

**IMPLEMENTATION OF
TRANSITIONAL LAWS
IN SERBIA 2009**

Youth Initiative for Human Rights
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INTRODUCTION

In the period from January to December 2009 the Youth Initiative for Human Rights (hereinafter the Initiative) conducted research into the implementation of transitional laws in Serbia. The research conducted during 2009 represents a continuation of monitoring the implementation of transitional laws which the Initiative has been conducting since 2005.

During 2009, the researchers supervised the implementation of the Law Against Discrimination¹, Law on Public Information² and Law on Churches and Religious Communities³. The position of Bosnians in Sandzak was also a subject of research, as well as the position of the Albanian national minority in the Presevo and Bujanovac Municipalities. A special section is dedicated to the institution of hate speech. Aside from the overview and analysis of regulations which regulate this institution, attention was also given to the legal proceedings the Initiative is leading for hate speech.

Special methodology was used for each of the researched laws. Aside from regular field research, the researchers of the Initiative also used mechanisms provided by the Law on Free Access to Information of Public Importance⁴. The same methodology was also used in reports from previous years, and therefore the evolution of the rule of law in Serbia can be tracked through the annual reports of the Initiative.

The report, aside from its central part, also contains the annex. Annex contains the verdicts of the First Municipal Court in Belgrade⁵ and the Regional Court in Belgrade⁶ in proceedings for determining hate speech, which the Initiative started against the “Glas javnosti” daily newspaper, as well as the lawsuit⁷ by which the Initiative started a process for determining hate speech in 2009, against the internet edition of the “Nova srpska politicka misao” magazine.

The report was written on the basis of information gathered before 31 December 2009.

1 Law Against Discrimination, adopted on 26 March 2009, put into effect on 7 April 2009 (Official Gazette of RS No. 22/2009)

2 Law on Public Information, adopted on 22 April 2003 (Official Gazette of RS No. 43/2003, 61/2005, 71/2009)

3 Law on Churches and Religious Communities, adopted on 20 April 2006 (Official Gazette of RS No. 36/06)

4 Law on Free Access to Information of Public Importance, adopted on 2 November 2004, put into effect on 13 November 2004 (Official Gazette of RS No. 120/04)

5 Verdict of the First Municipal Court on the suit to establish hate speech was brought on 15 September 2008 is in the documentation of the Initiative

6 Verdict of the Regional Court in Belgrade brought on 1 April 2009, in the documentation of the Initiative

7 Lawsuit for establishing hate speech was filed on 5 May 2009, in the documentation of the Initiative

EVALUATION OF THE DEGREE OF RULE OF LAW IN SERBIA

The previous year was marked by positive progress in the field of protection against discrimination through the adoption of a general anti-discrimination act, but also in building a judicial practice which sanctions hate speech. Unfortunately, significant progress was lacking again in 2009 in the efforts of the representatives of authorities to secure the rule of law in Serbia, with an obvious tendency to implement the laws selectively.

The adoption of the Law Against Discrimination represents merely the first step toward the change in the consciousness of citizens and the reduction of discriminatory actions. The first test for the Parliament of Serbia in the field of implementation of this law will be the election of the Commissioner for the protection of equality.

Through the verdict against “Glas javnosti” for the text “Boycott”, for the first time the court recognized the need to sanction hate speech according to the Law on public information⁸. This is the first verdict in the history of the Serbian judicial system regarding sanctioning hate speech. Afterwards no new examples appeared, and therefore it is too early to speak of an established judicial practice.

The representatives of authorities do very little in order to reduce the mistrust of the Albanians toward the state of Serbia. All the measures taken were short-term and did not enable full integration. The presence of the army and the police in the Presevo and Bujanovac areas is still significant. A special problem is the gendarmerie which performs arrests, searches and other police duties instead of the regular police, and in that way causes fear in the local population. The violations of rights of national minorities are the most severe precisely in the Presevo and Bujanovac regions.

Cases of war crimes and severe violations of human rights on the territory of Sandzak during the nineties still have not been fully resolved, nor have all the perpetrators been held accountable. The Priboj municipality still has not enabled the erection of a memorial monument for the victims of the abduction in Sjeverin. The state and the Priboj municipality provided no financial support for the victims of war crimes. A large number of these victims live at the very edge of existence. At the territory of Sandzak, the Law on the protection of rights and freedoms of national

8 More on this in the section on hate speech of this publication

minorities⁹ and the General convention for the protection of national minorities¹⁰ are being violated in many areas.

Law Against Discrimination

Introduction

The National Parliament of the Republic of Serbia has adopted the Law Against Discrimination¹¹ on 26 March 2009.

Serbia is the third of the former SFRY¹² to adopt a general anti-discrimination act. The Law Against Discrimination was adopted in Kosovo on 19 February 2004¹³, then Croatia adopted the Law on Prevention of Discrimination¹⁴ in July 2008. The Parliamentary Assembly of Bosnia and Herzegovina adopted the Law on Prohibition of Discrimination¹⁵ in July 2009. From mid December 2009, the draft of the Anti-Discrimination Law of Montenegro is going through the phase of public discussion.

History

The work on passing this Law lasted for full eight years. It started in 2001 at the initiative of the former Minister of Justice of the Federal Republic of Yugoslavia (FRY)¹⁶. The Institute of Comparative Law formed a Workgroup which would create a model called the Draft of the Law against Discrimination before September 2001. The evaluation of the model was carried out during 2002 in cooperation with the Ministry of Justice of FRY and the experts from the Council of Europe. Due to changes in state structure and the relations between Serbia and Montenegro, it soon became clear that the anti-discrimination act would not be passed at the federal level¹⁷.

9 Law on the Protection of Rights and Freedoms of National Minorities, adopted on 27 February 2002 (Official Gazette of RS No. 11/02)

10 General Convention for the Protection of National Minorities of the Council of Europe, ratified and put into effect on 1 September 2001 (Official Gazette of FRY (International Contracts) No. 6/98)

11 Law Against Discrimination, see 1

12 Socialist Federative Republic of Yugoslavia

13 Law No. 2004/3

14 Law on Prevention of Discrimination, adopted by the Croatian Parliament on 9 July 2008 (National Gazette No. 85/2008),

15 Law on Prohibition of Discrimination, adopted by the Parliamentary Assembly of Bosnia and Herzegovina on 8 July 2009 (Official Gazette of B&H No. 405/09),

16 Models of anti-discrimination laws, Center for Advanced Legal Studies and the Comparative Law Center, Belgrade 2005, pages 11-13

17 Models of anti-discrimination laws, op.cit, pages 11-13

In the meantime, the workgroup of the Center for Advance Legal Studies (CUPS) started to work on a model of the Law Against Discrimination of Disabled Persons. The Institute of Comparative Law decided to wait for the work on the Law Against Discrimination of Disabled Persons to be over, in order for it to be presented to the Government along with the model of the Law Against Discrimination. This was done in August 2005.

The Law Against Discrimination of Disabled Persons¹⁸ was adopted by the Parliament in April 2006, while the general anti-discrimination act would have to wait for three more years.

Key events in 2009

At the session held on 16 February 2009, the Government of the Republic of Serbia adopted the draft of the Law Against Discrimination and delivered it to the Parliament to be processed and passed¹⁹. Fifteen hours (on 4 March 2009) before the proposition of the Law was supposed to be discussed in the Parliament, the Government temporarily withdrew it from Parliamentary procedure. The Government reached this decision in a telephone conference after the intervention of the representatives of traditional churches and religious communities. Seven traditional churches and religious communities²⁰, lead by the Bishop of Backa of the Serbian Orthodox Church, Irinej, had 13 objections to the text of the Law²¹. They considered it absolutely unacceptable to guarantee the freedom of expressing sexual orientation and gender identity²².

According to their opinion, public expression of sexual orientation and gender identity is against the citizens right to the protection of public morality, private and family life. According to Irinej Bulovic, this proposition of the Law represents an attack on the inviolability of human dignity and insults the religious beliefs of 95% of the citizens of Serbia²³.

18 Law Against Discrimination of Disabled Persons, adopted on 17 April 2006 (Official Gazette of RS No. 33/2006)

19 *Proposition of the Law against discrimination adopted*, Timok press, 19 February 2009, available at the website: <http://www.timocpress.info/sr/?cat=2&paged=13>, last visited on 20 December 2009

20 Serbian Orthodox Church, Catholic Church, Islamic Community of Serbia, Slovakian Evangelist Church, Christian Reformation Church, Christian Evangelist Church and the Jewish Community of Serbia

21 *Coalition against discrimination: Proposition of amendments to the law unacceptable*, Borba, 11 March 2009, <http://www.borba.rs/content/view/3486/123/>, last visited on 20 March 2010

22 Law Against Discrimination, see 1, Article 21, line 1

23 *Faith, hope, discrimination*, NIN, 12 March 2009, No. 3037

According to Sasa Gajin, one of the creators of the draft of the Law, the church amendments asked the Government to erase the whole third part of the Law, from Article 15 to Article 27²⁴. The largest disputes were over Article 18, which prohibits the discrimination within the field of religious rights²⁵ and Article 21, which guarantees the freedom of expressing sexual orientation and gender identity²⁶.

Withdrawing the Law from Parliamentary procedure caused strong reactions both of domestic organizations dealing with the protection of human rights, as well as international organizations such as the United Nations²⁷, Council of Europe²⁸ and Human Rights Watch²⁹.

The public characterized this move of the Government as a coup d'état and an attack on the Constitution and the secular state³⁰. According to human rights activists, the intention of the churches is to turn the Law through these changes into "petrified letters on paper³¹", to make it "nonsensical" and "completely useless".

The Coalition Against Discrimination (in whose work the Youth Initiative for Human Rights was involved at the time), organized a protest on 9 March 2009, in which the Government was demanded to urgently present the Parliament with the Draft of the Law Against Discrimination³².

After changes regarding four Articles of the Draft of the Law, at the session held on 13 March 2009, the Government adopted the amended Draft of the Law and sent it to the Parliament for urgent procedure³³. The amended text was sent to the Parliament despite negative opinions on the Draft of the Law of the Minister of Religion of the Republic of Serbia, Bogoljub Sijakovic.

24 *The whole law bothers them, and SPS supports them*, Blic, 12 March 2009, <http://www.blic.rs/Vesti/Politika/82967/Smeta-im-ceo-zakon--a-SPS-ih-podrzava>, last visited on 20 December 2009

25 Law Against Discrimination, see 1, Article 18.

26 Ibid, Article 21.

27 Fame of the layman's Serbia, Business & Finances, April 2009, <http://www.bifonline.rs/tekstovi.item.286/zakon-o-zabrani-diskriminacije-slava-lai%C4%8Dke-srbije.html>, last visited on 20 December 2009

28 Ibid, see 16

29 *The church cannot be above the state nor parallel to it*, Borba, 11 March 2009, <http://www.borba.rs/content/view/full/3490/29/>, last visited on 20 December 2009

30 *The Government of telephone blessings*, Economist, 13 March 2009, <http://www.emg.rs/zines/ekonomist/81990.html>, last visited on 20 December 2009

31 *How do you comment on the amendments of traditional churches and religious communities*, Danas, 12 March 2009, is in the documentation of the Initiative

32 YIHR Newsletter, Youth Initiative for Human Rights, 31 March 2009, is in the documentation of the Initiative

33 *The Government returns the Law, Sijakovic and the Serbian Orthodox Church angry*, Alo, 14 March 2009, http://www.alo.rs/politika/13100/Vlada_vratila_zakon_Sijakovic_i_SPC_ljuti last visited on 20 December 2009

The amended text of the Law contains the changed title of Article 18, which now states “Prohibition of Religious Discrimination” instead of the original “Discrimination in the field of religious rights”. Article 18 was also amended with another line which states that the actions of priests or church officials which are in accordance with religious doctrine, beliefs and aims are not considered to be discrimination³⁴. This line refers exclusively to the doctrine of traditional churches and religious communities listed in the Registry of religious communities, in accordance with the Law on churches and religious communities³⁵.

Article 21 was also amended, in that the third line which mentioned trans-sexuality was removed. The expression trans-sexuality was substituted by the term “gender change” and moved to Article 20 which prohibits discrimination based on gender or gender change³⁶. The Government adopted six of the 446 proposed amendments to the proposition of the Law³⁷.

The adopted amendments were the amendment of the Serbian Radical Party³⁸ concerning equality in education, amendment of the Socialist Party of Serbia³⁹ regarding sexual orientation, two amendments of the Liberal Democratic Party⁴⁰ concerning education and discrimination of minors, as well as two amendments proposed by the G17 Plus party, which additionally explain the protection of disabled persons in court. Of all the opposition parties, the most amendments were proposed by the Serbian Radical Party, as many as 400 of them. The essence of the amendments of the opposition parties was the amendment of Article 21, which guarantees the freedom of expressing sexual orientation and gender identity⁴¹.

34 Law Against Discrimination, see 1, Article 18, line 2

35 Law on Churches and Religious Communities, see 3, Article 17.

36 Law Against Discrimination, see 1, Article 20, line 2

37 *Objections acknowledged*, Vecernje novosti, 23 March 2009, http://www.novosti.rs/code/navigate.php?Id=1&status=jedna&vest=140815&title_add=Uva%C5%BEene%20primedbe, last visited on 20 December 2009

38 Amendment of Goran Mihajlovic (SRS) i LDP-a to Article 19, specifies the right to education and expert training under equal conditions, available at the website http://www.danas.rs/danasrs/politika/vlada_prihvatala_samo_sest_od_400_amandmana.56.html?news_id=156721&action=print, last visited on 20 December 2009

39 Amendment of Zoran Bortic (SPS-JS), available at the website http://www.danas.rs/danasrs/politika/vlada_prihvatala_samo_sest_od_400_amandmana.56.html?news_id=156721&action=print, last visited on 20 December 2009

40 Amendments of the LDP and Snezana Stojanovic Plavsic and Gordana Rajkov (G17plus) change Articles 22 and 26 by adding new lines which prohibit and sanction discrimination of children and disabled persons more precisely, available at the website http://www.danas.rs/danasrs/politika/vlada_prihvatala_samo_sest_od_400_amandmana.56.html?news_id=156721&action=print, last visited on 20 December 2009

41 *Law cluttered with 500 amendments*, Alo, 19 March 2009, http://www.alo.rs/politika/13262/Zakon_zatrpao_sa_500_amandmana, last visited on 20 December 2009

After the discussion on the amendments which lasted for two and a half days, the Law Against Discrimination was adopted. A total of 127 MPs voted for the adoption of the Law. Most of them were the MPs of the ruling coalition, as well as the MPs of the Liberal Democratic Party. There were 59 MPs against adopting the Law. The MPs who were against the Law were from the Democratic Party of Serbia (DPS), Serbian Radical Party (SRP) and New Serbia, as well as one MP of the Party of united pensioners of Serbia (PUPS). The MPs of the Unified Serbia party, even though they belong to the ruling coalition, were against adopting the law. The MPs from the Serbian Advanced Party (SAS) did not participate in the voting⁴².

The Law was put into effect on 7 April 2009, except the part which refers to the institution of the Commissioner for the protection of equality which will be put into effect on 1 January 2010.

42 *Anti-discrimination Law adopted*, B92, 26 March 2009, available at the website http://www.b92.net/info/vesti/index.php?yyyy=2009&mm=03&dd=26&nav_category=11&nav_id=352154, last visited on 20 March 2010

ANALYSIS OF THE LAW AGAINST DISCRIMINATION

The Law has a total of 62 Articles, divided into nine chapters. The Law defines discrimination as the violation of the principle of equality based on personal characteristics⁴³.

The Law prohibits discrimination based on race, skin color, ancestry, citizenship, nationality or ethnic origin, language, religious or political beliefs, sex, gender identity, sexual orientation, property, birth, genetic characteristics, health, disability, marital or family status, convictions, age, appearance, membership in political, syndicate and other organizations, as well as other factual or supposed personal characteristics.⁴⁴

Article 2 of the Law contains the legal stipulation that all the terms used in the text of the Law in masculine gender, also refer to the same terms in feminine gender.⁴⁵ This rule of interpreting the law is a novelty in domestic legislature.

The forms of discrimination stipulated in the Law are direct⁴⁶ and indirect discrimination⁴⁷, violations of the equal rights and obligations principle⁴⁸, calling to responsibility⁴⁹, pooling for discrimination⁵⁰, hate speech⁵¹ and harassment and degrading behavior⁵².

It is of special importance that this law identifies and therefore sanctions hate speech as one of the commonest forms of discriminatory behavior⁵³. The prohibition of “hate speech” was also stipulated by the Law on Public Information⁵⁴ from 2003. According to the results of the Initiative’s research, sanctioning of hate speech in the Serbian judicial system is still insufficient.⁵⁵

Serious forms of discrimination stipulated by the Law are: causing and encouraging inequality, hate and intolerance based on nation, race or religion, language,

43 Law Against Discrimination, see 1, Article 4, line 1

44 Ibid, Article 2, line 1

45 Ibid, Article 2, line 5

46 Ibid, Article 6

47 Ibid, Article 7

48 Ibid, Article 8.

49 Ibid, Article 9.

50 Ibid, Article 10

51 Ibid, Article 11

52 Ibid, Article 12

53 Ibid, Article 11

54 Law on Public Information, see 2, Article 38

55 More on this in the section on hate speech of this publication

political beliefs, sex, gender identity, sexual orientation, disability, as well as supporting discrimination in public media, slavery, human trafficking, apartheid, genocide, ethnic cleansing and its support.⁵⁶

The third chapter of the Law is dedicated to special cases of discrimination: discrimination in processes with the organs of public authority⁵⁷, discrimination in the field of labour⁵⁸, discrimination in providing public services and using public objects and other areas⁵⁹, religious discrimination⁶⁰, discrimination in the field of education and expert training⁶¹, gender-based discrimination⁶², discrimination based on sexual orientation⁶³, discrimination of children⁶⁴, discrimination based on age⁶⁵, discrimination of national minorities⁶⁶, discrimination on the basis of political and syndical membership⁶⁷, discrimination of disabled persons⁶⁸, discrimination based on health⁶⁹.

Special cases of discrimination represent the most common and most dangerous cases of violations of the prohibition of discrimination in practice. Specifically defining certain cases of discrimination represents a novelty in regulating anti-discrimination mechanisms in the region. In this way, the most common cases of discrimination are clearly defined and the possibility of the Law being implemented in a wrong or malicious interpretation of special cases of discrimination has been reduced to a large extent.

The list of special forms of discrimination does not limit the circle of prohibited discriminatory behavior. Discriminatory behavior not regulated as a special form of discrimination cannot be considered allowed. The unlawfulness of this behavior is derived from the general prohibition of discrimination.⁷⁰

The law establishes the institution of the Commissioner for the protection of equality, as an independent state organ⁷¹. Such a solution is not a characteristic of the

56 Law Against Discrimination, see 1, Article 13, line 1

57 Ibid, Article 15,

58 Ibid, Article 16.

59 Ibid, Article 17.

60 Ibid, Article 18.

61 Ibid, Article 19.

62 Ibid, Article 20.

63 Ibid, Article 21.

64 Ibid, Article 22.

65 Ibid, Article 23.

66 Ibid, Article 24.

67 Ibid, Article 25.

68 Ibid, Article 26.

69 Ibid, Article 27.

70 Ibid, Article 2.

71 Ibid, Article 1, line 2

general anti-discrimination acts adopted by the other states in the region. Authority similar to that of the Commissioner regarding the Law on Prevention of Discrimination⁷² in Croatia is given to the public defender⁷³. According to the Law on Prohibition of Discrimination of Bosnia and Herzegovina, this authority is given to the Ombudsman for human rights of Bosnia and Herzegovina⁷⁴. Both institutions were established by laws adopted before passing the Law on preventing, i.e. prohibiting discrimination. In Kosovo, the complaints in cases of violation of human rights are received and considered by the Kosovo Ombudsman.⁷⁵

The Commissioner can be a citizen of the Republic of Serbia, with a degree in Law, with at least ten years experience in the field of human rights, who possesses high moral and expert qualities. According to the Croatian Law, the candidate for the civil defender must have at least 15 years of legal experience⁷⁶.

The Commissioner is chosen if a majority of the total number of MPs vote for him. The Commissioner is suggested to the Parliament by the Constitutional Board. The candidate for the Commissioner can be suggested by one or more parliamentary groups. A person cannot apply for this function him/herself, nor is it possible for organizations which deal with the protection of human rights to suggest this person.

The Commissioner is chosen for the period of five years. The mandate of the public defender is eight years⁷⁷, while the Ombudsman for human rights in Bosnia and Herzegovina is chosen for a period of six years⁷⁸. The same person can be chosen for the function of the Commissioner only two times.

The Commissioner has three assistants⁷⁹. Each of them deals with “a narrow field of work”. The Law does not regulate these fields of work but leaves the issue to the Commissioner, who passes a document on the organization and systematization of work in the office. According to the Croatian solution, the public defender has three deputies, each of whom must fulfill the same conditions as the person elected for the position of the public defender⁸⁰. The institution of the Ombudsman for human rights in Bosnia and Herzegovina is made of three persons⁸¹.

72 Law on Prevention of Discrimination, see 4, Article 12

73 Law on Public Defenders (National Gazette No. 60/92)

74 Law on the Human Rights Ombudsman of Bosnia and Herzegovina (Official Gazette of B&H No. 19/02)

75 Law No. 2004/3, see 3, Article 10.

76 Law on Public Defenders (National Gazette No. 60/92), see Article 16.

77 Ibid, Article 3.

78 Law on the Human Rights Ombudsman of Bosnia and Herzegovina (Official Gazette of B&H No. 19/02), Article 3.

79 Law Against Discrimination, see 1, Article 32, line 3

80 Law on Public Defenders, see 66, Article 3.

81 Law on the Human Rights Ombudsman of Bosnia and Herzegovina, see 68, Article 8.

The Commissioner has the same immunity given to the MPs in the National Assembly of the Republic of Serbia⁸².

The Commissioner receives complaints on violations of the stipulations of the Law. He gives opinions and recommendations, and provides additional information on the rights of the victim of the discriminatory action. The complaint is delivered in written form, and without fees or other monetary compensation.

The Commissioner submits complaints and misdemeanor charges for the violation of the rights guaranteed by the Law Against Discrimination. He also warns the public of the most common, typical and severe cases of discrimination. The Commissioner suggests the process of reconciliation in accordance with the stipulations of the Law on mediation⁸³. The Law does not clearly state if and in which cases the Commissioner is obliged to suggest reconciliation before taking other actions in the procedure.

The financial means for the work of the Commissioner, his assistants and his expert office are provided from the budget of the Republic of Serbia. The budget for 2010 provides 39.336.000 dinars for the work of this institution.⁸⁴

The Law also stipulates judicial protection against discrimination. The started procedure is considered to be urgent and is regulated by the stipulations of the Law on civil proceedings⁸⁵. The lawsuit is submitted to the court in the area of the office or residence of the prosecutor.⁸⁶ The procedure of court protection is started through a non-feasance suit⁸⁷, as well as suits to establish, suits to remove and suits to compensate damages⁸⁸.

The non-feasance suit asks the court to ban the discriminator from performing a certain action which had not yet been started but which would represent discrimination, to prohibit the continuation of a started action which represents discrimination, or to stop certain discriminatory behavior from repeating⁸⁹.

82 Constitution of the Republic of Serbia, adopted and put into effect on 8 November 2006 (Official Gazette of RS No. 98/2006), Article 103

83 Law on Mediation (Official Gazette of RS No. 18/2005)

84 Law on Budget of the Republic of Serbia for 2010 (Official Gazette of RS No. 107/09), Article 7.

85 Law on civil proceedings, adopted on 22 November 2004, put into effect on 23 February 2005 (Official Gazette of RS No. 125/2004)

86 Law Against Discrimination, see 1, Article 42.

87 Ibid, Article 43.

88 Ibid, Article 43.

89 Prof. dr dr h.c. Vladimir V. Vodinelic, *Protection from discrimination — civil and legal protection, and protection before the Commissioner*, Belgrade, Pravni informator

This suit can be filed by a person immediately in danger of discrimination if an action is performed, continued or repeated. The victim of discrimination or the person in danger of discrimination does not require special legal interest or other reason to file this suit.⁹⁰

The removal suit asks the court to order the defendant to perform an action in order to reverse the state created by his/her discriminatory action.⁹¹ The suit to establish is filed by the victim of discrimination in order for the court to establish that the victim was discriminated.

In order for some type of behavior to be considered discriminatory, it is not necessary for it to have caused any material or non-material damage. However, in cases when the victim of discrimination has suffered damage because of discriminatory behavior, they can file a suit for the compensation of this damage.

The discriminator's actions must be the cause of the damage, and the person who performed discriminatory actions must be found guilty. In cases of immediate discrimination, the discriminator's guilt is posited.⁹²

If discrimination was performed in public, the discriminated person can ask the court to publish the verdict by which his/her official lawsuit was accepted⁹³. In this way, the public is informed not only that the victim has won the discrimination dispute, but also that the state provides protection from discrimination, that discriminatory behavior is not allowed and that it carries certain legal consequences⁹⁴.

The verdict is published exclusively at the request of the prosecutor, and the defendant is to pay for the costs of its publishing.⁹⁵ The Law against discrimination of disabled persons does not stipulate this possibility for the victims of discriminatory behavior. The victim of discrimination has the option of additional protection by means of court penalty⁹⁶, as well as temporary protection as a temporary measure⁹⁷.

90 Ibid

91 Ibid

92 Law Against Discrimination, see 1, Article 45, line 1

93 In the "Krsmanovaca" case, on 8 July 2000, three persons of Roma national minority were prevented from entering the swimming pool of the sports recreation center Krsmanovaca, exclusively on the basis of their belonging to the Roma ethnical minority. The Supreme Court ordered the company "Jugentt - Sports recreation center Krsmanovaca – Sabac" to publish an apology to the damaged party in the Politika daily newspaper at their own expense. See the verdict of the Supreme Court of Serbia in the Krsmanovaca case, rev. 229/04.

94 Prof. dr dr h.c. Vladimir V. Vodinelic, op.cit

95 Ibid

96 Law on Contracts and Torts, Article 157 line 2, 294 line 1

97 Law Against Discrimination, see 1, Article 44.

The Law against discrimination does not stipulate the institution of court penalty, but the Law on obligational relations leaves the possibility for the discriminated person to ask for it.

When regulating temporary measures for protection, the authors of the Law strayed from the solutions stipulated in the Model of the Law against discrimination. Even though it stipulates temporary measures as a means of protection for the discriminated persons, the possibility of implementing these means according to the Law are narrower than those stipulated in the Model of the Law. Protection is narrower even than that stipulated by the Law on executive proceedings⁹⁸. The discriminated person can file a request for issuing temporary measures along with the lawsuit, as well as during the proceedings (after they were started by filing a lawsuit), but this means of protection cannot be used before filing the lawsuit.⁹⁹ This request asks the court to prohibit the discriminator to perform, continue or repeat discriminatory behavior, to temporarily order certain behavior which would remove the discriminatory action or provide the victims of discrimination with the request for compensating damage.¹⁰⁰

The Law against discrimination significantly widens the circle of persons who can file a lawsuit for the protection of rights guaranteed by the Law. In addition to the person who was directly discriminated, the proceedings for judicial or extra-judicial protection can be filed, with authorization from the discriminated person, by organizations which deal with the protection of human rights, or rights of a certain group of people¹⁰¹ (organizational lawsuit)¹⁰². The victim of discrimination must give written consent in advance for other persons to file a lawsuit. The Law does not specifically stipulate the existence of written consent for the case of filing a complaint to the Commissioner by another person.

The Law is specific in that it contains the possibility of a tester starting a court procedure¹⁰³. A tester is a person who voluntarily checks for cases of violations of the prohibition of discrimination. According to the freedom of action guaranteed by the Constitution, every person is authorized to be a tester. A tester can be one or more persons, e.g. a tester can be a person who does not have personal interest in suspecting discrimination, but who involve themselves into a suspicious situation in order to be a witness of possible discrimination in the given case¹⁰⁴. The institution of a tester was established in Serbian judicial practice before passing the Law against

98 Law on Executive Proceedings (Official Gazette of RS No. 125/2204), Article 291.

99 Law Against Discrimination, see 1, Article 44

100 Prof. dr dr h.c. Vladimir V. Vodinelic, op.cit

101 Law Against Discrimination, see 1, Article 46, line 1

102 Prof. dr dr h.c. Vladimir V. Vodinelic, op.cit, page

103 Dobrovoljni ispitivač diskriminacije

104 Prof. dr dr h.c. Vladimir V. Vodinelic, op.cit, page

discrimination. In the “Krsmanovaca” case¹⁰⁵, testers were accepted into legitimate evidence. Unless performing the role of the prosecutor, the tester is examined as a witness during the procedure.¹⁰⁶ This possibility is not included in the Kosovo, Croatia or Bosnia and Herzegovina judicial system.

If the court determines that an act of immediate discrimination took place, the defendant is banned from disproving his/her guilt, i.e. his/her guilt is subject to the irrefutable legal presumption of its existence¹⁰⁷. Sentences for actions contrary to the stipulations of the Law are monetary. The fines range from 5,000 to 100,000 dinars, depending on the fact if the offender is a physical or legal entity, or a state organ.

Supervision of the implementation of this Law is performed by the Ministry for human and minority rights.

Conclusions

- Passing the Law Against Discrimination represents only the first step (although a significant one) towards changing the consciousness of citizens and minimizing discriminatory actions.
- The importance of passing this Law can be fully devaluated if it is not accompanied by the full implementation of its legal solutions.
- The first test for the Serbian Parliament will be the election of the Commissioner for the protection of equality.

Recommendations

- The authorities in Serbia are obliged to do everything in order for discriminatory behavior to be sanctioned according to the Law Against Discrimination, especially in special and extremely frequent forms of discrimination such as hate speech.
- The Parliament of the Republic of Serbia is obliged to elect the Commissioner for the protection of equality in the legally stipulated timeframe, and it should be a person who fulfills all the legally stipulated conditions.
- The authorities in Serbia are obliged to provide the Commissioner with all the necessary working provisions immediately after his election. Every delay will be a clear indicator of the Serbian organs of authority continuing to obstruct the work of independent institutions.

105 See 83

106 Law Against Discrimination, see 1, Article 46, line 5

107 Ibid, Article 45

HATE SPEECH

Hate Speech in the Law on Public Information

The term “hate speech” is defined by the stipulations of the Law on public information¹⁰⁸, whose Article 38 is entitled “hate speech”¹⁰⁹, and Article 39 of the same Law stipulates the possibility of filing “a suit for the violation of prohibition of hate speech”¹¹⁰, which can demand the ban on re-publishing the information, etc. Based on the stipulations of the Law on public information, it is prohibited to publish ideas, information and opinions which support discrimination, hate or violence against persons or groups of persons based on their belonging or not belonging to a race, religion, nation, ethnic group, gender, or because of their sexual orientation, regardless of whether a criminal act was committed by publishing it.

The person to which, as a member of a group, the information personally refers to has the right to file a complaint to a court against the autor of the information and against the chief editor of the public media which published the information, in which they can demand a ban on re-publishing it and publishing the verdict at the expense of the defendant. A lawsuit can be filed against the autor and the chief editor by every legal entity whose aim is to protect the freedoms and rights of people and citizens, as well as organizations which protect the interests of groups from Article 38 of this Law¹¹¹.

According to the Law on public information, the lawsuit is filed for violation of the ban on hate speech, and therefore it is the obligation of the court to establish this violation, i.e. determine if a certain text represents hate speech.

The text in question must be marked as hate speech. It is the obligation of the court to determine if a text, because it contains elements which support discrimination, hate or violence towards a certain group, represents hate speech, and therefore this legal qualification is necessary in order for the stipulations of the Law on public information to be adequately implemented, and therefore as a basis for issuing a ban and the explanation for it.

The procedure started by this lawsuit is regulated by the stipulations of the law which regulates legal proceedings¹¹².

108 Law on Public Information, see 2

109 Ibid, Article 38,

110 Ibid, Article 39,

111 Ibid, Article 39, line 2

112 Ibid, Article 39, line 3

Hate Speech in the Law Against Discrimination

According to the Law Against Discrimination¹¹³, hate speech is stipulated and regulated as one form of discrimination¹¹⁴. In Article 11 of this Law, hate speech is defined as every instance of expressing ideas, information or opinions which support discrimination, hate or violence against persons or groups of persons because of their personal characteristics, in public media or other publications, at gatherings and places accessible to the public, by writing and displaying messages or symbols, or otherwise¹¹⁵.

The person who is the victim of this form of discrimination, according to this Law, has the right to file a complaint against the discriminator. In addition to the victim, a complaint can be filed by an organization which deals with the protection of human rights, or the protection of rights of a certain group of people¹¹⁶, which is a processing solution identical to that stipulated by the Law on public information.

Just as in the suit stipulated by the Law on public information, here also the suit starts a process regulated by the stipulations of the law which regulates legal proceedings¹¹⁷. In addition to judicial protection, the Law creates space for extra-judicial protection from hate speech, through filing a complaint to the Commissioner for the protection of equality.¹¹⁸

Hate Speech in International Documents

The state of Serbia, as a member of the Council of Europe and a signatory of numerous international conventions whose stipulations are binding and represent a part of our legislature, has the obligation to sanction and ban hate speech.

The Recommendation of the Committee of Ministers of the Council of Europe No.R.(97)20¹¹⁹, defines hate speech as “all forms of expression which spread, support, promote or justify racial hate, xenophobia, anti-semitism or other forms of hate based on intolerance”. The Recommendation also demands from national courts of member states to establish appropriate legal regulations on hate speech, and also demands that the national courts have in mind that hate speech can be so offensive to individuals and groups that it does not deserve the protection given by the right

113 Law Against Discrimination, see 1

114 Ibid, Article 8.

115 Ibid, Article 8.

116 Organization lawsuit, see the chapter on the Law Against Discrimination

117 Law Against Discrimination, see 1, Article 41, line 2

118 More on the issue in the section on the Law Against Discrimination

119 Recommendation of the Committee of Ministers of the Council of Europe No.R.(97)20 adopted on 30 October 1997, [www.humanrights.coe.int/.../SER-BIAN%20Rec%20No.%20R%20\(97\)%2021.doc](http://www.humanrights.coe.int/.../SER-BIAN%20Rec%20No.%20R%20(97)%2021.doc), last visited on 12 March 2010

to freedom of expression from Article 10 of the European Convention on Human Rights¹²⁰.

The European Court of Human Rights has taken the stand (case of *Gunduz vs. Turkey* etc.) that tolerance and respecting the equality and dignity of all people represents a basis for building a democratic and pluralistic society¹²¹.

The verdict states that, according to this principle, “certain democratic societies have a need for sanctioning, and even preventing all forms of expression which spread, encourage, promote or justify hate based on intolerance”¹²².

Key Events in 2009

Hate Speech Lawsuits

The daily newspaper “Glas javnosti” published in its “Economy” section on 16 March 2006 an advertisement entitled “Boycott”, which stated as follows:

Serbs, our brothers,

We call you to gather in large numbers on 17 March 2006 at half past 10 AM at the IMMO shopping mall in New Belgrade in block 64, and express our dissatisfaction with the opening of a Croatian store called “Idea”. While we have been banished from our ancestors’ lands all over Croatia and cannot return to our homes, at the same time the Croatian boot is stomping without obstacles on Serbian land, buying companies and opening stores in Serbia.

How much longer?

Serbs, our brothers, we call You to gather in large numbers and prevent the opening of a Croatian store in Belgrade and boycott shopping in their stores. Every purchase in the “IDEA” store is giving money to those who killed us and banished us from our homes. We will be monitoring who shops at the store and does not want to show solidarity for the hundreds of thousands of refugees and banished Serbs.

120 Recommendation of the Committee of Ministers of the Council of Europe No.R.(97)20 adopted on 30 October 1997, [www.humanrights.coe.int/.../SERBIAN%20Rec%20No.%20R%20\(97\)%2021.doc](http://www.humanrights.coe.int/.../SERBIAN%20Rec%20No.%20R%20(97)%2021.doc), Annex Recommendations, field of implementation section, last visited on 12 March 2010

121 The verdict can be found at <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbk&action=html&highlight=Gunduz%20|%20Turkey&sessionid=48712969&skin=hudoc-en>, last visited on 12 March 2010

122 The verdict can be found at <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbk&action=html&highlight=Gunduz%20|%20Turkey&sessionid=48712969&skin=hudoc-en>, last visited on 12 March 2010

Stop the Croatian occupation of Serbia!
Banished Serbs.

Upon the publication of the text, the Youth Initiative for Human Rights (the Initiative) has filed a complaint at the First Municipal Court in Belgrade based on the prohibition of hate speech¹²³ from Articles 38 and 39 of the Law on public information of the Republic of Serbia.

On 15 September 2008 the First Municipal Court in Belgrade reached a verdict in which the complaint of the Youth Initiative for Human Rights is acknowledged. The verdict determined that the text of the advertisement represents hate speech and at the same time banned re-publishing this or similar texts which contain ideas, information or opinions which encourage discrimination, hate or violence against other nations and which represent hate speech. The chief editor of the “Glas javnosti” newspaper has the obligation to publish the whole verdict without monetary compensation and without comments¹²⁴.

The verdict of the First Municipal Court was confirmed on 1 April 2009 by the Regional Court in Belgrade, which made it effective and executive¹²⁵. “Glas javnosti” published the whole first-degree verdict in June 2009.

The explanation of the verdict reached against the editor of “Glas javnosti” states that the court had determined the text of the advertisement to represent hate speech, which is prohibited by the Law on public information. The court decided that this was a case of unlawful advertisement which calls to unlawful actions towards other parties or unlawful boycotting of others, stopping or failing to establish economic or other relations, especially through the use of phrases such as “Croatian boot stomping without obstacles on Serbian land”, “we will monitor who shops at the store” and “stop the Croatian occupation of Serbia”, which the chief editor at the time, Ivan Corbic, according to the explanation of the court, had to have known¹²⁶.

The European Court of Human Rights believes that, in cases when expressions and comments encourage intolerance, hate or violence against individuals, parts of the population or whole nations, the state organs have more discretionary rights when examining the need for getting involved in the freedom of expression.

The very tone of the text, as well as the expressions used, qualify this text as hate speech.

123 The lawsuit for establishing hate speech filed by the Youth Initiative for Human Rights on 17 March 2006, is in the documentation of the Youth Initiative for Human Rights

124 The verdict of the First Regional Court on establishing hate speech, see 5

125 The verdict of the Regional Court in Belgrade, see 6

126 Ibid, explanation of the verdict

In the verdict in case of Erdog and Ince vs. Turkey¹²⁷, the European Court of Human Rights considered that the media carry a special responsibility for publishing such texts, because the responsibility which is a part of enjoying the freedom of expression by media professionals, gains special significance in situations and periods of time when certain topics by themselves contain tension and conflicting feelings.

The expressions and attitudes contained in the text in question, having in mind the social and historical context, are used exclusively as a means to cause intolerance between Serbs and Croats, and therefore the verdict reached by the court fulfills the obligation of the court to ban and sanction publishing of such texts, which through their content cause the feeling of insecurity for the members of national minorities in Serbia, and which indirectly encourage hate towards the non-Serbian population in general.

Lawsuit against the “Nova srpska politicka misao” magazine

The Youth Initiative for Human Rights has filed a complaint¹²⁸ for hate speech against author Zoran Grbic and the editor of the “NSPM” magazine Djordje Vukadinovic, to the First Municipal Court in Belgrade, based on the stipulations of the Law on public information.. The suit was filed because of the text called “Fathers, forefathers and stepmothers of Serbia”¹²⁹ published in the internet edition of the magazine from 27 April 2009. The lawsuit demands from the court to establish that the published text represents hate speech, as well as to order its removal from the NSPM webpage and ban all further publishing of this or similar texts which encourage hate and discrimination.

The internet edition of the magazine for political theory and social research “Nova srpska politička misao” (NSPM), in the “Political life” section, published on 27 April 2009 a text called “Fathers, forefathers and stepmothers of Serbia” by Zoran Grbic, which among other things states:

It can hardly be said that the Albanians are famous for the works they have created. You could more readily say that since their arrival to the Balkans, the Albanians have not done many creative things. Actually, I don't know if they have done anything creative, something to be remembered by in a community of people. Maybe I'm not well informed, but I don't know of any Albanian great scientists, writers, painters, sportsmen... I don't

127 The verdict can be found at <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=erdogdu&sessionid=48715892&skin=hudoc-en>, last visited on 12 December 2010

128 Lawsuit for establishing hate speech, see 7

129 The text can be found at <http://www.nspm.rs/politicki-zivot/ocevi-oci-i-macehe-srbije.html?alphabet=I>, last visited on 12 December 2010

know of a single great building in Albania, nor a great architect who would erect one, except for several tens of thousands of bunkers, which are a logical systematic continuation of the high walls which they xenophobically surround their houses with. Even the biography of the single authentic Albanian the whole world knows about, Mother Theresa, is nowadays more often the topic of texts concerning controversies and scandals in which she, allegedly, participated. Everything they have been doing lately (after the theft of territory) is the theft of someone else's history and historical persons.

The manner in which this information is delivered is more a matter of semantics and tact than a matter of truthfulness. In some happier times, and in a hypothetical situation that their politics had not done us harm, it is quite sure that it would be a matter of good manners not to mention anything about what, at the level of society, their creativity and their civilizational accomplishments are like. That would be of no concern or interest to us. However, in the present situation, a normal person, unless they are a robot or internationalist, cannot but admit that their most valuable, most widely known actions are human trafficking, production and organized trade of narcotics, illegal human organ trade, and accomplishments vendetta, terrorist attacks, camps, "houses" and tribal way of life. As far as culture goes (aside from the talent to create art photography which shows a terrorist in actual size) we shouldn't forget the irrefutable fact that in "old Yugoslavia" they had truly excellent actors. A cynic could say that their talent for acting is the only mutual talent, one of the authentic characteristics of the whole nation.

The quoted text is an attempt to defend Dobrica Cosic, against whom a criminal complaint was filed for the criminal act of causing racial, religious and national hate and intolerance. The text, although it allegedly intends to defend artistic freedom, represents a clear example of hate speech towards Albanians. The Albanian people are degraded in the text, and represented as culturally and civilizationally inferior to other European nations.

The author claims that the Albanian people have not done anything creative, by which they would be remembered in a community of people. Such an attitude represents degradation of Albanians and an expression of extreme chauvinism.

It continues with listing "facts" that the author knows of no (sic!) great scientists, writers, painters or sportsmen, nor of any "great buildings" in Albania. He pejoratively adds that the only buildings in Albania are tens of thousands of bunkers which, according to the author, is "a logical systematic continuation of the high walls which they xenophobically surround their houses with". Through such attitudes, the author wishes to establish a ranking order of nations, and through the low spot which he had given to the Albanians, wishes to prove their cultural and civilizational inferiority. Aside from giving a certain social group (such as a nation) "accomplishments", i.e. by stating that they do not exist, the author at the same time accuses the same group of "theft of someone else's history and historical persons".

After such a racist and chauvinist manner of comparing nations, another quoted passage continues, where the author states that it would be a matter of good manners “not to mention anything about what, at the level of society, their creativity and their civilizational accomplishments are like”. However, the author refuses to confine himself in the boundaries of decency which he himself defined, and paints a picture of his open racism with the sentence: “However in the present situation a normal person, unless they are a robot or internationalist, cannot but admit that their most valuable, most widely known actions are human trafficking, production and organized trade of narcotics, illegal human organ trade, and accomplishments vendetta, terrorist attacks, camps, “houses” and tribal way of life.”

With this sentence, all the members of a nation have been marked without exception as human traffickers, narcotics dealers and human organ traders, whose accomplishments are vendetta, terrorist attacks, camps, “houses” and tribal way of life. In this way the Albanians are completely dehumanized, represented as a criminal group incapable of creating anything constructive or creative.

Measuring the degree of “civilization” has been rejected a long time ago in all democratic countries based on equality before the law and rule of law. Degrading and insulting ethnic, religious or national groups is always a case of spreading, encouraging and supporting hate and intolerance. In this text, this intention is not even hidden.

The estimate of the author that the Albanians “had truly excellent actors” also represents a vulgar stereotype which belongs to the same ideological matrix in which it is allowed to compare nations and ascribe success or failure of individuals to the collective whole. Every such move inevitably leads to racism and putting the marked nation into a submissive position.

The undoubtable consequence of the published text is the encouragement of discrimination and hate against a group of people because they belong to a certain ethnic group.

The proceedings on the lawsuit filed by the Youth Initiative for Human Rights against the “Nova srpska politicka misao” magazine is still in progress.

Conclusions

- “Hate speech” is still present in Serbian media
- Through the verdict against “Glas javnosti” for the text “Boycott”, the court had for the first time recognized the need to sanction hate speech in accordance with the Law on public information. This has marked the beginning of creating a judicial practice in which texts which represent hate speech are sanctioned.
- The Youth Initiative for Human Rights had filed a lawsuit for hate based

on nationality against the internet edition of the “Nova srpska politicka misao“ magazine.

Recommendations

- The authorities in Serbia have the obligation to do everything in order to stop the spreading of hate speech. The Ministry of Culture which has jurisdiction over the Law on information, as well as the Ministry for Human and Minority Rights must get more involved in sanctioning hate speech in a timely fashion.
- Court proceedings concerning lawsuits for hate speech must be carried out faster and more effectively. An increase in the efficiency of courts would significantly contribute to marking such texts as illegal and prohibited.

LAW ON CHURCHES AND RELIGIOUS COMMUNITIES

Introduction

The Law on churches and religious communities¹³⁰ is still one of the most disputed legal documents in Serbia, and its implementation is still a subject of critique of minority and “non-traditional“ religious communities, non-governmental and international organizations¹³¹.

The Law, which regulates the legal position of religious communities in Serbia, has been effective since 5 May 2006. After a public discussion on its draft which lasted for several months, it was adopted by the Parliament of Serbia, at the dissatisfaction of numerous minority religious communities and non-governmental organizations¹³².

The Initiative had actively participated in the public discussion on the draft of the law, organized a round table on this subject¹³³ and formed amendments to the law, which were also submitted by other non-governmental organizations (Center for Development of Civil Society from Zrenjanin, the Belgrade Human Rights Center, Center for Advanced Legal Studies, Women in Black...) ¹³⁴. The law has been partially revised, but many of the objections of the civil sector were not adopted.

The problems which the representatives of NGOs pointed to, showed themselves in practice immediately after passing the Law.

History

The most common topic of criticism of the Law is its basic idea of dividing religious communities in Serbia into traditional churches and religious communities, confessional communities and other religious communities¹³⁵. Between the first and other categories, there is a significant difference in rights.

130 Law on Churches and Religious Communities, see 3

131 *Implementation of Transitional Laws in Serbia*, Youth Initiative for Human Rights, Belgrade, 2007

132 *Implementation of Transitional Laws in Serbia*, Youth Initiative for Human Rights, Belgrade, 2007

133 Report on the round table: “Pre-draft of the law on the legal position of religious communities“ from 20 June 2005 is in the documentation of the Initiative

134 All the amendments of non-governmental organizations are in the documentation of the Initiative

135 Law on Churches and Religious Communities, see 3, Article 4

The Law states the traditional churches to be the Serbian Orthodox Church, the Catholic Church, the Slovakian Evangelist Church, Reformation Evangelist Church and Evangelist Christian Church¹³⁶. The traditional religious communities, according to the Law, are the Islamic community and the Jewish community¹³⁷. The Law states that the traditional churches and religious communities in Serbia are those which have a historical continuity lasting for centuries, and whose legal subjectivity is acquired based on special laws. The confessional communities are defined by the Law as those whose position was regulated by the laws of the Federal People's Republic of Yugoslavia (FPRY) (from 1953) and the Socialist Republic of Serbia (from 1977)¹³⁸.

Other communities have not been defined, and are therefore determined negatively — all those which do not belong to the first two categories. The Ministry of Religion, which suggested the text of the Law, has never explained the criteria on the basis of which such a division was made.

The list of traditional religious communities leaves out many which were recognized by the law of the FPRY. Many of them acted legally even before World War II¹³⁹. Such a division was disputed by both the non-governmental organizations and minority religious communities. The intention of the Ministry not to treat religious communities equally is evident in line 2 of Article 11, which states: “The Serbian Orthodox Church has a special historical, state-forming and civilizational role in shaping, preserving and developing the identity of the Serbian people”¹⁴⁰.

The difference in the status of the traditional and other religious communities is most obvious in the process of registration, which is still a big problem, especially for numerous minority religious communities in Serbia. Namely, the traditional religious communities require only an application with the name of the community, address and the name of the authorized person in order to be registered by the new Law¹⁴¹.

Other communities, aside from the application, have to submit also a decision on forming the community with the names, identification numbers and signatures of the persons who formed the community, which have to make at least 0.001% of the total of persons over the age of 18 in Serbia (100 persons), the statute or other document which contains the organizational structure, way of management, rights and obligations of the members, way of forming and disforming, a list of organizational units and other data on the community, the summary of the basic religious

136 Ibid, Article 10, line 1

137 Ibid, Article 10, line 2

138 Ibid, Article 16

139 The Adventist church was registered in 1922 and Baptist in 1927, for example

140 Law on Churches and Religious Communities, see 3, Article 11, line 2

141 Law on Churches and Religious Communities, see 3, Article 18, line 1

teachings, religious ceremonies, religious goals and basic activities, as well as the data on permanent sources of income of the religious organizations¹⁴².

Aside from putting the religious communities into an unequal position, this Article also violates the constitutional stipulation which prohibits forcing the citizens declare their religious beliefs¹⁴³. This constitutional ban has been betrayed, because a large number of people are forced to declare their religious beliefs in order for their religious community to be registered. At the same time, the data required from the citizens seems more like a police database than a registry of religious communities.

The terms imposed on non-traditional religious communities are very rigorous. Probably the most disputable is Article 3 which demands that the religious communities provide the Ministry with a summary of their teachings and ceremonies¹⁴⁴. It is unclear in which way the religious communities are supposed to do this, and why they are supposed to write new documents on their work, in addition to the existing statute. It is absolutely impossible for a religious community to explain to the Ministry their complete religious practice. This issue is especially disputable having in mind the reasons for the denial of registration. Registration can be denied when the aims, teachings, ceremonies or actions of the community are conflicting with the Constitution and public order¹⁴⁵. This means that the Ministry has the discretionary right to evaluate the ceremonies of a religious community, even though it is not qualified for it.

Especially disputable is the article of the law which states that a religious community cannot be registered if its name contains “the name or part of the name which expresses the identity of the church, religious community or religious organization which has already been entered into the registry, or which had already submitted an application for registry”¹⁴⁶. This article of the law has not been explained in any way. It strengthens the discretionary authority of the Ministry to leave a certain religious community out of the registry. The Ministry also decides which terms express the identity of a religious community. It is easy to conclude that the aim of this stipulation is to prevent the registration of those churches not recognized by the Serbian Orthodox Church (such as the Montenegro or Macedonian Orthodox Church). However, adhering strictly to regulations, the Ministry has already made this article of the law the most common reason for denying registration.

When deciding on registration, the Ministry has the obligation to adhere to the decisions of the European Court of Human Rights (because the practice of the European Court is considered to be a part of domestic legislature), but also to take into consideration “the executive or judicial decisions concerning the registration or actions of a

142 Ibid, Article 18, line 2

143 Constitution of the Republic of Serbia, see 83, Article 43, line 2

144 Law on Churches and Religious Communities, see 3, Article 18, line 3

145 Ibid, Article 20, line 4

146 Ibid, Article 19

certain religious community in one or more member states of the European Union¹⁴⁷. Such a solution is extremely unusual and there is no reason why it would enter the law, especially since it is known that there isn't a unified policy of the European Union on this issue, but that the decision is left to the member states. The practice of the countries of the European Union on the position of religious communities is very diverse, and there is a justified fear that the Ministry could implement it arbitrarily, and use the solutions of the most conservative legal orders (such as, for example, that of Greece).

Aside from discriminatory behavior towards different religious communities, one of the basic characteristics of this law is a severe violation of the secular character of the state: above all through the guarantee of the state not to get involved in the business of the religious communities, and on the other hand through frequently permitting the religious communities to get involved in the business of the state. In this way religious service is guaranteed in all public institutions¹⁴⁸, the possibility of teaching religion is guaranteed in all primary schools and highschools¹⁴⁹, and there is even a stipulation which obliges state organs to enable the carrying out of binding decisions of church courts in accordance with the law¹⁵⁰. On the other hand, religious officials are guaranteed immunity when performing religious duties (considering the fact that there are no exceptions, this type of immunity is even wider than the immunity of judges or Members of Parliament)¹⁵¹, the state protects all the parts of the priest's official clothing¹⁵², priests have pension and disability insurance¹⁵³, burials on the property owned by a religious community are performed on the basis of its autonomous decision¹⁵⁴, and one of the stipulations of the law even states that "the religious quarters and time are protected and inviolable in accordance with the Constitution and the autonomous rights of churches and religious communities"¹⁵⁵.

Key Events in 2009

Registration of Religious Communities

According to the Law on churches and religious communities, all religious communities have the right to register at the new registry of the Ministry of Religion. Seven traditional churches and religious communities are registered automatically,

147 Ibid, Article 20, line 5

148 Law on Churches and Religious Communities, see 3, Article 34

149 Ibid, Article 36

150 Ibid, Article 7. line 2

151 Ibid, Article 8. line 4

152 Ibid, Article 8. line 9

153 Ibid, Article 29

154 Ibid, Article 32. line 7

155 Ibid, Article 31, line 3

without the obligation to obtain the necessary documents. In this way, the discriminatory nature of the law itself is confirmed, because it puts religious communities which were equal according to previous laws into a different position. The Vicariate of the Romanian Orthodox Church in Banat later received an “automatic” legal status under the Serbian Orthodox Church¹⁵⁶.

The website of the Ministry of Religion¹⁵⁷ states that 11 “non-traditional” communities have entered the registry until 1 May 2009, and then goes on to list 12 communities — Advent Christian Church, Evangelical Methodist Church, Church of Jesus Christ of Saints of the Last Days, Serbian Evangelist Church, Love of Christ Church, Spiritual Church of Christ, Union of Christian Baptist Churches in Serbia, Christian Nazarene religious community, Church of God in Serbia, Protestant Christian community in Serbia, Christian Brothers Church in the Republic of Serbia and Free Church Belgrade.

Unregistered religious communities cannot legally possess bank accounts, cannot employ anyone, cannot purchase or publish literature. They often have a problem in establishing legal and property relations, because they represent a physical, and not a legal entity.

On 19 January 2009, the Parliament of Serbia had, after the amendment of the MP from the Democratic Party of Serbia Nikola Lazic to the Law on the republic administrative tax, reached a decision by which the “traditional” religious communities are exempt from paying administrative taxes, which does not apply to the registered “non-traditional” religious communities.¹⁵⁸

The Ministry had given unofficial statements to some unregistered communities which were listed in the Law from 1977, telling them they do not need to register according to the Law from 2006¹⁵⁹. In this way, the Ministry hopes that the problems with banks and local authorities will be minimized¹⁶⁰. Some religious communities have tried to register as associations at the Ministry for Public Administration and Local Self Management, but they were referred to the Ministry of Religion¹⁶¹.

156 Report of Forum 18 “Serbia: Religious freedom survey”, from 26 February 2009, available at the website of this media service: http://www.forum18.org/Archive.php?article_id=1260, last visited on 10 December 2009

157 Registry of churches and religious communities is available at the website of the Ministry of religion: http://www.mv.gov.rs/cir/index.php?option=com_content&task=view&id=237&Itemid=65, last visited on 10 December 2009

158 Law on republic administrative taxes (Official gazetter RS No. 43/03, 51/03-correction, 53/04, 42/05, 61/05, 101/05-other law, 42/06, 47/07 i 54/08)

159 Report of Forum 18 “Serbia: Religious freedom survey”, from 26 February 2009, available at the website of this media service: http://www.forum18.org/Archive.php?article_id=1260, last visited on 10 December 2009

160 Ibid.

161 Ibid.

The Ministry of Religion has denied registration for several religious communities in Serbia, with different explanations. Additionally, several communities have confirmed that they received replies to their request from the Ministry after the stipulated time frame had run out.

Jehovah's Witnesses, the Union of the Seventh Day Adventist Reform Movement (hereinafter the Union) and the Protestant Christian community therefore did not get a reply from the Ministry in the legal timeframe of 60 days¹⁶². According to the Law, a religious community is considered to be registered if they had not received a reply to the request for registration from the Ministry within 60 days¹⁶³.

When Jehovah's Witnesses had completed their first registration application at the request of the Ministry, and sent it on 18 October 2006, they did not receive a reply until 18 December. They sent a request to the Ministry asking for a registry confirmation, believing that they had been automatically registered. However, on 27 December they received a decision dated 15 December, which they consider to be a false date. The decision was not in its legal form, but was in the form of an announcement that the registration is denied because of "technical difficulties"¹⁶⁴. Jehovah's Witnesses had started an administrative dispute against the Ministry, which was rejected by the Supreme Court¹⁶⁵.

They submitted the next request for registration in May 2008, and once again received the decision after the legal timeframe, on 9 July 2008, also falsely dated to a day which was within the legal timeframe. This time, they were rejected for "proselytism" — they allegedly violate the rights and freedoms of other people when preaching their faith and handing out magazines published by their community¹⁶⁶.

In late October 2008 Jehovah's Witnesses submitted a third application for registration. This time, the Ministry replied with rejection within the legal timeframe, on 30 December 2008, claiming that Jehovah's Witnesses are proselytizing, and that their rejection of blood transfusion is problematic — it states that in that sense, they endanger the lives of children¹⁶⁷.

162 Interview with Damir Porobic, the legal representative of Jehovah's Witnesses, Belgrade, 1 November 2009, interview with Branko Bosanac, the representative of the Union of the Seventh Day Adventist Reform Movement, Belgrade, 18 November 2009, interview with Dusan Beredji, the pastor and president of the Board of the Protestant Christian community Novi Sad, Belgrade, 23 November 2009, is in the the documentation of the Initiative

163 Law on Churches and Religious Communities, see 3

164 Interview with Damir Porobic, legal representative of Jehovah's Witnesses, Belgrade, 1 November 2009, is in the the documentation of the Initiative

165 Ibid.

166 Ibid.

167 Ibid.

The legal representative of Jehovah's Witnesses Damir Porobic stated that he did not get the impression they would be rejected, because the headquarters of Jehovah's Witnesses had been visited ten days earlier by the Assistant Minister of Religion Dragan Novakovic and Mirjana Kuburovic, the media councillor at the Ministry¹⁶⁸. They talked to the representatives of Jehovah's Witnesses on their preachings and the refusal of blood transfusion. The representatives of Jehovah's Witnesses told them that blood transfusion should not be a topic of discussion anymore, because Jehovah's Witnesses have local boards for cooperation with the hospitals in Serbia, which intervene in certain cases, and perform their duty without using blood transfusion¹⁶⁹. After the decision on denial of registration, Jehovah's Witnesses started an administrative dispute which is still in progress¹⁷⁰.

Porobic states that the greatest violation is the fact that "people give you strange looks when you are not a registered religious community". He points out that, when a religious community is not registered, they have to pay property taxes, but no one has asked Jehovah's Witnesses to pay them. Jehovah's Witnesses have a problem with building an object in Kovacica, because they need to have the consent of the Ministry of Religion in order to build. Porobic adds that this Ministry took a full year to find out who has jurisdiction over giving the building permit, even though Jehovah's Witnesses applied for it in July 2008¹⁷¹. Even though Jehovah's Witnesses are not registered, the Ministry of Religion told them that they can apply for a building permit, because they were registered in earlier legislature¹⁷².

The Union of the Seventh Day Adventist Reform Movement (the Union) submitted their first application for registration in November 2006. Just as the members of Jehovah's Witnesses, they hoped they were automatically registered, since they had not received a reply from the Ministry within 60 days¹⁷³. The representative of the Union Branko Bosanac stated that they called the Ministry of Religion after 90 days had passed without reply. On that occasion the representatives of the Union were told they cannot be registered because of the collision with the article of the Law which states that they cannot use the name or part of the name which expresses the identity of the church, religious community or religious organization which has already been entered into the registry, or which had already submitted an application for registry¹⁷⁴. In July 2007 the Union started an administrative dispute against the

168 Ibid.

169 Ibid.

170 Ibid.

171 Interview with Damir Porobic, legal representative of Jehovah's Witnesses, Belgrade, 1 November 2009, is in the the documentation of the Initiative

172 Ibid.

173 Interview with Branko Bosanac, the representative of the Union of the Seventh Day Adventist Reform Movement, Belgrade, 18 November 2009, is in the the documentation of the Initiative

174 Ibid.

Ministry, referring to the Constitution and respect for human rights. The process is still in progress. Bosanac claims that the Union had existed and been registered for a long time, and that they do not understand why they cannot be registered just because they have the word „adventist“ in their title¹⁷⁵.

Branko Bosanac stated that the representatives of the Union talked to the Minister of religion Milan Radulovic, but did not manage to explain their problem. Bosanac stated that he understands that the Serbian Orthodox Church has a problem with division and recognizing the Montenegro and Macedonian Orthodox Churches, but that those are political problems, which is not the case with the Union because, as he said, the Union's doctrines differ significantly from that of the Advent Christian Church, with which it shares a part of the name¹⁷⁶.

The Union is registered in Croatia and Macedonia, and the fact that it is not registered in Serbia is causing problems, most often in dealing with legal and property issues. As an example, Bosanac states that the Union had sold their house in Klinak near Sabac several years earlier, but the buyer still cannot register it. He added that the biggest problem of the Union is that this religious community is treated as a physical, and not a legal entity. When the Union tried to register as an association, the representatives of this community were told by the Ministry for Public Administration and Local Self Management that they were not an association, but a religious community¹⁷⁷.

The Protestant Christian Community applied for registration on 4 May 2007. After 60 days had elapsed, on 9 July 2007, the Ministry sent a request for completing the documentation which was considered irregular since it did not have the stamp of the church, and in order to clarify the issue of which organizations this religious community is the patron and the founder of¹⁷⁸.

Dusan Beredji, the pastor and president of the Board of the Protestant Christian Community stated that the documentation did not have a stamp because they were not registered according to the new Law, and believed that the old stamp was no longer valid. He pointed out that in December 2007, at a conference at the Belgrade Media Center, the Minister of Religion Milan Radulovic told the representatives of this religious community in an informal conversation that they need to have a base in another country and confirmation that they are representatives of a larger organization in order to register. Since there was no reply from the Ministry of religion, the representatives of this community scheduled a meeting with the now former

175 Ibid.

176 Ibid.

177 Ibid.

178 Interview with Dusan Beredji, the pastor and president of the Board of the Protestant Christian community Novi Sad, Belgrade, 23 November 2009, is in the the documentation of the Initiative

Minister Radulovic, where they presented him with the requests from the Christian and Missionary Alliance and the Evangelistic Association. On this occasion they were told that they cannot be registered as a Christian community since the name does not reveal enough about their identity, and that they need to be defined more clearly, which they did with the prefix “Protestant”. They were contacted once again and delivered to the Ministry a decision on the change of headquarters from 1997, and the decision on forming the community from 1991 on 15 April, after which they entered the registry¹⁷⁹. Beredji points out that the process of registration lasted too long and seemed more like detective work than registration — documents not listed in the Law nor the Rules of Registration were requested from them on several occasions, such as the decision on forming the organization from 1991, and the change of headquarters from 1997. They learned about some of these conditions, such as the request from abroad, through informal conversations¹⁸⁰.

The Christian Baptist Church refused to register according to the Law on churches and religious communities because, as the pastor of this church Dane Vidovic stated, the law from 2006 dramatically reduces the level of rights and freedoms which the minority religious communities had according to earlier legislature¹⁸¹. Vidovic points out that the former Minister of religion Milan Radulovic publicly stated upon passing the Law in the Parliament of Serbia, that the minority religious communities are not equal¹⁸².

Vidovic explains that, even though cases of open violence towards smaller, multinational religious communities have been reduced, now the Law itself encourages pressure and discrimination based on religion. He also points out that the Constitution guarantees the equality of all religious communities before the law, but that the Law itself is breaking the Constitution through its stipulations on minority religious communities, including the Baptists, because it guarantees equality only for the ‘traditional’ churches¹⁸³. Vidovic asks who the person who decides if a religious community can be proclaimed traditional is, and whether the fact that the Baptists had been formed in 1906 in an organizational sense is enough for them to be considered a traditional community¹⁸⁴.

The Cristian Baptist Church has been put in the category of confessional communities. The pastor of this church points out that confessional communities, which include all multinational, protestant and other religious communities, are almost

179 Ibid.

180 Ibid.

181 Interview with Dane Vidovic, the pastor of the Christian Baptist Church, Belgrade, 17 November 2009, is in the the documentation of the Initiative

182 Ibid.

183 Ibid.

184 Ibid.

devoid of all rights and protection, and that it is therefore better for a religious community to remain unregistered. He says that, in that case, a religious community can call to equality which was guaranteed by earlier legislature¹⁸⁵.

The Baptists have done just that, because even the new Law gives them this option — they did not want to wait in line for re-registration, or sign something they believe gives them no guarantees¹⁸⁶. Confessional communities, according to the new Law, instead in the category of public institutions, have been put in the category of business and service institutions¹⁸⁷.

Vidovic says that the religious community he is the pastor of is listed as Christian Baptist Church in the documentation they possess, therefore as a religious, sacral institution, and not a company or a factory. However, in the procedure of obtaining documentation for building, which lasted for 12 years, the Baptist Church had to pay the communal tax as a business or service institution, and not a public, sacral institution¹⁸⁸. Vidovic also mentioned that there were cases when a religious community became registered only after they had proven that they are organizationally connected to a religious community registered abroad — for example, the registered churches are two Evangelist or Lutheran churches, the Slovakian church, which is a large church, and the German, which has only several dozens of members in Belgrade¹⁸⁹. The law states in Article 19 that a religious organization cannot be registered if its name contains the name or part of the name which expresses the identity of the church, religious community or religious organization which has already been entered into the registry, or which had already submitted an application for registry¹⁹⁰.

The Christian Adventist Church is registered as a “non-traditional” religious community according to the Law on churches and religious communities¹⁹¹. The secretary of the Executive board of this church Igor Bosnic stated that they have good cooperation and relations with the state organs, but also mentions that the Law, even though it states that everyone is equal, puts some communities in a more equal position than others¹⁹². Bosnic points out that a group of churches, the so-called traditional ones, have been marked as having advantage and privileges not enjoyed by others, such as for example religious education. He added that if the Constitution

185 Ibid.

186 Ibid.

187 Ibid.

188 Interview with Dane Vidovic, the pastor of the Christian Baptist Church, Belgrade, 17 November 2009, is in the the documentation of the Initiative

189 Ibid.

190 Law on Churches and Religious Communities, see 3

191 Interview with Igor Bosnic, secretary of the Main Board of the Christian Adventist Church and Djordje Trajkovski, president of the south-east union of the Christian Adventist Church, Belgrade, 26 November 2009, is in the the documentation of the Initiative

192 Ibid.

says that they are equal, that is the way it should be, and points out that the representatives of the Christian Adventist Church often have to stress the fact that their community is registered, and that they should have equal rights¹⁹³.

The Romanian Orthodox Church (ROC) in Timocka krajina hasn't been able get a building permit for a religious object in the village Malajnica for years, in which services would be performed in the Romanian language¹⁹⁴. The High Priest of the ROC Bojan Aleksandrovic told the "Beta" agency on 4 February that the building inspection of the Negotin Municipality illegally ordered taking down the foundations of the object for painting religious paintings in Malajnica¹⁹⁵. The foundations of the object, in which the activist of the "Society for the culture of Romanians/Vlachs in Serbia" were supposed to meet, were erected in March 2008, but the urbanistic department in Negotin refused to give a permit for continuing to build¹⁹⁶. This non-governmental organization gathers Orthodox Christian Romanians which live in the Malajnica vilage. Their building was also supposed to be a gathering place of the ROC members, because the urbanists do not allow a religious object to be erected at that spot. Aleksandrovic stated that he and his colleagues tried to build an object for religious services in various ways, in order to show respect for the members of the ROC which financed the building. One of the ways was to build an object for painting religious paintings instead of a church, and enable services to be held there¹⁹⁷.

According to his words, the statute of the non-governmental organization stipulates religious services and gatherings of the members of the ROC, but the Negotin urbanistic department declined to issue a building permit, stating that only a tavern, trade or business object can be built in that place¹⁹⁸.

The priests of the ROC complained to the Ministry of Ecology and Space Planning about such a treatment of the organization which gathers Romanians-Vlachs in September 2008, but received no answer. Instead, on 21 January 2009, a decision was received which ordered the foundations of the object in Malajnica to be taken down within two weeks. Aleksandrovic said that more than 95% of objects in this vilage do not have a building permit, but none of them were given a deadline for demolition¹⁹⁹.

193 Ibid.

194 *Romanian Ambassador Jon Makovej in Negotin*, Timoc press, 5 February 2009, <http://www.timocpress.info/sr/?p=1987>, last visited on 10 December 2009

195 *Romanian priest: Illegal demolition of an object in Negotin*, Kurir, 4 February 2009, <http://www.kurir-info.rs/aktuelne-vesti/2009-02-04/rumunski-svestenik-nezakonito-rusenje-objekta-u-negotinu>, last visited on 10 December 2009

196 Ibid.

197 Ibid.

198 Ibid.

199 *Romanian priest: Illegal demolition of an object in Negotin*, Kurir, 4 February 2009, <http://www.kurir-info.rs/aktuelne-vesti/2009-02-04/rumunski-svestenik-nezakonito-rusenje-objekta-u-negotinu>, last visited on 10 December 2009

More than four years ago the first church for services in the Romanian language was built in Timocka krajina, which at the time caused negative reactions from the Timok Eparchy of the Serbian Orthodox Church²⁰⁰. This church is still in the process of legalization, and because of the suspicion of unlawfulness of the decision of the Negotin municipal administration, which does not allow it to be registered, this case has been forwarded to the Strasbourg Court of Human Rights²⁰¹. Several days after reaching a decision on demolition, the president of the Negotin Municipality Radmila Gerov stated at the portal of the Timocka Krajina Infocenter that she insists on upholding the law, and believes that the building inspection, by issuing a decision to prohibit further building and ordering the demolition of an already built object, have acted in accordance with the law²⁰².

Incidents Based on Religion

In the summer of 2009, the religious object of Jehovah's Witnesses in Sremska Mitrovica was painted with swastikas and graffiti such as 'death to the sect' and 'get out of Serbia'. In late October, eggs were thrown at the same object. Damir Porobic said that such incidents used to be provoked by arresting Hague fugitives, as if Jehovah's Witnesses had anything to do with that²⁰³.

In July 2009, Jehovah's Witnesses organized an action of inviting people to their Belgrade congress in the "Pionir" hall. Two representatives of this religious community rang the bell of Sasa Stanojevic in Smederevo who, when he found out what they wanted, pulled out a gun and aimed it at them. They ran away when he threatened to kill them. The case was reported to the police the next day. Stanojevic's gun was confiscated, since he only had the permit for possession, but not at the address where he lived. The process is in progress at the Smederevo Regional Court²⁰⁴.

Porobic also lists the case of brothers Predrag and Nenad, members of Jehovah's Witnesses from Obrenovac, who get fired from every job they can find. They found out that when an employer asks for their police files, the files state that they are 'members of the Jehovah's Witnesses sect'. Porobic said that they had never been convicted for a crime, but they are marked by the statement that they belong to a sect. He adds that a policeman, an acquaintance of theirs, took them to a computer

200 Ibid.

201 Ibid.

202 *New dispute over the Romanian church*, Press, 14 February 2009: <http://www.pressonline.rs/sr/vesti/regioni/story/58563/NOVI+SPOR+ZBOG+RUMUNSKÉ+CRKVE.html>, last visited on 10 December 2009

203 Interview with Damir Porobic, legal representative of Jehovah's Witnesses, Belgrade, 1 November 2009, is in the the documentation of the Initiative

204 Ibid.

in a police station and showed them their files which state that they are ‘members of the Jehovah’s Witnesses sect’. He also told them that this can be removed only in case of ‘an order from a higher level’. Porobic said that he found out about this in October 2009, since these two Jehovah’s Witnesses have been going through this ordeal for some time²⁰⁵.

The process against the priest of the SOC, who in August 2008 in the Veliki Popovic village near Despotovac violently banished the missionaries of Jehovah’s Witnesses, is still in progress²⁰⁶. The priest and his two associates attacked, slapped and kicked three women and one man, members of Jehovah’s Witnesses. The priest kicked an elderly lady. His two associates were convicted to one month, with one year probation term, for insulting religious feelings²⁰⁷.

Damir Porobic states that he was personally the victim of insults and swearing because he belongs to Jehovah’s Witnesses, but that he doesn’t feel threatened because Jehovah’s Witnesses are “after all used to avoiding crowds”²⁰⁸.

Dane Vidovic from the Christian Baptist Church said that in the past few years there were no incidents in which the victims were the members of this religious community, or in which their religious objects were damaged. He stated that the only case was at Christmas 2009, when the members of the Christian Baptist Church were handing out presents, the members of the ‘Obraz’ organization showed up at the Temple of Holy Trinity, trying to stop them. The members of ‘Obraz’ were handing out flyers, and then the police came. Vidovic adds that ‘Obraz’ from time to time writes graffiti on the buildings of the Christian Baptist Church, and that this is a habit from the past²⁰⁹.

Djordje Trajkovski stated that during 2009 the building of the Christian Adventist Church suffered broken windows and graffiti, which were mostly insults or insulting slogans such as ‘out with the sects’, ‘we will kill you’ and the like. He also stated that a car was demolished recently in the front yard of the Christian Adventist Church in Vracar, but that it is not known whether it happened because the car belongs to a member of this church, or for some other reason. The incidents were reported and the investigation is in progress. Trajkovski said that the Christian Adventist Church does not have any other significant problems aside from this²¹⁰.

205 Ibid.

206 Ibid.

207 Interview with Damir Porobic, legal representative of Jehovah’s Witnesses, Belgrade, 1 November 2009, is in the the documentation of the Initiative

208 Ibid.

209 Interview with Dane Vidovic, the pastor of the Christian Baptist Church, Belgrade, 17 November 2009, is in the the documentation of the Initiative

210 Interview with Igor Bosnic, secretary of the Main Board of the Christian Adventist

Branko Bosanac from the Union of the Seventh Day Adventist Reform Movement and Dusan Beredji stated that there were no incidents during the past year²¹¹.

Relations Between Minority Religious Communities and State Organs

Damir Porobic stated that Jehovah's Witnesses have good cooperation at the local and state levels with the police, as well as the Ministry for human rights. Porobic points out that the only problem Jehovah's Witnesses have is with Zoran Lukovic, the chief inspector of the Belgrade Criminal Police and member of the European Federation for Fighting Sects. Jehovah's Witnesses filed a lawsuit against Lukovic because he, in March 2009, stated for a Belgrade tabloid that a certain child should not be placed in a Jehovah's Witnesses foster family. The family took in the child, and then the mother of the child objected and Lukovic spoke to the press. The social services centers in Belgrade and Obrenovac were satisfied with the family, which had fostered several children before. However, after the pressure from the media and the public, their fostering of this child was cancelled²¹². The lawsuit for slander against Lukovic was rejected, and Jehovah's Witnesses filed a complaint²¹³. Porobic points out that no one from the police wanted to give him Zoran Lukovic's address, which was necessary in order for the lawsuit to be filed. He said that the court can request this information from the police, but that this was not done, and that the court asked Jehovah's Witnesses to determine the time and place when the slander happened. Porobic stated that he could not name the place, since this was published in a newspaper, and that the time when Lukovic talked to the journalist is unknown. The lawsuit was afterwards rejected, because Jehovah's Witnesses did not possess general data on Lukovic²¹⁴.

Dane Vidovic stated that the Christian Baptist Church has fair relations with the police. The police had contacted the Christian Baptist Church and gave the representatives of this community the telephone number of the person in charge for the region their religious object is in. Vidovic stated that they asked for the address of the religious object and contact, because according to the new Law the Registry of religious communities is not in the jurisdiction of the police but the Ministry of Religion, and therefore they do not have current data on the Christian Baptist

Church and Djordje Trajkovski, president of the south-east union of the Christian Adventist Church, Belgrade, 26 November 2009, is in the the documentation of the Initiative

211 Interview with Branko Bosanac, the representative of the Union of the Seventh Day Adventist Reform Movement, Belgrade, 18 November 2009, interview with Dusan Beredji, the pastor and president of the Board of the Protestant Christian community Novi Sad, Belgrade, 23 November 2009, is in the the documentation of the Initiative

212 Interview with Damir Porobic, legal representative of Jehovah's Witnesses, Belgrade, 1 November 2009, is in the the documentation of the Initiative

213 Ibid.

214 Ibid.

Church and, as they said, would not know where to come if something happened to the members of this community²¹⁵.

Vidovic, however, also stated that until recently undercover policemen came to the Christian Baptist Church — most often young men who said they had found out that “the Baptists are the best and their way is the right and best way” — who sometimes came every two or three weeks to the Christian Baptist Church. Vidovic said that such “suspicious” individuals would then ask a series of nonsensical questions, which revealed that they were there for some other reason. He points out that he openly called some of these people spies, and that Zoran Lukovic visited the Christian Baptist Church several years earlier and asked about certain individuals²¹⁶.

Igor Bosnic from the Christian Adventist Church points out that this church has very good relations and cooperation with the Ministry of Religion. They also have good relations with the state²¹⁷. Branko Bosanac complimented the relations of the Union with the police, and said that the only problem they have with the state organs is that of the registration process²¹⁸.

Dusan Beredji stated that the Protestant Christian Community Novi Sad has had good relations with the police so far, in the sense that if an incident happens, such as broken windows on the church, the police examines the scene without disturbing the devotees. However, he also points out that none of the cases of attacks on the object of the Protestant Christian Community have been processed so far²¹⁹.

Beredji points out that the members of the Protestant Christian Community feel discriminated, because they do not have the right to religious education in schools, they have been excluded from all state-organized programs such as donations, projects, stipulations of the Broadcasting Agency... He says that, even though they are not in danger, the members of this church are being ignored by the state. Beredji says that still, compared to the nineties, the situation is much better²²⁰.

215 Interview with Dane Vidovic, the pastor of the Christian Baptist Church, Belgrade, 17 November 2009, is in the the documentation of the Initiative

216 Ibid.

217 Interview with Igor Bosnic, secretary of the Main Board of the Christian Adventist Church and Djordje Trajkovski, president of the south-east union of the Christian Adventist Church, Belgrade, 26 November 2009, is in the the documentation of the Initiative

218 Interview with Branko Bosanac, the representative of the Union of the Seventh Day Adventist Reform Movement, Belgrade, 18 November 2009, is in the the documentation of the Initiative

219 Interview with Dusan Beredji, the pastor and president of the Board of the Protestant Christian community Novi Sad, Belgrade, 23 November 2009, is in the the documentation of the Initiative

220 Ibid.

According to the words of Djordje Trajkovic, the members of the Christian Adventist Church used to have problems in schools and workplaces because their religion prohibits them to work on Saturdays, and some people got fired because of this. Trajkovski says that nowadays there are not so many cases of this, because at the local level this is solved through confirmations of belonging to a religious community. He added that there isn't a systematic solution at the state level yet, but that they do not have problems like they used to²²¹.

Vidovic points out that there are often misunderstandings between the Baptists and the Orthodox. He lists an example of such misunderstanding, expressed by the former Minister of religion Milan Radulovic on one occasion in a meeting with the members of the Christian Baptist Church, who first had a friendly conversation with them, and then at one moment asked them why they existed, when there is already such a good Orthodox church. Vidovic says that this question truly surprised him, because the Minister of religion is also supposed to be a Minister of the Baptists²²².

Conclusions

- The Law on churches and religious communities is discriminatory towards the “non-traditional” religious communities. The law causes the most damage in the domain of registration, because it gives enormous discretionary rights to the Ministry to decide on ceremonies and teachings, names or actions of religious communities. The “non-traditional” religious communities are additionally discriminated by this year’s decision of the Parliament that only the “traditional” religious communities are exempt from paying administrative taxes.

- In addition to being discriminatory, the Law severely violates the principle of secularization. It stipulates an almost unlimited autonomy for religious communities and their officials, while imposing numerous obligations on the state.

- The Ministry of Religion has refused to register several religious communities, with different explanations. Most of them were refused because of problems regarding the names.

- Aside from numerous documents requested as a condition for the registration of “non-traditional” religious communities, the Ministry also asked some of the communities to provide documents not listed in the Law or the Rules of Registration. Some communities were informally asked to confirm that they have headquarters abroad in order to register.

221 Interview with Igor Bosnic, secretary of the Main Board of the Christian Adventist Church and Djordje Trajkovski, president of the south-east union of the Christian Adventist Church, Belgrade, 26 November 2009, is in the the documentation of the Initiative

222 Interview with Dane Vidovic, the pastor of the Christian Baptist Church, Belgrade, 17 November 2009, is in the the documentation of the Initiative

Recommendations

- The Parliament of Serbia must amend or revoke the Law on churches and religious communities as soon as possible.
- Considering the fact that discrimination is in the very basis of this law, revoking it and passing a new law would be a better solution.
- The Ministry of religion has the obligation to treat all the religious communities in Serbia equally. It is the duty of this institution to find an efficient legal way to enable the registration and unimpeded operation for all communities.

REPORT ON THE STATE OF HUMAN RIGHTS OF MEMBERS OF THE ALBANIAN NATIONAL COMMUNITY IN THE PRESEVO AND BUJANOVAC MUNICIPALITIES

Introduction

The Presevo and Bujanovac municipalities²²³ are situated at the very south of Serbia, next to the borders with Kosovo and Macedonia, and together make a geographic area called the Presevo valley. These municipalities are populated mostly by Albanians. The municipalities are among the most undeveloped areas in Serbia²²⁴.

In late 2000, there was a mutiny of the Presevo, Bujanovac and Medvedja Liberation Army (PBMLA), an armed group of local Albanians, who clashed with the army and the police of the former Federal Republic of Yugoslavia (FRY) and Serbia²²⁵. This mutiny ended peacefully, by signing a peace agreement²²⁶ and returning of the Yugoslav Army to the formerly demilitarized ground security zone (GSZ). The PBMLA was disarmed based on the so-called Konculj agreement signed on 23 May 2001 in Konculj, between the representatives of the state, the PBMLA and NATO emissaries²²⁷.

The governments of the FRY and the Republic of Serbia (RS) founded a Coordination body for the Presevo, Bujanovac and Medvedja Municipalities on 16 December 2000. The organization, its parts and jurisdictions have been formulated

223 The Presevo Municipality does not have an official website. More on the Bujanovac Municipality at the official website: <http://www.bujanovacinfo.org/>, last visited on 18 December 2009

224 Data on the economic development of municipalities in Serbia is available at the Statistical Office of the Republic of Serbia website: <http://webzrzs.statserb.sr.gov.yu/axd/ops.htm>, last visited on 18 December 2009

225 A detailed overview of violations of human rights and crimes during the clashes committed by both the members of Serbian army and police units and armed Albanians, can be found in the report: *Albanians in Serbia*, Humanitarian Law Center, Belgrade, 2002. The report is available at the Humanitarian Law Center website: <http://www.hlc-rdc.org/uploads/editor/cac030e723e8da5932a6da283ffd99bb.pdf>, last visited on 18 December 2009

226 The peace agreement was signed on 12 March 2001, and the first contact of Serbian and Albanian officials was on 23 March at a KFOR base near the border between Serbia and Kosovo

227 Ibid

in the Program for peaceful solutions to the crisis in the Presevo, Bujanovac and Medvedja Municipalities²²⁸. The Government of Serbia adopted this program on 6 February, and the Government of FRY on 7 February 2001²²⁹.

Three aims were set as basic in the program. The first is security and freedom of movement for all citizens (this entailed both disarming the PBMLA, and reducing the presence of Serbian forces), the integration of Albanians into the Serbian society, and finally the economic development of southern Serbia. The return of the Serbian army to the demilitarized zone ended on 31 May 2001²³⁰.

The Parliaments of FRY and Serbia adopted during February and March 2001 the Law on amnesty, which pardons all persons who participated in the mutiny from serving their sentences or from being processed²³¹. The criminal acts subject to the amnesty were: armed mutiny, calling to violent change of the Constitutional order and association for hostile actions²³².

Based on the program of the Coordination body, the process of including Albanians into the political and social life was started. In July 2002 extraordinary elections took place for the Presevo, Bujanovac and Medvedja Municipalities Assemblies, according to the new law²³³. This law corrected the former discriminatory stipulations on the division of these municipalities into election units (the division guaranteed the majority of Serbian members in the Assembly of the Bujanovac Municipality) and introduced the proportional election system at the local level²³⁴. The representatives of Albanian political parties won the elections in the Bujanovac and Presevo Municipalities²³⁵ and democratic organs of authority were formed²³⁶.

228 The complete program is available at: http://bujanovacpress.yubc.net/pozadina_sukoba/covicev_plan.html, last visited on 18 December 2009

229 More on founding the Coordination body and its program at the Coordination body website: http://www.kt.gov.yu/dokumenti/history_sr.pdf, last visited on 18 December 2009

230 Vidi gore pod 226

231 *Law on amnesty and suggestion of amendments to the Law on privatization*, B92, 12 February 2001, website: <http://www.b92.net/info/vesti/index.php?dd=12&mm=2&yyyy=2001>, last visited on 18 December 2009

232 Law on amnesty, Official gazette RS No. 10/01, adopted on 14 February 2001, and Law on amnesty, Official gazette of Serbia and Montenegro No. 37/2002, adopted on 4 June 2002

233 Elections were held on 28 July 2002, in accordance with the Law on local elections, adopted on 13 June 2002, Official gazette RS No. 33/2002 from 13 June 2002

234 Ibid

235 The results of the elections in Presevo and Bujanovac are available at the website of CESID: http://www.cesid.org/rezultati/bpm_jul_2002/index.jsp, last visited on 18 December 2009

236 On the elections in 2002 see the report of the OEBS observer mission at the website: http://www.osce.org/documents/odihr/2002/07/1354_sr.pdf, last visited on 18 December 2009

Key Events in 2009

Political and Security Situation

After the local elections in Serbia on 11 May 2008, the authorities in the Presevo and Bujanovac Municipalities were made up of Albanian parties²³⁷. The representatives of Serbian political parties did not enter the authorities. According to the representatives of Albanian political parties, the reason for this were the exaggerated demands of the parties they negotiated with (in Bujanovac, there were negotiations with the Democratic Party and a group of citizens)²³⁸.

In Presevo, the coalition of the Party for Democratic Action (PDA) and the Democratic Party of Albanians (DPA) comprises the authorities²³⁹. These two parties were vicious opponents before the elections. In Bujanovac, the authorities are made of the coalition of the PDA, the Democratic Progress Movement and the Valley Democratic Union²⁴⁰.

At the elections for the Parliament of Serbia which were also held on 11 May 2008, only one Albanian party participated, the PDA. In a coalition with a group of citizens, they entered the elections as a list Coalition of Albanians from the Presevo Valley, and won one mandate²⁴¹. The Party for democratic action and the Movement for democratic progress boycotted the elections, while the Democratic union of the valley did not manage up to the last moment to agree with the PDA on entering together²⁴².

The Coordination body for southern Serbia drastically reduced its activities from 2004 and the beginning of the Government of Vojislav Kostunica, and on 10 November 2005 an Office of the Coordination body was formed, which took on all the operative assignments into their field of work²⁴³. The Coordination body was reformed in 2007, by introducing six positions of vice-presidents and creating

237 The results of the elections on 11 May 2008 are available at the website of CESID: http://www.cesid.org/rezultati/sr_maj_2008-lokalni/index.jsp, last visited on 18 December 2009

238 Interview with Shaip Kemberi, Bujanovac, 6 October 2009, interview with Nagip Arifi, 6 October 2009, is in the the documentation of the Initiative

239 *No Serbs in the authorities of southern Serbia*, B92, 14 July 2008, website: http://www.b92.net/info/vesti/index.php?yyyy=2008&mm=07&dd=14&nav_id=308349, last visited on 18 December 2009

240 Ibid

241 All information on lists and the results of the election are available at the website of the Republic Electoral Commission: http://www.rik.parlament.sr.gov.yu/cirilica/pro-pisi_frames.htm, last visited on 18 December 2009

242 Interview with Skender Destani, 5 November 2009, interview with Mentor Nuhiju, 5 November 2009, is in the the documentation of the Initiative

243 Decision of the Government of the Republic of Serbia on forming the Office of the Coordination body from 10 November 2005

three operative teams: for economy and infrastructure, for security and legislature, and for social issues and integration²⁴⁴. The representatives of Albanians refused to enter the teams at the time, being dissatisfied with the functioning of the Coordination body²⁴⁵. With the mediation of the OEBS mission in Serbia, in March 2009 an agreement was signed on the principles of reconstructing the Coordination body, based on which the representatives of Albanians returned to this institution²⁴⁶. Some of the Albanian political parties did not accept this agreement, considering the signature of Riza Halimi, MP at the Parliament of Serbia, to be illegitimate²⁴⁷.

At the territory of the Presevo and Bujanovac Municipalities, there is still a significant presence of the Serbian army and police forces. The presence of the Gendarmery (special police forces) is visible in town streets. Armed and hooded members of the gendarmery can be seen driving through the streets of Presevo and Bujanovac in armoured cars, with weapons aimed at citizens²⁴⁸. The representatives of Albanians asked the state organs on several occasions to stop this kind of practice, but so far there have been no results²⁴⁹.

All arrests and searches of people and objects at the territory of Presevo and Bujanovac are done by the gendarmery, even though this is supposed to happen only in exceptional cases²⁵⁰. Such behaviour of the gendarmery causes unease with the local citizens. The last case was recorded on 14 July 2009, when a building near the train station in Presevo was bombed. Two persons were injured in the attack²⁵¹. Searching for the perpetrators, the gendarmery burst into the houses of Sadat Nuhiu, Hajrush Nuhiu, Gafurr Dalipi and Qenan Mehmeti. The intrusion was violent, without an order from an investigative judge and with physical abuse of civilians who were in

244 Decision of the Government of the Republic of Serbia on the organization of the Coordination body from 28 August 2007

245 *Key to the border zone*, Vreme, special addition, 21 February 2008, *Still no Albanians*, B92, 18 December 2007, website: http://www.b92.net/info/vesti/u_fokusu.php?id=22&start=15&nav_id=276986, last visited on 18 December 2009

246 *Agreement with Albanians from the south*, B92, 27 March 2009, available at the website: http://www.b92.net/info/vesti/index.php?yyyy=2009&mm=03&dd=27&nav_category=11&nav_id=352353, last visited on 18 December 2009

247 *Destani not satisfied with the agreement*, B92, 2 April 2009, available at the website: http://www.b92.net/info/vesti/index.php?yyyy=2009&mm=04&dd=02&nav_category=11&nav_id=353426, last visited on 18 December 2009

248 Report on the research in Presevo and Bujanovac, October/November 2009, is in the the documentation of the Initiative

249 Interviews with representatives of Albanians in Presevo and Bujanovac October/November 2009, is in the the documentation of the Initiative

250 Ibid

251 *Southern leaders condemn the attack*, B92, 14 July 2009, available at the website: http://www.b92.net/info/vesti/index.php?yyyy=2009&mm=07&dd=14&nav_category=11&nav_id=371272, last visited on 18 December 2009

these houses. On this occasion material damage was caused at the searched objects, and the members of the Dalipi family suffered minor injuries²⁵².

In the Lucane village near Bujanovac on 9 July 2009, an attack with an M80 rocket launcher on armoured police cars was recorded. None of these cases have had their epilogue in court²⁵³.

Freedom of Expressing Nationality and Prohibition of Discrimination and Asimilation

According to the results of the last census from 2002, there are 61,647 inhabitants of Serbia of Albanian nationality, 54,777 of which live in southern Serbia²⁵⁴. The number of Albanians in these two municipalities, in comparison with the 1991 census, has reduced by almost 10,000, while the number of Serbs has remained almost the same²⁵⁵. This reduction in numbers was noted despite the high natality rate in Presevo and Bujanovac. The explanation lies in large numbers of people moving away during the clashes in Kosovo in 1999, large number of young people moving to other countries to go to school, as well as people moving out because of the bad economic situation.

1991 CENSUS Presevo and Bujanovac		2002 CENSUS Presevo and Bujanovac	
Total	88.181	Total	78.224
Albanians	64.580	Albanians	54.777
Serbs	17.866	Serbs	17.766

Right to the Freedom of Religion

Religious rights of Albanians in Presevo and Bujanovac are not violated. Albanians in these municipalities are mostly Muslim. The Islamic community has its religious objects and is performing services in them unimpeded. Religious education is carried out in schools without impediments²⁵⁶. The board of the Islamic commu-

252 Interviews with the members of the Dalipi, Nuhiu and Mehmeti families in Presevo, 15 July 2009, is in the the documentation of the Initiative

253 *The planted bomb blows up a police vehicle*, Blic, 8 June 2008, available at the website: <http://www.blic.co.yu/hronika.php?id=44659>, last visited on 18 December 2009

254 Results of the 2002 census are available at the Statistical Office of the Republic of Serbia website: <http://webzrzs.statserb.sr.gov.yu/axd/popis.htm>, last visited on 18 December 2009

255 *The census of population, houses and apartments 1991*, Federal Statistical Office, Belgrade 1992

256 Interviews with Adnan Ahmedi, the president of the Board of the Islamic community in, 19 February 2010, is in the the documentation of the Initiative

nity in Presevo did not take sides during the division within the Islamic community of Serbia²⁵⁷.

Right to Information in the Native Language

In Bujanovac and Presevo, two TV and one radio station each broadcast program in the Albanian language. At the broadcasting contest, started in November 2007, the right to broadcast was given to TV Bujanovac and Radio Ema (in Bujanovac), as well as TV Aldi and Radio Aldi in Presevo²⁵⁸. TV Bujanovac is owned by the Municipal Assembly of Bujanovac, while the other media houses are in private ownership. There are no printed media in Albanian.

Radio and TV stations which did not get permission to broadcast are still broadcasting their program, despite the order of the Broadcasting Agency (BA) to stop. The director of RTV Bujanovac, Dzahid Ramadani, told the investigator of the Initiative that this media house has started a process in the Supreme Court of Serbia for not receiving a frequency for broadcasting radio program²⁵⁹. According to Ramadani, the explanation of the BA is unclear and does not state the criteria on the basis of which it was decided²⁶⁰.

The public service of the Presevo Municipality, RTV Presevo, also did not get the permission to broadcast program²⁶¹. The Presevo Municipality Assembly²⁶², at a session held on 15 April 2009, adopted a conclusion which asks the BA Council to re-consider the decision on frequencies and assign a frequency to RTV Presevo.

RTV Presevo broadcasts programs in Albanian and Serbian languages, and according to this media house, their plan to start a program in the Roma language (An-glunipe) fell through because they did not get a frequency. Radio program in Roma

257 More on this part of the report: Position of Bosnians in Sandzak

258 Decision on issuing regional and local TV broadcasting permits, 16 November 2007, available at the website of the BA: <http://www.rra.org.yu/srpski/lista-region-lokal-tv.doc>, last visited on 18 December 2009 and the Decision on issuing local permits for broadcasting radio program, 16 November 2007, available at the website of the BA: <http://www.rra.org.yu/srpski/RA-lista-lokal-radio.pdf>, last visited on 18 December 2009

259 Interview with Dzahid Ramadani, 6 November 2009, is in the the documentation of the Initiative

260 Ibid

261 RTV Presevo was founded on 3 December 2007, by the decision of the Presevo Municipal Assembly

262 Questionnaire on the rights of minorities in the Presevo Municipality, made by the Presevo Municipality and sent to the Ministry of human and minority rights on 6 August 2009, is in the the documentation of the Initiative

language is broadcasted daily.²⁶³ RTV Aldi broadcasts its program in Albanian. There was program in Serbian at first, but it was cancelled due to low ratings and high costs²⁶⁴.

RTV Bujanovac broadcasts program in all three languages (Albanian, Serbian, Roma). Once a week they broadcast a one-hour program called “Romano Krlo” (Voice of the Roma)²⁶⁵. The privately owned TV Spektri from Bujanovac broadcasts program only in Albanian²⁶⁶. Radio Ema broadcasts their program only in Serbian.

Right to Official Use of Language

The official languages in the Presevo and Bujanovac Municipalities are Serbian and Albanian²⁶⁷. The right to official use of language is respected partially in the work of municipal services. All the documentation and official correspondence in the work of the Presevo Municipal Assembly is bilingual, and there is a possibility for counselors to speak in Albanian at the sessions of the Municipal Assembly²⁶⁸. According to Naser Pajaziti, the secretary of the Presevo Municipal Assembly, there are still cases when birth certificates are not issued in Albanian²⁶⁹.

The republic organs often violate this right. Legal and civil proceedings are in Albanian only at the Presevo Municipal court, while this is not the case in Bujanovac, where cases are lead with the help of a court interpreter²⁷⁰. The reason is a small number of Albanian judges, but also the court administration, which is mostly made up of Serbs²⁷¹. Even at the Presevo Municipal court, it often happens that a case is lead in Serbian automatically, even though all the parties in the dispute, as well as the judge, are Albanian²⁷².

263 Interview with the director of RTV Presevo, Reshat Neziri, 12 February 2010, in the the documentation of the Initiative

264 Interview with the director of TV Aldi, Isuf Mehmeti, 12 February 2010, in the the documentation of the Initiative

265 Interview with the director of RTV Bujanovac, Sevdail Hiseni, 3 November 2009, in the the documentation of the Initiative

266 Interview with the director of RTV Spektri, Nedzat Beluli, 3 November 2009, in the the documentation of the Initiative

267 Statutes of the Bujanovac and Presevo Municipalities, in the the documentation of the Initiative

268 Interviews of reserachers of the Initiative in Presevo and Bujanovac, October/November 2009, in the the documentation of the Initiative

269 Interview with Naser Pajaziti, secretary of the Presevo Municipal Assembly, 28 September 2009, in the the documentation of the Initiative

270 Interviews of reserachers of the Initiative in Presevo and Bujanovac, October/November 2009, in the the documentation of the Initiative

271 Ibid

272 Interview with Bajram Ibrahim, consultant on the pilot-project of DFID: the Fifth Municipal Court in Belgrade and the Municipal Court in Presevo, 6 November 2009, is in the the documentation of the Initiative

Civil proceedings in the Presevo Municipality are lead in Albanian, while this is still an exception in Bujanovac due to the small number of Albanian employees²⁷³. Civil proceedings in republic organs, organizations and institutions are lead only in Serbian²⁷⁴.

According to the new organization of courts and prosecution, the municipal courts and prosecutors offices in Presevo and Bujanovac have been cancelled²⁷⁵. Their jurisdictions have transferred to the main court and prosecution in Vranje²⁷⁶. Such a situation will have a dramatic effect on the right of Albanians to use their native language in court proceedings, but also on their presence in the organs of public authorities. The competition for the election of judges and prosecutors will be carried out in early 2010.

Signs with the names of republic institutions are only in Serbian²⁷⁷. Names of streets, squares, and landmarks in Presevo have in some cases been written in two languages, while in most cases the inscriptions are only in Serbian. In Bujanovac, all signs are in Serbian²⁷⁸. Personal documents are still not being issued in Albanian, nor using Albanian transcription. The chief of the Presevo police department told the researchers of the Initiative that this is due to “technical difficulties” which will be solved in early 2010²⁷⁹.

Right to Education in the Native Language

In Presevo and Bujanovac education in Albanian is available at primary schools and high schools²⁸⁰. In Bujanovac, students of Albanian nationality have been attending classes in a newly built “Sezai Suroi” highschool since last year²⁸¹. The building was financed by the Republic of Serbia, USAID and UNDP²⁸².

In Presevo, at the “Skenderbeg” highschool, classes are both in Albanian and Serbian. There are a total of 1052 students in the school, 1020 of which attend

273 Interviews of reserachers of the Initiative in Presevo and Bujanovac, October/November 2009, in the the documentation of the Initiative

274 Ibid

275 Law on headquarters and jurisdictions of courts and public prosecution offices, Article 3, line 1, point 5 and Article 9, line 1, point 5

276 Ibid

277 Field research of the Initiative in Presevo and Bujanovac, October/Novembar 2009, in the the documentation of the Initiative

278 Ibid

279 Interview of the Initiative’s researchers with the head of the Presevo Secretariate of Internal Affairs Avdi Bajrami, 1 March 2010, in the the documentation of the Initiative

280 Ibid

281 Research at the “Sezai Suroi” school, Bujanovac, 7 November 2009, in the the documentation of the Initiative

282 Interview with the principal of the “Sezai Suroi” school, Bujanovac, 7 November 2009, in the the documentation of the Initiative

classes in Albanian, and 32 in Serbian²⁸³. At the “Presevo” technical highschool, classes are also in both Albanian and Serbian. Classes in Albanian are attended by 1266, and classes in Serbian by 112 students.²⁸⁴

An initiative for opening a faculty with classes in Albanian in this part of Serbia has been existing since 2002. The representatives of Albanians demanded that an office of the Teachers Faculty in Nis be opened in Presevo, which would have classes in Albanian²⁸⁵. Serious negotiations on opening a faculty were started only in 2009. The first sections of the Faculty of Law and Faculty of Economy of the Nis University were opened in October 2009, in which classes are held in Serbian, but there is a simultaneous translation into Albanian²⁸⁶. These faculties are situated in Medvedja.

The students study from textbooks imported from either Kosovo or Albania. The Minister of Education signs consent for importing the books every year, and therefore this issue has been left to his good will. There isn't a systematic solution which would solve these problems. The Ministers never allowed the import of textbooks in history, geography, literature, music and painting education, and therefore the teachers have to improvise in class, using old textbooks or dictating to the students²⁸⁷.

Right to Participation in Public Authorities

Albanians have not been equally represented in the organs of public authorities. Equality in this field has been damaged in the early nineties, and has not yet been re-established.

The judicial organs in Bujanovac employ 18 Albanians, 61 Serbs and no Roma²⁸⁸, while in Presevo the judicial organs employ 27 Albanians, 37 Serbs and 4 Roma²⁸⁹.

283 Interview with the principal of the “Skenderbeg” highschool, Abdurahman Zulfiu, 15 September 2009, in the the documentation of the Initiative

284 Interview with the principal of the “Presevo” technical highschool Talat Arifi, 15 September 2009, in the the documentation of the Initiative

285 Interviews with the representatives of Albanian political parties in Presevo and Bujanovac, 5 and 6 November 2009, in the the documentation of the Initiative

286 Medvedja: Faculties in Albanian, B92, 12 October 2009, available at the website: http://www.b92.net/info/vesti/index.php?yyyy=2009&mm=10&dd=12&nav_id=386183, last visited on 20 December 2009

287 Interviews of reserachers of the Initiative in Presevo and Bujanovac, October/November 2009, in the the documentation of the Initiative

288 All the data obtained officially from the Presevo and Bujanovac Municipalities are in the report submitted by these municipalities to the Ministry for human and minority rights in August 2009, in the the documentation of the Initiative

289 Ibid

In Presevo there are three Albanian judges (of a total of 5)²⁹⁰. Among misdemeanor judges in Presevo, two are Serbs (including the head of the misdemeanor organ), and two Albanians. The judges of Serbian nationality are not from Presevo, but from Leskovac and Vranje²⁹¹. In Bujanovac one judge is Albanian, one misdemeanor judge and one deputy of the municipal public prosecutor²⁹².

At the Vranje Regional Court, which had territorial jurisdiction over this area until 1 January 2009, there were no employees of Albanian nationality²⁹³. The municipal public prosecutor in Presevo and one deputy are Albanians, while the other deputy is a Serb²⁹⁴.

In the past, the passing of judicial exams, which is a pre-condition for performing any kind of judicial or prosecution function, was a large problem. With the help of OEBS in Serbia, in 2007 the preparation of Albanian lawyers for taking the judicial exam was organized, in order to increase the number of judges²⁹⁵. There are currently around 10 interns at the Presevo Municipal Court.

This is a table overview of employees based on nationality in certain public institutions in Presevo and Bujanovac:

Presevo²⁹⁶:

ORGANS	ALBANIANS	SERBS	ROMA
Municipal council	11	0	0
Municipal administration	108	7	1
Culture center	10	2	0
Health center	130	44	1
Police station	125	120	3
Cadaster realstate service	2	8	0
Tax Administration	1	4	0
PTT	8	12	0

290 Ibid

291 Ibid

292 Ibid

293 Ibid

294 Ibid

295 Interview of reserachers of the Initiative with Martin Brooks, OSCE office in Bujanovac, 6 November 2009, in the the documentation of the Initiative

296 Interviews of reserachers of the Initiative in Presevo and Bujanovac, October/November 2009, in the the documentation of the Initiative

Bujanovac²⁹⁷:

ORGANS	ALBANIANS	SERBS	ROMA
Municipal administration	74	84	4
Police station	107	198	2
Tax Administration	0	4	0
PTT	8	14	0
Cadaster realestate service	0	10	0
Special rehabilitation hospital	1	130	1
Culture center	8	6	3
Health center	176	59	2

With the engagement of the Coordination body for southern Serbia and the representatives of international organizations, especially OEBS, a multi-ethnic police has been formed in this area, and therefore the structure of police units in Bujanovac and Presevo has been somewhat balanced. The chief of police in Presevo is of Albanian, and in Bujanovac of Serbian nationality²⁹⁸.

Representatives of Albanians point out that the problem is the treatment of the local policemen. Those people have no authority outside Presevo and Bujanovac, i.e. they are seen as special police only for this area. This creates a feeling of inequality and lower value. There are also no efforts to include Albanians in other police structures (criminalist, special forces, etc.)²⁹⁹.

At the Parliament of Serbia, one MP is Albanian. Riza Halimi, the president of the Party of Democratic Action from Presevo, was elected from the list of the Coalition of Albanians from the Presevo Valley³⁰⁰. Halimi was not invited to take part in the government. The Government of Serbia, or the bodies it forms, have no representatives of Albanians.

297 Ibid

298 Interview of researchers of the Initiative with Martin Brooks, OSCE office in Bujanovac, 6 November 2009, in the the documentation of the Initiative

299 Interviews of researchers of the Initiative in Presevo and Bujanovac, October/November 2009, in the the documentation of the Initiative

300 All the information on lists and results of the elections are available at the Republic Electoral Committee website: http://www.rik.parlament.sr.gov.yu/cirilica/propisi_frames.htm, last visited on 18 December 2009

Conclusions

- The number of Albanians at the territory of the Presevo and Bujanovac Municipalities has been reduced between two censuses by more than 10,000. At the same time, the number of Serbs remained almost the same.
- The mistrust of the Albanians toward the state of Serbia still hasn't been reduced. All the measures taken were short-term and did not enable full integration in the long term.
- The Coordination center for southern Serbia lost a large part of its finances and all political influence in 2004, after the beginning of the Government of Vojislav Kostunica. The projects which represented a part of the long term plan have not been realized yet, and most of the investments of the state in this area were stopped. The reconstruction of the center and the return of Albanians in this institution still isn't complete, even though an agreement was reached on the reform of the Coordination center with the mediation of the mission of OEBS.
- The presence of the army and the police in the Presevo region is still significant. A special problem is the gendarmerie which performs arrests, searches and other activities instead of the regular police forces. The gendarmerie moves through the streets of Presevo and Bujanovac fully armed (weapons aimed at citizens on the vehicles were discovered, masked persons, military convoys...).
- The Government of the Republic of Serbia has no ministers, deputies or state secretaries of Albanian nationality. Only one of 250 MPs is Albanian. During the election campaign, the parties with headquarters in Belgrade visibly avoided Presevo.
- There are two TV and two radio stations operating in each Presevo and Bujanovac. At the BA contest, the frequencies for this area were given to TV Bujanovac and Radio Ema (in Bujanovac), as well as TV Aldi and Radio Aldi in Presevo. Radio Ema broadcasts its program in Serbian, RTV Aldo in Albanian, while TV Bujanovac broadcasts its program in Albanian, Serbian and Roma languages.
- The institutions of the Republic do not respect the right to the equal use of the native language. In Bujanovac, court proceedings are not lead in Albanian, even though there are Albanian judges, because the court administration is mostly made up of Serbs. All the signs on institutions with headquarters in Belgrade are written only in Serbian.
- Education in Albanian is present in both municipalities in primary schools and highschools. The work of the offices of the Faculty of Law and the Faculty of Economy of the Nis University started as late as October 2009. The offices are in Medvedja.
- Albanians are still not able to use their national symbols. The reason is the stipulation of the Law which prohibits the emblem and the flag of national minorities to be the same as that of neighboring countries. Since this is the case with the Albanian national minority in Serbia (the symbols are the same as the official symbols of the Republic of Albania), putting up a flag is still an illegal act.
- The right to equal representation in the organs of public authorities is being violated. The discrimination is especially evident in Republic institutions, which employ much more Serbs (in some institutions, such as the Tax administration in Bujanovac, all the employees are Serbian).

- The new Law on locations and jurisdictions of courts and public prosecutors offices has cancelled the municipal courts and public prosecutors offices in Presevo and Bujanovac. This will significantly contribute to denying the citizens of Albanian nationality their right to representation in organs of public authorities and the right to leading court proceedings in the Albanian language.

Recommendations

- The Government of the Republic of Serbia must urgently establish a dialogue with the representatives of local authorities in Presevo and Bujanovac, with the aim of re-activating the measures for the integration of Albanians into the Serbian society and economic help for the region. In that sense, it is especially important to improve the work of the Coordination center for southern Serbia.

- It is necessary to reduce the presence of the army and the police (especially the gendarmerie) in the Presevo and Bujanovac areas. It is especially unacceptable for the gendarmerie units to move through inhabited areas fully armed and with weapons aimed at citizens.

- It is necessary to urgently establish official contacts between the relevant ministries and the representatives of the Albanian national community. It is especially important for the ministries of education, culture, human and minority rights, but also the ministries of police and military, to maintain regular contact.

- The number of representatives of the Albanian national minority must be increased in state organs. The institutions with headquarters in Belgrade employ an insignificant number of Albanians, and there are no Albanians in the Government of Serbia, nor the offices of the Pcinj region with headquarters in Vranje.

- The problem of court proceedings in Albanian still hasn't been solved. By cancelling the main courts in Presevo and Bujanovac, this problem is likely to become even larger. It is necessary to invest effort into enabling the courts in Vranje, which have jurisdiction over this area, to hold proceedings in Albanian. The training of Albanians for taking judicial exams now performed by the mission of OEBS in Belgrade should be intensified.

- Even though the number of Albanian members of the police has risen significantly since the nineties, the measures of affirmative action should be continued in order for all the units to become multi-ethnic. This refers above all to the criminal police and special units.

- The Government of Serbia must help the opening of the Teachers Faculty in Presevo, in which classes would be in Albanian. This faculty would enable the education of future staff for primary school teachers in Albanian, but would also stop numerous young people from moving to other countries for education.

- Classes in Albanian are impeded because there are no adequate textbooks. The Government of Serbia has the duty to financially help publishing these textbooks, because the translation of Serbian textbooks into Albanian is not a proper solution. Until the textbooks are published, unimpeded import of textbooks from Kosovo and Albania should be enabled.

REPORT ON THE STATE OF HUMAN RIGHTS OF BOSNIANS IN SANDZAK

Sandzak is a region at the border between Serbia and Montenegro, which encompasses an area of approximately 8000 square kilometers, and its center is the town of Novi Pazar. Sandzak in Serbia includes the Municipalities of Novi Pazar, Sjenica, Tutin, Nova Varos, Priboj and Prijepolje. In Novi Pazar, Sjenica and Tutin, most of the inhabitants are Bosnians³⁰¹. In the administrative sense, the Tutuin and Novi Pazar Municipalities belong to Raska Region, and the Sjenica, Nova Varos, Prijepolje and Priboj Municipalities belong to Zlatibor Region. In the Republic of Serbia, according to the 2002 census³⁰², there are 155,590 Bosnians – Muslims, 142,350³⁰³ of which live in Sandzak.

History

In the spring of 1992, towns and villages in Sandzak found themselves surrounded by cannon and tank units of the Yugoslav Army. Until the end of the war in Bosnia, there were large numbers of members of the Uzice Corps of the Yugoslav Army in the border municipalities (such as Priboj). Harassment and searches of the local Bosnians' houses became usual. Many families moved out because of fear, their housed afterwards being robbed and burned down³⁰⁴.

Human rights organizations have registered more than 1,000 cases of police searching Bosnian houses for weapons during 1992, 1993 and 1994³⁰⁵. On those occasions several hundreds of people were taken into custody, and many of them were mentally and physically abused³⁰⁶. No one was ever held accountable for the systematic torture over Bosnians³⁰⁷.

301 Results of the census available at the website <http://webrzs.stat.gov.rs/>, last visited on 18 December 2009

302 Ibid

303 The official title for Bosnians in the SFRY was Muslims. In Sarajevo, at the congress of the Bosnian scientific elite in 1993, the term Bosnian was adopted for all Muslims on the territory of the former SFRY. However, a part of the population still declare themselves as Muslims.

304 Bulletin of the Humanitarian Law Center, 2007

305 More on torture in Sandzak in the reports of the Humanitarian Law Center, the Helsinki Board of Human Rights and the Sandzak board for the protection of human rights and freedoms.

306 Ibid

307 Especially specific are the cases of Sulja Muratovic and Mustafa Dzigal, who were represented in court by the Humanitarian Law Center. Both cases were outdated. More in: Sandzak board for the protection of human rights and freedoms, Testimonies from Sandzak, Novi Pazar, 2002

The members of the Serbian armed unit “Avengers”, on 22 October 1992, took 15 men and one woman (all Bosnian) off a bus on the Priboj-Rudo-Priboj line, identified them and afterwards took them to the Vilina Vlas motel in Visegrad, where they were physically abused and then killed on the banks of the Drina River. Milan Lukic, Oliver Krsmanovic and Dragutin Dragicevic were sentenced to twenty years each for this crime, and Djordje Sevic to fifteen years at the Regional Court in Belgrade³⁰⁸.

A memorial for the murdered inhabitants of Sjeverin has never been erected, even though the relevant decision was made by the Priboj Municipal Assembly³⁰⁹. The Sandzak Democratic Party claims that the municipal authorities are ignoring the decision on erecting a memorial monument, while the authorities state that they are still searching for the appropriate location³¹⁰.

At the Strpci station of the Belgrade-Bar railway line, on 27 February 1993, the members of the same unit kidnapped 18 Bosnians and 1 Croat off train 671, took them by truck to Visegradska banja, where they were tortured and murdered. The Supreme Court in Bijelo Polje sentenced Nebojsa Ranisavljevic to 15 years in prison for the abduction of the passengers³¹¹.

The village of Kukurovici in the Priboj Municipality, on 18 February 1993, suffered an infantry and artillery attack by the Yugoslav Army. On this occasion Musan Husovic, Fatima Sarac and Uzeir Bulutovic were killed. The Humanitarian Law Center (HLC) filed a criminal complaint for this crime against unknown perpetrators from the Uzice Corps of the Yugoslav Army in 2006, at the Regional Public Prosecution in Uzice. The Prosecution in Uzice informed the HLC that the case had been forwarded to the War Crimes Prosecution. The HLC, in the name of 20 inhabitants of Kukurovici, filed a demand for compensation of damage from the Republic of Serbia, for responsibility in destroying their homes³¹².

308 Verdict available at the website: <http://okruznisudbg.rs/content/2005/predmeti/pr-vostepenokriv/sjeverin/view?searchterm=%D0%BC%D0%B8%D0%BB%D0%B0%D0%BD%20%D0%BB%D1%83%D0%BA%D0%B8%D1%9B%20OR%20%D0%BC%D0%B8%D0%BB%D0%B0%D0%BD%20%D0%BB%D1%83%D0%BA%D0%B8%D1%9B>, last visited on 19 December 2009

309 *A problem and the memorial monument for victims*, Danas, 22 October 2009, available at the website: http://www.danas.rs/dodaci/sandzak/problem_i_spmenobelezje_za_zrtve.42.html?news_id=174921, last visited on 19 December 2009

310 Ibid

311 *Still waiting for the truth on the 16th anniversary*, Radio Free Europe, 24 February 2009, available at the website: <http://www.slobodnaevropa.org/Content/strpci/1500598.html>, last visited on 19 December 2009

312 Announcement of the HLC from 20 March 2007, available at the website: <http://www.hlc-rdc.org/PravdaReforma/Reparacije-Novcane/433.sr.html>, last visited on 19 December 2009

A part of the leaders and members of the PDA were arrested in 1994 under suspicion of attempting to violently create the state of Sandzak. The arrested Bosnians went through torture and abuse for the purpose of admitting to non-existent crimes³¹³. These were political trials in Serbia and Montenegro. The initial acquittal was overturned by the Supreme Court of Serbia in 1996, and returned to be re-tried at the trial court³¹⁴. This case has never been solved. The defendants face serious charges, and there are no indications as to when the process will end³¹⁵.

Key Events in 2009

Political situation

Two of the most influential parties in Sandzak which gather Bosnians are the Party of Democratic Action (PDA) of Sulejman Ugljanin and the Sandzak Democratic Party (SDP), until recently lead by Rasim Ljajic, and now by Resad Hodzic. The political situation is characterized by heavy political clashes. The clashes culminated in 2006 when Ruzdi Durovic, a councillor candidate of the Sandzak List, was killed. Durovic was killed in front of the election spot in Novi Pazar, after a fight between the members of the PDA and the SDP. Numerous other incidents have been recorded in the past three years, such as bomb attacks on the municipal offices, the houses and summerhouses of councillors. In the attack on the house of PDA activist Hajrovic, his wife Zumreta Hajrovic died from her injuries³¹⁶.

In mid January 2009 in Novi Pazar, a clash occurred between the security of the Culture Center and the representatives of the Bosnian List for European Sandzak, who wanted to enter the premises they had rented when Sulejman Ugljanin was head of the municipality. The epilogue of the clash was one severely and three lightly injured persons, as well as significant material damage. The representatives of both Bosnian blocks accused each other for the incident. The town defenders office in Novi Pazar filed a criminal complaint to the Regional Public Prosecution against Sulejman Ugljanin and 50 other PDA activists³¹⁷.

313 *Sjeverin — 13 years later*, Sandzak board for the protection of human rights and freedoms, 2005

314 *Helsinki books 28*, Helsinki Board of Human Rights, Belgrade, 2007

315 *Rights and freedoms in Sandzak*, Sandzak board for the protection of human rights and freedoms, 2006

316 Annual report of the Helsinki Board of Human Rights, Helsinki Board of Human Rights, Belgrade, 2006

317 *Novi Pazar: relatively peaceful*, B92, 18 January 2009, available at the website: http://www.b92.net/info/vesti/index.php?yyyy=2009&mm=01&dd=18&nav_id=339847, last visited on 19 December 2009

The last local elections in Serbia were held in May 2008. After the elections, the List for European Novi Pazar (RASim Ljajic) and the United Serbian List formed the majority in the town authorities. The absolute majority in Tutin belongs to Ugljanin's Bosnian List for European Sandzak. The majority in the Sjenica municipality is the coalition "For European Sjenica SDP, DP, LDP", the Sandzak European Movement, the DPS and the unified list SSP, SRP, NS and group of citizens "It's enough". One day before the deadline, the local authorities in Prijepolje were formed, made up of SDP, SNP and coalition For Better Prijepolje. In Priboj, the authorities are SRP, DPS-NS, SSP-PUPS, the Party of Democratic Action and group of citizens "Movement for Freedom — Doctor Dragan Gaga Cetkovic". In Nova Varos, the ruling majority is DP, G17+, SSP, NS and SDP³¹⁸.

Freedom of Expressing Nationality and Prohibition of Discrimination and Assimilation

According to the results of the 2002 census, there are 155,590 citizens of Bosnian nationality in Serbia. The table of inhabitants per town in the towns of Serbian Sandzak, according to the 2002 census, looks as follows³¹⁹:

Town	Serbs	Bonians/Muslims	Total
Novi Pazar	17.599	67.192	85.996
Sjenica	6572	21.171	27.970
Tutin	1299	28.542	30.054
Priboj	22.523	6994	30.377
Prijepolje	23.402	16.921	41.188
Nova Varos	18.001	1530	19.982

It is important to mention that the Priboj Municipality had 35,951 inhabitants before the war in Bosnia and Herzegovina, 10,927 of which were Muslims. According to the 2002 census, there are 6,994 Bosnians (Muslims). This significant decrease in the number of inhabitants is partly a consequence of the politics of the Serbian authorities in this area. Namely, the first mass movement happened in June 1992, when more than 500 families moved away, encouraged by the presence of military and para-military formations from Bosnia. Frequent nationality-based incidents, threatening the lives of the inhabitants of border villages when coming to Priboj

318 Results of the local elections available at the website <http://webrzs.stat.gov.rs/>, last visited on 20 December 2009

319 Results of the census available at the website <http://webrzs.stat.gov.rs/>, last visited on 20 December 2009

and public suspicion as to the loyalty of the Muslim citizens lead to more than 3000 people moving out³²⁰.

The Freedom of Religion

In February 2007 a clash happened within the Islamic community in Serbia. Two Islamic communities were formed: the Islamic Community of Serbia (ICS) lead by Adem Zilkic, and the Islamic Community in Serbia (ICiS) lead by Muamer Zurkolic. Zurkolic strives to connect with the Islamic community in Bosnia and Herzegovina, and sees Sarajevo as his spiritual center. Zilkic strives for the autonomy of the Islamic community in Serbia from Sarajevo. The two Islamic communities do not acknowledge each other³²¹. In the attempt to gain control over as many devotees and objects as possible, the members of the two Islamic communities have physically clashed on several occasions, and several persons were injured in these incidents³²².

In Tutin, in May 2009, a gathering of devotees was supposed to take place, at which the Reis-ul-ulema of the Islamic Community of Bosnia and Herzegovina Mustafa Cerić was supposed to speak. The Ministry of Internal Affairs and Police Directorate Novi Pazar decided to ban the gathering for security reasons. The gathering was held at the Central Mosque in Tutin, with the significant presence of police and gendarmerie, and Cerić stated that human rights of Muslims are being violated in Sandzak³²³. His statement caused sharp reactions of the Ministry of Religion of Serbia, who called Reis Cerić controversial, and officially declared him a persona non grata in Serbia³²⁴.

At the gathering patronized by the Islamic Community in Serbia in July 2009, a declaration was adopted which expresses concern for the political and economic

320 Human Rights 1991-95, Humanitarian Law Center, Belgrade, 1996

321 More on the division at: *Disturbance in the Islamic community*, B92, 19 February 2007, available at the website: http://www.b92.net/info/vesti/index.php?yyyy=2007&mm=02&dd=19&nav_category=12&nav_id=233202, last visited on 20 December 2009

322 *New clashes between ICiS and ICS*, B92, 6 July 2008, available at the website: http://www.b92.net/info/vesti/index.php?yyyy=2008&mm=07&dd=06&nav_category=12&nav_id=307254, last visited on 20 December 2009; *Fight between the followers of Zukorlic and Zilkic*, B92, 17 April 2009, available at the website: http://www.b92.net/info/vesti/index.php?yyyy=2009&mm=04&dd=17&nav_category=11&nav_id=356054, last visited on 20 December 2009

323 *Cerić speaks to devotees in Tutin*, B92, 18 May 2009, available at the website: http://www6.b92.net/info/vesti/index.php?yyyy=2009&mm=05&dd=18&nav_category=11&nav_id=361150, last visited on 20 December 2009

324 Announcement of the Ministry of religion on the statement of Mustafa Cerić, available at the website: http://www.mv.gov.rs/cir/index.php?option=com_content&task=view&id=239&Itemid=68, last visited on 20 December 2009

position of Bosnians in Sandzak. Attention is also given to violations of human rights of Muslims in Serbia, and the resignation of Minister of Religion Sijakovic was demanded, because of his improper statements regarding Reis Cerić³²⁵.

The Ministry of Religion of the republic of Serbia opened a competition on 15 October 2009 for awarding scholarships to students of high theological schools. One of the criteria for MA and PhD studies for students who study abroad is, among other things, the consent of the Islamic community of Serbia³²⁶. Through this act, the Ministry of religion has openly taken the side of the Islamic Community of Serbia, and in that way disabled the members of the other Islamic religious community to participate in the competition. The Islamic Community in Serbia led by Zurkolic stated that it has once again become a victim of discriminatory behaviour of the Ministry of Religion and Minister Bogoljub Sijakovic³²⁷.

The Right to Information in Native Language

The right to information in the native language is guaranteed as one of the basic minority rights. According to the Law on protecting the rights and freedoms of national minorities³²⁸, the members of national minorities have the right to full and unbiased information in their native language, including the right to express, send, receive and exchange information and ideas through press and other means of public informing. This right is guaranteed by the General convention for the protection of national minorities ratified by the FRY³²⁹, as well as the European charter on regional and minority languages³³⁰. Information in the native language does not necessarily entail the existence of separate media, but that the members of national minorities can obtain information through a public service.

There is one TV station in Sandzak which broadcasts its whole program in Bosnian (the program which is the result of their own production). This is the local TV Tutin, which asked the SBB cable distributor to include their station in the Novi

325 *SDP and PDA do not support the declaration*, B92, 5 July 2009, available at the website: http://www.b92.net/info/vesti/index.php?yyyy=2009&mm=07&dd=05&nav_category=11&nav_id=369545, last visited on 20 December 2009

326 Competition for scholarships available at the website http://www.mv.gov.rs/cir/index.php?option=com_content&task=view&id=258&Itemid=58, last visited on 20 December 2009

327 *ICiS: Muslims in Serbia are victims of discrimination*, TANJUG, available at the website: <http://www.pressonline.rs/sr/vesti/regioni/story/85537/IZuS:+Muslimani+u+Sr+biji+%C5%BErtve+diskriminacije.html>, last visited on 21 December 2009

328 Law on rights and freedoms of national minorities, see 10

329 General convention for the protection of national minorities, see 11

330 Charter on regional and minority languages, Official gazette of Serbia and Montenegro — International contracts, No.18/05

Pazar area system, pointing out the fact that they are the only station in the region which broadcasts program in the Bosnian language. SBB refused this³³¹, and included a Bosnian TV station which does not have a broadcasting permit into the system³³².

Concerning other TV stations in the region, such as the Regional TV Novi Pazar or TV Forum from Prijepolje, there are no programs in Bosnian at all. However, there are shows which deal with information on culture, tradition and religion of the Bosnian population³³³. The Bosnians in Sandzak do not have their own office within the Public Service of Serbia³³⁴.

Right to Official Use of Language

The right to official use of language is guaranteed by both the General convention for the protection of national minorities³³⁵, and the Law on the protection of rights and freedoms of national minorities, which states in Article 11 that the official use of the language and alphabet of a national minority spoken by at least 15% of inhabitants of a Municipality is obligatory³³⁶.

In Novi Pazar, Sjenica, Tutin and Prijepolje, the statute stipulates Serbian and Bosnian languages as official³³⁷. There aren't bilingual signs for all streets and institutions in these towns³³⁸. None of the institutions with headquarters in Belgrade, Uzice or Kraljevo have bilingual sign plates³³⁹.

The Bosnian language is not an official language in the Priboj Municipality, even though according to the 2002 census, 5,371 citizens (17.68%) declared that this is their native language³⁴⁰. The local assembly has been refusing for years to include this language in official use. The Sandzak Democratic Party filed a lawsuit in the

331 Interview of reserachers of the Initiative with Amir Numanovic, editor of TV Tutin, October 2009, in the the documentation of the Initiative

332 List of permits is available at the BA website: <http://www.rra.org.yu/index.php?id=5&task=dozvole>, last visited on 21 December 2009

333 Interview of reserachers of the Initiative with Sladjan Novosel and Mileva Malesic, 20 and 21 October 2009, in the the documentation of the Initiative

334 Ibid

335 General convention, see 319

336 Law on rights and freedoms of national minorities, see 318, Article 11

337 Data on the official use of languages are available at the website of the BNC: <http://www.bnv.org.rs/bosanski.php?lang=ba&action=izlistaj>, last visited on 22 December 2009, and the Prijepolje Municipality website: http://www.opstinaprijepolje.rs/OpstinaPrijepolje-Statut-op%C5%A1tine_103_, last visited on 22 December 2009

338 Field research of the Initiative, October 2009, in the the documentation of the Initiative

339 Ibid

340 Data available at the website <http://webrzs.stat.gov.rs/axd/popis.htm>, last visited on 20 December 2009

Constitutional Court of Serbia on this issue, and the Liberal Democratic Party sent a memorandum to the Ministry for human and minority rights³⁴¹.

Right to Education in Native Language

The class “Bosnian language with elements of national culture” exists in schools in Novi Pazar, Sjenica and Tutin and has the status of an optional class with two classes a week. The Bosnian National Council, which is the largest representative body of the Bosnian national community in the field of official use of language and alphabet, education, culture and information in the Bosnian language, has suggested that Bosnian language should be given the status of an obligatory class at schools. The work on perfecting the basic model with the state institutions is currently in progress³⁴².

The Bosnian national minority does not have its own textbooks. The textbooks are printed by the Bosnian National Council. They cannot import textbooks from Bosnia and Herzegovina, since the state of Serbia does not have regulated bilateral relations with Bosnia and Herzegovina³⁴³.

In Prijepolje, where the Bosnians make up 40% of the population, the Bosnian language class can be found in only two schools. These are the “Dusan Tomasevic Cirko” and “Svetozar Markovic” schools in Velika Zupa and Brodarevo. The class is optional, with two classes a week for lower grades³⁴⁴.

Right to Participation in Public Authorities

The practice of employing Serbs in the Republic services, especially the courts and the police, has been fostered for years. According to the data of the Sandzak board for the protection of human rights and freedoms, the employee structure in certain municipalities of this region is still extremely unfavorable, and does not reflect the multinational composition of the population³⁴⁵.

The situation is most favorable in the municipalities with mostly Bosnian inhabitants. The Regional Court in Novi Pazar, from a total of eight judges, employs

341 Interviews of reserachers of the Initiative with the LDP councillors in Priboj, 22 October 2009, in the the documentation of the Initiative

342 Interviews of reserachers of the Initiative with Zekirija Dugopoljac and Murat Fetahovic from BNC, 19 October 2009, in the the documentation of the Initiative

343 Ibid

344 Interviews of reserachers of the Initiative with Ajdin Zaimovic, theofficer for education in the Prijepolje Municipality, 21 October 2009, in the the documentation of the Initiative

345 *Rights and freedoms in Sandzak VII*, Sandzak board for the protection of human rights and freedoms, 2005

five Bosnian judges³⁴⁶. The number of employees at the Novi Pazar City Directorate of Bosnian nationality is 255, and Serbian 124³⁴⁷. The number of Bosnian employees at the Sjenica Municipal Directorate is 74, seven of which hold high positions³⁴⁸. In the School Directorate territory in Novi Pazar, which includes Novi Pazar, Sjenica and Tutin, there are a total of 41 educational institutions. Of these, 34 principals are Bosnians, and 7 Serbs³⁴⁹.

At the Center for Social Services in Priboj, there are no Bosnian employees in high positions³⁵⁰. In the Tax administration office in Sjenica twelve incumbents are employed, four of which are Bosnians. At the Priboj office of Tax administration there are no data on this, but we have been informed that after direct conversations with employees, it was determined that one person was a Muslim³⁵¹. At the Prijepolje office of Tax administration, of a total of 34 employees, seven are Bosnian³⁵². In the Nova Varos Municipal Court, five judges are employed, one of which is Bosnian³⁵³. The Nova Varos Municipal Assembly consists of 27 councillors, one of which is Bosnian. There is also one Bosnian person in the Municipal council³⁵⁴.

Students of criminology who graduated in Sarajevo and validated their degrees in Serbia, cannot get a job in the police. There are twenty one such students from Novi Pazar and forty seven students from the whole Serbian region of Sandzak. When they applied for a job in the Ministry of Internal Affairs, they were all rejected without a precise reason. They contacted OEBS, the Minister of internal affairs Ivica Dacic and President Boris Tadic. Kenan Hajdarevic, an MP from the LDP, has set this issue as a parliamentary issue in the National Assembly, but did not receive any feedback³⁵⁵.

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- 346 From 1 January 2010 there will not be regional or municipal courts, which will be substituted with a new network of courts. The same goes for Prosecution offices. See: Law on headquarters and jurisdictions of courts and public prosecution offices, Official gazette of RS 116/2008; Competition for the election of new judges will be held in early 2010
- 347 Reply of the Novi Pazar City Directorate from 10 November 2009, in the the documentation of the Initiative
- 348 Reply of the Sjenica Municipal Directorate from 05 November 2009, in the the documentation of the Initiative
- 349 Reply of the School Directorate from 4 December 2009, in the the documentation of the Initiative
- 350 Reply of the Center for Social Services Priboj from 5 November 2009, in the the documentation of the Initiative
- 351 Reply of the Tax Administration Sjenica, from 09 December 2009, in the the documentation of the Initiative
- 352 Reply of the Tax Administration Prijepolje, from 12 November 2009, in the the documentation of the Initiative
- 353 Reply of the Municipal Court in Nova Varos from 5 November 2009, in the the documentation of the Initiative
- 354 Reply of the Municipal Directorate Nova Varos from 16 November 2009, in the the documentation of the Initiative
- 355 Interviews of reserachers of the Initiative with the LDP councillors in Priboj and Amel Bisevac, one of the students, in the the documentation of the Initiative

The Sandzak Democratic Party asked the Ministry of internal affairs in November 2009 to employ as many Bosnians in the police as possible, in order to prevent the national structure of the police to be contrary to the composition of the population³⁵⁶.

Conclusions

- Cases of war crimes and severe violations of human rights at the territory of Sandzak during the nineties have not been completely solved, nor have all the perpetrators been prosecuted.
- The Priboj Municipality still hasn't enabled the memorial monument to be erected for the victims of the abduction in Sjeverin.
- The number of Bosnians in Serbia has declined between the two censuses by around 20,000. The most dramatic change happened in the Priboj Municipality, where the number of Bosnians was reduced by around 4,000.
- The state and the Priboj Municipality did not give any financial support to the victims of war crimes. Many of them are on the verge of existence.
- The division within the Islamic community contributed to the deepening of problems and the polarization in Sandzak.
- The Bosnian language is in official use in Novi Pazar, Sjenica, Tutuin and Prijepolje. This right is not being fully respected in these municipalities.
- The official language in the Priboj Municipality is Serbian, even though a sufficient number of citizens have declared that they speak Bosnian. The initiatives to respect this right were rejected without a legal basis. In this way, both the Law on the protection of national minorities and the General convention for the protection of national minorities have been violated.

Recommendations

- The relevant prosecution offices and judicial organs in Serbia need to shed light on all the cases of war crimes and severe violations of human rights in Sandzak during the nineties. All the perpetrators must be held accountable, and the victims must receive satisfactory moral and financial compensation.
- The Republic of Serbia has the obligation to help the families of the murdered and missing persons, including financial compensation.
- The right to the official use of Bosnian language must be carried out fully. This right must be respected equally, both in local and Republic institutions.
- The Priboj Municipality has the obligation to respect legal norms and declare the Bosnian language as official in its territory.

356 *For more Bosnians in the police*, Danas, 16 November 2009, available at the website: http://www.danas.rs/vesti/iz_sata_u_sat/za_vise_bosnjaka_u_policiji.83.html?news_id=13858, last visited on 22 December 2009

ANNEX

HATE SPEECH - COURT PROCEEDINGS

First Municipal Court verdict

IN THE NAME OF THE PEOPLE

FIRST MUNICIPAL COURT OF BELGRADE, acting through judge Aleksandra Čulin Vujić, as individual judge, acting in the lawsuit instituted by the plaintiff Youth Initiative for Human Rights, with its registered seat at 34, Kralja Milana Street, Belgrade, through its legal representative Tanja Drobnjak, attorney-at-law from Belgrade, 163, Bulevar Mihajla Pupina Street, in the legal action taken against Radisav Rodić, domiciled at 8, Vlajkovićeve Street, and Ivan Čorbić, at the time editor-in-chief of the daily paper “Glas javnosti”, seated at 8, Vlajkovićeve Street, represented herein by Aleksandar B. Petrović, attorney-at-law from Belgrade, 4, Sarajevska Street, in the legal procedure for the compensation for damages, in the amount of 510,000.00 RSD, upon holding oral hearing of the merits in open court, concluded on the session held on September 10th, 2008, passed and on the day of September 15th, 2008, made public the following

COURT RULING

WE HEREBY ADOPT the submission filed by the plaintiff Youth Initiative for Human Rights, from Belgrade, whereby

IT IS ACKNOWLEDGED that the text published in the daily paper “Glas javnosti”, of 16th March 2006, at the time when its editor-in-chief was Ivan Čorbić, as the principal in the second degree, which reads as follows:

“Brethren Serbs!

We call you to gather in great numbers on 17th March 2006, at 10:30 a.m., in front of the shopping mall IMMO in Novi Beograd, block 64, in order to express our discontent because of the opening of the Croatian store named IDEA.

While we have been exiled from our homes where we had lived for centuries throughout Croatia, and while we are prevented from returning to our homes, the Serbian land is freely trampled under the boots of Croats, who are buying companies and opening stores around Serbia.

How much more?

Brethren Serbs, we call you to gather in great numbers in order to prevent the opening of a Croatian store in Belgrade, and to boycott shopping in their stores. Any purchase made in IDEA stores means giving money to those who have been killing

us and banishing us from our homes. We will be watching who is shopping at this store and thus refusing to align with hundreds of thousands of refugees and exiled Serbs.

STOP the Croatian occupation of Serbia!
Exiled Serbs”

constitutes an instance of hate-speech.

IT IS PROHIBITED that the principal in the second degree, Ivan Čorbić, at the time editor-in-chief of the daily paper “Glas javnosti”, as well as any prospective successors there might be to his position, releases and/or publishes again the text quoted above in the wording of this Court Ruling, or any similar texts which include ideas, information or opinions inciting discrimination, hate or violence against other nations, which introduces hate-speech, in this daily paper and/or its web-site on the Internet.

IT IS ORDERED that the principal in the second degree, Ivan Čorbić, at the time editor-in-chief of the daily paper “Glas javnosti”, as well as any prospective successor to that position, is to publish this Court Ruling, in its entirety, without any comments, free of remuneration, in this daily paper, under the column “Ekonomija” (“Economy”), within period of 8 days upon receipt of written copy hereof.

IT IS ORDERED that the principal in the second degree, Ivan Čorbić, at the time editor-in-chief of the daily paper “Glas javnosti”, is to reimburse the plaintiff Youth Initiative for Human Rights for the costs of litigation, in the total amount of 108,600.00 RSD, within period of 8 days as from the day of receipt of a written copy hereof, under threat of enforcement of court ruling.

Explication

As set forth under the submission, filed through his legal representative, the plaintiff has requested that the court adopts his legal claims, in their entirety, against the accused and the principal in the second degree, as well as to acknowledge that the text published in the daily paper “Glas javnosti” on 16th March 2006, run by the accused Radisav Rodić, as the founder of the daily paper “Glas javnosti”, and Ivan Čorbić, as the editor-in-chief of the stated daily paper, constitutes an instance of hate-speech, as well as to prohibit the accused persons to publish the quoted text again, and to impose obligation upon the accused to publish the Court Ruling in the daily paper “Glas javnosti”, free of remuneration, and to reimburse the plaintiff for any costs of litigation.

According to the statement of the claim, announcement was published in the daily paper “Glas javnosti” on the day of 16th March 2006, under the heading “Boycott”, wherein it was written: “Brethren Serbs! We call you to gather in great numbers on 17th March 2006, at 10:30 a.m., in front of the shopping mall IMMO in Novi

Beograd, block 64, in order to express our discontent because of the opening of the Croatian store named IDEA. While we have been exiled from our homes where we had lived for centuries throughout Croatia, and while we are prevented from returning to our homes, the Serbian land is freely trampled under the boots of Croats, who are buying companies and opening stores around Serbia. How much more? Brethren Serbs, we call you to gather in great numbers in order to prevent the opening of a Croatian store in Belgrade, and to boycott shopping in their stores. Any purchase made in IDEA stores means giving money to those who have been killing us and banishing us from our homes. We will be watching who is shopping at this store and thus refusing to align with hundreds of thousands of refugees and exiled Serbs. STOP the Croatian occupation of Serbia! Exiled Serbs” constitutes an instance of hate-speech. The quoted text is evidently an instance of hate-speech, because it calls upon Serbs to boycott the opening a Croatian store, using statements such as “Serbian land is freely trampled under the boots of Croats”, “We will be watching who is shopping at this store and thus refusing to align with hundreds of thousands of refugees and exiled Serbs” and “STOP Croatian occupation of Serbia”. It is beyond doubt that the published text has resulted in spreading, instigation and incitement, as well as justification of ethnic hatred, xenophobia and intolerance. Calling upon the Public Information Act and relevant international standards, as well as Constitutional Charter of Serbia and Montenegro, and the Charter on Human and Minority Rights of Serbia and Montenegro, as well as International Convention on Abolishment of All Forms of Racial Discrimination, the claimant proposed the court to adopt the plaintiff’s submission in its entirety. The expenses have been claimed and determined.

In response to the plaintiff’s claims, legal representative acting on behalf of the accused party and the principal in the second degree refuted the plaintiff’s claims in their entirety, pointing out that the announcement published in the daily paper “Glas javnosti” on 16th March 2006 in no way constitutes hate-speech, as stipulated under article 38 of the Public Information Act, but only expression of discontent of Serbs exiled from Croatia, who have been prevented from returning to their homes, and their reaction to the opening of the Croatian store “Idea” in Novi Beograd. The announcement mentioned above solely served to realize the rights guaranteed under the highest national laws and acts, whereby “exiled Serbs expressed in public their opinion on the state which has violated their human and civil rights, showed utter intolerance, xenophobia, discrimination and enmity, and banished them from their homes and prevented them from returning there”. Furthermore, it is an evident fact that Croats are freely walking over the Serbian land, and that it is no invocation of hate-speech whatsoever, nor incitement of discrimination, but on the contrary, it strives for reciprocity to be established, so that likewise the Serbs are allowed to freely move through Croatian land. Plaintiff’s interpretation of the text from the announcement, with various negative connotations implied therein, is totally inappropriate and not objective in regard to the parties accused, and in no way can the plaintiff’s statement that the mooted text constitutes an instance of aggressive nationalism, ethnocentrism, discrimination and enmity among minorities be

accepted. There was surely no intention on part of the accused parties to underestimate, insult or to incite any kind of discrimination, hatred or violence against persons or group of persons on grounds of their belonging or non-belonging to certain race, confession, nation, ethnicity or sex, or their sexual preferences. He made objection that there is no legal capacity of the accused Radisav Rodić to be sued, taking into consideration that it has been stipulated under article 39, paragraph 1 of the Public Information Act that the plaint may be submitted against the author of the information and the responsible editor of the public media where such information has been released, whereat claim can be duly made for the prohibition of its repeated release, as well as publication of court ruling at the expense of accused parties. They proposed the court to reject the plaintiff's submission as ungrounded. The expenses have been claimed and determined.

During the hearing of evidence, all the evidence required has been presented before the Court, whereupon the Court made conscientious and mindful appraisal of each and every evidence, as well as all the evidence taken together, whereat it has determined that the facts of the case, based on the results of the entire hearing procedure, pursuant to article 8 of the Litigation Procedure Act, are as follows:

Upon reading the daily paper "Glas javnosti" issue of 16th March 2006, the Court has determined that the announcement under the heading "Boycott" was published on the day mentioned above, wherein it was written: "Brethren Serbs! We call you to gather in great numbers on 17th March 2006, at 10:30 a.m., in front of the shopping mall IMMO in Novi Beograd, block 64, in order to express our discontent because of the opening of the Croatian store named IDEA. While we have been exiled from our homes where we had lived for centuries throughout Croatia, and while we are prevented from returning to our homes, the Serbian land is freely trampled under the boots of Croats, who are buying companies and opening stores around Serbia. How much more? Brethren Serbs, we call you to gather in great numbers in order to prevent the opening of a Croatian store in Belgrade, and to boycott shopping in their stores. Any purchase made in IDEA stores means giving money to those who have been killing us and banishing us from our homes. We will be watching who is shopping at this store and thus refusing to align with hundreds of thousands of refugees and exiled Serbs. STOP the Croatian occupation of Serbia! Exiled Serbs", which constitutes an instance of hate-speech. The masthead shows that at that time the editor-in-chief of the daily paper was Ivan Čorbić, a fact which has not been contested by any party to the lawsuit. The Court has also ascertained from the masthead that Radisav Rodić is identified as the founder of the stated daily paper.

Deciding first on the objection on the non-capacity of the accused Radisav Rodić to be sued, the Court has ascertained that such objection is well-grounded. Namely, it has been stipulated under article 39, paragraph 1 of the Public Information Act that due to infringement on the prohibition of hate-speech, the plaintiff may take legal action against the author of the information and the responsible editor of the

public media where such information has been released, wherein claim can be duly made for the prohibition of its repeated release, as well as publication of court ruling at the expense of accused parties. Taking into consideration that Radisav Rodić has been identified as the founder of the daily paper “Glas javnosti”, as well as that the legal action in this case may be taken against the author of the information and the responsible editor of the public media where such information has been released, there are no legal grounds to claim responsibility of the accused Radisav Rodić.

Pursuant to article 38 of the Public Information Act, it has been prohibited to release ideas, information and opinions which incite discrimination, hatred or violence against other persons or groups of persons on grounds of their belonging to certain race, nation or ethnicity (hate-speech).

Pursuant to article 100, paragraph 1 of the Advertising Act, it has been stipulated that persons whose rights or interests have been infringed or threatened by advertising message, are entitled to protection realized through legal action taken before competent courts of law. Pursuant to paragraph 2 of the Act mentioned above, it has been stipulated that the advertiser and the producer of the advertising message shall be jointly held responsible for the damages caused by such advertising message, whereas pursuant to paragraph 3 thereof, it has been stipulated that the person who has released such advertising message shall be jointly held responsible for the damages caused by advertising message in case that he/she has not requested or received a declaration dully filled out in accordance with article 11 of the Act mentioned above, or if he/she had knowledge or was supposed to know in given circumstances that releasing such advertising message may cause damages.

Deciding on the submission made by the plaintiff, the Court has ascertained that it is well-grounded in its entirety, for the following reasons:

Whereas information must not incite on discrimination, in this case the advertising message published on 16th March 2006 in the daily paper “Glas javnosti” must not call for discrimination against persons or groups of persons for their belonging or non-belonging to any race, confession, nation, ethnicity or any group whatsoever. In this case, it is not allowed to make advertising which calls for prohibited acts against others, or prohibited boycotting of others (cessation or declining of economic and other relations with them, which is a matter of fact in this particular case, because the text quoted above actually makes a call for boycott due to the opening of a Croatian store, and uses language such as “Serbian land is freely trampled under the boots of Croats”, “We will be watching who is shopping at this store and thus refusing to align with hundreds of thousands of refugees and exiled Serbs” and “STOP the Croatian occupation of Serbia.” Likewise, taking into consideration that the editor-in-chief definitely is or should be acquainted with the texts published, and the advertisements published, bearing in mind that his position implies both obligation and responsibility, and an opportunity to have insight therein, therefore, considering

everything mentioned above, it is evident that the accused Ivan Čorbić, being editor-in-chief, in view of the circumstances of this case, should have known that publishing such advertising message, in the form in which it was published, may cause damages, especially bearing in mind that on a number of occasions he failed to appear in court when summoned for hearing in the capacity of a litigant, whereat he could have refuted plaintiff's statement of claims, so taking into consideration everything afore mentioned, the Court has decided as set forth in the statement of this ruling.

Decision on the costs of litigation has been made by applying the provisions from articles 149 and 150 of the Litigation Procedure Act, and refers to plaintiff's necessary expenses, namely 7,500.00 RSD for making the statement of claims, 8,500.00 RSD for each of 6 hearings held, and 4,250.00 RSD for each of 4 hearings not held, which adds up to the total amount of 84,000.00 RSD, as well as expenses of the tax on legal action and ruling, in the amount of 24,600.00 RSD, which adds up to the total amount of 108,600.00 RSD, in accordance with the submitted list of costs, and according to the results achieved in the lawsuit. At the same time, the Court has notified the plaintiff to refund the expenses borne by the accused Radisav Rodić, taking into consideration that the plaintiff's submission against him has been rejected in its entirety, namely 7,500.00 RSD for the statement of defence, 8,500.00 RSD for each of 4 hearings held, which sums up to 34,000.00 RSD, and another 4,250.00 RSD for each of 5 hearings held, which sums up to 21,250.00 RSD, which altogether adds up to the total amount of 62,750.00 RSD, all as per administration taxes valid at the time when ruling was passed.

ADVICE ON LEGAL REMEDY:

This Court Ruling may be appealed against before the District Court of Belgrade, within period of 8 days as from the day of receipt of a written copy hereof, through this Court.

Accuracy of the dispatch certified by the Office of the Court.

Judge:

Aleksandra Čulin Vujić

(signed)

(seal)

Republic of Serbia – Belgrade

First Municipal Court of Belgrade

District Court verdict

IN THE NAME OF THE PEOPLE

DISTRICT COURT OF BELGRADE, acting through its Panel of Judges, consisting of Judge Vesna Obradović, as the Presiding Judge, Vera Mušović and Veselinka Milošević, as Panel Members, in the lawsuit instituted by the plaintiff Youth Initiative for Human Rights, with its registered seat at 34, Kralja Milana Street, Belgrade, represented by its proxy Tanja Drobnyak, attorney-at-law from Belgrade, domiciled at 163, Bulevar Mihajla Pupina, in the legal action taken against the accused Radisav Rodić, domiciled at 8, Vlajkovićeve Street, Belgrade, and Ivan Čorbić, at the time editor-in-chief of the daily paper “Glas javnosti”, seated at 8, Vlajkovićeve Street, represented herein by Aleksandar B. Petrović, attorney-at-law from Belgrade, 4, Sarajevska Street, in the legal procedure for the compensation for damages, with the lawsuit amount of 510,000.00 RSD, deciding on appeal made by the accused Ivan Čorbić, against the Ruling num. P.br.3236/06, of 15th September 2006, made by the First Municipal Court of Belgrade, on the session held by this Tribunal on 1st January 2009, has made the following

COURT RULING

THIS IS TO CONFIRM the Ruling num. P.br.3236/06 made on 15th September 2008 by the First Municipal Court of Belgrade, in the first, second, third and fourth paragraph as set forth in its statement, whereas appeal made by the accused Ivan Čorbić **IS REJECTED** as ungrounded.

Explication

Pursuant to the Ruling num. P.br.323/06, of 15th September 2008, passed by the First Municipal Court of Belgrade, it has been stipulated under the first paragraph of the statement thereof, that the submission filed by the plaintiff Youth Initiative for Human Rights is adopted, whereat it has been acknowledged that the text published on 16th March 2006 in the daily paper “Glas javnosti”, whose editor-in-chief at the time was Ivan Čorbić, principal in the second degree, which reads as follows:

“Brethren Serbs!

We call you to gather in great numbers on 17th March 2006, at 10:30 a.m., in front of the shopping mall IMMO in Novi Beograd, block 64, in order to express our discontent because of the opening of the Croatian store named IDEA. While

we have been exiled from our homes where we had lived for centuries throughout Croatia, and while we are prevented from returning to our homes, the Serbian land is freely trampled under the boots of Croats, who are buying companies and opening stores around Serbia.

How much more?

Brethren Serbs, we call you to gather in great numbers in order to prevent the opening of a Croatian store in Belgrade, and to boycott shopping in their stores. Any purchase made in IDEA stores means giving money to those who have been killing us and banishing us from our homes. We will be watching who is shopping at this store and thus refusing to align with hundreds of thousands of refugees and exiled Serbs.

STOP the Croatian occupation of Serbia!

Exiled Serbs”

constitutes an instance of hate-speech.

It has been stipulated under the second paragraph of the ruling statement that it is prohibited for Ivan Čorbić, as the principal in the second degree, at the time editor-in-chief of the daily paper “Glas javnosti”, as well as any successor to his position, to release or to publish again in this daily paper, or on its web-site, the text quoted in the statement of that Ruling, or any similar texts which contain ideas, information or opinions inciting discrimination, hatred or violence against other nations, and which constitute hate-speech.

It has been stipulated under the third paragraph of the ruling statement that Ivan Čorbić, principal in the second degree, at the time editor-in-chief of the daily paper “Glas javnosti”, as well as any successors to his position, are under obligation to publish this Court Ruling in that daily paper, under the column “Ekonomija”, in its entirety, free of remuneration, and without any comments, within period of 8 days as from the day of receipt of a written copy thereof.

It has been stipulated under the fourth paragraph of the ruling statement that Ivan Čorbić has the obligation to refund the plaintiff Youth Initiative for Human Rights for the costs of litigation, in the amount of 108,600.00 RSD, within period of 8 days.

It has been stipulated under the fifth paragraph of the ruling statement that claims of the plaintiff's submission against the accused Radisav Rodić are not grounded.

It has been stipulated under the sixth paragraph of the ruling statement that the plaintiff Youth Initiative for Human Rights has the obligation to refund the accused

Radisav Rodić for the costs of litigation, in the total amount of 62,750.00 RSD, within period of 8 days.

The Court Ruling stated above has been timely appealed against, in its first, second, third and fourth paragraphs, by Ivan Čorbić, principal in the second degree, who refuted it due to fundamental breaches of the provisions of litigation procedure, as well as inaccurately and inadequately established facts of the case and faulty application of substantive law.

Upon examining regularity of the refuted ruling by applying article 372 of the Litigation Procedure Act, District Court of Belgrade has found that the appeal is ungrounded.

During the first instance proceedings, there have been no fundamental breaches of the provisions of litigation procedure from article 361, paragraph 2 of the Litigation Procedure Act, whose fulfilment is official responsibility of the District Court, nor does the appeal made by the principal in the second degree refer to any other breaches of procedure that may be of relevance herein.

Pursuant to the facts of the case established in the first instance procedure, announcement with the heading “Boycott” appeared on the day of 16th March 2006 in the daily paper “Glas javnosti”, with contents quoted in detail in the first paragraph of the statement of the refuted ruling, which was found by the Court of First Instance to be an instance of hate-speech, that information must not incite discrimination, and that in this particular case the announcement, in its form published in the daily paper “Glas javnosti” on 16th March 2006, must not call for discrimination against persons or groups of persons for their belonging or non-belonging to any race, confession, nation, ethnicity or on any other grounds. It is prohibited make announcements wherein calls are made for illicit acts against others or illicit boycott of others. Taking into consideration that the text mentioned above actually calls for boycott for the opening of a Croatian store, and contains language which constitutes hate-speech, and that the principal in the second degree, being editor-in-chief who should have known that publishing such advertising message, as it has been published, may cause damages, the Court of First Instance has applied provisions from article 38 of the Public Information Act, as well as article 100, paragraphs 1, 2, 3 and 11 of the Advertising Act, whereat it decided as set forth in the statement of the refuted ruling.

Taking into consideration the established facts of the case, as well as afore mentioned provisions of the law, the Court of First Instance has reached accurate decision as set forth in the first, second, third and fourth paragraph of the statement thereof, whereas reasons mentioned by the Court of First Instance are also accepted as fully adequate by this Court too.

Regularity of the refuted ruling is not impeached by the claims stated in the appeal made thereto.

Namely, it has been stipulated under provisions from article 38 of the Public Information Act that it is prohibited to release or publish ideas, information and opinions which incite discrimination, hatred or violence against persons or groups of persons on grounds of their belonging or non-belonging to any race, confession, nation, ethnicity. The District Court is also of the opinion that the text published on 16th March 2006 in the daily paper "Glas javnosti" constitutes an instance of hate-speech, whereby statements set forth in the appeal that the moot announcement points to the difficult conditions of Serbs in Croatia, expressing resistance to the expansion of Croatian capital in Serbia, and stressing the need for reciprocity in the relations between Croatia and Serbia, are not grounded, taking into consideration the contents of the moot text of the announcement.

There are also no grounds for the claim that even if it were an instance of hate-speech, the responsibility therefore could only be ascribed to the exiled Serbs, or their association, and not the accused party, taking into consideration that it has been stipulated under provisions from article 39 of the Public Information Act that legal action may be taken against the author and the responsible editor by any legal person whose aim is to protect human and civil freedom and rights, as well as any by any organizations whose aim is to protect the interests of the groups stated under article 38 of the Act mentioned above, whereby there are no grounds for the claim that the plaintiff has no right to sue.

There are also no grounds for the claim that the Court of First Instance has failed to hear the principal in the second degree in his capacity of a litigant, taking into consideration that the evidence from the minutes shows that on various occasions the principal in the second degree failed to appear when duly summoned by the court to appear as a litigant.

Likewise, there are no grounds for the claim that the principal in the second degree has no capacity to be sued, taking into consideration that he was the editor-in-chief of the daily paper "Glas javnosti", which published the moot announcement (article 39, paragraph 2 of the Information Act).

Other claims from the appeal made by the principal in the second degree have also been appraised, however this Court has established that they have been of no impact on the decision, wherefore such claims are not explicated in detail.

Decision on the costs set forth in the fourth paragraph of the statement has also been confirmed, because it has been duly made through adequate application of provisions from articles 149 and 150 of the Litigation Procedure Act.

Decision set forth in the paragraphs five and six thereof shall remain unchanged, because these parts have not been contested by the appeal.

Therefore, by way of applying provisions from article 375 of the Litigation Procedure Act, District Court has decided as set forth in the statement hereof.

Presiding Judge:
Vesna Obradović

Accuracy of the dispatch certified by: AJ
(initialled)

(seal)
Republic of Serbia – Belgrade
District Court of Belgrade

Plaint against “New Serbian Political Thinking”

YOUTH INITIATIVE FOR HUMAN RIGHTS

N-8283/09

Index: YIHR-05-8411-05.05.2009.

(seal)

RECEIVED

May 5th, 2009

First Municipal Court of Belgrade

FIRST MUNICIPAL COURT OF BELGRADE

17A, SAVSKA STREET

BELGRADE

PLAINTIFF: Citizens Association “Youth Initiative for Human Rights”, seated at Kondina 26/2, Belgrade, represented by herein by Andrej Nosov, President

ACCUSED: **1. Zoran Grbić**, journalist at the journal for political theory and social research “New Serbian Political Thinking” (“Nova srpska politička misao”) (hereinafter referred to as: “NSPM”), as the author of the text
2. Djordje Vukadinović, editor-in-chief of the journal “NSPM”, with its registered seat at Dečanska 8, 1st floor, room num. 118

Pursuant to article 39 of the Public Information Act, Youth Initiative for Human Rights, as citizens association dedicated to the protection of human rights, hereby takes this

LEGAL ACTION

Due to: Breach of prohibition of hate-speech

Made in: three copies

Value of the legal action: 20,000 RSD (twenty thousand)

1. Facts of the Case

On the day of 27th April 2009, online edition of the journal for political theory and social research “New Serbian Political Thinking”, under the column “Political Life” (“Politički život”), published a text entitled “Fathers, Forefathers and

Stepmothers of Serbia” (“Očevi, oci i maćeha Srbije”), authored by Zoran Grbić, wherein it was written:

Fathers, Forefathers and Stepmothers of Serbia

Zoran Grbić

Monday, 27th April 2009

“Will so your accusation overweigh
That you shall stifle in your own report,
And smell of calumny.”

William Shakespeare, *Measure for Measure*

One Croatian blogger and writer (or the other way around) once wrote a funny blog story describing an imaginary situation in which, at a time of Croatian membership of the Security Council, [Serbian President] Tadić and the Prime Minister of the “Republic of Kosovo” are brought before one Croatian official, who is to decide the future destiny of this region. The Croatian official, just like the wise Solomon in his own time, was expected to come forth with a “wise judgment”, whereat he proposed the following decision for the southern Serbian province: “I think that it would be best to cut Kosovo in half.” Brought before such a court, the two persons interested in Kosovo, provided responses, from which it would be easy to figure out who is the mother and whose child is Kosovo and Metohia. The only thing left unknown is who the father is, and his opinion on that point cannot be surmised.

Dobrica Ćosić, man of letters, President and the person who for some reason bears the unofficial title of “the father of the nation”, is more likely to be considered, according to afore mentioned reading of the wise King Solomon story, as the stepfather of the nation, someone who doesn’t hold Kosovo close to his heart, someone who would easily accept to have it “cut in half”. Ćosić’s defeatism, his pleading for surrender, termination of bombings and partition of Kosovo and Metohia, should rather be useful to the “Other Serbia”, whereas they are, instead, filing charges against him. A sentence taken from the diary is just what it is, one angry sentence written in desperation by a man already of age, written in some other time and in a different situation. Of course, for those who wrote the claims of the criminal charges, it is not a mitigating circumstance. Nor are they willing to understand the impotence which was the reason why that sentence was written at all, nor are they capable of comprehending the time when it was written. It is rather the case that they were only waiting for an occasion to strike down upon yet another Serbian symbol, a man who is for many people “the father of the nation”.

With due respect to his previous work and past accomplishments, it could be said that Ćosić is today a man of age, lonely and senile grandpa, somewhat worried

about the future of the people, insecure of the people, unaware of its strength, just like he is insecure of his own strength. Identifying with such a grave title like “the father of the nation”, as it seems, may ultimately become pernicious, because personal fears, insecurities and impotence are thus turned into a conviction about the condition of the entire nation with which that person identifies.

Ćosić appears to have forgotten there could have been no proclamation of the “Republic of Kosovo” (nor any terrorist rebellion, nor any bombings) if there had been no Dayton Agreement. Just as Dayton couldn’t have happened hadn’t Knin fallen before that. Just as the Statute, even in its outlines, couldn’t have been written without previous installation of the “terrorist Government” in Prishtina. Nothing comes to be before its due time. Every time that Serbia accepts something, it opens the door for further demands that come in line. Until someone says – that was enough. That someone is hardly going to be a person of Ćosić’s age.

It seems that the time has come again when some people feel disturbed by books. Hitler burnt them, they were prohibited in socialism, while Islam condemns writers to death. In the Middle Ages, it was people that were set on fire rather than books. Nowadays, the stage is taken again by the guardians of public morality and defenders of “brotherhood and unity”. Criminal charges have been pressed against Ćosić for the act of instigation of “national, racial and religious hatred and intolerance”, because of half a sentence in a voluminous book in which he said that the Albanians are the “social, political and moral dregs of the tribal and barbarian Balkans”.

It could scarcely be said that the Albanians are famous for the creations they have made. It’s much more likely to say that, ever since they arrived to the Balkans, Albanians haven’t done much in creative achievements. Actually, I don’t know that they have done anything creative, anything that they would be remembered for in the human community. Perhaps I am ignorant, but I don’t know that they had any great scientist, writer, painter, sportsman... I don’t know of any great edifice in Albania, no great architect who could build it, except dozens of thousands of bunkers, which stand as a logical and systemic continuation of the high ramparts constructed, xenophobically, around their homes. Even the biography of the single authentic Albanian woman known in the whole world, Mother Theresa, is growingly becoming a subject written about in regard to various controversies and scandals, which she was, supposedly, involved in. Everything they have been doing recently (after stealing the territory) is a theft of other people’s history and other people’s historical personalities.

The way to convey all these information is more a question of semantics and manners than a question of veracity. In some happier times, in a hypothetical situation, in which their political acts had not done evil unto us, it would surely be a matter of decency not to mention anything about the way their creativity appears to be, on social level, or what their civilizational accomplishments are. That would be of no interest to us, nor should it affect us. However, in a situation such as it is today, there is

scarcely any normal person, anyone who is not a robot or internationalist, who could stand without admitting that their most significant feats, acknowledged worldwide, are human trafficking, production of and organized trade in narcotics, trade in human organs, while their accomplishments are blood feuds, terrorist attacks, camps, “houses” and tribal way of life. As for the culture (apart from the talent for making artistic photos, such as the one on which a terrorist appears in natural size), we definitely must not forget the indisputable fact that in the “former Yugoslavia” they really had excellent actors. Someone sarcastic might say that their talent for acting is their only common talent, one of the authentic characteristics of their nation.

It might be a question of semantics, but I believe that it is worth mentioning here, because the “Other Serbia” appears to be very concerned about the questions of language and offense of other nations – Shqiptars are Albanians living in Kosovo and Metohia, a province of Serbia. Albanians are the people living in Albania. Shqiptars do not want to be called like that, not because it is an insult for them, but because it would point out that there is difference between them and their mother state. If they all are Albanians, then there is no reason for an “artificial” borderline between Albania and Kosovo to exist. If the terms *Shqiptar* and *Albanian* are clearly delineated, there is a good reason to it.

The Greeks, for instance, are well aware of it. They still do not recognize the name of the republic of Macedonia, just like they do not recognize the Macedonians as a nation, because thence they would accept the idea that the borderline between the two Macedonias is artificial, dubious, subject to changes.

The Croats also know it. Therefore, the Serbs from Krajina and Slavonija are denominated Serbs, whereas those from Serbia are denominated *Serbians*. They are clearly separated by language, just as they are separated by territory.

The Other Serbia, which I believe consists of people of more than dubious mental health, evil-minded persons and (to a lesser degree) those who are there since they have deviated, generally doesn't know about this. They mostly want to believe that Shqiptars are bothered if someone calls them like that.

They don't defend the Shqiptars only. One amongst them, known for his language and behavior that would embarrass a drunken truck driver going out on Saturday night to his favorite inn, was defended by Sonja Biserko. When asked to comment on his statement that some journalists should be sent to the gallows, Sonja first tried to avoid answering, by pointing that the blame was on the journalists during wartime (this is called relativization of crimes), and only after the presenter insisted, she gave explicit answer: “Such is the language of Pera Luković, he entered into that Nazi language, which dominates our public discourse, and from within that pattern he pelts it with that language of his. Actually, he is destroying it linguistically... He simply enters into the pattern and demolishes it from the inside”.

Is he also to be summoned before court, or does his “artistic procedure” have greater value and more importance than the work of one of the greatest Serbian writers? Is it possible to justify such writing at all, and in what context? And what kind of people are those capable of justifying and supporting it?

In a TV show on public broadcasting service, Borka Pavićević (known for her statement that not everyone has the right to their opinion) defended the language used by Nenad Čanak, and the calls for gallows, saying that “such language, in certain political context, is something that can be understood”. [Nenad]Prokić’s remark about Serbs (“That’s the only language those beasts understand.”) was justified by Borka, laconically and with a smile, by saying that he only quoted Thomas Mann.

Biljana Kovačević Vučo (who could win herself a place in history with her latest fantastic statement that “patriotism should be redefined”) also defended the right to attack one’s own people. In a TV show on the Radio Television of Serbia, broadcasted a few days ago, when asked by the presenter: “Can we say anything we please about ourselves?”, she replied: “Yes, that is a question of political culture, words that we are going to use, public discourse, style, irony (...) whereas discrimination refers to the other and diverse.” If someone were to accept what [Kovačević]Vučo is saying, he could then say, for instance, since we’re all bros and frat, that she is a fickle liar, a manipulator who is turning away from facing the truth, someone who sold out for chickenfeed. Biljana surely wouldn’t be angry with such a person, because, among ourselves, we can say whatever we please of one another.

Just as Mss. Biserko and Pavićević wouldn’t have any reason to get angry if someone were to say that their behavior is “radically retarded”, because that’s a quote of Luković who “entered into that Nazi language, which dominates our public discourse”. Or if someone were to tell them: “You shall stifle in your own report, and smell of calumny”, they wouldn’t be offended, because it is just a quote from Shakespeare (*Measure for Measure*).

The Slovenes recently had an affair, in which a book and a writer were involved, and the entire Slovenian public took a stand to defend an unknown writer and his right to write about Slovenia and the ethnic minorities living there openly and freely, in a way in which he experiences the situation. Even the Minister of the Interior, Katarina Kresal, stood up in defense of Goran Vojnović, Slovenian-Bosnian author of the novel *Čefurji raus! (Get lost, Southerners)*, who was taken into custody, and against whom legal action was taken. She conveyed to the Slovenes that “it would be wise for them to read it, because we are too often intolerant towards people who live there (in Fužine settlement)”. In that way, she gave a striking example to the police, of whom she is in charge of, as well as to their compatriots, and the entire Balkans, that literature and written word must be free of police persecution. It is obvious that some people here still didn’t get that message.”

Evidence: Printed internet page from the NSPM web-site, of 27th April 2009 Masthead of the journal. In case of requirement, the Court may examine the internet edition on this link: <http://www.nspm.rs/politicki-zivot/ocevi-oci-i-macehe-srbije.html>

The text quoted above is an attempt to defend Dobrica Ćosić, writer, against whom criminal charges were pressed for the act of instigation of national, racial and religious hatred and intolerance. Although it supposedly aims to defend artistic freedoms, this text is actually a clear example of hate-speech against the Albanians. The Albanian people are snubbed in this text, which presents them as inferior in cultural and civilizational terms in regard to other European nations. The author contests the “civilizational status” of the Albanians with the following words:

“It could scarcely be said that the Albanians are famous for the creations they have made. It’s much more likely to say that, ever since they arrived to the Balkans, Albanians haven’t done much in creative achievements. Actually, I don’t know that they have done anything creative, anything that they would be remembered for in the human community. Perhaps I am ignorant, but I don’t know that they had any great scientist, writer, painter, sportsman... I don’t know of any great edifice in Albania, no great architect who could build it, except dozens of thousands of bunkers, which stand as a logical and systemic continuation of the high ramparts constructed, xenophobically, around their homes. Even the biography of the single authentic Albanian woman known in the whole world, Mother Theresa, is growingly becoming a subject written about in regard to various controversies and scandals, which she was, supposedly, involved in. Everything they have been doing recently (after stealing the territory) is a theft of other people’s history and other people’s historical personalities.

The way to convey all these information is more a question of semantics and manners than a question of veracity. In some happier times, in a hypothetical situation, in which their political acts had not done evil unto us, it would surely be a matter of decency not to mention anything about the way their creativity appears to be, on social level, or what their civilizational accomplishments are. That would be of no interest to us, nor should it affect us. However, in a situation such as it is today, there is scarcely any normal person, anyone who is not a robot or internationalist, who could stand without admitting that their most significant feats, acknowledged worldwide, are human trafficking, production of and organized trade in narcotics, trade in human organs, while their accomplishments are blood feuds, terrorist attacks, camps, “houses” and tribal way of life. As for the culture (apart from the talent for making artistic photos, such as the one on which a terrorist appears in natural size), we definitely must not forget the indisputable fact that in the “former Yugoslavia” they really had excellent actors. Someone sarcastic might say that their talent for acting is their only common talent, one of the authentic characteristics of their nation.”

The author claims that the Albanian people haven’t done anything creative, which would provide them a place in the memory of the human community. Such

opinion is disdainful of the Albanians, and it is an expression of the worst chauvinism. To compare nations by their creative achievements is the common subject in all racist and chauvinistic ideologies in the history, as well as in the present day. Such a comparison is also undoubtedly implying that entire nations have different values and, therefore, people belonging to them cannot be equal. The author then proceeds with “observations” that he doesn’t know of a single (sic!) great scientist, writer, painter or sportsman, or of any “great edifice” in Albania. He adds, in a depreciatory manner, that in Albania the only constructions are dozens of thousands of bunkers, which are, in his words, “...logical and systemic continuation of the high ramparts constructed, xenophobically, around their homes”. By making such statements, the author tries to make a rank-order of nations, and by ranking the Albanians on a low position, to prove their cultural and civilizational inferiority. Besides attributing “accomplishments”, or rather the lack thereof, to one social group (such as nation), the author accuses the same group for “a theft of other people’s history and other people’s historical personalities”.

Such racist and chauvinistic act of making comparison between the nations continues with the second paragraph quoted above, wherein the author states that it would be a matter of decency “not to mention anything about the way their creativity appears to be, on social level, or what their civilizational accomplishments are”. However, the author refuses to stay within decent manners, which he has defined himself, but rather chooses to show his unabashed racism with the following sentence: “However, in a situation such as it is today, there is scarcely any normal person, anyone who is not a robot or internationalist, who could stand without admitting that their most significant feats, acknowledged worldwide, are human trafficking, production of and organized trade in narcotics, trade in human organs, while their accomplishments are blood feuds, terrorist attacks, camps, “houses” and tribal way of life.”

Under this sentence, all the members of one nation, with no restrictions, are labelled as traffickers of humans, narcotics and body organs, whose only achievements are blood feuds, terrorist attacks, camps, “houses” and tribal way of life. In this text, Albanians are totally dehumanized, represented as a criminal group, denied of the capability to make anything constructive or creative.

Any comparison between peoples, and thus their mutual ranking, leads into racism, and this infallibly goes along with the ideology which holds that there are higher and lower races. The author wrote his text as a defence of an equally racist sentence in the literary oeuvre of Dobrica Ćosić. Unlike Ćosić, this is not a matter of a single sentence, but rather of the entire text, which aims to prove that the Albanians are a lower race, from which it stems that they are not entitled to the same rights as the members of other nations.

Ethnic group, as imaginary community of people who share some of the features (usually the language or customs), cannot achieve results in any field (only individuals

can do that), nor can such community be attributed with particular achievements, works of art, cultural feats or anything like that. Measuring the degree of “civilizational status” has long been rejected in every democratic country which is grounded on the principle of equality before the law and the rule of law. Disdaining and insulting ethnic, religious or national groups always means spreading, inciting and instigating hatred and intolerance. In this text, such intention is not even covered up.

Author’s statement that the Albanians “really had excellent actors” is yet another vulgar stereotype, which belongs to the same ideological pattern that allows comparisons to be made between nations and individual achievements or failures to be attributed to community at large. Every step like that inevitably leads into racism and putting of the labelled nation into subservient position.

The publishing of this text indisputably resulted in instigation of hatred and discrimination against one group of persons on grounds of their ethnicity.

2. Legal Basis – Local Standards

Under article 38 of the Public Information Act (PIA), it has been prohibited to release ideas, information or opinions that instigate discrimination, hatred or violence against any person or group of persons on grounds of their belonging or non-belonging to any race, confession, nation, ethnicity, sex or their sexual preferences, regardless of whether such publishing constituted a criminal offence.

Under article 39 of the stated Act, it has been stipulated that court protection is to be provided to persons who are, being members of a certain group, directly concerned by the hate-speech, as well as legal persons whose aim is to provide protection of human and civil freedoms and rights, as well as organizations whose aim is to provide protection of interests of groups mentioned under article 38 of the stated Act.

Legal action may be taken against the author of the information and against the responsible editor at the public media in which such information has been released, wherein claim may be made for determining the existence of hate-speech, its removal and prohibition of its repeated release, as well as publication of the court ruling at the expense of the accused party.

Under article 11 of the PIA, it has been stipulated that public media comprise “newspapers, radio programmes, TV programmes, press agency services, Internet and other electronic editions of the stated public media, as well as other means of public information which use words, images or sounds to release ideas, information or opinions intended for public dissemination and for unidentified number of users”.

Evidence: Articles of Association of the Youth Initiative for Human Rights, as evidence that it is an organization with competence to provide

protection of human and civil freedoms and rights.

Certified copy of the Decision on Registration into the Register of the Ministry for Public Administration and Local Self-Government

3. International Standards

Based on article 16 of the Constitution of the Republic of Serbia, “Generally accepted rules of international law and ratified international treaties shall be an integral part of the legal system in the Republic of Serbia and applied directly”.

In the International Covenant on Civil and Political Rights, ratified in 1976, it has been stipulated under article 20, Paragraph 2, that “any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.” In the General Comments num. 11, referring to the Article 20 of the Covenant, it has been additionally elucidated that “for article 20 to become fully effective there ought to be a law making it clear that propaganda and advocacy as described therein are contrary to public policy and providing for an appropriate sanction in case of violation”. (CCPR General Comment 11. 29/07/83)

As a general act of the UN in its struggle against racism and discrimination, the International Convention on the Elimination of All Forms of Racial Discrimination (1965) proscribes as follows: States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, inter alia:

- (a) Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;
- (b) Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law;
- (c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.”

Under article 20 of the European Convention for the Protection of Human Rights and Basic Freedoms, it has been stipulated that “...the enjoyment of the rights and

freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status”.

Under the Protocol 12 to the European Convention, adopted in 2000, the member states have additionally reaffirmed the need for “a general prohibition of discrimination”, and in particular by part of the public authorities.

In 2004, Serbia ratified the European Convention and the Protocol, which have thus become integral part of the internal juridical system of the Republic of Serbia.

Recommendation R (97) 20 of the Committee of Ministers of the Council of Europe on “Hate-Speech” given to member states defines the term “hate-speech” as “all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, antisemitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin”.

In particular, this Recommendation makes special emphasis that “governments of the member states should establish or maintain a sound legal framework consisting of civil, criminal and administrative law provisions on hate speech which enable administrative and judicial authorities to reconcile in each case respect for freedom of expression with respect for human dignity and the protection of the reputation or the rights of others”.

Recommendation R (97) 21 of the Committee of Ministers of the Council of Europe on the Media and the Promotion of Cultural Tolerance provides that “the problem of intolerance calls for reflection by both the public and within the media. Experience in professional media circles has shown that media enterprises might usefully reflect on the following:

- reporting factually and accurately on acts of racism and intolerance;
- reporting in a sensitive manner on situations of tension between communities;
- avoiding derogatory stereotypical depiction of members of cultural, ethnic or religious communities in publications and programme services;
- alerting public opinion to the evils of intolerance;
- challenging the assumptions underlying intolerant remarks made by speakers in the course of interviews, reports, discussion programmes, etc.”

4. Conclusion

Taking into consideration the facts of this legal matter, as well as relevant local and international standards, it is evident that the text contested by this legal action constitutes an instance of hate-speech.

We, therefore, propose, once the proceedings are carried out and evidence presented, that the court issue the following

RULING

TO ADOPT THE SUBMISSION MADE BY THE PLAINTIE, Youth Initiative for Human Rights, from Belgrade, wherefore

IT IS ACKNOWLEDGED that the text released on 27th April 2009 in the online edition of the journal for political theory and social research “NSPM”, which reads as follows:

“Fathers, Forefathers and Stepmothers of Serbia

Zoran Grbić

Monday, 27th April 2009

“Will so your accusation overweigh
That you shall stifle in your own report,
And smell of calumny.”

William Shakespeare, *Measure for Measure*

One Croatian blogger and writer (or the other way around) once wrote a funny blog story describing an imaginary situation in which, at a time of Croatian membership of the Security Council, [Serbian President] Tadić and the Prime Minister of the “Republic of Kosovo” are brought before one Croatian official, who is to decide the future destiny of this region. The Croatian official, just like the wise Solomon in his own time, was expected to come forth with a “wise judgment”, whereat he proposed the following decision for the southern Serbian province: “I think that it would be best to cut Kosovo in half.” Brought before such a court, the two persons interested in Kosovo, provided responses, from which it would be easy to figure out who is the mother and whose child is Kosovo and Metohia. The only thing left unknown is who the father is, and his opinion on that point cannot be surmised.

Dobrica Ćosić, man of letters, President and the person who for some reason bears the unofficial title of “the father of the nation”, is more likely to be considered, according to afore mentioned reading of the wise King Solomon story, as the stepfather of the nation, someone who doesn’t hold Kosovo close to his heart, someone who would easily accept to have it “cut in half”. Ćosić’s defeatism, his pleading for surrender, termination of bombings and partition of Kosovo and Metohia, should rather be useful to the “Other Serbia”, whereas they are, instead, filing charges against him. A sentence taken from the diary is just what it is, one angry sentence written in desperation by a man already of age, written in some other time and in a

different situation. Of course, for those who wrote the claims of the criminal charges, it is not a mitigating circumstance. Nor are they willing to understand the impotence which was the reason why that sentence was written at all, nor are they capable of comprehending the time when it was written. It is rather the case that they were only waiting for an occasion to strike down upon yet another Serbian symbol, a man who is for many people “the father of the nation”.

With due respect to his previous work and past accomplishments, it could be said that Ćosić is today a man of age, lonely and senile grandpa, somewhat worried about the future of the people, insecure of the people, unaware of its strength, just like he is insecure of his own strength. Identifying with such a grave title like “the father of the nation”, as it seems, may ultimately become pernicious, because personal fears, insecurities and impotence are thus turned into a conviction about the condition of the entire nation with which that person identifies.

Ćosić appears to have forgotten there could have been no proclamation of the “Republic of Kosovo” (nor any terrorist rebellion, nor any bombings) if there had been no Dayton Agreement. Just as Dayton couldn’t have happened hadn’t Knin fallen before that. Just as the Statute, even in its outlines, couldn’t have been written without previous installation of the “terrorist Government” in Prishtina. Nothing comes to be before its due time. Every time that Serbia accepts something, it opens the door for further demands that come in line. Until someone says – that was enough. That someone is hardly going to be a person of Ćosić’s age.

It seems that the time has come again when some people feel disturbed by books. Hitler burnt them, they were prohibited in socialism, while Islam condemns writers to death. In the Middle Ages, it was people that were set on fire rather than books. Nowadays, the stage is taken again by the guardians of public morality and defenders of “brotherhood and unity”. Criminal charges have been pressed against Ćosić for the act of instigation of “national, racial and religious hatred and intolerance”, because of half a sentence in a voluminous book in which he said that the Albanians are the “social, political and moral dregs of the tribal and barbarian Balkans”.

It could scarcely be said that the Albanians are famous for the creations they have made. It’s much more likely to say that, ever since they arrived to the Balkans, Albanians haven’t done much in creative achievements. Actually, I don’t know that they have done anything creative, anything that they would be remembered for in the human community. Perhaps I am ignorant, but I don’t know that they had any great scientist, writer, painter, sportsman... I don’t know of any great edifice in Albania, no great architect who could build it, except dozens of thousands of bunkers, which stand as a logical and systemic continuation of the high ramparts constructed, xenophobically, around their homes. Even the biography of the single authentic Albanian woman known in the whole world, Mother Theresa, is growingly becoming a subject written about in regard to various controversies and scandals, which she was,

supposedly, involved in. Everything they have been doing recently (after stealing the territory) is a theft of other people's history and other people's historical personalities.

The way to convey all these information is more a question of semantics and manners than a question of veracity. In some happier times, in a hypothetical situation, in which their political acts had not done evil unto us, it would surely be a matter of decency not to mention anything about the way their creativity appears to be, on social level, or what their civilizational accomplishments are. That would be of no interest to us, nor should it affect us. However, in a situation such as it is today, there is scarcely any normal person, anyone who is not a robot or internationalist, who could stand without admitting that their most significant feats, acknowledged worldwide, are human trafficking, production of and organized trade in narcotics, trade in human organs, while their accomplishments are blood feuds, terrorist attacks, camps, "houses" and tribal way of life. As for the culture (apart from the talent for making artistic photos, such as the one on which a terrorist appears in natural size), we definitely must not forget the indisputable fact that in the "former Yugoslavia" they really had excellent actors. Someone sarcastic might say that their talent for acting is their only common talent, one of the authentic characteristics of their nation.

It might be a question of semantics, but I believe that it is worth mentioning here, because the "Other Serbia" appears to be very concerned about the questions of language and offense of other nations – Shqiptars are Albanians living in Kosovo and Metohia, a province of Serbia. Albanians are the people living in Albania. Shqiptars do not want to be called like that, not because it is an insult for them, but because it would point out that there is difference between them and their mother state. If they all are Albanians, then there is no reason for an "artificial" borderline between Albania and Kosovo to exist. If the terms *Shqiptar* and *Albanian* are clearly delineated, there is a good reason to it.

The Greeks, for instance, are well aware of it. They still do not recognize the name of the republic of Macedonia, just like they do not recognize the Macedonians as a nation, because thence they would accept the idea that the borderline between the two Macedonias is artificial, dubious, subject to changes.

The Croats also know it. Therefore, the Serbs from Krajina and Slavonija are denominated Serbs, whereas those from Serbia are denominated *Serbians*. They are clearly separated by language, just as they are separated by territory.

The Other Serbia, which I believe consists of people of more than dubious mental health, evil-minded persons and (to a lesser degree) those who are there since they have deviated, generally doesn't know about this. They mostly want to believe that Shqiptars are bothered if someone calls them like that.

They don't defend the Shqiptars only. One amongst them, known for his language and behavior that would embarrass a drunken truck driver going out on Sat-

urday night to his favorite inn, was defended by Sonja Biserko. When asked to comment on his statement that some journalists should be sent to the gallows, Sonja first tried to avoid answering, by pointing that the blame was on the journalists during wartime (this is called relativization of crimes), and only after the presenter insisted, she gave explicit answer: “Such is the language of Pera Luković, he entered into that Nazi language, which dominates our public discourse, and from within that pattern he pelts it with that language of his. Actually, he is destroying it linguistically... He simply enters into the pattern and demolishes it from the inside”.

Is he also to be summoned before court, or does his “artistic procedure” have greater value and more importance than the work of one of the greatest Serbian writers? Is it possible to justify such writing at all, and in what context? And what kind of people are those capable of justifying and supporting it?

In a TV show on public broadcasting service, Borka Pavićević (known for her statement that not everyone has the right to their opinion) defended the language used by Nenad Čanak, and the calls for gallows, saying that “such language, in certain political context, is something that can be understood”. [Nenad]Prokić’s remark about Serbs (“That’s the only language those beasts understand.”) was justified by Borka, laconically and with a smile, by saying that he only quoted Thomas Mann.

Biljana Kovačević Vučo (who could win herself a place in history with her latest fantastic statement that “patriotism should be redefined”) also defended the right to attack one’s own people. In a TV show on the Radio Television of Serbia, broadcasted a few days ago, when asked by the presenter: “Can we say anything we please about ourselves?”, she replied: “Yes, that is a question of political culture, words that we are going to use, public discourse, style, irony (...) whereas discrimination refers to the other and diverse.” If someone were to accept what [Kovačević]Vučo is saying, he could then say, for instance, since we’re all bros and frat, that she is a fickle liar, a manipulator who is turning away from facing the truth, someone who sold out for chickenfeed. Biljana surely wouldn’t be angry with such a person, because, among ourselves, we can say whatever we please of one another.

Just as Mss. Biserko and Pavićević wouldn’t have any reason to get angry if someone were to say that their behavior is “radically retarded”, because that’s a quote of Luković who “entered into that Nazi language, which dominates our public discourse”. Or if someone were to tell them: “You shall stifle in your own report, and smell of calumny”, they wouldn’t be offended, because it is just a quote from Shakespeare (*Measure for Measure*).

The Slovenes recently had an affair, in which a book and a writer were involved, and the entire Slovenian public took a stand to defend an unknown writer and his right to write about Slovenia and the ethnic minorities living there openly and freely, in a way in which he experiences the situation. Even the Minister of the Interior,

Katarina Kresal, stood up in defense of Goran Vojnović, Slovenian-Bosnian author of the novel *Čefurji raus! (Get lost, Southerners)*, who was taken into custody, and against whom legal action was taken. She conveyed to the Slovenes that “it would be wise for them to read it, because we are too often intolerant towards people who live there (in Fužine settlement)”. In that way, she gave a striking example to the police, of whom she is in charge of, as well as to their compatriots, and the entire Balkans, that literature and written word must be free of police persecution. It is obvious that some people here still didn’t get that message.”

constitutes an instance of HATE-SPEECH.

IT IS ORDERED that the accused Zoran Grbić, author of the text, and Djordje Vukadinović, editor-in-chief of the journal “NSPM”, as well as any successors that may come to hold their positions, remove the text quoted above in the statement of this court ruling from the journal’s web-site (<http://www.nspm.rs/politicki-zivot/ocevi-oci-i-macche-srbije.html>).

IT IS PROHIBITED that the accused Zoran Grbić, author of the text, and Djordje Vukadinović, editor-in-chief of the journal “NSPM”, as well as any successors that may come to hold their positions, keep and/or release on the web-site the text quoted above in the statement of this court ruling, or any similar texts which include ideas, information or opinions inciting discrimination, hate or violence against other nations, and which constitute hate-speech.

IT IS ORDERED that the accused Zoran Grbić, author of the text, and Djordje Vukadinović, editor-in-chief of the journal “NSPM”, as well as any successors that may come to hold their positions, release this court ruling, in its entirety, without any comments, on the web-site, under the column “Political Life”, free of remuneration.

IT IS ORDERED that the accused Zoran Grbić, author of the text, and Djordje Vukadinović, editor-in-chief of the journal “NSPM”, to jointly reimburse the plaintiff for the costs of litigation.

all within period of 8 days as from the day of receipt of a written copy hereof, under threat of enforcement of court ruling.

Andrej Nosov
(signed)
(seal)

“Youth Initiative for Human Rights” Association – Belgrade

In Belgrade, on May 5th, 2009

BIBLIOGRAPHY