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ICJ Submission to the Universal Periodic Review of Serbia

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The International Commission of Jurists (ICJ) welcomes this opportunity to contribute to the Universal Periodic Review (UPR) of Serbia. In this submission, the ICJ wishes to draw attention of the Human Rights Council's working group on the UPR (Working Group) and of the Human Rights Council (Council) to several issues of concern for the protection of human rights and the rule of law in Serbia: judicial appointments under the new Constitution and the implications for judicial independence; attacks on judges, lawyers and prosecutors and their impact on the protection of human rights and the rule of law; and the lack of full co-operation by the Serbian authorities with the International Criminal Tribunal for the former Yugoslavia (ICTY).

Judicial Appointments under the new Constitution

The ICJ is concerned that laws and procedures on the judiciary and judicial appointments, designed to reform the judiciary under the new Constitution of 2006, offer insufficient guarantees of judicial independence. Under the Constitution, judges are to be elected by the National Assembly on the proposal of the High Judicial Council (Article 147). This provision, read together with draft laws on the implementation of the Constitution, would provide for a significant parliamentary role in the selection of judges. Under Article 51 of the Draft Law on Judges, the High Judicial Council is to propose two candidates for each position to the National Assembly. After a probation period of three years, judges are to be appointed by the Council on a permanent basis. The Council of Europe Venice Commission on Democracy through Law¹ has criticised the role of the National Assembly in the selection of judges, and the potential for politicisation of the role of judiciary. It pointed out that the Constitution itself does not require a two-candidate system, and recommended that the High Judicial Council should put forward only one name for each position, to minimise the potential for political bias in the appointment process.²

¹ Opinion No.464/2007 of the Venice Commission on the Draft laws on Judges and on the Organisation of the Courts of the Republic of Serbia CDL-AD(2008)007

² Ibid., paras. 58-59

The politicisation of the appointment process is particularly problematic in the context of the constitutional transition currently underway, which requires the reappointment of serving judges and prosecutors under the new Constitution, with the risk that some may not be reappointed for political reasons.³ The draft law sets out procedures for the election of judges, which will apparently require all existing judges to reapply for appointment along with other candidates. Although there have been allegations of corruption, incapacity or bias within the judiciary in Serbia, and there may be grounds for deciding not to reappoint some judges, this process allows for non-appointment even where there is no suggestion of misbehaviour or incapacity, thus endangering the security of judicial tenure.⁴ It is important for the credibility and independence of the judiciary, and for its capacity to deliver justice effectively and impartially, that fair and transparent procedures are in place to ensure that where judges are not reappointed, it is for legitimate and objective reasons supported by verifiable evidence. The UN Basic Principles on the Independence of the Judiciary⁵ stipulate that judges shall have security of tenure (principle 12) and that they shall be subject to suspension or removal only for reasons of incapacity or behaviour that renders them unfit to discharge their duties (principle 18) and that in proceedings for removal, a judge shall have the right to a fair hearing (principle 17).

The ICJ urges the Working Group and the Council to recommend that the Government of Serbia:

- i) ensure that the judicial appointments process involves checks and balances sufficient to ensure judicial independence (both institutional and individual) and that appointments are made by an impartial and independent body, through fair and transparent procedures, based on objective criteria such as legal qualifications, experience, integrity, and high moral standing;**
- ii) put in place legal guarantees of judicial independence under the new system, to ensure that the judicial reappointment process will be fair and transparent and that judicial reappointments be prevented only in cases of serious misconduct or incapacity, in accordance with the Basic Principles on the Independence of the Judiciary.⁶**

Threats against judges, lawyers, and prosecutors

The ICJ is concerned at the numerous instances of threats or attacks against judges, prosecutors and lawyers, in particular those involved in cases concerning organised crime or war crimes. In June 2007, the plaintiff in a case being heard in Odzaci shot a judge and a lawyer dead in the courtroom.⁷ In the trial following the assassination of the Serbian Prime

³ See conclusions of the extraordinary assembly of the Judges Association of Serbia, 23 .12.2006, *Judiciary in the Aftermath of the new Constitution*, www.sudije.org.yu/list_news

⁴ Opinion No.464/2007 of the Venice Commission on the Draft laws on Judges and on the Organisation of Courts of the Republic of Serbia, CDL-AD(2008)007, para.61

⁵ A/RES/40/32, 29 November 1985, A/RES/40/146, 13 December 1985

⁶ Venice Commission Opinion on the Constitution of Serbia (Opinion No.405/2006, CDL-AD(2007)004Pars. 72-73; Opinion No.464/2007 of the Venice Commission on the Draft laws on Judges and on the Organisation of Courts of the Republic of Serbia, CDL-AD(2008)007 para.122.

⁷ Belgrade Centre for Human Rights, Annual Report 2007 para.2.11.6, p.303

Minister Zoran Djindjic, Judge Nata Mesarovic, as well as her colleague Judge Milan Ranic,⁸ received a number of threats, and there have been several other cases of threats or attacks against judges.⁹ Recently, Judge Dragisa Cvejic of Knjazevac Municipal Court was killed in a bomb attack, after he had received threats to his life.¹⁰

There have been particular problems of threats to and intimidation of prosecutors at the Serbia's War Crimes Chamber, which forms part of the Belgrade District Court and has jurisdiction concurrently with the ICTY to try persons responsible for serious violations of international humanitarian law, such as war crimes, committed in the territory of the former Yugoslavia (Serbia, Bosnia and Herzegovina, and Croatia) since 1991. Prosecutors have been subjected to intimidation, including from politicians and Members of Parliament.¹¹ The Chief Prosecutor, Vladimir Vukcevic, has received death threats;¹² as have his deputies. Other prosecutors have been assaulted and their cars vandalised.¹³

There are concerns that cases of attacks or threats against judges, prosecutors and lawyers have not been effectively investigated by law enforcement authorities.¹⁴ Poor security in courts and the understaffing of court security services has also been a problem.¹⁵ The Minister of Justice had stated that by the end of 2008 "a completely credible system of security for judicial officials" will be in place.¹⁶ No such security system has yet been established however.¹⁷ The ICJ notes that, in accordance with the UN Basic Principles on the Role of Lawyers,¹⁸ the authorities have obligations to ensure that lawyers can perform their professional functions without intimidation, hindrance, harassment or improper interference (principle 16) and to provide adequate protection to lawyers whose security is threatened (principle 17).¹⁹

The ICJ calls on the Working Group and the Council to recommend that the Government of Serbia:

- i) take immediate steps to prevent threats to and attacks on judges, prosecutors and lawyers and ensure their security, and in particular protect them from threats to life and physical integrity;**

⁸ Reuters, *Serbia Judge threatened before ruling on PM murder*, 10.05.2007

⁹ B92.net, *Judge asks for police protection*, 14.06.2007; B92.net, *Bomb found on judge's car*, 15.04.2008

¹⁰ International Herald Tribune, *Serbian judge dies after bomb attack*, 21.03.2008

¹¹ statement of 15 October 2007

¹² Reuters, *Group was plotting to kill Serb prosecutor – official*, 09.04.2008; Reuters, *Serbia war crimes prosecutor gets death threats*, 23.01.2008

¹³ Belgrade Centre for Human Rights, *Annual Report 2007* para.2.4, p.237;

¹⁴ *Ibid.*, p.238

¹⁵ *Ibid.*, para.2.11.6, p.303

¹⁶ B92.net, *Investigation into judge murder case ongoing*, 02.04.2008

¹⁷ B92.net, *Investigation into judge murder case ongoing*, 02.04.2008; B92.net, *"Special system" needed to protect judges*, 26.03.2008; B92.net, *Judge asks for police protection*, 14.06.2007

¹⁸ GA Res 45/166, 18 December 1990

¹⁹ See further, on security measures to protect judges, Recommendation No.R(94) 12 of the Committee of Ministers of the Council of Europe to Member States on the Independence, Efficiency and Role of Judges, adopted on 13 October 1994 at the 518th meeting of the Minister's Deputies, principle III.2: "all necessary measures should be taken to ensure the safety of judges, such as ensuring the presence of security guards on court premises or providing police protection for judges who may become or are victims of serious threats".

- ii) take particular steps to defend judges, prosecutors and lawyers of the Serbia's War Crimes Chamber against both verbal threats and physical attacks, and duly investigate such incidents.

International Criminal Tribunal for the Former Yugoslavia

Lack of cooperation by the Serbian authorities with the International Criminal Tribunal for the former Yugoslavia continues to impede the work of the Tribunal in establishing accountability for war crimes, genocide, and crimes against humanity. Such concerns have been raised in the judgment of the International Court of Justice in the Genocide case,²⁰ where it was held that the Former Republic of Yugoslavia had violated Article 1 of the Convention on the Prevention and Punishment of the Crime of Genocide (The Genocide Convention) by failing to take steps within its power to prevent genocide,²¹ and that Serbia had violated its obligations under this Convention by failing to co-operate with the ICTY, in particular by failing to transfer General Ratko Mladic who has been indicted for genocide, complicity in genocide, war crimes and crimes against humanity relating to the Srebrenica massacre, into custody of the ICTY.²² The Court found that there was "plentiful, and mutually corroborative, information suggesting that General Mladic ... was on the territory of the Respondent at least on several occasions and for substantial periods during the last few years and is still there now, without the Serb authorities doing what they could and can reasonably be expected to do to arrest him."²³ The Court noted that the failure to transfer General Mladic amounted to a violation of Serbia's duties under the Dayton Agreement, its duties as a Member of the United Nations, and a violation of its obligations under Article 6 of the Genocide Convention.²⁴

Welcome steps towards better co-operation with the Tribunal include the transfer to the Tribunal of Stojan Zupljanin, former Bosnian Serb police chief, who has been indicted for war crimes, as well as the transfer of generals Vlastimir Djordevic and Zdravko Tolimir, also indicted by the Prosecutor of the Tribunal. Nevertheless, very serious concerns of non-cooperation remain. General Mladic has still not been handed over to the ICTY; neither has Radovan Karadzic. In June of this year, the President of the ICTY, Fausto Pocar, wrote to the Security Council to report to it the Serbian Government for non-cooperation with the Tribunal in the case of Milan Milutinovic, by failing to respond to repeated requests to serve a witness summons on General Aleksander Dimitrijevic, former head of the Yugoslav Army's Security Administration.²⁵ Judge Pocar alleged that Serbia was in breach of its obligation under Article 29 of the Statute of the Tribunal to comply without undue delay with requests for assistance or orders issued by the ICTY.

²⁰ Judgment of 26 February 2007, *Case concerning the application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)*

²¹ *Ibid.*, para.438

²² *Ibid.*, para.471(6)

²³ *Ibid.*, para.448

²⁴ *Ibid.*, para.449

²⁵ Letter to H.E. Dr. Zalmay Khalilzad, President of the Security Council, from H.E. Judge Fausto Pocar, President, International Criminal Tribunal for the Former Yugoslavia, 17 June 2008

The ICJ urges the Working Group and the Council to urge that the Serbian Government:

- i) adopt a policy of full and active co-operation with the ICTY and, in particular, abide by the decision of the International Court of Justice;**
- ii) arrest and transfer General Ratko Mladic and Radovan Karadzic to the ICTY;**
- iii) co-operate fully with the Tribunal in serving documents and procurement of evidence and witnesses, including General Aleksander Dimitrijevic.**