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Human Rights and Democracy Violation Early Warning *Weekly Newsletter* No. 28

The verdict No. 2124/08 dated August 19, 2008 of the Belgrade District Court, assembled by: **Savka Gogić**, presiding judge, and judges **Vesna Petrović** and **Aleksandar Čolić**, confirmed the verdict by the 4th Municipal Court in Belgrade X-K.843/07 dated March 11 2008 in which Judge **Miroslav Bošnjak** found Zoran Petakov guilty on the count of insult against **private plaintiff** Bishop **Irinej Bulović**, by "stating the following during his participating in a TV show: 'There are the four riders of the apocalypse: Anfilohije¹, Atanasije, Artemije and Irinej', and previously presenting his opinion on the Serbian Orthodox Church which, according to the defendant, promotes an ideology suitable for right-wing extremists, adding that during the last 15 years these four men have had more influence on the creation of right-wing extremist groups than the state security"².

CHRONOLOGY

Bishop Irinej's private indictment

In his lawsuit dated February 16 2005, Bishop **Irinej Bulović** demanded that **Petakov** should be found guilty for the felony of insult because in a BK TV show he insulted "his Eminence of the Serbian Orthodox Church - Bishop of Bačka Irinej - Mirko Bulović, because he **presented his opinion on the Serbian Orthodox Church ... and in the context of explaining his opinion....**"The private plaintiff also demanded for the hearing of evidence: questioning of the defendant Petakov, questioning of the plaintiff Bishop Irinej, insight in the transcript of the part of the TV program which he enclosed in his lawsuit and the examination of the entire program which will be delivered to the court by the private plaintiff".

Cause for the private indictment

The BK TV talk show *Klopka* („The trap") dealt the subject of fascism, on the occasion of the storming of the Dept. of Philosophy at the University in Novi Sad by members of the Nazi organization *Nacionalni stroj*³ (National Order) who subjected

¹ Bishop Amfilohije's name was incorrectly spelled by the judge.

² EWS reported about this case in the newsletters No.2 and No.4.

³ Serbian chapter of the *Stormfront*.





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participants of a panel discussion to verbal and physical harassment. During the program, **Zoran Petakov** said, among other things: "I am far more interested in the role of **parts of the Serbian Orthodox Church** in financing and encouraging right-wing extremist and pro-fascist groups and, how should I put it, care they are enjoying..."

Asked by a participant of the debate to name an example, Petakov replied: "There is the example from Novi Sad, where this *Nacionalni stroj*, under a different name, were given their premises by the Serbian Orthodox Church... Under the name of Youth Organization *Soko* ("Falcon")... So, I am far more interested in an ideology those right extremists identify themselves with, which is promoted by the Serbian Orthodox Church, i.e. was promoted by those great bishops that nobody dares to say anything about now, **one cannot criticize them because that would be sacrilege. I am speaking, of course, about Bishop Nikolaj, who did spend some time in Dachau, but as a guest.**"

Following the insistence by the anchor: "Tell us about some current ones", Petakov said: "...well, there are the four riders of the apocalypse: Amfilohije, Atanasije, Artemije and Irinej..." and added: "...Because the four of them have had more influence during the last fifteen years on the creation of those groups than the state security ever had..."

First instance procedure and verdict

Judge Bošnjak denied to hear the evidence of questioning the private plaintiff Mirko Bulović – Bishop of Bačka Irinej, the questioning of witnesses of the *National Order's* who had stormed the panel discussion at the Dept. of Philosophy in Novi Sad, the obtaining of court records regarding that case, or the obtaining of official records of the registration of the *Youth Organization Soko* and its members. In short: Judge Bošnjak denied the hearing of all suggested evidence, and he explained his denial to question the private plaintiff Bishop Irinej by saying that **his questioning would drag out the procedure**, that it is excessive and unnecessary, especially bearing in mind the fact that **Bishop Irinej was not present as participant of the incriminating TV show** (sic!). Judge Bošnjak specifically denied to question Bishop Irinej about the fact whether he really feels offended by Petakov's statement, emphasizing that for the felony of insult **"the subjective feeling of being offended is not at all important"**, but that this feeling is estimated by the court based on **"objective criteria... by the understanding of the environment in which the act has been committed, which cannot be opposed to the generally adopted societal standpoints"**





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The fact whether the *Youth Society Soko* received its premises from the Church or not, i.e. whether its members are the same those of the neo-Nazi organization *National Order*, is considered by the Judge to be unimportant because: **„the private plaintiff (Bishop Irinej) certainly cannot be held responsible for the actions of individuals who act contrary to the widely accepted ethos of the Church, which stands for love towards all people, from which non-violence and tolerance stem“.**

Considering all circumstances, Judge Bošnjak explained the verdict:

„The said statement by defendant Zoran Petakov according to **an objective judgment expresses belittling of the private plaintiff and presents a negative attitude towards his person.**“

„The Episcopal rank is the highest in the Orthodox Church, because bishops are the direct heirs of the Apostles. An episcopos (from the Greek *Epi* – over, *biskopeo* – sees; therefore the one who oversees) is the supreme dignitary of the Church and the believers, the main teacher of faith and morals and he has the seniority in the religious service of the sacred secrets (source: “Religion Teaching in the House”...)

After explaining the meaning of Apocalypse based on the New Testament and quoting St. John the Theologian’s Revelation, Judge Bošnjak further explained Petakov’s guilt: „based on the Episcopal rank of the plaintiff, which cannot be separated from his person, the incrimination by the defendant Zoran Petakov, is considered by the Court as an extremely severe insult, because it insinuates that the private plaintiff is and does the exact opposite of his Episcopal rank, i.e. that he personally and as an Episcopos of the Serbian Orthodox Church does not promote good and the victory of good, but evil and the victory of evil, in the sense of Christian eschatology.“

Judge Bošnjak determined that **Petakov’s statement represents a value judgment**, but that Zoran Petakov „did not have any basis for it in the actions and behavior of the private plaintiff or in the acts of the Serbian Orthodox Church during its history and today“. He added: “such **judgments by Zoran Petakov could have hurt the religious feelings of other citizens of Serbia, 95% of which are religious, according to the last population census, 85% of those being orthodox Christians** (source: Serbian Ministry of Religion)..

Besides, Judge Bošnjak considers the following to be particularly important, as well: “The private plaintiff is an Episcopos of the Serbian Orthodox Church which does not dispose over any factual and real instruments of power, but its power is based on its authority and the free submittal of its members to that authority. Also, the Church does not dispose over any income, as is the case with the state, a company or private individuals. Accordingly, its income depends on the voluntary contributions by the





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churchgoers and other citizens, and therefore Church dignitaries should have greater protection from similar incriminations than the one enjoyed by state officials and politicians."

Finally, Judge Bošnjak cites Article 10 of the *European Convention on Human Rights* and concludes that „it is indisputable that everybody has the right to freedom of expression which includes **the freedom to receive and impart information and ideas without interference by public authority, but with the use of that right comes the duty and responsibility which may be subjected to formal conditions, limitations or penalties proscribed by the law necessary in a democratic society in the interest of protection of others' respectability and rights... but bearing in mind the contents and nature of the defendant Zoran Petakov's offensive statement, the circumstances in which he made it and the specific nature of the subject it was addressed to, by the judgment of the Court, it cannot be filed under the right to expression guaranteed by the said Convention.**”

In meting out the 100.000 dinars fine in punitive damages (for the compensation damages in the amount of 1.000.000 dinars, Judge Bošnjak addressed the private plaintiff to civil litigation) Judge Bošnjak considered as an aggravating circumstance that the defendant Petakov **„is a history professor, with an above average education, which points out the higher level of his guilt.”** As aggravating circumstances the court considered the: **„level of violation of the protected good (Bishop Irinej), the severity of the insult, which was determined by the Court in an analysis of the offensive statement's contents bringing it in connection with the specific nature of the subject (Bishop Irinej) it was addressed against ... incurred consequences...”**.

Appeal of the convicted Zoran Petakov

The appeal points out that the defendant was denied his **right to defense, right to objective trial and that he was subject of a form of discrimination**, since Judge Bošnjak had identified the private plaintiff with his clerical function, and took it upon himself to represent orthodox Christians and the Church. Besides, the Court refused to investigate the circumstances under which Petakov expressed his judgment, namely, the one concerning the financing and assisting right-wing extremist organizations, based on information which known to him; he had said in the TV show that those issues cannot be criticized since it is proclaimed sacrilege. The appeal also points out the **violation of the basic human right to expression of opinion**, since this represents a criticism, with no intention of belittling, but to raise the issue of the Church's role and the aiding of right-wing extremist organizations.





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The appeal also cites the standpoint of the European Commission from the 1997. *De Haes and Gijssels vs. Belgium* case, that "...in a public argument with a serious purpose, the common interest has predominance over the legitimate protection of reputation of the other party, even if the debate uses language which is offensive to that party," as well as the verdict of the European Court for Human Rights in the *Obrerschlick (No.2) vs. Austria* case from July 1997 which says that „penalization for the use of offensive language by a person using it in a case when they represent a reaction to an event or a fact that caused disgust or indignation with that party, does not represent a personal attack or a violation of freedom of speech.”

The appeal primarily points out that, firstly, the Judge identified himself with the Serbian Orthodox Church, then identified the private plaintiff with the Church and acted in the name of orthodox believers, without determining whether there was a felony of insult according to the private indictment by Mirko Bulović and that Petakov was in fact indicted for "sacrilege" because he dared to criticize church dignitaries.

The District Court's decision on the appeal

The Belgrade District Court which assembles **Savka Gogić** as President of the Council and Judges **Vesna Petrović** and **Aleksandar Čolić**, denied Zoran Petakov's appeal and confirmed the first instance verdict with no essential argumentation and without dealing with the claims of the appeal, which it arbitrarily denied.

Excerpts from the argumentation: "Although the defendant stated in his defense that he does not feel guilty and had no intention of offending anybody; that he only criticized the actions by the private plaintiff Bishop of Bačka Irinej Mirko Bulović, as well as actions by the Serbian Orthodox Church, **the court of first instance correctly evaluated the indictee's defense when finding that this statement cannot represent a manifestation of the defendant's right to freedom of expression as guaranteed by the European Convention.** Therefore, the claims of the defendant's appeal – stating that in this penal matter, the factual situation had been determined wrongly and incompletely – are deemed unfounded. The appeal does not point out at new facts and new evidence; it rather challenges a correct estimate of the evidence by the court of first instance. However, **the Belgrade District Court finds that the court of first instance correctly determined that the defendant Zoran Petakov, in the TV show "Klopka", broadcast on November 16, 2005 on BK television, had publicly insulted the private plaintiff, His Eminence of the Serbian Orthodox Church, Bishop of Bačka Irinej Mirko Bulović, by saying: "There are the four riders of the Apocalypse: Amfilohije, Atanasije, Artemije and Irinej", and previously stating his opinion that the Serbian Orthodox Church was promoting an ideology right-wing extremists identify**





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themselves with, explaining his standpoint that "during the last 15 years these four men have had more influence on the creation of right-wing extremist groups than the state security", **which the first instance [4th Municipal] Court substantiated with clear arguments this Court accepts as valid, too."** The District Court as a court of second instance also considers that **"The statements of the defendant, the manner in which they were made on the basis of objective criteria and understanding of the environment in which they were made, are of an offensive nature according to the generally adopted norms and standards of the modern society...** because, based on the manner of expressing the defendant's statement, it is obvious that the offensive incrimination presented by the defendant represents a groundless attack against the person and dignity of the private plaintiff... **Besides, the defendant is sufficiently educated to be able to express his opinion in the said debate in words that are not offensive,** and to address his criticism in a manner that does not insult the honor and dignity of the private plaintiff."

The District Court only confirms these quasi-philosophical and quasi-moral standpoints of Judge **Bošnjak**, stating that the court of first instance did everything according to regulations and that there are no grounds for the abolishing or alteration of the first instance verdict. With no argumentation and completely disregarding the claims of the appeal, the District Court put itself in the position of a supreme arbiter who is not obligated to argument its unquestionable decision and, thus only further degrading Serbian judiciary, only bureaucratically approved the first instance verdict. It is in this way that the District Court violates the right to effective legal remedy which according to the practices of the European Court of Human Rights does not consist only of a possibility to appeal a ruling, but also action to be taken in relation to the subject-matter. This has not been the case on this occasion.

The verdict of the Belgrade District Court puts an end to the case of **Zoran Petakov**, who officially became a victim of the clericalization of the state by irresponsible courts who erase the line between religious and secular issues, between the State and Church, between critical attitude and dogma.





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In lieu of a conclusion:

The Zoran Petakov verdict demands this detailed analysis since it indicates several issues concerning wrongly understood human rights standards in Serbia, wrong interpretation of the *European Convention on Human Rights*, the judges' lack of knowledge when it comes to the practice of the European Court for Human Rights and a fundamental lack of understanding of the right to freedom of expression and the right to effective legal remedy as basic human rights.

Besides, this verdict also represents a very dangerous attempt of the state's clericalisation through an effective court verdict. Equaling of the high clergy and what they should represent according to the Church standards leads to a situation in which they become untouchable, whereas the citizens are prevented to criticize certain moves by the Church.

Putting a religious leader in a situation of a subject with more protection than a regular citizen, not only represents an incorrect interpretation of the *European Convention*, but also a direct discrimination of the citizens. The same can be said of quoting religious scriptures in order to substantiate a ruling of a court of law.

And finally, the lack of commitment (sanction) if the court of second instance does not argument its decision, if it does not consider a single claim of the appeal, if it only confirms the first instance verdict - questions whether there is a right to effective legal remedy in Serbia. Only a formal confirmation of the verdict, without an argumentation which would take in consideration the claims of the appeal, renders meaningless the appeal itself, as a legal remedy, thus confirming the right to effective legal remedy.

