

CASE OF BODROŽIĆ v. SERBIA

Introduction

The Bodrožić case represents the first and only decision of the UN Human Rights Committee¹ against Serbia, and exposes a deficiency in Serbian legislation for implementing decisions from UN bodies.

Željko Bodrožić, a journalist for the *Kikindske* weekly newspaper, was sentenced on charges of defamation after writing an article entitled “Born for Reforms.” Dmtar Šegrt, a former Socialist Party official, initiated the criminal case against Bodrožić under charges of defamation and libel with the Municipal Court of Kikinda. The libel charge did not stand in court because the article was factually accurate. Bodrožić and his lawyers from YUCOM turned to the UN Committee for Human Rights after appeals to the several Serbian courts were ruled as inconsequential.

The UN Committee for Human Rights found that the State party had not shown prosecution and conviction were necessary for the protection of the rights and reputation of Mr. Šegrt, a prominent public and political figure. The expression of opinion by Bodrožić, in the manner he expressed it, did not amount to an

unjustified infringement, and it did not merit criminal action.

Chronology

On January 11, 2002, *Kikindske* weekly published an article entitled “BORN FOR REFORMS,” in which the author Željko Bodrožić sought to portray the political scene surrounding the first year of transition to democracy in the town of Kikinda. Bothered by the fact that the first year of transition had not brought any significant political changes in his town (the representatives of the new democracy were the very same representatives of the old power), Bodrožić reported the situation with indignation. Among other townspeople mentioned in this text, in the context of existing relations with daily politics and Milosevic’s regime, Bodrožić called attention to the case of Dmtar Šegrt, an ex-member of the Executive Board of the Socialist Party of Serbia and director of a local factory called Toza Marković, as an example of what composed the prevailing political scene in Kikinda.



Željko Bodrožić

¹ The UN Human Rights Committee is a treaty-based body that considers claims under the Optional Protocol from individuals who assert violations of their political and civil rights without domestic remedy.

Soon after the article was published, Šegrt initiated a criminal case against Bodrožić for criminal acts of defamation and libel. Bodrožić turned to YUCOM lawyers for aid.

On May 14, 2002 the Municipal Court of Kikinda, after the initial proceedings, allowed the prosecutor's request and convicted Bodrožić of defamation but acquitted him on the charge of libel on the basis that the factual aspects of the article were accurate.

Bodrožić's representatives (YUCOM) subsequently submitted a plea to a court of second instance in Zrenjanin. That court overruled the plea as inconsequential on November 20, 2002. Following that decision, YUCOM put forward another plea to the Republican Public Defender, who also overruled their appeal.

Lacking any other legal course, Bodrožić and YUCOM turned to the UN Committee for Human Rights, which released the following decision during its 85th Session on October 10, 2005:

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. Šegrt.

2. The Human Rights Committee, acting under the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it disclosed a violation of

article 19, paragraph 2, of the Covenant² in respect of the author.

3. In accordance with 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.*



Implementing the Decision: An Effective Remedy

1. After the Committee's decision, the Republican Public Prosecutor, Jovan Krstić, requested that the judgments against Bodrožić from the Municipal Court in Kikinda be vacated. However, the Republican Public Prosecutor did not mention the UN Committee decision or its findings in the petition though the decision was the reason for the request.

On October 26, 2006, the Supreme Court of Serbia, comprised of judges Dragiša Djordjević, President, Slobodan Rašić, Gligorije Spasojević, Ph.D., Šretko Janković, MA, and Goran Čavlin overruled as inconsequential the demand from the Republican Public Prosecutor. The Supreme Court did not repair

² Article 19, paragraph 2, guarantees a right to freedom of expression including the right to impart information.

previous judgments of national courts or adhere to the will of the Committee for Human Rights by quashing the verdict against Bodrožić. Likewise, the Court did not even address the Committee's decision, a sign that the judges did not wish to honor the findings of the custodial body of the rights guaranteed by international pact. Consequently, the Serbian judiciary missed the opportunity to conduct their actions in accordance with the charter of the UN Human Rights Committee.

Compensation for the Breach of His Covenant Right

2. The Serbian Ministry of Justice refused to meet its obligation and answer the decision of the UN Committee until, after years of a hostile environment towards implementing the UNHRC decision, the internal political climate shifted and the Ministry of Human and Minority Rights became involved.

YUCOM persistently pressed for media coverage during this time. In its fight for Bodrožić's rights, journalist associations contributed to YUCOM's efforts. From 2005 to 2008, YUCOM lawyers refused to abandon the Bodrožić case because of its significance to future application of international decisions. Ultimately, the Ministry of Human and Minority Rights appealed to the Ministry of Justice for Bodrožić to recover immaterial damages, and the Ministry of Justice finally announced that it would award Bodrožić with 800,000 dinars.

Conclusion

Despite being prompted by the UN Committee for Human Rights decision to quash the verdict against Željko

Bodrožić, the Serbian judiciary has refused to implement any material revisions to its original findings.

There is no direct obligation, or legal mechanism, for Serbia, a UN member state that ratified the Optional Protocol to the International Covenant on Civil and Political Rights in 2001, to conduct itself in accordance with the Standpoints of the UNHRC (unlike the obligatory relationship Serbia has with the European Court of Human Rights after signing the European Convention for Human Rights).

The consequences for failing to implement a decision by the UN Committee for Human Rights are strictly ethical and political. The International Covenant on Civil and Political Rights is an important agreement to honor. 104 State Parties have ratified the Optional Protocol, and the UN Committee for Human Rights acts on behalf of this global populace. In order for Serbia to subdue perceived defects in these spheres, it is essential that efforts be made to promote and respect mechanisms for implementing international obligations.

Chan H. Braithwaite