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HUMAN RIGHTS COMMITTEE
Eighty-fifth session
17 October – 3 November 2005

VIEWS

Communication No. 1180/2003

Submitted by:	Mr. Zeljko Bodrožić (represented by counsel, Mr. Biljana Kovacevic-Vuco)
Alleged victims:	The author
State party:	Serbia and Montenegro
Date of communications:	11 May 2003 (initial submission)
Document references:	Special Rapporteur's rule 97 decision, transmitted to the State party on 28 May 2003 (not issued in document form)
Date of adoption of Views:	31 October 2005

* Made public by decision of the Human Rights Committee.

Subject matter: Conviction of journalist for criminal insult concerning media article on a political figure

Substantive issues: Freedom of expression – Limitations necessary to protect rights and reputation of others

Procedural issues: None

Articles of the Covenant: 19

Articles of the Optional Protocol: None

On 31 October 2005, the Human Rights Committee adopted the annexed draft as the Committee's Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1180/2003. The text of the Views is appended to the present document.

[ANNEX]

ANNEX

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political rights

Eighty-fifth session

concerning

Communication No. 1180/2003[**]

Submitted by:	Mr. Zeljko Bodrožić (represented by counsel, Mr. Biljana Kovacevic-Vuco)
Alleged victims:	The author
State party:	Serbia and Montenegro
Date of communications:	11 May 2003 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 31 October 2005,

Having concluded its consideration of communication No. 1180/2003, submitted to the Human Rights Committee on behalf of Mr. Zeljko Bodrožić under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication, and the State party,

Adopts the following:

[**] The following members of the Committee participated in the examination of the present communication: Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Alfredo Castillero Hoyos, Ms. Christine Chanet, Mr. Maurice Glèlè Ahanhanzo, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer, Mr. Hipólito Solari Yrigoyen, Ms. Ruth Wedgwood and Mr. Roman Wieruszewski.

Views under article 5, paragraph 4, of the Optional Protocol

1. The author of the communication, initially dated 11 May 2003, Zeljko Bodrožić, a Yugoslav national born on 16 March 1970. He claims to be a victim of a breach by Serbia and Montenegro of his rights under article 19 of the Covenant. He is represented by counsel. The Optional Protocol entered into force for the State party on 6 December 2001.

Factual background

2.1 The author is a well-known journalist and magazine editor. In a magazine article published on 11 January 2002 entitled "Born for Reforms", the author politically criticized a number of individuals, including a Mr. Segrt. At the time the article was published, Mr. Segrt was manager of the 'Toza Mrakovic' factory in Kikinda, and previously had been a prominent member of the Socialist Party of Serbia, including leader of the party group in the federal Yugoslav Parliament in 2001. Inter alia, the article stated:

> "After he squandered away 'Toza's' millions on the [Socialist Party of Serbia] and [Yugoslav Left] campaign and other party pastimes; after being cooed "my friend Dmitar" by Sloba [Milosevic] before he was sent off to The Hague prison; after he organized the protests with Seselj against the "caging" of comrade Sloba; after the glitzy party moments in the first half of 2001 (he became the Socialist Party leader in the Federal Parliament and one of the Party's toplevel officials …); after he realized that the times of fun and games were over, he decided to 'give his party the finger' and become 'the great advocate' of the reforms undertaken by the government of the comrade – oops, the Chancellor, Mr. Djindjic."

The article also labeled Mr. Segrt "another former bolsterer of Sloba [Milosevic]" and "the manager from Plava Banja, also known as Dmitar Segrt".

2.2 On 21 January 2002, Mr. Segrt filed private criminal complaints of libel and insult against the author in the Kikinda Municipal Court, on the basis of the above extracts.[1] On 14 May 2002, the court convicted the author of criminal insult, but acquitted him on the charge of libel. It dismissed the libel charge on the basis that the factual aspects of the extracts in question were, in fact, true and correct. As to the charge of insult, the Court found that the extracts were "actually abusive" and "inflict[ed] damage to the honour and reputation of the private plaintiff". Rather than constituting, as argued by the author, "serious journalistic comment in which he used sarcasm", the Court considered that the words used "are not the expressions that would be used in serious criticism; on the contrary, these are generally accepted words that cause derision and belittling by the social environment". In the Court's view the use of slang words and emphasized quotations, rather than "a literary language that would be appropriate for such a criticism", showed that the expressions employed "were used with the intention to belittle the private plaintiff and expose him to ridicule, and therefore this and such an act of his, though it was done within the performance of the journalist profession, is indeed a criminal offence [of insult]."

[1] Article 92 of the Criminal Code of the Republic of Serbia criminalizes the conduct of anyone who "discloses or circulates any untrue material about a person, which can harm that person's honour or reputation", while Article 93, paragraph 2, of the Code does likewise for "anyone who insults another".

For the conviction of criminal insult, the Court sentenced the author to a fine of 10,000 Yugoslav dinars and costs.

2.3 On 20 November 2002, the Zrenjanin District Court dismissed the author's appeal against conviction. The Court considered that taken as a whole the article had an insulting character, giving particular weight to the use of the words "squandered", "give his party the finger" and "cooed". As part of the appeal, the author had also referred to previous speeches by Mr. Segrt in political speeches said to amount to hate speech, in which he labeled democratic opposition inter alia "traitors", "fascists" and "extended hand of NATO". The Court observed that while earlier speeches by Mr. Segrt could be "subjected to criticism and analysis", they "cannot be used for belittling and insulting [him], since dignity and honour of a man cannot be taken from anybody." On the contrary, the author could have asked for judicial protection if he had felt insulted by these speeches.

2.4 In the author's view, the appellate decision concluded the ordinary criminal process. On 30 December 2002, the author asked the Republic Prosecutor to file an extraordinary "request for the protection of legality" in the Supreme Court, but on 24 February 2003 the Prosecutor denied this request. With this, all domestic remedies are said to have been exhausted.

The complaint

3.1 The author alleges that his criminal conviction for the political article published violates his right under article 19 to freedom of expression. The author refers to the Committee's General Comment 10 on this issue as well as the jurisprudence of the European Court of Human Rights (Handyside v United Kingdom,[2] Lingens v Austria,[3] Oberschlik v Austria,[4] Schwabe v Austria[5]), the Inter-American Commission on Human Rights in Report 22/94 on Argentinian 'destacato' laws and the United States Supreme Court (New York Times Co v Sullivan[6] and United States v Dennis[7]). From these authorities, the author derives his claim that article 19 of the Covenant protects a broad area of expression, especially in political debate, and limits on this expression should be tightly construed in order to avoid chilling legitimate expression.

3.2 In addition, the author argues that the appeal court's suggestion that he should have sought judicial protection against Mr. Segrt's earlier speeches from the courts during the Milosevic era, when Mr. Segrt held a high position, is wholly unrealistic (see paragraph 2.3, *supra*). As a result, the author contends that his conviction and sentence, as well as the existence of criminal offences of libel and insult in the State party's law, violate his rights under article 19 of the Covenant.

3.3 In consequence, the author seeks a declaration of violation of article 19, and recommendations that the State party decriminalizes "libel" and "insult", that it dismisses the criminal verdict against him and removes it from its records, that it compensates him for

[2] A 24 (1976) at para. 49.
[3] A 103 (1986) at para. 42.
[4] Reports 1997-IV at para. 34.
[5] A 242-B (1992) Com Rep at para. 55.
[6] 376 US 254 (1964).
[7] 341 US 494 (1951), opinion of Douglas J.

wrongful conviction, that it reimburses the fine and costs he was sentenced to pay, and that he be compensated for his costs before the domestic courts and the Committee.

State party's submissions on admissibility and merits and author's comments

4. By Note verbale of 23 May 2005, the State party commented on the admissibility and merits of the communication, observing that the conviction for insult under article 93, paragraph 2, of the Criminal Code of the Republic of Serbia, upheld on appeal, were the result of legally valid judgments. It further points out that upon review of the case, the Office of the Public Prosecutor of the Republic of Serbia established that the request for legality protection with respect to these judgments was unfounded.

5. By letter of 25 July 2005, the author reiterated his earlier submissions, arguing that the State party's submissions implicitly confirm that domestic remedies had been exhausted.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not the communication is admissible under the Optional Protocol to the Covenant.

6.2 The Committee has ascertained that the same matter is not being examined under another procedure of international investigation or settlement for the purposes of article 5, paragraph 2(a), of the Optional Protocol.

6.3 As to the specific claims arising out of the author's conviction and sentence, the Committee does not construe the State party's submission of 23 May 2005 as raising an objection to the contention that domestic remedies have been exhausted, or to any other aspect of the admissibility of the communication, save substantiation for purposes of admissibility of the claims. In the Committee's view, however, the specific claims advanced by the author have been sufficiently advanced in fact and law so as to be substantiated, for purposes of admissibility. It therefore considers the communication to be admissible inasmuch as these claims raise issues under article 19 of the Covenant.

Consideration of the merits

7.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as provided in article 5, paragraph 1 of the Optional Protocol.

7.2 The question before the Committee is whether the author's conviction for criminal insult for the article published by him in January 2002 amounts to a breach of the right to freedom of expression, including the right to impart information, guaranteed in article 19, paragraph 2, of the Covenant. The Committee recalls that article 19, paragraph 3, permits restrictions on freedom of expression, if they are provided by law and necessary for respect of the rights or reputations of others. In the present case, the Committee observes that the State party has advanced no justification that the prosecution and conviction of the author on charges of criminal insult were necessary for the protection of the rights and reputation of Mr.

Segrt. Given the factual elements found by the Court concerning the article on Mr. Segrt, then a prominent public and political figure, it is difficult for the Committee to discern how the expression of opinion by the author, in the manner he did, as to the import of these facts amounted to an unjustified infringement of Mr. Segrt's rights and reputation, much less one calling for the application of criminal sanction. The Committee observes, moreover, that in circumstances of public debate in a democratic society, especially in the media, concerning figures in the political domain, the value placed by the Covenant upon uninhibited expression is particularly high.[8] It follows that the author's conviction and sentence in the present case amounted to a violation of article 19, paragraph 2, of the Covenant.

8. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose a violation of article 19, paragraph 2, of the Covenant in respect of the author.

9. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including quashing of the conviction, restitution of the fine imposed on and paid by the author as well as restitution of court expenses paid by him, and compensation for the breach of his Covenant right.

10. Bearing in mind that, by becoming a State party to the Optional Protocol, the State party has recognised the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the Covenant, the Committee wishes to receive from the State party, within 90 days, information about the measures taken to give effect to its Views. The State party is also requested to publish the Committee's Views.

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[8] See, inter alia, Aduayom et al. v Togo Case Nos. 422-424/1990, Views adopted on 12 July 1996, at para. 7.4: "[T]he freedoms of information and of expression are cornerstones in any free and democratic society. It is the essence of such societies that its citizens must be allowed to inform themselves about alternatives to the political system/parties in power, and that they may criticise or openly and publicly evaluate their Governments without fear of interference or punishment".