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4 October 2007

The Hon. John Howard, MP
Prime Minister of Australia
PO Box 6022
House of Representatives
Parliament House
CANBERRA ACT 2600

Dear Prime Minister

I am writing to you on behalf of the organisation “Serbs for Justice”, and other friends and colleagues, who have become familiar with the events and implications associated with what we strongly believe is the unlawful imprisonment of an Australian here in Australia. The Australian in question is Daniel Snedden who has been imprisoned for a period of approximately twenty months. He is currently incarcerated at the Parklea Correctional Centre in Sydney under the name “Dragan Vasiljkovic” and appears to have been arrested and imprisoned illegally, on a warrant issued on behalf of a foreign state.

We ask that you take the time required to carefully consider the contents of this letter as the issues are serious and require prompt and appropriate action.

To continue, the approach used by Government officials and our legal system in processing Daniel’s case has caused alarm, both within and outside the Australian Serbian community. It has created strong feelings of vulnerability with those in the wider community who have been exposed to this case, particularly with respect as to whether our rights would be protected by the Australian Government and our legal institutions, should we ever find ourselves in a similar position to that of Daniel Snedden. We also feel that this case demonstrates that the rights of Australians have been eroded to a level that falls outside the norms expected in what we believe should exist in a civilised society. Additionally, we carry strong feelings that we may experience a betrayal by our leaders in government and relevant institutions, similar to the feelings of betrayal felt by Daniel, should we ever be placed into a similar situation.

To avoid contempt of court issues I will avoid direct references to the ongoing court proceedings surrounding the part of this case that is the subject of legal proceedings.

The area of my focus initially will be the area that has contributed the most to the feelings mentioned. This area relates to the period leading up to the issue of the warrant for Daniel's arrest and the processes used by the relevant authorities in that period.

We believe that during this period a number of acts and omissions were made by the delegated Government Minister(s) and perhaps members of their staff. These acts and omissions have contributed to what we see as a serious and grave abuse of due process, lack of due diligence and lack of accountability.

To elaborate, we believe that the processes used by the delegated Minister(s) prior to the issue of the arrest warrant lacked the appropriate level of due diligence required by both our legislation and the conventions and statutes to which Australia is a party. As mentioned, those processes also appear to have left themselves open to strong allegations of abuse of due process and have raised a large number of questions that we believe require a carefully considered response if we are to regain any trust lost through what we have seen evidenced in the processing of the case in question. The processes also appear to expose anyone, but more particularly refugees who have arrived in Australia from war torn regions of the world, together with Australian service personnel and Australian aid workers who have served overseas to a similar abuse of due process and absence of protection of their rights by our Government. The number of people potentially affected is considerable, and they may well be placed in a position of great vulnerability and fear with respect as to whether the Government would discharge their responsibilities appropriately and uphold constitutional and other legislative guarantees for their protection, should they ever be placed in a position similar to that of Daniel Snedden.

Whilst the statements made may seem startling we believe that once you have acquainted yourself with what follows you will understand why they have been made and why the feelings described are so deeply and strongly held.

Although the following points and questions emanate from what transpired prior to the issue of the arrest warrant, there are other aspects of this case that also cause us serious concern, such as (i) some of the processes applied during the arrest and the subsequent legal proceedings; (ii) the application of the Extradition Act and its relevance to this case; (iii) the denial of certain rights that Daniel or anyone in his position has to protection and due process under the laws and conventions that are relevant to a case such as this, along with his denial of unimpeded access to counsel of his choice. Another area of serious concern is that the legal proceedings bar Daniel from proving his own innocence.

1. Period leading up to the Issue of the Arrest Warrant

Here are some of the concerns we have with what appear to be grave deficiencies in the processes leading up to the issue of the arrest warrant. They are also questions to which we seek answers:

- Was a check made as to the sufficiency of the substance of the allegations/reason for warrant/extradition request, i.e. was sound, legal justification sought and verified prior to allowing the arrest to proceed?

- Was any consideration made as to the probability that a person's life may be at stake? (This question is not designed to be alarmist. We understand Balkan politics only too well and know that this is a very real probability considering

what has happened and is happening in Croatia and the circumstances and factors surrounding the Daniel Snedden case.)

- We believe that Australia does not extradite its constituents/protected persons for alleged Geneva Convention breaches yet this appears to be happening in Daniel's case. We believe that Australia prosecutes Geneva war crimes suspects here in Australia and that these prosecutions are carried out before a jury. We also believe that for such a process to commence the existence of prima facie evidence is a mandatory requirement, yet there appears to be no evidence whatsoever to indict Daniel, i.e. he is being held with no charge and without prima facie evidence to hold him. What we are asking here is: Was expert legal advice sought on these issues prior to issue of the arrest warrant? (Please let me clarify what I mean by expert legal advice. In my exposure to this case it has become very clear that many legal professionals who are not well versed and equipped in the knowledge of our obligations under all of the legal instruments associated with a case of this nature such as the Australian Constitution, the Extradition Act, the Geneva Conventions and the Rome Statute, have considerable difficulty grasping the pertinent considerations applicable to a case such as this and are therefore exposed to providing advice that is insufficient or inappropriate. We would expect that in order to ensure that Australia did not deny a citizen their rights and did not expose itself to international and domestic ridicule, relevant Government Ministers would seek the advice of appropriate and competent legal experts. This expert legal advice issue also applies to a number of the following points raised in this letter.) We also know that Croatia does not extradite its citizens who may be suspected of having committed war crimes to Serbia, nor does Serbia extradite its citizens to Croatia. Why then has Australia lowered the bar and entertained the possibility of extraditing one of its citizens for alleged war crimes offences to either of these countries? We know that countries such as Britain, the USA and Russia would never allow their citizens to be extradited on these grounds so why does Australia demonstrate lesser standards in this respect?

- Following on from the previous point, was consideration made as to whether the process entertained in this instance may place this Australian in a position where his rights under the Geneva Conventions may be denied; whether he is a protected person under those conventions - afforded specified rights; whether he would be afforded the essential guarantees of an independent and impartial judiciary or other guarantees that are indispensable to a fair trial under the Geneva Conventions; and whether those conducting the process were accurately informed as to the facts surrounding Daniel's role in the hostilities in the former Yugoslavia?

- Upon receiving the extradition request, was consideration made of the fact that the request had been received from one of the Balkan successor states to the former Yugoslavia and that it may have been politically motivated? Was consideration given to the possibility that the Croat Government may be attempting to explain the historical and political account of the civil war in the former Yugoslavia to their constituents in a way that places importance on having Daniel in their jails so as to support their account of the war, and that Daniel is merely being used as a stool pigeon for their purposes, merely to be eliminated "Balkan style" either during or at the end of that process? There appears to be no appreciation on the part of Australian officials that whilst the

civil war has formally ended, its aftermath continues. Is there not a legal requirement to ensure that politics have not played a part in an extradition request and if so, how has the Government ensured that it has discharged its legal responsibility in this regard? Did the responsible Minister discharge his responsibilities appropriately with respect to determining whether a valid extradition objection existed prior to allowing the process for issue of the arrest warrant to proceed? It would appear that common sense would dictate that there was something fundamentally wrong with the extradition of a former Serbian military commander to a belligerent, without evidence and without the right to contradict allegations made against him. This process would appear to be a gross violation of the Geneva Conventions. At this juncture were any checks made of what rights a soldier, who has laid down his arms, has with respect to the Geneva Conventions?

- Considering that the International Criminal Tribunal for the Former Yugoslavia was created by the United Nations to deal with cases of allegations of war crimes alleged to have been committed on the territories of the former Yugoslavia, was a request forwarded to the ICTY prior to the issue of the arrest warrant to determine Daniel's status before that court and to verify Australia's obligations in processing the request from Croatia? Was any consideration given to the fact that it is the ICTY that is the body created by the UN to deal with such allegations of war crimes and to prosecute as required? Was any reference made to the declaration by the ICTY prosecutor that Daniel was not a person of interest (as they have already investigated his role in the hostilities) and that whilst he was offered immunity when he was brought to testify against the late President of Yugoslavia, Slobodan Milosevic, he declined the offer as he was confident that he had not transgressed against the accepted customs of law contained within the Geneva Conventions and that there could be no legally justifiable finding against him in this regard?

- Was any consideration given to the fact that the Croatian laws referred to in the request for extradition had transformed the Geneva Conventions on the laws for prisoners of war and civilians into Croatian law and that the process used by Croatia may have been designed to circumvent those conventions and the ICTY transfer principles to obtain a “backdoor extradition”, thereby placing Australia in a position of breaching these conventions and principles if it proceeded with the arrest and extradition? (Again, was expert legal advice sought to ensure we did not place the Government or its Ministers in a position of breaking the law?)

- Was any consideration given to the possibility that the International War Crimes Tribunals Act may take precedence over the Extradition Act in dealing with an extradition request for the reasons given by Croatia in its extradition request?

- Was any consideration given to the fact that the individual concerned may be placed in a position where he could be denied Geneva justice in breach of the Rome Statute, and placed in a position where he could not prove his innocence as the legislation used in this case (the “no evidence” model) prevented him from doing so?

- Does evidence exist to support the fact that the Attorney General or someone on his behalf formed the opinions necessary by legislation to issue the extradition documents? (We have not been able to find evidence to support this.)

- Was an attempt made to determine whether prima facie evidence existed as required by the Geneva Conventions for extradition to proceed to an appropriate body for trial for war crimes?

- Irrespective of Australia's official position towards Croatia, was due consideration made of Croatia's record towards its Serbian population and its long held doctrine of an ethnically pure state? Was reference made to Croatia's census results which show a shortfall of approximately 400,000 Serbs in Croatia in the period between the 1991 (pre-civil war) census and the 2001 (six years after the civil war) census? Was consideration made of the fact that the Croat General in charge of the Croat "Operation Storm" in 1995 and the late president of that time have both been indicted for war crimes committed against the Serbian population particularly in the Serbian Krajina territories that Croatia wished to, and succeeded in, annexing to the Republic of Croatia. (Operation Storm successfully expelled many of the 400,000 Serbs now no longer living in the territories under Croat control and killed many civilians as part of that operation?) Here we believe that we may need to place on record that those indictments would have been issued by a judge who had before him evidence of at least a prima facie nature that war crimes had been committed, and in this case there exist strong views that they were State rather than individually sponsored. Did the consideration made prior to the issue of the warrant for arrest take into consideration that even today, popular singers in Croatia glorify Croatia's fascist and racist past against their citizens of Serbian, Jewish and Gypsy origin, and that these concerts are unashamedly attended by their leading politicians who may well play a role in the proceedings that were planned by the Croat Government for Daniel? Whilst on this subject, was any consideration given to the fact that Daniel Snedden could fear for his life if exposed to the legal processes of such a State, irrespective of his guilt or innocence - a State that is reported to have experienced a huge media propaganda assault against him, throughout that country, and that it would be virtually impossible to find an impartial jury to sit on any trial that the Croat government may have entertained? At this juncture was there any consideration given to the probability that the processing of the extradition request may have placed Australia in a position of contravention of the Racial Discrimination Act and the International Covenant on the elimination of all forms of racial discrimination?

- Was any thought given to testing the allegations made by Croatia against Daniel prior to determining that the arrest warrant could be issued? When we looked carefully into the allegations we found that sufficient evidence and argument is available to counter the allegations and that the allegations appeared to be mischievous and contrived? We believe that if the allegations were tested in a legal system of a civilised country with duly qualified legal practitioners that they could be challenged successfully in a relatively short process. We also believe that Australia has the skilled personnel who could and should have investigated the allegations as part of the due diligence process prior to the issue of the arrest warrant. The ICTY website has

abundant information and can provide pertinent information regarding the allegations. If we, as members of the community, can access the website and verify various aspects of this case, surely our Government officials could and should have done the same?

- Was any consideration made by the Attorney General to formally distance himself from the process due to his membership in the "Australia/Croatia Parliamentary Group"?

- Was any consideration made to the possibility that the extradition process may have been, or construed to have been, a means of preventing Daniel from exercising his civil rights to challenge the defamation case he had initiated against a major Australian newspaper that had defamed him? (In the interim the case has been heard and Daniel's claim has been upheld pending hearing of a defence.)

- As the extradition request was for questioning purposes, was any consideration made to recommend to Croatia that it take place via video link with Daniel in Australia?

Prime Minister, as indicated, the preceding list is not exhaustive and tables but some of the serious concerns and questions we have with the process used prior to the issue of the arrest warrant. We believe the list provides more than enough solid grounds for supporting our position that there was an absence of an acceptable level of due diligence and accountability that should have been demonstrated particularly by Government Minister(s), but also officials involved in the process leading up to Daniel's arrest and incarceration. The list should be sufficient to raise alarm bells and provoke thoughts of an immediate remedy to the failings that have been tabled. It should also provide justification as to why we have a feeling of greater vulnerability and the feeling that our rights as citizens of this great country have been eroded to an unacceptable degree. We also believe that had any of the considerations tabled above been addressed diligently then this case would never have reached the arrest warrant issue stage and that Daniel would be a free man today.

2. Extradition Act

The next area that has caused considerable concern is the way in which the Extradition Act appears to have been applied in this instance. We believe that the Act was designed for day-to-day criminal acts and not for breaches of Geneva Conventions. We believe therefore that the Act in this instance has been used contrary to its intent and this is one of the reasons we hold that Daniel's arrest and imprisonment is illegal. What the Act appears to have done is to use a "no evidence" model making it impossible for an affected person to defend themselves against any allegations of criminal behaviour related to breaches of the Geneva Conventions, thereby circumventing access by the individual affected to their rights under the conventions and to the specified judicial processes contained therein. It also appears to put Australia in a position that is out of step with other civilised countries such as Britain, the USA and Russia who ensure that affected persons are not exposed to the sorts of deficiencies contained in our Act. There is also a view that the Extradition Act is in conflict with the Australian Constitution. It also appears that in this case we have witnessed the Act giving licence to a foreign State to imprison a person on Australian soil. If this is so then it is a preposterous position as it creates

a situation of gross infringement of our sovereignty! On this count we ask that urgent attention be given to investigating the perceived deficiencies of the Act through the use of duly qualified legal professionals and that a process is put in place to correct any deficiencies found. In this way we would bring our extradition legislation into the twenty first century.

Many refugees have come to Australia expecting to live in a western democracy where laws are upheld and people's rights are protected. The Extradition Act appears to threaten their dreams and expectations.

3. Community Perception of the Government's Track Record

The following statements are not intended to be inflammatory or derogatory. We expect that you will receive them as open and honest expressions of how we have experienced the Government's handling of higher profile cases involving the protection of human rights of various individuals, Australian and non-Australian alike. Our concerns have been deepened by those experiences. We have observed what we have seen as inadequate levels of proficiency in ensuring that important cases have been handled competently. We have also observed a perceived lack of preparedness to ensure that Australians, caught in the legal processes of other Governments, have been appropriately managed. We hold a perception that the Government has been duplicitous and perfidious in its involvement in cases of Australians affected by the Rendition program and its capacity to make appropriate calls when contrary to international law, the UN Charter and Geneva Conventions it has supported military action or aggression in other countries is unacceptable. A few relevant examples of these observations are the recent inept handling of the Dr Haneef case, the Solon, Cornelia Rowe, Mamdouh Habib and David Hicks cases. There are many others. These observations add to our heightened concerns regarding whether the Government is both prepared and is capable of protecting our rights as citizens of this country and indeed, has the maturity to deal with the full range of matters of importance both here and overseas that may affect Australia, its citizens and its constituents. We believe that the perceived superficial and injudicious approach we see demonstrated by the Government when dealing with these matters should be brought to a close.

The case being brought to your attention through this letter highlights once again an inept and very superficial approach taken by Government Minister(s) and our officials. They have demonstrated no evidence of research or understanding of Balkan affairs or politics either during the civil war that took place during the 1990s or at present.

Prime Minister, this case has infringed on the principles of "Natural Justice" and "Presumption of Innocence". Whilst it is not open to test under the Administrative Decisions Judicial Review Act it would appear that it would be well served if the case was open to those processes.

4. Summary

Daniel Sneddon is considered both a hero and a humanitarian who has helped several thousand people affected by the civil war in the former Yugoslavia. If the Australian Government is seen to demonstrate contempt in its attitude and practices to an individual of such high profile, where then does it place individuals of far lesser profile should they be exposed to similar situations of abuse of due process and lack

of accountability? Prime Minister, I and many of my friends and colleagues are not happy to hear phrases such as "Australia is acting in this case as if it's a Croatian penal colony" used to describe the Government's handling of this case. I'm sure you would share those sentiments with us.

You may recollect that in late 1999 I, together with my friends and colleagues, worked behind the scenes to obtain the release of two Australians who were imprisoned by a foreign Government on foreign soil. We succeeded. Steve Pratt and Peter Wallace were released by the late President Milosevic and in his address to us prior to their release, at no stage did he mention the Australian Government or its Ministers as a party or parties deserving of his consideration to release the two Australians to us. We undertook the responsibility to act as Australians to free our fellow Australians due to our special position within the Australian community. We did so trying to avoid any limelight or recognition for our efforts, and we did so in a way that was designed to avoid any potential interference by Government Ministers or their officials which may have jeopardised the mission. This time Prime Minister, we have an Australian imprisoned on Australian soil, apparently by a foreign State, an Australian who has been deprived of his rights by the apparent failure of Australian Government officials to exercise an appropriate level of due diligence and accountability in their determination of whether the extradition process should have proceeded to the arrest warrant issue stage. Whilst wishing not to come across as disrespectful we expect that you will show, at the very least, the wisdom and responsiveness to a miscarriage of justice as shown by the late President Slobodan Milosevic in the release of the two Australians, and address this issue appropriately and expeditiously.

Accordingly Prime Minister, we ask that due to the very serious shortcomings described and the grave abuse of due process which has led to the arrest and incarceration of an Australian who finds himself in an Australian jail without charge, without the existence of even prima facie evidence that he has committed an offence, without the ability to defend himself against the allegations made against him, denied access to the rights under the conventions he should have had accorded to him, and without the ready access to the legal representation of his choice, you exercise the discretion held in your position and release Daniel immediately and avow him of his rights to remedy his position with respect to the processes before him.

This case, Prime Minister, demands an inquiry. We ask that an independent inquiry is initiated immediately. The inquiry should investigate the full range of serious breaches and shortcomings in the handling of this case. It should be undertaken by duly qualified personnel. Such an inquiry, we believe, should be undertaken by personnel delegated by the International Criminal Court (to which we, Australia, are a signatory) to enable the full and proper investigation required of any acts and omissions made by both Australian and Croat officials. We believe that it would be improper for either Government to investigate themselves. We also believe that legal action against Daniel should be suspended immediately pending the outcome of the inquiry as we are of a strong belief that had appropriate due diligence been applied at the front end of this case, Daniel would not have been exposed to the trauma of what we believe was an illegal arrest and incarceration and would be a free individual today.

We await a speedy response and expect the following:

i. Daniel's immediate release pending inquiry into the abuse of due process and shortcomings of the pre-arrest period.
ii. The immediate initiation of an appropriate inquiry as recommended.
iii. The suspension of further legal proceedings associated with Daniel's arrest and incarceration pending the outcomes of the inquiry.
iv. A full review of the Extradition Act to remove its anomalies in relation to proceedings affected by the Geneva Conventions.

Daniel Snedden is keen to clear his name and intends to fight until he succeeds. We will continue to support him and his rights, as we believe that the implications are wide and serious and have a very real potential to affect other Australians or people on Australian soil in the future. We are committed to do what we can to prevent the extradition of this innocent man to what we know would be his certain death or "misfortune".

We look forward to your considered, judicious and prompt action and response.

Yours faithfully

Ilija Glisic
Spokesperson

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