

**REPORT**

**ON THE CONFORMITY OF THE LEGAL ORDER  
OF THE REPUBLIC OF MONTENEGRO  
WITH THE COUNCIL OF EUROPE STANDARDS**

Submitted by

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## I. Introduction

### A. Background

1. In 1992, following the dissolution of the Socialist Federal Republic of Yugoslavia, a referendum was held in Montenegro at which the overwhelming majority of voters chose to remain in the Federation with Serbia. On 4 February 2003, as a consequence of the increasing desire for independence on the part of Montenegro, the FRY was replaced by the State Union of Serbia and Montenegro (hereafter, ‘the State Union’), a loose confederation of the republics of Serbia and of Montenegro.
2. According to Article 60 of the Constitutional Charter of the State Union, the member states had the right to initiate the procedure for a change of the state status, i.e. for withdrawal from the State Union, upon the expiry of a three-year period. A decision to withdraw from the State Union could, however, be taken only after a referendum was held. The member state had to pass a Law on Referendum, taking into account recognised democratic standards. The Agreement amending the Constitutional Charter, adopted on 7 April 2005, further stipulated that regulations on a possible referendum, in accordance with Article 60 of the Constitutional Charter, must be founded on internationally recognized democratic standards and that the member state organising a referendum should cooperate with the European Union on respecting international democratic standards, as envisaged by the Constitutional Charter.
3. In December 2005, the Council of Europe’s Venice Commission provided an opinion on the internationally recognised democratic standards to be applied in the referendum.<sup>3</sup> Following this opinion, a special law applicable to this referendum was prepared, based on negotiations between the main political forces of the country. The negotiations were held under the guidance of the European Union Special Envoy, Ambassador Miroslav Lajcak. The Assembly of Montenegro adopted the Law on the Referendum on State Legal Status on 1 March 2006.
4. On 21 May 2006, a referendum was held in Montenegro on the Status of Montenegro. Turnout in the referendum exceeded 86 per cent, and the percentage of votes in favour of independence was 56.4.
5. The referendum was observed by an International Referendum Observation Mission (IROM). According to its Statement of Preliminary Findings and Conclusions, the 21 May referendum provided a genuine opportunity for Montenegrin voters to decide their future state-status through a process of direct democracy, ensuring that this issue could be resolved in a peaceful and legitimate manner. Overall, the referendum was conducted in line with OSCE and Council of Europe commitments and other international standards for democratic electoral processes.
6. On 3 June 2006, the National Assembly of Montenegro adopted a Decision on Proclamation of Independence (hereinafter “the Proclamation of Independence”) and a Declaration of the Independent Republic of Montenegro (hereinafter “the Declaration of Independence”).<sup>4</sup> An unofficial translation of the Proclamation and the Declaration is at Annex I.

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<sup>3</sup> Opinion on the Compatibility of the Existing Legislation in Montenegro concerning the Organisation of Referendums with Applicable International Standards, CDL-AD(2005)041.

<sup>4</sup> Official Gazette RCG 36/06.

7. Following such declaration, by operation of Article 60 of the Constitutional Charter the Republic of Serbia has continued the membership of the Council of Europe previously exercised by the State Union, and the obligations and commitments arising from it.

8. By letters of 6 and 12 June 2006, the Minister for Foreign Affairs of the Republic of Montenegro informed the Secretary General of the Council of Europe that the Republic of Montenegro wished to become a member of the Council of Europe, to succeed to the Council of Europe conventions that had been signed and ratified by the State Union and to become a member of the Partial Agreements of which Serbia and Montenegro was a member.

9. On 14 June 2006, the Committee of Ministers forwarded the application to the Parliamentary Assembly.

10. Following a decision of its Bureau at the meeting of 26 June 2006, on 5 July 2006 the Parliamentary Assembly asked the authors of the present report, both members of the Venice Commission, to assess the conformity of the legal order of Montenegro with Council of Europe standards.

### **B. Montenegro's membership of the Council of Europe (April 2003/June 2006)**

11. Montenegro has been a member of the Council of Europe, as one of the federated republics of the State Union, from 3 April 2003<sup>5</sup> to 3 June 2006, when it became an independent State.

12. When acceding to the Council of Europe in 2003, the State Union undertook the following commitments :

- i. to ratify the Dayton Peace Agreements and to co-operate fully and effectively in their implementation, which notably requires the settlement of internal and international disputes by peaceful means;
- ii. as regards conventions:
  - a. to sign, at the time of its accession, the European Convention on Human Rights, as amended by Protocol No. 11 thereto, and Protocols Nos. 1, 4, 6, 7, 12 and 13;
  - b. to ratify the European Convention on Human Rights and Protocols Nos. 1, 4, 6, 7, 12 and 13 thereto within one year of its accession;
  - c. to sign and ratify, within one year of its accession, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, as amended by its protocols;
  - d. to sign and ratify, within two years of its accession, the European Charter for Regional or Minority Languages;
  - e. to sign and ratify, within two years of its accession, the European Charter of Local Self-Government;
  - f. to sign and ratify, within two years of its accession, the European Outline Convention on Trans-frontier Co-operation and the protocols thereto, the European Convention on Extradition, the European Convention on Mutual Assistance in Criminal Matters, the Convention on the Laundering, Search, Seizure and Confiscation of the Proceeds of Crime, and the Convention on the Transfer of Sentenced Persons, and in the meantime to apply their fundamental principles;
  - g. to sign, within two years of its accession, the Council of Europe's European Social Charter, to ratify it as soon as possible and to endeavour forthwith to implement a policy in keeping with the principles enshrined in it;

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<sup>5</sup> See the Committee of Ministers' Resolution (2003)3.

- h. to become a party to the General Agreement on Privileges and Immunities and Protocols Nos. 1 and 6 thereto;
- iii. as regards domestic legislation:
- a. to enact legislation or, preferably, to include provisions in the constitutional charter to bring the army under civilian control;
- b. to enact, within one year of its accession, legislation on the reform of the police, comprising a redefinition its functions, the implementation of the European Code of Police Ethics and the establishment of training structures, and in particular the reorganisation of the secret police and its submission to control by the government and parliament;
- c. to enact, in sufficient time for its implementation before the next elections the draft broadcasting law in Serbia, which has been adopted by the Serbian Government, agreed upon by the experts of the Council of Europe and was recently referred to the Serbian Parliament with urgency, and to enact, in sufficient time for its implementation before the next elections, legislation on public information in Serbia, placing particular emphasis on guarantees of independence and pluralism;
- d. to enact, within one year of its accession, legislation to enable the implementation of the Geneva Convention on the Status of Refugees and the 1967 Protocol thereto to be implemented;
- e. to enact, within one year of its accession, legislation on citizens' associations and non-governmental organisations consistent with European standards for non-profit organisations;
- f. to revise, in co-operation with Council of Europe experts, the legislation and regulations concerning the prison system, war crimes and torture, so as to ensure prosecution before the courts of crimes which are not prosecuted by the ICTY, and also to prevent ill-treatment of citizens by the police;
- g. to amend the law governing elections with a view to the next presidential elections or, at the latest, in time for the elections to the federal parliament, so as to make the process more transparent, and, in particular, to bring it into line with the constitutional charter which is presently being drafted;
- iv. as regards human rights:
- a. to continue co-operating with the ICTY and in this context:
- to do its utmost to track down all sixteen indicted persons who are still at large and to hand them over to the ICTY. The authorities must not give in when confronted with any indicted person who threatens them by whatever means;
  - to co-operate with the ICTY in giving witness protection if required;
  - to give clear instructions to the police and prosecutors to enable them to make immediate arrests, as the law on extradition is deficient as regards time required for taking action;
  - to revise the law on co-operation with the ICTY in accordance with the statute of the ICTY and the relevant United Nations Security Council resolution;
  - to make documents and archives, including military documents and archives, available to the ICTY without further delay;
- b. to co-operate in establishing the facts concerning the fate of missing people and hand over all information concerning mass graves;
- c. to inform the people of Serbia about the crimes committed by the regime of Slobodan Milošević, not only against the other peoples of the region but also against the Serbs;
- d. to continue the reforms initiated with regard to the independence and impartiality of the judiciary and the relationship between judges, prosecutors and the police;
- e. to enforce legislation concerning conscientious objectors and, within three years, to enact legislation on an alternative type of service;
- f. to enact, within one year of its accession, legislation creating the office of ombudsman;
- v. as regards the functioning of the institutions:
- a. to resolve at the earliest opportunity the fundamental constitutional question as to the nature of the state between Serbia and Montenegro, on which a series of other questions hinges, including the rights inherited from the existing federation and representation of the new state in international organisations;
- b. to draft the constitutional charter in accordance with democratic, transparent and sound principles, and in this context to constitute the new federal parliament, which will have the task of adopting the charter, by means of elections;

- c. to ensure that, should a referendum on independence take place at the end of the three-year trial period provided for in the agreement between Serbia and Montenegro, that it is organised in conditions of the utmost transparency, in full conformity with the law, after a population census and in the presence of international observers;
- d. once the constitutional charter has been adopted, to amend the constitutions of Serbia and Montenegro to bring them into line with it and to harmonise the whole of the legal system so as to avoid the overlapping of responsibilities between the federation and the republics, paying great heed to Council of Europe standards in this matter;
- e. to improve the constitutional and legislative provisions concerning decentralisation and the organisation of local authorities and the autonomous regions;
- vi. as regards Kosovo:
  - a. to continue to comply with United Nations Security Council Resolution 1244 of 10 June 1999 and with the arrangements made under this resolution, in particular the international administration of Kosovo;
  - b. to undertake to settle disputes over the future status of Kosovo by peaceful means and solemnly to renounce any use of force;
  - c. to contribute to the efforts aimed at building a democratic, multi-ethnic entity in Kosovo with a view to creating a political climate conducive to reflection and dialogue on its future status;
- vii. as regards the monitoring of commitments:
  - to co-operate fully with the implementation of Parliamentary Assembly Resolution 1115 (1997) on the setting up of an Assembly committee on the honouring of obligations and commitments by member states of the Council of Europe (Monitoring Committee) and of a monitoring process set up in pursuance of the Committee of Ministers' declaration of 10 November 1994.

13. A study on the compatibility of Montenegrin legislation with the European Convention on Human Rights was carried out by the Directorate General II of the Council of Europe and finalised in July 2004.<sup>6</sup>

14. Respect by the State Union and by the two federated republics of the post-accession commitments was monitored in the first place by the Committee on the Honouring of Obligations and Commitments by member States of the Council of Europe (Monitoring Committee) of the Parliamentary Assembly of the Council of Europe.

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<sup>6</sup> A study on the compatibility of Yugoslav law and practice with the requirements of the European Convention on Human Rights had been carried out in 2001 and 2002 by the Human Rights Co-operation and Awareness Division of the Directorate General of Human Rights of the Council of Europe. This report was mainly concerned with the position of Serbia and it said relatively little about Montenegro, although it commented that there was much uncertainty as regards the delimitation of powers between the two states and at the federal level. The report found that the constitutional courts had played no significant role in the protection of democracy and human rights. Indeed, because of the restrictive approach of the Constitutional Court of Montenegro to its jurisdiction, the report concluded that the constitutional complaint was a theoretical possibility, not an effective remedy. The report found in this and other respects that the need for reform of the judicial system was 'one of the most urgent tasks'. Parliamentary involvement in the appointment and removal of judges was criticised; and action was urgently needed to improve the enforcement of final judgments. This was said to be largely due to the continued operation of laws inherited from the Milosovic regime. As regards human rights questions, the report did not in general distinguish between Serbia and Montenegro, making many criticisms that were not in terms restricted to Serbia. In both countries, reform of the police was considered necessary and the prison system fell below European standards. Some fundamental rights (such as freedom from discrimination, freedom of assembly and freedom of expression in the media) were guaranteed only for citizens and not for other persons. Legislation authorising interference with protected rights did not provide for proportionality. The courts were not applying the law in a manner consonant with their duty to protect fundamental rights. A specific point made in relation to Montenegro concerned the 'serious degree of ambiguity' in respect of police detention. Criticisms were expressed of a new draft law on the rights of national minorities, on the position of aliens and asylum-seekers, on the legislative framework of broadcasting and the media; new legislation was needed on the use of lethal force and firearms, on the deprivation of liberty, and to secure the complete abolition of capital punishment.

15. The first report of the Monitoring Committee, in September 2004<sup>7</sup>, focused on the “Functioning of democratic institutions in Serbia and Montenegro”. The Parliamentary Assembly, in its ensuing Resolution 1397(2004), called on the authorities of Montenegro:

- to pursue the legislative reforms and to adopt notably the laws on the police, the state intelligence agency and public access to information;
- to refrain from any attempt to control, influence or intimidate the media, in particular through libel lawsuits coupled with a high level of fines;
- to introduce the specific crime of torture;
- to grant internally displaced persons from Kosovo some of the rights and benefits that are enjoyed by refugees;
- to stop any attempt by the political forces to influence the judiciary through their role in judicial nominations or other means;
- to step up their fight against organised crime and corruption.

16. The Secretary General of the Council of Europe also monitored Serbia and Montenegro’s compliance with obligations and commitments and the implementation of the post-accession co-operation programme through ten quarterly reports.<sup>8</sup>

17. The latest report was issued on 19 January 2006 and covered the period October 2005-January 2006. In the view of the Secretary General, while “in recent months, Serbia and Montenegro has come close to full implementation on commitments relating to the signature and ratification of European conventions and the required adoption of very specific pieces of legislation”, “when it comes to broader and longer-term commitments, the record is mixed and a lot of work is still to be done.” The future status of the State Union and that of Kosovo were great elements of uncertainty and had major consequences on the political agenda, the functioning of institutions and the reform process.

18. Specifically in relation to human rights in Montenegro, the report referred to the very active office of Ombudsman (instituted on 8 July 2003) that since its creation had dealt with around 650 applications from citizens, made 30 recommendations to Parliament and given 20 opinions on court decision-making and the execution of judgments. As regards minorities, the Framework Law on Protection of Rights and Freedoms of National Minorities (2002) had not been recognised or implemented but a draft law on national minorities was likely to be completed in 2006. The Roma people remained vulnerable and no anti-discrimination legislation had been adopted. Some improvements in the freedom of the media had occurred, but Radio/TV Montenegro (RTCG) had not yet become a genuine independent public broadcasting service. Montenegro had had a law on NGOs since 1999, but a clearer definition of founding NGO rules was needed, to avoid the creation of non-profit organisations that aimed to encourage corruption or money-laundering. Montenegro still lacked an Asylum Law, although a draft law was in process of receiving government approval. Montenegro had, with Serbia, signed the Social Charter (Revised) in March 2005 and the legislation in this area in Montenegro was acceptable. The law on conscientious objection and alternative service was still not in full conformity with European standards. More progress was needed on establishing civilian control of the armed forces.

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<sup>7</sup> Doc. 10281, 20 September 2004, Functioning of democratic institutions in Serbia and Montenegro.

<sup>8</sup> SG/INF(2003)28, SG/INF(2003)38, SG/INF(2004)8E, SG/INF(2004)14E and 14add1, SG/INF(2004)23rev2E, SG/INF (2004)33, SG/INF(2005)5final, SG/INF(2005)13, SG/INF(2005)16final, SG/INF(2006)01.

19. In its Resolution 1514(2006) on “Consequences of the referendum in Montenegro”, the Parliamentary Assembly called on Montenegro:

- to reform its institutions and administrative structures to adapt them to its new status as an independent state in the most efficient and democratic manner, in full co-operation with the Council of Europe and other international organisations;
- to ensure the efficient functioning of parliament and a spirit of constructive and inclusive dialogue between political forces, including those who object to the referendum results;
- to adopt a new Constitution as soon as possible, in full compliance with European standards and in consultation with the Venice Commission;
- to organise and hold free and fair parliamentary elections under international observation;
- to guarantee in law and in practice the rights promised to Serb citizens;
- to guarantee the protection of national minorities;
- to ensure that no protection gaps affect the Internally Displaced Persons (IDPs) present in its territory, including those originating from Kosovo, irrespective of their ethnic origin, as well as refugees, and take all the appropriate steps to avoid statelessness;
- to complete the reform of the judiciary;
- to fight efficiently against corruption, organised crime and trafficking;
- to ensure full co-operation with the International Criminal Tribunal for the former Yugoslavia and pursue programmes aimed at enhancing public understanding and acceptance of its objectives;
- to endeavour to create all the preconditions conducive to the signature of a Stabilisation and Association Agreement (SAA) with the European Union in the nearest possible future.
- to settle all matters related to the dissolution of the State Union in the fastest, most efficient, democratic and consensual way.

### **C. The scope of the present report**

20. Article 3 of the Statute of the Council of Europe stipulates that:

*“Every member of the Council of Europe must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms, and collaborate sincerely and effectively in the realisation of the aim of the Council as specified in Chapter I.”*

21. The State Union of Serbia and Montenegro was considered to meet this requirement when it was granted membership of the Council of Europe on 3 April 2003, but was subjected to the monitoring by the Parliamentary Assembly, in accordance to Resolution 1115 (see paras. 14-18 above).

22. Following Montenegro’s Declaration of Independence of 3 June 2006 and by operation of Article 60 of the Constitutional Charter of the State Union, Serbia succeeded to the State Union in the membership of the Council of Europe, whereas Montenegro is today in the position of an applicant State for membership.

23. We note that in the course of its over three years of membership of the Council of Europe as one of the federated republics of the State Union, Montenegro has achieved many significant

reforms in respect of its legislation, and that most of these reforms have been carried out with the cooperation of the Council of Europe experts and monitoring bodies, and of other international experts. The principal reforming legislation that was enacted during this period is outlined in the report by Mr Bjeković (see para. 26 below, and Annex II)

24. As a result of these efforts, the state of the legislation in Montenegro cannot but have improved since accession of the State Union to the Council of Europe. For this reason, we do not consider it necessary to carry out a thorough assessment of the compatibility of the legal situation of Montenegro with the Council of Europe standards in the same way as would be necessary in the case of a request for accession by a wholly new member State. Indeed, a detailed analysis of all the legislation would not have been possible in the time available for preparation of this report. We are grateful to those members of the Secretariat, notably of Directorate General I and Directorate General II, of the Council of Europe, who kindly assisted us and promptly provided useful material and information.

25. The present report will focus on issues concerning the changes in the legal order of Montenegro which have been necessitated by independence. As regards the legislative reforms already carried out since the accession of the State Union to the Council of Europe and largely responding to the commitments undertaken on that occasion, we state as our general assessment that now the major objective should be to ensure their implementation in practice.

26. In order to obtain an up-to-date picture of the legislative situation in Montenegro, we charged Mr Siniša Bjeković, President of the Montenegrin NGO Centre for Human and Minority Rights and Head of Research, Law Faculty Centre for Human Rights, Podgorica, to provide us with an update of the amendments in the legislation of Montenegro which have been made since the compatibility study of July 2004. The update was provided on 10 August 2006 and is attached to the present report (Annex II).

#### **D. The visit to Podgorica**

27. We visited Podgorica and met with Montenegrin authorities on 29 and 30 August 2006. We were accompanied by Ms Simona Granata-Menghini, Head of the Constitutional Co-operation Division of the Venice Commission, and were assisted by Mr Vlado Ristovski, Special Representative of the Secretary General in Montenegro and by Ms Ana Zec, legal advisor.

28. In the course of the visit, we were provided with useful information and documents. We wish to express our thanks to the Montenegrin authorities who agreed to meet with us despite the summer period and, more importantly, the imminent parliamentary elections (which took place on 10 September 2006).

29. The programme of the visit is attached to the present report (Annex III).

## II. The legal situation in the Republic of Montenegro following its independence

### A. The Constitution

30. Following the Declaration of Independence of 3 June 2006, the Constitutional Charter of the State Union and the Charter on Human and Minority Rights of Serbia and Montenegro in their totality ceased to be in force. This was also the view of all our interlocutors during our visit.

31. Thus the only constitutional document in force is the Constitution of the Republic of Montenegro. The Constitution was adopted on 12 October 1992, at a time when the Federal Republic of Yugoslavia still existed and the Milosevic regime held power. It should have been harmonized with the Constitutional Charter of the State Union within six months of its adoption<sup>9</sup>, but it never was.

32. In the Declaration of Independence, it is stated that “the Republic of Montenegro, an independent state with full international legal personality, will continue to develop as a civic state, multiethnic, multicultural and multi-confessional society, founded on the respect and protection of human freedoms and rights, minority rights, principles of parliamentary democracy, the rule of law and market economy, *which will be further enhanced by promulgation of a new Constitution of the Republic of Montenegro*”.<sup>10</sup>

33. The need for constitutional reform is indeed recognised as essential and a priority in Montenegro. A “working document” was prepared by the “Council for Constitutional Matters”, a working group which was established by the Parliament as an *ad hoc* body and whose seven members (law professors, political scientists and eminent lawyers) are technicians and do not belong to any party. On 27 September 2006, the working document produced by the Council was sent to the Parliamentary Committee for Constitutional issues, a standing body of the Parliament composed of 13 MPs, out of which 6 are from the opposition. The Parliamentary Committee will prepare a draft Constitution, which will then be submitted to Parliament for adoption.

34. On 10 July 2006, the Montenegrin Assembly adopted the Law on the Constituent Assembly of the Republic of Montenegro.<sup>11</sup> This law provides that the Assembly resulting from the elections of 10 September 2006 will become the Constituent Assembly and will adopt a special law on the procedure for the adoption and promulgation of the new Constitution. After adoption of the Constitution, the Constituent Assembly will perform the functions of a parliamentary assembly in accordance with the provisions of the new Constitution.

35. The new Constitution will therefore be adopted with a special procedure, and not in pursuance of the relevant provisions of the current Constitution (Part V, Articles 117-119). The Speaker of the Montenegrin Assembly referred in this context to a “procedural discontinuity”, as opposed to a “legal continuity”, in respect of the pre-independence status of the Constitution.

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<sup>9</sup> Article 65 of the Constitutional Charter.

<sup>10</sup> Emphasis supplied.

<sup>11</sup> Official Gazette RCG no. 44/06 of 11.07.2006

36. Although the terms of the special law were not made known to us at the time of our visit, we were given to understand that, as regards the procedure for adoption of the new Constitution, provision will be made for some additional alternative mechanism to the two thirds majority of votes of all the deputies, as currently foreseen in the 1992 Constitution.

37. We were told that the draft text of the new Constitution was likely to be finalised and circulated shortly after the elections of 10 September. Both the Speaker of Parliament and the leaders of the opposition parties whom we met expressed their wish to finalise the text with the assistance of the Venice Commission.

## **B. The international treaties**

38. As regards the international obligations of Montenegro, in the Proclamation of Independence of 3 June 2006, the National Assembly stated that “the Republic of Montenegro shall apply and adhere to international treaties and agreements that the State Union of Serbia and Montenegro was party to and that relate to the Republic of Montenegro and *are in conformity with its legal order.*”<sup>12</sup>

39. According to the Declaration of Independence, Montenegro “shall accept and adhere to the rights and obligations that arise from existing arrangements with the European Union, United Nations, Council of Europe and the Organisation for security and Cooperation in Europe, as well as other international organizations, that relate to Montenegro and *are in conformity with its legal order,*”<sup>13</sup> providing full support to the operation of their agencies and representations on its territory.”

40. Furthermore, the Declaration of Independence provides that Montenegro, “accepting the principles laid down in documents of the United Nations, Council of Europe, Organisation for Security and Cooperation in Europe, and other international organizations, shall initiate the process for gaining a full-fledged membership of these organizations.”<sup>14</sup>

41. In its membership application, Montenegro expressed its commitment to respect and implement all the Council of Europe Conventions and Protocols which had been signed by the State Union.

42. On 14 June 2006, the Committee of Ministers of the Council of Europe, with regard to the Republic of Montenegro’s declaration of succession to the Council of Europe Conventions of which the State Union was a signatory or party, agreed as follows:<sup>15</sup>

a) that the Republic of Montenegro was either a signatory or a party, as appropriate, to the “open” conventions referred to in the appendix to these decisions, with effect from 6 June 2006, the date of the declaration of succession;

b) concerning the Republic of Montenegro’s succession to the “closed” conventions:

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<sup>12</sup> Paragraph 3 (emphasis supplied)

<sup>13</sup> Emphasis supplied.

<sup>14</sup> Paragraph 2.

<sup>15</sup> See CM(2006)104revised, 105 and 106, Decision adopted at the 967<sup>th</sup> meeting, 14 June 2006.

i. to take the relevant decisions in due course on the European Convention on Human Rights (ETS No. 5), of its Additional Protocol (ETS No. 9), its Protocols No. 4 (ETS No. 46), No. 6 (ETS No. 114), No. 7 (ETS No. 117), No. 12 (ETS No. 177), No. 13 (ETS No. 187) and No. 14 (CETS No. 194), the European Convention on the Suppression of Terrorism (ETS No. 90) and its amending Protocol (ETS No. 190), the European Charter of Local Self-Government (ETS No. 122) and the European Social Charter (revised) (ETS No. 163).

43. With regard to the Republic of Montenegro's declaration of succession to the partial agreements of which the State Union had been a member, the Committee of Ministers agreed that:

a) its succession to the Criminal Law Convention on Corruption (ETS No. 173) made it *ipso facto* a member of the Enlarged Partial Agreement Establishing the Group of States against Corruption (GRECO);

b) its succession to the Convention on the Elaboration of a European Pharmacopoeia (ETS No. 050) made it *ipso facto* a member of the European Pharmacopoeia;

c) its succession to the European Cultural Convention made it a member of the Partial Agreement on the Youth Card for the Purpose of Promoting and Facilitating Youth Mobility in Europe;

d) the Republic of Montenegro was a member of the following partial agreements, with effect from 6 June 2006:

i. Enlarged Partial Agreement Establishing the European Commission for Democracy through Law (Venice Commission);

ii. Partial Agreement Setting up a European Support Fund for the Co-Production and Distribution of Creative Cinematographic and Audiovisual Works ("Eurimages").

e) with regard to the participation of the Republic of Montenegro in the Partial Agreement of the Council of Europe Development Bank, the notification of succession contained in the aforementioned letter of 12 June 2006 should be transmitted to the competent bodies of the Bank, in order to give to it the appropriate follow-up.

### **C. The Federal laws and regulations**

44. In the Proclamation of Independence, the Montenegrin Parliament stated that, "pending the adoption of the respective regulations of the Republic of Montenegro, the regulations that were effective as regulations of the State Union of Serbia and Montenegro on the day of entry into force of this Decision shall apply as the regulations of the Republic of Montenegro, *provided that they are not in collision with the legal order and interests of the Republic of Montenegro.*"<sup>16</sup>

45. The Ministry of Justice has provided us with a list of "federal laws which are still in force in Montenegro". These are:

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<sup>16</sup> Emphasis supplied.

- Chapter XXX XXXI of the Criminal Procedure Code (Official Gazette of the SFRY no.4/77, 14/85, 74/87, 57/89, 3/90 and Official Gazette of the FRY no. 27/92,24/94);
- Law on settling of the conflicts of laws with the foreign countries laws and regulations (Official Gazette of the SFRY no. 43/82, 72/82 and 46/96);
- Law on Legal Professionals (Official Gazette of the SFRY no. 24/98 and 26/98);
- Law on corporate (commercial) offences (Official Gazette of the SFRY no. 4/77, 36/77, 14/85, 74/87, 57/89, 3/90 and Official Gazette of the FRY no. 27/92, 24/94 and 28/96);
- Law on contractual obligations (Official Gazette of the SFRY no. 29/78, 39/85, 57/89 and Official Gazette of FRY no. 31/93);
- Law on property rights (Official Gazette of the SFRY no. 6/80, 36/90 and Official Gazette of FRY no. 29/96);
- Law on settling the conflict of laws and jurisdiction in legal status, family and inheritance matters (Official Gazette of the SFRY no. 9/79, 20/90 and Official Gazette of FRY no. 46/96);
- Law on settling the conflicts of laws and jurisdiction in the field of execution of sanctions (Official Gazette of the SFRY no. 12/98); and
- Law on co-operation between Serbia and Montenegro with ICTY (Official Gazette of the State Union of Serbia and Montenegro no. 18/02 and 16/03).

### **III. The assessment of the compatibility of the Montenegrin legal order with the standards of the Council of Europe**

#### **A. Democracy**

46. The present Constitution was adopted by the Assembly of Montenegro on 12 October 1992, that is, at a time when the Federal Republic of Yugoslavia still existed and the Milosevic regime held power.

47. The constitutional and political context of the adoption of the Constitution may affect its legitimacy.

48. Constitutional reform is in any event required for legal reasons of a technical nature. In the first place, it is necessary to accommodate the Constitution to the newly-acquired independence. Thus, the Constitution lays down in Art. 1(3) that “Montenegro is the member of the Federal Republic of Yugoslavia”, and according to Art. 2(1) “Montenegro shall be sovereign in all matters which it has not conferred on to the jurisdiction of the Federal Republic of Yugoslavia.”

49. However, the reasons for the necessity of constitutional reform are not merely of a legal-technical nature. The constitutional protection of human rights, which after independence is wholly based on the provisions of the Constitution, is in many respects deficient (see section H. of our report).

50. The provisions of the Constitution concerning states of emergency should also be complemented with regard to the proclamation of such a state, its legal effects and the controlling powers of the Assembly. Supplementary provision for the regime of the state of emergency should be made through an ordinary law.

51. Defence policy was one of the fields in the exclusive competence of the State Union. Chapter VII of the Constitutional Charter of the State Union contained provisions on the armed forces. After independence, the status of the armed forces of Montenegro, the position of the commander-in-chief and the means of parliamentary supervision must be regulated at the constitutional level.

52. Chapter 4 on *Courts of Law and Public Prosecutor* is in need of revision, especially as regards the strengthening of the independence of the judiciary and the powers of the Public Prosecutor (see section G of our report).

53. As regards the competences of and the mutual relationships between the main political bodies – the Assembly, the President and the Government - no major changes are required in the light of European standards.

54. Provision for local self-government is made in Article 66 of the 1992 Constitution. This provision does not seem, *prima facie*, totally satisfactory; for instance, there is no clear definition of the right to local self-government. In the context of the constitutional reform, due attention will need to be paid to this provision, including its co-ordination with other articles, such as articles 8, 12 and 113 of the present Constitution, in order to avoid any possible constitutional hurdle to the full implementation of the principles of the European Charter on Local Self-Government.

55. The Minister of Justice and the Minister of Finances of Montenegro carried out, in April and June 2006 respectively, an analysis of local self-government competencies and a local self-government financing analysis with a view to preparing the ratification of the European Charter on Local Self-government. A Programme on Strengthening Local Self-government in Montenegro, both the institutional frame-work and capacity-building, has just been launched by the Council of Europe. Ratification of the European Charter on Local Self-government, full co-operation and implementation of the experts' recommendations including for legislative reforms are required from the Montenegrin authorities in order for this important branch of democracy to be fully achieved in Montenegro.

## **B. The Rule of Law**

56. One of the main issues in respect of the rule of law in Montenegro, as well as of the right to a fair trial, relates to the independence of the judiciary.

57. Pursuant to Paragraph 81, points 8 and 9, of the 1992 Constitution, “the president and justices of the Constitutional Court, the president and judges of all the courts of law, and the public prosecutor” are all appointed and dismissed by the Assembly.

58. The proposals for appointment, cessation of function and the removal of judges, both professional and lay, are made by the Judicial Council, an advisory body composed of the President of the Supreme Court and of ten members, elected by the Assembly as follows: six from the judicial order; two professors of the Law School; and two prominent legal experts. They are appointed for four years and their term is non renewable.<sup>17</sup>

59. The functions of the Judicial Council are merely advisory.

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<sup>17</sup> Law on Courts, Official Gazette of the Republic of Montenegro, No. 05/02

60. We consider that, while a direct political input into the appointment of judges may be said to pursue the aim of giving the judiciary in the exercise of its functions a certain democratic underpinning, it should not aim at nor result in submitting the appointment or promotion of judges to party political considerations<sup>18</sup>.

61. In its Recommendation No. R (94)12 on the independence, efficiency and the role of justice, the Committee of Ministers of the Council of Europe indicated that *“all decisions concerning the professional career of judges should be based on objective criteria and the selection and career of judges should be based on merit, having regard to qualifications, integrity, ability and efficiency”*.

62. The European Charter on the Statute for judges provides as follows:

*“In respect of every decision affecting the selection, recruitment, appointment, career progress or termination of office of a judge, the statute envisages the intervention of an authority independent of the executive and legislative powers within which at least one half of those who sit are judges elected by their peers following methods guaranteeing the widest representation of the judiciary”*.

63. In Montenegro, the direct links between the judiciary and the parliament, coupled with the weak role of the Judicial Council, are strongly felt as leading to a lack of impartiality of the courts. We were in fact extremely concerned by the evident lack of trust in the independence and efficiency of the judiciary of Montenegro, an opinion which reflects what appears to be a widely held perception.

64. The procedure for appointment and dismissal of the judiciary needs to be amended, as has been recommended by the Parliamentary Assembly. This aspect will need special attention in the context of the constitutional reform.

65. On several occasions during our visit we received information which intimated that the excessive length of legal proceedings is a grave problem and that it also for its part explains the conspicuous lack of trust in the judiciary. All the necessary legal and financial steps to solve this problem should be taken. We were also informed that there is no national remedy with regard to the undue length of proceedings. This deficiency, which also contradicts the requirements of the European Convention in Human Rights (Art. 6 and 13), should be corrected as soon as possible.

66. In our discussion with the representatives of the Supreme Court we learned of the problem of more than fifty cases – for the major part of administrative law – that were pending at the Court of the State Union at the time of the dissolution of union. This problem should be promptly dealt with, if needed through a special law.

67. According to Art. 105 of the Constitution, the Public Prosecutor not only performs tasks of criminal prosecution, but also applies remedies for protection of constitutionality and legality and represents the Republic in property and legal matters. These diverse roles of the Public Prosecutor clearly stand in tension with each other and place the holder of the office in a serious and continuing conflict of interest, particularly as regards the protection of human rights when allegations of their having been breached are made. This issue should be given due attention in the constitutional reform.

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<sup>18</sup> See, *mutatis mutandis*, the opinion no. 1 (2001) on standards concerning the independence of the judiciary and the irremovability of judges, adopted by the Consultative Council of European Judges, § 19.

68. Another issue of importance in Montenegro relates to corruption. An Office for Anti-corruption Initiative (OACI) was set up through the Government's Decree on Organisation and Functioning of the Public Administration in July 2004 and in particular is in charge of undertaking promotional and preventive activities aimed at effectively combating corruption; working closely with the Government towards adoption and implementation of European and international standards and instruments relevant to anti-corruption; and enhancing transparency in business and financial operations. It is accountable to the government.

69. This office has actively participated in drafting of several laws and other measures which are crucial for the fight against corruption, such as: the Law on Conflict of Interests, which established the Commission for the Determination of conflict of interest; the law on Prevention of Money Laundering; the Law on the State Audit Institution; the Law on Public Procurement; the Program against Corruption and Organised Crime; and the Action Plan of the Program against Corruption and Organised Crime, which has just been adopted by the Government of Montenegro.<sup>19</sup>

70. As regards conflicts of interest, we were informed in particular by the President of the Commission for Determination of Conflict of Interest of the extreme reluctance by members of parliament to comply with the requirement to provide information on their assets and revenues in compliance with the law. We consider that this uncooperative conduct is indicative of the need to promote the development of an anti-corruption mentality and culture in Montenegro. It also reveals, once again, that the most problematic aspect of the path of Montenegro towards democracy relates to the implementation of the laws. Full implementation is therefore the priority in the field of corruption as well as in the other fields.

71. An analysis of the current status and needs for reform of the Anti-corruption services in Montenegro has just been published by the Department of Crime Problems, Directorate General I Legal Affairs of the Council of Europe within the framework of the Implementation of National Anti-corruption Plans in South-eastern Europe (PACO IMPACT): we refer to their conclusions in full.<sup>20</sup>

72. The Group of States against Corruption (GRECO)<sup>21</sup> will discuss its first report on Montenegro at its next Plenary Meeting, on 9-13 October 2006. We wish to underline the need and importance for the Montenegrin authorities to take into account and implement the findings of GRECO.

73. As regards the fight against Economic and Organised Crime, a Special Organised Crime Prosecutor's Office was created in January 2004 within the Office of the State Prosecutor. The current Prosecutor was appointed in July 2004. In 2005, 55 persons were prosecuted, 14 of which were convicted; in 2006, 66 were prosecuted and 20 convicted. The Office works in close relation with a specialised department of the police. There are no specialised judges or sections of courts, and these cases are not treated by way of priority.

74. The Office of the Special Prosecutor is very small: one Head of Office, one Deputy, one secretary and one trainee. We would regard this as insufficient.

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<sup>19</sup> See PC-TC(2006)16, Anti-corruption Strategies and Action Plans in South-eastern Europe, Current status, pp. 153-186.

<sup>20</sup> PC-TC(2006)15, July 2006, pp. 23-26.

<sup>21</sup> Montenegro is a party to this Partial Agreement as of 6 June 2006, by virtue of the decision of the Committee of Ministers of the Council of Europe (see para. 43 a) above).

75. An analysis of the current status and need for reforms of Prosecution and Law Enforcement Bodies in Montenegro has just been carried out by the Department of Crime Problems Directorate General I Legal Affairs of the Council of Europe in the context of the Implementation of National Anti-corruption Plans in South-eastern Europe (PACO IMPACT). We refer to their conclusions in full.<sup>22</sup>

76. As concerns legal certainty, we are concerned about the status of regulations dating back to the State Union. In fact, the formula contained in the Proclamation of Independence that they are valid “provided that they are not in collision with the legal order *and interests* of the Republic of Montenegro” is problematic, to the extent that it is impossible to define clearly and unequivocally what these interests are, with the result that the formula could prevent Montenegrin courts and authorities from applying the law and ensuring respect for international standards.

77. The Speaker of Parliament explained to us that this formula was inserted as a “safety net” but that there is no political will to invoke it in order to disregard binding legal provisions. We were also provided with a list of the federal laws which are deemed to be still valid as laws of the Republic of Montenegro (see above, para. 45).

78. Be that as it may, we consider that this formula is incompatible with the principle of legal certainty. With the exception of those provisions which are clearly incompatible with the new status of Montenegro (such as Article 2 of the Constitution, and any similar legal provision), all other regulations and laws should remain in force. The new parliament will of course be free to amend any laws in pursuit of the political objectives of the independent Republic of Montenegro, but this should be done through the ordinary democratic process, by recourse to the constitutional process of legislation. The new Constitution should therefore contain a provision maintaining existing laws in being, and no reference to “the interests” of Montenegro should be made as a criterion for this purpose.

### **C. Human Rights**

79. Part 2 of the 1992 Constitution of the Republic of Montenegro deals with Freedoms and Rights. All citizens are declared to be equal before the law (article 15); abuses of the rights and freedoms of others are declared to be unconstitutional (article 16); and everyone is entitled to equal protection of rights and freedoms by the procedure prescribed by law (article 17). Personal rights and freedoms include personal inviolability (article 20), personal freedom (article 22), respect for human dignity (article 24), freedom of movement and residence (article 28), inviolability of the home (article 29) and the privacy of communications (article 30). Political freedoms and rights include voting rights (article 32), freedom of belief and conscience (article 34), freedom of the press (articles 35-37), and freedom of speech, assembly and association (articles 38-40). Economic, social and cultural freedoms and rights include the rights of property and inheritance (articles 45, 46), the right to work (article 52), rights to social security and health care (articles 55, 57), rights of the family (articles 58-60), rights to education (article 62) and protection of the environment (article 65). Local self-government is guaranteed (article 66). Articles 67-76 deal with the special rights of national and ethnic groups.

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<sup>22</sup> PC-TC (2006)17, July 2006, pp. 22-26.

80. Between 2003 and 3 June 2006, the 1992 Constitution was complemented,<sup>23</sup> insofar as the protection of human rights and fundamental freedoms was concerned, by the Charter on Human and Minority Rights and Civil Freedoms.<sup>24</sup> This Charter had been assessed by the Venice Commission<sup>25</sup> and recognised to be of excellent quality and to represent great progress in the constitutional protection of human and minority rights.

81. Unlike the 1992 Constitution, the Charter provided in particular for a general duty upon every person to respect the human and minority rights of others, the right of every person to equal legal protection and without discrimination, but subject to temporary measures to enable certain persons or groups to enjoy human and minority rights under equal conditions, the extent to which human and minority rights may be restricted, the direct applicability of rights guaranteed by international documents and the right of every person to effective court protection in the case of violation or denial of a human or minority right. Many of the human rights and fundamental freedoms protected by part II of the Charter had been drawn directly from international norms.

82. Part III of the Charter dealt with the rights of persons belonging to national minorities: discrimination on grounds relating to membership of a national minority was prohibited, and measures might be taken to enhance the position of members of national minorities who would otherwise be in an unequal position (article 49). The rights of national minorities included freedom to express national identity (article 48), the prohibition of discrimination (article 49) and of the instigation or provocation of racial, ethnic and religious hatred (article 51), and the right to maintain their identity in such matters as language, education, personal names, street names, the media, and political representation (article 52); enjoyment of the rights within article 52 was subject to regulation by law.

83. The Charter ceased to be in force on 3 June 2006. The new Constitution will therefore need to provide for at least the same level of protection of human rights and fundamental freedoms.

84. The Constitution will have to contain *in primis* a provision, similar to Article 2 of the Charter, on the direct applicability of the human and minority rights enshrined in the Constitution; the importance of this provision we need not emphasize,<sup>26</sup> in particular inasmuch as it ensures that individuals can rely before any domestic court on the guarantees afforded to them by the Constitution.

85. In addition to direct applicability, we would consider it appropriate to provide for the possibility of a direct constitutional appeal to the Constitutional Court of Montenegro. Under the 1992 Constitution, the Constitutional Court “shall decide on constitutional complaints for violation, by individual enactments or deeds, of the freedoms the rights of man and citizen as prescribed by the Constitution (...) *whenever some other legal remedy is not prescribed.*” (emphasis supplied) As was explained to us by the President of the Constitutional Court, this wording has prevented the Court from dealing with nearly all the complaints received, as it does not unequivocally provide for the possibility for the Constitutional Court to *review* decisions made by

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<sup>23</sup> In the hierarchy of norms, the Charter was indeed higher than the 1992 Constitution.

<sup>24</sup> Which formed an integral part of the Constitutional Charter of the State Union of Serbia and Montenegro (Article 8 of the Constitutional Charter) and had been ratified by the parliament of Montenegro.

<sup>25</sup> CDL(2003)010, Comments on the draft Charter on Human and Minority Rights and Fundamental Freedoms.

<sup>26</sup> See CDL(2003)010, §§ 6-9.

other courts. Nor does it allow the Court to consider whether a legal remedy that may be prescribed by legislation is in practice available and likely to be effective. Under the new Constitution, the possibility of lodging a constitutional complaint should be made dependent on the previous exhaustion of other legal remedies that are *available and effective*. Dealing with individual complaints, the Constitutional Court should have jurisdiction to annul unconstitutional legislation (together with judicial decisions based on it) as well as judicial decisions which constitute an unconstitutional application of constitutional legislation.

86. As regards the catalogue of rights, for reasons that we need not set out here, we consider that it should be directly inspired by the provisions of the European Convention on Human Rights, and that the framers of the new Constitution should resist the temptation to undertake new drafting of the content and limits of fundamental rights, except in so far as this may be necessary to make provision for situations specific to Montenegro or further rights that are outside the scope of the European Convention. It is important to emphasise in this context that the freedom of assembly, the freedom of association and the freedom of movement belong to everyone, not only to citizens, contrary to what is stated in the 1992 Constitution.

87. A provision setting out the right to an effective remedy, as foreseen in Article 13 of the European Convention on Human Rights, should be added in the Constitution.<sup>27</sup>

88. Capital punishment has already been abolished at the level of legislation and provision for it should be excluded by the Constitution.

89. As concerns social rights, the compatibility study between Montenegro legislation and the Revised Social Charter, carried out in 2004 and 2005 in the context of the Joint Programme between the Council of Europe and the European Commission on Serbia and Montenegro, showed that there are no major obstacles to ratification.<sup>28</sup>

90. Some concern had been voiced in connection with the right to health care, to the extent that it appeared that numerous Montenegrins had recourse to health institutions in Belgrade rather than in Podgorica. In the course of our visit, we were told by the Minister of Labour and Social Care that a Special Agreement on Social Security was about to be signed between Montenegro and Serbia providing that health care in Serbia for Montenegrin citizens would be covered by the Health Fund of Montenegro, whose financing it was planned to increase.

91. The criteria for the legitimate restriction of the exercise of certain rights (the principles of legality and proportionality, the need to pursue a legitimate aim) will have to be spelled out in the Constitution.

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<sup>27</sup> We have seen a recent opinion by the Supreme Court according to which: “The domestic legal system offers no legal remedy against violations of the right to be heard within a reasonable time, with the result that courts in the Republic of Montenegro have no jurisdiction to decide claims for compensation for non-material damage caused by violation of that right. This being so, any person who considers him/herself the victim of such a violation may apply to the European Court of Human Rights within six months of the giving of final judgment by the domestic courts. When asked to rule on claims for compensation for non-material damage caused by violation of the right to be heard within a reasonable time, the courts of the Republic of Montenegro must accordingly refuse jurisdiction, suspend all proceedings in connection with the application and declare the complaint inadmissible (Article 19, para. 3 of the Code of Civil Procedure).” This situation is clearly in conflict with the obligations stemming from Articles 6 and 13 of the European Convention on Human Rights.

<sup>28</sup> Joint Programme EU/COE Seminar “Towards the ratification of the Revised European Social Charter by Serbia and Montenegro”, Podgorica, 12 July 2005. See also SG/INF (2006)01, § 91.

92. As stated above in para 18, the office of Ombudsman was established in 2003. This office, however, lacks a constitutional basis. Provisions on the general competence, on the appointment procedure and on the guarantees of independence of the Ombudsman should be included in the new constitution.

93. As regards international human rights treaties, Montenegro has committed itself to ratifying those to which the State Union was party, notably the European Convention on Human Rights. It will be important to include in the new Constitution a provision for the direct applicability of international treaties on human and minority rights.<sup>29</sup> It would be advisable to provide also for the retrospective applicability of those treaties to the transitional period (i.e. prior to the adoption of the new Constitution) in order that cases from the past do not disappear into a legal limbo.

94. In these paragraphs, we do not refer to all matters that are relevant to the protection of human rights in accordance with European standards. Since we have not seen a draft of the new Constitution, the adequacy of the future scheme for protecting human rights in Montenegro can be assessed only when a text becomes available. We would however again emphasise that proper regard for human rights is not merely a matter for ensuring that satisfactory legislation is in place. The implementation of such legislation is also of very great importance if human rights provisions are not to become a dead letter.

95. In this connection, we draw attention to the substantial volume, *Human Rights in Serbia and Montenegro 2005*, published by the Belgrade Centre for Human Rights earlier this year. The material in the volume dealing specifically with Montenegro was prepared by the Centre's partner in Montenegro, the NGO Human Rights Action. In their summary on the position of legal provisions relating to human rights, the authors make the following remark: "Implementation of the laws remains the key problem in both Serbia and Montenegro and lack of it impedes the enjoyment of the guaranteed rights".<sup>30</sup> In the same summary, the authors observe that the courts and administration in the two countries "still only sporadically apply international norms mostly because they have for years applied only national legislation and partly because they are not versed in the international treaties binding on Serbia and Montenegro".<sup>31</sup> The authors also refer to difficulties in respect of the system of courts and the judiciary and, dealing with human rights in practice, they observe: "Substandard performance of institutions charged with protecting human rights still hinders the protection and realisation of human rights. The public prosecutors rarely spoke up when human rights violations occurred; the police investigations of such breaches were long and failed to yield satisfactory results. Court proceedings, too, lasted unreasonably long".<sup>32</sup> We are not able to corroborate the factual material upon which these conclusions are based, but the conclusions appear relevant to a full appraisal of the situation in Montenegro and give some support to the emphasis that we have already given to the importance of implementation of the laws (para 72 above).

96. This leads us to remark that the protection of human rights depends to a considerable degree on the existence of a favourable climate of opinion in the civil society and is not a matter that can be left simply to be promoted by organs of the state. Indeed, the existence of NGOs committed to furthering such a climate of opinion is a very positive factor in the promotion of

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<sup>29</sup> Similar to Article 10 of the Constitutional Charter of the State Union.

<sup>30</sup> *Human Rights in Serbia and Montenegro 2005*, p 25.

<sup>31</sup> Ibid.

<sup>32</sup> *Human Rights in Serbia and Montenegro 2005*, p 29.

human rights: their work can often draw attention to matters that are not welcome to the public authorities. The time available to us while we were in Montenegro did not permit us to meet with representatives of a range of NGOs. But we believe that in Montenegro there exists already an informed human rights community that will be able to make their concerns known both in the country and at the European level.<sup>33</sup>

97. One important matter in terms of human rights is referred to in the volume *Human Rights in Serbia and Montenegro*,<sup>34</sup> namely the continuing questions that exist regarding the deportation of certain Bosnian refugees from Montenegro in 1992, in circumstances that appear to have led to the death or disappearance of many of them. We do not seek to reach any conclusion about the specific issues that are in dispute, but we draw attention to the jurisprudence of the European Court of Human Rights under Article 2 ECHR regarding the obligation laid upon states to ensure that such events are the subject of a full and fair investigation if the rights of the families concerned are to be respected.<sup>35</sup>

#### **D. National Minorities<sup>36</sup>**

98. The Constitutional Charter of the State Union, article 9, prescribed that the member states should ensure and protect minority rights in their territories; and by article 10 international treaties relating to minority rights were to be directly enforced. Among the human rights instruments that the Union State ratified were several that directly or indirectly guaranteed minority rights and freedoms. Chapter III of the Charter on Human and Minority rights and Fundamental Freedoms (Articles 47 to 58) was devoted to “Special Rights of the Members of National Minorities and Obligations of the State Union of Serbia and Montenegro”.

99. The 1992 Constitution of Montenegro provides in articles 67-76 for the “special rights of national and ethnic groups”, giving guarantees to protect *inter alia* the identity of national and ethnic groups, the use of language, the right to education in the mother tongue, and the right to establish educational, cultural and religious associations.

100. The essential principles of the direct applicability of international treaties relating to minority rights and that the achieved level of human and minority rights may not be reduced should be included in the Constitution.

101. The principles of non-discrimination (in favour of everyone, not only citizens of Montenegro) and permissibility of positive discrimination should also be added to the Constitution. In addition, there is no specific law that gives general application to the principle of

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<sup>33</sup> We have for instance seen a wide-ranging paper by the NGO Human Rights Action in Montenegro, prepared in April 2006 prior to the referendum, summarising action that would be needed after independence to ensure respect for the human rights guaranteed under the international treaties to which the State Union was a party.

<sup>34</sup> *Human Rights in Serbia and Montenegro 2005*, pp 476-479.

<sup>35</sup> See European Court of Human Rights, *Caloc v. France* judgment of 20 July 2000, § 89; *McCann and Others v. the United Kingdom* judgment of 27 September 1995, Series A no. 324, p. 49, § 161; *Kaya v. Turkey*, 19 February 1998, Reports 1998-I, p. 324, § 86; and *Yaşa v. Turkey*, 2 September 1998, Reports 1998-VI, p. 2438, § 98.

<sup>36</sup> In the 2003 census, of the people living in Montenegro 40.64% declared themselves as Montenegrins and 30.01% as Serbs (in 1991 the respective figures were 69% and 9%). Of the remaining, 9.41% stated that they were Bosniaks, 4.27% Muslims, 7.09% Albanians, 1.05% Croats, 0.43% Roma, and 1.25% “others”. 4.29% did not indicate a national/ethnic determination (answering was not compulsory), and for 1.57% no data were available. It should also be noted that, of an overall population of some 670,000 people, about 60,000 persons are estimated refugees or displaced persons arrived essentially from the neighbouring Bosnia and Herzegovina and Kosovo (see CDL-AD(2004)026, § 5).

non-discrimination and equal treatment. We consider that the enactment of such a law could be of particular assistance in combating discrimination against Roma and in promoting their equal treatment. The treatment of minority groups and individuals is however a matter that calls not solely for legislation but also for implementation of the laws.

102. By virtue of the decision of the Committee of Ministers of the Council of Europe (see para. 43 a) above), Montenegro is a party to the Framework Convention for the Protection of National Minorities as of 6 June 2006<sup>37</sup>. The report on the implementation of the Framework Convention is due by 6 June 2007. The Council of Europe plans to organize a session on the implementation of the Framework Convention and its monitoring mechanism in the near future.

103. On 10 May 2006, the Montenegro Parliament enacted a Law on Minority Rights and Freedoms.<sup>38</sup> Article 2 of the Law<sup>39</sup> defines a minority for the purposes of the Law as “any group of citizens of the Republic, numerically smaller than the rest of the predominant population, having common ethnic, religious or linguistic characteristics, different from those of the rest of the population, being historically tied to the Republic and motivated by the wish to express themselves and maintain their national, ethnic, cultural, linguistic and religious identity”. This definition excludes from its scope of application any persons not having the citizenship of the Republic of Montenegro. The citizenship criterion has a particularly serious impact on the scope of application of the law, given that, following the break-up of Yugoslavia, there have been a range of difficulties in terms of confirmation of citizenship in Montenegro. The Venice Commission had in fact suggested a definition of national minority making no reference to citizenship, and an approach on an article-by-article basis, with the citizenship of the Republic of Montenegro being specifically mentioned as a requirement for the exercise of the political rights only. The Advisory Committee had noted in this respect that “limiting the scope of the term national minority to citizens only may have a negative impact for example on the protection of those Roma or other persons whose citizenship status, following the break-up of Yugoslavia and conflict in Kosovo, has not been regularised, including those displaced persons from Kosovo who, in the absence of personal documentation, have had difficulties in obtaining confirmation of their citizenship.”<sup>40</sup> We consider that it would be appropriate to adopt a broader definition of minorities, without the citizenship requirement, in the law and possibly in the Constitution as well. Due attention will have to be paid to the legislation on citizenship.

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<sup>37</sup> Serbia and Montenegro was a party to the Framework Convention. The Advisory Committee on the Framework Convention for the Protection of National Minorities had issued its first Opinion on Serbia and Montenegro (ACFC/INF/OP/I(2004)002), made public on 2 March 2004.

<sup>38</sup> This Law had long been in course of preparation, and there had been extensive consultation with Council of Europe experts as regards the content of the law (Directorate General II of the CoE and the Venice Commission; see the latter’s opinion on the revised draft law on exercise of the rights and freedoms of national and ethnic minorities in Montenegro, 18-19 June 2004, CDL-AD(2004)026). The Parliament of FRY had adopted an Act on the Protection of Rights and Freedoms of National Minorities in 2002, but this Act was never applied by the authorities of Montenegro and indeed is not included in the list of federal laws that are in force in Montenegro (para 45 above).

<sup>39</sup> Unofficial translation.

<sup>40</sup> See the Advisory Committee’s Opinion on Serbia and Montenegro, § 23.

104. According to the Minister for the Protection of Rights and Freedoms of National and Ethnic Groups, the legal definition of minorities is still receiving consideration; although Article 2 of the present Law is limited to citizens, new legislation would make provision for around 28,000 displaced persons, who were not citizens but were now permanently resident in Montenegro. In this connection, it must be underlined that Montenegro has recently adopted a Law on Asylum, which appears to be in conformity with international standards (see the report of Mr Siniša Bjeković, annex II).

105. Most provisions of the Law on Minority Rights and Freedoms are the same as those in the draft law which was commented by the Council of Europe's experts: we do not need to repeat the analysis here.

106. As regards in particular broadcasting in the languages of minorities (Article 12), at our meeting with the Minister of Culture, Media and the Civil Society, Ms Vesna Kilibarda, we were told of the current provision that is made for broadcasting in the Albanian and Roma languages.

107. There is also provision in the law for the creation of a representative Council for the Minorities (Articles 33-35). We were told by the Minister for the Protection of Rights and Freedoms of National and Ethnic Groups that this Council would be created after the September elections.

108. As enacted, Article 23 of the Law, applying the principle of affirmative action, provided for an additional mandate in the Parliament of Montenegro for minorities that make up between 1 and 5% of the total population, and also for three guaranteed mandates in the Parliament for minorities exceeding 5% of the total population. Similar provision was made by Article 24 for additional minority representation in local self-government. However, on 11 July 2006 the Constitutional Court by a majority held that these provisions were inconsistent with the Constitution, since they conflicted with the principle of the equality of all citizens before the law guaranteed by the Constitution, and were an attempted amendment of the Constitution by the Parliament.<sup>41</sup>

109. This decision of the Constitutional Court was necessarily applied to the elections held on 11 September 2006. It follows from this decision that, if a system of reserved seats for minorities is to be introduced, it will be necessary to include express provision in the new Constitution to this effect.

110. The implications of the decision of the Constitutional Court will need to be carefully considered, including in the context of the monitoring of the Framework Convention. Due attention to the principle of non-discrimination will need to be paid. In the absence of European standards, the Republic of Montenegro is free in its decision on whether to introduce specific seats for national minorities or not, in a non-discriminatory manner. It should be borne in mind that persons belonging to minorities often vote for "mainstream" parties in Montenegro.

111. We also discussed questions of minority rights with the Ombudsman. Since the creation of the institution in 2003, there had been only a small number of complaints involving minority rights. The most frequent complaint, often from non-nationals, was of difficulties in finding work in their locality and of alleged political bias against them in this respect. The Ombudsman

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<sup>41</sup> See the Venice Commission's Opinion on the revised draft law on exercise of the rights and freedoms of national and ethnic minorities in Montenegro, § 49 *in fine*.

had reported to Parliament on this and Parliament had asked for minority quotas in employment to be more widely respected.

112. In conclusion, certain constitutional and legislative amendments in the field of minority protection need to be carried out. We would also consider it necessary for the Republic of Montenegro to conclude bilateral agreements on protection of national minorities with the neighbouring States, in conformity with Article 18 of the Framework Convention, as well as with the conclusions of the Venice Commission's Report on the preferential treatment of the national minorities by the Kin-State<sup>42</sup>, which highlight the bilateral (consensual) way in protecting kin-minorities.

113. Compliance by Montenegro with the European standards in the field of minority protection will be duly monitored by the Advisory Committee, and we would like to underline in this respect the importance and need for the Montenegrin authorities to take into account and implement the Montenegro-related findings of the first Opinion of the Advisory Committee as well as the findings of the future opinions of the Advisory Committee.

#### **IV. Conclusions**

##### **A. Main conclusions**

114. Montenegro had already been a member of the Council of Europe, in its capacity as federated republic of the State Union of Serbia and Montenegro, for over three years before it became independent on 3 June 2006. During this time, numerous and significant reforms have been carried out, mostly with the assistance of the Council of Europe and of other international experts, which have certainly improved the level of compatibility of Montenegrin legislation with the standards of the Council of Europe.

115. While adequate legislation is mostly now in existence, the major challenge and objective is now its implementation in practice. This requires in the first place a change in the mentality and culture of Montenegro. It also requires respect for and due application of the principles of transparency of the acts of administration and accountability of the authorities' conduct.

116. Upon becoming an independent State, Montenegro expressed its commitment to respect and implement all Council of Europe Conventions and Protocols which had been signed by the State Union.

117. The new status of Montenegro requires substantial constitutional reform to be achieved. This requirement is particularly urgent, as the level of protection of human and minority rights has lowered now that the Charter on Human and Minority Rights and Fundamental Freedoms of the State Union is no more in force.

118. In our discussions with the representatives of the opposition, we were told that there are no major political disagreements with respect to the provisions of a new constitution on human rights or the three branches of state power. Eventual disagreements concern articles of a more symbolic nature. It is to be hoped that such disputes will not prevent there being a large backing for the new constitution from the political forces, civil society and the general public. Broad support for the new constitution will help to ensure its legitimacy. A procedure for the adoption of a new constitution that is agreed on by all major political forces will also add to its legitimacy.

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<sup>42</sup> CDL-INF(2001)019.

119. It would be highly appropriate that this reform be carried out with the assistance of the Venice Commission, as indeed is desired by both the majority and the opposition, and as has been requested by the Parliamentary Assembly.

120. Ratification of the Council of Europe Conventions (*in primis* the European Convention on Human Rights, the Revised Social Charter, the European Charter on Local Self-government) and other relevant international treaties should be effected as soon as possible.

121. Co-operation with the Council of Europe and its monitoring bodies needs to be pursued; recommendations must be taken into account. Further legislative reforms should be carried out with the assistance of the Council of Europe.

## **B. Specific findings in respect of the standards of the Council of Europe**

### **a. Democracy**

122. Constitutional reform is urgently needed, notably in the following areas:

- technical adjustments following the new status
- state of emergency
- armed forces
- human rights
- courts of law and public prosecutors.

### **b. Rule of Law**

123. Priority areas for reform, both in the constitutional and in the legal spheres, are the independence of the judiciary (both judges and prosecutors), corruption, fight against Economic and Organised Crime and legal certainty.

124. Due implementation of the legislation that is already in conformity with European standards must be ensured as a matter of priority.

### **c. Human Rights**

125. The Chapter on Human Rights of the 1992 Constitution needs to be revised. The catalogue of rights needs rewording and completing, in line with the European Convention on Human Rights. Provisions on the direct applicability of human rights provisions, the right to a direct constitutional complaint for individuals, the criteria for legitimately restricting certain rights, the principle of proportionality, the right to an effective remedy; and the direct applicability of human rights treaties should be added to the Constitution.

126. The bases for the existence, competence, appointment procedure and guarantees of independence of the Ombudsman should be included in the Constitution.

127. Due implementation of the existing legislation must become a priority.

#### **d. National Minorities**

128. The direct applicability of minority rights provisions and of minority rights treaties should be added to the Constitution.

129. The principles of non-discrimination (in favour of everyone, not only citizens) and permissibility of positive discrimination should be included in the Constitution. A specific law giving general application to the principles of non-discrimination and equal treatment should be enacted.

130. The criterion of citizenship should be removed from article 3 of the Law on Minority Rights and Freedoms. The legislation on citizenship should be analysed in the light of the European standards.

131. The implications of the decision of the Constitutional Court annulling articles 23 and 24 of the Law on Minority Rights and Freedoms should be carefully considered, particularly in the context of the monitoring of the Framework Convention for the Protection of National Minorities, and due attention to the principle of non-discrimination will have to be paid.

132. The conclusion of bilateral agreements with neighbouring State on the protection of national minorities is recommended.

#### **C. General conclusion**

133. The legal order of the Republic of Montenegro meets the standards of the Council of Europe, provided that an appropriate constitutional reform is carried out in a manner which will ensure its legitimacy. Further legislative reform is required in certain areas. Where existing legislation is compatible with the standards of the Council of Europe, there is a general and urgent need for its full implementation.

## ANNEX I

(Unofficial translation)

Implementing the decision based on the free will of the citizens of Montenegro to restore the independence of the State of Montenegro and its full international and legal personality in the referendum held on 21 May 2006, organised in partnership with the European Union, and verified by the Report of Republic Commission for administering the referendum on State-legal status of the Republic of Montenegro and exercising the right stipulated in the Article 2 of the Constitution of the Republic of Montenegro and Article 60 of the Constitutional Charter of the State union of Serbia and Montenegro

The Parliament of the Republic of Montenegro, at its session held 3<sup>rd</sup> June 2006, on the basis of Article 81, paragraph 2 of the Constitution of the Republic of Montenegro, has adopted:

### **THE DECISION ON PROCLAMATION OF INDEPENDENCE OF THE REPUBLIC OF MONTENEGRO**

1. The Republic of Montenegro is an independent State with full international legal personality within its existing State frontiers.
2. The Republic of Montenegro, by restoring its independence, shall assume all matters that it had conferred on to the institutions of the State union by adoption of the Constitutional Charter of the State union of Serbia and Montenegro;
3. The Republic of Montenegro shall apply and adhere to International Treaties and Agreements that the State union of Serbia and Montenegro was party to and that relate to the Republic of Montenegro and are in conformity with its legal order;
4. Pending adoption of respective regulations of the Republic of Montenegro, regulations that were effective as regulations of State union of Serbia and Montenegro on the day of entry into force of this Decision shall apply as the regulations of the Republic of Montenegro, provided that they are not in collision with the legal order and interests of the Republic of Montenegro;
5. The Republic of Montenegro shall determine the procedure of assuming the matters that have been so far administered by the institutions of the State union of Serbia and Montenegro and by separate Acts of the Parliament and the Government of the Republic of Montenegro it shall establish and make public the principles upon which its internal and foreign policy shall be formulated and conducted;
6. This Decision enters into force from the date of its adoption and shall be published in the "Official Gazette of the Republic of Montenegro".

N<sup>o</sup>  
Podgorica, 3<sup>rd</sup> June 2006-

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Proceeding from the centuries-long tradition of statehood and independence and the international recognition of the Principality of Montenegro at the Berlin Congress on 13 July 1978;

Base on freely expressed will of citizens in the referendum on the state-legal status of the Republic of Montenegro held on 21 May 2006, conducted in line with the international standards and in cooperation with the European Union;

Expressing its commitments to maintaining and promoting international peace and stability and reiterating its readiness to respect the principle of territorial integrity and sovereignty of all States, seeking to settle all international disputes by peaceful means, promoting friendly relations and cooperation with all States on the basis of the principle of equality;

Based on the Decision on Proclamation of Independence of the Republic of Montenegro and the Article 81, paragraph 2 of the Constitution of the Republic of Montenegro.

The Parliament of the Republic of Montenegro, at its session held on 3<sup>rd</sup> June 2006, has adopted a:

**D E C L A R A T I O N  
O F T H E I N D E P E N D E N T  
R E P U B L I C O F M O N T E N E G R O**

1. The Republic of Montenegro, an independent State with full international legal personality, will continue to develop as a civic State, multiethnic, multicultural and multi-confessional society, founded on the respect and protection of human freedoms and rights, minority rights, principles of parliamentary democracy, the Rule of Law, and market economy, which will be further enhanced by promulgation of a new Constitution of the Republic of Montenegro.
2. Proceeding from its restored independence, the Republic of Montenegro:
  - Accepting the principles laid down in documents of the United Nations, Council of Europe, Organisation for Security and Cooperation in Europe and other international organisations, shall initiate the process for gaining a full-fledged membership of these organisations;
  - Shall accept and adhere to the rights and obligations that arise from existing arrangements with the European Union, United Nations, Council of Europe and the Organisations for Security and Cooperation in Europe, as well as other international organisations, that relate to Montenegro and are in conformity with its legal order, providing full support to the operation of their agencies and representations on its territory;
  - Confirms as its strategic priority an accelerated integration into the European Union, and is determined to continue to efficiently fulfil the conditions and requirements included in the Copenhagen criteria and the Stabilisation and Association Process;

- Is firmly determined to joint European and Europe Atlantic-NATO security structures and to continue to contribute to strengthening the regional stability and security;
  - Committed to further progress in the process of accession to the World Trade Organisation, stands ready to fulfil the obligations stemming from the membership of this organisation;
  - Shall continue and further the existing cooperation with the international financial institutions and commence the procedure to regulate its membership as an independent State;
  - Shall observe the principles of the International Law, the decisions of the International Court of Justice and is determined to continue full cooperation with the International Criminal Tribunal for the Former Yugoslavia in the Hague;
3. The Republic of Montenegro shall establish and develop bilateral relations with the Third States on the basis principles of the International Law, accepting the rights and obligations stemming from existing arrangements and shall continue with active policy of good-neighbourly relations and regional cooperation;
  4. Reiterating in good faith, the Republic of Montenegro expresses particular interest and full readiness to address the existing mutual rights and obligations wit the Republic of Serbia and develop good and friendly relations between the two States.
  5. The Declaration shall be published in the “Official Gazette of the Republic of Montenegro”.

N°  
Podgorica, 3<sup>rd</sup> June 2006

THE SPEAKER

Ranko KRIVOKAPIĆ

## ANNEX II

### **AMENDMENTS IN THE LEGISLATION OF MONTENEGRO FOLLOWING THE STUDY ON ITS COMPATIBILITY WITH EUROPEAN CONVENTION LAW OF JULY 2006**

by Siniša Bjeković

#### ART. 1

In the period during which it was a member of the State Union of Serbia and Montenegro and after having acquired its independence, following a referendum held on 21 May 2006, Montenegro has gone through a rapid process of implementing international standards including the European Convention on Human Rights. With the ratification of this Convention and their admission to the Council of Europe, both member States of the former State union had acquired a number of obligations as the Convention became a part of their internal legislation. However, full implementation of the Convention, in particular in the field of judicial protection, has not happened yet. The Convention is primarily referred as a source of substantial law in judicial proceedings.

However, the human rights protection system, based on a separate procedure before the Court of the former State union, has never come into life, therefore the only body that has jurisdiction regarding violations of rights vested from regulations of the union, has never actually taken any action. The Constitution of Montenegro and the Constitutional Court do not provide sufficient guarantees for the protection of human rights in a separate procedure.

Within the national framework it can't be used now as a remedy for exercising and protecting rights in a procedure before the Protector of Human Rights and Freedoms in Montenegro. The decisions of this body are not binding. Nevertheless, judging from the total number of cases dealt with by the Ombudsman, almost 80% have been resolved (Report on work of the Protection of Human Rights and Freedoms in Montenegro for 2004 and 2005).

Since Montenegro, as a member of the former State union, has accepted the obligations deriving from its membership to the Council of Europe and that its Parliament, within the same documents adopted the Charter on Human Rights and Rights of Minorities, we may conclude that the standards of the Convention have been accepted in Montenegro as well. This obligation is all the more extensive if we take into consideration that Montenegro is about to be admitted to the Council of Europe, which also implies meeting human rights standards.

Some provisions of the Constitution and regulations in Montenegro reviewed in the Compatibility Study 2004, are still not adjusted, therefore, they provide a merely satisfactory level of human rights protection, in particular, when referring to procedures and means of protection. Constitutional reform that was delayed for a long time, is becoming a very important issue that will most probably be settled by the new Parliament. However, all the regulations adopted after the ratification are on the whole, in conformity with the provisions of the Convention. In addition, all regulations pass through a filter of conformity with European Union Law in a method where prior to going through a parliamentary procedure, they have to provide a statement of the proposer that the wording of law is in compliance with EU Law. For the time being, this procedure is referred only to the Government as a proposer.

In terms of exercising rights provided for in the Convention, focus is given to the institutions of the system; consequently, in development of judicial personnel, bar exams include a separate section named “constitutional system of Montenegro and the European Convention for protection of basic rights and human freedoms.”

In addition, a recently adopted law foresees initial and continuing education in judicial bodies for (conditionally said) new and old personnel in justice, which also foresees “the introduction of essentials of international law, international standards and recommendations including European Union Law and human rights”.

Essentially, the legislation in Montenegro has adjusted itself rapidly to the Convention, thereby giving legitimacy in the best way possible to process that Montenegro will face. The other segment - protection-has not been fully implemented and will require further work. All these firstly require the adoption of a new constitutional framework, adjusted to international standards and work on the remaining segments of legal regulation in Montenegro in order to align them to European Law.

## ART. 2

The Constitution of Montenegro has not been amended, it therefore still contains a capital punishment provision. However, criminal legislation in Montenegro has rendered null and void capital punishment provisions, thereby satisfying a standard of the Convention and disregarding a constitutional norm. Apart from this, criminal legislation has retained a set of norms that protect the physical integrity of persons and human life.

Major amendments referring to the right to life are made in a section of internal affairs by the adoption of the Police Law. Provisions of this law set out rights and obligations of police officers in connection with the use of force and firearms in the line of police duties. Consequently, the principle of proportionality is introduced according to which police authorities must use a proportional amount of force that does not exceed the force needed to achieve the aim pursued. According to the same principle, firearms may be used only in the following cases to:

1. protect human lives;
2. prevent the escape of person caught in criminal act for which prosecution is instituted ex officio and for which a penalty is prescribed for at least 10 years of imprisonment or more;
3. prevent the escape of a person in custody or a person for whom an order for detention is issued for a criminal act under Item 2 of this paragraph;
4. respond to a direct physical attack where a person’s life is in threatened;
5. respond to an attack on property, if it is certain that the attack is a threat to the persons safeguarding the property or other persons.

Firearms and other type of force shall be used only upon an order from a law enforcement officer in charge of police action. A police officer that has used or ordered the illegal use of force shall be held accountable.

It is worth mentioning that in previous legal practice, this subject was regulated by bylaws and that the assessment of legality of actions had been mainly in favour of police authority. Now a triple system of control is being introduced (civil, internal and control of ethic actions of the police), which along with criminal proceedings prescribed by law provides sufficient guarantees for the control of the legality of police action.

Among other important regulations is the Law on Firearms of July 2004. It was adopted in the period after the previous Study had been made. These regulations prescribe a general ban on carrying weapons in public places for persons in possession of firearms. In addition, a set of restrictions are introduced that refer to hunters and persons in charge of safeguarding persons and property. The Law also foresees pardoning persons who, within due time, return arms for which it is impossible to obtain license. The significance of these regulations is evident, since official assessments indicate the quantity of 150.000 pieces of weaponry legally and illegally possessed by citizens as well as the fact that the cult of carrying arms is very strong in Montenegro. Furthermore, the data on criminal statistics indicate that most of the criminal acts are committed directly through the use of or threat of firearms.

### ART. 3

There still is a need to establish a separate criminal act of torture with all the elements and degrees originating from the European Court is case-law and accordingly to classify different types of criminal acts. This need is firstly due to the fact that current legislation does not provide sufficient elements for the determination of such criminal acts, as it does not recognise all forms of torture (torture, inhuman treatment and punishment and humiliating treatment).

The current Police Law provides for the obligation of carrying out law-enforcement duties in compliance with the law, fully respecting international standards and regulations that protect personal dignity, freedom and the rights of citizens (Art. 2).

The Law also introduces a system of proportionality, where the use of police authority shall be exercised proportionally to the need for which the authority is to be used. When more police authorities are concerned, the authority that will decrease the risk of unnecessary harm to achieve the objective shall be exercised.

Provisions of the Law on Enforcement of Penal Sanctions are not in line with recommendations from the previous report regarding excessive period of isolation punishment and accommodation for persons treated for addiction (alcohol and drug addicts).

### Health protection

The Current Law on Protection of Rights of the Mentally Ill (Art. 2) provides for the exercise of rights and freedoms of the mentally ill in compliance with international law. In addition, the Law provides that no person can be forced to undergo medical investigation to establish a diagnosis of mental illness other than in cases and according to procedure prescribed by law. Mentally ill persons have the right to the following:

- available and effective protection of mental health and available basic psychotropic medicine under fair conditions;
- health and social care adequate to health needs and treatment under fair conditions and in compliance with equal standards as those of other persons treated in medical institutions;
- protection from economic, sexual and other forms of exploitation, body or other abuse, any type of maltreatment, humiliating treatment and other treatment that offends personal dignity and that creates unpleasant, aggressive, humiliating or offensive conditions;
- protection of personal dignity, human treatment and respect of his/her personality and privacy.

The exercise of the rights of the mentally ill in compliance with this law can be restricted only in cases prescribed by law and if it is necessary in order to protect their health or safety or that of other persons. Psychiatrists and other health workers shall carry out treatments of mentally ill persons in such a way as to create the least limitation of freedoms and rights as well as to not cause physical and psychological discomfort that offends the patient's personality and human dignity.

Force, isolation and restrictions in the light of this Law represent the means for physical restriction of movement and actions of a mentally ill person.

Health workers, for the purpose of carrying out measures under Paragraph 1 of this Article, may use means in compliance with regulations of a relevant state authority. Authorized personnel of a state authority in charge of internal affairs, carry out these measures in compliance with regulations governing the protection of lives, personal and property safety of people and prevention and finding of criminal acts and arresting the perpetrators.

The use of force, isolation and restrictions in the protection of the mentally ill may be applied in psychiatric institutions exclusively when it is the only means to prevent that person from attacking, endangering life and the health of other persons or when he/she is a threat to his/her own life or health or from destroying or damaging valuable property. The use of force, isolation or restrictions under Paragraph 1 of this Article are enforced solely to the extent and in the manner required to eliminate the threat caused by an attack by a mentally ill person and may be enforced only during the time required to achieve the objective.

A psychiatrist shall make a decision on the use of force, isolation and restrictions. A psychiatrist that has made a decision shall carry out the supervision of the enforcement of the decision. If extraordinary circumstances require urgent decision making, in the psychiatrist's absence a decision may be rendered by a medical doctor, nurse or attendant who shall immediately inform a psychiatrist who will take further actions accordingly.

In case of isolation of a mentally ill and the use of binding or other type of physical restraints on that person, a continuing supervision by the relevant medical workers is required regarding the physical and mental condition of that person. A mentally ill person subject to the use of force shall be notified accordingly, if circumstances allow it. Data regarding reasons for the use of force, the manner and method of such force as well as the name of the person that has made that decision, shall be entered in a medical file. The Legal representative of a mentally ill person and an independent multidisciplinary body shall be immediately informed about the use of force.

In order to carry out the duties related to the protection and the exercise of the rights of mentally ill, a relevant state authority shall establish a Mental Health Committee composed of experts in the field of psychiatry and neuropsychiatry, welfare, justice, protection of human rights and freedoms as well as other relevant fields. The Committee prepares experts' opinions and gives recommendations to the relevant state authorities in a procedure for the establishment of measures for the prevention of the occurrence of mental and behavioural disorders as well as measures for the improvement of the treatment of the mentally ill, supervision of conditions and manners of the implementation of the protection of the rights and treatments of the mentally ill, approval of the implementation of research programmes in psychiatric institutions and the supervision of their implementation as well as the establishment of measures for the improvement of protection of the rights and treatment of the mentally ill.

For the purpose of dealing with the protection of the rights of the mentally ill, psychiatric institutions are obliged to establish an independent multidisciplinary body. The Board of directors of the psychiatric institution appoints the independent multidisciplinary body from experts in the field of psychiatry and neuropsychiatry, welfare, justice, protection of human rights and freedoms and other relevant fields.

An independent multidisciplinary body also performs the following activities:

- monitors the implementation of procedures prescribed by this Law and reports on the negligence to relevant bodies of psychiatric institution and relevant state authorities;
- supervises the respect of human rights and freedoms and dignity of the mentally ill persons;
- instigates investigations according to its own assessment or upon recommendation of a third person, individual cases of forced detention or forced admission to psychiatric institution, in particular, admission of juveniles, disabled persons and other persons incapable to give consent;
- takes action to ensure the protection and the exercise of the rights the of mentally ill upon objections and complaints of these persons, their representatives, family members, third persons or a welfare centre.

Refoulement (ban on deportation)

Provisions of the Asylum Law of the State Union of Serbia and Montenegro (came into force effect in early 2005) and the recently adopted Asylum Law of the Republic of Montenegro (mid 2006) stipulate that an asylum applicant, refugee or a person provided with humanitarian protection cannot be deported or forcibly returned to a country where his/her life or freedom would be endangered due to his/her race, religion, nationality, belonging to a certain social group or political opinion or to a country where he/she would be exposed to torture, inhuman or degrading treatment or punishment. These persons that cannot be deported or forcibly returned and without being granted asylum, may be provided with humanitarian protection in compliance with provisions of this Law. A ban from deportation or refoulement of these persons shall not be applied to a foreign person that represents a threat to the security and public order of Montenegro or who, after being sentenced for a serious criminal offence, represents a threat to the citizens of Montenegro. These provisions have overcome the challenges and problems that were established in the previous Study.

Compensation for damage incurred in case of abuse

According to Article 9 of the Police Law, a person that believes that his/her rights and freedoms are violated during police actions or he/she has suffered a damage shall be entitled to judicial protection and compensation for damage incurred. The same provision related to unfounded detention and other illegal actions of the state authorities is covered by the current Criminal Code.

ART. 4

No significant amendments have been made in respect of Article 4 of the European Convention, and in the previous Study the legislative practice related to it was considered as satisfactory.

ART. 5 and Protocol 4, ART. 1

The previous Study indicated several times the need to pass new laws or amending existing ones governing issues from the Federal Law on Criminal Procedure adopted in 1977 and on which a new Criminal Code is based (extradition, enforcement of decisions of foreign courts, etc). As concerns the enforcement of foreign judgments, there still a remark that there is no limitation of enforcement of foreign judgments, if reached in a procedure contrary to Article 6 of the European Convention.

In addition, prison sentences in Montenegro are passed by offences authorities which do not have the required degree of guarantees for independence and even-handedness. For this reason, courts are needed. In addition to that, a standard that a prison sentence can be passed only by bodies that have a position and authorities of judicial bodies (regardless of official title) that they deal with cases classified as 'criminal acts' although as such they are not prescribed by national law, we can identify a discord with the Conventional law.

Since the legislation that deals with family matters has not been amended, there is a disagreement with the Convention in terms of admitting children to young offenders' institutions, which is not connected with the criminal procedure, but tackles the supervision of guardianship bodies in the exercise of parental rights. Namely, the admittance of a child to a young offenders' institution is a measure according to which a child is detained for correctional purposes and which is passed by an administrative body. These persons cannot turn down this decision in the judicial proceedings. Furthermore, juveniles who are admitted to young offenders' institutions have no procedural rights, including the right to legal representation.

In Montenegro in May 2005, a new Law came into force on the Protection of Population from Contagious Diseases; which apart from other measures prescribes the restriction of movement and the admission of ill person into quarantines or persons suspected of being infected with a type of diseases provided for by law. According to this Law an infected person or a person suspected of being infected with a contagious disease, shall be subject to a treatment if non-treatment may endanger the health of other people or cause the spread of a disease. For an infected person or a person suspected of being infected with a contagious disease, shall be isolated and treated in health institutions that fulfil the conditions in terms of personnel, space and medical equipment for hospital treatment of persons infected with contagious disease. A measure of strict isolation shall be applied and last as long as there is a threat of the disease spreading. Apart from the above-mentioned, health institutions for hospitalization and treatment of persons infected with contagious diseases shall isolate and treat persons suspected of being infected with a contagious disease of unknown origin and that has a high death rate and is transmitted by air and contact. A measure of strict isolation shall be enforced and last until the diagnosis is established that the disease does not require strict isolation. The previous Law and this Law also seem compatible with the Convention.

The new Law on the protection and Exercise of the Rights of the Mentally Ill, defines more precisely the protection of this category. A seriously mentally ill person, who due to mental and behavioural disturbances is a serious and direct threat to his/her own life, health and safety. Health and safety of other persons can be detained and admitted to a psychiatric institution without his/her consent in accordance with the law. A juvenile mentally ill person or a disabled person may be admitted to a psychiatric institution for the same reasons and without consent of his/her legal representatives in accordance with the law. A mentally ill person - perpetrator of a criminal offence, the defendant with mental disturbances in custody as well as a convicted person who, during a period of serving a sentence, becomes mentally ill may also be admitted to

a psychiatric institution in accordance with the law. When law enforcement officers in the exercising of their duties suspect that it is about a mentally ill person, they shall without hesitation bring that person to the closest health institution for examination. A mentally ill person reasonably suspected of being a threat to his/her own life and health or life and health of other persons, in particular, urgent cases, law enforcement officers may bring him/her to a psychiatric institution. A psychiatrist who admits a mentally ill person for examination, shall immediately examine him/her in order to establish if there are reasons for detention and admittance of that person to psychiatric institution. A psychiatrist may not detain a mentally ill person in a psychiatric institution if it is established that there are no reasons for this detention and the admittance of that person to a psychiatric institution.

A psychiatrist, if there are reasons for admittance, shall immediately make a decision on detention of a mentally ill and enter the data about the decision with an explanation into the medical file. A psychiatrist shall inform properly a committed person about the reasons and the purpose of his/her committal as well as about his/her rights and obligations, in accordance with this Law. A psychiatric institution shall submit on committal with medical file within a period of 48 hours to a legal representative of the committed person, a relevant welfare body and an independent multidisciplinary body that performs the following duties:

1. monitors the implementation of procedures prescribed by this Law and reports on the negligence to relevant bodies of psychiatric institution and relevant state authorities;
2. supervises the respect of human rights and freedoms and dignity of the mentally ill;
3. instigates an investigation according to its own assessment or upon recommendation of a third person, individual cases of forced detention or forced admission to a psychiatric institution, in particular, admission of juveniles, disabled persons and other persons incapable to give consent;
4. takes action to ensure the protection and the exercise of rights of the mentally ill upon objections and complaints of these persons, their representatives, family members, third persons or a welfare centre.

In the provisions of the amendments to the Criminal Code passed in July 2006, in section on juvenile pre-trial detention, a maximum period of detention is reduced, thus now the period of detention (after completion of preliminary procedure) may not be longer than four months for younger juveniles and six months for older juveniles.

Provisions of the Police Law are complied with in the Criminal Code so that incompatibility with the Conventional Law is eliminated as concerns detention of persons by police in case of committed offence. According to the previous Internal Affairs Law, the police had a right to detain a person for a period of 24 hours.

ART. 6, Protocol 4, ART.1

In terms of the right to a fair trial, the Study emphasized the incompatibility of the practice of the offences authorities with the practice of the European Court. In short, discord relates to the following characteristics of these bodies:

- they are not independent;
- the status of offences is mainly of a criminal nature;
- access to court is disputable;
- equality of parties in the procedures is not represented;
- nature of the act and punishment are not proportionate;

- a set of rights in preparation of defence are also disputable.

A section pertaining to economic offences undergoes major amendments as the Law on Criminal Legal Accountability of Legal Entities is about to come into force whereby previous economic offences will be defined as criminal offence committed by legal entities.

Regarding the independence of judicial bodies, the practice in Montenegro has shown that there is a serious influence of the parliament on the election of judges and other judicial officeholders. If one considers that party discipline is highly present in the work of the Parliament, it then becomes clear that this problem constitutes a high priority. Therefore, it is necessary to establish a higher degree of independence of judicial bodies by strengthening the role of the Judicial Council as the highest body of judicial power in Montenegro. In addition, it is very important to provide measurable indicators, which will value the quality of the work and proficiency of candidates for all judicial positions. The following significant segment of judicial independence includes a need for direct influence on adopting of budget of courts in the Parliament, improving the financial position of judges, their living and working conditions and training as well as providing favourable conditions for the functioning of courts as institutions in general.

The standard of trials within reasonable period of time is still a very significant problem in the practice of Montenegrin courts. One way to overcome this problem is the Law on Mediation (came into force in May 2005) which introduces a mediation institute as an alternative method of settling disputes. This Law stipulates rules of procedures of mediation in civil-legal suits, including suits related to family, economic and other property relations of physical and legal entities, wherein parties may freely dispose of their claims, as well as in suits related to labour relations pending before the court unless for some of the said litigations is differently defined by separate regulations. The procedure of mediation is instituted upon the agreement of the parties and, in case of court proceedings, upon the recommendation of the court. Parties to the mediation procedure take part in it on a voluntary basis. This is an absolute novelty in our legislation, which is just beginning and which will reduce the workload of the courts in Montenegro.

In addition, provisions of the Civil Procedure Law fully benefit from a faster and a more efficient functioning of the courts and rationalisation of the civil procedure.

The respect of the rights for adequate time for the preparation of defence as well as the defence of the defendant benefit from a novelty introduced by the amendments to the Criminal Code, referring to Article 59, which stipulates:

"The attorney has a right to confidential conversation with the suspect in custody and prior to interrogation as well as with the defendant in detention. The control of this conversation is allowed before the first interrogation and during the investigation only by observation and not by interrogation."

In terms of procedure with juvenile persons, a provision of Article 466 of the Criminal Code is questionable according to which a judge for juveniles may allow the presence of a parent in actions and preparatory procedure. If the best consideration the best interests of a child or juvenile are taken in consideration then the presence of a parent should be obligatory and only exceptional in cases where it is required to disallow the presence of a parent in preparatory

actions in the best interest of a juvenile and circumstances in which a offence act has been committed.

#### ART. 7

In the previous Study, the provisions of the Montenegrin legislation were considered to be in line with Conventional law.

#### ART. 8

In the modifications and amendments of the Criminal Code (July, 2006) Article 79 was amended by adding a new Paragraph 6 as follows:

'If there is a reasonable suspicion that a of criminal offence has been committed and for which prosecution is instituted ex officio, law enforcement officers may carry out a search of vehicles, passengers and luggage without a court order and without a witness '.

Taking into consideration the practice of the European Court in the cases of Buckley v. UK (1996) and Chapman v. UK (2001), as well as the way of life of some ethnic groups such as Romas, it is questionable if this authority may also be applied in cases where a vehicle may be deemed as a 'home' within the meaning of the Convention. If we take this standard, then this provision of the Law may be problematic, unless the other conditions set out by the European Court are fulfilled.

The next question that related to this Article was the obligation to enter the names of members of minority groups in their own language and spirit. This dilemma has been solved by the adoption of the Law on the Rights and Freedoms of Minorities . Article 10 prescribes that “Members of minorities have a right to independent and free national determination, right to free choice and use of personal and family name and name of their children as well as a right to enter those names in a register and personal documents in their own language and spirit”.

The Constitutional determination of Montenegro was proclaimed an ecological State and as such has encouraged legislative authorities to pay great attention to environmental protection and harmful emissions causing various devastations. Thus, from November 2005 until today many regulations have been adopted governing the protection of the environment which, directly or indirectly, protect the population from harmful phenomena.

#### ART. 9

Information contained in the previous Study regarding the place of religious institutions are still intact. That is in particular referred to the Constitution of Montenegro including recognizing the rights of only a number of confessions and religious institutions as well as Religious Holiday Law and Law on Legal Position of Religious Communities. All these regulations need to be revised so as to provide an equal position of all religious groups and those persons belonging to certain religious or other persuasions.

#### ART. 10

A major drawback pointed out by the previous study includes unregulated access to information of government bodies. The Law on Access to Information came to force November 2005. The most important provisions of this Law refer to the right to access to information of government

bodies that any domestic and foreign person both physical and legal is entitled to. Access to information is based on the principles and standards provided for in treaties/conventions on human rights and freedoms. Access to information of government bodies is based on the following principles: 1) freedom of information; 2) equal conditions of the exercise of rights; 3) openness and transparency of government authorities; 4) urgency of procedure.

The major problem of this Law is the wide discretionary competence of government bodies to limit the access to information for the following reasons:

1. national security, defence and international relations including:
  - information of national intelligence agencies;
  - information of military intelligence services;
  - information on armed forces' operations;
  - information on facilities, installations and systems exclusively used for the defence of the country;
  - information of importance for international courts, international investigative bodies and other international bodies and organizations;
2. public safety including:
  - information in connection with public policy and emergency;
  - information in connection with safety of individuals, people and property;
3. commercial and other economic individual and public interest including:
  - information related to financial, monetary or commercial activities of the state with other states, international organizations and other legal and physical persons;
  - information considered as economic secret;
  - information regulated by a separate confidentiality law;
4. economic, monetary and currency policy of the state including:
  - information on national economy, initiatives of financial policy, operational plans and other documents of economic policy;
  - information on capital market and financial market;
5. prevention, investigation and processing of criminal offences including:
  - reporting to relevant bodies in charge of finding and prosecuting of perpetrators of criminal offences in connection with data pertaining to the preparation or execution of criminal acts and their perpetrators;
  - information on witness protection;
  - information on juvenile offenders;
  - information in connection with an investigation;
  - information in connection with the prevention of organized crime, operational plans and special tasks for the prevention of organized crime;
  - information in connection with money laundering and the financing of terrorism;
6. privacy and other personal rights of individuals other than for judicial or administrative procedural purposes including:

- information on the personal life of a party or witness in proceedings, victims and persons suffering the consequences of criminal offence as well as data on convicted persons;
- data from personal and medical files, results of psychiatric tests, psychological tests and ability tests;
- information in connection with guardianship rights, adoption, etc.;
- information on employment, salary, pension, benefits and other social allowances;
- information on telephone number, address or residence of a person or of his/her family if he/she has demanded confidentiality from a relevant body of these data as there is a reasonable suspicion that his/her safety or safety of his/her family is endangered;

7. procedure of preparation and adopting of enactments including:

- information containing data in connection with negotiations of government authorities, which are in process;
- information that is being prepared or information that is not an official act other than laws and other enactments;

The above-mentioned interests are deemed significantly endangered if disclosure of the information would cause considerably more damage than the benefit to public interest of disclosing.

Previous practice has shown that without a decision of an Administrative Court, government authorities respond unwillingly to their legal obligation, which is proven by countless complaints from the NGO sector.

#### ART. 11

The key changes in this field are made by the adoption of the Public Assembly Act (came into force in May 2005). This Act regulates the procedure of peaceful assembly in accordance with international standards. The Law foresees certain restrictions in regard of public events and other forms of gatherings of citizens for the purpose of the protection of rights of other people, public order and safety, public moral, the environment and health of people. Freedom of speech and addressing a public assembly is restricted by the ban on any agitation and incitement at the use of violence, national, racial, religious and other hatred or intolerance.

The organiser or his/her representative is obliged to submit an application to hold a peaceful assembly in cases stipulated by this Act. The organizer is obliged to submit the application no later than five days before the scheduled beginning of the peaceful assembly. The application shall be submitted to an administrative body in charge of law enforcement. Peaceful assembly may be held in any suitable location. Notwithstanding Article 9 of this Act, peaceful assembly may not be held in the vicinity of hospitals, kindergartens and elementary schools while attended by children, in national parks and natural parks other than peaceful assemblies advocating environmental protection, in vicinity of monuments if it would lead to the destruction of protected cultural monuments, motorways, main, regional and local roads that may put traffic safety in danger, in other locations if it would, due to time, number of participants and character of assembly, seriously endanger movements and work of a great number of citizens.

The Police shall ban a peaceful assembly if: 1) it is not timely and properly reported; 2) it is reported to take place in a place, according to this Act, it may not be held; 3) its purpose is to breach human rights and freedoms or incite violence, national, racial, religious and other hatred or intolerance; 4) there is an actual danger that the peaceful assembly may endanger the safety of

people and property or cause extensive breach of public order; 5) it is necessary for the purpose of preventing the threat to health of people at the request of administrative authorities in charge of health care. The decision on the ban shall be rendered no later than 48 hours prior to the commencement of the scheduled peaceful assembly.

The organizer may lodge a complaint against the decision under Article 11 of this Act. The Police shall immediately forward the complaint with documentation to the Ministry of Internal Affairs as a second instance body. The complaint shall not delay the execution of this decision. The decision upon the complaint shall be rendered and sent to the organizer no later than 24 hours from the day of receipt of the complaint. In case the Ministry fails to act upon the complaint within the prescribed period, the peaceful assembly may take place.

Immediately after receipt of the decision according to which the peaceful assembly is not allowed, the organizer shall inform the public accordingly and possibly remove all the publicly displayed announcements and advertisements related to the peaceful assembly.

Law enforcement officers are entitled to disrupt and ban a peaceful assembly if:

1. it is not reported or is banned;
2. it takes place outside the location stated in the application;
3. participants are incited to armed conflicts, national, racial, religious and other type of hatred or intolerance;
4. the monitor fails to maintain order and peace;
5. there is a real danger of violence or other types of major breach of public order.

Therefore, we may conclude that the compatibility of this Act with the European Convention is a matter of enforcement of the same law bearing in mind that the rights and restrictions complies with the case-law of the European Court.

#### ART. 12

Although the practice in Montenegro is considered positive in comparison to the Conventional Law, we are waiting for the adoption of the new Family Law, which will regulate family relations and issues dealing with marriage relations in a contemporary manner based on international legal system.

#### ART. 13

The independence of Montenegro and the lack of institutions for the effective and efficient protection of human rights as foreseen by the Court of the Union have shown the need for the reorganization and constitutional order of an effective and efficient legal remedy. This would improve the situation of human rights protection. The institution of constitutional appeals was previously used which completely disavowed its purpose and effects in the previous legal system. The issue of new order should be considered in light of the obligations towards international institutions and in particular, obligations towards the Council of Europe and the role of the European Court of Human Rights by using the acquired and comparative experience such as those in Croatia or Slovenia.

#### ART. 14

Though based on the constitution and relevant laws, a specially protected principle of banning discrimination in legislation and law enforcement policy still has not been fully enforced. By looking into some issues such as religion or the celebration of religious holidays, we can see that a concept of discrimination is still present in the legislation, however to a smaller extent.

In terms of protection of the rights of minorities, we noted that revolutionary changes have been made by the adoption of the Law on Rights and Freedoms of Minorities although the Constitutional Court of Montenegro rendered a decision rescinding the provisions of Article 23 and Article 24 by referring to the principle of affirmative action in exercising electoral rights of members of minorities. The explanation for this decision is that these provisions violate the principle of equality in exercising electoral rights.

#### ART. 15

Regarding the restrictions during the period of state of emergency, the objections made were the same as in the previous Study since even this issue requires constitutional reform.

#### ART. 16

No changes have been made to this Article since the previous Study.

#### PROTOCOL 1, ART.1.

Although the Law on Restitution of Expropriated Property Rights and Compensation was a revolutionary change in the transition of the whole society, the main problem now lies in the enforcement of regulations according to which the municipalities are to form committees to deal with citizens' claims. Unfortunately, in some cases the authorities resort to illegal actions, including deleting records of restitution from deed books. This shows that municipalities are unwilling to give up a great deal of properties that have been in their possession. This encourages judicial bodies even more to react resolutely to these phenomena as well as to work on their prevention and elimination.

In the meantime, Montenegro has adopted the Law on Enforcement of Intellectual Property Rights Regulations, in force since 1st January 2006. This Law stipulates the formation of bodies in charge of law enforcement in the field of intellectual property, the procedure of taking measures by competent bodies when there is a suspicion that production, purchase, sale broadcasting or use of certain goods violates intellectual property rights, and establishing penalties for economic crimes.

### ANNEX III

#### PROGRAMME OF THE VISIT

##### 28 August 2006

Dinner with Mr. Sinisa Bjekovic, Centre for Human and Minority Rights

##### 29 August 2006

9h00 Supreme State Prosecutor's Office

Ms. Vesna Medenica, Supreme State Prosecutor of Montenegro

Ms. Stojanka Radovic, Special Prosecutor for Fight against Organized Crime

10h30 Supreme Court

Mr. Ratko Vukotic, President of the Supreme Court

Mrs. Dusanka Radovic, Supreme Court Judge

Mr. Sreten Ivanovic, Supreme Court Judge

Mr. Miras Radovic, Supreme Court Judge

Mr. Radule Kojovic, Supreme Court Judge

Mr. Ranko Vukovic, Supreme Court Judge

12h00 Constitutional Court

Mr. Mladen Vukcevic, President of the Constitutional Court of Montenegro

Ms Desanka Lopicic, Judge on the Constitutional Court

Ms Bojan Spaic, Trainee

13h30 Ministry of Justice

Ms. Branka Lakocevic, Deputy Minister in charge for the Judiciary

Ms. Zorica Brajkovic, Deputy Minister in charge for Local Self Government

15h00 Ministry of Culture and Media

Ms. Vesna Kilibarda, Minister

Mr. Zeljko Rutovic, Deputy Minister in charge for the media

16h00 Agency for Anti-corruption initiative

Ms. Ana Nikolic, Senior Advisor

Commission for Determination of Conflict of Interest

Mr. Slobodan Lekovic, President

##### 30 August 2006

9h00 Ombudsman

Mr. Sefko Crnovrsanin, Ombudsman

Ms. Nevenka Stankovic, Deputy to the Ombudsman in charge for children's rights

Ms. Nerma Dobardzic, PR officer

- 10h00 Ministry for the Protection of Rights and Freedoms of National and Ethnic Groups  
Mr. Gzim Hajdinaga, Minister for Protection of Rights and Freedoms of National and Ethnic Groups  
Mr Sabahudin Delic, Deputy Minister
- 12h00 Ministry of the Interior  
Mr. Dragan Pejanovic, Secretary  
Mr. Ivan Milic, Advisor to the Minister of Interior for Foreign Affairs
- 13h30 Assembly of Montenegro  
Mr. Ranko Krivokapic , Speaker
- 15h00 Ministry of Labour and Social Care  
Mr. Slavoljub Stijepovic , Minister of Labour and Social Care  
Ms. Snezana Mijuskovic, Deputy Minister
- 16h00 Opposition parties  
Mr. Srdja Bozovic, Deputy President of Socialist People's Party – SNP  
Mr. Savo Djurdjevac, People's Party - NS  
Ms. Dragica Perovic, Democratic Serb Party- DSS