

**Flygtningenævnets baggrundsmateriale**

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## Serbia

The Serbian government's unwillingness to confront the past seriously as well as delays in undertaking legal and other reforms contributed to a still unsatisfactory human rights situation in 2006. The authorities' failure to locate Bosnian Serb wartime general Ratko Mladic undermined relations with the European Union and United States, and destabilized the governing coalition, in turn setting back its reform agenda.

Montenegro's referendum vote for independence in May 2006 led to the dissolution of the State Union of Serbia and Montenegro in June. With the dissolution of the State Union, the progressive Charter on Human and Minority Rights ceased to have effect. In September 2006 the Serbian National Assembly adopted a new draft constitution. The lack of public consultation during the drafting phase drew criticism from civil society representatives. The draft constitution was approved by national referendum in late October, and formally adopted by the National Assembly on November 8. Parliamentary elections are scheduled to follow on January 21, 2007. Among the constitution's more controversial elements is an assertion that Kosovo remains an integral part of Serbia, a move likely to further complicate negotiations over the province's status. The new constitution contains most but not all of the protections in the defunct Charter on Human and Minority Rights.

### War Crimes Accountability

Serbia's cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY) came to a virtual standstill in 2006, after relative progress during 2005. The Serbian authorities' concept of cooperation—based on the so-called “voluntary surrender” of persons indicted by the ICTY rather than their arrest by the Serbian police—stopped delivering results. The failure to locate, arrest, and extradite Ratko Mladic remains the most glaring shortcoming. Under significant international pressure, the government of Serbia adopted an “Action Plan” in July 2006 with the

aim of arresting Mladic and other ICTY indictees, but as of this writing the plan had yet to produce any concrete results.

The Serbian public continues to have an extremely negative perception of the ICTY as a biased institution that singles out Serbs, a view that the Serbian government did little to contradict during 2006. The two-year prison sentence imposed in July by the ICTY Trial Chamber on Naser Oric for wartime crimes against Serbs in the Srebrenica area of Bosnia provoked a public outcry in Serbia and criticism from President Boris Tadic and Prime Minister Vojislav Kostunica. Those in Serbia advocating cooperation with the ICTY assessed that the short sentence was unlikely to improve popular opinion of the tribunal in the country.

Slobodan Milosevic, former Serbian and Federal Republic of Yugoslavia president, on trial at the ICTY for genocide and crimes against humanity, died in March 2006 at the court's detention unit in the Netherlands.

Domestically, several important trials were ongoing in the War Crimes Chamber of the Belgrade District Court during 2006, although the overall number of cases dealt with by the chamber since its establishment in 2003 remains small. Among the ongoing trials are two that began in late 2005 and relate to crimes against Muslims in Bosnia: one involving two former Bosnian Serb officials from Zvornik accused of killing Bosnian Muslim civilians between May and July 1992, and the other involving five former members of the notorious "Scorpio" paramilitary unit accused of killing civilians in Trnovo in August 1995. Representatives of the victims claim that there is documentary evidence showing that the unit was under the control of the Serbian police.

In late April 2006 eight former policemen were charged with war crimes for killing 46 Kosovo Albanians in the town of Suva Reka, Kosovo, in March 1999. The trial, still pending at this writing but slated to take place in the War Crimes Chamber, will be the first in Serbia involving defendants in positions of authority within the police at the time of the alleged offenses.

Witness protection remains an obstacle to effective accountability for war crimes in the Serbian courts. A witness protection law adopted in September 2005 has helped

partially to remedy the issue. The new Criminal Procedure Code, which came into force in early July 2006, should address some of the remaining concerns, by allowing courts to authorize the use of pseudonyms by witnesses giving evidence, changes of identity, and witness relocation (including to another country), without the need for a special agreement between the witness and the state.

## **Independence of the Judiciary**

State interference in the administration of justice remains a concern. The ruling coalition used the requirement that judges be confirmed by the National Assembly as a means of blocking qualified candidates. A number of judges unanimously nominated for senior judicial office by the High Judicial Council, an appointments body that takes into account solely the candidates' expertise and merits, failed to win the required National Assembly majority, mostly because the parliamentarians from the ruling coalition refrained from voting, in most cases without any explanation. Since the law precludes the re-nomination of judges whose appointments are not endorsed by parliament, this refusal to vote for the judges contributed to disqualifying them from appointment. The process raised serious questions about the selection criteria applied by the National Assembly.

There were concerns about the ability of prosecutors to carry out their work free from state interference. Gordana Colic, a Belgrade municipal prosecutor, was suspended in June 2006 and again in July by the Republican Public Prosecutor, the country's most senior prosecutor, on the grounds of alleged incompetence. The second suspension followed a ruling by the High Judicial Council overturning the initial suspension. Colic blamed Justice Minister Zoran Stojkovic for her suspension, ascribing it to her refusal to prosecute his predecessor Vladan Batic. A final decision on her suspension was pending at this writing.

Mioljub Vitorovic, an assistant prosecutor in the Organized Crime Prosecutors' Office who led the investigation into the 2000 assassination of former Serbian President Ivan Stambolic, was forced to leave his post in July 2006 following unsubstantiated allegations that he had leaked information to the media.

## **Treatment of Minorities**

Roma continued to face substandard economic and social conditions as well as frequent verbal abuse and physical assault. There were physical attacks on Roma in February 2006 in Nis, where a group of skinheads also broke the windows of Roma homes and made verbal insults and threats; the perpetrators were convicted on misdemeanour charges in April and received fines. There were further physical attacks on Roma in the Belgrade suburbs in June; and in Srpski Kostur in May and June.

There were fewer inter-ethnic incidents in Vojvodina than in recent years.

## **Human Rights Defenders**

Human rights organizations in Serbia continue to work against a backdrop of hostile criticism from the media and some political parties. The authorities failed in 2006 to react adequately to verbal attacks and threats against civil society. Government representatives frequently voiced negative opinions of civil society and nongovernmental organizations.

The most serious and ominous incident occurred in early September 2006. Witnesses described hearing what they believed (but could not confirm) were gunshots as Humanitarian Law Center Executive Director Natasa Kandic was leaving the TV B92 studio after participating in a discussion program. The police carried out a routine inquiry and stated the sounds had come from firecrackers.

## **Key International Actors**

The government continues to list EU membership as a political priority, but the failure to arrest Ratko Mladic and overall lack of cooperation with the ICTY prompted the EU in May 2006 to suspend talks with the government on a Stabilization and Association Agreement. EU officials indicated that the talks would resume once Serbian authorities began cooperating fully with the ICTY and extradited Mladic. The European Commission's November progress report contained a negative assessment on both counts.

US government policy on Serbia remained unchanged. US officials made clear to the Serbian government that full political and economic support in its transition are

contingent on full cooperation with the ICTY. In May 2006 US Secretary of State Condoleezza Rice declined to certify the continuation of aid to Serbia because of its failure to meet its international obligations, blocking US\$7 million in assistance to the country.

In January 2006, the representative of the UN secretary-general on the human rights of internally displaced persons, Walter Kaelin, published the report of his 2005 visit to Serbia. His report emphasized that “[t]housands of [internally displaced persons] continue to live in very difficult conditions in collective centres and irregular settlements,” and that they faced problems obtaining official documents. The report urged the authorities to find durable solutions for IDPs.

Serbia ratified the Optional Protocol to the UN Convention against Torture in September.

## **Kosovo**

Negotiations over Kosovo’s final status overshadowed its pressing human rights problems during 2006. Stalled talks between Kosovo’s predominantly Albanian provisional government and the government of Serbia, which retains formal sovereignty over the province despite seven years of United Nations administration, make an internationally imposed settlement increasingly likely. Meanwhile, minorities live in marginal and sometimes dangerous circumstances, the return of refugees and displaced persons to their homes has all but come to a halt, and the justice system continues to fail victims.

## **Protection of Minorities**

The overall number of reported inter-ethnic crimes fell. The physical separation of communities may be the most important factor. Minorities in Kosovo (including Albanians in areas where they constitute a minority) remain at risk of attack, harassment, and intimidation, and their freedom of movement remains limited in some areas. Despite anti-discrimination legislation, there is persistent discrimination in access to education, health, and other social services, including access for non-Serbs to “parallel” institutions (financed by Belgrade) in Serb majority areas.

Three incidents in June 2006 underscored the continuing threat: the murder of a 68-year-old ethnic Serb returnee in Klina, shot dead in his house; the shooting dead of a Serb youth on the road between Zvecan and Zitkovac; and the shooting of two Serbs during an attack on a gas station at Grabovac. In August a displaced Serb teacher from Decani was attacked on a return visit to the town.

Mitrovica remains a flashpoint: nine people (seven Serbs and two foreign nationals) were injured in August when a hand grenade was thrown at a cafe in the predominantly Serb northern part of the divided town. A 19-year-old Serb youth was stabbed in Mitrovica in March 2006. In June the NATO-led Kosovo peacekeeping force (KFOR) reopened its base in the north of the town and the UN Interim Administration Mission in Kosovo (UNMIK) deployed additional international police officers there.

The Roma, Ashkali and “Egyptian” (RAE) communities remain the most vulnerable and marginalized groups in Kosovo. They experience the highest rates of unemployment, educational exclusion, and infant mortality, and the greatest difficulty accessing public services. Lacking the political support of either Pristina or Belgrade, they are also largely excluded from the negotiations over Kosovo’s future status.

There was movement toward a solution for displaced Roma families living since 1999 in an area of high lead contamination adjacent to the Trepca mine in Mitrovica. Most were moved to a new interim camp during 2006 while permanent accommodation is built, and medical treatment for lead exposure began. However, the new camp is itself close to a contaminated area, and some families have refused to move until their original homes are reconstructed.

## **Return of Refugees and Displaced Persons**

A series of attacks on Serbs returning to Klina during 2006 drew condemnation from the United Nations High Commissioner for Refugees (UNHCR) and underscored the ongoing obstacles to sustainable return in Kosovo. The June killing in the town was followed in September by two bomb attacks on returnee homes, one of which seriously wounded four persons.

UNHCR statistics indicate that as of September, only 15,600 of the estimated 250,000 Serbs and other minorities displaced from Kosovo since 1999 are registered as having returned to their homes. The representative of the UN secretary general on the human rights of internally displaced persons Walter Kaelin noted in his January 2006 report on Serbia and Montenegro that for many displaced persons in Kosovo, security fears and concerns about livelihoods impede return.

In June 2006 UNHCR issued new protection guidelines for Kosovo, assessing that security improvements mean that Ashkali and “Egyptians” are generally not at risk, but reiterating that Serbs, Roma, and Albanians from areas where they constitute a minority remain at risk of being persecuted if returned. Forced returns to Kosovo from Western Europe continue, with more than a thousand RAE returned in the first nine months of 2006, despite the security risks for Roma and the precarious situation of RAE communities in general.

### **Impunity and Access to Justice**

Kosovo’s criminal justice system remains its weakest institution, fostering a climate of impunity and undermining long-term efforts to establish the rule of law. The shortcomings include: poor case management; passivity on the part of prosecutors and the police, reinforced by inadequate training; poor coordination between the local Kosovo Police Service (KPS) and UNMIK police; and problematic sentencing practices. All of these are compounded by inadequate oversight and coordination.

Inadequate witness protection remains a key obstacle to justice. Witness protection legislation remains in draft form. Kosovo lacks the basic means to protect vulnerable witnesses, much less the capacity to relocate those at high risk (in large part because of reluctance by many Western governments to accept such witnesses and their families for relocation).

UN Secretary-General Kofi Annan acknowledged in a September 2006 report to the Security Council on Kosovo that “insufficient progress has been made in investigating and prosecuting cases related to the violence of March 2004.” According to UNMIK, by the end of August 2006 “over 240” people had been convicted by national judges for crimes relating to the March 2004 riots



(approximately half of those charged), while 26 people have been convicted by courts with international judges. Those figures mask the reality that most March-related convictions by national judges were for misdemeanors, and lenient sentencing by international and local judges.

The slow progress on domestic war crimes prosecutions in Kosovo received a boost in 2006, although the total number of prosecutions remained extremely small. In August a panel of international judges in Kosovo found three former Kosovo Liberation Army (KLA) officers—including Gen. Selim Krasniqi, a regional commander in the post-war Kosovo Protection Corps—guilty of war crimes for the unlawful detention and abuse of ethnic Albanians at the Drenovac camp in 1998. All three were given seven-year prison terms, but Krasniqi and a second man were allowed to remain on bail pending an appeal. Charges were dropped against two other defendants, and a third was acquitted. The 2005 murder of a prosecution witness in the case remains unsolved.

In May 2006, German authorities arrested a former KLA member on an international arrest warrant for the same crimes. UNMIK has requested his extradition to face trial in Kosovo.

Despite some progress in determining the fate of those who went missing during and after the armed conflict in Kosovo, more than 2,200 cases remain, the majority ethnic Albanians.

Domestic and sexual violence against women, which remains common in Kosovo, is almost never prosecuted regardless of ethnicity. The reluctance of victims to come forward, especially in rural areas, provides only part of the explanation.

The UN secretary-general's September report indicated that the backlog in civil courts stands at over 45,000 cases, denying access to those wishing to confront discrimination or seeking to repossess their property. The failure of municipalities to implement court judgments compounds the problem.

## **Human Rights Defenders**

The jurisdiction of the Ombudsperson Institution over UNMIK was revoked in February 2006 by a regulation limiting its oversight to the Provisional Institutions of Self-Government. This decision by UNMIK removed one of the few mechanisms for accountability over the international administration. In March UNMIK established a Human Rights Advisory Panel, with a mandate to examine human rights complaints against it, but the panel lacks autonomy and UNMIK is not bound to act on its findings. The UN Human Rights Committee noted in July that the panel “lacks the necessary authority and independence” from UNMIK to carry out its mandate.

## **Key International Actors**

The office of United Nations Special Envoy for Kosovo Marti Ahtisaari, charged with facilitating the status talks, has drawn criticism from civil society organizations over insufficient consultation with non-Serb minorities and women, and a lack of transparency.

Joachim Rucker was appointed special representative of the secretary general and head of UNMIK in August. Upon taking office Rucker commented that he expects to be the last SRSG in Kosovo.

With little expectation that UNMIK’s record of poor performance can be reversed, the European Union and the United States turned their attention toward planning for the future international presence in Kosovo once status is determined, with the EU expected to take the lead.

The six-nation Contact Group (France, Germany, Italy, Russia, the United Kingdom and the United States) continues to drive international policy on Kosovo. In June 2006 the group presented Kosovo authorities with a list of 13 priorities in the areas of security, rule of law, return of minorities, and reconstruction of homes and other sites damaged during the March 2004 riots.

In July 2006, NATO granted the Council of Europe Committee for the Prevention of Torture access to KFOR detention facilities in Kosovo, thereby facilitating implementation of a similar access agreement with UNMIK from 2004.

In its July 2006 review of UNMIK's report on human rights in Kosovo since 1999, the UN Human Rights Committee expressed concern about continuing impunity for war crimes and inter-ethnic crimes, and inadequate internal mechanisms for investigating allegations of misconduct or illegal activity by the KPS, UNMIK police, and KFOR.