

FEDERAL REPUBLIC OF YUGOSLAVIA

Continuing Concerns

The recent rapid and dramatic political changes in the Federal Republic of Yugoslavia (FRY) that followed the holding of federal presidential, federal parliamentary and Serbian municipal elections on 24 September are a chance for the incoming government to move forward on human rights matters. The government has shown its willingness to redress some of the major human rights violations that were endemic under the government of former President Slobodan Milošević, but a number of issues still remain unresolved.

1. The current political situation

Although Vojislav Koštunica has now been officially inaugurated as president of FRY, the process of forming a new government has been fraught with difficulties. The result of the federal elections means that the opposition coalition which he leads (Demokratska Opozicija Srbije - DOS) is dependent on co-operation with other parties in order to form a workable administration, and this has to some extent involved working out compromises with figures previously close to former FRY President Slobodan Milošević. The unity of the opposition coalition itself remains fragile, and there is no guarantee that the old pattern of quarrels and disunity will not reassert itself, leading to a weak and ineffective government open to influence from vested interests, commercial, military and political.

Despite strong support for the opposition throughout the country, the actual result of the elections has meant that the DOS is a minority in the Federal Parliament which, according to the constitution, has more power than the Federal President (although Milošević's grip on both his party and the security forces meant that the parliament previously functioned as a mouthpiece and a rubber stamp). This minority presence was partly a result of the strong response to the call for a boycott of the elections by the Montenegrin authorities, who were opposed to Milošević and to dubiously valid election results from Kosovo, which showed strong signs of manipulation on behalf of the ruling coalition. As a result all of those elected to the parliament from Montenegro were members of the People's Socialist Party (SNP) or the Serbian People's Party (SNS), which are linked with Milošević's circle, and hold the balance of power in both houses of the parliament. Following a lengthy series of talks, on *22 October President Koštunica accepted the SNP's Zoran Djindjić as federal Prime Minister, and a new federal government held its opening session on 4 November 2000.*

The most powerful and effective elected body in the FRY is the Serbian parliament, which was not involved in the 24 September elections and remained dominated by Milošević allies. On 24 October, following a great deal of political manoeuvring, agreement finally was reached for the dissolution of the Serbian government and its replacement by a transitional government in which power is to be shared between the DOS, the Socialist Party of Serbia (SPS - Milošević's party) and the Serbian Renewal Movement (SPO) until a new round of elections on 23 December. The DOS is expected to make a far stronger showing than in the September elections. Ministerial posts have been shared between the three parties, with four of the most sensitive - the Interior Ministry, the Ministry for Information, the Ministry of Justice and the Ministry of Finance - being headed by three co-ministers, one from each party, who share collective responsibility. The far-right nationalist Serbian Radical Party (SRS), formerly a supporter of the SPS/Yugoslav United Left coalition, has refused to cooperate with the new government.

The opposition is accepted by both sides to have made the strongest showing in municipal elections. The majority of cities and large towns, including Belgrade, Niš and Novi Sad are governed by members of DOS.

Although the risk of open conflict breaking out in Serbia's sister republic Montenegro has receded, problems arising from the previous government's manipulation of the federal constitution, the rift within public opinion over the desirability of secession, and the fact that Montenegrin President Milo Djukanović has refused to recognize the validity of the 24 November elections, mean that relations between Montenegro and Serbia remain tense. Both Federal and Serbian governments are likely to oppose any moves towards independence by Montenegro. The position of the republic's ethnic Albanian and Muslim Slav minorities, who may be inclined to oppose independence and might be at risk of harassment or ill-treatment, will need attention. The presence within Montenegro of a large population of refugees and displaced persons (making up around 10 per cent of the total population in the republic), is another factor which could increase instability.

2. The implications for human rights and Amnesty International's concerns

The widespread fears of violence, mass arrests and ill-treatment of demonstrators, and even internecine armed conflict, have fortunately not been realized, and the handover of power has generally proceeded peacefully. There has been at least a start towards redressing human rights violations committed under the previous government. For example, journalist Miroslav Filipović, who had been arrested and sentenced to seven years' imprisonment on charges of "espionage" and "spreading false information" was released from jail on 10 October, although he still faces a retrial. Another journalist, Zoran Luković, who was serving a five-month prison sentence for

“spreading false information”, was released on 21 October after being pardoned by the Serbian President, Milan Milutinovi_. Both men had been adopted by Amnesty International as prisoners of conscience. On 1 November the Kosovar Albanian doctor and poet Flora Brovina, who had also been adopted as a prisoner of conscience by Amnesty International, was released. However, in mid-November more than 800 ethnic Albanian prisoners remained in jail in Serbia. Most of them are held in connection with political offences, and the majority have been sentenced following unfair trials. Many such prisoners have claimed during their court appearances or following their release after having served their sentences that they had been tortured or ill-treated during their detention. The evidence presented against many of the prisoners was weak, and AI believes that many are likely to be prisoners of conscience who were detained on the basis of their Albanian ethnicity rather than on evidence of criminal activities.

Previously documented cases of unfair trial and ill-treatment in custody or during arrest are still awaiting investigation by the authorities. Although some victims of ill-treatment have begun private prosecutions against those they hold responsible, there has been no move by the authorities to begin independent investigations of these incidents. All cases of ill-treatment in custody should be fully and impartially investigated by the authorities, with those responsible brought to justice and the victims of such ill-treatment afforded compensation by the authorities.

Following a series of violent protests about prison conditions (including accusations of ill-treatment by prison staff and accompanied by demands for amnesties for non-political prisoners) by prisoners in Sremska Mitrovica, Niš, and the Zabela prison in Po_arevac in which the authorities temporarily lost control, the Ministry of Justice announced the formation of a commission to look into their complaints and investigate the responsibility of prison officials. The former head of the Sremska Mitrovica prison, Trivun Ivkovi_, has been detained and is currently being investigated on charges of misuse of an official position and financial crimes.

There have also been reports that ill-treatment by police during arrest or questioning has continued to take place. On 13 October Dejan Bulatovi_, a member of the Serbian DemoChristian Party, was reportedly beaten by police who were questioning him about the looting of weapons from a Belgrade police station during the 5 October demonstrations, and suffered injuries requiring medical treatment. On 27 November it was reported that Peter Aradi, a Hungarian journalist, was beaten by two police officers in the Vojvodina town of Senta.

Conscientious objectors serving sentences for refusing to perform military service were released in September. It is believed that they - and those who fled abroad to avoid military service - will be covered by the proposed amnesty law (see below). Amnesty International remains concerned that the current law relating to conscientious objection and the provisions for civilian service fails to meet international standards. At the opening session of the FRY parliament on 4 November, Prime Minister Zoran _i_i_ stated that the government intended to reduce the period of military service, but made no mention of changes affecting provisions for alternative civilian service.

3. Proposals for amnesty law

On 17 November, FRY President Vojislav Koštunica agreed to the formation of a team of experts consisting of a number of members of a non-governmental human rights organization, the Yugoslav Committee for Human Rights (YUCOM) and others with the aim of drafting a law on amnesty. Preliminary statements from members of the team indicate that the federal law on amnesty is intended to cover those who refused to perform military service by avoiding call-up or deserting, and those who were facing or had been sentenced under the FRY Criminal Code for acts against the constitutional order and security of FRY, and criminal acts against the Yugoslav Army (VJ). There have also been suggestions that the amnesty would apply to ethnic Albanian prisoners held in Serbia on political charges. However, it is unclear as to whether this will include all of the ethnic Albanian prisoners. It would exclude anybody charged with war crimes and crimes against humanity. Details of the draft law have not yet been made public.

There is also discussion of a separate Serbian amnesty law for prisoners sentenced under the republic's legislation. Initial statements by President Koštunica also indicated his desire to grant an amnesty to those accused of verbal misdemeanours, spreading false information, or on similar criminal charges which have been used to restrict freedom of expression. Any amnesty for these cases would probably mean annulling criminal records and dropping cases in progress, as no such prisoners are currently known to be imprisoned.

4. National minorities

Members of national minorities, notably Roma, Sandžak Muslims and ethnic Albanians in Serbia proper, remain at risk. Problems are most likely to consist of police inaction in the case of attacks by skinheads, or discrimination by individuals than direct examples of violence or discrimination on the part of the authorities. Particular attention needs to be given to ensure the protection of and respect for the rights of minorities. The rights and protection of refugees and internally displaced persons, many of whom themselves are Roma or members of other national minorities, must also be given due attention.

There have been repeated clashes between Serbian police units and an armed ethnic Albanian opposition group, the Liberation Army of Medvedje, Bujanovac and Preševo (UÇMBP), in the area near the administrative border with Kosovo, where there is a sizeable ethnic Albanian population. On 20 November three Serbian police officers were killed and others wounded during an offensive by the UÇMBP, which is supported from within Kosovo, but has a presence in the boundary zone just inside Serbia proper. The FRY authorities responded to the incidents with restraint, abiding by the provisions of the Kumanovo agreement of June 1999 by which only lightly armed police are permitted entrance to the zone, and initiated talks with representatives of KFOR, in an attempt to arrange a cease-fire and the withdrawal of UÇMBP from the zone. However, tensions remain high and on 28 November the United Nations High Commission for Refugees (UNHCR) announced that around 3,000 ethnic Albanians had fled the area to Kosovo. An unknown number of Serbs was also reported to have fled the area.

5. Displaced persons and refugees

Amnesty International also encourages the new government to address the situation of the estimated 500,000 or more refugees from Bosnia-Herzegovina and Croatia, some of whom have been resident in FRY since as early as 1991. Used by the previous government as a scapegoat for many of the economic and social problems within the FRY, and as a political tool in the country's external relationships, they have neither been granted access to refugee status nor to citizenship of the Federal Republic of Yugoslavia. These refugees were provided with very little assistance by the authorities and with limited access to the documentation necessary for them to gain access to shelter, work and healthcare. Information about rights and services to which, as refugees, they should have been eligible, was at best variable, and at worst, unavailable.

The new government has, to date, remained silent on any programme of provision for refugees and internally displaced persons. The only exception has been to insist that ethnic Serbs displaced from Kosovo, estimated to number above 180,000 persons, should be enabled to return to the province as soon as possible.

The FRY authorities should work towards increased cooperation with both the Croatian authorities and the Federation and the Republika Srpska authorities in Bosnia-Herzegovina - as well as with UNHCR and other key non-governmental organizations (NGOs) and international NGOs involved in the return process - to enable those who wish to return to their former place of residence to do so. They should provide refugees with access to the documentation necessary for return, the freedom of movement necessary to obtain such documents, information about the return process, access to NGOs and INGOs able to assist them, and to information about conditions within Bosnia-Herzegovina and Croatia which would enable them to make fully informed decisions about the desirability and practicability of return. In the case of those who are unwilling or unable to return to their former place of residence, the FRY authorities should take measures to provide durable solutions for them to remain.

6. The rule of law and legislative reform

The incoming government will also have to give urgent attention to rebuilding institutions that are essential to the rule of law and adherence to international human rights standards. Ill-treatment and torture by police under the previous government occurred most frequently in police stations after arrest. According to the Yugoslav Code of Criminal Procedure (CCP), detainees should be brought before a judge as soon as possible and at latest within 24 hours. However, police frequently failed to follow this procedure, using another article which permitted detention on police orders for up to 72 hours. This rule, which itself was supposed to be used only under exceptional circumstances was also frequently flouted. The CCP itself falls short of international standards. The guarantee that an arrested person be permitted access to defence counsel during the

initial period of arrest and questioning is an important safeguard against torture, ill-treatment and coerced statements, including false confessions. Amending the CCP to allow such access, as well as independent medical examination and the ability to challenge detention by police (which is currently impossible) would be an important first step in reforming legislation in the FRY to ensure its compatibility with international human rights standards.

Law enforcement officers and military personnel should be trained in international human rights standards, and those against whom there is evidence of involvement in violations of human rights and humanitarian law should be suspended pending comprehensive and impartial investigations. The creation of an independent and impartial judiciary trained in international and regional human rights standards should be a high priority throughout the FRY.

7. The death penalty

The death penalty was abolished for crimes under the Federal Criminal Code with the promulgation of the FRY Constitution and amendments to the Federal Criminal Code in 1992. However, the death penalty remains in force in the Criminal Codes of the two constituent republics, Serbia and Montenegro, where it can be applied for aggravated murder. Although no executions are reported to have been carried out since 1992, courts have continued to pass death sentences. For example, six men were reportedly sentenced to death in 1999, on 30 October 2000 a Czech citizen was sentenced to death by the Subotica District Court, and on 27 the aak District Court sentenced two men to death. Around 30 men are believed to be on death row. One of these was sentenced in 1986 and still remains uncertain as to his fate.

AI believes that complete abolition of the death penalty is one of the challenges facing the new authorities, particularly in light of the FRY's expressed desire to join the Council of Europe (which regard the death penalty as incompatible with human rights). In light of the presence of the death penalty in the Montenegrin Criminal Code, it is important that the Montenegrin authorities also address this issue.

8. International Criminal Tribunal for the Former Yugoslavia

President Koštunica has clearly stated on many occasions that he will not consider handing over those - including former President Slobodan Milošević - indicted by the International Criminal Tribunal for the former Yugoslavia (Tribunal) , and has referred to the court as "a political, not a judicial institution," and has shown no signs of any willingness to revise his opinion. He has not, however, made any public statements indicating that Milošević (who was re-elected head of the SPS on 25 November) would be immune from prosecution if he remains in FRY. Amnesty International believes that it is incumbent on the new government to arrest him and others indicted as war crimes suspects, and transfer them to the Tribunal for trial. A recent announcement that the Tribunal will be able to open an office in Belgrade must at least be seen as a positive step and a sign that progress is possible on this issue. The office will reportedly work on gathering evidence from witnesses in Serbia.

Any deal involving other states intended to provide any of the indicted Yugoslav and Serbian officials or ex-officials with refuge or immunity in return for their retirement from political life would be quite illegitimate. Any state giving refuge to Milošević or any of the four other members of his government (Serbian President Milan Milutinović, former Deputy Prime Minister Nikola Šainović, former Defence Minister and former Chief of Staff of the Yugoslav Army Dragoljub Ojdanić, and former Serbian Minister of Internal Affairs Vlasto Stojiljković) who have been indicted is obliged under the terms of the charter by which the court was established to arrest or detain them and hand them over to jurisdiction of the court. The President of the Tribunal is the only person authorized to amend or withdraw indictments (at the request of the prosecutor), and Amnesty International would be immediately and strongly condemn any attempt to influence her to do so as an unjustified and reprehensible attempt to undermine the Tribunal itself, as well as doing untold damage to the principles of accountability, universal jurisdiction and the concept of international law.

A number of those indicted by the Tribunal for responsibility for war crimes committed during the period of conflict in Croatia and Bosnia-Herzegovina, including former members of the Yugoslav Peoples' Army (JNA) and former members of the political leadership and military forces of the Bosnian Serbs, are also reported to be present in Serbia. These men should also be arrested and surrendered to the custody of the Tribunal. The authorities should also take immediate steps to end the culture of impunity for human rights violations or abuses committed by members of Serbian and FRY forces and paramilitaries in Kosovo, Croatia and Bosnia-Herzegovina, investigate reports of such violations and bring those responsible to trial.

9. Kosovo

November saw the initiation of a dialogue between the new authorities and the United Nations Interim Administration in Kosovo (UNMIK), a dialogue which was entirely absent under the previous authorities. The release of some ethnic Albanian prisoners, such as Flora Brovina (see above), attributable to the change of authorities, give rise to hope for progress. However, enormous ground remains to be covered on the part of the FRY and Serbian authorities. Addressing the issue of Kosovo Albanian detainees in Serbia, as described above, is one of the main challenges. However, similar priority must be given to providing information urgently to enable the resolution of the cases of around 3,000 ethnic Albanians from Kosovo whose whereabouts remain unknown. Many of these have "disappeared" following their arrest by Serb or FRY military, police or paramilitary forces. The authorities must address the issue of impunity and the need to hold to account those who perpetrated human rights violations in Kosovo while it remained under control of the Serbian and Yugoslav authorities.

Moves by the FRY authorities to address these problems are likely to be accompanied by demands for the swift return of Serbian internally displaced persons to their homes in Kosovo; however, it is clear the security situation will not permit this in the near future and any attempts to realize it will be met with opposition by the ethnic Albanian population. Some statements by Serb

organizations have attempted to link the release of the Kosovar Albanian prisoners in Serbia with the progress of investigations into the abduction of Serbs in Kosovo and the clarification of their fate. AI believes that both concerns require urgent investigation and action, but that any attempt to make progress in one area dependent on progress in the other is quite unacceptable.

In Kosovo itself Amnesty International has serious concerns about the application of international human rights standards in law enforcement and judicial practices under the UNMIK administration by representatives of the authorities or the Kosovo peacekeeping force (KFOR). The organization also believes that leaders of the ethnic Albanian community must afford maximum cooperation in resolving the cases of perhaps 1,000 Serbs, Roma, ethnic Albanians, foreigners or members of other minorities who are still missing after reportedly being abducted by the Kosovo Liberation Army or other armed ethnic Albanians. There must be no impunity for any perpetrator of violations or abuses of international human rights or humanitarian law in Kosovo, and Amnesty International emphasizes the need for UNMIK and KFOR to set the highest standards as an example to the FRY, Serbian and all other authorities in the region.

Serious efforts must be made by all parties to cooperate in facilitating the voluntary return of internally displaced persons and refugees of all ethnicities where this is feasible, and any returns must be made in safety and dignity and without political pressures that result in danger to life or physical security.

10. The NATO air campaign

Amnesty International restates its concerns and recommendations as set out in “Collateral Damage” or Unlawful Killings (June 2000, AI Index: EUR 70/18/00), including the recommendations for the North Atlantic Treaty Organization (NATO) to establish a body to investigate credible allegations of violations of international humanitarian law during operation Allied Force, to make public the findings of such an investigation and ensure their use in assisting any prosecution that may appear appropriate, and to ensure that victims of violations of international humanitarian law receive adequate redress. The international community has clearly expressed desires to engage with the FRY and see democratic changes which will, as is generally hoped, have a positive effect on the wider region, particularly in respect of ending the culture of impunity in the former Yugoslavia. It is thus especially important that concerns arising out of the NATO intervention are addressed and that any perception of lack of accountability or impunity on NATO’s part be erased.

12. Amnesty International’s recommendations

Amnesty International makes the following recommendations to President Vojislav Koštunica and the government of the Federal Republic of Yugoslavia.

- The Federal Republic of Yugoslavia should uphold its international obligations as a member of the United Nations by arresting all suspects indicted for war crimes by the International Criminal Tribunal for the former Yugoslavia and transferring them to the custody of the Tribunal. It should further cooperate with the Tribunal by supplying it with all necessary information relating to those indicted.
- All cases of ethnic Albanians held on political charges should be reviewed urgently . In cases where no evidence of criminal activities exist prisoners should be immediately released. Where doubts exist concerning the fairness of trial proceedings, or trial has yet been held they should be tried or retried in a timely fashion according to international standards of fair trial.
- The FRY should cooperate fully with the International Committee of the Red Cross (ICRC) and the Commission for Detainees and Missing Persons, providing them with the fullest available information which could assist in establishing the fate of up to 3,000 Kosovo Albanians who “disappeared” or are believed by their families to have been detained by Serb military or paramilitary forces during the period of the NATO bombing and immediately afterwards, and whose whereabouts remain unknown. The FRY should also cooperate with bodies working in Kosovo to resolve cases of Kosovo Serbs, Roma and others who are believed to have been abducted by the Kosovo Liberation Army (UÇK) or other armed ethnic Albanians.
- Any revision of legislation relating to conscientious objectors should include provisions for a form of alternative service which ensures conscientious objectors a civilian and non-discriminatory alternative to military service, according to international standards, and a fair procedure in law for its application.
- All reports and allegations of ill-treatment in custody should fully and impartially investigated and the results of such investigations be made public. Those found responsible for the ill-treatment of those in custody should be brought to justice and the victims provided with full and appropriate compensation.
- All law-enforcement officers should be fully trained in international standards relating to the custody and treatment of detainees as expressed in the UN *Code of Conduct for Law Enforcement Officials* and in the UN *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*.
- The Serbian and Montenegrin governments should be encouraged to abolish the death penalty and remove it as a provision from their respective criminal codes, ensuring that the sentences of those currently sentenced to death are commuted to a term of imprisonment.
- Incidents of discrimination and violence towards minority groups - including refugees and internally displaced persons (IDPs) - should be investigated by the appropriate authorities in a timely and impartial fashion, and vulnerable groups and individuals should be afforded protection through appropriate legislation.

- Refugees and IDPs should be provided with appropriate assistance and services, as well as easy access to information to allow them to take informed decisions concerning the possibility of return to their former homes. The FRY should cooperate fully with the relevant authorities in Croatia and Bosnia-Herzegovina to ensure that refugees are afforded the right to return in safety and dignity. Those who are unable to do so must be afforded protection, and their status within the FRY regularized.
- Legislation should be reviewed and amended where necessary to ensure its compatibility with international human rights standards. Priority should be given to amending the Code of Criminal Procedure so that those arrested by police are guaranteed prompt and adequate access to defence counsel, independent medical examination and the legal right to challenge their detention.

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