

1999

## Academic Freedom in Serbia

Barbara Cochrane

*American University Washington College of Law*

Follow this and additional works at: <https://digitalcommons.wcl.american.edu/hrbrief>



Part of the [Education Law Commons](#), and the [Legal Education Commons](#)

---

### Recommended Citation

Cochrane, Barbara. "Academic Freedom in Serbia." Human Rights Brief 6, no. 3 (1999): 15-16, 18.

This Article is brought to you for free and open access by the Washington College of Law Journals & Law Reviews at Digital Commons @ American University Washington College of Law. It has been accepted for inclusion in Human Rights Brief by an authorized editor of Digital Commons @ American University Washington College of Law. For more information, please contact [kcley@wcl.american.edu](mailto:kcley@wcl.american.edu).



## Academic Freedom in Serbia

by Barbara Cochrane\*

According to Human Rights Watch's *World Report 1999*, "[a]cademics in dozens of countries in 1998 were harassed, censored, dismissed, beaten, or imprisoned for peacefully expressing their ideas." One of the most dramatic and disturbing examples of these challenges to academic freedom is occurring in Serbia. On May 9, 1998, the Serbian government unexpectedly announced its preparation of a draft proposal for a revised version of the Law of Universities (LU). This draft proposal, prepared by the government without any input from the universities, effectively removed a significant number of independent academics and government critics from Serbian universities. On May 26, 1998, the Serbian Parliament passed the proposal into law, thereby increasing government control over academic decisions affecting teaching, scholarship, and research. The 1998 LU continues the government's formal efforts, which began with the 1992 LU, to silence the universities' anti-government protests and gain more control over the universities.

Supporters of the 1998 LU maintain it will "depoliticize" the universities and, as a result, "improv[e] the efficacy of studies," which are affected adversely when faculty members and students spend large amounts of time protesting against the government. Opponents of the new law proclaim, however, that the 1998 LU ends the 160 year old tradition of university autonomy in Serbia and that its purpose is to punish the universities, in particular the University of Belgrade, for their active role in anti-government protests. Since the Serbian government first proposed the 1998 LU, students and faculty members at Serbia's six public universities have held periodic protests, drawing from approximately 50 to several hundred protestors. They believe the promulgation of the 1998 LU should have been a cooperative effort between the government and the universities, as Serbian President Milan Milutinović promised in January 1998.

### The 1998 LU

The 1998 LU seriously undermines academic freedom, including the freedom to teach, study, and research without unreasonable interference or restriction. It brings the public universities of Serbia under the direct control of the government, eliminating participation by independent faculty members who historically had input into setting curricula, hiring professors, and appointing faculty deans. Under the 1998 LU, significant powers granted to the government include the power to close universities (Article 18); the power to name and dismiss the chancellor of a university (Article 110); the power to name and relieve the dean of a faculty (Article 123); and the power to require university employees (including tenured professors) to sign new labor contracts, regardless of whether or not they already have a valid contract with the university (Article 165). The minister of education is the government official responsible for exercising these powers.

Article 18 of the 1998 LU is based on the government's power as the founder of public universities and allows the Serbian government to close these universities without explanation. It states that the conditions and procedures to close universities will be determined by "law," but, contrary to the 1992 LU, the 1998 LU does not define the conditions or procedures for closing a university and is silent on what "law" would be applied. Though the government has yet to close

a university under Article 18, the ambiguity of this article and its reliance on an undefined "law" increases government control over the universities, while it decreases the government's accountability regarding how it reaches decisions.

Article 110 of the 1998 LU grants the government the power to appoint and dismiss university chancellors without any input from universities' faculty. Chancellors' responsibilities, defined in Article 113 of the 1998 LU, include developing university statutes, implementing scholarly, artistic, and educational activities, and proposing university development plans. They are also charged to "carry out other duties" as determined by each university's statute, which is adopted by the managing board of each university under Article 117, and the "law," which is undefined.

Article 123 gives the government the power to appoint and dismiss deans of faculties regardless of university or faculty opinions. Deans' responsibilities, outlined in Article 126, are identical to those of chancellors except that they oversee individual faculties—schools within the universities—not entire universities. The 1998 LU, therefore, allows government-appointed deans with political ties to Serbia's ruling parties broad discretion in faculty hiring and firing decisions, leaving dismissed employees with little power with which to challenge these actions.

Article 165 of the 1998 LU requires "employees of the university" to sign new labor contracts even if they have valid existing contracts and tenure protections. Many of the tenured faculty and staff faced with new contracts have likened them to governmental "loyalty oaths," because if they refuse to sign these contracts, they are subject to dismissal, suspension, or re-assignment. The effect of the 1998 LU is an abolition of independent faculty review and governance of Serbian universities.

### The 1998 LU Violates Domestic Law

Led by Dr. Vesna Rakić-Vodinelić, a group of law professors from the University of Belgrade submitted a proposal to the Constitutional Court of Serbia in June 1998, challenging the 1998 LU. Before rendering a final decision, the Court requested the opinions of the government and the parliament. In February 1999, the Judiciary Committee of the Serbian Parliament gave its opinion that the 1998 LU does not violate the Serbian Constitution. The Constitutional Court's judgment regarding the 1998 LU was expected by April 1999; as a result of the NATO air-strikes against Serbia, however, the expected date of judgment cannot be confirmed.

According to Article 33 of the Serbian Constitution, "[t]he freedom of creating and publi[shing] scientific and artistic work, scientific discoveries and technical inventions is guaranteed, as are the moral and property rights of their creators." Although the Serbian Constitution does not explicitly guarantee the autonomy of universities, Dr. Rakić-Vodinelić reasons that the academic freedom of universities, including the participation of faculty members in governing the university, is necessary to ensure the freedoms of creating, publishing, discovering, and inventing. The resulting *de facto* abolishment of independent faculty review and governance of the universities under the 1998 LU is, therefore, a violation of the legal principle of academic freedom.

continued on next page



Academic Freedom, continued from previous page

The 1998 LU also promotes other constitutional violations in Serbia. For example, according to Article 35 of the 1989 Serbian Constitution, an employee contract, such as that held by a university law professor, cannot be voided prior to expiration unless the contract is illegal or conditions of the contract are violated. The 1998 LU has been used to strong-arm new employee contracts onto existing university faculty in violation of their Article 35 protections. Similarly, Article 40(1) of the 1992 Federal Republic of Yugoslavia (FRY) Constitution, a document that legally binds Serbia, affords the right to freedom of peaceful assembly. Students peacefully protesting the 1998 LU, however, have been arrested, arbitrarily detained, and beaten by police officers and private university security personnel in violation of the right to peaceful assembly.

### **The 1998 LU Violates International Law**

In addition to domestic violations, the 1998 LU violates Serbia's international human rights obligations under the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR). The Socialist Federal Republic of Yugoslavia ratified both covenants in June 1971, making these documents binding on the current FRY, which includes the Republic of Serbia through state succession. In addition, Article 27 of the Vienna Convention on the Law of Treaties prohibits a state from creating a domestic law that would be in direct violation of an international obligation. The 1998 LU, therefore, violates the right to education (ICESCR Article 13(1)), the right to freedom of expression (ICCPR Article 19(2)), and the right to liberty and security of person (ICCPR Article 9).

**Right to Education.** Article 13(1) of the ICESCR recognizes that the right to an education strengthens "human rights and fundamental freedoms" and enables "all persons to participate effectively in a free society . . ." The education guaranteed by the ICESCR, therefore, requires a free and democratic process distinct from governmental policies such as those promoted by the 1998 LU. Similarly, in November 1998, when faculty members staged a strike and students boycotted the University of Belgrade in response to the 1998 LU, the newly appointed deans responded by hiring private security personnel and denying students entry into university buildings to hold classes. More recently, the FRY government demonstrated the implications of Serbia's 1998 LU when it denied visas to numerous internationally prominent academics scheduled to appear at the University of Belgrade, including Washington College of Law Professor Herman Schwartz and Nobel Prize winning scientist John Polanyi.

**Right to Freedom of Expression.** The repressive academic climate created by the 1998 LU impacts the ICCPR Article 19(2) right to freedom of expression. On July 20, 1998, the Serbian government shut down Radio Index, a local station in Belgrade, after two months of broadcasting a nightly program protesting the 1998 LU. The talk show, "Free University on a Free Medium," broadcast interviews with professors who were fired from the Faculty of Law at the University of Belgrade. On September 16, 1998, the station was temporarily permitted to resume its broadcast until the government finally ended these anti-LU radio programs with the eviction of Radio Index from its premises on October 10, 1998.

Another example of the Serbian government's violation of the right to freedom of expression is its censorship of the Internet. In December 1998, the government blocked Internet access through OpenNet, an Internet service provider used by faculty and students at Serbian universities and research institutions. The dean of faculty of electrical engineering at the University of Belgrade, Vlada Teodosić, described the ban as a necessary reaction to ". . . insults and derision of some of the members of the management of the Faculty of Electrical Engineering on certain websites." The 1998 LU, therefore, is being used as a tool for censorship, denying students and faculty the right to freedom of expression.

**Rights to Liberty and Security of Person.** Finally, the reaction of the government to protests sparked by the 1998 LU also violates the rights to liberty and security of person as defined by Article 9 of the ICCPR. Article 9 promotes the right to be free from arbitrary arrest or detention and provides that any individual who is arrested should be informed of the charges that support the arrest. Students protesting the 1998 LU, however, have reportedly been illegally arrested, arbitrarily detained, and unjustifiably beaten by police officers and private university security personnel. One prominent example of such violations occurred in December 1998, when police officers arrested Srdja Popović, one of the leaders of Otpor, a student-organized resistance movement, one day after an unidentified individual raised the Otpor flag during a University of Belgrade ceremony. Popović claims that he was not given a reason for his arrest and not until three days later, when the police issued a statement that Popović was arrested for possession of cocaine, was Popović notified of the official charge against him. Fear of arbitrary arrests, detentions, and police brutality prevails for those who desire to peacefully protest the 1998 LU.

### **Alternative Solutions to the 1998 LU**

In response to the 1998 LU, concerned faculty members, such as Professor Vojin Dimitrijević, founded the non-governmental organization Alternative Academic Educational Network (AAEN). The purpose of AAEN is to foster an environment that protects and improves the quality of university education, which has been impacted negatively by the passage of the 1998 LU. In an attempt to achieve this goal, AAEN is creating alternative academic multidisciplinary programs. For example, AAEN established the Centre for Advanced Legal Studies (CALS), which offers support to programs and to faculty members affected by the 1998 LU. CALS established a European Studies program that began in the spring of 1999. According to Professor Dimitrijević, AAEN hopes such programs will help ". . . reduce the damage caused by the adoption of the new [LU] . . . [and] gradually develop a new alternative University, instead of one which . . . is doomed by the effects of [the] new [LU] and its implementation."

### **Conclusion**

In November 1997, the UN Educational, Scientific and Cultural Organization adopted a Recommendation Concerning the Status of Higher-Education Teaching Personnel, which recognized the right to academic freedom and institutional autonomy in higher education. The Recommendation explains that UN Member States are encouraged to protect the autonomy of higher education institutions from

continued on page 18



Street Children, continued from page 12

Guatemala, therefore, argued *inter alia* that the petitioners had not exhausted all local remedies in accordance with Articles 46 and 47 of the American Convention.

### Conclusion

The case of *Villagrán Morales* is the first case dealing with police brutality against street children before any international tribunal. The Inter-American Court is not expected to render its decision in the *Villagrán Morales* case before June 1999 at the earliest. The *Villagrán Morales* decision will be a precedent not only for the cases on the torture and killing of street children in Guatemala, but also for the abundance of similar cases likely to come before courts worldwide. One decision, however, is not enough. Press coverage and global public support will be necessary to help other street children brutalized by their own governments.

The international community has recognized the importance of preventing acts, such as those alleged against the Guatemalan government in *Villagrán Morales*, through various treaties, typified in the International Covenant of Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Rights of the Child, and the International Convention on Torture. In addition, the Special Rapporteur has specifically addressed the problems of street children in Guatemala and in the Western Hemisphere as a whole for the United Nations. These mechanisms, however, can only make recommendations to states as to how to implement their domestic provisions. The Inter-American Court, on the other hand, provides an actual course of remedy by rendering a binding and enforceable decision. A favorable decision in the *Villagrán Morales* case, which would hold Guatemala responsible for the gross violations of its agents, is crucial to the development of international jurisprudence. Not only would it provide justice for the families of the five murdered boys, but it also would encourage states worldwide to develop and enforce legal systems that can protect their citizens.

The values of society are in a large manner reflected in the way it treats its children. The case of Anstrum, Julio, Jovito, Henry, and Federico represents not only a social and legal inequity in Guatemala. It is also an appeal to all countries to understand the importance of developing programs that will assist those unfortunate children left to live on the streets. For justice to truly prevail, this case should be used as an example to denounce the violence against these human beings, who are, after all, only children. ☉

*\*Selina Kossen graduated from Utrecht University with a Meester in de Rechten (J.D. equivalent) with a specialization in public international law and human rights. From August 1998 until March 1999, she worked for Washington College of Law Dean Claudio Grossman as a visiting human rights research scholar on cases before the Inter-American Commission on Human Rights, both at the law school and the Commission. She began working for the Pan American Health Organization in May 1999.*

Academic Freedom, continued from page 16

all threats, and that self-governance and appropriate academic leadership are fundamental components of any meaningful enjoyment of academic freedom and autonomy. The 1998 LU directly contravenes these principles by placing powers of university decision making almost entirely with the Serbian government.

The domestic and international violations of the 1998 LU constitute a denial of important rights. The NATO air strikes, which commenced on March 24, 1999, against Serb forces, will have unforeseeable consequences on Serbian domestic politics. Prior to the NATO bombings, there were positive signs that opposition to the 1998 LU was effective. On February 9, 1999, for example, Professor Radmilo Marojević, a government-appointed dean at the University of Belgrade, resigned after months of student protests surrounding his appointment under the 1998 LU. Unfortunately, as Radomir Diklić, a founder and director of the local Beta independent news agency stated, "[e]ven if the war were to stop right now . . . the effect will be to cut all the roots of democracy that previously existed here." Restoring academic freedom within Serbian universities will play a crucial role in the building a fragile democracy. ☉

*\*Barbara Cochrane is a first year J.D. candidate at the Washington College of Law and a Staff Writer for The Human Rights Brief.*

Goldman Profile, continued from page 2

would also like to pursue funding from sources outside the hemisphere.

### Commission's Importance in the Development of International Law

Goldman believes that the Commission's decisions are on the cutting edge of international law. The Commission has devoted particular attention to addressing impunity for human rights violators, which continues to be one of the primary issues in Latin America. The Commission was also the first international organ to deal with the politically loaded issue of amnesties for human rights violators. As a result of Commission efforts regarding these and other issues, other international bodies such as the UN Human Rights Committee and the Inter-American Court of Human Rights now recognize their importance.

### Conclusion

Much of Goldman's work with the Commission is performed on a volunteer basis and requires a tremendous commitment of his time and resources. He finds this involvement, however, extremely rewarding. His efforts also have paid off for WCL students, who benefit in the classroom from his human rights experiences and have enhanced opportunities to become involved in activities at the Commission due to his position there. As president during the coming year, Goldman hopes to deepen the international community's involvement in the Commission and strengthen the organization's internal structure so that the Commission continues, in his estimation, to be the most successful and effective human rights body in the world. ☉

*\*Sarah Aird and Tom Lynch are first year J.D. candidates at the Washington College of Law and Staff Writers for The Human Rights Brief.*