

## WAYS TOWARDS JUSTICE

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Portrait of a judge: Maja Kovacevic-Tomic, Special Department for Organized Crime of the District Court in Belgrade



### THE KEY OF THE WITNESS-COLLABORATOR MAJA KOVACEVIC – TOMIC

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**What when the possible sentence is 40 years imprisonment, and you say to the potential witness-collaborator, who can reveal all crimes of a given group, that he is going to spend 20 years in prison? Will he accept to be a witness and get only 20 years and also live facing the risk of revenge until the end of his life?**

Maja Kovacevic-Tomic, judge and spokesperson for the Special Department for Fight against Organized Crime of the District Court in Belgrade, is by virtue of her function one of the publicly most exposed judges of this court, because it is she who informs the many journalists about what is going on in the numerous pending processes in this Court. Before coming to the Special Court she made all the steps which make a good judge: she was judge at the municipal level, then in the District Court in Belgrade, up to the present post, and it would be difficult to imagine her – at least for us, journalists – in a role other than the “role” of the judge.

Still, when she started her studies at the Law School in Belgrade she did not think of the judiciary, this – says she – “came later”. “I did not have particular talent for natural sciences, or for instance for medicine or architecture. I had to choose among social studies, and the most natural thing was law, because it is of a broadest nature and I had been thinking of the opportunities which a degree in law can offer, you can work in different fields, you can be a journalist, you can work in the court, be a solicitor, work in foreign trade...”, says Maja Kovacevic-Tomic.

Maja Kovacevic-Tomic: I started to think about the court somewhat later, in the third year of my studies. One of our good friends had an accident, everything came to court, and we, all his friends, came to the courtroom to follow the trial. This is when I came to the famous courtroom number three in the Palace of Justice and all this impressed me very much: this courtroom, the judges, the prosecutors and since then it was my desire to become part of this myself.

I graduated in mid-March 1976 and, although I wanted to rest a little in the coming few months, to have my holidays and to start searching for a job later, in September, already after ten days there was an announcement for internship in the Palace of Justice, in the very same building in which the courtroom had impressed me so much and it would have been foolish not to apply, who was to know when the next announcement could be expected. I was selected and on June 1 already started to work. This is how it all began.

After a year I made my judicial exam and afterwards I spent quite some time in the courtroom, when at some point I thought that this might not be the right thing after all, that I maybe did not like it all that much, and I applied for a post in the daily Politika – my mother was a journalist and I liked this job, too – thinking all the time that the court maybe was not the best choice for me. I even went to have an interview with the selection committee and as soon as I came back from this interview I called them by phone and told I was withdrawing! This was the only moment in my carrier when I had a dilemma.

During your carrier you were judging only criminal cases.

I was appointed as judge in 1981, in the Second Municipal Court. I have always preferred criminal law to civil cases, and it so happened that I was also assigned to the criminal department, first in the non-trial chamber dealing with criminal matters and it was only logical for me to become judge in criminal cases. Not only was I never handling civil cases, I also was never in any other department except the one

dealing with crime in the first instance, I was never doing investigation, appeals in the second instance, minor delinquency... I was only judge in the first instance, my whole carrier.

You were elected to the District Court in 1994; did you see this as a big change?

This appointment and my transfer to the District Court was quite stressful because trials on the municipal level are related to minor crime and although there are also more serious and more complex cases, the punishment still is rather mild, and as a rule everybody is satisfied with the judgment; then you come to the District Court, where you have very serious indictments, where you have many murders, where the trials are also very serious and the possible sentences are serious. This is a huge change for every judge.

I cannot select any case from these times, there were a lot of interesting ones and in a way all of them left a mark. For me as a judge, and this is probably the case also with other colleagues, the moment when the verdict is pronounced is always a stressful situation, particularly when a high sentence is involved. These are moments when the judge cannot escape the stress. For the defendant, any sentence is too high, for the family in black mourning clothing every sentence looks like a reward and is insultingly small for those who had lost someone dear; and it is exactly such trials that are so frequent in the District Court. In such situations you have to deal also with the reaction of the public, emotions are running high, and as a judge you must have a clear conscience. In my carrier there was not even one judgment for which I could not have given my argumentation and look right into somebody's eyes.

How are you coping with the inevitable pressures upon the judiciary that come from the public and politics, particularly in the last years in which you were part of the Court handling cases which are under constant "monitoring" and criticism?

Every person has a relationship in regard to his/her job, and for me as a judge it is a challenge not ever to forget what can be the result of a wrong decision. When we have big trials there is always public pressure, and this cannot be avoided, but the judge must be sufficiently professional and must be capable of getting above this. In the end, the judge issues the sentence in accordance with his consciousness and on the basis of evidence, and this is the only way in which the judgment can be defended. The public is always present, and it is normal to have pressure from the public which is siding with this or that side, but the judge must be above that and I think that in such situations I succeeded to do so. This is something that each judge can speak for himself.

After four years of experience in the Special Department of the District Court, in the so-called Special Court, what would you identify as special differences in regard to trials in front of "regular" courts?

There is a big difference between them. First of all, the fact that there is no jury, that the members of the chamber are professionals, makes things easier in comparison to the regular court, there are rather frequent dilemmas during trials and it is easier to sort them out with colleagues than with citizens who sit in the jury, who are not necessarily lawyers. Cases are very voluminous, because the very fact that they relate to organized crime implies a bigger number of crimes, because the criminal organizations do actually emerge in order to last for a longer time. These are big indictments, with a big number of defendants and a big number of crimes, and therefore the trials do last longer. There are also technical differences: in regular courts the minutes are dictated, the judge dictates the summary. Here we have an audio record and the minutes are very voluminous, which can make problems: not all of us are equally eloquent, in court people lose the thread of the sentence, they have stage fright, they are excited... Then you face volumes of minutes in which you have to find your way, but on the other hand they are authentic, so we do not have that constant conflict between the judge and the lawyers on whether or not the judge had correctly dictated the content of the minutes, or had he given "interpretations".

This Court was established on May 1, 2003, and in these few years there were opinions that it is not necessary to have this Court, that its establishment placed the citizens into unequal positions before the court, and that it disrupts the right to have the natural judge. How do you understand these remarks?

Organized crime is of such a nature that it implies organization, it works also on the international level and in the territory of the entire state, its consequences emerge in the entire state and it is logical to have the trials in one place, because it is difficult to establish where the crime was committed if we are dealing, for instance, with trafficking in human beings, or drugs, or weapons. So, the idea was to have the trial in one place and having in mind that the District Court in Belgrade is the biggest one, we were established as the Special Department within this Court, and were composed only from judges who dealt with criminal cases in the first instance, who have a long-lasting experience with a big number of cases and who agreed to be engaged in this work.

By no means do I think that the judges of the Special Court are smarter or more capable than the regular judges of the District Court, but it is logical that for organized crimes you have trials in a more secure surrounding like the one that we have, because it is considered that this job implies a certain risk.

Therefore each of the judges and prosecutors who came to this court had to give special consent, and at the time of the Court's establishment the number of vacancies was bigger than was the number of signed consents.

What was it in your case that had prevailed when you agreed to sign the consent?

It was absolutely a professional challenge. At that moment this was something unknown. The risk of the job I agreed to do by signing my consent was not an issue that occupied my mind too much: I was judging criminal cases for so many years, thought I, and if previously I did not think about being endangered, I saw no reason to be now. A human being is a human being, regardless of the court before which it stands trial. Maybe in the District Court I also had some defendants who belonged to organized crime, only at that time we did not look upon it in this way, and there were no special legal norms relating to organized crime; this "new" job was for me a professional challenge: many verdicts are behind me, and it was a challenge to make a step forward.



How did you understand when particularly the politicians were contesting the Special Court and its judges?

There was much manipulation, and the contesting – at a certain time some media were overflowed with the issue – affected not only the judges, but they were the most affected group. If in our country this was the time when the first trials for organized crime were starting – and organized crime had already proven to be very strong, so strong that it could kill the Prime Minister in the back of the Government's building – then both the public and the members of organized crime should have to see that the state is supporting us, us 12 judges which at that moment represented this so-called Special Court. However, when rumors started on how it is not necessary to have a special court for organized crime and when even the professionalism of the judges who came to this Special Department was attacked, and when there were rumors that this Department will even be cancelled, this did weaken our authority; it encouraged those accused of organized crime to obstruct and prolong the trials, until the Court's dissolution was to be announced and all these cases were to be transferred to other courts in Serbia, according to the place where the crimes were committed.

It seems that most of the obstructions related to the "trial of the century" against those accused for the murder of Prime

Minister Djindjic.

This is correct, we witnessed unprecedented obstructions. In the very beginning there were countless demands for exemption, relating to the chamber, the special prosecutor and his deputies, including the Supreme Court, even criminal charges were filed against judges participating in the trial, and also something happened which had never happened before in our court: the President of the Chamber issued his sentence and all the lawyers, about 50 of them were in the courtroom, stood up and left the courtroom. At the same time we were hearing announcements that this court was going to be revoked, that it was composed of incapable judges, and so on. It seemed as if nobody in the country needed trials related to organized crime except for us who are part of this court.

In this process unbelievable things were happening: it is unbelievable that two witnesses were murdered, Zoran Vukojevic and Kujo Krijestorac, and for the latter we still do not know who had killed him and why. Further, it is unbelievable that the deputy special prosecutor who was representing the indictment for the murder of the Prime Minister was arrested and under criminal investigation for revealing privileged information which related to organized crime, i.e. to the indictment accusing a Supreme Court's judge of receiving bribe allegedly in order to revoke one of the first verdicts exactly of the Special Court. Also, it happens that Goran Kljajevic, the brother of this Chamber's President, is arrested; I do not at all want to discuss whether or not he should be put on trial, this is for the court chamber to decide, but in any way this did happen while the trials for the assassination of the Prime Minister were pending, and it is impossible not to comprehend this as pressure against the judge Marko Kljajevic. After his brother was arrested he continued the trial for some two or three months, and then he left the trial and the post of the judge, so the trial had to start from the beginning. All these are events which are completely, to say the least, unusual and have represented additional difficulties for this trial, which is justly arousing unprecedented interest of the public. This trial is a priority and we in the Court understand that the public and the media are nervous and that there is an expectation to bring this trial to an end. Anyway,

every citizen has the right to know the complete truth regarding the murder of the Prime Minister, because the fact that somebody can kill your Prime Minister in the backyard of the Government means that organized crime is still very strong, and this is a slap in the face for the state, and this trial is a test for the state to see whether or not it is capable of putting an end to organized crime and whether it wants to do so in the first place.

You issued the verdict against the "Kruisevac group" which – at least so says the verdict which is not yet final – was subject to corruption in front of the Supreme Court of Serbia, and even one judge from this court was accused of taking bribe. How did you react to this?

Since this is my verdict, I am not objective, but the fact that one of the judges from the Supreme Court, hence the ultimate judicial level, was on trial in front of this court, is devastating for all of us. Whether there is corruption in the court, or not, I do not know; maybe there is. But what I do know is that, if there is corruption, it is certainly on a much smaller scale than rumors say.

In these four years various laws, which regulate the fight against organized crime, were changed several times. What are the biggest legal problems in this regard?

I would say that the biggest problem is the limitation of custody, because when you have an organized criminal group, the majority of those indicted are detained exactly because we deal here with an organization, with a big number of crimes of which they are accused. Limitation of detention was established before we had these trials for organized crime, when regular trials could have been ended much quicker because the indictments covered a smaller number of people and a much smaller number of crimes. The limitation of detention to two, or even four years in cases where the highest sentences can be issued has not proven to be a good solution. The new Criminal Procedure Code removed this limitation in case of acts for which a possible sentence is 40 years in prison, but we already do have indications that its implementation will be delayed.

In this new Criminal Procedure Code there are also changes in regard to the status of the witness-collaborator by which the entire sentence would not – as is now the case – be completely pardoned.

In my view, the key to the fight against organized crime is the witness-collaborator. Organized crime is organized crime exactly because it is well protected, because it penetrates all structures of the society and has its protectors: in the media, in the court, in the society, in the police, in the government, and it is very difficult to prosecute it. The witness-collaborator is the only way to prosecute such organized crime, to have someone among them talk about their crimes, to speak about who is belonging to the organized criminal group and what have they all done. In the Criminal Procedure Code it was envisaged that the witness-collaborator will get amnesty for all that he had been doing, that he will be acquitted. This is unjust, but on the other hand it is the major interest of the society – me, you, our children – to set him free, and to have the entire criminal group stand trial. However, I say it is terribly important that he gets protection, that he does not get killed, to have him keep his decision to testify. The new Criminal Procedure Code does no longer envisage this possibility to acquit, the witness-collaborator will get only half of the sentence he otherwise would get. Here the possible sentence is high: and what if the possible sentence is 40 years, and you say to the potential witness-collaborator, who can reveal all the crimes committed by this group, that he will stay in prison 20 years? Will he agree to be a witness and get only 20 years and above all face the lifelong risk of revenge?

Will he survive for one year in prison after that?

I would not give estimates in advance, but I am afraid that we shall no longer have witnesses-collaborators. The new legal solution has been adopted and I think that in the future we shall hardly ever have a witness-collaborator. We already have the murder of the witness-collaborator Zoran Vukojevic...

After he was murdered, the police explained that he refused to enter the protection program. The law says that he must sign his agreement to enter the protection program. In this program there are a number of things which you cannot undertake without his consent: you cannot change the identity of the man and his family, the address and place of living, you cannot move him to another state or town without his consent. In the concrete situation we were informed that Vukojevic refused to sign the agreement to be under the witness protection program, and so he was not protected and he was murdered. I think that he, although he did not sign the agreement to be under the witness protection program, must have had some protection, some physical protection and control: the witness-collaborator is by definition not an ordinary witness, he is not a completely free man, because theoretically speaking he can return to the court as defendant in case that he does not fulfill his obligations regarding the testimony. He should have been protected because he was objectively endangered and because until the very end of the trial he is also a potential defendant. The very fact that he was killed in the way this murder happened shows clearly that he did not have necessary protection.

On the other hand, we have constant stories that the fugitive members of the Zemun gang are occasionally in Belgrade, some of the fugitives have even got children in this period...

I do not know whether or not it is true what the media claim that this or that fugitive had been seen in restaurants, but it is the fact that Aleksandar Simovic was arrested in Belgrade, in a rented flat, and that Povic was killed in Belgrade. Hence, they were here, and all the wanted lists were issued in 2003. Why were they not arrested earlier? It is devastating for me that the fugitive member of the Zemun gang has a rented flat in Belgrade although an international wanted list was issued for him.

We come back to the trial related to the assassination of the Prime Minister: lawyers representing the damaged filed a number of requests asking for additional procedures related to establishing evidence, but they were rejected. They were claiming that this evidence could reveal the deeper background of the conspiracy to murder the Prime Minister.

The Court is obliged to stick to the indictment; the court cannot deal with something that is not in the indictment. The indictment is raised against people accused of killing the Prime Minister; their motives were described, their plans and the method of implementing them, and the court deals with this, it examines the accusations contained in the indictment and it establishes whether this people have really taken part in the assassination, whether they have later rendered their assistance and it establishes what each of them had done. The court cannot deal with those who inspired the whole thing, if they are not in the indictment. Criminal law does not establish the one who inspires as a criminal. A number of people were interrogated in front of this Court in regard to the atmosphere prior to the assassination, a number of proposals of those representing the damaged ones were rejected, but the court chamber is no doubt aware of the burden of such a verdict and of all that is needed to reach it and sign it.

A few times, during this and other trials, there were witnesses for which it can be presumed that they were not telling the truth. How much can we expect our practice to change and to instigate criminal procedures for witness who gave false testimonies?

I cannot comment any of the testimonies in the concrete trial, but it is up to the respective court chamber to decide whether or not to believe a witness. If the chamber does not trust a witness, this does not automatically mean that this witness was lying. Maybe there are not sufficient data, maybe the witness had the wrong impression when testifying on some event or detail. False testimony is a crime, but I remind that it is the prosecutor who implements criminal proceedings. The Court alone cannot do anything: it often happens that the court gets proof that the witness is lying, but any further proceeding depends on the prosecution. There are very rare indictments for false testimony, and we often have the situation that the witnesses say one thing during the investigation, and a different one on the stand. I think that prosecutors do not want to accuse them of false testimony as long as they do not know which of the two statements are false; when he raises an indictment, the prosecutor must define which of the two is true, and which is false. Then he waits for the final verdict and when this comes, the whole thing is forgotten, because everything lasts long and new cases emerge.