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**PUBLIC**

**AI Index: EUR 70/43/00**

**Action Ref.: EERAN 5/00**

**Date: 31 August 2000**

## **FEDERAL REPUBLIC OF YUGOSLAVIA**

### **Violation of the right to freedom of expression: Zoran Lukovi\_ journalist, prisoner of conscience**

On 15 August 2000 Zoran Lukovi\_, a journalist, was arrested and taken immediately to prison to serve a five-month sentence which he was given in March 1999 for “spreading false information”. Amnesty International believes him to be a prisoner of conscience and calls for his immediate and unconditional release.

Zoran Lukovi\_ was convicted on 8 March 1999 together with another journalist, Srdjan Jankovi\_, and Slavko \_uruvija, editor of the Belgrade daily newspaper *Dnevni Telegraph* for which all three men worked. Each of the men was sentenced to five months’ imprisonment by the Number 1 Municipal Court in Belgrade, but were not immediately sent to serve their sentences. Slavko \_uruvija was murdered in Belgrade on 12 April 1999 by unknown persons. To date no one has been charged with his murder, but there is widespread belief that the authorities were implicated in his death. Srdjan Jankovi\_ remains free, but may also be arrested and taken to serve his sentence.

The charges against the three men arose from an article published in the newspaper *Dnevni Telegraph* 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 Popovi\_’s 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 proving their authorship.

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

Amnesty International believes that in this case, which was brought by the public prosecutor, the law was clearly used to protect the reputation of a member of the government and not the public interest, and that criminal prosecutions of this nature are inappropriate. The organization believes that if public

officials consider that their reputations have been damaged they should resort to private prosecutions for slander or libel, as would any ordinary citizen.

Amnesty International's 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 was politically motivated and forms part of a wider pattern of suppression of independent journalists and other critics of the Serbian and FRY governments. Since the *Dnevni Telegraph* trial the situation has worsened. *Dnevni Telegraph* itself stopped publishing in March 1999 after the start of the bombing campaign against the FRY by the North Atlantic Treaty Organization (NATO). It failed to start republishing, mainly because of the murder of its editor.

### **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. Despite this clause, both Article 19 of the ICCPR and Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms<sup>1</sup> (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 itself<sup>2</sup>. 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).

Articles 45 and 46 of the Constitution of the Republic of Serbia guarantee freedom of expression: Article 46 specifies that censorship may not be imposed except when "a competent court of law finds by its decision that they [the press] call for the forcible overthrow of the order established by the Constitution, violation of the territorial integrity and independence of the republic of Serbia...", or that they incite hatred. It also specifies the right of a person to have corrections issued and obtain "moral"

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<sup>1</sup> 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.

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

and material damages when his or her 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. In the case of the *Dnevni Telegraph* journalists the law is being used to protect the reputation of a member of the government and not the public interest. Other legislation such as that giving special protection to the president and government officials are also in contravention of international standards on freedom of expression.

The organization calls on the Serbian authorities to amend or repeal the laws so as to bring them into line with international standards and the Federal and Serbian Constitutions and prevent the law from being used further to restrict freedom of expression.

### **Background information**

Pressure on journalists and the independent media in Serbia continues to be a concern for Amnesty International. The current wave of pressure dates back to October 1998 when the Serbian Law on Public Information was introduced. At that time the Yugoslav and Serbian governments were under pressure in view of the threat of air strikes by NATO. The Serbian government introduced a decree which in effect temporarily banned several newspapers. The decree was quickly followed by the new Law on Public Information which allowed for large fines, but used procedures for dealing with petty offences which lack the rigour of normal legal proceedings. Government supporters have most frequently used this law to make complaints which have resulted in the imposition of large fines against the independent media, thus threatening their viability. The independent print media also alleges that the authorities have deliberately created a shortage of newsprint.

Journalists working for independent publications have been detained and questioned while attempting to cover the progress of demonstrations against the government. Journalists have been placed under criminal investigation and prosecuted. Some have been sentenced to imprisonment for asserting their right to freedom of expression. For example, on 9 June 2000 the satirist Boban Mileti\_ was sentenced to five months' imprisonment for "ridiculing" Yugoslavia and President Slobodan Miloševi\_ during a public reading to mark the publication of a book of his aphorisms. He remains free appealing appeal. Other journalists have been given suspended sentences or have cases pending against them.

The most serious case concerns Miroslav Filipovi\_, a journalist writing for the London-based Institute for War and Peace Reporting (IWPR), the *Agence France Presse* (AFP) news agency and Belgrade daily *Danas*. He was arrested at his home in Kraljevo on 8 May 2000, and apart from 10 days, was held in custody until 26 July when he was tried and convicted on charges of "espionage" and "spreading false information" and sentenced to seven years' imprisonment. He was accused of "collecting data representing military secrets with the intention to sell them to foreign institutions like IWPR and AFP". His accounts of alleged eye-witness reports of human rights violations by members of the Yugoslav army and Serbian police and paramilitaries in Kosovo were described as "spreading false information with the intention of provoking disturbance among the citizens and jeopardizing public peace and order". Much of the trial was held *in camera* and full details of the charges against him were not made public because of the alleged secrets. Amnesty International thought that there was no case to answer and considers him to be a prisoner of conscience. The Filipovi\_ case has been seen by journalists and writers as a warning from the authorities aimed at discouraging free expression.

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. On 17 May 2000 the authorities took control of the independent television station Studio B, sacking its staff and appointing a new editor in chief. This effectively rendered Radio B2-92, the most prominent independent radio station, unable to broadcast, as it had been using Studio B's equipment and premises since the authorities took control of its predecessor, B92, in April 1999.