

The Second Big Council of the Constitutional Court did not accept the suggestion given by the Rapporteur to declare itself unauthorized in the proceedings launched by ex owner of *ATP Vojvodina* Nevertheless, Dević's Complaint before the Court

*The suggested solution to reject the Constitutional appeal has not been accepted due to the fact that the appeal was filed because of the infringed right to a fair trial as well as the right to protection of property; for that reason the appeal is in competence of the Constitutional Court. *Some judges have complained that there have been attempts of lobbying. There are some speculations that "the Rapporteur in this case is under pressure" as well.

AUTHOR: M. N. STEVANOVIĆ

Belgrade – The suggestion given by the Judge Rapporteur to the Constitutional Court to declare itself unauthorized relating the complaint filed by Ilija Dević, former owner of *the Auto-transport Company Vojvodina*, was not accepted by the Second Big Council of the court. The Council consists of 12 more judges, and the decision relating this case will be made during one of the coming sessions, *Danas* has learnt. The source close to the Council claims that the judges have complained about some attempts of lobbying and, consequently, there is an unconfirmed speculation that "the Rapporteur in this case is under pressure" as well. However, the suggested solution to reject the Constitutional appeal because of the procedure reasons has not been accepted with the explanation that the appeal was filed because of the infringed right to a fair trial and the right to protection of property, and that is why the appeal is in the competence of the Constitutional Court.

Namely, it is said in the constitutional appeal filed by Dević that "the judgement made by the Supreme Court of Cassation is a controversial one and it was made outside the law and judiciary practice". He reminds that the Court had the task to give their opinion on the executive, final judgement made by the Court of Appeal in accordance with which the City of Novi Sad had to pay the amount of 14 million Euros for the damage caused due to contempt of the contract with *ATP Vojvodina*. If the judgement had been realized in practice, not only all the trustees would have been better paid out and the conditions for the company getting out of bankruptcy would have been created, but a new way would have been open for compensation of the rest of the damage because the calculation made by the expert related only the period from March 2007 to April 2011

and it involved only activities of the bus station. The Court of Appeal, whose judgement was negated by the Supreme Court of Cassation, made the conclusion that the damage compensation had to include all the activities ATP Vojvodina had been having, and that would have involved not only the lost profit relating official representing of *Setra* and *Mercedes* but also the service of their vehicles which Dević had built during the first phase of the bus station project in Novi Sad.

However, the Supreme Court of Cassation made the conclusion that, when concluding the contract on construction of the new bus station by which *ATP Vojvodina* and Dević committed to bringing the investment to the end, i.e. till getting the use permit, and the City of Novi Sad committed to redirecting the traffic so that the new station could accept the passengers – both parties were unconscionable. According to the Supreme Court of Cassation, they did not take care of the third company – the City Transportation Company which would, in case of practical implementation of the contract, would be exposed to strong competition. The Court did not explain why a private company would stop its development because of the Public Transport Company's interest. Besides, the Supreme Court of Cassation made conclusion that *ATP Vojvodina* did suffer the damage, but not the one defined by the Court of Appeal in the second instance and repeated proceedings. Without the additional expertise, the Supreme Court of Cassation gave the order to the City to pay more than three times smaller amount – about four million Euros. That judgement was immediately included into the jurisprudence, so one of numerous court cases initiated by *ATP Vojvodina* and Dević within this case had already been solved in accordance with this model.

"The hot potato" is now with the Constitutional Court. In case the Court accepts the argumentation provided in the constitutional appeal, the Supreme Court of Cassation would have to make a new judgement in this case within 60 days. It would consequently become a model for the other appeals and complaints filed against the City of Novi Sad by *ATP Vojvodina* and Dević as the intervener in this case for the personal damage. When the expertise done by the Faculty of Mechanical Engineering which considered loss of the modern service for *Setra* and *Mercedes* buses which was projected to meet the requirements of the companies from Vienna to Athens as well as the loss relating other activities is included, the amount could reach hundreds of millions of Euros. In case the Constitutional Court

decides to reject the appeal, Dević would have open way to the Court in Strasbourg where the complete case could be finalized, but with far greater damage for the country.

Waiting for the Solution

The case of *ATP Vojvodina* is one of five top cases on the list of 24 cases of high-level corruption, mostly in the area of privatization, which the European Commission has sent to the Government of Serbia within harmonization of the Chapter 23. It has been emphasized that this is the only case in which the investor but not the state is the one suffering the damage. Although it was said in the year 2013 that all the cases would be solved till the end of the year, none of them has got a court epilogue so far and the state has not defined responsibility of its institutions in these cases.