Case No.: **X-KRŽ-05/58**

Date: **Delivered on 1 September 2009**

Before the Appellate Division Panel composed of:

Judge Dragomir Vukoje, Presiding Judge
Judge Azra Miletić, Reporting Judge
Judge Marie Tuma, Member

PROSECUTOR'S OFFICE OF BOSNIA AND HERZEGOVINA

v.

MOMČILO MANDIĆ

SECOND INSTANCE VERDICT

Prosecutor for the Prosecutor's Office of B-H:

Mr. Behaija Krnjić

Defense Counsel for the Accused, Attorneys:

Mr. Refik Serdarević
Mr. Milan Vujin

CONTENTS

Number: X-KRŽ-05/58
Sarajevo, 1 September 2009

IN THE NAME OF BOSNIA AND HERZEGOVINA!

The Court of Bosnia and Herzegovina, sitting on the Panel of the Appellate Division of Section I for War Crimes composed of Judge Dragomir Vukoje, as the Presiding Judge, and Judge Azra Miletić and Judge Marie Tuma, as members of the Panel, with the participation of Legal Officer Sanida Vahida-Ramić, as the record-taker, in the criminal case against the Accused Momčilo Mandić, for the criminal offense of War Crimes against Civilians, in violation of Article 173(1)(c) and (e), and the criminal offense of Crimes against Humanity, in violation of Article 172(1)(h), as read with Subparagraphs (a), (e), (f), (i) and (k), all as read with Article 180(1) and (2) of the Criminal Code of Bosnia and Herzegovina (CC B-H), having decided upon the Appeal by the Prosecutor's Office of B-H, No. KT-RZ 42/05 dated 8 November 2007, from the Verdict of the Court of B-H, No. X-KR-05/58 dated 18 July 2007, at a session of the Panel held in the presence of Behaija Krnjić, Prosecutor for the Prosecutor's Office of B-H, the Accused Momčilo Mandić, and Attorneys Refik Serdarević and Milan Vujin, the Defense Counsel for the Accused, on 1 September 2009, pursuant to Article 313(1) of the Criminal Procedure Code of Bosnia and Herzegovina (CPC B-H), rendered the following:

VERDICT

The Appeal by the Prosecutor for the Prosecutor's Office of B-H, No. KT-RZ-42/05 dated 8 November 2007, is hereby **refused as unfounded**, and the Verdict of the Court of B-H, No. X-KR-05/58 dated 18 July 2007, **upheld**.

REASONING

PROCEDURAL HISTORY

1. By the Verdict No. X-KR-05/58 dated 18 July 2007, the Court of B-H acquitted the Accused Momčilo Mandić of the charges that at the time and in the manner described under Section I of the operative part of the Verdict he committed the criminal offense of War Crimes against Civilians in violation of Article 173(1)(c) and (e), and under Section II, the criminal offense of Crimes against Humanity in violation of Article 172(1)(h), as read with Subparagraphs (a), (e), (f), (i) and (k), all as read with Article 180(1) and (2) of the CC B-H.

2. Pursuant to Article 189(1) of the CPC B-H, the Court decided that the costs of the criminal proceedings would be covered from the budget, while, pursuant to Article 198(3) of the CPC B-H, all injured parties should pursue their claims under property law in a civil action.

3. **The Prosecutor for the Prosecutor's Office of B-H filed an Appeal from this Verdict within the statutory deadline** on the grounds of essential violations of the criminal procedure provisions referred to in Article 297(1)(k) of the CPC B-H, the erroneously and incompletely established state of facts and the decision on the sentence, and moved the Court to grant the Appeal and revise the contested Verdict by finding the Accused guilty of the criminal offenses alleged in the Indictment and thereby sentencing him to a long term imprisonment, or to revoke the first instance Verdict in its entirety and schedule a new main trial before the Panel of the Appellate Division of the Court of B-H (the Appellate Panel).

4. The Defense Counsel for the Accused, Attorneys Milan Vujin and Refik Serdarević, and the Accused personally filed their respective Responses to the Appeal, fully contesting the averments in the Appeal and moving the Appellate Panel to refuse it as unfounded and to uphold the First Instance Verdict in its entirety.

5. **The Responses to the Appeal** primarily state that filing an appeal on the grounds of the decision on the sentence, which the Prosecutor in the case at hand did, is irrelevant, that is, inadmissible, since an appeal cannot be filed on this ground when sentence has not been pronounced. Given the fact that in the case at hand the Accused was acquitted of the charges and that the Court did not render a decision on the sentence at all, the Appellant could not evaluate whether or not the sentence was meted out properly.

6. With respect to the Appeal averment that, when rendering the contested Verdict, the First Instance Panel committed essential violations of the criminal procedure provisions referred to in Article 297(1)(k) of the CPC B-H, the Defense Counsel noted that the Prosecutor did not explain or specify in his Appeal what constituted the alleged violation and that his appeal is instead reduced to pointing at the allegedly erroneously and incompletely established state of facts. According to the Defense Counsel, stressing the reasons of the Verdict that are contradictory both mutually and to the presented evidence, does not constitute an essential violation of the criminal procedure provisions referred to in Article 297(1)(k) of the CPC B-H, given that this ground for the appeal covers only the incomprehensibility of the operative part of the Verdict or its contradictoriness (the intrinsic one or with the reasoning of the Verdict), and the lack of reasons of the Verdict at all, that is, the lack of reasons on decisive facts. Given the fact that the Appellant did not quote the averment that the Court, when evaluating the evidence, did not act in accordance with Article 281(2) of the CPC B-H, as the ground for appeal referred to in Article 297(2) of the CPC B-H, the Defense is of the opinion that the Appellate Panel, being bound by the limits of the allegations in the Appeal, can review the First Instance Verdict only with respect to the alleged erroneous and incomplete state of the facts.

7. With respect to the ground for appeal related to the correctness and completeness of the established state of facts, the Defense Counsel considers that the Appeal argument pointing at the defects of the First Instance Verdict in this respect is unfounded, and emphasizes that the Verdict contains clear and sufficient reasons on all decisive facts important for rendering a decision in this legal matter, both concerning Section I and Section II of the operative part of the Verdict. The Defense particularly contests the Appeal averments suggesting that the First Instance Panel should have attached a greater probative value to the evidence such as telephone intercepts, brochures and interviews, given that the Defense finds it to be

unlawfully obtained evidence and that the Court properly decided not to give them any probative value, as such, when rendering the decision.

8. The Accused also filed a Response to the Appeal in which, in addition to the arguments presented by his Defense Counsel, he also noted that the Court is not obliged to elaborate on every individual piece of evidence in a verdict, but must evaluate them all when rendering a decision. With respect to the conclusion on facts, according to the Accused, the Trial Panel is obliged to draw only those conclusions on facts that are of essential importance for establishing guilt on a particular Count in an Indictment, which was indeed done in the contested Verdict. In the opinion of the Accused, the state of the facts was established completely and accurately and a proper decision was rendered, hence the Accused moved the Appellate Panel to refuse the Appeal by the Prosecutor's Office of B-H as unfounded and uphold the First Instance Verdict.

9. Pursuant to Article 304 of the CPC B-H, on 1 September 2009, **the Appellate Panel held a session** which was also attended by the Accused Momčilo Mandić and his Defense Counsel, Attorneys Refik Serdarević and Milan Vujin, and the Prosecutor for the Prosecutor's Office of B-H, Behaija Krnjić, at which the Prosecutor fully reiterated his Appeal, the arguments and proposals therein, while the Accused and his Defense Counsel fully reiterated their respective Responses to the Appeal.

GENERAL CONSIDERATIONS

10. Before providing the reasoning for each argument in the Appeal, the Appellate Panel notes that, pursuant to Article 295(1)(b) and (c) of the CPC B-H, an Appellant is obliged to state in his Appeal the grounds for contesting the Verdict and the reasoning behind the Appeal.

11. Given that the Appellate Panel shall review the Verdict only insofar as it is contested by the Appeal, pursuant to Article 306 of the CPC B-H, it is a duty of the Appellant to draft the Appeal in such a way so that it may serve as a basis for reviewing the Verdict.

12. In that respect, the Appellant must specify the grounds for contesting the Verdict, specify which part of the Verdict, piece of evidence or procedure of the Court he contests and present a clear and well-reasoned explanation corroborating his appeal.

13. A mere generalized citing of the grounds for appeal, as well as pointing at alleged irregularities in the course of the first instance proceedings without specifying which ground for Appeal the Appellant refers to, does not constitute a valid basis to review the First Instance Verdict, due to which the Appellate Panel will *prima facie* refuse as unfounded the unclear appeal averments lacking reasoning.

I ESSENTIAL VIOLATIONS OF CRIMINAL PROCEDURE PROVISIONS REFERRED TO IN ARTICLE 297 OF THE CPC B-H

14. The Appellate Panel primarily reviewed if the arguments in the Appeal on the essential violations of the criminal procedure provisions referred to in Article 297(1) of the CPC B-H were well-founded and concluded that they were unfounded.

15. Essential violations of the criminal procedure provisions as a ground for an appeal are defined in Article 297 of the CPC B-H.

16. Given the gravity and the significance of the committed violations of the procedure, the CPC B-H differentiates between the violations which, if established as existing, give rise to an irrefutable assumption that they affected the validity of the pronounced Verdict (absolute essential violations), and the violations with which, in each specific case, it is up to the Court to assess whether they had or could have affected the validity of the Verdict (relative essential violations).

17. Absolute essential violations of the CPC B-H are listed in Subparagraphs (a) through (k) of Paragraph (1) of Article 297 of the CPC B-H.

18. Should the Panel establish that there exists some of the essential violations of the criminal procedure provisions, it will result in a compulsory revocation of the First Instance Verdict, pursuant to Article 315(1)(a) of the CPC B-H.

19. Unlike the absolute essential violations, the relative essential violations are not listed in the Code, but exist *if the Court has not applied or has improperly applied some provisions of this Code either during the main trial or in rendering the verdict, and this affected or could have affected the rendering of a lawful and proper verdict (Article 297(2) of the CPC B-H)*.

20. The Prosecutor contests the First Instance Verdict only on the grounds of alleged essential violations of the criminal procedure provisions referred to in Paragraph (1) of Article 297 of the CPC B-H.

21. Explaining what he considers as an essential violation of the criminal procedure provisions referred to in Article 297(1)(k) of the CPC B-H, the Prosecutor states that the contested Verdict "does not contain clear and correct reasons on which it is based, in particular it does not contain reasons concerning decisive facts, *whilst the provided reasons are completely inconsistent with and contradictory*[1] not only to presented evidence, but also to some reasons of the Verdict".

22. According to the Prosecutor, the provided reasons of the contested Verdict are based on arbitrary and generalized evaluation of the Trial Panel, not on the actual facts established in the course of the evidentiary proceedings. He adds that in the course of the proceedings the

[1] Article 297(1)(k) of the CPC B-H reads that an essential violation exists "if the wording of the verdict was incomprehensible, internally contradictory or contradicted the grounds of the verdict or if the verdict had no grounds at all or if it did not cite reasons concerning the decisive facts", but not if "the provided reasons are completely inconsistent and contradictory", as the Prosecutor erroneously interprets in his Appeal.

Court analyzed all presented pieces of evidence from the aspect of their relevance, authenticity and legality and concluded that they were admissible, and given such a conclusion, the Court was obliged to evaluate all admitted pieces of evidence with the same consideration and determine their final probative value and offer reasons as to why it considered some of the evidence more or less credible.

23. It is further stated that the Court examined 50 Prosecution witnesses and inspected over 200 pieces of physical evidence tendered by the Prosecution in the first instance proceedings, but when rendering the decision, it singled out and evaluated only a few pieces of all the evidence. Based on the foregoing, the Prosecutor concludes that the Court not only failed to evaluate all admitted pieces of evidence with the same consideration, but it did not at all evaluate a great number of very important pieces of evidence either, which resulted in rendering the Verdict that is completely unlawful and incorrect.

24. The Appeal further reads that the failure of the First Instance Panel to evaluate all pieces of evidence presented in the course of the proceedings resulted in the First Instance Verdict being based on the erroneously and incompletely established state of the facts, which constitutes a ground for appeal referred to in Article 299(1) of the CPC B-H.

25. In that respect, the Prosecutor argues that the First Instance Panel wrongly concluded that there was no armed conflict at the time relevant to **Section I of the operative part of the Verdict** and that, therefore, the Geneva Conventions and their Additional Protocols cannot apply to the described event at all. That is to say, the Appeal reads that the Court's decision on that issue is based on the fact established in the ICTY case against Stanislav Galić which was accepted by the Court as proven and according to which the armed conflict broke out in Bosnia and Herzegovina on 6 April 1992. This fact is contradictory to another fact from the same ICTY Judgment, also accepted by the Court, according to which the event described in Section I of the operative part marked the beginning of the armed conflict.

26. The Prosecutor also contests the Court's conclusion that the persons described in the Indictment as civilians, that is, the managerial and teaching staff of the Training Center in Vraca, were armed and that they took active part in the described event and returned fire, while failing to evaluate their status after the armed attack stopped and they laid down the arms and surrendered to the attackers.

27. Finally, the Appeal notes that the First Instance Panel also erroneously concluded that it was not proved in the course of the proceedings that the Accused held, *de iure* or *de facto*, the office of Deputy Minister of the Interior of the so-called Serb Republic of Bosnia and Herzegovina as of 4 April 1992, that he directed the attack on the Training Center in Vraca and that he was superior to the police members who transferred, detained or interrogated the persons deprived of liberty in the Police Station or the gym in Pale, given that numerous pieces of evidence which were presented and which the First Instance Panel did not evaluate at all or evaluated them incorrectly, prove to the contrary.

28. With respect to **Section II of the operative part of the Verdict**, the Appeal reads that the First Instance Panel, when explaining its conclusions concerning this Count in the Indictment, repeated the violations it made in the previous Section, that is, it did not

evaluate the presented evidence properly and completely, due to which it could not make correct conclusions on decisive facts or the essential elements of the criminal offense concerned.

29. In that respect, the Appeal primarily points at the contradictoriness in the reasoning of the Verdict where the Court established that the armed conflict in Sarajevo broke out on 6 April 1992, but failed to draw a conclusion concerning the existence of a widespread and systematic attack in the referenced area, which constitutes an essential element of the criminal offense that the Accused is charged with under this Count of the Indictment, whereupon the Court concluded that the acts described under Sections II – 2 through 4 of the operative part of the Verdict constituted a part of a widespread and systematic attack.

30. The Appeal further reads that with respect to Sections II- 2, 3 and 4 of the operative part, the First Instance Panel did not at all evaluate the presented evidence or give its final inference on its credibility, due to which the Appellant stresses that in the whole Verdict one can only guess whether or not the Court accepted some fact. In addition, the Appeal also lists certain pieces of evidence that the Court did not evaluate at all but which, in the opinion of the Prosecutor, are crucial for establishing the responsibility of the Accused. The Appeal also contests the competency of expert witness, Professor Zoran Pajić, PhD, to give his findings and opinion on the structure and the powers of the authorities in the Serb Republic of B-H, in other words, the authorities and competencies that the Accused had as the Minister of Justice as well as his effective actions, stressing that the expert witness based his findings and opinion only on some pieces of evidence, disregarding the evidence as a whole.

31. The Appeal particularly stresses that the First Instance Panel is absolutely contradictory in its evaluation of the referenced expert witness' findings and opinion, because it left out the witness' final conclusion stressing that the Accused was competent and formally responsible for the execution of obligations stipulated by the Law on Ministries, and that, as the Minister of Justice, he was the most responsible for the application of the law in general. In the opinion of the Prosecution, the foregoing speaks in favor of the Accused's full responsibility for the actions he was charged with.

32. With respect to the command responsibility of the Accused, the Appeal notes that the contested Verdict established that the Accused did not have effective control over members of the army, police or paramilitary formations who committed crimes against the detainees of the *Butmir*, *Planjo's House* and *Foča* Penal and Correctional Institutions [KP Dom in the vernacular; translator's note], although the Accused was not charged with it at all, instead the Prosecution's averment was that the Accused was a superior to the managerial staff and employees of the referenced Penal and Correctional Institutions. According to the Prosecution, the Court failed to draw a conclusion on this fact, that is, it failed to evaluate the presented evidence or reason and establish the facts related to the level of the effective control the Accused had, which was a decisive factor in determining his responsibility.

33. **Having reviewed the First Instance Verdict insofar as it concerned the referenced appeal ground and as it was contested by the Appeal, the Appellate Panel reached the decision as stated in the operative part for the reasons that follow.**

34. The Appellate Panel primarily reviewed the argument in the Appeal alleging an essential violation of the CPC provisions referred to in Article 297(1)(k) and found it to be unfounded, that is, that the contested Verdict contained the reasons on decisive facts related to the existence of the criminal offense and the criminal responsibility of the Accused.

35. Specifically, under Section I of the operative part of the Verdict the Accused was acquitted of the charges that: "… During the **armed conflict** between the Armed Force of the Republic of Bosnia and Herzegovina and the forces of the Serb Republic of Bosnia and Herzegovina in the City of Sarajevo, by violating Article 3(1)(a) and (c), Article 27(1), Article 33(3) and Article 147 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949, he planned, instigated, ordered and committed, as well as incited, aided and abetted the planning, instigation and perpetration of unlawful confinement and inhuman treatment of civilians, in as much as he, as Deputy Minister of the Interior of the Serb Republic of B-H, directed an attack against the **Training Center for Personnel of the RB-H Ministry of the Interior located in Vraca, Sarajevo**, carried out by the police force of the Serb Republic of B-H supported by military and paramilitary formations on **5 April 1992**;" and that "… all the managerial and teaching staff of Bosniak and Croat ethnicity were escorted to the building of the Vraca Local Community where they were subjected to interrogation from where a group … was singled out and transferred by vehicles to Pale. During the transfer they were severely beaten and upon their arrival they were imprisoned and interrogated at the Police Station and then transferred to a gym in Pale where they were imprisoned, physically abused and mistreated until 10 April 1992 when they were exchanged and taken back to Sarajevo", whereby he committed the criminal offense of War Crimes against Civilians, in violation of Article 173(1)(c) and (e) of the CC B-H, as read with Article 180(1) and (2) of the CC B-H.

36. Therefore, the relevant regulations referred to in the Indictment are contained in Article 173(1)(c) and (e) of the CC B-H:

*(1) Whoever in violation of rules of international law in time of war, **armed conflict** or occupation, orders or perpetrates any of the following acts:*

a) Attack on ...;
b) Attack ...;
*c) Killings, intentional infliction of severe physical or mental pain or suffering upon a person (torture), **inhuman treatment**, biological, medical or other scientific experiments, taking of tissue or organs for the purpose of transplantation, immense suffering or violation of bodily integrity or health;*
d) Dislocation ...;
*e) Coercing another by force or by threat of immediate attack upon his life or limb, or the life or limb of a person close to him, to sexual intercourse or an equivalent sexual act (rape) or forcible prostitution, application of measures of intimidation and terror, taking of hostages, imposing collective punishment, unlawful bringing in concentration camps and **other illegal arrests and detention**, deprivation of rights to fair and impartial trial, forcible service in the armed forces of enemy's army or in its intelligence service or administration;*
f) Forced labor ...,

shall be punished by imprisonment for a term not less than ten years or long-term imprisonment,

and in Article 180(1) and (2) of the CC B-H that reads:

Individual Criminal Responsibility

Article 180

(1) A person who planned, instigated, ordered, perpetrated or otherwise aided and abetted in the planning, preparation or execution of a criminal offense referred to in Article 171 (Genocide), 172 (Crimes against Humanity), 173 (War Crimes against Civilians), 174 (War Crimes against the Wounded and Sick), 175 (War Crimes against Prisoners of War), 177 (Unlawful Killing or Wounding of the Enemy), 178 (Marauding the Killed and Wounded at the Battlefield) and 179 (Violating the Laws and Practices of Warfare) of this Code, shall be personally responsible for the criminal offense. The official position of any accused person, whether as Head of State or Government or as a responsible Government official person, shall not relieve such person of criminal responsibility nor mitigate punishment.
(2) The fact that any of the criminal offenses referred to in Article 171 through 175 and Article 177 through 179 of this Code was perpetrated by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.
(3) ...

37. It follows clearly from the foregoing that the existence of an armed conflict (war or occupation) is an essential element of this criminal offense and that it determines the existence of the offense.

38. With respect to this essential element the First Instance Panel accepted as proven the fact established in the ICTY Judgment in the case against Stanislav Galić (para. 199, p. 66): "Armed conflict broke out after the European Community recognized B-H as a sovereign state on **6 April 1992**."

39. The Court also accepted as proven the following fact: **"Armed conflict in Sarajevo broke out with fierce shooting and attack on the Academy of the Ministry of the Interior in Vraca."** (ICTY Judgment No. IT-98-29-T, dated 5 December 2003, in the case against Stanislav Galić, para. 119, p. 66). This fact was listed as fact No. 5 on page 52 of the Verdict. [p. 53 of the English version; translator's note]

40. The Appellate Panel primarily notes that the aforementioned accepted fact which establishes the date of the beginning of the **armed conflict** should not have been accepted as established in the manner in which it was done in the contested Verdict, since it concerns a legal characterization, that is, the essential element of the criminal offense as charged in the Indictment (armed conflict). However, since the parties themselves proposed the acceptance of the aforementioned facts as proven, and since the manner in which the First Instance Panel decided on the admissibility of the proposed fact is not contested in the Appeal, either, this omission on the part of the First Instance Panel will not be reviewed by this Appellate Panel.[2]

[2] "That is to say, the contested Verdict clearly states that the Law on the Transfer of Cases from the ICTY to the Prosecutor's Office of B-H and the Use of Evidence Collected by the ICTY in Proceedings Before the

41. Both quoted facts are facts from the ICTY case against Stanislav Galić, No. IT-98-29-T, dated 5 December 2003, and, although these facts appear contradictory, the First Instance Panel did not commit an essential violation of the criminal procedure provisions, as the Prosecutor erroneously thinks, given the fact that the First Instance Verdict gave its position on this fact and offered reasons for it. These reasons may not be sufficient and acceptable for the Prosecutor, but it does not mean that the condition was met which stipulates that for an essential violation of the criminal procedure provisions the Court must fail to provide reasons on a decisive fact, especially on a contradictory fact. What this means is that the issue may be reviewed only in terms of the erroneously established state of facts as the ground for appeal.

42. Based on the foregoing, the Appellate Panel notes that a decision on the admission of facts essentially represents a decision on the admission of pieces of evidence into the evidentiary material and that the admission of established facts as proven constitutes a special action aimed at obtaining evidence. If a First Instance Panel accepts the facts, it will treat them only as one of the pieces of evidence presented at the main trial, of which it will give its evaluation, depending on the evidence's significance for the decision rendering.

43. Also, the First Instance Panel arrived at the decision on the essential elements of the criminal offense referred to in Section II of the operative part of the Verdict, the existence of a widespread and systematic attack at the time and in the place relevant to this Section, by having made a number of similar omissions as when accepting as proven the established facts concerning the conclusion on the existence of the armed conflict.

44. In other words, under this Count of the Indictment the Accused was charged with the criminal offense of Crimes against Humanity, in violation of Article 172(1)(h), as read with Subparagraphs (a), (e), (f), (i) and (k) of the CC B-H, which reads:

"(1) Whoever, as part of a widespread or systematic attack directed against any civilian population, with knowledge of such an attack perpetrates any of the following acts:

a) Depriving another person of his life (murder);
e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
f) Torture;
h) Persecutions against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious or sexual gender or other grounds that are universally recognized as impermissible under international law, in connection with any offense listed in this paragraph of this Code, any offense listed in this Code or any offense falling under the competence of the Court of Bosnia and Herzegovina;
i) Enforced disappearance of persons;

Courts in B-H (Law on Transfer), on the basis of which the facts were accepted, does not lay down the criteria that must be complied with in order for a fact to be considered 'adjudicated'. In this respect, considering the right of the Accused to a fair trial, the First Instance Panel applied the criteria established by the ICTY in the case against Momčilo Krajišnik and adhered to in subsequent ICTY cases.
The criteria, which this Panel also accepts and considers adequate for evaluating if an established fact can be accepted as proven in the proceedings before the Court of B-H, clearly set forth that the fact, inter alia, must be restricted to factual findings and not include legal characterizations."

k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to physical or mental health,

shall be punished by imprisonment for a term not less than ten years or long-term imprisonment."

45. Specifically, the facts in the Indictment charge the Accused that "in the period between May and end of December 1992, within a **widespread and systematic attack** of the military and police forces, as well as paramilitary forces of the so-called Serb Republic of B-H, **directed against the non-Serb civilian population of the City of Sarajevo and Foča Municipality**, being aware of the attack, as the Minister of Justice in the Government of the so-called Serb Republic of B-H, he planned, ordered and committed, as well as incited and aided and abetted the persecution of the non-Serb civilian population…".

46. As transpires from the referenced legal provision and the description of facts in the referenced Count in the Indictment, it was primarily necessary to establish the existence of a widespread or systematic attack **in the City of Sarajevo and Foča Municipality** in the period between May and late December 1992 as an essential element of the criminal offense of Crimes against Humanity. However, although on its page 127 [p. 133 of the English version; translator's note] the First Instance Verdict correctly indicates and analyzes all essential elements of the offense concerned, when evaluating the evidence and establishing the decisive facts related to these essential elements, it only states that it accepts as proven the established fact that on 8 April 1992, an **armed conflict** between the Serb and Muslim forces broke out in Foča and that the attack was **extensive** and that its duration included the period from April 1992 to February 1993 (accepted from the *Krnojelac* case, Trial Chamber Judgment, paras. 567 and 570). With respect to the **City of Sarajevo**, the Panel states that it accepted as proven the fact established in the ICTY Judgment against Stanislav Galić, dated 5 December 2003, para. 199, that an **armed conflict** broke out after the European Community recognized B-H as a sovereign state on 6 April 1992.

47. As with Section I, with respect to this Section of the operative part of the Verdict the First Instance Court also accepted as proven the facts that do not meet the set criteria, given that they include legal characterization and that they constitute an essential element of the criminal offense that the Accused is charged with.

48. On the penultimate page, page 163 [p. 170 of the English version; translator's note] (chapter entitled *Conclusion*), the contested Verdict reads that based on the results of evidentiary proceedings, the participation of the Accused in a widespread and systematic attack directed against non-Serb civilians of the City of Sarajevo and the Municipality of Foča, and in the persecution of non-Serb civilians, was not proved beyond a reasonable doubt, which is the first mention of this essential element of the criminal offense related to the City of Sarajevo in the whole Verdict.

49. However, the Appellate Panel finds that the omission of the First Instance Panel to present facts and properly determine whether there existed a widespread and systematic attack against the civilian population at the place and the time covered in the Indictment, which constitutes an essential element of the criminal offense that the Accused is charged with, did not result in the First Instance Panel rendering an unlawful Verdict. This is so primarily because the reason for the acquittal was not a lack of evidence on these decisive

facts. On the contrary, the First Instance Panel finds that the existence of a widespread and systematic attack against the civilian population in both the Municipality of Foča and the City of Sarajevo has been proved exactly as averred in the Indictment. It is, therefore, not clear why the Prosecutor points at this omission by the Court when elaborating on these facts, given that the Court's final conclusion is absolutely consistent with the Prosecutor's averments, hence this argument in the Appeal may be considered an argument to one's own detriment.

50. This Panel also finds unfounded the Prosecutor's argument regarding the essential violation of the provisions of the CPC B-H referred to in Article 297(1)(k) related to the findings and opinion of expert witness, Professor Zoran Pajić, PhD.

51. With respect to Section II of the operative part, the Prosecutor states in his Appeal that the expert witness based his findings and opinion only on some pieces of evidence, disregarding the evidence as a whole. According to the Prosecutor, this led to the inconsistencies in many facts that were allegedly established in the analysis. In addition to this, the Appeal also stresses that the First Instance Panel left out the expert witness' final conclusion that the Accused was competent and formally responsible for the execution of obligations stipulated by the Law on Ministries, and that, as the Minister of Justice, he was the most responsible for the application of the law in general.

52. With respect to the foregoing appeal argument, the Appellate Panel reviewed the case records and established that by the Order dated 14 June 2007 the First Instance Panel ordered an expert analysis to be conducted by expert witness, Professor Zoran Pajić, PhD, of the circumstances specified in the Annex to the Order. At the main trial held on 25 June 2007, the expert witness took an oath, pursuant to Article 270(1), (2), (3) and (4) of the CPC B-H and orally explained his findings and opinion, whereupon he was **cross-examined by the Prosecutor** and the Defense. On that occasion the Prosecutor could have asked the expert witness for full explanations of all the evidence that the Prosecutor possessed and that, in his opinion, might have been relevant to the case. Therefore, if some such relevant explanation is missing, it can in no way be interpreted as an omission on the part of the Court.

53. Admittedly, the written findings and opinion by the expert witness are not contained in the case records, due to which and pursuant to Article 303(2) of the CPC B-H, the Reporting Judge of the Appellate Panel sent a letter to the Presiding Judge of the First Instance Panel on 25 May 2009 with a view to obtaining a report on the referenced issue.

54. In his letter dated 26 May 2009, the Presiding Judge of the First Instance Panel informed the Reporting Judge that the expert witness presented his findings and opinion at the main trial on 25 June 2007, but that he never tendered his written findings and opinion into the case records.

55. Article 97 of the CPC B-H explicitly sets forth that the expert witness selected by the Court must present a report to the Court that shall contain the evidence examined, the tests performed, the findings and opinion reached, and any other relevant information the expert considers necessary for a fair and objective analysis.

56. Under Article 101 of the CPC B-H, the expert witness shall present his findings and opinion as well as worksheets, drawings, and notes to his appointing authority, and under Article 270(5) of the CPC B-H, the written findings and opinion of the expert shall only be admitted as evidence if the expert in question testified at the main trial.

57. In the case at hand, the expert witness obviously presented his findings and opinion pursuant to the order of the Court, but he has never submitted his written findings.

58. The component parts of an expert evaluation that an expert witness presents in the course of the proceedings are his written findings and opinion, which shall be submitted to the Court and the parties, and the oral presentation when the expert is provided with an opportunity to clarify his findings and the parties with an opportunity to cross-examine the witness. Irrespective of such procedural situation, the Court based its decision concerning Section II of the operative part on this very evidence to a great degree: *"...the Court ex officio engaged an expert witness, Professor Zoran Pajić, PhD, who presented a thorough and detailed analysis of physical evidence proposed by the Prosecution and the Defense in an authentic and impartial manner, and also gave oral presentation thereof at the main trial, and the Court finally gave full credence to the mentioned findings and opinion"* (*page 147 of the Reasoning/)* [p. 154 of the English version; translator's note]. **Neither the Prosecutor nor the Defense objected to such manner of examining the expert witness.**

59. The Prosecutor also points in the Appeal that with respect to the capacity of the Accused as the (*de iure* or *de facto*) Deputy Minister of the Interior and his directing of the attack at the time and in the manner as described in Section I of the operative part, and his command responsibility over the perpetrators of the crimes in the Penal and Correctional Institutions referred to in Section II of the operative part, the First Instance Panel failed to evaluate the contradictory pieces of evidence, that is, to explain in which way it evaluated the Prosecution evidence on these circumstances as well as the evidence on the status of the managerial and teaching staff of the Training Center in Vraca.

60. This ground for the Prosecution appeal is also unfounded.

61. The First Instance Panel is not obliged to touch on each and every presented piece of evidence individually (the Appeal itself emphasizes that there were 50 witnesses and more than 200 pieces of physical evidence). In the case at hand, the First Instance Panel evaluated the relevant evidence on these circumstances but the value the Panel attached to it is not necessarily identical to the value attached by the Prosecutor, which will be discussed in the section dealing with the regularity of the established decisive facts.

II ERRONEOUSLY OR INCOMPLETELY ESTABLISHED STATE OF FACTS REFERRED TO IN ARTICLE 299 OF THE CPC B-H

62. The standard that an Appellate Panel should apply when reviewing an alleged erroneously established state of facts is the foundation of the allegation. When reviewing the allegedly erroneously established facts an Appellate Panel will substitute the facts established by the First Instance Panel with its own finding only if an objective trier of facts would not be able to establish the contested state of facts. When determining whether a First Instance Panel's conclusion is such that no objective trier of fact could arrive at such conclusion, an Appellate Panel will not lightly set about to disturb the state of facts established by the First Instance Panel. The Appellate Panel is of the opinion that it is primarily the task of a First Instance Panel to examine, check and evaluate the evidence presented at the main trial and that the state of facts established by the First Instance Panel must be shown a certain degree of appreciation.

63. An Appellate Panel shall revoke a First Instance Panel's Verdict only if an error of fact brought about a miscarriage of justice. A miscarriage of justice is considered to be an utterly unjust outcome of court proceedings, as in the case when the Accused is sentenced despite the lack of evidence on the subject matter of the criminal offense.

64. In order to prove that a miscarriage of justice occurred, an Appellant must show that the alleged erroneous and incomplete state of facts established by the First Instance Panel justifiably calls into question the guilt of the Accused. In order to prove that a miscarriage of justice occurred, the Prosecutor must show that, once the errors the First Instance Panel made when establishing the facts are taken into account, every reasonable doubt with respect to the guilt of the Accused is eliminated.

65. Therefore, only in cases when an Appellate Panel concludes that, first, no objective trier of facts could reach the contested conclusions on facts, and, second, that an error of fact caused a miscarriage of justice, will the Appellate Panel grant the Appeal filed pursuant to Article 299(1) of the CPC B-H averring that the state of facts has been erroneously and incompletely established.

66. **The arguments in the Prosecutor's Appeal related to the alleged erroneously and incompletely established state of facts could be summarized as follows:**

67. With respect to **Section I of the operative part** of the contested Verdict, the Appeal states that the First Instance Panel did not draw a correct inference when it inferred that the attack on the Training Center in Vraca on 5 April 1992 did not constitute an armed conflict as an essential element of the criminal offense of War Crimes against Civilians, that the Accused, as the Deputy Minister of the Interior of the so-called Serb Republic of Bosnia and Herzegovina, did not have the order-issuing and command responsibility for the attack and treatment of the captured managerial staff of the Training Center, and that the persons captured in that conflict were not protected by the Common Article 3 of the Geneva Conventions.

68. Corroborating these averments, the Appeal points at the fact that the First Instance Panel

accepted as proven the fact that *"armed conflict in Sarajevo broke out with fierce shooting and attack on the Academy of the Ministry of the Interior in Vraca",* (ICTY Judgment against Stanislav Galić, p. 56), and that with the incontestably established fact that the conflict happened on 5 April 1992, there was no reason for the First Instance Panel not to conclude that the beginning of the armed conflict happened on that very day, 5 April 1992. The conflict broke out between the armed force of a state, that is, the Ministry of the Interior of Bosnia and Herzegovina, on one side, and members of the breakaway part of the Special Police Unit of the Republic of Bosnia and Herzegovina supported by military and paramilitary formations, on the other side, which indicates that it was the case of an internal armed conflict, not of inter-ethnic tensions.

69. The Appeal further points that the First Instance Panel's erroneous conclusion with respect to the existence of an armed conflict also led to the erroneous conclusion that the managerial and teaching staff of the Training Center did not have the status of civilians in terms of the Common Article 3 of the Geneva Conventions, but that they were armed and in uniforms and took active part in the referenced event. This is primarily because the Indictment does not aver the existence of the status of protected persons at the time of the attack, but after it, when these persons laid down their arms and were actually captured, and with respect to the treatment they subsequently underwent in the hands of members of the Police whose superior the Accused was.

70. With respect to **Section II of the operative part** of the contested Verdict the Appeal points that the First Instance Panel did not provide clear reasons concerning the conclusion on the existence of a widespread and systematic attack in the City of Sarajevo, which constitutes an essential fact for establishing the subject matter of the criminal offense of Crimes against Humanity, but only deals with the existence of an armed conflict in the City.

71. The Prosecutor argues further in his Appeal that it follows beyond any doubt from the presented evidence that all acts described in Section II of the operative part of the Verdict indeed happened, yet the First Instance Panel wrongly concluded that there was no evidence that the Accused ordered and committed, or instigated, aided and abetted the persecution of non-Serb civilians in the manner described. It is not contestable that during the referenced period the Accused was the Minister of Justice and Administration of the Serb Republic of B-H, thus a direct superior to the managerial and regular staff of the *Foča* and the *Butmir* Penal and Correctional Institutions and the latter Institution's department in the so-called *Planjo's house.* Had the First Instance Panel evaluated the evidence correctly, it should have concluded from this that there existed the responsibility of the Accused, both individual and command responsibility.

72. **Having reviewed the foregoing arguments in the Appeal related to the regularity of the establishment of decisive facts, the Appellate Panel concludes as follows:**

73. **Having established the decisive fact of the (non)existence of an armed conflict** on 5 April 1992, the First Instance Panel established, beyond any reasonable doubt, that the referenced event under Section I of the operative part of the Verdict happened on 5 April 1992 in the area of Vraca, but that it does not amount to the definition of armed conflict under Article 1(1) of the Additional Protocol II to the Geneva Conventions, hence the Panel qualified it as an inter-ethnic tension, of which it presented clear and convincing reasons

which this Panel also accepts.

74. The First Instance Panel additionally corroborated this conclusion with the established facts related to the event, that is, the fact that an armed incident occurred between members of the army and the police who belonged to or were subordinated to the same military and police authorities at that time, that is, that they were employees of the Ministry of the Interior of the Republic of Bosnia and Herzegovina.

75. This conclusion also results from the First Instance Panel's conclusion that on 5 April 1992 the Accused Momčilo Mandić was an Assistant Minister of the Interior of the Republic of B-H and not, as the Indictment averred, the Deputy Minister of the Interior of the so-called Serb Republic of B-H. This also follows from Exhibit No. T-70, which indicates that on that very day, after the incident in Vraca, the Accused was relieved of the duty of Assistant Minister of the Interior of the Republic of B-H by Alija Delimustafić, Minister of the Interior, to which duty he had been appointed under the Decision of the Government of the Socialist Republic of B-H of 25 February 1991 (T-58).

76. Also unfounded is the **argument in the Appeal that the Accused Mandić acted in the capacity as the Deputy Minister of the Interior of the so-called Serb Republic of B-H at the same time**, that is, as of 4 April 1992, when Vitomir Žepinić tendered his resignation, as this apparently follows from a number of Prosecution Exhibits, Nos. T-71, T-72, T-73, T-74 and T-75, given the fact that in the period from 10 to 24 April 1992 the Accused signed a number of documents in the capacity as the Deputy Minister of the Interior of the so-called Serb Republic of B-H. Although the Accused indeed signed the referenced documents, stating himself that he thought he would be appointed to that duty, it is obvious that the documents are dated several days after the event of 5 April 1992, on the basis on which the Prosecutor assumes that the Accused carried out that duty at the relevant time as well, the consequence of which might have been his superior role over the police force of the so-called Serb Republic of B-H. However, the Prosecutor did not offer reliable evidence to corroborate this averment.

77. The reasoning of the contested Verdict reads:

"From the presented evidence the Court could not conclude beyond reasonable doubt that the Accused carried out, de iure or de facto, the duty of Deputy Minister of the Interior of the Serb Republic of BiH from 4 April 1992. In other words, it follows from the exhibits No. T-71, T-72, T-73, T-74 and T-75 that the Accused signed certain documents in the capacity of the Deputy Minister of the Interior, but the dates on those documents range from 10 to 24 April 1992. The fact that Vitomir Žepinić resigned on 4 April 1992 is not sufficient for the Panel to conclude beyond reasonable doubt that the Accused assumed that office on the same day. It ensues from the statement of the Accused that he was to be appointed to the office of Deputy Minister of the Interior after Žepinić's resignation and that for that very reason he signed the aforementioned documents in that capacity although the appointment did not formally take place, since it follows from exhibit No. T-81 that at the extended meeting of the National Security Council of the Government of the Serb Republic of BiH, held on 22 April 1992, the Accused was appointed the Minister of Judiciary and Administration, which is also confirmed by exhibit No. T-82. Furthermore, it follows from exhibit No. T-88 that the Assembly of the Serb People of BiH, held on 12 May 1992, verified

the appointments of ministers in the Government of the Serb Republic of BiH including Momčilo Mandić as the Minister of Justice."[3]

78. The First Instance Panel completely and correctly elaborated on the issue of the character of an armed conflict in terms of the relevant international regulations and the international jurisprudence (pp. 120-126 [pp. 126- 132 of the English version, translator's note], and, having applied the accepted standards to the case at hand and having in mind the foregoing established facts, it concluded as follows:

" (1) The Court considers indisputable that the event described in Section 1 of the operative part of the Verdict took place on 5 April 1992. This fact follows beyond reasonable doubt from the testimonies of all the witnesses heard during the trial: Husein Balić, Dževad Termiz, Meho Mašović, Josip Bilandžija, Džafer Hrvat, Mlađen Mandić, Vlatko Lopatić, Alija Delimustafić, witnesses "H" and "I", and also the testimony of the Accused. Furthermore, the Panel accepted as proven (the Galić case, para. 196) that "in early March 1992, conflict broke out along ethnic lines in various locations in BiH." The Panel considers that the described events constitute a part of the process of internal turmoil and inter-ethnic tensions, and they should be perceived as they were perceived at that time, not as they might be seen nowadays. The Panel also accepted as proven the fact that "armed conflict broke out after the European Community recognized BiH as a sovereign state on 6 April 1992" (the Galić case, para. 199). The Panel concluded beyond reasonable doubt that the events that took place in Vraca do not fall under the definition of an armed conflict pursuant to Article 1 (1) of the Additional Protocol II to the Geneva Conventions. The described events fall under Sub-Paragraph 2 of the said international legal document. Therefore, given the fact that it is an event that was a part of the said inter-ethnic tensions, it cannot be defined as an armed conflict, be it international or non international, to which the Geneva Conventions and Additional Protocol I or common Article 3 to the Geneva Conventions and Additional Protocol II should, respectively, apply.

(2) Based on the foregoing, it can be clearly concluded that, since an armed conflict does not exist, the nexus between an armed conflict and the alleged crime does not exist and, therefore, the second element of this criminal offense has not been fulfilled either.

(3) Furthermore, it follows from the witness testimonies that the managerial and teaching staff of the Center were armed and they actively participated in the conflict. This fact is confirmed by the killing of two special policemen on that day and supported by the death certificates. It follows from the testimonies of witnesses Husein Balić, Dževad Termiz, Meho Mašović, Josip Bilandžija and Džafer Hrvat that at the time of the attack they were armed with automatic and semi-automatic weapons, they were wearing uniforms and they actively participated in the said event by firing back, which resulted in the death of two members of the Special Unit. This was also confirmed by the testimonies of Vlatko Lopatić, witness "I" and the Accused, as well as the other presented evidence. It follows from the aforesaid that the persons who were in the Center did not have the status of civilians, which constitutes an essential element of the definition of the criminal offense that the Indictment charges the Accused with.

[3] Momčilo Mandić case, Verdict No. X-KR-05/58 dated 18 July 2007 (hereinafter: Momčilo Mandić case, First Instance Verdict), p. 117 [p. 123 of the English version; translator's note].

Therefore, the Panel also concludes that the actions taking place in Vraca do not amount at a minimum the definition of armed conflict under Article 1 (1) of the Additional Protocol II to the Geneva Conventions. In fact, the described proven actions might fall under Article 1 (2) of the same international legal instrument. Thus, being an incident making part of the ethnic tensions, the said proven actions do not qualify as an armed conflict for the purpose of applying common Article 3 to the Geneva Conventions. In sum, the described actions do not constitute a violation of a rule of the international law, but, on the other side, they might constitute a violation of the national and human rights legislation."[4]

79. In the opinion of this Panel, too, the event described under Section I of the operative part of the Verdict, at the time it happened, still did not have the character of an armed conflict, that is, a part thereof, but represented a part of inter-ethnic tensions that over time developed into an armed conflict.

80. Armed conflicts are divided into international and non-international.

81. The core regulations on international armed conflicts are the four Geneva Conventions for the protection of war victims of 1949 and the Additional Protocol relating to the Protection of Victims of International Armed Conflicts (Additional Protocol I) of 1977.

82. On the other hand, the core regulation on non-international armed conflicts is the Common Article 3 of the Geneva Conventions and the Additional Protocol relating to the Protection of Victims of Non-International Armed Conflicts (Additional Protocol II), also of 1977.

83. The criterion applied when establishing the existence of an armed conflict given the rules contained in the Common Article 3 concerns two characteristics of the conflict: the intensity of the conflict and the organizational structure of the parties to the conflict.

84. In an armed conflict of an internal or mixed character, these closely related criteria are applied exclusively to the purpose of emphasizing the difference between an armed conflict and internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as they do not constitute armed conflicts.

85. International armed conflicts nowadays include:
a) all cases of declared war between two States (High Contracting Parties);
b) any other armed conflict which may arise between two or more States, High Contracting Parties to the Geneva Conventions, even if the state of war is not recognized by one of them;
c) all cases of partial or total occupation of the territory of a State, High Contracting Party, even if the said occupation meets with no armed resistance;
d) as of 1977, they also include armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination. With the adoption of the Additional Protocol I they were transferred from the category of non-international to the category of international armed conflicts.

[4] Momčilo Mandić case, First Instance Verdict, pp. 125-126 [pp. 131-132 of the English version; translator's note]

86. Additional Protocol II provided for the first time a definition of non-international armed conflicts. These are the conflicts which take place in the territory of a State between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations.

87. However, having in mind the circumstances of the case at hand, this Panel shares the conclusion of the First Instance Panel that the described event does not meet the foregoing criteria for the existence of an armed conflict (be it international or non-international), but constitutes acts of violence and internal turmoil that immediately preceded the armed conflict.

88. The **Appeal further implies** that the charges for the criminal offense under Section I of the operative part are related to the events after the takeover of the Training Center in Vraca and that **the responsibility of the Accused is linked to the actions of his subordinates after the end of the armed incident**, after the managerial and teaching staff of the Training Center in Vraca laid down their arms, stressing that as of that moment these persons enjoyed the protected status under the Common Article 3 of the Geneva Conventions, but that they were nevertheless taken from the Center's premises first to the premises of the Local Community in Pale, then to the Police Station and then to the gym in Pale, where they were imprisoned, physically abused and mistreated until 10 April 1992, on which the First Instance Verdict did not give a position.

89. However, these arguments in the Appeal are absolutely unfounded.

90. That is to say, when the First Instance Panel concluded that the armed incident did not meet the requirements of armed conflict set forth in Article 1(1) of the Additional Protocol II to the Geneva Conventions, and that it could not be concluded beyond a reasonable doubt that the Accused came to the Center in Vraca as the Deputy Minister of the Interior of the Serb Republic of B-H, that is, as a person with order-issuing authority over the police force, the fact related to the status of the detained members of the managerial and other staff of the Training Center in Vraca and their subsequent treatment is absolutely irrelevant.

91. Therefore, since the First Instance Panel did not establish these two decisive facts related to the essential elements of the criminal offense, without which the referenced criminal offense does not exist, the Panel did not have an obligation to make further findings.

92. However, the Appellate Panel notes that Article 280(1) of the CPC B-H sets forth that the verdict shall refer only to the criminal offense specified in the indictment, which means that the verdict corresponds to the description of facts in the Indictment (not the legal definition from the amended Indictment). The factual description in the Indictment does not provide grounds for command responsibility of the Accused for the actions directed against the Bosniak and Croat managerial and teaching staff who were arrested and transferred from the Training Center on the occasion. That is to say, what follows from the description of facts is that these persons were "transferred", "severely beaten", "imprisoned, physically abused and mistreated". The passive voice was used in this description. It is, therefore, not

obvious who the persons who did this were, who their superior was, who ordered it, that is, a possible chain of command has not been described at all, nor were the acts of the Accused or his omissions, all of which constitute the elements necessary to draw a conclusion on the Accused Mandić's command responsibility, provided the Prosecutor managed to prove that the Accused held the office of the Deputy Minister of the Interior of the so-called Serb Republic of B-H. In addition+, the Indictment did not clearly define for which specific actions the Accused is charged with individual responsibility and for which with command responsibility, given that the two responsibilities are mutually exclusive.

93. The Prosecutor particularly notes in his Appeal that the First Instance Panel did not evaluate all presented pieces of evidence which, in addition to violation of the Criminal Procedure Code, also led to an erroneously established state of facts. The Appellate Panel has already stated that a failure to elaborate on each piece of evidence does not constitute an essential violation with respect to the evidence on which the First Instance Panel did not base its decision anyway. This Panel is also of the opinion that these pieces of evidence are not of such quality so as to produce a different final inference on the essential elements from the inference of the First Instance Panel. In the Appeal, the Prosecutor particularly points at the self-incriminating exhibits in which the Accused speaks of his role in the events of 5 April 1992 (p. 11 of the Appeal [pp. 10,11 of the English version; translator's note]), disregarding the fact that such allegations had to be confirmed by the other presented evidence, since the above-said was the Accused's personal view, which was not necessarily objective, but could be a result of the Accused's wrong perception of his own role and contribution in the events concerned, which is not relevant for the Court.

94. **With respect to Section II of the operative part** of the contested Verdict, absolutely unfounded is the Prosecutor's argument that the First Instance Panel did not provide clear reasons concerning the **conclusion on the existence of a widespread and systematic attack** in the City of Sarajevo, which constitutes a decisive fact and an essential element of the criminal offense of Crimes against Humanity. This Panel has already offered its position on this related to the argument of the essential violation of the criminal procedure provisions. It repeats here that the First Instance Panel did establish the existence of a widespread and systematic attack in the Municipality of Foča and the City of Sarajevo, which is in absolute conformity with the averments in the Indictment and which neither the Accused nor his Defense Counsel objected seriously. This fact did not appear to be contestable for final adjudication, either.

95. **With respect to the detainees' conditions of living** in the Penal and Correctional Institutions of *Foča* and *Butmir* and the *Butmir* Institution's Department, the so-called *Planjo's House*, and the events described in Paragraphs 2, 3 and 4 of Section II of the operative part concerning the suffering of the named persons in terms of their detention and accommodation in inhumane conditions, physical abuse, infliction of bodily injuries and forced labor, the First Instance Panel stated that all these events happened without any doubt, accepting the statements of the injured parties as credible and the previously established facts[5]. The Accused did not raise any substantial objection either, hence these facts were established as indisputable. Therefore, the Prosecutor's argument in the appeal that there is no clear decision by the First Instance Panel on these facts is unfounded.

[5] *See* Momčilo Mandić case, First Instance Verdict, pp. 86-103 [pp. 90-108 of the English version; translator's note]

96. However, on the basis of the presented evidence and excluding every reasonable doubt, the First Instance Panel found that it was established that the Accused was not a direct order-issuing authority or a perpetrator of the referenced acts, that is, that he did not plan, order and commit, nor incite or aide and abet the persecution of the non-Serb civilian population on political, national, ethnic and religious grounds, by killing, inhuman treatment, violation of bodily integrity and health, unlawful confinement, forced labor and enforced disappearance, because the evidence adduced does not lead to the conclusion that the Accused personally ordered or committed any of the acts described in Paragraphs 2, 3 and 4 of Section II of the operative part of the Verdict, given that not a single piece of evidence so indicates and it does not follow from the factual description in the Indictment either. The First Instance Panel provided clear and convincible reasons for this inference, which are reasons that this Panel also completely accepts (pp. 130-144 [pp. 136-151 of the English version; translator's note]).

97. The Panel again points at Article 280(1) of the CPC B-H reading that the verdict shall refer only to the accused person and only to the criminal offense specified in the indictment that has been confirmed, or amended at the main trial, which clearly indicates the correspondence between the verdict and the charges. According to Article 227(1)(c) of the CPC B-H, an Indictment shall contain, inter alia, a description of the act pointing out the legal elements which make it a criminal offense, the time and place of perpetration, the relevant acts of the commission, the object on which and the means with which the criminal offense was committed, and other circumstances necessary for the criminal offense to be defined as precisely as possible. Therefore, it is the factual basis of an Indictment that determines and sets boundaries to the subject of a trial, due to which there exists the correspondence between the verdict and the charges.

98. The objective identity of an indictment and a verdict in the legal sense is a result of the application of the accusatory principle. The description of the offense in an Indictment enables the accused person to familiarize himself with the Prosecutor's view on the time, place, means and manner of the commission, as well as the other circumstances necessary for the criminal offense to be defined as precisely as possible, in which way the Accused is informed about the description of the act pointing out the legal elements which make it a criminal offense. Another reason for this is the fact that the operative part of the Verdict finding the Accused guilty must contain the facts and the circumstances that constitute the elements of the criminal offense. Given that actus reus is one of the essential elements of the criminal offense, the actus reus must also be specifically described with the presentation of the fact and the circumstances reflecting the activity of the Accused, that is, his omission, otherwise, the verdict would be incomprehensible.[6]

99. Also, if the Accused is charged with the commission of an offense as an inciter, the factual description of the offense in the Indictment must contain a specific and clear indication of the Accused's acts whose description indicates that the said acts, given the circumstances of a given case, were suitable to create or reaffirm with another the decision to commit a certain criminal offense and that they led another to commit a certain criminal offense. It must also contain the facts and the circumstances that indicate that the Accused

[6] *Commentaries on the Criminal Procedure Code of Bosnia and Herzegovina*, the Joint Project of the Council of Europe and the European Commission, 2005, pp. 734-735.

was aware that with his acts he was inciting another to commit an offense and that he was aware of the offense to which he incited another or that he wanted or agreed to the commission of the said offense.

100. Factual description of the offense that the Accused is charged with as an aider and abettor must contain the facts and circumstances indicating that the Accused was aware of the offense and the perpetrator and that with his acts he was aiding the acts of the perpetrator.

101. Therefore, it is not sufficient to state in the operative part of the Indictment that the Accused "planned, ordered and committed, as well as incited and aided and abetted"; on the contrary, such averments must be described by specific acts of the Accused that are legally surmised under the referenced manners of the perpetration of the offense.

102. Also, another charge that the First Instance Panel had to decide on was the **(non)existence of the responsibility of the Accused Mandić on the basis of command responsibility**, given the averments in the Indictment that *"by virtue of his office, he was solely responsible for the functioning of all penal and correctional institutions operating in the so-called Serb Republic of B-H and was an immediate superior of all the management and other personnel who carried out various duties in those institutions…"*

103. The Prosecution based its position on the responsibility of the Accused primarily on the fact that in the period *"between May and the end of December"* he held the office of the Minister of Justice in the Government of the Serb Republic of B-H.

104. With respect to the decisive facts for this part of the Indictment, the First Instance Panel gave its reasons on pp. 145-155 [pp. 151-162 of the English version; translator's note] of the contested Verdict. The Appellate Panel considers these reasons to be absolutely sufficient, comprehensible and clear, while the averments in the Appeal did not cast a serious doubt on the validity of the presented conclusions.

105. This conclusion was also not challenged with the arguments in the Appeal (pp. 25-26 [pp. 25-28 of the English version; translator's note]) pointing at the numerous exhibits proving that the Accused Mandić was aware of the conditions in the *Foča, Butmir* and the so-called *Planjo's House* Penal and Correctional Institutions and that it is visible from a number of documents that he was involved in the events in and around the referenced institutions in some way (T-92; T-93; T-95; T-98; T-99; T-124; T-125; T-136; …). The key question is not only the Accused's knowledge of the events, but, primarily, the effective control that the Accused Mandić had over the known perpetrators as his subordinates.

106. Concretely, "effective control" is the power to effect, not any result in relation to any matter, but the power and ability to take effective steps to prevent and punish crimes which others have committed or are about to commit.[7]

[7] Guénaël Mettraux, *The Law of Command Responsibility,* Oxford University Press, 2009, p. 157; *See*, e.g. *Čelebići* Trial Judgment, par. 354. One Trial Chamber of the ICTY has defined "effective control" as "the ability to maintain or enforce compliance of others with certain rules and orders" (*Orić* Trial Judgment, par. 311).

107. Therefore, "effective control" thus means the "capacity and power to force a certain act" upon the persons alleged to have committed the offense.[8] It consists of the power that one has to demand, expect and actually impose obedience with one's orders for the purpose of preventing and punishing criminal offenses. In substance, "effective control" is the enforceable power to prevent and punish crimes of subordinates.[9]

108. The authority which the superior had over the perpetrators must be "effective", that is, "real"[10], as opposed to being merely theoretical or potential.[11] In that sense, the existence of such power may not be presumed nor can it be subject to any sort of assumption: instead, it must be established beyond reasonable doubt as a concrete exercise of superior authority. From an evidential point of view, there must be evidence that the accused was actually and effectively capable of exercising that authority and of enforcing it in the concrete circumstances of the case.[12]

109. **Distinguishing between groups of people or various chains of command may also be important and necessary where the activities of such groups or chains of command overlap in part but not in whole.[13] It may, therefore, be concluded that in all cases proof of superior responsibility requires conclusive evidence of the actual exercise of command and control over an identifiable group of subordinates.[14] And those subordinates must be those who committed the crimes that from the basis of the charges.[15]**

110. The prosecution need not establish that the accused had been appointed to a position of command to be found liable under the doctrine of superior responsibility.[16] However, this relationship with the perpetrators must be shown on the totality of the evidence to be of such *intensity* as to be similar in that regard to a functioning and effective relationship of *de iure* command. In other words, in all cases and regardless of the *de iure* or *de facto* nature of the authority being exercised, **the superior must be able to exercise effective control over those who committed the crimes with which he is charged**. Any evidence which tends to

---

[8] *See Sadaichi* case, reported in XV LRWTC 175 (1949). See also, IV LRWTC 411, 480 (1950).
[9] G. Mettraux, *The Law of Command Responsibility,* p. 157.
[10] *Kordić* Trial Judgment, par. 422.
[11] *See*, e.g. *Čelebići* Appeal Judgment, par. 197: "it is necessary to look to effective exercise of power or control".
[12] G. Mettraux, *The Law of Command Responsibility,* p. 158.
[13] A Trial Chamber of the Special Court for Sierra Leone thus underlined the importance of distinguishing, for the purpose of the doctrine of superior responsibility, between the role and responsibilities of the Supreme Council (of which the accused had been a member) and the military since their responsibilities overlapped in part without being vertically integrated. See *Brima* Trial Judgment, par. 1656: "the Trial Chamber found that the Prosecution did not establish that the members of the Supreme Council had the collective ability to effectively control the military, as the military retained its own chain of command and organizational structure… There was definite overlap between the two institutions… However, the Supreme Council was the body that oversaw law-making and decision-making in the country. It met once a month, apart from emergency meetings. The Trial Chamber is not satisfied in light of the above evidence, that the Supreme Council was involved in or responsible for planning the day-to-day operations of the military throughout the country."
[14] *Brima* Trial Judgment, par. 1659.
[15] G. Mettraux, *The Law of Command Responsibility,* p. 161.
[16] See *Orić* Trial Judgment, par. 312.

suggest a departure from such a standard will therefore be relevant in principle as evidence that no such relationship existed.[17]

111. In order to resolve this issue, the First Instance Panel relied on the findings and opinion of Professor Zoran Pajić, Ph.D., primarily with respect to the *de facto* and *de iure* authority that the Accused had as the competent Minister. With respect to this, the argument in the Appeal that an expert witness with such qualifications was not competent to give his opinion about the structure and the powers of the authorities in the Serb Republic of B-H could not be reviewed seriously, given that the Prosecutor did not offer contesting evidence for his averment, not to mention the fact that he also referred to some of the conclusions made by the expert witness.

112. Presenting his opinion on these important circumstances, **the expert witness stated the following**:

"... The Ministry of Justice, later renamed the Ministry of Judiciary and Administration, was entrusted with the responsibilities listed in Article 9 of the Law on the Ministries. For this expert analysis, it is relevant to quote that ***the Ministry 'performs administrative and other jobs regarding the organization and functioning of penal and correctional organizations, the execution of penal sanctions, the work of economy units attached to detention organizations, pardoning and so on.'*** *This is further regulated by different bylaws, hence the Decision on the establishing of the penal and correctional organizations, reads, this is decision published in the Official Gazette No. 6 of 12 May 1992, paragraph No. 143, reads as follows: 'shall be taken over and will continue their work as organs of state administration, the Ministry'... I apologize, I will repeat it. So, it reads that the penal and correctional institutions shall be taken over and continue their work as organs of state administration. The Ministry of Justice shall enact a special instruction on the mode and place of executing sentence of imprisonment. The Internal Organization Rulebook shall be issued by the prison warden, upon the approval given by the Minister of Justice. The warden and deputy warden shall be appointed and relieved of duty by the Minister of Justice.' When I read this, it suggests that the Minister of Justice had a full and exclusive authority in this area.* ***However, Article 5 of the quoted Decision rules that 'security of the penal and correctional organizations is performed by the currently employed officers, but if necessary they will be helped by the police force of the Ministry of the Interior (hereinafter: the MUP)'.*** *The MUP responsibilities are regulated by the Law as follows: 'The MUP performs administrative and other professional tasks related to organizing, arming, equipping and training of the active and the reserve police force in the Republic; tasks related to establishing functional communication systems of the Ministry, and so on'.* ***This suggests a potential conflict of competences over running the prisons, as the functioning of the MUP and the police structure is far more subject to a strict hierarchy, than in any ministry of justice, and it can be assumed that in the context of the immediate war threat the MUP had a much greater responsibility and more obligations in this domain.*** *Finally, all decisions on establishing penal and correctional organizations are signed by the President of the Presidency. I can quote as an example the Decision on the Establishment of the Butmir Penal and Correctional Institution, Official Gazette No. 10; Decision on the Establishment of the Bijeljina Penal and Correctional Institution, Official Gazette No. 11; the Decision concerning the Foča prison, Document No. 460 dated 18 July*

[17] G. Mettraux, *The Law of Command Responsibility,* pp. 163-164.

1992. I would also like to point at the controversies that were possible on the ground between the Ministry of Defense and the Ministry of Justice. ***I am referring to the Instruction on How to Treat Prisoners of War, signed by the Minister of Defense,*** *published in the Official Gazette No. 9 of 13 June 1992. Paragraph 18 explicitly reads:* ***'Commanders of the Army Corps shall be responsible for the organization and placement of the camps'****, while Paragraph 19 instructs that the Ministry of Justice Commission for Prisoner Exchange to act as a Bureau for Information on Detained Persons.* ***When I compare the referenced documents and citations, it seems to me that it can be concluded that at place was a labyrinth of competences and different responsibilities and jurisdictions regarding the penal and correctional institutions."***[18]

113. Commenting on the documents on which he based his findings, the expert witness stated as follows:

"For example, with respect to signing the documents, a very elaborate Report of the Ministry of Justice, covering May – October 1992 period, dated 16 November 1992 in Pale, does not bear Mr. Mandić's signature. Furthermore, the Ministry of Justice Information on the Situation in Prisons and Collection Centers of 22 October 1992 was signed by an Assistant Minister. This Information was indeed only forwarded by the signature of Minister Mandić to the President of the Presidency, Assembly Speaker and the Prime Minister."[19]

114. The Panel emphasizes here the ICTY jurisprudence whose standpoint is that a formal existence of an order signed by an accused shall not be relevant for making a determination about effective control, unless the substance of that order actually reveals the existence of any kind of such authority over the perpetrators.[20]

115. The expert witness also concluded:

"All the above brings me to the conclusion of an ambivalent role of the Accused in carrying out his responsibilities as a Minister in the Republika Srpska Government*. On one hand, he is positioned highly in the Government as a minister of an important Ministry. On the other, his presence in the political establishment of the Republika Srpska is almost non-existent. On one hand, he has a jurisdiction to oversee and is responsible under the law for functioning of penal and correctional institutions, but at the same time he implicitly accepts substantial interference in his domain by the MUP, Ministry of Defense and Municipal War Commissions (Povjerenstva) in the municipalities where prisons are*

[18] Transcript, Momčilo Mandić case, X-KR-05/58, Main Trial, 25 June 2007, pp. 9-10.
[19] Ibid., p. 11.
[20] See *Prosecutor v. Dario Kordić and Mario Čerkez*, case No. IT-95-14/2-T, Judgment, 26 February 2001, par. 421. The Trial Chamber states as follows: ***"The capacity to sign orders will be indicative of some authority. The authority to issue orders, however, may be assumed de facto. Therefore in order to make a proper determination of the status and actual powers of control of a superior, it will be necessary to look to the substance of the documents signed and whether there is evidence of them being acted upon. For instance, in the Ministries case, the court found that the mere appearance of an official's name on a distribution list attached to an official document could simply provide evidence that it was intended that he be provided with the relevant information, and not that 'those whose names appear on such distribution lists have responsibility for, or power and right of decision with respect to the subject matter of such document'. Similarly, direct signing of release orders would demonstrate authority to release. An accused's signature on such a document, however, may not necessarily be indicative of actual authority to release as it may be purely formal or merely aimed at implementing a decision made by others."***

located. On one hand, as the Minister he implicitly stands behind a very critical report by the commission of the Ministry of Justice on the living conditions in the collection centers, dated 17 August 1992, documents Nos. 490 and 500. I say that he is implicitly behind the similar Report of the Ministry of Justice for the period May – October 1992. On the other, there is no evidence of any document reporting on the measures possibly undertaken following the recommendations in the Reports which contain a chapter entitled 'Proposed Measures', which measures would have been reported by the Minister if they had been undertaken. For example, the latter Report highlights as 'the biggest problem in the work of these institutions is bringing in and taking out prisoners without the approval of the wardens, in which case the penology rules cannot be applied', page 4. But, in spite of such a serious warning, the Ministry never opposed the requests for the so-called work engagement of prisoners. Furthermore, this practice went on even without merely informing the Ministry of Justice on such requests. An example of this is the frequent requests coming from the Municipal War Commission in Vogošća or from the Vogošća Brigade. See, as the source, the Defense Exhibits Nos. 134, 201, 204, 239, 310, 283, 338 and 370. The same applies to the orders of the War Commission concerning exchange, the information from the Bulletin of the Serb Municipality of Vogošća dated 2 August 1992, and so on. There is no document reporting any opposition, any consistent opposition on the part of the Minister to such practice and the first reaction occurred only on 16 December 1992, when the Minister signed an order that all exchanges must be approved by the President of a High Court and the Commander of the competent Corps of the Army of Republika Srpska. ***This obvious confusion or, one might say, and I underline it, a struggle for power and control over the prisoners and detainees culminates in a few documents originating from the ministries other than the Ministry of Justice. Hence, in a letter dated 24 August 1992, Document No. 338, 'the MUP requests from all Security Service Centers and all police stations, regardless of their respective competences,' I repeat, ' regardless of their respective competences, to send information on the camps, prisons or collection centers'.*** *The other document is the Order of the Vogošća Brigade of Republika Srpska of 18 October 1992, Document No. 310, sent to the Vogošća Prison Administration, to put prisoners at the disposal of the Brigade for work. This is one of many such orders. However, this Order invokes, as a legal ground, the Instruction on How to Treat Prisoners of War, issued by the Ministry of Defense on 13 June 1992."*[21]

116. *"We see here well-written and coherent laws, and we can say that, prima facie, we have clearly defined competences of institutions and their officials here. However, all that falls apart when confronted with voluntarism and arbitrariness in the implementation of the regulations. This phenomenon may grow to drastic proportions in the circumstances of an armed conflict, capture and deprivation of liberty of groups and individuals, and, generally, a chaotic application of law. Thus* ***the Accused Mandić has competences and formal responsibility to execute duties referred to in the Law on the Ministry of Justice, but at the same time we see a number of other institutions, including local level authorities, usurping the prerogatives and often operating like a state within a state, to put it colloquially, especially when it comes to the control over prisoners."***[22]

117. The Prosecutor's argument in the Appeal that the state of the facts remained erroneously established and that the First Instance Panel disregarded the expert witness'

[21] Ibid., pp. 11-12.
[22] Ibid., p. 12.

final conclusion is unfounded as well. The expert witness stated the following in his final conclusion:

"However, as a law professor and an expert, I have to say that it is exactly in such an environment that the issue of responsibility of government and other public officials for the implementation of the principles of the international laws of war and in particular for grave breaches of the rules of international humanitarian law becomes ever more critical. ***It goes without saying that, in such context, government members and ministers, as the highest executive officials with highest level authorities, are the most responsible for the application of the law in general."***[23]

118. However, this Panel also finds that such conclusion by the expert witness is too general and speaks more about the political and moral responsibility of the highest level officials, failing to give a necessary and precise answer on the omissions by the Accused which would have been sufficient for a conclusion on the Accused's command responsibility in the case at hand (see para. 109).

119. In addition, the role of an expert witness in court proceedings is to provide the Court with an expert analysis and explanation necessary for the Court to determine or evaluate the facts relevant for adjudication. In the case at hand, the expert witness analyzed the *de facto* and the *de iure* authorities the Accused had as a competent Minister, taking into consideration the exceptionally complex division of powers and duties of both the civilian and the military structures that were involved in the relevant event. However, the expert witness' findings and opinion constitutes only one piece of evidence in the proceedings which the Court has the duty to evaluate individually as well as to evaluate its correspondence with the other pieces of evidence and then render a decision on its probative value.

120. The expert witness' conclusion on the responsibility of the Accused that the Prosecutor refers to in his Appeal does not, in any case, represent an issue that an expert witness should give his opinion on, given that the evaluation of evidence and the decision on the responsibility of the Accused is the task of the trial panel exclusively. In the opposite case, an expert witness would have assumed the role of an adjudicator.

For the foregoing reasons, the Appellate Panel holds that the First Instance Panel used the explanations and the opinion of the expert witness to the extent allowed under the CPC B-H, while it reached the conclusion on the facts established with the expert witness' help independently, by evaluating all the relevant presented evidence, which this Panel fully supports.

121. Effective control must be distinguished from lower or lesser forms of influence or authority which certain individuals, charismatic ones, respected ones or those otherwise persuasive enough, may be able to exercise over other individuals without their relationship being one of superior to subordinates as understood under the doctrine of command responsibility.[24]

---

[23] Ibid.
[24] G. Mettraux, *The Law of Command Responsibility,* p. 183.

122. The doctrine of superior responsibility extends to civilian leaders only to the extent that they exercise a degree of control over their subordinates which is similar to that of military commanders. The degree of control exercised by a civilian must, therefore, be comparable to that required of a military commander, although the manner in which that control is exercised, and ultimately the nature of that control may differ.[25]

123. The establishment of civilian superior responsibility requires proof beyond reasonable doubt that the accused exercised effective control over his subordinates, in the sense that he exercised a degree of control over them which is similar to the degree of control of military commanders. It is not suggested that effective control will necessarily be exercised by a civilian superior and by a military commander in the same way, or that it may necessarily be established in the same way in relation to both a civilian superior and a military commander.[26]

124. Thus, whilst a court could, in some cases, be permitted to draw inferences concerning a military commander's authority over his subordinates from the existence and proper functioning of a military chain of command between them, such inference will be drawn with the greatest of caution in the context of a civilian relationship of authority or will require such corroboration to meet the relevant threshold of effective control.[27]

125. Taking as the starting point the results of the presented evidence and the aforementioned finding of the expert witness and clear positions on command responsibility in the international jurisprudence, the Appellate Panel also finds as absolutely logical the inference of the First Instance Panel that the Ministry of Justice of the Serb Republic of B-H did not explicitly demonstrate competences over detained persons. It is, therefore, not possible to draw a reliable conclusion that the Accused Momčilo Mandić, as the Minister of Justice, either de iure or de facto, exercised effective control over the events or actions related to the arrest, detention and treatment of prisoners, their transfer or release, which took place outside the premises of the penal and correctional institutions that the Ministry of Justice, headed by the Accused, ran under the law.

126. Although it does not follow from the factual substratum of the Indictment, which is the only element by which the Court is bound, who the persons that undertook the actions described in Count 2 of the Indictment are, it can be inferred from the presented evidence that the described forbidden actions were undertaken by members of the Republika Srpska military and police, but also sometimes by the guards, that is, the staff of the Penal and Correctional Institutions. However, that is not sufficient in its own right to conclude that with regard to such behavior on the part of the staff which affected the prisoners that did not fall under the regular operations of the Penal and Correctional institutions, there exists responsibility of the Accused Momčilo Mandić, given that it is not contained in the Indictment (see para. 92, pp. 21-22). This also does not follow from the results of the evidence on the decisive facts concerning the circumstances required for the Accused to be held criminally responsible on the grounds of command responsibility.

[25] Ibid., p. 188.
[26] Ibid.
[27] Ibid., p. 189.

III – APPEAL CONTESTING THE DECISION ON THE SENTENCE

127. The Prosecutor also filed an Appeal on this ground, but, given the fact that the First Instance Verdict did not even pronounce a sentence, the Appeal on this ground is irrelevant, therefore, the Appellate Panel did not even embark on reviewing it.

128. Based on the foregoing, pursuant to Article 313(1) of the CPC B-H, the Appellate Panel refused the Appeal by the Prosecutor for the Prosecutor's Office of B-H as unfounded and upheld the First Instance Verdict.

RECORD-TAKER
Sanida Vahida-Ramić

PRESIDING JUDGE
Judge Dragomir Vukoje

LEGAL REMEDY: No appeal lies from this Verdict.

I hereby confirm that this document is a true translation of the original written in Bosnian/Croatian.

Sarajevo, 29 March 2010
Edina Neretljak
Certified Court Interpreter for the English Language