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Human Rights and Democracy Violation Early Warning *Weekly Newsletter* No. 33

At a request of the *Serbian Orthodox Church* (SPC), the Government of Serbia withdrew on Wednesday, Mar. 4, 2009 the Draft Law on the Prohibition of Discrimination (hereinafter: Anti-Discrimination Law) from the parliamentary procedure.

Apart from the fact that it belongs to the legislative package to enable Serbia's inclusion into the "white Schengen list" and enable its citizens visa-free travel to EU and some other European countries, the Law represents one of the pieces of legislation most essential for the further development of democracy and respect, uphold and protection of human and minority rights, change in the value system and acceptance of equality as a condition for the functionality of the system. This Law contributes to the harmonization of Serbian legislation with the standards enshrined in numerous international instruments and the European Convention on Human Rights.

The Anti-Discrimination Law has been awaiting adoption by Parliament for four years spent for a broad public debate and often sharply opposed views. Following its passage in the competent parliamentary committees (notably the Legislative and European Integrations Committee), as well as consultations with all the ministries, the Government finally adopted its draft on Feb. 19, 2009 and submitted it to Parliament for adoption. The Law falls into the jurisdiction of the Ministry for Labor and Social Policy. Minister in charge, **Rasim Ljajić**, commented on the news of the Law's withdrawal that no one had asked for his opinion, since he was allegedly "inaccessible". The draft Law was withdrawn following a so-called "telephone sessions" of the Cabinet: such sessions are usually held in emergency situations when regular sessions are simulated and irregular political demands are fulfilled and measures taken.

SPC has confirmed that it had addressed its objections to the draft Law in a letter to the Ministry of Human and Minority Rights, whereupon the Government withdrew the draft. SPC thereby had had the consent of the Belgrade Archbishopric of the Catholic Church, the Islamic Community of Serbia, the Evangelical Church and other religious communities.



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It has become public -- if that matters at all -- that the SPC was especially "dissatisfied" with articles 18 and 21 of the Anti-Discrimination law, which deal with possibilities of altering religious beliefs and expressing gender identity and sexual orientation. However, Minister **Ljajić** states that the SPC questions the Law as a whole. Prime Minister's Office issued a lapidary statement that changes in the draft would be dealt with urgently, "since we are dealing with a law in a set which represents a precondition to include Serbia into the 'white Schengen list'".

Internet portal *e-novine* (e-news) reports March 5 that Bishop **Irinej Bulović** contacted the Office of the President of the Republic on behalf of the SPC, whereupon the draft Anti-Discrimination Law was withdrawn from Parliament in an emergency procedure.

At the first regular session of Parliament on March 5, the withdrawal met negative reactions by **Vladan Batić** (independent MP), **Balint Pastor** (*Minorities' Group Whip*) and **Ivan Andrić** (Liberal Democratic Party – LDP). While **Tomislav Nikolić** (SNS - *Serbian Progressive Party*, a split-off of **Vojislav Šešelj's** SRS - *Serbian Radical Party*) said that he "will not permit that anyone belittles SPC dignitaries in Parliament", **Dragan Marković-Palma**, MP for the SPS-PUPS-JS group that is also the ruling Democratic Party's coalition partner, underlined that "if homosexuals are to lead Serbia to Europe, it is better that we remain in Serbia and shepherd sheep".

Numerous NGOs expressed their opposition to the withdrawal of the Anti-Discrimination Law from parliamentary procedure. They include: *Belgrade Human Rights Center, Coalition against Discrimination, Gay-Straight Alliance, Women in Black, Youth Initiative for Human Rights, Anti-Trafficking Center, Human Rights Committees Network, Coalition for a Secular State, Helsinki Committee for Human Rights in Serbia, Lawyers' Committee for Human Rights* and many others. Citizen's Protector (Ombudsman) **Saša Janković** underlined in a special statement that "democratic procedures and institutional mechanisms [have] in this case [been] reduced to a bagatelle to the detriment of citizens and their right to not only to protection from discrimination, ... but to responsible and transparent governance as well".

Marko Karadžić, State Secretary in the Ministry for Human and Minority Rights, stressed that his Ministry will not allow the draft to be altered; it will insist on adopting the text as originally drafted. He went on to say that "no individual or group has the right to change the legislative procedure".



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Withdrawing from the final stage of the procedure a law which has passed the regular drafting procedure and represents one of the very few laws which had undergone the scrutiny of a broad public debate, represents a serious blow to the independence of institutions from illegal influence of the SPC and other centers of power alike. Several facts testify to the fact that the influence of informal centers of power in Serbia still exceeds the authority of regular and legitimate institutions. The notorious "telephone sessions" have till now been held in emergency situations as a way to evade institutional solutions to problems considered to be politically sensitive, and have proven to be one of the best instruments to compromise whatever little credibility the Government of Serbia may still have.

Serbian Orthodox Church as one of undoubtedly most influential institutions in Serbia, has repeatedly demonstrated that it is more influential than it is guaranteed by laws and the Constitution of Serbia; however, until now it has not resorted to a public exercise of that power to demonstrate that it is more powerful than the state and its legitimate institutions. Nevertheless, responsibility for this anti-constitutional conduct and direct undermining of the principle of secularity of the state lies not with the Church. The SPC has the right to make such attempts, but the authorities of the state have a constitutional duty and are obliged to make it clear to any center of power -- even if it is to be the most powerful institution in the country -- that nobody is entitled to violate the Constitution and breach the laws of the state. The entire responsibility for the withdrawal of the Anti-Discrimination Law rests with the Government, whereas civil society -- political parties included -- should oppose the putsch performed by the Church and permitted by the Government of Serbia.

OUTLOOK:

Chances are fair that the problem arisen upon the withdrawal of the Law against Discrimination from the adoption procedure will be reduced to the issue of adding Serbia to the "white Schengen list", whereby is to be expected that fundamental human rights such as the right to express gender identity and sexual orientation, as well as conviction and belief, will be consciously sacrificed by the Government in the name of the citizens' interest to abolish visa restrictions for Serbian citizens' EU travel.

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Addendum: Unofficial translation of the disputed provisions of the Anti-Discrimination Law.

Art. 18:

"Discrimination exists if steps are taken against the principles of freedom of expression of belief or conviction, or if an individual or a group is denied the right to acquire, maintain, express or alter their faith or conviction, as well as the right to privately or publicly express their convictions, in accordance with the law."

Art. 21:

"Gender identity and sexual orientation are a private matter and no person can be called upon to publicly declare one's gender identity and sexual orientation. Everybody shall have the right to express their gender identity and sexual orientation, whereas discriminatory measures based on expression of gender identity or sexual orientation shall be prohibited.

Freedom of expression of gender identity and sexual orientation shall relate to cases of transsexual persons as well."