Implementation of the Constitutional Charter of the State Union of Serbia and Montenegro* envisaged that the military judiciary would continue to operate until the adoption of a law delegating its jurisdiction to member states' civilian judicial systems. The *Law on the Delegation of Jurisdiction of the Military Judiciary to the Member States* was passed in the Assembly of Serbia and Montenegro in November 2004. This law stipulates transfer of state union military jurisdiction to each republic. Prior to the adoption of this law, Montenegro adopted in August 2004 the *Law on the Takeover of the Jurisdiction of the*

*Military Judiciary* which prescribes that the Montenegrin civilian judiciary take over military judicial competencies regarding citizens of Montenegro. On 27 December 2004, the Serbian assembly adopted the *Act on the Takeover of the Jurisdiction of the Military Courts, Military Prosecutors and Military Public Attorney's Offices*, which stipulates transferring of the military jurisdiction to the corresponding civilian judiciary institutions.

## **b) Republic of Serbia**

A set of important judicial reforms was launched in the Republic of Serbia in November 2001 and came into force on 1 March 2002. New laws relating to the judiciary such as the *Law on the Organizational Structure of Courts*, the *Law on Judges* and the *High Judicial Council Law* (which had come into force on 1 January 2002) were passed by the Serbian Parliament and for the first time incorporated international standards enhancing judicial independence.

In July 2002 amendments to the *Law on Judges* and *High Judicial Council Law* were made, fundamentally violating the principle of separation of powers and the independence and impartiality of the judiciary. These amendments changed the procedure for election of judges, as well as the composition of the High Judicial Council (see below); presidents of courts were deprived of the right to judge during their presidency. The amendments established that henceforth, the High Judicial Council would nominate candidates as judges, prosecutors and deputies of public prosecutors and propose them to the Parliament for election, while the presidents of courts are directly nominated by the competent Parliament committee (see Article 66 (2), *Law on Judges*). Before the July 2002 amendments, candidates for presidents of courts were nominated by the High Judicial Council. Prior to nomination, the Minister of Justice collected information and opinions on all proposed candidates for presidents of courts and submitted them to the Judicial Committee of the Serbian National Assembly together with his opinion.

The question of the constitutionality of these provisions was initiated ex officio in July 2002 by the Serbian Supreme Court. By its decision of 19 September 2002 the Constitutional Court of Serbia barred the application of all these unconstitutional amendments (see *Official Gazette of the Republic of Serbia*, No. 60/02). The National Assembly amended the laws to remove the controversial provisions in April 2003 and again in April 2004 (*Official Gazette of the Republic of Serbia*, Nos. 27/03 and 11/04).

Further amendments to the *Law on Judges* were made in April 2003. They eliminate the unconstitutional provision under which the members of the High Personnel Council (see below) were nominated by the High Judicial Council and appointed by the National Assembly. Supreme Court judges now become High Personnel Council members according to a schedule set by the High Personnel Council Rules of Procedure. The High Personnel Council comprises an approximately equal number of judges of each Supreme Court division.

The *High Judicial Council Law* was amended again in April 2004 (*Official Gazette of the Republic of Serbia*, No. 44/04). Under these amendments, the

National Assembly of the Republic of Serbia appoints the judges nominated by the High Judicial Council.

Serbia has been late in implementing this set of judicial reforms and in reorganizing its judicial system. The initial deadline for establishing the new courts of appeal as new courts of general jurisdiction and an administrative court was set as 1 October 2003, and then extended to 1 January 2004. Amendments to the *Law on Organization of Courts* yet again moved its deadline for establishing the courts of appeal and an administrative court to 1 January 2007 due to organizational problems.

In 2004, the Serbian Assembly passed numerous laws regulating the economy and finance, but the drafting and adoption of laws reforming the judiciary, and other areas where national legislation must conform with international human rights standards, were slowed down. Reportedly, the lack of political will and the inefficiency of institutions are the main reasons for this.

### *The High Judicial Council*

Serbia's High Judicial Council (HJC), together with the High Personnel Council (HPC), was established at the end of 2001 in order to promote judicial reform, increase judicial efficiency and improve the integrity of judges. It is an independent institution, submitting proposals to the National Assembly on judicial salaries and identifying and nominating candidates for judicial appointment.

Many of its functions were limited in 2002 and 2003. Under the November 2001 *High Judicial Council Law*, the HJC consisted of five permanent and eight non-permanent members (six judges and two public prosecutors). With the amendments to the *High Judicial Council Law* of July 2002 the HJC consisted of five permanent and ten non-permanent members (six judges and four public prosecutors). This reduced the influence of judges in the High Judicial Council's decision-making process. On 11 April 2003 the *High Judicial Council Law* was again amended and the HJC had six non-permanent members (all of them judges). On 22 April 2004, the National Assembly passed new amendments to the *High Judicial Council Law* to re-establish the same original HJC composition set out under the November 2001 *High Judicial Council Law*.

### *Special panels*

The *Law on Powers of State Bodies in Suppressing Organized Crime* (July 2002) and the *Law on the Organization and Competencies of Government Authorities in Prosecuting Perpetrators of War Crimes* (July 2003) both established special panels on organized crime and war crimes – [the War Crimes Department of the Belgrade District Court](#) and the War Crimes Chamber. These panels have jurisdiction over alleged violations of the *Criminal Code* in addition to crimes against humanity. Judges are appointed to the Special Department of the District Court and the War Crimes Chamber with their consent by the President of the District Court, from among the ranks of district court judges, for a period of two and four years respectively.

### *Council for the Reform of the Judiciary*

To facilitate cooperation in the area of judicial reform, the government of Serbia created an expert advisory group in January 2002, the Council for the Reform of the Judiciary, which is comprised of judges, prosecutors, legal scholars and public officials. In April 2004, the Serbian Government established a Commission for Judicial Reform. On 9 October 2004 a Strategy for Judicial Reform was adopted. This strategy includes reforms of constitutional law, organizational law, procedural law and the judicial profession. The period of implementation has not been established.

### *Judicial training organizations*

The establishment in September 2002 of the Judges' Association of Serbia and the Judicial Centre for Professional Education and Advanced Training (JTC) has improved the judiciary's institutional independence and its effectiveness. Since the JTC began operating from its Belgrade headquarters, it has provided numerous training courses in order to improve court administration and professional qualification.

### *Rehabilitation of the Constitutional Court*

After a period of inactivity, the Constitutional Court of Serbia is hearing cases and issuing decisions on the constitutionality of legislation and official acts. The court has demonstrated its independence from other branches of government by rendering decisions in several high-profile matters. The court remained moribund during the first six months of 2002, largely because it lacked an adequate number of judges. With a full complement of judges, the Constitutional Court is once again hearing cases and is in the process of rehabilitating itself as a credible and independent institution supporting the rule of law in Serbia.

### *Ombudsman*

The institution of ombudsman does not exist at the state level in the Republic of Serbia yet. A draft Ombudsman Law was written in 2005 and awaits adoption by the National Assembly.

### **c) The Autonomous Province of Kosovo**

Based on the Constitutional Framework for Provisional Self-Government in Kosovo, adopted by the Special Representative of the UN Secretary-General on 15 May 2001, the Administrative Department of Justice remained under the direct authority of the UNMIK head as one of the "reserved powers". The Special Representative of the UN Secretary-General (SRSG) in 2004 delegated more of UNMIK's powers to local authorities and transferred responsibilities for three additional ministries. However, the judiciary, police and legislation remain exclusively within [UNMIK's jurisdiction](#).

In July 2004, the Kosovo Assembly passed a package of 38 amendments to the Constitutional Framework for Kosovo. The amendments include, *inter alia*, the

renaming of the Constitutional Framework for Provisional Self-Government in Kosovo as the Provisional Constitution of Kosovo, the founding of a new Constitutional Court of Kosovo, the extension of Assembly deputies' terms in office from three to four years after elections (parliamentary elections were held on 23 October 2004) and creating conditions for a referendum on the independence of Kosovo.

The Kosovo Assembly and UNMIK passed numerous laws and other regulations of relevance for the judiciary. The [\*Provisional Criminal Code\*](#) and the [\*Provisional Criminal Procedure Code of Kosovo\*](#), which were adopted in summer 2003 by the interim institutions of Kosovo, came into force on 6 April 2004. The adoption of these codes represented an important milestone in the further development of Kosovo's judicial system, as they were fully in line with European and international human rights standards. A [\*Juvenile Justice Code\*](#) came into force on 20 April 2004. The [\*Law on Execution of Penal Sanctions\*](#) was adopted in November 2004 and came into a force on 19 February 2005.

#### **d) The Autonomous Province of Vojvodina**

The Serbian Parliament adopted in 2002 the *Act Establishing Particular Jurisdiction of the Autonomous Province (AP) of Vojvodina* (Official Gazette of the Republic of Serbia, No. 6/02). AP Vojvodina's judiciary does not enjoy any special autonomy, and its courts are dependent upon courts in Serbia. Vojvodina introduced in 2004 the institution of Ombudsman, as have some local governments in the Republic of Serbia.

#### **e) Republic of Montenegro**

Montenegro launched the transition of its legal and judicial systems independently from Serbia in the late 1990s and has a several-year advantage over Serbia in many segments of institutional reform. During 2003 several laws relating to the judiciary were newly passed or amended, including the *Law on Courts*, the *Law on the State Prosecutor*, the *Enforcement of Criminal Sanctions Act*, the *Conflict of Interest Act*, the *Ombudsman Act*, the *Act on the Takeover of the Jurisdictions of the Military Courts and Military Prosecutors*, the *Code of Criminal Procedure* and the *Criminal Code*. These laws represented a positive step forward, but still did not fully comply with international standards: for instance, war propaganda, hate speech, racist and anti-Semitic propaganda were not included in the list of crimes. In June 2003, Montenegro's Parliament abolished the death penalty.

The *Montenegrin Law on Courts* adopted on 31 January 2002 (Official Gazette of the Republic of Montenegro, No. 5/02) to regulate the judiciary specifies that professional judges and lay judges are appointed and dismissed by the Assembly of Montenegro. However, the Montenegrin Judicial Council plays the main role in the nomination process for judges, proposing which judges should be appointed and which should be dismissed. The Assembly appoints ten council members: six from the ranks of judges, two from the ranks of law professors and two from the ranks of eminent legal experts. The President of the Supreme Court of Montenegro chairs the Council. The *Montenegrin Law on Courts* also provided for the creation of appellate and administrative courts by 1 July 2004. Appellate

and administrative courts are new institutions in the Montenegrin courts system. However, these courts had not yet been established by the end of 2004.

### *Ombudsman*

The Parliament of Montenegro passed an *Act on the Protection of Human Rights and Freedoms* (<http://www.stopvaw.org/20Jan20057.html>) on 8 July 2003, and an ombudsman's office – the [Office of the Protector of Human Rights and Freedoms](#) – opened on 10 December 2003.

### **Independence**

Judges in both member states enjoy constitutional guarantees of security of tenure (see Articles 101 and 126 of the [Serbian Constitution](#); Article 103 of the [Montenegrin Constitution](#)).

#### **a) State Union of Serbia and Montenegro**

The Court of Serbia and Montenegro started to work in 2005. Judges of the Court of Serbia and Montenegro are appointed by the Council of Ministers of the State Union of Serbia and Montenegro for a six-year term and may not be transferred without their consent.

They may be dismissed if they are convicted and given a prison sentence of at least six months or if they are permanently incapacitated from performing judicial duties. The Court of Serbia and Montenegro decides on the termination of tenure. No cases of pressure or other interference have been reported.

#### **b) Republic of Serbia**

In 2002, serious disagreements broke out between representatives of the judiciary and of the government. The reformist government, headed by the late Serbian Prime Minister Zoran Djindjic, was extremely dissatisfied with the state of affairs in the judiciary, court inefficiency and with the fact that many of the judges, previously very close to the Milosevic regime and appointed on political grounds, had remained in office. However, the legislative measures – amendments in 2002 and 2003 to the *Law on Judges* and to the *High Judicial Council Law*, as well as the adoption in May 2003 of the *Responsibility for Human Rights Violations Act* ([Lustration Act](#)), undertaken to rectify the situation – were reportedly unsystematic and ineffective. As noted above, the Constitutional Court of Serbia declared most of the disputed amendments unconstitutional (see Official Gazette of the Republic of Serbia, Nos. 60/02, 27/03).

In the last years (1998–2000) of the Milosevic regime all judges and prosecutors were appointed under direct political dictate. Nominees for judicial and prosecution offices underwent party vetting and tests of “loyalty” to the ruling parties. The post-October 2000 the DOS government failed during its mandate from 2001 to 2003 to create any efficient disciplinary mechanism for establishing the responsibility of certain judges and prosecutors who had been “politically”



appointed and who had followed the government's dictate in trying, initiating or obstructing court proceedings.

The new March 2004 the ruling coalition in the Republic of Serbia (see, [Background](#)) openly reversed the results of the previous government's purge of those in the judicial system whom it believed were close to the earlier political leadership. The Council of Europe criticized the drafting and adoption of amendments to laws regulating the status of the judiciary (*Law on Judges, High Judicial Council Law*), mostly because of a lack of prior public debate (see, "Serbia and Montenegro: Compliance with Obligation and Commitments and Implementation of the Post-accession Co-operation Programme – Fourth Report", February – April 2004, [SG/Inf\(2004\)14](#), 30 April 2004)

### *Security of tenure*

The 2001 *Serbian Law on Judges* (see Official Gazette of the Republic of Serbia, Nos. 63/01 and 42/02) retains the possibility of transferring or reassigning judges to another court but improves their position in these situations compared to the previous 1991 *Courts Act* (see Official Gazette of the Republic of Serbia, Nos. 46/91, 60/91, 18/92, 71/92, 63/01). Decisions on reassignment are taken by the President of the Supreme Court and those on transfer by the High Judicial Council. The improvement over the 1991 *Courts Act* is that a decision to this effect may be taken only when the judge concerned has consented in writing.

The *Law on Judges*, adopted in November 2001 prescribed that procedures for the dismissal of judges could be initiated only by a court president or by the president of a higher court. However, the July 2002 amendments extended this prerogative to the Minister of Justice. The Constitutional Court found both of these provisions to be unconstitutional in a February 2003 decision (Official Gazette of the Republic of Serbia, No. 27/03). Currently, the procedure for the dismissal of a judge may be initiated by the president of the court, the president of the higher instance court or the President of the Serbian Supreme Court (Article 56, *Serbian Law on Judges*, Official Gazette of the Republic of Serbia, Nos. 63/01, 42/02, 17/03, 27/03, 29/04 and 44/04). The High Personnel Council, comprising nine Serbian Supreme Court judges, establishes whether there is cause to dismiss a judge. Judges may lodge complaints with the High Personnel Council when they consider that their rights have been infringed and when no other remedy is available. These complaints are considered by the Grand Chamber of the Serbian Supreme Court, which must decide on them within eight days and notify the president of the respective court, the president of the court immediately superior and the President of the Serbian Supreme Court, of its decisions. Judges have a right to appeal to the Constitutional Court of Serbia.

In March 2004, the Constitutional Court of Serbia declared unconstitutional the provision of the *Law on Judges* prescribing that court presidents are nominated and dismissed on the motion of the Judicial Administration Council. The members of this Council were the Chairman of the Judiciary Parliamentary Committee, the Justice Minister, the President of the Supreme Court of Serbia and four members appointed by the Serbian Assembly. The Serbian Assembly amended the *Law on Judges* on 22 April 2004 (Official Gazette of the Republic of Serbia, No. 44/04)

and changed Article 70 of the law. Under that amendment a court president shall be appointed and dismissed using the same procedure as applied to other judges.

### *Corruption*

Corruption is a very serious problem in the Republic of Serbia. Some Serbian judges have reported that although there is judicial corruption, public perception as to the extent of it is exaggerated. In [July 2004](#), only 14 per cent of Serbian citizens claimed they trusted national judicial institutions. Judicial wages in the Republic of Serbia were increased in the beginning of 2002. The judges are, however, dissatisfied with their salaries, which could be a source of corruption. The judges in the lowest (municipal) courts in Serbia currently earn around 400 Euros a month, which is twice the average monthly income in Serbia. In July 2005, amendments to the *Law on Judges* brought a slight increase in judicial salaries.

### **c. The Autonomous Province of Kosovo**

#### *Independence of the judiciary*

The regular court system in Kosovo consists of 25 municipal courts, five district courts, a Commercial District Court and the Supreme Court. The Constitutional Framework provides for the independence of the Kosovar judiciary. In practice, however, the judiciary have failed to be immune from bias, outside pressure, bribery or intimidation, especially in inter-ethnic cases. Judges in Kosovo have sometimes been victims of violence. The physical security of judges and court buildings remains a serious problem. For example, in January 2004 the court building in Northern Mitrovica was partially burned. In August 2002, the court building in Vitina was attacked. The Kosovo judiciary's difficulties are compounded by inadequate legal provisions regulating the organization of courts and court administration. There is also no standard judicial appointment practice and a lack of transparency in the procedure for the appointment of judges.

There is a shortage of judges and despite the fact that the judiciary is multi-ethnic, other judicial personnel remain overwhelmingly Albanian with minorities insufficiently represented within the judicial structure. In addition, some members of judicial personnel have been vulnerable to intimidation and political influence, ethnic bias and bribery. Judicial salaries are extremely low and are a potential ground for corruption.

Court proceedings are often marred by the inconsistent application of relevant laws, with many cases pending since 2001, but processing efficiency reportedly improved in 2003. Legal proceedings are slow because there is a shortage both of international judges and prosecutors and of qualified local personnel. Furthermore, intimidation of witnesses is quite common. The problem of impunity is still prevalent in Kosovo. The general atmosphere of fear that still pervades Kosovo means that many witnesses often change their testimony during trials or even withdraw it completely.

The court administration is still subordinated to the executive branch. The judiciary has only formal input into the court staff selection process. The Hiring Commission, the body with jurisdiction for staff selection, has five members and only one or two of them are judges from district courts.

#### *International judicial personnel*

During 2004, in addition to domestic personnel, there were 17 international judges and 10 international prosecutors managed by the UNMIK Department of Justice who were handling primarily inter-ethnic and other major and highly sensitive cases such as war crimes and organized crime. The SRSG was authorized to assign international judges and prosecutors to any cases in which there was reasonable doubt of impartiality or potential intimidation. International judges and prosecutors were dispatched in order to enhance the level of competence and efficiency of the judiciary, to avoid and/or remedy potential bias and the partiality of the judiciary and to provide the necessary experience of a modern judiciary. Their number, however, was still too small for the challenges faced by the Kosovar community.

Local judges are said to feel less secure than their international counterparts. They also feel constant pressure from the international community and constant public attention as they have to carry out their duties in a confrontational society. Reportedly, they do not have the support needed to develop into a qualified core of professionals.

#### *Parallel Belgrade-run judicial system*

Serious attempts to create an integrated judicial system in Kosovo began in 2002, and on 9 July 2002, after lengthy negotiations, the Serbian government and UNMIK signed a joint declaration on the recruitment of judges and prosecutors of Serb ethnicity into the multi-ethnic justice system in Kosovo. The main task of the Judicial Integration Section, set up in 2002, has been the unification of the judicial system, but so far it has not been able to achieve its aims.

A parallel judiciary is still operating in parts of Kosovo that are effectively under the control of the Serb community. This system is still active notwithstanding the agreements that have been signed, and works in tacit coexistence with UNMIK despite the fact that its existence contravenes UNMIK provisions. Serb judges and judicial personnel generally rejected jobs within the Kosovar judicial system and have continued to function within the shadow Belgrade-run judicial system in Serb-controlled parts of Kosovo. This shadow system has been integrated in the overall Serbian judiciary paid by the Serbian Ministry of Justice (See, [Report of the International Helsinki Federation for Human Rights](#)).

#### **d. Republic of Montenegro**

Judges of the Montenegrin Constitutional Court are appointed for nine-year terms and may not be transferred without their consent. Montenegro faces specific problems and shortcomings in the judiciary, which is not fully independent yet from the executive or able to resist its influence. Ongoing political influence leads

to a perception that judges and prosecutors do not respect their profession and see their role as to protect the authorities. The Montenegrin judiciary faces the problem of cases implicating state officials (see [Cases](#) below) as well as impunity for unclarified and untried criminal offences committed in the past (during the "Yugoslav wars").

One major problem has been the unsatisfactory application of laws in the field of the judiciary, in particular the implementation of the 2002 *Law on Courts*. There is legislation to establish a special budget for the courts. Current salaries for judges and their court staff are insufficient to attract or retain qualified judges. The system of providing housing to judges and other civil servants presents a serious threat to the independence of the judiciary and paves the way for the outright corruption of judges by the administration. In December 2004 the Council of Europe expressed concern over the manner in which judges are selected and appointed in the Republic of Montenegro (see Sixth CoE Report, para. 47, September–November 2004, [SG/Inf-\(2004\)33](#), 16 December 2004).

## **Cases**

### **a) Republic of Serbia**

#### *Mass dismissal of judges*

On 19 March 2003, the National Assembly of the Republic of Serbia dismissed 35 judges from office, including seven Supreme Court judges, amid accusations that the judiciary had failed to take tougher measures in dealing with the remnants of the former regime as well as in prosecuting organized crime. The National Assembly's decision to purge the judiciary came following a recommendation of the Ministry of Justice and a proposal by the Judiciary Committee of the National Assembly justifying the move on the grounds that all the judges had reached the mandatory retirement age of 65. The Minister of Justice, Vladan Batić, declared that the measure was due to the "tardiness of judges". The President of the Administrative Committee of the Serbian Parliament asked on 19 March 2003 for the resignation of the President of the Supreme Court, Leposava Karamarković, who resigned on 20 March, stressing that she was unable to do her job because of the massive political and media pressure on her. Following the February 2003 Constitutional Court decision (see above), the legal basis for action in this area became uncertain, thereby allowing the Judiciary Committee to assert itself and initiate dismissal proceedings in the place of the High Personnel Council. Reportedly, these mass dismissals of March 2003 were actually aimed at removing independent-minded judges from office in addition to dealing with incompetent judges and those considered to have compromised their integrity during the Milosevic regime. One of those judges dismissed by the National Assembly, for example, had helped establish the Judges' Association of Serbia in 1997 and was removed from office by the Milosevic regime in 1999, only to be reappointed several years later, in 2001 by the incoming DOS-majority-controlled National Assembly. This judge is considered to be one of the more independent-minded members of the Serbian judiciary. The ICJ expressed its concern about the arbitrary dismissal of judges and cautioned the government of Serbia to respect proper procedures regarding the judiciary in an [open letter of 16 April 2003](#). The

National Assembly of the Republic of Serbia dismissed 10 other judges and 18 prosecutors in July 2004.

#### *Executive pressure over the judiciary*

The long-standing conflict between the executive and the judiciary broke out on 10 June 2003, when representatives of the Justice Ministry, accompanied by cameras from the private television station, turned up in the Belgrade District Court to check whether judges were in their workplaces. The raid was intended to demonstrate to the public that the courts' inefficiency was to be ascribed to judges' sluggishness. The Ministry of Justice drafted a document entitled "Reform of the Judiciary" (later stated to be an internal, rather than official, act) listing the measures and deadlines to be met "in order to restore trust in the national judiciary". The document caused uproar among judges: they described '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 by 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 per cent. She added that some cases were still pending due to non-existent laws providing for more efficient proceedings, under-funding and slow work by the police and the prosecution services.

#### *Attacks on judicial immunity for official actions*

Several judges were taken into custody during "Operation Sabre", an extensive police operation launched to investigate the March 2003 assassination of the Serbian Prime Minister and to crack down on organized crime. Among those detained were two judges from the Fourth Municipal Court in Belgrade. One of these judges gained notoriety after releasing Dejan "Bugsy" Milenkovic, a suspect in an earlier attempt to assassinate the Prime Minister. Both judges were held in custody and questioned for several hours before being released. No formal charges were brought against either of these two judges but one of them (Djordje Mirkovi) was eventually relieved of his duties as court president.

Zivota Djoinčević, a judge from the Belgrade District Court, was also arrested by the police on 27 March 2003, several days after a state of emergency was imposed in Serbia. Following a raid on his residence that yielded several weapons and a large sum of cash, the police publicly accused the judge in a press release of receiving bribes in exchange for releasing suspects from custody, including eight murder suspects and five former officials of the Milosevic regime. Executive and legislative authorities often referred to this arrest during Operation Sabre in order to substantiate the claim that the judiciary was responsible for the expansion of organized crime. After more than two months in detention, the judge was released following a decision of the Supreme Court. However, he was never charged with an offence related to his official duties, nor was he charged for any of the accusations publicly alleged by the police. The judge faced prosecution for the illegal possession of weapons, which he claims he was authorized by the police to carry for protection while serving as a judge in Kosovo. The District Court in Novi Sad ruled on 24 May 2005 that Djoincevic was not guilty of the illegal possession of weapons.

## **b) Republic of Montenegro**

Prime Minister Milo Djukanovic sued Miodrag Zivkovic, leader of the Liberal Alliance, in a libel case. Judge Branka Boskovic fined Zivkovic 8,000 Euros on 5 July 2004, following a trial in which she reportedly had refused to admit any defence witnesses or documents. Zivkovic accused Djukanovic's government of exerting "illegal influence" on the court.

## **LEGAL PROFESSION**

The [\*Attorney-at-law Act\*](#) (Official Gazette of FR Yugoslavia, Nos. 24/98, 26/98 – corr. 69/2000 – decision of the Federal Constitutional Court, 11/2002 and 72/2002 – decision of the Federal Constitutional Court) states that the legal profession is an independent professional activity providing legal aid in realizing and protecting the constitutionally established freedoms and rights and other rights and interests established by law.

The estimated number of lawyers in the Republic of Serbia is 24,000, of whom 5,000 are member of the Bar. The Bar Association of the Republic of Serbia consists of the Bar Association of Belgrade, the Bar Association of Nis, the Bar Association of Kragujevac, the Bar Association of Cacak, the Bar Association of Pozarevac, the Bar Association of Zajecar and the Bar Association of Sabac.

The administrative body of the Bar Association of the Republic of Serbia is its Assembly, consisting of all attorneys-at-law and legal assistants. Members of the Bar choose administrative boards, judges of the Court of Honour and discipline prosecutors as well members of the Administrative Board of the Bar Association of Republic of Serbia and delegates of its Assembly. Discipline prosecutors initiate procedures in cases where the *Code of Ethics* is violated. These cases are heard by the Court of Honour.

Bar Associations try to protect and improve the professional, social, economic position and status of attorneys and their profession. There have been numerous suggestions for changing and adopting regulations regarding the organization of professional practice, the judicial system, proceedings and other laws. They have therefore been developing cooperation with other professional organizations in the country and abroad, and with the courts, the Ministry of Justice and faculties of law as well as with international bar associations.

No interference or pressure on the legal profession from the executive or other bodies or individuals has been reported.

## PROSECUTORS

### a. Republic of Serbia

The *Law on the Public Prosecutor's Office* and the *Law on the Seats and Districts of Courts and Public Prosecutor's Offices* came into force in Serbia on 1 March 2002 (Official Gazette of the Republic of Serbia, No. 63/01). The procedure for appointing prosecutors is regulated by the *High Judicial Council Law*. Under the *High Judicial Council Law*, it is the National Assembly of the Republic of Serbia that appoints prosecutors and deputy prosecutors nominated by the High Judicial Council.

A deputy public prosecutor may be transferred to another public prosecutor's office of the same rank only with his written consent. The decision on transfer shall be passed by the High Judicial Council (Article 45, *Law on the Public Prosecutor's Office*).

In November and December 2002, the Serbian Public Prosecutor submitted all public prosecutors and deputy prosecutors to a review for general competency and previous conduct, including during the Milosevic era. The result was that approximately one-third of Serbian Public Prosecution personnel were dismissed or forced into retirement by the end of the year.

In practice there is a problem of executive influence and interference that impinges on the independence of the prosecutorial office. Several High Judicial Council nominations for prosecutorial office in mid-2005 gave rise to particular concern, implying that the appointment of prosecutors may be sometimes biased and subject to executive interference. For example, a former senior official of the Socialist Party of Serbia, who had fired shots at protesters from his balcony during a civil protest in the southern Serbian town of Kursumlija in 1999, was nominated for the post of deputy prosecutor.

### b. Republic of Montenegro

The Montenegrin Parliament adopted a new *Law on the Public Prosecutor's Office* in December 2003. It establishes a new procedure for appointing prosecutors, excluding the government from this procedure. However, the Government of Montenegro appointed all new prosecutors in accordance with the previous legislation just one month before the adoption of that law ("Serbia and Montenegro: Compliance with Obligation and Commitments and Implementation of the Post-Accession Co-Operation Programme – fourth report", February–April 2004, SG/Inf(2004)14, 30 April, 2004, para. 35).

## ACCESS TO JUSTICE

The population largely enjoys access to justice. The number of cases of violation of the right to a fair trial has decreased compared to previous years (before 2000).

## **Lengthy proceedings**

No statistics are available about the average length of criminal proceedings and civil litigation in the State Union of Serbia and Montenegro. Judges polled by the media have said that the duration of legal proceedings is one of the greatest problems confronting the judiciary that needs to be solved.

Over the last several years, nearly a half of the total number of newly received cases have not been successfully dealt with until the following judicial year. The “Strategy for the Reform of the Judiciary” put in place by the Commission for Judicial Reform in April 2004 noted that “in order to secure a standard where the average trial is completed within the time limit of one year, it is necessary to define measures for the simplification of court proceedings as well as undertaking other measures for reducing the backlog of cases. Simplification of procedures should comprise criminal, civil, enforcement, non-contentious registration procedures in the court register and other procedures.”

## **Accountability for war crimes in the Republic of Serbia**

The courts in Serbia launched a small number of trials for war crimes committed in the former Yugoslavia during the wars (1991–1999). Only ten such trials were held between 1995 and 2004. The adoption of the *Law on the Organization and Jurisdiction of State Organs in Proceedings Conducted Against Perpetrators of War Crimes* on 1 July 2003 allowed for the establishment of special judicial and police bodies (special panels and special police units) tasked with uncovering and prosecuting perpetrators of such crimes.

## **Cases**

In July 2004, the Montenegrin Constitutional Court declared unconstitutional the provisions in the *Act on Administrative Taxes* making the filing of petitions conditional on the prior payment of court taxes. The court emphasized that “legal regulation of tax collection may not infringe on the exercise of fundamental human rights guaranteed also by the ECHR”.

The Montenegrin Ombudsman, Senko Crnovšanić, received 400 complaints during the first seven months of 2004: 70 per cent of them pertained to slow court proceedings and the non-execution of court decisions. The Ombudsman illustrates judicial inefficiency with the example of a trial which has been ongoing in the Bar Basic Court for 18 years now (*Vijesti*, 25 July 2004, p. 2).

## **LEGAL REFORMS DURING THE PERIOD**

### **Republic of Serbia**

<b>November 2001</b>	<i>New Law on Judges</i>
<b>November 2001</b>	<i>New Law on Courts</i>
<b>December 2001</b>	<i>New Criminal Procedure Code</i>



<b>November 2001</b>	<i>New Law on the High Judicial Council</i>
<b>November 2001</b>	<i>New Law on the Public Prosecutor's Office</i>
<b>July 2002</b>	<i>Amendments to the Law on Judges and Law on the High Judicial Council</i>
<b>July 2002</b>	<i>New Law on Organization and Competencies of State Organs in Fighting Organized Crime</i>
<b>March 2003</b>	<i>Amendments to the November 2001 Law on Judges</i>
<b>March 2003</b>	<i>Amendments to July 2002 Law on the Organization and Competencies of State Organs in Fighting Organized Crime</i>
<b>April 2003</b>	<i>Amendments to July 2002 Law on the Organization and Competencies of State Organs in Fighting Organized Crime</i>
<b>April 2003</b>	<i>Amendments to November 2001 Law on Office of the Public Prosecutors</i>
<b>July 2003</b>	<i>New Law on Organization and Jurisdiction of State Organs in Proceedings Conducted Against Perpetrators of War Crimes</i>
<b>July 2003</b>	<i>Amendments to Law on the Organization and Jurisdiction of State Organs in Fighting Organized Crime</i>

#### **Kosovo**

<b>July 2003</b>	<a href="#">UNMIK/REG/2003/26</a> on the Provisional Criminal Procedure Code of Kosovo
<b>December 2003</b>	<a href="#">UNMIK/REG/2003/36-14</a> amending UNMIK Regulation no. 2000/64 on the Assignment of International Judges/Prosecutors and/or Change of Venue
<b>April 2004</b>	UNMIK/REG/2004/8 on the Juvenile Justice Code of Kosovo
<b>November 2004</b>	<a href="#">UNMIK/REG/2004/46</a> on the Law on Execution of Penal Sanctions
<b>December 2004</b>	<a href="#">UNMIK/REG/2004/54</a> amending <a href="#">UNMIK Regulation No. 2000/64</a> on Assignment of International Judges/Prosecutors and/or Change of Venue

#### **Republic of Montenegro**

<b>January 2002</b>	<i>New Law on Courts</i>
<b>July 2003</b>	<i>New Act on the Protector of Human Rights and Freedoms (Ombudsman)</i>
<b>December 2003</b>	<i>New Criminal Code</i>

**December 2003**

*New Criminal Procedure Code*

**October 2004**

*New Witness Protection Act*