



# INTERNATIONAL COMMISSION OF JURISTS

Commission internationale de juristes - Comisión Internacional de Juristas

" dedicated since 1952 to the primacy, coherence and implementation of international law and principles that advance human rights "

16 April 2003

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**Mr. Zoran Zivkovic**  
**Prime Minister of Serbia,**  
**Office of the Prime Minister**  
**Nemanjina 11,**  
**Belgrade**  
**Fax: +381 11 657 379; 659-682**

**Your Excellency,**

The International Commission of Jurists (ICJ) consists of jurists who represent all the regions and legal systems in the world working to uphold the rule of law and the legal protection of human rights. The ICJ's Centre for the Independence of Judges and Lawyers (CIJL) is dedicated to promoting the independence of judges and lawyers throughout the world.

Pursuant to the emergency powers enacted on 12 March by the Acting President of the Republic of Serbia, Natasa Micić, sweeping reforms of the public authorities in Serbia and Montenegro have been made with the reported aim of stamping out corruption and ensuring greater efficiency and effectiveness of these institutions. At the same time, the Parliamentary Committee for the Judiciary authorised the immediate forced retirement of 35 sitting judges, including seven Supreme Court Justices, who had reached the mandatory retirement age as provided for in the 2001 *Law on Judges* ("Official Gazette of the Republic of Serbia", Nos. 63/01 and 42/02). It is alleged that many of these judges were appointed to the bench under the Milosevic era.

In response to this mass dismissal of judges, the Collegium of the Serbian Supreme Court issued a statement on 19 March condemning this action by the Parliamentary Committee. Moreover, to protest these dismissals, and reportedly also due to mounting pressure from your Government, Justice Karamarkovic, the President of the Supreme Court, tendered her resignation on 20 March. On the same day, the Republican Public Prosecutor, Sinisa Simic, was also suspended by your Government.

It appears that reform measures directed towards judges have been debated by your Government for some time, but had yet to be implemented owing to issues of unconstitutionality. As you are aware, in July 2002 the Constitutional Court struck down

amendments to Serbian judicial laws passed by the Serbian Parliament, which would have given a parliamentary committee the power to nominate, appoint, and dismiss court presidents and other judges. In striking down the amendments, the Constitutional Court held that they violated the constitutional principle of independence of the judiciary. More recently, Bosko Ristic, the chairman of the parliamentary Administrative Committee which had verified the Government's decision to dismiss these judges, stated that it had been clear for over two years that the legal system needed reforms but that these "couldn't be carried out with the present personnel of the Supreme Court and Belgrade courts." According to Mr. Ristic, "the inefficiency of the courts has become increasingly obvious over the past few months, as hardened criminals are being set free, and many grave offences are never prosecuted because the statute of limitation no longer applies to them".

We understand that during this time of emergency public emotions are high, and pressure to reform public authorities is great. We also appreciate that there are numerous allegations against the Serbian judiciary of corruption and ineffectiveness, and that the judiciary itself must also be held accountable for any perceived misadministration of justice. However while it is necessary in any country to ensure that the judiciary is free from all forms of bias and corruption, and that it functions effectively, the ICJ/CIJL is concerned that present actions undertaken by your Government threaten the independence of the judiciary. While we acknowledge that the mandatory retirement age is properly and adequately provided for under Article 52 of the *Law on Judges*, we are concerned that these dismissals were not carried out in accordance with existing law.

We remind you that the principles of judicial independence and separation of powers are well-established under domestic and international law. At no time is the need to ensure the independence of the judiciary more acute than during a time of emergency, as a subservient judiciary cannot be relied upon to impartially carry out the difficult task of ensuring that human rights and the rule of law are protected during times of domestic turmoil. Moreover, safeguarding the independence of the judiciary and the separation of powers during such periods (i.e. through the independent review of the judiciary by appropriate and impartial bodies charged with this function under law), are necessary to prevent the accumulative concentration of practically unlimited discretionary powers in any one branch of government.

In particular, the ICJ/CIJL is concerned that the removal of judges and prosecutors in your country be done in an impartial and transparent manner by a body specifically charged with that function, and in accordance with domestic and international standards. In this regard, we call your attention to the *Constitution of Serbia* which provides that the Supreme Court "shall establish in accordance with law whether grounds exist for the termination of a judge's tenure of office or for the removal of a judge, and shall inform the National Assembly accordingly" [Article 101].

Similarly, the *UN Principles on the Judiciary*, endorsed by the UN General Assembly in 1985, provide in relevant part that:

*Principle 17: A charge or complaint made against a judge in his/her judicial and professional capacity shall be processed expeditiously and fairly **under an appropriate procedure**. The judge shall have the right to a fair hearing. The examination of the matter at its initial stage shall be kept confidential, unless otherwise requested by the judge. "*

Moreover, the ICJ/CIJL respectfully reminds you that your Government has the responsibility to ensure that the bodies envisaged by law to administer the appointment and removal of judges from the bench, namely the High Judicial Council and the High Personnel Council, receive sufficient resources to allow them to efficiently and effectively discharge their functions.

Furthermore, with regard to the termination of the office of the Republican Public Prosecutor, the *Law on the Public Prosecutor's Office* ("Official Gazette of the Republic of Serbia", Nos. 43/91 and 71/92) provides that the Republican Public Prosecutor "may be suspended from duty when dismissal proceedings or criminal proceedings for a dismissable offense have been initiated" [Article 41]. Such determinations are to be made by the Minister in charge of the judiciary [Article 42], and only after a full investigation has been conducted by that office [Article 71].

In this regard the ICJ/CIJL would also like to draw your attention to the *United Nations Guidelines on the Role of Prosecutors*, adopted by the UN General Assembly in 1990, which provide that:

*Article 21: **Disciplinary offences of prosecutors shall be based on law or lawful regulations.** Complaints against prosecutors which allege that they acted in a manner clearly out of the range of professional standards shall be processed expeditiously and **fairly under appropriate procedures.** Prosecutors shall have the right to a fair hearing. The decision shall be subject to independent review.*

As with the judiciary, and regardless of allegations of corruption, the independence of the prosecutor's office must be safeguarded in order to ensure the impartial administration of justice. Thus, the ICJ/CIJL respectfully asks your Government to ensure that all decisions regarding the removal of prosecutors be done by an impartial body legally established for this purpose.

Finally, the ICJ/CIJL would generally like to remind your Government that any actions taken pursuant to emergency powers must be "**strictly required by the exigencies of the emergency situation**" as is required under Article 4(3) of the *International Covenant on Civil and Political Rights* ("ICCPR"), to which Serbia and Montenegro has acceded. In commenting on the limitations of Article 4 of the ICCPR, the UN Human Rights Committee stated in 2001 that states are expected to "provide careful justification not only for their decision to proclaim a state of emergency but also for any specific measure based on such a proclamation" [General Comment 29, "States of Emergency", Article 4(5)]. Similarly, the *Constitution of Serbia* provides that "at the proposal of the Government...the Republic of Serbia, [may] proclaim a state of emergency, and issue acts for taking measures required by such circumstances, **in accordance with the Constitution and law**" [Article 83(8)]. The *Law on Measures in Case of a State of Emergency* ("Official Gazette of the Republic of Serbia", No. 19/91) also requires that "the President of the Republic shall declare a state of emergency and pass acts allowing measures to eliminate the state of emergency, **in accordance with the Constitution and law**" [Article 1]. Thus, it is axiomatic that in order for justice to be seen to be done by both the public and the international community during this time of emergency, your Government must abide by domestic and international law and ensure that there is a clear separation of powers.

It is with these considerations in mind that the ICJ/CIJL requests that your Government review the mechanisms by which the judges and prosecutors are dismissed in order to ensure that such dismissals are done in a manner that is consistent with the requirements of domestic and international law, and not pursuant to irregular emergency measures. Such actions circumvent the rule of law and set an inappropriate precedent. In this regard, we urge your Government to secure the resources necessary for the High Judicial Council and the High Personnel Council to be able to effectively carry out their important functions.

Yours sincerely,

Louise Doswald-Beck  
Secretary-General

cc. S.E.M. Milorad Scepanovic  
Ambassador,  
Permanent Mission of Serbia and Montenegro to the UN,  
Chemin Thury 5,  
1206 Geneva, Switzerland  
Fax: 022 839 33 59

Mr. Vladan Batic  
Serbian Minister of Justice,  
Federal Ministry of Justice  
Bulevar Lenjina 2, Belgrade

Mr. Goran Svilanovic,  
Serbian Minister of Foreign Affairs,  
Federal Ministry of Foreign Affairs  
Kneza Milosa 24, Belgrade  
Fax: 681-572

Justice Sonja Brkic.  
Chief Justice,  
Supreme Court of Serbia  
26 Nemanjina Street, Belgrade  
Fax: 643-423

Mr. Djordje Ostojic,  
Public Prosecutor's Office of Serbia  
26 Nemanjina Street, Belgrade  
Fax: 645-286

Mr. Bosko Ristic,  
Chairman of the Serbian Parliament Judicial Committee  
Parliament of Serbia  
Fax: 682-850