

8 April 2008

PUBLIC STATEMENT

ON THE OCCASSION OF THE FINAL JUDGMENT OF THE HIGH COURT IN PODGORICA IN THE CASE OF EMIR KUSTURICA AGAINST ANDREJ NIKOLAIDIS AND WEEKLY MONITOR

Human Rights Action considers that the final judgment of the High Court in Podgorica accepting the claim of the film director Emir Kusturica and ordering the journalist and writer Andrej Nikolaidis and weekly Monitor to pay 12.000,00 euros of non-material damage to Kusturica, breaches the right to freedom of expression of Nikolaidis and the weekly Monitor in contravention to the standards of the European Convention on Human Rights that are obligatory for Montenegro.

We believe that the anti-war statements published by Nikolaidis in Monitor needed to be considered as value judgments (as determined by the first instance judgment of Mrs. Slavka Vukcevic), which, although disturbing and probably offensive for Mr. Kusturica, are necessary for a free debate of public interest in a European democratic society, and that, as such, they need not be punished, and especially not with such a high penalty. In any case, we believe that Nikolaidis' statements were less disturbing than Kusturica public expression of regret that „Milosevic did not have 250 million Serbs on his disposal together with two atomic bombs“.

If the Supreme Court or the Constitutional Court of Montenegro does not remedy this breach of freedom of expression, we believe that the European Court of Human Rights will do so. However, in the meantime, the damage will only be enhanced by execution of the judgment, and not only for the defendants, but for the general climate of freedom of expression in Montenegro.

A particular cause for concern presents the fact that the High Court in its judgment did not seriously consider the standard of freedom of expression in light of the jurisprudence of the European Court of Human Rights, as opposed to the Basic Court in Podgorica that had founded the (overturned) first instance judgement in this case on a considerable analysis of six key judgments of the Strasbourg court. In other words, the High Court had, as opposed to the Basic Court, ignored the interpretation of the freedom of expression in the case law of the European Court of Human Rights, which is concerning for development of jurisprudence of the Montenegrin courts, especially if one considers that the Venice Commission particularly emphasized the necessity of interpretation of the Montenegrin constitutional human rights guarantees in light of the case law of the Court in Strasbourg.