AGENCY FOR PREVENTION OF CORRUPTION

P o d g o r i c a

On August, 2018 at 10:00 AM Vanja Ćalović Marković along with myself, as a legal representative, came at the time scheduled for an oral hearing in the case led against her by the Agency.

Representatives of the media and the public, who wanted to attend the oral hearing, were stopped at the entrance of the Agency’s premises, so we waited for 15 minutes for the decision and explanation for excluding of the public. Since we did not receive the decision and the reasons for excluding of the public, I asked the authorized employee Maja Karas Bošković, in accordance with Article 143, Paragraphs 2 and 4 of the Law on General Administrative Procedure, to issue a reasoned decision on exclusion of the public. She announced that it is the practice of the Agency to exclude the public from these proceedings and the decision and reasons for excluding the public from the whole hearing have not been made.

For the above reasons, we refused to attend the oral hearing from which the public was arbitrarily and unlawfully excluded, and on the same day, I filed a written statement to the archives of the Agency for Prevention of Corruption on all the allegations the Agency requested from the party, and at the same time submitted written evidence the Agency requested from Vanja Ćalović Marković.

Apart from the allegations contained in the written statement, I hereby note the following:

The provision of the Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms guarantees the right to public hearing in determination of one’s civil rights and obligations, and therefore also in the process of determining whether Vanja Ćalović Marković has violated the Law on Prevention of Corruption, as are constant untrue and unfounded claims by the Agency. Also, the work of the Agency is public, and the principle of publicity provides public oversight of the bodies exercising public powers, all in terms of the principle of sovereignty under Article 2 of the Constitution of Montenegro on the direct exercise of power by citizens. In addition, pursuant to Article 143, Paragraph 1 of the Law on General Administrative Procedure, in conjunction with Article 41 of the Law on Prevention of Corruption, the oral hearing is public.

Since publicity of work is the rule, i.e. the principle prescribed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Constitution and the law, any exclusion of the public is an exception requiring the authority conducting the procedure to make a special decision on excluding the public and provide clear and convincing reasons in its decision, as well as the legal basis for which it decided to exclude or limit the public. This obligation is prescribed by the provision of Article 143, Paragraph 4 of the Law on General Administrative Procedure.

Pursuant to the provision of the Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, the public may be excluded from the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in special circumstances where publicity would prejudice the interests of justice. None of the above grounds for exclusion of the public in the concrete case exists. Also, none of the grounds for excluding the public prescribed in Article 143, Paragraph 2 of the Law on General Administrative Procedure in the specific case exists.

Therefore, by arbitrary exclusion of the public, without providing reasons and explanations, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Constitution of Montenegro and the law are violated while the public's interest in the lawful behavior of bodies exercising public authorities is severely jeopardized.

Public character of the procedure before the bodies that decide on civil rights and obligations protects the parties in the procedure from decision-making in secret without any public control, and at the same time maintains trust in the work of these bodies. The principle of publicity contributes to achieving the goal of fairness of the procedure, which constitutes one of the fundamental principles of every democratic society within the meaning of the European Convention (judgment of the European Court of Human Rights Golder of 21 February 1975, Series A No. 18, page 18, paragraph 36. and the Lawless judgment of 14 November 1960, Series A No. 1, p. 13).

The interests to be served by the public procedure are not only the interests of the parties in the trial, but also the interests of the general public, and the trial open only to parties involved in it does not meet the criteria laid down in Article 6 of the Convention (*Kadubec v. Slovakia*, 1998 and *Malhous v. Czech Republic*, 2001). The publicity principle applies to any stage of the trial that has an impact on "deciding" on a particular issue (*Axen v. Germany*, 1983).

In addition, I am referring that in the request for initiation of the procedure on the basis of which the Agency initiated this procedure, it was explicitly requested, pursuant to Article 31, Paragraph 3 of the Law on the Prevention of Corruption, that the information on the applicant and the content of the request be available to the public and Vanja Ćalović Marković.

Thus, in this case, the Agency unlawfully and arbitrarily excluded the public from the entire oral hearing, without making any decision and without giving any reasons for excluding the public.

Once again, I am pointing out that Vanja Ćalović Marković has responded to all allegations and evidence for which the Agency requested an explanation from her as a party. In this regard, I request for all other evidence of the Agency in the course of the trial which it considers essential for decision-making, and which have not been pointed out to the party so far and made possible to respond to them, to be timely delivered to me as a legal representative, and define a legal deadline in order for the party to be allowed to use her right to participate in the proceedings, comment on the files and evidence and propose evidence that she considers relevant. This is especially considering the fact that the written notice or any act of the Agency does not indicate what is the alleged evidence against Vanja Ćalović Marković and which evidence should be presented at the hearing, while for two years the Agency has not made clear in what way Vanja Ćalović Marković violated the law and which evidence confirms that.

Vanja Ćalović Marković’s legal representative:

Veselin Radulović, lawyer