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MR. MICHAEL G. KARNAVAS

Dear Mr. Karnavas,

Here are the questions. Please, send us your answers as soon as possible, at the latest till Sunday 12/9/2017, till 12 o'clock so we can prepare it on time for the new Hrvatski tjednik, which is in sale on Thursday.

1. Dear Mr. Karnavas, You have written an impressive review of the recent trial in the case of Prlić and the others. How would You answer in a few sentence to a question: What disturb You so deeply at the trial, especially in a Praljak case, that made you, although You're Mr Prlić's. attorney, to react publicly for the accused which you didn't defend?

MGK: *I have been outspoken and exceptionally critical about the trial proceedings during and after the trial. In our appeal submissions we did not nuance language in claiming that the trial judges had significantly erred, had ignored our evidence, had mischaracterized our evidence, had improperly assessed the evidence, had denied our client a fair trial, and had entered a judgement that was the product of a preconceived desired result. I probably would not have written about the appeal judgment even though I feel that this was another miscarriage of justice. After all, what is the point when nothing can really be done now? So in all likelihood, other than perhaps giving an interview on the appeal judgment, I would have quietly walked away – as is probably the best thing to do if I want to maintain any sense of equilibrium and inner peace. But two things profoundly disturbed me. The first thing was listening to the summary of the appeal judgment and hearing the mischaracterizations of what we had argued on behalf of Dr. Prlic. Either the judges had not bothered to read our briefs, or they had decided to present a distorted picture for public consumption. Either way, I felt that this was a canard, a subterfuge. The second thing, which was the trip wire, if you will, was when General Praljak chose to end his life rather than submit, to kowtow to the judges of the Trial and Appeals Chambers, to acquiesce to their notion that the trial was fair and that the appeal results represented the truth. General Praljak was an honest, descent, and principled man who stood by his*

convictions. As I noted, he believed that he was not given a fair opportunity to challenge the prosecution evidence and to present his evidence. And he certainly did not believe that the Trial Chamber had objectively assessed the evidence. I fully agree with General Praljak, because in no small measure Dr. Prlić also suffered these inequities. These two events were the catalyst to my writing about General Praljk and about the case overall. General Praljak was so giving during the pre-trial and trial phases, so willing to acknowledge what he did, so careful not to shift the blame on any of the other accused, so fearless in the courtroom to stand his ground and demand respect for the truth, that I felt I needed to speak out, to makes sure anyone who witnessed his tragic death would know his side of the story, to dispel the rumors that he was unwell, or unsound, or unable to cope with prison. Above all, I wanted to make sure that General Praljak's ultimate sacrifice was not in vain.

2. From Your review we can read that the trial of the six Croatians from Bosnia-Herzegovina was deeply unfair. Can you, please, explain to us in what is contained this injustice, especially can an average person, not only the accused and the Croatian people, think that such unfair verdict is acceptable?

MGK: *The trial process was unfair because we were unable to properly present our evidence, the evidence we did present was ignored, and what evidence was considered was not properly assessed. In our case, we almost never had sufficient time to properly examine the prosecution witnesses, we were not give sufficient time to present all the witnesses we wanted since we had a limited number of hours arbitrarily selected by the judges. There was a double-standard in admitting and rejecting documents that favored the prosecution. The judges were not experienced and sufficiently competent for a case of such complexity and magnitude. And from the way the judges conducted the proceedings, at least two of the judges displayed a predisposition for the prosecution. If you compare how this case was tried with other cases where the judges were of a different caliber, the shortcomings in our case were blatantly obvious. One of the judges had no experience as a judge at all; this was his first trial and he was nearly 80 years old when we started – well beyond the retirement age in his own country. He certainly had some pre-conceived notions of the facts, which, on occasion, he would reveal in his remarks that this is not how he remembered something, and so on. He may have been well-intentioned, but this is not how judges are expected to behave. How can a judge who does not understand the basic principles of trial procedure appreciate his role and functions? My measure of a fair trial is when a Chamber is even-handed, respectful, flexible, competent and patient. This means I am allowed to make my trial record, so all potential errors are properly preserved; I am provided sufficient time to examine and cross-examine witnesses; all submissions are decided transparently with reasoned opinions based on the applicable law and procedure, and not by fiat; and the Judges are not behaving as the midwife for the Prosecution in delivering a guilty verdict by acting as the Second Prosecutor in bolstering the Prosecution's case or in weakening the Defense case. A fair trial is the sort of trial the Judge would want for himself or herself.*

3. Why do You think that general Praljak should clear the illusion before the beginning that he will have a fair trial? Why do You think that the result of this subject is predetermined, who has determined it?

MGK: *General Praljak, as all other accused in this case, voluntarily came to The Hague. These accused did not go into hiding. There was no hunting them down. There were no threats to Croatia to turn them over lest its EU application be frozen. Any accused, not just General Praljak, is entitled to expect and receive a fair trial. Otherwise, why cooperate, why turn yourself in, why spend an enormous amount of time, energy, and resources on defending yourself by challenging the prosecution evidence and by providing relevant evidence – as guaranteed by the International Covenant on Civil and Political Rights – if it is pre-determined that the process is unfair? I certainly was optimistic prior to the trial proceedings that Dr. Prlić would receive a fair trial. But, as I noted, due to a confluence of events and circumstances, the trial proceedings were sub-standard and unbecoming of a judicial institution founded and funded by the United Nations.*

4. Was there any hope that it would be possible to stand up to that Kafkaesque process?

MGK: *I would not characterize the process as Kafkaesque. As you know, in Franz Kafka's novel The Trial, the protagonist, Josef K is unexpectedly arrested by two unidentified agents from an unspecified agency for an unspecified crime, and for two years he tried to find out the charges against him, until he is stabbed to death by two other unidentified agents from an unspecified agency of the state. Josef K never knew the charges against him, so he was never able to defend himself in a court of law subject to the transparent application of the law. In the Prlic et al case, all of the accused knew what they were charged with and were afforded relatively transparent trial and appeal proceedings. The proceedings, however, were flawed, and this led – in my opinion – to both procedural and substantive injustice. As I've noted, we expect Judges to be scrupulously fair and even-handed throughout the proceedings. Judges should not balance the rights of the accused against the rights of the victims. Judges should not short-change an accused of his or her rights to make up for any impediments that victims may face in a particular case. Judges are akin to referees and should not take on the role of a player for one of the sides to assist in achieving certain goals. At the ICTY, for instances, Judges can ask questions when necessary, but in doing so, they must be circumspect and their questions should be limited to clarifying matters for the record. Anything more, particularly if in intervening a Judge is predominantly and routinely assisting the prosecution, is unfair and prejudicial. A victim is a victim of a crime, not the victim of a presumably innocent accused. That only comes with a conviction based on proof beyond a reasonable doubt. This, in my opinion, was ignored.*

5. What do You think – was this trial embarrassing? Was it the most shameful you saw in 35 years of your career?

MGK: I would not call it embarrassing. My Co-counsel, Suzana Tomanovic, and I showed up prepared every day and did our very best and at a great amount of personal sacrifice. This was the worst experience in my career because of the way the case was tried. I personally would have been better off doing something different and more useful than working on this case. To put yourself through the meat-grinder of preparing and trying a case of this complexity and magnitude should be for something that makes all the sacrifices – much of which is usually unappreciated – worthwhile. In any event, as cynical as I may seem, I continue to believe in the majesty of the law. I think it would be a mistake to denigrate the ICTY wholesale on the basis of how the Prlić et al case was handled.

6. You said that the judges had in advance attitudes about BiH, they could read about in a brochure ICTY-a, which is available on their pages on Internet where they say that BiH was exposed to Croatia and Serbia, respectively divided by president of Croatia and Serbia. Why didn't Croatia react to such a brochure?

MGK: You need to ask the Croatian authorities. Keep in mind, there have been Croatian politicians who have testified in cases at the ICTY and have given public speeches attacking - for reasons of convenience and politics - past political rivals and a particular political party to which they once belonged to while serving in the very same Croatian government they claim was engaging in the activities and crimes described in the ICTY web page and Outreach material. Anyway, far be it for me to comprehend let alone comment on Croatian politics and the revisionist thinking of some of those Croatian politician, who, like chameleons, are able to effortlessly change, blend and adjust to situational political winds.

7. Can the judges that made such a verdict, and for which you say they weren't capable to this procedure, ever come under attack of their own conscience because of this verdict?

MGK: The trial judges who I have been critical of did not set out to do any injustice. Their actions, most likely, were based on their inner convictions and perceptions. I would say the same thing for the appeal judges. Also keep in mind, that I am subjective. I think I am right in what I say, but were you to ask these judges to grade their performances, I am sure they would give themselves high remarks on their performance. Judges generally do not engage in any measurable degree of self-criticism. So I doubt that any of the judges involved in the Prlić et al will spend any time reflecting because of a troubled conscience.

8. The perception of media in the world is that general Praljak is a war criminal. How to oppose to this perception? What would you say to them?

MGK: There is nothing that can be said. One would have to go through the entire record in this case before drawing any conclusion that is not based on emotions or the various competing narratives. General Praljak did what he did because he wanted to show the world that he was not a war criminal as claimed, and, perhaps, what better way to prove

this fact, irrespective of the trial and appeal judgments, than by making the ultimate sacrifice.

9. Public knows very little about the 'Mladic's diaries. What do they contain and how did the court use them as evidence against the accused Croatsians from BiH?

MGK: *Supposedly this is what Mladić wrote down during the war as events were occurring. Whether he wrote the entries is suspect. He certainly was not writing contemporaneously as he was speaking. He may have relied on a note-taker who might have been with him or maybe at the end of the day he would fill in the entries based on his memory. In any event, in these entries are matters favorable to the defense – directly going to the heart of the so-called joint criminal enterprise. The Trial Chamber relied on selective entries offered by the prosecution, while denying any of the entries we tried to get admitted. This was not only a double-standard in favor of the prosecutions, but its reliance on the Mladić entries facilitated a false narrative.*

10. You evaluated the trial as a circus. How do You rate the defense speech at the ICTY court hearing at a session of the UN Security Council on Wednesday? Do you consider that the leaders of the Croatia should have speak with more discontent about these judgment and the work of the court?

MGK: *I am not in position to comment on the high and calculated politics of the Croatian governments that have come and gone since I first got into this case in 2005. For the most part, all past Croatian governments have been MIA (missing in action) throughout the proceedings. Whether speech-making is of any use now is anyone's guess. All I can say is that the efforts I saw being made by the Croatian governments were for Croatia, not for the six accused.*

11. Should a moral person be more admired by general Praljak or judge Agius and other judges which are, we can also see it in your text, in every way inferior to general Praljak?

MGK: *I cannot answer this question, and I am not sure, as phrased, anyone can. I have set out my thoughts and convictions in my two blog posts on General Praljak (michaelgkarnavas.net/blog) and here – right or wrong as I may be.*