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## Serbia and Montenegro

Serbia and Montenegro is a loose union of two republics which face different human rights challenges. In 2005, inadequate official responses to intimidation and violence against ethnic minorities continued to be a problem in Serbia. Cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY) depended on the government of Serbia, where most of the ICTY indictees resided years after the tribunal brought charges against them. Also in Serbia, treatment of human rights defenders took a marked turn for the worse. In both republics, the judiciary appeared subservient to the executive.

### *International Criminal Tribunal for the Former Yugoslavia*

Serbia and Montenegro's cooperation with the ICTY has improved significantly after the near stalemate for the most part of 2004. Between October 2004 and April 2005, the government transferred fourteen indictees to the tribunal in the Hague. Serbian generals Nebojsa Pavkovic, Vladimir Lazarevic and Sreten Lukic, all indicted for war crimes in Kosovo in 1999, were among those surrendered, although the year before the government had insisted that they should be tried in Belgrade. Serbia also surrendered nine Bosnian Serb former army and police officials charged with genocide and crimes against humanity for the killing of eight thousand Bosnian men in Srebrenica in July 1995.

The change of attitude towards the ICTY resulted more from the willingness of the international community to use a "carrot and stick" approach than from any new-found commitment to justice on the part of the Serbian authorities. The cooperation began only after European Union and United States officials made it clear that closer relations with Serbia were dependent on the latter's full cooperation with the tribunal. In a troubling trend, Serbian government representatives often praised the accused who decided to surrender as "patriotic" and "responsible," without making any reference to the crimes for which they were indicted. On December 30, 2004, Minister of Interior Vladan Jovic even expressed his conviction that the Serbian army and police generals indicted for crimes in Kosovo were innocent.

Four indictees were believed to remain at large in Serbia and Montenegro as of November 2005, or to travel back and forth between Serbia and Montenegro and Republika Srpska (Bosnia and Herzegovina), including Ratko Mladic, the former commander of the Bosnian Serb army.

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***Domestic War Crimes Trials***

The prosecution of war crimes cases before domestic courts in Serbia is hampered by a lack of political support in the country to establish accountability. The creation of a special war crimes chamber in 2003 appeared to signal an increased seriousness of purpose, but so far the chamber has dealt with only one crime, the November 1991 killing of two hundred Croats near Vukovar, Croatia. Two more indictments involving twelve persons were issued in August and October 2005, relating to war crimes in Bosnia, but the two trials had not started as of mid-November. There were no persons holding positions of seniority in the army or police among the accused.

***Judiciary***

The executive in Serbia openly encroached upon the independence of the state prosecutor's office in 2005. Invoking his supervisory powers, Minister of Justice Zoran Stojkovic insisted in a newspaper interview in January 2005 that the prosecutors launch criminal proceedings against six individuals who had held positions in the Serbian government between 2001 and 2003. On February 13, Stojkovic repeated a call for the prosecution of former Deputy Prime Minister Cedomir Jovanovic. A municipal prosecutor in Belgrade indicted Jovanovic in September for abuse of official position in 2001, but the municipal court in October rejected the indictment as groundless.

In a newspaper interview published on September 17, 2005, Stojkovic stated that he had asked the competent bodies to look into the legality of certain activities of opposition leader Vladan Batic in 2003, when he had been Serbia's justice minister. On September 28, police detained Batic for 48 hours and then released him without charge.

The slow and inept handling by the Montenegrin judiciary of a case possibly implicating government officials in commission of a war crime in the 1990s exemplified the longtime concerns about the lack of judicial independence in the republic. The case concerned the handing over of eighty Bosnian Muslim refugees in Montenegro to Bosnian Serb soldiers in May 1992, resulting in the execution of most of the refugees. Dozens of victims' families sued the state for compensation in 2004, but as of October 2005 only four civil proceedings had begun. Under public pressure, in October, the Montenegrin state prosecutor requested the opening of a criminal investigation into the 1992 case. The prosecutor's motion was seriously flawed by including a dozen victims among the potential witnesses and omitting important documents from the evidence. The motion also failed to include any senior official among the suspects.

***Ethnic and Religious Minorities***

Compared to the previous year, in 2005 incidents of ethnically motivated attacks decreased in the Vojvodina region of northern Serbia, but intensified in other parts of Serbia, often taking the form of anti-Semitic and anti-Muslim graffiti, as well as physical assaults on Roma. Criminal and misdemeanor sentences against the perpetrators of ethnically motivated crimes were light. On July 26, for example, the district court in Nis sentenced eight defendants to prison sentences of between three and five months for their roles in burning down the city mosque in March 2004. On March 23, 2005, a Belgrade misdemeanor court sentenced to ten days'

imprisonment three persons who had written graffiti at the entrance to the Jewish cemetery calling for “Jewish parasites” to be expelled from Serbia.

In a positive development, in areas of southern Serbia bordering Kosovo and mainly inhabited by ethnic Albanians, the authorities have made initial steps to include Albanians in the judiciary and to incorporate Albanian culture and history in the local school curriculum. There has also been some progress in providing pre-school education for Roma children in Serbia. However, thousands of Roma continue to face discrimination in most areas of life, and lack basic access to education, health services and housing.

### ***Human Rights Defenders***

High-profile government officials expressed hostility towards leading human rights defenders. The head of the State Security Service, Rade Bulatovic, and Minister for Capital Investments, Velimir Ilic, suggested in July and September 2005 that leading human rights organizations in Serbia were working for unspecified foreign powers. In June and July the head of the parliamentary group of Prime Minister Vojislav Kostunica’s Democratic Party of Serbia repeatedly expressed contempt for “characters like Natasa Kandic [one of Serbia’s most prominent human rights activists],” while Justice Minister Stojkovic accused Kandic of indifference to Serb victims of war crimes. Physical assaults on Serbian Helsinki Committee Director Sonja Biserko and break-ins at her home and at the home of well-known human rights lawyer Biljana Kovacevic-Vuco during 2005 appeared to be the work of Serbian extremists incited by such statements. Verbal harassment of these three leading activists in public places was frequent.

### ***Key International Actors***

The U.S. government, which enjoys considerable influence with the authorities in Serbia, took a more uncompromising stance than in previous years on the issue of Serbia's cooperation with the ICTY. In January 2005, for the second consecutive year, the U.S. withheld a portion (U.S.\$10 million) of the economic assistance planned for 2005 to Serbia, over its non-cooperation with the tribunal. The aid was released for payment in June, following the transfer of a number of indictees to the Hague in the intervening period. On October 7, Under Secretary of State for Political Affairs Nicholas Burns reiterated that assistance would be again suspended if Serbia did not surrender Ratko Mladic.

The overall perception of the work of the ICTY among the Serbian public remained negative, although it improved somewhat during the year as a result of the improved cooperation by the Serbian authorities and the increase of prosecutions for crimes committed against ethnic Serbs. The trial of former President Slobodan Milosevic, on charges of crimes against humanity and genocide, continued into its fourth year, amidst a lively debate in Serbia and abroad, on the effect the trial has had on the process of coming to terms with the past in Serbia.

The E.U. rewarded Serbia and Montenegro politically for the improved cooperation with the ICTY by deciding in October 2005 to open negotiations on a Stabilization and Association Agreement, following a positive feasibility study by the European Commission in April. The October decision, by the European Council, did not include an explicit “brake clause” that would suspend the negotiations if the E.U. were dissatisfied with the human rights situation in the country, but it put a heavy

emphasis on the importance of continued cooperation with the ICTY. The European Parliament adopted a resolution on Vojvodina on September 29, finding that no real progress has been made in reversing the deterioration in the conditions for national and ethnic minorities in Vojvodina, and calling for E.U. monitors to be sent to the province.

## **KOSOVO**

The U.N. Security Council's decision in October 2005 to approve the start of negotiations over Kosovo's final status is arguably the most significant development since the United Nations placed Kosovo under international administration in 1999. In the field of human rights, however, the picture remains bleak. Insecurity and lack of free movement for minorities, justice system failures, and widespread discrimination remain serious problems. The return of internally displaced and refugees from Kosovo to their homes continues to be stalled.

### ***Protection of Minorities***

Despite improvements in the security situation in Kosovo, members of ethnic minorities, particularly Serbs and Roma, still cannot move about freely. Minorities generally travel with specially provided transport or under military or police escort—and typically from one minority enclave to another. Due to security incidents and generalized fear, previously disbanded escorts have had to be reinstated in some locations, particularly for transport of children to schools.

While rates of reported inter-ethnic crime fell in 2005, many organizations working with minorities suspect that the decrease simply reflects greater physical separation and lack of interaction between communities since major clashes between majority Albanians and Serbs and widespread rioting in March 2004.

While most minority homes destroyed in March 2004 have been reconstructed, displaced persons trying to visit them have reported continuing threats and intimidation. Ethnic Albanians living in Serb-majority areas or who travel to such areas report similar concerns.

The fragile nature of the security situation was reinforced by a series of incidents in the second half of 2005, including the killing of two young Serbs on the road to Strpce in August; the subsequent destruction of a nearby Albanian war memorial and shooting of an ethnic Serb police officer on duty near the memorial; the shooting of the highest ranking Serb police officer in Gjilan in late September; and confirmed reports of armed masked men (calling themselves "The Army for Kosovo's Independence") operating in the western part of the province in October.

Minorities continue to face persistent discrimination in employment and in the provision of education, social welfare, and health services, and have limited access to administrative offices and courts. The anti-discrimination law remains little more than words on paper.

Among minorities, the situation for Roma is perhaps the grimmest. Their often precarious plight is illustrated by the displaced Roma who have been living adjacent to the Trepca mine in North Mitrovica since 1999. In 2004, the high level of lead contamination in the area led the World Health Organization to recommend an

immediate evacuation of children and pregnant women and temporary relocation of all others. At this writing, the Roma remained at the site.

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

Fewer than 5 percent of the more than 200,000 displaced Kosovar minorities who fled their homes in the second half of 1999 have returned home. Many are living under makeshift arrangements elsewhere in Kosovo; many others are living as refugees outside Kosovo. The trend of decreasing voluntary minority returns continues. As of September, there had been approximately 1,500 such returns during 2005. By comparison, there were approximately 2,300 returns during 2004 (itself a 37 percent decrease from the previous year).

As in previous years, returns that did take place in 2005 were often incomplete or partial returns, predominately to rural and mono-ethnic areas. The first Serb return to an urban area where there was not already an established Serb presence did not take place until March 2005, with sixteen families returning to Klina.

Progress on the return of the 4,100 persons displaced by the March 2004 riots has been patchy. As of September 2005, more than 1,300 persons remained officially displaced. Among the two-third no longer considered officially displaced, few have returned to reconstructed homes in their former communities, preferring instead to remain in metal containers in Gracanica, in settlements on the outskirts of towns, in unaffected minority enclaves, or outside Kosovo.

In March 2005, UNHCR revised its findings on protection needs of minorities in Kosovo, and concluded that while individual cases should continue to be assessed, there was no longer a security basis for blocking forcible returns of Ashkaelia, Egyptian, Bosniak and Gorani minorities. On that basis, UNMIK relaxed its forced returns policy, which has resulted in an increase in forced returns from western Europe, especially of the first three groups, despite concerns from NGOs in Kosovo about the sustainability of such returns.

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

While the challenges in establishing a new justice system in Kosovo are considerable, progress to date has been disappointing. The failure to bring to justice many of those responsible for serious crimes has created a climate of impunity that recent efforts have done little to change.

The shortcomings in the justice system, previously identified by Human Rights Watch, include a growing backlog of cases; a shortage of qualified judges; virtually nonexistent mechanisms for witness protection and relocation; poorly-trained and inadequately supported investigators and prosecutors; inadequate defense counsel; perceptions of bias by local judges; and problematic sentencing practices. The problems affect all communities (particularly minorities), undermining confidence in the criminal justice system and the rule of law.

The poor record on prosecuting war crimes and post-war inter-ethnic and political violence continues, especially for offences carried out between 1998 and 2000. The second major trial of former Kosovo Liberation Army (KLA) members only began in October 2004. At writing, the proceedings had been completed and the three accused were awaiting judgment. In September 2005, four Kosovo Serb suspects

were arrested on charges of war crimes. Despite some progress on the resolution of outstanding cases of missing persons from Kosovo, more than 2,500 cases remain.

In March 2005, the International Criminal Tribunal for the Former Yugoslavia indicted then-Prime Minister of Kosovo Ramush Haradinaj and two others (Idriz Balaj and Lahi Brahimaj) for their involvement in the “intimidation, abduction, imprisonment, beating, torture and murder” of Serb, Albanian, and Roma civilians while Haradinaj was a KLA commander and the others his subordinates in 1998 and 1999. Haradinaj resigned and surrendered to the Tribunal the same month and was granted conditional release in June 2005.

While the criminal justice response to the March 2004 violence might appear a dramatic improvement in comparison to the dismal rate of prosecutions for offences prior to that date, the reality is more sobering. While 424 people were charged with criminal acts relating to the violence, most were charged only with misdemeanors; by November 2005, only about one-half of the cases had been decided; and the majority of decisions imposed no more than minor penalties or fines, often below those stipulated in Kosovo’s minimum sentencing guidelines.

Of fifty-six cases from March 2004 relating to more serious offences—including charges for murder; the incitement of violence or organization of riots; and arson—fewer than one-third had been resolved at this writing. Less than half of the cases had even reached the courts. The vast majority of those that were decided resulted in suspended sentences. The sixteen- and eleven- year sentences imposed on two of the men who murdered a Serb man in Gjilan and brutally attacked his mother were a notable exception.

The problems with the criminal justice system are mirrored in Kosovo’s civil courts. An extreme case backlog (up to 60,000 according to some estimates), limited access to the courts for ethnic minorities, and failure to implement court decisions, are among the chief continuing obstacles.

### ***Key International Actors***

UNMIK has not recovered from the damage to its already tarnished reputation caused by the March 2004 violence. Neither the appointment of a new special representative and other senior personnel in 2004 nor the ongoing transfer of powers to the Provisional Institutions of Self-Government (set to become Kosovo’s interim government), has managed to stem the diminishing credibility of UNMIK among all communities in Kosovo.

In October 2005, the U.N. Secretary-General’s Special Envoy to Kosovo Kai Ede submitted a report on Kosovo’s progress toward meeting the conditions established by the international community for the start of negotiations on the province’s final status. While concluding that talks should commence, the report contained a frank assessment of the international community’s human rights failures in Kosovo, including the “climate of impunity” in which “far too few perpetrators of serious crimes are ever brought to justice.” The report also made plain that “the overall return process has virtually come to a halt.”

Following the Eide Report and the recommendation of the U.N. secretary-general, the Security Council approved the start of status talks, expected at this writing to

commence by the end of 2005, emphasizing that “particular and time-conscious attention should be given to protecting minorities...[and] creating the necessary conditions to allow sustainable returns.”

The expected transformation of the Ombudsperson office from an international to a local institution at the end of 2005 raised concerns about whether the office would be able to effectively monitor the activities of UNMIK and other international and national bodies, threatening an important mechanism of accountability in Kosovo.

A change of leadership at the E.U. mission helped repair a rift between the mission and the provisional government resulting from the E.U.-led privatization process. E.U. negotiators are likely to play an important role in the status talks.



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