

VIOLATION OF HUMAN RIGHTS AND RELIGIOUS FREEDOM OF ARCHBISHOP JOVAN OF OHRID

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Abstract: *Despite the respect and protection of human rights and freedoms in the XXI century have become universal values and obligations of conduct for states wishing to be called democratic, there are still drastic cases of violations of these rights and freedoms, particularly in Europe. The case of Archbishop Jovan, head of the Orthodox Ohrid Archbishopric in FYROM, who for ten years is persecuted by the authorities in Skopje, because of their religious beliefs, is an example of compromising basic human rights outlined in the lofty charters, conventions, declarations and protocols adopted by the United Nations, the Council of Europe and the European Union, as well as a number of regional organizations and specialized institutions throughout the world. In this paper, we point out the provisions of international humanitarian law, which are violated by the political persecution of Archbishop Jovan. It also brings into question the character of the system that has remained resistant to all previous appeals and protests of various international organizations, the Conference of European Churches, the World Alliance of Churches, individual embassies and government. We point out that the criticism of OSCE was not sustained that the previously imposed sentences were excessive and unjust, that the assessment of the United States at the OSCE was ignored that detention and trial were disproportionate to the alleged guilt and that threaten the religious liberty of the bishop, as the conclusion of two specialized organizations Amnesty International and Freedom House that Archbishop Jovan is prisoner of conscience.*

Keywords: *Archbishop Jovan, religious freedom, human rights*

1. INTRODUCTION

Troubles of Archbishop Jovan are the consequence of long-standing schism in the Orthodox Church, because concurrently with the formation of the Macedonian nation, in Tito's Yugoslavia, the process of local independence of the Macedonian church from the Serbian Orthodox Church was going on. After secessionist breaking up of Yugoslavia, local government in Skopje tried to strengthen its national identity as FYR Macedonia, but the uniqueness of the Macedonian nation by establishing a special, the Macedonian Orthodox Church. That was not accepted in European and international ecclesiastical circles. However, the pursuit of separating Macedonian Orthodox Church from Serbian Orthodox Church was stronger, and those who have different religious beliefs in relation to local au-

thorities have fallen into an awkward situation. One of them was Archbishop Jovan, serving in Ohrid, who is a Macedonian citizen and whose citizen name is Jovan Vraniskovski.

2. SEVEN SENTENCES IN TEN YEARS

In previous decade, the judicial authorities in FYROM are against this head of the Orthodox Ohrid Archbishopric pronounce seven verdicts, of which two were definitively rejected in subsequent appeals. Each of the judgments had other excuse or referred to the various regulations, as well as the different articles of the same law, accusing Archbishop Jovan to violate them. The first time Jovan, the Bishop at the time, was convicted in 2003 for „disturbing the peace and resisting police officer.” He was sentence in 2004, because he „slandered the Macedonian Orthodox Church”, and spent in prison 220 days. He was sentenced to two years in 2006, for alleged „fraud of 57,000 Euros, then the indictment was overturned and the court acquitted him, however, finally he spent 256 days in prison. Penultimate sentence was to two years in prison for „tax evasion”, announced in absentia, in 2010.

He was at that time located in Greece on doctoral studies. FYR Macedonia is then issued an Interpol notice, but when entering Bulgaria where he was going to use the library in Sofia, Bulgarian Court of Appeals rejected a request for extradition from Skopje because it found that Archbishop Jovan is politically persecuted. Ljupce Georgievski, former Prime Minister of FYROM, has repeatedly stated that the Archbishop (at that time only bishop) Jovan is political prisoner. December 12, 2011 he returned to Macedonia, after he defended doctoral thesis in the field of religious doctrine, Archbishop Jovan was immediately arrested and has since been in prison for a total of 579 days, until the July 2 of 2013 when he received a new judgment on three years' imprisonment, for alleged „fraud in the amount of 250,000 Euros.”

Together with Archbishop Jovan 18 others priests and believers was sentenced in the area of the Ohrid Archbishopric, to two years, a suspended sentence to five years. Among them were mother and sister of Archbishop Jovan. At the same time, all church property of Ohrid Archbishopric of SPC was confiscated. If one takes into account that not one person in the history of the Macedonian judiciary was so many times convicted in ten years, there is an obvious intent that such a punishment is the intention of government is to scare all those who do not support the schismatic MOC. The latest verdict is the culmination of persistence and consistency fo the Skopje regime to crush religious freedom and the persecution of the Orthodox Ohrid Archbishopric of SPC on religious grounds.

On the latest verdicts numerous institutions activate, primarily religious and those dealing with the protection of human rights and religious freedom. The Conference of European Churches has responded the next day after pronouncing the last judgment. It supported the appeal that the World Council of Churches sent to the UN High Commissioner for Human Rights to carefully examines the subject of Bishop Jovan. In addition, the Commissioner for Human Rights at the Council of Europe and the EU Special Representative for Human Rights was asked to consider the case. Tomislav Nikolic, Serbian President in 2012, unlike all previous Serbian presidents and prime ministers who in the past ten years did not change the fate of the ecclesiastical dignitaries and refused to take him into care, said for Skopje media that the legal problem was devised. On the information that the

Bishop Jovan violated the law on taxes, he replied that Orthodox Church does not have the fiscal account, so it is not possible to charge only the Ohrid branch of SPC.

Irrespective of these proclamations and criticism politically motivated process of government in Skopje, it is indisputable that in the international humanitarian law there are a number of options to initiate proceedings for the protection of Archbishop Jovan, for the simple reason that in his case a violation of fundamental rights and freedoms set forth and are guaranteed by numerous international documents of a humanitarian character, legally binding and political imperative character.

What is necessary to make a reason for initiating legal proceedings against the regime in Skopje before the relevant international institutions? First, there is clearly a violation of international laws and principles by certain states, regardless of whether these standards are contained in legally binding or merely political documents. Second, international agreements and principles, organization and resolution must allow or encourage states to respond to the situation when violating the rights that are under international protection. The regime in Skopje certainly is familiar with the fact that the European Charter on Human Rights, after the entry into force of the Reform, the so-called Lisbon Treaty on European Union (as of January 1, 2009) became legally binding document.

What human rights of Archbishop Jovan are violated? First of all, the right to free expression of beliefs, conscience, and religion. Act of arrest and two years of his detention while a new trial pending, those rights was undoubtedly deprived to archbishop Jovan. Then, the rights of members of religious minorities to practice their religion and performing religious rites in accordance with the canons of the church to which they belong were violated.

Where are the legal grounds for the protection and defense of the above-mentioned rights? One of the primaries on our continent is „the European Convention for the Protection of Human Rights and Fundamental Freedoms.” Article 9 expressly provides that „everyone has the right to freedom of thought, conscience and religion” and that „this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, expresses faith or belief in worship, teaching, practice and observance”¹. Article 14 prohibits states discrimination against citizens with regard to the use of these rights on any grounds, including „religion, political or other opinions”².

FYR Macedonia ratified this Convention too. The Article 33 of the Convention stipulates, „Each party may refer to the court for any alleged breach of the provisions of the Convention or the protocols thereto, which it considers to be attributed to any other High contracting party.”³ In order for Convention to have an effective legal ambit, it proclaimed the creation of the European Court for Human Rights. Therefore, here’s one possible basis for the official response of some state or charitable institutions from Serbia, or at least some non-governmental organizations, even more because many public reactions in Skopje and the case of Archbishop Jovan were placed in the context of bilateral and international relations with neighboring Serbia.

The Archbishop Jovan itself, then the entire group arrested and convicted believers and some non-governmental organizations (under the Article 34 of the Convention) may

¹ *Konvencija Evropske unije o zaštiti ljudskih prava i osnovnih sloboda*, član 9, preuzeto sa: <http://www.hjpc.ba/dc/pdf/Europska%20konvencija%20o%20ljudskim%20pravima.pdf> /8.7.2013/;

² *Ibid*, član, 14;

³ *Ibid*, član, 33;

initiate proceedings before the European Court. They do not have to wait to exhaust all remedies before the Macedonian court, but to turn to the European Court immediately, „if they provide enough convincing evidence” that the legal remedies at the national level would have brought no improvement for arrested.⁴

Zoran citizen of Macedonia with the ecclesiastical title of Archbishop, and the name Jovan, regardless of the Macedonian nationality, once was convicted and charged for „inciting national, racial or religious hatred, disorder and intolerance” only because he the exercise the worship in his apartment by the canonical rules of the Serbian Orthodox Church along with 12 other like-minded (Article 319 of the criminal code of Macedonia).

⁵Thus, the judicial power interpreted its own law so that each confession of Christianity is outside the rules and a facility of the self-proclaimed Macedonian Orthodox Church is a difficult criminal offense.

The judicial interpretation that a citizen of Macedonian nationality may cause ethnic hatred towards the Macedonians, regardless of whether they are of the same Orthodox or other faith is contrary to the logic. In addition, how this can call for national hatred towards Serbs, if he prays in the same way as they do, and Orthodox Serbs in Macedonia accept his spiritual leadership? It is not possible to say he was provoking riots because he performed the rite of baptism in his apartment. It is not possible to discuss intolerance even less, because Archbishop Jovan was never promoting propaganda against members of other religions and churches. Racial hatred as a tort is absolutely excluded, because the local Serbs and Macedonians belong to the same group of South Slavic and Orthodox peoples, it is the same race.

Through articles in the Macedonian press regarding Archbishop Jovan lurked insinuations in relation to Serbs and Serbia as to the interference in the internal affairs of Macedonia using the Serbian Orthodox Church. In doing so, the fact that since the establishment of Orthodoxy in the Balkans at the end of XII century, and then in all stages of the existence of Yugoslavia, the Serbian Orthodox Church had its believers, institutions, regional centers and dignitaries who have lived and worked throughout the area, in accordance the organization of Orthodox churches and canons of this religion is neglecting.

After the disintegration of Tito's Socialist Federal Republic of Yugoslavia 1991/2, the believers, and institutions of the Serbian Orthodox Church extend their normal lives and spiritual activity in emerging countries (former Yugoslav republics, including Macedonia), as their citizens, but also as cultural and religious factors. With the creation of new states, these believers and spiritual laborers have become the distinctive religious minorities, with a new citizenship but with the same religious identity as before, regardless of national origin or affiliation. The religious right, the conviction and conscience of members of religious and minorities (cultural, national, ethnic, etc.) are also explicitly protected internationally. Although with the signed agreement in Nis in mid nineties, Macedonian Orthodox Church agreed to return to the canonical wing of the Serbian Orthodox Church, in 2002 this agreement was abandoned. Among those who still stick that deal was Jovan the Bishop of Ohrid, which still suffers the persecution by the Skopje regime.

4 *Ibid*, član, 34;

5 *Krivični zakon Republike Makedonije*, član, 319; “KRIVIČEN ZAKONIK –konoslidirani tekst”, “Službeni vesnik na RM” 37/96, 80/99, 4/02, 43/03, 19/04, 60/06 i Odluka na Ustavni su “Sl. vesnik” 48/01, posećno 08.07.2013, <http://aktiv.org.mk/mk/rules-and-legislations/domasni/178-krivicen-zakonik>:

After examining the judgment of the European Court of Human Rights, 2001, „The case of Metropolitan church of Bessarabia and Others v. Moldova” (no. 45701/99)⁶, a complex knowledge about the types of injuries in the area of religious rights that are identical with discrimination case under consideration here as Archbishop Jovan, and Serbian Orthodox Church in Macedonia become obvious.

In the aforementioned judgment of the European Court, which can be applied by analogy to the Macedonian state, paragraph 116 states, „Applying its regulatory powers in this area and in its relations with various religions, religious communities and beliefs, the State is obliged to remain neutral and impartial”... „Without relying on coercion, even if these problems are unpleasant”⁷. In the next, paragraph 117, the Court stated, „the purpose of the Convention excludes that the government estimates the legitimacy of religious feelings or the way in which they manifest. State measures which would be give one leader advantage or put pressure on the community or section of the community to be involuntarily placed under single management would also constitute a violation of freedom of religion”⁸. From this point of view, paragraph 119, the right of believers to freedom of religion, which includes the right to manifest religion in community with others, encompasses the expectation that believers will be allowed to associate freely, without arbitrary government interference. The independent existence of religious communities is even necessary for pluralism in a democratic society, and this is an issue that is at the very heart of the protection provided by Article 9 of the Convention,⁹

In addition to the Convention, other international documents not only allow, but also require states to take specific positive actions when they learn of cases of threats to religious rights and religious beliefs in a state. For example, the Organization for Security and Cooperation in Europe (OSCE) has adopted a series of documents that expressly requires states to respect the rights of every citizen to own belief, religious belief and conscience, and feel free to belong to the church of their own choosing. At the same time, it condemns and prohibits persecution on religious and ideological grounds. Thus, the OSCE Copenhagen Document (1990) states members in connection with the violation of human rights and civil liberties are called to provide „as soon as possible, but not later than four weeks (the deadline is shortened to seven days in 1993), provide a written response to requests for information in writing by other participating states”¹⁰. There will be no written reply from Macedonia because the initiative has not yet sent to OSCE.

The most important document in the sphere of human rights, „The International Covenant on Civil and Political Rights” (1966) expressly protects „freedom of religion, political or any other opinion”¹¹. Article 27 specifies that „in the states in there are ethnic, religious

⁶ Evropski sud za ljudska prava, presuda po prestavci 45701/99: CASE OF METROPOLITAN CHURCH OF BESSARABIA AND OTHERS v. MOLDOVA, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-59985>, pristupljeno 08.07.2013;

⁷ *Ibid*, komentar presude, pafagraf 116;

⁸ *Ibid*, komentar presude, pafagraf 117;

⁹ *Ibid*, komentar presude, pafagraf 119;

¹⁰ *Završni dokument Trećeg sastanka Konferencije o ljudskoj dimenziji OEBS (DOCUMENT OF THE COPENHAGEN MEETING OF THE CONFERENCE ON THE HUMAN DIMENSION OF THE CSCE)*, Kopenhagen 29. juna 1990, Odeljak IV, tačka 42.1, strana 22, <http://www.osce.org/odihr/elections/14304>, posećeno 08.07.2013;

¹¹ *Zakon o ratifikaciji Međunarodnog pakta o građanskim i političkim pravima*, deo prvi, član 2, “Službeni list SFRJ” br. 7/77;

(Macedonia became a state in which believers and clergymen of SPC, due to historical and other circumstances, now make religious minority, the author's note) persons belonging to such minorities shall not be deprived of the right to have in community their own cultural life with other members of their group, from practicing their own religion and perform religious duties, or to use their own language".¹²

In the „General Comment of the Article 27," (which is also an international legal document) gives the interpretation of the meaning of paragraph quoted above, including, inter alia, appeal to UN Member States to protect the citizens of other countries too. The formulation that allows it to state, „These statements also suggest that individuals who in this case should be protected not have to be citizens of a member state".¹³

Following relevant document of the UN in this area is the „Declaration on the elimination of all Forms of intolerance and discrimination based on religion or belief"¹⁴ (1981). Article 1 prohibits coercion against the citizens of the state to impede freedom of religion or belief. Article 2, waives the right to states to discriminate its citizens based on religion or belonging to a church, and explains in detail what it consists of. Article 3 is calling for action. It reads, „Discrimination of human beings on the grounds of religion or belief is an affront to human dignity and disregard the principles of the UN Charter, and should be condemned as a violation of human rights and fundamental freedoms (bolded by the authors) as proclaimed in the Universal Declaration of the UN and precise in detail in the International Covenants on human rights as an obstacle to friendly and peaceful relations between nations."

A series of documents that provides the legal basis for the response of many governmental and non-governmental institutions across Europe regarding the assembled political judgment against Archbishop Jovan could be mentioned. The meaning of such a response would not be interference in the relationship between the Macedonian government and its citizen, but the activation of mechanism for the international protection of human rights, freedom of expression and beliefs of exercising religious rituals by the one of the prominent spiritual figures in the SPC and his followers in the neighboring state of Serbia. It should also be emphasized that Serbia as a state does not have any aspirations towards Macedonia, much less the Serbian people and Serbian citizens. Also, be reminded that Serbia and Montenegro has never, nor would ever support any individual or group aspirations in that direction no matter whose, of any church, individual priests or believers. All this is to promote tolerance, respect for diversity and promote spiritual pluralism in the Balkans, as essential preconditions for development of democracy in the countries of Southeastern Europe and their entry into the European Union as soon as possible.

¹² *Ibid*, treći deo, član 27;

¹³ MEĐUNARODNI STANDARDI LJUDSKIH PRAVA KOJI SE ODOSE NA VEROISPOVEST I VERSKA UVERENJA, Komentari Komiteteta za ljudska prava Ujedinjenih nacija (UNHCR) na članove Međunarodnog pakta o građanskim i političkim pravima (MPGPP) UN (1966), Opšti komentar br. 23 (50) (Član 27), http://veraznanjemir.bos.rs/index.php?page=medu_standardi%20_verska_uverenja&lang=srp&subaction=showfull&id=1248794712&archive=&start_from=&ucat=15&page=medu_standardi%20_verska_uverenja, posećeno 08.07. 2013;

¹⁴ *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, UN/A/RES/36/55, 25 November 1981, <http://www.un.org/documents/ga/res/36/a36r055.htm>, posećeno 08.07.2013;

3. RESUME

Endangering the religious freedom of citizens, as part of the corpus of universal human rights, wherever it happened, requires timely and decisive response of all competent institutions. International humanitarian law provides a very good base for something like that, makes available effective legal instruments and calls upon states to stand in the way of all forms of abuse. The case of the Macedonian courts that with fabrication of judgment seeks to criminalize religious activity of high dignitaries of the Serbian Orthodox Church in the Former Yugoslav Republic of Macedonia became a precedent of a broad international scale. It is therefore in many international reports the Macedonian judiciary indicated as one of the most problematic segments of society there, primarily due to corruption and susceptibility to political influences. Mounted political process against Archbishop Jovan deserves an epilogue before the European Court of Human Rights. With our paper, we want to provide starting points to applicants of such initiatives for the petition in order to protect the persecuted Archbishop Jovan.

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