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Bosnia and Herzegovina:

Compliance with obligations and commitments and implementation of the post-accession co-operation programme

Document presented by the Secretary General

Ninth Report (September 2004-January 2005)

Executive Summary

The first transfer of a war crimes suspect to The Hague, with the co-operation of the Republika Srpska (RS) authorities in mid-January 2005, is a significant step in the right direction. However, as most wanted war crimes suspects remain at large, much is still needed to ensure full co-operation with the ICTY, a priority matter for the CoE and a pre-condition for progress towards further Euro-Atlantic integration. The decision of the High Representative mid-December 2004 to dismiss several high officials of the RS testifies that obstacles still exist in this respect.

Democratic institutions: progress continues regarding the reinforcement of BiH State institutions, *i.a.* via comprehensive defence and police reforms, mainly as a result of constant pressure by the international community. However, practical implementation remains very weak and the need to strengthen the action capacity of State institutions is urgent. The adoption in the RS of a revised Law on Local Self-Government is a welcome development, whereas a draft Law on Local Self-Government, passed in first reading by the Federation's House of Representatives, raises concerns with respect to compliance with the European Charter of Local Self-Government.

Human Rights: the authorities should take all measures to ensure that the delayed compatibility exercise between BiH legislation and the ECHR be successfully completed by the end of May 2005 and that a Government Agent before the ECtHR be appointed as soon as possible. New legislation to restructure the Ombudsman institution in BiH, in line with Venice Commission recommendations, should be adopted at State and, subsequently, Entity level. A countrywide and sustainable Public Broadcasting System, in line with the CoE/European Commission expertise of June 2004, should be set up without further delay. 314,000 persons remain displaced in BiH and returns are lower than expected. CoE is taking part in the reconstruction effort through its Development Bank. As regards missing persons, the conclusions of the Srebrenica Commission's final report should now be implemented by the RS government.

Rule of Law: following the entry into force of relevant legislation, the War Crimes Chamber within the BiH State Court should start hearing cases as of end of February 2005. There is a need for a coherent BiH strategy towards prison issues, including the creation of a single prison administration. Ratification of four CoE Conventions in the penal field is still expected.

Education: the situation of 'two schools under one roof' in the Federation should be put to an end without further delay. At State level, a revised draft Framework Law for Higher Education, incorporating the principles and standards of the Bologna Process and the Lisbon Convention, should be adopted as soon as possible.

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1. Bosnia and Herzegovina (BiH) joined the Council of Europe (CoE) on 24 April 2002. Accession of BiH to the CoE followed the adoption of Opinion No 234 (2002) of the Parliamentary Assembly of the CoE (PACE), which lists a series of commitments to be met by BiH following its accession to the Organisation. Specific issues were also the subject of an exchange of letters between the BiH authorities and the Chair of the CoE Committee of Ministers (see the Addendum to this report).
2. The present report is the ninth quarterly report prepared by the Secretariat following the Committee of Ministers' decision of 29 May 2002 mandating the Secretariat to provide the Committee of Ministers Rapporteur Group for Democratic Stability (GR-EDS) with quarterly progress reports on the honouring of commitments by BiH, as well as developments in the post-accession co-operation programmes¹. It provides an update of the previous report and a stock-taking of the compliance with obligations and commitments undertaken after BiH accession to the CoE.
3. In order to guide the work of the CoE, notably the co-operation programmes, a number of priority matters have been identified in the fields of democratic institutions, human rights, rule of law and education. These priority matters appear in boxes in each relevant chapter below.
4. It should be noted that during the period covered by the present report, the Committee of Ministers adopted its reply to PACE Recommendation 1664(2004) on the honouring of obligations and commitments by BiH (doc. CM/AS(2004)Rec1664 final, adopted on 7 December 2004 at the 908th meeting of the Ministers' Deputies). Also, during the same period, Mr. Hugh Chetwynd was appointed as the new Special Representative of the Secretary General in BiH.

II. MAIN CONCLUSIONS

5. **Since the last report**, the following developments should be underlined:

A. Democratic institutions

- On 16 December 2004 the High Representative announced a series of measures, including dismissals of officials, for lack of co-operation with the ICTY by the BiH authorities, especially those in Republika Srpska (RS). These measures were accompanied by a decision of the US government to seize the assets of the Serb Democratic Party (SDS) and impose a visa ban on its leaders and on those of the Party of Democratic Progress (PDP).
- A cascade of resignations followed in the second half of December 2004 by Bosnian Serb political leaders and members of the PDP, including the RS Prime Minister and the BiH Minister of Foreign Affairs; Mr Pero Bukeylovic was nominated RS-Premier designate on 8 January 2005 and given 40 days to form a government.
- The BiH political agenda continues to be dominated by preparations for a future Stabilisation and Association Agreement (SAA) with the EU. As the latter requires fulfilment of CoE post-accession commitments, BiH's road to Brussels passes via Strasbourg.
- On 2 December 2004, EUFOR took over control of peacekeeping operations from NATO-led SFOR whereas NATO maintained a headquarters in Sarajevo. International troop strength on BiH territory has been reduced by almost 90% over the last nine years.
- The mandate of the Defence Reform Commission, co-chaired by the first ever State Minister of Defence, was extended until the end of 2005 with a view *inter alia* to finalising transfer of the remaining competencies of the Entities' defence ministries to the State level.
- A proposal for a comprehensive police reform, including the creation of a single policing structure under authority at State level has been put forward by the Police Restructuring Commission.
- Two new taxation laws started being paid into a single State bank account as from 1 January 2005. On 12 January 2005, the BiH House of Representatives adopted the VAT law, at a single 17 % rate.
- Continuous progress has thus been made regarding the reinforcement of BiH State institutions, but implementation capacity remains very weak. It would appear that conditions/criteria laid out by the international community remain the only real driving forces for change and progress in the country.
- Revision of electoral legislation, at all levels, in co-operation with the Venice Commission, is still expected.
- A new Law on Local Self-Government was adopted in the RS and CoE assistance was requested for the drafting of related legislation.
- A draft Law on the Principles of the Local Self-Government passed in first reading in the House of Representatives of the Federation of Bosnia and Herzegovina (FBiH) on 17 January 2005. However, the draft Law, in its current form, does not seem to take into account the recommendations previously made by CoE experts and raises some concerns regarding its compliance with the standards of the European Charter of Local Self-Government. Moreover, no progress has been made on the constitutional reform front concerning the regulatory responsibilities for local self-government in the FBiH.
- A new Local Democracy Agency was inaugurated in Mostar on 22 November 2004.
- On 21 December 2004, BiH ratified the European Outline Convention for Transfrontier Co-operation and its Amending Protocol.

B. Human rights

- On 15 January 2005, the surrender of Bosnian Serb ICTY indictee Savo Todovic to the Bosnian Serb authorities marked the first case in which a war crimes suspect was transferred to The Hague with the co-operation of the RS authorities. However, the most wanted war crime suspects remain at large and much is still needed to achieve full co-operation with the ICTY, essential also to ensure long-expected BiH's accession to the NATO Partnership for Peace programme.
- The Srebrenica Commission submitted its final report on 15 October 2004. Apologies to the relatives of the victims by the RS government followed on 10 November 2004. In mid-January 2005, the working group to implement the Commission's conclusions by the end of February 2005 was set up.
- The property repossession process has been a key achievement in BiH with over 90% of owners being able to repossess their pre-war homes. According to UNHCR, 314,000 persons remain displaced in BiH whereas the number of returns is lower than expected. The CoE Development Bank approved in November 2004 a 8 million Euros loan for the rehabilitation of 1100 damaged houses, measure which will provide housing to 4500 IDPs.
- On 21 December 2004, the CPT published its first report on BiH together with the government's reply.
- A new draft Law on Amendments to the Law on the Ombudsman in BiH has been prepared by the Ministry of Human Rights and Refugees before the end of 2004, taking into account most of the Venice Commission's recommendations.
- An agreement is expected to be reached with a view to extending the mandate of the Human Rights Commission at the State Constitutional Court for another year, i.e. until the end of 2005. Funding is, however, ensured only for the first three months of its operation. Both the Commission and the Court remain understaffed and in need of financial and material resources.
- The appointment of the ECTHR Government Agent is still expected. Progress on the 'compatibility exercise' of BiH legislation with the ECHR has been slow and participation of national experts to the drafting meetings unsatisfactory.
- Following a CoE expert report on the relevant laws and practice in both Entities, the State of BiH should now work towards adoption of a Law on Conscientious Objection in line with CoE norms, before the 24 April

2005 deadline laid down in its post-accession commitments, and allocation of the required funds to ensure implementation of the law.

- BiH still lacks public system and service broadcasting laws compatible with European standards following the failure of the Parliament to adopt the necessary amendments on 12 October 2004.

C. Rule of law

- The judiciary continues to face difficulties caused by insufficient funding. For this purpose, the High Representative is proposing *inter alia* reallocation of funds through the decrease of judges' and prosecutors' salaries.

Legislation regulating the establishment of the War Crimes Chamber within the BiH State Court and the transfer of cases from the ICTY to the BiH Prosecutor and State Court entered into force on 6 January 2005. Reconstruction, including of required secure pre-trial detention facilities, should be completed by the end of February 2005 to allow the first trials to start. A project proposal to build a high security State level prison and remand facility for some 400 persons has been developed with CoE's advice and international donor funds are being sought.

- The CoE Conventions on extradition, on mutual assistance in criminal matters, on the transfer of sentenced persons and on the compensation of victims of violent crimes - which had to be signed and ratified within two years after accession - have been signed but not yet ratified, although the authorities had indicated in September 2004 that ratification would follow "shortly".

D. Education

- Prototype by-laws necessary to ensure implementation of the new primary and secondary education laws - including the provisions on language - were developed by the relevant ministries in mid-2004. Adoption of these by-laws among the Cantons and the RS is currently uneven and should be introduced as quickly as possible. There are still 52 'two schools under one roof' in the FBiH.

- BiH is still lacking a Law on Higher Education offering a legal framework to regulate the country's higher education system in conformity with European standards. A new draft should be finalised by the end of January 2005.

6. **Recommendations for action** appear in Part VIII below.

III. DEMOCRATIC INSTITUTIONS

A. Strengthening and functioning of democratic institutions (at State and Entity level), with particular reference to the legislative process and to effective participation of representatives of the constituent peoples in decision-making

Recent political developments

7. On 16 December 2004, following a second refusal by NATO to admit BiH into its Partnership for Peace programme because of continued lack of co-operation with the ICTY by the BiH authorities, especially those in RS, the High Representative, Lord Ashdown, announced a series of measures "to address the systemic weaknesses in BiH's law enforcement and security institutions" (see below, under IV, B). His announcements were accompanied by those of the US government to freeze the assets of the Serb Democratic Party (SDS), founded by war-crimes fugitive Radovan Karadzic, and impose a visa ban on the leaders of the SDS and its coalition partner, the Party of Democratic Progress (PDP).

8. Twenty-four hours later, the RS Prime Minister and member of the PDP, Mr. Dragan Mikerevic, resigned in protest. He was followed by the BiH Minister of Foreign Affairs, Mr. Mladen Ivanic, founder and leader of the PDP. The BiH Minister of Transports and Telecommunications (PDP) resigned on 20 December and the Minister of Defence submitted his resignation on 29 December 2004. The BiH Minister of Justice stated he would only resign if asked to by all the RS political parties.

9. Following several weeks of negotiations and inter-party talks, on 8 January 2005, the RS President, Mr.

Dragan Cavic, nominated Mr Pero Bukejlovic from the SDS party as the new RS-Premier designate with the mandate to form a government within 40 days. RS President Cavic declared that the new RS government would not include ministers from the Party for Democratic Action (SDA), the major Bosniac party, which resulted in a series of critical comments.

Reinforcing BiH Statehood, reform ownership and integration into Europe

10. On 2 December 2004, a European-led multinational stabilisation force in BiH, EUFOR, took over control of peacekeeping operations in BiH by the NATO-led Stabilisation Force (SFOR). Formed by countries acting through or in co-operation with the EU and led by British Major-General Leakey, the 7,000 strong EUFOR mission was given an initial 12-month mandate which could be extended depending on the circumstances. Lord Ashdown, in his capacity as EU Special Representative, is offering political guidance to EUFOR. NATO maintained a headquarters in Sarajevo to continue helping with the implementation of the Dayton Peace Agreements. The Steering Board of the Peace Implementation Council (PIC), at its meeting on 2-3 December 2004, noted that international troops' strength on BiH's territory has been reduced by almost 90% over a period of nine years.

11. As concerns defence reform, one of the main pre-conditions for BiH's accession to the NATO Partnership for Peace programme, the High Representative extended the mandate of the Defence Reform Commission (DRC) until the end of 2005. The DRC is expected to propose the legal and institutional measures required to enhance State-level command and control, promote co-operation with the ICTY, achieve fiscal sustainability, strengthen parliamentary oversight and transfer the remaining competencies of the Entities' defence ministries to the State level. The DRC will be co-chaired by Mr Radovanovic, the first-ever State BiH Minister of Defence, and Dr Raffi Gregorian, appointed by NATO. It will hold its first meeting end of January 2005.

12. Another significant step towards reinforcement of BiH Statehood has been the implementation, since 1 January 2005, of two new taxation laws regarding tax on turnover of goods and services and excise tax. These taxes are paid now into a single bank account of the BiH Indirect Taxation Administration. The new system should simplify the sale and transport of goods between entities and prevent tax evasion. Some 1 billion Euros are expected to flow into the single account in 2005. Moreover, on 12 January 2005, the BiH House of Representatives adopted the VAT law at a single 17 % rate.

13. Preparation of a future Stabilisation and Association Agreement (SAA)² with the EU remains a political priority for BiH and the prospect of further European integration continues to be the strongest incentive to accelerate reforms in the country. However, the consensus on further European integration does not always translate into political action.

14. The first of the 16 preconditions for the conclusion of the SAA, includes the "implementation of BiH's CoE post-accession criteria, especially in areas of democracy and human rights"³. In addition, a number of other EU preconditions are directly linked to concrete CoE post-accession commitments. Consequently, fulfilling CoE commitments is clearly a pre-condition for the conclusion of the SAA and the development of closer relations with the EU. The need to strengthen the action capacity of State institutions, in particular Ministries - including the Ministry of Foreign Affairs, which appears to be understaffed as far as co-operation with the CoE is concerned - must also be reiterated.

15. During its December 2004 meeting, the PIC Steering Board welcomed the considerable achievements made by the BiH Council of Ministers in addressing the EC's Feasibility Study priorities and paid tribute to Prime Minister Terzic's personal engagement. However, the PIC also urged all concerned to resolve rapidly all outstanding Feasibility Study issues and in particular to ensure full implementation of reforms. Among the core causes of the government's inability to carry through the full range of its legislative commitments on time was considered to be the irregularity of meetings of the BiH Council of Ministers.

16. Consolidation of State-level institutions and implementation capacity cannot be totally dissociated from a reflection on the evolution of the present constitutional system. However, as mentioned in the previous reports, there is still no consensus on the content of such a reform. There is only one agreed basic principle: it should be the result of the decision of all citizens and parties of BiH and not be imposed by the international community. The CoE, in particular its Venice Commission, stands ready to provide advice and assistance whenever there is an agreement on the revision of the present constitutional arrangements. In this respect, it is worth recalling that, following the PACE's request in Resolution 1384(2004), the Venice

Commission is preparing an Opinion on three related issues: (a) the efficiency and rationality of the constitutional arrangements in BiH; (b) the compatibility of the BiH Constitution with the ECHR and the European Charter of Local Self-Government and (c) the compatibility of the powers of the High Representative with CoE standards, mainly the ECHR. Following a mission of the Venice Commission rapporteurs to Sarajevo and Banja Luka at the end of October 2004 and a preliminary discussion at its December 2004 session, the Venice Commission should adopt its Opinion on these issues in March 2005.

Election Legislation in BiH

17. Revision of the electoral law, in co-operation with the Venice Commission, was one of BiH post-accession commitments to be fulfilled by the first year of BiH's accession to the CoE. A comprehensive reform of BiH election legislation, at all levels, is expected and the Venice Commission has received an official request to work with the Election Commission in analysing the various issues (see also para. 19 below).

B. Development and functioning of local democracy (powers and finances)

18. The European Outline Convention on Transfrontier Co-operation and its Amending Protocol was ratified on 21 December 2004.

19. The "Report on the municipal elections in Bosnia and Herzegovina (2 October 2004)" was adopted by the Standing Committee of the Congress of Local and Regional Authorities of the CoE on 5 November 2004 (doc. CG/CP (11) 13). Reference is thus made to that report as regards the positive general assessment and historic significance of these elections, as well as the observed shortcomings. Among the latter, of particular concern for the purpose of the present report is the complexity of the legal framework under which the municipal elections were held, with four distinct electoral systems operating. This complex system, which few voters could understand, as well as the resulting lengthy counting procedures could, in the opinion of the Congress, reduce confidence in the results. A thorough verification of the Electoral Law by the Venice Commission is therefore recommended.

20. Moreover, as the report of the Congress observed, the municipal elections were held before the adoption of legislation on local self-government in the RS and the FBiH with the result that voters did not know the precise powers of the offices they were electing. This element could also explain the low turnout of election (46%).

21. In fact, the RS Law on Local Self-Government, completed with the assistance of CoE experts and adopted on 13 September 2004 by the RS National Assembly, was challenged by the RS Council of Peoples for violation of vital national interests of the Bosniac and Croat Peoples. Following amendments, the law was adopted. The new Law on Local Self-Government broadly complies with the standards of the European Charter of Local Self-Government and represents a clear improvement. However, the effective implementation of the new law requires adoption of new laws and a systemic revision of the existing legislation on local self-government.

22. At the end of 2004, the RS Minister of Administration and Local Self-Government, Mr. Slaven Pekic, requested CoE assistance for drafting some of these legislative and regulatory acts, namely: the Law on Administrative and Territorial Organisation of RS; the Law on the Status of *Functionaries* (high-ranking local elected officials), and guidelines on the preparation of new municipal statutes. Moreover, the RS Work Programme for Better Local Government, being drafted following the South-East European Regional Ministerial Conference, held in Zagreb on 25-26 October 2004, should be finalised for the Budapest European Conference of Ministers Responsible for Local Government, to be held at the end of February 2005. The Work Programme could lay the basis for the designing and drafting of a comprehensive Decentralisation Strategy, as recommended by CoE experts. The CoE is prepared to assist the RS authorities in launching the preparation of the relevant decentralisation strategy by setting up a platform for institutional dialogue on local-government-related matters (eg. RS Commission on Decentralisation).

23. As concerns the FBiH, the CoE has provided expert assistance to the authorities in the preparation of (a) amendments to the Entity Constitution and (b) a revised Law on the Basic Principles of Local Self-Government. The former aimed at shifting the regulatory responsibility for local government matters from the Cantons to the Federation with a view to achieving greater harmonisation of Cantonal regulations. Two attempts by the Parliamentary Committee on Constitutional Matters to introduce these amendments failed because of the lack of consensus between the different political stakeholders. Similarly, two new draft laws on the basic principles of local self-government were put into procedure last year without any success. In the view of the CoE experts, although both drafts were broadly in line with the standards of the Charter, they failed to effectively respond to the challenges they were supposed to address. This was due to a lack of shared vision of the future of local government in FBiH by all the stakeholders. In this context, the CoE recommended the launching of the preparation of a comprehensive Decentralisation Strategy for FBiH. Work on the Strategy could start in early 2005 in the context of the preparation of the FBiH Work Programme for Better Local Government, following the Zagreb Conference. The CoE is prepared to assist the FBiH authorities in finalising the Work Programme and launching the drafting of the relevant Decentralisation

Strategy by setting up a platform for institutional dialogue on local-government-related matters (e.g. Federation-level Commission on Decentralisation).

24. On 17 January 2005, the FBiH House of Representatives adopted in first reading the draft Law on the Principles of Local Self-Government and decided to organise public hearing within 60 days. However, the approved draft law does not seem to take into account the recommendations of the CoE experts and raises some concerns with regard to the standards of the European Charter of Local Self-Government. The CoE stands ready to provide specific assistance to the FBiH authorities in finalising the draft law, should an appropriate request be formulated, although it would be preferable that the adoption of the law be part of a more global reform project, i.e. the Decentralisation Strategy, as recommended by CoE. Moreover, the Law, if adopted, could only enter into force once the proposed amendments to the Federation Constitution (see above) are passed. For the moment, they have yet to be submitted to the FBiH Parliament for consideration.

25. Following entry into force of the new status of Mostar in March 2004, the city is building up a single administration. The inauguration of a Local Democracy Agency (LDA) in Mostar took place on 22 November 2004. The partners for this programme are, so far, the Municipality of Mostar, the Regions of Puglia and Sicilia, the Municipalities of Montegrotto, Monfalcone (Italy), the Region and the Municipality of Vejle (Denmark), the Municipality of Kragujevac (Serbia-Montenegro) and the Municipality of Kayseri (Turkey). The Agency is also financially supported by the governments of Liechtenstein and Luxembourg but additional funds for its functioning are still necessary. The LDA of Mostar develops projects in the fields of local economic development, sustainable development, capacity-building, inter-ethnic dialogue and trans-border co-operation.

26. More than two months after the municipal elections took place in the rest of the country, the councils of Brcko District and Mostar elected their mayors on 9 and 14 December 2004 respectively.

IV. HUMAN RIGHTS

A. Human Rights institutions (after expiry of the mandate of the Dayton human rights institutions)

Restructuring of the Ombudsman institutions in BiH

27. The principles, as well as the procedure and time-frame of the restructuring of the Ombudsman institutions in BiH were agreed at a working meeting organised by the Venice Commission on 19 April 2004 (see doc. CDL-AD(2004)28 rev). The number of Ombudsmen should gradually be reduced from nine (three State Ombudsmen + three Ombudsmen for each Entity) to three and then from three to one, over a transitional period during which the three institutions will co-exist, each one with one Ombudsman and two deputies. Furthermore, the principle of multi-ethnicity should be maintained in the resulting single institution through the appointment of deputy ombudsmen, possibly rotating on the post of ombudsman.

28. A draft Law on amendments to the Law on the Ombudsman in BiH, prepared by the Ministry for Human Rights and Refugees in the summer 2004, was welcomed by the Venice Commission as taking good account of the April conclusions (see Opinion No 264/2003 of 11 October 2004, doc. CDL-AD(2004)31, drawn up upon the request of the Ministry). At the same time, the Venice Commission suggested some improvements, in particular as concerns the appointment procedure and the respective roles and functions of the Ombudsman and deputy Ombudsmen, and considered that the law should fix a date, for example 1 January 2006, when the single institution becomes operational. These elements had been agreed upon by the current Ombudsmen and by representatives of the Ministry and of the international community.

29. Although the Ministry amended the draft law in the light of the Opinion of the Venice Commission, its proposal was not followed by the relevant Commission of the Parliamentary Assembly of BiH which approved another proposal advocating the maintenance of the status quo of three State Ombudsmen and providing for a non-transparent appointment procedure for the new, unified institution, in contradiction with what was agreed back in April 2004. Fortunately, following the intervention of both the CoE SRSG and the OSCE Mission, the House of Representatives of the BiH Parliament, on 4 November 2004, rejected the Commission's proposal and referred the draft law back to the Ministry of Human Rights and Refugees for redrafting.

30. A new draft law was prepared by the Ministry before the end of 2004. The new draft seems to take into account most of the recommendations made by the Venice Commission to the previous draft. However, the draft provides that the merged institution will enter into force in 2007, thus making the transitional period longer than initially planned. The new draft should be submitted to the Council of Ministers in January 2005.

31. In the meantime, on 28 December 2004, the RS National Assembly elected a new Ombudsman and Deputy Ombudsmen, although the Secretary of the Venice Commission had conveyed his opinion to the

President of the RS National Assembly that this election was not necessary in the current circumstances.

32. The CoE remains ready to assist the authorities of BiH throughout the process of creation of a single Ombudsman institution, including its technical and practical aspects to be dealt with in the framework of an Action Plan. Entities will have to enact legislation to comply with the BiH law once the latter is adopted.

The Human Rights Commission at the Constitutional Court and the Constitutional Court

33. The Human Rights Commission at the Constitutional Court deals with the backlog of the former Human Rights Chamber - i.e. with cases received before 31 December 2003 - and in principle should have ceased to exist by 31 December 2004; the Constitutional Court deals with cases received after 31 December 2003.

34. Out of 8,800 cases inherited, some 5,500 were still unresolved in December 2004. In addition, the Constitutional Court has received a considerable number of cases as of 1 January 2004. It is reportedly not able to resolve this influx of cases with its present human, material and financial resources. Had the Commission ceased to exist at the end of 2004 - as was initially foreseen - and had it been decided that the Constitutional Court take over the Commission's unresolved cases, the Court would have faced huge problems of legal and material nature.

35. An agreement is expected to be reached between the two Entities and the State extending the Commission's mandate for another year, i.e. until the end of 2005. While the balance of the European Commission grant will be able to cover the first three months of operation of the Human Rights Commission, the State and Entities will have to find the resources for the remaining nine months in 2005. At any event, both the Human Rights Commission, as well as the Constitutional Court should be provided with the necessary financial and material resources. It is to be hoped that further support such as the generous donation of computer equipment to the Court by the Greek Government will be forthcoming. Appropriate legal procedures need also to be put in place to deal with present and future cases.

B. Co-operation with the International Criminal Tribunal for the former Yugoslavia (ICTY)

36. Co-operation with the International Criminal Tribunal for the former Yugoslavia (ICTY) is an unambiguous obligation under the Dayton Agreements and under international and domestic law. It is also a CoE post-accession commitment identified as a priority matter by the CoE, as well as one of the 16 conditions of the EU Feasibility Study. As stressed in previous reports, the road to further European integration goes via full co-operation with the ICTY, especially in the RS.

37. Nine years after the Dayton Peace Agreement, the surrender of Bosnian Serb ICTY indictee Savo Todovic to the Bosnian Serb authorities, on 15 January 2005, marked the first case in which a war crime suspect was transferred to The Hague with the co-operation of the RS authorities. Todovic is charged with crimes against humanity and war crimes for the killing, torture and inhuman treatment of mainly Muslim prisoners at the Foca concentration camp, where he was deputy commandant from 1992 to 1993.

38. The High Representative and the EC Delegation in BiH welcomed Todovic's transfer to the Hague as a significant step forward which should mark the beginning of a process which will see the other indictees transferred without delay to the ICTY. They recalled that, unfortunately, most wanted war crime suspects, including Karadzic and Mladic, remained at large. According to Lord Ashdown, "if the RS authorities demonstrate that they are fully cooperating with ICTY, it will remove the obstacle that is blocking this country's progress towards the EU and NATO".

39. On 9 December 2004, continued lack of co-operation with the ICTY by the BiH authorities, especially those of the RS, had caused a second refusal by NATO to admit Bosnia and Herzegovina into its Partnership for Peace programme. This lack of co-operation was confirmed by both the President of the ICTY, Judge Theodor Meron, and the Chief prosecutor, Mrs Carla del Ponte, in their address to the United Nations Security Council on 23 November 2004.

40. As a consequence, one week after NATO's decision, on 16 December 2004, the High Representative announced "the start of a process designed to address the systemic weaknesses in BiH's law enforcement and security institutions", a process to run into the Spring of 2005 (see also above, under III A). Before announcing a number of measures to this end, the High Representative acknowledged some positive developments since the NATO Istanbul Summit in June 2004, such as: the publication of the final report of the Srebrenica Commission and the apology that followed from the RS authorities; the arrest within BiH and transfer to the jurisdiction of the Sarajevo Cantonal court of eight people indicted for war crimes in

December 2004 under the ICTY's Rules of the Road procedure; an increased activity on the part of the RS authorities with regard to locating and arresting those indicted by The Hague, another welcome step. However, the fact that the RS had, for nine years, failed to arrest a single person indicted of war crimes by the ICTY, stand, according to the High Representative, between BiH and European integration. Press reports of the RS Army continuing to employ Ratko Mladic until 2002, and VRS soldiers harbouring him in an isolated military shelter on RS territory (near Han Pijesak) in summer 2004 were for the High Representative "shocking examples of the RS' institutional complicity in the evasion of justice of ICTY fugitives".

41. The measures announced by the High Representative in mid-December 2004 include:

- The removal of 9 officials believed to have helped war criminals and their networks.
- The blocking of bank accounts of individuals for the same reasons.
- An instruction to RS Prime Minister Dragan Mikerevic to set up a group under the supervision of the EU Police Mission to study documentation produced by the Srebrenica Commission and identify those officials whose names appear in connection with the events of July 1995. The work of this Commission should be completed by the end of February 2005 when a decision will be taken on further action, including if needed criminal prosecutions and suspensions.
- A request to BiH Defense Minister Radovanovic to investigate the assistance given by some in the RS Army to fugitives at large and to suggest concrete measures to prevent this happening again.
- An acceleration of Defence Reform: functions currently carried out by the Entity Ministry of Defence should be transferred to the State Ministry of Defence, and the Entity Ministry should be closed down. This process should be completed by the autumn of 2005.
- The creation of a single system of policing, as recommended by the Police Restructuring Commission, in accordance with the EC criteria laid out in its Feasibility Study. These reforms should also be adopted in early 2005.
- An amendment of the RS Law on Auditing to the payment provisions in the RS Law on Auditing and Public Sector of Republika Srpska to ensure that it will be possible to fund special audits of key companies in coming months and years.
- An amendment to the BiH and Entity Criminal Codes to require all family members except the spouses, parents and children of the accused to co-operate with police investigations and to give evidence in war crimes trials.

42. As was mentioned above, the announcements by the High Representative were accompanied by those of the US government to freeze the assets of the Serb Democratic Party (SDS), founded by war-crimes fugitive Radovan Karadzic, and impose a visa ban on the leaders of the SDS and its coalition partner, the Party of Democratic Progress (PDP). For the resignations of Bosnian Serb officials which followed the announcement of these measures and the subsequent political developments in RS see above, under III.

43. These measures by the High Representative were the subject of very strong reactions by the highest officials in the Republic of Serbia (President, Prime Minister and Parliament Speaker) who warned against the risk to jeopardise the political stability in BiH and in the entire region. However, during his official visit to Belgrade in early January 2005, the High Representative received assurances from the Prime Minister of Serbia that he would actively and energetically support Banja Luka in the process of cooperating with The Hague and meet its international obligations. Serbian President Boris Tadic and the High Representative agreed that the issue of co-operation with The Hague was holding up the European future of countries throughout the region and that in this sense intensive and concrete co-operation was needed. They also agreed that it was unacceptable to change the Dayton Agreement and the constitutional arrangements of BiH without the consensus of all three constituent peoples/nationalities.

44. In this respect, it is recalled that the Venice Commission, upon PACE request, is

preparing - for adoption in March 2005 - an Opinion to determine to what extent the powers of the High Representative in BiH comply with CoE basic principles, in particular the ECHR (see also above, under III, A).

45. As concerns the issue of missing persons and the Srebrenica events, on 15 October 2004, the Srebrenica Commission submitted its final report to the RS Government which subsequently transmitted it to the Human Rights Commission of the Constitutional Court of BiH. In a Statement issued on 10 November 2004, the RS Government apologised for the Srebrenica tragedy and conveyed condolences to the relatives of the victims, some 7,800 Bosniaks according to the report. The conclusions state that the Srebrenica Commission's Report, including its attachments, represents a good platform for investigating, documenting and prosecuting crimes. The RS Government should swiftly conduct exhumation and identification of missing persons and provide ICTY with the incriminatory information deliberately left out of the report. The publication of the report and the apologies expressed by the RS government have been welcomed by the international community as an important step in the process of reconciliation and building of trust among the peoples of Bosnia and Herzegovina.

46. On 13 January 2005, the RS Government formed an eight-member working group to implement conclusions cited in the final report of the Srebrenica Commission. Earlier in January, the High Representative had reminded the RS government that by the end of February 2005 a report should be delivered both to the State Prosecutor and his Office analysing the documentation produced by the Srebrenica Commission and identifying all officials whose names appear in the confidential annexes, with emphasis on those still in the employment of the RS authorities.

47. There is still no consensus on the setting up of a Truth and Reconciliation Committee. The draft law prepared by representatives of the civil society has not yet been examined by the authorities.

C. Sustainable return of refugees and displaced persons, on the basis of freedom of choice

Property Law Implementation (PLI)/restitution of property and handover

48. The property repossession process has been a key achievement in BiH with over 90% of owners being able to repossess their pre-war period homes. As of mid-December 2004, the OSCE mission and its Property Law Implementation Plan (PLIP) partners, the OHR and UNHCR, had verified that 118 out of 129 municipalities had completed their property claims caseload. Ten of the remaining unverified municipalities had also done so but were on the process of substantiating their compliance with the PLI Substantial Completion Guidelines. Banja Luka was the only municipality in BiH still processing claims, due to inadequate support to its housing authorities from the RS Ministry of refugees and Displaced Persons. Adequate funds should be allocated to the housing authorities of Banja Luka to complete their remaining work and the Ministry should actively and publicly support them.

49. Moreover, mid-December 2004, the OSCE Mission expressed its concern to the FBiH Minister of Urbanism and Environment with respect to the 31 December 2004 deadline set for municipalities to resolve cases which had not been decided by the Commission for Real Property Claims (CRPC). Following the latter's closure in December 2003, the remaining 1,338 unresolved cases were transferred to local housing authorities.

50. On 23 December 2004, the representatives of OSCE, OHR and UNHCR drew the attention of the FBiH Parliament to the fact that the draft Law on Return, Allocation and Sale of Apartments, which the Federation Parliament planned to discuss at the end of December 2004, should consider the continued right to alternative accommodation of the beneficiaries currently using unclaimed apartments, as envisaged by the Law on Cessation of the Application of the Law on Abandoned Apartments. The international community representatives noted that the draft Law did not prioritise the neediest families in the allocation process and underlined that the allocation criteria in the new Law, which would dispose of the last housing stock remaining in public hands, should take into account the housing needs of the most vulnerable categories of society. Vulnerable segments of the IDP population include those whose property has not been restructured and who are unable to access reconstruction assistance.

Returns

51. According to information provided by the UNHCR early January 2005, an estimated 314,000 persons remain displaced in BiH as of mid-2004, whereas the number of returning refugees and IDPs is lower than expected (see UNHCR Global Appeal 2005). It is anticipated that refugee and IDP returns will continue during 2005, albeit on a reduced scale. UNHCR will continue the re-registration exercise which started in 2004 and focus attention throughout 2005 on the vulnerable returnee population. It will also continue helping the BiH government manage all aspects of the asylum process, including implementation of the new asylum legislation.

52. In making returns to BiH sustainable over the next two years and beyond, complex issues to be tackled vary from respect for the rule of law to assistance for the reconstruction of destroyed property, employment, health care, pensions, utilities and an egalitarian education system. Although some progress has been made in recent years with respect to some 17,000 refugees from Croatia, much more needs to be done to enable them to return home and repossess their properties.

53. The CoE is also taking part in the reconstruction effort through its Development Bank (CEB), which BiH joined in December 2003. A new project should soon provide housing for some 4,500 IDPs as the Bank approved, in November 2004, an interest rate subsidised loan worth € 8 million, for the rehabilitation of some 1100 damaged houses. In March 2004, the CEB also approved an exceptional donation of USD 300,000 for integration of internally displaced persons (IDPs) with a view to providing permanent housing to a selected group of about 45 IDPs currently living in collective centres in Bosnia and Herzegovina and thus facilitating their voluntary return and reintegration into their places of origin. The project will be implemented by UNHCR.

54. As mentioned in the previous report, Entities should ensure that their legislation on refugees and IDPs is fully harmonised with the State legislation. In addition, the Return Fund, the Commission for Refugees and Displaced Persons and the proposed Restitution Commission should be made fully operational.

D. Other relevant issues

CoE Conventions in the field of Human Rights

55. The appointment of the Government Agent before the ECtHR, under the authority of the Ministry for Human Rights and Refugees, is still expected as a priority matter (see previous report, doc. SG/Inf(2004)28, para. 46).

56. The Working Group of National Experts set up for the 'compatibility exercise' of BiH legislation with the ECHR held its third drafting meeting, with the participation of CoE experts, at the end of November 2004. The final compatibility report should be ready by 31 May 2005 at the latest. In view of the importance attached to the effective completion of the compatibility exercise as a pre-requisite for compliance with the post-accession commitments undertaken by BiH, the BiH authorities should take all necessary measures to ensure that this study is conducted as efficiently as possible, with the full and active involvement of all national experts concerned and the proper institutional support from the Council of Ministers.

57. On 21 December 2004, the CPT published its first report on Bosnia and Herzegovina, following a visit in April/May 2003. In its report, the CPT *inter alia* calls upon the authorities to ensure that a thorough, independent and impartial investigation is carried out into allegations of large-scale ill-treatment following a riot in Zenica Prison in February 2003. It also draws attention to the total lack of out-of-cell activities offered to remand prisoners. Whereas many people indicated to the CPT that they had been treated correctly whilst detained by the police, some did complain of physical ill-treatment by police officers. The CPT emphasised the importance of strict selection criteria during recruitment of police officers and of professional training. Moreover, there is lack of any integrated health care policy in the prisons. Persons committed to the forensic psychiatric care are unacceptably treated and, in FbIH, continue to be accommodated within a prison with minimal psychiatric and therapeutic care. In their response to the report, the BiH authorities refer to progress in the field of legislative reform, including as regards the development of a new State Law on the Execution of Criminal Sentences, and to measures taken to improve police training and to step up the control of police activities. However, they also make reference to significant budgetary difficulties, which pose an obstacle to tackling problems such as those observed in psychiatric institutions (for both the CPT report and the response of the BiH government see the CPT's website: www.cpt.coe.int).

58. As regards national minorities (the "Others"), there remain legislative and constitutional obstacles to their full integration and even where appropriate legislation does exist, full implementation is still needed. A report on IDPs in the OSCE area (entitled "Trapped in Displacement" and published in November 2004 by the Global IDP Project, established by the Norwegian Refugee Council), notes the continued discrimination faced by minority IDPs and returnees at different levels, including access to housing assistance, utilities, employment, health care and education, which poses an obstacle to return and /or reintegration. The European Charter for Regional or Minority Languages - to be signed and ratified by the second year of BiH membership to the CoE (24 April 2004) - has not yet been signed.

59. Since the previous report, there have been no further developments regarding ratification of the revised European Social Charter, signed in May 2004.

60. Problems mentioned in the previous report remain as regards differences among social security rights enjoyed by BiH citizens not only across the two Entities but also across the cantons in the FbIH, as well as the organisation of the social security system which - in practice - often deviates from enacted legislation. On the occasion of a seminar organised by CoE in Sarajevo in November 2004 on (a) the Revised Social Cohesion Strategy and (b) the social security instruments, the Minister of Civil Affairs, who has responsibility at State level of social affairs, welcomed CoE proposals to assist the appropriate department of his Ministry,

in coordination with the Entities and Cantons, in setting priorities for social policy in his country (see also below).

Freedom of expression and information

61. BiH undertook the commitment to continue reforms in the field of the media, in order to guarantee freedom of expression and the independence of journalists. In June 2004, PACE recommended that the CoE CM "continue to follow closely the question of freedom of the media in BiH, and in particular the independence of the Communications Regulatory Agency (CRA), and ensure that the public service broadcasting laws are adopted and implemented as soon as possible in accordance with the relevant European standards" (see PACE Recommendation 1664 (2004) adopted in June 2004).

- Laws on the Public Broadcasting System and Service of BiH:

Regrettably, BiH still lacks public service broadcasting laws (PBS Laws) compatible with European standards. A joint expertise of revised draft PBS laws was issued in June 2004 by the CoE and the European Commission. These laws should create a countrywide and sustainable Public Broadcasting System/Service in line with CoE standards. Their adoption is one of the 16 EC Feasibility Study requirements. However, on 12 October 2004, the House of Representatives of the BiH Parliament rejected amendments on the Draft Public Broadcasting System Law necessary to bring the Draft in compliance with the Feasibility Study requirements, i.e. to create a single, self-sustainable public broadcasting where constituent broadcasters share a common infrastructure. In its Reply to PACE Recommendation 1664(2004), the CoE CM, in December 2004, expressed regret that the PBS laws had not yet been adopted and urged the authorities to do so, "in order to establish a country-wide sustainable and independent public broadcasting system in line with the Council of Europe-European Commission expertise of June 2004". Once the State laws are adopted, the Entities will have to adapt their own legislation and TV structures. In the meantime, BHT Public Television, covering the entire country, started broadcasting in August 2004.

- The Communications Regulatory Agency (CRA):

As mentioned in its Reply to PACE Recommendation 1664(2004), the CoE CM continues to closely follow developments concerning the CRA, in particular its financial situation and staff status. Further to concerns expressed in mid-2004, additional funding has been released to the CRA. However, a permanent mechanism for consultation with the authorities on the budget proposal would be most useful in the future. As regards the staff situation, contrary to the civil service agency, the CRA Council considers that none of its staff can be qualified as civil servants.

Alternative (civil) service/Conscientious objection

62. Upon the request of the FBiH Ministry of Defence, the CoE participated in the evaluation of the implementation of the first phase of the Pilot Project on the civil service in BiH. Following a visit to the country at the end of September 2004, CoE experts submitted to the FBiH and RS authorities in December 2004 a report on the relevant laws and practice, including concrete recommendations with respect to future legislative initiatives.

63. The State of BiH should now work towards adopting a Law on Conscientious Objection in line with CoE norms before 24 April 2005, as laid down in its post-accession commitments to the CoE. The law should guarantee allocation of adequate resources to enable a proper consideration of each request for conscientious objector status. In this regard, the CoE reminds the FBiH that the inability of the Civil Service Commission to function due to lack of funds can in no way be used as an excuse to deny the right to conscientious objection.

Civil society

64. On 7 December 2004, the NGO Coalition "To work and Succeed Together" organised a conference of BiH NGOs, with the participation of international organisations, including the CoE. The conference discussed a strategy for NGO development, which was based on the contributions of more than 300 NGOs and sought to strengthen partnership between BiH authorities and NGOs, improve the quality of services provided by NGOs and increase the support for NGO work from authorities, business and citizens. The conference adopted a Strategy and agreed to abide by the approved standards of service and code of conduct. A Working Group, consisting of NGOs and representatives of the Council of Ministers should in the near future sign an "Agreement on Co-operation between the Council of Ministers and the Non-Governmental Sector in BiH".

V. RULE OF LAW

Functioning of the judicial system, particularly with regard to execution of court decisions and the fight against corruption and organised crime

A. CoE Conventions

65. Ratification of the following Conventions - which were to be signed and ratified by 24 April 2004- is still expected: the European Conventions on extradition; on mutual assistance in criminal matters; on the transfer of proceedings in criminal matters; and on the compensation of victims of violent crimes. The CoE stands ready to provide assistance to ensure that these ratifications will have full domestic effect (by-laws etc.).

B. Reform of the Judiciary

66. Steady progress is being made in consolidating judicial institutions at State level - High Judicial and Prosecutorial Council (HJPC), Constitutional Court, State Court, court police- but they remain under-resourced and understaffed. The recent appointments by the new HJPC in Courts and Prosecutors' offices at all levels in BiH is expected to contribute, to a great extent, to the fight against corruption in the judiciary.

67. Amendments to the pre-trial detention chapter of the Criminal Procedure Code guaranteeing the principle of presumption of innocence and a new State Law on the Execution of Criminal Sentences were elaborated with CoE expert assistance and submitted to Parliament before the end of last year. Changes in the Entity legislations on prisons should now also be elaborated.

68. According to a report on the implementation of the new (2003) Criminal Procedure Code in the courts of BiH, prepared by a team of 24 OSCE court monitors and presented on 17 December 2004, the courts, prosecutors and defence attorneys have made substantial progress in implementing the new codes; positive and measurable steps forward have been made. Among the positive findings, the report notes that the vast majority (over 90%) of judges demonstrated a high level of professionalism. In addition, plea bargaining practices had resulted in much greater court efficiency, with such cases being resolved in an average of 70 days from indictment. A significant majority of defendants have access to a private or court appointed attorney. At the same time, delays continue to occur and a better case management and planning is needed since almost ¼ of all scheduled hearings are postponed. In many courts, a reluctance to appoint attorneys to indigent defendants was also noted, although this right is granted by law.

69. At its December 2004 meeting, the PIC Steering Board considered that the efficient administration of justice, a "core plank of BiH's post-war rehabilitation", depended on a properly functioning and appropriately remunerated judiciary and fully supported "the urgent need to review judicial salaries" to ensure proper allocation of funds and enable the judicial system to work effectively. Some days earlier, in addressing a Conference on Judicial Reform in BiH, organised by the HJPC, the High Representative had pointed out that to create a healthy budgetary situation in the judiciary, salaries of judges and prosecutors had to be reduced at certain court levels up to 16% in the Federation and up to 4% in the RS. Such a measure would reduce the personal costs (currently representing 84% of the total budget for the judiciary) and allow financing for other running expenses - such as electricity, heating and telephones- with respect to which insufficient funding continues to cause major concerns. In the RS, in particular, courts and prosecutor's offices even lack continuous access to basic utilities (e.g. electricity).

70. The lack of information technologies in court administration, backlog of cases and insufficient enforcement of court decisions, mentioned in the previous report, remain areas of concern. Harmonisation of legislation between both Entities should also become a priority and a single BiH Judicial and Prosecutorial Training Centre should be established. The CoE, in co-operation with the European Commission, has played an important role in supporting the two existing training centres, mainly through assistance with the continuous training activities (sitting judges and prosecutors) and in establishing an initial training system (for future judges and prosecutors).

71. The package of laws regulating the establishment of the War Crimes Chamber within BiH and the transfer of cases from ICTY to the BiH Prosecutor and the State Court officially came into force on 6 January 2005. A Registry will provide independent administrative support to the Court. Only highly sensitive war crimes and organised crime cases will be tried by the BiH State Court while other cases will proceed before the Entity (local) courts. To make sure that the new Chamber gains the benefit of years of international war crimes tribunal experience a strong international presence is foreseen for the first two years. This presence will gradually decline during years three to five and thereafter this specialised Chamber and the corresponding Department in the BiH Prosecutors Office will be fully BiH staffed institutions. Although it was foreseen that the War Crimes Chamber would be operational in January 2005 and start its first trials, the required reconstruction work and building of secure pre-trial detention facilities are now expected to be completed by the end of February 2005. As also requested by PACE (see PACE Recommendation 1664(2004, adopted in June 2004), the CoE member States are invited to consider assistance to the new War Crimes Chamber by way of human, material and financial resources. In this respect, the OHR has already indicated that substantial additional funds will be required to continue work of the Chamber into the future. International donors have pledged to revisit this requirement once the Chamber has been set up.

72. As concerns detention facilities, the process of prison reform - for which CoE is the lead organisation -

has been initiated. However, there is a need for a coherent BiH strategy towards prisons issues which should also include the creation of a single prison administration for BiH.

73. The establishment of the War Crimes Chamber has thrown into the spotlight the necessity for a high security detention facility for BiH. Within the framework of the War Crimes Chamber project, a provisional 21 bed pre-trial detention facility has been established at State level. The CoE is working closely with the Registry of the Chamber in developing the necessary regulations and training the personnel. At the same time, a project proposal to build a high security State level prison and remand facility for some 400 persons has been developed and international donor funds are being sought. The CoE is also supporting this initiative.

C. Police and security reforms

74. Progress has been marked with respect to police reform and, in particular, the creation of a single structure of policing. Such a structure "with competency vested at the State level operating in functional areas based on technical policing criteria" is one of the 16 pre-conditions for the conclusion of the SAA with the EU. The reform is considered essential to increase efficiency in the fight against criminality, which could, in turn, allow *inter alia* liberalisation of visa regimes for BiH citizens.

75. On 14 January 2005, the Chair of the BiH Police Reform Commission (PRC), Mr. Wilfred Martens, delivered to the BiH Council of Ministers Chair and the High Representative the final report on police reform in BiH. The report contains the concept for the establishment of a "single police structure" and calls for the exclusive authority of the State over laws that concern the police and the police budget, as well as the creation of functional local police areas whose territory and organisation will be defined on the basis of technical policing criteria. Following consultations on three maps proposed in the report, a decision on which map will be accepted needs to be made by late January and then the report will be made public. The CoE stands ready to provide assistance in the drafting of legislation necessary to implement the police reform.

76. The building-up of the new downsized and streamlined BiH Intelligence Security Agency (OSA), following the abolition of the two Entity secret services, gave rise to complaints early this year with respect to some persons hired by the OSA. BiH Prime Minister said that he would act on the basis of an investigation by the Commission for Supervision of the OSA which would establish whether there had been any violation of the law or parliament decisions.

77. Implementation of other related laws such as those on the State Information Protection Agency (SIPA) and the Security and Justice Ministries is on-going.

VI. EDUCATION

Adoption of education legislation at all levels, reform of curricula and eradication of all segregation in the school system.

A. Legislation on Primary and Secondary Education

78. Following the introduction of all lower level primary and secondary education (PSE) laws in conformity with the State Framework Law on Primary and Secondary Education (in the case of three Cantons imposed by the High Representative), prototype by-laws necessary to ensure implementation of the new laws - including the provisions on language - were developed by the relevant ministries in mid-2004. Adoption of these by-laws among the Cantons and the RS is currently uneven and should be introduced as quickly as possible.

79. Challenged by the Croat Caucus of the Cantonal Assembly in the Central Bosnia Canton (Travnic), the FBiH Constitutional Court, on 11 December 2004, issued a ruling that the PSE Law (which had been imposed by the High Representative) did not violate the vital interest of the Croat people, since teaching exclusively in one language violated the rights of other constituent peoples and contravened the principle that all languages in BiH are to be regarded as equal. Following this ruling, the Central Bosnia PSE Cantonal Law and the necessary by-laws should be implemented without further delay.

80. Linked to the implementation of the State-level Framework law, are two new State-level Laws on vocational education and training and on the establishment of a Curriculum Agency, which should be finalised and submitted to the Council of Ministers in early 2005. A new Law on pre-school education is also being prepared at State-level.

B. Full integration in schools

"Two schools under one roof" in the FBiH

81. There have been unfortunately no concrete developments since the previous report's finding that there are still 52 "Two schools under one roof" in the FBiH (separate classes for Croat and Bosniak children). The first step to unify these schools is for the municipal councils, with support from the relevant Ministries, to implement the decision on administrative unification of the schools (see doc. SG/Inf(2004)28, para. 64). It is still expected that the new (imposed) legislation should finally eliminate this situation. Implementation of the laws and the development of more specific by-laws continue to be the key issues.

82. Only one of the '2 in 1 schools', Mostar Gymnasium, has unified legally and administratively. Although some progress is being made to encourage contacts between students – such as a joint student council – tensions remain and students still study separately. It is hoped that the aid given to the Gymnasium by the International Community to transform the Mostar Gymnasium into a centre of excellence will relieve tensions and eventually end its status as a '2 in 1 school'.

83. The persistence of ethnically ethno-centric schools in BiH is still a matter of grave concern for the CoE. Elimination of all aspects of segregation and discrimination based upon ethnic origin is not only one of the post-accession commitments undertaken by BiH, it is of the utmost importance for the peoples concerned and for the further European integration of BiH.

C. Higher Education

84. Regrettably, BiH continues to lack a Law on Higher Education offering a legal framework to regulate the country's higher education system in conformity with European standards. It remains thus one of the only two States to be part of the Bologna process but still lacking this crucial law.

85. Challenged by the Croat Caucus in the BiH House of Peoples, the BiH Constitutional Court ruled, in June 2004, that the Draft Framework Law on Higher Education endangered the vital interest not only of the Croats, but of all constituent peoples. The Court made it clear that all three constituent languages must be respected at all universities in BiH, thus preventing ethno-centric higher education.

86. In July 2004, the BiH Parliament stipulated that a new draft be prepared as quickly as possible taking into account the ruling of the BiH Constitutional Court and the interests of all constitutional peoples in BiH. Also, the International Community has urged the Council of Ministers to raise the competencies in higher education, in particular financing, to the State level in the medium-term.

87. In the autumn of 2004, the Ministry of Civil Affairs set up a Working Group consisting of representatives of the three constituent peoples. The Working Group, however, failed to reach an agreement, *inter alia* as regards levels of financing (cantonal, entity or State level), licensing and the rights of the founders of universities. Therefore, the Ministry of Civil Affairs and international organisations, including the CoE, are currently working on a new draft which should be finalised by the end of January 2005.

VII. CoE CO-OPERATION PROGRAMMES WITH BIH

88. In the period October 2004 – January 2005, the CoE organised more than 50 bilateral and multilateral activities to the benefit of Bosnia and Herzegovina. These activities concerned six out of eight CoE Programme of Activities' Lines of Action. Most of these activities directly reflect the commitments and obligations discussed in this report.

89. The 'compatibility exercise' with the ECHR is underway and several drafting meetings took place in the mentioned period. This study holds a key position in the co-operation and it was decided to prolong the main BiH Joint Programme with the European Commission for six months, through to August 2005, for this very reason. In the words of the 17 September 2004 Steering Committee conclusions:

"The completion of the compatibility exercise of domestic legislation is extremely important and viewed as a pre-requisite for compliance with the post-accession commitments undertaken by Bosnia and Herzegovina. The findings of the compatibility report would lead towards an overall review of legislation in light of the European standards in the human rights field." (doc. DSP (2004) 18 of 27 October 2004).

90. At this Steering Committee meeting in Banja Luka, the BiH President of the Supreme Court affirmed that he received daily complaints on violations of human rights and that the compatibility exercise would pave the way for a set of new laws which would offer improved protection to the citizens in Bosnia and Herzegovina. It is now important to ensure that the compatibility study is available by the end of May 2005. The full support of the authorities is needed to this process (see also Parts II and IV above and Part VIII

below).

91. There were a number of other activities in the field of human rights in the reporting period, not less than six training workshops on different aspects of the ECHR, for judges, prosecutors and lawyers. In general, the training of legal professionals continues to be a cornerstone of CoE action in BiH. In October 2004 the CoE organised a pilot training course on writing reasoned judgments, in November a train-the-trainers course on judicial ethics and in December there were training sessions on mediation and regional aspects of Bar Association work. Most of this work is carried out in the context of Joint Programmes with the European Commission.

92. Another important field of CoE action, in correlation with the BiH commitments and obligations, regards the freedom of expression and information. The focal point of assistance in 2004 was the joint EC-CoE expertise of the revised draft public broadcasting laws, that, so far, has not resulted in adopted legislation (see also Parts II and IV above and Part VIII below). However, there was also other support action for BiH: a seminar on media concentration and pluralism took place in October 2004, and BiH representatives participated in multilateral seminars on defamation and on press ethics and self-regulation.

93. Education also continues to be a field where the CoE is investing considerable resources: several activities were organised in order to help establish adequate policies for higher education reform and the Bologna Process, but this has not yet produced the expected results. In October and December 2004, there were drafting sessions to develop a Prototype Statute for BiH universities. The CoE also offered history teaching support (the "Textbook Commission"), advice on the modernisation of the foreign language curriculum in the country and a follow-up teacher-training seminar on children's rights.

94. In the field of social cohesion, a seminar was organised in November 2004 on the Revised Social Cohesion Strategy and social security instruments, with high-level participation from both Entities. The authorities will now establish the necessary priorities and more CoE support will be organised to discuss each single social security contingency. Social security coordination is essential in BiH and authorities are now well aware of the need of further progress in this field. It is worth noting that BiH will host the annual 2005 social security training course devoted to the coordination instruments of the CoE (and the EU).

95. As regards co-operation with the European Commission, co-operation continued within the four country-specific Joint Programmes (see the previous report, doc. SG/Inf (2004)28), as well as within four regional programmes (police, justice, support to social institutions and electoral law support). The regional programmes are becoming increasingly important, with a series of BiH-related activities organised within the regional CARDS-Police programme (2004-2006) and the October 2004 launching conference for the regional CARDS Justice programme (2004-2007), in which the CoE is a partner.

VIII. RECOMMENDATIONS FOR ACTION

A. Democratic institutions

i. The need to urgently strengthen the action capacity of State institutions, in particular Ministries - including the Ministry of Foreign Affairs, as far as co-operation with the CoE is concerned - must be reiterated. They should be provided with the necessary resources (human, material and financial). The problem of irregularity of meetings of the BiH Council of Ministers should also be urgently addressed.

ii. A comprehensive reform of the electoral legislation, at all levels, is still awaited and the Venice Commission should be consulted well in advance of the next general elections due in autumn 2006.

iii. Progress in the implementation of the European Charter of Local-Self-Government is necessary: in particular, in the FBiH, the draft Law on the Principles of Local Self-Government, passed in first reading in the FBiH Parliament on 17 January 2005, should be amended in order to take into account the recommendations of CoE experts and ensure compliance with the European Charter of Local Self-Government. The CoE is prepared to assist the FBiH experts in the drafting of amendments which will bring this law in compliance with the Charter. Moreover, constitutional amendments concerning the regulatory responsibilities for local self-government in FBiH should be adopted, as the lack of appropriate constitutional basis may hamper the decentralisation reform in FBiH. In the RS, the legislative reform needs to be pursued with CoE assistance.

iv. Existing piecemeal constitutional reform needs to be expanded into a comprehensive reform, subject to the consensus of the three constituent peoples. The CoE, in particular the Venice Commission, remains ready to provide advice and assistance in this process.

B. Human rights

i. The recent transfer to the ICTY of the first war crime suspect ever arrested with the co-operation of the

RS authorities should mark the beginning of a process which will see the other indictees, including the most wanted war criminals, transferred without delay to The Hague. The RS authorities should give appropriate follow-up to the final report of the Srebrenica Commission, through the working group recently created for this purpose, including the identification of all officials whose names appear in the confidential annexes of the report. Concrete measures should also be taken to encourage the reconciliation process.

ii. The Government Agent to the European Court of Human Rights should be appointed as soon as possible. The BiH authorities should take all necessary measures to ensure that the delayed 'compatibility exercise' of BiH legislation with the ECHR is conducted as efficiently as possible, with the full and active involvement of all national experts concerned and the proper institutional support from the Council of Ministers. A final report by the Working Group should be produced by the end of May 2005.

iii. Revised legislation - in line with the Opinion of the Venice Commission - to ensure the restructuring of the Ombudsman institutions in BiH, including a transparent appointment procedure, should be adopted at State and, subsequently, at Entity level. The need to establish an Action Plan for the process of creating the single Ombudsman institution is also to be reiterated. The Human Rights Commission and the Constitutional Court should be provided with the necessary resources, *inter alia* to ensure the operation of the Commission, following an extension of its mandate, until the end of 2005. CoE member States are invited to consider assistance to the Commission for this purpose. The issue of the backlog of human rights cases should also be addressed as soon as possible and appropriate legal procedures need to be put in place to deal with present and future cases.

iv. Appropriate follow-up should be given to the recommendations made by the CPT in its recently published report.

v. A country-wide, sustainable and independent Public Broadcasting System, in line with the CoE/European Commission expertise of June 2004, should be set up without further delay; in addition, budgetary and staff issues of the Communications Regulatory Agency should be addressed so that its effectiveness and independence be maintained.

vi. A State Law on Conscientious Objection, in line with CoE norms, should be adopted before 24 April 2005, as laid down in BiH's post-accession commitments, ensuring *inter alia* that adequate resources are foreseen to enable a proper consideration of each request for conscientious objector status.

vii. Continued efforts are requested, in particular in the economic and social fields (job creation), to consolidate returns of refugees and IDPs and make them sustainable; BiH authorities should ensure that restitution decisions made under the Commission for Property Claims in the past are fully respected and not overturned; adequate funds should be allocated to the housing authorities of Banja Luka to complete their property claims caseload and the RS Ministry of Refugees and Displaced Persons should actively and publicly support them; the draft Law on Return, Allocation and Sale of Apartments in the FBiH should consider the continued right to alternative accommodation of the beneficiaries currently using unclaimed apartments.

viii. The situation of national minorities ('the Others', according to the BiH Constitution) continues to deserve increased attention, including in legislation. Signature and ratification of the European Charter for Regional and Minority Languages, as well as concrete implementation of legislation on the protection of minorities, are still awaited.

C. Rule of law

i. The establishment of the single High Judicial and Prosecutorial Council (HJPC) at State level should be accompanied by the creation of a single BiH Judicial and Prosecutorial Training Centre, a high security State detention facility and a comprehensive strategy towards prison reform, including the creation of a single prison administration for BiH. Judicial institutions, at every level, need to be provided with adequate resources (material and financial); this stands also for the new War Crimes Chamber within the State Court, which should be operational as of end February 2005 and for which CoE member States are also invited to consider assistance.

ii. BiH authorities should take appropriate measures to ensure that the on-going comprehensive reform of the police system be successfully completed, in compliance with the EC Feasibility Study requirements, in order *inter alia* to increase efficiency in the fight against criminality and allow liberalisation of visa regimes for BiH citizens.

iii. CoE Conventions in the penal field - to be ratified by 24 April 2004 - which could facilitate co-operation with the ICTY, should be ratified without further delay; measures should also be taken to ensure signature and ratification of the CoE Convention on Cybercrime within the deadline of 24 April 2005 laid down in BiH's commitments.

D. Education

i. The situation in a number of schools in FBiH which still apply the principle of 'two schools under one roof' should be put to an end without further delay by the completion of their administrative unification. Focus should be put on implementation of the Laws on Primary and Secondary Education and on the adoption of more specific by-laws; a new Law on the Establishment of a Curriculum Agency – one of the key components of the State-level Framework Law - should also be soon adopted.

ii. At State-level, the Framework Law for Higher Education, incorporating the principles and standards of the Bologna Process and the Lisbon Convention, and providing the means for a coherent and rational approach to higher education, should be adopted before the Ministerial meeting on the Bologna Process in May 2005 in Bergen.

Appendix I

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<http://conventions.coe.int/Treaty/Commun/ListeTraites.asp?PO=BOS&MA=999&SI=2&DF=&CM=3&CL=ENG>

Appendix II

<http://conventions.coe.int/Treaty/Commun/ListeTraites.asp?PO=BOS&MA=999&SI=3&DF=&CM=3&CL=ENG>