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CRISIS IN YUGOSLAV PUBLIC LAW

PETAR TEOFILOVIĆ*

I. INTRODUCTION

Writing about the crisis in Yugoslavia is a challenge indeed. The crisis is overwhelming, penetrating almost every aspect of social life, and affecting the majority of citizens on a personal level in many unpleasant ways. Fluctuations in its intensity and breadth occur, sometimes for better, but usually for worse. Politics, economy, internal ethnic and civic relations, relations with the rest of the world, even science, culture, arts, morale are all severely affected by the crisis, and have significantly deteriorated in comparison with the state of affairs (far from perfect itself) that existed in Yugoslavia until the beginning of the 1990's. The ways of ruling, and the functioning of the state's agencies, have been continually distorted, gradually becoming more and more absolutist, presenting in many respects a disturbing deviation from most standards accepted by the majority of the modern world. The crisis has been a substantial part of contemporary Yugoslavia since the state emerged in its present shape in 1991, and has persisted.

The domain of law, and public law in particular, has not been immune to the devastating effects of the sweeping and ongoing social crisis. A comprehensive picture of the state of Yugoslav public law would naturally require a much longer article. Thus, this paper will cover two of the most illustrative aspects in this domain: the crises in the federal order and in the media.

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Section II contains, as background, a brief outline of the federal arrangement of Yugoslavia; how it was established and its most important features. It also contains basic information about the political context in contemporary Yugoslavia. Section III deals with the development of the crisis of Yugoslav federalism. Section IV presents an overview of the current state of lack of freedom of the press. The abuses of the regime have been most flagrant and long-lasting in this area, since resistance to the regime has been highly vocal in the media. The conclusion to this paper updates the events described and attempts to project future developments.

II. BASIC INSTITUTIONAL AND POLITICAL ASPECTS OF THE FEDERATIVE REPUBLIC OF YUGOSLAVIA

A. THE ESTABLISHMENT AND MAIN INSTITUTIONAL FEATURES OF YUGOSLAV FEDERALISM

It is important to have some understanding of the federal structure of the country as a background to understanding the crisis in Yugoslav law.

Until the disintegration in 1991, the Socialist Federative Republic of Yugoslavia (SFRY) was a federation consisting of six member-states (republics) and two autonomous provinces. According to the 1974 federal Constitution of SFRY, the last in force before the dissolution of the country, all these units, the republics as well as the provinces, were the constitutive elements of the federation. Both provinces were formed on the territory of the Socialist Republic of Serbia — Vojvodina in the north and Kosovo in the south. The 1974 federal Constitution, as well as the Constitution of the Socialist Republic of Serbia of 1974, provided for a very high level of autonomy for the provinces, which in many respects made their status equal with that of the republics.

The events at the end of the 1980's and early 1990's wrought many controversies on the federal level and within the federal units concerning the then federal arrangement of Yugoslavia. One of the characteristics of that period was the eruption of nationalism throughout the country. Some proposals for a new constitutional arrangement were introduced, but in the existing political setting none of them seemed good enough to the political elites. Tensions were high; provocations and armed clashes started shortly thereafter. As a result, SFRY split in 1991 and the wars for the territories began, ending after the Dayton Peace Accord in 1995. After this dissolution of SFRY, five new states emerged. Four of them are former republics of Yugoslavia that had gained independence. The

fifth, the Federal Republic of Yugoslavia (FRY), is the one discussed in this paper.

In 1990, during the disturbances that were going on before the country split, the Constitution of Serbia was amended to introduce many changes to the previous constitutional order. The constitution of the former Yugoslavia (SFRY), effectively abolished after the country's breakup, was formally replaced by a new one enacted in April 1992. It established FRY as a federation consisting of two remaining federal units from the former Yugoslavia — the Republic of Serbia (including both provinces) and the Republic of Montenegro.¹ The latter enacted its new constitution in October 1992. Therefore, the present constitutional system of FRY incorporates three constitutions.

These constitutions were drafted in a very short period of time, by a small circle of politicians and legal experts loyal to the regime. No material public debate was conducted on the issues addressed or on the solutions and formulations proposed. The current Constitution of Serbia was enacted by the still single-party Serbian Parliament (consisting of deputies of the members of the former League of Communists) before the first multiparty elections in more than half a century introduced plurality and opposition, however rudimentary, into the parliament.² As for the Montenegrin Constitution enacted by its multiparty legislative body, controversies and opposition in parliament were easily ignored by the ruling party's majority, and the proposed text was ratified without much debate.³ Finally, the federal Constitution was a result of an arrangement between the ruling parties of Serbia (Socialist Party of Serbia) and Montenegro (DPS).⁴

1. CONST. OF THE FEDERAL REPUBLIC OF YUGOSLAVIA, art. 2, § 1 [hereinafter CONST. OF FRY]. English translation of the CONST. OF FRY can be found, *inter alia*, on Internet at <<http://www.uni-wuerzburg.de/law/sr00000.html>> or <<http://www.beograd.com/kule>>.

2. The first free multiparty elections in Serbia and Montenegro were held at the same time, December 1990. The elections were prepared and held under circumstances so unfair for the opposition parties that it is not clear if they can be considered free at all. See VLADIMIR GOATI, IZBORI U SRJ OD 1990 DO 1998; VOLJA GRADJANA ILI IZBORNA MANIPULACIJA, 27-58 (Centar za slobodne izbore i demokratiju, Beograd, 1999.) [V. GOATI, ELECTIONS IN FRY FROM 1990 TO 1998 - WILL OF THE CITIZENS, OR ELECTORAL MANIPULATION, 27-58 (Center for Free Elections and Democracy, Belgrade, 1999)].

3. The Montenegrin Constitution was passed by the Assembly clearly dominated by deputies belonging to the regime, i.e. to the ruling Democratic Party of Socialists — DPS (former League of Communists of Montenegro).

4. The federal constitution was adopted without a chance for the opposition to influence its contents, by a small number of deputies (73 out of 220, former members of the League of Communists, and then mostly members of Milosevic's SPS and Bulatovic's DPS) remaining in one of the three Chambers — the Federal Chamber — of the Assembly of the long disunited SFRY. The

Generally, the existing constitutional order formally provides for the strong status of the republics and a relatively weak federation. In Serbia, according to its Constitution, the President of the Republic has the most power; this state and political system could be called "semi-presidential." In Montenegro, the President of the Republic has few powers, so the Government and its Prime Minister are in a balanced position against him. The system established by the Constitution is a parliamentary one.

Finally, on the federal level, the President of the mutual state has largely representative and ceremonial powers and is, under the Constitution, a body of minor importance. According to the FRY Constitution of 1992, the highest legislative body of Yugoslavia is the Federal Assembly, but the Government and its Prime Minister have considerable power over the Assembly.⁵ The bicameral Assembly consists of the Chamber of Citizens and the Chamber of Republics.⁶ The Chamber of Citizens is composed of the deputies elected directly by secret ballot; one deputy per 65,000 voters.⁷

Since the population of Montenegro makes up only about 10% of the total population of FRY, a corrective mechanism is built into the federal Constitution to abate the disproportion between the number of deputies coming from two entities — each member republic is to have no less than 30 federal deputies.⁸ The other chamber reflects the federal structure of FRY. Each republic, notwithstanding its size and the number of its citizens, appoints 20 deputies to the Chamber of Republics.⁹ Election and termination of the mandates of federal deputies in the Chamber of Citizens of the Federal Assembly are regulated by federal law, while

first multiparty elections for the federal Parliament of the state renamed by the Constitution as the Federal Republic of Yugoslavia were held some five weeks after the new Constitution was adopted, in May 1992. The Act on Elections, adopted immediately after the promulgation of the Constitution by the same Assembly, introduced an odd combination of a majoritarian and proportional electoral system in favor of the ruling parties. Many other features to the advantage of the regime (the design of electoral units; control over the media; ample financial resources; manipulations with the lists of the electorate; etc.) forced the most important opposition parties to boycott those elections. After massive civic protests in June 1992, an agreement was reached between the two sides that new, extraordinary, elections for the federal Parliament were to be held by the end of 1992; they occurred indeed in December 1992. *See also* V. GOATI, *supra* note 2, at 59-87.

5. For instance, according to Art. 83 of the Constitution of FRY, "The Federal Assembly shall be dissolved at the request of the federal government." The Constitution prescribes some extraordinary situations during which the government cannot dissolve the Assembly in Art. 83, sec. 2 (if the vote of no confidence to the government was initiated in the Assembly), and in Art. 85, sec. 1 (in the first or last six months of the Assembly's term, during a state of war, imminent threat of war, or state of emergency).

6. CONSTITUTION OF FRY, *supra* note 1, art. 80, § 1.

7. *Id.* art. 80, § 2.

8. *Id.*

9. *Id.* art. 80, § 3.

election and termination of the mandates of federal deputies in the Chamber of Republics are regulated by the law of the respective republic.¹⁰ Finally, both chambers concurrently decide questions within the jurisdiction of the Federal Assembly, unless otherwise provided by the Constitution.¹¹

A glance at these provisions of the federal Constitution is sufficient to show that this arrangement can function only while a consensus exists between the two member states. Namely, Serbia as a larger member has more directly elected deputies in the Chamber of Citizens, and has so far easily managed to obtain the majority required by the Constitution to pass a statute in this Chamber. However, an equal number of deputies in the Chamber of Republics, and the concurrent legislative jurisdiction of both Chambers in the Federal Assembly, make it possible for either member state to block enactment of any decision it deems contrary to its interests. The Constitution contains provisions with controlling mechanisms in such cases which, however, may secure only a temporary solution or lead to a parliamentary crisis and extraordinary elections for the federal Parliament.¹²

In practice, the real center of power is highly personalized, personified in Slobodan Milosevic, and shifts according to the position Milosevic occupies at any given moment. During Milosevic's term in office as President of Serbia, key powers were concentrated in the hands of the Serbian president, sometimes beyond constitutional limits. After Milan Milutinovic became President of Serbia in December 1997 replacing Milosevic who was nominated President of Yugoslavia by the federal Assembly,¹³ the position of the Serbian President abruptly lost its previous importance. On the other hand, as President of Yugoslavia

10. *Id.* art. 81, § 2. Both republics have their deputies in the Chamber of Republics nominated and (easily) revoked by their assemblies. So far, the deputies have voted regularly in accordance with the interests of the republic (leadership) which nominated them.

11. *Id.* art. 90.

12. If an act has not been passed in both Chambers in an identical text, a five member commission is to be established to work out a harmonized text. If the commission does not come up with a harmonized text, or if the draft it proposed is not passed in both Chambers in the identical text, the version of that act adopted in one of the Chambers (which one depends on the area the statute regulates) may be provisionally enforced until it is enacted in both Chambers, but no longer than for a year after the start of its application. If by the end of that period the act is not adopted in both Chambers, the mandate of the Federal Assembly shall be terminated. CONSTITUTION OF FRY, *supra* note 1, art. 91-93.

13. The President of FRY is not directly elected at popular elections, but appointed and dismissed by the Federal Assembly. The term in office is four years, and the same individual may not be reelected for a second term. CONSTITUTION OF FRY, *supra* note 1, art. 78, § 1/7 and art. 97 §§ 1, 2.

Milosevic usurped powers that do not belong to that office under the federal Constitution, leaving no doubt as to what constitutes the key decision-making body on the federal level.

All important decisions are made in parallel centers of powers and are transmitted to relevant institutions through mechanisms within the ruling parties. At the top of the hierarchy is the current President of Yugoslavia, Slobodan Milosevic, his wife Mirjana Markovic, and their circle of close collaborators. The state bodies and institutions established by the Constitution, including Parliament, are often used only to preserve the illusion of legality and legitimacy. In such a constellation, acts and decisions of the legislature, executive, and judiciary are directed from the outside, by the centers of political powers, and are sometimes openly in violation not only of the statutes and general acts of lower legal force but of the Constitution itself.¹⁴

14. As for the legislative bodies, particularly the federal and the Serbian, they are, generally, inappropriately passive during their terms. For instance, in the period from late 1992 until the end of 1994 the federal Assembly had worked only 18 days. See PAVLE NIKOLIC, OD RASPADA DO BEZNADJA I NADE (Filip Visnjic, Beograd, 1997) [PAVLE NIKOLIC, FROM THE BREAK UP TO HOPELESSNESS AND HOPE, (Belgrade, 1997)]. The situation did not improve later -- although the Federal Assembly could work in sessions for up to 240 days during the year, in 1998 the federal Assembly's Chamber of Citizens held 24 sessions, while the Chamber of the Republics held only 10 sessions. In comparison, most Western European countries' Parliaments work from 75-100 days per year (120 days in France). Vucina Vasovic defined this state as "the presidential anesthesia of parliamentarism." Regarding the Federal Assembly, he points out that "the fragile nature of the federation," which for a variety of reasons causes the "fleeing" or the "sliding" of powers toward the center of the executive, is one of the main reasons for the weak position of the federal legislative body. LAVIRINTI KRIZE, VUCINA VASOVIC (urednik), (Institut za Evropske Studije, Beograd, 1998) [VUCINA VASOVIC (ed.), THE LABYRINTHS OF CRISIS (Institute for European Studies, Belgrade, 1998)] quoted in Milan Milosevic, *Rekonstrukcija Savezne Vlade (The Reconstruction of the Federal Government)*, VREME (weekly), no. 431, 23 January 1999.

The extent of control of the regime over the judiciary was most obvious after the outrageous electoral theft by the regime of the elections for local governments in Serbia in November 1996. The opposition parties achieved the most significant success by then, winning majority in all the major cities in Serbia, but a number of results were annulled by the Electoral Board, and soon afterward an even larger portion was nullified by the courts. In the second round of elections the regime performed a wide range of forgeries to retain power, by extensively violating the Act on Elections. Although many manipulations were proven and made public, the Public Prosecutor's office never initiated criminal proceedings in cases of alleged violations of the Act on Elections, as it is mandated to do according to the law. The proceedings were initiated by an opposition party, against more than 50 presidents or members of electoral committees, but the judicial proceeding was started in only one case, which is still pending. On the other hand, in all the other elections the courts regularly rejected numerous appeals coming from opposition parties. The Lawyers' Association of Serbia instituted the Commission for Expert Analysis of the Procedures Related to Elections, which reviewed in detail the courts' decisions which altered the results of the elections. In its report the Commission established that the courts in general violated the law in those proceedings by: not respecting the right of all interested parties to participate in the proceedings (to the detriment of the coalition of opposition parties "Together"); not respecting the principle of establishing the truth in the proceedings (courts often decided solely on the grounds of unproved allegations coming from SPS); and violating the principle of full judicial jurisdiction in those proceedings. See *The*

B. THE POLITICAL SETTING IN YUGOSLAVIA

The institutions of the present system are not functioning as they should, and are currently only a theater, while the real decision-making powers lie elsewhere. The multiparty system was introduced in Yugoslavia, Serbia, and Montenegro in 1990. The major parties in the political life of Yugoslavia and its member states are the following:

The strongest ruling party in Serbia is the Socialist Party of Serbia (SPS). Its leader since 1986 has been the current President of FRY, Slobodan Milosevic.¹⁵ This party originated when the former League of Communists of Serbia (LCS) merged with the Socialist Alliance of Working People of Serbia (an organization which embraced the associations of trade unions, women, students, youth, and WWII veterans, actually an extension of the LCS), taking over their huge assets, existing organizational structure, and the majority of former members. SPS has been in power, both in Serbia and on the federal level, continuously since it originated, either alone (after the first multiparty elections in Serbia in 1990, until the next ones in 1992), or as the strongest and dominant partner in various coalitions (from 1992 to today). Originally a left-oriented party of a communist provenance, it soon shifted strongly toward the right wing by incorporating numerous nationalist elements, merging both orientations through the years. In close collaboration with the extreme left and far right parties, it currently forms coalition government with them in the federal and Serbian parliaments.

Report of the Commission..., Documents of the Association of Lawyers of Serbia, of the Association of Lawyers of Montenegro, and of the Association of Lawyers of Yugoslavia; Documents of the Belgrade Center for Human Rights [Belgrade, 1996].

For more information on these and other direct elections, the means used in the electoral fraud, the long lasting public protests that followed, the outcomes, etc. See VESNA RAKIC-VODINELIC, ET AL., *IZBORNA KRADJA, PRAVNI ASPEKT* (Media centar, Beograd, 1997) [V. RAKIC-VODINELIC, ET AL., *THE ELECTORAL THEFT - LEGAL ASPECT* (Media Center, Beograd, 1997)]. See also LJUDSKA PRAVA U JUGOSLAVIJI 1998, 158-165 (Beogradski centar za ljudska prava, 1998) [HUMAN RIGHTS IN YUGOSLAVIA 1998, 158-165 (Belgrade Center for Human Rights, 1998)]; GOATI, *supra* note 3; Letter from Felipe Gonsales to Flavio Koti, the Chairman of OSCE at that time, (27 December 1996); REF PC-784/96; THE FINAL REPORT OF THE CSCE MONITORING MISSION ON THE PARLIAMENTARY AND PRESIDENTIAL ELECTIONS IN THE REPUBLIC OF SERBIA, December 20, 1992 (printed in daily BORBA, 18 January 1993); REPUBLIC OF SERBIA: PARLIAMENTARY ELECTION SEPTEMBER 21, 1997 AND PRESIDENTIAL ELECTION SEPTEMBER 21 AND OCTOBER 5, 1997, OSCE OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS (Report, 1997).

15. Both the FEDERAL CONST., art. 97, sec. 2, and the SERBIAN CONST., art. 86, sec. 7 provide that "the President of the Republic may not engage himself in any other function or professional activity." When he assumed the offices of President of Serbia and later, Yugoslavia, Milosevic did not resign as President of the SPS, but he "froze" his function as party leader. For objectivity's sake, it must be said that the same thing was done by the current Montenegrin President Djukanovic, see *infra*.

Another party currently in power is the Yugoslav United Left (YUL), headed by Milosevic's wife, Mirjana Markovic. This party was founded as an association of several small extreme left parties in July 1994, and, according to various surveys of public opinion, has never managed to gain the support to give it alone more than a couple of representatives in the Assembly.¹⁶ Still, as a coalition partner of SPS in the federal parliamentary elections of 1996 and in the last Serbian parliamentary elections of 1997, by internal agreements within the coalition YUL has more representatives than its number of supporters would indicate.¹⁷ Its influence in politics, the economy, and other aspects of daily life is disproportionately strong, extending far beyond the limits of its support.

The Serbian Radical Party (SRS), led by Vojislav Seselj, is an openly extreme-right oriented party. It formed an informal coalition with SPS after the elections for the federal and Serbian parliaments in 1992, through mid-1993. At that time, SRS and SPS entered into open confrontation in the Serbian Assembly, resulting in the Assembly's dismissal by the then President of Serbia, Milosevic, and in extraordinary elections for the Serbian Assembly in December 1993.¹⁸ After the last (again extraordinary) elections for the Serbian Assembly in 1997 SRS, rather unexpectedly, became the coalition partner of SPS and YUL.¹⁹

16. The results of a survey of public opinion conducted by the Institute for Social Sciences in May 1996, before the last elections for the Federal Assembly (November 1996), suggested that YUL was supported by not more than 1.7% of the electoral body. A similar survey by the same Institute in May 1997, before the last elections for the Serbian Assembly held in September 1997, showed that only 1.1% of the voters supported YUL. See GOATI, *supra* note 3, at 94-99, 152-153. Although the exact number of those who actually supported YUL in these elections is not available since the voters voted for the coalition as a whole and not for a particular party, it is reasonable to assume that this figure was not considerably higher than those established by the surveys.

17. YUL was assigned 16 representatives (1/4 of the total representatives of the coalition) in the Federal Assembly after the last elections, and 20 seats in the Serbian Assembly (out of 110 seats secured by the coalition) after the last parliamentary elections in Serbia (September 1997). In addition, several members of this party became ministers in the federal and the Serbian government.

18. SRS initiated the proceedings in the Assembly for a vote of no confidence on the government of Serbia. The opposition parties, which at the beginning decided not to take sides and to abstain from voting in this matter, later backed the initiative, and the dismissal of the government seemed inevitable. See GOATI, *supra* note 3. Thus, Milosevic dismissed the Parliament on the grounds of the SERBIAN CONST., art. 98, sec. 1 (which grants him the power to do so "at the proposal of the Government containing justified grounds").

19. After these elections for Serbian National Assembly, the SPS did not manage to win the majority, even in coalition with YUL and its previous coalition partner, another small party called New Democracy (together, they won 34.2% of all votes, and 44.0% of the seats in the Assembly). SPS had to enter into coalition with another party to secure the majority in the Assembly. It seemed that this time it would be forced to reach an agreement with the largest and most influential opposition party at that time, Serbian Renewal Movement, to form a relatively stable federal government. However, the negotiations between SPS and SRM failed, apparently because SPS was not ready to renounce as much power as SRM thought it was in a position to demand in that

The differences in programs among these three partners, particularly between SRS and the other two parties, are huge in many respects, making their current coalition appear awkward and seemingly difficult to sustain. Nevertheless, the “red-black coalition,” as it is nicknamed, has been functioning well so far.

Some parties were founded by the regime in order to confuse the electorate and cause dissipation of votes that would otherwise go to the opposition. Such parties usually reappear in public some time before the elections or when the regime needs support for its intended moves, but have no real influence in the political life.

The Serbian Renewal Movement (SRM) is the opposition party with the strongest support among voters. Its orientation has changed over the years from the extreme right toward the center, and it is now best described as a right party of the center, democratically and nationally oriented, with elements of monarchism. SRM has entered into loose coalitions with other democratically oriented opposition parties prior to elections, but its tendency to take a leading role within the opposition, among other reasons, has contributed to conflicts with other parties, and to the short life of such alliances.

After “Together,”²⁰ the last alliance SRM joined, fell apart in mid-1997, SRM decided to participate alone in the elections for the Serbian parliament in September 1997, which its former coalition partners boycotted. Since the SPS dominated coalition achieved poor success in the Serbian parliamentary elections, SRM seemed to be the most likely candidate to form the coalition government with it, but that did not occur (*See note 20, infra*).

To all appearances, soon after the split of the “Together” alliance the leadership of SRM, until then in bitter opposition to SPS, shifted towards the regime in some respects, and even started openly collaborating with it

situation. Just after abandoning talks with SRM, SPS announced its coalition with SRS. The outcome was further radicalization of the already tensed political situation in many respects (further gradual aggravation of the situation in Kosovo and of relations with the international community, worse persecution of the independent media, a new and unprecedented attack on the University and its autonomy, and the sharpening of the already exceptionally totalitarian practices of the regime).

20. Besides SRM, the opposition alliance “Together” was joined by the Democratic Party (DP), Democratic Party of Serbia (DPOS), and the Civic Alliance of Serbia (CAS), all of which were represented in Parliament at that time, and by other smaller democratically oriented political parties.

on some issues.²¹ Since then, until recently, SRM has avoided open conflicts with SPS, and in some local governments where it won the majority even adopted elements of the regime's style of governing. This caused huge dissatisfaction among its members, resulting in a decrease of support to SRM.

In January 1999, the leader of SRM, Vuk Draskovic, was appointed Deputy Prime Minister of the federal Government, while some SRM members entered the federal government. However, Draskovic was dismissed from office at the end of April 1999 at the peak of NATO's bombing of Yugoslavia, after criticizing aspects of the government's policy in that period. SRM did not join the anti-regime protests all over Serbia that occurred for about two and a half months (from September 21 until early December 1999), the majority of which were organized by the Alliance for Change (an umbrella organization which includes various political parties, individuals, and associations).

On October 3, 1999, a loaded truck suddenly veered into two cars carrying Draskovic and several other members of SRM, killing four passengers. Draskovic was slightly injured in the accident. The driver of the truck fled, and was not found or even identified. The circumstances of the accident, and the inefficient investigation encouraged speculation that the accident was "an obvious assassination attempt" by the regime.²² Since then, SRM is reluctantly but gradually getting closer to joining the efforts with other opposition parties.

The Democratic Party (DP), led by Zoran Djindjic, is a democratically oriented party that has participated in the political life of Serbia and Yugoslavia with varying degrees of success. Depending on circumstances, it sometimes participated alone in elections, sometimes joined in alliances with other opposition parties, and sometimes

21. The collaboration became manifest when the representatives of SPS, and some of the SRS as well, supported SRM and its leader in the Assembly of Belgrade in its showdown with Zoran Djindjic, the leader of DP and later the Mayor of Belgrade (President of the Belgrade Assembly) at that time, forcing him out of office. SRM's member replaced Djindjic and became the "acting Mayor of Belgrade."

22. Draskovic on TV Studio B, 3 October 1999 - Source: FREEB92 DAILY NEWS (4 October 1999), Internet issue, in English at <<http://www.freeb92.net/archive/e/>>. For more details see Nenad Lj. Stefanovic and Zoran B. Nikolic, *Nesreca na Ibarskoj magistrali - Atentat?* [*The Accident on the Ibar Highway - An Assassination?*], VREME, no. 457, October 9, 1999.

According to the SRM's speakers, an independent investigation conducted by the SRM revealed certain facts that connect the State Security's office to this accident. In December 1999 SRM officially addressed the State Prosecutor's office, requiring an investigation against the heads of the Serbian and Belgrade State Security, but the request was dismissed. See FREEB92 DAILY NEWS (6 December 1999) at <<http://www.freeb92.net/archives>>.

boycotted elections. Since its last boycott of the parliamentary elections in Serbia in 1997, it has acted outside the Serbian Parliament. When SRM became more aligned with the regime, DP became the strongest party in opposition.

The Civic Alliance of Serbia (CAS) is a small opposition party, probably the most consistently democratic and anti-regime in FRY. It has formed coalitions with other opposition parties. Its electorate is small, sufficient to secure only a few seats in the Assembly. Thus, it has had a rather limited influence in the political life of Serbia and Yugoslavia.

The Democratic Party of Serbia (DPOS) is one of the factions that separated from DP in the early 1990's. It is supported by a rather stable, though small, electorate. Although sometimes giving supremacy to national issues over democratic ones, DPOS has criticized the regime constantly since its inception. Another faction from DP is the Democratic Center (DC), the leader of which was an initiator and organizer of the round table of opposition parties.

Numerous smaller parties are active in Serbia. Some are organized on the ethnic principle — for instance the Democratic Alliance of Hungarians of Vojvodina (DAHV), or the Party of Democratic Action (PDA) which represents the Muslims of Yugoslavia. Their influence is largely restricted to the major part of the ethnic group they represent, and to a region inhabited by the members of the specific ethnic group. Factions appear even within these parties.

Other smaller parties have regional or local importance, like the League of Social-Democrats of Vojvodina (LSDV), or the coalition "Vojvodina," consisting of several small parties from the northern province of Serbia. New Democracy (ND) is a small party that has been a coalition partner of SPS since the end of 1993, but is now its stern critic. Some parties are led by former members of SPS, or former high ranking military officers once close to the regime, like Democratic Alternative (DA), Social-Democracy (SD), and Movement for a Democratic Serbia (MDS). They have mostly attempted to attract disappointed members and supporters of SPS.

The Serbian opposition parties acted separately most of the time, producing a fragmented electorate and a dissipation of votes in the ruling parties' best interests. Their gradual assembly into larger coalitions began in mid-1999. A round table of opposition parties was initiated during the 1999 protests, with the aim of gathering forces against

Milosevic and the regime. In January 2000, all relevant parties reached a consensus on coordinated action for several major issues.

In Montenegro, the strongest political party is the Democratic Party of Socialists (DPS)²³. Since 1997 its leader has been Milo Djukanovic (formerly its vice-president), currently the President of Montenegro. It is the ruling party in Montenegro, and was the essential coalition partner of SPS on the federal level. In all elections since the multiparty system was introduced in 1990²⁴ except for those in 1998, DPS won enough votes to stay in power without entering into any coalition. During the most recent elections for Montenegro's Assembly in 1998 it was a dominant partner in the winning coalition named "To Live Better." Divisions within the party, concentrating primarily on the status of Montenegro in the federation, surfaced in mid-1997, causing its rupture into two factions, and gradually generating the severe crisis of the federal state (described in more detail in the next section).

The Socialist People's Party (SPP) is led by the former president of DPS, Momir Bulatovic, current Prime Minister of FRY's government. SPP appeared in 1997 as a faction of DPS during the power struggle between former close associates Djukanovic and Bulatovic.²⁵ Although the coalition "To Live Better" prevailed in the last republican parliamentary elections, SPP won more than one-third of the seats in the Montenegrin Assembly, proving it is still an important political factor in Montenegro, and to some extent on the federal level.

Aside from these two parties with common roots, several opposition parties are active in Montenegro. The People's Party (PP) and the Liberal Alliance of Montenegro (LAM) are the two most important. So far, opposition parties in Montenegro have not come close to replacing the ruling party, either alone or in coalitions. In the 1998 elections for the Montenegrin Assembly, PP and other opposition parties entered the coalition "To Live Better" with Djukanovic's DPS.

23. In the Montenegrin parliamentary elections of 1990, DPS participated under its previous name — League of Communists of Montenegro (LCM). The name of the party was changed from LCM to DPS in June 1991.

24. Elections for the Federal Assembly held in May 1992, December 1992, and 1996, and the elections for the Assembly of Montenegro held in 1990, 1992 and 1996.

25. After the division of DPS, both factions strove to keep the DPS's name. For more than six months, even during the critical presidential elections in Montenegro in October 1997, both factions performed under the name of DPS, with the name of each faction's president after that. Only in March 1998 did Bulatovic's faction change its name to SPP.

Ethnic Albanians populated in the southern Serbian province of Kosovo have never recognized FRY or the abolition of Kosovo's autonomy, and have pressed for an independent state. Political parties of Kosovar Albanians, joined in the boycott by the large majority of the Albanian population, have not participated in elections held in Yugoslavia or Serbia since 1990 (except in those illegally held by ethnic Albanians' parties in Kosovo, for their para-state bodies), nor have they engaged in the political life of the rest of Serbia in any other way.

Thus, a large part of the electorate remained outside the political systems of Serbia and Yugoslavia during the 1990's.²⁶ Montenegro is the exception, since the political parties of its Albanian population never called for a boycott of elections, and regularly participated in republican parliamentary and presidential elections. Since 1996, the Democratic Union of Albanians not only participated in Montenegrin parliamentary elections, but won seats in the parliament as well.

III. THE CRISIS OF YUGOSLAV FEDERALISM

A. DIVISIONS BETWEEN THE FEDERAL UNITS OF SERBIA AND MONTENEGRO

Leadership of the republics of Serbia and Montenegro has long been homogeneous. The ruling parties — SPS (Serbia) and DPS (Montenegro) — have been in close cooperation. Potential disputes were regularly settled informally, outside of parliament or government, and no severe controversies existed on the federal level. However, in mid-1997 a crack appeared in the leadership of Montenegro and the DPS, resulting in the appearance of two factions — a majoritarian faction which supported Milo Djukanovic, then Prime Minister of Montenegro and vice-president of DPS, and another faction led by Momir Bulatovic, then President of Montenegro of DPS. The former was also supported by the most Montenegrin and Serbian opposition parties, while the latter enjoyed the open support of the Serbian and federal leadership, headed

26. The regime actually benefited from the massive abstention of Kosovar Albanians from participating in the elections in Serbia and Yugoslavia. Because the boycott was joined by a large part of the population in Kosovo, the SPS candidates had no real opposition there. Thus, they regularly won in all, or in the large majority of electoral units in Kosovo (about 15-20% of the total number of seats in the Assembly, depending on the elections), where the total number of voters who participated in all electoral units in Kosovo sometimes equaled the number of voters in only one larger electoral unit in another part of Serbia. In few extreme cases, only several dozen votes were sufficient for an SPS candidate to win the elections in particular electoral units in Kosovo.

by Milosevic, who was appointed President of Yugoslavia by the Federal Assembly in mid-1997.

The conflict escalated some time before the presidential elections in Montenegro in October 1997 when these two high ranking Montenegrin officials and former close associates proposed two antithetical programs — a reformist one by Djukanovic, and one aimed at keeping the state as it was by Bulatovic. Djukanovic started advocating the need for democratization and overwhelming reform in FRY, and criticized the policies of the leadership of Serbia and of the federal government by blaming them openly for attempts to centralize the federal state and use its organs to ensure the supremacy of Serbia over Montenegro. He pointed to Milosevic as the most important factor of instability and the generator of crises in Yugoslavia, as well as to then Montenegrin President Bulatovic for neglecting the interests of Montenegro in the federal state.

This generated a split inside DPS. The majoritarian reformist wing in the Montenegrin DPS, backing Djukanovic, decided to nominate him as a presidential candidate, and he filed his application with the Montenegrin Electoral Commission, which accepted it. Since the Montenegrin statute governing presidential elections prescribes that each political party in the Republic may nominate only one presidential candidate (both republics had adopted this solution), Bulatovic could no longer be nominated for President by that party. However, his pro-Milosevic oriented supporters within DPS held a party conference a couple of days later, where he was nominated as a presidential candidate by the other faction of the same party.

At first, the Electoral Commission accepted Bulatovic's nomination as well, but Djukanovic's wing within DPS filed a complaint to the Montenegrin Constitutional Court, which has jurisdiction in these matters.²⁷ The Court accepted the complaint, arguing that the nomination of more than one candidate by the same party was against electoral law. Since Djukanovic's nomination by DPS came first, Bulatovic's candidacy could not have been accepted, and was accordingly invalidated by the Electoral Commission. He then exhausted available legal remedies within Montenegro, but the challenged decision of the Electoral Committee was upheld.

27. CONST. OF THE REPUBLIC OF MONTENEGRO, art. 113, § 1/8 (transl. by author) [hereinafter CONST. OF MONTENEGRO].

The federal bodies joined the showdown on Bulatovic's side. He filed an appeal to the Federal Constitutional Court, the members of which are appointed by the Federal Assembly,²⁸ and the majority of which is controlled by the Serbian regime. According to the federal Constitution, republics are sovereign in matters not reserved to the jurisdiction of the Federal Republic of Yugoslavia by the federal Constitution, and they autonomously organize their governments by their own Constitutions.²⁹

Accordingly, the Federal Constitutional Court has jurisdiction only in cases in which the alleged violation of rights occurred in the course of elections of *federal* officials,³⁰ while the Montenegrin Constitutional Court has exclusive jurisdiction to "decide in electoral disputes . . . which are not in jurisdiction of the trial courts."³¹ Basing their argument on these constitutional provisions, all relevant Montenegrin state authorities held that the Federal Constitutional Court had no jurisdiction whatsoever in this matter and should dismiss the complaint without reviewing the decision.

The Federal Constitutional Court nonetheless reviewed the complaint. It found an indirect way to effectively invalidate the Montenegrin Constitutional Court's decision and the decision of the Montenegrin Electoral Commission. In his complaint, Bulatovic argued that the article of the Montenegrin Act on Elections which provided for the nomination of only one candidate by each party was in violation of his right, guaranteed by the federal Constitution, to participate in political life.³² Since that right is prescribed in the federal Constitution (as well as in the two others), the Federal Constitutional Court first held it had jurisdiction in this matter; it then found that provision of the Act violated Bulatovic's right to participate in presidential elections, and finally annulled the decision of the Electoral Commission which rejected Bulatovic's candidacy. Although this decision was openly discarded by Montenegrin authorities, the Electoral Commission reversed its decision by allowing Bulatovic to participate in the presidential elections as a candidate of the DPS faction loyal to him.

28. CONST. OF FRY, art. 78, § 1/7.

29. *Id.* art. 6, §§ 2, 3. *See also* CONST. OF MONTENEGRO, art. 2, §§ 1-3.

30. CONST. OF FRY, art. 124, § 1/9.

31. CONST. OF MONTENEGRO, art. 113, § 1/8.

32. CONST. OF FRY, Art. 34.

Djukanovic won the presidential election in the second round with a very narrow margin (50.8% to 49.2% of votes).³³ The reaction from the federal level came immediately. In an attempt to render the results of the elections invalid, Bulatovic submitted to the federal state prosecutor a motion for an extraordinary legal remedy (Request for the Protection of Legality) before the federal court, against the Montenegrin Supreme Court's decisions on voter registration.³⁴ Bulatovic submitted several thousand such requests.

Although Montenegrin authorities argued that federal institutions have no authority in electoral disputes within member-states, the Federal Court annulled some 2300 decisions, issuing an order that all registrations accepted between the two rounds of elections were illegal, and that those voters must be deleted from electoral lists. The intent was to aid Bulatovic in obtaining legal grounds to require nullification of the results and to demand new elections. Montenegrin authorities explicitly declined to conform with the nullifying orders of the Federal Court, and in December 1997 the Montenegrin Parliament enacted a resolution condemning the "breach of the legal system of Yugoslavia." Some Montenegrin officials mentioned the possibility of a referendum on whether Montenegro should remain in the federation with Serbia.

As January 15, 1998, the day the new President was to take office approached, the situation in Montenegro was getting more strained by the day.³⁵ Bulatovic eventually left the office to Djukanovic, while Milosevic suddenly found himself in a serious confrontation with the best part of the Montenegrin state leadership. He needed strong backup on the federal level, where the center of power moved with him. His

33. After the first round of elections Bulatovic received more votes than Djukanovic (the other candidates lagged far behind them), but not more than 50% of those who voted (a requirement for victory in the first round). The two of them continued the contest in the second round. Between two rounds of election, the Supreme Court of Montenegro (backing Djukanovic) accepted nearly 14,000 requests for registration of voters, which were added to electoral lists in the second round. Bulatovic filed a complaint in the Montenegrin Constitutional Court claiming electoral fraud on two grounds (one of which was the allegedly illegal registration of additional voters between the two rounds), but his attempt was unsuccessful.

34. The Supreme Court is the highest court of the Republic. *See* CONST. OF MONTENEGRO, art. 104.

35. Bulatovic did not recognize the results of the elections, and stated he would not hand over the office since the electoral fraud was judicially confirmed. Bulatovic's wing of DPS, abetted by the Serbian authorities, organized public protests in support of Bulatovic, reportedly to provoke riots and give federal authorities an excuse to proclaim a state of emergency on the territory of Montenegro, with all the consequences that would follow. The protests culminated on the day of inauguration, but their escalation to bigger disorders was prevented by the police.

next step was to replace the Prime Minister of Yugoslavia, Radoje Kontic, with a more reliable ally, Bulatovic.

In an attempt to prevent this move, the Montenegrin Assembly quickly amended its act regulating the election of deputies to the Chamber of Republics in the Federal Assembly,³⁶ and replaced six Montenegrin deputies in that Chamber still loyal to Bulatovic. However, new nominations were rejected and the previous deputies' mandates were restored by the Federal Assembly's Mandate Commission, with the rationale that the Federal Constitutional Court must decide on the legality of the Montenegrin Assembly's dismissal of deputies before the removals would be effective. Kontic received a vote of no confidence in the Federal Assembly in May 1998, and Bulatovic became Prime Minister of the Yugoslav government in his place.³⁷

The next day the Montenegrin Parliament passed a resolution stating it did not recognize the legitimacy of the new federal government. Since then, the federal arrangement established by the FRY Constitution has been practically non-functional in many respects. Montenegro has not recognized decisions made by federal bodies since mid-1998, and has refused to pay any of its share of the federal budget.³⁸

In October 1998, under the shadow of NATO's threats of armed intervention against Yugoslavia, the Montenegrin Constitutional Court ruled that decisions of the extraordinary session of the Federal Assembly, which convened on October 5, would not be recognized in Montenegro.³⁹ From a legal standpoint, this decision was invalid because the authority to decide on the constitutionality of a federal legal act is vested in the Federal Constitutional Court, whereas the Montenegrin Constitutional

36. The amendment explicitly allows the Montenegrin Parliament to revoke the mandates in the Federal Assembly's Chamber of Republics of those deputies who fail to "represent Montenegro's interests as defined under the Constitution and laws, and with other regulations adopted by the republican Parliament."

37. See also V. GOATI, *supra* note 2.

38. To secure incomes from customs, which the Montenegrin government is not transferring to the federal budget, in early March 1999 the Federal Customs Bureau sent 76 customs officers from posts in Serbia to Montenegro, while 68 Montenegrin customs officers were to be moved to various posts in Serbia. The decision was not accepted by the Montenegrin government and the officers from Serbia were returned, while 65 of 68 Montenegrin officers refused to report to the newly assigned duties. See Velizar Brajovic, *Jugoslavija - Crna Gora: Carinski rat*, VREME, no. 437, March 6, 1999.

39. See *Constitution Watch - Update on Yugoslavia*, 7 E. EUR. CONST. REV. 74 no.4 (Fall 1998). The EEC Review Internet issue can be found at <<http://www.law.nyu.edu/eeer/>>.

Court has no such power.⁴⁰ Nonetheless, it was a strong political declaration reflecting deteriorating relations among the federal units.

This situation, a constant source of potential conflict that could expand to unpredictable and uncontrollable levels, persisted until NATO's aggression in March 1999. When the bombardments began, Montenegro declared neutrality and distanced itself from the Serbian regime. Despite several days of bombing, it was spared larger destruction. Relations between the federal army and the Montenegrin authorities were extremely tense over this time. During the state of war in Yugoslavia the indications were that federal (and Serbian) authorities might try to remove the Montenegrin government, which could have provoked a civil war. That did not happen, but the relationship between the two partners in the federation did not improve. At the end of May 1999, the Montenegrin government prepared a document called "The Basis of the Project for Rearrangement of Relations Between Montenegro and Serbia." Shortly after the NATO bombardments ended in early June, Montenegrin authorities became more resolute in requesting redefinition of the federal arrangement of Yugoslavia, or Montenegro might have continued its existence as an independent state. The Serbian establishment ignored the initiative until Djukanovic revealed that Montenegro had set a deadline for Serbia's reply. In response, Serbian authorities offered negotiations on the party level.⁴¹ Talks between DPS and each of the Serbian ruling parties on the platform presented by DPS were conducted during autumn 1999, but with no tangible results.⁴²

The latest developments have further alienated the two federal units. As an interim measure, on November 2, 1999 Montenegro introduced German mark as a parallel currency to the YU dinar (the official Yugoslav currency) within the Republic, and established its own Monetary Council.⁴³ The intention was to replace this dual monetary system with the Montenegro's own currency and establish its own monetary institutions.⁴⁴ The Federal Constitutional Court, acting upon the request of the federal National Bank, issued a temporary injunction banning those actions of Montenegrin government,⁴⁵ and later issued a

40. CONST. OF FRY, art. 124; CONST. OF MONTENEGRO, art. 113.

41. FREEB92 DAILY NEWS (05, 07, and 08 October 1999), Internet issue, in English at <<http://www.freeb92.net/archive/e/>>.

42. In mid December 1999, DPS announced that there is no sense in continuing the talks about the proposed project on the party level, but that the official answer from the Serbian authorities is still expected. *Id.* 11 December 1999.

43. *Id.* 2 November 1999.

44. *Id.* 14, 15 January 2000.

45. *Id.* 24 November 1999.

decision on their unconstitutionality,⁴⁶ but its decisions were ignored in Montenegro. A customs war is now taking place between the two federal units.⁴⁷ Friction between the federal army and Montenegrin authorities occurs from time to time, threatening to spark yet another armed conflict.⁴⁸ Montenegrin authorities are effectively acting independently of the federal state, and generally do not recognize federal bodies nor comply with their acts and decisions. On the other hand, Serbian and federal authorities steadily display hostility rather than good will in attempting to compromise. Voices requiring a referendum on whether Montenegro should stay in the federation or proclaim independence are becoming louder, and this alternative might soon prevail on the political agenda over claims for redefinition of the federal arrangement.⁴⁹ It is unlikely that a unilateral proclamation of Montenegro's independence would end peacefully. The present situation resembles the one that existed less than a decade ago, before the former SFRY split.

B. REVOCATION OF THE AUTONOMY OF THE PROVINCES OF VOJVODINA AND KOSOVO

A new provision of the constitutional system of the 1990's affected the status of the "autonomous provinces": although that term remained,⁵⁰ their autonomy has been abolished. The federal Constitution does not mention "autonomous provinces" at all, while Chapter VI of the Constitution of Serbia (Territorial Organization), includes provisions concerning "autonomous provinces" which regulate their status, organs, and authorities.⁵¹

Consequently, all powers related to these features of the provinces are vested solely in the Republic of Serbia, while the federal state has no authority in these matters. The highest legal act of an autonomous province is its statute.⁵² Previously, each province had the authority to

46. *Id.* 26 January 2000.

47. *Id.* 24, 27 September 1999.

48. *Id.* 9, 14, and 23 December 1999.

49. Probably the most weighty demand of the kind so far came recently from the Montenegrin Social Democrat Party, which belongs to the current ruling coalition in Montenegro: it required its coalition partners to announce a referendum on Montenegro's future status by the end of March 2000, since that is "one of the conditions for the survival of the coalition". *See Id.* 20 January 2000.

50. The Constitution of the Republic of Serbia of 1990 changed the name of the southern province from "Kosovo" (introduced by the Constitutions of SFRY and Serbia of 1974), to "Kosovo and Metohija" (as it was called before the 1974 SFRY Constitution was enacted).

51. CONSTITUTION OF THE REPUBLIC OF SERBIA, art. 108-112. The English translation of the text of the Serbian Constitution can be found on Internet at <<http://www.beograd.com/kule/>>.

52. *Id.* art. 110, § 1.

enact its own constitution within the powers vested by the federal and republic's constitutions. The statute is subject to the prior approval of the National Assembly of Serbia.⁵³ The territory of an autonomous province is established by a statute of the Republic of Serbia.⁵⁴

Formally, the provinces have their own assemblies, executive councils, and agencies of administration,⁵⁵ but the powers of these bodies are restricted. The Assembly of a province, its highest body, consisting of directly elected representatives, has no legislative authority; it can only enact "decisions and general enactments" in the areas enumerated by the Constitution of Serbia.⁵⁶ A look at the provision which enumerates the powers granted to the provinces⁵⁷ reveals that "autonomy," as determined in the Serbian Constitution, is very limited, and has little to do with the concept of autonomy, but instead contains powers usually delegated to local authorities.

C. CENTRALIZATION OF POWERS IN SERBIA

Revocation of the autonomy of the provinces was accompanied by excessive centralization of powers in the Republic of Serbia. This generated huge dissatisfaction in both provinces. As mentioned earlier,

53. *Id.* art. 110, § 2.

54. *Id.* art. 108, § 3.

55. *Id.* art. 111, § 1.

56. *Id.* art. 109, § 1/3.

57. These powers are enumerated in Article 109 of the Constitution of the Republic of Serbia:

"The autonomous province shall, through its own agencies:

1) enact the program of economic, scientific, technological, demographic, regional and social development, development of agriculture and rural areas, in accordance with the development plan of the Republic of Serbia, and shall lay down measures for their implementation;

2) adopt a budget and annual balance sheet;

3) enact decisions and general enactments in accordance with the Constitution and law, to regulate matters affecting the citizens in the autonomous province in the areas of: culture; education; official use of the language and alphabet of the national minority; public information, health and social welfare; child welfare, protection and advancement of environment; urban and country planning; and in other areas established by law;

4) enforce laws, other regulations and general enactments of the Republic of Serbia, whose enforcement has been entrusted to the agencies of the autonomous province, and pass regulations necessary for their enforcement if so proved by the law; see to the execution of provincial decisions and general enactments;

5) establish agencies, organizations and services of the autonomous province, and regulate their organization and work;

6) attend to other business laid down under the Constitution and law, as well as by the statute of the autonomous province.

The Republic of Serbia may entrust by a law an autonomous province with the performance of specific affairs within its own competencies and transfer to it the necessary funds for this purpose. The autonomous province shall collect revenues as laid down by law."

Albanian political factors in Kosovo never recognized the Serbian and Yugoslav constitutional order and were almost unanimous in requiring independence for Kosovo. All of this was taking place in a context in which inter-ethnic relations had become greatly disturbed.

Separatist tendencies, present among the Albanian population in Kosovo since the early 1980's, gradually became more radical. Serbian authorities tried to suppress them by repressive means which led first to the Albanian minority's boycott of the institutions of Serbia and Yugoslavia and the formation of a kind of a parallel state of Albanians in Kosovo in the 1990's, and then to the appearance of armed guerrilla forces known as the Kosovo Liberation Army (KLA), the proclaimed objective of which was the armed fight for an independent Kosovo.

The first guerrilla actions of the KLA are deemed to have started in the spring of 1998, about a year after its reported formation. The Serbian authorities never really tried to negotiate and reach a solution acceptable to both parties, but instead increased the repression against Albanians in Kosovo, which gradually led to an open armed conflict between the KLA and Serbian police, later joined by the army.⁵⁸

The protests from abroad directed toward the Serbian regime, followed by political and economic pressure from many countries and regional and international organizations, were ignored by Serbian and federal authorities, which adhered to the view that the crisis in Kosovo was an internal affair of Serbia and Yugoslavia. In October 1998 members of NATO threatened to resort to the bombing of Yugoslavia if the conflict in Kosovo continued. A day after the deadline, an agreement was

58. The fact that, besides police forces, the Yugoslav Army was also engaged in Kosovo against the KLA was officially (and only indirectly) recognized on October 5, 1998. At that time the NATO alliance threatened to use force against Yugoslavia because of the situation in Kosovo. The Federal Assembly convened in the extraordinary session, and the federal Prime Minister, Bulatovic, in his address to the representatives, said that Yugoslavia was under an immediate threat of war (later at the same session he clarified that his statement was not to be taken as a formal proposal to the Assembly to proclaim a state of imminent threat of war, which it could do under Art. 78, sec. 1/3 of the federal Constitution), and said that the Yugoslav Army was withdrawing from Kosovo (emphasis added.). By then, the official version was that the crisis in Kosovo was an "internal matter of Serbia," and that only Serbian police, but not the Yugoslav army, was engaged in fighting. See *Constitution Watch - Update on Yugoslavia*, 7 E. EUR. CONST. REV. 73-74 no.4 (Fall 1998), Internet issue at <<http://www.law.nyu.edu/eecr/>>.

reached and the bombing did not begin at that time,⁵⁹ but the violence in Kosovo escalated further.

The last attempt to reach a peaceful end to the crisis was made in February 1999, when negotiations between representatives of Kosovar Albanians and Serbian authorities were organized in Rambouillet, France. A document prepared for signing was again backed by an ultimatum of NATO that it would bomb Yugoslavia if there was no agreement. Since neither party signed the document in France, the deadline was postponed until mid-March. After additional pressure on both parties, representatives of Kosovar Albanians eventually signed, but the Serbian regime rejected the document, claiming it did not guarantee the territorial integrity and sovereignty of Serbia and Yugoslavia.

The final outcome was that on March 24, 1999 NATO started an extensive bombing campaign against Yugoslavia which continued for over two and half months. The bombings ended soon after an agreement between the Yugoslav Army and NATO was signed. Following the agreement, all federal army troops and Serbian police forces, as well as Serbian paramilitary forces that also took part in the clashes, withdrew from Kosovo by June 20, and international troops (KFOR — Kosovo Forces) under the auspices of the United Nations were deployed in the province.⁶⁰

Using the aggression as an excuse, the regime intensified armed operations against ethnic Albanians, forcing their massive expulsion from many areas of Kosovo.⁶¹ On May 27, while the bombing was going on, the International Criminal Tribunal for the Former Yugoslavia in the Hague officially announced its decision to indict President Milosevic and four other high-ranking officials (the President and the Minister of the Interior of Serbia, one of the federal Deputy Prime Ministers, and the chief of the federal Army) for crimes against humanity and war crimes committed in Kosovo in 1999.

59. On 13 October 1998, the U.S. envoy Richard Holbrooke reached an agreement with Milosevic. The agreement was signed on 16 October, by OSCE Chairman Bronislaw Geremek and Yugoslav Foreign Minister Zivadin Jovanovic.

60. See Resolution 1244 of the United Nations' Security Council (establishing the basic political and legal framework for administering Kosovo in an unspecified transitional period).

61. The UN High Commissioner for Refugees (UNHCR) estimates that around 750,000 Albanians were forced to flee, or were expelled from the country from about March 1998, when the armed clashes in Kosovo intensified, until the end of the NATO bombing campaign in June 1999. See *Constitution Watch — Update on Yugoslavia*, 8 E. EUR. CONST. REV. 37 no.3 (Summer 1999). Internet issue at <<http://www.law.nyu.edu/eecr/>>.

NATO's aggression resulted in massive destruction all over Yugoslavia — its infrastructure (bridges, roads, heating and electricity plants, networks for distribution of drinking water, homes) was devastated, numerous industrial plants of all kinds (such as factories and oil refineries) were obliterated or heavily damaged. Approximately 500,000 people have no jobs to return to, raising the already high unemployment rate to 40%.⁶² Since the KFOR troops were deployed in Kosovo, a large part of the Kosovar Serbian population has fled the province,⁶³ either in fear of retaliation from the Albanians, or because KFOR did not manage to prevent the occurrences of reprisals.⁶⁴ The final number of victims has not yet been officially established for either side.⁶⁵

After the NATO intervention, Vojvodina it remains the only federal unit of the former SFRY whose status has not been modified in some way. While the majority of Serbian political actors did not support significant changes in its current position, most local political parties constantly objected to its status. Requests for redefinition of its relations with Serbia were recently articulated and coordinated. In addition to the catastrophic consequences of the policy conducted in Serbia and Yugoslavia since the late 1980's, such demands stress the distinct multiethnic structure of Vojvodina's population, as well as various historical, economical, legal, political, and other factors. Although voices calling for an independent Vojvodina sound more frequently, the relevant local political parties do not advance that option. They agree on the need for some kind of autonomy for the northern province, while

62. The assessments of damage done by the bombing vary from \$30 billion to \$100 billion (these assessments do not include the damage done in Kosovo). See *id.* at 38. A list of destroyed or damaged objects can be found on Internet at <<http://www.beograd.com>>.

63. The most conservative assessments dating from mid-summer 1999 place this number around 100,000. See *id.* at 37 n. 58.

64. For a daily update on the current situation in Kosovo see, for instance, FREEB92 DAILY NEWS, Internet issue in English at <<http://www.freeb92.net/archive/e/>>. See also *Constitution Watch - Update on Yugoslavia*, in the issues of the E. EUR. CONST. REV., *supra* note 39.

65. The total number of victims among Kosovar Albanians is still being established. The estimations in western sources during the NATO campaign mostly revolved around the figure of about 100,000 killed Albanians. Multinational experts groups for investigating war crimes in Kosovo, after five months of investigation, issued a report with the figure of 2108 established victims so far. The investigation is to be continued from 31 March 2000, and current assessments of the number of victims among Kosovar Albanians range from 4600 (UNHCR, in LONDON TIMES) to about 8,000 Kosovar Albanians (see: ROKSANDA NINCIC, *In Search for Justice (Crimes in Kosovo)*, Vreme no. 463, 9-13, 20 November 1999). As for the victims among the rest of the population of Yugoslavia, the number officially declared by Yugoslav authorities is much lower than the figure assessed by foreign sources, although both come close on the number of victims among civilians "collateral damage" (the former claim that fewer than 600 hundred soldiers and policemen, and around 1500 civilians were killed, while the latter estimate the total number at around 5000 soldiers and policemen, and around 1500 civilians killed). See *Constitution Watch — Update on Yugoslavia*, 8 E. EUR. CONST. REV. 37 no.3 (Summer 1999).

differences exist as to what level of autonomy Vojvodina should enjoy, and which form of autonomy should be applied (varying from models of Vojvodina as a republic within a redefined federation, to models of autonomy similar to the one enjoyed previously).⁶⁶

IV. THE STATUS OF THE MEDIA — FREEDOM OF EXPRESSION AND OF THE PRESS

A. REPRESSION OF THE MEDIA (1990-1998)

The media has played an important role in the political events in Yugoslavia during the 1990's. From the beginning of the 1990's the state controlled media has been one of the key pillars of the regime, playing a crucial role in abetting the rule of Milosevic and the SPS. Those media are important means of formulating and directing public opinion by vigorously promoting each action of the regime and deflecting any criticism of its policies. Purges of staff members who resisted external involvement into editorial and personnel policies enabled Milosevic's regime to acquire absolute control over those media.⁶⁷

On the other hand, the independent media critically oriented toward the regime⁶⁸ has been continually harassed and hindered in its normal work by the government. Consequently, the independent media has never managed to expand its audience state-wide, and its influence was, and still is, primarily local (mostly concentrated in and around the capital of Yugoslavia, Belgrade). Besides persistent propaganda against the independent media conducted through the state-controlled media,⁶⁹ the regime has used numerous other means aimed at obstructing and

66. See also Dimitrije Boarov, *Zahtev za samodefinisanje [Request for Self-definition]*, VREME no. 469, 22-26, 1 January 2000; Milena Putnik, *Political Scene of Vojvodina: Searching for the Future*, AIM Podgorica, 9 December 1999.

67. For an illustration, see MARK THOMPSON, *FORGING WAR*, 22-24, 45-46, 64, 79-83, 125 (University of Luton Press, Luton, 1999). See also ANEM press release: Federal Republic of Yugoslavia: A State of Repression (May 1999), which quotes that in one of the cleansings that were executed in RTS (Radio-Television of Serbia, the most important among the pro-regime media), in one month only (January 1993) some 1500 staff members were fired from the RTS for not agreeing with the editorial policy of that station. Available (in English) on Internet at <<http://www.freeb92.net/media/repression/>>.

68. The phrase "critically oriented independent media" is used to make a distinction with another group of privately owned media oriented towards entertainment programs, without news programs or programs with political contents.

69. For instance, from the early 1990's the independent media were officially stigmatized as being "anti-Serbian," "anti-state," "non-patriotic," "seditious," "fascist," "internal enemies of Serbia and all the Serbs;" they were accused of being "on the payrolls" of foreign intelligence services and foes with the task to disseminate lies and anti-Serb propaganda, and the like.

silencing it.⁷⁰ Some of those methods are extra-legal (physical and even armed attacks against journalists, ransacks of the independent media's premises and equipment),⁷¹ and many serious indications exist that the regime is behind them. Others are legal, or based on arbitrary application of certain legal acts.

One of the legal instruments in use is the Criminal Code, particularly provisions concerning criminal liability for offenses committed by the media contained in the federal code of 1977,⁷² and those concerning defamation and disseminating false information contained in the Serbian code of the same year.⁷³ A number of lawsuits for defamation have been filed against journalists, most of whom work for the independent media. Typically, the plaintiffs were politicians, usually in public office.⁷⁴

However, this mechanism proved to be unsuitable for achieving desired long-term effects, such as elimination of a particular medium or re-direction of its editorial policy. The defendants had the option of using certain legal defenses (e.g. truth, fair comment, certain immunities),⁷⁵ which made the final outcome less certain. Moreover, the procedural requirements and guarantees included in the federal Criminal Proceeding Act prolonged the duration of such proceedings (in some cases for

70. See The Outline of the State Repression over Independent Media (including the media in the Albanian language, in Kosovo) in the ANEM press release *Federal Republic of Yugoslavia: A State of Repression* (May 1999) on Internet at <<http://www.freeb92.net/media/repression/>>.

71. The most notorious and tragic incident of the kind occurred on 11 April 1999, when Slavko Curuvija, the owner and editor-in-chief of two independent dailies, was assassinated while returning home. See also FREEB92 NEWS 16, 17 January 2000, Internet issue at <<http://www.freeb92.net/archive/s/>>. For other examples see MARK THOMPSON, *FORGING WAR*, 60 (University of Luton Press, Luton, 1999).

72. CRIMINAL CODE OF FRY, art. 27-29.

73. CRIMINAL CODE OF THE REPUBLIC OF SERBIA, art. 92, and related art. 96-101 (defamation), and art. 218 (disseminating false information). In relation to the recent convictions under the said art. 218, see ANEM press releases: RSF Asks for TV Soko Director Neboja Ristic's Release (17 August 1999); Journalist Summoned to Begin Prison Sentence (20 July 1999); TV Soko Closed Again; Ristic Imprisonment Upheld; Ministry Threatens Charges for Licence Fee Defaulters (27 June 1999); TV Soko Editor Imprisoned (27 April 1999). ANEM press releases (in English) are available on Internet at <<http://www.freeb92.net/media/repression/>>.

74. The Serbian Criminal Code, as well as the Montenegrin, provide a heightened level of protection from defamation to public officials - the prescribed punishment for that felony is more severe than for cases where the injured party is a private individual, and spans from three months to three years imprisonment. This concept is completely opposite to the one accepted by the European Court of Human Rights, that politicians knowingly lay themselves open to close scrutiny, and thus must display a higher degree of tolerance (*Lingens* case of July 8, 1986, 7 HRLJ 307 (1986)), or to the US doctrine, which since the *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964) adds an additional requirement for "public officials" as plaintiffs - to prove that the defamatory statement contained the element of "actual malice" (extended later in *Curtis Publishing Co. v. Butts*, 388 U.S. 130 (1967), and in *Rosenbloom v. Metromedia*, 403 U.S. 29 (1971)).

75. CRIMINAL CODE OF THE REPUBLIC OF SERBIA, arts. 92, 96.

years), and to some extent enabled the defendants to use fair trial guarantees for their benefit. Largely because of these reasons, most cases brought under these provisions have never been decided on the merits by the courts, but were terminated for procedural reasons, or because the plaintiff withdrew the suit.

Similar or even less effective outcomes have been reached when journalists are sued for misdemeanors, as provided by statute. Whereas fines, as typical penalties for misdemeanors, are limited to amounts prescribed by law, the judicial procedure for misdemeanors contains all the basic guarantees of criminal procedure.

Until the end of the 1980's little of the media in Yugoslavia was privately owned, but was usually founded by the state, its organs, or various para-state organizations, and was deemed "property of society." Some of the most prominent independent media has been gradually destroyed and/or taken over by the regime's use of various tactics, usually illegal or based on arbitrary interpretations of certain provisions. In some cases, various legal or contractual provisions concerning ownership rights of the media have been invoked by the state in order to seize or ban the media.

In most of these cases the media's foundation was based on vague, unclear, or controversial formulations, and sometimes no legal or contractual traces concerning ownership rights existed. When it finally became legal for individuals and non-governmental entities to run the media, employees or individuals legally acquired the majority of shares or ownership of some of the already existing media. Later some of the most prominent independent media was simply taken over by the regime, which claimed that ownership rights still belonged to the state as the original founder of the respective medium, or that acquisition of the particular medium was illegal.⁷⁶

76. This was the way the daily "BORBA," the TV station "Studio B," and other smaller papers and electronic media were taken over by the state during the last decade. For more details on the cases of "BORBA" and "Studio B" see MARK THOMPSON, *FORGING WAR*, 46-48, 125-126 (University of Luton Press, Luton, 1999). The most recent case, which is still pending before the court, was the take over of one of the most prominent independent radio stations, B92, by the government in March 1999 during the NATO bombardments. The entire crew had left and continued working under the name FREEB92, as a third program of Studio B, another radio station. See Higher Commercial Court Dismisses B92 Appeal (ANEM and Radio B92 press release, August 16, 1999); Legal Proceedings for the Protection of Radio B92 - Chronology (ANEM press release, 24 March 1999). ANEM press releases (in English) are on Internet at <<http://www.freeb92.net/media/repression/>>.

Another mechanism in use has been directed solely towards the electronic media in Yugoslavia — licensing procedures and fees for use of broadcast frequencies. Since 1991, allocation of frequencies has been under the jurisdiction of the Republics.⁷⁷ Between 1994 and 1998, tenders for allocating frequencies were not held, although the law orders they be held once a year. During those years a number of new electronic media began work without a license for broadcasting.

In May 1997, the Federal Ministry of Telecommunications declared that all broadcasters had to obtain licenses within a month or cease broadcasting. The media then faced a problem invented to allow authorities to be rid of independent media critical of the regime. Under the Serbian Act on Public Information, broadcasters can be registered only if they have already obtained a license, yet one of the Ministry's requirements for obtaining a license was that the media already be registered. Fifty five of the smaller media were ordered to close down. At the end of July, the Ministry suspended those closing orders until the end of November due to the ongoing campaign for presidential and parliamentary elections in Serbia.

In March 1998 the federal Ministry of Information announced the tender for assigning temporary frequencies to the electronic media for the territory of Serbia without stating the relevant legal grounds. Even media with long-term contracts for use of their frequencies with state-owned radio and TV station were required to participate in the competition as if no contracts existed.⁷⁸ Terms and procedures for competing for frequencies were vague and subject to arbitrary interpretation. Many elements had no grounds in existing legal acts.

Although the announcement declared that certain amounts would have to be paid for the use of frequencies, those amounts were announced for the first time only three days before publication of final results. The results were disastrous: of 425 radio and TV stations in competition, only 247 were assigned frequencies for broadcasting their programs. Except for

77. Such a solution is contrary to the Federal Constitution and relevant laws, as well as to relevant international conventions.

78. The most probable motivation for such a move was that the regime in Serbia used the net of local governments to found and control the local media. After the elections for local governments in Serbia at the end of 1996, the regime lost control in all major cities in Serbia, where the coalition of opposition parties won. Consequently, the opposition gained control over the media owned by the local governments. Therefore, the primary goal of the tender was to regain control over the media, this time by the federal government, that is, by its Ministry of Information.

three members of the Association of Independent Electronic Media (ANEM), all other members of this association were denied frequencies.

In addition, monthly amounts required to be paid by the stations for use of a frequency were extremely high, reportedly about 180,000 Yugoslav dinars (over \$16,000 by the official exchange rate) per month.⁷⁹ Those that cannot pay this amount can be ordered to stop broadcasting. This allows the regime to "tolerate" their broadcasts without paying for use of a frequency, in exchange for less critical reporting on issues related to the regime. Under existing difficult economic circumstances⁸⁰ hardly any independent media can afford to pay that much for a license.⁸¹ Most of the media does not pay, at least not those amounts, and are thus under constant threat from authorities to close them down. Authorities have actually closed down or harassed some of the media for this reason.⁸²

B. THE ACT ON PUBLIC INFORMATION OF THE REPUBLIC OF SERBIA (OCTOBER 1998)

Another action of the regime directed against freedom of the press was the enactment of the new Act on Public Information of the Republic of Serbia in October 1998, which repealed the previous Act of the same name. The need for "adequate regulation" of public information had been announced many times by authorities, but the media, not being in a position to influence the new Act, expected it to be very restrictive. Two drafts of the statute were released in the last few years, and both were heavily criticized by scholars, lawyers, and the independent media, but the objections were not the reason the drafts never reached the Assembly. Still, the version that was finally enacted is even more restrictive and violative of freedom of the press than the previous drafts.⁸³

79. The amount cited is according to Uros Komlenovic, *Katil Ferman za ANEM* (Katil Ferman for ANEM), VREME, no. 395, May 16, 1998.

80. Current average monthly salary in Yugoslavia is around \$35 (January 2000) by the black market rate, or around \$200 by the official rate.

81. Those controlled by the government are either financed or largely subsidized from the state budget.

82. For more details see: *supra* note 62, at 125; see also VREME, no. 395, May 16, 1998; ANEM press releases: Exorbitant Fee Demand For Radio Pancevo (September 16, 1999); Outrageous Fee Demand For Radio Pancevo (July 13, 1999); TV Soko Closed Again; Ristic Imprisonment Upheld; Ministry Threatens Charges for Licence Fee Defaulters (June 27, 1999); Yugoslav Telecommunications Ministry Continues Shutdown of ANEM Affiliate Broadcasters; Independent Newspaper Fined (24 June 1999). ANEM press releases (in English) are on Internet at <<http://www.freeb92.net/media/repression/>>.

83. An important reason for passing this Act was that the number of independent media have increased greatly in the last few years. Despite the fact that most of them have only local influence (due to low circulation of printed media and low range transmitters of electronic media), their

The Act was passed on October 20⁸⁴ in an extraordinary session of the Serbian Assembly convened three days earlier, and only a few days after NATO's threats to intervene in Yugoslavia were (temporarily, as later events demonstrated) eliminated.⁸⁵ As proposed by the Government of Serbia which submitted the draft, it was enacted in an urgent procedure. Representatives were handed the text of the draft at the beginning of the session, and the Act was enacted at its end.⁸⁶ To aid in enforcing the penalties in the Act on Public Information, the Assembly also enacted an amendment to the Serbian Act on Misdemeanors⁸⁷ by inserting a short new provision (new section 4 of Article 33) which reads: "*Higher fines may be passed for misdemeanors in the area of public information.*"

Before entering into analysis of this Act, it should be stressed that the organs which decide misdemeanors, although called "courts for misdemeanors," are not judicial but administrative bodies. Their "judges" are appointed and dismissed by the Serbian government, and this fact reveals much about their independence and impartiality.

numbers allowed larger audiences to learn information never publicized in the state controlled media. Besides, several independent dailies (DNEVNI TELEGRAF, GLAS JAVNOSTI, DANAS, BLIC -- the first was forced to cease work after two huge fines under this Act in 45 days, while each of the three others has been fined several times so far, and is constantly struggling with financial problems because of that) placed in jeopardy the long lasting monopoly of the media under the regime's control.

84. Official Gazette of the Republic of Serbia, 36/1998. The text of the Act, in English, can be found on Internet at <<http://www.freeb92.com/media/legalrepression/index.html>>.

85. Earlier in October two other steps were taken by the Serbian Government announcing this Act. On October 5, Serbian Ministry of Information issued a warning to the media to stop rebroadcasting programs produced by the "services for the propaganda and psychological war of Western powers" (which actually meant news programs produced by broadcasters in the specified states). Failure to conform with the warning would be punished, although the punishment was not specified. Three days later, the Serbian government issued the Decree on Special Measures During the Threat of NATO Military Intervention Against Our Country. It prohibited the airing of foreign programs which spread "fear, panic, defeatism, or undermine the readiness of citizens to fight for the preservation of the integrity of the Republic of Serbia and of FRY." The Decree also provided that domestic media must not publicize programs or articles that spread defeatism, or that are contrary to the resolutions passed by the Federal and Serbian Assemblies. The punishment for violations of these provisions was a temporary ban on their activity, and confiscation of their property (by comparison, the confiscation of property as a punishment for felonies was abolished by amendments to the FEDERAL CRIMINAL CODE in 1990). On October 13, on the basis of the Decree, three newspapers (DANAS, NASA BORBA, and DNEVNI TELEGRAF) were closed down by police. The Government withdrew its Decree after the Act on Public Information was enacted. *See Constitution Watch - Update on Yugoslavia*, 7 E. EUR. CONST. REV. 78 no.4 (Fall 1998) available on Internet at <<http://www.law.nyu.edu/eeer/>>.

86. For more details on the procedure in the Assembly, which is typical of its work in the 1990's, *see id.* at 79.

87. Official Gazette of the Socialist Republic of Serbia, 44/1989; Official Gazette of the Republic of Serbia, 21/1990, 11/1992, 6, 20, 53, 67/1993; 28/1994; and 16, 37/1997.

The Serbian Act on Public Information contains numerous provisions that are invalid as contrary to the positive law of Yugoslavia and Serbia and the provisions of various international instruments accepted worldwide. Although formally proclaiming that "public information is free" and "inviolable," and that "no one has the right to illegally restrict it or forcefully influence the work of public information services,"⁸⁸ the Act violates not only the principles related to freedom of expression and of the press, but also key elements of the concepts of fair trial, due process, and equality of all subjects under the law. Its deficiencies are overwhelming, and can be found in the provisions that set up general rules, as well as in those dealing with technical details. The failures of this Act are so numerous that only the most flagrant will be briefly discussed below.

1. Prior Restraints

A group of its provisions prescribes the circumstances and procedures for imposing prior restraints on the media, and preventing distribution of certain information. The Act prescribes that distribution of press and other means of public information calling for the forced overthrow of the constitutional order, jeopardizing the territorial integrity of the Republic of Serbia and the Federal Republic of Yugoslavia, violating guaranteed freedoms and rights of citizens, or stirs national, racial or religious intolerance and hatred can be prevented by court order.⁸⁹ The restraining order is to be issued by a competent court within six hours of receipt of a petition by the public prosecutor authorized to proceed in the case (printers or publishers must deliver three copies of each publication to the authorized public attorney immediately upon printing),⁹⁰ who may propose adoption of an order if he finds a basis for initiating criminal proceedings for a criminal act prosecuted *ex officio*.⁹¹

The court must deliver the temporary order banning the distribution to the founder, publisher, or printer immediately, and order the seizure of all copies of the news or other means of public information by competent authorities of internal affairs.⁹² The court must hold a hearing on the public prosecutor's petition within three days of its receipt.⁹³ The court may hold hearings and decide the petition even if the invited parties fail

88. Act on Public Information of the Republic of Serbia, art. 1, §§ 1, 2.

89. *Id.* art. 42, § 1.

90. *Id.* art. 26, § 2.

91. *Id.* art. 42, §§ 2, 3.

92. *Id.* art. 43.

93. *Id.* art. 44, § 1.

to appear at the hearing, to which they will receive an invitation.⁹⁴ Each party may appeal the decision in the first instance to the court of the second instance within three days from the delivery of the decision.⁹⁵

Reasons for the prior restraints enumerated in the Act are identical to those listed in the Serbian (as well as the Yugoslav) Constitution,⁹⁶ and are constitutional on their face. However, the Act is not specific as to constitutional formulations, which are too general to be directly implemented in particular cases. In order to comply with statutory requirements, particularly if followed by a punishment, an individual must be able to determine exactly what is ordered or prohibited. The language of the Act's provision, however, fails to describe the punishable offenses with sufficient accuracy. Consequently, the provision in the Act on Public Information is too vague, since it enables the public prosecutor to ban distribution in a wide range of situations completely covering the area of "political speech."

For committing a misdemeanor under Article 42, section 1 (see *supra* at the beginning of this section), the founder and publisher are also to be fined from 400,000 to 800,000 YU dinars, while parties responsible to the founder, the publisher, and the editor in chief are to be fined from 100,000 to 400,000 YU dinars.⁹⁷

2. The Banning of Foreign Broadcasts

The Act also bans transmission or re-transmission of foreign radio and TV broadcasts of a "political propaganda nature" produced by foreign broadcast organizations founded by foreign governments or their organizations, except for delayed programs shown on the basis of reciprocity determined by inter-state agreement.⁹⁸ Again, the language of the provision is far too vague. The key phrase is "political propaganda nature," grounds for a penalty, but the Act does not define those terms. "Forbidden" information may include anything that deals with political issues, as well as a variety of other issues.

Whether there is "reciprocity determined by an inter-state agreement" is a matter that cannot be determined by a broadcaster or even by a team of

94. *Id.* art. 44, § 2.

95. *Id.* art. 48, § 1.

96. CONSTITUTION OF SERBIA, art. 46, § 6 (and CONST. OF FRY, art. 38) — explicitly prohibiting censorship, and enumerating reasons that justify prior restraint on a medium.

97. Act on Public Information of the Republic of Serbia, art. 67.

98. *Id.* art. 27.

its legal experts, but only by an authorized state body, namely, the Government, and its Ministry for Foreign Affairs in particular. This way, broadcasters are deprived of the opportunity to make free editorial choices when it comes to foreign programs. This solution effectively empowers the state and its administrative authorities to decide which foreign broadcasts will be included in the inter-state agreement. Having the power to decide what information cannot be broadcast is to have utter control over circulation of information from abroad. Thus, the range of information available to citizens is hugely restricted, and subject to arbitrary decisions.

Yet another element of prior censorship by the state is made legal, namely, censorship of information produced abroad, by the state's choice of information allowed for publication in Yugoslavia, which is also in violation of the explicit prohibition of censorship found in the Serbian Constitution (see note 94, *supra*).

According to the Serbian (and federal) Constitutions,⁹⁹ only a competent court of law may establish whether any of the enumerated reasons for prohibiting distribution of the news and dissemination of other information exist in a particular case. Conduct which results in restricting distribution also constitute a misdemeanor under article 27 of the Act. However, no such decision of the court is required in cases under article 27, which means that an explicit constitutional procedural requirement is not met.

Moreover, the provision of article 27 conflicts with the provision of another article of the Act, which proclaims that the public media may freely present facts and opinions on everything of interest to citizens, and that everyone has the right to be informed on matters of public interest.¹⁰⁰ For the reasons stated above, the restrictions introduced by article 27 greatly limit the freedom of the media to present facts and opinions of public interest, as well as the public's "right to know."

The Act prescribes penalties for misdemeanors constituting a violation of this article. The fine prescribed is 250,000 – 500,000 YU dinars for the founder and the publisher, and 50,000-150,000 YU dinars for the editor-in-chief and the party responsible to the founder and publisher.¹⁰¹

99. CONST. OF FRY, art. 38; CONSTITUTION OF SERBIA, art. 46, § 6.

100. Act on Public Information of the Republic of Serbia, art. 3.

101. *Id.* art. 68.

3. Misdemeanors

The Act contains other provisions describing misdemeanors in the area of public information subject to punishment under the Act. For instance, the public media must inform the public “truthfully, timely, and completely,” while publicizing lies in the public media represents an abuse of freedom public information.¹⁰² The criteria of this provision are vague, particularly that requiring information to be “complete.” Since there are no firm grounds to decide if these requirements are met, their content is subject to various interpretations and depends on the circumstances of each particular case. This promotes arbitrariness and introduces legal uncertainty.

The Act also provides that “a public media may not publicize or reproduce information, articles or facts which violate the honor and dignity of the individual, or contain insulting expressions and rude words.”¹⁰³ The language of this provision does not state that the incriminating information must be untrue, or whether the correct information should be punished. This formulation is too broad. For this misdemeanor, the founder and publisher may be fined from 100,000 to 3000,000 YU dinars, while the editor-in-chief and the party responsible to the founder and publisher may be fined from 5,000 to 150,000 YU dinars.¹⁰⁴

4. Fines

The fines discussed above, as well as others not mentioned, are outrageous. The maximum fine prescribed in the Act on Public Information amounts to 800,000 YU dinars (over \$70,000 by the official exchange rate). Several points need to be highlighted in this respect.

The amendment introducing the fines does not specify the maximum to be prescribed as a fine for misdemeanors in the area of public information, and is therefore deficient, and contrary to an explicit provision of the Act on Misdemeanors which prescribes maximum fines to be imposed for misdemeanors – 1,000 YU dinars for individuals, and 10,000 YU dinars for companies. The amended provision is a general one that applies to all misdemeanors, so exceptions should be based on firm reasons, and should be proportional to general penalties. However,

102. *Id.* art. 4.

103. *Id.* art. 11, § 2.

104. *Id.* art. 69.

the highest penalties set for misdemeanors in the area of public information are much greater than general maximum fines.

Moreover, the amounts in the Act on Public Information are much higher than the maximum financial punishments prescribed for felonies in the federal Criminal Code – 50,000 YU dinars, that is 200,000 YU dinars for felonies committed with intent to obtain personal gain. Since misdemeanors are defined as the lightest forms of offense, it is only logical that the highest fines for misdemeanors do not exceed fines prescribed for felonies. This puts the legal definition of misdemeanors to a serious test, or at least questions whether the “misdemeanors” prescribed in the Act on Public Information really qualify as misdemeanors.

Another question is whether the prescribed fines are proportional to the wrong done by committing a misdemeanor under the Act on Public Information. In the current economic setting in Yugoslavia, these amounts exceed the financial ability of most of the independent media. Imposition of such a fine means severe financial burden for the misdemeanant, sometimes even too large (so far at least two major dailies, Dnevni Telegraf and Evropljanin, and several smaller papers had to cease work for this reason). Such forceful destruction of a media is undoubtedly an unjust and disproportionate punishment for offenses set forth in the Act.

Under the Act on Misdemeanors, if a fine is not paid, a court may transform the fine into a sentence of imprisonment according to a formula prescribed by the Act. If this formula were applied to individuals under the Act on Public Information, the maximum prison sentence would be greater than the maximum prison sentence prescribed by the federal criminal code (20 years), and far greater than the maximum prison sentence derived from the fine under the Act on Misdemeanors.

Setting such high penalties under the Act on Public Information will undoubtedly have a chilling effect, and will result in self-censorship within the system of public information in Yugoslavia with all attendant negative consequences. For all the reasons stated above, the Act on Public Information seriously challenges the constitutionality of the amendment to the Act on Misdemeanors, as well as the penalty provisions contained in the Act on Public Information.

5. Violations of Procedural Due Process

Like the Act on Misdemeanors, the Act on Public Information prescribes that the (federal) Act on Criminal Proceedings applies unless stated otherwise in the Act on Public Information.¹⁰⁵ The latter includes special rules of procedure in articles 72-74 that contravene nearly all the procedural guarantees of due process.

The Act prescribes that the court hold urgent proceedings in cases of violation of public information.¹⁰⁶ The court of first instance must schedule an oral hearing for misdemeanors prescribed in articles 67 through 69 of the Act within 24 hours from submission to the court.¹⁰⁷ The Act does not require personal delivery of a summons for the oral hearing to the defendant, but instead prescribes delivery to a person designated to receive written correspondence for the defendant, or to an employee on the business premises of the founder, publisher, printer. If such delivery cannot be made, the summons is to be “nailed” to the door, which is considered lawful delivery. If even that delivery cannot be made, a summons is to be made through the system of public information, which is deemed lawful and prompt delivery.¹⁰⁸

By the end of the hearing, the defendant must prove that the released information is true. If he does not, it is presumed a misdemeanor has been committed.¹⁰⁹ If the defendant is absent for any reason, the court is authorized to reach a decision.¹¹⁰ The court must end the legal proceedings within 24 hours of delivery of the summons.¹¹¹ An appeal does not suspend enforcement of the decision.¹¹²

These provisions are a blatant violation of nearly all elements of the due process principle. Allowing for indirect delivery of a summons, and beginning a case so quickly, does not afford a defendant time to prepare his defense. Instead of the presumption of innocence, the Act brings in the presumption of guilt – the defendant has to prove, under detrimental circumstances, the truth of the published information. The burden is solely on the defendant. Failing to meet the burden of proof leads to the

105. *Id.* art. 49.

106. *Id.* art. 1, § 3.

107. *Id.* art. 72, §§ 1, 2.

108. *Id.* art. 72, §§ 3, 4.

109. *Id.* art. 72, § 5.

110. *Id.* art. 72, § 6.

111. *Id.* art. 72, § 7.

112. *Id.* art. 72, § 8.

presumption that the defendant committed the alleged misdemeanor. The case may be decided even in a defendant's absence, without the possibility for later justification of his absence. Finally, an appeal does not suspend enforcement of the decision. Although some of these provisions are common for certain media offenses (those regarding the burden of proof in libel cases), the whole setting is designed so that a defendant can hardly avoid punishment.

Fines must be paid within 24 hours of the decision. Delivery of the decision is made the same way as delivery of the invitation to the oral hearing (see *supra*). If the 24 hour deadline for the payment is missed, payment is enforced by the state.¹¹³ In the latter case, compulsory payment by the founder or publisher is made by transferring funds from their accounts to the Budget of Serbia. If those funds do not cover the amount of the fine (which is not unlikely), the Act prescribes that capital assets used in the work of the media, and, if needed, all printed matters as well, are to be seized and sold at public auction within seven days of seizure.¹¹⁴

As to the editor-in-chief and the "responsible person," enforcement is to be executed first on their personal accounts. If the funds on those accounts are not sufficient to cover the whole amount of the fine, then enforcement is to be executed on their personal assets (including real estate), which will be seized and sold at public auction within seven days of seizure.

The provisions on the procedure for misdemeanors and enforcement of decisions made in those procedures violate the rights of the accused guaranteed in several articles of the Serbian Constitution¹¹⁵ and incorporated in all (federal or Serbian) acts in force which regulate various judicial and administrative procedures.

Other provisions of the Act on Public Information depart from accepted standards for the media, or at least prescribe some peculiar solutions. These are: provisions concerning right to reply and correction (which

113. *Id.* art. 73, §§ 1-3.

114. *Id.* art. 74, §§ 1-3.

115. In particular, Art. 22 (guaranteeing the right to equal protection of one's own rights in procedures before courts, other state agencies, or any other agency or organization, and the right to appeal or to apply another legal remedy against a decision concerning one's legally founded right or interest); Art. 23, sec. 3 (presumption of innocence in judicial procedures); and Art. 24 (right to defense, and prohibition to any court or agency authorized to conduct proceedings to punish anyone not given an opportunity to defend oneself).

exceed limits determined by both Serbian and Yugoslav Constitutions)¹¹⁶; those regulating rights of parties to whom the information relates (the scope and contents of which is also potentially detrimental to the free dissemination of information)¹¹⁷; the provision establishing a supervisory body with the power to initiate charges against the media (with no mechanisms for ensuring its impartiality and independence from the government's political control)¹¹⁸; the one prohibiting re-release of information determined as a criminal act by an effective decision of a court, except when publicizing the court's decision upon its order (with a possible chilling effect on reporting of legal issues)¹¹⁹; some related to registration of the media¹²⁰; the lack of provisions that would require higher standards for public officials than for private individuals in proceedings under the Act (with a probable chilling effect on critical reporting about public officials).¹²¹

In addition, the media and its editors, owners, managers, and printers, have been fined in several cases for verbatim publication of statements of opposition political parties and individuals, even when the reports were fair and accurate.¹²²

Besides violating internal legal acts, the model constructed by the Act on Public Information violates the relevant provisions of related international documents. In particular, these are articles 6 (due process clause) and 10 (freedom of expression) of the [European] Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR); article 19 of the Universal Declaration of Human Rights; and article 19

116. Act on Public Information of the Republic of Serbia, art. 37-41.

117. *Id.* art. 55-60.

118. *Id.* art. 65-66.

119. *Id.* art. 31.

120. *Id.* art. 12-23.

121. Several legal analyses of the Act on Public Information have been completed both inland and abroad during the first year of the Act's application. They concentrate on various problems imminent to the Act, from different angles. The unanimous conclusion of those analyses is the same as the one suggested here. For a legal analysis on compliance of the Act on Public Information with the ECHR, see ANDREW NICOL, EXPERT OPINION ON THE SERBIAN PUBLIC INFORMATION LAW (1998) (Council of Europe, Strasbourg, 19 November 1998). See also COVINGTON & BURLING, LEGAL ANALYSIS OF THE SERBIAN LAW ON PUBLIC INFORMATION (Washington, 1998). All these analyses can be found on Internet at <<http://www.freeb92.net/media/legalrepression/index.html>>. See also Article 19 (The International Centre Against Censorship), MEMORANDUM ON THE REPUBLIC OF SERBIA PUBLIC INFORMATION LAW (London, November 1998).

122. See FREEB92, News for 26, 27 Oct. and 8, 9 Dec. 1999; See also: HELSINKI COMMITTEE FOR HUMAN RIGHTS IN SERBIA, *Report on Intensified Repression in Serbia*, VREME no. 467, at 33, 18 December 1999 (on the case against dailies BLIC, DANAS, AND GLAS JAVNOSTI).

of the International Covenant on Civil and Political Rights (both related to freedom of expression).

On October 27, 1998, the Association of the Independent Electronic Media (ANEM) filed an initiative to the Serbian Constitutional Court for examination of the constitutionality of the 1998 Act on Public Information of Serbia, which is still pending.¹²³ It focuses on some of the shortcomings of the Act mentioned here, as well as others. In particular, the initiative challenges the constitutionality of articles 27 and 67-74 of the Act on Public Information, and of the amendment to the Act on Misdemeanors.

In December 1999, coalition "Vojvodina" submitted a motion in the Serbian Parliament, demanding a discussion on the repeal of the Public Information Act. The Act was described by the head of the coalition as an "instrument of state terror," and a "violation of basic legal standards." The motion was dismissed after deputies from the ruling coalition voted against it.¹²⁴

The 1998 Serbian Public Information Act is a clear example of a repressive piece of legislation, the aim of which is to legalize discretionary and unrestrained repression of the media. The provisions of the Act form a peculiar system of censorship, combining forms of prior restraint, and subsequent punishment with a potential chilling effect, making this law on media look rather like a law *against* the media. The Act blatantly negates freedom of expression and the press by establishing a system designed to enable the regime to exercise absolute control over the flow of information, and to allow elimination of every independent source that does not follow the dictatorial rules set up in the Act. Much of the independent media in Yugoslavia has been prosecuted under the Act, and some have been forced to terminate their work.¹²⁵

123. The full text of the constitutional complaint (in English) can be found on Internet at <<http://www.freeb92.net/media/legalrepression/index.html>>.

124. See FREEB92, News for 21 Dec. 1999. On internet at <<http://www.freeb92.net/archive/e/>>.

125. For information on the cases tried under the Act see VLADO MARES, MUZZLING THE MEDIA (Institute For War & Peace, 1 October 1999, Belgrade). See also ANEM's press releases: INDEPENDENT RADIO BREAK-IN AS MEDIA REPRESSION STEPS UP, and ANEM PROTESTS STRONGLY (13 September 1999); MAGAZINE FINED 150,000 DINARS (17 August 1999); YUGOSLAV TELECOMMUNICATIONS MINISTRY CONTINUES SHUTDOWN OF ANEM AFFILIATE BROADCASTERS; INDEPENDENT NEWSPAPER FINED (24 June 1999). All texts referred to in the footnote can be found on Internet (in English) at <<http://www.freeb92.net/media/repression/>>. See also HELSINKI COMMITTEE FOR HUMAN RIGHTS IN SERBIA, *Report on Intensified Repression in Serbia*, VREME no. 467, at 30-36, 18 December 1999; ALEKSANDAR CIRIC, *Vreme Bira Presudu Godine* (Vreme's

V. CONCLUSION

Seventy nine days of bombing Yugoslavia by NATO in the first half of 1999, as could easily have been foreseen, did not change the essence of the autocratic regime — at least not for the better. To the contrary, it harmed mostly the opponents of the regime. A state of war proclaimed because of the aggression gave the regime an excuse to intensify the already harsh repression, not only against Kosovar Albanians, but against all who had openly opposed the regime, and in many respects against the better part of the population.

In these extraordinary circumstances, repression continued through vigorous governmental activity by passing numerous decrees and other regulations.¹²⁶ The federal government enacted 77 decrees, decisions, and other by-laws, while the Serbian president and government enacted 16 decrees that suspended or severely restricted various constitutionally guaranteed rights and liberties.

Between the beginning and the end of the war, the Assemblies of Yugoslavia and Serbia each convened several times. However, the decrees passed during that time were never discussed, nor were they approved or repealed by the Assembly, as provided by the Constitutions. The Serbian Ministry of Information issued instructions the media in the state of an immediate threat of war the day NATO's attacks began, which set the criteria for reporting on all the events during the state of war.

Choice of the Sentence of the Year), VREME nos. 468, 25 December 1999, 469, at 12-14, 1 January 2000, and 470, at 18-21, 8 January 2000.

126. Art. 99, sec. 1/11 of the Federal Constitution authorizes the government to regulate by its own acts matters within the jurisdiction of the Federal Assembly when the assembly is not able to convene during the state of war, after asking the president of the Assembly's chambers for an opinion. If adopted during a state of war, such regulations may restrict rights and freedoms of the citizens until such state lasts. Certain rights, enumerated in the same article, are exempted from restrictions even during the state of war. The federal government must seek approval for those measures of the Federal Assembly as soon as it is able to convene.

The Serbian Constitution, in art. 83, sec. 1/7, confers similar powers on the President of the Republic. During a state of war, the President is authorized to enact, at his own initiative, regulations that relate to matters within the jurisdiction of the Serbian National Assembly. He has to submit them to the Assembly for approval as soon as it can convene. Unlike the Federal and Montenegrin Constitutions, which enumerate rights and liberties that cannot be restricted even during the state of war, the Serbian Constitution includes no such limitation -- it plainly provides that by enactments promulgated during a state of war, some freedoms and rights of man and citizen may be restricted, and the organization, composition and powers of the Government and of the ministries, courts of law, and public prosecutor's offices may be altered.

Military censorship was introduced and immediately enforced, and the independent media came under open attack by the regime. Some branches of the media were banned, some were taken over by the government (such as radio B92, see *supra*), some decided to stop work temporarily, and some continued to work against their editorial policy. All army conscripts between the ages of 18 and 60 were prohibited from traveling abroad. Numerous provisions of the Act on Criminal Procedure were temporarily altered or suspended, giving police wider authority and restricting due process guarantees. Unless organized by authorities, public gatherings were prohibited. The Decree on Internal Affairs During the State of War allowed for deportation of all who endangered Serbia's defense capabilities for up to 60 days, without a court warrant.¹²⁷

Two weeks after the attacks ended, the Federal Assembly declared the end of the state of war and repealed the governmental decrees, while the Serbian Assembly hesitated to do so. Some of the decrees were later abolished, while others were enacted as regular legislation of Serbia.

In his analysis, Nenad Dimitrijevic postulates the survival of the regime would probably mean a slide toward military dictatorship and its stabilization for some time. The fall of Milosevic, on the other hand, could open the possibility for a change toward democracy. In the latter case, how the regime was changed would influence future developments. Violent overthrow would increase the risk of struggle for power without legal and institutional mechanisms to control it, and might lead to a new

127. Texts of some of the decrees and other regulations issued by the governments of Serbia and Yugoslavia during the state of war, and the legal analyses of these acts are available on Internet, at <<http://www.freeb92.net/media/war/index.shtml>>.

In particular:

- Instructions of the Serbian Ministry of Information for the Work of the Media in the State of Immediate Threat of War (issued on 24 May 1999), and federal decrees;
- Decree on Organizing and Fulfilling Material Obligations (Official Gazette of FRY, no. 36, 24 July, 1998), and Decrees on Amendments to the Decree on Organizing and Fulfilling Material Obligation (Official Gazette of FRY, no. 32, 25 April, 1999);
- Decree on Internal Affairs During the State of War;
- Decree Restricting Traveling Abroad of the Yugoslav Army's Conscripts (Official Gazette of FRY, no. 16/99, 28 March 1999);
- Decree on the Application of the Law on Criminal Procedure in a State of War (Official Gazette of FRY, no. 21/99, 4 April 1999);
- Decree on Application of the Criminal Procedure During the State of War (Official Gazette of FRY, no. 21/99).

dictatorship, or even civil war. On the other hand, if the regime were forced to give up its grip on power, and if a minimum of legal and political continuity remained, radical changes directed toward democracy might result.¹²⁸

At the beginning of 2000, shared institutions of the federal state do not function properly. The federal arrangement is undergoing a most difficult test, and threatens to terminate if not modified thoroughly, and soon.¹²⁹ Neither the Serbian nor the federal government is able to effectively exercise its powers in Kosovo. A number of current Serbian and Yugoslav officials (including the presidents of both entities, as well as the Yugoslav Foreign Minister) are prohibited from entering about many European countries (all members of EU, and 14 other Central and Eastern European countries), and the USA, and are severely limited in performing their functions of representing the state abroad.¹³⁰

After two and a half months of daily unsuccessful anti-regime protests in Serbia, where the main demands were for the resignation of Milosevic and early elections on all levels, the Alliance for Change gave up those tactics in early December 1999, and is now taking other measures. Unification of the opposition since January 10, 2000 is a big step forward. Representatives of opposition parties have been meeting frequently with representatives of foreign countries (mostly the USA and European states) for several months now, and are recognized as partners. Though not in power, the opposition thus exercises some functions of state bodies.

At present it is hardly possible to predict the outcome. As has been demonstrated in this article, both Federal and Serbian legislative bodies are systematically abused and are hardly functioning, while the administration and the judiciary are controlled by the regime. It is unlikely that a shift towards democracy will come from the

128. Nenad Dimitrijevic, *What Language Will We Be Speaking After the Bombs Stop Falling*, 1 REC 5 (24 May 1999). Text in English available on Internet at <http://www.freeb92.net/casopis_rec/dimitrijeviceng.html>.

129. The Montenegrin Foreign Minister stated recently that the "referendum on Montenegro's independence is likely." See FREEB92 News (16 October 1999), Internet issue, in English, at <<http://www.freeb92.net/archive/e/>>.

130. The first list of those forbidden to enter many countries contained the names of about 300 officials and businessmen. See *Constitution Watch - Update on Yugoslavia*, 8 E. EUR. CONST. REV. 38 no.3 (Summer 1999), also available on Internet at <<http://www.law.nyu.edu/eecr/>>. Both the EU and USA lists were updated in November 1999 to include 597, that is 615 individuals, respectively. See Vladimir Milanovic, *Spisak Nepozeljnih u Evropi i Americi (The List of Unwanted Ones in Europe and USA)*, VREME no.464, 27 November 1999; V. Milanovic, *Novinari i Bankari (Journalists and Bankers)*, VREME no. 466, 11 December 1999.

establishment. It is now especially difficult to believe that Milosevic would give up power and risk an appearance before the Hague Court. Another foreign military intervention, which might follow if new armed conflict occurs in the existing tensed situation, would only make things worse, with no predictable outcome. On several occasions top ranking army officials have explicitly stated that the army will take the side of the regime, if it comes to that. Any outcome, favorable or grim, still seems possible.