



BELGRADE CENTRE FOR  
HUMAN RIGHTS



## **PRIORITY PROGRAMME TO SUPPORT THE FEDERAL REPUBLIC OF YUGOSLAVIA IN STRENGTHENING HUMAN RIGHTS AND THE RULE OF LAW WITH A VIEW TO ITS ACCESSION TO THE COUNCIL OF EUROPE**

The Federal Republic of Yugoslavia (FRY), a participating State of the OSCE, a member of the UN and a full participant in the Stability Pact, applied on 9 November 2000 for membership of the Council of Europe. On 22 November 2000 the Committee of Ministers of the Council of Europe adopted Resolution (2000) 15 by which it transmitted the FRY application for membership to the Parliamentary Assembly for opinion, noting that "a consensus exists among its member states in favour of the accession of the Federal Republic of Yugoslavia (...) to the Organisation as soon as the requirements of the Statute have been met, namely the implementation of the principles of pluralist democracy, respect for human rights and the rule of law" and taking note "with satisfaction of the commitment of the Federal Republic of Yugoslavia to respect the rule of law, human rights, rights of national minorities and fundamental freedoms on the basis of the conventions of the Council of Europe and other documents".

On 22 January 2001, the Parliamentary Assembly of the Council of Europe granted Special Guest status to the Yugoslav Federal Parliament and the FRY became an associated member of the European Commission for Democracy through Law (Venice Commission) on 31 January 2001.

In addition, the FRY has requested to become party to a number of Council of Europe conventions. The Committee of Ministers of the Council of Europe has replied favourably to such requests. A request to accede to the Framework Convention for the Protection of National Minorities is also under consideration.

With an emphasis on requirements for accession of the FRY to the Council of Europe, a set of main objectives has initially been identified with a view to strengthening democratic institutions, human rights and the rule of law. These priorities were discussed at the Belgrade Conference of 16 and 17 February 2001 between the Council of Europe and federal and Serbian and Montenegrin Republic authorities, as well as with other international and European organisations, several non-governmental organisations and experts, in order to define the main fields for immediate cooperation with the Council of Europe. This list of priorities is not exhaustive and does not necessarily cover all important areas where actions have been initiated already. Nor does it prejudice the Opinion to be issued by the Parliamentary Assembly of the Council of Europe according to the accession procedure.

This priority programme concerning reform of legislation and policies in the Federal Republic of Yugoslavia with regard to their compatibility with the European

Convention on Human Rights and other Council of Europe norms and standards is described below.

While respecting the political, legal and social specificities of the systems within the FRY, this on-going process will ensure that both law and practice conform to the European Convention on Human Rights and other European norms. Drawing on Resolution (2000) 15, which states that candidacy for membership of the Organisation "implies that the legislative and judicial system of the country should be brought into line with the principles of the rule of law", the Participants reaffirm in particular the priority to be given to the establishment of a strong and independent judicial system and the re-organisation of the law enforcement agencies according to the European standards.

This compatibility with European standards has to be ensured first of all by the relevant authorities within the Federal Republic of Yugoslavia. Whatever the level of competence is between federal and republican authorities, compliance with the commitments and obligations to European standards must be achieved.

This co-operation can be based to a large extent on the considerable work that has been done by sectors of civil society in the FRY and draw on the many and varied human resources within the country.

It will be fully coordinated with the OSCE (and its Office for Democratic Institutions and Human Rights) and the European Union, as well as the relevant institutions of the United Nations.

## **I – ENSURING THE PROMOTION AND RESPECT OF HUMAN RIGHTS**

### **A) Compatibility with European Human Rights norms**

#### **1. Compatibility with the European Convention on Human Rights**

- The Conference mainly focused on fair trial standards, arrest and detention, freedom of expression and association, minorities' rights, prohibition of discrimination, social rights and property rights. However, law and practice related to other essential standards such as the right to life, prohibition of torture, right to privacy, right to free and fair elections and the protection of minorities will also have to be reviewed.
- Expertise process of, *inter alia*, legislation related to the following issues: the code(s) of criminal procedure, criminal code(s), civil code(s) and civil procedure code(s), administrative code(s) and code(s) of administrative procedure, amnesty law(s), law(s) on associations, law(s) on police, data protection law(s) and citizenship law.
- Establishment of a Compatibility Working Group comprising FRY and Council of Europe experts.
- Conference to present the recommendations of the Working Group to the relevant authorities.

## 2. Compatibility with the revised European Social Charter

- Expertise review of all legislation related to social and economic rights.
- Establishment of a Compatibility Working Group comprising FRY and Council of Europe experts.
- Conference to present the recommendations of the Working Group to the relevant authorities in view of the ratification of the RESC.

### **B) Training on Council of Europe human rights standards**

#### 1) Training for legal professions and law enforcement agencies

- Expert meetings with relevant institutions, including the non-governmental sector, to develop relevant training programmes and prepare relevant training and awareness materials for initial and continuous training of legal professions and law enforcement agencies (including judges, prosecutors, lawyers, police officers and prison staff).
- Participation in regional training seminars for legal professions and law enforcement agencies throughout Serbia and Montenegro (focus should be given to the right to a fair trial, liberty and security of person, the prohibition of torture and other unacceptable treatments and the right to respect for private and family life).
- Organisation of activities within the framework of the Council of Europe programme: “Police and Human Rights – Beyond 2000”.

*Training workshops should be organised for experienced professionals on the one hand, and for those recently appointed, on the other.*

#### 2. Training on Council of Europe fundamental social and economic rights standards

- In-depth training on the revised European Social Charter, the case law of the European Committee of Social Rights and the Collective Complaints procedure for civil servants, parliamentarians, trade unions, employers, legal professionals, including judges and lawyers, and NGOs.

### **C) Human rights promotion and awareness-raising**

- Support towards the organisation of training workshops for NGO representatives active in the field of human rights, on European human rights standards and on how to deal with allegations of human rights violations.
- Translation, editing, printing and distribution of human rights materials in relevant languages for government and public institutions, the judiciary and non-governmental groups, including materials on the ECHR and the case law of the European Court of Human Rights.
- Awareness activities regarding the abolition of death penalty to be organised in co-operation with the non-governmental sector, such as a conference for law-makers, representatives of the judiciary, law enforcement agencies and the press.

### **D) Independent national institutions for the promotion and protection of human rights**

- Expertise on drafting legislation, in particular to shed light on a number of legislative and practical implications which could assist the establishment of national human rights institutions.
- Training on all aspects of setting up and running an Ombudsman institution, both on substantive and practical matters.
- Placements by experts from existing institutions or visits to existing institutions to receive input on practical matters.
- Thematic meetings to address specialised issues such as minorities, refugee returns, prisoners' complaints, property matters etc.
- Information meetings with the relevant authorities in the FRY, including ministries, parliamentarians, local administrators, the police, prison officials and others to present the role and powers of Independent National Institutions and explain how they fit into the existing administrative structures, including the existing human rights promotion and protection mechanisms.
- Information meetings between Independent National Institutions and the public, including the media, to present the role and powers of these institutions.
- Provision of documentation to the Independent National Institutions, including the case law of the European Court of Human Rights.

*These activities should be implemented in the framework of the Stability Pact Project on Independent National Human Rights Protection Institutions, including Ombudsman institutions.*

## **II - STRENGTHENING THE INDEPENDENCE AND FUNCTIONING OF THE JUDICIARY**

- Round Table on the reform of the judicial system, to be organised jointly by OSCE-ODIHR and the Council of Europe.

### **A) Organisation of the judiciary**

- Expert meetings and written reports on draft legislation for the reform of:
  - the Federal Supreme Court
  - the Federal Military Court
  - the Federal Prosecutor General's Office
- Expertise process for the reform of the court system at the republic level, including military courts.
- Expertise process for the reform of the Prosecutors' offices at the republic level.
- Seminars (and possible expert meetings) on the relations between ministries of justice, courts and prosecutors' offices.

### **B) Status of judges and prosecutors**

- Expertise process for the definition of a new status for judges and prosecutors.
- Expertise process for the establishment of the relevant institutions responsible for the appointment of judges and prosecutors, the management of their career and disciplinary regimes (in particular a High Council of Justice).
- Support to the development of judges' associations.
- Expert meetings on judges' ethics.

### **C) Training of judges and prosecutors**

- Expert meetings for the development of structures and tools for (initial and) continuous training of judges and prosecutors (Judicial Institutes or Schools for Judges and Prosecutors).
- Participation in the in-service training of judges and prosecutors with regard, in particular, to their statutory rights and obligations, the application of domestic law in the light of international instruments, the methods of conducting proceedings and managing the justice system (particularly the functioning of the courts, personnel management and budgetary questions).

### **D) Improving the effectiveness and quality of the administration of justice**

- Expertise process for legislation regarding the Bar Associations.

- Support to the Bar Associations:
  - for the development of self-administration of the profession
  - for the training of lawyers within the framework of the Bar Associations
  - networking between Bar Associations<sup>1</sup>.
- Expertise process for the development of legal aid mechanisms.
- Expert meeting on alternative measures for solving disputes<sup>2</sup>.
- Expertise process for the development of the enforcement of court decisions in civil, commercial and administrative matters.

### **III - REFORMING THE PENAL SYSTEM**

#### **A) Legislation in the criminal field**

- In the light of the experience gained in reforming criminal legislation in the countries of South Eastern Europe, expertise process for the reform of the Code of Criminal Procedure and the part of the Criminal Code under federal responsibility.
- In the light of the experience gained in reforming criminal legislation in the countries of South Eastern Europe, expertise process for the reform of the Code of Criminal Procedure and the Criminal Code under republic responsibility, as well as other relevant criminal legislation.

#### **B) Organisation and functioning of police**

- Round Table on the reform of the police, to be organised jointly by OSCE-ODIHR and the Council of Europe.
- Expertise process on the legislation on police at the appropriate level, including judicial police.
- Expert meeting on police ethics.
- Training seminars on police ethics.

#### **C) Setting up of a juvenile justice system**

- Expertise process to set up specific legislation and specific court system regarding juveniles

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<sup>1</sup> These activities could be carried out within the framework of the Regional Council of Bar Associations to be created within the framework of the Stability Pact for South Eastern Europe.

<sup>2</sup> On the basis of the conclusions of the Stability Pact regional meeting on alternative disputes resolutions (Bulgaria, 13 – 14 December 2000)

**D) Fight against corruption and organised crime**

- Participation of the FRY in the Council of Europe's PACO programme within the framework of the Stability Pact Initiative against Corruption (SPAI) and the Stability Pact Initiative against Organised Crime (SPOC).
- Specific training for prosecutors on the fight against organised crime
- Seminar on international norms regarding money laundering, and in particular the European Convention ETS N° 141.
- Expert mission to assess existing measures against money laundering.

**E) Reform of the prison system**

- Participation of the FRY and the relevant entities in the Joint Project OSCE/ODIHR – Council of Europe for Prison Reform within the framework of the Stability Pact: assessment mission and implementation of the mission's recommendations.
- Expertise for the development of alternative sanctions to imprisonment

**IV – FREEDOMS OF EXPRESSION AND ASSOCIATION****A) Freedom of expression**

- To provide assistance to the relevant authorities and non-governmental organisations to address the issues of pluralism, including religious pluralism, tolerance of criticism, access to information, the fight against hate speech and the promotion of tolerance, the protection of journalists when reporting on crime and corruption, the establishment of an independent public service broadcasting organisation, as well as the freedom of expression of public employees, in law, when appropriate, and in practice.

*i. General media law*

- To provide assistance to the media experts in charge of preparing a new legislative framework for the media, which should include legislation on the print media, access to information, the rights and responsibility of journalists and the media, as well as relevant provisions in both the Criminal and the Civil Codes; in preparing the law the authorities should co-operate with experts in the non-governmental sector who have already prepared draft laws such as the *Model Law on Public Information*.
- Once a new set of draft regulations has been developed, to assist the competent ministries and other public authorities in the further preparation and subsequent application of new laws and regulations.

*ii. Broadcasting sector*

- To provide assistance for the establishment and implementation of a new legislative framework for the electronic media, both public and private, as agreed in the conclusions and recommendations of the 2<sup>nd</sup> *Conference on Media for a Democratic Europe: transformation of broadcasting in FRY*, organised in co-operation with ANEM (Belgrade 10-12 December 2000).

*iii. Training and awareness-raising*

- To implement a comprehensive set of complementary activities, including a series of awareness-raising and training activities, aimed at specific groups (public officials, media professionals, etc) and organised in co-operation with the competent authorities and civil society. In addition, experts and an advisory mission on European standards on freedom of expression could be envisaged.

**B) Freedom of association including support to civil society**

- Expertise process for the drafting of a legal status for associations, making sure that their formation and regulation are regulated in full compliance with the ECHR, in particular Article 11, and Article 5 of the (revised) European Social Charter (RESC) as regards trade unions and associations of employers.
- Expertise process for the drafting of a legal status for non-governmental organisations, making sure that their formation and regulation are regulated in full compliance with the ECHR, (in particular Article 11), the RESC, (in particular article 5), the European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations (ETS N° 124), the Council of Europe's ongoing work to propose guidelines for the legal status of NGOs, as well as the "Stability Pact Declaration on NGO-government partnership in South Eastern Europe".
- Through the organisation of seminars and support for NGO fora, facilitation of the active involvement of local civil society in the drafting of a legal status for associations and NGOs.
- Awareness-raising campaign at the level of authorities and civil society to ensure that practice with reference to freedom of association follows the law.
- Encouraging a positive attitude among relevant authorities in the FRY towards associations and non-governmental organisations.
- Ensuring the guarantee of the right to form trade unions and associations of employers, at local, national or international levels, and to join those organisations through the adoption of relevant legislation in conformity with Article 5 of the RESC, as defined by the case law of the European Committee of Social Rights (if appropriate).

## **V – PROTECTION OF THE RIGHTS OF MINORITIES AND PROHIBITION OF DISCRIMINATION**

### **A) On-going assistance in drafting a law on national and ethnic communities**

- Support by the Council of Europe for a review of domestic law and practice and its compatibility with minority rights standards. In this a linkage can be made with the non-discrimination review of legislation and practice concerning national and ethnic communities proposed under the Stability Pact. Such reviews / studies, will be essential background work in preparing a law on national and ethnic communities.
- On-going expert assistance by the Council of Europe to the expert group responsible for drafting a new law on national and ethnic communities (materials, expert consultations and study visits).

### **B) Ratification of the Framework Convention for the Protection of National Minorities and other European norms**

- Support for the acceptance and implementation of minority rights standards, including preparation for ratification of the Framework Convention for the Protection of National Minorities, as well as the European Charter for Regional or Minority Languages. Support could take the form of target-oriented meetings, workshops or information meetings to prepare the authorities, experts and interested members of civil society for ratification and implementation of the relevant instruments. These activities can be supported under the Stability Pact.
- Possible expert assistance in concluding bilateral agreements as a tool for promoting good ethnic relations with support under the Stability Pact.

### **C) Awareness-raising campaign on the need for legislation on minority rights issues**

- Support for an awareness-raising campaign concerning national and ethnic communities, including the establishment of a national campaign committee under the Stability Pact awareness-raising campaign “Link Diversity” organised by the Council of Europe.

### **D) Non-discrimination review of legislation and practice**

- Support for a non-discrimination review of legislation and practice concerning national and ethnic communities as proposed under the Stability Pact.

**APPENDIX****BACKGROUND NOTES FOR THE  
PRIORITY PROGRAMME TO SUPPORT THE FEDERAL REPUBLIC OF  
YUGOSLAVIA IN STRENGTHENING HUMAN RIGHTS AND THE RULE  
OF LAW WITH A VIEW TO ITS ACCESSION TO  
THE COUNCIL OF EUROPE**

To ensure the compatibility of legislation and practices with European standards, and then prepare the accession of the FRY to the Council of Europe, close co-operation between the Council of Europe and the relevant authorities and organisations within the FRY is necessary. Priority activities appear in the document "Priority Programme to support the Federal Republic of Yugoslavia in strengthening human rights and the rule of law with a view to its accession to the Council of Europe". They will be fully co-ordinated with the activities to be carried out with the co-operation of other international organisations to ensure the best efficiency of this action.

The present document's purpose is to provide with additional information related to the activities listed in the Priority Programme.

**I – ENSURING PROMOTION AND RESPECT FOR HUMAN RIGHTS**

Human rights have always been at the heart of the Council of Europe since the need to protect them inspired its creation. They were the impetus for the development of its machinery where the European Convention on Human Rights (ECHR) and the case law of the European Court of Human Rights have played a central role, as well as other human rights protection mechanisms established later on, such as the European Social Charter, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the Framework Convention for the Protection of National Minorities. Significantly, the Council of Europe's Statute provides that one of the methods by which the Council of Europe pursues its aim of achieving greater unity between its members, is "the maintenance and further realisation of human rights and fundamental freedoms", thus placing human rights at the heart of any society wishing to move towards democracy and the rule of law.

The importance of human rights as an instrument contributing to stability in Europe has been reaffirmed during the years. This was echoed in the Final Declaration of the Second Summit of Heads of State and Government of the Council of Europe (Strasbourg, 10-11 October 1997), which said that "the promotion of human rights and the strengthening of pluralist democracy both contribute to stability in Europe" and more recently, during the European Ministerial Conference on Human Rights (Rome, 3-4 November 2000).

Today, the place of the Federal Republic of Yugoslavia is clearly within the Council of Europe and steps will have to be undertaken by the authorities to bring laws and regulations into line with European standards.

Indeed, the protection of fundamental human rights standards is primarily a duty of the State at the national level. The subsidiary protection mechanism provided by the European Convention on Human Rights and other European norms enter into action only when national jurisdictions have failed to remedy a human rights violation.

Finally, ensuring promotion and respect for human rights means not only bringing laws and regulations into line with Council of Europe standards, but also changing attitudes and mentalities at all levels of the society. Human rights standards must penetrate all aspects of the law, institutions, practice, policies and modus operandi of the country.

It is in this spirit that the Council of Europe is ready to provide FRY authorities with its expertise regarding the compatibility of the law and practice in FRY with European Human Right norms, human rights training and awareness-raising activities and instilling civil society with human rights values through close cooperation with the non-governmental sector.

## **A) Compatibility of law and practice in FRY with European human rights norms**

### 1) Compatibility with the European Convention on Human Rights

As part of the preparation for accession to the Council of Europe, the Federal Republic of Yugoslavia is expected to carry out an in-depth examination of the conformity of its domestic legislation and practice with the requirements of the European Convention on Human Rights (ECHR), its Protocols and the case law of the European Court of Human Rights. This is called a compatibility exercise and it has a dual aim: on the one hand, it offers an opportunity to State institutions and to local administrations to familiarise themselves with the new norms that will be part of their domestic law. Indeed, the rights guaranteed by the ECHR should, first and foremost, be fully protected in the FRY, by relevant authorities at both federal and republic level, in particular the courts. In particular, after the ratification of the European Convention on Human Rights, everyone under FRY jurisdiction whose convention rights and freedoms are violated, will have a right to an effective remedy before the competent federal or republic authority, in accordance with Article 13 of the ECHR.

On the other hand, the compatibility exercise also has a preventive effect, since it identifies any potential shortcomings in domestic law and practice, both at the federal and republic level, and addresses them through changes in legislation or implementation practices, with a view to ensuring the full and effective enjoyment of the rights protected under the ECHR primarily at domestic level. The protection afforded by the European Court of Human Rights is thus made subsidiary and exceptional.

Abolition of death penalty and the ratification of Protocol N° 6 to the ECHR constitute core commitments for membership of the Council of Europe. The FRY is, therefore, also expected to examine its legislation, on both republic and federal level, so as to remove the death penalty from its law.

The compatibility exercise should draw upon existing expertise and legislative reviews which have been prepared by local experts including non-governmental organisations with considerable knowledge of the ECHR and its case law, as well as other European norms.

## 2) Compatibility with the revised European Social Charter

Fundamental social and economic rights guaranteed under the revised European Social Charter (RESC) are fundamental human rights and their protection is indispensable if the recent democratic changes in FRY are to be irreversibly secured. In order to prepare for the ratification of the RESC, the FRY authorities will need to examine the conformity of both its legislation and practice with the requirements of the RESC, as defined by the case law of the European Committee of Social Rights (see also above I.A). This compatibility exercise has a dual aim: on the one hand, it offers an opportunity to State institutions and to local administrations to familiarise themselves with the new norms that will have to regulate the daily life of the population in both its working and family aspects. On the other hand, the compatibility exercise also has a preventive effect, since it identifies any potential shortcomings in domestic law and practice, both at the federal and republic levels, and addresses them through changes in legislation or implementation practices, with a view to ensuring the full and effective enjoyment of the rights protected under the RESC. A number of violations are therefore prevented, which would otherwise be found by the European Committee of Social Rights under the reporting system and the collective complaints system.

### **B) Training on Council of Europe human rights standards**

#### 1. Training for legal professions and law enforcement agencies

It is essential to provide legal professionals, (including judges and lawyers), and law enforcement agencies, (including the police, prosecutors and prison staff), with in-depth training on the ECHR, its additional Protocols and the case law of the European Court of Human Rights, as well as other relevant human rights treaties.

Indeed, once the FRY ratified the European Convention on Human Rights, the provisions of the ECHR and the case law of the European Court of Human Rights will become directly applicable by judges and other officials on its territory.

Practice, however, may fall short, if Yugoslav members of legal professions and law enforcement agencies have no knowledge about the ECHR and the case law of the European Court of Human Rights. Therefore, training programmes will need to provide them with an opportunity to familiarise themselves with the new norms, that will be part of their domestic law and directly applicable before local courts. Also, in order to minimise the number of Yugoslav cases brought by applicants before the European Court of Human Rights, and those in which the European Court of Human Rights finds that FRY has violated a provision of the ECHR, it is important to provide in-depth training for judges, police and prosecutors throughout the territory of FRY.

It is also important to provide lawyers with training on how to use ECHR advocacy skills at domestic level, as well as how to submit successful applications to the European Court of Human Rights.

## 2. Training on Council of Europe fundamental social and economic rights standards

It is essential to provide civil servants, parliamentarians, trade unions, employers, legal professionals, including judges and lawyers, and NGOs with in-depth training on the revised European Social Charter, the case law of the European Committee of Social Rights and the Collective Complaints procedure. Appropriate legislation is necessary, but not sufficient, to guarantee full conformity with the requirements of the RESC. Effective implementation is also required, and for this the wide dissemination of information is crucial.

### **C) Human rights promotion and awareness-raising**

As civil society has been instrumental to changes in FRY and many NGOs are now actively cooperating with the authorities in their field of expertise, the Conference considers that the development of the non-governmental sector should be further sustained. To this effect, the Council of Europe is ready to build upon civil society, working with and through them by, *inter alia*, promoting knowledge and awareness of European human rights standards among them and continuing the production and widespread distribution of pertinent documentation in relevant languages, in addition to the documentation already produced most recently. These awareness-raising activities should be seen as a natural extension of professional training on the ECHR and other human rights norms.

### **D) Independent national institutions for the promotion and protection of human rights**

The participants of the Conference consider that ombudsmen and other independent national human rights institutions, such as human rights commissions and others, play an important role in the promotion and protection of human rights and are important interfaces between government and civil society. While human rights commissions can effectively advise the public authorities on human rights matters and promote human rights information and education, Ombudsmen offer an opportunity of redress for individuals vis-à-vis the administration on the basis of mediation, fairness and broader standards of justice. The Ombudsman Institution also plays a key role in consolidating democratic practices, transparency and accountability in public administration. In a society at a stage of incomplete legislative reform, or with problems in implementing legislation or even judicial decisions, the findings of the ombudsman in an individual case may have implications for the overall reform process, thus adding impetus and encouragement to an on-going democratic reform process and helping inject a human rights culture into a society.

Such an institution should be established in the FRY.

## **II - STRENGTHENING THE INDEPENDENCE AND EFFECTIVENESS OF THE JUDICIARY**

It is essential for democratic stability that the judiciary within the FRY, at all levels, operates according to the rule of law. Indeed, it is pointless to introduce legislation unless its implementation is effectively guaranteed through supervision by an independent and competent judge and unless those responsible for implementing it are qualified professionals, in particular lawyers and prosecutors, performing their duties in a specific legal framework.

Also, stability will be reinforced when any person living under FRY's jurisdiction can have confidence in the structure of the State, among which the judiciary occupies a crucial position. The smooth functioning of the courts is also essential for the economic development of the country.

The importance of the question of independence and efficiency of the judiciary emerged especially during the 22<sup>nd</sup> Conference of European Ministers on Justice, on the independence and impartiality of judges (Chisinau, June 1999) and during the 23<sup>rd</sup> Conference (London, June 2000), on the theme of improving the administration of justice in the 21<sup>st</sup> century. The judiciary should be organised on the basis of the European Convention on Human Rights and the Court's case law (in particular regarding Article 6), and other standards such as those contained in Recommendation R(94)12 on the independence, efficiency and role of judges, the European Charter on the status of judges and the work of the Consultative Council of European Judges, including the "Framework Global Action Plan for Judges in Europe" adopted by the Committee of Ministers on 7 February 2001. It could also take into account the results of the specific activities developed within the framework of the Stability Pact for South Eastern Europe, and in particular the three regional meetings which took place in Athens (January 2000) on the "Guiding principles in the field of justice", Budapest (March 2000) on "The independence of the judiciary" and Ankara (March 2000) on the "Training of judges and prosecutors".

### **A)D) Organisation of the judiciary**

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The legislative framework for the organisation and functioning of the courts should be considered to ensure that it is reformed in line with European standards. This applies to all levels within the FRY, according to the constitutional repartition of judicial powers. It concerns first of all courts and other relevant bodies at the republic level, although a specific attention should be paid to the Federal Supreme Court and the Federal Military Court.

The reform of the organisation of the judicial system should address the organisation of the prosecutorial system, and in particular the role and powers of public prosecutors in the criminal procedure, and their relation with the other bodies acting in the judicial system, in line with Recommendation R (2000) 19 on the role of public prosecution in the criminal justice system. Furthermore, the role and functions of the judicial police should be properly articulated within the judicial system (see below).

This structural reform should eventually organise appropriate relationships between the ministries of justice, the courts and the prosecutors' offices to define a proper balance between the task of the executive power to ensure the smooth functioning of justice, the independence of judges and the role of prosecutors.

### **B) The status and career of judges**

The status of judges is the essential element to guarantee their independence and thus the credibility of the judicial system. A priority should therefore be given to the definition of a new status for judges and the establishment of a High Judicial Council, which would be responsible for the appointment of judges (and prosecutors), the management of their career and disciplinary regime.

Specific action could also be undertaken toward reinforcing the associations of judges so that judges can themselves play an active role in the development of the judicial system, and in particular judicial ethics.

### **C) Training of judges and prosecutors**

An efficient judicial training system is an important element both to ensure the quality of the judicial system and to strengthen the independence of judges. A particular effort should therefore be made to develop structures and tools for (initial and) continuous training of judges and prosecutors as well as in-service training of judges with regard to their statutory rights and obligations, the application of domestic law in the light of international instruments, methods of conducting proceedings and managing the justice system (particularly the functioning of the courts, personnel management and budgetary questions) and the European Convention on Human Rights and the case law of the European Court of Human Rights (see above I-2). This work should take into consideration the principle according to which public authorities are responsible for organising the training of judges while respecting judges' independence.

### **D) Efficiency of the judicial system**

There is no effective development of the fundamental principles of the Rule of Law where the judicial system does not operate efficiently. It is therefore of the highest importance to improve the effectiveness and quality of what should become a genuinely accessible system within the Federal Republic of Yugoslavia.

Reforms should improve the *access to court* by strengthening the rights of the defence and then defining the proper *organisation and functioning of bar associations*, on the basis of the European Convention on Human rights and the Court case law and Recommendation R(2000) 21 on the freedom of the exercise of the profession of lawyers, as well as the work of the Regional Council of Bar Associations to be created within the framework of the Stability Pact for South Eastern Europe. They should also develop appropriate mechanisms for *legal aid and legal advice*. In the context of the FRY, *alternative measures of solving disputes* also appear to be key means of reducing the waiting time in judicial proceedings and improving the quality of justice.

The *execution of court decisions*, which is an integral part of the right to a fair trial, should be organised so that court rulings, at all levels, be carried out without undue

delay. The efficiency of the judicial system therefore requires the improvement of the system for executing judicial decisions, particularly in civil, commercial and administrative cases.

Finally, the efficiency and smooth functioning of justice cannot be reached without appropriate means. Therefore the FRY as well as the republics should dedicate proper budgetary and human resources to their judicial systems.

### **III - REFORM OF THE PENAL SYSTEM**

Criminal legislation and policies must be adopted and implemented in conformity with human rights and European standards of criminal law. Particular importance should be attached to training those responsible for ensuring security and law and order at all levels, on the basis of the standards established by the Council of Europe.

#### **A) Legislation in the criminal field**

The FRY has requested to accede to a number of European conventions in criminal matters. Therefore reforms of criminal legislation (in particular the criminal code, the code of criminal procedure, and laws on internal affairs), both at the federal and republic level, must ensure the compatibility of domestic legislation with these legal instruments. They should also take place so that the FRY can fulfil all its international obligations in the criminal field. Appropriate authorities within the FRY should reform the legislation in co-operation with the Council of Europe's experts, taking into consideration their experience in the reform of criminal law in several States of the Region. This reform will duly have to take into account Protocol N° 6 to the European Convention on Human Rights on the abolition of the death penalty (see also above A.1), as well as Article 3 of the European Convention on Human Rights and the European Convention for the Prevention of Torture and other Inhuman and Degrading Treatment and Punishment.

Moreover, rapid provisions should be made for an appropriate amnesty and review of judgments that have recently been passed in criminal cases.

#### **B) Organisation and functioning of the police**

The organisation of the police is crucial when establishing respect for human rights and the Rule of law. In order therefore to ensure respect for these fundamental principles in police activity, specific efforts should be focused on the legislation organising police forces at federal and republic levels, on the development of police ethics, as well as on the training of police on human rights issues and ethics.

These efforts should be carried out on the basis of the European Convention on Human Rights, as well as the Recommendation on Police Ethics to be adopted by the Council of Europe's Committee of Ministers. They should also take into account the programme "Police and Human Rights – beyond 2000" (see also above I.B). Specific attention should be paid to the definition of the role and powers of the judicial police and its effective functioning, in line with criminal legislation and the legislation governing the organisation of the judicial system.

### **C) The fight against corruption and organised crime**

Fighting corruption and organised crime has been recognised as essential to the strengthening of democratic stability, as corruption and organised crime hamper efforts to adopt democratic practices. The authorities within the FRY have committed themselves to addressing this question as a priority and might therefore adopt relevant policies with a view to ratifying the Criminal Convention on Corruption and the Civil Convention on Corruption as soon as they enter into force, ratifying the Convention on Money Laundering, and becoming a party to the GRECO mechanism. They should also take into account the provisions of the European Convention on Money Laundering (ETS N° 141).

To reach and fully implement such standards, the FRY should participate actively in the Stability Pact Initiative against Corruption (SPAI) and the Stability Pact Initiative against Organised Crime (SPOC).

### **D) Reform of the prison system**

The FRY must ensure the smooth running of the prison system in accordance with European standards, such as the European Convention on Human Rights, the Convention for the Prevention of Torture and Other Degrading and Inhuman Treatment or Punishment and the European Prison Rules. Doing so would enable it to improve management of the prison administration and individual prisons, and to promote best practice for prisoner rehabilitation and the prevention of recidivism (by preparation for release, education and training programmes, work in penal institutions, post-release support).

This work should take into consideration the experience gained in reforming the prison systems in the countries of South Eastern Europe as well as the existing Joint project OSCE/ODIHR – Council of Europe for prison reforms within the framework of the Stability Pact.

## **IV – FREEDOM OF EXPRESSION AND ASSOCIATION**

### **A) Freedom of expression and information**

The right to freedom of expression is not only a cornerstone of democracy, but also a prerequisite for the enjoyment of many of the other rights guaranteed by the ECHR. It includes freedom to hold opinions and to receive and impart information and ideas through a plurality of independent media catering for the needs of all segments of society.

Freedom of expression in the FRY context is of particular importance as regards the recognition of pluralism, including religious pluralism, tolerance of criticism, access to information, the fight against hate speech and the promotion of tolerance, the protection of journalists when reporting on crime and corruption, the establishment of

an independent public service broadcasting organisation, and the freedom of expression of public employees.

The FRY authorities should ensure that these issues are addressed both in law and in practice.

Because of the essential role that independent media play in non-democratic societies, the Council of Europe has since 1998 been providing active support to independent media in the FRY through, *inter alia*, the expertise of the Serbian Law on Public Information, the organisation of two Conferences on *Media for a Democratic Europe: transformation of broadcasting in FRY*, in December 1998 and December 2000 in co-operation with ANEM, and training activities for journalists, in co-operation with various NGOs such as the European Journalism Centre, Article 19 and the Alternative Information Network.

Independent media also have a unique role to play in the development of a democracy, and this is the reason why the FRY authorities should, as a matter of urgency, design and implement a legal framework which allows the media to operate and develop in a free and independent manner, in line with the European Convention on Human Rights, (in particular its Article 10), and other relevant Council of Europe instruments.

The media should also be able to contribute to open and transparent governance and to help create a climate of tolerance and mutual understanding in society, while combating the dissemination of hate speech.

#### **B) Freedom of association including support to civil society**

It is acknowledged that civil society has played, and continues to play, a very important role in the transformation of the FRY. The support of civil society by the FRY authorities should continue in the spirit of the “Bratislava Process”, an important contact point of various components of civil society, which has been supporting the process and content of democratic reforms in FRY since summer 1999.

A legal status for associations and non-governmental organisations should be developed in full compliance with the ECHR, the European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations and the Council of Europe's ongoing work to propose guidelines for the legal status of NGOs, as well as the “Stability Pact Declaration on NGO-Government Partnership in South Eastern Europe”.

The relevant authorities should support the freedom of association of the non-governmental sector with practical and concrete measures, such as tax-breaks and exemption from postal charges, over and above a legislative framework. Furthermore, it be established that European standards relating to freedom of association are applied in practice to all associations, NGOs, as well as trade unions and political parties.

### **V – PROTECTION OF THE RIGHTS OF MINORITIES AND PROHIBITION OF DISCRIMINATION**

**A) Protection of minority rights**

The Conference acknowledges that the question of minority rights is a particular challenge in that there is no specific “European formula” but a framework system from which the FRY must find its solution. At the same time, the resolution of minority questions is one of the main factors of stability in FRY and the neighbouring States. A first important step taken in protecting and promoting the rights of national and ethnic communities has been the establishment of a working group to draft new legislation at a federal level for the protection of national and ethnic communities and first discussions have taken place with Council of Europe experts on this subject. Furthermore an important Conference on the “Development of a Multi-cultural and Multi-ethnic Society” was held in Belgrade, on 2 and 3 February 2001, bringing together, for the first time in ten year, the authorities and members of national and ethnic communities for discussions on this subject.

These are important steps in the process leading to the invitation to ratify the Framework Convention for the Protection of National Minorities as well as the European Charter for Regional or Minority Languages.

Work on the drafting of a new law on national and ethnic communities will need to be carried on, ensuring full consultation with all interested parties. The Council of Europe stands ready to continue to provide advice and assistance.

In undertaking this work it will be important to carry out a full review of domestic law and practice in order to highlight potential areas of conflict with European and International minority rights standards. Linked to this could be a “non-discrimination review” of legislation and practice to identify discriminatory provisions in law and practice which impact on national and ethnic communities. Such a review is provided for within the Stability Pact for South East Europe.

It is essential to continue to raise awareness about minority rights issues and the need for legislation on national and ethnic communities. A synergy between the awareness-raising campaigns currently planned in the FRY and those proposed under the Stability Pact awareness-raising campaign “Link Diversity” can be recommended.

Promoting good ethnic relations may be the subject of bi-lateral agreements with neighbouring States, and the FRY Authorities are encouraged to examine possibilities for such bi-lateral agreements.

**B) Prohibition of discrimination**

A first step for the appropriate authorities will be the removal of all discriminatory legislation, such as the Law on Real Estate Transactions.

At the same time, they should engage in drafting and adopting a specific body of comprehensive civil and administrative anti-discrimination legislation covering discrimination in different fields of life such as employment, use of language, education, housing, access to public and social services and public places, contractual relations between individuals. Such legislation should embrace the concepts of direct and indirect discrimination and should provide for the establishment of an effective mechanism of enforcement.

A part of this work could be the “non-discrimination review” of legislation and practice (referred to above, B) minority rights) to identify discriminatory provisions in law and practice which impact on national and ethnic communities. Such a review is provided for within the Stability Pact for South East Europe.