

United Nations
Nations UniesInternational Criminal Tribunal
for the former YugoslaviaTribunal Pénal International
pour l'ex-Yugoslavie

(IT-00-39)
**MOMČILO
KRAJIŠNIK**

**MOMČILO KRAJIŠNIK***Convicted of persecutions, deportation, forced transfer*

A member of the Bosnian Serb (later “Republika Srpska”) leadership during the war - the Main Board of the Serbian Democratic Party of Bosnia and Herzegovina (SDS) and President of the Bosnian Serb Assembly

- Sentenced to 20 years’ imprisonment

Crimes convicted of (examples):

Persecution on political, racial or religious grounds; deportation; inhumane acts (forced transfer) (crimes against humanity)

- Momčilo Krajišnik was found to be responsible for deportations in Zvornik, Banja Luka and Prnjavor and for forcible transfer in Bijeljina, Bratunac, Zvornik, Bosanska Krupa, Sanski Most, Trnovo and Sokolac. These crimes encompassed the forcible displacement of several thousands of Muslim and Croat civilians, among them women, children and elderly persons, throughout the period of April to December 1992;

Born	20 January 1945 in Zabrdje, municipality of Novi Grad, Sarajevo, Bosnia and Herzegovina
Indictment	Initial indictment: 25 February 2000; amended indictment: 7 March 2000; consolidated indictment: 23 February 2001; amended consolidated indictment: 4 March 2002
Arrested	3 April 2000 by the Multinational stability force (SFOR)
Transferred to ICTY	3 April 2000
Initial appearance	7 April 2000, pleaded not guilty to all charges
Trial Chamber Judgement	27 September 2006, sentenced to 27 years’ imprisonment
Appeals Chamber Judgement	17 March 2009, new sentence of 20 years’ imprisonment imposed

STATISTICS

Trial days	314
Witnesses called by Prosecution	93
Prosecution exhibits	3938
Witnesses called by Defence	25
Defence exhibits	382
Witnesses called by Chambers	6
Chambers exhibits	28

TRIAL	
Commenced	3 February 2004
Closing arguments for the Prosecution	29 August 2006
Closing arguments for the Defence	30 August 2006; the accused made his closing statement on 31 August 2006
Trial Chamber I	Judge Alphons Orié (presiding), Judge Claude Hanoteau, Judge Joaquín Martín Canivell
Counsel for the Prosecution	Mark Harmon, Alan Tieger
Counsel for the Defence	Nicholas Stewart, David Josse
Judgement	27 September 2006

APPEALS	
Appeals Chamber	Judge Fausto Pocar (presiding), Judge Mohamed Shahabuddeen, Judge Theodor Meron, Judge Andréia Vaz , Judge Wolfgang Schomburg
Counsel for the Prosecution	Peter Kremer, Shelagh McCall, Barbara Goy, Katharina Margetts, Steffen Wirth, Anna Kotzeva, Matteo Costi
Counsel for the Defence	Accused represents himself; Alan Dershowitz and Nathan Dershowitz assist him but only regarding the issue of joint criminal enterprise
<i>Amicus curiae</i>	Colin Nicholls
Judgement	17 March 2009

RELATED CASES	
<i>by geographical area</i>	
BANOVIĆ (IT-02-65/1) "OMARSKA CAMP & KERATERM CAMP"	
BOROVNICA (IT-95-3) "PRIJEDOR"	
KARADŽIĆ & MLADIĆ (IT-95-5/18) "BOSNIA AND HERZEGOVINA" & "SREBRENICA"	
KRNOJELAC (IT-97-25) "FOČA"	
KUNARAC, KOVAČ & VUKOVIĆ (IT-96-23 AND 23/1) "FOČA"	
KVOČKA <i>et al.</i> (IT-98-30/1) "OMARSKA, KERATERM & TRNOPOLJE CAMP"	
MEJAKIĆ <i>et al.</i> (IT-02-65) "OMARSKA CAMP & KERATERM CAMP"	
MRĐA (IT-02-59) "VLAŠIĆ MOUNTAIN"	
MILOŠEVIĆ (IT-02-54) "KOSOVO, CROATIA AND BOSNIA AND HERZEGOVINA"	
PLAYŠIĆ (IT-00-39 & 40/1) "BOSNIA AND HERZEGOVINA"	
SIKIRICA <i>et al.</i> (IT-95-8) "KERATERM CAMP"	
MIĆO STANIŠIĆ (IT-04-79)	
STAKIĆ (IT-97-24) "PRIJEDOR"	
TADIĆ (IT-94-1) "PRIJEDOR"	

INDICTMENT AND CHARGES

The initial indictment against Momčilo Krajišnik was confirmed on 25 February 2000 and an amended indictment was confirmed on 7 March 2000; both were made public on 3 April 2000. The Prosecution's motion for a joint trial of Momčilo Krajišnik and Biljana Plavšić was granted on 23 February 2001 and the consolidated indictment against the two accused was filed by the Prosecution on 9 March 2001. Pursuant to the decision of Trial Chamber III on 4 March 2002, the Prosecution filed the amended consolidated indictment on 7 March 2002. Following the plea agreement between Biljana Plavšić and the Office of the Prosecutor on 30 September 2002, co-accused Biljana Plavšić pleaded guilty on 2 October 2002, to one count of persecutions on political, racial and religious grounds, a crime against humanity. Following this, on 25 November 2002, the Trial Chamber ordered that the trial of Momčilo Krajišnik be severed from the sentencing proceedings for Biljana Plavšić. On 27 February 2003, Biljana Plavšić was sentenced to 11 years' imprisonment (see Biljana Plavšić case information sheet, number IT-00-39&40/1).

The operative indictment against Momčilo Krajišnik charged that between 1 July 1991 and 30 December 1992, Momčilo Krajišnik, Biljana Plavšić and others, including Slobodan Milošević, Željko Ražnatović aka "Arkan", Radovan Karadžić and Ratko Mladić, participated in a joint criminal enterprise (JCE) in which they planned, instigated, ordered, committed or otherwise aided and abetted the planning, preparation or execution of persecutions of the Bosnian Muslim, Bosnian Croat or other non-Serb populations of 37 municipalities in Bosnia and Herzegovina. The objective of the JCE was primarily achieved through a manifest pattern of persecutions as alleged in the indictment.

It is alleged that Momčilo Krajišnik held a prominent position in the Bosnian Serb leadership. He was a member of the National Security Council, the Expanded Presidency of the "Serbian Republic of Bosnia and Herzegovina", the Main Board of the Serbian Democratic Party of Bosnia and Herzegovina (SDS) and the Bosnian Serb Assembly, of which he was also President. By virtue of those associations, positions and memberships, he had de facto control and authority over the Bosnian Serb forces and Bosnian Serb political and governmental organs and their agents, who participated in the crimes alleged in the indictment.

As a consequence, it was alleged that Momčilo Krajišnik knew or had reason to know that all the crimes alleged in the indictment were about to be committed or had been committed by his subordinates and he failed to take necessary and reasonable measures to prevent such acts or punish the perpetrators thereof.

Momčilo Krajišnik was charged on the basis of individual criminal responsibility (Article 7(1) of the Statute) and on the basis of superior criminal responsibility (Article 7(3) of the Statute) with:

- Genocide and/or complicity to commit genocide (genocide, Article 4),
- Persecutions on political, racial and religious grounds, extermination, murder, deportation, inhumane acts (crimes against humanity, Article 5), and
- Murder (violations of the laws or customs of war, Article 3).

Momčilo Krajišnik's applications for provisional release were denied on 6 August 2001, 8 October 2001, 24 January 2002 and on 18 October 2002 by Trial Chamber III. On 28 November 2002, the case was re-assigned to Trial Chamber I.

TRIAL

The trial commenced on 3 February 2004. The Prosecution completed its case-in-chief on 22 July 2005. The Defence case-in-chief commenced on 10 October 2005 and lasted until 22 June 2006, after which six Trial Chamber witnesses were examined. Closing arguments of the parties were presented on 29, 30 and 31 August 2006.

RULE 98bis PROCEEDINGS

After the conclusion of the presentation of Prosecution evidence, the Trial Chamber can rule whether there is a case to answer. If the Chamber believes that the Prosecution has not presented sufficient evidence to prove certain charge(s), it can dismiss those charges and enter a judgement of acquittal before the beginning of the presentation of defence evidence.

On 19 August 2005, the Trial Chamber in the Krajišnik case issued an oral decision pursuant to Rule 98bis and decided that Momčilo Krajišnik had a case to answer on all eight counts of the indictment. In addition, the Chamber noted certain clarifications to the indictment made pursuant to an agreement between the Parties, including that the Prosecution would no longer rely for its case on the municipalities of Rudo and Šipovo, due to insufficient evidence.

TRIAL CHAMBER JUDGEMENT

The first multi-party elections in Bosnia-Herzegovina were held on 18 November 1990. The political parties representing the three dominant ethnic groups won the majority of seats, namely the SDS, the Croatian Democratic Union, known as the HDZ, and the Party of Democratic Action, which was the main political party of the Bosnian Muslims, and known as the SDA. These three parties reached an agreement among themselves on a formula for the distribution of power. Positions in all government organs and public institutions at the central and lower levels were distributed in accordance with party quotas.

Nonetheless, mistrust, fear, and resentment grew among the three main ethnic groups in Bosnia-Herzegovina. As a consequence, in early 1991, Bosnian Croats and Bosnian Muslims began organizing armed groups. At around the same time, the SDS began actively arming the Serb population. Bosnian Serbs also relied on the Yugoslav People's Army for protection.

On 15 October 1991, the Bosnia-Herzegovina Assembly passed a resolution on the sovereignty of Bosnia-Herzegovina, despite strong opposition from the Serb deputies. Ten days later, the SDS formed a Bosnian-Serb Assembly, with Momčilo Krajišnik as president. The Bosnian-Serb Assembly began establishing parallel government structures.

The Bosnian-Serb Assembly adopted the Constitution of the Bosnian-Serb Republic on 28 February 1992. The Constitution laid out the structure of the Bosnian-Serb Republic. The Bosnian-Serb Assembly consisted of eighty-two (82) deputies, the majority of whom were SDS members. On 27 March 1992, the Assembly created the National Security Council, or SNB. Radovan Karadžić was the President of the SNB while Mr Krajišnik, as President of the Assembly, was an ex officio member. The SNB held joint meetings with the Bosnian-Serb Government for the purpose of taking decisions on military, political, and administrative matters. The SNB also issued instructions to, and received reports from, local Territorial Defence units and municipal authorities.

On 12 May 1992, the Bosnian-Serb Assembly replaced the SNB with a three-member Presidency, to function until a President of the Bosnian-Serb Republic could be elected. Radovan Karadžić, Nikola Koljević, and Biljana Plavšić were appointed to this Presidency. They, in turn, elected Radovan Karadžić as the President of the Presidency. The SNB stopped functioning shortly thereafter.

Although Momčilo Krajišnik was not formally a member of the Presidency, he attended all but possibly one session of the Presidency between May and December 1992. During these sessions, Momčilo Krajišnik was not a mere spectator. For example, he was responsible for the economy. Later he was also responsible for liaising and coordinating with war commissioners, who were appointed by the Presidency and were in charge of municipalities. Momčilo Krajišnik had a significant input in the Presidency's workings. He conducted himself as a regular member of the Presidency, and was accepted as such by the other members. Prime Minister Đerić also attended sessions of the Presidency. The Chamber found that the Bosnian-Serb Presidency operated, in fact, with five members from its inception on 12 May 1992.

The Presidency wielded great power in the Bosnian-Serb Republic, beyond that of its constitutional powers. For example, the Minister of Interior, Mićo Stanišić, and the Minister of Justice, Momčilo Mandić, both reported directly to, and took instructions from, the Presidency. This, in turn, led to a weak Government. Nevertheless, the Government still had significant influence over many issues arising during the conflict.

The Presidency also controlled the Bosnian-Serb Army, known as the VRS, which was established by the Assembly on 12 May 1992. Pursuant to the Constitution, the President of the Bosnian-Serb Republic was the Supreme Commander of the VRS. General Ratko Mladić was the commander of the VRS Main Staff. He would consult with the Presidency regularly, and the Presidency would frequently make decisions on military matters.

The Presidency also had extensive contact with municipal authorities, much of which came through Momčilo Krajišnik. As President of the Bosnian-Serb Assembly, Momčilo Krajišnik was in close contact with Assembly deputies, who were also active on the municipal level.

The Assembly's composition and operating methods thus ensured that the decision-making process was heavily influenced by SDS policy. Momčilo Krajišnik, both as President of the Assembly and as a prominent member of the SDS, played an important role in effecting the SDS's influence over the Bosnian-Serb Assembly.

The Chamber also heard evidence that expressions of ethnic hatred and scaremongering in the Bosnian-Serb Assembly were condoned by Momčilo Krajišnik. The transcripts of sessions brought to the attention of the Chamber showed that never once, during the indictment period, did he chastise deputies for insults to other national groups. On occasions, he engaged in this type of language himself. Momčilo Krajišnik's authority as President of the Bosnian-Serb Assembly made it easy for him to propagate views on ethnic separation.

When the independence of Bosnia-Herzegovina was recognized by the international community in early April 1992, Bosnian Serbs began to seize power in the municipalities through the use of force.

The Chamber found that from 18 March 1992 onwards, there was an attack directed against the Bosnian-Muslim and Bosnian-Croat civilian population living in the thirty-five (35) indictment municipalities. The attack included a wide range of discriminatory measures, such as the imposition of curfews; the setting up of barricades and checkpoints where members of these ethnic groups were regularly stopped and searched; searches of the houses of Muslims and Croats; and dismissals from employment.

Beginning in April 1992, Serb forces attacked Muslims and Croats living in towns, villages, and smaller settlements, most of which were undefended and contained no military targets. Muslims and Croats were mistreated and killed. Men were often arrested and taken to detention centres, while women and children were forced to leave their homes, and were either detained or forced to leave the municipality. Their homes were then either looted and destroyed by Serb forces, or appropriated by Serb authorities. Serb forces also destroyed cultural monuments and sacred sites of importance to the Muslim and Croat populations.

The conditions in many detention centres where Muslims and Croats were held were intolerable, without sufficient food, water, medical care, and hygiene facilities. The detainees were often beaten and sometimes raped by members of the Serb forces, some of whom were employed as guards, while others were allowed access to detention centres. Many detainees suffered physical and psychological injuries and health problems. Many detainees died as a result. Many detainees were also deliberately killed, by members of paramilitaries, police or other Serb forces.

The Chamber found that the following crimes committed in the indictment municipalities had been proven beyond a reasonable doubt: Extermination as a crime against humanity was committed against Bosnian Muslims, and against Bosnian Croats to a lesser degree, in fourteen (14) of the indictment municipalities. Murder as a crime against humanity was committed against Bosnian Muslims and Bosnian Croats in twenty-eight (28) of the indictment municipalities. Having qualified all killings as murder or extermination under article 5 of the Tribunal's Statute, there was no need to make findings under the alternative charge of murder as a war crime. Deportation as a crime against humanity was proven to have been committed against Bosnian Muslims and Bosnian Croats in seventeen (17) of the indictment municipalities, and forced transfer as a crime against humanity was committed in twenty-five (25) of the indictment municipalities. Persecution against Bosnian Muslims and Bosnian Croats as a crime against humanity was committed in all thirty-five (35) municipalities, through the following acts: the imposition of restrictive and discriminatory measures involving the denial of fundamental rights; murder; cruel and inhumane treatment during attacks on towns and villages and within various detention centres; forcible displacement; unlawful detention; forced labour at front lines; appropriation or plunder of private property; and destruction of private property and of cultural monuments and sacred sites.

With regard to the charge of genocide, the Chamber found that in spite of evidence of acts perpetrated in the municipalities which constituted the *actus reus* of genocide, the Chamber did not receive sufficient evidence to establish whether the perpetrators had genocidal intent, that is, the intent to destroy the Bosnian-Muslim or Bosnian-Croat ethnic group as such.

The Chamber was of the opinion that the existence of a joint criminal enterprise did not presume preparatory planning or explicit agreement among its participants. The Chamber found that a joint criminal enterprise existed throughout the territories of the Bosnian-Serb Republic. There was a centrally-based core component of the group, which included Momčilo Krajišnik, Radovan Karadžić, and other Bosnian-Serb leaders. The rank and file of the joint criminal enterprise was based in the regions and municipalities of the Bosnian-Serb Republic, and maintained close links with the leadership in the Bosnian-Serb capital of Pale. A joint criminal enterprise can exist and its members may be held liable for crimes committed by principal perpetrators in the municipalities who may not have shared the common objective of the joint criminal enterprise. It is sufficient in such cases to show that their acts were procured by members of the joint criminal enterprise in the implementation of the common objective. The possibility that one or more principal perpetrators were not aware of the joint criminal enterprise or its objective does not preclude a finding that the joint criminal enterprise committed crimes throughout the indictment municipalities through such principal perpetrators.

The common objective of the joint criminal enterprise was to ethnically recompose the territories targeted by the Bosnian-Serb leadership by drastically reducing the proportion of Bosnian Muslims and Bosnian Croats through expulsion. The Chamber found that the crimes of deportation and forced transfer were the original crimes of this common objective. Momčilo Krajišnik gave the go-ahead for the expulsion programme to commence during a session of the Bosnian-Serb Assembly when he called for, “implementing what we have agreed upon, the ethnic division on the ground”.

The criminal means of a common criminal objective may be expanded when leading members of the joint criminal enterprise are informed of new types of crimes committed pursuant to the implementation of the objective, when they take no effective measures to prevent recurrence of such crimes, and when they persist in the implementation of the common objective. In this case, the members of the joint criminal enterprise were shown to have intended the expansion of means, since implementation of the common objective can no longer be understood to be limited to commission of the original crimes.

Whereas in the early stages of the joint criminal enterprise in which Momčilo Krajišnik participated, the common objective may have been limited to the crimes of deportation and forced transfer, the evidence showed that the criminal means of the enterprise very soon grew to include other crimes of persecution, as well as murder, and extermination. This expanded set of crimes, as detailed in the judgement, came to redefine the criminal means through which the joint criminal enterprise’s common objective would be achieved during the course of the indictment period.

The evidence did not show that at any time during the indictment period the crime of genocide formed part of the common objective of the joint criminal enterprise in which Momčilo Krajišnik is shown on the evidence to have participated, nor did it show that Momčilo Krajišnik had the specific intent necessary for genocide. The evidence also does not support the conclusion that the Momčilo Krajišnik was complicit in genocide.

In the Chamber’s view, Momčilo Krajišnik’s overall contribution to the joint criminal enterprise was to help establish and perpetuate the SDS party and state structures that were instrumental to the commission of the crimes. He also deployed his political skills both locally and internationally to facilitate the implementation of the joint criminal enterprise’s common objective through the crimes envisaged by that objective. Momčilo Krajišnik knew about, and intended, the mass detention and expulsion of civilians. He had the power to intervene, but he was not concerned with the predicament of detained and expelled persons. Momčilo Krajišnik wanted the Muslim and Croat populations moved out of Bosnian-Serb territories in large numbers, and accepted that a heavy price of suffering, death, and destruction was necessary to achieve Serb domination and a viable statehood.

Therefore, the Chamber found that Momčilo Krajišnik was guilty of commission of the aforementioned crimes through his participation in a joint criminal enterprise.

In determining the appropriate sentence, the Chamber assessed the seriousness of Momčilo Krajišnik’s overall criminal conduct.

The Trial Chamber found that immense suffering was inflicted upon the victims in this case, and the consequences that the crimes had on the Muslim and Croat ethnic groups in Bosnia-Herzegovina were profound. The crimes were committed over a long period of time, often through brutal methods, with hatred or appalling lack of concern.

The Chamber found that Momčilo Krajišnik's role in the commission of the crimes was crucial. His positions within the Bosnian-Serb leadership gave him the authority to facilitate the military, police, and paramilitary groups to implement the objective of the joint criminal enterprise. Momčilo Krajišnik had a duty to tend to the well-being of the entire population as well as a duty to uphold law and order. The population residing in the territory of the Bosnian-Serb Republic, was entitled to expect that a person of Momčilo Krajišnik's authority would work to prevent or punish crimes instead of taking part in their commission.

The Chamber found that the following individual circumstances of Momčilo Krajišnik should be accorded some, although very slight, weight in mitigation: his lack of prior convictions; his good conduct during detention; his relatively long time in detention before his trial began; his efforts, although limited, during the indictment period to provide help to non-Serb individuals; and his age and family situation.

On 27 September 2006, the Trial Chamber rendered its judgement: Momčilo Krajišnik was found guilty of the following counts:

- Count 3, persecution as a crime against humanity;
- Count 4, extermination as a crime against humanity;
- Count 5, murder as a crime against humanity;
- Count 7, deportation as a crime against humanity; and
- Count 8, forced transfer as an inhumane act as a crime against humanity.

He was found not guilty of the following counts:

- Counts 1 and 2, genocide and complicity in genocide;
- Count 6, murder as a violation of the laws or customs of war

Sentence: 27 years' imprisonment

APPEALS CHAMBER JUDGEMENT

On 26 October 2006, the Prosecution filed its notice of appeal, asking for the sentence to be changed to life imprisonment. On the same day, the Pre-Appeal Judge ordered Momčilo Krajišnik to file his notice of appeal "no later than 30 days after the assignment of counsel to him".

The Prosecution filed its appeal brief on 27 November 2006.

On 12 February 2007, Momčilo Krajišnik's assigned counsel filed the notice of appeal. Subsequently, on 20 February 2007, the appellant filed his notice of appeal separately.

On 11 May 2007, the representation of Momčilo Krajišnik by assigned counsel was terminated, and he was granted self-representation.

On 8 June 2007, Colin Nicholls was assigned as *amicus curiae* to the appellant. On the same day, he filed his notice of appeal against the judgement. Subsequently, on 31 August 2007, the *amicus curiae* filed a public and redacted appeal brief. On 1 February 2008, Momčilo Krajišnik filed his appeal brief confidentially, a public version of which was filed on 28 February 2008.

On 28 February 2008, the Appeals Chamber granted a motion by Momčilo Krajišnik and ordered that Mr Alan Dershowitz could provide legal assistance to the appellant regarding the sole issue of joint criminal enterprise whilst in all other respects Momčilo Krajišnik would remain self-represented. Mr Dershowitz was formally appointed as a legal representative on 4 April 2008.

The appeals hearing took place on 21 August 2008.

In its judgement, the Appeals Chamber dismissed *Amicus Curiae's* assertion that Krajišnik's trial was unfair. Nevertheless, the Appeals Chamber noted that certain aspects of the conduct of the trial were not free from defects and may have created an appearance of unfairness. However, based on a holistic assessment of the trial record and the additional evidence on appeal, the Appeals Chamber was not satisfied that *Amicus Curiae* had shown that these defects amounted to a miscarriage of justice which would undermine the fairness of the trial received by Krajišnik.

In his third ground of appeal, *Amicus Curiae* argued that the Trial Chamber did not correctly identify the participants in the Joint Criminal Enterprise ("JCE") and could thus not conclude beyond reasonable doubt as to the existence of a common objective between them and Krajišnik. The Appeals Chamber found that the Trial Chamber indeed erred in failing to specify whether all or only some of the local politicians, militaries, police commanders and paramilitary leaders referred to in paragraph 1087 of the Trial Judgement were JCE members. This sub-ground was thus granted.

Amicus Curiae further alleged that the Trial Chamber erroneously failed to make findings as to when the murders formed part of the JCE and could thus be imputed to Krajišnik. In this context, the Appeals Chamber first noted that it was satisfied that the Trial Chamber found that Krajišnik shared the intent to commit the *original* crimes of deportation, forcible transfer, and persecution based on these crimes from the beginning of the JCE. With respect to the *expanded* crimes of murder, extermination, and persecution based on crimes other than deportation and forcible transfer, the Trial Chamber generally found that they were added to the JCE after leading members of the JCE were informed of them, took no effective measures to prevent their recurrence, and persisted in the implementation of the common objective, thereby coming to intend these expanded crimes. The Appeals Chamber noted, however, that the Trial Chamber made only scarce findings, if at all, on these requirements. Therefore, the Appeals Chamber was not able to conclude with the necessary preciseness how and at which point in time the common objective of the JCE included the expanded crimes, and, consequently, on what basis the Trial Chamber imputed those expanded crimes to Krajišnik. Neither the Appeals Chamber nor an accused could be required to engage in speculation on the meaning of the Trial Chamber's findings - or lack thereof - in relation to such a central element of Krajišnik's individual criminal responsibility as the scope of the common objective of the JCE. Thus, the Appeals Chamber found that the Trial Chamber committed a legal error in failing to make the findings necessary for Krajišnik's conviction in relation to the following expanded crimes, which were not included in the original common objective of the JCE: persecution (count 3), with the exception of the underlying acts of deportation and forcible transfer; extermination (count 4); and murder (count 5). Consequently, the Appeals Chamber granted this sub-ground of appeal in part and dismissed its remainder. Krajišnik's convictions for expanded crimes under Counts 3, 4 and 5 were thus quashed.

Amicus Curiae further argued that the Trial Chamber erred in law by holding that a JCE member can be criminally responsible for the acts of persons who were not members of the JCE and who potentially did not even know of the existence or purpose of the JCE. *Amicus Curiae* avered that the Trial Chamber erred in departing from the *Brđanin* Appeal Judgement, and that it failed to find the existence of a link between Krajišnik and the crimes. The Trial Chamber held that a JCE member could incur liability for crimes committed by principal perpetrators "procured" by a JCE member to commit crimes which further the common objective. The Appeals Chamber was satisfied that this standard corresponded in substance to the standard outlined in the *Brđanin* Appeal Judgement which was rendered after the Trial Judgement in the present case. *Amicus Curiae* therefore failed to show an error by the Trial Chamber in this respect. The Appeals Chamber observed, however, that on many occasions the Trial Chamber erred in failing to reach any finding on the link between the principal perpetrators of the original crimes of deportation, forcible transfer, and persecution based on these crimes, and the JCE members. As a result, the Appeals Chamber concluded that the Trial Chamber made only findings that the following original crimes were committed by JCE members by using principal perpetrators, in furtherance of the common purpose:

Persecution by way of deportation, count 3, in Bratunac; Zvornik; Sanski Most; Banja Luka; Bijeljina; and Prnjavor;

Persecution by way of forcible transfer, count 3, in Bijeljina; Bratunac; Zvornik; Bosanska Krupa; Sanski Most; Trnovo; and Sokolac;

Deportation, count 7, in Bratunac; Zvornik; Sanski Most; Banja Luka; Bijeljina; and Prnjavor; and

Inhumane acts by way of forcible transfer, count 8, in Bijeljina; Bratunac; Zvornik; Bosanska Krupa; Sanski Most; Trnovo; and Sokolac.

Krajišnik's convictions for the remainder of the original crimes under Counts 3, 7 and 8 were thus quashed.

Furthermore, *Amicus Curiae* alleged that the Trial Chamber erred in law by failing to make the relevant findings on deportation with regard to each municipality. The Appeals Chamber found that the Trial Chamber indeed failed to always perform the required analysis of whether a sufficient *de facto* or *de jure* border was crossed, and that the findings on deportation from Bijeljina, Bratunac and Sanski Most must fall. Consequently, Krajišnik's convictions for these crimes were quashed. However, the Appeals Chamber was of the view that the Trial Chamber found that forced displacements of persons across *de jure* state borders occurred in the municipalities of Zvornik, Banja Luka, and Prnjavor, amounting to deportation. This ground of appeal was thus granted in part.

Amicus Curiae further submitted that the Trial Chamber erred in fact when making findings with respect to Krajišnik's hierarchical position in the Bosnian-Serb leadership. The Appeals Chamber was satisfied, however, that the Trial Chamber exercised caution in assessing the relevant witness evidence, and it was not convinced that the additional evidence provided by Radovan Karadžić was sufficient to undermine the extensive evidence supporting the Trial Chamber's findings.

In his appeal, Krajišnik argued that the Trial Chamber erred in law and in fact in finding that he was a JCE member, as he and the other alleged members of the JCE were simply individuals carrying out tasks within their lawful competencies, as part of the functioning of the state administration and in accordance with the Constitution. The Appeals Chamber dismissed his arguments as irrelevant in determining whether the actions of the concerned persons resulted in statutory criminal liability. Furthermore, the Appeals Chamber dismissed Krajišnik's challenges relating to the Trial Chamber's findings on the Bosnian-Serb Government and judiciary; the Bosnian-Serb Presidency; the armed forces; the MUP, crisis staffs, war presidencies and war commissions; and Krajišnik's style of leadership.

The Prosecution raised a single ground of appeal, arguing that a life sentence was the only sentence proportionate to the overall magnitude of Krajišnik's crimes. However, the Appeals Chamber did not conclude that the sentence imposed failed to reflect the seriousness of Krajišnik's criminal conduct or that it did not express the outrage of the international community or that it was grossly insufficient to ensure deterrence.

The Appeals Chamber recalled that in some cases, the circumstances warranted it to ascertain itself whether the Trial Chamber's findings on their own or in combination with relevant evidence sustained the conviction. Given the factually complex circumstances of this case, an appellate assessment of the crimes for which the Trial Chamber erroneously imputed criminal liability to Krajišnik would require the Appeals Chamber to re-evaluate the entire trial record. While Rule 117(C) of the Rules vested the Appeals Chamber with discretion to order a retrial in appropriate circumstances, the Appeals Chamber was not obliged, having identified an error, to remit the case for retrial. The Appeals Chamber noted that the convictions for the majority of crimes, of which Krajišnik had been found guilty, had been quashed. However, convictions for persecution, deportation and forcible transfer were upheld, and the gravity of these crimes required a severe and proportionate sentence. Therefore, in the circumstances of this particular case, the Appeals Chamber considered that it was not in the interests of justice to remit the case for further proceedings. As a result, the Appeals Chamber determined the adequate sentence for the crimes which were correctly imputed to Krajišnik.

On 17 March 2009, the Appeals Chamber sentenced Momčilo Krajišnik to 20 years' imprisonment. Judge Shahabuddeen appended a separate opinion.

Document prepared by the Communications Service. All ICTY key documents are available on: www.icty.org
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