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Plaintiff: Milan Beko from Belgrade, Andre Nikolica
23a, represented by Lawyers Ana Lazarevic
et. al from Belgrade, Kosancicev venac 11a

Respondent: Verica Barac from Belgrade, Ilije
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COUNTER STATEMENT

No. of copies: 2
No. of exhibits: 10

The Respondent is hereby pleading to the charges as follows:

I Objection to lack of passive legitimacy

1. First of all, the Respondent is making an objection to the lack of passive legitimacy, for the following reasons:

Article 172, Paragraph 1, of the Law of Obligations (hereinafter LOO) provides that:

“A legal entity is accountable for damages caused by its body to a third party in exercising or in connection with exercising its functions.”

The Respondent is President of the Anti-Corruption Council (hereinafter the “Council” or the “Anti-Corruption Council”). The Council has been formed by the Government of the Republic of Serbia as its expert-advisory body and it is to be considered as a body in the terms of Article 172, Paragraph 1, of the LOO.

Exhibit: 1/ Decision on the Formation of the Anti-corruption Council of 2 October, 2001.

The Respondent took part in the B92 program *Kaziprst (The Index Finger)* on 22 November, 2010, in the capacity of the Council President. On that day the Respondent was introduced by the programme host as “President of the Anti-Corruption Council, Verica Barac”. During the programme the Respondent talked about a subject which had been, on the basis of the tasks entrusted to the Council by the Government, investigated by the Council and about which the Council had made an official report. The lawsuit includes exclusively the Respondent’s statements which had been the result of the Council’s work and which are contained in the Council’s official reports. However, the Respondent appeared in the programme in question as a representative of the Council, or a body of the Republic of Serbia in terms of Article 172, Paragraph 2, of the LOO.

As she had not acted on her own as a natural person, the Respondent cannot be accountable for the alleged damages sustained by the Plaintiff owing to her statements made in the capacity of the Council President.

II Respondent’s disputed statements

2. Though she believes that all her disputed statements were made while exercising her office as the President of the Anti-Corruption Council, and that therefore only the legal entity whose body the Council is, i.e. the Republic of Serbia, may be accountable for them, the Respondent shall, out of precaution, show that there is no place for civil-legal liability in this case.

II.1 Statements relating to *Luka Beograd (Port of Belgrade)*

3. At the beginning it should be noted that all the Respondent's statements relating to *Luka Beograd (Port of Belgrade)*, which are disputed by the Plaintiff, have their basis in official documents of the Anti-Corruption Council: "Report on the Concentration of Ownership in the Company *Luka Beograd*" from 2008; and "Response of the Anti-Corruption Council to Milan Beko's Untruths Stated on the B92 Programme" of 07.02.2011.

Exhibit: 2/ "Report on the Concentration of Ownership in the Company *Luka Beograd*", by the Government of Serbia, the Anti-Corruption Council, 72 No: 07-793/08 of 19.02.2008.

3 / "Response of the Anti-Corruption Council to Milan Beko's Untruths Stated on the B92 Programme" on 07.02.2011,
www.antikorupcija-savet.gov.rs

4. The Plaintiff finds disputable the fact that the Respondent challenged his statements regarding *Luka Beograd*, and that she said that the 1972 and the 2003 official documents did not foresee relocation of the port, and that the 2003 documents foresaw a 10-hectare extension of the area for the port activities. The Plaintiff claims that these statements made by the Respondent are "untrue and totally false". However, as it will be shown, the public documents, including the evidence supporting the lawsuit itself, confirm the truthfulness of the Respondent's statements.

The 1972 General Urban Plan of Belgrade

5. The Respondent stated that "no one mentioned relocation of the Port in 1972". This statement is true. The 1972 General Urban Plan of Belgrade clearly states: "The existing port of Belgrade *is to remain* at the present location next to the Pancevo bridge" (Official Gazette of the City of Belgrade No. 17/1972, pp. 611, Exhibit No. 4 supporting the lawsuit, italics added). This clearly shows that it was foreseen in 1972 that the port of Belgrade be kept at the same location, as stated by the Respondent. This text is preceding the paragraph quoted in the lawsuit, but the Plaintiff avoided mentioning it.
6. Furthermore, in the same paragraph of the 1972 General Urban Plan of Belgrade, quoted by the Plaintiff ("A place in Velikoselski rit is foreseen for the extension of the Port capacity"), "extension" of the Port is mentioned, which means that it was to stay at the same place but was to be "extended". So, from the text cited by the Plaintiff it can be concluded that the Port was to stay where it is.
7. The Plaintiff also supports his claims by quoting page 593 of the 1972 General Urban Plan of Belgrade, but again he quotes selectively. Specifically, he omits the key part of the text (p. 3 of the lawsuit), which reads:

"A lot of money has been invested in the construction of airports and ports so far, and these facilities have not yet reached the optimum level of exploitation of the built capacities, so it is most realistic to expect that they will be further exploited and expanded. It is likely that significant changes as regards the use of land on their sites can be expected only when their available space becomes insufficient for them." (Official Gazette of the City of Belgrade No. 17/1972, pp. 593, Exhibit No. 3 supporting the lawsuit, italics added).

In other words, it is not stated here that the Port of Belgrade would only remain in its place for many years to come, but that it would also be expanded there. However, the Plaintiff failed to mention this part of the 1972 General Urban Plan in his lawsuit.

8. All the above clearly implies that no relocation of the Port was planned in 1972, but rather that there was a clear attitude that it would stay where it is, just as the Respondent said.

The 1976 Detailed Urban Plan

9. In the controversial statements the Respondent did not mention the 1976 Detailed Urban Plan, and therefore it is not clear why the Plaintiff is quoting it. In any case, the above quote does not speak about the precise location of the Port of Belgrade, but rather that it must be "physically separated from the city so that the port activities could be carried out without any obstructions", which is a condition that can be achieved at various locations, including the present one. In other words, the above quote does not provide any support to the Plaintiff's claim.

The 2021 Master Plan of Belgrade, adopted in 2003.

10. The Respondent stated that "the 20-year 2003 Master Plan of Belgrade confirms that the Port would remain in that place, which means for the next 20 years". The Plaintiff disputed this, citing the part of the Master Plan of Belgrade, which says that Velikoselski rit is the planned location for a new port. However, the Plaintiff again cites selectively. First, the above quote about Velikoselski rit is incomplete because the Plaintiff omits an important part where it is stated that Velikoselski rit, as a commercial zone and as a planned port, "*has not been realized in any segment* because of large investments required to develop the land and provide traffic connections with the city" (Official Gazette of the City of Belgrade No. 27/2003, pp. 1029, Exhibit. 6 to the lawsuit, italics added). So, this part of the Master Plan speaks of an idea that has not been acted upon and says nothing specifically about the relocation of the Port of Belgrade from the current location.
11. However, another part of the 2003 Master Plan of Belgrade, which the Plaintiff again avoids citing, and which specifically and at length speaks about the Port of Belgrade, reads, *inter alia*: "It is planned that transportation and goods-transportation activities dominate in this area in the future, primarily for the purpose of the Port of Belgrade".

So, the 2003 Plan envisaged that the Port would stay where it is, and that port activities would dominate, and that was the plan for the next 20 years, just as the Respondent said. This is confirmed by the following excerpt from the 2003 Master Plan of Belgrade:

"The concentration of multi-modal, transportation, storage and transshipment facilities at a favorable geographic location makes it possible that the Port of Belgrade could become the largest and the most important transportation and distribution system in the wider geographic area and the backbone and carrier of the development of the city of Belgrade as an international goods exchange and transportation hub."

12. All the above stated clearly implies that the Respondent's disputed statement is true.
Exhibit: 4 / Master Plan of Belgrade 2021, Official Gazette of Belgrade No. 27/2003, pp. 987, 1007 and 1029.
13. Further disputed was the Respondent's statement that it was envisaged in 2003 that the area for the performance of port activities be increased by 10 hectares. However, the Master Plan of Belgrade 2021 shows that the production zone area of the Port of Belgrade is 84 acres and that it has been planned that it be expanded to 97 acres by 2021.
Exhibit: 5 / Master Plan of Belgrade 2021, Official Gazette of Belgrade No. 27/2003, pp. 934-935 and 1007.
14. Finally, the Respondent's statement that the Plaintiff had bought the "Port of Belgrade as tycoons normally buy companies; they buy a company to ruin its business and trade its land", is disputed. However, the Respondent's statement that the Plaintiff had bought the Port of Belgrade to take advantage of its land, and not to develop the port, is the Respondent's opinion, and not a factual assertion subject to argument. This statement is a conclusion made on the basis of all available information, supported by *Luka Beograd's* new management's policy, according to which the Port area is to be used as building land and not for port activities. As for the statement that the Plaintiff is a "tycoon", it is a common term for very wealthy and influential businessmen, so it is not clear why its use would be considered offensive. Besides, this term is commonly used in the local media, which have already put the Plaintiff in this category, as can be seen in the attached text of the daily *Politika*.
Exhibit: 6 / Excerpt from the website of *Luka Beograd*, if necessary other documents and statements;
7 / I. Klein, M. Bar, *Comprehensive Dictionary of Foreign Words and Phrases*, Prometej, 2006, pp. 1201;
8 / "Tycoons at Lunch about Dacic as Prime Minister," *Politika* 12.06.2008, www.politika.rs.
15. In conclusion, the Respondent's disputed statements regarding *Luka Beograd* are (a) true (in the case of statements subject to proving); or (b) are attitudes that are not

subject to argument, but are rather the Respondent's views and opinions which she has formed on the basis of the facts established by the Anti-Corruption Council or available from other sources. In both cases there is no basis for a civil-legal responsibility of the Respondent.

II. 2. The Respondent's statements relating to violation of law, violation of national interests, undermining of the state's interest, causing damage to the state and making profit on it at the same time

16. The Plaintiff finds disputable the Respondent's statements set forth in Section II.2, page 5, of the lawsuit:

"He is really interesting in this respect, because he is an excellent example of collusion between the executive power and tycoons, where the law may be violated, national interests impaired, and huge damage caused to the state, so that they profit by it; these are all speculative activities. Therefore, they're not doing any business other than engaging in such speculations. This means that no one else could, first of all, buy it in this way below cost, and be the only bidder, with a phantom company."

17. The Plaintiff claims that this statement is untrue, sweeping and calculated in order to compromise him among the public. However, this statement is entirely based on the above-mentioned report of the Anti-Corruption Council (see Exhibit No. 1 /), and on the criminal complaint filed by the Council regarding the *Luka Beograd* scandal against several persons, including the Plaintiff, for a criminal offense of association to commit criminal acts according to Art. 346, Paragraph 1, of the Criminal Code of the Republic of Serbia (CCRS). These documents clearly confirm the following statements which the Plaintiff alleges to be untrue:

- that the Plaintiff, along with others, acted unlawfully (see, for example, Criminal Complaint, pp. 7-10);
- that the Plaintiff acted in concert with persons in power (see, for example, Criminal Complaint, pp. 7-10, and "Report on the Concentration of Ownership in the Company *Luka Beograd*", pp. 5 and 7-8);
- that the Plaintiff acted against the interests of Serbia and caused material damage to her of about 21 million euros (see e.g. Criminal Complaint, pp. 7).

Exhibit: 9 / Criminal Complaint against Predrag Bubalo, Milan Beko and others, submitted to the High Public Prosecutor's Office of Belgrade by the Anti-Corruption Council, dated 14.05.2010.
2 / "Report on the Concentration of Ownership in the Company *Luka Beograd*", by the Serbian Government, the Anti-Corruption Council, 72 No: 07-793/08, dated 19.02.2008.

18. As to the statement that the Plaintiff engages in speculations, and that no one could buy *Luka Beograd* but he, it is clear that this is the Respondent's opinion, based on the said documents and investigations carried out by the Anti-Corruption Council.

II.3. Statements regarding the association of politics and tycoons and about messages directed to the President by the Plaintiff

19. The Respondent will plead one by one regarding the statements the Plaintiff listed in Section III.3 of the lawsuit and which he considers to be untrue.

20. As to the statement that there was collusion between tycoons and the executive power: firstly, this is a general statement in which the Plaintiff was not even mentioned. Secondly, as regards the Plaintiff and the case of *Luka Beograd*, the existence of collusion with the executive power can be clearly gathered from the said Council's documents (see, for example, the Criminal Complaint, pp. 7-10, "Report on the Concentration of Ownership in the Company *Luka Beograd*", pp. 5 and 7 - 8). Furthermore, this statement also contains a paragraph stating that this "concept ... has now suffered a total collapse." This is also a general statement. In addition, it is the Respondent's opinion referring to the fact that the economy has found itself in a deep crisis, and that cooperation with the tycoons has contributed to it, as can be seen from the entire statement ("And the collusion between politics or the executive power and tycoons has, in fact, created this concept which has now suffered a total collapse. That is the essence. This has completely failed economically").

21. As to the part of the statement in which the Respondent wonders, "How can they change the Master Plan so as to destroy the port and trade the land? How can they exert influence so that laws are passed in their favour?", this is the Respondent's conclusion made on the basis of the fact that the Master Plan of Belgrade 2021 was changed after their takeover of *Luka Beograd*, and all for the purpose of the Plaintiff's business plans. According to the findings of the Anti-Corruption Council, "these changes provide that the area of about 70 acres, which is now occupied by manufacturing, warehouse and transportation facilities, be converted into land for commercial purposes, opening the door for the implementation of the *Luka Beograd* owners' plans to build a residential and office complex there."

Exhibit: 3 / "The response of the Anti-Corruption Council to Milan Beko's Untruths Stated in the B92 Programme" of 07.02.2011, www.antikorupcija-savet.gov.rs.

22. With regard to the Respondent's comment on the exchange of statements between the Plaintiff and the President of the Republic, in which she stated that the Plaintiff's statement "is a sort of blackmail ... some kind of dictation of conditions", it is clear that this is the Respondent's opinion about an event. The statements exchanged between the Plaintiff and the President of the Republic following the Plaintiff's interview on TV B92 showed that there was certainly tension, if not a conflict between the two of them. In her disputed statement, the Respondent commented on this social phenomenon. This

is also clear if we take into account the journalist's question in its entirety and the Respondent's response:

The programme host:

"When Milan Beko says that Tadic is anyhow more powerful than him, do you find it logical that a businessman, sending a message or doing whatever, puts himself generally in a position to compete with the President? Well, isn't it logical that the president of a country is indeed more powerful? And what does that more powerful mean? How did you understand that, Boris Tadic is more powerful than I. He is responsible for Serbia's future, I'm not. How to understand this statement of his; is it a message, is it a ...?"

Verica Barac, President of the Anti-Corruption Council:

"It is a kind of blackmail, I think. Some sort of dictation of terms. (...)"

(Stated in Exhibit 2 supporting the lawsuit)

23. The above stated clearly implies that it is a comment on a social phenomenon - a conflict of the Plaintiff with the President of the Republic.
24. Finally, the Plaintiff did not like the Respondent's following statement: "In all transactions in which they have been engaged in Serbia, they have caused damage to the state; here, consider any transaction." Firstly, this is a general statement. Secondly, this statement is the Respondent's opinion, which is based on official documents of the Anti-Corruption Council, including the Criminal Complaint against the Plaintiff in which it is stated that the state lost 21 million euros in the *Luka Beograd* sale scandal.

Exhibit: 9 / Criminal Complaint against Predrag Bubalo, Milan Beko and Others, dated 14.05.2010, pp. 7, submitted to the High Public Prosecutor's Office of Belgrade by the Anti-Corruption Council.

III Legal basis for the statement of claim

25. The Plaintiff claims non-material damage for emotional pain sustained due to injury to his reputation and honour, but does not state specifically which of the mentioned statements caused injury, nor how it injured his reputation and honour, but states in general that "all the Respondent's disputed statements create a false idea that the Plaintiff is engaged in unlawful transactions, speculative activities, that he tells lies regarding the contents of official documents, that he exerts influence on state institutions in an unpermitted way. . .".
26. As already stated, the factual statements the Respondent made in her disputed statements are true and they are based on official documents of a state body, the Anti-Corruption Council. Therefore, they cannot be the basis for civil liability of the Respondent in this case.

27. On the other hand, the Respondent has also made a number of judgments and opinions about the Plaintiff. Neither of these statements can be grounds for civil-legal responsibility of the Respondent because these are opinions on issues of general importance and/or of the Plaintiff, who is a public figure.
28. It should be also noted that all disputed statements - both the factual statements and opinions - are based entirely on facts contained in official government documents. Finally, the Respondent uttered all the disputed statements while performing her public office, participating in a public debate on issues of common interest.
29. The Plaintiff, as a public figure who participates in business transactions important for the entire society, must be prepared to be exposed to critical public scrutiny and comments, even when he does not like such comments or if they are not fully accurate or precise. Otherwise, we would limit or even abolish public debates on issues of social importance. However, the Plaintiff is clearly not ready to expose himself to public debate or discussion about his actions in the economic and social spheres of Serbia, but rather wants to limit such a discussion or prevent it. This lawsuit is just the latest in a series of attempts to do so, and, ultimately, an attempt to prevent the work of the Anti-Corruption Council.
30. On the other hand, the Respondent, as a participant in this public debate, and especially in her capacity as the president of the Anti-Corruption Council, has the right (and duty) to make statements and comments concerning the Plaintiff and his business transactions. In this case, the Respondent presented in her disputed statements facts acquired by the Council through its work, as well as opinions that are based on these facts. As such, these statements are far above the standards of freedom of expression that is applicable in this public debate. Consequently, the Respondent cannot be liable for damages which, the Plaintiff believes, have been caused by the disputed statements.

IV. The issue of damages allegedly sustained by the Plaintiff

31. Bearing in mind the fact that the Respondent has no responsibility for the disputed statements in this case, she will not, at this moment, plead herself in more detail as regards the existence and amount of any damages sustained by the Plaintiff, except that she explicitly and fully denies them.

Given all the above stated, the Respondent, through her attorneys authorized to represent her by the Power-of-Attorney enclosed herewith as Exhibit 10 /, makes a proposal that the Court reject the statement of claim and oblige the Plaintiff to pay her the incurred costs of proceedings.

In Belgrade, Verica Barac

11 March, 2011, represented by:

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