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Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)

Honouring of obligations and commitments by Serbia

Information note by the co-rapporteurs on their fact-finding visit to Belgrade (26-28 October 2016)

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I. Introduction

1. We visited Serbia from 26 to 28 October 2016 in the framework of the monitoring procedure of Serbia. It was the first visit after the April 2016 elections. We would like to thank the Serbian delegation, in particular its Chairperson Ms Alexandra Đjurović, and the parliament of Serbia for the excellent organisation of our visit. We would also like to thank the Head of the Council of Europe Office Mr Cartwright and his team for facilitating the meetings requested with local NGOs and media and for their logistical support.

2. Our objective was to follow implementation of [Resolution 1858 \(2012\)](#) on *The honouring of obligations and commitments by Serbia*. At that time the Assembly resolved to pursue its monitoring of Serbia, and decided to set the following objectives to complete the monitoring procedure and launch a post-monitoring dialogue (see paragraph 14):

- full implementation of the reform of the judiciary in order to guarantee its independence and efficiency, including the completion of the review process of the non-re-elected judges and prosecutors;
- adoption and implementation of effective anti-corruption policies;
- adoption of amendments to the Criminal Code in line with GRECO recommendations;
- improvement of the situation of the media;
- full implementation of the rights of minorities, especially Roma.

3. After the visit paid in November 2014 by co-rapporteur Mr Seyidov, who focused on the situation of the media and minorities, we decided this time to concentrate notably on the judiciary and the fight against corruption, the latest political developments and to update out information on the situation of media freedom.

4. The programme of the visit is appended. We had meetings with the Speaker of the National Assembly Ms Gojkovic, the Deputy Prime Minister and Minister of the Interior Mr Stefanovic, the Minister of Culture and Information Mr Vukosavljevic, representatives from the Ministry of Foreign Affairs and Justice, the Presidents of the Constitutional Court and the Supreme Court of Cassation as well as representatives of the Public Prosecutor's Office, the Serbian delegation to the PACE and members of parliament. We also met the Deputy Ombudsmen, the Director of the Anti-Corruption Agency, representatives of the media and civil society and members of the diplomatic community. Unfortunately, we did not have the opportunity to meet Prime Minister Mr Alexander Vucic and the Minister of Foreign Affairs Mr Dacic.

¹ Document declassified by the Monitoring Committee at its meeting on 26 January 2017.

II. General context

a. Results of the April 2016 early parliamentary elections

5. 2016 was marked by the organisation of early parliamentary elections on 24 April, which were observed by the Assembly². The Assembly's ad hoc committee concluded that the early parliamentary elections had offered voters a variety of choices and fundamental freedoms had been respected, allowing Serbian citizens to make their choice freely from among a large number of political parties. However, it pinpointed some concerns, including unclear rules for signature verification and the lack of transparency of this process (already criticised by the Assembly in its election observation report in 2014), the abuse by incumbents of the administrative advantages of office; cases of pressure on voters and intimidation, particularly those employed in the public sector; media coverage favourable to the ruling parties, despite an open media environment; and the lack of full transparency in party and campaign funding. It also noted that, "while legally the 'culture' of early elections does not pose a problem, one can nevertheless question the impact of systematic early elections on the efficient functioning of the parliament according to the constitutional term of office, no matter which political forces are in power."

6. The *ad hoc* committee was informed by the Republic Electoral Commission (REC) that a comprehensive review would be conducted after the elections following cases of around 15 000 falsified signatures to support some candidate lists. The ad hoc committee concluded by stating that "Serbia therefore needs to improve its electoral legal framework, as well as certain electoral practices, taking into consideration the lessons of the elections, in order to increase the citizens' confidence in democratic elections. This work should be accomplished in close co-operation with the Venice Commission." We will follow progress made on that issue.

7. Following the voting on 24 April 2016, the Republic Election Commission identified some irregularities and decided to re-run elections in 15 polling stations on 4 May 2016. At the end of the process, Mr Vucic's Progressive Party won the majority of seats in parliament, and managed as well to win control of the province of Vojvodina as well as most of its municipalities. The parliament is now composed as follows³:

	Number of voters	Percentage	seats
ALEKSANDAR VUCIC – SERBIA IS WINNING [Progressive Party]	1,823,147	48.25	131
IVICA DACIC – "Socialist Party of Serbia (SPS), United Serbia (JS) – Dragan Markovic Palma"	413,770	10.95	29
VOJISLAV SESELJ – SERBIAN RADICAL PARTY	306,052	8.10	22
ENOUGH IS ENOUGH – SASA RADULOVIC	227,626	6.02	16
FOR A JUST SERBIA – DEMOCRATIC PARTY (NOVA, DSHV, ZZS)	227,589	6.02	16
DVERI – DEMOCRATIC PARTY OF SERBIA – SANDA RASKOVIC IVIC – BOSKO OBRADOVIC	190,530	5.04	13
BORIS TADIC, CEDOMIR JOVANOVIC – ALLIANCE FOR A BETTER SERBIA – Liberal Democratic Party, League of Social Democrats of Vojvodina, Social Democratic Party	189,564	5.02	13
Vajdasági Magyar Szövetség – Pásztor István – Alliance of Vojvodina Hungarians – István Pásztor	56,620	1.50	4
MUAMER ZUKORLIC – BOSNIAK DEMOCRATIC COMMUNITY OF SANDZAK	32,526	0.86	2
Party of Democratic Action of Sandzak (SDA) – Sulejman Ugljanin	30,092	0.80	2
GREEN PARTY	23,890	0.63	1
PARTY OF DEMOCRATIC ACTION – ARDITA SINANI PARTIA PËR VEPRIM DEMOKRATIK – ARDITA SINANI	16,262	0.43	1

8. The parliament is currently composed of 16 political groups, offering a wide political spectrum Ms Gojkovic, Speaker of the Parliament stressed that the parliament had adopted 7 reports by independent agencies, and had excellent co-operation with NGOs dealing with vulnerable people and with LGBT issues. We heard however complaints from the Ombudsman's office and NGOs that a lot of legislation was adopted under urgent procedure. The Speaker indicated that "urgent procedures" were requested by ministers, who expected their draft legislation to be adopted in a quicker way - notably due to the time constraints imposed

² See Doc 14062.

³ <http://www.parliament.gov.rs/national-assembly/national-assembly-in-numbers.1743.html>.

by the EU accession process. However, the Speaker explained that these draft laws would undergo all the procedures required by law. It is however our understanding that such legislation is indeed adopted in short period of time, which indeed restricts consultation of external bodies. In its 2016 progress report, the European Commission also mentioned “last-minute changes to the parliamentary agenda, limited support for independent regulatory bodies and a lack of pro-activeness in oversight of the executive, combined with a lack of genuine cross-party debate, [which] undermines parliamentary effectiveness”. The adoption of parliament’s code of conduct and annual work plan is also still pending.⁴

9. The political negotiation by the Progressive Party, which won the majority of votes, lasted three months until the formation of the government on 11 August 2016. Mr Aleksandar Vucic was re-appointed Prime Minister⁵. The new government vowed to remain committed to reforms, EU integration and to the EU-facilitated dialogue with Kosovo*⁶ and identified economic recovery and attraction of foreign investment as other key priorities.⁷

b. Massive arrival of migrants and refugees

10. In 2015 and 2016 Serbia faced a massive arrival of both refugees in need of protection and economic migrants coming via Turkey and Greece and heading for northern Europe. The European Commission noted that, in 2015, 579 518 people expressed an intention to seek asylum, but only one in 1 000 (586 persons) lodged an application: 16 received refugee status, 14 received subsidiary protection, and there were 40 negative decisions. In most cases the procedure was suspended because the applicant was no longer available.⁸

11. According to the UNHCR figures, some 6 300 new refugees, asylum-seekers and migrants, encountered by UNHCR and partners were present in Serbia in October 2016. Of those, some 4 900 (or 78%) were accommodated in governmental facilities, with 1 740 in five asylum centres and 3 160 in “transit” or reception centres. The others were counted at the border with Hungary and close to 1 000 were sleeping rough at night in Belgrade city centre.⁹

12. Despite limited resources, Serbia ensured the effective screening of refugees and migrants, and made substantial efforts to provide shelter and humanitarian supplies, with some EU support as well as the support of others, according to the EC findings. The authorities however complained that, while facing such a massive challenge, there was no clear policy or vision defined by the European Union about the refugee crisis, leaving Serbia to deal with the situation as it thought fit. Serbia was also directly affected by decisions taken by neighbouring countries about the flow of refugees entering in or leaving Serbia. The country thus was providing all the limited humanitarian assistance it could, and was expecting more financial aid in order to cope with such a large-scale problem. We hope that Serbia will cope with the management of the migrant crisis, which indeed requires a European response based on solidarity.

c. Foreign policy: a twin-track approach

13. In a region marked by continuous turbulence, Serbia has opted for a twin-track foreign policy, between East and West and wants to remain a key player for ensuring stability in the region. The authorities confirmed the twin-track approach policy already presented during the last visit of the rapporteur in November 2014: it embraces continued EU accession negotiations (which started in January 2014) and good relations with Russia, due to cultural and strategic partnerships (notably in the energy sector).

14. Concerning the EU integration process and the EU accession negotiations, Chapter 23 (Judiciary and fundamental rights) and Chapter 24 (Justice, freedom and security) were opened in July 2016. The screening of Chapters 23 and 24, which are relevant to the work of the Monitoring Committee, was finalised and action plans are now in place to meet the benchmarks. At the time of our visit, the Serbian authorities expected three more chapters in its EU accession negotiations to be opened by the end of the year, i.e. Chapter 5 (public procurement), 25 and 26 (science, culture, and education). In December 2016, Chapter 5

⁴ Serbia 2016 Report published by the European Commission on 9 November 2016, SWD(2016) 361 final (hereafter: EC 2016 report), p.5.

⁵ See: <http://www.srbija.gov.rs/vlada/sastav.php>.

⁶ * All references to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

⁷ EC 2016 report, p.7.

⁸ EC 2016 report, p.68.

⁹ UNHCR figures, “Serbia Update, 17-19 Oct 2016”.

was opened, as well as Chapter 25 (dealing with science and research), which was closed immediately, and Chapter 26.¹⁰

15. Cooperation with Russia continued, notably in the military field. After Minister of Foreign Affairs Lavrov's visit to Serbia in December 2016, a visit of Prime Minister Medvedev was expected in early 2017 while Russian President Putin, in a letter addressed to President Nikolic on 28 December 2016, pledged to follow "with full attention" the 2017 presidential elections.

d. Progress on the Belgrade-Pristina dialogue

16. Our visit took place at a time when the Belgrade-Pristina dialogue was marred by objections made to the draft agreement on telecommunications and the use of area codes by the Serbs living in Mitrovica which, for the Serbian authorities, amounted to an ultimatum that Serbia surrender Telekom Srbija assets in Kosovo*.

17. The Serbian Government has also decided to nullify "all and any legal effects of all and any acts or actions" of institutions in Priština regarding the Trepča mining complex¹¹. The Kosovo* Assembly had just voted the Trepča Law, by virtue of which the Kosovo* Government owns 80% of the complex, with the remaining 20% being transferred to the ownership of its workers. Relations between Belgrade and Pristina have remained tense since then.

18. We welcome the resumption of the Belgrade-Pristina dialogue in February 2017 and encourage all sides to continue their efforts to diffuse the tension, ensure stability and security in the region, as well as a normal living conditions for all citizens.

e. Regional cooperation

19. Despite the reiterated commitment expressed by Serbia to remain a factor for stability in the region, tensions in bilateral relationships with neighboring countries surfaced with statements made by the Minister of Foreign Affairs questioning "the former Yugoslav Republic of Macedonia" and Montenegro for their stance on Kosovo in international organisations, the participation of President Nikolic in the disputed "Nation Day of Republika Srpska" (which was ruled unconstitutional by the Constitutional Court of Bosnia and Herzegovina) on 9 January 2017, renewed tensions with Croatia on various post-war issues and transitional justice, and the alleged participation of a retired Serbian police officer in an alleged coup against Montenegrin President Milo Djukanovic during the last parliamentary elections.

III. Rule of law

a. Reform of the judiciary

20. *Pro memoria*, the judiciary system underwent an important reform in 2009, which proved to be problematic. The Group of States against Corruption (GRECO) summarised the situation as follows:

"Judicial reforms have been underway since 2000 when an entirely new judicial system was to be established in the wake of the country's democratic changes. The most recent reform launched in 2009 failed to achieve the goal of improving efficiency by changing the old court structure and redistributing workload between the overburdened urban and underused rural courts. In addition, it led to the unlawful de facto dismissal of a large number of judges and prosecutors who – following an appeal to the Constitutional Court – have in the meantime been reinstated. This process contributed to the lack of trust of both professionals and the larger public in the independence of the judiciary and prosecution service and in their self-governing bodies, the High Judicial Council and the State Prosecutorial Council. (...) Another reason for concern with respect to the balance of state powers is the currently low profile of the National Assembly – the national parliament – which does not exercise

¹⁰ Croatia had first blocked the opening of Chapter 26 in the EU negotiations – which covers education and culture – because of its concerns about the rights of the Croatian minority in Serbia, notably the lack of progress in producing textbooks for pupils from Serbia's Croat minority, among other issues. After receiving the clarifications requested, Croatia lifted its veto on 23 December 2016.

¹¹ The lead, zinc and silver mine complex, once Kosovo*'s most profitable conglomerate, is split along ethnic lines, the northern part run by Belgrade and employing workers from the Serb majority in Mitrovica-North, the southern part employing Kosovo* Albanian workers under the control of authorities in Pristina. Due to the dispute over its ownership, the mine has been working at low capacity, has built up large debts, and is facing bankruptcy.

proactive and meaningful control functions but mainly operates upon governmental initiatives which are, to a large extent, processed through urgent adoption procedures".¹²

21. During our visit, we were informed by representatives of associations of judges and prosecutors about the following problems:

21.1. *Problematic appointments of basic judges*, based on the 2009 regulation which has remained in force, without the application of clear criteria;

21.2. *Undue political influence is exerted over the judiciary*. This is related to the presence of the Minister of Justice in the High Judicial Council or by pressure exerted by politicians and the media commenting the action of the prosecutor's office. Undue political interference is also exerted when filling senior management posts (according to the European Commission (EC), the legal separation of political and public service positions is not clearly enforced, and more than 60% of senior civil servants are not appointed in line with legal provisions¹³), while GRECO was "repeatedly told that both politicians and the media exert significant pressure on the judiciary — including with regard to individual cases — resulting in fear and lack of self-confidence on the part of judges and prosecutors."¹⁴ Some of our interlocutors put special emphasis on the possible political influence exerted on presidents of courts, who are appointed by the parliament upon proposal of the High Judicial Council, but without publication of a reasoned decision. Some measures have been taken to limit undue political influence, such as amendments to the rules of procedure of the HJC, which allows the publication of statements by the HJC when members consider that undue political influence was exerted (we were told that 6 or 7 such statements had been published so far), or the release of an circular for members of the Cabinet to refrain from commenting on the action of the prosecutors.

21.3. *Corruption in the judiciary needs to be further tackled*: the public has low trust in the judiciary. GRECO has suggested a number of recommendation to alleviate the risk of corruption, and notably to strengthen the independence and role of the High Judicial Council and the State Prosecutorial Council; to amend the procedures for the recruitment and promotion of judges, court presidents and prosecutors, in particular by excluding the National Assembly from this process and ensuring merit-based recruitment; and to continue reforming the system of appraisal of judges' and prosecutors' performance, *inter alia*, by introducing more qualitative evaluation criteria.¹⁵

21.4. *The position of prosecutors, who now play a key role in investigations, needs to be strengthened*: the prosecutorial service was dramatically changed with the entry into force of the new *Criminal Procedure Code* (CPC) in 2015; which introduced an adversarial Anglo-Saxon system as opposed to the inquisitorial one, previously in force, based on the central role of investigative judges as a filter between criminal action and trial, and on the significant role of the police in heading criminal investigations.¹⁶ The International Commission of Justice stressed that the new role of public prosecutors and deputy public prosecutors as heads of criminal investigations increases the need for their independence so as to ensure the independence of the investigations themselves¹⁷. Representatives of the High Council of Prosecutors complained about lack of adequate resources to implement their new competences.

22. The President of the Supreme Court of Cassation acknowledged that resources were lacking to ensure the good functioning of courts. The blanket ban on recruitments prevents the recruitment of assistant judges while new judges are appointed. This situation has an impact on the functioning of the courts, and results in backlogs. After the unsuccessful reform of the judiciary in 2009, the dismissal of 870 judges and the reintegration of 521 judges in 2013, following the ruling of the Constitutional Court, the system still lacks 200 judges.

23. The President of the Supreme Court of Cassation presented to us the innovations introduced by the new Law on judges that came into force on 1 September 2016, with respect to recruitment (with tests for newcomers), registration of the test in track records and appointment procedures. When we raised the issue of the transparency of recruitments, the President indicated that the High Council of Judges was yet to publish the rulebook regulating the recruitment and promotion of judges. Interviews, including of candidates for the posts of presidents of courts, were recorded and the results published on internet. This information

¹² [Greco Eval IV Rep \(2014\) 8E](#), p. 2.

¹³ EC 2016 report, p.11.

¹⁴ Group of States against Corruption (GRECO), *Fourth Evaluation Round: Corruption prevention in respect of members of parliament, judges and prosecutors—Serbia*, CoE Doc. Greco Eval IV Rep (2014) 8E, 2 July 2015, para. 95.

¹⁵ Greco Eval IV Rep (2014) 8E, 2 July 2015, para. 2

¹⁶ Serbia's Judges and Prosecutors: The Long Road to Independent Self-Governance, A Mission Report, International Commission of Jurists, 2016.

¹⁷ Ibid.

was however contradicted by the ombudsman office, which mentioned that the list sent to the parliament for the appointment of judges did not contain all the information needed (such as the score), and no effective remedy was available to appeal the decisions. Such a system was thus not adequate for ensuring the integrity of the judges.

b. Constitutional amendments pertaining to the judiciary

24. During our visit we were informed about the preparation of constitutional amendments focusing on the judiciary by a working group set up by the parliament in the framework of the implementation of the action plan for Chapter 23.

25. We welcomed the steps taken by the authorities to strengthen the independence and efficiency of the judiciary, in line with PACE Resolution 1858 (2012). We expect the new judicial laws and the constitutional amendments addressing the judicial system to limit undue political interference in the judiciary and reinforce the separation of powers. We strongly support all efforts made by the authorities to carry out this constitutional reform process. We encourage them to make use of the expertise of the Venice Commission to align the Serbian Constitution with Council of Europe norms. We also reminded the Serbian authorities that a comprehensive reform of the Constitution would be welcome to fully reflect the recommendations of the Venice Commission: apart from parliament's role in judicial appointments, the revision of the Constitution should address political parties' control over the mandate of members of parliament, the independence of key institutions and the protection of fundamental rights, including data protection, as was also pointed out by the EC.¹⁸

c. The "Belgrade Waterfront Project" issue

26. During our visit, we discussed with the authorities the Belgrade Waterfront Project, a government-led urban project located in the Savamala district of Belgrade which should lead to the construction of a huge urban complex.¹⁹ A law "*lex specialis*" enabled the expropriation of private and urban land to start the Waterfront Project.

27. This project however was challenged, notably for environmental reasons, by citizens rallying under the banner "Let's not drown Belgrade". Several large rallies were organised in the summer of 2016, while the July 2016 rally was marked by incidents with the police. The authorities questioned the real motivation of these movements and their "spontaneous" demonstrations, alleging that they were funded by foreign states or funded by international NGOs with a view to destabilising the country.

28. During the night of 24/25 April 2016 (during the elections), around 30 masked men arrived at the construction site, demolished three barracks, and mistreated and held some citizens captive for a few hours. Residents and workers said they called the police for help, but no action was taken. The (city) authorities denied in the first place that phone calls had been made, and denied any knowledge of these masked men²⁰.

29. The Ombudsman's office launched an investigation, examined police documents and listened to recordings of police telephone conversations during the incident. It concluded that the police had indeed been called that night but did not intervene, and that the police was thus complicit. The ombudsman's report mentioned that the police's behaviour was not only intentional but planned and supported by high-level officials²¹. It also highlighted the lack of internal control within the police. The publication of this report stirred political protest from the ruling party (which suspected the political ambition of the ombudsman with a view to the upcoming 2017 presidential election²²) and a smear campaign was orchestrated by media close to the government targeting the Ombudsman (for his alleged involvement in a murder). We raised this issue with the Minister of Culture responsible for media. He demanded evidence to back the accusations of such campaign.

30. In June 2016, Prime Minister-designate Vucic admitted that senior Belgrade city officials had been behind the nocturnal demolitions in Savamala. Both the National Assembly and the Belgrade Municipal

¹⁸ EC report 2016, p.8

¹⁹ The entire project, which also involved the Abu Dhabi-based Eagle Hills Company, is worth about 3.5 billion euro. The contract, signed in April 2015, the authorities said, obliges Eagle Hills to invest 300 million euro, while Serbia would own 32% of the property. <http://www.balkaninsight.com/en/article/belgraders-protest-against-belgrade-waterfront-deal>.

²⁰ <http://www.balkaninsight.com/en/article/belgrade-s-activists-to-stage-protest-concert-10-19-2016>

²¹ <http://www.balkaninsight.com/en/article/belgrade-s-activists-to-stage-protest-concert-10-19-2016>

²² At the time of our visit, the Ombudsman Mr Jankovic did not comment on whether he would be a candidate for the presidential election, but this was deemed to be a possibility by several interlocutors. In the meantime, Mr Jankovic announced on 26 December 2016 that he would run for the election, and gathered the support of the Democratic Party.

Assembly however have rejected early October separate Democratic Party (DS) motions for a Committee of Enquiry into the issue of the Savamala demolitions.²³

31. We questioned the representatives of the Prosecution office about this, but they explained that the prosecution was still in a confidential phase and their findings could not be disclosed. Nine months after the incident, we note however that no progress has yet been made on the issue: it remains unsolved.

32. Following the publication, in June 2016, of an article on the demolitions in Belgrade's Savamala district, the political weekly NIN was fined on 4 January 2017 for "damaging the reputation" of the Minister of the Interior. The chief editor and author of the text were fined to 150 000 dinars each after a ruling that the magazine "has offended Stefanovic's reputation and honor". This decision prompted the Commissioner for Human Rights, Nils Muižnieks, to urge Serbia's judiciary to prevent the chilling effect of defamation on media freedom in Serbia.²⁴

33. Several interlocutors we met considered that this case was a litmus test for the Serbian state institutions. We thus encourage the Serbian authorities to address the case with due diligence, to complete their investigations, address the lack of responsiveness of the relevant institutions (in particular the police and the prosecution office) and other alleged maladministration issues. We think that the illegal demolition in the city centre on the night of the elections should be properly investigated in order to bring those responsible to justice, as announced by the Prime Minister. Such a move would confirm that the authorities acknowledge the remit of independent bodies, including the Ombudsman's Office, and are committed, in practice, to respect the rule of law. We encourage the Serbian authorities to find means and ways to take into account the concerns expressed by citizens for a project which is revamping the river bank of the Sava river, and is thus of general interest. For our part, we will continue to follow the handling of this case by the authorities and to meet those involved or concerned by it.

d. Fight against corruption

34. Corruption in Serbia remains a problematic issue. Serbia ranks 71th (out of 168 countries) in the [Transparency International Corruption Perceptions Index](#) (2015), with a score of 40/100. On 2 July 2015, GRECO published a report on the fourth evaluation cycle²⁵ (i.e. corruption prevention in respect of members of parliament, judges and prosecutors). Healthcare, education, construction and spatial planning, infrastructure projects and the privatisation of public enterprises still remain particularly vulnerable to corruption.²⁶

35. The legal framework for the fight against corruption is broadly in place. The excessive recourse to the provision on abuse of office in the private sector in the criminal code is harmful to the business climate and legal certainty. Amendments to the criminal code to provide for a sustainable legal solution in order to prosecute criminal economic offences effectively are still under consideration.²⁷

36. The core competence of the Anti-Corruption Agency (ACA) is to monitor the assets of officials, and to control political party funding. We were informed that the action plan on the fight against corruption was adopted in the framework of the EU accession negotiations on Chapter 23. The Director of the Anti-corruption Agency noted progress in that area. She mentioned more involvement of the ACA in the legislative process, improvements in the prevention of corruption among officials, good co-operation with key independent institutions and with the ministries, and an increase of state institutions using integrity test (i.e. more than half of them).

37. However, from the discussions we had with the Anti-Corruption Agency, the Anti-Corruption Center and NGOs active in the sector, we understand that a lot still needs to be done:

37.1. The law on political funding needs revision and should allow for a sound framework;

37.2. The current Law on the ACA left the issue of the professional status of staff members and their salaries unsolved, which makes it difficult to recruit new staff members;

²³ <http://www.balkaninsight.com/en/article/belgrade-s-activists-to-stage-protest-concert-10-19-2016>

²⁴ [Statement of the Commissioner for Human Rights](#), 10 January 2017.

²⁵ [Greco Eval IV Rep \(2014\) 8E](#), Evaluation report on Serbia adopted by GRECO at its 68th Plenary Meeting (Strasbourg, 15-19 June 2015), published on 2 July 2015

²⁶ EC 2016 report, p. 59

²⁷ EC 2016 report, p. 16

37.3. The number of high level corruption cases that are prosecuted remains low. This shortcoming might be linked to the position of the prosecutors, their low salaries, their high exposure when dealing with corruption cases, and a hierarchical structure (appointed by the parliament, thus not immune to political influence) which determines the re-appointment and promotion of prosecutors.

37.4. Despite the adoption of the 2014 Law on whistle-blower protection (which has been applied since June 2015), when investigating corruption cases, NGOs investigating corruption cases (and funded through external partners) are exposed to being labelled as “foreign agents” or presented in a sensational manner by some media.

38. We were informed that a new law on the Anti-corruption Agency was expected to be adopted by the end of 2017 / early 2018. We expect the Serbian authorities to take the necessary steps to further fight corruption. Eradicating corruption and establishing sound rules of governance will contribute to increasing legal certainty and the people’s trust in State institutions, which is fundamental for economic reform and stability in the country.

e. Fight against organised crime

39. The Special Prosecutor for the fight against organised crime mentioned the new Law on the seizure of assets. However, according to the European Commission, “precautionary freezing of assets is rarely applied and the level of assets confiscated is low. (...) Assets often disappear, which results in a poor track record of confiscating criminal assets on final conviction. Sanctions applied by judges are not sufficiently deterrent”.²⁸ The Special Prosecutor stressed the need for more capacities and human resources, in particular to fight drug smuggling. The length of procedure remained an obstacle for speedy investigations, in particular when rogatory letters needed to be issued. The Minister of the Interior Mr Stefanovic drew attention to the signature of new protocols on legal aid with Germany and Spain and a planned agreement with Eurojust in the framework of the implementation of the Chapter 23-related action plan. The Minister also stressed that the growing use of technology by organised crime required better financial means and equipment for the police.

40. The Committee of Experts on the Evaluation of Anti-Money Laundering (MONEYVAL) published its latest report on Serbia in June 2016. It urged Serbia “to develop a clear criminal policy on money laundering investigations and prosecutions”, and to “do more to combat the financing of terrorism”. They noted that “the major threat emanating from organised criminal groups involved in the smuggling and trafficking of narcotic drugs and trafficking of human beings. Tax evasion and corruption offences are considered to generate substantial criminal proceeds. The purchase of real estate, valuable moveable property and investment in securities is a preferred laundering method, which makes the banking, remittances and real estate sectors especially prone to money-laundering risk”. MONEYVAL experts “commended the authorities for the efforts in investigating one significant money laundering case connected with organised criminality”, but urged them “to take immediate action to ensure that law enforcement efforts are fully commensurate with the money laundering risks faced by the country.”²⁹

IV. Human rights

a. Media freedom

41. The journalists we met expressed many concerns about the deterioration of the situation of media freedom in the country, referring to the limited power of the press council to ensure ethical journalism³⁰, the worrying rise of complaints lodged by the media to the press council, campaigns targeting journalists, sophisticated control mechanism and the intimidation and sacking of the Programme Director of Radio Television Vojvodina, RTV, Slobodan Arezina, after the Progressives won the election in the province of Vojvodina, The composition and functioning of the Regulatory Authority for Electronic Media (“RAEM”) raised questions: it is responsible for monitoring the media coverage of elections – but has so far failed to publish its report on the April 2016 elections. The Speaker of the Parliament as well as the Minister of Culture acknowledged that the functioning of this institution need to be improved.

42. The future of the Tanjug news agency, which officially ceased to exist, also raises questions. According to the Media Law, this agency should have been privatised, but two tenders have failed so far.

²⁸ EC 2016 report, p. 17

²⁹ MONEYVAL [Press release](#) and Report of 9 June 2016

³⁰ The press council, by a majority of 8 out of 11 members, can reach decisions which must then be published in the media concerned.

The agency was supposed to close in November 2015; it managed however to remain operational, subsidised by public money, which put this private news agency in a difficult economic situation. The Minister of Culture asserted however that the government was no longer funding the Tanjug agency.

43. In Belgrade, we discussed the situation of media freedom with the authorities and media associations. We noted that Serbia has made good progress in upgrading the legal framework on media with the adoption, in August 2014, of three 3 laws:

- the Law on Public Information and Media [which notably mandates privatisation of the remaining publicly owned media³¹ in order to create a level playing field for all media and allows for transparent and non-discriminatory co-financing of media projects of public interest as a permissible form of state aid to media],
- the Law on Electronic Media and
- the Law on Public Service Broadcasting [regulating the right of all natural persons and legal entities to take part in public information under equal conditions and the use of minority languages in the media].

44. There is however still room for improvement to ensure proper implementation of the recently adopted media laws, so as to secure a pluralistic and sustainable media environment in line with Council of Europe standards, and create conditions for journalists to feel free and safe to provide pluralistic information based on professional and ethical standards. This would contribute to nurturing public debate, which is essential in a vivid democracy. In addition, our attention was drawn to the fact that the issue was not about “free media”, but sustainable media, which would have the capacity not to depend on the large-scale funding made available by the state through subsidies and advertisements.

b. The police

45. The Deputy Prime Minister and Minister of the Interior explained that he aimed to reduce the number of criminal cases by 40%. The issue was about the limitation of the length of procedure so as to avoid the statute of limitation.

46. The Minister mentioned that close co-operation was being developed with the Minister of Justice to diminish criminal proceedings. While 84% of the cases were solved by the police, people still did not feel safe and police presence should be improved. The Ministry had also developed a protocol of “safe cities”, enabling police to monitor cities with cameras. Following the initiative of the ombudsman, the Law on the police had been amended to improve the internal control system.

c. Rights of LGBT persons

47. Some politicians joined several hundred LGBT rights supporters on a march through the capital, which ended without incident. The third Belgrade Pride Parade took place under the slogan “Love changes the world”. In August 2016 Prime Minister-designate Vucic appointed the first openly LGBT person, Ana Brnabic, Minister of State Administration and Local Self-Government, which we welcome.

d. The ombudsman institution

48. The ombudsman institution continues to play an important role in securing fundamental rights. This ombudsman’s office mentioned, as some of the key problems identified, the lack of legal certainty, the violation of the human rights of vulnerable people and the overly speedy adoption of laws, leaving no time for public consultation. The ombudsman also regretted that his two last reports – of 2014 and 2015 – had not being debated in the plenary sessions of the parliament (only at committee level), which is indeed a pity, and a step backwards from previous practice, undermining the efficiency of the work of the ombudsman and the impact of his findings on the decision-making process. On the other hand, the fact that the ombudsman had announced his candidacy for President of the Republic but had not resigned from his post as ombudsman raised serious concern, especially as Serbian law does not allow any sort of political activity within the framework of the ombudsman institution. However, on 6 February 2017, the ombudsman announced his resignation from that post in order to launch his campaign for the presidential elections.

³¹ According to NUNS, 79 media owned by the state should be privatised by 1st July 2015.

V. Conclusions

49. Serbia is approaching the presidential elections in April 2017. We were informed that there are currently discussions about possible early elections being organised on the same occasion, which, from our point of view and bearing in mind the conclusions of the last election observation mission, may not be appropriate, as repeated early parliament elections – which seem solely motivated by political tactics – could have a detrimental effect on the stability and good functioning of democratic institutions, notwithstanding that the choice made by the vote of citizens just one year earlier should be respected. We hope in any case that the shortcomings observed during the last election observation will be redressed, and that clear rules will allow fair media coverage and ban misuse of administrative resources. Campaign funding and registration process are also issues that need to be addressed by the authorities as a matter of priority.

50. We note that the opening of Chapters 23 and 24 of the European Union accession negotiations – pertaining to the judiciary and fundamental rights, justice, freedom and security – will give fresh impetus to the reform process. In this respect, trust in the legal system is necessary to ensure the good functioning and security of the country. Thus we encourage the Serbian authorities to adopt the proposed constitutional amendment on the judiciary in co-operation with the Venice Commission, which would be a first step towards strengthening the rule of law. We also wish to remind the Serbian authorities that, in a second phase, further amendments to the Constitution are expected by the Council of Europe, in line with the Venice Commission's recommendations.

51. We intend to pay another visit to Serbia after the April 2017 presidential elections to prepare our full monitoring report. In the meantime, we ask the Monitoring Committee to declassify this information note.

Appendix I – Statement by the co-rapporteurs following their visit to Belgrade

28/10/2016 – PACE co-rapporteurs for the monitoring of Serbia, Maria Guzenina (Finland, SOC) and Samad Seyidov (Azerbaijan, EC), welcomed the steps taken by the authorities to strengthen the independence and efficiency of the judiciary, in line with PACE Resolution 1858 (2012). “The adoption of new judicial laws, and the preparation of constitutional amendments addressing the judicial system should lead to restriction of undue political interference in the judiciary and reinforce the separation of powers. We strongly support all efforts made by the authorities to carry out this constitutional reform process. We encourage them to make use of the expertise of the Venice Commission to align the Serbian Constitution with Council of Europe norms”, they said.

In Belgrade, the co-rapporteurs discussed the situation of media freedom with the authorities and media associations. “Serbia has made good progress in upgrading the legal framework on media; there is however still room for improvement to ensure proper implementation of the recently adopted media laws, so as to secure a pluralistic and sustainable media environment in line with Council of Europe standards, and create conditions for journalists to feel free and safe to provide pluralistic information based on professional and ethical standards, thus contributing to nurturing public debate, which is essential in a vivid democracy.”

The co-rapporteurs also expect the Serbian authorities to take the necessary steps to further fight corruption. “Eradicating corruption and establishing sound rules of governance will contribute to increasing legal certainty and people’s trust in the State institutions, which is fundamental for economic reform and stability in the country. In this respect, we believe that the opening of chapters 23 and 24 of the European Union accession negotiations – pertaining to the judiciary and fundamental rights, justice, freedom and security – will give fresh impetus to the reform process.

Noting that Serbia remains committed to the European Union integration process, the co-rapporteurs also acknowledged the continuing turbulence in the region. “Serbia has opted for a twin-track foreign policy, between East and West; it thus remains a key player for ensuring stability in the region. We hope that Serbia will find the means to cope with the many challenges the country has to face, in particular management of the migrant crisis, which requires a European response based on solidarity” said the co-rapporteurs.

During their three-day visit, Ms Guzenina and Mr Seyidov had meetings with the Speaker of the National Assembly Ms Gojkovic, Deputy Prime Minister and Minister of Interior Mr Stefanovic, the Minister of Culture and Information Mr Vukosavljevic, representatives from the Ministry of Foreign Affairs and Justice, the Presidents of the Constitutional Court and the Supreme Court of Cassation as well as representatives of the Public Prosecutor’s Office, the Serbian delegation to the PACE and members of Parliament. They also met the Deputy Ombudsmen, the Director of the Anti-Corruption Agency, representatives of the media and civil society and members of the diplomatic community.

Appendix II – Programme of the visit (26-28 October 2016)

Wednesday 26 October 2016

- 08:30 Briefing with Mr Tim Cartwright, Head of the Council of Europe Office and Ms Nadia Cuk, Deputy Head of the Office
- 09:30 Meeting with the Association of Judges and Association of Public Prosecutors (*)
Ms Dragana Boljevic, President, Association of Judges
Mr Omer Hadziomerovic, Vice President, Association of Judges
Mr Goran Ilic, President, Association of Public Prosecutors
Ms Svetlana Nenadic, Member of the Management Board, Association of Public Prosecutors
- 10:30 Round table with selected NGOs (*)
Mr Relja Radosavljevic, Humanitarian Law Center
Mr Mihajlo Pavlovic, Humanitarian Law Center
Mr Milan Antonijevic, YUCOM
Ms Jelena Dzombic, Helsinki Committee for Human Rights
Mr Aleksandar Tresnjev, CEPRIS
Ms Ana Zdravkovic, CEPRIS
Mr Nikola Kovacevic, Belgrade Centre for Human Rights
- 11:30 Meeting with media representatives (*)
Mr Svetozar Rakovic, Secretary General, NUNS
Ms Marija Vukasovic, Advisor, NUNS
Mr Zoran Sekulic, FONET
Ms Tamara Skrozza, Press Council
- 13:00-14:15 Working lunch hosted by Ms Alexandra Đurović, Chairperson of the Serbian delegation to PACE
- 14:30-15:00 Meeting with Ms Maja Gojkovic, Speaker of the National Assembly of the Republic of Serbia
- 15:15-15:45 Meeting with Ms Vesna Ilic Prelic, President of the Constitutional Court
- 16:00-16:45 Meeting with members of the Parliamentary Committee on Constitutional and Legislative Issues
- 16:50-17:35 Meeting with leaders of the ruling coalition in the Parliament
- 17:40-18:25 Meeting with leaders of the opposition political parties in the Parliament
- 18:30-19:15 Meeting with leaders of the minority parties in the Parliament
- 20:00 Working dinner with representatives of the Anti-Corruption Council and anti-corruption NGOs
Mr Miroslav Milicevic, Vice President, Anti-Corruption Council
Mr Stevan Dojcinovic, Network for Criminal and Corruption Investigation – KRIK
NN, Transparency International

Thursday 27 October 2016

- 09:00-09:45 Meeting with Ms Roksanda Nincic, Political Director, Ministry of Foreign Affairs
- 10:00-10:45 Meeting with Mr Radomir Ilic, State Secretary and Mr Petar Rundic, Chief of Cabinet, Ministry of Justice
- 11:00-11:45 Meeting with Mr Vladan Vukosavljevic, Minister of Culture and Information
- 12:00-12:45 Meeting with Mr Dragomir Milojevic, President of the Supreme Court of Cassation
- 13:00-14:10 Lunch with Ms Aleksandra Đurović, Head of the Serbian Delegation to PACE

- 14:15-15:00 Meeting with Ms Tatjana Babic, Director of the Anti-Corruption Agency
- 15:15-16:00 Meeting with Mr Milos Jankovic and Mr Robert Sepi, Deputy Ombudsmen
- 16:15-17:00 Meeting with representatives of the Republic Public Prosecutor's Office:
Ms Gordana Janicijevic, Deputy Public Prosecutor in charge of International Cooperation and Legal Aid
Ms Olgica Miloradovic, Deputy Public Prosecutor in charge of Fight Against Corruption
Ms Tamara Mirovic, Deputy Public Prosecutor
Mr Branko Stamenkovic, Special Prosecutor for High Technology Crime
Ms Tatjana Lagumdzija, member of the State prosecutorial Council
- 17:15-18:00 Meeting with Mr Mladen Nenadic, Special Prosecutor for Organised Crime
- 20:00 Working dinner with representatives of the diplomatic community, hosted by HE Ambassador Pertti Ikonen, Ambassador of Finland,
in presence of H.E. Mr Eldar HASANOV, Ambassador, Embassy of Azerbaijan, H.E. Mr Jan LUNDIN, Ambassador, Embassy of Sweden, H.E. Mr Radko Todorov VLAYKOV, Ambassador, Embassy of Bulgaria, H.E. Mr Andrea ORIZIO, Ambassador, Head of Mission, OSCE, Ms Päivi ALATALO, DHOM, Embassy of Finland, Ms Sabine BRENDEL, First Secretary, Political Affairs, Embassy of Germany and Ms Jannicke BAIN, DHOM, Counsellor, Embassy of Norway

Friday 28 October 2016

- 10:45-11:30 Meeting with Mr Nebojsa Stefanovic, Deputy Prime Minister and Minister of Interior, in presence of Ms Alexandra Đjurović, Chairperson of the Serbian delegation to the PACE

Departure of the delegation

(*) Meetings organised by the Secretariat of the Council of Europe