

HOMMAGE: DAVOR KRAPAC (1947.-2016.)

*By Zlata Đurđević**

I.

On November 2, 2016 Davor Krapac, longstanding professor of the Faculty of Law University of Zagreb, and one of the most significant Croatian legal minds passed away at the age of 70. Professor Krapac achieved everything that emerges on the Croatian legal landscape: he was a full Professor of Law, Head of the Department of Criminal Procedural Law, Dean of the Faculty of Law, Constitutional Court judge, a member of the Croatian Academy of Sciences and Arts, the author of Croatian anthological works in criminal science, an accomplished legal teacher and internationally recognized scientist. He departed in the academic year when we were expecting to pay tribute to him on the occasion of his retirement after 43 years of work at the Faculty of Law in Zagreb. He was an intellectual star for generations of Croatian students, judges, public prosecutors, lawyers, criminal investigators, professors, lawyers and politicians. A professor with charisma, he was the most prolific contemporary Croatian legal writer, and a symbol of success achieved by being a diligent worker, as well as and a gentleman with impeccable taste and individuality.

His life was devoted to the development of Croatian legal science, jurisprudence, legal education and to society as a whole, and his theoretical, institutional, legislative and practical achievements have indebted the entire Croatian legal profession, the judiciary and academia permanently to him.

II.

Davor Krapac was born August 31, 1947 in Zagreb. After completing legal studies at the Faculty of Law in Zagreb in 1971, he was awarded master's degree in 1973 and doctoral degree in 1980 with the thesis titled "Direct and circumstantial evidence in criminal proceedings". In 1973 he was employed at the Department of the Criminal Procedural Law at the University of Zagreb where he worked until 2007 when he was elected as a judge of the Constitutional Court of the Republic of Croatia. He has been awarded a number of prizes for his scientific work, and in 2012 the highest recognition was bestowed on him when he was elected as a regular member of the Croatian Academy of Arts and Sciences.

From the outset, Krapac's professional path was paved with assiduous and constant scientific work that he produced over the past four decades, representing a life's work sufficient to fill multiple scientific bibliographies. He has published 17 books, 11 of which as a single author, more than 130 scientific papers and hundreds of other publications, such as comments on case law, presentations at scientific meetings, historical overviews, discussions, obituaries, dozens of excellent introductions for journals, magazines and books, and numerous other contributions. His translations of works of prominent modern criminal law theorists (Weigend, Schick, Cudahy, Damaška, Zupančič, Herrmann, Ambos and Riegenberg) during 1990s demonstrate his commitment to enlightenment, which he pursued on behalf of criminal justice professionals in Croatia.

Professor Krapac was the center of the Croatian criminal justice development and the magnet which gathered the entire Croatian criminal law profession which he guided, encouraged and strengthened for three decades. He always had clear sight, infinite energy, a strong will, and vast knowledge both to implement his ideas, and initiate new forms of legal activities. When the existing academic and professional criminal law structures disappeared after the collapse of the former Yugoslavia, Professor Krapac constructed new ones, creating two pillars of the Croatian legal culture and criminal law profession: the Croatian Association of Criminal Sciences and Practice and the Croatian Annual of Criminal Law and Practice. Since its establishment in 1991, the Association has grown into the most important organization for criminal law experts from academia and practice, functioning also as the AIDP national group. Professor Krapac is one of the Croatian scientists with

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the highest standing in the area of editorial work and publishing. His jewel is the Croatian Annual of Criminal Law and Practice, the only Croatian journal specializing in criminal law. During 22 years working as its chief editor, he published 42 volumes with more than 400 articles, creating national legal library that represents a rich source of legal history, theory and practice. The Association and Annual represent the infrastructure of the Croatian criminal professions outside state institutions and long-term platforms for the development of criminal law experts of all profiles, from scientists to judicial officials.

Although primarily focused on issues of the domestic legal system, Professor Krapac stayed connected to the wide international academic community. He was a polyglot who published more than thirty papers in English, German, French and Slovene language in journals and books, and taught at universities in Maribor, Ljubljana, Sarajevo, Graz and Budapest. Professor Krapac collaborated with major foreign and international criminal law institutions and organizations. For instance, he collaborated with Professor Peter Novoselac for years, as national and regional criminal law rapporteur for the Max Planck Institute for Foreign and International Criminal Law in Freiburg and created the affiliation between Croatia and the family of European lawyer's associations. He presented a series of important national reports at numerous international conferences and colloquia, and was active in the International Association of Criminal Law (AIDP). He was personally responsible for the establishment of the Croatian AIDP group and the intensive involvement of Croatian experts in the governing bodies and activities of this most important international criminal justice association. The most renowned names in international criminal science expressed their condolences and sorrow over departure of Professor Krapac, including Mirjan Damaška, Thomas Weigend, John Vervaele, Andre Klip, Joachim Herrmann, Gert Vermeulen, Ljubo Bavcon Alenka Šelih, Katja Šugman, Matjaž Jager and others.

III.

The significance of professor Krapac writings is revealed by the fact that his scientific legacy represents a significant part of Croatian theory of criminal procedure, mutual legal assistance in criminal matters, international criminal law and constitutional law. His *magnum opus* is the university textbook "Criminal Procedural Law: Institutions", the most valuable contemporary book of theory of criminal procedural law in Croatia because it includes historical, comparative and case study methods, and the major theoretical problems in the field. During his entire career he engaged in the topic of mutual legal assistance in criminal matters, concluding in 2004 with the publication of the Commentary on Mutual Legal Assistance in Criminal Matters detailing the theoretical basis for and collection of international treaties. Professor Krapac followed the development of international criminal justice related to the former Yugoslavia and then the creation of a permanent International Criminal Court, and released several books and a number of papers. His reputation and expertise in this field was proved in practice when together with professor Mirjan Damaška from the Yale Law School in 2004, he appeared as *amicus curiae* before the International Criminal Tribunal for the Former Yugoslavia.

Carrying on the tradition at the Criminal Procedural Law Chair in Zagreb, he continued to develop legal history, *inter alia*, by publishing the book "English Criminal Procedure", teaching postgraduate courses on the history of criminal law, and inspiring and supporting younger colleagues to publish historical works. In the 2000s, after becoming a constitutional judge, he turned wholeheartedly to the study of constitutional law and for several years published a series of articles and book about proceedings before the Constitutional Court. His production was so extensive as to leave little doubt about its centrality to the thinking of Croatian legal area academics and professionals. To demystify such a voluminous scientific opus, he must be viewed as a man working at his desk every day in the oasis of his office, leaving so late that the building of the University of Zagreb has already been locked.

IV.

Professor Krapac's motto is summarized in the famous saying of Winston Churchill, which he especially appreciated: "The mood and temper of the public in regard to the treatment of crime and criminals is one of the most unfailing tests of the civilization of any country." Driven by the idea of Croatian accession to a democratic and legalistic European civilization, Professor Krapac permanently fought against the criminal

justice system's unlimited and arbitrary power, tirelessly repeating the demand for precise and firm boundaries against the repressive powers of the state bodies, which must not restrict human rights and freedom more than is "strictly necessary". He was at the zenith of his career during Croatia's transition from an autocratic to democratic political system, and he played a key role in the transformation of the criminal proceedings of the one-party socialist state to the criminal proceedings of the constitutional democracy. The Yugoslav criminal procedure and theory contained the principles and institutions which by form and content belonged to Western European legal systems. The reasons could be found: in their origins from the mixed type of criminal procedure prescribed by the Austrian *Strafprozeßordnung* of 1873; the liberal reform of Yugoslav criminal procedural law in 1967; and education of the domestic legal theorists in the European continental legal traditions. However, as every national criminal procedural law is part of a government's repressive system and reflects its political system, liberal criminal procedural law instruments could not fulfill its *raison d'être* in the non-democratic state having no separation of powers. Therefore, the new Croatian Constitution of 1990 required fundamental reform of the values and principles of criminal procedure and the criminal justice system. Professor Davor Krapac, with his wisdom and knowledge, was entrusted by The Republic of Croatia to take on this extremely important task of helping the legal and political transition succeed. He not only established theoretical institutes that have democratized and liberalized criminal proceedings concerning human rights, independence of the judiciary, the principle of proportionality, the principle of public trial, the fair trial principle and the rights of defendants, but was literally their legislator, formulating provisions of the codes and regulations crucial for constructing the body of criminal procedure and organization of the judiciary.

Although Krapac, as the constitutional judge and scholar, developed the notion of constitutionalization of criminal procedural law in the Republic Croatia, in his a 2011 paper, a retrospective look reveals that he actually devoted his entire professional life to this idea. One can distinguish three stages in his work on the constitutionalisation of the Croatian criminal procedure and the judiciary. The first stage began with the papers on the protection of human rights in criminal proceedings existing in socialist Yugoslavia (e.g., 1973 and 1980), and culminated in a comprehensive paper published in the wake of the democratic changes in 1989, entitled "Basic human and civil rights and the principles of criminal procedure." In the second stage, in the 1990s, in many papers he developed the theoretical basis for certain elements of due process in accordance with the case law of the European Court of Human Rights, and through several editions of his textbooks incorporated them in contemporary Croatian theory of criminal procedural law. During those years he was a member of the parliamentary Constitutional Commission, which prepared the text of the Croatian Constitution of 22 December 1990, and was a permanent adviser of the Ministry of Justice, who over two decades led numerous legislative reforms in writing the provisions of the legislative acts of criminal procedure, the State Attorney's Office, the special office for the prosecution of organized crime and corruption, the police, witness protection, the execution of imprisonment, the mutual legal assistance in criminal matters, and others. The third stage of the constitutionalisation of criminal procedural law is written by Davor Krapac, the constitutional judge and academician who developed constitutional criminal procedural law through Constitutional Court judgments, particularly in the landmark judgment of 2012, which repealed most provisions of the Criminal Procedure Act.

V.

Academic citizen Davor Krapac, aware of the importance of critical legal thought and discourse on the rule of law and the development of legal theory and case law, constantly encouraged debate among intellectuals at all levels: with students teaching criminal procedural law, with Department colleagues, in journals, and at professional meetings, and conferences of associations. In his papers and public statements, he continuously warned of illegal and incompetent work of authorities; of their multiple attempts to politicize criminal law; of their *ad hoc* decision-making about strategic issues of criminal law reform "at the level of small expert groups and singular decisions of some ministers guided by short-term, political interests;" and of the multiple errors of the "young" legislators while "driving in fifth gear." He used to say that the "shine of the legislator's sword in the fight against crime is darkening by the increasing number of cases before the European Court of Human Rights. As a constitutional judge he criticized the Constitutional court for its "sins" established by the judgments of the European Court of Human Rights. In recent years he claimed that he was becoming more and more confident that each generation has to fight again for their rights.

Professor Davor Krapac was an authentic teacher who transmitted knowledge in order to open new horizons, encouraged new challenges, and above all respected academic freedoms. As its longtime head, guided by the aspiration to professional excellence, and with love and care for its younger colleagues, he built a strong Department of criminal procedural law at the Faculty of Law University of Zagreb. In one way, he led by a steady hand, directing and encouraging them on the path of intellectual inquiry, and in another way, gave them the opportunity for unhindered and independent professional development. He pushed them into the changing world and left them to cope on their own with the professional challenges they faced. He showed great interest in his colleagues, enjoying socializing with them, and exchanging ideas. He cherished his life-long friendships, wrote letters and regularly congratulated others on anniversaries and holidays. Personally, I am proud and feel privileged to have had him as my teacher, mentor, colleague and friend. Among many other skills which he passed to me, he taught me the secrets of editorial work, which he based on a lifelong experience he called "Bread with seven crusts". In scientific, legal and social terms, he left behind him a fortune that will be always available to us. But forever we will miss his wise guiding words, intellectually challenging long discussions over coffee, warm friendly conversations, contact with the living words of a true scientist and a versatile man of erudition who, exposed us to his sharp-witted humor, discerning insight, and a blink of his mustache revealing a contented smile. We say a final farewell to Davor Krapac and utter: *Acta est fabula, plaudite!*