Short Summary

Zeljko Bodrozic

Introduction

On October 26, 2006 (to be delivered to the accused at February 15, 2007), the Supreme Court of Serbia, in a chamber that resided **judges Dragiša Djordjević, president, and Slobodan Rašić, Gligorije Spasojević, PhD, Sretko Janković, MA, and Goran Čavlin**, **members**, have decided to *OVER-RULE AS INCONSEQUENTIAL* the demand for the protection of the legality (due process of law), of the **republican public prosecutor Jovan Krstić,** who have requested annulation or revision of the decision KJ.36/02 of Municipality Court in Kikinda from May 14, 2002, and decision kž 409/02, of the same court, from November 20, 2002, and thus not to reveal **Željko Bodrožić** from the accusation of committing a crime of defamation and libel, described in Article 93/2 of the Serbian Criminal Code, against private prosecutor **Dmitar Šegrt.**

By doing this, the Supreme Court of Serbia have not just **OFFICIALLY CONCLUDED THIS BIROCRATIC, DEPERSONALIZED COURT FARSE**, but have also **REFUSED TO ACT UPON THE DECISION (VIEW) OF THE UN COMMITTEE FOR HUMAN RIGHTS**, released in 2005, concerning this case.

This overview of the **BODROŽIĆ CASE**, produced in order to re-actualize the problem which the Legal Aid Office of **LAWYERS COMMITTEE FOR HUMAN RIGHTS** is trying to resolve from its' beginning in 2001, is intended to **INFORM THE PUBLIC THAT SERBIA STILL LACKS LEGAL MECHANISMS FOR IMPLEMENTATION OF DECISIONS OF INTERNATIONAL COURTS AND ORGANIZATIONS, INCLUDING DECISIONS OD THE EUROPEAN COURT FOR HUMAN RIGHTS.**

Chronology

On January 11, 2002, "Kikindske" weekly have published an article titled "**BORN FOR REFORMS"**, in which the author Željko Bodrožić has depicted the political scene that surrounded the first year of transition in the town of Kikinda. Bothered by the fact that the first year of transition to democracy had not brought any significant political changes in his town (for the representatives of the new, democratic changes were the very same representatives of the old power), Bodrožić illustrated the situation in Kikinda with indignation. Among other town's people, mentioned in this text in a context of existent relations with daily politics and Milosevic's regime, Bodrozic has used the case of Dmitar Šegrt, ex-member of Executive Board of the Socialist party of Serbia and director of local factory "Toza Marković", as an example of what he wanted to portray as situation on the political scene at that time in Kikinda.

Soon after that Šegrt initiates a criminal case against him, for criminal acts of defamation and libel. Bodrožić turns to YUCOM lawyers for help, which marks the beginning of our struggle to protect his rights. At first, the court of first instance have, after the initial proceedings, allowed the prosecutors' request and punished journalist Željko Bodrožić for criminal act of defamation. Bodrožić's representatives (YUCOM lawyers) have then submitted a plea to a court of second instance in Zrenjanin. This court over-ruled the plea as inconsequential, after which Bodrožić's representatives (YUCOM lawyers) are submitting another plea to the Republican Public Defender, who over-rules it again. Lacking any other legal routes, Bodrožić is, with the assistance of YUCOM's legal

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team, turning to the UN Committee for Human Rights, which, on its' 85th session on October 10, 2005, releases a following view:

1. The Committee observes that the State party has advanced no justification that the prosecution and conviction of the author on charges of criminal insult were necessary for the protection of the rights and reputation of Mr. Segrt.

2. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose a violation of article 19, paragraph 2, of the Covenant in respect of the author.

3. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including quashing of the conviction, restitution of the fine imposed on and paid by the author as well as restitution of court expenses paid by him, and compensation for the breach of his Covenant right.

In a recent conclusion of this case, Serbian Ministry of Justice has refused to meet its' obligations and answer to the view of the UN Committee. The same refusal then came from the Supreme Court of Serbia, by way of use of a newly devised legal mechanism for handling decisions of international courts and organizations.

Having in mind all of this, YUCOM offers the following

Conclusions

1. The Željko Bodrožić case best describes the unwillingness of state to implement decisions of international courts and organizations, that is, in this case, the decision of the UN Committee for Human Rights.

2. The Željko Bodrožić's case significance is much larger if counting the fact that the initiative before the UN Committee has been submitted at the time when the state (then FRY) did not still ratify European Convention on Human Rights. This is thus the only former Yugoslav petition ever submitted to the UN Committee, and the only one that received a view from the Committee that finds violations of human rights, described in the Pact on Civil and Political Rights.

3. Unfortunately, persistent ignoring of this UN Committee's view by the state of Serbia (then FRY), even if it is the only one ever reached for the area of former Yugoslavia, envisages the future behavior in cases of decisions of the European Court of Human Rights, for the existent legal mechanisms, prescribed in the Law on Criminal Procedures and the Law on Civil Procedures as extraordinary procedures in front of the Supreme Court of Serbia, leave the possibility for local courts to decide on significance and validity of decisions of international courts.

4. The Supreme Court of Serbia has the authority to reject, revise, or annulate the decisions of courts of lower authority, acting upon the extraordinary legal measures, which means that the Supreme Court will treat the validity of decisions of the Strasbourg Court for Human Rights as the decisions of any other court, instead of having an obligation to act directly upon those decisions. Moreover, if the Supreme Court over-rules any decision of the EU Court of Human Rights, thus sending the procedure back to its' beginning, the same authority is inherited by courts of first instance. This leaves no guarantee for persons whose rights have been violated by the state that any ruling reached by the European Court could be actually implemented, and their rights protected.

5. Additional concern is raised by the recent statement of Serbian Justice Minister Zoran Stojković, who said that there is no possibility for the state to carry out the responsibility for implementation of decisions of European Court for Human Rights, for it would mean to interfere with the authorities of judiciary.

6. This completely diminishes the role and importance of rulings of the European Court for Human Rights – local courts, which are object of procedures in front of the Strasbourg Courts are given the authority to decide on these decisions, to over-rule them or devaluate them.

7. YUCOM recommends that new mechanisms should be built into the legal system of Serbia, that would enable direct implementation of rulings of international courts and organizations, Un Committees, and European Court for Human Rights, in order to stop the progress of such a policy.

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