To the Honourable Judges

Jean-Claude Antonetti, Àrpàd Prandler and Stefan Trechsel

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Out of three basic questions which determine us to the greatest extent:

a) what is
b) what are be able to know
c) what should we do

as philosophy student and professor, as well as later, regardless of the activity I was active in, I dedicated the most of the time to the basic question of every ethics:

"What do have to do/What do I have to do?"

I quote Nikolai Hartmann "Ethics", Berlin, 1938

""What to do" is the question we find ourselves in every moment. Each new situation poses that question over and over again; we have to respond to it as we make ever step in our lives; it is inevitable and there is no such power which could lift our burden and release us from its necessity. To every new question, our activity, our actual behaviour brings a new answer. Because the act always contains a decision that has already been made. Wherever that decision was not conscious, we could still comprehend it subsequently in our activity, perhaps in the form of repentance. Whether in pro and contra a right has been chosen, it neither exists in question nor the situation; there is no necessity for it, no guidance by other man's arm. Everybody depends on their own, one alone makes a decision. Subsequently, if one made a mistake, he alone bears responsibility and guilt.

Who observes the range of his activity? Who is familiar with the chain of consequences and who measures the quantity of responsibility?

An act which happened once, belongs to the actuality and cannot be undone. No matter which mistake one made in it, remains irrevocably mistaken and it is irreparable in the strict sense. The situation happens once, it does not come back and it is individual just like all what is real."

The question of activity, act, deed is especially important in the course of certain social structure collapsing; how to act in the French revolution, in the time of growing Nazism, fascism and communism; how to act in war?

How to restrain from "COMMITTING A SIN THROUGH OUR OWN FAULT, IN OUR THOUGHTS AND IN OUR WORDS, IN WHAT WE HAVE DONE AND WHAT WE HAVE FAILED TO DO" that we confess during the mass.

Due to complexion of this question, once I cited the conversation between Heisenberg and Planck before this Chamber, in which young Werner Heisenberg describes an answer of the great Max Planck to the question what should he do in the time of Nazism growth.

Basics and origin of law are in the indivisible connection with such questions therefore I have right to talk about law as researcher and human being.

Ever since the time when Anitus and society crushed Socrates (ha was spoiling youth and questioned Gods on Olympus), as well as Cicero and Giordano Bruno, throughout the history (especially in social systems of the 20th century) various judges condemned hundreds of millions of people – always in the name of justice.

I think I read all the relevant literature regarding the topic and this literature says that each individual decides on his own action when three variables come into the balance – courage, unbearableness of own passiveness against the system in which the individual is in and expected punishment.

Hence – when and in what way is one to react and express discordance and what is the price to be paid for what has been done?

Even nowadays I have doubts whether such modi operandi are the act of free will of the individual or merely a statistic variable of the major number of individual values.

Why am I saying all this?

I am saying it because the cumulative growth of **small bad procedures** in this trial reached the point of my nonagreement.

I shall cite some of that:

A – the books by C. del Ponte "Mrs. Prosecutor" and "Peace and punishment" by Florence Hartmann testify about the practice of this tribunal. In many cases indictments are written to satisfy the political goals, whereby remain unclear for whose interests and the behind-the-scenes manoeuvrings bring the sense of the institution in question.

B – I was searching for an answer by sending a letter to many important addresses to the following question; has the indictment against me been written pursuant to position that "Croats are perfidious bastards" (unlike Serbs who are merely "bastards") as it is written in the book by C. del Ponte. I asked whether such statement is racist and how many years of prison with hard labour would I get if I spoke about Serbs and Muslims – Bosniaks in that way in war.

Nobody even made an effort to send a courtesy reply.

C – The judges don't have a possibility to examine the factual basis of the whole or only parts of the indictment before they confirm it.

A word "professional judges" was quite often mentioned in this courtroom.

I have no idea what the content of the word "professional" would mean in other languages but in Croatian there are two important meanings for the term "professional":

1. It is a man who performs his work for money – unlike the amateur.
2. A professional is a man who knows his job – unlike a dilettante.

All orthopaedists agree on the method how to put together a broken bone; the physicists do not argue about wave and corpuscular nature of photons or the existence of quarks and leptons; all electronics engineers have no doubts about the usage of RC combination in the transistor base or the way of making an assembly for amplitude or frequent modulation of signal, mathematicians have no dilemmas on multiplication table, adding up in binary system or what is the correct solution of the equation $\int xdx$ – integral x d x.

It is the same situation with all fields of activities which have at least something in common with the normative science.

When forming a judgement, professionals agree in 99% of the cases.

The judges at this Tribunal, especially in this Trial Chamber, Jean-Claude Antonetti, Àrpàd Prandler and Stefan Trechsel mostly do not agree.

Whether someone is to be released home, under which conditions, does an accused have right to examine, in which way should a piece of paper be delivered to the judges and in which way to other Counsel; by new decision a Chamber derogates the previous, rules change on daily basis, certain rules apply for the prosecution and others for defence. I would like to see this Tribunal administer justice to French, Brits, Americans, Chinese, let's say for Tibet.

Such justice can be administered to inhabitants of the Balkans and Africans. Experiments on androids have always been allowed. To put the most charitable interpretation on it, such way of work is frustrating, whereas accepting such procedure by coming to court expresses hope that the judgement will be righteous after all. However, hope must be limited by ratio, a clear cognition that mistakes in conclusion might be distributed by chance, without having any clearly expressed direction.

And then, in "Order on admission of evidence in relation to the witness 4D – AB" dated 14th of January 2010, judge Antonetti, in one of his numerous dissenting opinions says:

1) “However I find that the Trial Chamber, faced with an avalanche of documents, could have accepted all of them, having a possibility at the end of the trial to request from the parties to do a triage through their final briefs so that one can have a purpose-serving debate on some of admitted materials of evidence.

Most of the judges of this Chamber did not choose this commonsense solution, inspired by decades of the professional law practice.”

2) “I find that rejection of documents of this kind equals one-side approach of the conflict.”

Therefore I would like to say something on logic and method of the scientific cognition.

Discussions on traditional logic (Aristotle’s “Organon”), discussions on general logic and cognition (Kant’s “Critique of Pure Reason, Moris Cohen, Ernest Nagel’s “An introduction to logic and scientific method”, London, 1934) or the mathematical logic (Russel’s and Whitehead’s “Principia Matematica”) clarified that in each correct argumentation a conclusion necessarily follows from the premises. One of the most significant authors dealing with this topic, Karl Popper in the “Logic of scientific revelation” says:

“However, it is understood that I would accept a certain system as empirical or scientific only if it can be tested through experience. These contemplations suggest that, as a criterion of demarcation, one should not take a possibility of verification but a possibility of falsifiability. In other words; I will not demand from a scientific system to be such it can be isolated in positive sense once for all but I will demand that his logical form be such it can be isolated through empirical examinations, in negative sense; it must be possible that one empirical system be refuted by the experience.”

Nobody however is challenging that the basic characteristic of a scientific principle is a **public possibility of examining** the results which are obtained by this method on the basis of **used** facts – premises.

All what is a natural or a social system or phenomenon can be explored; even to law, which is one of the aspects of the human experience, all rules of logic and scientific approach methods can be applied.

All of us (even the judges) bring logical conclusions and make methodological cognitions proportionally to our knowledge (to put it in better words, proportionally to our own ignorance), proportionally to analytic and synthetic force of our reason, our conclusions depend on physical and mental energy that we dispose of and that we invest into the cognitive process, as well as time that we dedicate to the revelation of conclusions.

However, it is absolutely not allowed, not at any costs to drop, neglect or reject those facts or premises which might question our conclusion, cognition or judgement. Once I quoted Schiller; “Abundance contributes to clarity”.

I shall present couple of examples:

Once as Aristotle’s theses were accepted as social norms, understanding that the cognition is possible only as a form of speculative opinion and that truth cannot be reached by measurements, experiments or in any other similar way, as well as his postulate about heavier objects falling faster that light objects, physics was dead for the next 2000 years all the way till Galileo Galilee.

Democritus’ books were destroyed and everyone who had doubts about scholastics being the only proper science leading to the truth was decapitated.

If Galileo hadn’t fought, in the hard way, for the right to measure speed and time of various ballots which he was then dropping down the steep, it is questionable whether Isaac Newton would have written his “Philosophie Naturalis Principia Matematica”. Would Johannes Kepler have established his laws on movement of planets, if somebody had hidden remarkable measurements of Ticho Brahe?

Is it allowed to hide evidence on wave nature of photons in order to leave only the truth that the photons are merely corpuscles?

Would there have been a war in Iraq (several thousands of dead people, several millions of expelled persons) if reports of French intelligence (and not only French intelligence) had been published about Saddam Hussein not being in possession of chemical weapon?

When saying the abovementioned, I don’t want to say whether this war should have been waged for humanitarian reasons, and especially I don’t want to say anything how this war should have been waged.

Hence, I can relatively calmly accept the fact of possible mistake in judges’ conclusion on my guilt because the wrong interpretation of each and especially the one of social phenomenon is sui generic built into every reasonable man, but I cannot accept, just like the judge Antonetti, the rejection of those facts which could serve the rebuttal of conclusion made or arbitrated punishment.

As far as I understand, due to a possible mistake, there are few degrees of trial assessments of facts and conclusions, respectively, the judgement – all the way till some supreme, constitutional or appeal levels.

In the case in which a relation between some criminal offence and mens rea of some other individual in the social hierarchy should be established in the conditions of war, respectively in the conditions of a complete de-compensation of all state systems and

subsystems, to reject from the trial the following evidence; the third party in war – the Serbs, to throw out Mujahedins and all elements of religious war which was brought by those combatants into the territory, to throw away from evidence all refugees and expelled persons, as well as all the elements of civil war with them, all this followed by an explanation it is TU QUOQUE. And so on and so forth.

How is this possible and why is this happening?

How to solve accurately hundreds of related non-linear differential equations through which the society is described if we throw out the basic constants by reduction?

Politics, economy, law, sociology, philosophy, social psychology and many other sciences have trying to solve those equations for centuries, more or less, without success. The results, as the reality is testifying about them aren't brilliant, exactly because the complicated systems are reduced to one or two variables, which is inadmissible.

Isn't it?

The war even more makes the entire system of complicated causal social relations more complicated by many fractions of curves, points of singularities and iterations of small changes which explode into the determined chaos.

I quote "The war and the society" by Ozren Žunec, Zagreb, 1998

"The causes of war can still be explained sociologically, however the war per se eludes the sociologic inspect. Hobbes's "natural condition" is not a subject appropriate for science, in which the central concepts are order, continuity, institutions, socialisation and similar. Accordingly the war is a point of discontinuity for the social mainstream, respectively a point in which something ends and something else starts. All before and after this "big bang" is liable to sociological analysis. The mere point of breach, however is not. It comes before the society (or outside the society) and it can be