

Karnavas: Dodging Bullets at The Hague Tribunal

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Despite a run-in with his client, Michael Karnavas says the Blagojevic case was one of the best he has worked on.

Champion, gladiator, facilitator, storyteller – taken together, all of these terms form the basic job description of a good defence lawyer.

Sometimes though, the accused doesn't buy into this description, and conflict ensues. That's what happened between lawyer Michael Karnavas and his client Vidoje Blagojevic, the former Bosnian Serb army commander accused of war crimes committed at Srebrenica in 1995.

The case, which began in 2001, was marked throughout by dramatic clashes between Karnavas and Blagojevic. Blagojevic tried to fire Karnavas and would not let his lawyer question him on the witness stand.

The final showdown between the two came on May 9 when appeal judges denied Blagojevic's request for a retrial, although overturned his conviction for complicity to commit genocide at Srebrenica. The judges cut his 18-year prison sentence to 15 years, after upholding other convictions for his role in the mass killings that took place there.

Blagojevic said the conflict with his lawyer meant he didn't get a fair trial, and at the May 9 hearing again lashed out at Karnavas, saying judges were protecting his "criminal behaviour".

In spite of the rocky relationship with Blagojevic, Karnavas says the case was one of the best he has worked on during a 24-year career, which now includes the presidency of the Association of Defence Counsel of ICTY.

He said judges in the Blagojevic case were patient and controlled, allowing him to present the case he believed necessary to protect his client's rights.

Karnavas sees that as his primary job – to ensure the defendant gets a fair trial.

"You're there to look at the facts objectively," he said. "You need to verify the prosecution's case. I don't defend causes. I defend individuals based on the facts and based on the indictments."

His current client is Jadranko Prlic, who was a senior political leader in the unrecognised Croat entity Herceg Bosna. That case – which is still ongoing – has produced a few fireworks of its own, including concerns from the prosecution that judges are biased in favour of the defence teams.

Karnavas has acquired a reputation for outspokenness during his time in The Hague, and even those who praise him describe his style as tough.

Describing Karnavas's hard-hitting approach, fellow tribunal defence lawyer John Ackerman says, "Michael's been in this business long enough to know you don't need to be afraid of the judges as long as you're not in contempt."

The judge in Blagojevic case, Liu Daqun, told IWPR that Karnavas makes good points in a forceful way. "He's very aggressive in presenting his case but his arguments are always on the point," he said.

Ironically, it was a request from Blagojevic's family in Bosnia to defend the commander of the Bratunac Brigade that first brought Karnavas – a small, wiry American in his mid-fifties – to the tribunal in 2001.

He had been working in Bosnia helping to establish a transparent and accountable system of law for the Bosnian municipality of Brcko when Blagojevic's family approached him and asked whether he would take the case.

Relations were initially cordial between lawyer and client and according to Karnavas the two worked together for hundreds of hours preparing the case.

However, conflicts arose, particularly over the issue of the co-counsel. Blagojevic was not happy with the co-counsel selected by Karnavas and wanted to appoint someone himself. When that failed, he tried to dismiss the entire defence team.

Blagojevic also said Karnavas falsely accused him of asking if he would share his fee in return for being hired. Karnavas said he never accused Blagojevic of anything.

As a result, Blagojevic refused to speak with his lawyer for much of the trial. He accused Karnavas of "working against him", sometimes at points where Karnavas was trying to discredit key witnesses or have parts of the indictment dismissed.

In the appeals hearing, the judges dismissed the defendant's accusations, finding that Karnavas had acted in accordance with the law and in the best interests of his client. The court also said it was the lawyer's professional duty to continue working on the case, despite the conflict.

Blagojevic's appeals lawyer, Vladimir Domazet, told IWPR he was disappointed with the final verdict, saying the antagonistic relationship between the defendant and Karnavas had rendered the original trial unfair. He says he cannot understand how it was possible to mount a fair defence without the cooperation of the accused.

Karnavas said he comes from a tradition where "the lawyer doesn't walk away just because the client doesn't like you. Our position was that since we were essentially appointed by the registry, it was up to the registry and the trial chamber to make the decision. We had hearings and both chambers found we hadn't done anything wrong, so in the interest of justice we stayed in".

The idea of justice has always interested Karnavas. He spent his childhood in Greece, where a right-wing military junta came to power and overthrew the democratically elected government in 1967, when he was 13-years-old. He saw relatives disappear because of their political beliefs, then several years later, the re-

emergence of democracy and the creation of a constitution.

These events shaped Karnavas's world view and led him to the Marshall School of Law in his home town of Cleveland, Ohio.

For Karnavas, a good lawyer has to understand the defendant's cultural and psychological background and the context crime he is accused of committing.

"You can't defend someone unless you understand who he is and what makes him tick. You have to do more than read law - you have to read philosophy, literature, look at the arts. You have to try to understand the environment, because everything comes into play from the day he was born."

It is the seemingly obvious facts of a case that Karnavas says often give insights into how to best defend a client. The defence lawyer must then uncover the sub-plot and focus on the background narrative to disclose the full story. Judges or juries can then see the story from a different angle from that which the prosecution is presenting. Between these two points of view, the facts should emerge and allow for the fairest trial possible.

"You take the jury on a vicarious ride, give them a chance to crawl into that person's skin and ask 'how would I behave?'" he said.

He added, "The cases are all-consuming. It's impossible to forget about it. As soon as you dodge one bullet, the next one is on its way."

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