

Yugoslavia

Over 40 proceedings for dismissal of judges and presidents of courts were instituted because they were members of the Association of Judges of Serbia. The 1998 Act on Lawyers restricts the freedoms of lawyers because the lawyer's chambers at federal and republic level have strict control over the profession. In Kosovo the civil administration component of UNMIK is trying to rebuild the judiciary.

On 11 April 1992 Serbia and Montenegro proclaimed the Federal Republic of Yugoslavia (FRY) and together claimed to be the official successor of the former Socialist Federal Republic of Yugoslavia. The UN Security Council denied that Serbia and Montenegro was the sole successor to the former Socialist Federal Republic of Yugoslavia and required it to make a new application for admission.

Besides the two republics, Serbia and Montenegro, the Federal Republic of Yugoslavia has two autonomous provinces: Kosovo and Vojvodina. The province of Kosovo in Serbia, with a mainly ethnic Albanian population, was given almost complete autonomy by the 1974 Constitution of the former Yugoslavia. During the 1980's voices calling for Kosovo to be made a full republic became stronger, but in 1989 the President of Serbia reduced Kosovo to an administrative region of Serbia and the Albanian language and cultural institutions were suppressed. The Kosovo self-government was dissolved by Serbia in 1991 after the ethnic Albanian leaders had proclaimed an independent "Republic of Kosovo".

In 1996 the Kosovo Liberation Army (KLA) emerged to fight for independence. An armed conflict between the Serbs and the Kosovo Albanians erupted when on 2 January 1999 an earlier truce between the Serb forces and the KLA was broken. The ethnic cleansing by Serb and Yugoslav forces that followed between January and June 1999 forced thousands of ethnic Albanians to flee.

Forced by the international community, negotiations started on 6 February in Rambouillet (France). When no peace deal could be brokered, on 24 March 1999 NATO began a daily air-strikes campaign, known as "Operation Allied Force", against military targets in FRY, followed by an EU oil embargo, beginning on 30 April 1999. Early in June 1999, the war was formally ended, the NATO bombing stopped and, according to UN Security Resolution 1244, the UN Interim Administration Mission in Kosovo (UNMIK) was established. Bernard Kouchner was appointed head of UNMIK whose goal is to organise a civil administration, coordinate humanitarian assistance, promote democratisation and institution-building, and restore the economy. On 10 June 1999, NATO deployed a peacekeeping force, K-FOR, in the province as the Yugoslav military withdrew from Kosovo in accordance with the Military Technical Agreement.

On 27 April 1992, the Constitution of the Federal Republic of Yugoslavia came into force. According to Articles 96 and 97 of the Constitution the President of the Federal Republic is the head of state and cannot be from the same republic as the Prime Minister who is the head of the government. The President is elected for a four-year term and cannot be re-elected. Slobodan Milosevic is President of the Federal Republic of Yugoslavia, Momir Bulatovic is Prime Minister of the Federal Republic of Yugoslavia, Milo Djukanovic is the President of Montenegro and Milan Milutinovic is President of Serbia.

The 1990 Constitution of the Republic of Serbia has, to date, not been brought into conformity with the 1992 federal Constitution and this gives rise to abuse and confusion. According to Article 155 of the federal Constitution "the constitutions of the member republics...must be in conformity with the Constitution of the Federal Republic of Yugoslavia".

The Federal Assembly (Savezna Skupstina) consists of the Chamber of Citizens (Vece Gradjana) and the Chamber of Republics (Vece Republika). Deputies to the Chamber of Citizens represent the citizens of the Federal Republic, while deputies to the Chamber of Republics represent the member republic from which they were elected.

The Republic of Montenegro has distanced itself from the "ethnic cleansing" carried out by the Milosevic regime in Belgrade and is slowly moving towards independence. On 2 November 1999 Montenegro adopted the German mark as its official currency.

Human Rights Background

Kosovo

Thousands of Kosovo Albanians were killed, their houses were burned and women were raped in the "ethnic cleansing" by the Serb and Yugoslav forces between January and June 1999. International investigations into the events are currently undergoing. Thousands of Kosovar Albanians fled to Macedonia and Albania and later found refuge in other European countries. On 27 May 1999 the UN International Tribunal for the Former Yugoslavia in the Hague indicted President Milosevic and four other Serbian leaders on charges of crimes against humanity. This was the first time that an acting head of state had been indicted for war crimes.

After the war ended Kosovo Albanians resorted to violence against Serbs, Roma, Bosniaks and other non-Albanians after their return to Kosovo, despite the presence of UNMIK and KFOR.

In March 1999, a personal envoy to Kosovo was dispatched by the UN High Commissioner for Human Rights along with the Special Rapporteur on the Situation of Human Rights in Yugoslavia. The High Commissioner also created the Kosovo Emergency Operation in Albania, the former Yugoslav Republic of Macedonia and the capital of Montenegro, Podgorica. The purpose of these deployments was "to register concern for the human rights situation then prevailing in Kosovo and to gather first-hand information about those violations for the purpose of accountability". In addition, the High Commissioner conducted several missions to the region in 1999.

The reports of the Office of the High Commissioner confirmed the crimes of the Serbs against the Albanian population of Kosovo and also drew attention to the current attacks by Kosovo Albanians on the Serb, Roma and other minorities, despite the international presence in the region.

Serbia

The adoption of the Decree on the Proclamation of a State of War on 24 March 1999 by the federal government established the possibility for the passing of a spate of decrees restricting

freedoms and rights of citizens. Only two weeks later the Decree on Enforcement of the Criminal Proceedings Act during a State of War (Official Gazette of the FRY, no. 21/99) was adopted (4 April 1999). Provisions of the act constitute changes to the Criminal Proceedings Act in force, directly restricting the freedoms and rights of citizens envisaged by the act and the republican and federal Constitutions, and determines terms of detention, bodies authorising detention and prerogatives of "competent bodies".

Press freedom was limited severely after the Serbian parliament adopted, in October 1998, the Law on Public Information which limits the scope of media coverage. In the course of 1999, and especially during the "ethnic cleansing", many journalists were harassed and even killed, such as the editor of Dnevni Telegraph, Slavko Curuvija, who was murdered on 11 April 1999, after having been openly critical of the FRY Government. Human rights defenders could not work freely in Serbia in 1999 and many were convicted in unfair trials or detained in Serb prisons without trial. An example is the Kosovar Albanian paediatrician, Flora Brovina, who was convicted and sentenced to twelve years in jail for conspiring against the government to commit terrorist activities. She is the founder and head of the League of Albanian Women and provided help to Albanians during the war. According to information from Amnesty International, Ms. Brovina was denied the opportunity to have confidential meetings with her lawyer which is in clear violation of international standards.

Two Australian and one Yugoslav employee from the organisation CARE were convicted on 29 May 1999 by a military court of passing on military secrets and were sentenced to prison terms of between four and twelve years. They were tried behind closed doors. On 19 May 1999, the ICJ and CIJL mandated a lawyer from the Swedish section to observe the trial. The ICJ and other observers were, however, barred from the court room. The two Australians were later pardoned but the Yugoslav aid worker remained in prison.

UN Human Rights Treaties

The six UN treaty bodies on human rights, which monitor the obligations under the respective human rights treaties, are of the opinion that "successor states are automatically bound by obligations under international human rights instruments from their respective date of independence...". The Human Rights Committee, for example, noted in 1992 that it regarded:

the submission of the report by the government and the presence of the delegation as confirmation that the Federal Republic of Yugoslavia (Serbia and Montenegro) had succeeded, in respect of its territory, to the obligations undertaken under the International Covenant on Civil and Political Rights by the former Socialist Federal Republic of Yugoslavia.

Except for an initial report to the UN Committee against Torture, however, no report to any of the treaty bodies has been discussed during the last few years, either because no reports were submitted or because the reports were not scheduled for consideration.

The UN Committee against Torture (CAT) discussed the initial report of the FRY in November 1998 after the report was submitted in January of that year with a delay of six years. The Committee expressed its concern over the "absence in the criminal law in Yugoslavia of a provision defining torture as a specific crime in accordance with Article 1 of the Convention" and the numerous accounts of the use of torture by the state police forces,

particularly in the districts of Kosovo and Sandjac. Furthermore the Committee voiced its grave concern:

over the lack of sufficient investigation, prosecution and punishment by the competent authorities of suspected torturers...as well as with the insufficient reaction to the complaints of such abused persons, resulting in the de facto impunity of the perpetrators of acts of torture. De jure impunity of the perpetrators of torture and other cruel, inhuman or degrading treatment or punishment results, inter alia, from amnesties, suspended sentences and reinstatement of discharged officers that have been granted by the authorities. The second periodic report to the CAT was due in October 1996 and has, to date, not yet been submitted to the Committee.

The Council of Europe

The Federal Republic of Yugoslavia asked to become a member of the Council of Europe on 18 March 1999 but "the lack of seriousness and credibility of the FRY government's application" led to the suspension of discussion of the issue.

The Judiciary

The court system at republic level consists of local, district and supreme courts. At the federal level a Federal Court and Federal Constitutional Court exist to which Supreme Court decisions may be appealed. The Federal Constitutional Court rules on the constitutionality of laws and regulations and on the conformity of the Constitutions of the member republics with the Constitution of the Federal Republic of Yugoslavia. The republics are responsible for enforcing the decisions of the Federal Constitutional Court. A military court system also exists.

Harassment of Members of the Association of Judges of Serbia

On 17 February 1999 the Supreme Court of Serbia dismissed the appeal of the Association of Judges of Serbia against the decision of the Ministry of the Interior in Serbia banning the association from entering the register of associations of citizens, and consequently obtaining the status of a legal person. The Supreme Court's decision was justified by the view that judges were not entitled to civil association and that retired judges could not be members of a professional association.

Under Article 44 of the Constitution of the Republic of Serbia:

those associations planning to violently overthrow constitutional order, violate the territorial integrity and independence of the Republic of Serbia, breach the constitutionally guaranteed human and civil rights, and instigate national, racial and religious intolerance and hatred...cannot exercise the freedom of associating on the basis of their registering with a competent body.

The President of the Supreme Court of Serbia, Mr. Balso Govedarica, at a staff meeting of the Belgrade District Court, commented on the aforementioned decision of the Supreme Court and explained his own position on the issue: There is no need for the establishment of a separate association of judges...for only a small group of judges wants to form such an association with a view to representing their political engagement as a non-party one.

Despite the aforementioned decision, the Association of Judges continued its activities, such as drawing attention to the fact that judges are underpaid, often receive their salary several months late and are subjected to a lot of political pressure. The Ministry of Justice announced the introduction of sanctions against demonstrators demanding pay increases for judicial employees. The Ministry underscored that "the Act on Strikes bans strikes in state bodies" and that:

any work stoppage or non-performance of duties represents a severe breach of work obligation....heads of judicial bodies are therefore requested to urgently inform the Justice Ministry of measures undertaken against employees breaking rules or working badly.

The CIJL wrote, on 27 October 1999, to the government of the Federal Republic of Yugoslavia expressing concern over the attacks against some Serbian judges and their denial of freedom of association. The President of the Supreme Court of Serbia, Mr. Balsa Govedarica, had threatened judges who are members of the Association of Judges of Serbia with removal from office unless they revoked their membership of the association.

All judges were asked to declare their membership or non-membership of the association at staff meetings, and those who admitted their membership were immediately dismissed. Over 40 proceedings for dismissal of judges and presidents of courts were instituted. These measures are in violation of international norms pertaining to the independence of the judiciary, and more specifically of Principles 8 and 9 of the 1985 UN Basic Principles on the Independence of the Judiciary (please refer to the Annex for the full text).

Kosovo

According to UN Security Council Resolution 1244 (1999) UNMIK is composed of four segments: the United Nations (UN) leads the civil administration, the United Nations High Commissioner for Refugees (UNHCHR) is in charge of the humanitarian issues, the Organisation for Security and Cooperation in Europe (OSCE) leads the institution-building and the European Union (EU) covers the reconstruction. The Special Representative of the UN Secretary-General, Mr. Bernard Kouchner, is the head of UNMIK and the highest international civilian official in Kosovo.

The civil administration component created a Judicial Affairs Office that deals with the administration of courts, prosecution services and prisons; the development of legal policies; the review and drafting of legislation; and the assessment of the quality of justice in Kosovo, including training requirements.

According to UN Security Council Resolution 1244 (1999) all legislative and executive powers, including the administration of the judiciary, is vested in UNMIK. The laws of the Federal Republic of Yugoslavia and the Republic of Serbia are respected by UNMIK as long as they do not conflict with internationally recognised human rights standards or regulations issued by the Special Representative.

The Special Representative has the authority to appoint or dismiss any person in the interim administration, including the judiciary, and can issue regulations that will be in force until repealed by UNMIK or by the Kosovo Transitional Council. The Kosovo Transitional Council, headed by the Special Representative, was created with representatives of all the

major political parties and ethnic groups in Kosovo, but some representatives left the Council for political reasons.

On 15 December 1999 all the political parties agreed to participate in the establishment by UNMIK of a Kosovo-UNMIK Joint Interim Administrative Structure. This will be composed of an Interim Administrative Council which will make recommendations for amendments to the law and regulations, as well as propose policy guidelines for administrative departments in applying the law. Three decrees were issued with regard to the judicial system in Kosovo: one that established a Joint Advisory Council for judicial appointment, one that appointed the members of this council and one that appointed four prosecutors, two investigating judges and a three-judge panel approved by the Judicial Panel.

The judiciary in Kosovo failed to function after the end of the conflict as almost all the Kosovo Serb staff had left and the Kosovo Albanian staff did not return to Kosovo. Before the conflict the Kosovo judiciary existed mainly of Serbian judges and prosecutors. During the Serb regime, out of 756 judges and prosecutors 30 were Kosovo Albanians. Under the auspices of UNMIK the Supreme Court of Kosovo that was abolished in 1991 was re-established, as well as five District Courts and the General Prosecutor's Office. An emergency judicial system was initiated on 30 June 1999 with the opening of the District Court in Pristina. Other courts have been established in Prizren, Pec, Gnjilane and Mitrovica, in addition to mobile courts.

According to a report of the UN Secretary-General to the Security Council dated 23 December 1999, the Advisory Judicial Commission had recommended 328 judges and 238 lay judges for appointment, but only 47 judges and prosecutors were actually active in the Emergency Judicial System. Several Serb judges had resigned for security reasons and several other judges, prosecutors and lawyers belonging to ethnic minorities were threatened. This development has severely hampered the establishment of a multi-ethnic judiciary.

Applicable Law in Kosovo

A review of applicable law was conducted by the Council of Europe and recommendations were issued to bring legislation in line with internationally recognised human rights standards.

UNMIK Regulation No. 1999/1 of 10 June 1999 provides that the laws in force in Kosovo prior to 24 March 1999 should continue to apply in the province, insofar as they did not contravene internationally recognised human rights standards. This regulation was, however, amended by Regulations 1999/24 and 1999/25 that state that the applicable law in Kosovo will be those regulations promulgated by the Special Representative, including subsidiary rules, and the law in force in Kosovo on 22 March 1989. The reason behind these amendments is a sensitivity in applying Serbian criminal law which was used for the revocation of the autonomous status of Kosovo and the repression of the Kosovo Albanians.

Federal law is applicable in any situation where neither UNMIK regulations nor the law in force in Kosovo on 22 March 1989 can be applied. In criminal trials the defendant will have the benefit of the most favourable provisions of the laws in force in Kosovo between 22 March 1989 and the date of issuance of a new regulation. Legal actions taken under UNMIK Regulation 1999/1 will remain valid.

Lawyers

The 1998 Act on Lawyers restricts the freedoms of lawyers because the lawyer's chambers at federal and republic level have strict control over the profession. After the war in Kosovo ended formally in June 1999, some 2,000 Albanian political prisoners remained in prisons in Serbia. Albanian lawyers have to work under very difficult circumstances to provide assistance to these prisoners. Most of them are accused of committing acts of "terrorism" and of being members of the KLA. If the Kosovar Albanian lawyers cannot, for safety reasons, represent the prisoners, they have to rely on Serbian lawyers (see i.e. the case of Teki Bokshi). According to information from the Lawyers Committee for Human Rights, Serbian courts are processing an enormous number of political trials in great haste, raising serious questions as to the fairness of these trials, which have already been tainted by unfair procedures and a lack of adequate representation.

Cases

Teki Bokshi (lawyer of the Humanitarian Law Center): Mr. Bokshi, an Albanian lawyer who represents Albanian political prisoners, was abducted from his car by three plainclothes men while working in Serbia with the Humanitarian Law Center. Two of Mr. Bokshi's colleagues, Mr. Mustafa Radoniqi and Mr. Ibish Hoti, were ordered to stay in the car and were only able to leave several hours later. After ten days of detention, Mr. Bokshi was released when his family paid a ransom of approximately \$60,000. There are strong suspicions that at least one of the kidnappers was a Serbian policeman.

Bajram Kelmendi (lawyer): Mr. Kelmendi, a Kosovo Albanian human rights lawyer was killed on 25 March 1999 by the Serbian police, together with his two sons. The Serbian police forced their way into Kelmendi's house early in the morning of 25 March, ransacked the house and took Kelmendi and his two sons, age 16 and 30.

Milorad Marjanovic (judge of the Municipal Court in Leksovac): Mr. Marjanovic was informed of the Supreme Court's decision to start dismissal proceedings against him, on 21 October 1999. This decision was explained in the following manner: "Mr. Marjanovic was engaged in activities incompatible with his judicial capacity, in the past three years he heard just a few cases and never achieved satisfactory work results". It was also pointed out that "Marjanovic is politically active in the so-called Association of Judges...within the scope of which his actions aim at constant disparaging of the judiciary position and the system as a whole".

S. Obradovic (judge of the Municipal Court in Valjevo): On 6 October 1999, Mr. Obradovic submitted his resignation note to the Assembly of Serbia, asking for the acceptance thereof, in conformity with Article 45 of the Act on Courts of Law. The following reasons for his resignation were given: "...collapse of morale and basic social values and subjugation of courts to exclusive party interests led to degradation of our judiciary, and the criminal courts, under degraded conditions of criminal and legal protection of life, freedom and property, lost a part of its inherent legitimacy".