

## WAYS TOWARDS JUSTICE

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PORTRAIT OF A JUDGE: RADMILA DRAGICEVIC-DICIC, JUDGE, SPECIAL DEPARTMENT FOR ORGANIZED CRIME OF THE DISTRICT COURT IN BELGRADE



### ON COURAGE, ENERGY AND ENDURANCE

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#### **Legal conduct and fair trials are my greatest protection**

The judge of the Special Department of the District Court for Organized Crime, Radmila Dragicevic-Dicic, is not unknown to the broader public: let us just mention the trial against the former director of the national broadcast corporation Dragoljub Milanovic; the recent trial against Milan Zarubica; the trial for the murder of Ivan Stambolic and the attempt on Vuk Draskovic's life in Budva in which she was member of the chamber; nowadays she is the presiding judge in the trial against a former colleague, judge of the Supreme Court of Serbia Ljubomir Vuckovic, accused of corruption...

The virus of law infected her since her childhood: the immediate and broader family is from this branch, law was nurtured at home, as she says, and adds that it was just logical to choose law school. During her studies she got fond of criminal law, and afterwards "she got lucky" to be accepted as an intern. "It was long ago, in 1980, when I began as an intern in the Second Municipal Court, where in 1988 I was elected as judge of that court", she says and adds: "If it is important for this story, before that I got two wonderful children, a son and a daughter". In this court she remained until 1994, when she became the judge in criminal matters of the District Court in Belgrade, wherefrom the National Assembly of Serbia removes her – together with 18 other judges – as unsuitable. This was her status until 2001, when the new parliament nominated her again to the position of a judge; she returned to the District Court, and in 2003 she was elected as judge of the Special Department for Organized Crime.

"During my entire professional career I was dealing with criminal matters and, of course, it is in my veins... Criminal matters are very challenging, it is a broad field, together with criminal law come many other sciences. A lot of other types of knowledge are required, even psychology, because to be a judge demands a special relationship to people and an attitude to life: when you enter the courtroom as a professional your angle changes. When I had already acquired some knowledge, I had the impression that until then I had lived under some shelter, where everything was orderly and good. Then, the cases in my courtroom unfolded a different world, one in which you do not see only the classical crime, these cases depict and reflect the image of the entire society, the social, political and economic image of the society. Apart from those persistent criminals – the public sees them as "born criminals" – whom you meet, you get to understand that some people are privileged from their birth on, and some are not. Some are born to a good family, in which their life is predestined, the others are not, and you see clearly

through cases and the people who come to you as accused ones, that many did not have the privilege of a 'good family', that at some point in their lives and the lives of the family the state had failed, that their path was predestined by being born in such a surrounding and that they had no chance. This is where the beauty of this profession is, because apart from our verdicts which can sometimes be scary, through our attitude towards each individual, each accused, still we somewhere can also help – regardless in how few cases – by the approach to this individual, his deed, his life. On the other hand, apart from the accused one each case has also the victim and in our work the protection of both the victims and injured, and the relation towards them, are very important. It is a challenge to judge in criminal matters in our time, in our country, it demands both courage and energy, and endurance", says judge Dragicevic-Dicic.

**Which was the most difficult period of your carrier?**

- When in 1999 I was dismissed as an unsuitable judge together with 18 more of my colleagues. This decision was two years later declared illegal and I was again elected by decision of the new National Assembly of Serbia. In a way, it was an honor to be dismissed at that time and it was a good lesson on how the regime can destroy the judiciary. Those combinations of Slobodan Milosevic's regime, all those pressures upon the judiciary... It was not bare pressure in the sense of exposing the representatives of the executive authorities in the media, but it was a horrible and unbearable fact that it was known that in each court there were two or three judges which would do anything they were told to do and what someone wanted. "Important" cases were assigned to these judges in an orchestrated manner, and it happened that besides me in the cabinet sits a judge who will follow a directive and in some truly political and orchestrated trial will so easily pronounce a verdict, and afterwards be awarded, with a flat, for instance. This is the worst corruption, state corruption. All this reflected upon me and my colleagues, and we were those who – by the very fact that we were judges at this court – in a way participated in this, although we personally had never the chance to prove our independence because we, such as we were, of course, in those times never were given such "politically" sensitive cases.

**Three years before you were dismissed as unsuitable, you founded with your colleagues the Association of Judges of Serbia?**

- In the Association of Judges, on the basis of my previous experience, I fought wholeheartedly and with passion to reveal this influence upon the judiciary. The regime has then, through the Supreme Court of Serbia, decided to ban the Association of Judges, claiming that judges do not have the right to associate. This was a scandalous decision, it was contrary to all international conventions and standards which speak of independence of judges. This was really a culmination of this bareness of the regime, we were dismissed practically as the people's enemy and we were reproached of making politics, afterwards came also indictments against the Association of Judges. Even today I think that if a judge is fighting for the independence of the judiciary and the integrity of the profession, he cannot be considered to be in politics. Such an accusation is always an excuse for a regime, it declares a judge unsuitable because he "is in politics".

**You have been judge for many years, do you see a difference in the graveness of crimes which came to your courtroom in the last fifteen years and those before that, having in mind that there are those who even today deny the need for "specialization" of court chambers for such cases?**

- What we were having in our courtrooms in the last fifteen years culminated in 1997-98 and onwards. Until then the trials were quiet, and for those political trials which I have mentioned, it was known who was to judge in these cases, so that the state did not interfere much with the judiciary – cases in which the state was interested were assigned to "special" judges. Of course, classical crime is always the same and has always its specific weight. There is not much talk about it, exposed to the public are cases that are dealt with by the Special Department; but also before the Special Department for Organized Crime was founded all judges in district courts, particularly the District Court in Belgrade, presided in many cases which had all the characteristics of organized crime. Cases that we deal with today have their own additional weight, which is reflected primarily in public interest for them, in politicizing these cases and the external pressures upon judges; this is their additional weight. Otherwise, crime committed in our cases is practically the same as every other except – of course – for the higher level of danger for the security of all participants in the proceedings, including the judges themselves, and also because organized crime is involved, which – this is clear – is not yet defeated and many persons are still at large.

**How much do you think of your own security?**

- As far as I know – and I also start from myself – the judges do not think very much about this. Simply, if one would think about it, a kind of psychosis would emerge, and I think there is no way to protect anybody in a completely adequate way. I myself do not think about this, I think that the way in which I work, the legal conduct and fair trials are my biggest protection.

**Among the cases you judged prior to the Special Department which one would you mark as particularly difficult?**

- The most difficult one for me was the trial against Dragoljub Milanovic, accused of endangering lives of

others in connection with the bombardment of the building of the national broadcasting corporation of Serbia (RTS – Radio Television of Serbia). And the killing of its employees. First, because the very trial – and the climate in which it took place – was among the first ones to attract such attention of the media and it was in focus because of the specifics of the deed itself and because of the circumstances in which it was committed, which divided the public: half of the public was against this trial, attacking the court and me and the chamber with arguments “why do we have on trial our man for something that NATO did, NATO should stand trial”, probably along the practice related to some previous trials. On the other hand, there were the victims, the families of those killed, as well as all other potential victims – employees of RTS and the entire public which comprehended the essence: the essence was that these people were victimized by an unnecessary and ruthless exposure of their lives to a danger which, it is important to say, was a concrete one. It was difficult to explain during the trial, from the position and role of the judge, that my chamber and I were not judging NATO for the bombardment, but that we were judging the director of RTS as the responsible individual in the concrete situation, in which he was warned and obliged to transfer the employees and did not do it, albeit he had reason to believe that the building will be bombed. The very trial was unfolding in a disturbing atmosphere, burdened with passions and emotions, with quarrels among the participants in the proceedings, and, of course, with politics. It took quite some time for the trial to start at all and to have the indictment raised. I really do think that one must appreciate the persistence of the families of those killed; at that time and in that situation their resolve to find out the truth on the death of their loved ones contributed to have the indictment raised at all. Afterwards they have tried also in front of the international court beyond this country to find justice and in my verdict I, too, have also felt the need to say – not only as a judge, but as a human being – exactly because of this second part of the public, that the RTS building was the actual target and that by the Geneva conventions and by international law it cannot be a legitimate target, and that it was my judge’s belief that this was the violation of the Geneva conventions, but that this court is not competent in that trial and that this was not an issue in this trial; on trial was only this concrete deed for which Milanovic was accused.

Humanly

**How do you assess the fact that convicted Milanovic serves his sentence as a half-free person?**

- The court has no influence upon the way the time is served. From a human standpoint I think that because of the equality of all citizens in front of the law, no person must have any special privileges, not even in jail, and all this potentially creates the doubt whether there is maybe the influence of some structures upon his status in jail and whether he is going to have some privileges. On the other hand, and this is something that the public mainly does not know, he is convicted for a crime committed out of negligence, i.e. the consequence of the deed is a result of negligence and this falls within that group of crimes for which certain privileges can be allowed. During his time in jail, like the other convicts, he can deserve certain privileges due to his behavior; this is regulated by rules, the Penal Sanctions Enforcement Act and various rules of procedure, so that this is completely linked to his conduct in jail and he can earn privileges like any other person doing time.

**And after the verdict – confirmed by the Supreme Court of Serbia – there were accusations that you were guilty of his eschewing to go to jail.**

- Every judge carries the burden of his verdicts through his entire life, and I will carry this verdict my whole life. After the verdict, during the action “Saber”, when Dragoljub Milanovic did not show up in jail, a genuine media campaign was started against me, with claims that it was my fault that I did not order custody, although even during the trial he was not detained. He was defending himself from freedom, because his detention was abolished before the indictment was raised, and in various newspapers in these days it was published even that I, too, was arrested because of my cooperation with the “Zemun gang”. These were really horrible times, but I understood them as a specialty of this country, such things accompany the fact that I am judge in this country, not in some other country in which such things maybe could not be happening.

**You were publicly attacked recently as well, after you abolished detention of the former judge of the Supreme Court of Serbia Ljubomir Vuckovic in the case related to corruption in the judiciary.**

- I cannot speak about the concrete case which I am judging now, but in our media every abolishment of detention is treated as acquittal, which of course is not true. In any case, detention is the severest measure for securing the presence of a person; having in mind all international standards and the European convention on human rights, which we ratified and which we must implement directly, each judge is obliged to take into account whether detention is necessary and to abolish it any time that he thinks it is not necessary anymore or it is not legal. Detention is not a punishment, and abolishing detention does not mean that somebody is pardoned of criminal responsibility. On the other hand, it is completely inhuman for somebody to spend in detention such a long period of time if he does not have to, and even maybe to serve his time in detention, which is often the case because of the length of the proceedings. In this case, the court has thought that there was no reason to keep judge Vuckovic in

detention and has ruled to abolish it, which does not mean that detention would not be ordered if the conditions require so.

**You were member of the court chamber which pronounced the most severe punishment envisaged by law, 40 years imprisonment, for those accused of murdering Stambolic and the attempt on Draskovic's life in Budva. How difficult is it to pronounce such a verdict, is it easier than to pronounce death penalty?**

- 40 years imprisonment is practically a substitute for the death penalty and I think that all the dilemmas which are present in the public on whether or not it can be pronounced for crimes committed at the time when there was the possibility to pronounce the death penalty are groundless. In essence, this is the substitution of punishment by kind and 40 years imprisonment is a substitute for the death penalty. I am really very pleased that I was not in the position to pronounce a death verdict in my career and I have both publicly and in professional circles stood against the death penalty. 40 years imprisonment is an adequate substitute, because people who deal with penology consider that a person after 15 or 20 years spent in prison is, in a way, a dead person and this is an adequate substitute. To sentence someone to 40 years in prison is difficult, this is in a way both a philosophical and ethical question which every judge, me too, is facing – the right of one human being to sentence another human being to such a long imprisonment. However, when everything is done by law, and when the judge is convinced that the committed crime deserves such punishment, considering all other circumstances which affect this punishment and the significance of this punishment for the public in view of prevention and in view of the attitude towards the victims, my standpoint is clear: each judge who acts in this way does not have – and should not have – problems in pronouncing such a verdict.

**Do you follow media reports on cases in which you judge?**

- I do, simply because I do regularly read newspapers, many of them on a daily basis, and I think that a judge should know what is written about, the judge cannot not know, having in mind how much all our trials are discussed in the public and followed by the media. The judge cannot isolate from the world outside his courtroom, but this can only increase my awareness and attention to try to be absolutely impartial and that everything I read and hear about does not affect me.

**And what about misuse and often lies in the media, manipulation of facts and publishing of documents which should be out of public reach, does this affect you?**

- Of course, primarily because I feel to be absolutely unprotected as a human being, and then also as a judge, with such a state of the media and generally the state of affairs in the society, in which everybody can write about me or somebody else whatever he wants, any lie. I am ready for all that, but the question remains is it any use to react. I have also come to the conclusion that it is groundless, or even counterproductive to react when the society is in such a state. So, everything is forgotten after a while... There were situations in which I was hurt, in which I read lies, for instance in the trial against Milan Zarubica after the verdict was reached. His attorney said to a newspaper that the entire chamber was prior to the verdict in consultations with the special prosecutor, which is really ridiculous, and false, and unworthy of a colleague, because this attorney is a former prosecutor of the city of Belgrade. At that time I did give a thought to the idea of maybe pressing charges against him or these newspapers. Maybe we really do make a mistake by not doing so, because hopefully at least the fines against responsible persons and editors would have a preventive function in a way. However, when working in this field we do not have time to deal with these things, and the courts and prosecutors are not efficient in protecting judges, and taught by this experience we mainly do not react in such cases. Besides, we judges who deal with these things evaluate that there is ground for suspicion that some articles are orchestrated from some crime structures or structures which are close to them.

**Let us not stop at the media alone, attacks from the executive branch upon the judiciary are also not rare, as well as the comments related to ongoing trials by ministers and state officials...**

- When this is done by public personalities and representatives of the executive branch or the ministries – because they, too, speak publicly and comment – this destroys first of all the integrity of the court and the integrity of the proceedings, it destroys the impression on the independence of the judiciary, because every average citizen can think that there is pressure upon the court and that some statement of some representative of the executive branch of power will frighten some judge or in any other way induce him to act or not to act in a certain way... This impression which is created is very dangerous for the legal culture to which we strive and for which we have been standing in the past years – through the Association of Judges, as well – that we all must contribute to the development of the legal culture and educate through our statements and our work, that the way in which we comment something can educationally influence the citizens. On the other hand, such statements of the executive branch of power are particularly dangerous for the state, because they can be subject to consideration by the European Court in Strasbourg. All these statements are seen as influence upon the court, they are understood as violation of the independence of the judiciary. There are already cases of Italian and Austrian courts being charged by their citizens in which the European Court for Human Rights decided that there was influence upon courts, and that the presumption of guaranteeing independence of the

judiciary envisaged by Article 6 of the European convention which speaks of the right to fair trial was violated because the politicians and ministers – representatives of the executive branch – gave statements during the trials, which made the impression upon the average citizen that the independence of the judiciary was endangered. I like to mention an interesting decision of this court: in Lithuania there was a trial against a big businessman and former representative of the executive branch for financial crime, and during the trial – and the defendant was in custody – it was established that he had serious coronary problems and the court abolished detention and ordered a less severe measure of house detention. Immediately after this decision came statements of the representatives of the regime, their minister of justice, that the court's decision to abolish custody was illegal. Judges in the case asked to be exempted, declaring that they cannot judge under such pressures and that their independence was endangered. The case was later, on other grounds, brought to the European Court for Human Rights which found that there was violation first of all in regard to the presumption of innocence of each person standing trial and in regard to violation of the presumption of the independence of the court.

**How much is the education of judges important for creating a legal culture; you yourself were dealing with this education for four years. Until recently you were the President of the Assembly of the Association of the Judges of Serbia, and today of the Executive Board of the Judicial Center for the Education of Judges, and you are one of the ten national instructors for the education of judges in the field of certain rights which are guaranteed by the European Convention on Human Rights.**

- This Center, which emerged thanks to the enthusiasm and activity of a few judges, was founded by the Association of Judges and the Ministry of Justice. The judges are aware that it is important for them to have constant specialization, and today in our country this has institutional treatment, as is the case with other European countries. In France, for instance, such a center has been existing for 50 years already, the judges go there each year for five days to "refresh their knowledge". This is necessary here, too, primarily because we signed a number of international conventions. The European Convention on Human Rights interferes with the very trial, with the rights of people during the trials, custody, arrest; the judges must know that. In cooperation with the Council of Europe a dozen of judges were educated, they are national instructors, who up to now have already made one "round" and all judges in Serbia have up to now undergone this basic education linked to this Convention. Working as an instructor I saw that judges are truly interested in this and now we have to go further, to analyze the verdicts of the court in Strasbourg, which really are of a high quality and give certain directives. There are so many similar, almost identical cases in countries in the surrounding and in Europe which we can implement directly and learn so much. Also, crime is developing – the organized crime itself, trafficking, drugs, money laundering, economic and computer crime etc. – all this demands some new knowledge, additional education, and judges must learn. Concretely, in some cases you must order expertise: in the Zarubica case I had to learn how amphetamine is produced, in order to know what is the essence, which question should I ask the witness expert, because the judge must not allow the expert to lead the trial and define the case, this is very dangerous in some cases. Besides, international law and conventions have priority over national legislature, which means that the judge must know international law, and many conventions are linked also to direct assistance and direct cooperation of state organs, courts and investigative organs, and this knowledge can help much both the courts and the state organs which engage in revealing different types of crime.

**How do you defend yourself from evident pressures of the executive branch upon the judiciary and particularly upon the Department for Organized Crime?**

- We defend ourselves through our verdicts, in such circumstances it is a challenge to abide by law, independently and impartially. Pressures only strengthen the desire to work in such a manner. Still, somewhere this is seen and recognized, and every judge through his decisions and verdicts and conduct gains reputation and integrity among the citizens and the attorneys, and the executive branch.

**You mentioned the case of the judge Gordana Mihajlovic, whom the members of parliament did not elect – despite an enviable professionalism – for president of the Second Municipal Court, and we did not hear the arguments against her reelection.**

- I have known my colleague Mihajlovic for a long time now, and she is one of the judges who were dismissed at the time when I was dismissed, too, and she was also among the founders of the Association of Judges, she stood for the same goals as I and many other colleagues and this is what happened in the Parliament. We are absolutely not protected, because in the Parliament anyone can stand up and say anything – whether out of some personal interests, out of some personal attitude against a concrete judge, or because in some court he had a lost case in which he had personal interest, or out of political conviction – and he can even say lies – which is most often the case. Judges who are potential candidates should be protected from this and I think it is a good proposal in the Judicial Strategy that the High Judges' Council – whose members must be carefully selected – elects the judges and that afterwards the judges only make their vows in the parliament. Such a system exists already in Slovenia; the judges which are not the council's permanent members by function, elect the members of the council among their own rank. Such a system prevents these events, and besides, the criteria for election of judges must be precise, clearly defined and a clear and detailed professional biography of the

candidate for the function of the judge must be accompanied also by an evaluation of the person in question and its integrity.

### **In view of what was said, how do you assess lustration in the judiciary?**

- We are late with lustration in the judiciary, the time for this has passed. Now have only remained serious mechanisms within the judiciary itself, within the election of judges, their promotion and dismissal and disciplinary responsibility. The question is also how would lustration be implemented and who would implement it in the present political situation and in view of the political conflicts; what would be the guidelines. The problem of lustration was not solved in the entire society, so the question is why should it be implemented only in the judiciary. In my view, it should be secured that the best ones remain in the profession, that the best ones – I have in mind the young ones which are yet to become the elite – come and that maybe those excellent judges who left the judiciary now return back. We cannot count on all this if the future elite is to get an income of 16 thousand dinars as is planned for the interneers and junior experts – this is not an amount which can either keep the best ones, or bring them to the field. On the other hand, salaries of judge's are disgraceful, the judge in Serbia cannot support normally his family on his contemporary income and by international standards cannot perform independently and impartially. Of course, the level of income has nothing to do with corruption and of course it must not imply that somebody is suitable for corruption for his small salary. However, it is resentful when a criminal with all the signs of his luxurious life faces the judge knowing the amount of his income, when he can think that he can corrupt the judge. This is offending. There are declarations of the Council of Europe, UN and the European Union which speak exactly that the judge must be paid for his work, that his income must guarantee a decent life, because he must not do anything else except his work.

The "Zarubica case" and the state budget

**When it comes to organized crime, you have recently dealt also with the issue of asset seizure – in the courtroom, concretely in the case of Milan Zarubica – for which there is still no legal quality solution.**

- When it comes to organized crime, as well as any crime which implies increase in wealth which can be of big proportions and acquired during a long period of time and not only in a concrete crime on trial, it is very important to take away these gains. When committing such a crime the criminals have in a way already agreed with the possible sentence, but they take very badly the seizure of gained property, which gives them and their families privileges to live in a certain way, a way unreachable for the majority of citizens, obviously falling short to their lives and criminal history. Our laws are very inefficient in this regard and now there are efficient instruments which give the court the possibility to act in a trial and when the verdict is declared and somebody is sentenced for a crime to simultaneously seize the significant gain which he acquired. For instance, in England and Belgium there are agencies which deal with asset seizure, and they are somewhere in between the ministries of justice and ministries of finance. This asset seizure is in their cases not always linked to the crime at issue, because if we have a trial against a criminal whose living is based exclusively on crime, if both he and his wife do not work, and his life is obviously luxurious and wealthy, then it is logical – and this depends also on the attitude of citizens to the state – that each citizen asks how this person is continuing to be wealthy, and we have no mechanisms through which we can influence this, because we are limited to the profit of the concrete crime that is in front of the court. In England this is very simple: you investigate whether somebody has been paying taxes, what he and his family were living on, how they acquired real estate and movable property. In order to prove its efficiency and seriousness the state must deal with this as well, in a different and serious way, otherwise the punishment is often not sufficient for them.

### **How does this look like in our practice?**

- The mechanisms are complicated and judges very often avoid to deal with this issue, because this prolongs the trial: on the one hand, we must efficiently proceed and have the trial last as shortly as possible because of the detention, and on the other hand it is not simple to establish the gain. Our present legal solutions are not efficient. In the case of Milan Zarubica we have established in the verdict that his gain from the production of amphetamine during three years amounted to ten million dollars and we ordered him to pay this amount. It is also significant that the court chamber has managed, using international cooperation and the possibility to freeze assets abroad, to freeze during the trial proceedings the amount of 2.5 million Swiss Francs in a Swiss bank and within the process of international cooperation, since this money was confiscated upon final judgment, we can get this money into the budget of the Republic of Serbia. During this trial confiscated was also a total amount of some 500 thousand Euros of all defendants and this will also come to the state budget. These are no small amounts and this is a good example of how significant this can be.