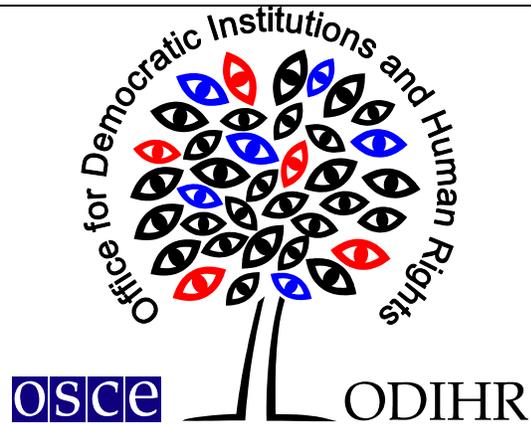


27 July 2005

Opinion-Nr.: FoRB - MK/035/2005 (Expert
Panel on FoRB/IU)

www.legislationline.org



Opinion
on the Case of Bishop Jovan (Zoran Vraniskovski)

This Opinion has been prepared by Malcolm D. Evans, Professor of Public International Law, University of Bristol, UK, in a private capacity at the request of the OSCE Office for Democratic Institutions and Human Rights (OSCE ODIHR). Professor Evans is a member of the OSCE ODIHR's Panel of Experts on Freedom of Religion or Belief.

Aleje Ujazdowskie 19 PL-00-557 Warsaw ph. +48 22 520 06 00 fax. +48 22 520 0605,

TABLE OF CONTENTS:

1. SCOPE OF REVIEW

2. EXECUTIVE SUMMARY

3. ANALYSIS AND RECOMMENDATIONS

3.1 The Union of the Accused with the SOC

3.2 The conducting of the service of worship

3.3 The Calendar

1. SCOPE OF REVIEW

1. This opinion does not equate to a review, rather it has been drafted to serve as considerations which should be taken into account in light of international standards relevant to the matter under consideration.

2. The comments contained herein are without prejudice to any further recommendations and comments that the OSCE ODIHR may wish to make on the case under consideration.

2. EXECUTIVE SUMMARY

3. Three separate elements of the criminal accusation can be identified, relating to (a) the union of the accused with the Serbian Orthodox Church (hereinafter referred to as “SOC”), (b) the conducting of a service of worship and (c) the distribution of a “calendar.” In relation to all three elements, a criminal conviction raises serious concerns regarding the enjoyment of the freedom of religion as set out in Article 9 of the European Convention on Human Rights, chiefly for the lack of proportionality when determining whether the limitation that such a conviction would place upon the exercise of the freedom of religion was “necessary in a democratic society.” Bishop Jovan (Zoran Vraniskovski) has now been convicted of the criminal offence of “*causing national, racial and religious hatred and intolerance*” and that has been upheld on appeal. There is nothing in the Judgement of the Court (which, according to available information, was endorsed by the Court of Appeal) which causes a need to alter this conclusion. Indeed, there is much in the reasoning of the Court which confirms the opinion that this conviction raises serious concerns regarding the freedom of religion.

4. It must be stressed at the outset that the elements which comprise the criminal offence in question are not clear from the indictment or the Judgment. However, it seems that the Judgment falls short of an acceptable standard in its reasoning and contains language and argument which appear to undermine its impartiality and objectivity.

5. Article 319 of the Criminal Code is too imprecise to make an informed assessment of whether the conviction is sound as a matter of its interpretation and application. What does seem clear is that if that law does permit a criminal conviction on the basis of the

evidence set out, and for the reasons given, in this judgment, then this is unlikely to be compatible with the proper enjoyment of the freedom of religion of belief.

6. It seems that it is the fact of his being a member of the SOC and advancing the work and cause of the SOC in the former Republic of Macedonia that is considered as giving rise to religious hatred, etc and thus comprising a criminal offence. The fact of his having conducted religious services which prompted a hostile response cannot amount to the commission of an offence of this nature.

7. The calendar raises other questions and it may be that a conviction for causing religious hatred could possibly be justified but the evidence in support of this seems lacking.

8. The pervasive concern is that the language used throughout the judgment appears partial, which seems to suggest that any form of religious activity that has the effect of challenging the legitimacy and supremacy of the Macedonian Orthodox Church (hereinafter referred as “MOC”) as the dominant religion is to be considered as causing religious hatred. A conviction premised on such an approach should be difficult to sustain.

3. ANALYSIS AND RECOMMENDATIONS

3.1 The Union of the Accused with the SOC.

9. It is clear from the Judgment¹ that the Court took the view that in leaving the MOC, joining the SOC and establishing the “Ohrid Archbishopry,” the Accused was seeking to undermine the position of the MOC and that this created a “schism” which “*caused religious hatred, discord and intolerance.*”² The chief evidence of such intolerance that is presented is, in fact, the protests by members of the MOC directed at the SOC. The essence of the Court’s reasoning is that Bishop Jovan joined with and officiated as a member of the SOC was in and of itself an act causing religious hatred discord and intolerance. There is no consideration of the right of Bishop Jovan to exercise his freedom of religion by joining the Church of his choice and manifesting that belief through worship. It is certainly true that the manifestation of religion in this fashion is capable of restriction but the general

¹ See pp. 18-20.

² See p. 18.

approach of the Court was to see his Union with the SOC as an act that resulted in the commission of the criminal offence. Indeed, the Court says that his conducting religious services was the “*kind of event [which] causes a religion hate between Macedonian citizens.*”³ Similarly, when considering the defence arguments, the Court asserts that “[i]n Republic of Macedonia... there is one MOC with SAS, and the accused is not the one to decide if there is going to be more arhierieic synods.”⁴ It is difficult to avoid the impression that the Court took the view that the act of joining and advancing the cause of the SOC in the Republic of Macedonia was an act causing religious hatred, discord and intolerance sufficient to justify a criminal conviction. This is difficult to reconcile with the freedom of religion.

3.2 The conducting of the service of worship

10. Although it tends to blur into the more general question of his involvement in the activities of the SOC in the Republic of Macedonia, there is a particular issue concerning the conduct of a service of worship in a private flat. Once again, there appear to be some evidential difficulties with the material presented to support this conviction. That evidence suggests that some Macedonians took offence and up to 250 marched from the MOC Church to the flat to express “*their disturbance from the harm of their religious feeling and the schism that was caused by the accused*”⁵. This negative response to the exercise of the freedom of worship in this fashion cannot be taken as evidence of a criminal offence having been committed by the worshippers. Moreover, the evidence of those residents who did not object to the service seems to have been discounted on the grounds that they were sympathetic to the SOC and Bishop Jovan. This does not appear to be an evenhanded approach.

3.3 The Calendar

11. It seems to be common ground that the words in the calendar were written by Bishop Jovan, but there appears to be some dispute as to whether he is responsible for its publication and dissemination. Certainly, the reasoning given in the Judgment⁶ that links the Bishop to the actual publication appears illogical and unconvincing. Nevertheless, the

³ See p. 20.

⁴ See p. 22.

⁵ See p.16.

⁶ See p. 22.

content of the calendar is certainly of a nature that might justify the state to intervene in order to protect the religious sensibilities of others - though it is equally capable of being seen as a robust statement of the view of the Accused which ought to be tolerated within a democratic society committed to upholding the freedom of religion and the freedom of expression. This is a matter on which a margin of appreciation might lie with the state.