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Belgrade, 01.07.2016)  
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Republic of Serbia  
STATE PUBLIC  
PROSECUTION  
UT.1. no. 1/16  
06/05/2016  
BELGRADE  
SM/DC

**ADMINISTRATIVE COURT**

**BELGRADE**  
Nemanjina 9

**CLAIMANT:** The State Public Prosecutor, Belgrade, Nemanjina 22-26

**RESPONDENT:** The Commissioner for Information of Public Importance and Personal Data Protection, Belgrade, Bulevar kralja Aleksandra 15

**STATEMENT OF CLAIM**

***for annulment of the decision of the Commissioner for Information of Public Importance and Personal Data Protection No. 07-00-04224/2014-03 of 14/03/2016 in the operative part of the decision under I, II and IV***

The Republic Public Prosecutor, in accordance with Article 29 of the Law on Public Prosecution ("Official Gazette of the Republic of Serbia", No. 116/2008) and Article 11, paragraph 3, Article 18, paragraph 3 of the Law on Administrative Disputes ("Official Gazette of the Republic of Serbia", No. 111/2009), has filed a statement of claim in an administrative dispute against the decision of the Commissioner for Information of Public Importance and Personal Data Protection No. 07-00-04224/2014-03 of 14/03/2016, in the operative part of the decision under I, II and IV.

The State Prosecutor has submitted the Statement of Claim against the mentioned decision in due time within the time limit imposed by Article 18, paragraph 3, of the Law on Administrative Disputes (according to the writs of the Commissioner, the challenged decision was sent to the Ministry of Defence of the Republic of Serbia on 16/03/2016).

Exhibit: Decision of the respondent authority number 07-00-04224/2014-03 of 14/03/2016 and files of the same body

The contested decision of the Commissioner No. 07-00-04224/2014-03 of 14/03/2016 annuls the decision of the Ministry of Defence of the Republic of Serbia No. 4346-2 of 27/10/2014, rejecting the request of the complainant the Humanitarian Law Center for submission of information and ordering the Ministry to submit to the Humanitarian Law Center, without delay, and no later than 5 days from the date of receipt of the decision, at the address in Belgrade, Dečanska 12, the requested information, i.e., copies of documents from which it can be determined when Goran Jeftović was appointed as the headquarter officers of the Priština Corps of the Army of Yugoslavia during the Kosovo conflict in 1999, until when he held that position and which rank

he held, provided that before submitting copies of documents, personal information such as home address and personal identification number, date of birth and the like will be protected, if contained in these documents, so they will be made non-available. Paragraph IV of the same decision required notifying the Commissioner by the said Ministry within 7 days of receipt of the decision on the enforcement of the decision.

The Ministry of Defence of the Republic of Serbia submitted the initiative to the State Public Prosecutor to file a lawsuit in an administrative dispute against the above decision of the Commissioner. The initiative states that the contested decision ordered the submission of data to the Humanitarian Law Center in Belgrade relating to professional military personnel, which are contained in the documents and personal records and are to be kept in the line of duty in accordance with the provisions of the Rulebook on personnel records of the Yugoslav Army, which is why the requested information is available as confidential only to the competent authorities of the Ministry of Defence, the Army and the judicial authorities. Disclosure of such information to others would have repercussions on the defence capabilities of the Army of Serbia, would endanger national defence, national and public security, and personal safety of officers and non-commissioned officers. The proponent considers that providing such information is contrary to the interests of the Republic of Serbia, and the country's interest outweighs the interest of any other person to obtain information. Also, the proponent considers that the challenged decision violated the provisions of the Law on Defence, the Law on military, work and material obligation, the Law on Data Secrecy, the Law on the Army of Serbia, resulting in incorrect application the Law on Free Access to Information of Public Importance.

The State Public Prosecutor finds that the decision of the Commissioner in the contested parts violated the provisions of Article 2, paragraph 1, Article 8, paragraph 1, and Article 9, paragraph 1, item 3 and 5 of the Law on Free Access to Information of Public Importance ("Official Gazette of the Republic of Serbia", Nos. 120/04, 36/10 ...), to the detriment of the public interest, which is why this statement of claim initiates an administrative dispute against the decision of the Commissioner No. 07-00-04224/2014-03 of 14/03/2016.

It was found from the case files of the Commissioner No. 07-00-04224/2014-03 that the decision of the Ministry of Defence of the Republic of Serbia, Department for Material Resources, No. 4346-2 of 27/10/2014, rejected the request of the Humanitarian Law Center in Belgrade for access to information concerning the status and movements in the service of Goran Jeftović as a professional military person as well as information about the duty that the appointed person held as headquarter officer of the Priština Corps of the Army of Yugoslavia during the Kosovo conflict in 1999. The reasons for rejection include: the data pertaining to the duties which the appointed person held according to the wartime assignment during a declared state of war are data that, according to legal regulations, are protected as confidential and available only to certain persons.

Exhibit: decision of the Ministry of Defence of the Republic of Serbia No. 4346-2 of 27/10/2014

In deciding upon appeal by the claimant of information, the Humanitarian Law Center, following the above first instance decision, by the challenged decision in the paragraph of the operative part under I the Commissioner annulled the first Instance decision in part rejecting the request of the Humanitarian Law Center for information about when Goran Jeftović during the conflict in Kosovo 1999 was appointed and until when he held the position of headquarter officer of the Priština Corps of the Army of Yugoslavia and which rank he had at that time. Paragraph II of the decision ordered the Ministry to submit to the Humanitarian Law Center, without delay, and no later than 5 days from the date of receipt of the decision, the requested information, i.e., copies of documents from which it can be determined when Goran Jeftović was appointed during the Kosovo conflict in 1999, until when he was at the position of headquarter officer of the Priština Corps of the Yugoslav Army, and which rank he held, provided that before submitting copies of documents, personal information such as home address and personal identification number, date

of birth and the like will be protected, if contained in these documents, so they will be made non-available.

In the operative part under III, the appeal of the Humanitarian Law Center filed against the decision of the Ministry of Defence of the Republic of Serbia in relation to the part which requires the submission of the requested information about whether Goran Jeftović today is an active member of the Army of Serbia and, if so, which post he was assigned and which rank he holds, was rejected, and in the operative part of the decision under IV, it was ordered that enforcement of the decision referred to in paragraph 2 must be notified by the Ministry of Defence of the Republic of Serbia to the Commissioner within 7 days of receipt of the decision.

The Commissioner for Information of Public Importance believes that the Ministry of Defence of the Republic of Serbia was obliged to provide the requested information to the applicant and that there were no conditions for the exclusion of the right of access to such information as prescribed by Article 9, paragraph 1, item 5 of the Law on Free Access to Information of Public Importance, because valid evidence has not been offered.

Exhibit: Files of the Commissioner 07-00-04224/2014-03

Provision of Article 2, paragraph 1, of the Law on Free Access to Information of Public Importance stipulates that information of public importance is information held by a public authority body, created during or relating to the operation of a public authority body, which is contained in a document and concerns anything the public has a justified interest to know.

Article 8, paragraph 1 of the same Law stipulates that the rights provided for in this Law may, in exceptional circumstances, be subject to limitations set out in this Law, to the extent necessary in a democratic society to prevent a serious violation of an overriding interest based on the Constitution or law.

Chapter II of the same Law which relates to the exclusion and limitation of free access to information of public importance lists, *inter alia*, defence of the country as a special matter. Article 9, paragraph 1, item 3, of the Law stipulates that a public authority shall not allow an applicant to exercise the right to access information of public importance if it would thereby seriously threaten national defence, national and public safety or international relations. Item 5 of the same Article of the Law prescribes that access to information will not be made available if a public authority would thus make information or a document qualified by regulations or an official document based on the law as state, official, commercial or other secret, i.e. if such a document is accessible only to a specific group of persons and its disclosure could seriously legally or otherwise prejudice the interests that are protected by the law and override the access to information interest.

The subject matter of requested information in this case refers to data on the status and movements in the service of Goran Jeftović in the Yugoslav Army, as a professional military person, the information on the duties performed by the appointed person by wartime formation and wartime assignment during a declared state of war.

Under Article 8, paragraph 1 of the Law on Secrecy of Data (“Official Gazette of the Republic of Serbia”, No. 104/09), data that can be classified as secret shall be any data of interest for the Republic of Serbia, whose disclosure to an unauthorised person would result in damage, if the need to protect the interest of the Republic of Serbia prevails over the interest to have free access to information of public importance. Such data under the same Article, paragraph 2, item 1, relate in particular to the national security of the Republic of Serbia, public safety, or defence, foreign, security and intelligence affairs of public authorities.

Provisions of Article 81 to 102 of the Law on Defence (“Official Gazette of the Republic of Serbia”, Nos. 116/07, 88/09, 104/09) regulate that the Defence Plan of the Republic of Serbia lays down the tasks of all defence subjects in terms of organization of the forces, resources, measures and procedures for the work of state authorities and the use of the Armed Forces, and other defence forces at wartime and during the state of emergency, which was identically regulated by the previously applicable Law on Defence in its Article 6. Also, the data about wartime formation and

the use of Army units are an integral part of the Defence Plan, which carries a degree of secrecy "State secret" and that is at disposal of Defence Plan's manager, which is why natural and legal persons as beneficiaries of classified information for the conduct of operations from their purview, in accordance with the provisions of the Law on Secrecy of Data, have access to secret data only on the basis of a certificate issued by the competent authority, which the representative of the claimant of the information - the Humanitarian Law Center - does not have.

Information on the status and movements in the service of Goran Jeftović, as well as information on the duties that the appointed person performed during his position of a headquarter officer at the Priština Corps of the Army of Yugoslavia during the Kosovo conflict in 1999, does not constitute information of public importance, because this matter concerns a professional military person, who in the requested period, by his wartime formation was performing the constitutionally and legally set tasks and duties, whose disclosure would result in damage to the interests of the Republic of Serbia and the Serbian Armed Forces if such data in the particular case would be provided to the Humanitarian Law Center as an authorised person. This is because jobs and formation posts, under any internal acts on job classification and systematisation are subject to a protective regime in accordance with Article 32 of the Law on Secrecy of Data ("Official Gazette of the Republic of Serbia", No. 104/09). In this particular case, the data are requested on the military person Goran Jeftović, who based on the wartime assignment, performed his duties to which he was assigned by wartime formation at the time of declared state of war. Information on wartime assignment which, *inter alia*, include information on professional military persons and the posts to which these persons are appointed by wartime formation, in the sense of Article 59 of the Law on military, work and material obligation ("Official Gazette of the Republic of Serbia", Nos. 88/09 and 95/10) is set to be kept as **classified information**.

Under the Rulebook on criteria for determining data relating to the defence of the country that must be kept as a state or official secret and the determination of the duties and tasks of particular importance to national defence, to be protected by the application of special security measures ("Official Gazette of FRY", No. 54/94 and "Official Gazette of the Republic of Serbia", Nos. 88/09 and 111/09), the criteria for determining data relating to the defence of the country, which must be kept as a state or official secret and measures for their protection, are regulated. Classified information whose disclosure could have serious consequences for the national defence and security, which includes, *inter alia*, the National Defence Plan (Articles 81 - 102 of the Law on Defence), which contains information about the wartime formation and use of Army units.

Based on the foregoing it follows that the requested information constitutes protected information. To disclose such information to persons not authorized to have such access, it is necessary to previously revoke the secrecy of information, according to the Law on Secrecy of Data, otherwise persons who would give such information without the revocation of secrecy would make illegal acts based on which they would suffer consequences.

The information contained in the documents of the personal records of the Army can be used only for official purposes and is considered confidential documents, and the formational book is a strictly confidential document. The degree of secrecy "strictly confidential" shall be determined for information whose disclosure could cause serious harmful consequences for the security and defence of the country. The structure of military personnel, their duties and their assignment to wartime duty in accordance with the Defence Plan, are protected data of the Army of the Republic of Serbia, and their disclosure could cause consequences for the country's interest, i.e., the defence of the country, national and public security as well as international relations could be compromised. This clearly indicates that the national interest prevails over the interest of the public.

Therefore, we find that in this case the conditions for exclusion and limitation of free access to information, in accordance with Article 8, paragraph 1 and Article 9, paragraph 1, item 3 and 5 of the Law on Free Access to Information of Public Importance, as it was decided by the judgment of the first instance authority. Specifically, we believe that the claimant of information does not belong to the circle of persons who can have access to data pertaining to military persons and their

assignment, thus contesting the decision of the Commissioner, which is of an opposite position to one of the first instance authority, passed by violation of the provisions of the Law on Free Access to Information of Public Importance relating to the exclusion of free access to information of public importance.

Having regard to the above, we suggest that the Administrative Court adopts the following

***JUDGMENT***

*THE STATEMENT OF CLAIM IS UPHELD* and the decision of the Commissioner for Information of Public Importance and Personal Data No. 07-00-04224/2014-03 of 14/03/2016 is *ANNULLED* in the operative part of the decision under I, II and IV.

Deputy Republic Public Prosecutor  
Snezana Markovic  
(Signature and seal, illegible)

HLC TRANSLATION