

5/7/05

IN THE NAME OF THE CITIZENS OF THE REPUBLIC OF MACEDONIA

COURT OF APPEALS IN BITOLA, in a panel consisting of the judges : Vasko Kuzev, Chairman, Vladimir Radevski and Nedzat Ajro, members of the panel, and court clerk Mitko Fidanovski, a counsellor of the Court, regarding the penal case of the defendant Jovan (John, remark of translator) Vraniskovski from Bitola, for the criminal offence 'instigation of ethnic, racial and religious hatred, discord and intolerance' as provided by virtue of the Article 319 of Penal Code, dealing with the appeals of the defendant filed by him personally and through his defence counsellor Vasil Gjeorgjiev, attorney at law from Bitola, against the Verdict P. NO. 22/04 dated on 1st of July, 2004 of the Court of First Instance in Bitola, on the session maintained in the presence of the Deputy High Public Attorney of Bitola Dimitar Lazarevski, the defendant and his counsellor Vasil Gjorgjiev, attorney at law from Bitola, on 22nd of June, 2005 has reached the following :

VERDICT

The appeals filed by the defendant Jovan Vraniskovski from Bitola, declared by the defendant personally as well as through his defence counsellor Vasil Gjorgjiev, attorney at law from Bitola, ARE BEING REJECTED as groundless.

The verdict P. No. 22/04 dated on 1st of July, 2004 by the Court of First Instance in Bitola IS BEING CONFIRMED.

R a t i o n a l e

The Court of First Instance in Bitola has pronounced the defendant Jovan (John) Vraniskovski from Bitola to be guilty for the criminal offence 'instigation of ethnic, racial and religious hatred, discord and intolerance' provided for by the Article 319 paragraph 1 of the Penal Code with the Verdict P. No. 22/04 dated on 1st of July, 2004. The aforesaid verdict sentenced the defendant to the punishment of imprisonment for a period of 1 year and 6 months, the time spent in temporary arrest being calculated therein. The defendant shall be charged for

the expenses of the penal proceedings, as stated in the wording of the first instance verdict.

Appeals against the aforesaid verdict have been filed by the defendant Jovan (john) Vraniskovski personally as well as through his defence counsellor Vasil Gjeorgjiev, attorney at law from Bitola. Those appeals challenged the verdict of the Court of First Instance on all legal grounds. The appeals basically state that the acts described in the wording of the verdict of the Court of Appeal do not constitute elements of the criminal offence being indictment of the defendant and for which he has been pronounced to be guilty. In addition, the appeals state that verdict of the Court of First Instance had been founded only on presumptions and not on the proofs presented during the proceedings. As a matter of fact, penal proceedings had been conducted with regard to a religious belief expressed, and it is guaranteed to the defendant as a right determined by the Constitution of the Republic of Macedonia.

The aforesaid appeals especially refer that the Court of First Instance did not establish the facts and the circumstances which can constitute the elements of the criminal offence in question, i.e., 'instigation of ethnic, racial and religious hatred, discord and intolerance', referred to in Article 319 paragraph 1 of the Penal Code. The Court of first Instance had not analysed completely the evidence presented during the proceedings, and as for all the evidence presented, it could not be derived from all of them that the defendant aimed to instigate religious hatred and intolerance accepting to be appointed for and Exarch of the Serbian Orthodox Church in the Ohrid Archbishopric in Macedonia consciously. It could not be concluded with certainty that the defendant Vranishkovski had published the Religious Calendar for the year of 2004 by none of the evidence, although he did not deny that the contents thereof coincide with his opinion.

With regard to the question of the presence of Vraniskovski at the tonsure of the two bishops in Belgrade, on invitation of the Serbian Orthodox Church, as well as to the performing of religious service in the apartment being ownership of his parents on Kocanska St. in Bitola, it could not be accepted that those acts constitute the criminal offence 'instigation of ethnic, racial and religious hatred, discord and intolerance' referred to in Article 319 paragraph 1 of the Penal Code, because he had not jeopardize the peace in his environment by that. Contrary to what the Court of First Instance had accepted from the evidence presented in the proceedings, it resulted that those acts of the defendant did not disturbed anybody. The conclusion of the Court of First Instance that the defendant is the perpetrator of the criminal offence being charged to him could not be derived by the acts of his, because his acts did not involve force, molesting, jeopardizing of safety, damage to somebody else's possessions or similar acts leading to force at all, as the legal definition of the aforesaid criminal offence stipulates. It was a

matter of a mere political trial, only because the defendant does not share the same opinion as some of the members of the Holy Synod of the Macedonian Orthodox Church.

The Court of First Instance had found erroneously that the acts of the defendant constitute elements of the aforesaid criminal offence attending the tonsure of the two bishops. The very statement of the first instance verdict pointed to certain vagueness and unintelligibility hindering the establishment of the act instigating religious intolerance. The defendant did not undertake any actions, and everything stated in the rationale of the first instance verdict was mere presumptions, which had been accepted by the Court of the First Instance regretfully, and the very factual situation could not be derived from the evidence presented. The claim of the indictment and the decision of the Court of First Instance were even less clear with regard to the church ritual in the aforesaid apartment which allegedly caused great religious hatred and intolerance, and it referred to the question where the Court of First Instance had found such intolerance, when nobody pointed to it particularly. It is true that the defendant performed religious services together with his followers in the apartment on Kocanska St., but no proceeding had been instituted with regard to it, and the right to confess a religion and to express a faith is guaranteed by the Constitution and the use of the apartment inviolable. The Court of First Instance had made conclusion contrary to the statements of the witnesses heard, giving Rationale inappropriate for the evidence presented during the proceedings. The factual situation had been established erroneously, and the Court of First Instance had accepted the counts of the indictment, not taking into consideration that there cannot be a liability for different religious beliefs than the ones prevailing in the Holy Synod of the Macedonian Orthodox Church, as well as that there cannot be a liability for expression of different political opinion and beliefs in political life. It should have brought criminal charges against former MP Todor Petrov, the President of the World Macedonian Congress, who called to a lynching and murder of the defendant together with the mob, and not to ground the guilt of the defendant upon the statement of the aforesaid. The conclusion of the Court of First Instance was arbitrary with regard to instigation discord, intolerance and ethnic and religious hatred by the defendant. The acts described in the wording of the first instance verdict with regard to the Religious Calendar for the year of 2004 could only be qualified as some sort of insult, eventually as a slander, which can be sued privately. As stated previously, the other acts described hereabove, could not constitute some criminal offence in no way, especially not the criminal offence for which the defendant had been prosecuted and pronounced to be guilty.

As for the decision on the penal sanction pronounced, although the appeal of the defendant is being mentioned as grounds thereof, there is no rationale for

that, i.e., there have not any appeal reasons stated and the aforesaid legal grounds has been only mentioned, therefore the grounds of the appeals consist only of challenging it with regard to the legal grounds for essential violation of the provisions provided for the penal proceedings, violation of the Penal Code and erroneously and incomplete established factual situation. In the aforesaid appeals, it has been proposed the first instance verdict to be modified and the defendant acquitted. It has been demanded that the defendant and his defence counsellor be notified on the session of the panel and the date thereof.

The Office of the High Public Prosecutor in Bitola has made a motion by virtue of written submission No. PPA No. 619/04 dated on 6th of December, 2004 that the appeals of the defendant personally and through his defence counsellor Vasil Gjeorgjiev, attorney at law from Bitola, to be rejected as groundless, and the first instance verdict to be confirmed. The present Deputy High Public Prosecutor Dimitar Lazarevski has stuck to the aforesaid motion on the whole during the aforesaid session.

The defendant Jovan (John) Vraniskovski and his defence counsellor Vasil Gjeorgjiev, attorney at law from Bitola, present on the session of the panel, have stuck on the whole to the statements of the appeals and the motion cited therein.

The Penal Panel of the Court of Appeals in Bitola, dealing with the aforesaid appeals, having studied the verdict challenged and the documents of the penal case, has established that the reasons for challenging the verdict by virtue of the aforesaid appeals are groundless, and that there are no violations of the Article 393 paragraph 1 of the Law on Penal Procedure, purified text, being observed by the Court in line of duty, and therefore has decided as I the wording herein in accordance with Article 401 of the Law on Penal Procedure, reasons being the following :

The appeals are groundless.

The verdict of the Court of First Instance has been challenged groundlessly by the appeals declared with regard to essential violation of the provisions of the penal procedure, i.e., Article 381 paragraph 1 item 11 of the Law on Penal Procedure. Contrary to the statement in the appeal, the wording of the first instance verdict is clear and understandable, and it is not in contradiction to itself or to the reasons thereof. There are enough reasons with regard to the decisive facts in the verdict of the Court of First Instance, and the said reasons are quite clear without significant contradiction to what have been stated as reasons for the verdicts by virtue of the contents of the evidence presented during the proceedings.

The appeals state groundlessly that the wording of the first instance verdict does not contain the facts and the circumstances constituting the elements of the criminal offence 'instigation of ethnic, racial and religious hatred, discord and intolerance' referred to in Article 319 paragraph 1 of the Penal Code. The statement cited in the appeals that the verdict had been grounded on assumptions instead on the evidence is unfounded as well, and the same goes for the statement that the facts established were in contradiction with the evidence, that they were arbitrary and that the Court of First Instance had derived an erroneous conclusion that the defendant acted with premeditation to instigate ethnic, racial and religious hatred, discord and intolerance when he agreed to be appointed for the Exarch of the Ohrid Archbishopric in the Republic of Macedonia by the Serbian Orthodox Church. The statement cited in the appeals that the church rituals and performance of religious services in the apartment on Kocanska St. I Bitola and by his attendance on the tonsure of the two bishops in Belgrade on invitation of the Serbian Orthodox Church resulted by a different religious belief than the one of the Holy Synod of the Macedonian Orthodox Church are also unfounded.

The defendant is pronounced to be guilty for the criminal offence 'instigation of ethnic, racial and religious hatred, discord and intolerance' referred to in Article 319 paragraph 1 of the Penal Code and the one who undertakes the act causing religious hatred, discord and intolerance using force, molesting, jeopardizing or other method is considered to have committed it. Within those frameworks, it cannot be accepted the statement in the appeals that such acts of the defendant had never been undertook, because the aforesaid criminal offence does not consist only of undertaking of concrete acts of forcing, molesting, jeopardizing of safety, mocking national, ethnic or religious symbols, damaging somebody else's possessions, desecrating graves, as the appeals cite. Therefore, the conclusion that the aforesaid statements in the appeals aim to present the acts of the defendant as the ones which cannot be elements of the criminal offence referred to in the Article 319 paragraph 1 of the Penal Code is logical.

The very legal description of the aforesaid criminal offence clearly points to the conclusion that it can be committed in any other way as well, by undertaking other activities instigating or inflaming ethnic, racial hatred, discord and intolerance. In this particular case, as for the acts described in the wording of the first instance verdict, being contained in the Religious Calendar for the year of 2004 issued by the inexistent monastery 'St. John The Chrysostom', by the consent of the defendant to be appointed by the Synod of the Serbian Orthodox Church for an Exarch of the Ohrid Archbishopric in the Republic of Macedonia, and his work on the territory of the Republic of Macedonia, being presented by

the defendant as the only church, denying the existence of the Macedonian Orthodox church, as well as his attendance of the tonsure of the two bishops in the Cathedral Church in Belgrade and the religious services he performed in the apartment on Kocanska St. in Bitola, the Court of First Instance has found correctly that they are acts of committing of one of the other forms of committing of the criminal offence being charged to the defendant and for which the defendant has been pronounced to be guilty. Therefore, contrary to the statement in the appeal, the wording of the first instance verdict indicated all the facts and circumstances constituting the elements of the criminal offence 'instigation of ethnic, racial and religious hatred, discord and intolerance' referred to in Article 319 paragraph 1 of the Penal Code. The Court of First Instance had established correctly that the acts of committing by the defendant contained a subjective characteristic, the premeditation of the defendant to instigate religious hatred and discord between the faithful people, and the objective circumstance related to the place, manner, time and consequences of the activities undertaken, quite clearly defined in his entire work during the period related to the indictment. Therefore, contrary to the statement of the appeal, the wording of the verdict is clear, understandable, and the contradictions being pointed in fact do not exist, and the acts undertaken by the defendant contain the elements of the criminal offence referred to in the Article 319 paragraph 1 of the Penal Code.

The claim presented in the appeals declared, that the Court of First Instance had grounded the verdict on assumptions and not on the evidence presented during the proceedings is unacceptable. On the contrary, the Court of First Instance has established all the decisive facts constituting the elements of the criminal offence being charged to the defendant by virtue of the evidence, and has given clearly enough reasons with regard to the question from which exhibit which fact had been established in the verdict being now challenged by the appeal declared, and therefore it may be said with certainty, that the factual situation established by the Court of First Instance is derived by the contents of the evidence presented and the qualification that the matter is about an unclarity and not unintelligibility, or even contradiction between the evidence presented and the conclusion on the facts by the Court of First Instance. It can be established with certainty in a way, that the accounts of both appeals are generalized and not concretized, because they claim arbitrary that the Court of First Instance had grounded the verdict contrary to the evidence, without stating what are they consisted of or even less to refer to the presence of contradictions and arbitrary conclusions.

The Court of First Instance has not accepted the defence of the defendant with regard to the motivation of the defendant by his religious belief, constituting absence of subjective characteristic of the criminal offence. The Court of First Instance has cited enough reasons in the verdict now being challenged by the

appeal declared, out of which may be realized with certainty why the Court had found that the acts cited in the wording constitute the elements of the criminal offence 'instigation of ethnic, racial and religious hatred, discord and intolerance' referred to in Article 319 paragraph 1 of the Penal Code.

The statement of the appeals regarding the factual situation established, referring that it was established incompletely and erroneously, is completely unfounded. The appeals declared groundlessly cite that the Court has established erroneously that the contents of the Religious Calendar for the Year of 2004 being presented related to the consent of the defendant to be appointed for an Exarch of the Ohrid Archbishopric of Macedonia by the Serbian Orthodox Church and his attendance of the tonsure of the two bishops in the Cathedral Church in Belgrade, as well as the church rituals and performance of religious services in the apartment of his parents in Bitola were acts undertaken by the defendant with premeditation aimed to instigate religious hatred and discord between the members of the Macedonian orthodox church and a part of the members of the Serbian Orthodox Church. Evaluating all the evidence presented individually and in the mutual connection thereof, the Court of First Instance has established the factual situation correctly and completely, accepting that the defendant had undertaken the aforesaid acts being contained in the wording of the first instance verdict with premeditation, consciously instigating discord and intolerance between the members of the Macedonian Orthodox church and a part of the members of the Serbian Orthodox Church, and even more, between the various associations and other organisations in the Republic of Macedonia. It is obvious from the statements of the witnesses heard within the frameworks of the proceedings, clearly pointing to the reflection of the citizens, the uncertainty and controversy thereof with regard to the questions whose representatives were certain clergymen, to which church they belong and whether the acts undertaken by certain clergymen are the ones to which they wanted to belong, all of that as a consequence of the work of the defendant Vraniskovski. Therefore groups of citizens were ready to undertake certain activities aimed to stop the further work of the defendant Vraniskovski in the sacral buildings in Bitola and wider in the Republic of Macedonia due to the revolt caused by the acts of the defendant Vraniskovski.

It is obvious out of the decisions of the Holy Synod of the Macedonian Orthodox Church that the defendant Vraniskovski was dethroned and that he was forbidden to perform any religious service in the Macedonian Orthodox Church on the territory of the Republic of Macedonia and in the Diaspora thereof. With his striping of power, according to the decisions of the Synod of the MOC, he had no right to perform any religious services or acts in the Republic of Macedonia and the Diaspora thereof, or to organize any church or monastic life, and he was forbidden the access as an archpriest to the churches and the

monasteries of the MOC and performing of church activities therein. In spite of such situation, as the Court of First Instance has established, the defendant continued to undertake activities of church religious services, even in the apartment of his parents on Kocanska St. in Bitola, which was turned into a sacral premises, disturbing the peaceful life to the neighbours. The Court of First Instance has established correctly as well, that a revolt of the citizens was caused by such work of the defendant, and they organised a protest aimed to manifest the disapproval of the church work of the defendant Vraniskovski as the Exarch of the Ohrid Archbishopric appointed by the Head of a foreign orthodox church, to be more specific, the Serbian Orthodox Church and the Head thereof Paul, on the critical date, in the time when the religious service in the Temple 'St. Great Martyr Dimitry', where the Head of the MOC led the church ritual, finished.

The Court of First Instance has not accepted correctly the claim presented in the defence of the defendant, and later in the appeals declared, with regard to denying of the issuance of the Religious Calendar of the inexistent Monastery 'St. John the Chrysostom'. This due to reasons that the defendant himself in his defence and during the preliminary proceedings and on the main hearing, stated that the words written in the aforesaid Religious Calendar on the first pages thereof were written by him and that those were his personal notes and that finally, anyone could get into contact with them. However, as the Court of First Instance has established, the claim that defendant had not been connected in any way with the issuance of the Calendar is unacceptable. As the Court of First Instance has established, the Calendar was issued by the Monastery 'St. John the Chrysostom' locate in the summer cottage of his parents and it is logical that there is no possibility that other persons participated in the issuance without a consent of the defendant. The question who could issue such a Calendar presenting the opinions and the entire work of his and the qualifications of the Macedonian Orthodox church and the Holy Synod thereof, practically documenting through photographs the work of the defendant during a longer period of time even out of the Republic of Macedonia, is logical. Therefore, the Court of First Instance has established correctly that the defendant is a central figure in that Calendar writing about his relations with the MOC and the behaviour of the authorities towards him, rudely assaulting the MOC, the clergymen and the heads thereof. After all, the defendant himself has not retreated the statement presented in the aforesaid Religious Calendar issued in the year of 2004 within the framework of his defence. So, the conclusion of the Court of First Instance is quite logical and correct, and the objections with regard to it from the appeal declared have no grounds at all.

The Court of First Instance has concluded correctly that the claim declared in the defence of the defendant that he had not been connected in any way with the tonsure of the two clergymen by the Serbian Patriarch Paul, and who are

members of the Synod of the Ohrid Archbishopric, being parallel church in Macedonia besides the existent Macedonian Orthodox church and the Holy Synod thereof, as the defendant himself stated in his defence. If it was really so, and the defendant had not been connected with the ordination of the two clergymen Joachim and Mark to be the bishops of the Ohrid Archbishopric, his presence there would not had been needed, but on the contrary, as the Court of First Instance has concluded, the ordination thereof had been performed just on demand and proposal of the defendant aimed for the work thereof within the Ohrid Archbishopric as the members of the Synod of the so-called Ohrid Archbishopric.

As the Court of First Instance has found correctly, all the aforesaid acts were aimed just to the things covered by the indictment and the wording of the first instance verdict, that the defendant had committed them with a premeditation, thus causing a schism within the MOC and discord of the Macedonian believers, as well as religious hatred and intolerance, because a separation and hatred between the believers had arisen as never before, and the SOC through the Patriarch Paul had appointed an Exarch on the territory of another country , where the Constitution has defined the MOC which exists already with the Holy Synod thereof. the aforesaid separation of the believers and instigation of religious hatred, intolerance, as the Court of First Instance has established, derived out of the evidence presented, was manifested in various ways, because all the acts undertaken by the defendant and his followers were aimed for violation of the unity of the MOC and accession to unity with the OC, resulting with unrecognising of the MOC as and independent church, and the church rituals and religious services performed by the defendant were aimed for instigation exactly such consequences, indeed having influence on the entire life and behaviour of the citizens of the Republic of Macedonia.

It is undisputable that the Constitution guarantees the right to freedom of religious confession, but in this very case, that right has been misused for realisation of other goals. In this case, the acts contrary to the Constitution have been undertaken, namely, establishment of a parallel Holy Synod of Archpriests, that may not exist as such, because the acts of the defendant are contrary to the constitutional provisions for existence of one Macedonian Orthodox church on the territory of the Republic of Macedonia, and they have provoked the revolt of the citizens, i.e., the believers.

The Court of First Instance has accepted correctly that Mr. Todor Petrov, as the President of the Macedonian World Congress, has a duty to protect the affirmation of the Macedonian identity and that within the frameworks of fulfilling that duty, together with a group of believers he passed in review from the Temple of 'St. Great Martyr Dimitry' to the apartment on Kocanska St. on 18th January,

2004, expressing the anxiety by the assault of the religious feelings and schism caused by the defendant, and all of that as a consequence of the acts undertaken during a long period of time by the defendant. Therefore, the statements presented in the appeal declared are groundless, namely that the aforesaid was a marketing of the aforesaid witness, and that no anxiety or assault of the religious feelings had not been provoked. The entire work of the defendant during the aforesaid period of time, and continuation thereof by him in any case insults the religious feelings of the citizens of the Republic of Macedonia and cause ethnic hatred, and finally, intolerance, and undertaking of individual acts by some citizens and taking the justice in own hands could be the consequence. It may not be allowed in any case, and therefore, the reactions to such acts of the defendants are just.

The statement of the appeal of the defendant and the defence counsellor of his with regard to the legal grounds for violation of the Penal Code is unfounded, because the Court of First Instance has found correctly that the acts of the defendant contain the characteristics of the criminal offence for which the defendant has been pronounced to be guilty. The statements of the appeals that the contents presented in the Religious Calendar may be only slander and insult and not a premeditation for instigation of religious hatred and discord, i.e., that the church rituals and religious services performed in the apartment of his parents, his consent to be appointed for and Exarch of the inexistent Ohrid Archbishopric and the attendance of his of the ordination of the two bishops in Belgrade, that they do not constitute acts being elements for the criminal offence for which the defendant has been pronounced to be guilty, are not true. Contrary to the claims presented in the appeals declared, having correctly and completely established the factual situation, the Court of First Instance has proceeded correctly pronouncing the defendant to be guilty for the aforesaid criminal offence. The Court of First Instance has found correctly that the defendant, in spite of being conscious that he would instigate a religious hatred, wanting just that, presented untruths and slanders with regard to the Macedonian Orthodox church I the Religious Calendar after his degrading, gave his consent to be appointed for and Exarch of the Ohrid Archbishopric in Macedonia, where only one MOC exists according to the Constitution, acting in the name of the inexistent Ohrid archbishopric, instigating religious intolerance and discord between the believers, which constitute the objective and the subjective elements of the criminal offence referred to in Article 319 paragraph 1 of the Penal Code. The aforesaid criminal offence may be committed in any other way, except for the ones stated individually in the legal description, in case that those acts led to arising of the forbidden consequences with regard to the provisions cited concerning this criminal offence, being indisputably established by the Court of First Instance.

Despite there is a statement in the appeals with regard to the decision on the penal sanction pronounced, i.e., it has been mentioned therein, nevertheless, there is not a rationale with regard to it in the appeals declared. Considering that the verdict of the Court of First Instance has been challenged on the legal grounds related to the factual situation established, this Court has examined it also with regard to the decision on the penal sanction pronounced, and found that determining the type of the penal sanction, the Court of First Instance has considered and evaluated all the circumstances important for individualisation of the penal sanction. The circumstances considered and evaluated by the Court of First Instance had been evaluated correctly, and the Court of First Instance has found correctly that only by such penal sanction as pronounced could be achieved an influence of satisfactory extent on the defendant, so that he would not commit such or similar criminal offences in the future. In this particular case, considering the personality of the defendant, the severity of the criminal offence by means of the punishment of imprisonment for a period from one to five years threatened, the Court of First Instance has found correctly that in this particular case only such penal sanction would achieve the goals thereof, especially from the point of view of special prevention. The Court of First Instance has not found some especially extenuating circumstances which would enable the application of the institute of reduction of the sentence correctly. Considering in the first place the former behavior of the defendant and the fact that he had undertake such acts, the Court of First Instance has found correctly that they had implementation of ideas of a foreign country on the territory of the Republic of Macedonia as a consequence.

Due to all the aforesaid, it results that the verdict of the Court of First Instance is correct and legitimate.

Court Clerk :

Mitko Fidanovski, Oh.

Chairman of the Panel,

Judge Vasko Kuzev, Oh.

Round seal runs :
**COUR OF APPEALS
BITOLA**

**THIS IS A TRUE COPY OF THE
ORIGINAL**

**Authorised clerk :
*Signature illegible***