



YUCOM

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Human Rights and Democracy Violation Early Warning *Weekly Newsletter* No. 27

On the invitation of the European Commission's Delegation to the Republic of Serbia a Roundtable discussion on the 2008 *Progress Report* on Serbia was held in Belgrade on Nov. 12, 2008. The aim of the meeting was to further intensify the EC's dialogue with Serbian civil society, especially with organizations that have contributed to this year's Report. The following organizations were invited to the Roundtable discussion:

Centre for development of civil society
Centre for liberal democratic studies
Belgrade Centre for Human Rights
Konrad Adenauer Stiftung
Save the children
ASTRA
Anti-Trafficking Action
Open Society Fund
Helsinki Committee for Human Rights
Transparency Serbia
Civic Initiatives
Mental disability rights international
Association of persons with dystrophy in Serbia
Roma Women's Centre Bibija, Belgrade
Human Rights Watch
Handicap International South-East Europe
IAN
Group 484
Lawyers' Committee for Human Rights (YUCOM).





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Head of Delegation, Ambassador **Josep M. Lloveras**, opened the discussion and thanked the organiyatiions represented at the meeting for their active contribution to the drafting of the Report. He stressed that one of the Delegation's mail goals is to publicize the Report widely and save it from being pushed aside for the sake of „more important events“, as has been the practice over the past two years.

The debate, chaired by **Thomas Gnocchi**, Head of the Delegation's Political Section, focused on ways and means of rendering the Report more accessible to the public.

On the basis of the debate held at the Roundtable, and in accord with the Delegation, YUCOM devotes this issue of the EWS bulletin to the Report's section that deals with human rights. It is in this way that YUCOM wishes to warn relevant institutions and the broad public alike, that in Serbia there still are problems related to the respect of basic human rights.

In the chapter devoted to **democracy and the rule of law** (pp. 6 to 13) the *Report* deals with various aspects of the legal framework, setup and functioning of key institutions of the present-day Serbian state. The *Report* provides a critical analysis of various shortcomings in these institutions, and singles out requirements essential to Serbia's speedier accession to the EU:

- *Constitution*
- *Parliament*
- *Government*
- *Public administration*
- *Civilian oversight of the security forces*
- *Judicial system*
- *Anti-corruption policy*

The paragraph devoted to **democracy and rule of law** special attention is paid to the constitutional framework:





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Constitution

Following the adoption of the new constitution in 2006, the Law on the Constitutional Court was adopted in November 2007. Ten of the fifteen judges of the Constitutional Court were appointed and sworn in, and the President of the Court was elected. In December 2007 parliament adopted a package of laws necessary for calling presidential, provincial (Vojvodina) and municipal elections, as required by the Law for the implementation of the Constitution (Constitutional Law). The province of Vojvodina adopted a new statute in October 2008 in line with constitutional requirements. This new statute has to be approved by the national parliament.

There has, however, been no follow-up to the opinion of the Venice Commission of the Council of Europe concerning the constitutional provisions adjudged not to be fully in line with European standards. The major causes for concern are political party control over the mandates of members of parliament and the role of parliament in judicial appointments. Specific laws establishing clear and objective criteria for the re-election of judges have not yet been adopted and the provisions in the Constitutional Law lack clarity and transparency. There was insufficient consultation prior to the adoption of the laws necessary for holding provincial and municipal elections.

Overall, there has been progress on adopting legislation to implement the new constitutional framework. However, further reforms are needed to ensure that the constitutional provisions, notably on the judiciary, are implemented in line with European standards. This is one of the key priorities of the European Partnership.

The chapter **Human rights and the protection of minorities** highlights several areas where – while acknowledging progress achieved – Serbian authorities are reminded of considerable shortcomings, inconsistencies and failures representing obstacles to the country's approximation with EU standards. This issue of the EWS Newsletter carries a slightly abridged version of that chapter:





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Observance of international human rights law

As regards **ratification of human rights instruments** Serbia has ratified all major human rights instruments. Serbia has largely met its obligations to report to UN bodies. However, the revised European Social Charter has not been ratified.

The **European Court of Human Rights** (ECtHR) delivered 13 judgments during the reporting period finding that Serbia had violated the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). The largest number refers to violations of the right to fair trial. A total of 1,131 new applications to the ECtHR were made during the reporting period and 14 judgments were delivered. There are approximately 1,800 pending cases against Serbia.

As regards **promotion and enforcement of human rights** the Serbian courts still show reluctance to directly implement ratified international treaties that guarantee protection of human rights. Lawyers rarely invoke these standards. Constitutional appeals against human rights violations are legally possible. However, there have been no judgments since the Constitutional Court was established in 2007. The Serbian authorities finally implemented the 2005 decision of the UN Human Rights Committee concerning violation of freedom of expression in the case against a journalist sentenced for slander¹.

Overall, the legal and institutional framework for the observance of human rights is in place. However there has been insufficient progress on implementing international human rights law. Institutional structures for the implementation of human and minority rights have to be further reinforced.

¹ This is a reference to the case of Željko Bodrožić who was represented by YUCOM lawyers. Details of the case: <http://www.yucom.org.yu/rest.php?tip=vestgalerija&idSek=18&idSubSek=62&id=5&status=drugi>





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Civil and political rights

With regard to **prevention of torture and ill-treatment and the fight against impunity**, judicial control over respect for human rights in prisons has improved. However, there has been no progress on investigating alleged serious violations of human rights relating to prison riots in 2006. There are frequent allegations of ill-treatment of suspects by police during questioning. The Serbian authorities should ensure that thorough investigations are conducted into all allegations of torture and ill-treatment.

As regards the fight against impunity, the capacity of the Serbian war crime prosecution service needs to be further strengthened. There are still obstacles to the transfer of cases and extradition of suspects in cases of war crimes and crimes against humanity between Bosnia and Herzegovina, Croatia, Montenegro and Serbia.

As regards **access to justice**, Serbia has not yet put in place a comprehensive legal system for free aid. The right to mandatory defence in most serious criminal cases is enshrined in the new Criminal Procedure Code but there are still no specific provisions on mandatory defence in cases of pre-trial detention.

Reforms of the **prison system** continued, with the reconstruction of three of the largest prisons in Serbia. The latest statistics on criminal offences indicate an increase in serious crime, repeat offences and juvenile offenders. Prison security has improved slightly and the level of violence has decreased. However, overcrowding, violence among prisoners and drug abuse remain serious problems in prisons in Serbia.

The Constitution contains guarantees for **freedom of expression** which are generally protected. However the conditions for freedom of expression in Serbia were affected during the period immediately following the Kosovo declaration of independence. There were numerous reports of incidents involving offensive language, hate speech and violence against organizations and individuals, mainly journalists and human rights defenders. In March 2008, a number of media outlets and journalists' associations addressed a series of concerns to the Serbian authorities. They complained, in particular, of repeated verbal and physical abuse and of being accused of unpatriotic reporting. The law enforcement authorities arrested the suspected perpetrator





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of a violent attack on a journalist in July 2008. Authorities also took actions against extremist groups in October 2008.

There were also cases of threats to journalists from local officials and businessmen where, in some instances, recorded material was confiscated from journalists in an attempt to prevent them from providing reporting on a range of issues. There was no progress in the investigations on murders of journalists dating back to the 1990s and of an attempted murder of a journalist in April 2007.

The law on **media** concentration and new legislation on advertising have not yet been adopted. Legislation on local self-government, adopted in December 2007, contains provisions in contradiction with the laws on broadcasting and public information and is undermining the privatisation of municipally owned media.

The Constitution guarantees **freedom of assembly** and these rights are generally protected. A number of peaceful rallies and demonstrations took place following the Kosovo declaration of independence. However, there were violent incidents when foreign diplomatic missions were targeted and attacked by demonstrators in Belgrade in February 2008. These acts were condoned in some political quarters and sections of the media, while the immediate response from the law enforcement authorities was inadequate. There were reports of attacks against organizations and individuals defending civil and political rights, fighting against impunity and defending the right to different sexual orientation. Some efforts were made by the law enforcement authorities to follow up such incidents, however, in most instances the perpetrators have not been brought to trial.

The Constitution guarantees **freedom of association**, including political and trade union associations. Restrictions to this right, including grounds and procedures for a possible ban on associations, assign a primary decision-making role to the Constitutional Court. Constitutional grounds for prohibition include violent breaches of constitutional order, violation of guaranteed human and minority rights. However, laws implementing the new Constitution in the area of political parties, citizens' associations (NGOs), labor unions and minority national councils, as well as incitement to racial, national or religious hatred, have not yet been adopted. The existing legislation imposes restrictions which go beyond the constitutional provisions.





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Civil society organizations continue to play a major role in social, economic and political life in Serbia. However, longstanding legislative deficiencies have not been adequately addressed. These concern the legal status of NGOs and their financing, including restrictive and unfavorable fiscal conditions applied on an *ad hoc* and arbitrary basis. A number of NGOs, in particular human rights defenders, were subjected to threats and verbal abuse for holding diverging views on issues such as the situation in Kosovo. Such incidents have not been fully investigated.

Freedom of religion is guaranteed by the Constitution and law in Serbia. However there are shortcomings resulting from the implementation of legislation from 2006 on churches and religious organizations. These concern registration of so-called "non-traditional" religious communities. There have been repeated reports of arbitrary decisions in connection with registration of "non-traditional" religious communities, affecting their legal status and rights. There were several religiously motivated incidents, including attacks, hate speech, vandalism and offensive graffiti against a number of religious communities. These incidents were not followed up sufficiently by the law enforcement authorities, and investigations have been inconclusive.

In lieu of the usual EWS Team's *Outlook*, the concluding paragraph from the chapter on human rights:

Overall, civil and political rights in Serbia are generally respected. Legislation needs to be further adjusted to European standards. Existing constitutional and legal guarantees need to be fully enforced and violations properly investigated.

