

amnesty international

PUBLIC



AI Index: EUR 70/11/99

Action Ref.: EERAN 4/99

Date: March 1999

FEDERAL REPUBLIC OF YUGOSLAVIA

Violation of the right to freedom of expression: Slavko _uruvija, Zoran Lukovi_ and Srdjan Jankovi_ - Journalists, possible prisoners of conscience

On 8 March 1999 Slavko _uruvija, editor of the Belgrade daily newspaper *Dnevni Telegraph* and two of its journalists, Zoran Lukovi_ and Srdjan Jankovi_, were convicted of “spreading false information” at the First Municipal Court in Belgrade. They were each given prison sentences of five months, but remain free pending appeal. If imprisoned Amnesty International will consider them prisoners of conscience.

The charges against them arise from an article published in the newspaper on 5 December 1998 and at the same time on the newspaper’s Internet web site. The article alleged that Dr Aleksandar Popovi_, a Belgrade heart specialist who was murdered on 3 December 1998, had criticized Dr Milovan Boji_, one of the Deputy Prime Ministers in the Serbian Government who is also the director of an institute for cardiovascular medicine. The court apparently accepted that the article linked Milovan Boji_ to the murder. As the editor responsible for the publication of the article Slavko _uruvija was charged, along with the two journalists, whom the court found to be the authors. In court the defence disputed that the prosecutor had evidence to prove their authorship. Dragan Novakovi_, editor-in-chief of the newspaper, was also charged but acquitted as Slavko _uruvija was found to be the editor responsible.

The law under which they were convicted, Article 218 of the Serbian Criminal Code, refers to “spreading false information” in a context in which it might “endanger public order or the peace”.

The law is clearly being used in this case to protect the reputation of a member of the government and not the public interest. Amnesty International considers that criminal prosecutions of this nature are inappropriate and that public officials should have recourse to private prosecutions for slander or libel such as those available to any ordinary citizen if they consider that their reputations have been damaged. This view is supported in international standards on freedom of

expression and case law which firmly establish that there must be scope for robust criticism of government officials and that they should not enjoy special protection from criticism.

Amnesty International believes that the prosecution of the *Dnevni Telegraph* journalists is politically motivated and is yet another attempt to suppress freedom of expression and criticism of the government.

International standards on Freedom of Expression

Article 19 of the United Nations (UN) International Covenant on Civil and Political Rights (ICCPR) which protects the right to freedom of expression, acknowledges that the exercise of that right “carries with it special duties and responsibilities” and may therefore be subjected to restrictions. However, it specifies that such restrictions may only be imposed if they are necessary to respect the rights or reputations of others or for the protection of national security or public order, or other issues affecting the community as a whole. However, both Article 19 of the ICCPR and Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms¹ (ECHR) recognize a wide latitude for robust criticism of government officials.

The UN Human Rights Committee, in an authoritative interpretation of Article 19 of the ICCPR, commented that “when a State Party imposes certain restrictions on the exercise of freedom of expression these may not put in jeopardy the right itself². The European Court of Human Rights has issued several judgments under the ECHR. For example, in the case of *Castells v. Spain*, Vol. 236, Series A, Judgment (1992), paragraph 46, the Court has made clear that “[t]he limits of permissible criticism are wider with regard to the Government than in relation to a private citizen” and that “the dominant position which the Government occupies makes it necessary for it to display restraint in resorting to criminal proceedings, particularly where there are other means available for reply to the unjustified attacks and criticisms of its adversaries in the media”. In that case, the Court found that the conviction of a person for writing an article accusing the Spanish police of responsibility for a series of murders in the Basque region violated Article 10 of the European Convention. The Court has reached similar decisions in other cases, such as *Prager v. Austria*, Vol. 313, Series A., Judgment (1995) (conviction for defamation of judges for alleged lack of impartiality); and *Lingens v. Austria*, Vol 103, Series A., Judgment (1986) (conviction for defamation of Chancellor for alleged Nazi associations).

In Articles 45 and 46 the Constitution of the Republic of Serbia guarantees freedom of expression: Article 46 specifies that censorship may not be imposed except “by decision of a competent court which establishes that [a newspaper] is calling for the overturning of the constitutional order” or otherwise for the break-up of Serbia or inciting hatred. It also specifies the right to have corrections issued and obtain “moral” and material damages when someone’s interests are damaged by the publication of incorrect information. The Federal Constitution contains similar provisions.

Amnesty International believes that the provisions of Article 218 of the Serbian Criminal Code are so broad and undefined that they may be used to restrict freedom of expression, as in the

¹ The FRY is not a member of the Council of Europe, which has developed the ECHR, however in 1998 it restated its intention to obtain membership, which would mean that it would have to commit to ratification of the ECHR.

² *General Comments 10 (19) e/ (article 19), paragraph 4. Report of the Human Rights Committee 38th Session, Supplement No.40.* UN Doc. A/38/40 1983.

case of the *Dnevni Telegraph* journalists where the law is being used to protect the reputation of a member of the government and not the public interest. The organization calls on the Serbian authorities to amend or repeal the law so as to bring it into line with international standards and the Constitutions and prevent it from being used further to restrict freedom of expression. Amnesty International similarly calls on the authorities to repeal the 1998 Serbian Law on Information and ensure that any legislation which is introduced to replace it is in compliance with the ICCPR.

Background information

Independent media outlets in Serbia have been under intense pressure from the authorities in recent months as a consequence of direct criticisms of the authorities which they have disseminated or simply the information which they have published, which includes reports on human rights violations in Kosovo. In October 1998 when, because of the situation in Kosovo, the Yugoslav and Serbian governments were under pressure in view of the threat of air strikes by the North Atlantic Treaty Organization, the Serbian government introduced a decree which effectively banned several newspapers. The decree was quickly followed by a new Law on Information which allowed for fines of up to 800,000 Dinars (80,000 US Dollars). Despite the size of the large size of the fines the law uses the procedures for dealing with petty offences which lack the rigour of normal legal proceedings.

The Law on Information allows prosecution on a wide range of grounds and restricts freedom of expression. For example, a small human rights organization in Leskovac was prosecuted because of an article its newsletter in which the state-controlled local radio station was criticized. The newsletter has a circulation of about a thousand copies, but the organization was fined 100,000 Dinars (about 10,000 US Dollars) and one of its directors, Dobrosav Nešić, was fined 70,000 Dinars (7,000 US Dollars), a huge sum by local standards and an amount he was not in a position to pay. The decision of the magistrate specified that he would be imprisoned for 30 days if he did not pay within 24 hours.

Dnevni Telegraph is itself now registered and printed in Montenegro, where Serbian laws do not apply, because of repeated prosecutions and fines under the Law on Information. Copies of it and other publications which are now printed in Montenegro for the same reason have repeatedly been seized by the authorities when they are brought into Serbia. The seized copies are supposedly sold as waste paper to pay unpaid fines. One daily, *Naša Borba*, has closed after the application of the law compounded its existing financial problems. In Kosovo the independent Albanian language media have also been threatened with prosecution.

The Serbian authorities have hinted that the Law on Information may be amended to permit criminal prosecutions. A draft Federal Law on Information has also been prepared although the text has not yet been made public.

The electronic media in Serbia has repeatedly complained about unreasonable and politically motivated restrictions on the issuing of licences which have led to the forced closure of radio stations, seizure of equipment and the prosecution of station directors.