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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

OPINION ON THE CONSTITUTION OF SERBIA

adopted by the Commission at its 70th plenary session (Venice, 17-18 March 2007)

on the basis of comments by

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INTRODUCTION

1. The Monitoring Committee of the Parliamentary Assembly of the Council of Europe decided on 16 October 2006 to ask the Venice Commission to give an Opinion on the new Constitution of the Republic of Serbia. Messrs Grabenwarter (Austria), Jowell (United Kingdom), Ms Suchocka (Poland), Messrs Tuori (Finland) and Velaers (Belgium) were appointed by the Venice Commission as reporting members. The present Opinion was adopted by the Venice Commission at its 70th plenary session in Venice on 17-18 March 2007.

2. The Constitution of the Republic of Serbia was adopted by the National Assembly of the Republic of Serbia at a special session on 30 September 2006 and endorsed by referendum on 28 and 29 October 2006.

3. While efforts to adopt a new democratic Constitution have been ongoing since the overthrow of the Milosevic regime, it did not prove possible to adopt a new Constitution earlier. Several drafts were publicly discussed and the Venice Commission provided in 2005 an Opinion[1] on the chapter on the judiciary in a draft approved by the Government of Serbia.

4. The finally adopted text was however prepared very quickly. A small group of party leaders and experts negotiated during a period of about two weeks to achieve a compromise text, acceptable to all political parties including the Serbian Radical Party. This compromise text was finalised late on Friday 29 September and voted by the National Assembly at a special sitting on Saturday 30 September. On 29 September the Rules of Procedure of the National Assembly were amended to make such a procedure possible. On 30 September all 242 members of the National Assembly present voted in favour of the adoption of the new Constitution.

5. In general many aspects of this Constitution meet European standards and adopt the criticisms made in the Venice Commission's 2005 Opinion. However, there are some provisions that still fall well below those standards and others where the hasty drafting is evident in provisions that are unclear or contradictory. It should be added that the consideration of the text by the Venice Commission was made more difficult by the absence of a reliable official translation. The text used by the Venice Commission, which also appears on the web-site of the National Assembly, contains a considerable number of errors. The Serbian authorities should ensure the preparation of a more reliable text.

PREAMBLE

6. The text of the Preamble considers the Province of Kosovo and Metohija as an integral part of the territory of Serbia enjoying the status of substantial autonomy. As regards the future status of Kosovo, it is not up to the Venice Commission to interfere with the political process designed to determine Kosovo's future status under Resolution 1244(1999) of the Security Council. As a member of the United Nations, Serbia will have to respect the respective decisions by the Security Council.

7. With respect to substantial autonomy, an examination of the Constitution, and more specifically of Part VII, makes it clear that this substantial autonomy of Kosovo is not at all guaranteed at the constitutional level, as the Constitution delegates almost every important aspect of this autonomy to the legislature. In Part I on Constitutional Principles, Article 12 deals with provincial autonomy and local self-government. It does so in a rather ambiguous way: on

[1] Opinion on the Provisions on the Judiciary in the draft Constitution of the Republic of Serbia, document CDL-AD(2005)023.

the one hand, in the first paragraph it provides that state power is limited by the right of citizens to provincial autonomy and local self-government, yet on the other hand it states that the right of citizens to provincial autonomy and local self-government shall be subject to supervision of constitutionality and legality. Hence it is clear that ordinary law can restrict the autonomy of the Provinces.

8. This possibility of restricting the autonomy of the Provinces by law is confirmed by almost every article of Part 7 of the Constitution, and more specifically by:

- Article 182, par. 2: "The substantial autonomy of the Autonomous Province of Kosovo and Methohija shall be regulated **by the special law** which shall be adopted in accordance with the process envisaged for amending the Constitution."
- Article 183. par. 4: "The territory of autonomous provinces and the terms under which borders between autonomous provinces may be altered shall be regulated **by the law** …"
- Article 183, par. 2: "Autonomous provinces shall, **in accordance with the law**, regulate matters of provincial interest in the following fields …"
- Article 183, par. 3: "Autonomous provinces shall see to it that human and minority rights are respected, **in accordance with the Law**."
- Article 183, par. 5: "Autonomous provinces shall manage the provincial assets **in the manner stipulated by the Law."**
- Article 183, par. 6: "Autonomous provinces shall, **in accordance with the Constitution and the Law,** have direct revenues, …"
- Article 184, par. 1 to 3: "An autonomous province shall have direct revenues for financing its competences. The kind and amount of direct revenues shall be **stipulated by the Law**. **The Law** shall specify the share of autonomous provinces in the revenues of the Republic of Serbia."

Hence, in contrast with what the preamble announces, the Constitution itself does not at all guarantee substantial autonomy to Kosovo, for it entirely depends on the willingness of the National Assembly of the Republic of Serbia whether self-government will be realised or not.

PART I – CONSTITUTIONAL PRINCIPLES

General comments

9. The first part of the Constitution on constitutional principles contains a number of important and welcome principles which are fundamental in any democratic state. Only some Articles warrant specific comments.

Article 1 – Republic of Serbia

10. Article 1 defines the Republic of Serbia as "a state of Serbian people and all citizens who live in it". While this definition may be criticised for emphasising the ethnic character of the state, no legal consequences should follow from it in practice.

Article 5 – Political Parties

11. Section 3 of this Article stipulates that activities of political parties aimed at a forced overthrow of the constitutional system, violation of guaranteed human or minority rights, inciting racial, national or religious hatred, shall be prohibited. Since this article implies restrictions on the freedom of expression, the freedom of assembly and the freedom of association for political parties, it is important that its application is subject to Article 20 concerning restrictions on the exercise of human and minority rights. Moreover, the case law

of the European Court of Human Rights relating to Articles 10 and 11 ECHR will have to be taken into account. As a matter of principle it may be considered necessary in certain democratic societies to sanction or even prevent all forms of expression which spread, incite, promote or justify hatred based on intolerance (including religious intolerance), provided that any "formalities", "conditions", "restrictions" or "penalties" imposed are proportionate to the legitimate aim pursued[2]. The Court reiterates, however, that the exceptions set out in Article 11 are, where political parties are concerned, to be construed strictly; only convincing and compelling reasons can justify restrictions on such parties' freedom of association[3].

Article 10 – Language and Script

12. According to this Article the Serbian language and the Cyrillic script are in official use. It is striking that, compared to the 1990 Constitution, there is a decreased protection of linguistic rights of minorities, as Article 8 of that Constitution expressly provided that the Latin alphabet also "shall be officially used in the manner established by law[4]." As it appears from the articles 14, 18.2, and 75 to 81 of the Constitution, it is clearly the intention of the drafters to have the rights of minorities protected at constitutional level. It is therefore not clear to the Venice Commission for what reasons the legal protection of the use of the Latin alphabet, which is preferred by most of the minorities, is no longer expressly mentioned in the Constitution. This is the more astonishing as, according to article 20. 2, of the Constitution, the attained level of human and minority rights may not be lowered.

Article 12 – Provincial autonomy and local self-government

13. Article 12 unusually provides for a right of citizens to provincial autonomy and local self-government. This right is said to limit state power and is only subject to supervision of constitutionality and legality. While this is welcome in principle, it seems regrettable that the content of this right is not made concrete in the Constitution which leaves it nearly entirely to the legislature to define the scope of these rights (cf. the comments on the Preamble above and on Part VII of the Constitution below)

Article 16 – International relations

14. It is welcome that this Article provides that "the foreign policy of the Republic of Serbia shall be based on generally accepted principles and rules of international law" and that "generally accepted rules of international law and ratified international treaties shall be an integral part of the legal system in the Republic of Serbia and applied directly".

15. By contrast, the third section of the Article, according to which "ratified international treaties must be in accordance with the Constitution" raises important issues. First of all, the Serbian authorities will, at the international level, have to respect the Vienna Convention on the Law of Treaties. Under its Article 27, a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. If Article 16.3 in conjunction with Article 167.2 enables the Constitutional Court to deprive ratified international treaties of their internal legal force when they do not comply with the Constitution, then the Serbian State, in order not to violate its international obligations deriving from ratified treaties, would either have to amend the Constitution – which will not always be possible in view of the complex procedure provided for

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[2] ECtHR, Gündüz v. Turkey, 4 December 2003, § 23, 29.

[3] ECtHR, Refah Partisi v. Turkey, 13 February 2003, § 152-154.

[4] "In the Republic of Serbia the Serbo-Croatian language and the Cyrillic alphabet shall be officially used, while the Latin alphabet shall be officially used in the manner established by law. In the regions of the Republic of Serbia inhabited by national minorities, their own languages and alphabets shall be officially used as well, in the manner established by law."

in Article 203 – or denounce the treaty or withdraw from it, if the possibility to do so is provided for in the treaty itself or is in compliance with article 56 of the Vienna Convention on the Law of Treaties.

16. As the international liability of the Serbian State might be at stake, it would be preferable by far to try avoiding these situations by providing for an *a priori* verification of the compliance of a treaty with the Constitution, before the treaty is ratified. The procedure for the "assessment of the constitutionality of the law prior to its coming into force", provided for in article 169 of the Constitution, could therefore be expanded to the assessment of the constitutionality of treaties prior to their ratification.

17. In addition, the Serbian authorities should try avoiding any conflicts between international law and the national Constitution. Other European countries, including in particular many established democracies, also give a higher rank to the national Constitution with respect to international treaties. This does, however, not mean that the Constitution is interpreted without having regard to international law. On the contrary, this means that the national authorities, including the Constitutional Court, interpret the Constitution in a manner designed to avoid conflicts between national and international rules.

18. Moreover, in order to enable the country to fully participate in European integration, including a possible future accession to the European Union, it will be advisable, following the example of other European states, to include in the future in the Constitution a provision explicitly authorising the transfer of certain powers of the organs of the Republic of Serbia to international or supranational organisations. Article 97.1 of the Constitution stating that "The Republic of Serbia shall organise and provide for … its international status and relations with other countries and international organisations;" might be considered a possible legal basis for such transfers. A more explicit provision would be advisable.

19. Finally, rules similar to Article 16 appear, in a different wording, in Article 194. Such repetitions, especially if not identical, are undesirable since they risk opening delicate issues of interpretation.

Article 17 – Status of foreign nationals

20. This Article states that foreign nationals shall enjoy all rights with the exception of rights reserved to citizens by the Constitution or the law. This should not be misinterpreted as enabling the legislature to reserve any right to citizens, without due justification in the light of the prohibition on discrimination.

PART II – HUMAN AND MINORITY RIGHTS AND FREEDOMS

General comments

21. Part II of the Constitution deals with "human and minority rights and freedoms". This Part comprises Articles 18 to 81; it is subdivided into three parts, i.e. Fundamental Principles (1., Articles 18 to 22), Human Rights and Freedoms (2., Articles 23 to 74), and Rights of Persons Belonging to National Minorities (3., Articles 75 to 81). Moreover, in Part III of the Constitution (Economic System and Public Finances) there are a number of additional guarantees which are – on the basis of their content – to be qualified as fundamental rights as well (Articles 82 to 90). In sum, nearly 70 Articles are dedicated to fundamental rights, i.e. approximately one third of the 206 Articles of the Constitution. From an international and a comparative perspective this number is quite remarkable, in absolute and in relative terms. It shows that Human Rights form an integral and important part of constitutional law and it makes it clear that attention is paid to

this element and basic feature of a democratic society in the sense of European Standards such as the European Convention on Human Rights.

22. Part II resembles the previous Charter on Human and Minority Rights and Freedoms of the State Union which is no longer in force following the dissolution of the State Union. This resemblance becomes obvious through virtually the same number of articles and the division into fundamental principles, concrete human rights and freedoms and finally rights of persons belonging to national minorities. It must be recalled at the outset, that the Charter of the State Union was very positively assessed by the Venice Commission in 2003[5]. Despite these similarities there exist quite a number of significant differences. For this reason a new analysis seems to be appropriate and necessary.

23. Part II fully covers all areas of "classical" human rights. Their content is in line with European standards and goes in some respect even beyond that. These classical rights are followed by a series of fundamental rights of the so-called second and third generation ranging from health care, social protection, social security, pension insurance, right to education to the right to healthy environment as well as protection of consumers (Articles 68 to 71, 74, 90). Their implementation will be dependent upon resources being provided by the legislature and will be subject to review by the courts. There is little experience in this respect at European level. The Venice Commission has on other occasions[6] expressed the concern that positive social and economic rights might create unrealistic expectations and advocated drafting them as aspirations rather than rights that can be directly implemented through court decisions. To include such rights as fundamental rights in the Constitutions risks involving the courts in the evaluation of scarce resources and in infecting the whole section on fundamental rights with the character of a list of aspirations rather than enforceable rights. At the least these socio-economic rights should be qualified as 'subject to available resources'.

24. This points to the more general problem of implementation of the Constitution. Serbia already had with the State Union Charter an excellent text which was however not sufficiently implemented. It will now be the task of the authorities to ensure that the rights granted by the Constitution become effective in practice.

Chapter 1 – Fundamental principles

25. This Chapter contains a large number of mainly very positive provisions. It suffers, however, from excessively complex drafting, which may lead to many issues of interpretation, which may lead to allowing excessive restrictions of fundamental rights. The courts, and in particular the Constitutional Court, will have to remain vigilant and ensure an interpretation in line with the democratic values set forth in the Constitution as well as the international standards to which it makes reference.

Article 18 – Direct implementation of guaranteed rights

26. This Article provides welcome provisions on the direct application of constitutional rights, their interpretation and the role of the legislature. In particular, under Article 18.2.2 "the law may prescribe manner of exercising these rights only if explicitly stipulated in the Constitution or necessary to exercise a specific right owing to its nature, whereby the law may not under any circumstances influence the substance of the guaranteed right". Thus, the legislature may only

[5] See document CDL(2003)10fin.

[6] See the Opinions on the draft Constitution of Ukraine, CDL-Inf(1996)006, on the Constitution of Ukraine, CDL-Inf(1997)002; the Interim Opinion on Constitutional Reform in the Kyrgyz Republic, CDL-AD(2005)022.

enact laws in this field if there is an explicit basis in the Constitution. The terms “necessary” and “substance” of a right are common in constitutional texts and legal doctrine on fundamental rights in Europe. According to Article 18.3 “provisions on human and minority rights shall be interpreted to the benefit of promoting values of a democratic society, pursuant to valid international standards in human and minority rights, as well as the practice of international institutions which supervise their implementation.” This provision has to be seen as a positive signal, as a commitment to international and European standards although - from a legal point of view - the wording “to the benefit of promoting values of a democratic society” is rather general. It has to be welcomed that reference is also made to supervisory institutions. From a European perspective this means that above all the case law of the European Court of Human Rights is of highest significance for the interpretation of fundamental rights in the Constitution of Serbia.

Article 19 – Purpose of constitutional guarantees

27. This Article has a programmatic character when it refers to “guarantees for inalienable human and minority rights” in the Constitution which have the purpose of preserving “human dignity and exercising full freedom and equality” of each individual in a “just, open, and democratic society” based on the “principle of the rule of law”.

Article 20 – Restriction of human and minority rights

28. This Article requires a more detailed analysis. Section 1 reads as follows: “Human and minority rights guaranteed by the Constitution may be restricted by the law if the Constitution permits such restriction and for the purpose allowed by the Constitution, to the extent necessary to meet the constitutional purpose of restriction in a democratic society and without encroaching upon the substance of the relevant guaranteed right.” This provision may raise difficult questions and cause problems. In contrast to the restrictions clauses in the ECHR (Articles 8 to 11 ECHR), Article 20 does not bind the restriction of the rights and freedoms to a specific legitimate aim, but to **any** purpose “allowed by the Constitution” without a list of legitimate aims. However, bearing in mind the general interpretation clause and the rest of the wording in Articles 18 and 20, national courts are in the position to interpret the Constitution in conformity with European law, especially with the ECHR. However, it should be made clear, as it is in relation to states of emergency and war (see below para. 92) that some rights (such as those set out in Article 26) are never able to be subject to limitation.

29. Article 20.3 defines the principle of proportionality as follows: “When restricting human and minority rights, all state bodies, particularly the courts, shall be obliged to consider the substance of the restricted right, pertinence of restriction, relation of restriction and its purpose and possibility to achieve the purpose of the restriction with less restrictive means.” This paragraph repeats and specifies the prerequisites of Section 1 and of Article 18.2. It would be preferable to put the various types of restriction clauses in a more systematic and clear order. The excessively complicated drafting of these Articles risks leading to many issues of interpretation and the Constitutional Court of Serbia will have to ensure a coherent interpretation, on the basis of the guidelines set forth in Article 18.3.

30. This problem of interpretation is compounded by the fact that in addition to these complex general restriction clauses the Constitution provides for specific conditions of interference in the context of the provisions on different fundamental rights. This legislative approach, which was also the approach of the previous Charter, has the consequence of a coexistence of a general provisions and concrete provisions, or to put it otherwise: a coexistence of the ECHR-system (concrete clauses) and the EU-Charter-system (one general restriction clause). The impact of this dual system is not easy to assess in advance. Again, much will depend on the practice of the courts and especially the Constitutional Court will be faced with an important task of ensuring a coherent, human rights friendly interpretation.

Article 22 – Protection of human and minority rights and freedoms

31. This Article, which includes the right to address international institutions protecting human rights, deserves a positive assessment. However, the latter right should not be reserved to citizens only.

Chapter 2 – Human Rights and Freedoms

32. This Chapter deals with the specific fundamental rights. The number of rights in the Constitution is large, compared to other national constitutions, the ECHR and the Charter of Fundamental Rights of the European Union. This is primarily due to the fact that the Constitution provides for several articles where in other documents there is only one article. Some examples: five articles (Articles 27 to 31) are dedicated to the right of liberty and security; guarantees of a fair trial and of criminal proceedings are found in five articles (Articles 32 to 36), the inviolability of privacy in three articles (Articles 40 to 42), the freedom of thought, conscience and religion in four articles (Articles 43 to 46), fundamental rights on the freedom of thought and the media in five articles (Articles 47 to 51). This system corresponds to the previous Charter of the State Union. Besides this question of pure technique of legislation the rights in this part cover all areas of "classical" human rights. Their content is at least in line with European standards and goes in some respect even beyond them.

33. The second reason for the large number of rights is the inclusion of a large number of economic, social and cultural rights. In many cases it will be difficult for the courts to apply these rights directly as provided for in Article 18 of the Constitution and a more prudent wording as objectives of state action might have been preferable (cf. paragraph 21 above)

Article 27 – Right to freedom and security

34. Section 1 of this Article allows restrictions to be introduced by law without specifying the objectives which may justify such restrictions.

Article 32 – Right to a fair trial

35. The right to a fair trial in the Constitution generally corresponds to the requirements of the ECHR although it is formulated in a different way. Article 32 refers to "rights and obligations" and does – like the EU Charter - not reduce the guarantee to civil an criminal proceedings.

Articles 40-42

36. These Articles cover different aspects of the right to privacy, including in particular in accordance with modern tendencies in constitutional law the right to data protection. By contrast, there is no explicit and general guarantee of respect for private and family life as it is guaranteed by Article 8 ECHR. Therefore, Article 8 ECHR is not reproduced entirely by the Constitution

Article 54 – Freedom of Assembly

37. The restriction of the freedom of assembly to citizens in Article 54 is problematic in view of Article 11 ECHR which does not restrict freedom of assembly to nationals. The "political clause" in Article 16 ECHR seems insufficient as justification since it covers only political activities of aliens whereas there are also assemblies that are not "political" in a narrower sense. Most constitutions in Europe do not restrict the right of free assembly to nationals anymore. If the text

stays as it is, some effort in applying the "interpretation clauses" in Articles 18.3 and 19 will be necessary in order to reach a result in conformity with the ECHR.

Article 62 – Right to enter into marriage and equality of spouses

38. This Article also explicitly guarantees the right to dissolve a marriage. This is unusual in European constitutions and may correspond to specific conflicts in national law.

Article 64 – Rights of the child

39. Section 4 providing for equal rights of children born out of wedlock is welcome.

Article 67 – Right to legal assistance

40. This provision goes beyond the ECHR. This has to be welcomed.

Article 69 – Social protection

41. Social protection is not granted generally but only to citizens and families.

Chapter 3 – Rights of persons belonging to national minorities

42. This Chapter grants additional and special rights to persons belonging to national minorities, which are partly already inherent in the "general" fundamental rights. This Chapter has to be welcomed and is important, bearing in mind the difficulties encountered in the region in the last decades.

Article 76 –Prohibition of discrimination against national minorities

43. It seems questionable whether only "extremely unfavourable living conditions" may justify positive measures in favour of national minorities which are not to be regarded as discriminatory.

PART III – ECONOMIC SYSTEM AND PUBLIC FINANCES

Article 88 – Land

44. This Article will have to be read in conjunction with Article 58 on the "Right to Property", and with Articles 18 and 20 of the Constitution, on the "Direct implementation of guaranteed rights" and on the "Restriction of human and minority rights". The case law of the European Court of Human Rights pertaining to Article 1 of the first Additional Protocol to the ECHR will have to be respected.

Article 91 – Taxes and other revenues

45. Article 91.2 provides that the obligation of paying taxes and other dues shall be general and "based on the economic power of taxpayers". This article seems to exclude (indirect) taxes – such as the Value Added Tax (VAT) – which are not based on the economic power of taxpayers. Since VAT was recently introduced in Serbia, this can not be explained otherwise than as an oversight on the part of the drafters. Probably their intention was that economic power be relevant only for direct taxation. The text should be adapted.

Article 95 – National Bank of Serbia

46. While this Article makes reference to the independence of the National Bank, it also makes the National Bank accountable to the National Assembly and there are no guarantees for its independence such as a fixed term of office of the Governor.

PART IV – COMPETENCES OF THE REPUBLIC OF SERBIA

47. This Part, consisting of a single Article, is somewhat puzzling. In a non-federal state the need for such a Part is not at all obvious. Insofar as this Article may be relevant for the distribution of powers between the Republic and the Autonomous Provinces, it could have been included in Part VII of the Constitution on Territorial Organisation. Its significance in this respect remains unclear (cf. the comments on Article 177 below).

PART V – ORGANISATION OF GOVERNMENT

General comments

48. The Constitution provides for a clearly parliamentary system of government with a relatively weak although directly elected President. Having regard to the experience with the use of presidential powers in other new democracies, this choice is welcome. As regards the particular design of the system, the President might have been given a somewhat stronger role concerning appointments to independent positions. In addition, there is a risk of an excessive influence of political parties since the mandate of members of parliament is made dependent on the will and whim of the political parties. The influence of parliament on the judiciary is clearly excessive. This will be dealt with in more detail below.

Chapter 1 – National Assembly

Article 99 – Competences

49. It is particularly welcome that the National Assembly is given the power to 'decide on war and peace and declare a state of war and emergency', the power to adopt defence strategy, as well as the power to supervise the security service. The latter power will have to be regulated in more detail by law.

50. The Article also contains a list of positions the holders of which are elected by the National Assembly, including most positions in the judicial field. The concerns of the Commission in this respect and concerning the election and dismissal of the Civic Defender will be set forth below. With respect to the Governor of the National Bank, an appointment procedure involving the President would have been preferable.

Article 100 – Constitution of the National Assembly

51. Under Section 1 of this Article, the Deputies of the National Assembly are directly elected by the people. The Venice Commission understands this provision as requiring that the voters determine the composition of the National Assembly and outlawing the present practice that

political parties may designate after the elections the persons to be considered elected on their lists[7]. This practice is not in line with European standards.

52. Section 2 provides for equality of gender representation and national minorities in the National Assembly. Does this intend that seats in the National Assembly should be distributed in proportion to the national gender distribution? Does the term 'national minorities' include all minorities? Should the term be more precisely defined?

Article 102 – Status of Deputies

53. Section 2 of this Article states that "Under the terms stipulated by the Law, a deputy shall be free to irrevocably put his/her term of office at the disposal [of] a political party upon which proposal he or she has been elected a deputy". It seems that its intent is to tie the deputy to the party position on all matters at all times. This is a serious violation of the freedom of a deputy to express his/her view on the merits of a proposal or action. It concentrates excessive power in the hands of the party leaderships. This is all the more worrying due to the excessive role of the National Assembly in judicial appointments in general and in particular in the reappointment process for all judges foreseen in the Constitutional Law on the Implementation of the Constitution. It reinforces the risk of a judicial system within which all positions are divided among political parties.

Article 103 – Immunity of Deputies

54. Insofar as this Article protects the free expression of deputies for words uttered within the National Assembly and in its precincts, it is desirable and necessary. The broader immunity of Deputies for any act committed is traditional in many democracies and has been regarded by the Venice Commission as still pertinent for new democracies[8] where there may still be a risk of unwarranted prosecution of opposition members. In Serbia this risk seems at present remote. The recent case law of the European Court of Human Rights tends to consider such wide immunity as an obstacle to the right of access to the courts[9]

Chapter 2 – The President of the Republic

Article 118 – Dismissal

55. This provision provides that one third of the Deputies may request the opening of an impeachment procedure for violation of the Constitution. The Constitutional Court then decides, or at least this is the understanding of the Venice Commission with respect to this not very clearly drafted provision, on whether there has been a violation and the Nationally Assembly may then dismiss the President by a two-thirds majority. In principle, this seems a correct procedure, although under present conditions in Serbia the vexatious opening of impeachment procedures cannot be excluded.

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[7] Cf.. Joint Recommendations on the Laws on Parliamentary, Presidential and Local Elections and Election Administration in the Republic of Serbia by the Venice Commission and OSCE/ODIHR, CDL-AD(2006)013 at 43.

[8] Opinion on the Constitutional Referendum in Ukraine, CDL-Inf(2000)11 at 41.

[9] ECtHR, Tsalkitzis v. Greece, 16 November 2006, § 47.

Chapter 3 – Government

Article 125 – Prime Minister and members of the Government

56. This Article provides for a very strong Prime Minister who according to Section 2 "shall manage and direct the work of the Government, take care of coordinated political activities of the Government, coordinate the work of members of the Government and represent the Government". While it is to be welcomed that Ministers are accountable to the National Assembly and it is inevitable that they are accountable to the the Prime Minister, it seems unnecessary for them to be accountable to 'the government'.

Chapter 4 – Public Administration

Article 137 – Delegation of public powers and public services

57. This Article permits delegation of powers to autonomous provinces, local self-government units, and also to "enterprises, institutions, organisations and individuals" and other regulatory bodies. Care must be taken here in the delegation of what are essentially governmental functions to private bodies who may not be competent to exercise them (e.g. the power of judges), or who would not be accountable for their exercise (an issue that has arisen in some countries, for example, in respect of privatised prisons).

Chapter 5 - Civic Defender

Article 138

58. The institution of a Civic Defender to be elected by the National Assembly is welcome. It is, however, regrettable that there is no protection of the Civic Defender against unjustified pre-term dismissal by the National Assembly. While the Civic Defender should indeed present reports to the National Assembly, it seems questionable to state that the National Assembly supervises the Civic Defender (see Article 99) and that the Civic Defender shall account for his/ her work to the National Assembly.

Chapter 6 – The Army of Serbia

59. Articles 139 – 141 on the Army of Serbia are welcome. The principle of democratic and civil control of the Army enshrined in Article 141 will have to be implemented in practice.

Chapter 7 - Courts

General comments

60. The chapter on courts in the draft Constitution of the Republic of Serbia approved by the Government of Serbia in 2004 was already commented upon by the Venice Commission (CDL-AD(2005)023). The Constitution as adopted indeed no longer contains some provisions which were particularly criticised by the Commission, such as the election to judicial office of judges following the probationary period. On the other hand, the technical quality of the text seems poorer than in the previous draft and the overall impression of an excessive influence of parliament on the judiciary remains.

61. This impression is strengthened by the Constitutional Law on the Implementation of the Constitution which provides that all sitting judges within the Republic of Serbia have to be reappointed following the entry into force of the new Constitution. This means that the first High Judicial Council elected following the entry into force of the Constitution will be extremely powerful. This Constitutional Law will be addressed in more detail below.

Article 143 – Types of courts

62. The only court specifically mentioned in this Article is the Supreme Court of Cassation. The reason for changing the name of the Supreme Court is not clear. Does this imply that the Court will be limited in the future to a pure cassation function? More detail on the organisation of the judicial system could have been provided, having regard to the fact that a fairly long Article is then devoted to the person of the President of the Supreme Court of Cassation.

Article 144 – President of the Supreme Court of Cassation

63. It seems questionable whether a whole Article of the Constitution should be devoted to the President of the Court who should be *primus inter pares.* The election of the President by the National Assembly is not the best solution (see below) and there is no reason why the National Assembly should take a decision on the end of his or her term of office as provided for in Section 4. The term of office of five years seems too short.

Article 146 - Permanent tenure of office

64. The principle of stability of judges is expressed in the new Constitution in a more precise way than in the previous draft Constitution dated from 2004. Article 146 states that a judge shall have permanent tenure. This should be understood as appointment until retirement. Despite the general rule on "a permanent tenure of office", the Constitution has maintained the previous principle to elect judges for the first time for a 3 year term. The previous draft provided for a 5 years term The change is in line with the Venice Commission's suggestions that "a reduction of the excessive five years period would alleviate the problem of "temporary judges" (CDL-AD(2005)023 p.14). Another positive change is that the decision on their confirmation in post following the probationary period is no longer taken by the National Assembly but by the High Judicial Council as requested by the Venice Commission. Concerns with respect to the independence of judges during a probationary period will always remain. Nevertheless, the Constitution now provides safeguards in this respect and the need to evaluate the practical abilities of persons to be appointed as judges seems compelling in a country where people with limited experience are appointed as judges.

Article 147 – Election of judges

65. Article 147 maintains the principle that judges are elected by the National Assembly. The Venice Commission remains unconvinced that this is a good solution and reiterates the criticism made in its previous Opinion:

> *"16…The involvement of parliament in judicial appointments risks leading to a politicisation of the appointments and, especially for judges at the lower level courts, it is difficult to see the added value of a parliamentary procedure. In Serbia the People's Assembly hitherto has not limited its role to confirming candidates presented by the High Judicial Council but it has rejected a considerable number of such candidates under circumstances where it seemed questionable that the decisions were based on merit. This is not surprising since elections by a parliament are discretionary acts and political considerations will always play a role.*

17. As set forth above Recommendation (94)12 requires that judicial appointments should be based on objective criteria and merit and not on political considerations. The main role in judicial appointments should therefore be given to an objective body such as the High Judicial Council provided for in Articles 133-135 of the Constitution. It should be understood that proposals from this body may be rejected only exceptionally. From an elected parliament such self-restraint cannot be expected and it seems therefore preferable to consider such appointments as a presidential prerogative. Candidatures should be prepared by the High Judicial Council, and the President would not be allowed to appoint a candidate not included on the list submitted by the High Judicial Council. For court presidents (with the possible exception of the President of the Supreme Court) the procedure should be the same."

Article 148 – Termination of judge's tenure of office

66. This Article provides that decisions on termination of a judge's term of office are taken by the High Judicial Council with the possibility of an appeal to the Constitutional Court. This is welcome. It would have been even better to include in the Constitution the grounds for the dismissal of judges instead of leaving these to the law. It is also a serious gap that apart from this provision on termination of office the Constitution does not contain any rules on the disciplinary responsibility of judges. The lack of basic constitutional regulations in this respect can create a real threat to the independence of judges.

Article 151 – Immunity

67. It is a welcome change with respect to the previous draft that judges will henceforth enjoy functional immunity only.

Article 152 – Incompatibility of judiciary function

68. Like the previous draft from 2004 the text contains a very general rule concerning incompatibility. There is however one important positive change. The Constitution regulates directly that the judge shall be prohibited from engaging in political actions. This provision, which should not be interpreted too broadly, can be seen as implementation of the Venice Commission's suggestion: "it might be considered whether to include in the text a prohibition of the membership of judges in political parties". As it has been written in the report "Monitoring the EU, Judicial Independence":, It is common among candidate States-as among member states- that judges are not allowed to be members of political parties or to be engaged in political activities. Although the ban on party membership was introduced as a reaction to the communist past, the prohibition is still perceived as a genuine guarantee of independence".[10]

Chapter 8 – High Judicial Council

General comments

69. In all new democracies the Constitutions accord an important role to the High Judicial Council. The Serbian Constitution in Article 153 describes the Council as an independent and autonomous body which guarantees independence and autonomy of courts and judges. One can note a positive change in the wording of this provision in comparison with the 2004 draft Constitution insofar as it is not described any more as a judicial body. Only a court can be a

[10] Monitoring the EU Accession Process: Judicial Independence, Open Society Institute, Budapest 2001, p. 38

judicial body. The structure of the High Judicial Council is different from the solution chosen in the previous draft Constitution. Serbia has chosen the model with two completely separate bodies, one for judges and one for prosecutors. This is one of the possible solutions existing in European countries.

70. By contrast, the composition of the High Judicial Council seems flawed. At first sight, the composition seems pluralistic. There are 11 members: the President of the Supreme Court of Cassation, the Minister of Justice, the President of the authorised committee of the National Assembly as members *ex officio* as well as 6 judges (among them 1 from an Autonomous Province), 1 practising lawyer and 1 professor at a law faculty as elective member. This appearance of pluralism is, however, deceptive. All these members are elected, directly or indirectly, by the National Assembly. The 6 judges are not to be elected by their peers but by the National Assembly, the lawyer not by the Bar Association but by the National Assembly, the professor not by the Law Faculty but by the National Assembly. The judicial appointment process is thus doubly under the control of the National Assembly: the proposals are made by the High Judicial Council elected by the National Assembly and the decisions are then made by the National Assembly itself. This seems a recipe for the politicisation of the judiciary and therefore the provision should be substantially amended.

Implications of the Constitutional Law on Implementation of the Constitution of the Republic of Serbia with respect to the judiciary

71. The Constitutional Law, adopted by the National Assembly on 10 November, seems based on the principle of discontinuity between the institutions functioning under the previous Constitution and those provided for in the present Constitution. This may seem surprising since one reason for the lengthy constitution-making process in Serbia was the insistence by some political forces on the need to respect the provisions of the previous Constitution when adopting the new Constitution. These provisions were indeed followed during the adoption of the Constitution. With respect to the political institutions, it seems nevertheless perfectly legitimate to require new elections following the adoption of an entirely new Constitution.

72. By contrast, the need for a reappointment process as provided for in the Constitutional Law with respect to all judges and prosecutors is not at all obvious. It may be motivated by the wish to get rid of judges who have compromised themselves with previous regimes or who are corrupt. The Venice Commission is not in a position to evaluate whether such reasons exist with respect to a large number of judges. A comprehensive and quick reappointment process is bound to be extremely difficult and there is no guarantee that in the end better judges and prosecutors will be appointed. One may therefore have doubts whether the decision to undertake such a process was wise.

73. In any case, such a process is acceptable only if there are sufficient guarantees for its fairness. In the opinion of the Venice Commission this requires in particular:

- The procedure must be based on clear and transparent criteria and only past behaviour incompatible with the role of an independent judge may be a reason for not re-appointing a judge;
- The procedure has to be fair, carried out by an independent and impartial body and ensure a fair hearing for all concerned;
- There must be the possibility for an appeal to an independent court.

74. A High Judicial Council completely dependent on parliament would not be a suitable body for carrying out such a procedure. This requires a Council composed of independent and credible personalities and not of partisan political appointees.

Chapter 9 – Public Prosecutor's Office

Article 156 – Status and jurisdiction

75. According to Section 1 the Public Prosecutor's Office "shall prosecute the perpetrators of criminal offences and other punishable actions, and take measures in order to protect constitutionality and legality". The meaning of measures to protect constitutionality and legality is unclear. In the context of Serbia it should not be meant as a basis for the introduction of a Soviet style *prokuratura* system which would not correspond to the legal tradition of the country..

Article 158 – The Republic Public Prosecutor

76. The Republic Public Prosecutor is to be elected by the National Assembly (at the proposal of the government) with the right to be re-elected. It would be preferable to exclude, as in the case of the President of the Supreme Court of Cassation, the right to be re-elected.

Article 159 – Public Prosecutor and Deputy Public Prosecutor

77. This provision provides for the election of public prosecutors (at the proposal of the government) and of Deputy Public Prosecutors (at the proposal of the State Prosecutors Council) by the National Assembly. Again, this creates a risk of unduly politicising the appointment process.

Article 160 – Responsibility

78. While the Constitution contains no clear provisions on the structure of the prosecution service, Article 160 makes the Republic Public Prosecutor accountable to the National Assembly, Public Prosecutors accountable to the Republic Public Prosecutor and the National Assembly and Deputy Public Prosecutors responsible to the Public Prosecutor. The meaning of accountability in this provision seems unclear. In any case, the parallelism of accountability to higher prosecutors and to the National Assembly suggests political interference in prosecutions and is disturbing.

Article 164 – Status, constitution and election of the State Prosecutors' Council

79. This Council closely follows the model of the High Judicial Council. Since prosecutors do not enjoy independence in the same way as judges, it seems questionable whether this is justified.

PART VI – THE CONSTITUTIONAL COURT

General comments

80. This Part seems generally positive. The Constitution provides for a strong Constitutional Court with a balanced composition.

Article 167 – Jurisdiction

81. While the drafting of this provision seems less than perfect, in particular it is stated twice that the Court shall perform other duties stipulated by the Constitution, its contents do not meet with objections. The need for an *a priori* control of international treaties before their entry into force was explained above with respect to Article 16. Article 167 can be interpreted as allowing for such a procedure.

Article 170 – Constitutional appeal

82. It is particularly welcome that this Article provides fort the possibility of constitutional complaints by individuals for human rights violations.[11]

Article 172 – Organisation of the Constitutional Court. Election and appointment of the Constitutional Court justices

83. The composition of the Court appears well balanced.

Article 174 – Termination of the tenure of office of the Constitutional Court justice

84. It seems questionable to give to the National Assembly the right to decide on the termination of office of Constitutional Court justices, even if only for the reasons set forth in Section 2. Section 3 uses the term "decide on the termination of a justice's tenure of office". According to Article 99 the National Assembly "appoints and dismisses" judges of the Constitutional Court. Presumably this dismissal refers only to the termination of office under Article 174. Otherwise it would be a clear violation of judicial independence. The meaning of the terms "as well as on appointment for election of a justice of the Constitutional Court" in Section 3 is unclear, at least in the English translation. It is imperative that these sections be amended and clarified so as to ensure judicial independence.

PART VII - TERRITORIAL ORGANISATION

General comments

85. This Part of the Constitution seems not very coherent. On the one hand, there are generous provisions of principle, including the right to provincial autonomy and local self-government and on substantial autonomy of Autonomous Provinces. On the other hand, these concepts are not really filled with substance. The constitutional regulation of the division of competences between the State, autonomous provinces and units of local self-governance is quite complicated and leaves quite a wide scope for interpretation and specification through legal acts of lower rank.

Chapter 1 – Provincial autonomy and local self-government

Article 176 – Concept

86. This Article reiterates the citizens' right to provincial autonomy and local self-government appearing in Article 12. It should be emphasised that these provisions, which confer the constitutional right only on citizens, should not be interpreted as preventing the extension of the right to vote and of other participatory rights at the provincial and local level to non-citizen residents.

Article 177 – Definition of the competences

87. Art. 177 contains a general provision on the competences of both autonomous provinces and units of local self-government. The definition, however, is very vague. Thus, "local self-government units shall be competent in those matters which may be realised, in an effective

[11] The English translation "against individual general acts" is erroneous. The word "general" does not spear in the original language.

way, within a local self-government unit, and autonomous provinces in those matters which may be realised, in an effective way within an autonomous province". An additional requirement, however, is that the matter "shall not be the competence of the Republic of Serbia". This might be understood as a reference to Article 97 (see above). This provision covers however also fields mentioned in Article 183.2 as competences of autonomous provinces. Whether Art. 97 has any significance for the division of competences between the State and the units of provincial autonomy and local self governance remains unclear.

Chapter 2 – Autonomous Provinces

Article 182 – Concept, establishment and territory of autonomous province

88. According to Art. 182.1, there are two autonomous provinces in the Republic of Serbia: the Autonomous Province of Vojvodina and the Autonomous Province of Kosovo and Metohija. The establishment of new autonomous provinces is possible only following the procedure required for amending the Constitution, after the citizens (residing in the region?) have approved the proposal in a referendum (Art. 182.2). As set forth above with respect to the Preamble, the Constitution leaves the definition of the "substantial autonomy" of the Autonomous Province of Kosovo and Metohija to a special law to be adopted pursuant to Article 182.2.

Article 183 – Competences of autonomous provinces

89. This provision has to be read in conjunction with Article 177 (see above).

Article 184 – Financial autonomy of autonomous provinces

90. The constitutional guarantees for the financial autonomy of autonomous provinces are rather weak too. Thus, Art. 184 leaves open whether the provinces have a right of taxation or not. The Constitution also delegates to the level of the law the specification of state subsidies due to the autonomous provinces (Art. 184.2). By contrast, Art. 184.3 includes a rather peculiar provision according to which "the budget of the autonomous Province of Vojvodina shall amount to at least 7 % in relation to the budget of the Republic, bearing in mind that three sevenths of the budget of the Autonomous Province of Vojvodina shall be used for financing the capital expenditures".

Chapter 3 – Local Self-Government

Article 188 – General provisions

91. The Constitution does not include any explicit guarantees for the financial autonomy of the municipalities. Art 188.4 only lists the sources of revenue but does not, for instance, establish a right to taxation or state subsidies

Article 192 – Monitoring the work of municipality

92. As is laid down in Art. 12.2, autonomous provinces and units of local self-governance are subject only to supervision of legality and constitutionality. According to Art. 192.1, "the Government shall be obliged to cancel the enforcement of the municipal general act which it considers to be in non-compliance with the ´Constitution or the Law, and institute the proceedings of assessing it constitutionality or legality within five days. Although it is not expressly stated (unlike in Art. 186, concerning the decisions adopted by autonomous provinces), the proceedings obviously take place before the Constitutional Court (see para. 4 of Art. 167.1). It would have been preferable to let the Constitutional Court decide – in conformity

with the provision in Art. 186 concerning the decisions of autonomous provinces - also on the interim ban on the enforcement of the municipal act.

93. According to Art. 192.2-3 "the Government may, under the terms specified by the Law, dismiss the Municipal Assembly" and "appoint a temporary body which shall perform the duties within the competences of the Assembly, taking into consideration the political and national composition of the dismissed Municipal Assembly". This provision should be interpreted in the light of Art. 12.2: the dismissal should be possible only if the Assembly has acted in contradiction with the Constitution or the law. Because of the constitutional / legal nature of the measure, the Government's competence of dismissal should have been subjected to the requirement of a prior assessment of the case by the Constitutional Court.

PART VIII – CONSTITUTIONALITY AND LEGALITY

Article 194 – Hierarchy of domestic and international legal acts

94. See the comments on Article 16 above.

Article 200 – State of emergency

95. Articles 200 and 201 define the state of emergency and the state of war. The regulations on the state of war do not give rise to doubts. The state of war on the territory of given country is, as a rule, proclaimed as a consequence of the war, i.e. as a consequence of a situation existing at the international level. The situation with respect to the state of emergency is more differentiated. General constitutional law knows different kinds of a state of emergency. The state of emergency or better the extraordinary measures can be introduced in several situations: 1. In the case of external threats to the State, acts of armed aggression against the territory; 2. When an obligation of common defence against aggression arises by virtue of an international agreement; 3. In the case of threats to the constitutional order of the State, to the security of the citizens or public order; 4. In order to prevent or remove the consequences of a natural catastrophe or a technological accident exhibiting characteristics of a natural disaster.

96. Article 200 regulates that the state of emergency shall be proclaimed "when the survival of the state or its citizens is threatened by a public danger". This comes closest to the situation described above under 3. The conditions under which the state of emergency could be proclaimed are however described in a very general way. Admittedly this is also the case in other constitutions. It would, however, been preferable to at least add another qualification at the end of Art.200.1: "if ordinary constitutional measures are inadequate".

Article 202 – Derogation from human and minority rights in the state of emergency and war

97. This Article regulates the derogation from human and minority rights in the state of emergency and war. It would have been preferable to keep the differentiation between the state of war and the state of emergency with respect to the derogation from fundamental rights. The situation in both cases are different and for that reason the scope for derogation should be differentiated as it was the case in the previous draft Constitution. The general wording used "permitted only to the extent deemed necessary" seems far too vague. A stricter wording as in Article 15 ECHR "to the extent **strictly** required by the exigencies of the situation" should be used.

98. There are also some gaps in the list of non-derogable rights in Section 4 of this Article. In the light of Article 202.2 Article 44 on churches and religious communities should have been

included. One may also have doubts why for example Articles 33 and 65 are not included in the list.

PART IX – AMENDING THE CONSTITUTION

Article 203 – Proposal to amend the Constitution and adoption of the amendment to the Constitution

99. It strikes the Venice Commission, first of all, that the procedure drafted is very complex, as it involves two or even three steps: first, the National Assembly has to adopt, by a two-thirds majority of all deputies, a proposal to amend the Constitution (Article 203.3), and then the same National Assembly has to adopt an act amending the Constitution by a two-thirds majority of all deputies (Article 203.6). Finally, Article 205 seems to require the adoption, again by a two-thirds majority, of a further constitutional law for the enforcement of the amendments to the Constitution.

100. A number of questions arise as to the significance and use of this procedure. What is the legal effect of the adoption of the proposal to amend the Constitution? What is the relationship between the votes held by the National Assembly? What is the use of the complexity that results from this procedure? The Venice Commission draws attention to the drawbacks of an excessively rigid procedure for amending the Constitution, as was experienced in Armenia and in Serbia itself under the Constitution of 28 September 1990.

101. An important element in the procedure to amend the Constitution is the possibility (Article 203.6) and in some cases the obligation (Article 203.7) to have it endorsed by the citizens in a referendum. It strikes the Commission that the list of constitutional amendments subject to referendum is very broad, especially since "the system of authority" as such is mentioned. In the original language of the Constitution the same term is used for the heading of Part V. If this implies that the notion "the system of authority" in article 203.7 is to be read in connection with Part V, the result would be that every amendment of Articles 98 to 165 would have to be subject to a referendum. It would be wise to determine more precisely to which principles of the "system of authority" Article 203.7 of the Constitution applies.

102. Article 203.8 provides only two basic principles for the organisation of a referendum. As the principle of the rule of law applies to referendums, further regulation will have to be enacted. The Commission draws attention to its Guidelines on the holding of Referendums[12] and especially to point II. 2. a, that states: “Apart from rules on technical matters and details (which may be included in regulations by the executive), rules of referendum law should have at least the rank of a statute.” In order to apply article 203, the Serbian legislator will have to adopt legislation on the organisation of the constitutional referendum which should be in compliance with the principles set out in the above-mentioned “Code of good practice on Referendums”.

CONCLUSIONS

103. The Commission had the opportunity in the past to note the excellent quality of constitutional texts prepared in the Republic of Serbia. It did so both with respect to constitutional texts prepared by the democratic opposition during the Milosevic regime[13] and to

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[12] European Commission for democracy through law (Venice Commission), Guidelines on the holding of Referendums, CDL-AD(2006)027rev.

[13] Interim Report on the Constitutional Situation in the Federal Republic of Yugoslavia, CDL-Inf(2001)23, at 35-39.

the Human Rights Charter of the State Union[14]. Against this background the new Constitution has all the hallmarks of an over-hasty draft which does not do justice to the previous standards.

104. It is of course very welcome that after several years of efforts it has been finally possible to replace the Constitution adopted under the Milosevic regime by a new text reflecting the democratic ideals of the new Serbia. However, another aspect of the hasty drafting of the text is the lack of opportunity for its public discussion. This procedure was motivated by important political considerations and reflected specific difficulties in the country. Nevertheless, it raises questions of the legitimacy of the text with respect to the general public. Against this background of a hasty adoption it is particularly surprising that the Constitution is extremely rigid and that large parts are very difficult to amend. If one lesson could have been drawn from the history of constitution-making process in Serbia it would seem to be that amending the Constitution should not be made too difficult.

105. It has to be noted that the Constitution contains many positive elements, including the option for a functional parliamentary system of government and a comprehensive catalogue of fundamental rights. While it would have been preferable to have clearer and less complicated rules on restrictions to fundamental rights, it is possible for the courts and in particular the Constitutional Court to apply these rights in full conformity with European standards.

106. The main concerns with respect to the Constitution relate, on the one hand, to the fact that individual members of parliament are made subservient by Art. 102.2 to party leaderships and, on the other, to the excessive role of parliament in judicial appointments. Judicial independence is a fundamental prerequisite of a democratic constitutionalism and is also wholly necessary to ensure that the constitution is not merely a paper exercise but will be enforced in practice. Yet the National Assembly elects, directly or indirectly, all members of the High Judicial Council proposing judges for appointment and in addition elects the judges. Combined with the general reappointment of all judges following the entry into force of the Constitution provided for in the Constitutional Law on Implementation of the Constitution, this creates a real threat of a control of the judicial system by political parties. The respective provisions of the Constitution will have to be amended. Since such amendments are unlikely to take place quickly, the composition of the first High Judicial Council will be of the outmost importance. The judicial reappointment process can only be considered as in any way acceptable if the National Assembly elects independent and credible personalities into this Council. Moreover, the law will have to establish clear criteria guiding the reappointment process as well as fair procedures and the right to appeal.

107. With respect to other parts of the Constitution, a lot will depend on implementation. The provisions on the role of international law in the legal system are not unusual as such but require a prudent approach sensitive to international developments, as well as the introduction of a procedure for assessing the constitutionality of treaties before their entry into force. The rules on territorial organisation are complicated and not very clear but do not close doors. The Venice Commission remains available to assist the authorities in drafting legislation required for the implementation of the Constitution.

[14] Document CDL(2003)10fin.