

## JUSTICE

## THE PROJECT OF COURT PRACTICE INTERNETIZATION

## JUDGES WEB

## up against a brick wall

*After four years of work, the project of publication of court decisions on the Internet seems to be doomed and its disappointed author is about to go back to the United States.*

Written by: Deana Knežević

Photos by: Siniša Štambuk

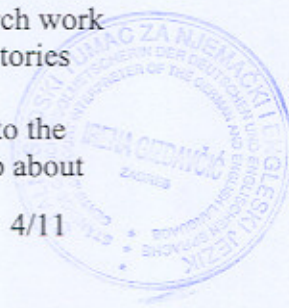
**DRAŽEN KOMARICA**, a young American expert of Croatian ancestry, still has hopes that publishing court decisions on the web might become Croatian practice.

When he was leaving USA on his way to Croatia, his friends advised him not to do that. But, he wouldn't be persuaded and didn't believe as he was warned he might have a hard time staying in Croatia. Now, after having spent four years in Croatia, he seems desperate. The Judges Web project, by which he tried to establish a computerized court decisions archive, which would be a huge help for the judges, lawyers and many others, has come up against a brick wall. Many municipal and county courts joined the project, about 200 court decisions have been entered into the system and 2,000 more are waiting to be placed on the web. Still, the future of this project is uncertain. Top judicial circles oppose the placement of court decisions on the web and their becoming public without a special commission's approval. The Ministry of Justice which supported the project two years ago, now seems disinterested. Mr Dražen Komarica finds this odd, especially in the light of the Ministry's intention of introducing something very similar to the concept of the Judges Web. Although being close to the decision to go back to the United States, he still hopes that the four years he dedicated to the Croatian judicial practice haven't been wasted.

## LEAVING CROATIA

Mr Dražen Komarica, now twenty-nine, was taken to the United States at the age of two by his mother. A year earlier, his father had emigrated. The grandfather, Zvonimir Komarica, former inmate of Kerestinec penitentiary and former Yugoslavian minister, participated in the "Croatian Spring". After this movement was crushed, his son was also exposed to pressures, which forced him to leave Croatia. The grandson, Mr Dražen Komarica, graduated in the United States, from Political Sciences and History. He has acquired American ways from top to toe, but he speaks Croatian well and this enabled him to get quite a good idea of the local circumstances and also to articulate them properly. – Being mediocre is highly rated in Croatia. Individuality is restrained, self-initiative as well – this is what Mr Komarica said in a public forum, providing arguments for this trenchant social analysis from his experience in contacts with various state institutions, for instance with the Supreme Court and the Ministry of Justice, or County Courts.

How did the Judges Web come about, which from Komarica's pride could turn into his defeat? Thanks to Fullbright scholarship, for sixteen months Mr Komarica did research work on court practices in Croatia, comparing the courts that were located in occupied territories and those in the liberated territories. He spent a month in each of the following cities: Vukovar, Vinkovci, Glina, Sisak, Beli Manastir, Osijek, Knin and Gospić. Listening to the judges saying that they would like to ask their more experienced colleagues in Zagreb about





what to do in certain situations, but they didn't dare to do that, the young scholar came to the conclusion that it would be of great help to the judges if legally binding court decisions were published on the web, as it is done in the United States.

#### THE IMPOTENCE OF INDIVIDUALS

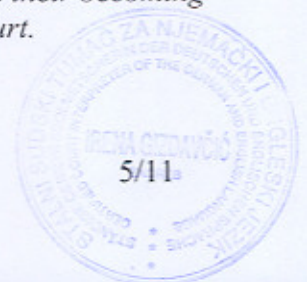
He founded a non-governmental organization, the Judges Web, which now has about thirty members – judges, lawyers, law clerks, but also law students. The initial money came from the American Bar Association and later on other donations came from various embassies: Canadian Embassy, American, Dutch. One German organization and some private donors provided their support, too. The project was supported by the companies such as Microsoft Croatia, Span, SYS and Items, by experts from Zagreb Law School and individuals from state institutions.

After the first 220 judgements were placed on the web, two problems came up. First, the judges are reluctant to expose their judgements to the public. And second, it turned out that the most expensive part of the project was visiting the courts, explaining the idea and convincing the judges to join the project with their court decisions. Due to substantial expenditures invested in "public relations", they have run out of money for the digitalisation and entering of files.

The status of public accessibility of court decisions is not sufficiently defined, says Mr Komarica: A court decision is public, but not its explanation. That is, the explanation is public for the parties involved and for those who have a valid legal interest – and who that is, it is for the judge to decide. My dispute with the members of the Supreme Court has arisen from the interpretation of Article 62 of the Law on Courts, saying that a judge is entitled to publish the dispatched court decisions. At the Supreme Court I was told that no judge was entitled to such a decision, but the court, that I was misinterpreting the intention of the Law. I, on the other hand, think that the court is an object, a building. The Law says that the judge, not the court, is entitled to do it.

In other words, the dispute has arisen on the issue whether an individual can say what's important for the court practice or does an institution decide that? Maybe it is important what the Supreme Court has to say about the court practice, but maybe a judge as an individual, who has been studying a certain part of the law, also has something important to say. Let it be on the website and it might be of use to somebody. But, at the Supreme Court they maintain such publishing of court decisions might cause confusion. That's why they are in favour of publishing only those decisions that were selected by an expert commission or by the Supreme Court. The project is ready and functional, so what do we do now? It should be placed in a state institution to keep it alive, says Mr Komarica, but where? If that's the Ministry of Justice, which in Mr Komarica's opinion favours the notion of someone from a higher instance deciding which court decisions to publish, then the initial idea of practicing judges being able to influence the matters that are important for their everyday work will also get lost. The Minister of Justice, Mrs Ingrid Antičević Marinović has provided her written opinion of the Judges Web project being in compliance with the law. But, neither she, nor the President of the Supreme Court urged the courts to publish the court decisions as suggested by the Judges Web.

*Top judicial circles oppose the placement of court decisions on the web and their becoming public without the approval of a special commission or the court.*





## JUDICIAL ARGUMENTS

The Supreme Court has presented three arguments. The first one is that the judges are overloaded as it is, so they have no time for submitting the court decisions. The second one is that the informatization should go from top to the bottom and not the other way round. And the third one is that the top judicial circles should decide about the modalities of informatization and that it is not desirable to have several informatization and court practice publication systems.

- We have nothing against an official informatization system, but why shouldn't there be this other one? – Mr Komarica wonders. In the United States people are also reluctant to having information connected with their names on the Internet, but that is one of the ways to deflect people from situations that might take them to court. The court decisions are accessible to anyone and that is one of the elements that keep people away from courts. But, publishing court decisions is also a way to control the courts. Who else can control them?

Are the judges afraid for their safety? Mr Komarica maintains that even this aspect is in the hands of the system and that for this reason the most severe punishments are foreseen for attacks on police forces and court staff. The trenchant appraisal of the circumstances in the Croatian society, based on the insight Mr Komarica gained while working on the project, is defended by examples: why are young judges reluctant to publish their good judgements, justifying it by their fear of making others envious? Why should anyone be afraid of their colleagues' envy? There is a judge in Zagreb who has been collecting court decisions for years, scanning them and filing them away. He is in possession of hundreds of court decisions that may be of use to him and to his colleagues in Zagreb. Why not make those files accessible for his colleagues in Sisak, Split or anywhere else in Croatia? That particular judge didn't dare to hand those court decisions over to the Judges Web without the permission, or even an order, from someone in the Supreme Court.

## PROJECT EXPORTED TO ARMENIA

While hundreds of court decisions from the area of commercial law, bankruptcy proceedings, securities disputes, damages, restitution of property, seizures, evictions, disputes between politicians and journalists are waiting to be placed on the Judges Web, Mr Komarica is still looking for ways to keep the project alive and keep it going. If neither the Ministry of Justice nor the Judges Association take this project over, it can be self-financed through a monthly subscription of let's say 25 HRK/month, which would be paid by the lawyers interested to have access to it. Using their password, the subscribers could use the web whenever they need it. The Judges Web is a non-profit organization and this would be sufficient for its operation.

In the meantime, Serbia and Armenia have shown their interest in this project. Mr Komarica hasn't given up yet, but he has made up his mind: he is going back to USA next year and until then he'll try to convince some influential individuals in judicial circles that the Judges Web could be quite a useful thing.





**PROJEKT INTERNETIZACIJE  
SUDSKE PRAKSE**

# SUDSKA MREŽA pred zidom

*Nakon četiri godine rada projekt je objave sudskih presuda na Internetu pred propašću, a njegov razočarani autor pred povratkom u SAD*

**Piše: Deana Knežević  
Snimio: Siniša Štambuk**

Kad je odlazio iz SAD-a u Hrvatsku, prisjeća se Dražen Komarica, znanci su mu govorili da to ne čini. Nije se dao odgovoriti i nije povjerovao upozorenju da će mu u Hrvatskoj biti teško. Sada, nakon što je četiri godine proveo u Hrvatskoj, zdvojan je. Projekt Sudačka mreža, kojim je pokušao uspostaviti kompjutoriziranu arhivu sudskih presuda, što bi bila na pomoć sucima, odvjetnicima i mnogima drugima, došao je do zida. Mnogi općinski i županijski sudovi uključili su se u tu mrežu, 200-tinjak presuda uneseno je u sustav, a još oko 2000 čeka na unos. No, budućnost je projekta neizvjesna. Viši pravosudni krugovi protive se tome da se presude dižu na web i postanu javne bez odobrenja posebne komisije. Ministarstvo pravosuda, koje je prije dvije godine podržalo projekt, sada se ne čini zainteresiranim. Dražen Komarica to smatra to neobičnijim što Ministarstvo planira uvesti nešto vrlo slično konceptu Sudske mreže. Iako je blizu odluke o povratku u Ameriku, još se nada da četiri godine posvećene hrvatskoj pravosudnoj praksi nisu bile izgubljeno vrijeme.

**ODLAZAK IZ HRVATSKE** Dvadesetdevetogodišnjeg Dražena Komaricu majka je odvela u SAD kad su mu bile dvije godine. Godinu dana prije njih emigrirao je njegov otac. Djed Zvonimir Komarica, negdašnji zatvorenik Kerestince i bivši jugoslavenski ministar, angažirao se u Hrvatskom proljeću, a pošto je taj pokret ugušen i njegov se sin našao pod pritiscima, što ga je nagnalo na odlazak iz Hrvatske. Unuk Dražen Komarica diplomirao je u SAD-u političke znanosti i povijest. Amerikaniziran je u svakom pogledu, ali dobro govori hrvatski, što mu je omogućilo da prilično dobro shvati ovdašnje prilike, a i da ih jasno formulira. - U Hrvatskoj se cijeni mediokritetstvo. Individualizam se zatamljuje, samoinicijativnost također - rekao je Komarica na jednoj javnoj tribini, argumentirajući taj britki sociološki presjek iskustvima iz kontakata s raznim državnim institu-



**DRAŽEN KOMARICA**, mladi američki stručnjak hrvatskoga podrijetla, još se nada da bi objave presuda na webu mogle postati hrvatskom praksom

cijama, primjerice, s Vrhovnim sudom i Ministarstvom pravosuda te županijskim sudovima.

Kako je nastala Sudačka mreža, koja bi od Komaričina ponosa mogla postati njegov poraz? Šesnaest je mjeseci Dražen Komarica zahvaljujući Fullbrightovoj stipendiji istraživao rad sudova u Hrvatskoj, uspoređujući sudove koji su bili pod okupacijom i one na slobodnom teritoriju. Bio je po mjesec dana u Vukovaru, Vinkovcima, Glini, Sisku, Belom Manastiru, Osijeku, Kninu i Gospiću. Slušajući suce kako govore da bi rado pitali kolege iz Zagreba s više iskustva kako postupiti u nekoj situaciji, ali da se ne usude, mladi je istraživač zaključio da bi sucima pomoglo objavljivanje pravomoćnih presuda na webu, kao što je to praksa u SAD-u.

**NEMOĆ POJEDINCA** Osnovao je nevladinu udrugu Sudačka mreža, u kojoj je danas tridesetak članova - sudaca, odvjetnika, sudskih vježbenika, ali i studenata. Početni je novac došao od Američke odvjetničke komore, a kasnije su s donacijama uskočila veleposlanstva Kanade, SAD-a, Nizozemske, jedna njemačka udruga i privatni donatori. Projekt su poduprle tvrtke Microsoft Hrvatska, Span, SYS i Items,

stručnjaci Pravnog fakulteta u Zagrebu, pojedinci iz državnih institucija.

Nakon što je prvih 220 presuda uneseno u sistem iskrsnula su dva problema. Prvo, suci se boje davati presude u javnost. Drugo, pokazalo se da je najskuplji dio projekta odlaziti na sudove, tumačiti ideju i uvjeravati suce da se uključe s presudama. Zbog velikih izdataka za "public relations" ponestalo je novca za digitalizaciju i unos dokumenata.

Status javnosti presuda, smatra Komarica, nije dovoljno definiran: - Presuda je javna, ali njezino obrazloženje nije. Odnosno, obrazloženje je javno za stranke i one koji imaju valjan pravni interes, a tko je to, odlučuje sudac. Moj spor s članovima Vrhovnog suda nastao je zbog tumačenja članka 62. Zakona o sudovima, koji kaže da je sudac ovlašten objavljivati otprilike sudske odluke. U Vrhovnom sudu rekli su mi da za takvu odluku nije ovlašten sudac nego sud, a da ja pogrešno tumačim duh Zakona. Ja pak smatram da je sud objekt, zgrada. U Zakonu piše da je za to ovlašten sudac, a ne sud.

Drugim riječima, sporenje je nastalo na pitanju može li pojedinac reći što je bitno za sudske praksu ili o tome mora odlučiti



institucija. Možda je bitno što za praksu kaže Vrhovni sud, ali možda sudac pojedinačno, koji je izučio neki dio zakona, također ima nešto važno za reći. Neka to bude na webu i možda će nekome koristiti. U Vrhovnom sudu, međutim, smatraju da bi takvo objavljivanje presuda moglo izazvati konfuziju. Zato se zauzimaju za objavljivanje samo onih presuda koje je odabrala stručna komisija ili Vrhovni sud. Projekt je gotov, funkcionalan i što sad? Trebalo bi ga smjestiti u državnu instituciju da bi nastavio živjeti, smatra Komarica, ali kamo? Ako je to Ministarstvo pravosuđa, koje se prema Komaričinu shvaćanju priklanja tome da netko s više instance odluči koje presude objavljivati, onda će se izgubiti polazna ideja da i suci iz prakse mogu utjecati na ono što je bitno za njihovu praksu. Ministrica pravosuđa Ingrid Antičević Marinović pismeno se izjasnila o tome da je projekt Sudačka mreža u skladu sa zakonom, ali ni ona ni predsjednik Vrhovnog suda nisu sudove potaknuli na objavljivanje presuda kao što je to predlagala Sudačka mreža.

**SUDSKI ARGUMENTI** Vrhovni je sud Komarici dao tri argumenta. Prvi je da su suci i bez toga preopterećeni, te nemaju vremena slati presude. Drugi je argument da informatizacija treba ići od vrha prema bazi, a ne obrnuto. Treći je da o modalitetima informatizacije također mora odlučiti

vrh pravosuđa i da nije poželjno imati više sustava informatizacije i objavljivanja sudske prakse.

- Ne protivimo se postojanju službenoga sistema informatizacije, no zašto ne bi postojao i ovaj drugi? - pita Komarica. I u SAD-u ljudi zaziru od toga da se informacije povezane s njihovim imenom mogu naći na Internetu, ali to je jedan od načina da se ljude odvraća od situacija koje bi ih mogle dovesti na sud. Presude su svima dostupne i to je jedan od elemenata koji ljude odvraćaju od sudske prakse. No, objavljivanje je presuda, kaže, jedan od načina kontrole sudova. Tko inače može kontrolirati sudove?

Boje li se suci za svoju sigurnost. Komarica, smatra da je i taj aspekt u rukama sustava i da su u SAD-u zbog toga za napade na policiju i sudstvo predviđene najstrože kazne. Oštre ocjene o stanju u hrvatskom društvu, do kojih je došao radeći na projektu, Komarica brani primjerima na koje je naišao. Nije mu jasno zašto se mladi suci brane od objavljivanja kvalifikativnih presuda, tumačeći da će time navući zavist ostalih. Zašto se netko mora bojati ljubomornog kolega? Jedan je zagrebački sudac sam godinama skupljao presude, skenirao ih i arhivirao. Kod njega su stotine presuda

koje mogu služiti njemu i njegovim znancima u Zagrebu. Zašto ti dokumenti ne bi bili dostupni i njegovim kolegama u Sisku, Splitu i bilo gdje drugdje u Hrvatskoj? Dotični sudac nije se, međutim, usudio ustupiti presude Sudačkoj mreži bez odobrenja, ili čak naloga, nekoga iz Vrhovnog suda.

**PROJEKT IZVEZEN U ARMENIJU** Dok stotine presuda iz područja trgovačkog prava, stečajeva, sporova oko vrijednosnih papira, naknada štete, povrata imovine, ovrha, deložacija, sporova političara i novinara čekaju na unos u Sudačku mrežu, Komarica još

traži način kako da projekt preživi i održi se. Moguće je, ako ga ne preuzmu primjerice Ministarstvo pravosuđa ili Udruga sudaca, da se financira sam, naplaćujući pretplatu, na primjer 25 kuna mjesečno, koju bi uplaćivali zainteresirani odvjetnici. Sudačka mreža neprofitna je udruga i za njezin bi rad to bilo dovoljno, a pretplatnici bi uz šifru mrežu mogli koristiti po potrebi.

U međuvremenu, za projekt su se zainteresirale Srbija i Armenija. Komarica još nije odustao, ali je već odlučio: iduće se godine vraća u SAD, a dotad će još pokušati utjecajne pojedince iz pravosuđa uvjeriti u to da Sudačka mreža može biti korisna. ■

**Viši pravosudni krugovi protive se tome da se presude stavljaju na web i postanu javne bez odobrenja posebne komisije ili suda**



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