
Serbia and Montenegro

Serbia and Montenegro is taking some small steps to promote human rights, however, its progress is limited by continued impunity for those who committed war crimes. The government is unwilling to cooperate fully with the International Criminal Tribunal for the former Yugoslavia and efforts to prosecute war criminals before domestic courts are inadequate. Additionally, the government has failed to respond effectively to attacks against ethnic minorities.

International Criminal Tribunal for the former Yugoslavia (ICTY)

Serbia and Montenegro's cooperation with the ICTY took a marked turn for the worse after the December 2003 parliamentary elections and the establishment of a new Serbian government dominated by the nationalistic Democratic Party of Serbia (DSS). Serbian Prime Minister Vojislav Kostunica openly opposes the arrests of suspects indicted by the ICTY, arguing that they should surrender voluntarily.

On October 9, 2004, former Bosnian Serb army general Ljubisa Beara, charged with genocide for crimes committed against Bosnian Muslims in Srebrenica in 1995, was transferred to the ICTY. Serbian officials insisted that Beara surrendered voluntarily, notwithstanding the claims by the ICTY Office of the Prosecutor that Beara was arrested. As many as fifteen ICTY indictees remain at large in Serbia and Montenegro, or traveling back and forth between Serbia and Montenegro and Republika Srpska (Bosnia and Herzegovina). They include Ratko Mladic, the former general of the Bosnian Serb army, and Bosnian Serb wartime leader Radovan Karadzic.

The government has been particularly obstinate in its refusal to transfer to ICTY custody three former army and police generals—Nebojsa Pavkovic, Vladimir Lazarevic, and Sreten Lukic—indicted for war crimes in Kosovo in 1999. Prime Minister Kostunica and his cabinet continue to insist that the ICTY should allow them to be tried in Serbia. The political climate in Serbia and Montenegro—where the men are widely regarded as patriots—and the absence of a genuinely independent judiciary make the chances of a credible prosecution being mounted against them in Serbia very slim.

Domestic War Crimes Trials

The prosecution of war crimes cases before domestic courts in Serbia is hampered by a lack of political will on the part of the authorities, and the unwillingness of the police to provide evidence to the prosecutor's office. The creation of a special war crimes chamber in 2003 appeared to signal an increased seriousness of purpose. But during 2004 the chamber heard only one trial, yet to be completed at the time of this writing, in a case arising from the November 1991 killing of 200 Croats, near Vukovar, Croatia. In addition, Sasa Cvjetan was convicted in March 2004 by the Belgrade district court for killing

fourteen Kosovo Albanian civilians in March 1999 in Podujevo, Kosovo. Cvjetan was sentenced to twenty years' imprisonment.

Current legislation in Serbia contains only rudimentary witness protection mechanisms. The government has drafted a new law on protection of witnesses and other participants in criminal trials, but as of November 2004 the draft law had yet to be enacted.

The office of the special war crimes prosecutor with five prosecutors, and the special war crimes unit within the Serbian police, with eight inspectors working on war crimes investigations, both remain severely understaffed. The office of the special war crimes prosecutor is reportedly preparing several cases pertaining to war crimes in Kosovo in 1999. However, the security situation in Kosovo, coupled with a lack of initiative on the part of the office of the special war crimes prosecutor, has prevented it from getting access to ethnic Albanian witnesses in Kosovo. The office has yet to prepare any cases arising from crimes committed in Bosnia or in Croatia.

Ethnic and Religious Minorities

The government failed adequately to respond to the explosion of ethnic and religious violence in Serbia in March 2004. It is similarly failing to address a year-long wave of low-level violence against non-Serbs in the Vojvodina region in northern Serbia.

On March 17, mobs burnt down mosques in Serbia's biggest towns, Belgrade and Nis. The violence was sparked by reports from Kosovo of widespread rioting and attacks on minorities by ethnic Albanians. The few police officers deployed to protect the mosques were unable to control the rioters. In a March 17 television interview, Serbian Interior Minister Vladan Jovic effectively encouraged the rioters, assuring viewers that the police would not use force against "its own people." On the same evening, the police in Novi Sad stood by as demonstrators attacked and seriously damaged an Islamic community center, as well as pastry shops and bakeries belonging to ethnic Albanians and Muslims. In the following months, prosecutors in Nis and Belgrade charged three dozens rioters with participation in a violent group, rather than with ethnically- or religiously-aggravated forms of violence.

There have been dozens of incidents against ethnic minorities in Vojvodina since January 2004. The violence ranges from tombstone desecration and painting of nationalistic graffiti to confrontations involving young persons of different ethnicities. The government initially claimed that the incidents were not ethnically motivated. In the face of mounting evidence that most of incidents had an ethnic motivation, and European Union and Council of Europe condemnations of the violence, the government eventually acknowledged there was a problem. In September, Serbian Prime Minister Kostunica and the Minister of Serbia and Montenegro for Human and Minorities Rights Rasim Ljajic visited Vojvodina and vowed to end ethnic intolerance. By October there had been only one case in

which a court charged perpetrators with ethnically motivated crimes. Most other cases have either not reached trial, or resulted in minor penalties for disturbing the peace.

In southern Serbia—a predominantly ethnic Albanian area bordering eastern Kosovo—the school curriculum continues to ignore Albanian culture and history. There is still no progress on improving educational opportunities for Roma children in Serbia. Most Roma children drop out of school altogether at an early stage, or are channeled into the schools for students with mental disabilities. Thousands of Roma families—many of them displaced from Kosovo—live in makeshift settlements on the outskirts of towns, without electricity, running water, sewers, or access to public health and education services.

Serbia and Montenegro has seen some progress during the year in the implementation of the 2002 Law on the Rights and Freedoms of National Minorities. Most minority groups have completed establishing national councils under the law. The councils play a consultative role in minority education and cultural matters.

Key International Actors

The United States government enjoys considerable influence with the authorities in Serbia. Serbia's failure to cooperate with the ICTY is a growing cause of friction in their relations. The U.S. suspended U.S.\$26 million in economic assistance to Serbia on March 31, 2004, over its non-cooperation with the ICTY. It is the first time the U.S. has taken such a step since the fall of Slobodan Milosevic in October 2000. The U.S. position has been less than principled, however. The Serbian government's request to try Serbian generals wanted by the ICTY in Serbia rather than handing them over to the tribunal has met with a sympathetic response from two senior U.S. government officials. Mixed signals from the U.S. encourage the Serbian officials to persist in non-cooperation with the ICTY.

On March 18, the ICTY sentenced former Yugoslav Navy admiral Miodrag Jokic to seven years in prison for the 1991 shelling of the Croatian town of Dubrovnik. In February, the ICTY prosecutor rested its case against the former President Slobodan Milosevic, who faces crimes against humanity and genocide charges. The beginning of Milosevic's defense has been frustrated by his refusal to cooperate with the lawyers assigned to him on September 2. Milosevic continued to insist on representing himself, which the trial chamber has determined was not appropriate given the serious deterioration in his health. On November 1, ICTY Appeals Chamber confirmed the decision on the assignment of lawyers, but gave Milosevic greater scope to run his case. The overall perception of the Tribunal's work among Serbian public remains negative, mainly due to the hostility of consecutive Serbian governments and the media to the work of the tribunal.

The European Union is attempting to make a more effective use of the association and stabilization process to leverage improvements in Serbia's performance on human rights. The Stabilization and Association report from April 2004, noted progress in the area of minority rights, but also the slower

than hoped-for reform of the police and judiciary, and shortcomings in the conduct of domestic war crimes trials. The European Partnership document, adopted by the E.U. Council on June 14, details a list of short- and medium-term human rights priorities for Serbia and Montenegro's further integration with the E.U. On October 11, the European Commission announced that it would re-launch the Feasibility Report on a Stabilization and Association Agreement (SAA) with Serbia and Montenegro. The report, due to be finalized by spring 2005, will assess the country's capacity to negotiate and implement the far-reaching political and economic obligations the agreement entails.

Kosovo

In March 2004, the United Nations-administered province of Kosovo returned to the international agenda. Two days of widespread riots—the worst violence since 1999—revealed the precarious situation of the province's minority population, the weakness of security structures, and the frustration of the majority population at the international institutions that govern Kosovo. Lack of security for minorities, coupled with a continuing accountability gap and uncertainty regarding the province's political status, limit the return of internally displaced and refugee Kosovars to their homes. The impact of Kosovo's inadequately functioning judicial institutions is felt by majority and minority populations alike. October elections for Kosovo's legislative assembly were free of violence, but most Serbs did not participate.

Protection of Minorities

The March 17-19 riots shattered the illusion of security for Kosovo's minority communities. At least thirty-three major riots took place across the province, involving an estimated 51,000 predominantly ethnic Albanian participants. The violence—directed at international organisations as well as minorities—left twenty-one people dead, more than 950 wounded, and some 4,100 people displaced, almost all of them Serbs, Roma, Ashkali, or other non-Albanian minorities. At least 730 minority-owned homes—including some belonging to recent returnees—and twenty-seven Orthodox churches and monasteries were burned and looted, together with at least ten public buildings providing services to minorities, including a hospital, two schools, and a post office.

During the riots, the security organizations in Kosovo—the NATO-led Kosovo Force (KFOR), U.N. international civilian police, and the local Kosovo Police Service (KPS)—almost completely lost control. In too many cases, minorities under attack were left entirely unprotected. Poor inter-agency coordination, limitations on deployment in individual KFOR contingents (so-called “caveats”), and lack of riot-control training and equipment for KPS, U.N. police, and KFOR, provide part of the explanation.

Beyond the destruction of homes, and the displacement of more than four thousand people, the violence reinforced existing concerns among minorities about their personal safety, fuelled by routine—and frequently unreported—ethnically-motivated harassment and intimidation, verbal abuse, property defacement, and stone-throwing. Minorities also face persistent discrimination in the provision of

education, social welfare, and health services, and limited access to administrative offices and courts. There has been little progress in implementing the new anti-discrimination law.

Efforts to improve coordination among KFOR and U.N. police have yet to reassure either minority communities or those agencies working on their behalf that international security structures would be able effectively to manage a repeat of March violence. Assurances from the U.N. Interim Administration Mission in Kosovo (UNMIK) that the situation has stabilized—often supported by crime statistics considered on par with many Western European countries—ring hollow at a time when many minorities have little or no freedom of movement, and remain subject to harassment and intimidation.

Return of Refugees and Internally Displaced Persons

Even before the March violence, the overall picture on returns in Kosovo was bleak. Fewer than 5 percent of the more than 200,000 internally displaced and refugees from minority communities who left their homes since 1999 have returned. The majority are in Serbia, Montenegro, and Macedonia. By the end of September 2004, fewer than 1,500 voluntary minority returns had occurred. (During the twelve months of 2003, there were 3,801 minority returns). The figures include returns of displaced ethnic Albanians to locations where they are in the minority. Those returns that did take place were often incomplete or partial returns—with only part of the family returning, or the family returning only for part of the year. As of early October 2004, 2,288 of the 4,100 minorities driven from their homes by the March violence remained displaced.

Even prior to March, the United Nations High Commissioner for Refugees (UNHCR) warned against the forced return of minorities, including ethnic Albanians from areas where they are in the minority, and those from mixed families. Forced returns of minorities have continued, however, together with the return of larger numbers of ethnic Albanians to majority areas.

Impunity and Access to Justice

While there has been progress toward the establishment of a functioning and sustainable justice system in Kosovo over the past five years, the current picture of accountability for crimes is one of rampant impunity. Ongoing legislative drafting, including the recently enacted criminal procedure, criminal, gender equality, and anti-discrimination laws, though an important part of the judicial process, can do little to remedy many of the practical obstacles to accessing justice in Kosovo.

The current justice system continues to suffer from a significant, and ever increasing, backlog of cases; a shortage of international and local judges; virtually non-existent mechanisms for witness protection and relocation; poorly-trained and inadequately supported investigators and prosecutors; persistent concerns over the perceived bias of ethnic Albanian judges; and serious problems in ensuring the right to be tried within a reasonable time, including securing the attendance of the accused at trial. The problems affect all communities, undermining confidence in the criminal justice system and the rule of law.

There have been few prosecutions for war crimes committed in 1998 and 1999 and for post-war inter-ethnic and political violence, especially during the period of late 1999 and 2000. The second major trial of former Kosovo Liberation Army (KLA) members began in October 2004. All of the alleged victims are ethnic Albanian. Verdicts in the first domestic war crimes trial, the so-called “Llap” case, were only rendered in late 2003. All but one of the victims in that case are ethnic Albanian. There has also been little progress in resolving the more than three thousand outstanding cases of missing persons from Kosovo.

In comparison to the dismal rate of prosecutions for offences prior to March—whether for war crimes, inter-ethnic crimes, or ordinary criminal offences—the response to the March events has been dramatic. More than 270 people have been arrested for criminal acts relating to the violence. The bulk of these arrests, however, have resulted in charges for fairly minor offences, adjudicated by the local Municipal and Minor Offences Courts. Despite the minor nature of the offences charged, and the relative speed at which these cases should be adjudicated, fewer than half had been resolved by late October 2004. Of the fifty-seven more serious cases relating to murders, ring-leaders, serious inter-ethnic crime, and major arson attacks, only about one-third were in the judicial process by late October 2004, with indictments filed in little more than half of those cases. Cases involving allegations of police complicity in violence are still under investigation.

Trafficking of women and girls—a significant problem in Kosovo—is another area where there is a serious accountability gap. There have been few prosecutions for trafficking. Women and girls rounded up in police raids have been prosecuted for being unlawfully present in Kosovo or for prostitution. The inclusion in the UNMIK witness protection program of trafficking victims facing serious threat as of September 2004 is a welcome development.

The problems with the criminal justice system are mirrored in Kosovo’s civil courts. Case backlogs, access to the courts for ethnic minorities, and a sometimes chronic failure to implement court decisions, are among the obstacles.

Key International Actors

The United Nations remains the key international actor in Kosovo. The appointment of the experienced diplomat Søren Jessen-Petersen as special representative to the secretary general (SRSG) in August was broadly welcomed as an opportunity to re-energize the tired U.N. mission ahead of negotiations on Kosovo’s political status. The new SRSG faces a major challenge to reinvigorate the U.N.’s work on police and justice issues, and restore confidence in the mission among Kosovo’s communities. In October, the U.N. Human Rights Committee requested that UNMIK submit a report to it on the situation of civil and political rights in Kosovo.

The first trial of former KLA members at the International Criminal Tribunal for the former Yugoslavia began on November 15. Fatmir Limaj, Haradin Bala, and Isak Musliu are charged with crimes against humanity for their alleged role in the torture and murder of Serb and ethnic Albanian civilians at a KLA prison camp in 1998. The three men have pleaded not guilty to all charges.

The Contact Group—France, Germany, Italy, Russia, the United Kingdom, and the United States—renewed their focus on Kosovo in the wake of the March violence. The group has emphasized that progress on minority protection and other human rights standards remain a precondition for a viable political settlement in Kosovo.

The Organization for Security and Cooperation in Europe (OSCE) Mission in Kosovo is increasingly emphasizing the capacity-building elements of its mandate, including training for judicial officials and officers from the Kosovo Police Service. It continues to monitor the courts and produce periodic reports on minority rights together with UNHCR.

NATO has been working at a diplomatic level to remove national restrictions (“caveats”) on the deployment of NATO contingents in Kosovo—widely seen as a barrier to a coordinated and effective KFOR response to security incidents.

The European Union remains the key international player with regard to economic development, including Kosovo’s vexed privatization process. The E.U. is assuming a growing importance in the political sphere—a role suggested in the June 2004 U.N.-commissioned report by Norwegian NATO Ambassador Kai Eide. New envoys from the E.U. High Representative on Common Security and Foreign Policy and the European Commission were dispatched to Pristina/Prishtina in the wake of the March violence.