



Coalition All for fair trials

DAMAGED PARTY
From the Colorful revolution

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DAMAGED PARTY from the Colorful revolution

The civil activist, participant in the Colorful revolution, and recently elected member of the Parliament, today again was found in the defendant's table, charged with participation within a crowd that has committed criminal offense as defined in Article 385 from the Criminal Code.

Although on several occasions the trial was postponed, as a result of determination, verification and precise confirmation for the amount of the compensatory damages, today, even though the main hearing started, seeing that this is a summary/ shortened procedure (in which case there is no preparatory hearing) a representative of the damaged party Ministry of culture was heard, after which the hearing was again postponed and the representative of the damaged party was obliged to additionally submit evidence.

Although the Criminal Procedure Code states that with the indictment application/ information¹ the public prosecutor submits a list of evidence that later during the main hearing are bring forth, the court again allowed the prosecution i.e. the damaged party to additionally submit evidence which the fore mentioned party had before the start of the main hearing.

What we would like to underline as an omission in this hearing is the way the representative of the damaged party gave his statement. Namely, the person giving the statement today is representative of the damaged party- Ministry of culture, thus he had the purpose to bring forth facts regarding the determined damage as well as the damage claims. Despite his legally determined role in this hearing, the representative engaged in commenting and analyzing the events of the day the alleged crime was committed with details about the alleged situation. The same person practically gave statement as a witness for facts and circumstances that he was neither called for nor asked, so when asked how the damage was established, the representative of the damaged party- Ministry of Culture began retelling the events which occurred the day of occurrence of the damage.

Although the court did not take into account the statements about the events outside the Ministry, since the damaged party representative was not asked nor called in status of witness, this caused series of ambiguity about the status in which this person is summoned in this hearing. It was this ambiguity in the statement of the damaged party, which in some way imposed the need of the court to take over the lead of this trial by preforming the job of the public prosecutor in this hearing – to do the examination.

Exactly this is the main irregularity in this proceeding observed by the Coalition- the fact that the hearing of the damaged party representative, suggested by the public prosecutor, was

¹ A written accusation, different than indictment, charging a person with a crime. It is presented in court by a public prosecutor for crimes sanctioned by imprisonment of up to 5 years.

directly conducted by the court. Namely, Article 383 paragraph 2 of the Criminal procedure code states that the party which has called the witness i.e. expert witness or the technical advisor in support of its case shall conduct the direct examination, and therefore the examination in this case had had to be done by the public prosecutor, not to be a separate examination led by the court under the cover of “clarifying fact and circumstances”. This option is provided in Article 383 paragraph 5 saying that “After the completion of the examination by the parties, the Presiding Judge and the Trial Chamber members may ask questions of the witness i.e. the expert witness”.

But what left the biggest impression about this hearing is in fact the interference of the prosecutor providing answers or answer clarifications for the representative (of the Ministry of Culture), to questions that were asked by the defense. This only suggests that the evidences are modifying for the purpose of supporting the indictment of the prosecution and eventually a conviction verdict for the defendant.