

ESTABLISHING RULE OF LAW IN A CORRUPT SOCIETY:

ABA/CEELI IN SERBIA

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“Serbia is the sickest society in Europe! Its system is built on paranoia, it [sic] politics on a blatant disregard for truth, its borders on unrecognized maps, . . . its ethics on corruption.”²

The American Bar Association Central & East European Law Initiative (CEELI) is one of the few foreign nongovernmental organizations (NGO) working in Serbia (which, together with Montenegro, constitutes the Federal Republic of Yugoslavia) – and its presence is far from secure. To begin with, it took nearly a year and a half for CEELI to obtain a visa to place a country liaison in Belgrade. And, while CEELI applied for and believed it had secured a work visa, it turned out to be a 3-month tourist visa, renewal of which was a month-long saga requiring intervention by influential local partners. As with all laws in FRY, compliance does not guarantee the law will be enforced. That is entirely discretionary – and depends on who you know and how much of a threat you pose.

I was posted to Belgrade in June 1997, as CEELI’s first country liaison, with two months left on my three-month tourist visa. In those two months, I managed to open an office, secure living quarters and meet most of the major players in the law reform and human rights communities. Since massive street demonstrations last winter protesting electoral fraud, local NGOs have multiplied dramatically. Some, like the peace group Women In Black, existed and were a regular public presence throughout the war. Others, like the Center for Humanitarian Law, are newer on the scene. In addition to support for these and other NGOs, our major partner is the Jurists Association of Yugoslavia (the independent bar association), which also acts as an umbrella organization for the newly-formed independent judges’ association.

Before I could do much real work with local partners, however, I had to secure my status beyond the first visa expiration. I spent a month in limbo, while police reviewed a stack of a dozen documents I was ordered to produce, including the rental agreement on my flat and my biography. It was also at this time that I became aware I had joined the criminal ranks, which include nearly everyone in Serbian society. With great authority, the police officer for foreigners informed me that I had violated the law because I did not have a residency card. Through my translator, I explained that my residency card had been confiscated by Serbian police at the border when I crossed into Croatia. That was of no consequence. I had violated the law and, now, it was up to the police to decide what to do with me. They also thought I was a spy, my interpreter

reported later, as they do of most Americans. Or, as my police interrogator put it, “Why would you need a three-month tourist visa? This is a small country. You can see it all in a month.” Nevermind that I had requested a business, not a tourist visa.

A Society of Law Breakers

In today’s Federal Republic of Yugoslavia (FRY), nearly everyone is a law breaker because the system makes it impossible to survive as a law-abiding citizen. Taxes on flats are so high people commonly write two leases – one for a lower amount which is filed with the authorities and on which the tax is figured, and another lease between the two parties for the actual (higher) amount of rent. The practice is widespread and well-known to the authorities, who look the other way most of the time. However, at any time they can choose to selectively enforce the law – and, despite constitutional protections, they often do so for political reasons.

The high taxes would not be so offensive to people if they benefited from any public services, as they did under Communism. Today, however, pensions and salaries are often not paid for months at a time. In a country where the majority of people work for the state, this makes for considerable poverty. As doctors, health care workers and teachers routinely strike over unpaid wages, public services suffer more.

To keep solvent, citizens can be thankful for the repetitive elections for which Serbia is gaining world reknown.³ While the ruling socialists fund their electoral campaigns with public money, their campaign strategy often includes a sudden payment of pensions and back salaries. Money for the latter has been secured through selling the state telephone system to the Italians and printing more dinars.

The grey market offers another example of widespread state-sanctioned lawlessness, as well as a way for people to survive. Popularly called “grey” market because of official involvement and sanction, it operates openly on one of Belgrade’s main streets (Boulevard of the Revolution) and throughout the city. From the hoods of cars and upturned cardboard boxes, people sell cigarettes, candy, clothing and other items smuggled across the borders without paying import duty.

The grey market enabled Yugoslavs to survive years of economic sanctions imposed by the United Nations because of FRY’s role in the recent war. Now, it continues to provide an income for many of the unemployed, as well as the employed but unpaid. Of course, the activity is illegal and participation in it (buying or selling) makes one subject to arrest – which happens arbitrarily. When criminal activity becomes so widespread, the authorities can arrest anyone at anytime – and have a legitimate reason for it.

I was told by a lawyer friend that there is no lawyer in the country who does not break the law. Law breaking routinely includes income and employment tax evasion, as well as prohibited hard currency transactions. The government tightly controls the flow of money by requiring that all financial transactions be made through a bank account. Cash transactions and especially hard currency transactions are prohibited because the

government cannot track them and tax them. Employers must pay salaries into local bank accounts. Citizens cannot withdraw more than the amount of their salary, plus money to pay bills of less than 500 dinars (about \$70.00) on presentation of the bills. To finance vacations and larger purchases of household items, gifts, etc., people accumulate “fake” bills. Especially popular are taxi receipts. Lawyers, too, I’m told, commonly accept payment in cash to avoid the heavy income tax. The full amount of payroll taxes are also rarely paid, since taxes and benefits equal 120% of salary. In these ways, people circumvent laws they find burdensome.

Law as a Vehicle for Oppression

The law is also a vehicle for oppression against minority groups, such as Albanians in Kosova, Hungarians in Vojvodina and Muslims in Sandzak (all regions within FRY). A purchase law was passed that requires Albanians in Kosova (but not Serbs) to obtain special permission to lease or purchase property. Anticipating denial of permission, Albanians lease or buy property without seeking permission. All such persons are subject to arrest and prosecution, a process the state pursues selectively as a way to maintain fear in and control over the Albanian population in Kosova.

Another law prohibits all citizens of FRY from selling real property to a citizen of a different nationality – to maintain an ethnic balance. Thus, a Serb must sell to a Serb; a Slovenian to a Slovenian; a Croat to a Croat; an Albanian to an Albanian. This law is also directed at Kosova, where the Serb minority has been fleeing the area, thus increasing the size of the Albanian majority in an area that has symbolic significance to Serbs.

Becoming Legal in an Illegal State

In the FRY, obtaining one’s rights under the law does not depend on hiring a competent lawyer, but on hiring one who has connections. The first question local lawyers are asked by a client is not “what do you know?” but “who do you know?” As one of FRY’s many lawbreakers, I, too, secured assistance from someone with connections. After a month as a person without status, the police called me in and, without explanation, handed me a six-month work permit. As far as I’ve been able to determine, I’m the only U.S. citizen (and maybe the only foreigner) to get a six-month work permit. It makes me just a little nervous about who I do know!

Rule of Law Initiatives in a Lawless Society

Having secured legal status for myself, if not for CEELI (there is no procedure for registering a foreign NGO, though they are required to be registered⁴), I turned my attention to substantive issues. In the next few months, CEELI collaborated with the Humanitarian Law Center on the case of a seven-year-old boy denied schooling because he is HIV-positive; worked with the Women’s Law Group which is gathering data on women’s prison conditions and advocating for reform; developed a seminar on judicial independence in conjunction with the Jurists Association of Yugoslavia – to be presented in February; participated in an international roundtable on Civilian Oversight of Police;

organized women's groups to develop a legal strategy for addressing domestic violence; and hired a lawyer to represent CEELI in its efforts to become officially registered. In addition, CEELI is assisting the newly-formed Lawyers Committee for Human Rights, which plans to provide representation to individuals and groups persecuted by the government, propose legislative reform and develop public education campaigns on various aspects of the law and legal system.

None of this is easy in a society which is not ruled by law, but by personal whim or political purpose. How does one convince judges that they should assume the power of their office, when they have no training or precedent for doing so – and, when doing so might cost them their jobs? Police often fail to show up for court hearings, whether they are defendants or key witnesses, and judges do nothing to compel their appearance, fearing the police more than an impotent justice system. Court decisions are subject to appeal, a process which can take years. Moreover, even if one is successful on appeal, there remains the problem of enforcement.

For example, Yugoslavia's version of a pyramid scheme induced citizens to deposit large sums of money (often their entire savings) in banks, with the promise of 50% to 400% returns in a matter of a few months. While early depositors realized substantial gains, later ones lost everything. Though the constitutional court ultimately required the banks to return the money to their depositors, the decision has never been enforced – not only because banks lack hard currency, but because there is no enforcement mechanism. The banks continue to operate and citizen's salaries continue to be directly deposited into those banks.

A "Soft" Police State

The FRY is a "soft" police state. It has all the trappings of a democratic society and everyday life on the street appears normal. However, the police act as an army for the ruling elite. They can be ordered into action with no regard for constitutional limits.

In October, I was able to entertain my country director visiting from CEELI in Washington, D.C., with the sight of Serbia's finest dressed in camouflage and riot gear, running maneuvers on the streets of Belgrade. (I still do not understand why they dress in jungle camouflage, since Belgrade has few trees and no jungle foliage.) Their presence effectively stopped a student demonstration against the arbitrary sacking of Belgrade's mayor and the removal of liberal board members from the only independent television station.

Even when wearing ordinary uniforms and responding to "ordinary" crime, police ignore legal limits. They continue to operate under a three-day rule, which was outlawed a few years ago. The rule allows them to arrest and hold a suspect for three days without notifying a court or prosecutor, and without any warrant. The period is used to obtain confessions by physical as well as psychological "persuasion." There have been no challenges to police brutality or illegal detention. Thus, lawyers as well as judges share

in the responsibility for a sham legal system that declares people's rights but does not protect them.

Al Capone Lives!

While Belgrade is a relatively safe city for common people,⁵ it is hazardous to the health of friends and associates of the Ruling Family. There have been two "assassinations" since my arrival in Belgrade: one of a businessman who is a close associate of Mira Markovic, President Milosevic's wife and head of the Yugoslav Communist Party; the other, a business associate of Milosevic's son, Marko. Last spring, the police chief, a close ally and friend of the president, was also shot, gangland style. A string of similar gangland assassinations preceded these. None has been solved.⁶ All have been executed with a high degree of planning and precision.

The Moral Corruption of Society

There is no shortage of allegations and rumors that the ruling elite are involved in organized crime and corruption. Just as worrisome, however, is a pervasive attitude of lawlessness which affects nearly all transactions, from a taxi ride to city contracts. When I purchased a computer printer, for example, the seller, who had been recommended to me by a legal colleague, presented the bill with the amount left blank. Another lawyer, in giving me a bill for services, indicated helpfully that he could write it for a larger amount. Each anticipated I would submit the bill to CEELI for reimbursement and pocket the difference between actual payment and the "billed" amount.

Vreme, a progressive weekly news magazine, in an article on corruption, states this inflation of prices to allow for embezzlement is a common practice in municipal administration.⁷ They quote former Belgrade Mayor Zoran Djindjic, saying a million dinars (about \$145,000.00) can be stolen in the city each day.

The pervasiveness of disregard for law makes the task of establishing rule of law daunting, to say the least. Yet in a country where laws and their enforcement are unjust, where the legal system is merely a tool for maintaining power, disrespect for law and cynicism about the legal system are inevitable. Add to that the necessity of breaking laws to survive and the corruption of society is understandable. Whether one understands it or not, one can't help wondering if the moral decay has so infected society that it can no longer be saved. As Aleksandar Tijanic, former editor of *Gradjanin*, declared in commenting on Belgrade's latest "assassination,"

"[Todorovic's] life and death represent the most complete metaphor of the new Serbian society which is ruled by instincts rather than reason and principles, and evil powers, licensed to kill, instead of the law."⁸

Courageous Signs of Judicial Independence

Yet there are also signs of hope and incredible courage. Last fall when opposition parties won 18 local elections, the government pressured the supreme court to declare those elections invalid, which it did. Five judges, however, issued a written legal opinion to President Milosevic and the media, substantiating the validity of the elections and the unsupportability of the supreme court's action. Supported by three months of daily street demonstrations, this opinion eventually held sway and the opposition candidates were allowed to assume office. The five judges were threatened with professional and personal reprisals. However, the backing of the independent Jurists Association of Yugoslavia provided protection and all held onto their jobs.

In April 1997, the judges founded the first independent judges' association in the FRY. In response, the president of the constitutional court, a non-lawyer appointed by the government, ordered that a letter be read to all courts forbidding judges from joining the association. Five hundred judges defied that order and joined.

Each year for the last 11 years, the Jurists Association of Serbia has sponsored the Kopaonik School of Natural Law. With the fall of communism throughout Eastern Europe and Russia and the onset of war in the former Yugoslavia, the School bravely turned its focus towards the protection of human rights.

This year I was privileged to attend the five-day school as it took up the subject of an independent judiciary. In response to strong calls for judicial independence by the founder of the Kopaonik School, Professor Slobodan Perovic, and Judge ?? Ivosevic, one of the five judges who stood up to the regime, the audience of nearly 3000 lawyers and judges responded with loud, sustained applause. This is no light matter in a country where rule of law is merely an aspiration, while the rule of one man can destroy one's future.

An International Commitment to Rule of Law

CEELI is in the FRY to lend its support to these efforts. As I have stated publicly on more than one occasion to this proud people, we are not here to preach or out of a self-satisfied sense of superiority. We are here because the ABA is committed to supporting rule of law and justice and that support is desperately needed in the FRY. We must keep the goal of justice alive in the world. For we recognize that next year or in five years, the U.S. may need help from justice-loving people abroad if present attacks on the independence of our judiciary become increasingly successful.

FRY provides a unique challenge for CEELI and gives new meaning to the cliché about the chicken and the egg. Will a change in legal institutions bring about a lawful society? Or is a lawful society (government) required to establish operating legal institutions? There is no either/or answer to this riddle. Both must be pursued so that when one changes, the other will not be far behind.

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² Aleksandar Tijanic, Serbia's ex-Information Minister and renowned journalist in the last issue of *Gradjanin*, the paper he published, which folded on October 28, 1997.

³ There has been no elected president of Serbia since Slobodan Milosevic left that office to become President of the Federal Republic of Yugoslavia, when his final term as president was about to expire. In the first round of elections to fill the seat, no candidate secured more than 50% of votes cast. In the second round, fewer than 50% of the electorate voted resulting in an invalid election. On December 7, another election was held at which no candidate received 50% of votes, necessitating yet a fourth election where there was insufficient voter turnout to validate it. Another round of elections is anticipated for next spring, unless Milosevic manages to change the constitutional requirements so non-majority president can be elected, as in the U.S.

⁴ CEELI has hired local council, as well as joined a working group of foreign NGO's, to find a way to implement the federal law that allows foreign NGO's to operate. That law provides that foreign NGO's are permitted and must register according to republic law (Serbian or Montenegrin). Republic law, however, provides no procedure for registration.

⁵ I feel no apprehension about walking alone at night nearly anywhere in the city. People speak of increased crime and violence, yet it is not visible.

⁶ A Belgrade prosecutor told me confidentially that his office pursues only petty criminals and stays strictly away from organized crime. An investigation by *Vreme* quoted former police officials admitting that the police and/or army have been infiltrated by organized crime. "Killings: The Death of Zoran Todorovic," by Milos Vasic, *Vreme*, November 1, 1997, p. 5.

⁷ "City Hall Scandals: Stealing Belgrade," by Vesna Kostic, *Vreme*, News Digest Agency, No. 364, October 1, 1997, pp. 22 – 24.

⁸ "Killings: The Death of Zoran Todorovic," by Milos Vasic, *Vreme*, No. 367, November 1, 1997, p. 6.