

## **Who has the status of injured party and how to determine the responsibility of the members of corporate bodies in case of dismissal of criminal charges for Belgrade Waterfront?**

An MP from the opposition party Balsa Bozovic (DS) published certain information on dismissed criminal charges he filed against Deputy Prime Minister Zorana Mihajlovic, as the signatory of the joint venture "Belgrade Waterfront", and against unknown persons, "with whom she worked in agreement". According to the criminal charge, the crime reflected in the failure to leave out or amend harmful provisions from the agreement, while harmful consequences were reflected in the state assuming obligations whose value exceeds 32 per cent in the joint venture. (<http://goo.gl/gd4ni8>). Zorana Mihajlovic publicly reacted to this by pointing out that the contract was in fact beneficial and by indicating other agreements concluded by the current government that she also considered beneficial, while making no comments on possible criminal or legal aspects of this issue (<http://goo.gl/uXu4eR>).

According to the news from a few weeks ago, the Prosecutor's Office for Organized Crime rejected Bozovic's criminal charge as unfounded, and Bozovic "requested the case files" in order to file a complaint. (<http://goo.gl/vCPB58>). He apparently received the files, as the latest news refer to some of the possible reasons for the dismissal of criminal charges. As stated, "the injured party has the right to challenge prosecutor's decision on dismissing criminal charges, and the fact that the complainant Balsa Bozovic is not an authorized person to file a complaint served as grounds for issuing the decision that the complaint is inadmissible". (<http://goo.gl/Ogn57p>)

In addition to this formal cause for dismissal of the complaint, media also published one of the possible reasons for dismissal of criminal charge, but it is not entirely clear whether that was a direct statement of the Prosecution or Bozovic's interpretation: "... he said that the Prosecution dismissed criminal charges without any verification... and advocated the stance that state officials cannot be held responsible because they are protected by government decisions. The Prosecution's standpoint that the charge was premature and that I should wait 30 years to see if there was any damage to citizens means that no one will ever be held responsible for this, because the criminal act will become outdated by that time." (<http://goo.gl/NJfjQu>)

This case is also very interesting after leaving out certain actors and the agreement that served as basis for criminal charge. By nature, some agreements concluded by public officials in the name and for the account of the authorities will be beneficial and some will be harmful. The effects cannot be known with certainty until an agreement is implemented. Therefore, criminal liability that can arise from the agreement cannot be linked to the fact that specific contract had (objectively) harmful consequences.

This can serve as basis for political responsibility (resignation) - for example, if it is proven that specific agreement, although implemented in accordance with regulations, was not cost-effective. An official can be criminally liable if there is a tie between subjective and objective responsibility. The subjective element required for criminal liability is reflected in either intentional harmful actions (e.g. received bribes, blackmail, intent to cause damage) or in negligence (failure to conduct checks before undertaking a commitment or ignoring the warnings). The objective element of criminal liability is reflected in violation of some rules of procedure. Thus, a mayor or a minister who had the legal capacity to make free assessment of whether to donate a building land to an investor or not, cannot be criminally reliable, but a mayor or a minister will be prosecuted if they had a legal obligation to award the land to the highest bidder and they sold the land to the investor of their choice or did not organize procurement at all.

Scarce information from the case Bozovic/Mihajlovic resemble another great dilemma about which we already wrote (<http://goo.gl/11mZuW>) - the criminal liability of members of collective bodies. This is a very important issue for the fight against corruption in Serbia, because many important decisions are made by the bodies where decisions are made collectively (at least according to the Constitution and the Law), and not by the individuals who implement them. Thus, the Prosecution may have established that Deputy Prime Minister cannot possibly be held responsible for concluding the agreement, because she was implementing government's decision. There is no indication whether the prosecution addressed individual responsibilities of government members for making decisions that preceded the conclusion of the agreement. The issue of liability of members of corporate bodies is particularly complicated in cases where a possible abuse occurs by a failure to act (e.g. as in the case of dismissed criminal charges filed by former director of the anti-corruption agency against former members of the City Council of Novi Sad for failing to adopt certain acts in connection with the relocation of bus station).

Equally interesting and important issue is the status of an injured party. It is generally considered in Serbia that an injured party is *"any person whose personal or property rights have been violated or threatened by criminal offense"*. When a criminal complaint is filed by a relative of a murdered person, an owner of illegally destroyed property or an attorney on behalf of the municipality that suffered damages due to unpaid taxes, then there is no dilemma who an injured party is. However, the dilemma can arise when property rights of citizens are injured in an indirect way. For example, when adverse actions of a government member lead to budget deficits in connection to rents, taxes or land contributions, when an income of a retired person or a teacher freezes or when excessive amounts of budget money are allocated as a result of harmful public procurement contracts, causing deficits in resources for improving the quality of courts and forcing litigants have to lead longer disputes. Whenever there is a damage to public property, it could be established that some property rights of all citizens are ultimately hurt (even to a negligible degree). However, since this is not a unique case, it seems that the legislator intended to acknowledge the status of the injured party to a narrow circle of

people (<http://goo.gl/x4A6xd>). On one hand, this relieves the judiciary, but public interest also remains completely unprotected if the competent public prosecutor does not act properly - hierarchically superior Public Prosecutor's Office will reject the complaint of the "injured party" without engaging in the matter. The solution to this problem should be sought in setting some limits of potential damage or the number of people who believe that the public interest was violated, which could serve as grounds for initiating some sort of "complaint of public interest" even when the public prosecutor does not want to investigate the presence of criminal liability.