

FIDH

Serbia-Montenegro (excluding Kosovo) : The failures of the transition

During the three last years, some progress in the field of Human rights, confirmed in April 2003 by the accession of the Union Serbia-Montenegro (USM) to the Council of Europe and the ratification of the European Convention Against Torture¹. So did the DOS coalition's, after its victory against Milosevic in October 2000, manage to get out of the 13 years of bellicose and criminal policy of Milosevic era? In fact the democratic transition is far to its successful conclusion. In the actual political context, in spite of the recent election of the pro-European candidate at the presidency of Serbia, the concern on the continuity of the process is still strong (I). For some time we even assist to a sensitive loss of the situation, particularly in the increase of the attacks against civil society and the treatment of the question of war crimes. Reports from the local organisations, especially from the Helsinki Committee² and from the Humanitarian Law Center (HLC)³, documented several abuses, violations and failures. As a lot is already very well documented, the crucial point here is less to write an exhaustive factual report than to give the order of priority in the denunciation of human rights violation in the Serbia-Montenegro (II), to point the limitation of the reforms in the state institutions, especially in the police (III) and the justice (IV), and to underline the threats and abuses that still concern the minorities (V) and the civil society (VI).

This report does not deal with the violation of human rights that took place in Kosovo, although Kosovo is formally always part of the USM, because the situation in the international protectorate is not directly linked with the responsibility of the State's institution of USM and must, for that reason, be analysed separately.

I Why the process of reform is limited and still at risk

The process of democratisation appears to be slow and laborious. It is still partial and fragile for at least three reasons:

The instability and the radicalisation of the political scene that results from the rising of nationalist and extremist parties, the dissensions and the fragility of governmental coalitions, the extent of the social and institutional crisis. Successive polls did not succeed in drawing a clear direction: apart from the highly level of abstention (always more than 50%), the first party of the land, in number of vote expressed during the first round, is the Radical Party (PR) of the ultranationalist Vojislav Sesel (in course of trial at the Hague); the governmental coalition lead by the DSS of Kostunica after the legislative of December 2003 leave out both the PR and the reformist DS party of Zoran Djindjic; but the presidential election of June 2004 was finally in favour of the candidate of the DS, Boris Tadic. Therefore if the worst was avoided (the election of an ultranationalist at the presidency), the contradictions and instability of a political "arena", characterized by the violence of the debates and the practices (inflammatory speeches, intimidations, etc.) are still going on.

The assassination of the reformist Prime Minister Zoran Djindjic in March 2003 was an explosive rupture of which we can still feel the shock wave today.

¹ Serbia and Montenegro, Country report, April 2004, IMMIGRATION AND NATIONALITY DIRECTORATE, HOME OFFICE, UNITED KINGDOM.

² See in particular their last annual report : Human Rights and Accountability – Serbia 2003, HELSINKI COMMITTEE FOR HUMAN RIGHTS IN SERBIA, Belgrade 2004.

³ See in particular their web-site : www.hlc.org.yu/english.index.php

The reaction which followed gave rise to fears and hopes. Hopes because, after having been postponed and delayed for too long, the arrests in the circle of organized crime (Zemun clan) and in the widely corrupted police have apparently beheaded one of the most active criminal groups implicated in the sabotage of the democratic transition. Fears because during the state of emergency, between March 12th and April 22nd, violations of human rights occurred and because the real effect of the « Sabre » operation is maybe more limited than expected. The trial of the murderers of Zoran Djindjic, “turned into a farce aimed at presenting a political murder as a mafia showdown”⁴; another criminal gang (Curcin clan) seems to gain from the knock-out of his rival; with the political changes of December 2003, we saw the return and the appointment of old actors from the Milosevic era (at the Pancevo police or at the RTS – Radio Television Serbia).

The political status of the region is not yet resolved and the contentious are not calming down. The blur of the Union Serbia - Montenegro new constitution and the lack of coordination between the institutions have hindered in their application the improvement in the rights of the minorities. Similarly, the indecision in the resolution of the final status of Kosovo (cited in the USM constitution as an “autonomous province” just as the Voivodine is) leaves open a gaping wound and a source of crisis very sensitive as the March riots show it again. With the plan of cantonization for the Kosmet (Kosovo-Metohija) adopted, on April 29th, by the unanimity of the parliamentarian of Serbia, the “defence of the mythical cradle of the nation” seems to be the only subject around whose a consensus remains possible. At the price of an unrealistic treatment of the problems and an electoralist demagoguery which support either than made a handsome contribution to stop the degradation of the situation.

II How the victims are designed by the state's institutions of USM

Profile of the victims

First, it is not only minorities which are subject to systematic violation of their rights; it is also individual because they are contesting the power in place or/and because they are vulnerable. Second, the victims are civilians usually without any kind of possible defence and isolated or already severely discriminated by state institutions. They are several times designed and named as responsible for untestified or clearly false accusation. They have little judiciary procedure after they have been attacked or threatened.

List of prior victims

Roms are regular victims of violent discrimination and force military mobilisation.
Women are not protected from homeland violence, they are a very developed human traffic through Serbia and Montenegro.
Gay/homosexual are threatened and very often beaten by groups close to the police.
Muslims face direct and violent discrimination particularly during the election periods
Albanian population are still segregated and support very large discrimination.
Young military “conscript” are very often tortured and raped during their military service.
Witnesses for war crimes trial are considered as traitors and face direct intimidation and threats.

III The police and Security services

In March 2002, a new federal code of procedure has been adopted, death penalty was abolished and the last political prisoners registered by the international NGOs were released. The Reds Berets dissolution, this special unity of national security which had an important role in the wars in Croatia and Bosnia and Herzegovina, was finally declared in March 2003. The unity was still linked with its former leaders, Milorad Lukovic Legija and Dusan

⁴ Helsinki Committee, op. cit.

Spasojevic, both directly involved in the murder of Zoran Djindjic. In parallel, reorganizations could be done at the military staff level, other institutions reluctant to democratic transition: 16 generals were fired. The prison system also knew a general improvement. According to the Helsinki Committee in Belgrade which publishes every year a report on imprisonment conditions, even if it is variable with the centres. The psychiatric prison clinic of Belgrade remained the worse in the prison system⁵.

Arbitrary arrests, roughness and torture

However progress brings in the police and security system of the State by the new code of procedure must not delete recurrent failures in its application.

In 2002, twelve grave cases of torture and three cases of deaths in detention which should be caused by police roughness were released⁶ among them:

Dejan Petrovic, 29 years old, died on February, 15th 2002 officially he fell down accidentally by a window (preliminary investigation in process)

Dragan Malesevic, died during a police interrogation on October, 29th 2002, suspected for the murder of the former police chief Bosko Buha (allegations of torture done by other prisoners in the same case)

Milan Jezdovic, 24 years old, died on December, 5th 2002, suspected for drugs trafficking, on pictures marks of torture with electricity (preliminary investigation in process)

In 2003, allegations for arbitrary arrests and police torture are in increase in the framework of the **Sabre operation**, great police swoop (arrest of 11 665 persons) lead after murder of Zoran Djindjic. During the State of emergency declared between March, 12th and April, 22nd 2003, ten or so cases of grave violence were informed, one more mediated than others, those of the adjoint prosecutor Milan Sarajlic, arrested on March, 19th and in incommunicado detention until April, 11th. He would have been tortured with electricity. The same year, the HLC instituted a procedure for the violence suffered by Zoran Todorovic (beating) and his wife Danijela Bogojevic (sexual abuses) the night from January 22nd to 23rd 2003 in their home although they were not subject of any accusation. The Serbian Jurists Committee for the DDH (JUKOM) registered in Belgrade 11 other cases of roughness since the Sabre operation among them Bojan Stojanovic (beating). Concerning police violence, in spite of some accusations impunity seems still the general rule⁷.

2) The hierarchy and the « intermediaries » of the police and state institutions

The reshuffle executed during the State emergency can't cancel their limits. In spite of their compromise with the Milosevic regime, some people have been promoted. On April, 22nd 2004, the Humanitarian Law Center protested against the appointment of Zvezdan Radojković as the Pančevo Police Chief. In 2000, he participates as inspector at the massive police campaign against political opponents of the Milošević regime, in particular against members of the Otpor organization. Despite the bringing down of the Reds Berets, the State institutions go on using "intermediaries" such as paramilitary units or criminal groups linked to local mafia. These groups are shifting from official uniform to paramilitary unrecognizable dresses. Orders are very precise and come directly from the State top level. Human rights violation are not necessary taking place in police office, they are mainly done in the public or in private homes. Police does not cooperate with the judiciary system in order to find top level responsibilities. Political responsibilities are evacuated and command hierarchy is neglected. The judiciary system does not have the capacities, competencies and independence to begin any investigation seriously. They are very little testimony and State institutions put usually the responsibilities of such crimes on some private or local fights. Inter-ethnic conflicts are very often used as a general explanation for political crimes.

⁵ report OSCE 2003

⁶ Amnesty (EUR 70/002/2004)

⁷ Release from HCL on July, 29th 2003

IV The judiciary system and the war crimes trials

Two important reshuffle waves shackled the juridical system: in 2002, one third of the public prosecutor staff were fired or sent in early retirement. During the state of emergency in March 2003, 35 judges and adjoin prosecutor were moved aside. These reshuffles seemed indispensable and one can regret that they delayed so much insofar as the legal system had been mainly compromised under the Milosevic regime, it was notoriously corrupted even directly linked to organized crime. However, the Helsinki Committee of Belgrade was worried about the opacity in which these reshuffles were made and the opportunity the executive took to ensure its control on the legal system. The grave failures of the authorities of the USM as regards as justice are particularly glaring in the treatment of war crimes.

1) War crimes trial in Serbia

A Law on the Organisation and Jurisdiction of Government Authorities in Prosecution of Perpetrators of war Crimes was enacted in Belgrade in June 2003⁸. This Law might provide a legal and institutional framework for the conduct of war crime trials in Serbia. Yet, *"the Law per se cannot guarantee success, unless other vital conditions are met, too [such as] adequate and safe premises for the special institutions, higher salaries for judges, prosecutors and police involved in war crime cases, budget to cover operational costs of war crime investigations and trials, witnesses/victim protection programs, political support and media campaign to shape public opinion"*⁹.

The judiciary of Serbia, in co-operation with the ICTY, started the proceedings against the **direct perpetrators** of the crime. The District Prosecutor in Novi Sad filed a request on June, 5th 2003 for the investigation of six persons for the criminal offence of **"a crime against prisoners of war"**, under Article 144 of the Basic Criminal Law in Serbia and Montenegro. The investigation began on June, 6th 2003, based on individual responsibility. Special Prosecutor Vladimir Vukcevic issued the indictments against eight men in early December 2003, charging them with killing 200 Croat and other non-Serb prisoners at the Ovčara farm. The men indicted were Spasoje Petković, Stanko Vujanović, Jovica Perić, Mirko Voinović, Ivan Atanasijević, Predrag Madžarać, Miroљjub Vujović and Milan Vojinović. All the suspects were in custody.

The trial started on March, 9th 2004. However, on March, 8th 2004, Mirko Voinović died in a prison-hospital, of the injuries sustained two months before when he jumped from a hospital window. The two major figures in this trial are Miroљjub Vujović, who was in 1991 the commander of the TO detachment called Petrova Gora in Vukovar, and Stanko Vujanović, who was the commander of a TO unit in Vukovar. Both men's names appear in the ICTY indictment against Mrkšić et al. In late March 2004, presiding Judge Vesko Krstajic decided to interrupt the trial, since new evidence has been found. 11 additional persons have been charged for their participation in the Ovčara massacre. The trial was supposed to start on June, 21st 2004, but it has been postponed again. It should start on June, 29th 2004.

This trial is expected to serve as a test for the Serbian authorities' seriousness in respect to war crimes allegedly committed by Serb citizens. However, human rights activists have criticised the quality of the trials for war crimes in Serbia. The Humanitarian Law Center in Belgrade (HLC) is an NGO which, for years now, has tried to establish the responsibilities of the FRY and Serbia, and to implement a critical work of facing both individual and collective responsibility within the Serbian society. But time is not really for optimism in Serbia. As Nataša Kandić, HLC director, writes, *"the Serbian government has publicly stated that it is not interested in putting people on trial for command responsibility, and that only those who committed crimes with their own hands should be prosecuted. This position - and the trials*

⁸ Before the new Law was enacted, seven cases concerning war crimes had been open in Serbia, and one in Montenegro: see HLC website.

⁹ OSCE Mission to Serbia and Montenegro, Rule of Law and Human Rights Department, *"War crimes before domestic courts: OSCE monitoring and empowering of the domestic courts to deal with war crimes"* p. 48.

*resulting from it - will ensure that the truth of what happened in the former Yugoslavia over the past decade remains buried. If the government maintains this position until The Hague tribunal closes in 2008, the Serbian model of justice will not only prove unable to continue the work of the international court, but may actually undermine what has been accomplished*¹⁰. Since S. Milošević lost the power in October 2000 and was sent to The Hague in June 2001, many people expected the political situation to change dramatically within months. But the Serbian government has not shown much will to change the structures of the state and to examine its own responsibility in the wars of the last decade. The Truth and Reconciliation Commission created in 2001 was dissolved in February 2003 without holding any audience on war crimes. The military court, put in place by Kostunica in 2001 to prove that a national alternative to the TPIY was possible, might be suspended soon. The initiated criminal procedures against 304 persons for criminal offences committed in Kosovo between March 1998 and June 1999 resulted largely in very low charges (on the 304 investigated, 267 were charged of very low offences – as property violation – and only 26 were investigated over murder)¹¹. So except some very rare case (like the “Colonel Mancic et al. case”) the war crimes conducted failed to address the issue of the real dimension of crimes committed and the real responsibility.

Collaboration with ICTY

Serbian authorities had arrested and extradited numerous accused to the TPIY in particular Milosevic, extradited on June, 28th 2001, Jovica Stanisic (MUP) and « Franki » Simatovic (unity of special operations of the MUP) in May 2003, Miroslav Radic and Veselin Sljivancanin, both accused for the Ovchara massacre (Croatia) in 1991 (see here under). Milutinovic and Seselj surrendered in February 2003.

But the renditions and extraditions appeared for the most as concessions obtained with international pressures and American ultimatums for stop financial helps. Serbian authorities never started an effective policy to put the war crimes of the Milosevic regime in the public debate. The Serbian president, Milan Milutinovic, despite his indictment, stayed in charge until the end of his mandate in December 2002. The vice Minister for Home affairs Sreten Lukic, former police chief under Milosevic era, charged in October 2003 by the TPIY, was defended and kept at his position by the Minister for Home affairs, Dusan Mihailovic. Four accused by the TPIY could apply for the parliamentary elections of December 2003. Today the transfers of Nebojsa Pavkovic, former captain of the army Yugoslav, arrested by the Serbian authorities for revelation of state secrets, of the generals Vladimir Lazarevic and Vlastimir Dordevic as well as Sreten Lukic (cf. supra) are blocked by the government. Many former Karadzic partners excluded by the TPIY, the MINUBH, the EU and the US like Ljuban Ecin or Momcilo Mandic (arrested by Serbian authorities in April 2003 but released without charges in September 2003) living in Belgrade where they should put in place a support network for the defendant. The special Commission, created within the Ministry of defence to provide information and support Milosevic defence, was dissolved but only following the reshuffles began face the murder of Zoran Djindjic. Like the extradition of accused, the opening of the records and the delivery of documents required by the persecutor of TPIY remained a problem. Even when the persecutor office announced in 2003 want to confer two files to Serbian tribunals, the process now is locked and Carla del Ponte considers cooperation between The Hague and Belgrade as « non-existent ». We can hope that the victory of Boris Tadic to presidential elections will allow to resume and improve the cooperation. However, the context stays particularly hard to bring deep changes as the example of the last election in June for the supporting law to accused, according to those who voluntarily go to The Hague, a public help of 200 Euros per months for him and 250 Euros for travelling costs of his family to The Hague.

¹⁰ HLC website

¹¹ OSCE, War crimes before domestic courts, Belgrade, octobre 2003.

3) Threats against witnesses in sensible trials

Apart from the authorities' obstructions, one of the most worrying aspects concerns threats against potential witness whether in trial in The Hague, where the number of protected witnesses is particularly high, or those in Serbia. The testimony of Goran Stoparic, former member of the Scorpions, a special police unit charged for the murder of 19 civilians in Podujevo (Kosovo) scheduled on December, 8th 2003, had to be reported following the threats he received. The judge gave an order of protection but this kind of measure does not alleviate the lack of an effective program for protection of witness. Numerous local and international NGOs were worried on this lack and the condition of Stoparic. In the same case, the judge Biljan Sinanovic received anonymous threats several times. It has to underline that despite the weakness of the justice in this field, 4 Albanians survivors could appear before a court on July 9th and 10th 2003 in this case. A positive sign which has been darkened by an explosion inside the Court building the day following their deposition.

Pressures on potential witnesses were not only exerted in war crimes cases but also in the trial for the assassination of Serbian Prime Minister Zoran Djindjic. On March, 1st 2004, Kujo Krijestorac, a key witness for the accusation was shot and died. Another key witness has claimed that, while he was waiting outside the courtroom, a court official relayed a message to him from one of the accused, telling him not to look at him while giving evidence¹².

V Minorities

State institutions failed to procure security or participated to the segregation and the violence against ethnic minorities, especially the Roms.

Discrimination and violence against Rom minorities

Roms represent the minority whose conditions remain most problematic. 70% of them are illiterate, only 3% have a stable job, 20% of the families do not have any income. On October 11th, 2001 a particularly barbarian aggression was the assassination of a 36 years Rom refugee, burnt alive in a park of Belgrade. Even less spectacular, the attacks against Roms are quasi daily. On 21 March 2004, in the Višnjica suburb of Belgrade, several dozen masked assailants threw rocks and bricks at the windows of Rom houses. Children are particularly aimed¹³. The skinheads are responsible for the majority of the physical attacks but the social discriminations against them are the rule in all the sectors: economy, education, work, health, culture, leisure.

Police brutalities are also more frequent concerning Roms than any others. At the end of January 2001, in the refugee camp of Vinarce, Roms arrested, suspected of carrying a weapon without a licence, were beaten and left without water nor food during two days.¹⁴ Despite the laws in force, justice rarely reacts or renounces during the first stage of the proceeding. In spite of some official move, as the public condemnation by Vojislav Kostunica of many racist graffiti on the wall of the capital in 2001, the reports of the HLC and the Helsinki Committee remain alarming.

Discrimination and violence against Albanian minorities

According to Rasim Ljajic, Minister of the Union Serbia and Montenegro for minorities, «the surveys done in 2002 by our ministry show that the mistrust of the Serbs towards Albanians is 70%». This general hostility against Albanians leaves itself a free hand during the demonstrations in the wake of the ethnic violence against Kosovar Serbs in Kosovo on March

¹² Related by B 92 – June 2004

¹³ HLC, Press Release, 26 May 2004.

¹⁴ Comité des droits de l'Homme de Leskovac

17th and 18th : hate slogan against Albanians, burning of the mosques in Belgrade and Nis, attacks against the Islamic center of Novi-Sad (Voïvodine). On June 1st 2004, 11 people were charged in Niš for participation in mob violence but as they were charged under Art. 230 of the Serbian Criminal Code, ie as a minor incident, the Humanitarian Law Center expresses *"its concern at the lack of a proper reaction by police and prosecutors in Serbia (...) The torching of the two houses of prayer was an act against the feelings of Muslims and the inadequate reaction to it has created an atmosphere in which members of non-Serb religious communities feel unsafe and deprived of the protection of the law (...) The HLC holds that there were grounds to apply Art. 134 of the Code which deals with incitement to ethnic, racial and religious hate (...) Since Serbia and Montenegro is a member of the Council of Europe, its institutions have an obligation to respect the generally recognized human rights standards."*¹⁵

The instrumentation of the crisis in the patriotic and religious speeches more or less impassioned and the financing of parallel institutions in Kosovo in the aim of a district division or a future sharing of the province, remain the way to follow sharing by the entire political parties. The tensions between communities Serbs and Albanians of Kosovo has repercussions in south-east of Serbia with the Albanian community of the Preshevo valley and Albanians and Muslim Bosnians of the north of Montenegro. The demilitarization and integration agreement of May 2001 reduced the intensity of the crisis with the first but peace is fragile¹⁶.

Discrimination and violence against other minorities

Egeresi Sandor, vice-president of the Alliance des Hongrois de Voïvodine, Nenad Canak and Rasim Ljalic, president of the Democratic Party of Sandjak, creators of the coalition « Together for tolerance » denounced the discriminatory character of the new election act establishing the same eliminator line of 5% of the polling for the great national parties and little minorities parties. Up to date, the Parliament of Serbia does not have any Hungarian representatives (excepted those represented within big parties).

Representatives and members of Hungarian, Bosnian or Croat communities, suffered grave attacks. During the electoral campaign in December 2003, the President of the national Croat Counsel was suffered aggression. The memorial for the Croat leader Matija Gubec in Tavankut and the Croat cultural center of Sombor were sacked. Zvonimir Perusic, chief editor of the Croat weekly paper *Hrvatska Rijec*, was threaten of death.

VI Civil society

The actors of the civil society also suffered of the insecurity context or to the pressures of the authorities to limit their activities when there are critical or subversive. Two key sectors of the civil society, the associations of human rights defence and the medias, are characteristic. Although their activities are not questioned and they enjoyed substantial improvements since the Milosevic' fall, their working conditions remain difficult.

1) Organisations for human rights defence

The insecurity context hit in particular associations for human rights defence as the Humanitarian Law Center, the Serb Laywers Committe for human rights (JUKOM), the Helsinki Committee which offices or members suffered attacks or recurrent threats.

2) Medias

A law on the information was adopted in April 2003, abrogating definitively the rests of the repressive laws of the Milosevic era. It was approved by the OSCE. However, its

¹⁵ HLC, Press Release, June 7, 2004.

¹⁶ Southern Serbia's fragile peace, International Crisis Group, December, 9th 2003.

enforcement was long to come and, according the International Federation of Journalists (IFJ), gave rise to breaches in the designation of the members of the Counsel for the audiovisual sector, in charge to supervise the content of the programs, grant authorisations of broadcasting and regulate electronic medias activity. As in the rest of the public administration, the nominations are made according to the criteria of partisan suitability as we can see with the controversial appointment of Aleksandar Tijanic at the head of the Serbia Radio Television (RTS) after the formation of the new governmental coalition in February 2004. Tijanic, Minister for information with Milosevic, lampoonist xenophobe especially seems only to have for merit to have been characterized by his radical hostility against the former government of Djindjic.

The prosecutions increased, sometimes in justified way but apparently also in an abusive way. According to the chief editor of the paper *Danas*, sued 56 times, « the law is anti-journalistic and not for information »¹⁷. Veran Matic, from B-92, also denounces « attempts to introduce fear and self-censorship in the medias (...) our justice does not show any comprehension towards critical medias »¹⁸.

¹⁷ Helsinki Committee, report 2003, op. cit.

¹⁸ Helsinki Committee, report 2003, op. cit.