

Authority:

Commissioner for Information of Public Importance and Personal Data Protection

Country/State:

Serbia

Case title:

Journalist v. Public Prosecutor (First Basic Public Prosecutor)

Official citation:

071-01-3890/2018-03

Date of decision:

26.12.2018.

Relevant law:

Anti-corruption Agency Act, Criminal Procedure Code

Decision:

The authority should provide the applicant with access to information regarding its decision to cease criminal investigation of the then Mayor of Belgrade on the failure to report and/or giving false information on property in accordance with the Anti-corruption Agency Act.

Public authority decision to reject access to information is overruled;

Key words:

Public officials, investigation exemption, criminal prosecution

Case Summary:**1. Facts**

A journalist filed an access to information request with the First Basic Public Prosecutor (hereinafter: Prosecutor) pertaining to the public authority's file on investigating the Mayor of Belgrade who, according to Anti-corruption Agency that filed criminal charges against the Mayor to the public authority, failed to report information on property and allegedly provided false information.

The Prosecutor denied access to information based on the exemption that allowing access to information would jeopardise indictment of a criminal offence, pretrial proceedings, or unbiased treatment and a fair trial, since the Mayor submitted all information during the processing of Anti-corruption Agency's charges, while the Prosecutor decided to defer criminal prosecution and the Mayor paid the requested sum to the benefit of humanitarian purposes, as provided for by Criminal Procedure Code. The prosecutor added that access to its decision to reject the criminal charges filed by Anti-corruption Agency, could jeopardise possible criminal procedure.

2. Decision

In his decision Commissioner noted the public interest to know the reasoning behind the Prosecutor's decision to reject criminal charges filed by a public

authority in its legal capacity against a public, and important political, figure. The case was intensely reported in the media. With regard to the notion of possible criminal procedure the Commissioner rejected the argument as the exemption could refer to an ongoing procedure and not hypothetical one. The Commissioner concluded that the Prosecutor failed to show that allowing access to information would cause legal or other harms to legitimate interests, without prejudice to any future investigation following the knowledge of new facts.

Note (Optional):

Resource:

The case is in brief noted in Commissioner's annual report for year 2018, available on website www.poverenik.rs (in Serbian only).