

## THE FIRST RULING FOR HATE SPEECH IN SERBIA

### BACKGROUND

In the section "Economics" of March 16, 2006, "Glas javnosti" daily published an advert titled "Boycott", of the following contents:

*Brothers Serbs,  
We are hereby inviting you to gather in large numbers on March 17, 2006, at 10:30 AM in front of the IMMO shopping mall, located in New Belgrade's block 64, and express our displeasure at the opening of the Croatian chain store "Idea". While we were banished from our centuries-old homes across Croatia and are being prevented from return, Croatian boot is freely threading Serbian soil, buying firms and opening stores across Serbia.*

*Until when?*

*Brothers Serbs, we are hereby inviting you to gather in large numbers, prevent the opening of the Croatian chain store in Belgrade and boycott shopping at their stores. Each purchase at IDEA is tantamount to giving money to those who were killing us and forcing us from our homes. We will be monitoring as to who is shopping at that store, thus refusing to express support for hundreds of thousands of exiled and displaced Serbs.*

*Stop Croatian occupation of Serbia!  
Exiled Serbs.*

Apropos the published text, the Youth Initiative for Human Rights' (YIHR) Belgrade Office filed a suit to the First Municipal Court in Belgrade toward prohibition of hate speech, pursuant to articles 38. and 39. of the Public Information Act of the Republic of Serbia.

On September 15, 2008, the First Municipal Court in Belgrade passed a ruling, adopting the Youth

Initiative for Human Rights' suit. The ruling found the text of the advertisement to constitute hate speech, at the same time prohibiting republication of this or similar texts which contain ideas, information or opinions that incite to discrimination, hatred or violence against other nations and which constitute hate speech. Editor of the "Glas javnosti" daily is required to publish, free of charge, the ruling in its entirety, with no commentary.

The ruling passed by the First Municipal Court was upheld by Belgrade District Court on April 01, 2009, which made it unappealable and final. In June 2009. "Glas javnosti" published the first instance ruling in its entirety.

### LEGAL FRAMEWORK

The term "hate speech" is clearly expressed and contained in provisions of the Public Information Act, whose Article 38. is titled "hate speech", whereas Article 39. of the same act prescribes an option to file a "suit for violation of hate speech prohibition", which may demand prohibition of republication of a piece of information and alike. Pursuant to provisions stipulated in the Public Information Act, it is prohibited to publish ideas, information and opinions which incite to discrimination, hatred or violence against an individual or a group of individuals for reasons of their belonging or not belonging to a race, religion, nation, ethnic group, gender or for their sexual orientation, regardless or whether the act of publication constitutes a crime.

An individual to whom as a member of a group the information personally pertains to has the right to file a suit against the author of the information and editor-in-chief of the media outlet in which the information was published, by which they can demand prohibition of its republication, as well as publication of the ruling at the expense of the accused. A suit against the author and editor-in-chief may also be filed by any legal entity whose aim is to protect freedoms and rights of a human being

and a citizen, as well as by an organization aiming to protect interests of groups from Article 38. of this Act.

The Republic of Serbia, as a member of the Council of Europe and a signatory to numerous international conventions whose provisions are binding and constitute an integral part of our legislation, is obliged to penalize and prohibit hate speech.

The Committee of Ministers' recommendation No.R.(97) 20 on hate speech defines hate speech as "all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance". Therefore, hate speech also pertains to expression of views which incite to, promote or justify the existing hatred, including all forms of hatred based on intolerance. The recommendation also urges member states to establish appropriate legislation on hate speech, as well as that national courts take account of the fact that hate speech can be so offensive to individuals or groups that it does not deserve the protection provided by the freedom of expression from Article 10. of the European Convention on Human Rights.

European Court of Human Rights has taken the position (in the case of *Gündüz v. Turkey* at al) that tolerance and respect of equality and dignity of all people constitute a basis for development of a democratic and pluralistic society.

The ruling states that in keeping with this principle, "in certain democratic societies it is necessary to sanction, even to prevent all forms of expression which propagate, incite, promote or justify hatred based on intolerance".

## **IMPORTANCE OF THE RULING FOR HATE SPEECH**

Rationale for the ruling passed in the proceedings against the editor-in-chief of the "Glas javnosti" daily states that the court has found the text of the advert to constitute hate speech, prohibited under the Public Information Act. The court has decided that in this case it is inadmissible to publish adverts

which call for illegal actions toward another or illegal boycott of another, termination or non-establishment of economic and other relations, especially by the use of words such as "Croatian boot is freely threading Serbian soil", "we will be monitoring as to who is shopping at that store" and "stop Croatian occupation of Serbia", which the then editor-in-chief Ivan Čorbić, according to the rationale given by the court, had to know.

Such judicial decision for the very first time recognizes the need for hate speech to be penalized in accordance with the Public Information Act. This has initiated development of judicial practice in which texts which constitute hate speech are penalized.

**Unappealable ruling passed by the First Municipal Court in Belgrade represents the first ruling which has found a text published in a daily newspaper to constitute hate speech. This has created a basis for more efficient fight against hate speech and establishment of the principle of accountability in the domain of press in Serbia.**

That the text of the advert constitutes hate speech prohibited under the Public Information Act is clearly indicated by the chosen words used in the text, which express hostile attitude toward a nation, incite to and propagate ethnic hatred and intolerance. In this concrete case, it is obvious that the call for certain products or stores to be boycotted due to their owners' nationality, even though they entered our market legally, constitutes hate speech. Text of the advert states that it is tantamount to "giving money to those who were killing us and forcing us from our homes", from which it is clear that such calls may stir ethnic hatred. The use of words such as "Croatian boot is freely threading Serbian soil" and "we will be monitoring as to who is shopping at that store" is aimed at propagation and incitement to discrimination, hatred and violence toward Croatian people.

**The ruling removes the former dilemma as to whether it can be established in legal proceedings that a text constitutes hate speech. Under the Public Information Act, a suit is filed for violation of hate speech**

**prohibition, and it is on the court to establish this violation, i.e. to find whether a text constitutes hate speech in a concrete case.**

The contentious text has to be labeled as hate speech, which is fully in keeping with provisions stipulated in articles 38. and 39. of the Public Information Act. It is on the court to determine whether a text, due to its contents which incite to discrimination, hatred or violence against a certain group, constitutes hate speech, and thus the issue at hand is legal qualification necessary for adequate application of provisions stipulated in the Public Information Act, i.e. as a basis for issuance of the prohibition and its rationale.

Views expressed in the newspaper article in question are incompatible with democratic principles because they threaten the rights of others and constitute violation of the right to freedom of expression guaranteed by Article 10. of the European Convention.

In instances when expressions and comments incite to intolerance, hatred or violence against individuals, a part of a population or an entire nation, organs of public authority enjoy greater discretionary right while examining the need to interfere with freedom of expression, which is also the position taken by the European Court of Human Rights. The tone of the text itself, as well as the expressions used, classify this text as hate speech.

**The media bear particular responsibility for publication of such texts, since responsibility, which is an integral part of enjoying the right to freedom of expression by media professionals, gains particular significance in situations and periods when certain topics bring inherent tensions and conflicting emotions.**

Expressions and views contained in the contentious text, having in mind the social and historical context, are exclusively in the function of inciting to intolerance between Serbs and Croats, and therefore by passing the ruling the court has met its duty of prohibiting and penalizing publication of such texts whose contents result in the feeling of

insecurity among members of national minorities in Serbia and which indirectly incite to hatred toward non-Serb population in general.

## **SUIT AGAINST “NOVA SRPSKA POLITIČKA MISAO” MAGAZINE**

In the Internet edition of the magazine for political theory and social research “Nova srpska politička misao” (NSPM) [New Serbian Political Thought] of April 27, 2009, the section titled “Political Life” features an article titled “Fathers, Forefathers and Stepmothers of Serbia” by Zoran Grbić, stating inter alia:

*One would hardly call Albanians renowned for achievements accomplished. One would rather say that since their arrival to the Balkans Albanians haven't been particularly creative. In fact, I am not aware of anything creative they have done, anything they would be remembered for by the mankind. I may be uninformed, but I am not aware of any great scientist, writer, painter, athlete... of theirs. I am neither aware of any edifice in Albania, nor of an architect that might have erected it, apart from tens of thousands of bunkers, a logical systematic continuation of high walls which they xenophobically surround their houses with. Even the biography of the only authentic Albanian woman known worldwide, Mother Theresa, is ever increasingly becoming a global topic of writings related to controversies and scandals which she had, allegedly, taken part in. Lately, all they ever do (following the theft of territory) is steal of another's history and another's historical figures.*

*The manner in which to present these pieces of information is a matter of semantics and tact rather than a question of truth. In happier of times, and in a hypothetical situation in which their policies weren't inflicting evil upon us, there is no doubt that it would be courteous to make no mention of what their creativity and civilizational achievements are like at societal level. We wouldn't even be interested in that, nor should it affect us. However, in the current situation a normal person, neither a robot nor an internationalist, would find it hard to refrain from admitting that their most significant deeds,*

*known worldwide, are people trafficking, production and organized distribution of narcotics, trafficking in human organs, whereas achievements list blood feud, terrorist attacks, prison camps, "houses" and tribal way of life. With regard to culture (apart from the talent for art photography featuring a life-size terrorist), one must not forget the indisputable fact that in the "old Yugoslavia" they used to have excellent actors indeed. Someone sarcastic might say that their talent for acting is their sole common talent, an authentic national characteristic.*

The quoted text is an attempt at apology of the writer Dobric Ćosić, against whom charges were pressed for incitement to racial, religious and national hatred and intolerance. The text, even though allegedly aiming at the apology of artistic freedoms, represents a clear example of hate speech against Albanians. Throughout the text the Albanian nation is being denigrated and depicted as culturally and civilizationally inferior to other European nations.

The author claims that the Albanian nation has done nothing creative to be remembered after by the mankind. Such a view represents denigration of Albanians and a manifestation of the worst kind of jingoism.

**Comparing nations in terms of creative achievements is the subject of all racist and jingoist ideologies throughout history, as well as today. Such a comparison also unequivocally implies that nations as a whole differ in value and that therefore their members cannot be equal either.**

What follows are "remarks" that the author does not know of a single great scientist, writer, painter or athlete, nor is he aware of any "edifice" in Albania. He further disparagingly adds that the only constructions existing in Albania are tens of thousands of bunkers which are, in author's own words, "...a logical systematic continuation of high walls which they xenophobically surround their houses with". With such views the author is trying to establish a ranking list of nations and, by assigning Albanians to a low position on the list, to prove their cultural and civilizationally inferiority. Apart from ascribing "merits" to a social group (such as a nation), i.e. stating that they do not exist, the author is accusing

that same group of "theft of another's history and another's historical figures".

Such a racist and jingoist act of comparing nations is followed by the second quoted paragraph in which the author states that it would be courteous "to make no mention of what their creativity and civilization achievements are like at societal level". However, the author refuses to remain within the limits of courtesy he himself has defined, his overt racism being reflected in the following line: "However, in the current situation a normal person, neither a robot nor an internationalist, would find it hard to refrain from admitting that their most significant deeds, known worldwide, are people trafficking, production and organized distribution of narcotics, trafficking in human organs, whereas achievements list blood feud, terrorist attacks, prison camps, "houses" and tribal way of life".

This line indiscriminately labels all members of a nation as traffickers in people, narcotics and human organs whose achievements are blood feud, terrorist attacks, prison camps, "houses" and tribal way of life. Through such a text Albanians are being utterly dehumanized and depicted as a criminal group denied of being capable of creating anything constructive or creative.

Any comparison between nations and accordingly their mutual ranking lead to racism and are an essential accompaniment of the ideology which advocates the thesis of the existence of superior and inferior races. The author wrote his article in apology of the equally racist line featured in a novel by Dobrica Ćosić. Unlike with Mr. Ćosić, what is at issue here is not a single line but an entire article aimed at proving that Albanians are indeed an inferior race, the implication of which is that they are not entitled to the same rights enjoyed by members of other nations.

**Ethnic group, as an imaginary community comprised of people who share some characteristics (usually language or customs) is incapable of achieving results in any field (only individuals are able to do so), nor can such a community be credited with individual achievements, works of art, cultural assets or alike.**

Measuring the level of “cultivation” has long been dismissed in any democratic country that is based on equality before the law and the rule of law. Belittling and insulting ethnic, religious or national groups is always tantamount to propagation, incitement to and instigation of hatred and intolerance. This text does not even attempt to conceal such an intention.

**The author’s assessment that Albanians “used to have excellent actors indeed” also represents a vulgar stereotype belonging to the same ideological matrix in which it is allowed to compare nations and ascribe individual successes or failures to a collective. Any such act inevitably leads to racism and to putting the branded nation in a subordinate position.**

An unequivocal effect of the published text is incitement to discrimination and hatred against a group of individuals for reason of their belonging to an ethnic group. The Youth Initiative for Human Rights (YIHR) has therefore filed a hate speech suit to the First Municipal Court in Belgrade against the author Zoran Grbić and editor-in-chief of the magazine NSPM Djordje Vukadinović, pursuant to provisions stipulated in the Public Information Act. The suit requests that the court establish whether the published text constitutes hate speech, as well as to order its removal from NSPM website and prohibit any further publication of this or any similar text inciting to hatred and discrimination.

**Proceedings pursuant to the YIHR suit against NSPM magazine are still underway.**

Activities described in this Newsletter were realized with the assistance of the organization Civil Rights Defenders.

