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TO HIGHER PUBLIC PROSECUTOR IN NOVI SAD

On the basis of the Provision of the Article 51, Paragraph 1 of the Law on Criminal Procedure and in response to decision made by the Basic Prosecutor's Office in Novi Sad Kt.No. 4739/14 from 31 July, 2014, in which the criminal charges were dismissed because the act mentioned in the charges is not a criminal act to be prosecuted ex officio, the authorized attorney of the aggrieved party, Ilija Dević, who filed the criminal charges, Nikola Stanojević, attorney from Belgrade, is lodging the following

PLEA

The Basic Public Prosecutor's Office in Novi Sad informed me, as the authorized attorney of the aggrieved party, that the Prosecutor's Office dismissed the criminal charges against Nikola Lapčević, President of the Steering Board of *ATP Vojvodina AD Novi Sad* under bankruptcy, Nenad Čotranovački, member of the Steering Board of *ATP Vojvodina AD Novi Sad* under bankruptcy, Lazar Munižaba, member of the Steering Board of *ATP Vojvodina AD Novi Sad* under bankruptcy, Nikola Pavlović, bankruptcy Trustee of *ATP Vojvodina AD Novi Sad* under bankruptcy and Dragomir Zjalić, lawyer from Novi Sad because of criminal act of abuse of the official position according to the Article 359, Paragraph 1 of the Criminal Law, damage inflicted to the creditors according to the Article 237, Paragraph 3 of the Criminal Law as well as for abuse of trust according to the Article 216, Paragraph 3 of the Criminal Law.

I find the decision made by the Basic Public Prosecutor in Novi Sad unlawful.

It cannot be seen in the information sent by Gordana Popović, the Public Prosecutor's Deputy, for which persons and for which acts the criminal charges were dismissed, although in the criminal charges each criminal act, time and place, way of its execution as

well as all the elements essential for each criminal act are precisely defined and qualified for each person individually.

The criminal charges were not filed to the Basic Public Prosecutor in Novi Sad but to the Higher Public Prosecutor in Novi Sad because the criminal offenses committed by the persons stated in the criminal charges are in jurisdiction of the Higher Public Prosecutor's Office whose actual jurisdiction arises from the type of the criminal act, height of the damage caused by committing of the offense.

The criminal charges for abuse of the official position against the abovementioned persons for the criminal acts according to the Article 359, Paragraph 3 which they did together with other criminal acts were inexplicably ceded to jurisdiction of the Basic Public Prosecutor's Office in Novi Sad without any previously done *vidimus* and the Basic Public Prosecutor's Office in Novi Sad as the one act *ultra vires* acted in a unlawful way.

We think that acting of the Prosecutor's Office in this way is, procedurally, abuse by both the Higher and the Basic Prosecutors and it indicates that these institutions which are defined and appointed in accordance with the Constitution and Law to prosecute offenders, when the very case of *ATP Vojvodina* is considered, were acting in accordance with someone's order and under pressure put on them, that they acted contrary to their professional obligations and that the reasons for dismissal of these criminal charges are not of legal nature and do not indicate that the state authorities are acting in accordance with the Law.

Besides precise description of time, places, ways of execution of the criminal offenses, the criminal charges also contain the evidence which unequivocally indicates committing of criminal offense.

Besides, according to the order given by the Prosecutor, certain preliminary investigation was supposed to be carried out, conversations were supposed to be organized with Emir Jašarević, the authorized attorney of the aggrieved party and with Ilija Dević, the aggrieved party, and the information was supposed to be gathered from other persons stated in the criminal charges. None of the abovementioned activities has been carried out.

Although the Prosecutor's Office as an institution which prosecutes offenders is very familiar with the case of *ATP Vojvodina* due to the case actuality, the public interest,

interest of Anti-corruption Council and representatives of European Commission, the Prosecutor's Office did not act in accordance with the rules and regulations of the Constitution and Law on Public Prosecution, but they dismissed the criminal charges after two and a half years.

This information clearly shows that the Prosecutor's Office did not act in accordance with the Law, that it did not act efficiently, that there was no reason for dismissal of the criminal charges and their ceding to the incompetent Prosecutor who dismissed the criminal charges so that now the aggrieved party, as the one who filed the criminal charges, does not know facts relating real decision made by the Prosecutor, i.e. he does not know against which persons, for which criminal acts and for which reasons the criminal charges were dismissed.

This way of the Prosecutor's acting who dismissed the criminal charges and who was obviously acting in accordance with someone's order and pressure and, having in mind the fact that the public is very well informed about the case of ATP Vojvodina, clearly shows that the aggrieved party is not legally protected by the Prosecutor in spite of the fact that it is his/her legal obligation, he is not legally protected by the state authorities in charge when it happens that he is in dispute or conflicting interests with the representatives of the City of Novi Sad local self-government.

Although it is common fact in acting and prosecution practice that, when informing about filing of criminal charges, Prosecutor does not inform the one who filed the charges about the reasons for their dismissal, it does not mean that this practice cannot be a form of abuse by the prosecutor as it is obvious in this very case. It does not mean that he is allowed arbitrariness, negligence, inactivity, acting motivated by the reasons which are not of criminal legal nature, especially when the one who filed the criminal charge knows nothing about the reasons for the charges dismissal. Furthermore, he does not know against which persons, for which criminal acts and for which reasons the dismissal was done.

I suggest to the Higher Public Prosecutor's Office in Novi Sad to, according to their professional obligations defined by the Law, have insight into the case of the filed criminal charges, to consider the gathered evidence and already done checks and, after that, to take over the case as the competent Prosecutor's Office and give order for

investigation against the persons stated in the criminal charges for the stated criminal acts.

I would kindly ask you to inform me about your decision.

Belgrade, 15 August, 2014

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