HEARINGS ON PUBLIC DIPLOMACY

AND INTERNATIONAL FREE PRESS

WRITTEN TESTIMONY

OF KURT WIMMER

BEFORE THE

COMMITTEE ON FOREIGN RELATIONS

UNITED STATES SENATE

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Summary

The development of a free, fair and independent global press is essential to world freedom and to America's national security. Independent media can expose corruption, increase transparency in government, ensure true democracy and create an environment in which business will have the confidence to invest in transitional economies. It cannot accomplish these goals, however, if it is stifled by unfair defamation suits, discriminated against by stilted media laws, kept from vital public information, and if its journalists continue to be jailed and assassinated.

There is no lack of resolve on the part of journalists overseas. Freedom of speech is far from free, and sacrifices are made daily by those on the front lines of journalism. Many governments provide assistance in this struggle. But it is the United States, the only world government that holds freedom of expression as a primary policy goal, that must continue to exercise an essential global leadership role.

The work of the United States in developing nations has been effective. In Serbia, independent media emboldened by U.S. support helped spark a revolution that overthrew a tyrant. In Kosovo, independent local media now exist for the first time in history. In Bosnia, a true television network exists because of U.S. technical assistance. Across Eastern Europe and Central Asia, sustainable independent media have begun to take hold, enabled by new media laws, and these efforts must continue unabated.

Iraq, Afghanistan and the Middle East can benefit from this approach.

But if we expect this work to succeed, it will be crucial for our efforts to be ***long-term in scope***, for this work to be ***clearly separated from short-term policy goals and political influence***, for our efforts to include ***effective involvement of U.S. media companies,*** and for this work to be measured by a ***rigorous assessment of media freedom***. Ongoing work, which is extraordinarily successful, must be continued even as new institutions are considered.

The foundation for these efforts has been carefully constructed by years of hard work by non-governmental organizations supported by the U.S. Agency for International Development. The next step, both in substance and geography, will be a challenge. We must take it with the resolve necessary to continue our work until the job is truly done -- until independent media overseas are self-supporting, free and fully protected by law. Some may say that this is a policy marathon in an era defined by the sprint. But free expression and independent media are far too crucial to the world and to our own national interests to merit anything less.

Statement for the Record

Committee on Foreign Relations
United States Senate
February 26, 2004

Kurt Wimmer
Covington & Burling
Washington, D.C.

Mr. Chairman, Senator Biden and Members of the Committee:

I am grateful for the great honor and opportunity of appearing before you today. The development of free, fair, legally protected and self-sustaining media in the developing world is of paramount importance to the interests of the United States in the current global environment. Because my colleagues and I have worked so hard to help to develop free expression in developing democracies, it is both gratifying and encouraging to me that this Committee is focusing on this issue.

Introduction. Before I discuss the importance of this issue to our country, let me provide the context for my views. I have been a partner in the law firm of Covington & Burling, in its Washington and London offices, for the past 12 years and a media lawyer for almost 20. In addition, I am privileged to chair the First Amendment Advisory Council of the Media Institute and the board of governors of the International Research & Exchanges Board (IREX).

In my law practice, I have been able to see firsthand the effect of varying international standards of free expression on our U.S. and international media clients. I also have been privileged to see the dedication and perseverance of journalists in developing democracies around the world.[1] Our media law practice at Covington has been providing legal assistance and on-the-ground legal advice to the media in developing countries for the past decade in some 20 countries, including Serbia, Kosovo, Croatia, Bosnia and Herzegovina, Romania, Bulgaria, Albania, Slovakia, Macedonia, Montenegro, Russia, Ukraine, Belarus, Georgia, Azerbaijan, the Kyrgyz Republic, Turkey, Indonesia, Mongolia and, most recently, Iraq.

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[1] Our clients in this work have included IREX, the ABA Central and Eastern European Law Initiative, Internews, the International Center for Journalists, the Global Internet Policy Initiative, the Stanhope Centre for Communications Policy Research in London, and the ABA-United Nations Development Project. Additionally, I was the sole American member of the United Nations/OSCE Advisory Group on Defamation and Freedom of Information Legislation for Bosnia and Herzegovina, which drafted new libel and access laws for Bosnia that now have been adopted.

The Need for U.S. Support for Free Expression. Our work has given me a useful vantage point to assess the prospects for change in global free expression. There is no doubt that more must be done. Our First Amendment does not reach beyond our borders, and no country has legal protections to rival ours. In most of the world, the watchdog of the press is muzzled. The media has an invaluable role to play in galvanizing sustained political reform, exposing corruption, increasing transparency in government, ensuring effective democracy and creating an environment in which business will have the confidence to invest in transitional economies. The structural importance of the press, moreover, cannot be overstated in states torn by ethnic factionalism. The press cannot do its job, however, if it is subjected to unfair media laws, if it is prevented from having access to information, if it is stifled by unfair defamation litigation, and if its journalists continue to be jailed and assassinated. Groups and governments from around the world are focusing on these issues. But I am more convinced than ever that the United States must continue to play an essential leadership role for these conditions to improve.

There is no lack of will, vision or courage on the part of journalists living under repressive regimes. Members of this Committee may recall Slavko Curuvija, the publisher of the *Dnevni Telegraf* in Belgrade, with whom I had the privilege of working in the course of our efforts in Serbia. Mr. Curuvija's media outlets had been subjected to ruinous fines by the Milosevich regime for expressing opinion, on a pretext and without hope of legal challenge. By 1998, it was no longer safe for him to publish. But he had found a printer in Montenegro and a sympathetic trucking firm that would hide bundles of his newsmagazine, *Evuropljanin*, under shipments of produce. But the ultimate act of censorship finally ended this publisher's crusade. On April 11, 1999, as he walked home with his wife from Orthodox Easter Mass, Slavko Curuvija was assassinated.

Mr. Curuvija's assassination was not an isolated incident. Just a few months before, Zeljko Kopanja, editor of the independent newspaper *Nezavisne Novine* in Bosnia, was the victim of a car bomb -- and even after losing both legs, he edited his newspaper from his hospital room. The Committee to Protect Journalists has reported that at least 263 journalists have been assassinated in the past decade. And it has been going on for as long as there have been conflicts between those in authority and those who would criticize authority. My own grandfather, a printer in Luxembourg, criticized the Nazi invasion until his presses were destroyed by the SS.

Freedom of speech is far from free. It is purchased by the sacrifices of those who risk their all, from John Peter Zenger to Katherine Graham. Those

who are making these sacrifices in the developing world need our help in building effective, independent media and media laws that can preserve their freedom and protect their speech.

The question, of course, is how we can best use the scarce resources available to accomplish this goal. I applaud the Chairman's leadership in this area and suggest that this Committee bear in mind the following principles that the more than 30 lawyers involved in our team at Covington & Burling have drawn from our work overseas:

- **Current programs are effective, economical and must be continued even as new structures are considered.**

We have worked in 20 developing countries, with Covington lawyers on the ground in 15. Our team has seen real change attributable to the work of USAID-supported programs. We have worked with dedicated, hard-working media professionals who are committed to provoking positive change and who *truly* appreciate the help and leadership of the United States.

The results of the work supported by USAID have been tangible and real. Independent media in Serbia contributed to the will of the people overcoming the Milosevich regime, and this regime would have silenced these media without the brilliant technical assistance of the United States. Repressive media laws would have been passed in multiple Central and Eastern European states had it not been for the opinions of American legal experts that raised significant doubts about the consistency of these schemes with European and international legal norms. Our opinion on the draconian Serbian "Law on Public Information" (attached) was translated into several languages and distributed broadly to those attempting to oppose it. Independent media in Bosnia and Kosovo are truly local and becoming self-sustaining. New access to information laws have been passed throughout the region, particularly in Georgia and Bosnia, because of the help of United States experts. The evidence in the region is staggering. And it has been achieved at a cost that must be considered modest in comparison to the more general foreign policy obligations of the United States.

If a wholesale change in these sustaining programs is made while they are in mid-stream, their ability to continue to make progress will be jeopardized. Current methods and levels of funding must continue as we consider how to improve the overall scope of our efforts. Consistency is of paramount importance in this field, and we cannot afford to endanger the momentum that these programs have attained over years of hard work.

- **<u>Our commitment must be long-term in scope</u>.**

Our experience has shown that there really are no quick fixes, particularly in the area of free expression and independent media. We must make it clear to the world community that our commitment to these goals is long-term and sustaining, that our attention will be focused closely on the countries in which we are working, and that will stay until our goals are attained. This commitment is essential from the moment we begin working -- an investment in serious media change, and the credibility necessary to have a place at the table for legislative and legal developments, requires a long view.

This Committee was precisely right to insist that funding for programs in countries in process not be ended until it can be established that a free, protected and independent media exists in each of these countries. We have seen, over and over, the need for sustained legal intervention and assistance. Countries that outwardly seem to "graduate" to more mature legal systems nonetheless continue to have needs for progressive media laws that are in accordance with international legal norms. In one country, for example, we opposed unjust laws until the government changed, and then were privileged to work on the ground with local experts to create new media laws. But regressive elements, including prior restraints, crept back into those laws, and we now have been asked once again to work with local journalists on strategies for dealing with harsh laws. Although the harsh regime is gone, the need for real legal help remains. We must continue our vigilance to ensure against backsliding, which has been all too commonplace in our experience.

The typical trajectory of legal structures necessary for a free press demonstrates the need for long-term involvement. *First*, there is the basic and obvious need for free expression, equitable distribution of broadcast licenses and allocation of spectrum. *Second*, it is essential that defamation reform be accomplished, and this is an area where much remains to be done in virtually all of the countries in which we have worked -- libel suits by public officials, often criminal in scope, remain a danger across Europe, and independence of courts is an essential but challenging element in reform. *Third*, freedom of access to information must be assured. This is a long-term project -- it cannot be accomplished by mere passage of a Freedom of Information law, but by changing the hearts and minds of judges and bureaucrats who control information flow. *Fourth*, press freedoms must be assured in all media, particularly the Internet. Damaging new media laws continue to be proposed in countries across Europe that must be opposed.

If we assume we have done our job after the first, most preliminary, step, we have done little to truly establish independent media. We must

sustain our efforts and assist in the creation of a truly workable legal system. The amount of work is formidable -- for example, the Stability Pact for South Eastern Europe published in January 2004 a summary of proposed media legislation in 10 countries that runs to 22 single-spaced pages. Without U.S. assistance, many of these laws will be passed in forms that will not protect free expression and foster independent media. Given the amount of work that has gone into the region, this would be a tragedy.

- **Our work must be clearly separated from short-term policy goals and political influence.**

Public diplomacy and international broadcasting are important complements to fostering freedom of expression and independent media, but they should maintain their separate character. I take second chair to no one in my support and admiration for Radio Free Europe/Radio Liberty, and have been privileged to do some work for it. Its work is essential in providing an independent voice in parts of the world that have little access to independence in their local media. And it is of course important for public diplomacy efforts to ensure that the views of the United States are heard in the developing world.

But this is not identical to the goal of fostering independent media. Our efforts to build a truly free press must be separate from any appearance of content or political influence. We must have the courage to build a press that is so independent that it can criticize us. Again, Serbia provides an apt example. The same independent media that gave voice to opposition to the Milosevich government were also harsh critics of the NATO bombing campaign and, in some cases, U.S. policy. Yet, the voicing of opinions with which we would not agree is not a failure -- it is a measure of our success. A commitment to fostering true independence requires respect for the value of the First Amendment, and acceptance of criticism is at the heart of this value.

I am not an expert on government mechanisms in all three of these areas. But I do worry that a single office overseeing all three will be seen as muddling the firewalls that must exist between them and undermine our credibility in attempting to establish a free and independent press.

- **In this effort, we must fully engage the power of the most important media in the world -- our own.**

The United States media is, to be sure, involved in current efforts overseas. IREX, for example, has sent consultants and trainers from CNN, The New York Times, the Wall Street Journal, ABC and other media companies into the region. But we have not tapped the full potential of our world-leading media in fostering free speech and independent media in the developing world.

Our timing is right in involving the media more comprehensively, because U.S. media is cognizant of the need for freedom of expression internationally more comprehensively today than ever. The Internet, as well as increasing international newsgathering efforts, have illustrated the decreasing size of the journalistic world in graphic terms. Consider:

- Barrons Magazine has a handful of Web subscriptions in Australia. The Australian High Court has forced its owner, American publisher Dow Jones, to defend a libel case under strict liability that would never be permissible under the First Amendment simply because Barrons is available on the Internet.
- Andrew Meldrum, an American journalist working for the Guardian, a London newspaper, was prosecuted in Zimbabwe for publishing statement claimed to be inaccurate under an "information law" that clearly violates international legal standards. He was prosecuted in Zimbabwe even though the Guardian does not publish there simply because a prosecutor managed to access it via the Internet.
- Until a federal court in California applied the First Amendment to stop it, Yahoo.com was under orders from a French court to stop publishing information relating to Nazi speech to *any* country, even though that speech was clearly protected by the U.S. Constitution -- despite Yahoo's full compliance with restrictive French hate-speech laws on its Yahoo.fr site.
- In November, the Council of Europe approved an addition protocol to the Cybercrime Convention, under which signatories will be required to outlaw "any written material, any image or any other representation of ideas or theories, which advocates, promotes or incites hatred, discrimination or violence against any individual or group of individuals, based on race." So far, 20 countries have ratified it.

A new battle is being waged. It is no longer a battle in which our federal courts can be a dependable refuge for our media companies, no longer a battle where Congress can be relied upon to pass laws such as those that protect U.S. newsrooms from searches. The media of the United States are engaged in this battle. Given proper involvement, I believe they will engage directly in our efforts to foster free expression overseas.

The key, of course, will be to find an effective mechanism to engage the media fully. Existing avenues, such as drawing on the media to provide

training and support, will of course continue. But considering new mechanisms to engage the media is certainly appropriate.

U.S. media can be tapped for substantive assistance. Our media has long been involved internationally -- for example, the Washington Post helped to establish precedent for a reporter's privilege not to be forced to testify about war crimes in the International Court in the Hague, and the Associated Press and others have filed *amicus* briefs in cases in Croatia and elsewhere. Our media also are focusing increasingly on international standards as they struggle with Internet jurisdiction over libel cases and difficult privacy issues arising from Europe and elsewhere. But if existing media organizations can be tapped to be fully engaged strategically and across the board, significant resources could be brought to bear on problems in developing countries with an energy and focus that we have not yet seen. This could truly move the project forward, and I applaud the Chairman's efforts to explore initiatives that could accomplish this goal.

In this effort, it may be worthwhile to consider tax incentives for U.S. media companies, entertainment companies and sports leagues to contribute highly demanded American content to broadcasters in emerging democracies.[2] Among the most important elements of ensuring independence in media is sustainability, and compelling programming is an essential element of building a brand and maintaining an advertising base. If U.S. companies can be provided incentives for distributing highly demanded programming, it could make a real difference.

- **Our work, and its ultimate success, should be judged by a rigorous assessment of media independence and freedom.**

There is a need for a system to measure, to the extent possible, our success in fostering independent media and a free press. The *Media Sustainability Index* (www.irex.org/msi), which provides a rigorous assessment of media development in 20 countries in Europe and Eurasia, strikes me as having established the right analysis. The MSI measures progress along a five-point scale, using evidence drawn from extensive field work in each country -- free speech protected by laws, regulations and cultural norms; professional journalism that is balanced, fair and ethical; a plurality of news sources available to citizens; ethical and profitable management and independent media; and institutions supporting media professionalism and independence. These indices provide a valuable analysis of where we are in each country, and

[2] For full disclosure, I should point out that Covington & Burling represents numerous media companies and sports leagues.

they provide a system of measurement that could be straightforwardly extended to additional countries and regions.

Any serious effort to establish a goal demands a concomitant commitment to measuring whether that goal has been met. Analyses such as the MSI will be an essential component going forward to ensure that we do not end our involvement prematurely.

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Once again, I appreciate the opportunity to share these ideas with you. I would be pleased to address any questions you might have.

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LEGAL ANALYSIS OF THE SERBIAN LAW ON PUBLIC INFORMATION

We have been asked to assess the extent to which the Republic of Serbia's Public Information Law (the "Law"), enacted on October 20, 1998, complies with the constitutions of the Republic of Serbia and the Federal Republic of Yugoslavia as well as applicable international law. In this analysis, we find that the Law is a blatantly unconstitutional exercise in media censorship, intimidation and punishment that cannot stand under either Serbian or international law.[3] The Law is an extreme and illegal departure from the standards established by the Serbian and Yugoslav Constitutions and from the international norms with which European media laws must comply. As such, the Law wrongfully deprives Serbian citizens of their constitutionally guaranteed rights to an independent and free media and to freedom of thought and conscience.

I. LEGAL BACKGROUND

A. Standards of Serbian Law

The 1992 Constitution of the Federal Republic of Yugoslavia (the "FRY Constitution") governs the republics of Serbia and Montenegro and, according to its terms, is supreme on any matter it reserves for the Federal Republic. Serbia is also bound by the 1990 Constitution of the Republic of Serbia (the "Serbia Constitution"). The FRY Constitution contains a number of provisions that guarantee freedom of expression and forbid censorship:

- "Freedom of confession, conscience, thought and public expression of opinion shall be guaranteed." (Art. 35).
- "Freedom of the press and other forms of public information shall be guaranteed. Citizens shall have the right to express and publish their opinions in the mass media. The publication of newspapers and public dissemination of information by other media shall be accessible to all, without approval, after registration with the competent authorities." (Art. 36).
- "Censorship of the press and of other forms of public information shall be prohibited. No one may prevent the distribution of the press or

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[3] We have not assessed the Law under the standards of U.S. law but have judged it solely under the standards of Yugoslav, Serbian and European law with which it must comply. Further, we have not reiterated all points raised in our analysis of October 31, 1997, which concerned an earlier draft of the Law and raised many issues that remain in the enacted law.

dissemination of other publications, unless it has been determined by a court decision that they call for the violent overthrow of the constitutional order or violation of the territorial integrity of the Federal Republic of Yugoslavia, violate the guaranteed rights and liberties of man and the citizen, or foment national, racial or religious intolerance and hatred." (Art. 38).

- "Freedom of speech and public appearance shall be guaranteed." (Art. 39).

The Serbia Constitution contains similar provisions:

- "The freedom of conscience, thought and public expression of opinion shall be guaranteed." (Art. 45).
- "The freedom of press and other public information media shall be guaranteed. Citizens shall have the right to express and make public their opinions in the public information media. Publication of newspapers and dissemination of information by other means shall be accessible to everyone without seeking permission, subject to registration with the competent agency. The right to correction of published incorrect information which violates someone's right or interest, as well as the right to compensation for any moral and property damage arising therefrom, shall be guaranteed." (Art. 46).
- "The censorship of press and other public information media shall be prohibited. No one may obstruct the distribution of the press and dissemination of other information, except when the competent court of law finds by its decision that they call for the forcible overthrow of the order established by the Constitution, violation of the territorial integrity and independence of the Republic of Serbia, violation of guaranteed freedoms and rights of man and citizen, or incite and foment national, racial or religious intolerance and hatred." (Art. 46).

B. Standards of International Law

The Law must also be consistent with the standards of international law.[4] The European Convention on Human Rights (ECHR) guarantees freedom of expression, including the right to receive information through any medium. Article 10 of the ECHR provides that:

> (1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart ideas without interference from by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television, or cinema enterprises.

[4] The FRY Constitution states that Yugoslavia will "recognize and guarantee the rights and freedoms of man and the citizen recognized under international law." (Art. 10).

(2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions, or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

The European Court of Human Rights has held that Article 10 places a high burden on governments wishing to interfere with the right to free expression. The European Court has held that any such interference must meet the following three criteria: (1) it must be prescribed by law; (2) it must have as its aim a goal which is legitimate under Article 10, section 2; and (3) the specific restriction must be "necessary in a democratic society" in order to achieve that goal.[5]

The European Court has interpreted the first criterion – that any interference be prescribed by law – to mean that legal requirements must be accessible and that legal consequences must be reasonably foreseeable to enable citizens to manage their activities.[6] Thus, a law will infringe Article 10 if it is so vague as to provide effectively no guidance to citizens as to the bounds of legal conduct.

The most important requirement of Article 10 is that any measures must be "necessary in a democratic society." The European Court has stressed that exceptions to freedom of speech "must be narrowly interpreted and the necessity for any restrictions must be convincingly established.'[6] Thus, the European Court has held that for a restriction on speech to be "necessary in a democratic society" a government must demonstrate: (1) a pressing social need; (2) proportionality between the restriction, including legal penalties, and the aim pursued; and (3) that the reasons for the restriction are relevant and sufficient under Article 10, section 2.[7]

The Court has placed particular emphasis on the importance of a free and vigorous press, stating the principle "that freedom of expression constitutes one of the essential foundations of a democratic society and that the safeguards to be afforded to the press are of particular importance." *Jersild v. Denmark*, Series A, No. 298, 19 Eur. H.R. Rep. 1, 31 (1995); *see also The Observer and the Guardian*, at 59 (stating similar principle). It is also important to note that the Court has held that Article 10 applies to commercial speech, although states may be allowed a greater "margin of appreciation" in determining what regulation of commercial speech is "necessary in a democratic society." *See Casado Coca v. Spain*, Series A, No. 285, 18 Eur. H.R. Rep. 1, 35, 50 (1994).

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5 *See e.g., The Sunday Times v. the UK*, Series A, No. 217, 14 Eur. H.R. Rep. 229, ¶ 45 (1992).

6 *See id.* at ¶ 49.

7 *See e.g., The Sunday Times* at & 62; *see also Tolstoy Miloslavsky v. The UK*, Series A, No. 323, 20 Eur. H.R. Rep. 442, ¶ 51 (1995) (excessive damage award for libel constituted violation of Article 10).

II. AREAS IN WHICH THE PUBLIC INFORMATION LAW IS INVALID

A. Establishment of a System of Censorship and Punishment For Statements Critical of the Government

The Law establishes a system of prior censorship of any press statements critical of the Serbian government and substantial fines for the publication of such statements. The Law undertakes these actions without regard for legal protections of fair trial and procedure. As such, the Law violates Serbian and Yugoslavian constitutional law and European law, both in its swift system of censorship and its strict regime of punishment.

First, the Law provides that the media may be restrained from publishing information if a court has determined that the medium "calls to the forced overthrow of the constitutional order, jeopardizes the territorial integrity of the Republic of Serbia and the Federal Republic of Yugoslavia, violates guaranteed freedoms and rights of man and the citizen, or stirs national, racial or religious intolerance and hatred" (Art. 42). Any publisher found to violate this provision can be prosecuted under criminal law.[8] Under this provision, a public prosecutor proposes the adoption of a restraining order. Within six hours of the court's receipt of the petition – whether or not the publisher has any notice of the petition or appears in court to protest it – the court must issue a restraining order. Upon issuance of the order, the "court orders the jurisdictional authority for internal affairs to seize and deliver to the court and seal all copies of the press or other means of public information" (Art. 43). The court then holds a hearing in the case within three days of the court's receipt of the petition. In the case, "the court may hold hearings and make a decision even if the invited parties fail to appear at the hearing" (Art. 44).

Second, the Law sets up a schedule of fines to punish certain types of published content. Article 67 provides for large fines for publication of statements found to violate Article 42. The publisher of a press outlet that violates Article 42 can be fined between 400,000 and 800,000 dinara. The editor and other employees of such a medium can be fined between 100,000 and 400,000 dinara. Moreover, statements found to violate even less stringent standards may be punished with substantial fines. If a publication does not "inform the public truthfully, timely and completely" (Art. 4), does not "respect the inviolability of human dignity and the right to private life by the individual," "violates the honor and dignity of the individual" or "contains insulting expressions and rude words" (Art. 11), its publisher may be fined from 100,000 to 300,000 dinara and its editor and other employees may be fined from 50,000 to 150,000 dinara.

If a prosecutor brings a criminal case under any of these procedures, the trial must begin within 24 hours of the prosecutor's petition. The publisher need not be given actual notice of this hearing; if he or she is unavailable, "the summons is immediately nailed to the door and is thus considered to have been delivered" (Art. 72). The trial can go forward whether or not the defendant appears. At the trial, the publisher bears the burden of proving that all challenged information was, in fact, "true." (Because the publisher bears the burden of proof, any trial at which he or she is not present will be resolved

[8] The Law applies to the broadcast media as well as the printed press. "The articles of this Law regarding the ban on distribution of the press and other means of public information and the proceedings are implemented appropriately to radio and television broadcasts, as well as to information transmitted by news agencies" (Art. 50).

against the publisher.) If a publisher is found to violate these provisions, its fine will be due and payable within 24 hours of the court's decision (Art. 73). The commencement of an appeal against the trial court's decision does not postpone the execution of the decision (Art. 72). If the fine is not paid immediately, "payment is executed by compulsion" (Art. 73). Any account held by the publisher can be transferred immediately "to the benefit of the Budget of the Republic of Serbia" (Art. 74). If the amounts in the defendants' accounts are inadequate to satisfy the judgment, "seizure of their chattels is ensure, and such are sold at public auction within seven days of the day of seizure" (Art. 74).

It is clear that the government intends to use these provisions. In a case brought two days after the passage of the Law, a complaint was drawn against the Serbian weekly newsmagazine The Evroplijanin.[9] The article that is the source of the complaint, which was published before the Law was passed, roundly criticized the policies of the current Serbian government and its officers and demanded that they change those policies.[10] (The full text of the article is attached, along with excerpts from the complaint.) On October 22, 1998, the first charges pursuant to the Law were brought by Milorad M. Radevic, president of the Patriotic Alliance of Belgrade. The case was brought in the City Transgression Court of Belgrade, which is part of the executive branch of government rather than the judicial branch and generally has authority over traffic control and misdemeanors. The defendants were Slavko Curuvija, the magazine's founder; Dragan Bujosevic, editor in chief; De Te Press, its publisher; and Ivan Tadic, director of publication for De Te Press. On October 23, 1998, trial began at 3:30 p.m. and ran until 11:00 p.m. The court refused to permit a constitutional challenge to the law, refused to permit the authors of the article to testify, and nonetheless placed the burden on the defendants to prove the truth of the statements in the article. The morning of October 24, 1998, fines totalling 2,400,000 dinara – about $230,000 – were issued.

An appeal against the judgment could not, under the Law, postpone the execution of the judgment (and an appeal from the executive branch court would be taken to another executive branch court; there is no access to the judicial branch for an appeal). The defendants were unable to pay the fine within the 24-hour period provided by the Law. On October 25, 1998, at about 10:30 p.m., police began confiscating the property of the defendants to satisfy the fine. According to published reports, the effort was undertaken by a police caravan of a half-dozen cars and a police van with 10-15 officers carrying automatic weapons. The building was blockaded until about 2:15 a.m. The officers did not confiscate the personal property of the editors, but seized the contents of the business office of De Te Press (which is in the same building). The police the same night confiscated all the equipment used to print Dnevni Telegraf, a newspaper edited by one of the defendants in the Evroplijanin case.

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[9] Three independent daily newspaper had been banned prior to the October 20, 1998 passage of the Law under interim orders. Those papers, The Daily Telegraph, Danas and Nasa Borba, apparently have re-registered in Montenegro in an attempt to recommence publication.

[10] *Cf.* Serbia Constitution, Art. 23 ("No one shall be punished for an act which prior to its commission was not provided as a punishable offense by the law or statutory instruments based on law").

1. The Prior Censorship Provisions of the Law Are Impermissibly Vague

In order for a law to be applied against a citizen, that citizen must have fair notice of the requirements of the law. *See, e.g.,* Serbia Constitution, Arts. 12, 15, 23. To meet this constitutional requirement, a law must provide sufficient information so that citizens can conform their behavior to the law. Article 42 of the Law fails this test because it merely restates that Serbia Constitution's language without defining which language may be subject to penalty. Because it fails to state the requirements of the law with specificity, it vests complete power in public prosecutors and courts to impose prior restraints against any content they wish to find contrary to Article 42.

The demands of Article 42 are, moreover, far too vague to be considered "prescribed by law" within the meaning of Article 10 of the European Convention on Human Rights (ECHR). To meet this test, a law must be "formulated with sufficient precision to enable the citizen to regulate his conduct."[11] Here, the Law provides no guidance whatsoever to the publisher that wishes to comply with the Law because it is merely restates the provisions of the Serbian Constitution that provide the outer limits for prior restraint under Serbian law. But it does not provide any guidance on what content might be considered to "violate guaranteed freedoms and right of man and the citizen" or to "stir national, racial or religious intolerance." In the absence of greater clarity, the only way in which a publisher can ensure that it is in compliance with the Law is to censor itself – that is, to avoid any discussion whatsoever of national issues. This imposition of self-censorship through intimidation underscores the invalidity of the Article 42.

A law under which a journalist may be heavily penalized merely for criticizing the State is flatly impermissible under the ECHR. The European Court of Human Rights has repeatedly recognized that protecting the right of the press to criticize government is among the most important goals of Article 10. The Court has placed particular emphasis on the importance of a free and vigorous press, stating the principle "that freedom of expression constitutes one of the essential foundations of a democratic society."[12] This freedom of expression simply cannot be exercised if the press may be penalized for any statement that a single prosecutor and a single court find to be critical of the State. The recent Evroplijanin case demonstrated convincingly that the Law can be applied in a draconian manner against an article that criticizes the State.

2. The Prior Restraint Portions of the Law Can Only Be Applied To Speech That Actually Incites Unlawful Action.

Article 42 also permits journalists to be penalized for certain categories of controversial content. Although a state can prohibit the actual and demonstrable

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[11] *See The Sunday Times v. United Kingdom,* Series A, No. 217, 14 Eur. H.R. Rep. 229, ¶ 49 (1992).

[12] *Jersild v. Denmark*, Series A, No. 298, 19 Eur. H.R. Rep. 1, ¶ 31 (1995); *see also The Observer and the Guardian v. United Kingdom,* Series A, No. 216, 14 Eur. H.R. Rep. 153, ¶ 59 (1992) (similar principle); *Castells v. Spain*, Series A, No. 236, 14 Eur. H.R. Rep. 45, ¶ 46 (1992) ("In a democratic system the actions or omissions of the Government must be subject to the close scrutiny . . . of the press and public opinion"); *Lingens and Leitgens v Austria*, App. No. 8803/79, 4 Eur. H.R. Rep. 373 ¶ 10 (1982) (Commission Report) ("it is the very function of the press in a democratic society to participate in the political process by checking on the development of the debate carried on by political office-holders").

incitement of violence, the European Court has held that a government cannot prohibit the discussion of even controversial and offensive racist and nationalist issues. In *Jersild v. Denmark*, the European Court recently considered a case where a television station broadcast an interview with several avowed racists. The Court found that, although the racist speech was not protected by Article 10, the state violated Article 10 when it attempted to bar news organizations from broadcasting those racist views as part of a news report.[13] In so holding, the Court emphasized that the broadcast media has the duty to "impart information and ideas of public interest" in order to fulfill "its vital role of `public watchdog,'" and that the public has the right to receive such information. *Id*. at ¶ 31. The Court has made it repeatedly clear that "information and ideas of public import" includes not only ideas which are inoffensive but also those which offend, shock, and disturb.[14] In the absence of actual incitement to overthrow of the government, territorial separation, violation of the rights of others or ethnic hatred, then, the press cannot be penalized.

The European Court has held that speech can be restricted under the terms of Article 10 only if the proposed restriction is "necessary in a democratic state." To meet this standard in the case of any speech that is of public concern, the state must prove that it is "absolutely certain" that the dissemination of the speech would have the adverse consequences claimed by the state.[15] Here, Article 10 would command that only speech that is "absolutely certain" to incite the harms of which Serbia is concerned – actual incitement of a forceful overthrow of the government, for example – has occurred by virtue of the speech that is sought to be censored or punished.

It could be pointed out that some states that have had internal upheaval based on racial and ethnic issues – notably Germany – have enacted laws that sharply restrict hate speech. In the case of Germany, however, the three penal provisions permitting hate speech to be penalized are narrowly tailored and rarely invoked. In the few cases that are prosecuted under these provisions the standard of proof applied is "a probability amounting to certainty" (*mit an Sicherheit grenzender Wahrscheinlichkeit),* as is the case in general in German criminal law. Each provision, moreover, is based on "incitement" of acts by the speech in question rather than basing penalties on the speech itself. Section 130 of the German penal code, for example, is entitled "incitement of the people" and punishes only speech that "disturbs the general peace" and actually incites violent actions. Section 166, concerning group slander, only permits slanders that are "suited to disturb the general peace" to be punished.[16]

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13 *Jersild* at ¶ 35.

14 *See, e.g., Castells* at ¶ 42 (infringement of Article 10 where state prosecuted a government critic under a statute for the prevention of disorder).

15 *See Sunday Times* at ¶¶ 65-66.

16 This is not to say, of course, that all German law should be considered a positive model. In particular, the provision in the German criminal code prohibiting the so-called *Auschwitzlüge* – a provision that permits those denying the Holocaust to be punished – likely would be held to violate free speech guarantees. This provision has not, however, been challenged to date.

Article 42 thus may only be applied against speech that actually *incites* the behavior sought to be prohibited by the Law and cannot be applied to punish speech critical of the Government of Serbia or its elected officials. The Law has, to date, been applied to severely punish, and seize the equipment of, a weekly newsmagazine that published a critical commentary without *any* proof whatsoever that the commentary actually incited any action against the government of Serbia. That invalid prosecution underscores the failings of the Law.

3. The Censorship and Punishment Provisions of the Law Do Not Accord With Fair Trial Procedures Envisaged by the Serbian Constitution and the ECHR.

The structure of the Law's provisions for prior restraint, punishment by fine and immediate execution of judgment constitutes a unique system of censorship. Under this system, a restraining order against publication may be entered without the publisher having any opportunity to defend against the action of a prosecutor. A criminal trial may be scheduled within 24 hours of the petition of a prosecutor. A publisher may be subjected to enormous fines without receiving actual notice that any proceeding is pending against it and may be found guilty without even appearing in court. The publisher is, moreover, required to prove the truth of all statements that are the subject of the prosecution. When the court enters a judgment against the publisher, potentially ruinous fines are due to be paid within 24 hours; if the fine cannot be paid immediately, the means of communications – presses, transmitters and the like – can be seized immediately and sold within a week to satisfy the judgment. In this manner, the "subsequent punishment" provisions of the Law act very much like "prior restraint" provisions – they operate to prevent journalists who have offended the state from being able to continue operating.

This system violates a number of provisions of the Serbian Constitution. First, it permits a defendant to be convicted and punished without being present at trial, contrary to the Constitution's demand that "every person is guaranteed the right to defend himself and to engage a defense attorney to represent him before the court of law" (Art. 24). Second, it violates the Constitution's command that "no one accessible to the court or other agency authorized to conduct proceedings may be punished without being afforded an opportunity to be interrogated and to defend himself" (Art. 24). Third, it establishes a harsh system of punishment for journalists and publishers that is otherwise unknown to the Serbian system, depriving the media of "equal protection of his rights in the proceedings before a court of law" (Art. 22). Fourth, it denies an effective right to appeal, in contravention of Article 22 of the Constitution, by permitting a judgment to be executed and the means of communications to be seized and sold before an appeal may be filed. Fifth, it permits the seizure of equipment owned by publishers, contrary to the demand that any entry upon the premises of another for the execution of a warrant be done only in exigent circumstances and with two witnesses (Art. 21).[17]

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[17] This list is not meant to be exclusive. There may be additional grounds for the invalidity of this scheme under Serbian and Yugoslav law.

The procedures followed by the court in the Evroplijanin case demonstrate the invalidity of the procedures set up by the Law. The defendants could not prepare an adequate defense because the case began 24 hours after the filing of the petition against them. They could not present a full and complete defense because constitutional challenges against the Law were not accepted and the burden of proving the "truth" of opinions and value judgments stated in the article was imposed on the defendants. An enormous fine – obviously beyond the means of the defendants to pay – was imposed within a few hours of the end of trial. The appeal did not stop the execution of the judgment, and the execution of the judgment resulted in the facilities of the newsmagazine and a related newspaper being seized. The net result of the application of these procedures against the Evroplijanin demonstrates how the Law's procedures are fundamentally unconstitutional and will result in the silencing of the press.

Independently, this scheme for restraining and punishing the press violates Article 6 of the ECHR. Article 6 provides, in pertinent part, that "[i]n the determination of his civil rights and obligations and of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law." The trial procedures established by the Law cannot be considered fair under Article 6 for the reasons set out above.

4. The System of Strict Punishment Constitutes An Impermissible Attempt to Prevent Criticism of the Government.

Unlike Article 42, the system of punishment created by Articles 68 and 69 of the Law does not rely on provisions that have a textual base in the Serbian Constitution. Rather, these article criminalize speech that is not "true," does not inform the public "truthfully, timely and completely," does not "respect the inviolability of human dignity and the right to a private life" or the "honor and dignity of the individual," and even speech that contains "insulting expressions and rude words." The range of punishment for this speech is formidable – the "misdemeanors" that can be penalized by fines of 50-300,000 dinara carry penalties that are far higher than felonies under current Serbian law. This system of punishment is impermissible for several reasons.

First, the Law is impermissibly vague and standardless. These potentially criminal offenses are stated in vague and subjective terms – the "honor or integrity of an individual" – that could be violated by virtually any press report. Further, whether a report is "true" or "complete" can often be a matter of opinion. As such, prohibitions on speech fail to comply with general standards of fairness under the Serbian Constitution and the requirement of the European Convention on Human Rights that restrictions on the press be stated with specificity. This requirement, that a restriction be "prescribed by law," is crucially important. *See The Sunday Times*, ¶ 45. If a law does not state with specificity the obligations required, it is impossible for the citizen to conform his or her behavior to the law. These provisions of the Law clearly suffers from this defect, in that they state a mere general obligation, without specifics, that can result in severe criminal penalties.

Second, it is impermissible to require a publisher to prove the "truth" of a report that may be based on opinion or value judgment. In *Lingens v. Austria*, Series A, No.

103, 42 (1992), the applicant, an Austrian journalist, had been convicted under Article 111 of the Australian Criminal Code for publishing two articles strongly criticizing then Chancellor Kreisky for supporting a politician who had served as an SS officer. The Austrian court conceded that the article did not contain any false statements but found that Mr. Lingens could not prove that his opinions were "true." Reversing the decision of the Austrian court, the European Court found: (1) "the limits of acceptable criticism are wider as regards a politician as such than as regards a private individual," *id.* at 42, and (2) the requirement that an accused must prove the truth of an allegedly defamatory opinion infringes his or her right to impart ideas, within the meaning of Article 10. *See also Oberschlick v. Austria*, Series A, No. 204 (1991), ¶ 61 (finding that the requirement that a journalist prove the truth of a value judgment is impossible and "itself an infringement on freedom of expression"). The Court has also noted that criticism of a government is even more protected than criticism of a politician. *Castells* at ¶ 46.

Once again, the case of the Evroplijanin demonstrates that the Law is invalid under Article 10. In that case, the court squarely placed the burden of proving the "truth" of the article on the defendant, despite the fact that the article itself was an editorial protesting the policies of the Serbian government. This aspect of the Law clearly violates Article 10, as well as the Serbian and FRY Constitutions.

A related shortcoming of the Law is that it applies equally to public officials and private citizens. It thus permits government officials to obtain the punishment of journalists based on criticism that may reflect on the "dignity or integrity" of the official, a result that effectively would prevent all criticism of public officials. The European Court has stated that those in the political sphere must accept a higher degree of criticism without resort to a libel action. *See Oberschlick* at ¶ 59. The Court has also noted that criticism of a government is even more protected than criticism of a politician. *See Castells* at ¶ 46. In failing to differentiate between public officials and private individuals, the Law establishes a system for the repression of legitimate criticism of the government and its agents.

Third, the Law provides for a series of fines that is grossly disproportionate to the harm that the Law seeks to redress. The fines provided for in the Law are much larger than fines established elsewhere in Serbian law. The "misdemeanor" fines established by the Law range from 50,000 to 800,000 dinara; in contrast, the fines established in the Law on Misdemeanors are limited to 10,000 dinara for companies and 1,000 dinara for individuals. Even the Law on Felonies establishes that the highest financial penalties under law are limited to 50,000 dinara, with the sole exception of a 200,000 dinar fine limited to felonies perpetrated for personal gain.[18] Because the fines established by the Law are dramatically larger even than fines imposed for felony violations under Serbian law, the sole conclusion that can be drawn is that the fine structure has been created with the intent to suppress speech. The European Court has held that punishment that is disproportionate to the offense, such as an exceptionally large libel judgment, can violate Article 10. *See Tolstoy Miloslavsky v. United Kingdom*, 20 Eur. H.R. Rep. 442, ¶¶ 52-54 (1995). Here, the largest penalty that can be applied against a publisher for a

[18] *See Beta's Commentaries on the New Serbian Information Law*, October 22, 1998 (www.mediacenter.opennet.org).

misdemeanor is actually four times greater than the largest *felony* fine known to Serbian law. Clearly, the structure of the Law has been established to encourage self-censorship and to stifle potential criticism of the government.

B. Restrictions on Republication of Foreign Broadcasts

The Law provides for strict penalties – fines of up to 500,000 dinara – for the retransmission of "radio and television broadcasts of a political-propaganda nature . . . from foreign broadcast organizations founded by foreign governments or their organizations, except those programs being transmitted . . . on the basis of reciprocity determined by an inter-state agreement" (Art. 27). This provision is patently unconstitutional.

First, Article 27 constitutes prior censorship of the publication of information that would not meet the standards of the Serbian Constitution. The Constitution plainly provides that "no one may obstruct the distribution of the press and the dissemination of other information, except when the competent court of law finds by its decision that they call for the forcible overthrow of the order established by the Constitution, violation of the territorial integrity and independence of the Republic of Serbia, violation of guaranteed freedoms and rights of man and citizen, or incite and foment national, racial or religious intolerance and hatred" (Art. 46). Article 27 of the Law does not require proof that any foreign broadcast would satisfy this standard; rather, all foreign broadcasts that could be considered "political-propaganda" are simply banned. This result clearly violates the Serbian Constitution.

Second, Article 27 is void for vagueness. As set out above, the Law must define its terms sufficiently so that broadcasters can conform their behavior to the expectations of the law. Article 27 fails utterly to define what is meant by "political-propaganda," and the penalties for violating Article 27 are enormous. Accordingly, broadcasters wishing to avoid the enormous fines permitted by the Law will either avoid all foreign rebroadcasts that concern any political issue or, more likely, will stop all foreign broadcasts altogether.

Third, Article 27 sets up a regime where the state can select – by making an inter-state agreement – the foreign broadcasts that are acceptable to it. All other foreign broadcasts dealing at all with political issues are banned. The establishment of a class of state-approved foreign broadcasts with all others censored is clearly proscribed by the free-speech guarantees of Article 46 of the Serbian Constitution.

C. Other Provisions

Other provisions in the Law raise serious constitutional concerns as well. This analysis has focused on the most egregious failings of the Law and is not meant to be exclusive of all areas of the law that could be subject to challenge. The following areas also are likely subject to serious constitutional challenge:

- The right to reply and correction is not appropriately limited to the grounds on which the Serbian and Yugoslav Constitutions permit such information to be published. In particular, Serbia should limit required replies to cases in which the fundamental and legitimate interests of a subject of a report have been damaged. *See, e.g.*, European Union, Television Without Frontiers Directive, Art. 23. As the Law now stands,

even subjects (including public officials) that cannot claim any damage are nonetheless entitled to rights of reply and correction. Moreover, the Law inappropriately provides for substantial fines for cases in which the reply is unsatisfactory rather than simply requiring the reply to be made.

- Articles 55 through 60 of the Law establish rights of subjects in their words, images and likenesses that could make reporting virtually impossible. The Law requires a subject to give consent to be photographed or quoted, even if the subject is in a public place, the provides that "the person has the right to revoke consent even when such a right was not reserved if publicizing would considerably harm his integrity" (Art. 60).

- The Law establishes a "jurisdictional authority" that supervises the media (Art. 65), and that "authority" has the power to recommend that charges be brought against the media (Art. 66). But there is no provision in the Law that describes the formation of this entity to ensure that it is not subject to political control.

- The Law requires anyone who has been the subject of a criminal proceeding "to demand that the responsible editor publicize the information of the legally executed discontinuance of the proceedings, the rejection of the accusation(s), or clearing of charges" (Art. 51), regardless of whether the allegations were truthfully and completely reported by the medium from which a statement is sought. This provision is beyond the reply and correction provisions of the Serbian and FRY Constitutions.

- The Law effectively prohibits all reporting on court and legal proceedings by stating that it is "forbidden to again release information which an effective court decision has determined as a criminal act, except when publicizing an effective court decision by order of the court" (Art. 31). This provision could chill all reporting on legal issues, contrary to Article 46 of the Serbian Constitution.

- The Law requires registration of the media, and it permits a "responsible authority" to "reject the application with a decision" (Art. 20). The Law does not, however, specify the grounds on which a registration application could be rejected. The Law also requires copies of all publications to be delivered to public prosecutors "immediately after printing" (Art. 26). This provision raises the potential for censorship and places heavy burdens on the media.

CONCLUSION

The FRY Constitution and the Serbia Constitution make a strong commitment to freedom of expression, freedom of information, and freedom of the press. The Law on Public Information does not, however, live up to these guarantees of free expression. It is subject to serious constitutional challenge.

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ATTACHMENT
TEXT OF THE EVROPLJANIN ARTICLE SUBJECTED TO PROSECUTION

WHAT'S NEXT, MILOSEVIC?

Your excellency, you might have not found out, but your state saw coup d'etat last week. Contrary to your proclamation that the threats with military attacks had been averted, the extremist wing of your aides, members of the three parties of the ruling coalition, has acted upon the anti-constitutional Decree. They have introduced a de facto state of emergency, suspended laws and took over the control of Serbia. The first measure of this group was to prohibit the Serbs to hear, speak and see. Three dailies and a radio station have been banned, the measure

that is unheard of in Serbia's history. While committing this brutal act, they perversely enjoyed in manifesting their sheer power and inviolability. This is Serbia's disgrace, Mr. President. But far from the worst case scenario that Serbia and her citizens might experience. The policy of

nauseous obsession with simplicity leads us to lawlessness, fear, terror and dictatorship.

We are writing to you with respect to the defence of freedom of press.

However, our objective is rooted in far more serious concerns. Martial laws and decrees have been brought about in Yugoslavia before the state of emergency is proclaimed. All this has passed unnoticed by you. Why? Is it perhaps because you refuse to face the final results of your ten-year long rule? Or is it because, feeling tired of ruling the country, you rebuff the responsibility and decided to lend the authority to the group that won the wars waged in the royal palace - wars for control of politics, legislation, finances, police, secret services, Army, universities, media, and the entire state and society? Or is it because you exhausted the overwhelming support the majority of Serbs has entrusted you with when you assumed the power, so your magic box, once full of political tricks, has been emptied. Since there are no new means of deceiving the masses, you opted for preserving your own power by suspending the Constitution and laws - the mediators between yourself and the citizens, and decided to rule as

an absolutist. In case you are refusing to accept the balance sheet of your decade-long

rule, we can assure you that your efforts are in vain. Accountants of history and the archives of facts have already set up the sheet. Each Serb, dead or alive, has become an accountant and a witness:

- Everything that the Serbs created in this century has been lavishly depleted: state and national boundaries; the status of an ally in two world wars; national dignity; membership in all international institutions; the European identity of Serbs has eroded; Serbs withdrew from their ethnic territories in Croatia and parts of Bosnia; the nation has grown a complex of being an aggressor, genocidal, vanquished and a keeper of the last frontiers of European Communism.

- Merits and worth of all Serbian institutions have been destroyed in a planned manner: You equated the importance of University with the one of a local farmers' club, the Academy of Arts and Sciences with a nursing home, you degraded the Church,

legislature, media, parliament, government.

- - Under cover of transition, which is nothing but a different name for robbery, you impoverished middle class, allowing at the same time for a new economic and political elite to emerge.

- Currently there are around two million unemployed, while more than a hundred thousand young and educated left the country, fleeing from war, draft, or because there was no future for them in this country.

- Nowhere in today's Europe crime and authorities are wedded in such a harmonious matrimony like here in Serbia. You are the only statesman who has hosted three men who are later killed in street showdowns.

- You destroyed the spirit of tolerance by instigating artificial conflicts and propelling confrotations between the rich and the poor, the rural and urban, between Serbia and Montenegro. You turned the students against their professors, the literate against the illiterate. If you feel tired of ruling and you wish to evade the responsibility and hand the power over to a handful of extremists, than, your Excellency, you should bear in mind the following:

A - No European statesman of socialist provenance has chosen a radical rightist as a coalition partner

B - The coalition between the socialists, neocommunists and extreme right wing is deviant, anti-civilizational, ideologically hideous and clearly reflects your ambition: to persevere the power at all costs, even if it takes signing the pact with your ideological, personal and family enemies.

C - Sharing the power will not satisfy the Radicals. They have started co-opted members of the Yugoslav left and among the Socialist ranks in order to form a core which will have only two options to offer: dictatorship or civil war which will drag Serbia into rampage of street gangs, rule of paramilitary forces and bandits with license to terminate anyone who does not resemble the image of a citizen created in their headquarters.

In case, however, that you behaviour reflects the fact that you decided to suspend the Constitution, usurp the overwhelming power and impose the autocratic rule, you should be aware of the following:

A - You will be personally responsible for all the grim consequences that such omnipower might bring about.

B - Such rule can be nothing but short-lived.

C - The principle means of controlling this sort of power is sheer force.

To execute such force and to be ready to use it, you will have to rely on the worst segments of population. Do you really wish to govern with the help of the most corrupted volunteers, who are already in abundance around you?

Your excellency, your country, your people and your compatriots have been living for ten years in a state of fear, psychosis, with noting but death, misery, terror and despair around them. Hungry and humiliated, your citizens have exhausted their spirits and strength to make even verbal protests. This was apparent during the last crisis. Serbs are

disarmed, deprived of their survival instinct, precisely like this regime wanted them to be like.

It is in your duty, your Excellency, to avert this tendency and immediately oppose the atmosphere of lawlessness and despair. In this you will succeed if, and only if you commit your self to the following:

1. Break up the coalition with Vojislav Seselj and the Serbian Radical Party.

2. Warrant the resignation of Serbian Prime Minister Mirko Marjanovic his government.

3. Recommend to Serbian President Milan Milutinovic to call for elections and entrust the Prime Minister position to a competent person, capable of forming a government of experts.

4. Sign a peace accord with the ruling coalition in Montenegro.

5. Request the resignation of the Federal government, appoint Milo Djukanovic a Federal Prime Minister and acknowledge Montenegrin MPs, members of the Montenegrin ruling coalition.

6. Regain inter-ethnic tolerance and include minorities in highest political institutions.

7. Engage in attempts to annul the Law on University.

8. Arrest persecution of media and journalists.

9. Initiate a true and prudent privatization, enhance market economy and a welfare state.

10. Initiate a resolute struggle against organized crime, and display the results of such struggle.

11. Secure independent legislation, separation of power and checks and balances.

12. Allow Yugoslavia to rejoin all international institutions and regain the confidence of international community in the Yugoslav state and Yugoslav people.

13. Define national interests according to civilizational norms and standards of the developed world and apply for membership in European Union and Partnership for Peace.

Your Excellency, the above-mentioned 13 points embody the choice between hope and despair for your people. Without hope, in a system, which does not adhere to any of the Ten Commandments, your authority becomes illegitimate. Legitimate author is the one that works for the benefit and well being of its subjects. Our letter to you is a modest contribution to the struggle against fear.

Aleksandar Tijanic and Slavko Curuvija

In Belgrade, October 19, 1998