

Ways towards Justice

PORTRAIT

WE ARE SUPPRESSING THOUGHTS ABOUT RISKS

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Dragoljub Albijanic, a thirty-eight-year old judge in the Special Department for Organized Crime of the Belgrade District Court, has recently been in the limelight because of his verdict in the “Stambolic case”. It was the first time that some of the well known actors of dramatic events in the nineties which came to court were sentenced to forty years in prison.

What do you think of making organized crime a special field; opinions in this regard do differ?

When you deal with such big a problem as organized crime, you must seek for an efficient solution. This is how the Italians started, and the Canadian example is also instructive. Only after they solved the problem and sized it down to tolerable proportions, tolerable in their view, were these processes categorized as regular judicial processes, which is probably what is going to happen also in Serbia one day. The concentration of organized crime has dramatically burdened the society, as we had it here, and it justified the intention to form a special court department, the special prosecutor's office, to introduce special procedural provisions in the criminal procedure code for dealing with certain questions, like the issue of the status of the witness collaborator, whom the law has given full amnesty from criminal prosecution. This is the reality having in mind the level of criminalization of the society, and only in the next phase of its development can the provisions of the witness collaborator be revised; for instance, his sentence can be reduced, as is the case in Italy and America. However, in the last year and a half we were exposed to constant pressure from everywhere, regarding both the trial and the commentaries related to the work of the judges as well as the verdicts. The court acts upon prosecutor's indictment, i.e. it is working within its frameworks, and on the other hand you have the defense which is constantly attacking, the statements of lawyers, and this is in a way normal, but also you have numerous statements of a different nature, statements of politicians, the ministries, sometimes also of those whose field of work is not related to the judiciary. It is not rare that we see promises and tales which the public wants to hear, there are made momentary political calculations, sometimes even if the cost is a complete discredit of the judiciary. I do trust the institutions of this country, and I believe in their improvement and therefore I cannot accept such reactions. Maybe I am wrong, but we all must establish the authority of the court. We in the judiciary, but also those beyond.

There is great public interest for these trials. Is it not habitual to expect some commentaries, which you call pressures? Finally, the President of the Supreme Court of Serbia is also asking – why does it take so long to end the trial for the assassination of the Prime Minister?

I fully agree that the public must be informed, particularly in these cases, but also in other regular proceedings in municipal and district courts. It did happen that I, judge in the district court, read articles related to my trials which were very interesting to the public. But it is one thing to inform on what is going on, which point was reached, what did someone say, who was interrogated, and another one when the journalists, politicians and many others comment on whether or not something was good, should it have been done in a different way, why was it done in this and not in some other way, why is something not yet completed while it should have already been ended, etc. In my view, this is intolerable. I had the opportunity to speak to this effect with the journalists, I think it is not good to go public with evaluations of what has been accomplished, or what is to be done or to speculate on what is to come, but once again I would say this is true both for politicians and those whom you call legal experts. The law established procedures which say who can evaluate the verdicts, and the public, politicians and experts, in my view, can analyze occurrences in the judiciary but they cannot make concrete evaluations on concrete cases. Probably at this moment this cannot be absolutely prevented, but I think that a way should be found to precisely define and arrange these issues in order to protect the institutions.

Why is this such a big problem when there is even the legal provision which says that public figures should refrain from commenting judicial proceedings? Finally, up to now there was no example that somebody has reacted to these commentaries in accordance with his/her authorities, and if we look at the percentages, then it is the politicians who are the majority among those who go public with such commentaries.

This is a question for the prosecutor. However, I would not like to be narrow-minded, I think we have here a judicial culture that has not been sufficiently formed. If the people do not know, or cannot sense what are the limits for their statements, then this is a problem which is difficult to overcome without introducing some more concrete, I would say more profound measures. Few people know about this legal provision, and those who do interpret it in a way suitable for them. Hence, the prosecution should be that organ which will react and show to the people what it is that we are talking about. On the other hand, I think that the norm that you mentioned should be more concrete and foresee certain sanctions for those who violate it.

In a case in which I have recently rendered the verdict the public was excluded only during the interrogation of the witness collaborator, although even from this part of the trial we had commentaries in mass media! How – I would not know!

Was there any sanction?

No; this, too, remained unpunished. This is something that the prosecution should take care of, we can only draw attention to this, and we have done so many times, both in this and in other cases which were often commented in the public. We pointed out that reports are not correct, that there are inappropriate comments, that there are speculations regarding the end result of the proceedings, which creates the opinion in the public on what is to be expected in this or that trial. This is completely intolerable. You know, one thing, one piece of evidence can completely redirect the trial, so you can bring a completely different decision from the one which, at first glance, the public was expecting. The consequence is that the public is disappointed, and all kind of stories emerge. Let me conclude: I am aware of the need for the public to be truly and timely informed on such cases, I think the public is an ally of justice, but a sense of proportion must be retained.

You certainly do know that journalism also has rules of the profession, that it must take into account the attention and interest of the public?

Certainly, but these rules of journalism must be harmonized with the demands of a professional judiciary. It is necessary to have certain limits and correctives in reporting, or maybe it is better to say, certain rules, in the interest of the quality of court proceedings. Improper reporting is most often to the detriment of the proceedings. If I only would show you press clippings with reports from my trials, you would see unbelievable things: offensive, provocative, correct and incorrect. And all that in a variety of most different newspapers, and I would not like to speculate on whether or not some of these articles could be classified as the so-called "yellow press".

Do you read such press?

Yes, because I am interested to know what is emerging as the public's picture of what we are doing.

I cannot but remind you of the day when you were reading the verdict for the murder of Ivan Stambolic and attempt of assassination of Vuk Draskovic. The Media Centre was overcrowded with journalists and when you announced the verdict applause burst out. Do you know about that, did anybody tell you about this reaction of the journalists?

No, I did not hear about that. I am not often in the position to talk to your colleagues, I know only a few of them and our contacts are strictly official. While the trial was going on, I was fully concentrated upon it. The case was a complex one in itself, difficult, and when you add that the public eye was so persistently focused upon you, this certainly raises your attention, your energy and concentration.

But now, when you know about this reaction, I would like to know how you interpret it?

What should I tell you? If there was an applause, this, I hope, is a result of a just, proper and professional conduct of my colleagues and me in such a complex case.

Is it possible to say that your verdict has served justice? Did law and justice meet in it?

Our view is presented in the verdict. The aim of our activity and work was exactly to bring a just decision on the basis of evidence that we had. The verdict, I remind, is not yet final, work is still going on, which means that the proceedings are still ongoing, so that I cannot, and I also do not want to, speak about this case. I can speak of what was our aim, and that is to have the trial just, legal, correct and lawful from the very beginning to its very end, so that nobody can make any serious objection. In such a process there is a possibility of mistakes, but they must not be substantial, they must not endanger the criminal proceedings in any way. Hence, it was our aim to have the trial run smoothly and to have a decision made upon presented evidence, whatever it might be, but that we, too, are confident with what

we did. I think that the trial ran correctly, and that in the end we made a just decision, exclusively upon evidence at our disposal. Of course, there are always those who do share our view and those who do not, as long as there is the court this will always be the case. Finally, as it is already a commonplace to say – never do all come satisfied out from the courtroom. In our view, justice is served with an impartial implementation of law. However, the Supreme Court will say whether or not we have made a mistake. There were improper and heated observations, as well as those which deserved our warning.

The public was recently divided in regard to Judge Bojan Misić who after four months did not write down the verdict for the case "Ibarska highway". You too are still writing the verdict for your case. Although the colleagues and professional public say that the deadline for writing the verdict is intolerably short, laymen rest assured that this could be done somewhat quicker.

I would like to draw your attention that this case has five thousand pages, out of which twenty three hundred are transcripts. About one thousand pages relate to the investigation, and there are about fifteen hundred pages apart from transcripts. This is huge material which had to be dealt with and this is time consuming, it demands work and concentration.

The explication of this verdict is nearing the end, but I cannot say either when it will be completed, or how voluminous it is going to be. I told you how huge this case was. I would not like to sound pretentiously, but few people in the history of the Serbian judiciary faced such a difficult case. It happened that in our time the need emerged to put on trial such complex cases, and the entire burden fell upon nine judges of the Special Department and another three investigating judges. In such a case, it is theoretically impossible for you to write down the verdict in 15 days. The legal deadline is 8 days, and in more difficult cases it is 15 days. When the legislator was writing the law, he probably did not think that some day there will emerge cases of this type. Even in regular proceedings it is very rare that judges manage to write a verdict within this deadline. I would remind you that in the District Court the judges have 100 cases on the average. Imagine that I have already written the verdict for such a voluminous case, what would you think of me? Wouldn't that raise doubts that I brought the verdict much before I have formally made it public, or that I have done it wrongly, when you know the entire seriousness and complexity of the case? It is impossible to translate five thousand pages into a verdict in fifteen days. And I am asking, what is the reasonable deadline? This is a relative thing. In my view, it is better to exceed the deadline, but make a quality verdict, than finish this job worse and quicker. And whether or not some of the competent ones will make use of their discretionary right and institute proceedings because of this alleged slowness – that is legitimate business. I would like to get the opportunity to say to those who do not share my view: could they make a verdict in fifteen days, and what would be a reasonable deadline? Here again you will have people who understand you and those who do not. The following example should illustrate how voluminous these cases are: in this case over 60 witnesses, experts and damaged were interrogated, and the interrogation of only one witness is written down on 150 pages.

Still, is the specific weight of the case that you conducted only this what you said?

Of course not. The primary thing is the seriousness of criminal acts, for which the severest sentence is envisaged, and also the significance of the very events that are the subject of court proceedings: the former President of Serbia Ivan Stambolic was killed, there was an assassination attempt of a leader of a significant political party, and the defendants were leading persons of the state organs from the previous regime. Both events arouse huge interest of the public. Therefore, both the prosecutor and the defense were interested to do their work as good as possible. During the trial it was happening that 22 lawyers were in the courtroom, for 10 defendants, out of which two are standing trial in The Hague, Milosevic and Pavkovic. There was a numerous audience following the trial. All this produced great tension in the courtroom, but all – the court, the prosecutor and the defense – used every possibility to do their part of work as good as possible.

While conducting this trial, did you have the feeling that in front of you a part of Serbian history, maybe the most intriguing one, was revealing? Did you get to know also something that will remain secret? Finally, prosecutor Vuckovic said that this was a political process and that the former regime stood on trial.

What I saw, that is no secret. Maybe I only saw certain things before the others did. While preparing for the trial I read the files a few times, I read the evidence upon which the prosecutor built the indictment, so that I knew certain things before others did. But the public also could see all this in the court and in press reports. Whether this was the place where history was written – this is something I will think about maybe one day when the verdict in this case, mine or somebody else's, becomes final. I had no time to think about that, and I did also not want to. I tried to conduct the trial in the best possible way and to prepare for it so it could proceed in the best way. The court chamber was of the view that concrete persons were on trial for concrete acts. Whether the regime of Slobodan Milosevic was on trial, whether or not somebody is going to understand it in that way – this will be shown in time. Concrete people were

standing on trial, accused of concrete acts, and this is what we saw in the first place. Court verdicts are not history, they are the basis for the historians to write.

Trials for organized crime and war crimes belong to high risk trials. Did you, in any way, face this?

I had no embarrassing situation because of the trial. I myself did not feel the risk, but I am aware of it. It is completely realistic that such trials bear greater risk than some other ones, because within the category of organized crime these are serious criminal acts. In my view, one is less exposed to risk if one does his job professionally. My colleagues from the chamber and me stuck to this. We think that nobody can accuse us of being personal, or that we went beyond the framework of the profession. I think that neither side's rights were violated nor that I should now feel the risk as greater than it objectively is. It did happen to me, however, also in the District Court, in regular proceedings, that the defendants were threatening during the trial. This we have also in municipal courts, and also in the Supreme Court. The position of the judge is by definition a risky one. This is something you know when you start doing this job. We in this court which, well, both we and you journalists, came to be used to call the Special Court, do not think of this. We are doing our job and we suppress such thoughts.

Although cases before your court are difficult and complicated, verdicts were rendered rather soon, after almost two years. This speaks also of your responsibility in regard to your job and of the responsibility of the court in general. Because in the regular courts, for more simpler cases, the trials last much longer?

The judge and the court must be responsible. However, our work cannot be evaluated only by numbers. There are many obstacles in achieving both quality and quantity, there is a big number of cases in the courts, the structure of cases is different, not all of them are equally difficult. Times are changing, and as a rule the laws are lagging behind. It takes time to make a good law, and the real situation changes again. When I became judge of the District Court, I got 28 cases to deal with. Next year the number grew to 50. And now a judge has 100 cases. There are many reasons why courts are not efficient. We must not view the problem as a black-white one, it is a much more complex problem, and the worst thing is to reduce it all to numbers. I was working for two years on the case we spoke about, and at the same time I was member of the chambers in five additional cases. We used to spend four weeks a month in the courtroom. I would like to recall the experience from a professional seminar in the United States, where 90% of the cases are solved by settlement. We could use some of their solutions and adapt them to our legislature. I know that the public is dissatisfied with the work of the courts, I am not saying that there is no responsibility on part of judges in certain cases, but the majority of them are meticulously and professionally doing their job.

It is said that the laws are lagging behind the needs of the society, but for organized crime it is said that it goes even a decade, or two, ahead of the society and that it is impossible to suppress it without good regional cooperation. What is your practical experience?

I was member of the chamber in a case related to human trafficking. There are a few cases in this regard in our department. When the criminal act was committed in one country, and was completed in another one, without regional cooperation certain criminal acts cannot be successfully dealt with. Countries, and particularly neighboring countries, must have common plans and actions, particularly in the investigation procedure. I will once again recall one of the impressions from the recent expert gathering in the USA: they have huge interest in organized crime here, but not, as many think, for political reasons, but because they fear the transnational effect.

No doubt, organized crime has spread. Is the number of cases in the Special Court in correlation with this? There is an impression that at some point indictments stopped.

Never and nowhere does the number of ongoing cases give the realistic picture of how much organized crime is wide-spread. In Italy for instance, despite a long-lasting struggle, they are conscious that they have outrooted only about five to ten percent of organized crime. I would say that Serbia has made a step forward. Still, there is a lot that we must learn from the more modern judiciary systems.

Is there corruption in the judiciary?

There is much talk on corruption. I am certain that it is no more present than in other segments of society, but because of the bipolar nature of the judiciary, first of all in civil cases, it is exposed to criticism and speculations. Hence, I think it is much less present than the talks about it.