



International Tribunal for the  
Prosecution of Persons  
Responsible for Serious Violations of  
International Humanitarian Law  
Committed in the Territory of the  
Former Yugoslavia since 1991

Case No. IT-95-13/1-T  
Date: 27 September 2007  
Original: English

**IN TRIAL CHAMBER II**

**Before:** Judge Kevin Parker, Presiding  
Judge Christine Van Den Wyngaert  
Judge Krister Thelin

**Registrar:** Mr Hans Holthuis

**Judgement of:** 27 September 2007

**PROSECUTOR**

v.

**MILE MRKŠIĆ  
MIROSLAV RADIĆ  
VESELIN ŠLJIVANČANIN**

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*PUBLIC*

**JUDGEMENT**

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## CONTENTS

<b>I. INTRODUCTION</b> .....	<b>1</b>
<b>II. CONSIDERATIONS REGARDING THE EVALUATION OF EVIDENCE</b> .....	<b>5</b>
<b>III. CONTEXT</b> .....	<b>8</b>
<b>IV. COMMAND STRUCTURE OF SERB FORCES INVOLVED IN VUKOVAR OPERATIONS</b> .....	<b>23</b>
A. GUARDS MOTORISED BRIGADE (“GMTBR”).....	23
B. OPERATIONAL GROUP SOUTH (“OG SOUTH”).....	25
C. 80 <sup>TH</sup> MOTORISED BRIGADE (“80 MTBR”).....	28
D. TERRITORIAL DEFENCE (“TO”) AND VOLUNTEER OR PARAMILITARY UNITS.....	31
E. ASSAULT DETACHMENTS AND ASSAULT GROUPS.....	37
F. TOWN COMMANDS.....	44
G. MILITARY POLICE AND SECURITY ORGANS.....	45
H. SUBORDINATION OF SECURITY ORGANS.....	49
<b>V. EVENTS ON 18 AND 19 NOVEMBER 1991</b> .....	<b>52</b>
A. ZAGREB AGREEMENT AND INTERNATIONAL INVOLVEMENT IN THE EVACUATION OF VUKOVAR HOSPITAL.....	52
B. SURRENDER OF CROATIAN FORCES AT MITNICA (“MITNICA EVACUATION”).....	58
C. EVACUATION OF CIVILIANS FROM VUKOVAR.....	63
D. VELEPROMET.....	64
E. INSPECTION OF VELEPROMET BY COUNTER-INTELLIGENCE OFFICERS.....	67
F. VISIT OF CYRUS VANCE.....	73
<b>VI. PREPARATION FOR THE EVACUATION OF VUKOVAR HOSPITAL AND EVENTS ON 20 NOVEMBER 1991</b> .....	<b>75</b>
A. JNA CONTROL OF VUKOVAR HOSPITAL.....	75
B. PREPARATION FOR THE EVACUATION OF VUKOVAR HOSPITAL.....	79
C. 20 NOVEMBER 1991.....	83
1. Events in the morning at Vukovar hospital.....	83
2. Events at and near Vukovar hospital in the late morning and early afternoon.....	87
3. Events at the JNA barracks in Vukovar.....	90
4. Session of the SAO “government”.....	95
5. Events at Ovčara.....	98
6. Serb forces and JNA officers involved in the events at Ovčara.....	106
(a) JNA officers present at Ovčara during the events of the afternoon.....	106
(b) Serb forces present at Ovčara and JNA units securing the hangar.....	110
(c) Withdrawal of the military police of the 80 mtbr from Ovčara and ensuing events.....	115
D. ROLE OF MILE MRKŠIĆ.....	123
1. Evidence and findings.....	123
2. Mile Mrkšić’s departure to Belgrade.....	141
E. ROLE OF MIROSLAV RADIĆ.....	144
1. Evidence and Findings.....	144
2. Credibility of Witness P002.....	157
F. ROLE OF VESELIN ŠLJIVANČANIN.....	159
1. Participation in the events.....	159
2. Did Mile Mrkšić confer on Veselin Šljivančanin special authority?.....	168

<b>VII. JURISDICTION .....</b>	<b>175</b>
A. JURISDICTION UNDER ARTICLE 3 .....	175
1. <i>Chapeau</i> requirements .....	175
(a) Existence of an armed conflict .....	175
(b) Nexus between the acts of the accused and the armed conflict .....	180
(c) The four <i>Tadić</i> conditions .....	181
2. Conclusion .....	181
B. JURISDICTION UNDER ARTICLE 5 .....	182
1. <i>Chapeau</i> requirements .....	182
(a) Nexus to an armed conflict.....	182
(b) Widespread or systematic attack and nexus to the attack .....	183
(c) Directed against any civilian population .....	184
(d) Applicability of Article 5 to non-civilian victims .....	185
(i) Submissions .....	186
(ii) Discussion.....	187
(iii) Conclusion.....	194
2. Findings.....	195
(a) Widespread or systematic attack directed against a civilian population .....	195
(b) Status of the victims of the crimes alleged in the Indictment .....	198
3. Conclusion .....	202
<b>VIII. THE CHARGES.....</b>	<b>203</b>
A. MURDER (COUNT 4).....	203
1. Law on murder.....	203
2. Findings on murder.....	204
3. Findings on identity of the victims .....	208
4. Conclusion .....	213
B. TORTURE AND CRUEL TREATMENT (COUNTS 7 AND 8) .....	214
1. Law .....	215
(a) Torture (Count 7) .....	215
(b) Cruel treatment (Count 8) .....	216
2. Findings.....	216
(a) Scope of Counts 7 and 8.....	216
(b) Findings on Counts 7 and 8.....	218
3. Conclusion .....	221
<b>IX. RESPONSIBILITY .....</b>	<b>224</b>
A. LAW .....	224
1. Responsibility under Article 7(1).....	224
(a) Committing through participation in a joint criminal enterprise.....	224
(b) Planning .....	226
(c) Instigating.....	227
(d) Ordering .....	227
(e) Aiding and abetting .....	228
2. Responsibility under Article 7(3).....	230
(a) Superior-subordinate relationship .....	231
(b) Mental element: the superior knew or had reasons to know .....	232
(c) Necessary and reasonable measures.....	233
B. FINDINGS.....	234
1. Joint Criminal Enterprise .....	234
(a) Purpose of the removal of not less than 200 persons from the Vukovar hospital on 20 November 1991.....	235
(i) Did OG South act to secure prisoners of war for exchanges? .....	235
(ii) Was Sremska Mitrovica originally the planned destination? .....	238
(iii) The SAO “government” meeting .....	241

(b) Was there a common plan between the three Accused and others to commit the crimes charged in the Indictment?.....	243
(i) Knowledge of soldiers involved in the events on 20 November 1991 .....	243
(ii) Preparations for the burial of a large number of people .....	247
(c) Blocking access of ECMM and ICRC representatives to the Vukovar hospital.....	248
(d) Reasons for stopping at the JNA barracks .....	250
(e) Conclusion.....	252
2. Responsibility of Mile Mrkšić .....	252
(a) Mile Mrkšić's responsibility under Article 7(1) of the Statute .....	252
(i) Planning, instigating .....	254
(ii) Ordering.....	254
(iii) Aiding and abetting .....	255
(iv) Joint criminal enterprise.....	261
(b) Mile Mrkšić's responsibility under Article 7(3) of the Statute .....	261
3. Responsibility of Miroslav Radić .....	261
(a) Miroslav Radić's responsibility under Article 7(1) of the Statute .....	261
(i) Planning, instigating .....	261
(ii) Ordering.....	261
(iii) Aiding and abetting .....	261
(iv) Joint criminal enterprise.....	262
(b) Miroslav Radić's responsibility under Article 7(3) of the Statute .....	262
4. Responsibility of Veselin Šljivančanin.....	266
(a) Veselin Šljivančanin's responsibility under Article 7(1) of the Statute.....	266
(i) Planning, instigating .....	266
(ii) Ordering.....	266
(iii) Aiding and abetting .....	267
a. Operations conducted under the direction of Veselin Šljivančanin.....	267
b. Directing the buses to Ovčara .....	268
c. Transmitting the order to withdraw the 80 mtr.....	269
d. Failure to give orders to prevent the commission of crimes .....	270
(iv) Joint criminal enterprise.....	275
(b) Veselin Šljivančanin's responsibility under Article 7(3) of the Statute.....	276
<b>X. CUMULATIVE CONVICTIONS .....</b>	<b>277</b>
<b>XI. SENTENCING.....</b>	<b>279</b>
A. THE GRAVITY OF THE OFFENCE.....	280
1. Mile Mrkšić.....	280
2. Veselin Šljivančanin .....	281
B. INDIVIDUAL CIRCUMSTANCES OF THE ACCUSED: AGGRAVATING AND MITIGATING CIRCUMSTANCES .....	282
1. Mile Mrkšić.....	283
2. Veselin Šljivančanin .....	285
C. THE GENERAL PRACTICE IN THE COURTS OF THE FORMER YUGOSLAVIA AND THIS TRIBUNAL..	286
D. CREDIT FOR TIME SERVED IN CUSTODY .....	288
<b>XII. DISPOSITION .....</b>	<b>289</b>
<b>XIII. SCHEDULE: LIST OF PERSONS KILLED AT OVČARA IN THE EVENING HOURS OF 20/21 NOVEMBER 1991 .....</b>	<b>291</b>
<b>XIV. ANNEX I: GLOSSARY OF TERMS .....</b>	<b>306</b>
<b>XV. ANNEX II: MAPS.....</b>	<b>314</b>
<b>XVI. ANNEX III: PROCEDURAL HISTORY .....</b>	<b>319</b>

A. PRE-TRIAL PROCEEDINGS .....	319
1. Initial indictment and Rule 61 proceeding.....	319
2. Initial appearance and history of indictments .....	320
3. Applications for provisional release .....	320
4. Rule 11 <i>bis</i> proceedings .....	321
5. Commencement of trial.....	322
B. TRIAL PROCEEDINGS.....	323
1. Overview.....	323
2. Matters related to witnesses .....	324
3. Evidentiary matters .....	324
4. Decision on clarification of the Indictment .....	325
5. Rule 98 <i>bis</i> decision .....	325
6. Motion to admit evidence in rebuttal.....	326

## I. INTRODUCTION

1. The Accused, Mile Mrkšić, Miroslav Radić and Veselin Šljivančanin, are charged in the Indictment with crimes allegedly committed on or about 18 to 21 November 1991 against Croats and other non-Serbs who were present in the Vukovar hospital after the fall of Vukovar. The Indictment, as ultimately amended, alleges that several hundred people had sought refuge at Vukovar hospital in the belief that the Vukovar hospital would be evacuated in the presence of international observers. It is alleged that the evacuation of these people was agreed upon in Zagreb, in Croatia, on 18 November 1991, in negotiations between the Yugoslav People's Army ("JNA") and the Croatian government. Pursuant to this agreement the JNA was responsible for the evacuation of Vukovar hospital which was to be monitored by various international organisations. The Indictment alleges that in the afternoon of 19 November 1991 JNA units took control of the hospital in preparation for the evacuation and, in the morning of 20 November 1991 the JNA units removed about 400 Croats and other non-Serbs, loaded approximately 300 of them onto buses and moved them to the JNA barracks in Vukovar where for about two hours they were subjected to threats and psychological taunts, and some were beaten. It is alleged that the Croats and other non-Serbs who had been taken from Vukovar hospital to the JNA barracks, were then transferred to Ovčara farm. There Serb soldiers forced them to run between two lines of soldiers who beat them as they passed. It is alleged in the Indictment that after the initial beating, Serb forces continued to beat and assault the detainees for several hours, so seriously that at least two men died from the beatings, and that at least one female detainee was sexually assaulted. It is further alleged that at least 264 named detainees were then taken to a nearby location southeast of the Ovčara farm, where they were executed. These allegations support three counts of violations of the laws or customs of war, and five counts of crimes against humanity, under Articles 3 and 5, respectively, of the Statute of the Tribunal, for persecutions on political, racial, and religious grounds, extermination, murder, torture, inhumane acts, and cruel treatment.

2. The Indictment charges the Accused Mile Mrkšić, at the time a colonel in the JNA and subsequently a general in the JNA who became the commanding officer of the army of the then "Serbian Krajina", with individual criminal liability under Article 7(1) of the Statute for, in particular, planning, instigating, ordering or otherwise aiding and abetting the aforementioned crimes, or committing them by participation in a joint criminal enterprise. He is alleged to have ordered or permitted JNA soldiers under his command to deliver custody of detainees taken from the Vukovar hospital to other Serb forces, under his command, who allegedly committed the crimes charged in this Indictment, knowing or having reason to know that the detainees would be murdered. Mile Mrkšić is further charged with superior responsibility pursuant to Article 7(3) of the Statute in respect of these offences, which is alleged to arise out of the position of command and

control he then held, as commander of Operational Group South (“OG South”) and of the 1<sup>st</sup> Guards Motorised Brigade of the JNA, and over members of the JNA, Territorial Defence (“TO”), and other Serb volunteer and paramilitary forces allegedly responsible for the crimes charged in the Indictment. While the Indictment first refers to the 1<sup>st</sup> Guards Motorised Brigade, the evidence establishes he commanded the Guards Motorised Brigade (“gmtbr”).

3. The Indictment charges the Accused Miroslav Radić, at the time a JNA captain, with individual criminal liability under Article 7(1) of the Statute, in particular, for allegedly planning, instigating, ordering or otherwise aiding and abetting the aforementioned crimes, or committing them by participation in a joint criminal enterprise. He is alleged to have personally participated in the removal and selection of about 400 non-Serbs from Vukovar hospital on 20 November 1991, knowing or having reason to know they would be murdered. Miroslav Radić is further charged with superior responsibility pursuant to Article 7(3) of the Statute in respect of these offences, which is alleged to arise out of the position of command and control he then held over a unit comprising members of the JNA, members of the TO and volunteer and paramilitary forces allegedly responsible for the crimes charged in the Indictment.

4. The Indictment charges the Accused Veselin Šljivančanin, at the material time, a JNA major and later a colonel in the JNA, with individual criminal liability under Article 7(1) of the Statute, in particular, for allegedly planning, instigating, ordering or otherwise aiding and abetting the aforementioned crimes, or committing them by participation in a joint criminal enterprise. He is alleged to have personally directed the removal and selection of about 400 non-Serbs from Vukovar hospital on 20 November 1991, knowing or having reason to know they would be murdered, to have ordered or permitted JNA soldiers under his command to deliver custody of these detainees to other Serb forces knowing or having reason to know that they would be murdered, and to have been present at Ovčara farm on 20 November 1991 when criminal acts charged in the Indictment were being committed. Veselin Šljivančanin is further charged with superior responsibility pursuant to Article 7(3) of the Statute in respect of these offences, which is alleged to arise out of the position of command and control he then held as the security officer of OG South and gmtbr over Serb forces including members of the JNA, members of the TO and volunteer and paramilitary units allegedly responsible for the crimes charged in the Indictment.

5. Among various modes of criminal liability pleaded in the Indictment special attention has been given to the alleged participation of the three Accused in a joint criminal enterprise the purpose of which is alleged to have been the persecution of Croats and other non-Serbs, who were present in the Vukovar hospital after the fall of Vukovar, through the commission of murder, torture

and cruel treatment. The Indictment lists a number of acts and omissions of each of the Accused which the Prosecution alleges contributed to achieving the objective of the joint criminal enterprise.

6. Each of the three Accused has pleaded not guilty to all counts against him.

7. The Prosecution alleges that at the material time the Serb forces subject to the command of Mile Mrkšić in OG South comprised primarily elements of the JNA, including gmtbr, but also forces of the TO of the so-called Serbian Autonomous District/Slavonia, Baranja and Western Srem, which included TO forces from the Vukovar area (“local TOs”), TO forces of the Republic of Serbia, and various volunteer and paramilitary forces. For convenience in this decision, the Chamber will often refer to “TO forces” or “TOs” as including volunteer and paramilitary forces. Further, references to “paramilitary forces” and to “paramilitaries” include other volunteers.

8. The Indictment is confined to the events mentioned above. It does not include the attack directed against the city of Vukovar and its civilian population by the JNA and other Serb forces in 1991. The devastation brought on Vukovar over the prolonged military engagement in 1991, the very many civilian casualties and the extensive damage to property resulting from the military operations are not the subject of the Indictment. As a result, the Chamber cannot enter a finding of guilt in respect of those events. Also, acts of mistreatment and killings of detainees at the Velepromet facility on 19 November 1991, are not the subject of the Indictment.<sup>1</sup> While the crimes alleged to have been committed there are referred to in the Indictment, this is only to demonstrate the Accuseds’ knowledge of instances of abuse similar to those that are alleged to have occurred at the JNA barracks and the Ovčara farm.<sup>2</sup> The Chamber cannot, therefore, enter a finding of guilt in respect of events at the Velepromet facility.

9. The events alleged in the Indictment are discussed at length in the Judgement that follows. The Chamber would record here its finding that in the morning of 20 November 1991 over 200 individuals, almost all men, the vast majority of whom had been involved in the hostilities, were removed by JNA soldiers of OG South from Vukovar hospital and brought via the JNA barracks in Vukovar to a hangar at Ovčara, near Vukovar, where they were severely mistreated. In the evening and night hours of 20/21 November 1991 they were taken in groups of some 10 to 20 from the hangar to a site located nearby where earlier that afternoon a large hole had been dug. There, TO and paramilitary soldiers of OG South executed at least 194 of them. The killings started after 2100

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<sup>1</sup> *Prosecutor v Mrkšić et al*, Case No: IT-95-13/1-T, Decision on Motion Seeking Clarification on Count 1 of the Indictment, 19 May 2006. *See infra*, para 736.

<sup>2</sup> *Prosecutor v Mrkšić et al*, Case No: IT-95-13/1-T, Decision on Motion Seeking Clarification on Count 1 of the Indictment, 19 May 2006.

hours and continued until well after midnight. The bodies were buried in the large hole, a mass grave, and remained undiscovered until several years later.

10. The events that transpired at Ovčara on or about 20 November 1991 have also led to legal proceedings in Serbia against persons accused of being the actual physical perpetrators of the crimes alleged against the three present Accused. These perpetrators appear to have been members of the TO or paramilitary forces at the time. The names of a number of them feature in the evidence in this trial, including Miroljub Vujović, Stanko Vujanović and Milan Lančuzanin. There have been three trials, all held in the War Crimes Chamber of the Belgrade District Court. The first trial (“Ovčara I”) concerned sixteen persons accused of “War Crimes against Prisoners of War” under the Federal Republic of Yugoslavia Criminal Code (“FRY Criminal Code”). On 12 December 2005, fourteen accused were found guilty and two were acquitted.<sup>3</sup> Some, including the three perpetrators names above, were sentenced to 20 years imprisonment. The second trial (“Ovčara II”) was of a single accused, Milan Bulić, accused of “War Crimes against Prisoners of War” under the FRY Criminal Code. Milan Bulić was originally named in the indictment for Ovčara I but was tried separately. The District Court found Milan Bulić guilty on 30 January 2006.<sup>4</sup> The third trial (“Ovčara III”) concerned a single accused, Saša Radak, also for “War Crimes against Prisoners of War” under the FRY Criminal Code, and the Court found Saša Radak guilty on 6 January 2006.<sup>5</sup> The judgements from the District Court for Ovčara I and Ovčara III were the subject of appeals to the Supreme Court, which rescinded the decisions of the lower court.<sup>6</sup> A single re-trial of all the accused from Ovčara I and Ovčara III is currently underway.

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<sup>3</sup> Judgement of the War Crimes Chamber of the Belgrade District Court (case number: K.V. 1/2003) of 12 December 2005.

<sup>4</sup> Judgement of the War Crimes Chamber of the Belgrade District Court (case number: K.V. 02/2005) of 30 January 2006; Appeals Judgment of the Supreme Court of Serbia, (case number Kž.I r.z. 2/2006) of 9 February 2007.

<sup>5</sup> Judgement of the War Crimes Chamber of the Belgrade District Court (case number: K.V. 01/2005) of 6 January 2006.

<sup>6</sup> The judgment of 12 December 2005 was reversed through the decision of the Supreme Court of Serbia (case number Kž.I r.z.1/06) of 18 October 2006; the judgement of 6 January 2006, concerning Saša Radak, was reversed and a re-trial ordered through the decision of the Supreme Court of Serbia (case number Kž.I r.z. 1/07) of 29 February 2007. These two cases were joined in a new trial under the reference number 04/06.

## II. CONSIDERATIONS REGARDING THE EVALUATION OF EVIDENCE

11. In the present Judgement, the Chamber is to determine the innocence or the guilt of each of the three Accused in respect of each of the eight counts of the Indictment. Article 21(3) of the Statute enshrines the presumption of innocence to which each Accused is entitled. This presumption places on the Prosecution the burden of establishing the guilt of the Accused, a burden which remains on the Prosecution throughout the entire trial. In respect of each count charged against each Accused, the standard to be met for a conviction to be entered is that of proof beyond reasonable doubt.<sup>7</sup> Accordingly, the Chamber has determined in respect of each of the counts charged against each of the Accused, whether it is satisfied beyond reasonable doubt, on the basis of the whole of the evidence, that every element of that crime charged in the Indictment, including each form of liability, has been established. In so doing, in respect of some issues, it has been necessary for the Chamber to draw one or more inferences from facts established by the evidence. Where, in such cases, more than one inference was reasonably open from these facts, the Chamber has been careful to consider whether any inference reasonably open on those facts was inconsistent with the guilt of the Accused. If so, the onus and the standard of proof requires that an acquittal be entered in respect of that count.<sup>8</sup>

12. The Chamber has been required to weigh and evaluate the evidence presented by all parties. The nature of the case is such that the Chamber has been faced with a large amount of evidence, which is often characterised by contradictions and inconsistency. In respect of some issues, the task of the Chamber has been made more difficult because witnesses who played a material role have not been called to give evidence, and because some relevant records and documents have not been located or provided in evidence.

13. The Chamber would emphasise that the mere admission of evidence in the course of the trial has no bearing on the weight which the Chamber has subsequently attached to it. The Chamber further observes that the more than 15 years that have passed since the events in the Indictment have, in all likelihood, affected the accuracy and reliability of the memories of witnesses, understandably so. In some cases, witnesses had no personal memory of these events and sought to rely on their personal notes. While records taken contemporaneously sometimes provide a more detailed and accurate account of the witness's experience, these personal records are easy to be manipulated. As will be discussed below, the Chamber has been cautious not to rely on such records unless satisfied of their authenticity and reliability.

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<sup>7</sup> Rule 87(A) of the Rules provides, in its relevant part: "[...] A finding of guilt may be reached only when a majority of the Trial Chamber is satisfied that guilt has been proven beyond reasonable doubt."

<sup>8</sup> *Čelebići Appeals Judgement*, para 458.

14. There were times where the oral evidence of a witness differed from an account given in a prior statement. It has been recognised that “it lies in the nature of criminal proceedings that a witness may be asked different questions at trial than he was asked in prior interviews and that he may remember additional details when specifically asked in court.”<sup>9</sup> Nevertheless, these matters called for careful scrutiny when determining the weight to be given to any such evidence. Some of this evidence will be reviewed in more detail later in this Judgement.

15. The Chamber is persuaded that in some cases the evidence it has heard was not entirely truthful. For example, some of the JNA officers who came to testify left the Chamber with a clear impression that they were seeking in their evidence to minimise or misrepresent their involvement, or that of associates, in the events relating to 20 November 1991. Further, the Chamber has come to accept that the evidence of some Defence witnesses, at the time JNA officers subordinated to one or other of the Accused, has been influenced by their loyalty to their commander. In a similar way, some of the Croatian witnesses, albeit at times possibly unwittingly, have advanced the position that, genuine patients aside, there were only staff members of Vukovar hospital and their families in the hospital on 20 November 1991, and no Croatian combatants, while in fact other evidence has demonstrated the opposite. The Chamber is further conscious of the fact that some witnesses, who were members of the Croatian forces at the time, may have been careful in their evidence to protect themselves. In respect of all the above witnesses, their evidence may be reliable regarding some issues but unreliable or less persuasive with respect to others. Further, even more regrettably, the Chamber has been forced also to conclude that some evidence was deliberately contrived and false. These various factors, in particular, have had the effect in this case that, in respect of a number of witnesses, the Chamber’s assessment of the personal credibility of the witness as the evidence was given has been most material to the Chamber’s acceptance or rejection of evidence of that witness, whether in whole or in part. The Chamber would also observe that it has found that the general background circumstances to material events, and the actual course of material events, at times has offered valuable assistance in the task of determining where the truth lies in a body of conflicting and inconsistent oral and documentary evidence about a particular issue.

16. Despite the difficulties identified above, after having carefully reviewed and weighed all the evidence, the Chamber has been able to make findings on the facts in this case sufficient for it to be able to determine the innocence or the guilt of each of the three Accused on each count. However, the Chamber has not been able to resolve all disputed factual matters. As will be seen, the Chamber has accepted some evidence notwithstanding the presence of contradicting or inconsistent evidence. At times, the Chamber has rejected evidence despite the presence of other consistent evidence. At

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<sup>9</sup> *Naletilić* Trial Judgement, para 10; *Limaj* Trial Judgement, para 12. See also *Vasiljević* Trial Judgement, para 21.

times, the Chamber has been persuaded it should accept only part of the evidence of a witness, while rejecting other parts. In each of these cases the Chamber has acted in light of the other evidence on the issue and only after very careful scrutiny indeed of the witness and the evidence.

### III. CONTEXT

17. The crimes alleged in the Indictment took place in the district of Vukovar, which is located in Eastern Slavonia, current day Croatia, on the western bank of the Danube River. The river marks the border between Croatia and Serbia. Vukovar municipality is large in geographical terms.<sup>10</sup> The municipality ranges from Ilok, southeast of the city of Vukovar, on the Danube, to Osijek, northwest of Vukovar. The distance between Osijek and Ilok is about 50 kilometres.<sup>11</sup> The municipality also encompasses Trpinja and Bobota to the west.<sup>12</sup>

18. In 1991, Vukovar municipality had a population of some 84,000. Of these, 43.7% were Croats, 37.4% were Serbs, 1.6% were Hungarians, 7.3% regarded themselves as “Yugoslavs” and 10% defined themselves as “others”.<sup>13</sup> The percentage of “Yugoslavs” was the second highest in Croatia at the time.<sup>14</sup> The population of some towns or villages in the municipality, such as Borovo Selo and Trpinje, was exclusively Serb, but overall the area was mixed. Other nationalities, such as Hungarians and Slovaks, were also present and the evidence indicates that all lived in relative harmony until 1991.<sup>15</sup> The Vukovar area was among the richest areas in Yugoslavia both in terms of the land and general infrastructure.<sup>16</sup> According to some evidence, before the events discussed in this Judgement, the actual city of Vukovar, which is within the municipality, had approximately 45,000 inhabitants.<sup>17</sup>

19. While the events relevant to this case focus on Vukovar municipality in the Eastern Slovenian region of Croatia, it should be borne in mind that, contemporaneously with these events, there was widespread unrest, which developed into extensive armed conflict, throughout much of Croatia. It is misleading to view the events in Vukovar in isolation or to imagine they were only governed by local factors. They were but part of a much wider political and military struggle.

20. In 1991 the Socialist Federal Republic of Yugoslavia (SFRY) experienced a series of events which culminated in the break-up of the six republic federal state. These events involved initially a quest for autonomy by the Republics of Slovenia and Croatia, notwithstanding provisions of the federal constitution.<sup>18</sup> A referendum on independence was held in Croatia in mid May 1991, with the result that the people of Croatia voted not to remain in the SFRY as a unified state, but to

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<sup>10</sup> Exhibit 391, p 200.

<sup>11</sup> Exhibit 391, p 200.

<sup>12</sup> Exhibit 391, p 200-201.

<sup>13</sup> Slovaks, Ruthenes, Ukrainians, Muslims, etc. (Exhibit 447, p 26)

<sup>14</sup> Exhibit 447, p 26.

<sup>15</sup> Mark Wheeler, T 9230.

<sup>16</sup> Exhibit 447.

<sup>17</sup> Vesna Bosanac, T 567.

<sup>18</sup> Exhibit 447, p 23.

become independent.<sup>19</sup> On 25 June 1991, the Croatian Parliament passed a declaration on the sovereignty and independence of Croatia and then declared Croatia independent on 8 October 1991. Croatia's independence was not recognized by the then European Community, however, until 15 January 1992.<sup>20</sup> At least generally speaking, Serbs living in Croatia did not participate in the referendum. In August, however, Serbs in the predominately Serb parts of Croatia held their own referendum, voting to remain within SFRY.<sup>21</sup>

21. Within Croatia, following elections in early 1991, which were won by the Croatian Democratic Union ("HDZ"), and the steps directed to constitutional change which have been described, clear tensions began to become apparent between Serbs and Croats. The constitutional changes had the effect that Serbs, as an ethnic group, were no longer considered a constituent nation of the Croatian Republic, but became a national minority.<sup>22</sup> The use of the Cyrillic script as an official script was also banned. This was seen by the Croatian Serbs as a potential threat.<sup>23</sup>

22. At about the same time or even earlier, Croatia started purchasing weapons for its armed forces.<sup>24</sup> A large number of automatic weapons were purchased in late 1990 or early 1991 with the involvement of General Spigelj, who later became Minister of Defence of Croatia.<sup>25</sup> A video footage showing the shipment of these weapons on 1 January 1991 was broadcast publicly.<sup>26</sup> This further stirred emotions among the people.

23. By early 1991 the attitude of both the political leadership and the general public in Croatia became increasingly hostile towards the JNA. Of course, the JNA had been constituted as the national military force of the Yugoslav federation, but it had come to be typically perceived in Croatia as aligned with Serb interests and effectively commanded from Belgrade by a Serb dominated leadership. In the course of 1991 many Croat and other non-Serb officers and men of the JNA left the JNA, in many cases to take up arms against the JNA in Croatia. In March 1991 Croatian forces "blocked", *i.e.* effectively blockaded, the JNA barracks in Bjelovar and Varaždin. Increasingly acts of hostility or aggression were manifested against JNA personnel in various parts of Croatia. By July-August 1991 a general strategy was adopted to block JNA barracks on Croatian territory by cutting off water, electricity, food supply, and communications to the JNA barracks.<sup>27</sup> As one expert witness observed, the blocking of the JNA barracks in areas under Croatian control

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<sup>19</sup> Exhibit 391, p 185-195.

<sup>20</sup> Mark Wheeler, T 9270.

<sup>21</sup> Exhibit 391, pp 223-224.

<sup>22</sup> Exhibit 447, p 23; P007, T 4052. *See also* Exhibit 798, p 54.

<sup>23</sup> Exhibit 391, p 224.

<sup>24</sup> Exhibit 798, pp 60-61.

<sup>25</sup> Irma Agotić, T 2036-2037; Razvigor Virijević, T 11542.

<sup>26</sup> Irma Agotić, T 2036-2037; Razvigor Virijević, T 11542.

<sup>27</sup> Exhibit 798, pp 55, 60.

appeared to be a strategy often preferred by the Croat forces who were less numerous and largely unarmed at the time.<sup>28</sup>

24. In the spring of 1991 Serbia-based paramilitary groups began establishing themselves in various parts of Eastern Slavonia, around Vukovar. Vojislav Šešelj's "White Eagles" established themselves in Borovo Selo, the site of the first outbreak of violence on 2 May 1991, and Željko Ražnatović (*aka* "Arkan") and his militia ("Arkan's Tigers") established themselves in the Danube-side town of Erdut.<sup>29</sup> Members of these groups began encouraging the local Serb population to put up barricades and seek to defend themselves from the "Ustashas" who "were coming to kill them".<sup>30</sup> "Ustashas" once again came to be a term frequently used by Serbs to describe Croats.<sup>31</sup> One witness testified that she could not go to visit her friend in a neighbouring village, Borovo Naselje, because of barricades which had been erected to protect the children from these "Ustashas".<sup>32</sup> Another witness testified that in this period persons of mixed ethnicity were subjected to threats, harassment and physical abuse at the hands of the Croatian police and civilians.<sup>33</sup>

25. The media also influenced these events. Belgrade television came to portray Croats indiscriminately as "bloodthirsty Ustashas," while the Zagreb media began to present Serbs as drunken violent "Chetniks."<sup>34</sup> Politicians on both sides engaged in propaganda, misrepresenting the other side's activities.<sup>35</sup> Political and military leaders in Belgrade started talking about "the threat of neonazism" and "fascism" to Serbian people in Croatia and the need to prevent "annihilation," "biological extermination," and "genocide" against the Serbian people.<sup>36</sup> On the other hand,

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<sup>28</sup> Mark Wheeler, T 9305.

<sup>29</sup> Exhibit 391, pp 202-203.

<sup>30</sup> Exhibit 391, pp 202-203.

<sup>31</sup> It is a derogatory reference back to bitter WWII conflicts when it was generally used as a reference to Croatian Nazi forces.

<sup>32</sup> Zvezdana Polovina, T 2588-2589.

<sup>33</sup> P009, T 6067, 6068.

<sup>34</sup> Exhibit 447, pp 22-23.

<sup>35</sup> For example, after the interception of two planes carrying weapons at Zagreb Pleso Airport the Federal Secretariat for National Defence made a public statement that Croatia was importing weapons illegally, while the Croatian officials announced that these were weapons delivered for Yugoslavia from the Soviet Union. (Exhibit 798, pp 60-61)

<sup>36</sup> On 3 October 1991 the Federal Secretary for National Defence, General Veljko Kadijević made the following statement to the citizens of Yugoslavia:

"[...] Our exclusive goal was to prevent bloody interethnic clashes and the repetition of the genocide against the Serbian people by engaging the bulk of our forces in crisis areas. What is in force in the Republic of Croatia is neonazism. At present neonazism is the most serious threat to the Serbian people in Croatia. [...] The army now wants nothing more but to restore control in the crisis area, to protect the Serbian population from persecution and annihilation and to liberate the army personnel and members of their families. [...]" (Statement by the Federal Secretary for National Defence, General of the Army Veljko Kadijević, 3 October 1991, cited in Exhibit 578, part II, p 16) A circular to all Yugoslav armed forces issued by General Blagoje Adžić, the Chief of Staff of the Federal Secretariat for National Defence on 12 October 1991 included the following statement: "[...] It is obvious that the war, which has been imposed upon the Serbian people in Croatia and the JNA by the Ustasha forces and their leadership, is not about the conquest of Croatian territory [...]. It is rather about defending parts of the

Serbian people in Croatia were sometimes proclaimed “Serbian rebels” by Croatian political leaders and their failure to accept the new Croatian government and to allow official Croat bodies to perform their functions was used as an excuse to carry out attacks on some predominately Serb populated villages.<sup>37</sup>

26. Events on 2 May 1991 were to herald the beginning of armed clashes in the area. On that day the Croatian Ministry of Internal Affairs (“MUP”)<sup>38</sup> carried out an operation in the largest Serbian village in Vukovar municipality, Borovo Selo, in response to the arrest of two Croatian policemen the previous night.<sup>39</sup> Five buses with policemen from Vukovar, Vinkovci and Osijek police stations participated in the raid.<sup>40</sup> 12 Croatian policemen and three Serb civilians were killed and there was also a number of wounded on both sides.<sup>41</sup> This incident was followed by a series of acts directed against Serbs or pro-Serbs interests. In western Croatia, on 6 May 1991, a JNA soldier was strangled in Split in front of TV cameras.<sup>42</sup> A report of the Federal Secretariat for National Defence to the SFRY Presidency of 8 August 1991 indicated that from 9 May until 4 August 1991, 340 attacks against JNA units and members in Croatia were carried out, in which six JNA soldiers and officers were killed and 83 were wounded.<sup>43</sup>

27. The incident of 2 May 1991 had an impact on the political life in the Vukovar area. Shortly after the incident, the HDZ took control of Radio Vukovar. The name of the station changed from “Radio Vukovar” to “Croatian Radio Vukovar.” The editor-in-chief Mirko Stanković, who had a reputation of being pro-Serb, was replaced by Josip Esterajher, a Croat. The director of the radio left in May 1991. His departure was followed by the departure of a number of Serb employees. The content of the programmes of the radio station also changed.<sup>44</sup>

28. Slavko Dokmanović, a Serb and a member of the Social Democratic Party of Croatia (“SDP”), who was elected President of the Municipal Assembly of Vukovar following local elections in 1990, ceased to perform his functions in early July 1991 when the position of a commissioner for Vukovar was created by the Croatian government.<sup>45</sup> Marin Vidić, aka Bili, a

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Serbian people from genocide and biological extermination with which they are threatened by resurrected fascism in Croatia [...]” (Exhibit 89; Exhibit 578, part II, pp 17-18)

<sup>37</sup> Exhibit 798, p 58.

<sup>38</sup> See *infra*, para 411.

<sup>39</sup> Exhibit 798, p 57; Zvezdana Polovina, T 2568-2569.

<sup>40</sup> Exhibit 798, p 57.

<sup>41</sup> See Exhibit 798, p 57; Zvezdana Polovina, T 2568-2569.

<sup>42</sup> Mark Wheeler, T 9304-9305.

<sup>43</sup> Exhibit 798, p 58.

<sup>44</sup> Zvezdana Polovina, T 2569-2570; 2618-2619. See also P021, T 1391.

<sup>45</sup> P007, T 4051; P021, T 1390; Josip Čović, T 3469-3470.

Croat, who was previously Deputy Municipal President was appointed to this position in late June 1991.<sup>46</sup>

29. Similarly, by August 1991 the ethnic composition of the Vukovar hospital staff had changed. Many of the Serb employees ceased working there.<sup>47</sup> The director of the hospital, Dr Rade Popović, a Montenegrin,<sup>48</sup> was dismissed on 18 July 1991.<sup>49</sup> Dr Vesna Bosanac, a Croat, was appointed to this position on 25 July 1991.<sup>50</sup> She headed the hospital staff until 20 November 1991.<sup>51</sup>

30. These developments further exacerbated the tension between the two communities. People generally did not trust each other anymore<sup>52</sup> and barricades were maintained on all the roads leading to predominantly Serb villages.<sup>53</sup> Town defences began organising themselves. In predominately Croatian populated areas in Vukovar such as Mitnica and Borovo Naselje, people endeavoured to obtain weapons and set up small groups of defenders.<sup>54</sup>

31. Armed clashes between the JNA and other Serb forces and the Croat forces began. From July 1991, after the war in Slovenia, the JNA became actively involved in conquering territory and not merely in interposing itself between rebelling Serbs and local Croat authorities as it had been in the early stages of the conflict.<sup>55</sup>

32. In August 1991 local Serb communities made a declaration of their autonomy and purported to create the second of the new Serb-ruled “mini-states” in Croatia, viz, the Serb Autonomous District (“SAO”; *Srpska Autonomna Oblast*) of Slavonia, Baranja, and Western Srem.<sup>56</sup> A “government” of the SAO was formed in September 1991.<sup>57</sup> At the time, in neighbouring Bosnia and Herzegovina, similar entities were formed by local Serbs and local Croats.

33. As indicated earlier, the JNA became actively involved in the conflict. This was so also in the area of Vukovar. JNA forces sporadically shelled parts of Vukovar in June, July and August 1991. Houses in the centre of Vukovar as well as the Vukovar hospital were hit and damaged and

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<sup>46</sup> P007, T 4051; Exhibit 798, p 62.

<sup>47</sup> P012, T 3689-3691.

<sup>48</sup> Binazija Kolesar, T 905.

<sup>49</sup> Vesna Bosanac, T 709; Exhibit 44.

<sup>50</sup> Vesna Bosanac, T 539.

<sup>51</sup> P012, T 3690.

<sup>52</sup> Zvezdana Polovina, T 2568-2569.

<sup>53</sup> P007, T 3993.

<sup>54</sup> P007, T 4054; Juraj Njavro, T 1582; Šarlota Foro, T 2429.

<sup>55</sup> Mark Wheeler, T 9171.

<sup>56</sup> Exhibit 447, pp 24-25. See Exhibits 389 and 390 for the formation and structure of the SAO; Exhibit 391, p 206. The Autonomous Province of Serb Krajina in Knin was the other Serb mini-State.

<sup>57</sup> Exhibit 389, p 2483.

civilians were wounded.<sup>58</sup> The first significant shelling occurred on 4 July 1991. The predominately Croat Borovo Naselje was targeted from the direction of the predominately Serb Borovo Selo.<sup>59</sup> In June and July 1991, shelling would take place once a day or every two days in Vukovar. The intensity grew on a daily basis.<sup>60</sup>

34. Other villages in the municipality of Vukovar as well as towns in the larger area of Eastern Slavonia were also subjected to military operations by the JNA during the summer and autumn of 1991. To the north and northwest of Vukovar, the town of Osijek came under heavy artillery attack in July 1991,<sup>61</sup> the villages of Erdut and Dalj were shelled in early August 1991<sup>62</sup> and Borovo Naselje was shelled during the spring/summer of 1991.<sup>63</sup> To the east, the village of Ilok was shelled and experienced daily shooting in August 1991.<sup>64</sup> As part of its autumn operation, the JNA started an incursion in Eastern Slavonia with the intention of capturing the towns of Vukovar, Vinkovci and Osijek.<sup>65</sup> At the same time military operations by the JNA were occurring elsewhere in Croatia.

35. Villages in Eastern Baranja also came under attack.<sup>66</sup> One resident of Erdut testified that around 1 August 1991 he saw 50 JNA tanks driving past his house, shelling Erdut as they passed.<sup>67</sup> During September and early October, the JNA attacks on villages in Eastern Baranja intensified, causing extensive material damage to those villages and civilians to flee.<sup>68</sup> By August 1991 people were already leaving Erdut, after the village was shelled with mortars.<sup>69</sup> On 25 and 26 August 1991 the JNA and other Serb forces overran the entire district of Baranja. This area had a proportionally small Serb population, of between 20 and 25%.

36. On 23 August 1991, Borovo Naselje came under heavy shelling.<sup>70</sup> Croatian forces in Borovo Naselje brought down two JNA aircrafts with hand-held rocket launchers.<sup>71</sup> On 24 and 25 August 1991, all other parts of Vukovar were subjected to a heavy aerial attack by the JNA.

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<sup>58</sup> Šarlota Foro, T 2397; Binazija Kolesar, T 915-916; P002, T 10371-10372; P006, T 1105-1107; P011, T 5702-5704; P021, T 1347; Juraj Njavro, T 1591-1592; Mara Bučko, T 2711; Mark Wheeler, T 9171.

<sup>59</sup> Zvezdana Polovina, T 2571-2572.

<sup>60</sup> P021, T 1347.

<sup>61</sup> Exhibit 383, p 11.

<sup>62</sup> Exhibit 385, pp 34-35.

<sup>63</sup> P002, T 10371-10372.

<sup>64</sup> Exhibit 383, p 11.

<sup>65</sup> Exhibit 798, p 66.

<sup>66</sup> Exhibit 391, p 40.

<sup>67</sup> Exhibit 385 (Rule 92*bis* statement of Luka Sutalo).

<sup>68</sup> Exhibit 305 re: attacks on Šarengrad, Bapska, Lovas, Tovarnik, Opatovac and, Momovo. *See* also Exhibit 304; Aernout van Lynden, T 3085-3087; re: attacks on Tovarnik, Ilača, Orolik and Negoslavci; Exhibit 383, p 11.

<sup>69</sup> Exhibit 385.

<sup>70</sup> Josip Čović, T 3487, 3491.

<sup>71</sup> Josip Čović, T 3425-3426, 3484-3487; Šarlota Foro, T 2472; P006, T 1104.

This was the first severe attack on the city of Vukovar.<sup>72</sup> A witness who was present in Vukovar observed “firing from all sorts of weapons, howitzers, mortars, guns, tanks and planes.”<sup>73</sup> The shelling came from the area around the JNA barracks, located in the Sajmište area of Vukovar, where local Serbs used to live, and from the Petrova Gora neighbourhood, Borovo Naselje, Borovo Selo and the direction of Trpinja.<sup>74</sup> Extensive damage was caused to the city of Vukovar<sup>75</sup> and many civilians were killed.<sup>76</sup>

37. After this attack, on 25 August 1991 the siege of Vukovar commenced. By the late summer or early autumn of 1991 the city of Vukovar was effectively surrounded and besieged by JNA and other Serb forces.<sup>77</sup>

38. The Chamber notes that at the time of the siege of Vukovar the opposing forces saw their roles differently, a difference that persists to this day. The Croat forces saw themselves as defending the Croat city and surrounding areas from aggression by the Serb forces, especially once siege was laid to the city. On the other hand, in the view of the Serb forces, Croat interests had unlawfully seized control of parts of the territory of the SFRY, conduct that was resisted by the Serb residents, local Serb territorial forces and volunteers from Serbia, while the JNA described itself as seeking to restore due constitutional order by defeating the Croat terrorists who had unlawfully seized control. In this judgement the Chamber will generally refer to Croat forces and Serb forces when referring to the opposed parties, although at times references will be made to other descriptive terms used in the evidence including “defenders” or “terrorists” or “Croat combatants” for the Croat forces, and “attackers” and (indiscriminately as between types of Serb forces) the “JNA” for the Serb forces. As has been mentioned, at the time it became also prevalent among Serbs, at governmental and other levels, to refer to Croat forces as “Ustashas”, and among Croats at governmental and other levels to refer to Serb forces as “Chetniks,” thus replaying the World War II vocabulary.

39. A large number of JNA, Territorial Defence Units (“TO”) and paramilitary units, including Serb volunteers took part in the battle for Vukovar on the Serb side.<sup>78</sup> Initially, their number was limited. By the end of September 1991 the number of JNA troops had increased considerably. The evidence indicates there were then some 15,000 JNA soldiers in the larger Vukovar area.<sup>79</sup> The Serb forces were divided into two military Operational Groups, OG South and OG North. This trial

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<sup>72</sup> Binazija Kolesar, T 919; Mara Bučko, T 2712; Zvezdana Polovina, T 2572, 2576; P021, T 1346-1347; Vesna Bosanac, T 552; Exhibit 391, pp 36-38.

<sup>73</sup> Josip Čović, T 3483.

<sup>74</sup> Josip Čović, T 3491.

<sup>75</sup> Binazija Kolesar, T 917-918.

<sup>76</sup> Binazija Kolesar, T 919-920. *See also* P006, T 1108-1109.

<sup>77</sup> Mark Wheeler, T 9326; Irma Agotić, T 2019; Exhibit 391, pp 209-211.

<sup>78</sup> Exhibit 391, p 207.

<sup>79</sup> Irma Agotić, T 2130.

concerns OG South which came to be commanded by the Accused Mile Mrkšić.<sup>80</sup> His own immediate unit was the gmtbr, which arrived in the Vukovar area at the end of September 1991. It, alone, numbered some 4,000 troops, but the number of JNA troops under his command increased progressively to some 6,000 troops by early November.<sup>81</sup> TO and other forces also swelled the Serb forces under the command of OG South.<sup>82</sup> The number of troops involved in the hostilities on the JNA side within OG South zone of responsibility was put at between 4,000 and 6,000 by senior JNA Officers involved in the siege.<sup>83</sup>

40. On the Croatian side there were the locally based Territorial Defence and members of the Ministry of the Internal Affairs (“MUP”), the National Guard (“ZNG”) and a small number of a newly created Croatian defence force.<sup>84</sup> After the attack in late August, the local Croatian defence mobilised.<sup>85</sup> Some reinforcements and volunteers came from other parts of Croatia. Some 150 people, mostly policemen, arrived from Varaždin and they brought Kalashnikovs or other rifles with them and people came with their arms from Nuštar, Vinkovci and Županja.<sup>86</sup> Eventually, by the height of the siege, the number of Croat combatants may have reached 1,700-1,800.<sup>87</sup>

41. There were dramatic differences between the military capacities of the opposing forces. The JNA was an extensively equipped and trained military force and was in far superior numbers. The Serb TO, paramilitary and other volunteer elements were all equipped and armed. Available to the Serb forces in large numbers was a full range of military weaponry, including automatic infantry rifles, other automatic weapons including machine-guns, rockets (including hand-held and multi-launchers), heavy and light mortars, artillery and land mines. They had armoured vehicles including armoured personnel carriers (nearly all mounted with heavy machine-guns), tanks both old (T-33) and new (M-84).<sup>88</sup> They also had anti-aircraft batteries and an air force armed with a range of ground attack weapons including bombs up to 250 kg,<sup>89</sup> all of which were used in the attack on Vukovar. Naval forces on the Danube were also used.

42. By way of stark contrast, not only were the Croatian forces very significantly less numerically and mostly ill-equipped and untrained, but for the most part they had only light infantry

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<sup>80</sup> *See infra*, para 70.

<sup>81</sup> Radoje Trifunović, T 8038.

<sup>82</sup> Miodrag Panić, T 14428.

<sup>83</sup> Radoje Trifunović, T 8038.

<sup>84</sup> Exhibit 391, p 208. The ZNG was formed in March 1990 and was affiliated with the political party HDZ. (Exhibit 798, p 54)

<sup>85</sup> P011, T 5707-5708.

<sup>86</sup> Josip Čović, T 3576-3577, 3541. The Chamber notes that Exhibit 798, p 63 puts this number to between 3,000 and 3,500, but does not accept it as no source for this information was provided.

<sup>87</sup> Exhibit 391, p 207-208.

<sup>88</sup> Aernout van Lynden, T 3089-3090, 3109. *See also* Šarlota Foro, T 2400; Vesna Bosanac, T 570; P011, T 5712-5715.

weapons. Indeed many were only armed with personal hunting rifles.<sup>90</sup> Some shared weapons, although gradually the Croatian forces gathered weapons.<sup>91</sup> These were bought,<sup>92</sup> sometimes from neighbouring countries,<sup>93</sup> and weapons were seized from JNA barracks in Croatia.<sup>94</sup> While, during the siege, the Croatian forces had mostly infantry weapons, they did acquire some mortars and one or two anti-aircraft guns. They also used mines, most of which were made in improvised facilities.<sup>95</sup> They captured two JNA tanks during the fighting. They had also two or three cannons.<sup>96</sup>

43. By September 1991 there were two fronts in Eastern Slavonia, the northern and the southern fronts.<sup>97</sup> On the evidence of Ambassador Kypr of the European Community Monitoring Mission (“ECMM”), which the Chamber accepts, the system of attack employed by the JNA typically evolved along the following lines: “(a) tension, confusion and fear is built up by a military presence around a village (or bigger community) and provocative behaviour; (b) there is then artillery or mortar shelling for several days, mostly aimed at the Croatian parts of the village; in this stage churches are often hit and destroyed; (c) in nearly all cases JNA ultimata are issued to the people of a village demanding the collection and the delivery to the JNA of all weapons; village delegations are formed but their consultations with JNA military authorities do not lead, with the exception of Ilok, to peaceful arrangements; with or without waiting for the results of the ultimata a military attack is carried out; and (d) at the same time, or shortly after the attack, Serb paramilitaries enter the village; what then follows varied from murder, killing, burning and looting, to discrimination.”<sup>98</sup>

44. By the end of September 1991, the JNA barracks in the city of Vukovar had been “blocked” by Croatian forces for an extended period of time.<sup>99</sup> The JNA soldiers in the barracks were unable to leave, their water and electricity had been cut off and they had come under weapons fire.<sup>100</sup> On 30 September 1991 the gmtbr was deployed from Belgrade on a mission, *inter alia*, to de-block the barracks and relieve the JNA soldiers inside. A unit from Sremska Mitrovica had previously been unsuccessful in a similar attempt.<sup>101</sup> On 2 October 1991 the gmtbr were able to de-block the

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<sup>89</sup> Irma Agotić, T 2132; P011, T 5714.

<sup>90</sup> Šarlota Foro, T 2471; P011, T 5715-5716; Josip Čović, T 3541.

<sup>91</sup> Irma Agotić, T 2074.

<sup>92</sup> Josip Čović, T 3474-3475.

<sup>93</sup> Irma Agotić, T 2036-2037. *See also* Aernout van Lynden, T 3172.

<sup>94</sup> Irma Agotić, T 2074.

<sup>95</sup> Jan Allen Schou, T 6944; Šarlota Foro, T 2472; P011, T 5790-5793; Slavko Stijaković, T 12887-12888.

<sup>96</sup> P011, T 5715-5716; Aernout van Lynden, T 3090-3091.

<sup>97</sup> Aernout van Lynden, T 3081, 3146.

<sup>98</sup> Petr Kypr, T 6555; Exhibit 312.

<sup>99</sup> Miodrag Panić, T 14268.

<sup>100</sup> Miodrag Panić, T 14268; Božidar Forca, T 13259.

<sup>101</sup> Miodrag Panić, T 14268.

barracks,<sup>102</sup> but its more extensive offensive in Vukovar was halted by strong resistance from Croatian forces. Within a few hours, 67 JNA men were wounded and one was killed.<sup>103</sup> The JNA requested that Croatian forces put down their weapons and end the fighting but this request was denied and fighting continued.<sup>104</sup> The battle for Vukovar between the JNA and other Serb forces on the one hand, and Croat forces on the other, then continued until the Croat forces capitulated on 18 November 1991.

45. From October, the city of Vukovar was without electrical supply. In the Vukovar city hospital, which will be the subject of much discussion later in this Judgement, nurses were forced to treat patients by candle light or in complete darkness. The destruction of the installations supplying electricity occurred both outside and inside the hospital,<sup>105</sup> due to JNA shelling.<sup>106</sup> In the area to the south and west of the hospital, there was constant shooting and shelling.<sup>107</sup> In one incident in late October the Eltz Castle in Vukovar was shelled, causing the death of 12 persons.<sup>108</sup> Damage was caused to the water supply system and civilian buildings. This will be discussed later in this Judgement.

46. In October, the JNA moved on to Ilok, a small town southeast of Vukovar on the Danube, normally with only a 7% Serb population.<sup>109</sup> On 8 October 1991, the ECMM described the situation in and around Ilok in a report, which the Chambers accepts as reliable.<sup>110</sup> The villages around Ilok include Šarengrad, Bapska, Mohovo, Tovarnik and Ilica. The report states that “all villages have been attacked by the JNA, except Ilok, and most of the population is now concentrated in Ilok.”<sup>111</sup> The population of Ilok increased from 6,300 to 15,000 due to an influx of people from the surrounding villages.<sup>112</sup> 65.5% of that population was Croatian.<sup>113</sup> On 17 October 1991 around 8,000 of these people, mainly Croats, were forced by the circumstances to leave Ilok.<sup>114</sup>

47. On 6 October 1991, the electricity supply from Bačka Palanka was cut off with the effect that there was no water in Šarengrad and Bapska as it was reliant on an electric pump.<sup>115</sup> In

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<sup>102</sup> Miodrag Panić, T 14268.

<sup>103</sup> Miodrag Panić, T 14268; Exhibit 798, p 73.

<sup>104</sup> Miodrag Panić, T 14269.

<sup>105</sup> Vesna Bosanac, T 577.

<sup>106</sup> P021, T 1500.

<sup>107</sup> Emil Čakalić, T 5889-5890; Ljubica Došen, T 3753-3755.

<sup>108</sup> Exhibit 129; Irinej Bučko, T 2892; Šarlota Foro, T 2398-2399.

<sup>109</sup> Exhibit 391, p 209.

<sup>110</sup> Exhibit 305.

<sup>111</sup> Exhibit 305, p 2.

<sup>112</sup> Exhibit 304.

<sup>113</sup> Exhibit 305.

<sup>114</sup> Exhibit 308, p 1; Exhibit 383.

<sup>115</sup> Exhibit 383.

Tovarnik, there were no houses that had not been “touched by gunfire of one sort or another” and “some were completely destroyed”.<sup>116</sup> Ilica’s Catholic and Orthodox churches were destroyed and every house was pockmarked from bullets or attacks by heavier weaponry.<sup>117</sup> The only civilians left in the village of Ilica were Serbian.<sup>118</sup> Serb “volunteers” in Lovas had attacked specific homes on 10 October 1991 killing 22 Croats and one Serb.<sup>119</sup> On 16 October 1991, ECMM monitors learnt of ideas to relocate some 300 to 500 Croatian persons from the village of Lovas. The local defence “chief” described the population of the town as 1,800 Croatian and 136 Serbs.<sup>120</sup>

48. On 18 October 1991 the ECMM received a plea from General Tus of the Croatian forces regarding the heavy artillery attacks that were launched on the Vukovar hospital wounding 83 persons. The ECMM was asked to intercede in order to get these attacks stopped.<sup>121</sup> On visiting the hospital on 19 October 1991, one witness saw that all staff and patients were in the basement.<sup>122</sup>

49. In early November 1991 journalists from Croatian Radio Vukovar called upon the political leadership and the government in Zagreb to take responsibility for Vukovar’s situation.<sup>123</sup> At approximately the same time the reports sent by Croatian Radio Vukovar to Zagreb about the situation in the town and at the Vukovar hospital were no longer broadcast by the Zagreb media or were not fully broadcast.<sup>124</sup> Siniša Glavašević, a journalist from Croatian Radio Vukovar, unsuccessfully attempted to find out the reasons for this censorship.<sup>125</sup> As a result Croatian Radio Vukovar discontinued sending reports to Zagreb.<sup>126</sup>

50. On 12 and 13 November 1991, there was street-to-street fighting close to the centre of Vukovar. There was still shelling, mortar fire, heavy machine-gun fire, and explosions, but heavy artillery was no longer being used by the JNA because of the closeness of the opposing forces.<sup>127</sup> Most communication broke down on 12 November 1991, when telephone lines were cut.<sup>128</sup>

51. On several occasions in late October and early November 1991, Vojislav Šešelj visited Vukovar and especially its Petrova Gora area.<sup>129</sup> It is said that this was to assess the situation of his

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<sup>116</sup> Aernaut van Lynden, T 3087.

<sup>117</sup> Aernaut van Lynden, T 3086-3087.

<sup>118</sup> Aernaut van Lynden, T3086.

<sup>119</sup> Petr Kypr, T 6546-6549.

<sup>120</sup> Petr Kypr, T 6546-6549.

<sup>121</sup> Irma Agotić, T 1965.

<sup>122</sup> Jan Allan Schou, T 6847.

<sup>123</sup> Zvezdana Polovina, T 2605.

<sup>124</sup> Zvezdana Polovina, T 2605.

<sup>125</sup> Zvezdana Polovina, T 2664-2665.

<sup>126</sup> Zvezdana Polovina, T 2576.

<sup>127</sup> Aernout van Lynden, T 3107-3109.

<sup>128</sup> Šarlota Foro, T 2404.

<sup>129</sup> Radoje Trifunović, T 8193-8194, 8287-8288; P002, T 10381-10383; P018, T 7397; P022, T 4986-4991; P024, T 4195; 2D4, T 13020; Ljubiša Vukasinović T 15170-15171; Josip Čović, T 3427, 3503.

volunteers and to improve their morale.<sup>130</sup> Šešelj was the president of the Serbian Radical Party and of the Serbian Chetnik movement. Volunteers considered him a spiritual leader and an idol.<sup>131</sup> Evidence indicates that during his visits Šešelj also moved about in a tank calling out to “Ustashas” to surrender,<sup>132</sup> and that he spent the nights in the house of Miroljub Vujović, the commander of Petrova Gora TO detachment and later of Vukovar TO.<sup>133</sup> Three witnesses gave evidence that on one of these occasions Šešelj held a meeting at Nova Street 81, which, it was said, was attended, among others, by two of the Accused in this case, Miroslav Radić and Veselin Šljivančanin, and also by Stanko Vujanović, a TO commander in the area of Petrova Gora.<sup>134</sup> Some of this evidence further suggests that during a speech at this meeting Šešelj had said that “not a single Ustasha must leave Vukovar alive.”<sup>135</sup> The Prosecution places great emphasis on this. As will be discussed in more detail later in this Judgement,<sup>136</sup> the Chamber is not persuaded of the honesty or reliability of the witnesses who testified about this. Their evidence in this respect is not confirmed by other evidence and, in addition, there is contradicting evidence regarding Miroslav Radić’s and Veselin Šljivančanin’s presence at this meeting.<sup>137</sup> The Chamber records at this stage that it accepts that Vojislav Šešelj visited Vukovar on several occasions in late October and early November 1991, but is unable to conclude on the evidence it has heard that Miroslav Radić and Veselin Šljivančanin attended a meeting at which Šešelj made such a statement.

52. From 2 October till 18 November 1991 the JNA was constantly engaged in attack operations in and around the city of Vukovar. Combat operations were conducted more or less on a daily basis. These often involved attacks by JNA aircraft, artillery, tanks and rockets.<sup>138</sup> While cease-fire agreements were reached from time to time, they were violated by both sides.<sup>139</sup> Under the might of the attack the destruction of the city progressed<sup>140</sup> and, slowly but certainly, the siege of the city by the JNA was tightened until the Croat forces finally capitulated.

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<sup>130</sup> Radoje Trifunović, T 8193-8194.

<sup>131</sup> P024, T 4195.

<sup>132</sup> Josip Čović, T 3427, 3503.

<sup>133</sup> Josip Čović, T 3504-3505, 3545-3546. For Miroljub Vujović’s position *see infra*, para 95.

<sup>134</sup> P002, T 10381-10383; P018, T 7397; P022, T 4986.

<sup>135</sup> P002, T 10389, 10391; P022, T 4986.

<sup>136</sup> *See infra*, paras 362-364, 356, 343-354.

<sup>137</sup> 2D4 gave evidence that Šešelj just passed by the house and that Miroslav Radić was not present at that time, T 13020. Miroslav Radić also testified that he was not present at this meeting, T 12774-12780. Veselin Šljivančanin denied having attended any meeting with Šešelj at Vujanović’s house. (T 13945-13948) P002 stated that he did not see Šljivančanin during the meeting, but only heard him speak. (T 10618) Yet, unlike addresses of other speakers, Šljivančanin’s address is not summarised in the diary of P002. (P002, T 10620; Exhibit 884)

<sup>138</sup> Exhibit 401, pp 2-16, 19-22, 24-28, 30, 32-38. Exhibit 405; Exhibit 408; Exhibit 427; Exhibit 430; Exhibit 431; Exhibit 730; Exhibit 731; Exhibit 733; Exhibit 749; Exhibit 750; Exhibit 751; Exhibit 811. *See also* Mara Bučko, T 2713; Vesna Bosanac, T 551.

<sup>139</sup> *See* Exhibit 88; Exhibit 401, p 16; Exhibit 798, p 59. *See also* Exhibit 868, p 37.

<sup>140</sup> Mara Bučko, T 2713.

53. In September 1991, the Croatian defence line was running from the Danube River between Mitnica and Vučedol and continued northwest through Adica and around Borovo Naselje and Lipovača.<sup>141</sup> By early October 1991, Bogdanovci fell to the Serb forces,<sup>142</sup> and later that month the Croatian defence line pulled back towards the city centre so that in the Sajmište area the front line ran north of the JNA barracks and the Petrova Gora neighbourhood.<sup>143</sup> As of 1 November 1991 the Croatian defence were forced to withdraw from Sajmište and Duga Street to Otokara Keršovanija.<sup>144</sup> On 10 November 1991, the 3<sup>rd</sup> company of the 1<sup>st</sup> motorised battalion of the Guards Motorised Brigade of the JNA (“3coy 1/gmtbr”) took Milovo Brdo,<sup>145</sup> forcing the Croatian defence in this area to withdraw to positions close to the Vukovar hospital.<sup>146</sup>

54. On 18 November 1991 the Croatian forces finally capitulated. The defence line was abandoned.<sup>147</sup> During the preceding night there was still JNA shelling,<sup>148</sup> although not in the area of the hospital,<sup>149</sup> and early in the morning of 18 November 1991 there was a major action involving JNA tanks.<sup>150</sup> By the afternoon Serb forces had reached the water tower in the Mitnica area and placed that territory under their control.<sup>151</sup> Mitnica had been a stronghold of the Croatian forces until they surrendered there on 18 November 1991.<sup>152</sup>

55. The fighting in the Vukovar area from late August 1991 until 18 November 1991 had devastating consequences for the city and its surroundings. Many towns around Vukovar were destroyed. Luzac, Opatovac, Stompajvci, Tolonik, Trpinja, Bršadin, Petrovci, Negoslavci and Borovo Naselje were destroyed.<sup>153</sup> In others houses had been heavily shelled.<sup>154</sup> As one witness described, the difference between Serb and Croat villages was obvious. In the former, the houses were generally untouched whereas in the latter, everything was torched and devastated.<sup>155</sup>

56. A similar fate befell the city of Vukovar itself, which had been under virtually continuous attack since 25 August 1991.<sup>156</sup> By mid-October it had been completely surrounded with

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<sup>141</sup> P007, T 3997-3998; Exhibit 185. *See also* P006, T 1131-1132.

<sup>142</sup> P006, T 1153.

<sup>143</sup> P007, T 3998; Exhibit 185; Exhibit 186; Exhibit 240; Exhibit 241. *See also* P011, T 5710.

<sup>144</sup> Josip Čović, T 3505.

<sup>145</sup> Miroslav Radić, T 12639-12641; Exhibit 785.

<sup>146</sup> Vilim Karlović, T 6429.

<sup>147</sup> Josip Čović, T 3508.

<sup>148</sup> Ljubica Došen, T 3759.

<sup>149</sup> Binazija Kolesar, T 930, 1040.

<sup>150</sup> Stevan Bisić, T 11414-11415; Emil Čakalić, T 5890.

<sup>151</sup> Miodrag Panić, T 14378.

<sup>152</sup> *See supra*, paras 145-146.

<sup>153</sup> Binazija Kolesar, T 914-916.

<sup>154</sup> P006, T 1108-1109.

<sup>155</sup> P002, T 10369-10370.

<sup>156</sup> Exhibit 391, p 205.

widespread damage to buildings.<sup>157</sup> In Mitnica, the roofs of family houses had been blown off<sup>158</sup> and by November 1991 there was practically no house left standing above the cellar.<sup>159</sup> After the fall of the city the scenes were of utter and total destruction.<sup>160</sup> Ambassador Herbert Okun who visited Vukovar on 19 November 1991 observed that the city was “completely shattered” and compared it to Stalingrad.<sup>161</sup> Video footage taken from the top of the water tower after the fall of the city vividly depicts this. The footage depicts a landscape of burnt out cars and buildings reduced to rubble.<sup>162</sup> This is consistent with all film footage in evidence.<sup>163</sup> Ambassador Kypr, on arrival in Vukovar on 20 November 1991, noted that every house had suffered damage.<sup>164</sup> The predominantly residential area, south of the Vuka River, was flattened.<sup>165</sup> Roads were so damaged it was difficult to walk or drive.<sup>166</sup>

57. Due to the constant shelling of private houses and property, most of the remaining families in Vukovar had been forced to live in basements and cellars.<sup>167</sup> The ICRC referred to them as “mushroom people”.<sup>168</sup> Most did not emerge from their basements until the end of the siege, at which point many went to the hospital, believing it would guarantee their safety.<sup>169</sup>

58. The hospital in Vukovar, a multi-storey building, suffered extensive damage. Virtually all windows were shattered and the roof was nearly destroyed.<sup>170</sup> There were huge holes in the building, caused by projectiles.<sup>171</sup> As summarised in the assessment of Mr van Lynden, a journalist from Sky News, the hospital had suffered damage due to direct hits from a variety of weapons of heavy calibre.<sup>172</sup> The evidence identifies shells from both artillery and tanks, aircraft bombs, mortar shells and rockets from multi-barrelled launchers.<sup>173</sup> During the fighting the upper levels of the hospital were vacated because of shelling, bombing and other destruction from the attacks of the Serb forces.<sup>174</sup> As a consequence the patients, staff and the improvised medical treatment facilities were below ground in the desperately crowded basement areas.<sup>175</sup> Water, electricity and other

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<sup>157</sup> Irma Agotic, T 2022.

<sup>158</sup> Šarlota Foro, T 2397.

<sup>159</sup> Šarlota Foro, T 2398.

<sup>160</sup> Exhibit 391, p 207.

<sup>161</sup> Herbert Stuart Okun, T 1864.

<sup>162</sup> Aernaut van Lynden, T 3103, 3120; Exhibit 136.

<sup>163</sup> See for example Exhibit 269.

<sup>164</sup> Exhibit 320; Šarlota Foro, T 2403.

<sup>165</sup> Dragutin Berghofer, T 5318-5320.

<sup>166</sup> Šarlota Foro, T 2403.

<sup>167</sup> P021, T 1353; Binazija Kolesar, T 919; Šarlota Foro, T 2399.

<sup>168</sup> Herbert Stuart Okun, T 1872-1873.

<sup>169</sup> Binazija Kolesar, T 931.

<sup>170</sup> Petr Kypr, T 6638; P011, T 5712-5715.

<sup>171</sup> Šarlota Foro, T 2402.

<sup>172</sup> Aernaut van Lynden, T 3121.

<sup>173</sup> Dr Juraj Njavro, T 1516.

<sup>174</sup> Dr Juraj Njavro, T 1514-1515.

<sup>175</sup> Binazija Kolesar, T 909-910, 918; Juraj Njavro, T 1514-1515.

services had failed.<sup>176</sup> Even essential medical supplies had been cut-off by the Serb siege.<sup>177</sup> Footage, taken by a film crew, after the fall of Vukovar, confirms the grave extent of the damage to the hospital.<sup>178</sup>

59. Despite evidence to the contrary<sup>179</sup> the Chamber accepts that the Vukovar hospital suffered attacks on virtually a daily basis.<sup>180</sup> The physical condition of the hospital buildings by 18 November 1991 provides eloquent evidence confirming the oral testimony of the attacks.

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<sup>176</sup> Binazija Kolesar, T 924; Dr Juraj Njavro, T 1609-1610, 1646; Aernaut van Lynden, T 3122; Exhibit 137, p 1.

<sup>177</sup> Dr Juraj Njavro, T 1650; Aernaut van Lynden, T 3122; Exhibit 137, p 1.

<sup>178</sup> Exhibit 136.

<sup>179</sup> Miodrag Panić testified that the artillery of OG South never fired on the hospital and the sector around the hospital, T 14281. Exhibit 868, p 48 states that until the order of 1 MD of 18 November 1991 to take over the hospital, the hospital has not been treated as a target, but no basis is provided for this conclusion.

<sup>180</sup> Vesna Bosanac, T 546; Binazija Kolesar, T 927; Juraj Njavro, T 1516. *See* also Exhibit 8; Exhibit 9; Exhibit 14; Exhibit 21; Exhibit 26; Exhibit 29; Exhibit 31.

## IV. COMMAND STRUCTURE OF SERB FORCES INVOLVED IN VUKOVAR OPERATIONS

60. It is alleged in the Indictment that at the material time the Accused Mile Mrkšić was both the commander of the Guards Motorised Brigade (“gmtbr”) of the JNA and Operational Group South (“OG South”) which included the gmtbr and other JNA and Serb forces, that the Accused Miroslav Radić commanded an infantry company in the 1<sup>st</sup> battalion in the gmtbr (“1/gmtbr”), and that the Accused Veselin Šljivančanin was the security officer of both the gmtbr and of OG South and, as such, *de facto* had charge of the military police of the gmtbr. As will be discussed later in this decision, various Serb forces from a number of units participated in the events forming the basis of the charges in this Indictment. It is necessary, therefore, to establish the military structure or hierarchy of these forces and units and the *de jure* powers of control, if any, which each of the Accused exercised in respect of these forces and units at the time material to the Indictment.

### A. Guards Motorised Brigade (“gmtbr”)

61. The gmtbr existed long before the events charged in the Indictment.<sup>181</sup> It was a, if not the, premier unit of the JNA. Its personnel were carefully selected, highly trained and well equipped.<sup>182</sup> Its main responsibility was to provide security to the political and military leadership of the former Yugoslavia.<sup>183</sup> The gmtbr comprised eight battalions: two motorised battalions, two military police battalions one of which included an anti-terrorist company, an armoured battalion, a light artillery battalion of anti-aircraft defence, a rear battalion, and a battalion responsible for securing significant buildings and facilities.<sup>184</sup> It was subordinated directly to the Chief of Staff of the Federal Secretary for National Defence in Belgrade, at the material time, General Blagoje Adžić.<sup>185</sup> Before the Vukovar operations, its numerical strength was approximately 4,000.<sup>186</sup>

62. The first Accused, Colonel Mile Mrkšić, had been appointed commander of the gmtbr on 9 July 1990 and remained in this position until 30 June 1992.<sup>187</sup> The brigade’s Chief of Staff and the deputy of Mile Mrkšić from 1989 until mid 1992 was Lieutenant-Colonel (LtCol) Miodrag Panić.<sup>188</sup> The third Accused, Major Veselin Šljivančanin was the chief of the security organ of the gmtbr and,

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<sup>181</sup> See Radoje Trifunović, T 8032. See also Exhibit 578, p 73.

<sup>182</sup> Exhibit 798, p11; Exhibit 868, p29.

<sup>183</sup> Radoje Trifunović, T 8026, 8032-8033; Miodrag Panić, T 14263; Exhibit 594, fact 14.

<sup>184</sup> Radoje Trifunović, T 8026-8028; See also Miodrag Panić, T 14263-14265. There was also a special purposes squad attached to the security organ, which did not participate in the Vukovar operations. (Miodrag Panić, T 14266; Veselin Šljivančanin, T 13431-13432)

<sup>185</sup> Radoje Trifunović, T 8032; Exhibit 798, p 70; Exhibit 578, p 75; Exhibit 594, fact 14.

<sup>186</sup> Radoje Trifunović, T 8031-8032.

<sup>187</sup> Exhibit 594, fact 20.

<sup>188</sup> Exhibit 594, fact 22.

in the Chamber's finding as discussed elsewhere, thereby also of OG South throughout the time relevant to the Indictment.<sup>189</sup> His deputy was Major Ljubiša Vukašinić.<sup>190</sup> Captain Borče Karanfilov, Captain Mladen Karan and Captain Srečko Borisavljević were officers of the security organ and were among those subordinated to Veselin Šljivančanin.<sup>191</sup> On 29 September 1991 Colonel Nebojša Pavković from the Federal Secretariat for National Defence was ordered by the Federal Secretary to "engage" in the command of the gmtbr during combat activities in the Vukovar sector<sup>192</sup> and effectively served in Negoslavci under Mile Mrkšić as liaison officer to the Federal Secretariat and the intermediary command of the 1<sup>st</sup> Military District ("1 MD").

63. On 29 September 1991, pursuant to an order issued by the Chief of Staff of the Federal Secretary for National Defence, General Adžić, the gmtbr was committed to the fighting in the Vukovar area.<sup>193</sup> To this end it was re-subordinated to the command of the 1 MD<sup>194</sup> and remained subordinated to 1 MD until it left the Vukovar area.<sup>195</sup> On 30 September 1991 the gmtbr arrived in the area of Vukovar.<sup>196</sup> Upon its arrival and after being briefly subordinated to the command of 12<sup>th</sup> Corps,<sup>197</sup> the gmtbr entered the structure of OG South.<sup>198</sup>

64. The gmtbr arrived in the Vukovar area almost in its full composition: only its battalion tasked with securing buildings and facilities stayed behind.<sup>199</sup> At the time of the gmtbr's arrival in the Vukovar area and throughout the period of the Indictment, the commander of the 1<sup>st</sup> motorised battalion of the gmtbr ("1/gmtbr") was Major Borivoje Tešić.<sup>200</sup> His deputy was Captain Slavko Stijaković.<sup>201</sup> The 1/gmtbr had three companies. Captain Saša Bojkovski was the commander of the 1<sup>st</sup> company ("1coy 1/gmtbr") and Captain Zoran Zirojević was the commander of the 2<sup>nd</sup> company ("2coy 1/gmtbr").<sup>202</sup> The Accused Captain Miroslav Radić commanded the 3<sup>rd</sup> company

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<sup>189</sup> Radoje Trifunović, T 8177; Veselin Šljivančanin, T 13421-13423.

<sup>190</sup> Radoje Trifunović, T 8177; Veselin Šljivančanin, T 13457-13458; Ljubiša Vukašinić, T 14978-14980, 14982.

<sup>191</sup> Radoje Trifunović, T 8177, 8182; Veselin Šljivančanin, T 13457-13458; Borče Karanfilov, T 15408. With respect to Borče Karanfilov, *see also* Dragi Vukosavljević, T 8652-8653; P001, T 10080.

<sup>192</sup> Exhibit 404.

<sup>193</sup> Radoje Trifunović, T 7986, 8034-8035; also referred to as Chief of General Staff, Irma Agotić, T 1959-1960. *See also* Exhibit 89.

<sup>194</sup> Exhibit 403; Radoje Trifunović, T 8062-8063, 8034.

<sup>195</sup> Exhibit 594, fact 15.

<sup>196</sup> Exhibit 594, fact 29.

<sup>197</sup> Exhibit 428. On 30 September 1991 OG South was under the command of 12<sup>th</sup> Corps, which still coordinated the entire operation of Vukovar, including what became later known as operational zones north and south. (Radoje Trifunović, T 8221-8222) Miodrag Panić, T 14341.

<sup>198</sup> Exhibit 594, fact 29.

<sup>199</sup> Exhibit 403; Radoje Trifunović, T 8031-8032. *See also* Exhibit 798, p 12.

<sup>200</sup> Radoje Trifunović, T 8067-8070; 8286; Exhibit 798, p 12. Major Tešić was also the commander of the 1<sup>st</sup> Assault Detachment, *see infra*, para 95.

<sup>201</sup> Slavko Stijaković, T 12825-12827.

<sup>202</sup> P018, T 7382-7383; P022, T 4951, 5044; Slavko Stijaković, T 12833. *See also* Davor Vučković, T 13184; Zoran Zirojević, T 13099.

(“3coy 1/gmtbr”).<sup>203</sup> The 3coy 1/gmtbr consisted of three platoons led by Lieutenant Dordje Vostić, Lieutenant Elvir Hadžić (also Miroslav Radić’s deputy<sup>204</sup>) and Sergeant Dejan Jovanović, respectively.<sup>205</sup>

65. The gmtbr’s two military police battalions were deployed to the Vukovar area on 28 or 29 September 1991.<sup>206</sup> At the time, the commander of the 1<sup>st</sup> military police battalion of the gmtbr (“1 MP/gmtbr”) was Major Branislav Kavalić, who, on 1 November 1991, was replaced by Captain Jovan Šušić.<sup>207</sup> Captain 1<sup>st</sup> Class Radoje Paunović was the commander of the 2<sup>nd</sup> military police battalion of the gmtbr (“2 MP/gmtbr”).<sup>208</sup> His deputy was Captain 1<sup>st</sup> Class Milivoj Simić who also served as a company commander in that battalion.<sup>209</sup> The 1 MP/gmtbr comprised also an anti-terrorist company commanded by Captain 1<sup>st</sup> Class Mladen Marić.<sup>210</sup> The anti-terrorist company was comprised of three platoons.<sup>211</sup>

66. LtCol Milovan Lešanović commanded the anti-aircraft defence of the gmtbr at the time relevant to the Indictment.<sup>212</sup>

67. Battalion commanders were directly subordinated to the gmtbr’s commander.<sup>213</sup>

68. Vukovar having fallen on 18 November 1991, on 24 November 1991 the gmtbr left Vukovar and returned to Belgrade.<sup>214</sup>

## **B. Operational Group South (“OG South”)**

69. OG South was initially formed by the command of 1 MD<sup>215</sup> sometime in the summer or autumn of 1991. Surprisingly, the orders for its establishment and disestablishment have not been located so that the precise date of its establishment is not in evidence. OG South was a temporary formation, set up in order to carry out a specific task.<sup>216</sup> As LtCol Lešanović testified, OG South was established to unify all military units acting in a geographic zone around and to the south of

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<sup>203</sup> P018, T 7382-7383; Davor Vučković, T 13184; Miroslav Radić, T 12595-12596; Slavko Stijaković, T 12833; Exhibit 798, p 84.

<sup>204</sup> Miroslav Radić, T 12612-12613.

<sup>205</sup> P022, T 4949; 4952.

<sup>206</sup> Radoje Trifunović, T 8031; P001, T 10079.

<sup>207</sup> Jovan Šušić, T 14879; Miodrag Panić, 14272; P001, T 10135.

<sup>208</sup> Radoje Paunović, T 14101; Radoje Trifunović, T 8136; Miodrag Panić, T 14272.

<sup>209</sup> Milivoj Simić, T 14563-14564.

<sup>210</sup> Mladen Marić, T 15216-15218; P001, T 10110.

<sup>211</sup> Mladen Marić, T 15218-15219.

<sup>212</sup> P014, T 7673-7674; Milovan Lešanović, T 12136.

<sup>213</sup> Miodrag Panić, T 14267. *See also* Jovan Šušić, T 14881.

<sup>214</sup> Radoje Trifunović, T 8208; Boriša Glušćević, T 12506; Exhibit 798, p 110.

<sup>215</sup> Radoje Trifunović, T 8330.

<sup>216</sup> Radoje Trifunović, T 8021, 8330. Milovan Lešanović, T 12140. *See also* Exhibit 798, pp16-17.

Vukovar under a single command.<sup>217</sup> Another formation, OG North, was established to perform a similar role in respect of an adjoining geographic zone generally to the north of the zone for which OG South was responsible. The southern perimeters of OG North's zone of responsibility extended into the northern reaches of the city of Vukovar itself.<sup>218</sup> OG South was not strictly a Corps although at the operational level it was similar to a Corps, as it enjoyed support from other units.<sup>219</sup> While it is Colonel Radoje Trifunović's evidence that OG South was at the level of an operative-tactical group as defined by paragraph 27 of the Provisional Rules for Land Forces Corps,<sup>220</sup> the Chamber prefers the view and finds that OG South was established as an expedient to deal with a situation which had not been anticipated by the applicable formal rules, *i.e.* the internal break-up of the SFRY, and that OG South did not strictly comply in structure to any formal formation. As of 1 October 1991 units subordinate to OG South included the gmtbr, the TO unit Petrova Gora and the armoured battalion of the 544<sup>th</sup> Motorised Brigade of the JNA,<sup>221</sup> but this was extended considerably in the following weeks. At the time of the gmtbr's arrival in the Vukovar area OG South was under the command of Colonel Bajo Bojat.<sup>222</sup>

70. Although a written order to this effect is not in evidence, and even though there was some dispute of even this fact in the early stages of the trial, it is now an agreed fact that on 8 October 1991 Mile Mrkšić was also appointed commander of OG South.<sup>223</sup> As of that date, in the Chamber's finding, the command structure and staff of the gmtbr also became the command of OG South.<sup>224</sup> Had the normal structural rules been applied, OG South would have been established with its own command staff, quite separate from the command of its component units including that of the gmtbr. In this regard, also, the "rule book" was ignored and the command staff of the gmtbr became the staff of OG South. By this means all other units serving in the zone of responsibility of OG South came under *de jure* and the full effective command of Mile Mrkšić and the gmtbr command.

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<sup>217</sup> Milovan Lešanović, T 12140. *See also* Exhibit 798, p 67.

<sup>218</sup> Petar Stojić, T 15347; Milorad Vojnović, T 8829; Dušan Jakšić, T 11908-11909.

<sup>219</sup> Radoje Trifunović, T 8021. *See also* Milovan Lešanović, T 12141. It is Radoje Trifunović's evidence that a corps is an operations unit comprising a number of infantry and armoured mechanised brigades as well as artillery units, anti-aircraft defence units, and navy, T 8020.

<sup>220</sup> Radoje Trifunović, T 8022-8023; Exhibit 398. *See also* Exhibit 588, pp 97-98.

<sup>221</sup> Radoje Trifunović, T 8067-8068; Exhibit 405.

<sup>222</sup> Radoje Trifunović, T 8033; Milovan Lešanović, T 12138; Exhibit 798, p 71.

<sup>223</sup> Exhibit 594, fact 20.

<sup>224</sup> Radoje Trifunović, T 8033-8034, 8057-8059; Milovan Lešanović, T 12139-12140; Milorad Panić, T 14271. The transfer of the command of the gmtbr to the command of OG South was probably effected by an order from the command of 1 MD. (Miodrag Panić, T 14271)

71. Pursuant to orders of the Federal Secretary for National Defence, the command of OG South was subordinated to, and reported one level up to, the command of 1 MD.<sup>225</sup> 1 MD covered a vast area which included the territory of the 1<sup>st</sup> Belgrade District, the 3<sup>rd</sup> Skopje District, the 5<sup>th</sup> Zagreb District, and the area of Eastern Slavonia.<sup>226</sup> Geographically, it covered the area of Eastern Slavonia, Bosnia-Herzegovina and Central and Northern Serbia.<sup>227</sup> As of 12 October 1991, 1 MD included the 12<sup>th</sup> Corps, the 1<sup>st</sup> Proletarian Guards Division, and OG South.<sup>228</sup> The commander of 1 MD was General Života Panić<sup>229</sup> who, in turn, reported directly the one further level up to the Chief of Staff of the Federal Secretary for National Defence (also referred to as the Chief of the General Staff), General Adžić.<sup>230</sup> In 1991 the Federal Secretary for National Defence, *i.e.* Minister of Defence, was General Veljko Kadijević.<sup>231</sup> General Aleksandar Vasiljević was the Chief of the Security Administration at the Federal Secretariat and General Simeon Tumanov was his deputy.<sup>232</sup>

72. OG South's area of responsibility (or zone of operations) covered an area approximately 14 kilometres long and 8 kilometres wide, which included the city of Vukovar up to the Vuka River (the boundary being the mouth of the Vuka River into the Danube), Jakubovac, Ovčara, Negoslavci, and Berak to the south; and Nustar, Petrovći, and Mirkovći, to the west.<sup>233</sup> The Vukovar hospital was located just to the north of the Vuka River and originally fell within the zone of responsibility of OG North.<sup>234</sup> However, on 18 November 1991, OG South was ordered by the command of 1 MD to take the Vukovar hospital.<sup>235</sup> Within the zone of responsibility of OG South, areas were further divided between the units attached to OG South, so that, generally, each unit carried out tasks within certain geographic borders.<sup>236</sup> The command post of OG South was located in Negoslavci, a village situated south of Vukovar, and was housed in a vacated, private house.<sup>237</sup> There was also a rear command post located in the village of Berak.<sup>238</sup>

73. After the gmtbr command was appointed command of OG South, on 8 October 1991 a number of units were re-subordinated to OG South. Pursuant to an order of 1 MD of 8 October

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<sup>225</sup> Exhibit 404; Radoje Trifunović, T 8034, 8059. *See* also orders from the command of 1 MD addressed, *inter alia*, to the command of OG South (Exhibit 407, Exhibit 409) and reports from the command of OG South to the command of 1 MD (Exhibit 414, Exhibit 427). Miodrag Panić, T 14274.

<sup>226</sup> Radoje Trifunović, T 8034-8035.

<sup>227</sup> Exhibit 578, p 91.

<sup>228</sup> Radoje Trifunović, T 8071.

<sup>229</sup> Exhibit 594, fact 23.

<sup>230</sup> Irma Agotić, T 1960; Exhibit 578, part II, p 3. *See* also Exhibit 89; Radoje Trifunović, T 8034-8035.

<sup>231</sup> Radoje Trifunović, T 7986, 8212.

<sup>232</sup> Bogdan Vujić, T 4593; Exhibit 594, fact 24.

<sup>233</sup> Radoje Trifunović, T 8037-8038; Exhibit 399. *See* also Miodrag Panić, T 14275.

<sup>234</sup> Exhibit 594, fact 31.

<sup>235</sup> Exhibit 415; Miodrag Panić, T 14276-14277, 14368; Exhibit 798, p 72. *See* also Radoje Paunović, T 14161. *See infra*, para 180.

<sup>236</sup> Miodrag Panić, T 14275.

<sup>237</sup> Radoje Trifunović, T 8047-8049.

<sup>238</sup> Radoje Trifunović, T 8223. *See* also Boriša Gluščević, T 12506.

1991, the Kragujevac TO unit was re-subordinated to OG South.<sup>239</sup> On 9 or 10 October 1991 the 3<sup>rd</sup> Armoured Battalion of the 211<sup>th</sup> Brigade was re-subordinated to OG South.<sup>240</sup> Pursuant to an order from the command of 1 MD of 13 October 1991 the Sabotage Detachment of the 93<sup>rd</sup> Protection Regiment and the 20<sup>th</sup> Partisan Brigade of the 46<sup>th</sup> Partisan Division were re-subordinated to OG South.<sup>241</sup> By mid October 1991 OG South also included artillery units of 1 MD, parts of the armoured mechanised brigade from Sremska Mitrovica, and TO units.<sup>242</sup> By that time the numerical strength of OG South had increased approximately by one third.<sup>243</sup>

### C. 80<sup>th</sup> Motorised Brigade (“80 mtbr”)

74. The 80 mtbr of the JNA, also referred to as the Kragujevac Brigade,<sup>244</sup> will also feature in this decision. It comprised one tank battalion, three infantry battalions, a rear and an engineer’s battalion.<sup>245</sup> It also had a military police company<sup>246</sup> and a light artillery anti-aircraft battalion (“LAD PVO”).<sup>247</sup> At least in one period the 80 mtbr sent reports to 1 MD and in that period it may have been directly subordinated to 1 MD.<sup>248</sup> There is also evidence indicating that in one period the 80 mtbr was also subordinated to the 24<sup>th</sup> Kragujevac Corps.<sup>249</sup> However, while stationed in the zone of responsibility of OG South, the 80 mtbr and its component units came under the command of Mile Mrkšić.<sup>250</sup> This was the position at the times material to the Indictment.

75. At the time material to the Indictment the commander of the 80 mtbr was LtCol Milorad Vojnović.<sup>251</sup> The brigade’s Chief of Staff and Vojnović’s deputy was LtCol Rade Danilović.<sup>252</sup> Captain Dragi Vukosavljević was the chief of the 80 mtbr’s security organ.<sup>253</sup> Captain Dragan Vezmarović was the commander of the military police company of the 80 mtbr.<sup>254</sup>

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<sup>239</sup> Exhibit 401, p 18; Radoje Trifunović, T 8075.

<sup>240</sup> Radoje Trifunović, T 8075.

<sup>241</sup> Exhibit 401, p 25; Radoje Trifunović, T 8075, 8353-8354. *See also* Exhibit 427, p 2.

<sup>242</sup> Radoje Trifunović, T 8035, 8038-8039.

<sup>243</sup> Radoje Trifunović, T 8038.

<sup>244</sup> Dragan Vezmarović, T 8512.

<sup>245</sup> Dragi Vukosavljević, T 8644-8645.

<sup>246</sup> Dragan Vezmarović, T 8385; Milorad Vojnović, T 8827-8828. The evidence about its size and structure, however, is inconsistent, ranging from a military police platoon of about 25 men and a traffic platoon (Milorad Vojnović, T 8827-8828), to two military police platoons and a traffic platoon (Dragi Vukosavljević, T 8647), to approximately 70 soldiers and several additional platoons of transport personnel (Dragan Vezmarović, T 8386).

<sup>247</sup> Dragi Vukosavljević, T 8646; P014, T 7666-7669.

<sup>248</sup> Milorad Vojnović, T 8875-8876, 8879. Exhibit 401, p 36 (reference to an order of 1 MD for re-subordination of 80 mtbr units). *See also* P014, T 7668.

<sup>249</sup> *See* Mladen Karan, T 15598. *See also* Milorad Vojnović, T 8879.

<sup>250</sup> *See infra*, para 77. *See also* Exhibit 395, rule 108.

<sup>251</sup> Exhibit 594, fact 25.

<sup>252</sup> Dragan Vezmarović, T 8520; Rade Danilović, T 12278.

<sup>253</sup> Dragi Vukosavljević, T 8641-8642.

<sup>254</sup> Dragan Vezmarović, T 8382-8283; Dragi Vukosavljević, T 8647.

76. As a small qualification of what has just been said, sometime in late October or early November 1991, the precise date is not known from the evidence, the 1<sup>st</sup> infantry battalion of the 80 mtbr (“1/80 mtbr”), but not the other elements of the 80 mtbr, was re-subordinated to OG North (Novi Sad Corps) and remained subordinated to OG North until 18 November 1991.<sup>255</sup>

77. It is the evidence accepted by the Chamber that, except for 1/80 mtbr, by an order of 7 November 1991 the 80 mtbr was resubordinated to OG South.<sup>256</sup> The actual order is not in evidence. Some units of the 80 mtbr arrived in the zone of operations of OG South on 8 and 9 November 1991. Except for 1/80 mtbr which was within the zone of OG North, the units of the 80 mtbr began deployment in the area of Vukovar on 8 November 1991.<sup>257</sup> The commander of the military police company of the 80 mtbr, Captain Dragan Vezmarović, arrived in Negoslavci on 9 November 1991 with approximately 25 to 30 men and reported to the commander of the 80 mtbr who was already there.<sup>258</sup> By an order issued on 15 November 1991, the commander of OG South Mile Mrkšić re-subordinated the Stara Pazova TO detachment to the 80 mtbr, authorised the command of the 80 mtbr to regulate all issues arising out of this, and assigned tasks to the 80 mtbr in the forthcoming operations.<sup>259</sup> In the following days OG South issued orders to the 80 mtbr assigning combat and other tasks and re-subordinating further units to it.<sup>260</sup> These orders demonstrate that OG South was then directly in command of 80 mtbr, except for 1/80 mtbr. This accords with the evidence of several witnesses.<sup>261</sup>

78. After the 80 mtbr’s re-subordination to OG South, new units were placed under its command by OG South.<sup>262</sup> From 15 to 20 November 1991, approximately 1000 soldiers were re-subordinated to the 80 mtbr.<sup>263</sup>

79. On 5 November 1991, pursuant to an order from the command of 1 MD, the 3<sup>rd</sup> battalion of the 80 mtbr (“3/80 mtbr”) and the LAD PVO were re-subordinated directly to the gmtbr.<sup>264</sup> The LAD PVO arrived in Negoslavci on 8 November 1991 and there came under the command of LtCol

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<sup>255</sup> Milorad Vojnović, T 8877; Dragi Vukosavljević, T 8644-8645; Rade Danilović, T 12282.

<sup>256</sup> Radoje Trifunović, T 8096.

<sup>257</sup> Milorad Vojnović, T 8829; Dragi Vukosavljević, T 8643-8644.

<sup>258</sup> Dragan Vezmarović, T 8388, 8474, 8515.

<sup>259</sup> See Exhibit 412.

<sup>260</sup> Exhibit 431, p 2, item 8; Exhibit 422; Exhibit 419; Exhibit 420; Exhibit 424; Exhibit 425.

<sup>261</sup> Radoje Trifunović, T 8096; Dragi Vukosavljević, T 8650, 8680; Milorad Vojnović, T 8823. See also Exhibit 370.

<sup>262</sup> Stara Pazova TO Detachment, (Exhibit 412; Radoje Trifunović, T 8096) the 195<sup>th</sup> Tactical Group (Exhibit 372; Milorad Vojnović, T 8926; Radoje Trifunović, T 8258; Rade Danilović, T 12300), the armoured battalion of the 544<sup>th</sup> Motorised Brigade. (Exhibit 420; Radoje Trifunović, T 8130)

<sup>263</sup> Radoje Trifunović, T 8259. Rade Danilović testified that when he arrived in Negoslavci on 15 or 16 November 1991 the strength of the 80 mtbr was approximately 4950 men whereas earlier the 80 mtbr comprised approximately 3600 men. (Rade Danilović, T 12290)

<sup>264</sup> Exhibit 401, p 36.

Lešanović, who was in charge of all the gmtbr's anti-aircraft defence.<sup>265</sup> On 18 November 1991 the LAD PVO's command post was transferred from Sajmište to Ovčara where it was located in a house approximately 300 m from the Ovčara hangar, the so-called yellow house.<sup>266</sup> The LAD PVO of the 80 mtbr remained subordinated directly to the gmtbr until 21 November 1991, when it was returned to the 80 mtbr.<sup>267</sup>

80. The Chamber notes, but does not accept, various pieces of contrary evidence that the LAD PVO remained subordinated to the 80 mtbr throughout the relevant period,<sup>268</sup> that it was not re-subordinated to the gmtbr or OG South, that it had its own command, and that with respect to disciplinary issues OG South had no responsibility for the LAD PVO.<sup>269</sup> However, in none of these alternative propositions is the LAD PVO entirely removed from the chain of command of OG South and thus from the command of Mile Mrkšić. Further, even if the proposition were to be accepted that the LAD PVO remained subordinated to the 80 mtbr throughout the material time (which is not the Chamber's finding), the LAD PVO would still have been under the command of OG South because, at the time the 80 mtbr itself was subordinated to OG South.<sup>270</sup>

81. The Chamber heard conflicting evidence as to whether on 20 November 1991 the hangar at Ovčara and its surroundings were within the local zone of responsibility of the 80 mtbr. Witnesses called by the Šljivančanin Defence testified, that after the withdrawal of the 20<sup>th</sup> Partisan Brigade from the area on 18 November 1991, the area of responsibility of the 80 mtbr included the hangar at Ovčara.<sup>271</sup> This evidence may have been intended to rebut the evidence of the witness LtCol Vojnović, who commanded the 80 mtbr at that time, and who testified that the hangar at Ovčara was in the zone of responsibility of OG South.<sup>272</sup> However, as the Chamber has already found, on 20 November 1991 Ovčara was within the zone of responsibility of OG South. The 80 mtbr was at the time subordinated to OG South. Given the evidence, in the Chamber's finding, whether or not the 80 mtbr had local responsibility over the hangar, the hangar and the surrounding area remained within the zone of responsibility of OG South on 20 and 21 November 1991.

82. On 22 November 1991 units of the 80 mtbr entered the city of Vukovar.<sup>273</sup> The command of the 80 mtbr was to take over responsibilities from OG South on 23 November 1991 as the gmtbr

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<sup>265</sup> P014, 7670, 7682-7683, 7685-7686. On 9 November 1991 the commander of OG South issued an order assigning tasks to LAD PVO (Exhibit 367). See also Milorad Vojnović, T 8830.

<sup>266</sup> P014, 7690-7692; Milorad Vojnović, T 8854, 8922, 8929, 9000.

<sup>267</sup> P014, T 7683-7684. See also Milorad Vojnović, T 8830.

<sup>268</sup> Rade Danilović, T 12284-12285; Milovan Lešanović, T 12147-12151.

<sup>269</sup> Miodrag Panić, T 14365-14366.

<sup>270</sup> See *supra*, para 77.

<sup>271</sup> Miodrag Panić, T 14288, 14272-14273; Radoje Paunović, T 14138-14140.

<sup>272</sup> Milorad Vojnović, T 9053, 9117.

<sup>273</sup> Dragi Vukosavljević, T 8709-8713.

was about to withdraw to Belgrade.<sup>274</sup> While no specific order terminating the existence of OG South is in evidence, the evidence establishes, in the Chamber's finding, despite some suggestions to the contrary, that the command of OG South under Mile Mrkšić functioned until the gmtbr left Vukovar on 24 November 1991 and did not function thereafter. Its temporary task at Vukovar had been accomplished. With the withdrawal of the gmtbr from the Vukovar area on 24 November 1991, 80 mtbr was left with responsibility for the city of Vukovar and Borovo Naselje.<sup>275</sup> This, of course, included the area of Ovčara and its hangar. The 80 mtbr left Eastern Slavonia on 14 January 1992.<sup>276</sup>

#### **D. Territorial defence ("TO") and volunteer or paramilitary units**

83. Pursuant to the Law on All Peoples' Defence, the Territorial Defence, TO, was one of the two constituent elements of the armed forces of the former Yugoslavia, the other being the JNA.<sup>277</sup> TO was organised on a territorial basis, at the level of local communities, municipalities, autonomous provinces and republics, the highest command level being the republican level.<sup>278</sup> The Law on All Peoples' Defence also allowed for the possibility in time of war, or in the event of an immediate threat of war or other emergencies, for the armed forces to be reinforced by volunteers. These were individuals who were not subject to military service and who had been accepted and had joined the armed forces at their own request.<sup>279</sup> In this way volunteers became either members of the JNA or TO. The volunteers had the same rights and duties as the other military personnel and conscripts.<sup>280</sup> While individuals could and did volunteer in this way, it was also common for volunteer units to be formed under the auspices of organisations such as political parties or trade unions and for these units, trained and equipped, to present for voluntary service, usually as TO. These often wore distinguishing emblems. Volunteers, especially volunteer units, were often referred to as paramilitaries, and the Chamber will do so at times in this Judgement (often to better reflect the evidence).

84. Both the JNA and TO were subordinated to the Supreme Defence Council. This reflected the governing principle of singleness or unity of command, according to which, at all relevant levels, command must be exercised by one single person.<sup>281</sup> While TO commanders were responsible within their territorial structures to their superiors for their work, combat readiness and

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<sup>274</sup> Exhibit 426; Radoje Trifunović, T 8204-8206.

<sup>275</sup> Milorad Vojnović, T 8858-8860.

<sup>276</sup> Exhibit 440; Milorad Vojnović, T 8824.

<sup>277</sup> Exhibit 392, Article 91(1); Radoje Trifunović, T 7980.

<sup>278</sup> Exhibit 392, Article 102; Radoje Trifunović, T 7981-7983; Dušan Jakšić, T 11855-11856. See also Exhibit 576, pp 92-93.

<sup>279</sup> Exhibit 392, Article 119; Radoje Trifunović, T 7983; Exhibit 798, p 13.

<sup>280</sup> Exhibit 392; Article 119; Radoje Trifunović, T 7983.

<sup>281</sup> Radoje Trifunović, T 7984-7985, 8320; Exhibit 392, Article 112.

use of units,<sup>282</sup> pursuant to the Law on All Peoples' Defence, in situations when JNA and TO forces were engaged in joint combat operations, these units were subordinated to the officer in charge of carrying out the operation.<sup>283</sup> This principle was reiterated at brigade level in rule 108 of the JNA Brigade Rules (for Infantry, Motorised, Mountain, Alpine, Marine, and Light Brigades) issued by the Federal Secretariat for National Defence in 1984, which stated that integration of command is achieved "through joint efforts by the brigade command and commands of the brigade's subordinate and other units and staff of the TO operating in coordination [with] the brigade [...]." Rule 108 continued by making it clear that this integration of command is achieved "on the basis of unity of command and subordination".<sup>284</sup> The principle of unity or singleness of command, therefore, required that in a zone of operations, in combat action, one commander was responsible for commanding all military units in that area, including TO and volunteer units, and that all subjects in the area, *i.e.* all units and their individual members, were subordinated to the one commander.<sup>285</sup> This is further reflected at the battalion level in the rules of Battalion Manual (for Infantry, Motorised, Mountain, Alpine, Partisan and Marine Battalions) of 1988.<sup>286</sup>

85. In the finding of the Chamber it is clear that, in practice, at least at the time relevant to the Indictment, the officers in command of all joint combat operations were JNA officers. An example of how the principle of singleness of command was implemented in practice is the general moral guidance circular of General Adžić, the Chief of the General Staff, of 12 October 1991, which in its last paragraph reiterated that at all levels all armed units, whether JNA, TO or volunteers, must act under the single command of the JNA.<sup>287</sup> Further, on 15 October 1991 the command of 1 MD issued an order to all units subordinated to it, including OG South, to establish "full control" within their respective zones of responsibility. Pursuant to this order, paramilitary units which refused to submit themselves under the command of the JNA were to be removed from the territory.<sup>288</sup>

86. The effect of this lawfully established structure was, in the Chamber's finding, that in respect of the joint combat operations for the liberation or capture of Vukovar, in the zone of responsibility of OG South, between 8 October 1991 and 24 November 1991 when Mile Mrkšić and his command withdrew from Vukovar, Mile Mrkšić as the commander of OG South, had the sole command of all JNA and all TO including volunteer or paramilitary units. Accordingly, he had *de*

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<sup>282</sup> Exhibit 392, Article 113.

<sup>283</sup> Exhibit 392, Article 116.

<sup>284</sup> Exhibit 395, rule 108.

<sup>285</sup> Radoje Trifunović, T 8004-8005, 8017.

<sup>286</sup> For example, rule 94 provides: "The *estimate of own forces* analyzes the status and combat capability of the battalion, reinforcement and support units; disposition, strength and tasks of Territorial Defence units and adjacent units [...]" (Exhibit 397, emphasis in the original). See also rule 89, Exhibit 397.

<sup>287</sup> Exhibit 89.

<sup>288</sup> Exhibit 407; Radoje Trifunović, T 8077-8078.

*jure* authority to issue orders to all JNA, TO and paramilitary units in the zone of responsibility of OG South in combat operations. Geographically this zone of responsibility included all locations relevant to the Indictment including, from 18 November 1991, the hospital in Vukovar. This is further illustrated by orders issued by Mile Mrkšić as commander of OG South to the assault detachments comprising JNA, TO and paramilitary units, which were active in the various parts in the zone of responsibility of OG South during this period.<sup>289</sup>

87. Some submissions and evidence for the Defences of the Accused sought to confine this command authority narrowly, in particular by limiting very strictly the notion of combat operations. The proposition was advanced that, so viewed, combat operations should be seen to have ceased at any time that units were not engaged in actual combat against the opposing forces, and certainly not from the time on 18 November 1991 when there was a general surrender of Croatian forces defending Vukovar. In the Chamber's view such an understanding does not reflect the intended effect of the law on All People's Defence. It is quite impractical and unjustified in this context and contrary to what actually occurred. Effective command of combat operations must include not only the actual moments of combat, but planning, preparation and surveillance before combat, the processes of clearing and securing an area after combat, the analysis of combat intelligence and the redistribution of forces so as to take account of the outcome of the actual combat, as well as maintaining guard and watch against the possibility of fresh attack or some different deployment of the opposing force. In the Chamber's view such matters are all to be naturally and readily understood as elements of combat operations in this context and for the application of the principle of singleness of command.

88. Further, in the Chamber's view, it would be entirely unrealistic to seek to interpret the application of this principle so that the moment an opposing force capitulated, the commander ceased to be in command of the forces that had secured the capitulation. Clearly, in this context, combat operations necessarily include the processes of overseeing the actual surrender of the opposing force, their disarming, the securing of the men and their weapons, the "mopping-up" of the battle area to ensure, *inter alia*, the completeness of the surrender, the care of wounded, the collection of the remains of those killed and the restoration of basic order. Until matters such as these are in hand it cannot sensibly be suggested that combat operations are at an end. Indeed, combat reports which are in evidence indicate that combat operations of this nature continued on 19 and 20 November 1991<sup>290</sup> and by the nature of these tasks must have continued beyond these days. On this basis the Chamber is satisfied that the single command of Mile Mrkšić over all the

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<sup>289</sup> Exhibits 408; 410; 412 (re-subordinating Stara Pazova TO detachment to 80 mtbr). See also *infra*, para 98.

<sup>290</sup> Exhibit 735; Exhibit 421; Exhibit 419.

forces, JNA, TO and volunteer or paramilitary, in the zone of responsibility of OG South continued throughout the events in the period 18-21 November 1991 relevant to the Indictment, including the events at and near the hangar at Ovčara on the night of 20/21 November 1991. Indeed, in the Chamber's finding, this command continued until 24 November 1991 when Mile Mrkšić with the other members of his command withdrew from the Vukovar area and returned to Belgrade. In the days preceding this withdrawal Mile Mrkšić with the members of his OG South command made a number of relocations of forces, JNA, TO and volunteer or paramilitary, and put in place arrangements for the ongoing exercise of military authority and to facilitate the eventual re-establishment of civil order in the area of Vukovar.<sup>291</sup> These dispositions do not demonstrate that the authority of OG South was at an end, as is submitted, rather they disclose that the command authority of Mile Mrkšić was being exercised to ensure an orderly completion of the combat operation with a continuance of authority after he and his command structure withdrew.

89. The circular of the Chief of the General Staff of 12 October 1991 and the order of the command of 1 MD of 15 October 1991, which are mentioned above, go even further than has been discussed in these last paragraphs. They serve to confirm that what had been established as the *de facto* reality, not only in the zone of operations of OG South, but, generally, in the Serb military operations in Croatia, was the complete command and full control by the JNA of all military operations. This, in the Chamber's finding, reflects the reality of what had been established. It was a reality, which the JNA had the military might to enforce, even though it may well have been reluctant to be too heavy handed in doing so, against TO and volunteer or paramilitary units fighting in the Serb cause. As the order of 1 MD made clear, paramilitary units refusing to submit themselves under the command of the JNA were to be removed from the territory *i.e.* from the respective zone of responsibility of the JNA command. While there will be further consideration, later in this decision, of the degree of effective control which could be exercised by the JNA at the various levels of command, to anticipate the outcome of that further consideration, in the final analysis the JNA under the command of Mile Mrkšić not only had *de jure* authority as identified above, but also had the manpower, armament and organisation to exercise effective *de facto* control over all TO and volunteer or paramilitary units in the zone of responsibility of OG South at the times material to the Indictment.

90. TO units active in the zone of responsibility of OG South and during the period relevant to the Indictment were organised in TO detachments, which comprised TO companies and TO platoons.<sup>292</sup> A detachment was at the national organisational level of a JNA battalion<sup>293</sup> and

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<sup>291</sup> See Exhibits 421; 423; 424.

<sup>292</sup> See Radoje Trifunović, T 8303-8304.

<sup>293</sup> Radoje Trifunović, T 8303.

properly would consist of approximately 700 men although this number could be lower. In Vukovar, however, TO detachments, generally, would comprise only 150 to 200 men.<sup>294</sup>

91. When the gmtbr arrived in Vukovar on 30 September 1991, there were approximately 10 TO units represented in Vukovar.<sup>295</sup> However, the only TO unit at detachment level in the zone of responsibility of OG South was Petrova Gora TO, which was smaller than the usual size of a TO detachment.<sup>296</sup> One estimate put it at 344 men.<sup>297</sup>

92. Not all of the evidence as to who was in command of the Petrova Gora TO when the gmtbr arrived in the area of Vukovar is consistent. Dušan Jakšić testified that on 3 October 1991 Petrova Gora detachment was under his command and had four companies. Miroljub Vujović was the commander of the 1<sup>st</sup> company and Stanko Vujanović, of the 2<sup>nd</sup> company.<sup>298</sup> Jakšić testified that he later disbanded two companies and only Miroljub Vujović's and Stanko Vujanović's companies remained.<sup>299</sup> Further, it is his evidence that "on the eve of the Vukovar attack" he was appointed commander of all Vukovar TOs.<sup>300</sup> However, Colonel Trifunović testified that upon the arrival of the gmtbr in Vukovar, Miroljub Vujović was already commander of the Petrova Gora TO detachment.<sup>301</sup> This is supported by other evidence.<sup>302</sup> The Chamber accepts that in October 1991 Miroljub Vujović was appointed commander of Petrova Gora TO detachment replacing Dušan Jakšić, who was moved to a support role in the rear.<sup>303</sup> On 20 November 1991 after the fall of Vukovar, Miroljub Vujović was appointed commander of all Vukovar TO by Mile Mrkšić.<sup>304</sup>

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<sup>294</sup> Radoje Trifunović, T 8069.

<sup>295</sup> Radoje Trifunović, T 8286-8287.

<sup>296</sup> Radoje Trifunović, T 8365; Dušan Jakšić, T 11935-11936.

<sup>297</sup> Dušan Jakšić, T 11937.

<sup>298</sup> Dušan Jakšić, T 11906-11907.

<sup>299</sup> Dušan Jakšić, T 12001-12002.

<sup>300</sup> Dušan Jakšić, T 11910.

<sup>301</sup> Radoje Trifunović, T 8069, 8286.

<sup>302</sup> Veselin Šljivančanin testified that when the gmtbr arrived in Vukovar, Dušan Jakšić was the commander of "Vukovar TO detachment" and that later he was tasked with coordinating the rear operations, while Miroljub Vujović was put in charge of the units on the front line. (Veselin Šljivančanin, T 13477-13478) P022 also testified that Dušan Jakšić was replaced as the commander of Petrova Gora TO by Miroljub Vujović in the first 20 days after the gmtbr's arrival in the area. (P022, T 4956, 5089) See also Exhibit 798, p 86.

<sup>303</sup> On the evidence, the Chamber is not able to make a finding as to the person who made this appointment.

<sup>304</sup> Radoje Trifunović testified that at noon or in the afternoon on 20 November 1991 Mile Mrkšić ordered him to write a document whereby Miroljub Vujović was appointed as commander for Vukovar TO and that the order was signed. While Trifunović was not able to remember whether the order was signed on 20 November 1991 or in the morning of 21 November 1991 and merely assumed it had immediate effect, not being able to remember the precise terms, the Chamber refers to its findings elsewhere in this Judgement that Mile Mrkšić attended a significant reception in Belgrade the following morning, leaving Negoslavci either late in the evening of 20 November or early on 21 November in which circumstances he could be expected to deal with a matter of this significance before he finished at his headquarters on 20 November. In the Chamber's view, this is especially so because, as it finds later, in this Judgement, by an order he gave late on 20 November he was leaving the Croat prisoners of war at Ovčara in the custody of the TO forces there. He, therefore, had particular reason to resolve the matter of the command of those TO forces that day. For this same reason the Chamber accepts that the order would not provide for any delay in it taking effect. The Chamber further observes that even if (contrary to its finding) the order had not been signed or taken effect until after 20 November 1991 it would merely have confirmed what in the Chamber's appreciation had become the effective position. There is evidence that by 20 November 1991 Miroljub Vujović acted as the

Stanko Vujanović was a TO commander in Vukovar throughout the material time, and was seen by many at the time as Miroljub Vujović's deputy.<sup>305</sup>

93. A volunteer (or paramilitary) unit known as Leva Supoderica also operated in Vukovar, in the zone of responsibility of OG South.<sup>306</sup> An order issued by the command of OG South on 29 October 1991, *inter alia*, to the 1<sup>st</sup> Assault Detachment ("1 AD")<sup>307</sup> listed Leva Supoderica as one of the units incorporated in 1 AD.<sup>308</sup> Leva Supoderica's numerical strength is not established by the evidence<sup>309</sup> although some evidence suggests that it comprised about 100 men.<sup>310</sup> The unit was made up of local men, from the Leva or Desna Supoderica area of Vukovar, and members of Šešelj's Radical Party who started arriving as volunteers in the operations area of OG South approximately between 15 and 20 October 1991.<sup>311</sup> Because of its affiliation with Šešelj's Radical Party Leva Supoderica was also referred to as the "Šešeljevci" Unit<sup>312</sup> (or Šešelj's men).<sup>313</sup> It was under the command of Milan Lančuzanin, aka Kameni ("Stone Face").<sup>314</sup> His deputy was Predrag Milojević, aka Kinez ("Chinese").<sup>315</sup> Leva Supoderica was active in the Petrova Gora neighbourhood of Vukovar.<sup>316</sup> Its headquarters was on Nova Street, not far from Stanko Vujanović's house, which was located on Nova Street No 81.<sup>317</sup>

94. Other volunteer units present in the Vukovar area in the zone of operations of OG South included Novi Sad Volunteers Company, which was also part of 1 AD (*see below*), 2<sup>nd</sup> Volunteers Company, Smederevska Palanka, Sarajevo and Belgrade volunteers' platoons.<sup>318</sup>

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commander of Vukovar TO. As discussed in more detail elsewhere, on 20 November 1991 at Ovčara the TOs would seek approval for their actions and ask for permission from Miroljub Vujović who was one of "the officers of Vukovar TO" (Dragan Vezmarović, T 8424; 8427-8428). LtCol Vojnović also testified that Miroljub Vujović and Stanko Vujanović left the impression of being in charge and in command at Ovčara by the way they acted and communicated with other TO members, T 8860. (*See also* P022, T 5004). Further, Miroljub Vujović is mentioned in Captain Vezmarović's diary on a previous occasion as commander of Vukovar TO (Exhibit 432; Dragan Vezmarović, T 8425-8426). P009 also testified that Miroljub Vujović was in charge of Vukovar TO (T 6142-6143).

<sup>305</sup> *See* Dragi Vukosavljević, T 8656; Milorad Vojnović, T 9021-9022; P002, T 4956-4957.

<sup>306</sup> Radoje Trifunović, T 8082.

<sup>307</sup> *See infra*, para 99.

<sup>308</sup> Exhibit 410.

<sup>309</sup> Radoje Trifunović testified that it was difficult to establish its size as it did not comply with the regulations, T 8364-8365.

<sup>310</sup> P022, T 4960.

<sup>311</sup> Radoje Trifunović, T 8087; P001, T 10081-10082. *See also* Miroslav Radić, T 12612-12615.

<sup>312</sup> Radoje Trifunović, T 8141.

<sup>313</sup> P001, T 10081-10082.

<sup>314</sup> Dragi Vukosavljević, T 8656; P001, T 10081; P022, T 4960; P024, T 4161; Miroslav Radić, T 12615.

<sup>315</sup> P022, T 4960.

<sup>316</sup> P024, T 4439-4440. Miroslav Radić testified that Leva Supoderica was active at the axis of operation of 3coy 1/gmtbr on 20 October 1991. (T 12615)

<sup>317</sup> P022, T 4960; Miroslav Radić, T 12616, 12624.

<sup>318</sup> Exhibit 410; Exhibit 414. *See also* P022, T 4958 (Smederevo volunteers).

### **E. Assault detachments and assault groups**

95. In normal JNA operations an assault detachment is a larger unit, with strength from several companies to a battalion which is formed for a specific purpose.<sup>319</sup> The Battalion Manual of 1988 stipulates that an assault detachment is formed to carry out an assault on well-fortified strongholds and in the course of an attack on a populated area. For this purpose a battalion would normally be reinforced with tanks, artillery, engineers and communications equipment.<sup>320</sup> While as a matter of normal JNA formal structure, reinforcements were not supposed to include TO units, the situation could arise where, for example, if a TO unit was present in the zone of responsibility of a JNA battalion, in accordance with the principle of singleness of command, the TO unit would be re-subordinated to the battalion command, and by this means reinforce the battalion.<sup>321</sup>

96. In normal JNA operations an assault group is the basic entity of an assault detachment.<sup>322</sup> An assault group in normal operation is of the size of a reinforced platoon and in normal operations is formed to carry out an attack on a facility, building or other feature, “thus making it possible for the detachment to carry out its tasks.”<sup>323</sup>

97. Assault detachments were formed in the area of Vukovar before the period of the Indictment. They were typically of the size of a reinforced battalion. The assault detachments comprised several assault groups. The evidence indicates that in the Vukovar operation these assault groups were of the size of a company,<sup>324</sup> *i.e.* larger than the normal size.

98. While it is unclear from the evidence when exactly the assault detachments were established, an order issued by Mile Mrkšić on 1 October 1991 in his capacity of gmtbr commander, stated that the gmtbr was “to conduct a blockade and assault on Vukovar with the use of assault detachments within OG [South]”.<sup>325</sup> The order further issued specific tasks to Assault Detachment 1 (“1 AD”) and Assault Detachment 2 (“2 AD”) and listed the units incorporated in them.<sup>326</sup> Orders issued later by the command of OG South, for example, the orders of 15 October 1991 and of 14 November 1991, assigned tasks also to Assault Detachment 3 (“3 AD”), and Assault Detachment 4 (“4 AD”), and an order of 29 October 1991 assigned tasks, *inter alia*, to Assault Detachment 5 (“5 AD”).<sup>327</sup> Thus, it is clear that throughout October and November 1991 until

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<sup>319</sup> Radoje Trifunović, T 8016; Exhibit 798, p 17.

<sup>320</sup> Exhibit 397, para 508. *See also* Exhibit 798, p 17; Exhibit 578, pp 98-99.

<sup>321</sup> Radoje Trifunović, T 8017.

<sup>322</sup> *See* Radoje Trifunović, T 8018-8019.

<sup>323</sup> Exhibit 397, para 510; Exhibit 798, p 18.

<sup>324</sup> Radoje Trifunović, T 8019.

<sup>325</sup> Exhibit 405, item 2; Radoje Trifunović, T 8067-8068.

<sup>326</sup> Exhibit 405, item 5.

<sup>327</sup> Exhibit 408; Exhibit 430; Exhibit 410.

Vukovar fell the command of OG South exercised direct command authority over up to five assault detachments in respect of their combat operations. These detachments included TO and volunteer or paramilitary units.

99. 1 AD included 1/gmtbr, which was under the command of Major Tešić,<sup>328</sup> whose deputy was Captain Stijaković, Petrova Gora TO detachment, at the time under the command of Miroљjub Vujović,<sup>329</sup> the paramilitary unit Leva Supoderica under the command of Milan Lančuzanin, and several other volunteer companies and platoons.<sup>330</sup> 1 AD also included parts of a military police battalion and a tank company.<sup>331</sup> The area of operations of 1 AD coincided with the area of Petrova Gora TO detachment<sup>332</sup> and its axis approximately coincided with the axis of 3coy 1/gmtbr.<sup>333</sup> The evidence suggests that 1 AD was the strongest assault detachment because of the size of the TO and volunteer units attached to it.<sup>334</sup> The Chamber accepts that the commander of 1 AD was Major Tešić who was also the commander of 1/gmtbr.<sup>335</sup> His command post was located on Svetozara Markovica Street in Vukovar.<sup>336</sup> This command post served as the command post for both 1/gmtbr and 1 AD. While it is the evidence of Miroslav Radić that the command post of the Vukovar TO commander was also at the same place,<sup>337</sup> this evidence reflects a contention of Miroslav Radić concerning the command of the TO and volunteer forces attached to 1 AD discussed shortly, and is not accepted by the Chamber.

100. While the evidence does not identify precisely when and how the assault groups of 1 AD were formed, Major Tešić, as the commander of 1 AD, had authority to act independently and regulate the number and composition of assault groups within his assault detachment.<sup>338</sup> As the evidence indicates, from a military view point it would have been logical within 1 AD to have three assault groups from establishment JNA companies, each with guides from TO detachments linked to certain axes, and two additional assault groups from TO units. Further, on this same basis, it is the evidence of Colonel Trifunović that as Miroslav Radić was the commander of 3coy 1/gmtbr, and under the command of Major Tešić, it would be logical for Miroslav Radić to be the commander of an assault group of which 3coy 1/gmtbr was the core unit. As will be discussed

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<sup>328</sup> Exhibit 405, item 5; Radoje Trifunović, T 8070.

<sup>329</sup> *See supra*, para 92.

<sup>330</sup> Exhibit 410; Radoje Trifunović, T 8082-8083, 8087-8088, 8196; *See also* Exhibit 414. With respect to Leva Supoderica, *see also* P001, T 10081. Zoran Zirojević testified that Petrova Gora and Leva Supoderica became part of 1 AD in late October 1991, T 13161-13162. Volunteers from Novi Sad were also included in 1 AD. (Zoran Zirojević, T 13104) *See also* Exhibit 798, p 85.

<sup>331</sup> Exhibit 408; Exhibit 410.

<sup>332</sup> Radoje Trifunović, T 8197.

<sup>333</sup> Radoje Trifunović, T 8299.

<sup>334</sup> Radoje Trifunović, T 8364.

<sup>335</sup> Radoje Trifunović, T 8070. *See also* Davor Vučković, T 13188-13189.

<sup>336</sup> P022, T 4955, 4965; Davor Vučković, T 13189; Slavko Stijaković, T 12877.

<sup>337</sup> Miroslav Radić, T 12611.

more specifically, while Miroslav Radić disputed that he “commanded” an assault group, it is his evidence that he “coordinated” an assault group established along his axis.<sup>339</sup>

101. The Chamber heard contradictory evidence as to whether Miroslav Radić had command powers over Petrova Gora TO and Leva Supoderica. P022 and P024 testified that Miroslav Radić was the commander of Milan Lančuzanin, aka Kameni, who in turn commanded Leva Supoderica, that Elvir Hadžić, platoon commander in Miroslav Radić’s 3coy 1/gmtbr and Miroslav Radić’s deputy, was also commanding the mortar squad of Leva Supoderica,<sup>340</sup> and that Miroslav Radić was the commander of Miroljub Vujović, at the time commander of Petrova Gora TO detachment.<sup>341</sup> Dušan Jakšić, however, remembered some matters differently. It was his evidence that he sent Miroljub Vujović and his “company” to Miroslav Radić’s company, and Stanko Vujanović’s company to the company of Saša Bojkovski who was the commander of 1coy 1/gmtbr. He denied that Miroljub Vujović’s company was subordinated to Miroslav Radić.<sup>342</sup> Jakšić did accept that Miroljub Vujović and Miroslav Radić were working together at the same command post, including drawing maps and making plans, but he did not, or could not say, whether Vujović was working under orders from Miroslav Radić.<sup>343</sup> In any event as Dušan Jakšić was moved from his position in command of Petrova Gora TO early in the combat operations, in October 1991, it would appear that the evidence of P022 and P024 related to the period after Jakšić’s removal and after Miroljub Vujović became the immediate commander of Petrova Gora TO detachment. Witnesses called by the Radić Defence further testified that Miroslav Radić’s 3coy 1/gmtbr acted “in coordination” with Petrova Gora TO or the TO unit commanded by Miroljub Vujović and with Leva Supoderica<sup>344</sup> and rejected the view that these units were subordinated to Miroslav Radić and that he commanded them.<sup>345</sup> It was evident from the explanation and justification of their testimony in this respect, however, that their evidence was heavily influenced by their present appreciation of formal policy statements such as found in rule 108 of the JNA Brigade Rules, which is quoted earlier and which refers to “joint efforts by the ... commands of the brigade’s subordinate and other units and staff of the TO operating *in coordination* [with] the brigade ...”.<sup>346</sup> In the Chamber’s view these witnesses were not speaking of their personal recollection in this respect, but were expressing the rationalised conclusions they had now reached as to what must have been the situation in light of their present understanding of the formal JNA policy as set out in its rules. This position not only reflects a

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<sup>338</sup> Radoje Trifunović, T 8357-8358.

<sup>339</sup> Miroslav Radić, T 12617-12618. The 1 AD had three assault groups (AG). (Exhibit 807)

<sup>340</sup> P024, T 4172-4175; P022, T 4957-4958.

<sup>341</sup> P022, T 4957-4958.

<sup>342</sup> Dušan Jakšić, T 12011.

<sup>343</sup> Dušan Jakšić, T 12011.

<sup>344</sup> Davor Vučković, T 13195; Miroslav Radić, T 12617-12620.

<sup>345</sup> Dušan Jakšić, 12008-12020; Davor Vučković, T 13214;

<sup>346</sup> Exhibit 395, rule 108 (emphasis added).

misunderstanding of formal JNA policy documents, it is contradicted by the position taken at the time, in fact, by the senior levels of the JNA command as revealed in the circular of the Chief of the General Staff, General Adžić, of 12 October 1991 and the order of the commander of OG South's immediately superior unit, 1 MD, General Panić, of 16 October 1991, both of which are referred to earlier, which have the effect, in the finding of the Chamber, of commanding that the JNA should establish "full control" within their respective zones and that at all levels all armed units, whether JNA, TO or volunteers, "must act under the single command of the JNA". Rather than contradicting formal JNA policy the position of General Adžić and General Panić appears to conform with a proper understanding of rule 108 which, in its second paragraph, provides that the integration of command, which is the subject of first paragraph, is achieved "[...] on the basis of unity of command and subordination." In the Chamber's finding, while Milan Lančuzanin commanded the Leva Supoderica volunteer unit, and Miroljub Vujović commanded the Petrova Gora TO detachment, each of these commanders and most of their men, in combat operations, were subject to the command of Miroslav Radić, in his capacity as the commander of an assault group which was one of the assault groups in 1 AD.<sup>347</sup> The integration and co-ordination contemplated by the formal rules was not achieved by several commanders each with equal authority over their respective units agreeing on co-ordinated action as contended by the Radić Defence, but by one JNA commander co-ordinating the respective units over which he exercised his command through the commanders of these units. The evidence persuades the Chamber that it was 3 AG which Miroslav Radić commanded.

102. The Chamber is aware that it was the evidence of Miroslav Radić that Miroljub Vujović commanded 3 AG in combat.<sup>348</sup> While this evidence is not independently confirmed, the Chamber accepts that this may have occurred in some situations but, even if so, in the Chamber's view, this was not because Vujović had command of Radić or the assault group, but because Radić chose to allow Vujović to do so. As Vujović was from the area he knew the terrain much better than Radić did. For reasons identified elsewhere in this decision<sup>349</sup> the Chamber has reservations about the evidence of P022 and P024 and is not persuaded to rely on it alone. In this matter, however, their evidence is in agreement and there is also the telling evidence referred to of the JNA determination to take control and to enforce its control of combat actions. The Chamber has also considered that at the material time Miroslav Radić was the commander of a company within a JNA battalion whereas Petrova Gora and Leva Supoderica were, at least in theory, detachments at battalion level. In reality, however, their numbers were well below normal battalion strength. It is also the case that

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<sup>347</sup> See *infra*, paras 645-649.

<sup>348</sup> Miroslav Radić, T 12619.

<sup>349</sup> See *infra*, paras 343-349; 337.

all JNA and other units comprising 1 AD were subordinated to Major Tešić as the JNA commander of 1 AD. Weighing all of these factors, however, and given the curious absence of formal orders constituting both 1 AD and its assault groups, the Chamber is unable to conclude that at all times Miroslav Radić had *de jure* command over Petrova Gora TO detachment or the volunteer unit Leva Supoderica. As distinct units they remained under the command of Miroljub Vujović and Milan Lančuzanin respectively. Nevertheless, the Chamber also finds that, subject to the qualifications which follow, members of Petrova Gora TO including Miroljub Vujović, and of Leva Supoderica including Milan Lančuzanin, who were also members of 3 AG, were subject to the *de jure* command of Miroslav Radić at the times material to the Indictment, for combat operations. The qualifications are that one company of Petrova Gora has been assigned to another assault group, sometime late on 20 November 1991 Miroljub Vujović was appointed by Mile Mrkšić to command all Vukovar TO of which Petrova Gora TO was one component, so that he may have ceased to be the subject to the command of Miroslav Radić, and, on occasions some men of Leva Supoderica could be temporarily used to reinforce other assault groups.<sup>350</sup>

103. Also relevant to events alleged in this Indictment is 2 AD. It included 2/gmtbr, 2MP/gmtbr, and from 2 to 20 October 1991, the anti terrorist company of 1MP/gmtbr.<sup>351</sup> The commander of 2 AD initially was Major Adem Bajić. He was subsequently replaced by Major Branislav Lukić,<sup>352</sup> so that on 20 November 1991 the commander of 2 AD time was Major Lukić who was also the commander of the JNA barracks in Vukovar.<sup>353</sup> The area of responsibility of 2 AD included Velepomet and Sajmište.<sup>354</sup> There were also other assault detachments active in the Vukovar area but they have little relevance to the events charged in the Indictment.<sup>355</sup>

104. Each of the five assault detachments comprised a mix of JNA, TO and volunteer units. They were all in the composition of OG South, each was under the command of a JNA officer, and it is clear that they acted directly on orders from the command of OG South. Examples of these orders which directly assigned tasks to the assault detachments are the orders issued by Mile Mrkšić in his capacity as the commander of OG South on 15 October 1991, 29 October 1991, 14 November 1991, and 16 November 1991, which are in evidence.<sup>356</sup> The conclusion that the assault detachments acted under the full command of OG South is further supported by the fact that Major Tešić, the commander of 1 AD, attended regularly the daily briefings at the command of OG South

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<sup>350</sup> See *supra*, paras 92 and 101. See *infra*, paras 640 and 643.

<sup>351</sup> P001, T 10079; Mladen Marić, T 15272; Radoje Paunović, T 14104-14105; Jovan Šušić, T 14883-14884.

<sup>352</sup> Miodrag Panić, T 14272; Jovan Šušić, T 14887.

<sup>353</sup> Jovan Šušić, T 14887.

<sup>354</sup> Radoje Trifunović, T 8126; P001 T 10118.

<sup>355</sup> 3 AD was commanded by Milorad Stupar, whose JNA unit did not belong to the gmtbr. (Miodrag Panić, T 14273)

5 AD included units of 1 MP/gmtbr. (Jovan Šušić, T 14905-14906)

<sup>356</sup> Exhibit 408, Exhibit 410, Exhibit 430 and Exhibit 431, respectively.

in Negoslavci, as did the commanders of 2 AD and 3 AD.<sup>357</sup> The evidence is not specific about the commanders of the other assault detachments.

105. As in almost all material factual matters in this case, there was conflicting evidence and submissions as to when 1 AD was disbanded. Captain Stijaković testified that on 12 November 1991 Major Tešić issued an oral order (after receiving an order from Mile Mrkšić) to the effect that 1/gmtbr should be taken out of the composition of 1 AD.<sup>358</sup> It is his evidence that this should be seen to have been confirmed by a written order issued by the commander of OG South on 14 November 1991, in which different tasks were assigned to 1/gmtbr and 1 AD. This order is in evidence.<sup>359</sup> In cross-examination, however, the witness accepted that this “separation” of the two units was solely with respect to active assignments between 14 and 18 November 1991.<sup>360</sup> Miroslav Radić testified that after the battle for Milovo Brdo on 10 November 1991,<sup>361</sup> Leva Supoderica and Petrova Gora TO were moved to the axis of 2 AD as this detachment needed assistance.<sup>362</sup> It should be noted here, however, that while a combat order of the command of OG South of 16 November 1991 did not assign tasks specifically to 1 AD and 2 AD, but only to 3 AD and 4 AD, it was the evidence of Colonel Trifunović that at the time of the issuance of this order Petrova Gora TO detachment and Leva Supoderica were still under the command of 1 AD and consequently under the command of Major Tešić.<sup>363</sup>

106. There is no written order in evidence in respect of the period 10 to 18 November 1991 that formally re-subordinates Leva Supoderica and Petrova Gora TO or which removes 1/gmtbr from the composition of 1 AD. Nor is there any mention of these matters in the war diaries of the 1/gmtbr, gmtbr or OG South.<sup>364</sup> On the contrary, the only order concerning re-subordination of volunteer and paramilitary units subordinated to 1 AD was made on 21 November 1991. On this day the command of OG South re-subordinated Leva Supoderica to the 12<sup>th</sup> Corps and by the same order the Vukovar TO units, which included Petrova Gora TO, were re-subordinated to the 80 mtbr.<sup>365</sup> While there was no reference in this order to the command of 1 AD, the order was addressed, *inter alia*, to the commander of 1/gmtbr, Major Tešić, to the commander of Leva Supoderica, and to the commander of Vukovar TO.

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<sup>357</sup> Radoje Trifunović, T 8194-8196.

<sup>358</sup> Slavko Stijaković, T 12853, 12964.

<sup>359</sup> Slavko Stijaković, T 12858, 12964, 12925-12931; Exhibit 430.

<sup>360</sup> Slavko Stijaković, T 12940-12941.

<sup>361</sup> *See supra*, para 53.

<sup>362</sup> Miroslav Radić, T 12643-12644, 12672.

<sup>363</sup> Radoje Trifunović, T 8308.

<sup>364</sup> Miodrag Panić, T 14502; Exhibit 807; Exhibit 401. *See also* Slavko Stijaković, T 12925-12931.

<sup>365</sup> Exhibit 422; Radoje Trifunović, T 8139-8142.

107. The absence of any written orders to the effect suggested by some of this evidence, or war diary entries, the Chamber is not able to accept either that there was an oral order of Major Tešić of 12 November 1991, or any formal written order, which had the effect of withdrawing 1/gmtbr from 1 AD as suggested by Captain Stijaković. The balance of the evidence persuades the Chamber that all that happened was a temporary use of Leva Supoderica and Petrova Gora TO in support of 2 AD between 14 and 18 November 1991.

108. What followed appears to the Chamber to involve no more than that the capitulation of the Croatian forces on 18 November 1991 had the practical consequence that there was no need to engage 1 AD in any further combat with the consequence that Leva Supoderica and Petrova Gora TO found themselves without any fighting to do. Had there been no capitulation there would have been no need to formally reconstitute 1 AD as it had not been disbanded. In the hectic and unusual demands of the days following 18 November 1991, it was not until 21 November 1991 that OG South re-subordinated both Leva Supoderica and the Vukovar TO units, which included Petrova Gora TO, to other units. The necessary implication of this is that from 21 November 1991 these two units were no longer within the composition of 1 AD. It may be that, by implication, 1 AD was disbanded at this time. What is more probable is that no specific thought was given to 1 AD and the other assault detachments. In what may be regarded in retrospect as sloppy administration, all the non-JNA units were re-subordinated, leaving only gmtbr units remaining under the command of Mile Mrkšić, and no formal step was taken, or was seen to be necessary, to formally disband the assault detachments which had been rendered superfluous by these events.

109. Compelling confirmation of the view that 1 AD was not disbanded on 12 or 14 November 1991, as suggested in the evidence of Captain Stijaković, and as submitted by the Radić Defence, is provided by the appointments of “town commanders” made by Mile Mrkšić. By an order of 19 November 1991 the commanders of the assault detachments were appointed town commanders for their respective zones of operation.<sup>366</sup> This entirely contradicts the view that 1 AD, or any of the other assault detachments, had been disbanded in the interim. Further had there been any disbandment by that time, there would have been an immediate consequential lapse in the appointments of their respective commanders as town commanders. Yet no replacement appointments were made. It is also relevant that 2 AD was not disbanded until 24 November 1991, *i.e.* when the gmtbr left the Vukovar area.<sup>367</sup> All of this leads the Chamber to conclude that the assault detachments in the Vukovar area, including 1AD, had not been disbanded by 20 November 1991, and were either disbanded or allowed to lapse on 24 November 1991.

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<sup>366</sup> Exhibit 418, p 2, point 4.

<sup>367</sup> See Jovan Šušić, T 14905; 14888.

## F. Town commands

110. Town (and village) commands<sup>368</sup> in the area of responsibility of OG South were established during November 1991 by the command of OG South pursuant to orders from the command of 1 MD.<sup>369</sup> Town commanders were required under JNA rules to prevent sabotage and terrorist activity in their area of responsibility, to ensure proper transportation, to prepare conditions necessary for the civilian authorities to function, to be responsible for general security, law and order, to prevent looting and ensure physical security to persons in their area.<sup>370</sup> According to the rules in force at the time, anybody entering the area of responsibility of a town commander was to report to the town commander who was to inform that person of the rules of conduct which applied in that area.<sup>371</sup>

111. On 19 November 1991 the commander of OG South Mile Mrkšić issued an order appointing the commander of 80 mtbr LtCol Milorad Vojnović to the position of town commander for Ovčara, Jakubovac and Grabovo.<sup>372</sup>

112. On the following day, 20 November 1991, although the operational and the war diaries of the 80 mtbr suggest it happened at 2300 hours on 19 November 1991,<sup>373</sup> LtCol Vojnović, the commander of 80 mtbr and town commander for the sector Ovčara, Jakubovac and Grabovo appointed one of his officers as village commander for Ovčara.<sup>374</sup>

113. On 20 and 21 November 1991, which are the most material dates for the Indictment, the town commanders in the area of responsibility of OG South, including LtCol Vojnović as the town commander for the area of Ovčara, Jakubovac and Grabovo, and through him the village commander for Ovčara, were subordinated to the person who appointed them,<sup>375</sup> that is to Mile Mrkšić.<sup>376</sup>

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<sup>368</sup> Town commands of a broader area encompassed several village commands. For example, Ovčara was part of the town command for the sector of Ovčara, Jakubovac and Grabovo, but it was a distinct village command. (See for example Exhibit 374)

<sup>369</sup> Exhibit 374 (an order from the command of OG South of 9 November 1991 establishing several town commands citing an order of 1 MD issued two days earlier as a legal basis). Exhibit 413 (an order from the command of 1 MD to its subordinate units, including OG South, to “immediately start establishing the military authority and the town commands in the liberated territory and settlements.”). See also Miodrag Panić, T 14336.

<sup>370</sup> Miodrag Panić, T 14336-14337. Exhibit 374, para 5. See also Radoje Trifunović, T 8091-8092.

<sup>371</sup> Miodrag Panić, T 14337. See also Exhibit 411 (an order from the command of OG South issued on 14 November 1991 addressed to unit commanders and town commanders to establish, *inter alia*, full control of the movement in and out of settlements).

<sup>372</sup> Exhibit 418, point 3; Milorad Vojnović, T 8934-8936; Radoje Trifunović, T 8254-8255.

<sup>373</sup> Exhibits 371; 375.

<sup>374</sup> Exhibit 369; Milorad Vojnović, T 8921-8925.

<sup>375</sup> Radoje Trifunović, T 8092.

<sup>376</sup> Radoje Trifunović, T 8127.

## **G. Military police and security organs**

114. Military police were specially trained and equipped units of the armed forces of the SFRY responsible for providing security to the command and to other units, for protecting people and property, for securing the safety of military traffic, for maintaining discipline, and for crime investigation.<sup>377</sup> The military police's tasks may include guarding prisoners of war, guarding conscripts in local units who were placed in detention, securing prisons, securing crime scenes, and other similar tasks.<sup>378</sup>

115. Pursuant to the Rules of Service of security organs in the Armed Forces of the SFRY in force at the time material to the Indictment, security organs are specialised organs who carry out duties of state security and, more specifically, are responsible for detecting, tracking and preventing foreign intelligence activities, detecting and preventing hostile activities against the armed forces, implementing counterintelligence measures and for other related activities.<sup>379</sup> Security organs also participate in detecting and preventing serious crimes that involve theft of or damage to weapons, ammunition, and other combat equipment, in providing security training and other related tasks.<sup>380</sup> The effect of the rules cited above is that the primary functions of security organs are in the field of counterintelligence, where they had the sole or the primary responsibility, whereas in the field of crime detection and prevention they participated together with the military police and other bodies.

116. The line of subordination of the military police was determined by the regulations in force at the time. Pursuant to rule 12 of the Service Regulations of the SFRY Armed Forces Military Police, the commander of a unit to which a military police unit is attached, "commands and controls the military police."<sup>381</sup> Somewhat ambiguously, pursuant to rule 13 of the same regulations, the security organ of this unit "controls the military police."<sup>382</sup> The same provision further specifies that the security organ makes "suggestions" to the commander of the unit to which a military police unit is attached on the use of the military police unit and is "responsible" for combat readiness of the military police and the performance of their tasks.

117. The office in charge of security affairs in the Federal Secretariat for National Defence was authorised to control the military police and for this purpose was tasked with organising education and training of military police officers, it participated in the organisation and territorial jurisdiction

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<sup>377</sup> Exhibit 435, Chapter I, rule 1; Exhibit 435, Chapter III, rule 17; Exhibit 868, p 8.

<sup>378</sup> Dragan Vezmarović, T 8383, 8386-8367; Exhibit 439. *See also* Exhibit 868, p 19; Exhibit 578, p 84.

<sup>379</sup> Exhibit 107, rules 1, 6. *See also* Reynaud Theunens, T 10857-10858; Exhibit 868, p 11-12.

<sup>380</sup> Exhibit 107, rule 7.

<sup>381</sup> Exhibit 435, rule 12. *See also* Exhibit 868, p 15.

<sup>382</sup> Exhibit 435, rule 13. *See also* Exhibit 868, pp 15-16.

of the JNA military police units, drafted regulations relevant to the service of the military police and was responsible for equipment of the military police and their supply with weapons.<sup>383</sup>

118. Similarly ambiguous and unclear were the provisions of the Rules of Service of the security organs concerning the relations between security organs and military police. Pursuant to rule 23, a security organ provides “specialist management” to a military police unit. The rule further states:

[the security organ] recommends the use of the military police unit to the senior officer of the command [...] and is responsible to him for the state and activity of the unit.

...

The deployment of units of individual members of the military police to perform tasks within the security organ’s competence is determined by the security organ officer under paragraph 1 of this item with the approval of his superior military officer.<sup>384</sup>

Rule 7(d) of the Rules of Service of the security organs lists as one of the tasks of the security organs their participation in providing specialist administration service for military police units.

119. It appears to follow from the regulations cited above that while the security organs could participate in and exercise control over the work of military police, military police units remained *de jure* subordinated to the command of the military unit to which they were attached. This conclusion is indicated by the provisions to the effect that the fact that the commander of the unit to which a military police unit is attached has “command and control” over this military police unit, while the security organ has “control” over the military police unit.<sup>385</sup> The difference between these two notions is developed by the JNA Textbook on Command and Control, which defines command as the power to make decisions and assign tasks, which is implemented by issuing orders.<sup>386</sup> Further, while, in cases where the military police had to perform tasks within the security organ’s competence, the security organ could make proposals regarding the specific tasks and deployment, these proposals were to be implemented only with the approval of the superior officer.<sup>387</sup> The lack of clear distinction between the control exercised over military police by the command of the military unit to which they are attached, and the security organ of that unit, is also evident in the further provision of rule 13 that “with respect to speciality, the officer in charge of the security body [...] controls the military police.”<sup>388</sup>

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<sup>383</sup> Exhibit 435, rules 14, 15.

<sup>384</sup> Exhibit 107, rule 23, paras 1 and 3.

<sup>385</sup> See Exhibit 435, rules 12 and 13.

<sup>386</sup> Exhibit 394 (JNA Textbook on Command and Control, 1983), p 14.

<sup>387</sup> Exhibit 107, rule 23; Exhibit 435, rule 13.

<sup>388</sup> Exhibit 435, rule 13: “*With respect to speciality*, the officer in charge of the security body [...] controls the military police.” Exhibit 107, rule 23, para 1: “A security organ [...] provides *specialized management* for a military police

120. In respect of this issue, Captain Dragan Vezmarović, the commander of the military police company of the 80 mtbr, testified that he communicated directly with the security organ of this brigade, Captain Dragi Vukosavljević, that he had very little direct contact with the commander of the 80 mtbr, and that the security organ was responsible for coordinating the work of the military police.<sup>389</sup> He acted on orders from the security organ without first seeking approval from the 80 mtbr command.<sup>390</sup> However, he submitted reports to the commander of the 80 mtbr.<sup>391</sup> He also testified that when he did not have a direct order from his commander, he would receive instructions from the security organ.<sup>392</sup> The effect of this evidence is that where a direct order from the command of the 80 mtbr had been issued the military police company acted pursuant to that order, and otherwise it acted in accordance with the instructions of the security organ. While it can be debated whether that fully reflects the rules, it provides a practical guide to the way the uncertainty and ambiguity of the rules was understood and applied in practice.

121. By way of contrast, it is the evidence of Captain Vukosavljević, who at the time was the security organ of the 80 mtbr, that the security organs did not have powers of command over the military police and could not issue orders to the military police. Hence, it was his view that the commander of the military police company of the 80 mtbr, could only be given an order by the commander of the 80 mtbr.<sup>393</sup> Captain Vukosavljević further testified that the security organs, by virtue of their appointment, had no command functions with respect to other units. They could merely advise. He did accept that the commander could transfer some of his powers to his security organ, but it was his view that this should only be done in writing. Where this was done, the security organ would not act pursuant to his powers as a security organ, but pursuant to the specific authorisation from the commander.<sup>394</sup>

122. The view expressed by Captain Vukosavljević that a security organ could not issue orders to the military police, appears to the Chamber to be a far too absolute understanding of the relevant rules. It is clear that the commander of the relevant military unit has command of the military police and ultimately the commander's orders, if he chooses to issue orders, are those which the military police must obey. Subject to any such orders of the commander, however, by rule 13 the security organ "controls the military police" and is responsible for both the combat readiness of the military police and the performance of their tasks. This indicates a far more direct involvement of

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unit." Exhibit 107, rule 23, para 3: "The deployment of units or individual members of the military police to perform tasks *within the security organ's competence* ..." (emphasis added).

<sup>389</sup> Dragan Vezmarović, T 8384-8385.

<sup>390</sup> Dragan Vezmarović, T 8530.

<sup>391</sup> Dragan Vezmarović, T 8517-8518.

<sup>392</sup> Dragan Vezmarović, T 8387.

<sup>393</sup> Dragi Vukosavljević, T 8785-8788, 8790-8791.

<sup>394</sup> Dragi Vukosavljević, T 8814-8816.

the security organ with the military police and a greater capacity to control them and to be directly concerned with the performance of their tasks than this witness's evidence would allow. While the Chamber accepts that the power of ultimate command lies with the commander of the unit, not the security organ, it takes note of the extent of the permissible involvement of the security organ with the military police, which, as will be shown elsewhere in this decision, may in certain circumstances take the form of a working arrangement by which the commander could legitimately leave the routine management and control of the military police to the security organ in connection with a specific task with which the security organ has been entrusted.<sup>395</sup> Further, in matters of security intelligence<sup>396</sup> the effect of the rules appears to be intended to give the security organ a greater function which need not be considered in the present context. The Chamber also accepts from the evidence that a commander may authorise any officer under his command, including the security organ, to exercise powers and functions of the commander, in which event the security organ when performing those powers and functions would be in no different position from any officer similarly authorised. This matter will be discussed in greater detail elsewhere in this Judgement.<sup>397</sup>

123. Colonel Petar Vuga, who was called as a military expert by the Defence, testified that there was a difference in the line of subordination of military police between infantry battalions and the gmtbr. It was his evidence, that the military police battalions of the gmtbr are directly subordinated to the gmtbr commander, whereas in regular infantry brigades military police battalions are subordinated to the brigade commander through the security organ. To demonstrate this difference, Colonel Vuga provided two organisational charts in his report, the first representing the structure of the gmtbr and the second of a regular infantry brigade. He further testified that the military police in the gmtbr were used for the gmtbr's functional purposes but not for typical military police activities.<sup>398</sup> It was his evidence that the differences in structure follow from the different functions of military police in regular infantry battalions and in the gmtbr.<sup>399</sup> Unfortunately for this evidence, the rules and regulations in force at the time provided for no such distinction between the gmtbr and the regular infantry brigades.<sup>400</sup> There are no orders in evidence which indicate that the organisational structure of the gmtbr and of an infantry brigade were different. The chart of the structure of the gmtbr was based on the establishment book of the gmtbr of 31 January 1991, which is in evidence.<sup>401</sup> This chart is consistent with the Chamber's conclusions as to the line of

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<sup>395</sup> See *infra*, para 400.

<sup>396</sup> See *infra*, para 129.

<sup>397</sup> See *infra*, paras 390-403.

<sup>398</sup> Petar Vuga, T 15741-15744; Exhibit 868.

<sup>399</sup> Petar Vuga, T 15909-15912.

<sup>400</sup> Petar Vuga, T 15910.

<sup>401</sup> Exhibit 851.

subordination of all military police units in all brigades pursuant to the regulations in force at the time and other evidence. The Chamber finds that no formal distinction existed between the line of subordination of military police in the gmtbr and in regular infantry brigades.

124. The Chamber also heard evidence from LtCol Vojnović that the military police company of the 80 mtbr received their tasks from the security organ or the brigade's Chief of Staff and as the commander of the 80 mtbr LtCol Vojnović did not have much contact with him.<sup>402</sup> It may have been intended by this evidence to indicate that it was his practice to leave these matters to his subordinates, the security organ and his Chief of Staff. There can be no quarrel with this. But if by this it was intended to suggest that he, as the commander of the 80 mtbr, had no *de jure* power to give orders to the military police company, the Chamber is not able to accept this evidence. It is quite contrary to the clear effect of the established Rules of Service and the Service Regulation referred to earlier. LtCol Vojnović had *de jure* powers to issue orders to his military police and, as it will be discussed later in this Judgement he indeed did so including on the days that are most material to this Judgement.

125. In the Chamber's view at the material time military police units were subordinated to the commander of the unit to which they were attached. The security organ of this unit could participate in and exercise control over their work. In the Chamber's finding, contrary to the submission of the Šljivančanin Defence, the distinction between the command and control authority of the commander of a unit, and the control authority of the security organ of that unit, over its military police, did not deny to the security organ the *de jure* ability to issue orders to the military police, subject always to the overriding authority of the commander of the unit. In the present case, however, in the end this issue is not determinative in respect of Veselin Šljivančanin, because on 20 November 1991, as found later in this Judgement, he was exercising *de jure* authority to issue orders to the military police of all JNA units of OG South specifically conferred on him by Mile Mrkšić.

## **H. Subordination of security organs**

126. One further matter needs to be considered at this point. The Chamber heard inconsistent evidence as to the chain of reporting and the chain of command of the security organ of a unit and in particular, in the context of this case, the responsibilities of Veselin Šljivančanin, as the security organ of OG South to report to Mile Mrkšić, to the security organ of 1 MD, and to the head of the security department of the Federal Secretariat for National Defence in Belgrade. A distinct but related issue, also the subject of conflicting evidence, is whether the security organs of units

subordinated or re-subordinated to OG South were required to report to the security organ of OG South.

127. It is LtCol Vojnović's evidence that Veselin Šljivančanin, the security organ of OG South, was the senior security organ and all security organs in the subordinate units, "were, in a manner, subordinated to him."<sup>403</sup> Captain Vukosavljević testified that the senior officer of a security organ from a subordinate command must report to the security officer of his superior command.<sup>404</sup> Captain Mladen Karan testified that the security organ of the gmtbr was subordinate to the security department of the Federal Secretariat for National Defence and that, as a security officer of the gmtbr, he sent reports daily to the Federal Secretariat for National Defence,<sup>405</sup> but that he did not send reports to the security officer of the gmtbr's superior command, 1 MD, nor did he receive reports from the security organs of the units subordinated to OG South.<sup>406</sup> Veselin Šljivančanin testified that as the security organ of the gmtbr he sent reports and received instructions from the Federal Secretariat for National Defence but that these instructions were not orders and that as a security organ he was subordinated to the commander of his unit. He further testified that he had no command powers with respect to the security organs of subordinate units.<sup>407</sup> In evidence before the Chamber is also the testimony of Colonel Irma Agotić in the trial of *Prosecutor v Slobodan Milošević*, admitted pursuant to Rule 92bis, that the security organs had their own chain of command and that while with respect to counterintelligence assignments they were responsible exclusively to their superior security officers, for other matters they were responsible to the commander of their military unit.<sup>408</sup>

128. The military hierarchy of the security officers is regulated by the Rules of Service of security organs in the Armed Forces of the SFRY. Pursuant to rule 16, the security organ is directly subordinated to the commanding officer of the unit.<sup>409</sup> Pursuant to rule 18 the security organs of the superior command "provide assistance to those organs and organise, direct, coordinate and supervise their work."<sup>410</sup> The Federal Secretary for National Defence or a military officer authorised by him, has responsibilities with respect to the "application of the methods and means" of work of the security organs and supervises the legality of their work.<sup>411</sup> While rule 18 would appear to suggest that the security organ of OG South should report to the security organ of 1 MD,

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<sup>402</sup> Milorad Vojnović, T 8966.

<sup>403</sup> Milorad Vojnović, T 8827.

<sup>404</sup> Dragi Vukosavljević, T 8651-8652.

<sup>405</sup> Mladen Karan, T 15528-15533; Exhibit 819; Exhibit 820. See also Borče Karanfilov, T 15433.

<sup>406</sup> Mladen Karan, T 15539-15540. See also Borče Karanfilov, T 15434.

<sup>407</sup> Veselin Šljivančanin, T 13433-13434, 13436, 13440-13441.

<sup>408</sup> Exhibit 75, p 23271.

<sup>409</sup> Exhibit 107, rule 16. See also Exhibit 868, p 13.

<sup>410</sup> Exhibit 107, rule 18. See also Exhibit 107, rule 22, para 1.

<sup>411</sup> Exhibit 107, rule 17, para 1; Exhibit 107, rule 22, paras 2, 3.

while OG South was in Vukovar, but not otherwise, the Chamber accepts that in fact this was not done and reporting was made directly to the Federal Secretariat.

129. In the Chamber's view, the effect of this evidence is that with respect to counterintelligence related tasks security organs were responsible to the superior security organs, whereas with respect to other tasks security organs were subordinated to the commander of their establishment unit. In this case, perhaps because of the special and temporary nature of OG South and because the gmtbr normally reported directly to the Federal Secretariat, the Chamber accepts that in counterintelligence related tasks the OG South security organ reported directly to the Federal Secretariat. Consistent with the Chamber's conclusion is the evidence of Prosecution expert witness Reynaud Theunens that the security organs of units included in an establishment unit such as an operational group, existed only with respect to counterintelligence activities.<sup>412</sup> The Chamber accepts, however, that within OG South, consistently with rule 18 of the Rules of Service of security organs, the security organs of the units subordinated to OG South, including 80 mtbr, were required to report to Veselin Šljivančanin as the security organ of OG South, although it is also correct that while he could organise, direct, coordinate and supervise their work, he had no actual powers of command over them as the security organ of OG South.

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<sup>412</sup> Reynaud Theunens, T 10867-10868.

## V. EVENTS ON 18 AND 19 NOVEMBER 1991

### A. Zagreb Agreement and international involvement in the evacuation of Vukovar hospital

130. The Croatian forces in and around Vukovar capitulated on 18 November 1991. Coincidentally, on that day, representatives of the Republic of Croatia and the JNA had concluded an agreement in Zagreb on the evacuation of the sick and wounded from Vukovar hospital (“Zagreb Agreement” or “Agreement”).<sup>413</sup> Negotiations for the Agreement had been conducted during the previous days. The Agreement was signed by Dr Andrija Hebrang, the Minister of Health of the Republic of Croatia,<sup>414</sup> General Andrija Rašeta<sup>415</sup> representing the JNA and Mr Georges-Marie Chenu, head of the ECMM in Zagreb.<sup>416</sup> Representatives of the International Committee of the Red Cross (“ICRC”),<sup>417</sup> of Médecins Sans Frontières (“MSF”) and Malteser Kreuz also participated in the negotiations.<sup>418</sup>

131. According to the Agreement, the evacuation was to include “[a]ll those wounded or sick undergoing medical treatment in Vukovar hospital who are judged by the authorities of the hospital to be fit to make the journey”.<sup>419</sup> It was anticipated in the Agreement that around 400 persons would be evacuated. Of these, it was estimated that approximately 40 were seriously ill and 360 were casualties.<sup>420</sup> The Agreement did not apply to the evacuation of the hospital staff or their families or other persons.

132. Both the Republic of Croatia and the JNA agreed to guarantee a ceasefire in the area surrounding the hospital during the evacuation and along the agreed evacuation route to Zidine in Croatia. The guarantee of ceasefire would cover regular and irregular units in the areas “in which they would respectively have responsibility for the evacuation operation”<sup>421</sup> and assurances that the route was clear of mines in the respective areas of responsibility.<sup>422</sup> The JNA and the Republic of Croatia agreed to recognize the neutrality of the hospital during the evacuation. The hospital was to be put under the protection of the ICRC, which would advise both the JNA and the Republic of Croatia on neutrality during the pertinent period. The evacuation was to be monitored by monitors from the ECMM, who were to have full access to all stages of the evacuation.<sup>423</sup> The JNA and the

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<sup>413</sup> Exhibit 40.

<sup>414</sup> Reynaud Theunens, T 10874.

<sup>415</sup> Irma Agotić, T 1944; 1967; Reynaud Theunens, T 10874.

<sup>416</sup> Vesna Bosanac, T 670.

<sup>417</sup> Juraj Njavro, T 1645.

<sup>418</sup> Reynaud Theunens, T 10874-10875.

<sup>419</sup> Exhibit 40, para 5.

<sup>420</sup> Exhibit 40, para 4.

<sup>421</sup> Exhibit 40, paras 2-3.

<sup>422</sup> Exhibit 40, para 2.

<sup>423</sup> Exhibit 40, paras 6-7.

Republic of Croatia agreed to facilitate the involvement of the ICRC, MSF and Malteser Kreuz as appropriate.<sup>424</sup> From many of these terms it is apparent that the Zagreb Agreement did not depend on the capitulation by the Croatian forces, nor was it reached as a consequence of their capitulation. The agreed evacuation was to take place whether or not the fighting at Vukovar persisted. The Agreement did not contain provisions authorising the JNA to select people to be evacuated, nor did it provide for the possibility of sick and wounded patients being handed over to any force or body other than the Republic of Croatia.<sup>425</sup> The effect of the terms of the Agreement was for the ICRC to coordinate the evacuation with the ECMM acting as monitors.

133. The Agreement was subject to all parties meeting their obligations.<sup>426</sup> The only option for withdrawal provided for in the Agreement was in the event that one of the parties judged that the terms of the Agreement had not been met. The Agreement stipulated that this option would become particularly relevant if the security undertakings given by, respectively, the JNA or the Republic of Croatia were “judged to have been invalidated”.<sup>427</sup>

134. It was not stated in the Zagreb Agreement when the agreed evacuation should take place. In fact, this depended on the respective opposing forces effecting the necessary ceasefire and ensuring safe passage for the evacuees. It is also apparent that the object of the Agreement was the relief of the humanitarian crisis at Vukovar hospital so that urgent evacuation was implied. To this end, on 17 November 1991, in the apparent expectation of the conclusion of the Agreement, the Croatian Minister Andrija Hebrang informed the Medical Director of Vukovar hospital, Dr Vesna Bosanac,<sup>428</sup> that two ICRC teams would arrive on 18 November 1991 to carry out the evacuation,<sup>429</sup> and Dr Vesna Bosanac informed Minister Andrija Hebrang of the number of sick and wounded in the hospital to be evacuated.<sup>430</sup>

135. The ICRC did not arrive at the hospital on the morning of 18 November 1991. It appears in the morning its representatives were diverted to negotiations for the surrender of the Croat forces from the Mitnica area.<sup>431</sup> ICRC representatives did attempt to reach the hospital at around 1215 hours on 18 November 1991, but “shooting from the left bank” prevented them from reaching the

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<sup>424</sup> Exhibit 40, para 7.

<sup>425</sup> Only hospital authorities were to decide who was to be evacuated, Petr Kypr, T 6591.

<sup>426</sup> Exhibit 40, para 8.

<sup>427</sup> Exhibit 40, para 8.

<sup>428</sup> Vesna Bosanac, T 538-539.

<sup>429</sup> Vesna Bosanac, T 652.

<sup>430</sup> Vesna Bosanac, T 848.

<sup>431</sup> Exhibit 417; Borče Karanfilov, T 15409-15410; Šarlota Foro, T 2530.

hospital.<sup>432</sup> Later on 18 November 1991, Andrija Hebrang informed Vesna Bosanac that the ICRC would arrive at the hospital at 0800 hours on 19 November 1991.<sup>433</sup>

136. ECMM representatives also attempted to reach Vukovar hospital on 18 November 1991. At approximately 0800 or 0900 hours that day ECMM monitors Petr Kypr and Jan Allan Schou, having been delayed by a briefing at the command of the 1 MD by General Maksimović, departed from Belgrade to Vukovar.<sup>434</sup> On the road to Vukovar they were then held by the JNA at a checkpoint.<sup>435</sup> Eventually, they arrived at the OG South command post at Negoslavci outside Vukovar at approximately 1215 hours.<sup>436</sup> At about that time, the ECMM monitors had a conversation with Dr Vesna Bosanac, via mobile phone. She asked them to come to the hospital.<sup>437</sup> This, however, could not happen on 18 November 1991. First, the monitors were told by a JNA officer that they were not allowed to contact Dr Vesna Bosanac, because she was “a criminal”,<sup>438</sup> and she and other hospital staff members had been taken away.<sup>439</sup> Then later, when the ECMM monitors sought permission to go to Vukovar hospital,<sup>440</sup> they were instead given a further JNA briefing at Negoslavci until approximately 1400 hours, when they finally left for Vukovar,<sup>441</sup> accompanied by Veselin Šljivančanin. However, they could not reach Vukovar hospital, as they were told that fighting was going on which prevented this.<sup>442</sup> The ECMM monitors were escorted by Veselin Šljivančanin until they eventually left the Vukovar area at about 1530 hours, not having been able to reach the hospital.<sup>443</sup>

137. At around 1200 hours on the following day, 19 November 1991, Dr Vesna Bosanac met Mile Mrkšić at his OG South command at Negoslavci.<sup>444</sup> They talked about the evacuation of the hospital. On Vesna Bosanac’s evidence, Mile Mrkšić said that the ICRC and ECMM were preventing them from reaching an agreement and suggested that they should agree on the

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<sup>432</sup> Petr Kypr, T 6566; Exhibit 344.

<sup>433</sup> Vesna Bosanac, T 655; 675. The evidence suggests that this was prior to 1200 hours on 18 November 1991.

<sup>434</sup> Jan Allan Schou, T 6865-6867, Petr Kypr, T 6563; Exhibit 339; Exhibit 344.

<sup>435</sup> Jan Allan Schou, T 6867-6868; Petr Kypr, T 6565; Exhibit 339; Exhibit 344.

<sup>436</sup> Jan Allan Schou, T 6867; Exhibit 339.

<sup>437</sup> Vesna Bosanac puts the time to “about 1200”, T 655; 675. Petr Kypr, T 6566; 6657; Exhibit 344.

<sup>438</sup> Jan Allan Schou, T 6885-6886. Upon being shown his own statement from 1996, Petr Kypr agreed that they were instructed by their JNA liaison officer that further contact with Dr Vesna Bosanac was not allowed, T 6776.

<sup>439</sup> Jan Allan Schou, T 6886; 6967. The evidence of Jan Allan Schou is given in relation to 19 November 1991, however the evidence of Vesna Bosanac, Petr Kypr and Exhibit 344 puts the date of the conversation at 18 November 1991 and Jan Allan Schou does allow for the fact that the conversation took place on 18 November 1991 (T 6996). Vesna Bosanac gave evidence that she was with Mile Mrkšić in Negoslavci around 1200 hours on 19 November 1991 (See Vesna Bosanac, T 666-667; 671; 677). This indicates that she could not have been at the hospital on 19 November 1991 to take the call from the ECMM at 1215 hours.

<sup>440</sup> Petr Kypr, T 6778, Exhibit 344.

<sup>441</sup> Jan Allan Schou, T 6868; 6961; Exhibit 339.

<sup>442</sup> Jan Allan Schou, T 6870; 6887. Jan Allan Schou testifies that this happened on 19 November 1991. (T 6887) However he also testified that this immediately followed the conversation with Vesna Bosanac via mobile phone which took place on 18 November 1991. (T 6886-6887)

<sup>443</sup> Jan Allan Schou, T 6884; Exhibit 339.

evacuation among themselves.<sup>445</sup> Vesna Bosanac told him that an agreement had been signed between the Croatian government, the JNA, ECMM and ICRC and that the evacuation of the hospital would be organised by the ICRC and ECMM.<sup>446</sup> Mrkšić responded that as the situation had improved and the shooting stopped, the JNA were now in a better position to conduct the evacuation.<sup>447</sup> He further said that he did not know what General Rašeta had signed and commented that “Rašeta was in Zagreb and not on the ground.”<sup>448</sup> Mile Mrkšić told Dr Vesna Bosanac that the evacuation would have to take place on 20 November 1991. He said this was because mines needed to be cleared at Zidine in order for the convoy to pass.<sup>449</sup> Before she left Negoslavci, Vesna Bosanac heard Mile Mrkšić give orders for JNA soldiers to guard each of the hospital entrances.<sup>450</sup> Further, as Vesna Bosanac was leaving Negoslavci she saw a white vehicle, thought it was the monitors and wanted to speak with them, but was denied permission.<sup>451</sup>

138. The Chamber is unable to accept the truth of Mile Mrkšić’s denial of having knowledge of the Zagreb Agreement. The Agreement was negotiated over some days before 18 November 1991 with the JNA directly represented at very senior level by General Andrija Rašeta.<sup>452</sup> Given the nature of the Agreement and the circumstances it is not conceivable that Mile Mrkšić was not fully informed. Also inconsistent with such a denial is the presence of both ICRC and ECMM monitors, who were seeking to reach the hospital to implement the Agreement on 18 November and, as it will be discussed shortly, on 19 November 1991, but who were prevented by JNA officers under Mile Mrkšić’s command.

139. At 1400 hours on 19 November 1991, shortly after Mile Mrkšić’s meeting with Vesna Bosanac, the ECMM monitors also met with him in Negoslavci to discuss the evacuation of wounded from the hospital.<sup>453</sup> Mile Mrkšić and Colonel Nebojša Pavković, the Federal Secretariat’s liaison officer to OG South,<sup>454</sup> Mr Cunningham, Mr Brodin, Mr Kypr, Mr Kanteres, Mr Schou, and Mr van den Gaag from the ECMM monitors, as well as Colonel Lončar, Colonel Memisević and Major Zarić from the JNA were present.<sup>455</sup> Nicolas Borsinger, representing the

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<sup>444</sup> Vesna Bosanac, T 666-667; 671; 677.

<sup>445</sup> Vesna Bosanac, T 678.

<sup>446</sup> Vesna Bosanac, T 678.

<sup>447</sup> Vesna Bosanac, T 671.

<sup>448</sup> Vesna Bosanac, T 671, 806.

<sup>449</sup> Vesna Bosanac, T 668.

<sup>450</sup> Vesna Bosanac, T 804.

<sup>451</sup> Vesna Bosanac, T 679.

<sup>452</sup> *See supra*, para 130.

<sup>453</sup> Petr Kypr, T 6577; 6581; Exhibit 316; Exhibit 344.

<sup>454</sup> Exhibit 344, p 4.

<sup>455</sup> Petr Kypr, T 6596-6597; 6709-6710; Exhibit 316.

ICRC, was present during part of the meeting.<sup>456</sup> There were no Croat or Serb civil authorities present.<sup>457</sup> It is significant that during the meeting, the ECMM monitors were told by Colonel Pavković that the ECMM were not to get involved in the evacuation.<sup>458</sup> Colonel Pavković said that the prisoners of war would not be allowed to leave the hospital, as “1) they were under JNA control, 2) if they did, the Serb irregulars/local citizens would attack the convoy, 3) the prisoners of war would be exchanged for JNA prisoners of war at some future time,<sup>459</sup> and 4) hospital management should be replaced by JNA military doctors and personnel.”<sup>460</sup> Mr Cunningham protested and informed the JNA that not allowing the Croatian prisoners of war to leave the hospital would be a breach of the Zagreb Agreement and the Geneva Convention<sup>461</sup> and insisted that the JNA abide by the Zagreb Agreement.<sup>462</sup> It is to be noted that while the Zagreb Agreement did not refer directly to prisoners of war,<sup>463</sup> it expressly provided for the evacuation of the wounded. In the circumstances, the Agreement could not be understood as excluding prisoners of war from the wounded. Indeed, the whole effect of Colonel Pavković’s statement was to identify respects in which the Zagreb Agreement would not be honoured by the JNA, starting with the direction that the ECMM monitors were not to get involved in the evacuation, contrary to their express role provided by the Agreement, and the statement that prisoners of war would not “be allowed” to leave the hospital but would be exchanged for JNA prisoners of war at a later time. This meeting was still in progress when, at 1635 hours,<sup>464</sup> the ECMM received a message from the ICRC that wounded persons had been taken out of the hospital without appropriate medical care,<sup>465</sup> but when this was communicated to the JNA at the meeting, the JNA representatives denied knowledge of this.<sup>466</sup>

140. On 19 November 1991 JNA soldiers had arrived at the hospital. In the afternoon more JNA had arrived. Civilians who had sought refuge at Vukovar hospital in the last days of the siege as well as civilians who had come from nearby shelters were placed on trucks and lorries and were taken to the facility of Velepomet by the JNA.<sup>467</sup> More than ten trucks with people from the hospital, including women and children were transferred to Velepomet. The events that transpired there will be discussed later in this Judgement.<sup>468</sup> Nicolas Borsinger of the ICRC who had come

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<sup>456</sup> Petr Kypr, T 6785-6786; Exhibit 418, p 3 states: “19 November 1991 [...] around 1300 hours a delegation of International Red Cross was here” (*i.e.* OG South headquarters in Negoslavci).

<sup>457</sup> See Petr Kypr, T 6579-6580; Exhibit 344.

<sup>458</sup> Exhibit 333.

<sup>459</sup> Petr Kypr, T 6582; 6599; Exhibit 316. See also Exhibit 344.

<sup>460</sup> Exhibit 316.

<sup>461</sup> Petr Kypr, T 6590; 6600; 6618.

<sup>462</sup> Petr Kypr, T 6599-6601; Exhibit 333.

<sup>463</sup> Exhibit 40.

<sup>464</sup> Petr Kypr, T 6592-6593; Exhibit 344.

<sup>465</sup> Petr Kypr, T 6592-6593; Exhibit 344.

<sup>466</sup> Petr Kypr, T 6593, Exhibit 344.

<sup>467</sup> Vesna Bosanac, T 682-683; P007, T 4009-4011. See also *infra*, para 157.

<sup>468</sup> See *infra*, paras 157-168.

from the meeting with Mile Mrkšić and others at Negoslavci, was at the hospital. He confirmed to Aernout van Lynden, a Sky News journalist, that he was there to organise the hospital evacuation.<sup>469</sup>

141. Veselin Šljivančanin was also at the hospital in the afternoon of 19 November 1991, together with Nicolas Borsinger,<sup>470</sup> who enquired whether the hospital had a list of the people to be evacuated and Vesna Bosanac gave him a copy.<sup>471</sup> Veselin Šljivančanin then demanded all the copies “in order to be able to compare”.<sup>472</sup> Vesna Bosanac clarified that the hospital staff and their family members were not on this list.<sup>473</sup> It appears that a copy of the list was given to Nicolas Borsinger and the rest was given to Veselin Šljivančanin, either directly or to his assistant Captain Karan.<sup>474</sup> The Chamber has not seen any copies of these lists. They have not been made available by the ICRC or JNA.

142. Following this exchange, Nicolas Borsinger told Vesna Bosanac, in the presence of Veselin Šljivančanin, that the ICRC was unable to stay during the night but that they would return at 0800 hours on the following day.<sup>475</sup> Shortly after that Vesna Bosanac, and also the Croatian Government Commissioner for Vukovar, Marin Vidić, were taken to the OG South command post in Negoslavci.<sup>476</sup> There, Dr Vesna Bosanac was questioned by Veselin Šljivančanin about the whereabouts of a commander of the Croatian forces in Vukovar.<sup>477</sup> She spent the night at Negoslavci and was returned to the hospital at 0600 hours on the following day.<sup>478</sup>

143. During the evening of 19 November 1991, the Chamber accepts that ECMM monitors were twice denied access to the hospital, first by their JNA liaison officer who acted in accordance with a specific order received from Admiral Brovet, Assistant Federal Secretary for National Defence in Belgrade,<sup>479</sup> and subsequently by Veselin Šljivančanin who told them that fighting at the hospital prevented them from going there.<sup>480</sup> Šljivančanin’s explanation is manifestly contradicted by the events that evening at the hospital which have just been recounted and by all other evidence about

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<sup>469</sup> Aernout van Lynden, T 3119; 3122; 3124; 3202; Aernout van Lynden testified that he arrived at the hospital at around 1400 – 1430 hours, was there around one hour and saw Nicolas Borsinger and Šljivančanin as Aernout van Lynden was leaving the hospital. So this would have been around 1500 – 1530 hours.

<sup>470</sup> Vesna Bosanac, T 684; 856; 7126; 7130; Aernout van Lynden, T 3124; 3202; Radoje Paunović, T 14125; Miodrag Panić, 14289-14290.

<sup>471</sup> Vesna Bosanac, T 686.

<sup>472</sup> Vesna Bosanac, T 686.

<sup>473</sup> Vesna Bosanac, T 686.

<sup>474</sup> Vesna Bosanac, T 687; Veselin Šljivančanin, T 13591, 13593; Mladen Karan, T 15550.

<sup>475</sup> Vesna Bosanac, T 686-687.

<sup>476</sup> Radoje Paunović, T 14155-14157; Milivoj Simić, T 14583. *See also* Borče Karanfilov, T 15418; Vesna Bosanac, T 688.

<sup>477</sup> Vesna Bosanac, T 688-689; Veselin Šljivančanin, T 13598-13599.

<sup>478</sup> Vesna Bosanac, T 690.

<sup>479</sup> Jan Allan Schou, T 6997; Veselin Šljivančanin, T 14069; Exhibit 333.

<sup>480</sup> Jan Allan Schou, T 6887-6889; 6894-6895.

the circumstances at the hospital that evening. This was a false explanation. In making these findings, the Chamber has taken into account, but does not accept, the evidence of Veselin Šljivančanin, that he was not in contact with the ECMM monitors on 19 November 1991.<sup>481</sup> The Chamber prefers the evidence, directly and indirectly, to the contrary which it considers lacks reason for bias and is more consistent with the general body of evidence and, therefore, more persuasive.

144. On 19 November 1991 at 2240 hours, the ECMM monitors received a fax message from their tasking cell in Zagreb in which they were specifically instructed to monitor the evacuation of the Vukovar hospital from the hospital until the handover point in Zidine.<sup>482</sup> They were informed that the loading of wounded would begin at 0800 hours on 20 November 1991, that the rules of the Geneva Conventions would be applied to all wounded prisoners of war and they would be interviewed to ascertain where they wanted to go. The ICRC was to compile lists of the wounded being evacuated from the hospital and to check the wounded on their arrival at the handover point in Zidine. The ECMM monitors were to monitor the evacuation. Attached to the fax message was a copy of the Zagreb Agreement of 18 November 1991.<sup>483</sup> The Chamber will deal with the events at the hospital on 20 November 1991 after first considering intervening events.

### **B. Surrender of Croatian forces at Mitnica (“Mitnica evacuation”)**

145. On the evening of 17 November 1991, negotiators for the Croatian forces initiated contact with the JNA via radio and arranged for negotiations to be held in the morning of the following day.<sup>484</sup> There is evidence that Mile Mrkšić and Marin Vidić, the Croatian Government Commissioner for Vukovar,<sup>485</sup> talked twice in the morning of 18 November 1991, although the evidence is not conclusive as to the subject matters of their conversations.<sup>486</sup> Veselin Šljivančanin and Nicolas Borsinger, the senior ICRC representative, also met on 18 November 1991 around 1000 hours,<sup>487</sup> before the surrender negotiations started.<sup>488</sup>

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<sup>481</sup> Veselin Šljivančanin, T 13584.

<sup>482</sup> Petr Kypr, T 6604-6609; Exhibit 315. The attached Agreement is identical to the Zagreb Agreement admitted into evidence as Exhibit 40.

<sup>483</sup> Exhibit 315.

<sup>484</sup> Šarlota Foro, T 2415; 2411. During the siege of Vukovar a number of civilians took shelter in cellars. Šarlota Foro, together with about 20 other people, stayed in the cellar of the company by which she was employed. (Šarlota Foro, T 2393; 2397; 2406-2407; 2411) Croatian forces from the area of Mitnica in Vukovar also used the cellar as their headquarters and Šarlota Foro heard them discussing the option of surrender to the JNA. (Šarlota Foro, T 2406, 2410)

<sup>485</sup> Irma Agotić, T 2068.

<sup>486</sup> Veselin Šljivančanin, T 13550-13551; Petr Kypr, T 6569; Exhibit 401, entries at 0140 hours, 0945 hours, and 0950 hours on 18 November 1991; Exhibit 417. See also Exhibit 868, p 42.

<sup>487</sup> Veselin Šljivančanin, T 13555.

<sup>488</sup> Aernout van Lynden, T 3111; 3114; 3177; 3220. See *supra*, para 135.

146. During the morning of 18 November 1991<sup>489</sup> surrender negotiations were held. International news crews filmed part of the negotiations.<sup>490</sup> The negotiations took place in the area of Vučedol<sup>491</sup> near Mitnica in Vukovar. Participants in the negotiations were Filip Karaula, commander of the Croatian forces, Matija Mandić, and Zdravko Komsić for the Croatian forces,<sup>492</sup> and Colonel Nebojša Pavković, the Federal Secretariat's liaison officer to OG South<sup>493</sup> and Marko Marić<sup>494</sup> from the JNA. Nicolas Borsinger from the ICRC also attended<sup>495</sup> at the request of the Croatian forces as a guarantee that the agreement would be respected.<sup>496</sup> The negotiations lasted approximately one and a half to two hours.<sup>497</sup> An agreement was reached on the surrender of the Croatian forces, which would take place the same afternoon.<sup>498</sup>

147. It was agreed that the Croatian forces would surrender themselves and their weapons to the JNA, and that the surrender would be monitored by ICRC representatives, who would record the names and take photographs of those surrendering.<sup>499</sup> The Croatian forces were to be treated as prisoners of war in accordance with the Geneva Convention.<sup>500</sup> It was further agreed that civilians from Mitnica would be evacuated to parts of Croatia not engulfed by the war.<sup>501</sup> The Croatian forces specified that they did not trust the Serb TO and would not surrender to them.<sup>502</sup> The Croatian forces and civilians were to assemble at an agreed collection point, which was at a wide clearing on the way to the cemetery.<sup>503</sup> This was implemented. There was radio communication between the negotiators for the Croatian forces and the JNA throughout the gathering at the collection point. Once everyone had gathered, a Croatian negotiator drove away and on his return he said the evacuation could proceed.<sup>504</sup>

148. Mile Mrkšić, the commander of OG South, ordered the commander of the 80 mtbr, LtCol Milorad Vojnović to secure the Mitnica group.<sup>505</sup> This order was implemented by the military police of the 80 mtbr under the command of Captain Dragan Vezmarović and other officers from

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<sup>489</sup> Exhibit 417; Borče Karanfilov, T 15409-15410; Šarlota Foro, T 2530.

<sup>490</sup> Aernout van Lynden, T 3112; Exhibit 126; Exhibit 831; Exhibit 832.

<sup>491</sup> Veselin Šljivančanin, 13554-13555.

<sup>492</sup> Šarlota Foro, T 2411.

<sup>493</sup> Aernout van Lynden, T 3114, 3215; Bogdan Vujić, T 4781; Borče Karanfilov, T 15409; Ljubiša Vukašinović, T 15001; Exhibit 401.

<sup>494</sup> Veselin Šljivančanin, T 13552.

<sup>495</sup> Exhibit 126; Exhibit 831.

<sup>496</sup> Exhibit 831, at 13:02 – 13:25 minutes; Exhibit 832, p 7 at 24-30.

<sup>497</sup> Borče Karanfilov, T 15410.

<sup>498</sup> Aernout van Lynden, T 3113; Ljubiša Vukašinović, T 15001; Borče Karanfilov, T 15410, Exhibit 417.

<sup>499</sup> Šarlota Foro, T 2416-2417.

<sup>500</sup> Šarlota Foro, T 2417.

<sup>501</sup> Šarlota Foro, T 2416; Veselin Šljivančanin, T 13565-13566; Exhibit 832, p 8.

<sup>502</sup> Šarlota Foro, T 2412.

<sup>503</sup> Šarlota Foro, T 2417.

<sup>504</sup> Šarlota Foro, T 2418.

<sup>505</sup> Miodrag Panić, T 14391.

the command of the 80 mtbr.<sup>506</sup> LtCol Vojnović with Captain Vezmarović looked for an appropriate location where the prisoners could be kept until they were evacuated. They identified a large hangar at a pig farm at Ovčara, and LtCol Vojnović ordered Captain Vezmarović to prepare the hangar to receive a large group of prisoners.<sup>507</sup> LtCol Vojnović reported to Mile Mrkšić that he had found an appropriate place to keep the prisoners.<sup>508</sup>

149. The surrender started in the afternoon on 18 November 1991, at approximately 1400 -1500 hours,<sup>509</sup> while there was still daylight.<sup>510</sup> The surrender of weapons took place at the entrance to the new cemetery.<sup>511</sup> At least some of the Croatian forces were wearing civilian clothes.<sup>512</sup> The surrender of the Croatian forces lasted until dusk.<sup>513</sup> In all, 181 Croatian fighters commanded by Filip Karaula<sup>514</sup> surrendered to the JNA on 18 November 1991. There were six officers among them.<sup>515</sup>

150. The surrender took place in an organised manner. Witnesses observed that the prisoners of war were treated in accordance with the Geneva Convention.<sup>516</sup> Around 30 JNA soldiers were present at the surrender.<sup>517</sup> The ICRC registered the prisoners of war.<sup>518</sup> They were told that a shelter was secured for them at Ovčara until further transport was provided.<sup>519</sup> After the surrender of weapons the Croatian prisoners of war were transported to the Ovčara farm on buses escorted by military vehicles.<sup>520</sup> Aernout van Lynden understood that Croatian prisoners of war and some civilians were transported to Ovčara together in a mixed group,<sup>521</sup> although at least some civilians used their own vehicles to reach Ovčara. At Ovčara, the civilians were separated from the prisoners of war and were taken elsewhere. This will be discussed later.

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<sup>506</sup> Dragan Vezmarović, T 8390-8391; 8475; 8485; 8531-8532; P014, T 7697; 7850-7851; Milorad Vojnović, T 8833; 8896; 8906; Dragi Vukosavljević, T 8667-8668; P014, T 7697; 7850-7851; Miodrag Panić, T 14284; 14288; 14391; Exhibit 371; Exhibit 375 (entry at 1800 hours on 18 November 1991).

<sup>507</sup> Dragan Vezmarović, T 8392-8393; 8486; 8531-8532; 8534; 8542; 8598-8599; Exhibit 375 (entry at 1800 hours on 18 November 1991 states that a hangar is a temporary prison).

<sup>508</sup> Miodrag Panić, T 14391.

<sup>509</sup> Šarlota Foro, T 2412; 2530. Exhibit 417.

<sup>510</sup> Šarlota Foro, T 2530; Borče Karanfilov, T 15410; Exhibit 124; Exhibit 126 (on exhibit 124 and 126 one can see that there is still daylight).

<sup>511</sup> Šarlota Foro, T 2419.

<sup>512</sup> Aernout Van Lynden, T 3113, 3116; 3179; Razvigor Virijejić, T 11562-11563; Exhibit 124.

<sup>513</sup> Borče Karanfilov, T 15411; Exhibit 375.

<sup>514</sup> Radoje Trifunović, T 8401; Dragan Vezmarović, T 8669; Dragi Vukosavljević, T 8796; Milorad Vojnović, T 8833; Borče Karanfilov, T 15411; Veselin Šljivančanin, T 13978; Exhibit 432.

<sup>515</sup> Dragan Vezmarović, T 8395, 8402, 8410, 8416; 8551; Milorad Vojnović, T 8833-8836; Rade Danilović, T 12393; 12463 (181 people in the hangar at Ovčara).

<sup>516</sup> Aernout van Lynden, T 3183; Borče Karanfilov, T15459-15460; Milorad Vojnović, T 8833-8836; 8896-8897.

<sup>517</sup> Veselin Šljivančanin, T 13565.

<sup>518</sup> Šarlota Foro, T 2419; 2480.

<sup>519</sup> Ljubiša Vukašinović, T 15000-15004.

<sup>520</sup> Dragan Vezmarović, T 8393; Dragi Vukosavljević, T 8666; P014, T 7697; Rade Danilović, T 12307-12308; 12312; 12352-12353; Exhibit 432.

<sup>521</sup> Aernout van Lynden, T 3113; 3116. See also Exhibit 401, entry on 18 November 1991 at 1430 hours.

151. Veselin Šljivančanin, his deputy Major Vukašinović as well as Colonel Pavković, were present at the surrender of the Croat forces and the gathering of civilian Croats to be evacuated, Veselin Šljivančanin and Major Vukašinović from approximately 1500 or 1600 hours<sup>522</sup> until 2300 hours.<sup>523</sup> While the 80 mtbr had been given responsibility for the prisoners of war, in fact the 80 mtbr forces gathered at Ovčara where they assumed responsibility for the prisoners. The Chamber accepts the evidence of an eyewitness that at the surrender point and during the transport to Ovčara Veselin Šljivančanin was in command and that his orders were clearly obeyed by the soldiers. This could be seen by the way the soldiers addressed him in connection with the orders given, the way they escorted the Croatian prisoners of war into the buses and trucks and the way they collected weapons.<sup>524</sup>

152. Veselin Šljivančanin testified that at dusk, he received a telegram from General Aleksandar Vasiljević, Chief of the Security Administration of the Federal Secretariat for National Defence in Belgrade, in which it was stated: “Around 2,000 of our soldiers and officers are in Croat prisons. What should be done is to bring in as many perpetrators of crimes as possible in order to carry out an exchange”.<sup>525</sup> No such telegram is in evidence, although it is the evidence of Major Vukašinović that it was shown to him at the time.<sup>526</sup>

153. At approximately 1600 hours, while “there was still natural light”, the first group of prisoners of war who surrendered at Mitnica arrived at Ovčara.<sup>527</sup> During the night, the remaining prisoners of war from Mitnica arrived there.<sup>528</sup> Captain Vezmarović and his military police of the 80 mtbr were already at Ovčara,<sup>529</sup> ready to secure the prisoners of war, who had been transported by the military police of the gmtr.<sup>530</sup> No military policemen of the 80 mtbr participated in escorting the convoy of prisoners of war.<sup>531</sup> Upon arrival of the prisoners of war at Ovčara, LtCol Vojnović, the commander of the 80 mtbr, told Captain Vezmarović that from then on, he was to take orders from Captain Borče Karanfilov, a subordinate of Veselin Šljivančanin from the security organ of OG South,<sup>532</sup> who was to be in charge of security.<sup>533</sup> Captain Karanfilov proceeded,

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<sup>522</sup> Ljubiša Vukašinović, T 15001-15004; Veselin Šljivančanin, T 13565-13566; Šarlota Foro, T 2420-2421; Borče Karanfilov, T 15410-15411.

<sup>523</sup> Veselin Šljivančanin, T 13566.

<sup>524</sup> Šarlota Foro, T 2420.

<sup>525</sup> Veselin Šljivančanin, T13566-13567.

<sup>526</sup> Ljubiša Vukašinović, T 15000-15004, Veselin Šljivančanin, T 13565-13566.

<sup>527</sup> Dragan Vezmarović, T 8393-8394; 8397; 8411; 8599; 8600; P014, T 7693; 7697; Milorad Vojnović, T 9812; Dragi Vukosavljević, T 8796; Exhibit 371; Exhibit 432.

<sup>528</sup> Rade Danilović, T 12462; Exhibit 371.

<sup>529</sup> Dragan Vezmarović, T 8393; 8395; 8599. Exhibit 371, p 8 states that the brigade officers were ordered to establish a prisoner camp at 1410 hours and that the prisoners arrived at 1600 hours.

<sup>530</sup> Dragan Vezmarović, T 8393-8394; 8599; P014, T 7697; Milorad Vojnović, T 8912; Borče Karanfilov, T 15411; Dragan Vezmarović, T 8533.

<sup>531</sup> Dragan Vezmarović, T 8548.

<sup>532</sup> Dragan Vezmarović, T 8395-8396; 8450; 8534.

however, to hand over the security of the prisoners to Captain Vezmarović,<sup>534</sup> emphasizing that the prisoners of war should be treated in accordance with the Geneva Conventions.<sup>535</sup> Captain Karanfilov further instructed Captain Vezmarović to contact him if he needed anything during the night, as he would not be spending the night at Ovčara<sup>536</sup> and that he would return at 0800 hours the next morning for the arrival of international organisations and the transport of the prisoners of war to Sremska Mitrovica<sup>537</sup> (which is across the border in Serbia) where there was a prison. On his evidence, Captain Karanfilov only stayed at Ovčara for about 10 to 15 minutes.<sup>538</sup>

154. Efforts were made to ensure that the facilities for the Croatian prisoners of war were adequate considering the weather conditions,<sup>539</sup> as it was already very cold. The prisoners were given food and water.<sup>540</sup> The prisoners of war spent the night in the hangar.<sup>541</sup> Armed men, who Captain Vezmarović assumed to be Vukovar TOs, came throughout the night to enquire about the Croatian prisoners of war.<sup>542</sup> A drunken lieutenant-colonel from the gmtbr also arrived with a similar enquiry.<sup>543</sup> No one was allowed access, the visitors were sent away and the night passed quietly.<sup>544</sup> During the night, Captain Vezmarović compiled a hand-written list with the names of the prisoners of war.<sup>545</sup> There is no evidence to suggest that any of the prisoners of war were hurt or maltreated during the night.<sup>546</sup>

155. On 19 November 1991 between 0900 and 1000 hours,<sup>547</sup> on the orders of Veselin Šljivančanin,<sup>548</sup> Captain Karanfilov returned to Ovčara because international monitors were due to arrive and organise the transfer of the Croatian prisoners of war to Sremska Mitrovica.<sup>549</sup> A convoy of military vehicles, buses and ICRC vehicles arrived at around 1100 hours.<sup>550</sup> The prisoners of war had the opportunity to tell the ICRC of any occurrences of violations or mistreatment, but no one complained.<sup>551</sup> At 1130 hours, Captain Vezmarović handed over the Croatian prisoners of

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<sup>533</sup> Dragan Vezmarović, T 8396-8397.

<sup>534</sup> Dragan Vezmarović, T 8397; 8669; Dragi Vukosavljević, T 8796; Dragan Vezmarović, T 8397.

<sup>535</sup> Dragan Vezmarović, T 8395-8396; Borče Karanfilov, T 15411-15412; 15463; Dragi Vukosavljević, T 8669-8670; Exhibit 415, para 3.

<sup>536</sup> Dragan Vezmarović, T 8399-8400; 8449; 8542-8543; Exhibit 432.

<sup>537</sup> Dragan Vezmarović, T 8401.

<sup>538</sup> Borče Karanfilov, T 15413; 15462; 15465-15466.

<sup>539</sup> Dragan Vezmarović, T 8391-8392; Rade Danilović, T 12308.

<sup>540</sup> Dragan Vezmarović, T 8413-8414; 8417; 8600.

<sup>541</sup> Dragan Vezmarović, T 8600.

<sup>542</sup> Dragan Vezmarović, T 8412; 8415.

<sup>543</sup> Dragi Vukosavljević, T 8670-8671.

<sup>544</sup> Dragi Vukosavljević, T 8670-8671. *See also* Dragan Vezmarović, T 8412; Rade Danilović, T 12366.

<sup>545</sup> Dragan Vezmarović, T 8409; 8573.

<sup>546</sup> Borče Karanfilov, T 15460; Dragi Vukosavljević, T 8670-8671.

<sup>547</sup> Borče Karanfilov, T 15413; 15469-15470.

<sup>548</sup> Borče Karanfilov, T 15413; 15462; Veselin Šljivančanin, T 13571-13572.

<sup>549</sup> Dragan Vezmarović, T 8401; Borče Karanfilov, T 15414.

<sup>550</sup> Dragan Vezmarović, T 8415-8416.

<sup>551</sup> Dragan Vezmarović, T 8415-8417.

war to Captain Karanfilov<sup>552</sup> and reported to him on the night's events.<sup>553</sup> Captain Vezmarović considered Captain Karanfilov his superior officer at the time. Captain Karanfilov was issuing tasks and assignments to him.<sup>554</sup> Captain Karanfilov took charge, ordering checks to be run to see how the Croatian prisoners of war had been treated, and then they boarded the buses.<sup>555</sup> Captain Karanfilov then told Captain Vezmarović to get his list typed up.<sup>556</sup> The Croatian prisoners of war were transported to Sremska Mitrovica, escorted by JNA forces of OG South.<sup>557</sup> On the orders of LtCol Vojnović, once it had been typed out, Captain Vezmarović delivered the list of the prisoners to the KP Dom prison in Sremska Mitrovica between 1530 and 1630 hours on 19 November 1991.<sup>558</sup> The list identified 181 prisoners of war.<sup>559</sup>

156. LtCol Vojnović reported back to Mile Mrkšić that these matters had been accomplished,<sup>560</sup> as Mile Mrkšić was his immediate superior in the chain of command.<sup>561</sup>

### **C. Evacuation of civilians from Vukovar**

157. On 18 November 1991 over 4000 civilians took steps to leave Vukovar.<sup>562</sup> The civilians consisted of men, women, children, and the elderly.<sup>563</sup> Their evacuation was assisted by the JNA. As has been indicated, the civilians assembled at a collection point in the Mitnica area which appears to be the same as the surrender point for the Croatian forces from Mitnica. Veselin Šljivančanin, assisted by Major Vukašinović and unidentified Vukovar TOs,<sup>564</sup> who had local knowledge and knew many of the local population, interviewed civilians who had gathered at the collection point. It is said that this was in order to ascertain whether they had committed crimes.<sup>565</sup> In the Chamber's view, in effect they were seeking to ensure that no members of the Croat forces were seeking to be evacuated as civilians.

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<sup>552</sup> Dragan Vezmarović, T 8411; 8415; 8596; Exhibit 371; Exhibit 432.

<sup>553</sup> Dragan Vezmarović, T 8415; 8600-8601.

<sup>554</sup> Dragan Vezmarović, T 8415.

<sup>555</sup> Dragan Vezmarović, T 8415.

<sup>556</sup> Dragan Vezmarović, T 8601; Borče Karanfilov, T 15415.

<sup>557</sup> Dragan Vezmarović, T 8602; Miodrag Panić, T 14303; 14391; Exhibit 375 (stating that this happened in the morning); Dragi Vukosavljević, T 8716; P014, T 7697; Exhibit 418. Borče Karanfilov gave the time as between 1200 and 1400 hours, T 15417. Milorad Vojnović gave evidence that the military police of the 80 mtbr escorted the convoy to Sremska Mitrovica, T 8832, 8896-8898, 8906-8907; 8909-8910; 8913. *See* Razvigor Virijević, T 11565; *See* Exhibit 415, para 3.

<sup>558</sup> Dragan Vezmarović, T 8411; 8452; 8602; Exhibit 432.

<sup>559</sup> Dragan Vezmarović, T 8551.

<sup>560</sup> Milorad Vojnović, T 8836-8837; 8916. On the evidence of Rade Danilović, Milorad Vojnović reported to his superior following the chain of command, T 12313.

<sup>561</sup> *See infra*, paras 77; 113.

<sup>562</sup> Aernaut van Lynden, T 3113, 3116; Šarlota Foro, T 2417; Ljubiša Vukašinović, T 15001; Veselin Šljivančanin, T 13565-15466.

<sup>563</sup> Šarlota Foro, T 2428; Aernaut van Lynden, T 3113, 3117; Razvigor Virijević, T 11556.

<sup>564</sup> Veselin Šljivančanin, T 13566.

<sup>565</sup> Veselin Šljivančanin, T 13566.

158. From the collection point in Mitnica some civilians were transported to Velepromet while others were transported initially to Ovčara.<sup>566</sup> The civilians arrived at Ovčara on buses or in their private cars at approximately 2200 or 2300 hours.<sup>567</sup> It does not appear that any civilians stayed at Ovčara for an extended period of time,<sup>568</sup> they were continuously transported by bus to Croatia or to Serbia.<sup>569</sup> This process started late in the evening of the 18 November 1991 and continued throughout the night and into the following morning.<sup>570</sup> Their private cars remained at Ovčara.

159. JNA personnel were present throughout the transportation of the civilians. On the road to Ovčara, there were JNA and TO soldiers as well as heavy artillery.<sup>571</sup> The convoy of buses and cars that brought the civilians to Ovčara was accompanied by a military column.<sup>572</sup> There was also a large presence of JNA soldiers at Ovčara.<sup>573</sup> The movement of the civilians at Ovčara was controlled by OG South of which the 80 mtbr was in charge of security of the area.<sup>574</sup> The JNA supervised and organised the transportation of the civilians by bus from Ovčara.<sup>575</sup>

160. Convoys of civilians were leaving Vukovar throughout 18, 19 and 20 November 1991. The evidence indicates that at least one convoy consisting of 16 buses with civilians was turned back by Croatian authorities on 18 November 1991 and had to return to the area of responsibility of OG South.<sup>576</sup>

#### **D. Velepromet**

161. On 19 November 1991, a large number of people who had gathered at the Vukovar hospital were taken from there to the facility of Velepromet by the JNA.<sup>577</sup> This facility, located a few hundred metres from the JNA barracks in Vukovar,<sup>578</sup> consisted of several hangars and a few

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<sup>566</sup> Šarlota Foro, T 2422, 2427; Ljubiša Vukašinić, T 15001, 15004; Radoje Trifunović, T 8112; P018, T 7547.

<sup>567</sup> P014, T 7692-7693; Šarlota Foro, T 2418, 2427; Ljubiša Vukašinić, T 15003-15005; . The civilians left their cars at Ovčara and were transported further by bus. Their cars were later taken to Velepromet. (Ljubiša Vukašinić, T 15004; 15149-15153; Veselin Šljivančanin, T 13567)

<sup>568</sup> P014, T 7697; Ljubiša Vukašinić, T 15004.

<sup>569</sup> Šarlota Foro, T 2430-2431; Ljubiša Vukašinić, T 15004-15005; P014, 7697-7698; Veselin Šljivančanin, T 13565-13567.

<sup>570</sup> P014, T 7697-7698; Exhibit 344, p. 4; Veselin Šljivančanin, T 13569; Ljubiša Vukašinić, T 15004-15005; Šarlota Foro, T 2532.

<sup>571</sup> Šarlota Foro, T 2422, 2428.

<sup>572</sup> Šarlota Foro, T 2422.

<sup>573</sup> Šarlota Foro, T 2428; Veselin Šljivančanin, T 13569; Ljubiša Vukašinić, T 15001.

<sup>574</sup> Veselin Šljivančanin, T 13568; P014, T 7693, 7697.

<sup>575</sup> Veselin Šljivančanin, T 13565-13567; Šarlota Foro, T 2430. Some JNA members were on the buses from Ovčara. Šarlota Foro, T 2433.

<sup>576</sup> Radoje Trifunović, T 8112; 8251; Petr Kypr, T 6578; Miodrag Panić, T 14285-14286; Ljubiša Vukašinić, T 15006-15007; Veselin Šljivančanin, T 13609-13613; Exhibit 401, entry 19 November 1991 at 1400 hours; Exhibit 418; Exhibit 344, p 4.

<sup>577</sup> P007, T 4009-4011.

<sup>578</sup> Josip Čović, T 3439.

buildings and was used as a warehouse.<sup>579</sup> It was across the street from a warehouse of the Vupik company.<sup>580</sup> The Vupik company was the owner of several commercial facilities, including this warehouse, a wine cellar<sup>581</sup> and the farm at Ovčara.<sup>582</sup>

162. P007 testified that at the entrance to Velepromet persons brought from various directions were separated according to their ethnicity.<sup>583</sup> When Josip Čović arrived at Vupik, a JNA officer appeared and ordered that elderly people, women and children be separated from other civilians and from “defenders”, who had also been brought there from various locations.<sup>584</sup>

163. Acts of mistreatment occurred at Velepromet on 19 November 1991. They will be described briefly because events at Velepromet are not charged as offences in the Indictment.<sup>585</sup> After his arrival, P007 was told to go to the side and stand with a group of seven or eight individuals. A young man was taken out of the group and cursed at. A TO, Mičo Dzanković, hit the young man on the face with the barrel of his rifle. The man started bleeding and was taken away.<sup>586</sup> P007 stated that he saw a man called Čapalo, a Serb volunteer or paramilitary, walking with a human head in one hand and a knife from which blood was dripping in the other.<sup>587</sup> Josip Čović testified that after the arrival at Velepromet, he and other people from his group were asked to line up in front of the hangars.<sup>588</sup> He stated that local Serb civilians passed by their group and pointed at people. The people so identified were then taken by “Šešelj’s men” behind the hangars towards a brick factory located about 50 metres away.<sup>589</sup> Out of the 50 men standing in front of the hangars, half were taken away.<sup>590</sup> Josip Čović could hear muffled shots from that direction.<sup>591</sup> There were lulls of two or three minutes and then the firing would start again.<sup>592</sup> Josip Čović believed that the people taken to the brick factory were killed, as he never saw them again.<sup>593</sup> One of the persons pointed at by local civilians was a young man called Kemo. Two men wearing full “Chetnik” Serb paramilitary attire killed Kemo by slitting his throat with a knife. They did it in front of the people standing by the hangars.<sup>594</sup> A local Serb TO member called Josip Čović “an old

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<sup>579</sup> P009, T 6080; P032, T 2964; Josip Čović, T 3518; Exhibit 148.

<sup>580</sup> Josip Čović, T 3439; Zvezdana Polovina, T 2634.

<sup>581</sup> Zvezdana Polovina, T 2575.

<sup>582</sup> P031, T 3258.

<sup>583</sup> P007, T 4012; 4033.

<sup>584</sup> Josip Čović, T 3440.

<sup>585</sup> *See supra*, para 8.

<sup>586</sup> P007, T 4028.

<sup>587</sup> P007, T 4034.

<sup>588</sup> Josip Čović, T 3442-3443.

<sup>589</sup> Josip Čović, T 3443.

<sup>590</sup> Josip Čović, T 3447.

<sup>591</sup> Josip Čović, T 3443.

<sup>592</sup> Josip Čović, T 3448.

<sup>593</sup> Josip Čović, T 3443; 3614.

<sup>594</sup> Josip Čović, T 3445; 3448-3449.

Ustasha” and said that his son was “a hardcore Ustasha”. The paramilitaries who had killed Kemo then started punching Josip Čović, until a JNA officer emerged and stopped them.<sup>595</sup>

164. P007 described how at Velepromet he was taken to a small room with a slanting roof, which was also referred to as the “death room”. It had been the carpenter’s room. The room was lit by candles and about 50 people were packed in there. From inside the room P007 could hear sounds of firing outside. He described seeing a man with bleeding legs thrown into the “death room”. His wounds were caused by gun shots. Subsequently, the wounded man was taken away, upon a request made to a person referred to as Topola, who was a Serb paramilitary.<sup>596</sup> P032 was also taken to the “death room”. In his evidence, approximately 50 to 60 other people were held in that room.<sup>597</sup> A Croat police officer was in the room, who had a gash across his face, which P032 believed had been inflicted with a knife during an interrogation.<sup>598</sup> P032 also described incidents that, he thought, took place on 20 November 1991, but other evidence indicates that he may have made an error as to the date of his arrival at Velepromet and that the incidents he described actually took place on 19 November 1991.<sup>599</sup> The Chamber is not able to determine which is correct. P032 saw the Croat police officer he described taken out of the death room and, judging by the sounds that could be heard outside, severely beaten.<sup>600</sup> After that incident, twenty individuals, including P032, were taken out of the room to another room in the same building.<sup>601</sup> A member of the local Serb forces, whom P032 considered to be “a paramilitary policeman”, questioned P032 about weapons in his possession and the number of Serbs allegedly killed by him. He insulted P032 and tied his hands with wire. Another Serb paramilitary, called Topola, arrived and, having learned that P032 was a member of ZNG, forced him to swallow two bullets and hit him on the head.<sup>602</sup>

165. There are other witnesses who testified that they were held in the “death room” or the “carpenter’s room” on 21 November 1991. Although the events described by them took place after the time of the events alleged in the Indictment, this evidence supports the general credibility of the evidence of P007 and P032. The witnesses who were held at Velepromet on 21 November 1991 stated that people were taken out of the “death room” and killed.<sup>603</sup> There is in evidence a list identifying the bodies of 15 Croat men from Vukovar’s new cemetery, all of whom had been found initially in a grave at the rear of Velepromet. Ivan Grujić testified that these persons were listed as

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<sup>595</sup> Josip Čović, T 3450-3451.

<sup>596</sup> P007, T 4036-4039.

<sup>597</sup> P032, T 2965.

<sup>598</sup> P032, T 2965-2966.

<sup>599</sup> Exhibit 133; P032, T 3042.

<sup>600</sup> P032, T 2966.

<sup>601</sup> P032, T 2965-2967; 3032.

<sup>602</sup> P032, T 2966-2968.

<sup>603</sup> Emil Čakalić, T 5921-5923; Exhibit 265; Vilim Karlović, T 6361-6363; Exhibit 294; P031, T 3283-3284; 3288-3289; Dragutin Berghofer, T 5305-5308; 5311-5312.

having gone missing between 18 and 21 November 1991, and that they were killed before 7 December 1991.<sup>604</sup> Two of the men named in the list, Karlo Crk and Krunoslav Golac, were seen on 21 November 1991 being taken out of the “death room”. The witnesses to this believed that the men were subsequently killed.<sup>605</sup>

166. The witnesses who were kept in Velepromet stated that the soldiers present at Velepromet belonged to the Serb TO.<sup>606</sup> Josip Čović described the TO members who were in charge of the facility.<sup>607</sup> P007 and Josip Čović referred to Darko Fot as a commander who gave them instructions.<sup>608</sup> Josip Čović stated that Darko Fot wore the upper part of the TO uniform.<sup>609</sup> He saw Darko Fot give an order to TO members, whom Josip Čović believed to be under his command.<sup>610</sup>

167. In the finding of the Chamber, on 19 November 1991 some hundreds of non-Serb people were taken from the Vukovar hospital and transferred to the facility of Velepromet by Serb forces. Others arrived at Velepromet from elsewhere. At Velepromet these people were separated according to their ethnicity and suspicion of involvement in the Croatian forces. The Chamber finds it established that interrogations of some of these people were conducted at Velepromet in the course of which the suspects were beaten, insulted or otherwise mistreated. A number of them were shot dead at Velepromet, some of them on 19 November 1991. The Chamber finds that many, if not all, of the persons responsible for the brutal interrogations and killings were members of the Serb TO or paramilitary units.

168. In the evening hours of 19/20 November 1991, some of the people detained at Velepromet were transferred on buses guarded by the JNA to the prison at Sremska Mitrovica.<sup>611</sup> Civilians not suspected of involvement in the Croatian forces were evacuated from Velepromet to destinations in Croatia and Serbia at some time on 20 November 1991.<sup>612</sup>

#### **E. Inspection of Velepromet by counter-intelligence officers**

169. When the Croat forces capitulated, JNA counter-intelligence officers from the Federal Secretariat for National Defence and from 1 MD in Belgrade arrived in Vukovar to provide assistance to Mile Mrkšić and his staff at OG South in handling prisoners of war captured by Serb

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<sup>604</sup> Ivan Grujić, T 9967-9968; 10059; Exhibit 552.

<sup>605</sup> P031, T 3288-3289; Emil Čakalić, T 5921-5923; Dragutin Berghofer, T 5311-5312.

<sup>606</sup> P007, T 4013; 4077; P032, T 3007.

<sup>607</sup> Josip Čović, T 3443.

<sup>608</sup> P007, T 4012; 4013; Josip Čović, T 3441-3442.

<sup>609</sup> Josip Čović, T 3441.

<sup>610</sup> Josip Čović, T 3442; 3551.

<sup>611</sup> Josip Čović, T 3453-3454; 3589; 3590; P032, T 2969-2971; P007, T 4039-4040; 4080.

forces in the area of Vukovar. These counter-intelligence officers were specifically tasked to interview prisoners of war in the area with regard to crimes of war.<sup>613</sup>

170. Colonel Bogdan Vujić, one of the counter-intelligence officers testified that the team of officers from the Federal Secretariat for National Defence, arrived at the command post in Negoslavci at 2000 hours on 19 November 1991, and had a meeting with Mile Mrkšić.<sup>614</sup> Mile Mrkšić then informed the team that prisoners of war were being held at Velepromet and that there was information that in the Vukovar hospital war criminals were hiding with the wounded and civilians.<sup>615</sup> At the end of the meeting Mile Mrkšić informed the team that they would be further briefed on the prisoners of war held in Velepromet by Veselin Šljivančanin.<sup>616</sup> It was the testimony of Colonel Vujić, that during the briefing Veselin Šljivančanin warned the officers who were about to set off to Velepromet that they should not be surprised if they found “Chetniks there slaughtering Ustashas”.<sup>617</sup> However, no other witness has corroborated this account by Colonel Vujić. Warrant Officer Branko Korica, a counter-intelligence officer of IMD who also attended the briefing said he had not heard any warning about “Chetniks” slaughtering “Ustashas” at Velepromet,<sup>618</sup> and Veselin Šljivančanin denied in his testimony having made such a statement.<sup>619</sup> It is also to be noted that Colonel Vujić, had not mentioned this statement of Veselin Šljivančanin when testifying before other courts and it is not referred to in his earlier statements to investigators.<sup>620</sup> Colonel Vujić agrees that previously he withheld this part of his testimony, explaining that he did so out of fear for his safety.<sup>621</sup> However, in particular, at a trial before the War Crimes Chamber in Belgrade, Colonel Vujić gave an account that stands in contradiction with his present testimony. He testified then that he saw “Chetniks” at Velepromet but had not heard of any indications of “something unpleasant” that could be expected from them.<sup>622</sup> Notwithstanding the findings of the Chamber about the credibility of the evidence of Vujić where it conflicts with the evidence of Branko Korica, which will be discussed shortly, in respect of this particular issue, for these reasons, the Chamber is not able to be entirely confident of the reliability of Colonel Vujić’s present recollection concerning this alleged warning by Veselin Šljivančanin, when he briefed the counter-intelligence officers.

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<sup>612</sup> Bogdan Vujić, T 4692-4693.

<sup>613</sup> Bogdan Vujić, T 4479-4481.

<sup>614</sup> Bogdan Vujić, T 4487.

<sup>615</sup> Bogdan Vujić, T 4489.

<sup>616</sup> Bogdan Vujić, T 4489.

<sup>617</sup> Bogdan Vujić, T 4497.

<sup>618</sup> Branko Korica, T 14714.

<sup>619</sup> Veselin Šljivančanin, T 13601-13602.

<sup>620</sup> Bogdan Vujić, T 4790-4792.

<sup>621</sup> Bogdan Vujić, T 4829-4830.

<sup>622</sup> Bogdan Vujić, T 4795.

171. Following the briefing, Colonel Vujić and the other counter-intelligence officers went to Velepromet. Upon their arrival, they attended a meeting with commanding officers of the military police of the gmtbr and a group of members of the security organ of 1 MD,<sup>623</sup> where they discussed the transport of the prisoners of war.<sup>624</sup> To Colonel Vujić's surprise, he was told at the meeting that TO members and volunteers were responsible, together with the gmtbr military police, for guarding the prisoners of war at Velepromet.<sup>625</sup> A group of Serb paramilitaries and TOs actually interrupted the meeting and told the counter-intelligence officers that they would not be allowed to take prisoners of war to the prison at Sremska Mitrovica in Serbia.<sup>626</sup> After the meeting, Colonel Vujić and the other officers visited the rooms where the prisoners were held at the Velepromet facility.<sup>627</sup> During the visit, he saw that some prisoners of war had sustained injuries, and that others were detained in inhumane conditions.<sup>628</sup> After the counter-intelligence officers had visited the detention rooms, military police of the gmtbr began loading prisoners of war onto buses. While the boarding was underway, Colonel Vujić and other counter-intelligence officers were threatened by Serb TOs and paramilitaries.<sup>629</sup> Colonel Vujić sent an officer to the OG South command at Negoslavci to ask for reinforcements, and to report the situation at Velepromet to Mile Mrkšić.<sup>630</sup> Following this, he was on board one of the buses loaded with prisoners of war registering names when "Duke Topola",<sup>631</sup> a TO,<sup>632</sup> boarded the bus. Topola physically lifted Colonel Vujić, put a knife to his neck and told him that he would not be able to take the "Ustashas and criminals out" since "[t]hey ha[d] to pay for what they did to the Serbian people".<sup>633</sup> Another officer managed to drag Topola off the bus which then departed without further obstruction.<sup>634</sup>

172. Immediately after the first clash at Velepromet between TOs and paramilitaries and the counter-intelligence officers, two officers from the Security Administration of the Federal Secretariat, Colonel Tomić and Colonel Kijanović, approached Colonel Vujić and told him that they were going back to Negoslavci to inform Mile Mrkšić about the incident, and to tell him that they no longer wanted to be part of the mission.<sup>635</sup> When Colonel Vujić saw these two officers the following day, at around 1900 hours, on 20 November 1991, Colonel Kijanović informed him, that after reporting to Mile Mrkšić or to "one of his senior officers" about the situation at Velepromet,

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<sup>623</sup> Bogdan Vujić, T 4499-4501, 4492.

<sup>624</sup> Bogdan Vujić, T 4499-4502.

<sup>625</sup> Bogdan Vujić, T 4502.

<sup>626</sup> Bogdan Vujić, T 4511-4512; 4502-4503.

<sup>627</sup> Bogdan Vujić, T 4504-4505.

<sup>628</sup> Bogdan Vujić, T 4504-4506.

<sup>629</sup> Bogdan Vujić, T 4510-4513.

<sup>630</sup> Bogdan Vujić, T 4510-4513.

<sup>631</sup> "Vojvoda Topola" can be translated into Duke Topola.

<sup>632</sup> Bogdan Vujić, T 4505-4506; P022, T 5027; P024, T 4200.

<sup>633</sup> Bogdan Vujić, T 4515.

<sup>634</sup> Bogdan Vujić, T 4515.

Colonel Kijanović and a “group of senior officers from Mile Mrkšić’s unit”, together with military police officers, went to search the premises of the Velepromet facility, where they found 17 corpses. The corpses found were transported to a military cemetery on a military truck that had been provided by Mile Mrkšić.<sup>636</sup>

173. Warrant Officer Korica, however, depicted a somewhat less serious situation at Velepromet in his evidence.<sup>637</sup> Korica stated that while the atmosphere at Velepromet was unpleasant, he saw nothing unusual occurring.<sup>638</sup> Warrant Officer Korica suggested that he was with Colonel Vujić much of the time,<sup>639</sup> but nevertheless, he did not see any prisoners injured,<sup>640</sup> nor did he see or hear of corpses.<sup>641</sup> This is the subject of direct conflict in the evidence of Korica and Vujić, as it is Vujić’s evidence that Korica had told him that some TOs and volunteers had taken some prisoners of war that were to be transported away from the Velepromet facility, and had killed them.<sup>642</sup> Further, while Korica says he did not hear of any threats to the counter-intelligence officers,<sup>643</sup> he did concede that some of the TOs were refusing to hand over the prisoners to those officers.<sup>644</sup> It also emerged later that he recalled seeing some TOs in a state of drunkenness in one of the rooms where the prisoners were held, which he reported to Colonel Vujić as he thought that perhaps the TOs could “do something”.<sup>645</sup> It was his evidence that Colonel Vujić then went to the room and returned with a prisoner who had blood on his forehead.<sup>646</sup> The Chamber has already recorded evidence which it accepts from some of the prisoners of war being held in Velepromet at the time dealing with acts of mistreatment some of which were serious, and of what the Chamber accepts were killings of prisoners by TOs and paramilitaries being committed at Velepromet on the evening of 19 November 1991.<sup>647</sup> In view of the severity and scale of the mistreatment that night, as described by other witnesses, and the relatively small size of the Velepromet facility, the Chamber is not able to accept that no signs of mistreatment would be visible to Korica and other counter-intelligence officers as they moved around the facility. In the Chamber’s assessment, the general effect of the evidence in these respects is to confirm the evidence of aggressive acts against prisoners and himself and other JNA officers as disclosed by Colonel Vujić. The Chamber is unable to be satisfied of the truth and reliability of Warrant Officer Korica’s account, where it

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<sup>635</sup> Bogdan Vujić, T 4511-4512.

<sup>636</sup> Bogdan Vujić, T 4528; 4568; 4678.

<sup>637</sup> Branko Korica T 14707-14708; 14755-14757.

<sup>638</sup> Branko Korica, T 14715-14717.

<sup>639</sup> Branko Korica, T 14816.

<sup>640</sup> Branko Korica, T 14719.

<sup>641</sup> Branko Korica, T 14721.

<sup>642</sup> Bogdan Vujić, T 4520.

<sup>643</sup> Branko Korica, T 14721.

<sup>644</sup> Branko Korica, T 14715-14717.

<sup>645</sup> Branko Korica, T 14717.

<sup>646</sup> Branko Korica, T 14798.

<sup>647</sup> *See supra*, paras 163-167.

conflicts with that of Colonel Vujić, about the situation at Velepromet on 19 November 1991. The Chamber accepts Colonel Vujić's account about the mistreatment of prisoners, and the aggressive behaviour of the TOs and paramilitaries witnessed and experienced at Velepromet on 19 November 1991. The Chamber finds that Colonel Vujić did send an officer to the command of OG South to report the situation at Velepromet to Mile Mrkšić and to ask for reinforcements. Further, the Chamber accepts Colonel Vujić's evidence and finds that during the night of 19/20 November 1991 Colonel Tomić and Colonel Kijanović also left Velepromet and returned to Negoslavci with the expressed aim of reporting to Mile Mrkšić that the TOs and paramilitaries would not allow the prisoners to be taken by the JNA from Velepromet to Sremska Mitrovica. This was significant for those two officers as it was a part of their role to interview prisoners of war and they had expected to be able to complete this at Sremska Mitrovica. There is no direct evidence that the two Colonels did report to Mile Mrkšić on this situation, however, the Chamber does accept that when Colonel Vujić saw Colonel Kijanović the next day, Vujić was told that Kijanović reported the situation to Mile Mrkšić or to "one of his senior officers", with the consequence that on 20 November 1991 Kijanović returned to Velepromet, together with OG South military police and a "group of senior officers from Mile Mrkšić's unit", to search the Velepromet facility and that a truck was provided by OG South to remove the corpses of prisoners found at Velepromet. While it is possible on the evidence that Mile Mrkšić may only have heard of this indirectly in the course of his command reporting, and if so the precise detail provided to him cannot be positively determined, in the Chamber's finding it was at least reported to him that TOs and paramilitaries were strongly opposed to and were resisting the JNA moving the Croat prisoners of war from Vukovar to Sremska Mitrovica in Serbia and that prisoners had been killed or seriously mistreated while in their custody at the Velepromet facility.

174. It was also the testimony of Colonel Vujić that after the buses with the prisoners of war departed from Velepromet in the evening hours of 19/20 November 1991 to be taken to Sremska Mitrovica, he returned by foot to the command post at Negoslavci.<sup>648</sup> Colonel Vujić testified that there he managed to approach Mile Mrkšić at the command post and said: "Commander, do you have any idea what was going on over there? People killed. This is an attack against the integrity of the JNA. This is an attack against you as a commander. This is an attack against all of us. There was a "Chetnik duke", as they called him, who wanted to slit my throat in front of all the "Usthas" on that bus. That is a disgrace." He then left the command post.<sup>649</sup> It is the witness' evidence that Mile Mrkšić remained silent.<sup>650</sup> Subsequently, Colonel Vujić met with Veselin

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<sup>648</sup> Bogdan Vujić, T 4521.

<sup>649</sup> Bogdan Vujić, T 4522.

<sup>650</sup> Bogdan Vujić, T 4522.

Šljivančanin. Colonel Vujić stated that during that meeting he told Veselin Šljivančanin that killings had occurred at Velepromet. He also mentioned that he had been threatened himself. In the testimony of Colonel Vujić, Veselin Šljivančanin did not comment on that information and only concluded that the mission concerning Velepromet had been completed.<sup>651</sup> Once again, there is an apparent difference between the evidence of Warrant Officer Korica and Colonel Vujić in respect of these matters. While there is no specific evidence as to the time of Colonel Vujić's meeting with Mile Mrkšić and the material events at Velepromet that preceded it, it is hardly surprising that such details were not noted at the time, or recalled reliably 15 years later. Bogdan Vujić did indicate that he had attended a meeting with gmtbr military police in Velepromet, he thought at approximately 2300 or 2330 hours.<sup>652</sup> After this he toured the Velepromet facility, had discussions with TOs, helped in the actual loading onto buses of the prisoners, and he then returned to Negoslavci by foot, a distance of some 5 kilometres.<sup>653</sup> At Negoslavci, it is his evidence that he reported to Mile Mrkšić and met with Veselin Šljivančanin.<sup>654</sup> He did suggest that the meeting with Veselin Šljivančanin was at around 0100 or 0200 hours,<sup>655</sup> but it was clear that this was more an attempt at a deduction than a precise recollection. On any basis it would seem more likely that the meeting with Veselin Šljivančanin was nearer 0200 hours or even later. Warrant Officer Korica returned to Negoslavci from Velepromet separately from Colonel Vujić.<sup>656</sup> He says he arrived at Negoslavci after 0100 hours.<sup>657</sup> It was the evidence of Branko Korica that Mile Mrkšić was not in the operations room when he arrived and Mrkšić did not return that night, that Vujić arrived after him, and that Korica was with Vujić at the command post until morning.<sup>658</sup> Because of this evidence it is submitted that it should be accepted that Bogdan Vujić could not have reported to Mile Mrkšić and Veselin Šljivančanin that night. In the Chamber's view, however, even if Warrant Officer Korica's evidence in these respects is accepted as honest and reliable, unlike his evidence concerning the earlier events at Velepromet, the Chamber is not prepared to accept that the time estimates of the various witnesses are so reliable that issues about the occurrence, or not, of events described in the evidence can be determined by reference to these estimates. The Chamber accepts that Colonel Vujić reported to Mile Mrkšić on his arrival. The events he had experienced and reported were pressing concerns on his mind at the time. He also met with Veselin Šljivančanin, whose headquarters were nearby but not in the actual OG South command post, whom he also told about the events at Velepromet. If Colonel Vujić was seen by Warrant Officer Korica to arrive in the OG

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<sup>651</sup> Bogdan Vujić, T 4526.

<sup>652</sup> Bogdan Vujić, T 4648.

<sup>653</sup> Branko Korica, T 4522.

<sup>654</sup> Bogdan Vujić, T 4522, 4530.

<sup>655</sup> Bogdan Vujić, T 4530.

<sup>656</sup> Branko Korica, T 14724.

<sup>657</sup> Branko Korica, T 14724.

<sup>658</sup> Branko Korica, T 14724-14725.

South operations room, which in any event the Chamber does not accept, this could well have been after Vujić had met with Šljivančanin, the report to Mile Mrkšić being earlier. In the Chamber's finding the evidence of Warrant Officer Korica does not provide reason to reject or to call in question the credibility of Colonel Vujić in these matters.

175. In the finding of the Chamber, therefore, Mile Mrkšić was informed directly, or through his command reporting process, of the mistreatment of prisoners of war at Velepromet by Serb TOs and paramilitaries and the opposition they showed and expressed to the removal of prisoners of war to Sremska Mitrovica, matters reported both by the officer sent by Colonel Vujić and Colonels Kijanović and Tomić. Further he was also directly informed of these matters and that prisoners were being killed when Bogdan Vujić reported to him in the early hours of 20 November 1991, immediately on Vujić's return to OG South from Velepromet. The Chamber also finds that Veselin Šljivančanin was directly told of these same matters by Colonel Vujić shortly after Vujić had reported to Mile Mrkšić.

#### **F. Visit of Cyrus Vance**

176. On 19 November 1991, a diplomatic and fact-finding mission of the United Nations arrived in the area of Vukovar. The mission was sent to the region in connection with concerns about the humanitarian situation in Vukovar and in order to gather information relevant to the assessment of a possibility of engagement of UN peacekeeping forces.<sup>659</sup> The delegation was led by Mr Cyrus Vance, a Special Representative of the UN Secretary General.<sup>660</sup> He was accompanied by Ambassador Herbert Okun who gave evidence during the trial. At 1000 hours the delegation was received at the command post of OG South in Negoslavci.<sup>661</sup> Members of the delegation had a meeting with Mile Mrkšić, at which they discussed, *inter alia*, the issue of treatment of civilians and prisoners of war.<sup>662</sup>

177. After the meeting, at 1100 hours, Mr Vance and his delegation, accompanied by Veselin Šljivančanin, were given an escorted tour in the area. They visited the JNA barracks, Velepromet and a hospital in Negoslavci.<sup>663</sup> When touring Velepromet, the visitors got the impression that the Serb paramilitaries present in the facility posed a threat to the security of civilians.<sup>664</sup> During the visit in the area, Mr Vance wished to see the Vukovar hospital. Veselin Šljivančanin said it was impossible to organise such a visit. He justified this on the basis that mine fields on the road to the

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<sup>659</sup> Herbert Okun, T 1755; 1761; 1765; Exhibit 861.

<sup>660</sup> Petar Stojić, T 15340; Radoje Trifunović, T 8122-8123; Exhibit 418.

<sup>661</sup> Exhibit 68; Exhibit 418.

<sup>662</sup> Radoje Trifunović, T 8122-8123; Herbert Okun, T 1765-1767.

<sup>663</sup> Petar Stojić, T 15348; 15358; 15360; Veselin Šljivančanin, T 13573-13578; Exhibit 68; Exhibit 418; Exhibit 861.

<sup>664</sup> Exhibit 68; Herbert Stuart Okun, T 1773.

hospital had not been cleared.<sup>665</sup> Herbert Okun testified it was their clear impression that Veselin Šljivančanin was telling them obvious falsehoods. For instance, Herbert Okun could see traffic moving on a bridge, which, according to Veselin Šljivančanin, was mined.<sup>666</sup> Okun noted in his diary: “weak excuses by JNA”.<sup>667</sup> Cyrus Vance became extremely annoyed by this deliberately obstructive behaviour.<sup>668</sup> Vukovar hospital was an issue of major concern to him.

178. Herbert Okun testified that an argument broke out between Veselin Šljivančanin and Cyrus Vance over this. It was his impression that at a very heated stage of the argument Veselin Šljivančanin threatened Cyrus Vance with a rifle.<sup>669</sup> However, no rifle can be seen on a video recording of the scene taken at the time.<sup>670</sup> Veselin Šljivančanin denied the allegation and that he carried a rifle at the time.<sup>671</sup> A JNA eye-witness also disputed this allegation.<sup>672</sup> The diary of Herbert Okun only refers to a “scene” provoked by the conversation about the possibility of visiting the hospital.<sup>673</sup> The Chamber is not able to find that a rifle was used to threaten Cyrus Vance, although it does accept that Cyrus Vance and his party were deliberately denied access to the Vukovar hospital by Veselin Šljivančanin on spurious grounds and that this denial was maintained in the face of heated protestation by Cyrus Vance.

179. Mr Vance and his delegation left Vukovar and set out for Belgrade at about 1300 hours.<sup>674</sup>

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<sup>665</sup> Exhibit 69; Exhibit 70; Veselin Šljivančanin, T 13573-13578; Petar Stojić, T 15349-15351; Exhibit 861.

<sup>666</sup> Herbert Okun, T 1768-1769; 1774-1775.

<sup>667</sup> Exhibit 68.

<sup>668</sup> Herbert Okun, T 1768-1769; Exhibit 70.

<sup>669</sup> Herbert Okun, T 1770.

<sup>670</sup> Exhibit 70.

<sup>671</sup> Veselin Šljivančanin, T 13579-13580.

<sup>672</sup> Petar Stojić, T 15362, 15381.

<sup>673</sup> Exhibit 68.

<sup>674</sup> Exhibit 68.

## VI. PREPARATION FOR THE EVACUATION OF VUKOVAR HOSPITAL AND EVENTS ON 20 NOVEMBER 1991

### A. JNA control of Vukovar hospital

180. On 18 November 1991 OG South was ordered to take the Vukovar hospital by 1000 hours on 19 November 1991. The order issued by the commander of 1 MD, General Života Panić, gave the following instruction to OG South:

OG SOUTH: Carry out detailed and complete preparations and in coordinated action with TG (*sic*) NORTH take the hospital and the MUP and mop up the remaining Ustasha forces in the liberated parts of the town on the morning of 19 November 1991 (by 1000 hours). Continue to clear up Mitnica and downtown Vukovar until it is completely safe and secure to move round the town.<sup>675</sup>

This order was recorded in the operations diary of OG South and Mile Mrkšić, the commander of OG South was aware of it.<sup>676</sup> The effect of this order was to extend the operations zone of OG South north of Vuka River to include Vukovar hospital. OG South was also ordered to clear up and make safe the areas of Mitnica and downtown Vukovar.

181. In the days preceding the fall of the city, a large number of Vukovar residents had arrived at the Vukovar hospital. On 19 November 1991 the Vukovar hospital was full beyond its capacity. The evidence about the actual number of persons at the hospital by 18-20 November varied from several hundreds to several thousands.<sup>677</sup> The Chamber accepts from the evidence of Dr Vesna Bosanac that on 18 November 1991 there were not less than approximately 750 people, 450 patients and about 300 civilians, waiting to be evacuated,<sup>678</sup> although she also estimated that the numbers could have been approximately 600 patients and 400 civilians. Among them there were sick, wounded, hospital staff, as well as family members of hospital staff. Contrary to her evidence, there were also members of the Croatian forces, both MUP and ZNG, some of whom were not wounded but had taken refuge at the hospital.

182. Patients at the hospital and hospital staff saw JNA soldiers at the hospital in the afternoon and evening of 19 November 1991.<sup>679</sup> P011 saw a JNA major (who appeared to be Major Borivoje

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<sup>675</sup> Exhibit 415.

<sup>676</sup> Radoje Trifunović, T 8109.

<sup>677</sup> Binazija Kolesar testified that on 18 November 1991 there were almost 400 wounded and sick persons at the hospital and that on 16, 17 and 18 November 1991 MUP and ZNG members might have arrived at the hospital. (T 935, 995) Vesna Bosanac also testified that by 18 November 1991, 600 patients were being recovered at the hospital and approximately 400 civilians were waiting to be evacuated. (Vesna Bosanac, T 651-652, 854; Exhibit 34) Some witnesses put this number even higher to over 2,000 people. (P007, T 4004, 4111)

<sup>678</sup> Vesna Bosanac, T 547.

<sup>679</sup> P007, T 4004; Mara Bučko, T 2721; P006, T 1113; P012, T 3628; P021, T 1366, 1483; Dragutin Berghofer, T 5276; Vesna Bosanac, T 680-681; Tanja Došen, T 3913; Irinej Bučko, T 2808, 2907; Vilim Karlović, T 6328-6329; P031,

Tešić) arriving at the hospital in an armoured military vehicle around noon on 19 November 1991. The major placed soldiers at the entrance of the hospital to monitor and restrict the entrance to and from the hospital.<sup>680</sup> On the same day, several witnesses saw Bogdan Kuzmić, who used to be a janitor at the hospital, wearing an olive-drab JNA uniform, walking around the hospital together with two young soldiers, also wearing uniforms, who had weapons.<sup>681</sup> They were looking for specific Croatian individuals.<sup>682</sup> In the afternoon of 19 November 1991, P012 saw Saša Bojkovski, the commander of the 1coy 1/gmtbr and also of an assault group within 1 AD, outside the hospital, accompanied by two “Chetniks”<sup>683</sup> and later the same day, he saw Saša Bojkovski in the hospital kitchen talking to Bogdan Kuzmić.<sup>684</sup> Mara Bučko saw some (but not many) JNA soldiers on 19 November 1991.<sup>685</sup>

183. In implementation of the order of 1 MD, in the morning of 19 November 1991 Miroslav Radić had been ordered by Major Tešić, the commander of 1/gmtbr and 1 AD, to secure the hospital.<sup>686</sup> Radić went there and saw Major Tešić arriving almost at the same time.<sup>687</sup> Captain Saša Bojkovski arrived with several soldiers a few minutes later.<sup>688</sup> Other members of the 1/gmtbr were also at the hospital in the morning.<sup>689</sup> In the early afternoon on 19 November 1991 the commander of 2 MP/gmtbr Captain Paunović received an order relayed to him by the OG South’s Chief of Staff, LtCol Panić, to go to the Vukovar hospital, which he did with two of his companies.<sup>690</sup> He arrived he thought at about 1400 or 1500 hours almost simultaneously with Captain Milivoj Simić, the commander of 4coy 2MP/gmtbr.<sup>691</sup> While there he saw Major Tešić, the commander of 1 AD and 1/gmtbr, and Veselin Šljivančanin.<sup>692</sup> Captain Paunović’s 2 MP/gmtbr took over the security of the hospital from Major Tešić.<sup>693</sup> The military police searched the area around the hospital, then placed patrols and guards and appointed a security commander.<sup>694</sup> In the evening hours members of the military police took Marin Vidić, *aka* Bili, the Croatian

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T 3235. The Chamber does not accept the evidence of Juraj Njavro (T 1522-1525), Ljubica Došen (T 3766-3767), and P013 (T 1175-1176) that they saw JNA soldiers in the hospital on 18 November 1991.

<sup>680</sup> P011, T 5720, 5849-5851.

<sup>681</sup> Dragutin Berghofer, T 5276-5277; Emil Čakalić, T 5892-5894; P031, T 3235-3237; 3312-3313, 3340; Binazjia Kolesar, T 1037-1038; P006, T 1114.

<sup>682</sup> P031, T 3235-3237, 3240. *See also* P006, T 1113-1114.

<sup>683</sup> P012, T 3631, 3728.

<sup>684</sup> P012, T 3630-3634.

<sup>685</sup> Mara Bučko, T 2722.

<sup>686</sup> Zoran Zirojević, T 13119; Davor Vučković, T 13202; 2D4, T 12999-13000; Miroslav Radić, T 12647.

<sup>687</sup> Miroslav Radić, T 12648. *See also* Radoje Trifunović, T 8134-8136.

<sup>688</sup> Miroslav Radić, T 12649.

<sup>689</sup> Slavko Stijaković, T 12863-12864.

<sup>690</sup> Radoje Paunović, T 14151-14152.

<sup>691</sup> Radoje Paunović, T 14110-14111; Milivoj Simić, T 14567, 14575. *See also* Mladen Marić, T 15234-15238.

<sup>692</sup> Radoje Paunović, T 14111; Milivoj Simić, T 14575; Veselin Šljivančanin, T 13585-13587. Regarding Veselin Šljivančanin *see also* Mara Bučko, T 2722-2723, 2791-2792; Vesna Bosanac, T 682-684; P007, T 4006-4007, 4115-4116; P009, T 6121-6123.

<sup>693</sup> Radoje Paunović, T 14180-14181. *See also* Radoje Trifunović, T 8134-8136.

<sup>694</sup> Milivoj Simić, T 14575-14576.

Commissioner for Vukovar who had been at the hospital,<sup>695</sup> and the medical director Dr Vesna Bosanac, to Negoslavci.<sup>696</sup> The military police remained on guard at the hospital during the night of 19/20 November 1991.<sup>697</sup>

184. Witnesses testified to seeing Serb TO members and paramilitary soldiers around the hospital on 19 November 1991.<sup>698</sup> Witnesses who were in the hospital on 19 November 1991 gave evidence that there were Serb volunteers and TO members around the hospital and that JNA soldiers prevented them from entering the hospital compound.<sup>699</sup> This evidence is consistent with the evidence of Defence witnesses who were present at the hospital on 19 November 1991 and who testified that there were armed TO members from Vukovar and paramilitary soldiers outside the perimeter of the hospital<sup>700</sup> and that they behaved aggressively.<sup>701</sup>

185. There is also some evidence that paramilitaries and TO members were allowed in the hospital on 19 November 1991. Tanja Došen,<sup>702</sup> Ljubica Došen,<sup>703</sup> and Irinej Bučko<sup>704</sup> testified that some paramilitary soldiers were inside the hospital on 19 November 1991 and that they left at the insistence of JNA soldiers. Ljubica Došen further testified that the JNA soldiers did not allow local reservists to mingle with the people at the hospital but when JNA soldiers left in the night of 19/20 November 1991, the reservists selected young men and took them away.<sup>705</sup>

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<sup>695</sup> Milivoj Simić, T 14583-14584; Radoje Paunović, T 14153-14154. *See also* Borče Karanfilov, T 15418.

<sup>696</sup> Radoje Paunović, T 14155-14157; Milivoj Simić, T 14583. *See also* Borče Karanfilov, T 15418; Vesna Bosanac, T 688.

<sup>697</sup> *See* Milivoj Simić, T 14586-14587.

<sup>698</sup> Vesna Bosanac testified that when she arrived at the hospital at 1600 hours on 19 November 1991, the hospital was surrounded by JNA soldiers, JNA military police, reservists and volunteers, T 681.

<sup>699</sup> In addition to the "Chetniks" mentioned earlier, in the early afternoon on 19 November 1991 Mara Bučko saw paramilitaries, including one called Arivani at the entrance of the emergency ward, outside the hospital, and a person called Maksimović, whom she knew, wearing civilian trousers, a green jacket and a fur hat, sitting on a stretcher at the entrance of the hospital with two or three other persons. (Mara Bučko, T 2721-2722) A young soldier wearing a uniform prevented them from entering the hospital through the emergency entrance and the paramilitaries were left standing outside. (Mara Bučko, T 2749-2750) Similar evidence was given by P009 who saw at least 20 TO members in front of the hospital on 19 November 1991. (P009, T 6118-6121, 6130) JNA military police were at the gate of the hospital and did not allow anyone in, which made the TO people outside the gate angry. (P009, T 6120, 6130) P009 further testified that some of the JNA soldiers were wearing camouflage uniforms, others had regular JNA uniforms and white belts. (P009, T 6120)

<sup>700</sup> Milivoj Simić, T 14578; Radoje Paunović, T 14120.

<sup>701</sup> Radoje Paunović, T 14120-14121. *See also* Milivoj Simić, T 14584-14585.

<sup>702</sup> Tanja Došen testified that on 19 November 1991, when local "Chetniks" entered the hospital and started abusing verbally the people there, Veselin Šljivančanin came and told the "Chetniks" to leave, which they did. He left two JNA soldiers in front of the room to stand guard and did not allow any of the people outside to come in the hospital. (T 3913-3915)

<sup>703</sup> Ljubica Došen also saw two "Chetniks" at the hospital including a man called Čapalo. (T 3768-3770)

<sup>704</sup> Irinej Bučko saw four "Chetniks" at the hospital in the afternoon of 19 November 1991. One of them introduced himself as "the Duke" and another as his assistant. They behaved aggressively and verbally threatened the people at the hospital. The four "Chetniks" left when a soldier with a Kalashnikov walked by and told them to leave threatening that otherwise he would shoot them. (T 2809-2812)

<sup>705</sup> Ljubica Došen, T 3770-3772.

186. In the observation of a senior nurse Binazija Kolesar, only two persons, the former hospital staff member Bogdan Kuzmić and Dr Ivanković's son, managed to get past security.<sup>706</sup> P006 said he saw a "White Eagles" patch (a Serb paramilitary unit) on the right arm of Dr Ivanković's son.<sup>707</sup> Emil Čakalić testified that later, on 20 November 1991 at Ovčara, he saw Dr Ivanković's son wearing a "Chetnik" hat with a cockade on it.<sup>708</sup> Another witness, P031, testified that on 20 November 1991 at Ovčara he saw a uniformed soldier who introduced himself as Dzo Ivanković, a "White Eagles" major working for the state security services.<sup>709</sup> Binazija Kolesar, however, did not see any insignia to help her identify the unit to which Dr Ivanković's son belonged when she saw him at the hospital.<sup>710</sup> While the Chamber finds that Dr Ivanković's son belonged to the Serb paramilitary unit "White Eagles", it is not persuaded that his presence or the presence of a small number of other Serb TOs or volunteers (paramilitaries) at different times inside the hospital indicates that these forces had free access to the hospital on 19 November 1991. The evidence generally indicates that once JNA guards took up positions during 19 November 1991, entrance to the hospital was restricted and TO and paramilitaries were generally denied entrance.

187. In the Chamber's finding, JNA soldiers entered the hospital in the late morning of 19 November 1991. These were primarily soldiers of 1 AD and 1/gmtbr led by Miroslav Radić who was under the command of Major Tešić. At about 1400-1500 hours military police, primarily from 2MP/gmtbr arrived and took over the security of the hospital. They were also there in the morning of 20 November 1991. Paramilitaries and TO members were present but generally were outside the hospital. JNA officers placed soldiers to guard the entrances and with a few exceptions these did not allow them to enter the hospital. Miroslav Radić and Veselin Šljivančanin were at the hospital on 19 November 1991. There is no evidence that Mile Mrkšić was at the hospital on 19 November 1991.

188. Further, as the Chamber has found elsewhere in this Judgement, following the JNA capture of the Vukovar hospital, in the evening hours of 19 November 1991 a large number of civilians who had sought refuge in the hospital as well as some members of the Croatian forces were transferred from the hospital to Velepromet, where men were separated from women, questioned and some were taken away.<sup>711</sup>

189. On 20 November 1991 at 1800 hours the command of OG South sent a report to 1 MD indicating that the task assigned to OG South on 18 November 1991 to take the hospital and the

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<sup>706</sup> Binazija Kolesar, T 1037-1038.

<sup>707</sup> P006, T 1115.

<sup>708</sup> Emil Čakalić, T 6059.

<sup>709</sup> P031, T 3278.

<sup>710</sup> Binazija Kolesar, T 937-938.

MUP by 1000 hours on 19 November 1991 was carried out by 1100 hours on 19 November 1991.<sup>712</sup> Point 2(1) of this report stated that “[d]uring selection, transport and handover of prisoners of war everything was handled in accordance with the Geneva Convention on Prisoners of War.” While this report may be read as indicating that all aspects of the order were completed by 1100 hours on 19 November 1991, that was not the case. Indeed, the evacuation of prisoners of war, other patients and others, mainly occurred on 20 November 1991. This report was not sent until the evening of 20 November 1991 despite the fact that other orders and reports were sent by OG South to 1 MD between 1100 hours on 19 November and 1800 hours on 20 November 1991.<sup>713</sup>

### **B. Preparation for the evacuation of Vukovar hospital**

190. On 19 November 1991 at 1800 hours Mile Mrkšić, the commander of OG South, sent a report to the command of 1 MD indicating *inter alia* that according to the statements of JNA soldiers, who had been patients in the Vukovar hospital and who were released from the hospital that day, there were HDZ members and “Ustasha” forces at the hospital.<sup>714</sup> The soldiers had reported that, in addition to the wounded, civilians, women and elderly, there were people carrying weapons who had taken shelter at the hospital and had started disguising themselves by putting on white coats and by pretending to be patients.<sup>715</sup> This must have confirmed information previously available to OG South about the presence of ZNG members at the hospital.<sup>716</sup>

191. Earlier, as the Chamber finds, Mile Mrkšić instructed Veselin Šljivančanin to ensure the transport of war crime suspects from the hospital to the prison in Sremska Mitrovica. Civilians could be taken either to the Red Cross headquarters in Šid, or to a place at the Croatian border where they would be received.<sup>717</sup> Mile Mrkšić told Veselin Šljivančanin not to take anyone out of the hospital without a prior examination by military doctors.<sup>718</sup> The evacuation was to take place in the morning of 20 November 1991. While it is Šljivančanin’s evidence that Mrkšić instructed him about the removal of war crime suspects, it is apparent from his evidence that these were distinguished only from civilians. It is clear, therefore, in the Chamber’s finding, that by his reference to war crime suspects, Mile Mrkšić was referring to all members of the Croat forces at the hospital. That indeed is the way the order was understood and implemented by Veselin Šljivančanin the next morning. Veselin Šljivančanin testified that he received the order after his

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<sup>711</sup> See *supra*, paras 161-162.

<sup>712</sup> Exhibit 421.

<sup>713</sup> See, for example, Exhibit 418.

<sup>714</sup> Exhibit 418.

<sup>715</sup> Radoje Trifunović, T 8116-8117.

<sup>716</sup> Exhibit 824, p 2.

<sup>717</sup> Veselin Šljivančanin, T 13596-13597.

<sup>718</sup> Veselin Šljivančanin, T 13597.

return from the hospital to the command post in Negoslavci at sometime in the early evening of 19 November 1991, between the nightfall<sup>719</sup> and 2000 hours.<sup>720</sup> The Chamber, however, notes the evidence of Veselin Šljivančanin's presence at the hospital in the afternoon,<sup>721</sup> and also at a time shortly before the time of the regular briefing at the command post. He was seen there by two JNA officers, who subsequently went to Negoslavci to attend the briefing.<sup>722</sup> As indicated in the following paragraph, Veselin Šljivančanin did not attend the briefing. He thus spent the late afternoon and early evening of that day, including the time shortly before and during the briefing, at the hospital or elsewhere, away from the command post at Negoslavci. Mile Mrkšić referred to this order to Veselin Šljivančanin during the briefing so that the order had been given earlier. It follows that Veselin Šljivančanin must have been given the order concerning the evacuation before going to the hospital. Indeed, when visiting the hospital he was involved in the collection of lists of the wounded and other patients to be evacuated,<sup>723</sup> which is consistent with the order he had received from Mile Mrkšić. The Chamber finds that the order to prepare and conduct the evacuation on 20 November 1991 was issued to Veselin Šljivančanin on 19 November 1991, before he left Negoslavci to visit the hospital, at a time at the latest earlier in the afternoon than was indicated in the evidence of Veselin Šljivančanin.

192. As has been indicated, at the regular OG South briefing held in the command post at Negoslavci at 1800 hours the evacuation of the hospital was discussed.<sup>724</sup> As established elsewhere, Mile Mrkšić announced at the briefing that Veselin Šljivančanin had been entrusted with the task of preparing and conducting the evacuation.<sup>725</sup> Veselin Šljivančanin did not attend the briefing.<sup>726</sup> At the briefing Captain Paunović received the task to secure the buses.<sup>727</sup> Later in the evening of 19 November 1991, Veselin Šljivančanin held a briefing for his subordinates. Major Vukašinović, Captain Karan and Captain Karanfilov, among others, attended the briefing.<sup>728</sup> Veselin Šljivančanin tasked Major Vukašinović with the organisation of transport by buses. He says was to ensure the transport of persons from the hospital to the JNA barracks, and from there to Sremska Mitrovica,<sup>729</sup> however, for reasons identified elsewhere the Chamber is not able to accept

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<sup>719</sup> Veselin Šljivančanin stated that it was almost nightfall before he returned to Negoslavci; T 13593.

<sup>720</sup> Veselin Šljivančanin stated that at about 2000 hours he met with the officers from the Security Administration; T 13599-13601.

<sup>721</sup> Aernout van Lynden, T 3124; 3202; P007, T 4006-4007; Vesna Bosanac, T 683; 7124; 7130.

<sup>722</sup> Miodrag Panić, T 14289-14290; Radoje Paunović, T 14124-14125.

<sup>723</sup> *See supra*, para 141.

<sup>724</sup> Radoje Paunović, T 14118; 14159.

<sup>725</sup> *See infra*, para 396.

<sup>726</sup> Veselin Šljivančanin, T 13720; Radoje Paunović, T 14117.

<sup>727</sup> Radoje Paunović, T 14167.

<sup>728</sup> Mladen Karan, T 15632; Borče Karanfilov, T 15453.

<sup>729</sup> Ljubiša Vukašinović, T 15007-15008; Mladen Karan, T 15633.

material aspects of the evidence of Major Vukašinić and it is not able to accept that the buses were originally ordered to travel via the JNA barracks.

193. About one hour later, at 2000 hours on 19 November 1991, a group of officers from the General Staff in Belgrade and also from the security organ of 1 MD arrived at the command post of OG South at Negoslavci. They were received by the commander Mile Mrkšić.<sup>730</sup> The meeting was very brief, it lasted about 10 to 15 minutes.<sup>731</sup> A detailed account of what was said at this meeting is not in evidence. The evidence as to the reason for this visit is not sufficient to enable a positive finding, however, there is evidence that the officers from the General Staff were tasked with helping with the evacuation and transfer, as well as other issues that may occur at a later stage in the transport of the people evacuated,<sup>732</sup> that they were to see what the situation was with the wounded and civilians and how the prisoners of war were being treated and to take measures necessary to help carry out the process in a planned and organised manner.<sup>733</sup> Mile Mrkšić provided them with an escort, as they dealt with those issues.<sup>734</sup> Colonel Trifunović of the OG South staff attended this meeting but the Chamber does not find his evidence reliable or helpful in this respect. He could not even remember the names of the visiting officers.<sup>735</sup> While it could be expected that a visit from officers from the General Staff would be regulated by an order,<sup>736</sup> no such order has been identified. The activity of this group remains unclear.

194. There is also the evidence of witnesses testifying for Veselin Šljivančanin that in the evening of 19 November 1991, at about 2100 or 2200 hours, General Aleksandar Vasiljević, the head of the Security Administration in Belgrade, and his deputy General Tumanov, visited the command post of OG South in Negoslavci. Essentially, it was said that they were present while Šljivančanin was interviewing Marin Vidić, *aka* Bili, the Croatian Commissioner for Vukovar who was brought from the Vukovar hospital earlier that day<sup>737</sup> and that an argument between the officers from the security administration and Šljivančanin occurred allegedly because Šljivančanin wanted to record his interview with Marin Vidić, but the officers did not allow that.<sup>738</sup> It was also said by Captain Karanfilov that General Vasiljević issued an order to Šljivančanin that Karanfilov was to go to Belgrade on the following day, *i.e.* 20 November, to take documents found at the headquarters of the command of the Croatian national guard, and that Captain Karan was to accompany Veselin

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<sup>730</sup> Radoje Trifunović, T 8154.

<sup>731</sup> Radoje Trifunović, T 8154, 8156.

<sup>732</sup> Radoje Trifunović, T 8154.

<sup>733</sup> Radoje Trifunović, T 8157.

<sup>734</sup> Radoje Trifunović, T 8155.

<sup>735</sup> Radoje Trifunović, T 8156.

<sup>736</sup> Radoje Trifunović, T 8176.

<sup>737</sup> Borče Karanfilov, T 15420; Mladen Karan, T 15558; Veselin Šljivančanin, T 13616-13618.

<sup>738</sup> Mladen Karan, T 15559, 15677, 15679; Borče Karanfilov, T 15421; 15479.

Šljivančanin as he prepared the evacuation of the hospital.<sup>739</sup> As discussed later, the Chamber does not accept this evidence concerning Karanfilov and Belgrade. Further, Veselin Šljivančanin, while inconsistent about the time they arrived at Negoslavci, testified that he also informed General Vasiljević, General Tumanov, and other officers from the 1 MD and the General Staff about the events of the preceding two days and especially about the Mitnica evacuation, and that General Vasiljević told him to cooperate with the group from the security administration.<sup>740</sup>

195. The Chamber accepts that a group of senior officers from the General Staff in Belgrade and also from the security organ of 1 MD, including General Vasiljević and General Tumanov, arrived at the command post of OG South at Negoslavci in the evening hours of 19 November 1991 and met with Mile Mrkšić and other officers of the command of OG South. On the basis of the evidence before it, the Chamber is unable to make a finding as to what had been discussed at that meeting.

196. Later that same evening, at around midnight or 0100 hour on 20 November 1991, a different group of officers, a team from the rear logistics of 1 MD, arrived at the command of OG South in Negoslavci.<sup>741</sup> They came there upon a request from the command of OG South to assist “since they had the means that OG South did not have” with respect to the supply of food, regulating and securing transport.<sup>742</sup> They met with the officers of the logistics of OG South.<sup>743</sup>

197. On 20 November 1991 at 0600 hours the commander of OG South Mile Mrkšić issued an order to “evacuate and transport civilians, the wounded and the sick from the hospital in Vukovar.”<sup>744</sup> Nothing further regarding the evacuation of the Vukovar hospital was mentioned in this order, nor were any written orders concerning the evacuation of the hospital issued later.<sup>745</sup> No order was issued mentioning war crimes suspects or prisoners of war separately from “the wounded”. A witness conjectured that the vagueness of this order may be related to the visit of the high-ranking security organs from the General Staff and 1 MD,<sup>746</sup> but the Chamber did not find this to be at all persuasive. As will be discussed later in this Judgement<sup>747</sup> it is manifest in the circumstances, and the Chamber finds, that oral and more expansive orders had been given by the commander of OG South with regard to the subject of the written order issued on 20 November 1991 at 0600 hours.

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<sup>739</sup> Borče Karanfilov, T 15422-15423.

<sup>740</sup> Veselin Šljivančanin, T 13614-13615.

<sup>741</sup> Radoje Trifunović, T 8154, 8160.

<sup>742</sup> Radoje Trifunović, T 8160-8161.

<sup>743</sup> Radoje Trifunović, T 8160.

<sup>744</sup> Exhibit 419.

<sup>745</sup> Radoje Trifunović, T 8128.

<sup>746</sup> Radoje Trifunović, T 8174-8176.

<sup>747</sup> *See infra*, para 400 .

198. Shortly after 0600 hours on 20 November 1991, Major Vukašinić, deputy head of the security organ of OG South, departed from Negoslavci for Vukovar hospital with buses pursuant to an order he had received from his immediate superior Veselin Šljivančanin the previous evening.<sup>748</sup> There were two JNA military policemen from Captain Paunović's 2MP/gmtbr on each bus. Major Vukašinić led the column in a Puch vehicle.<sup>749</sup>

### C. 20 November 1991

#### 1. Events in the morning at Vukovar hospital

199. At about 0700 hours on 20 November 1991 at the Vukovar hospital Binazija Kolesar, the head nurse of the surgery ward, was asked to accompany a doctor wearing a regular JNA uniform who wished to inspect a number of patients. He had a list of names. They were escorted by an armed soldier.<sup>750</sup> The inspection took about 15 to 20 minutes.

200. Shortly after 0700 hours, the medical and nursing staff were told to gather in the plaster room for a meeting.<sup>751</sup> The meeting was convened by Dr Vesna Bosanac who had been told to do so earlier that morning by Veselin Šljivančanin. There were some 30 to 50 hospital employees there.<sup>752</sup> Veselin Šljivančanin and another person, who some witnesses believed was Dr Izvetic, a JNA medical officer, arrived. Šljivančanin addressed the staff.<sup>753</sup> He told them that Dr Bosanac was no longer the director of the hospital, that the person with him was the new director, and that he and the new director would be in charge of issuing orders. At the meeting the staff were also told that they could decide whether they would like to continue working at the hospital or to leave.<sup>754</sup> They were assured that those wishing to leave could choose to go to Croatia or Serbia.<sup>755</sup>

201. While the meeting with the medical and nursing staff in the plaster room was still in progress, sometime between 0700 and 0800 hours, JNA soldiers went through the hospital and told the patients and others who were able to walk to leave.<sup>756</sup> At the exit, JNA soldiers were separating the men from women and children. The women and children were told to go towards the main gate

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<sup>748</sup> Ljubiša Vukašinić, T 15007-15008, 15013-15016.

<sup>749</sup> Ljubiša Vukašinić, T 15013-15016.

<sup>750</sup> Binazija Kolesar, T 942; P021, T 1368-1370.

<sup>751</sup> Mara Bučko, T 2724-2725, 2793; Binazija Kolesar, T 948. Binazija Kolesar testified that the order was issued between the time she was asked to accompany the doctor wearing a JNA uniform (Dr Izvetic) in his inspection of patients which took about 15 to 20 minutes and before she returned, T 948.

<sup>752</sup> Mara Bučko, T 2726.

<sup>753</sup> Binazija Kolesar, T 949-950.

<sup>754</sup> Mara Bučko, T 2726-2727, 2793; P021, T 1370-1371, 1489-1490; Veselin Šljivančanin, T 13624-13627. *See also* Dr Juraj Njavro, T 1537; Vesna Bosanac, T 692.

<sup>755</sup> P021, T 1376.

<sup>756</sup> Dragutin Berghofer, T 5277-5279; P011, T 5720; P031, T 3237. *See also* Emil Čakalić, T 5892-5893. Vilim Karlović put the time between 0900 and 1000 hours on 20 November 1991, T 6329. P013, T 1182. P013 testified that they were ordered to leave the hospital between 0630 and 0700 hours, T 1176-1177.

of the hospital on Lola Ribara Street, and the men were told to go towards the side or emergency entrance on Gundulićeva Street (currently Špadul).<sup>757</sup> The wounded who were unable to walk were to remain in their beds awaiting evacuation.<sup>758</sup> The JNA soldiers were members of the 2 MP/gmtbr.<sup>759</sup> Around the hospital there were also members of the Serb TO.<sup>760</sup> From 0800 to 1100 hours, *i.e.* after those who could walk had left the hospital, Colonel Bogdan Vujić and a senior JNA counter-intelligence officer, and Branko Korica who were in Vukovar with the task of identifying perpetrators of war crimes, accompanied by Dr Stanojević, with a lance-corporal and two military policemen as escort, toured the hospital. They had been assigned to this task by Veselin Šljivančanin. They looked for weapons as part of their assignment to uncover perpetrators of war crimes,<sup>761</sup> and they also checked whether the people who were in bed were genuinely wounded or sick.<sup>762</sup> Branko Korica took approximately 20 persons outside the hospital as it was thought that they were healthy men and not wounded or sick.<sup>763</sup>

202. While this was happening, Irinej Bučko, a volunteer in the Croatian forces in Vukovar,<sup>764</sup> who a few days earlier had hidden at the hospital where his wife Mara worked as a nurse, tried to establish contact with his wife. At the time she was attending the meeting in the plaster room.<sup>765</sup> A nurse called Mara Bučko out of the meeting and she managed to speak to him. Irinej Bučko told her that he and others were being taken away.<sup>766</sup> Mara Bučko returned to the plaster room. Veselin Šljivančanin asked whether anyone had questions. Mara Bučko spoke. She said that, contrary to what Šljivančanin had promised them, their husbands were being taken away. Šljivančanin asked her to write down their husbands' names. Mara Bučko wrote down about 16 or 17 names of spouses of hospital employees, including her husband's name. Šljivančanin took the piece of paper and said that he would send someone to pick them up.<sup>767</sup>

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<sup>757</sup> Rudolf Vilhelm, T 4866; Vilim Karlović, T 6329; Dragutin Berghofer, T 5277; P031, T 3237-3239; Ljubica Došen, T 3786-3787; Zvezdana Polovina, T 2580; P013, T 1181, 1187-1188; Binazija Kolesar, T 951-952; P030, T 9726-9727. *See also* Hajdar Dodaj, T 5528-5529.

<sup>758</sup> Binazija Kolesar, T 950; P013, T 1176-1177.

<sup>759</sup> Bogdan Vujić, T 4533-4534.

<sup>760</sup> P030, T 9734. *See also* Bogdan Vujić, T 4533-4534.

<sup>761</sup> Bogdan Vujić, T 4535-4540, 4690; Branko Korica, T 14728-14729. The Chamber does not accept Korica's evidence (T 14735-14736) that this process took them approximately two hours, *i.e.* until about 1000 hours and that the ECMM monitors were at the hospital when Korica and Vujić left.

<sup>762</sup> Branko Korica, T 14730.

<sup>763</sup> Branko Korica, T 14730.

<sup>764</sup> Irinej Bučko, T 2804.

<sup>765</sup> Irinej Bučko, T 2859-2860.

<sup>766</sup> Mara Bučko, T 2727; Irinej Bučko, T 2860, 2906.

<sup>767</sup> Mara Bučko, T 2728-2729; Binazija Kolesar, T 952-954.

203. Outside, as the men left the hospital they were lined up along the wall by the emergency entrance and searched by JNA soldiers,<sup>768</sup> members of the 2 MP/gmtbr.<sup>769</sup> TO members and paramilitaries did not participate in the frisking.<sup>770</sup> However some TO members were involved in the triage. On Veselin Šljivančanin's evidence they were "chosen to participate" in the process as they knew people from Vukovar.<sup>771</sup> Witnesses for Veselin Šljivančanin testified that medical doctors also participated in the triage<sup>772</sup> but the only satisfactory evidence to support this concerns the one doctor who accompanied Colonel Vujić and Korica. The five buses Major Vukašinić had brought from Negoslavci that morning were parked outside the hospital, on Gundulićeva Street.<sup>773</sup> Each bus had two armed JNA military policemen.<sup>774</sup> There may also have been a few military trucks.

204. At the same time, on the other side of the hospital yard, towards the main entrance on Lola Ribara Street the women and children gathered.<sup>775</sup> There were a few apparently elderly men with them.<sup>776</sup> These boarded a convoy of several buses parked on Lola Ribara Street.<sup>777</sup> Soldiers stood at the gate near the convoy of women and children.<sup>778</sup> Later in the day this convoy of buses also left the hospital and the occupants were eventually evacuated from Vukovar. These buses did not go to the JNA barracks or to Ovčara.

205. After the triage of the men was completed, the men were ordered to get on the buses in Gundulićeva Street.<sup>779</sup> Some witnesses put the number of men boarding the buses at approximately 250,<sup>780</sup> while others thought there were less.<sup>781</sup> One woman, Ružica Markobašić, was seen among

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<sup>768</sup> Dragutin Berghofer, T 5278-5280, 5282, 5440-5441; Emil Čakalić, T 5892-5893, 5996-5997, 6028; Vilim Karlović, T 6329; P011, T 5720; P031, T 3237-3239; P006, T 1117-1118; P012, T 3677-3678; Mara Bučko, T 2729, 2734; Tanja Došen, T 3919; Hajdar Dodaj, T 5529; Zlatko Zlogledja, T 10181-10182; P030, T 9732.

<sup>769</sup> In the evening of 19 November 1991 Radoje Paunović ordered Milivoj Simić to prepare 10 soldiers who would conduct the triage on the following day, Milivoj Simić, T 14586, 14620. He later said that there were about 70 men carrying out the frisking, of which 48 from his company and 20 from 1 coy of 2 MP/gmtbr, T 14594. While there are discrepancies in his evidence as to the number of soldiers conducting the triage it is clear from his evidence and from the other evidence received that these soldiers were members of the 2MP/gmtbr. See also Radoje Paunović, T 14126, 14173.

<sup>770</sup> Vilim Karlović, T 6329-6330, 6333.

<sup>771</sup> Veselin Šljivančanin, T 13628. See also Zlatko Zlogledja, T 10181-10182.

<sup>772</sup> Radoje Paunović, T 14133; Veselin Šljivančanin, T 13628.

<sup>773</sup> Emil Čakalić, T 5895, Vilim Karlović, T 6329-6330; Irinej Bučko, T 2820. The witnesses' account of the number of buses varied. Dragutin Berghofer testified that there were six buses parked in front of the hospital, T 5280-5281. P012 saw four or five buses, T 3641-3642. Ljubica Došen saw three civilian buses and one military bus with reservists carrying guns, T 3791-3794. P011 also saw three of four buses. (P011, T 5720-5722). P006 saw military trucks. (P006, T 1117-1118)

<sup>774</sup> Dragutin Berghofer, T 5282; Irinej Bučko, T 2818; Rudolf Vilhelm, T 4867-4868; Vilim Karlović, T 6335; P031, T 3249-3250; P012, T 3641; Radoje Paunović, T 14131.

<sup>775</sup> Ljubica Došen, T 3808-3809.

<sup>776</sup> Ljubica Došen, T 3926.

<sup>777</sup> Ljubica Došen, T 3808-3809; Tanja Došen, T 3924-3925, 3972-3973. See also P013, T 1190.

<sup>778</sup> Tanja Došen, T 3926.

<sup>779</sup> Dragutin Berghofer, T 5278-5280, 5447-5449.

<sup>780</sup> Dragutin Berghofer, T 5278-5280. See also Dragutin Berghofer, T 5281; Emil Čakalić, T 5895; P031, T 3246-3247.

<sup>781</sup> Rudolf Vilhelm, T 4866-4867.

the men,<sup>782</sup> although another woman was also seen later. Almost all of them were Croats.<sup>783</sup> None were Serbs.

206. While the men were boarding the buses, hospital employees whose husbands were taken away, tried to have their husbands released.<sup>784</sup> Some women were allowed to take their husbands back,<sup>785</sup> but soldiers prevented others from talking to their husbands or establishing any contact with them.<sup>786</sup> The nurses then talked to Veselin Šljivančanin and Dr Izvetic and asked for help.<sup>787</sup> At about the same time a JNA officer got on one or more of the buses and asked whether there were people who had hospital staff IDs or connections with hospital employees. Five or six men got off one of the buses.<sup>788</sup> Outside the bus the men were asked to show their hospital IDs to a JNA major whom the Chamber accepts was Veselin Šljivančanin.<sup>789</sup> He looked at the IDs and compared their names to a list of names which he had with him. Some names were not on the list but the major added them.<sup>790</sup> He sent all of them but one back to the hospital. The one was required to get back on the bus.<sup>791</sup>

207. It is important to emphasize that, in the Chamber's finding, the men taken to the buses had not been randomly selected. The men, except the elderly, had been separated from women and children. All men in the hospital who could walk were in the group, including patients and men pretending to be patients. Men who were related to hospital staff and male hospital staff, in each case who had not been involved in the hostilities, were then released. Women and children and elderly males were dealt with separately and eventually transported by the JNA to Serbia or Croatia. Some identified male patients who were apparently not able to make their way unassisted outside the hospital were taken out by the JNA, apparently because of their role in the Croat forces, and included with the main body of men.<sup>792</sup> Some males in the hospital had been specifically identified by Serb forces and earlier removed from the hospital. They were no longer present at the hospital. All males were searched for weapons or dangerous objects. They were placed under JNA armed guard. As will be discussed in more detail later in this Judgement, the evidence reveals that at least the vast majority of them, if not all, had been involved in Croat military formations active in the

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<sup>782</sup> Dragutin Berghofer, T 5281-5282; Emil Čakalić, T 5896; Ljubica Došen, T 3796-3797; Tanja Došen, T 3920-3921.

<sup>783</sup> Dragutin Berghofer, T 5281-5282; Emil Čakalić, T 5895-5896; P012, T 3640.

<sup>784</sup> Binazija Kolesar, T 957. *See also* Mara Bučko, T 2734.

<sup>785</sup> Binazija Kolesar, T 958.

<sup>786</sup> Mara Bučko, T 2734; Binazija Kolesar, T 958.

<sup>787</sup> Binazija Kolesar, T 958.

<sup>788</sup> Emil Čakalić, T 6031; P031, T 3247-3248; P006, T 1119-1120.

<sup>789</sup> P031, T 3248-3249; P006, T 1120.

<sup>790</sup> P006, T 1120.

<sup>791</sup> P031, T 3248-3249.

<sup>792</sup> *See* Ljubica Došen (T 3776-3778, 3780, 3784-3786, 3812) and Tanja Došen (T 3916, 3969) with respect to Martin Došen.

fighting at Vukovar.<sup>793</sup> At the time all of them were thought by the JNA to have been so involved. The Chamber finds that at least by the time they were searched to ensure they were not armed and were under the armed guard of JNA soldiers, these men became prisoners of war. They will often be referred to as prisoners of war in what follows even though it is possible that individuals among them may not have been members of the Croat forces. The circumstances also demonstrate, in the Chamber's finding, that the two Croat women included with the men were also thought by the JNA to have been involved in the Croatian forces.

208. Approximately two hours passed between the time the men started lining up until they had all boarded the buses.<sup>794</sup> In the Chamber's finding, at approximately 1000 hours the buses left the hospital.<sup>795</sup> They set off in a convoy in the direction of the JNA barracks in Vukovar. Veselin Šljivančanin's deputy at the OG South security organ, Major Vukašinić led the column in a Puch vehicle.<sup>796</sup>

## 2. Events at and near Vukovar hospital in the late morning and early afternoon

209. While this was happening on 20 November 1991 at the Vukovar hospital, at about 0800 hours, perhaps as late as 0845 hours,<sup>797</sup> after a meeting with JNA officers, Jan Allan Schou and Petr Kypr, ECMM monitors, were allowed to depart from Negoslavci for Vukovar.<sup>798</sup> They were driving in their own vehicle with other vehicles, escorted by two JNA military police vehicles, one of which drove in front and one behind them.<sup>799</sup> By the Zagreb Agreement the hospital was to be under the protection of the ICRC, which was to register the wounded and sick to be evacuated,<sup>800</sup> ECMM monitors were to monitor the evacuation from Vukovar hospital and were to have full access to all stages of the evacuation.<sup>801</sup> This was the role Schou and Kypr were seeking to perform. Their efforts to reach the hospital before 20 November 1991 had been prevented by the JNA. The time of their arrival on 20 November 1991 was controlled by the JNA. In the city and close to the hospital the delegation was stopped. On a bridge over the Vuka River, close by the hospital, there was a JNA armoured vehicle blocking their way to the hospital. Colonel Pavković

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<sup>793</sup> See *infra*, para 479.

<sup>794</sup> Dragutin Berghofer and Vilim Karlović testified that about one hour passed from the time they were lined up until the time they boarded the buses. (Dragutin Berghofer, T 5447; Vilim Karlović, T 6460) Some waited in the buses for over one hour. (P031, T 3249. See also Rudolf Vilhelm T 4921). Radoje Paunović testified that the triage took (in total) two hours or a little over two hours, T 14128.

<sup>795</sup> P031, T 3344; See Emil Čakalić, T 5896; Rudolf Vilhelm, T 4868; P011, T 5722; P031, T 3250; Ljubiša Vukašinić, T 15023.

<sup>796</sup> Ljubiša Vukašinić, T 15023.

<sup>797</sup> Exhibit 320.

<sup>798</sup> Jan Allan Schou, T 6890.

<sup>799</sup> Jan Allan Schou, T 7015.

<sup>800</sup> Jan Allan Schou, T 6889-6890.

<sup>801</sup> See *supra*, para 132.

and Veselin Šljivančanin were there.<sup>802</sup> Colonel Pavković spoke to Nicolas Borsinger of the ICRC, who was also in one of the vehicles.<sup>803</sup> He made reference to prisoners of war disguised as civilians at the hospital.<sup>804</sup> Veselin Šljivančanin talked to Nicolas Borsinger as well.<sup>805</sup> He also spoke with the ECMM monitors and explained that they could not proceed further, maintaining there were snipers and fighting on the road and that demining was in progress.<sup>806</sup> The ECMM monitors were held at the bridge for about two hours.<sup>807</sup> They were told that they were not allowed to go to the other side of the river for their own safety.<sup>808</sup> While the ECMM monitors and the ICRC representative were held at the bridge, the five buses carrying the men from the hospital, travelling in the opposite direction, crossed over the Vuka River on another nearby bridge. They were heading towards the area of Sajmište where the JNA barracks were located.<sup>809</sup>

210. The ECMM monitors and the ICRC representative were then allowed to proceed and arrived at the hospital at about 1030 hours on 20 November 1991.<sup>810</sup> At the hospital they saw mainly women and children, there were almost no men. There were no recently wounded.<sup>811</sup> Veselin Šljivančanin was at the hospital when the monitors arrived, but he was not there all the time during their stay.<sup>812</sup> He explained to them that the men had been taken away, some of them to a prison, because they were criminals.<sup>813</sup> In the Chamber's finding manifestly this did not accord with the Zagreb Agreement for the evacuation of the hospital.<sup>814</sup>

211. In the finding of the Chamber, the ECMM monitors and the ICRC representative were deliberately delayed for false reasons by the JNA, with the direct participation of Veselin Šljivančanin, who coordinated the episode so that they did not arrive at Vukovar hospital until after the main group of the intended male evacuees had been driven from the hospital under JNA guard as prisoners of war. When they arrived at the hospital the main body of women and children to be evacuated from the hospital were already at other buses preparing to leave. Only more serious injured and ill cases remained to be evacuated from the hospital. As will be discussed later in this

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<sup>802</sup> Veselin Šljivančanin, T 13641.

<sup>803</sup> Exhibit 333; Exhibit 336.

<sup>804</sup> The video recording of this exchange, which is in evidence, does not include these words of Colonel Pavković. However, the response of Nicolas Borsinger makes it clear that the issue was mentioned: "... our role is not to help fighters disguise themselves as civilians and be evacuated from the hospital", Exhibit 335; Exhibit 336.

<sup>805</sup> Petr Kypr, T 6632; Exhibit 318.

<sup>806</sup> Jan Allan Schou, T 6891; Petr Kypr, T 6631.

<sup>807</sup> Petr Kypr, T 6631, Exhibit 320.

<sup>808</sup> Jan Allan Schou, T 6893.

<sup>809</sup> See Emil Čakalić, T 5896-5897.

<sup>810</sup> Exhibit 341. Witnesses who were at the hospital at the time saw them arriving at about 1100 hours. (Ljubica Došen, T 3811-3813) Zvezdana Polovina testified that ECMM monitors and journalists started coming after the men had been taken away, T 2582, 2692.

<sup>811</sup> Jan Allan Schou, T 6898-6899.

<sup>812</sup> Jan Allan Schou, T 6900-6901.

<sup>813</sup> Jan Allan Schou, T 6899-6900.

<sup>814</sup> Jan Allan Schou, T 6916-6917, Exhibit 341.

Judgement, one effect of this was to prevent the ICRC and the ECMM from carrying out their responsibilities under the Zagreb Agreement.<sup>815</sup> It also enabled the JNA to take into its custody the main body of male wounded and sick from the hospital even though the Zagreb Agreement provided for their evacuation to Croatia. As will appear, the consequences of this for these unfortunate men were grave.

212. On their arrival at the hospital the ECMM monitors saw Serb paramilitaries walking freely at the hospital.<sup>816</sup> They witnessed women and children boarding buses.<sup>817</sup> They also saw wounded being loaded into a military ambulance.<sup>818</sup> There were no regular soldiers to secure the convoy.<sup>819</sup> To the monitors it appeared that there was no control or organisation whatsoever.<sup>820</sup> The monitors stayed at the hospital for some hours,<sup>821</sup> leaving at about 1600 hours.<sup>822</sup> At 2100 hours on 20 November 1991 they arrived at Sremska Mitrovica,<sup>823</sup> having followed civilian evacuees there.

213. The women and children, who, with some others, were being evacuated had to board different buses depending on whether they wanted to go to Croatia or to Serbia.<sup>824</sup> They started boarding buses at about 1100-1130 hours.<sup>825</sup> These were military, olive grey buses of the JNA.<sup>826</sup> The last hospital employees were loaded onto buses at about 1300 or 1400 hours.<sup>827</sup> There were five buses with about 250 people in all, mostly women and children but including doctors, nurses, their husbands, and children.<sup>828</sup> The buses left the hospital at about 1400 or 1430 hours.<sup>829</sup> There were also military ambulances and trucks.<sup>830</sup> They drove to Sremska Mitrovica.<sup>831</sup> They spent the night in the buses in Sremska Mitrovica where lists were made of the number of evacuees.<sup>832</sup> Seriously wounded that had been brought from the hospital by ambulance were in the medical station.<sup>833</sup> Other wounded arrived from the hospital later.<sup>834</sup> On the following morning those

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<sup>815</sup> See *infra*, paras 602-604.

<sup>816</sup> Jan Allan Schou, T 6898-6899, 6916; Exhibit 341.

<sup>817</sup> Exhibit 321; Jan Allan Schou, T 6951-6953.

<sup>818</sup> Jan Allan Schou, T 7019.

<sup>819</sup> Jan Allan Schou, T 6912.

<sup>820</sup> Jan Allan Schou, T 6902, Exhibit 341.

<sup>821</sup> Jan Allan Schou, T 7019.

<sup>822</sup> Exhibit 341.

<sup>823</sup> Exhibit 341.

<sup>824</sup> Ljubica Došen, T 3896-3897; Tanja Došen, T 3925-3926.

<sup>825</sup> Tanja Došen, T 3966; P013, T 1191.

<sup>826</sup> P013, T 1191, 1303. See also Exhibit 136.

<sup>827</sup> Binazija Kolesar, T 963.

<sup>828</sup> Binazija Kolesar, T 967. See also P006, T 1122-1123, 1125.

<sup>829</sup> See Binazija Kolesar, T 963. P021 testified that the convoy set out around noon that day, T 1499; Exhibit 320 ("loading of patients and others until approximately 1430 hours"). Veselin Šljivančanin, T 13658-13659.

<sup>830</sup> Aernaut van Lynden, T 3130-3132; Exhibit 136. From the video film, these were military buses.

<sup>831</sup> Ljubica Došen, T 3813-3814; Mara Bučko, T 2735-2736; Zvezdana Polovina, T 2579; P013, T 1191; Binazija Kolesar, T 963-964; P012, T 3665-3666. See also P021, T 1359; Exhibit 60.

<sup>832</sup> Binazija Kolesar, T 965.

<sup>833</sup> Binazija Kolesar, T 965. See also P012, T 3675. P021 saw ambulances once they joined the convoy (after P021 and the others boarded the buses), T 1497-1498.

travelling to Croatia left Sremska Mitrovica and on 22 November 1991 arrived in Zagreb,<sup>835</sup> having driven through Bosnia to Croatia.

214. While the ECMM monitors were still at the hospital, possibly around 1300 or 1400 hours although it may have been earlier, a team from Sky News and other journalists arrived at the hospital.<sup>836</sup> They saw JNA soldiers in the hospital. The journalists tried to gain access to the basement of the hospital but were not allowed.<sup>837</sup> Veselin Šljivančanin was there with the journalists.<sup>838</sup> They saw him talking to Nicolas Borsinger of the ICRC at the doors of the hospital, in front of the main building.<sup>839</sup> The Sky News team filmed the exchange between the two.<sup>840</sup> Borsinger stated that ICRC had been unable to perform its task and that its work had been made impossible by the JNA.<sup>841</sup> In an interview with the Sky News team immediately after this, Veselin Šljivančanin stated that the ICRC was naïve and did not realise that they were in a war zone. He reproached the ICRC for not being impartial.<sup>842</sup>

### 3. Events at the JNA barracks in Vukovar

215. The buses carrying the main body of male evacuees from the hospital, the prisoners of war, arrived at the JNA barracks in Vukovar at around 1030 hours.<sup>843</sup> They parked in a semi-circle in the barracks compound.<sup>844</sup> In the barracks compound there were some regular JNA soldiers and also what were described as reservists, that is TOs and paramilitaries.<sup>845</sup> The JNA soldiers at the barracks were mostly members of the military police<sup>846</sup> under the command of Captain Mladen Predojević, the commander of an armoured vehicles company of 1 MP/gmtbr attached at the time to 2 AD.<sup>847</sup> He was there together with the barracks commander Major Branislav Lukić, who was also the commander of the 2 AD,<sup>848</sup> and Captain Jovan Šušić who was the commander of 1 MP/gmtbr.<sup>849</sup>

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<sup>834</sup> Binazija Kolesar, T 965.

<sup>835</sup> Zvezdana Polovina, T 2579; Binazija Kolesar, T 967.

<sup>836</sup> Jan Allan Schou, T 6904.

<sup>837</sup> Aernaut van Lynden, T 3126.

<sup>838</sup> Jan Allan Schou, T 6904.

<sup>839</sup> Aernaut van Lynden, T 3128-3129.

<sup>840</sup> Aernaut van Lynden, T 3128; Exhibits 138 and 139.

<sup>841</sup> Aernaut van Lynden, T 3128.

<sup>842</sup> Aernaut van Lynden, T 3128-3129; Exhibits 138 and 139.

<sup>843</sup> Emil Čakalić, T 5898.

<sup>844</sup> Dragutin Berghofer, T 5282; Rudolf Vilhelm, T 4870-4871; Vilim Karlović, T 6333; P009, T 6139; P030, T 9739; Jovan Šušić, T 14896.

<sup>845</sup> Dragutin Berghofer, T 5282; Vilim Karlović, T 6333. *See also* P030, T 9739.

<sup>846</sup> P009, T 6139.

<sup>847</sup> Jovan Šušić, T 14878-14879.

<sup>848</sup> Miodrag Panić, T 14306; Jovan Šušić, T 14887.

<sup>849</sup> Miodrag Panić, T 14306; Jovan Šušić, T 14888.

216. Serb TO members and paramilitaries milled around the buses and started to threaten and to verbally abuse the men on the buses.<sup>850</sup> One witness saw that Kemal (Ćeman) Saiti aka Kemo, Damjan Samardžić and Željko Jurela were particularly threatened.<sup>851</sup> The paramilitaries spoke with a different accent and had round fur caps with braids on them.<sup>852</sup> A witness described them as Arkan's or Šešelj's men,<sup>853</sup> although the Chamber is not able to find that this was a reliable identification. They had poles and bats in their hands<sup>854</sup> and were hitting the buses and banging on the windows with them.<sup>855</sup> The Chamber is not able to accept the evidence of Captain Karanfilov, one of Veselin Šljivančanin's security organ staff from OG South, who was also at the barracks, that a cordon of military police was set up around the buses to prevent physical contact between the paramilitaries and the men in the buses.<sup>856</sup> The paramilitaries and TO members were trying to get into the buses. The JNA soldiers on the buses, at least for the most part, did not allow that.<sup>857</sup> However, initially no attempt was made by the JNA soldiers to prevent these threats and menaces from outside the buses.<sup>858</sup> Order was reinstated only about 30 minutes later, when the JNA military police removed the TO members and the paramilitaries from the barracks compound.<sup>859</sup>

217. In the meantime, approximately 20 minutes after the buses arrived at the barracks, a soldier in uniform got on one of the buses and took away three persons.<sup>860</sup> One or two soldiers got on another bus and asked whether there were hospital employees. One man showed them his hospital ID but it was not accepted as there was no photo on it.<sup>861</sup> A captain got on a third bus. He read the names of several people from a piece of paper and told them to go with him. P030 testified that this was Captain Radić,<sup>862</sup> however, as explained in more detail elsewhere in this Judgement, the Chamber is not able to accept this as a reliable identification.<sup>863</sup> The people who were called off the buses, altogether about 12 to 15 of them, were taken to an empty military bus ("sixth bus") which had arrived separately at the JNA barracks compound in the meantime.<sup>864</sup> Among them were Professor Licina, two members of the Simunović family, Rudolf Vilhelm, Irinej Bučko, and Mihalj

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<sup>850</sup> Dragutin Berghofer, T 5282,5286; Emil Čakalić, T 5901; Irinej Bučko, T 2821; Vilim Karlović, T 6334; P011, 5723-5724; P012, T 3643; P031, T 3251-3254.

<sup>851</sup> P011, T 5722-5724.

<sup>852</sup> Emil Čakalić, T 5899-5901; Irinej Bučko, T 2822.

<sup>853</sup> P012, T 3643.

<sup>854</sup> Irinej Bučko, T 2822.

<sup>855</sup> Irinej Bučko, T 2822; P031, T 3251-3253.

<sup>856</sup> Borče Karanfilov, T 15426-15427.

<sup>857</sup> Vilim Karlović, T 6335.

<sup>858</sup> See Irinej Bučko, T 2822-2824.

<sup>859</sup> See Jovan Šušić, T 14892-14893.

<sup>860</sup> Dragutin Berghofer, T 5283.

<sup>861</sup> Emil Čakalić, T 5901-5902.

<sup>862</sup> P030, T 9739.

<sup>863</sup> See *infra*, para 336.

<sup>864</sup> Dragutin Berghofer, T 5282-5286; Irinej Bučko, T 2823, 2825; Vilim Karlović, T 6335-6337; P012, T 36449-3650; P031, T 3253.

Kolesar, whose wife was a nurse.<sup>865</sup> On their way to the sixth bus and on the sixth bus these men were beaten with rifle-butts, punched and kicked.<sup>866</sup> The Chamber accepts that their attackers were Serb TOs and paramilitaries. While some witnesses testified that the men were beaten by soldiers,<sup>867</sup> this may have been a reference to TOs in some form of uniform. The Chamber is not able to accept that this evidence identifies JNA soldiers as the attackers. Mihalj Kolesar was severely beaten, the two members of the Simunović family were screaming and moaning.<sup>868</sup> A witness testified that Milan Bulić, a paramilitary, hit Josip Zeljko, one of the men directed to the sixth bus, with an iron bar.<sup>869</sup> One man had his head fractured.<sup>870</sup> No one received medical treatment.<sup>871</sup> There were no attempts by the JNA military police or officers present to stop the beatings.<sup>872</sup>

218. P009 noticed two men, whom he believed to be Miroljub Vujović, the commander of Petrova Gora TO who was that day appointed commander of Vukovar TO, and Stanko Vujanović a TO commander in the area, arriving at the JNA barracks compound in Miroljub Vujović's civilian vehicle.<sup>873</sup> They went straight to the JNA officers and appeared quite angry.<sup>874</sup> They had an argument with the JNA officers, following which they all went inside the barracks.<sup>875</sup>

219. As the Chamber finds elsewhere in this Judgement, Veselin Šljivančanin was present at the barracks at some time around 1100-1130 hours on 20 November 1991. Šljivančanin was standing about 15 metres from the buses with the prisoners and was talking to at least two other JNA officers.<sup>876</sup>

220. At about the same time a civilian minivan with two men who were dressed as paramilitaries (they were wearing pieces of different uniforms) arrived from Negoslavci.<sup>877</sup> They were looking for the Došen brothers who had been very active in the Croatian independence struggle in Vukovar. Despite the JNA military police guards on each bus, two of the Došen brothers were thrown out of one of the buses by these two paramilitaries and were severely beaten.<sup>878</sup> Miroljub Vujović, Stanko

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<sup>865</sup> Dragutin Berghofer, T 5284; P031, T 3256-3257; Rudolf Vilhelm, T 4874.

<sup>866</sup> Dragutin Berghofer, T 5282-5286; Irinej Bučko, T 2824-2825, 2940; Rudolf Vilhelm, T 4874-4875; Vilim Karlović, T 6335-6337; P012, T 3651-3654, 3734; Hajdar Dodaj, T 5535. *See also* Binazija Kolesar, T 962.

<sup>867</sup> Dragutin Berghofer, T 5282-5286; Irinej Bučko, T 2824-2825, 2940; Rudolf Vilhelm, T 4874-4875; Vilim Karlović, T 6335-6337.

<sup>868</sup> Rudolf Vilhelm, T 4874-4875. *See also* Binazija Kolesar, T 962.

<sup>869</sup> P012, T 3657.

<sup>870</sup> Irinej Bučko, T 2825.

<sup>871</sup> Dragutin Berghofer, T 5471.

<sup>872</sup> Dragutin Berghofer, T 5282-5286; Irinej Bučko, T 2823-2825, 2940.

<sup>873</sup> P009, T 6142-6143.

<sup>874</sup> P009, T 6143.

<sup>875</sup> P009, T 6147.

<sup>876</sup> *See infra*, paras 368; 372 .

<sup>877</sup> P009, T 6147, 6151.

<sup>878</sup> P009, T 6148-6149, 6277.

Vujanović and the JNA officers were inside the barracks when this occurred.<sup>879</sup> The third Došen brother, who had been badly injured, was lying on a stretcher in a military truck which had parked near the buses. He was thrown out by the paramilitaries. He was not beaten at the barracks.<sup>880</sup> All three Došen brothers were put in the minivan which was driven away, it is suggested, to Negoslavci.<sup>881</sup> No one of the three brothers has been seen again.

221. After some time the sixth bus, with the 12-15 men mentioned earlier, directed by Major Vukašinović departed and drove back to the Vukovar hospital.<sup>882</sup> There Veselin Šljivančanin questioned the men to see whether they were Croatian defenders.<sup>883</sup> He consulted with two or three TOs from Vukovar. One witness identified one of these to be Miroljub Vujović, the commander of Petrova Gora TO who was that day appointed commander of Vukovar TO.<sup>884</sup> Five or six of the men who were thought to have been involved in the Croatian forces at Vukovar were sent back to the bus.<sup>885</sup> Among them were Ivan Adžaga and Josip Zeljko, the former cook of the hospital,<sup>886</sup> Miroslav Vlaho and Mato Vlaho.<sup>887</sup> They were then driven back to the JNA barracks.<sup>888</sup> The remainder were released at the hospital, after being questioned by Veselin Šljivančanin. These went to the hospital compound and later were evacuated by bus to Sremska Mitrovica, together with the women and children.<sup>889</sup>

222. The five buses left the JNA barracks together.<sup>890</sup> Trucks with wounded may have left at about the same time, but the evidence does not suggest the trucks travelled to Ovčara.<sup>891</sup> While some of the evidence as to the time varies and is imprecise,<sup>892</sup> in the Chamber's finding it was between 1300 and 1400 hours that the buses left the JNA barracks. They followed at least one

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<sup>879</sup> P009, T 6149.

<sup>880</sup> P009, T 6150.

<sup>881</sup> P009, T 6151-6152.

<sup>882</sup> Irinej Bučko, T 2826; Rudolf Vilhelm, T 4871, 4875.

<sup>883</sup> Irinej Bučko, T 2826-2829; P012, T 3659-3660, 3662-3663.

<sup>884</sup> Rudolf Vilhelm, T 4877; Veselin Šljivančanin, T 13657-13658. Witnesses saw Bogdan Kuzmić (Irinej Bučko, T 2826-2829) and Darko Kovačević *aka* Drko (Rudolf Vilhelm, T 4877) consulting Šljivančanin in this process.

<sup>885</sup> Rudolf Vilhelm, T 4878-4880.

<sup>886</sup> Rudolf Vilhelm, T 4880; Binazija Kolesar, T 962; P012, T 3652-3653.

<sup>887</sup> P012, T 3660.

<sup>888</sup> Rudolf Vilhelm, T 4880.

<sup>889</sup> Irinej Bučko, T 2830; Rudolf Vilhelm, T 4880.

<sup>890</sup> Vilim Karlović, T 6337-6338; Dragutin Berghofer, T 5287.

<sup>891</sup> P009, T 6152-6153.

<sup>892</sup> Dragutin Berghofer testified that they left the hospital at about 0915 hours and that they spent approximately four hours at the JNA barracks (Dragutin Berghofer, T 5286). P011 thought that they spent one hour and a half to two hours (P011, T 5723-5726) and left at 1300 hours (P011, T 5812). Emil Čakalić testified that they stayed at the JNA barracks until about 1400 or 1430 hours (Emil Čakalić, T 5903). P031 thought that they stayed until 1430 hours (P031, T 3257). Vilim Karlović thought that they stayed at the JNA barracks for about one to two hours. (Vilim Karlović, T 6333). Hajdar Dodaj and Zlatko Zlogledja thought that they spent two hours at the barracks (Hajdar Dodaj, T 5535-5536; Zlatko Zlogledja, T 10186). P030 thought that they stayed two to three hours at the barracks (P030, T 9739, 9743). Jovan Šušić testified that the buses left the barracks at 1400 hours (Jovan Šušić, T 14897).

military vehicle (Puch or a Pinzgauer)<sup>893</sup> and took the road to Negoslavci.<sup>894</sup> The two JNA military police guards who had been onboard each bus at the hospital remained onboard the buses throughout.<sup>895</sup> They were armed military policemen from 2MP/gmtbr under the command of Captain Paunović.<sup>896</sup> Before reaching Negoslavci the buses turned left and continued to Ovčara. There they stopped in front of a hangar<sup>897</sup> that was normally used as a warehouse for agricultural machinery and belonged to the Vupik pig farm.<sup>898</sup> The journey from the barracks took only some half hour.<sup>899</sup>

223. Obviously, not all of the detail of the evidence about these events is consistent. Given the lapse of years it would be surprising if it were. The Chamber notes, for example, that while Miroljub Vujović and Stanko Vujovanović may have left the JNA barracks at about the same time as the buses,<sup>900</sup> it is not established that they then travelled with the buses to Ovčara. However, the evidence that Miroljub Vujović was among the local Serb TO and paramilitary persons whom Veselin Šljivančanin consulted at the hospital after the return from the barracks of a sixth bus, can be reconciled with the evidence of both Šljivančanin's and Vujović's presence at the barracks. The two locations are not far apart. The recollections of witnesses vary as to detail and time estimates inevitably are imprecise. The Chamber accepts that Miroljub Vujović and Veselin Šljivančanin were at both locations. Miroljub Vujović left the barracks in a private car with Stanko Vujanović, to return to the hospital grounds where Veselin Šljivančanin interrogated the men who had been returned in the sixth bus.

224. In the Chamber's further finding, the men in the sixth bus were hospital staff or spouses of hospital staff. They had been returned to the hospital at the direction of Veselin Šljivančanin because, earlier that morning, he had told the staff that they and their spouses would be evacuated. He had, therefore, arranged for these men to be removed from the five buses at the barracks, and for the sixth bus to collect them from the barracks and return them to the hospital. That having been achieved, he then confirmed their identities and verified, by questioning them and by consulting leading TOs and paramilitaries, that none of them were active in the Croatian forces. Not all of the men who had been returned in the sixth bus satisfied this scrutiny. Those who did not were returned to join the main body of prisoners of war.

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<sup>893</sup> Jovan Šušić, T 14897-14898.

<sup>894</sup> Emil Čakalić, T 5904; P011, T 5726.

<sup>895</sup> Dragutin Berghofer, T 5286-5287; Vilim Karlović, T 6337-6338; P009, T 6153-6154.

<sup>896</sup> Radoje Paunović, T 14131. *See also supra*, para 198.

<sup>897</sup> Emil Čakalić, T 5904-5905; P011, T 5726.

<sup>898</sup> P031, T 3258.

<sup>899</sup> Emil Čakalić, T 5970.

<sup>900</sup> P009, T 6152-6153.

#### 4. Session of the SAO “government”

225. On 20 November 1991 a meeting of the self-described “government of SAO” (*Srpska Autonomna Oblast/Serbian Autonomous District*) Slavonia, Baranja and Western Srem was held at Velepromet. This “government” had been formed in September 1991 by a secret organisation calling itself the Serbian National Council of Slavonia, Baranja and Western Srem. The Council did not accept the separation of the region from the State of Yugoslavia.<sup>901</sup> Among the participants in the session at Velepromet, there were members of this “government”, including its prime minister, Goran Hadžić and Slavko Dokmanović,<sup>902</sup> minister of agriculture and ousted mayor of Vukovar, as well as two senior officers of the JNA, Colonel Vujić, from the Security Administration, and, arriving late LtCol Panić, Chief of Staff of OG South and the gmtbr, who attended as the representative of Mile Mrkšić. Captain Jakšić of the Vukovar TO was present. Željko Raznjatović, *aka* Arkan, a renowned paramilitary leader whose troops had fought in Vukovar,<sup>903</sup> also attended the meeting.<sup>904</sup>

226. In the evidence of LtCol Panić, the participants discussed the fate of the captured members of the ZNG, *i.e.* the prisoners of war most of whom were at that moment being held in the five buses at the JNA barracks in Vukovar.<sup>905</sup> He says it was decided at the session that the prisoners should not be transported to Sremska Mitrovica and then exchanged, as had been done with previous groups of prisoners. Instead, the members of the “government” expressed their wish to have the prisoners put on trial before the local judiciary.<sup>906</sup> LtCol Panić recorded in his notepad<sup>907</sup> a statement by the minister of interior of the “government”:

We waged the war together, we have to bring them to justice together. These people and the Government should have been consulted on how to house them and where. Only over the citizens' dead bodies is it going to be possible to leave Vukovar with the Ustashas and take them to Sremska Mitrovica.<sup>908</sup>

227. The account of Colonel Vujić is consistent with the testimony of LtCol Panić as regards the matters discussed at the meeting. Colonel Vujić stated that there had been great tension when, at an earlier stage of the meeting, he informed the members of the “government” that the prisoners of war

<sup>901</sup> Exhibit 390, pp 3049; 3051; Exhibit 389, p 2483; 2492-2493.

<sup>902</sup> Exhibit 389, p 2484.

<sup>903</sup> P001, T 10088; Branko Korica, T 14833-14834; Exhibit 718.

<sup>904</sup> Bogdan Vujić, T 4556-4557; Miodrag Panić, T 14307-14308; Dušan Jakšić, T 11952-11953.

<sup>905</sup> *See infra*, paras 231-233.

<sup>906</sup> Miodrag Panić, T 14309.

<sup>907</sup> Bogdan Vujić stated that Panić arrived at the meeting with a notebook or a folder. (Bogdan Vujić, T 4562) LtCol Panić insisted that he only had a small notepad at the time. (Miodrag Panić, T 14407-14409) The content of the notepad, as presented and admitted into evidence, corresponds with the testimony of LtCol Panić and, as will be shown, with the testimony of Colonel Vujić. This inconsistency between the evidence of the two witnesses is thus of no significance.

<sup>908</sup> Exhibit 852; Miodrag Panić, T 14311.

would be taken to a camp in Sremska Mitrovica and interrogated there. In the evidence of Colonel Vujić, the minister Slavko Dokmanović stated that the prisoners would not be allowed further than the JNA barracks. Colonel Vujić also heard that the “government” was ready to set up a court-martial.<sup>909</sup> Captain Jakšić did not remember the details of the discussion, but could recall that there was some tension over the issue of prisoners of war and that the “government” wished to put them on trial.<sup>910</sup>

228. That evening, some hours after the meeting, Goran Hadžić, the prime minister of the “government”, gave an interview to the media in which he said, with reference to the session of the “government”:

[...] our main resolution was that the disdained Ustashas, whom we have captured, would not leave the territory of the Serb District of Slavonia, Baranja and Western Srem, that they cannot be transported to Serbia, because Serbia is not at war and that the army which helped us capture them [sic] ... they are not soldiers. They are paramilitary formations and they can be tried only by these people here, that is the people of our Serb District which has been recognised, and which has its own judiciary. ... We have agreed with the military authorities to have these Ustashas detained in our detention camps, here in the surroundings of Vukovar. Since one group of Ustashas has already been taken to Sremska Mitrovica, I have personally taken the responsibility to bring these people – if that is the right term to use for them at all, “people” – to bring them back and put those who are guilty on trial. Those who are not guilty will, of course, be released and we will let them rebuild our town with us.<sup>911</sup>

The evidence given by members of the “government” in the *Dokmanović* trial, which is in evidence in this trial, to the effect that the issue of the captured prisoners of war was not discussed at the meeting cannot be accepted by the Chamber.<sup>912</sup> It contradicts the consistent evidence on this issue given by witnesses in the present trial, which the Chamber finds persuasive, and the reported statement of Goran Hadžić to the media. It is also noted by the Chamber, that the evidence given by the witnesses in this trial to the effect that the fate of the Croatian prisoners of war was discussed and decided at the meeting may well indicate that the “government” had a role in the commission of crimes against these prisoners. For this reason, also, what was said by members of the “government” in the *Dokmanović* trial must be treated with caution.

229. While, in the finding of the Chamber, the comments of Goran Hadžić and Slavko Dokmanović noted above provide an indication of the determination of the meeting that the JNA should not take the prisoners of war remaining in Vukovar to Sremska Mitrovica in Serbia, the reported assertion of Goran Hadžić to the media that there was an agreement with the military authorities “to have these Ustashas detained in our detention camps [...] in the surroundings of Vukovar” is not shown by the evidence to have occurred by the end of the meeting. His reported

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<sup>909</sup> Bogdan Vujić, T 4558-4563.

<sup>910</sup> Dušan Jakšić, T 11958-11959.

<sup>911</sup> Exhibit 576.

words may reflect events that transpired following the meeting. If so, the circumstances would indicate that the issue was pursued further with Mile Mrkšić or his representatives following the meeting. What eventually transpired in respect of the prisoners of war on 20 November 1991 following the meeting is, in the finding of the Chamber, consistent with the reported assertion of Goran Hadžić of an agreement reached at least by that evening, with the military authorities to have the prisoners of war detained in the surroundings of Vukovar.

230. Accounts of the session given by witnesses differed from one another as regards the time when it was held. One of the participants, LtCol Panić did not know the exact time of the beginning of the session, as he arrived late.<sup>913</sup> In any event, his recollection of the time of the meeting was not clear. He believed that it started either at 1000 or 1100 hours, and lasted for about an hour.<sup>914</sup> However, Colonel Vujić, who also attended the session, said it took place from 1300 to 1400 hours.<sup>915</sup> Warrant Officer Branko Korica, who was at Velepromet and saw Colonel Vujić leave for the meeting room,<sup>916</sup> allowed for the possibility that it started as late as at 1300 hours.<sup>917</sup> What was said in the *Dokmanović* trial indicated that the meeting started at about 1400 hours and concluded at about 1500 hours.<sup>918</sup>

231. It is the evidence of LtCol Panić that he was told by Mile Mrkšić to go to the meeting of the “government”. Panić was then at the JNA barracks. It is his evidence that during the same telephone conversation, he informed Mile Mrkšić that a bus with prisoners had arrived at the barracks<sup>919</sup> (although in fact there were several buses). As found earlier by the Chamber, the buses left the hospital at around 1000 hours. On this basis the first bus would have reached the barracks at sometimes around 1030 hours. When LtCol Panić returned to the barracks after the “government” session, there were still buses there.<sup>920</sup> In the finding of the Chamber the buses left the barracks between 1300 and 1400 hours.<sup>921</sup> The evidence of Captain Šušić of 1/gmtbr also demonstrates that the session was held while the buses were still at the JNA barracks. He stated that at some time, which he put between 1000 and 1100 hours,<sup>922</sup> although in the Chamber’s finding this was after 1030 hours and may have been well after 1100 hours, he contacted Mile Mrkšić by telephone and informed him about the security problem with the buses that had arrived at the

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<sup>912</sup> Exhibit 388, p 3191; Exhibit 389, pp 2536-2537; Exhibit 390, p 3065.

<sup>913</sup> Miodrag Panić, T 14307; Bogdan Vujić, T 4562.

<sup>914</sup> Miodrag Panić, T 14404; 14308.

<sup>915</sup> Bogdan Vujić, T 4697; 4703-4704.

<sup>916</sup> Branko Korica, T 14740.

<sup>917</sup> Branko Korica, T 14765.

<sup>918</sup> Exhibit 388, p 3177; Exhibit 389, pp 2506-2507; Exhibit 390, pp 3056-3057.

<sup>919</sup> Miodrag Panić, T 14318.

<sup>920</sup> Miodrag Panić, T 14321; 14401.

<sup>921</sup> *See supra*, para 222.

<sup>922</sup> Jovan Šušić, T 14916.

barracks. During the conversation Mile Mrkšić mentioned to him that the meeting of the “government” of Krajina was in progress.<sup>923</sup>

232. Colonel Vujić’s recollection placed the “government’s” session later than LtCol Panić. However, in his account of the “government’s” session he mentioned that one of the participants in the discussion spoke of the JNA barracks being encircled by members of TO and civilian population. That person also said that the people who gathered there were ready to prevent the buses from leaving by lying across the road.<sup>924</sup> This indicates that this person then knew what was happening at the barracks after the buses arrived there and that the buses were still there. The effect of this evidence is also similar to that of the testimony of LtCol Panić in that the meeting of the “government” was held when the buses were still at the JNA barracks. Thus the meeting could not have commenced as late as 1300 hours. Clearly, for the same reason, the evidence in the *Dokmanović* case which placed the meeting as commencing at 1400 hours cannot be accepted. In addition, one of the participants in the meeting, Slavko Dokmanović, was seen by Emil Čakalić and Dragutin Berghofer at Ovčara.<sup>925</sup> The later one of the two sightings, by Dragutin Berghofer, took place between 1400 and 1430 hours,<sup>926</sup> which would be during the time of the “government” session indicated by the witnesses testifying in the *Dokmanović* case. The Chamber finds the evidence of Dragutin Berghofer and Emil Čakalić on this issue persuasive and consistent. No evidence has been adduced to the effect that Slavko Dokmanović left the meeting room during the “government” session. For these reasons, the Chamber does not accept the indication of time of the session provided by the witnesses in the *Dokmanović* case.

233. While time estimates have inevitably been affected by the lapse of some 15 years since the events and because the precise times were of little materiality when these events occurred, in the finding of the Chamber the meeting of the “government” at Velepromet had concluded before 1300 hours, and in all probability started at about 1100 hours and concluded at about 1200 hours.<sup>927</sup>

## 5. Events at Ovčara

234. The buses arrived at Ovčara on 20 November 1991 between 1330 and 1430 hours. They were emptied one by one.<sup>928</sup> The prisoners of war were released from each of the buses in groups of five to six and every second or third prisoner of war was questioned by the soldiers about their

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<sup>923</sup> See *infra*, paras 298-302.

<sup>924</sup> Bogdan Vujić, T 4562.

<sup>925</sup> Emil Čakalić, T 5904-5907; Dragutin Berghofer, T 5291-5293.

<sup>926</sup> Dragutin Berghofer, T 5366-5368.

<sup>927</sup> See Exhibit 269.

<sup>928</sup> Vilim Karlović, T 6338; P011, T 5812; Dragutin Berghofer, T 5286-5287; Emil Čakalić, T 5904; P031, T 3260-3264; P009, T 6159-6160.

activities in Vukovar.<sup>929</sup> The prisoners of war were then stripped of their personal valuables; their money and jewellery was taken away while their IDs and other personal belongings were thrown in a ditch.<sup>930</sup> Then they had to pass between two rows of soldiers, about 10 to 15 on each side, who were beating them severely as they passed through.<sup>931</sup> The soldiers beat the prisoners of war using wooden sticks, rifle-butts, poles, chains and even crutches. They were also kicking and punching the prisoners of war.<sup>932</sup> The gauntlet was about eight to 10 metres long.<sup>933</sup> Everyone from the buses, except for four persons,<sup>934</sup> had to go through the gauntlet and was heavily beaten. It took approximately 15 to 20 minutes to unload each bus.<sup>935</sup> After passing through the gauntlet some prisoners of war were further individually interrogated and mistreated.<sup>936</sup>

235. Serb paramilitaries and TO members participated in the gauntlet.<sup>937</sup> Individuals among them were recognised and have been identified in evidence.<sup>938</sup> Witnesses saw Slavko Dokmanović, the minister of agriculture in the “government,” by this time wearing a JNA uniform.<sup>939</sup> Some regular JNA soldiers in uniform may also have participated in the gauntlet.<sup>940</sup> The JNA military police of the 2MP/gmtbr, who had provided the security on the buses, stayed on the buses while the men were made to run the gauntlet.<sup>941</sup> At the hangar there were also 15-20 JNA soldiers who were securing the area.<sup>942</sup> A witness described the soldiers around the hangar as JNA military policemen wearing olive-drab JNA uniforms with white belts.<sup>943</sup> Other evidence, specifically considered elsewhere confirms that these were military police of the JNA 80 mtbr. No one tried to stop those who were hitting the prisoners of war.<sup>944</sup>

236. Four JNA soldiers, who had deserted from the JNA and had surrendered to the Croatian forces, were also at the hospital on 20 November 1991. They were in the group of men taken from the hospital to the hangar at Ovčara. When they left the buses in front of the hangar, two of them

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<sup>929</sup> Vilim Karlović, T 6341.

<sup>930</sup> Dragutin Berghofer, T 5287-5288, 5299; Emil Čakalić, T 5904-5905; Vilim Karlović, T 6338-6341; P009, T 6159-6160; P011, T 5728-5730; P031, T 3260-3264.

<sup>931</sup> Dragutin Berghofer, T 5288, 5299; Emil Čakalić, T 5905-5907; Vilim Karlović, T 6339-6340; P009, T 6159-6160; P011, T 5728-5730; Hajdar Dodaj, T 5539-5540; P030, T 9743-9745.

<sup>932</sup> Dragutin Berghofer, T 5288, 5299; Emil Čakalić, T 5905-5907; Vilim Karlović, T 6338-6340; P009, T 6161; P031, T 3260-3264; Zlatko Zlogledja, T 10189.

<sup>933</sup> Dragutin Berghofer, T 5288, 5299; Emil Čakalić, T 5970-5972.

<sup>934</sup> See *infra*, para 236.

<sup>935</sup> Vilim Karlović, T 6340; P009, T 6162.

<sup>936</sup> P011, T 5730-5732.

<sup>937</sup> Vilim Karlović, T 6338-63340; Zlatko Zlogledja, T 10187; P030, T 9734-9735; P009, T 6159-6160.

<sup>938</sup> Dragutin Berghofer, T 5289; Emil Čakalić, T 5908; P031, T 3280; P030, T 9754.

<sup>939</sup> Emil Čakalić, T 5904-5907. See also Dragutin Berghofer, T 5291-5293.

<sup>940</sup> Dragutin Berghofer, T 5289; Vilim Karlović, T 6338-6340.

<sup>941</sup> Vilim Karlović, T 6338-6341; P009, T 6162.

<sup>942</sup> Vilim Karlović, T 6345. See also P011, T 5728. P011 testified that near the hangar there were over 50 soldiers, including JNA troops, reservists and possibly also paramilitaries.

<sup>943</sup> P009, T 6162-6163, 6281-6282.

<sup>944</sup> Dragutin Berghofer, T 5289.

established contact with an officer and told him that they were JNA soldiers who had been imprisoned in Vukovar. When the other two descended from the bus the officer, who appeared to have had the rank of a captain, called them and took the four men (Petar Krusević, Samir Hrkić, Hajdar Dodaj, and Zlatko Zlogledja) aside.<sup>945</sup> They did not have to go through the gauntlet. Then they were questioned by two officers (one of the witnesses believed they were lieutenant-colonels) about their ethnic background.<sup>946</sup> After some time a JNA officer with a car arrived and took them to Negoslavci.<sup>947</sup>

237. Inside the hangar the beatings continued. The atmosphere was miserable. There were about 200 people from the buses and at least 40 Serb soldiers including paramilitaries, TO members and JNA soldiers.<sup>948</sup> Among them witnesses recognized Miroljub Vujović and Gordana Karan, a female TO soldier wearing an olive-drab uniform.<sup>949</sup> The prisoners of war had to lean against the wall with their arms up and their legs spread.<sup>950</sup> Some were hit with iron rods and rifle-butts and kicked.<sup>951</sup> The evidence was specific about a number of prisoners of war, including the following. Siniša Glavašević, a Radio Vukovar journalist, was severely beaten with rifle-butts, iron bars, rods, chains and police truncheons by several soldiers.<sup>952</sup> Damjan Samardžić was punched, he fell to the ground and was beaten by five or six soldiers. He was beaten so badly that after two hours he still could not move.<sup>953</sup> Kemal (Ćeman) Saiti was also beaten particularly badly.<sup>954</sup> A paramilitary soldier grabbed him by the hair and banged his head several times against the concrete floor<sup>955</sup> so severely that witnesses thought that he died there from the injuries caused during the beatings.<sup>956</sup> Vlado (Vladimir) Đukić who had gunshot injuries, was also so seriously beaten that a witness thought that he might have died in the hangar.<sup>957</sup> Tomislav Baumgartner, a 16 or 17 year old boy, who was also sometimes called “the Frenchman” was also beaten badly and kicked.<sup>958</sup> Damir Kovacić was kicked on his wounds.<sup>959</sup> No one attempted to stop the beatings.<sup>960</sup> A group of three

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<sup>945</sup> Hajdar Dodaj, T 5536-5538; Zlatko Zlogljeda, T 10189-10190.

<sup>946</sup> Hajdar Dodaj, T 5440-5441; Zlatko Zlogledja, T 10190-10191.

<sup>947</sup> Hajdar Dodaj, T 5537-5538; Zlatko Zlogledja, T 10227. Zlatko Zlogledja thought that he spent about 30 minutes at Ovčara, T 10195.

<sup>948</sup> Vilim Karlović, T 6346-6347; P011, T 5734, 5852-5853. P011 testified that there were between 50 and 100 soldiers, T 5734.

<sup>949</sup> P011, T 5811, 5815-5816. See also P030, T 9755.

<sup>950</sup> Emil Čakalić, T 5909.

<sup>951</sup> Dragutin Berghofer, T 5291-5292; Emil Čakalić, T 5909.

<sup>952</sup> Dragutin Berghofer, T 5293, 52995-5296; P030, T 9749.

<sup>953</sup> Dragutin Berghofer, T 5294-5295; Emil Čakalić, T 5906, 5909-5910; P031, T 3272-3273; P030, T 9749.

<sup>954</sup> Emil Čakalić, T 5906, 5909-5910; P030, T 9749.

<sup>955</sup> P031, T 3270-3272.

<sup>956</sup> P011, T 5730-5732; Emil Čakalić, T 5906, 5909-5910; P030, T 9749.

<sup>957</sup> P011, T 5732.

<sup>958</sup> Dragutin Berghofer, T 5296-5298.

<sup>959</sup> P030, T 9751.

<sup>960</sup> P031, T 3270-3273; P030, T 9751.

or four paramilitary soldiers stopped in front of P031 and started questioning him how many of their soldiers he had killed.<sup>961</sup>

238. Witnesses testified that one man whose dress and general appearance indicated he was a TO member, despite the evidence of one witness that he was a JNA officer,<sup>962</sup> blew a whistle at intervals at which sound the soldiers who were doing the beatings left and other soldiers came in to the hangar to continue the beatings.<sup>963</sup> The soldiers beating the prisoners were, at least in the main, paramilitary soldiers.<sup>964</sup> While some evidence could indicate that JNA soldiers also directly participated in beatings in the hangar,<sup>965</sup> this evidence was not convincing and differed from the effect of the main body of evidence.

239. No prisoner of war received medical treatment, either at the JNA barracks, or at Ovčara, despite the fact that many were severely injured and many were extremely badly beaten.<sup>966</sup>

240. At a time estimated as between 1400 and 1500 hours, a soldier approached a worker at the Vupik pig farm and told him to bring an excavating machine that was parked there and to go with him.<sup>967</sup> The soldier was wearing a JNA uniform, had an officer's belt and a pistol but a regular cap. He had a clean appearance and was clean-shaven.<sup>968</sup> While this description could well indicate the soldier was a JNA soldier, indeed some elements but not all would indicate an officer, it is too general to enable the Chamber to conclude that this soldier was not a TO or paramilitary officer. They left the farm compound. The soldier told the driver to turn right, then near the woods, to turn left.<sup>969</sup> As they left the hangar there were four or five buses there, the first one was at the gate and the others were right behind each other.<sup>970</sup> The soldier told the worker to look for a place where it would be possible to dig. They drove to the end of the woods. To the right there was an old hole and the soldier asked the worker to dig there.<sup>971</sup> The worker dug until the soldier told him: "Enough".<sup>972</sup> The worker's estimation and recollection was that the hole excavated was about 10 metres long and three metres wide. It was between one and half to two metres deep.<sup>973</sup> The worker and the soldier then returned to the Vupik pig farm. It was between 1530 and 1600 hours

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<sup>961</sup> P031, T 3274-3275.

<sup>962</sup> See P030, T 9747.

<sup>963</sup> Dragutin Berghofer, T 5296-5297; P011, T 5735-5737. See also Emil Čakalić, T 5919, P031, T 3275-3276.

<sup>964</sup> P031, T 3275-3278.

<sup>965</sup> Dragutin Berghofer testified that all men who beat him were in uniforms, T 5295-5296. See also P011, T 5734.

<sup>966</sup> Dragutin Berghofer, T 5471; Dragan Vezmarović, T 8421.

<sup>967</sup> P017, T 9341-9342.

<sup>968</sup> P017, T 9342, 9352.

<sup>969</sup> P017, T 9343, 9375.

<sup>970</sup> P017, T 9343-9344.

<sup>971</sup> P017, T 9343.

<sup>972</sup> P017, T 9347. See also P017, T 9343.

<sup>973</sup> P017, T 9347-9348, 9383-9384.

when they reached the yard.<sup>974</sup> The buses that were earlier at the hangar were no longer there.<sup>975</sup> The worker parked the digger and took the key home. When he returned the following day he did not notice that the digger had been moved or used.<sup>976</sup>

241. In the finding of the Chamber, the location of the hole dug by the worker, in the presence of the soldier, coincides exactly with the location of the mass grave<sup>977</sup> which has since been located and identified and which is dealt with further at a later stage of this Judgement. The worker's memory was that the actual hole was between one metre and a half and two metres deep. This is confirmed by photographs taken of the exhumation site which indicate that the mass grave was also between one and a half to two metres deep.<sup>978</sup> While P017 was cross-examined closely about the dimensions of the hole, and it was put to him that the mass grave was nine metres long and seven metres wide,<sup>979</sup> the Chamber was satisfied of the honesty of his evidence, notwithstanding some discrepancies between the description of the hole as best he could recall it after some 15 years and the dimensions of the mass grave discovered several years later. The Chamber is entirely satisfied the worker did excavate by machine a very large hole in the afternoon of 20 November 1991, at the direction of a soldier, that this hole was used that evening as a mass grave, and it was the same grave that is the subject of the exhumation evidence which is discussed later in this Judgement. On this basis the excavated hole was wider than the worker recalled and some nine or 10 metres in length, with a depth of one and a half to two metres.

242. At the hangar, in the course of the afternoon, at least seven prisoners of war, namely Dragutin Berghofer, Emil Čakalić, Vlado Dudas, Miroslav Perković, Vilim Karlović, P030 and P031,<sup>980</sup> were taken out of the hangar by individual soldiers who knew them. These seven have survived and some gave evidence.

243. Vilim Karlović was taken outside the hangar by a soldier with whom he had established contact before passing through the gauntlet. The soldier proposed to his captain to save Vilim Karlović.<sup>981</sup> The soldier's captain was wearing a camouflage uniform, a dark-blue beret with a five-pointed star and had a moustache.<sup>982</sup> He appeared to Vilim Karlović to be a JNA officer.<sup>983</sup> Other prisoners of war were taken outside the hangar by their acquaintances who were local Serbs from

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<sup>974</sup> P017, T 9349, 9377.

<sup>975</sup> P017, T 9348.

<sup>976</sup> P017, T 9353.

<sup>977</sup> Exhibit 450; P017, T 9343; Exhibit 520; Florence Hartmann, T 9614-9616.

<sup>978</sup> Exhibit 456, photo 35.

<sup>979</sup> P017, T 9384.

<sup>980</sup> Dragutin Berghofer, T 5301; Vilim Karlović, T 6347-6348. *See also* Emil Čakalić, T 5919-5920; Exhibit 274.

<sup>981</sup> Vilim Karlović, T 6341-6344.

<sup>982</sup> Vilim Karlović, T 6341-6345.

Vukovar.<sup>984</sup> This suggests that they were TO and not JNA soldiers. Nevertheless, throughout the afternoon JNA soldiers continued to stand guard around the hangar.<sup>985</sup>

244. At a time after the seven prisoners of war had been taken outside, three or four JNA officers arrived at Ovčara in a Pinzgauer.<sup>986</sup> A woman approached one of them and asked him to save her handicapped son from the beatings. The officer went inside and took out the boy. Vilim Karlović heard the man saying to the boy: “There, leave this place and remember that your life was saved by Colonel [...]”. Vilim Karlović was unable to remember the name of the colonel.<sup>987</sup> However, he remembered how the colonel looked and described him as being between 40 and 45 years old, at least 185 cm tall, with greying hair with dark patches on the side, clean-shaven, wearing a JNA uniform with a coat draped over his shoulders, and being loud.<sup>988</sup> While this description is consistent with a JNA officer in this case, it is too vague to enable a positive identification. The arrival of these three or four officers is also the subject of the evidence of Emil Čakalić who testified that sometime between 1500 and 1600 hours someone rushed into the hangar and said that officers had arrived. Čakalić testified that there were a three star colonel and two lieutenant-colonels wearing JNA insignia. On Čakalić’s evidence, there was silence in the hangar when the officers entered and then all TO members and paramilitaries fled outside.<sup>989</sup> This left only JNA soldiers guarding inside the hangar. P031 also described the arrival of officers at the hangar and that one of them was addressed as lieutenant-colonel.<sup>990</sup>

245. The officers went inside the hangar and spent some time there.<sup>991</sup> While they were inside the hangar door was open or ajar. Men outside could hear screams and moaning from inside the hangar.<sup>992</sup>

246. Having been outside the hangar for a time the group of seven men were returned briefly inside the hangar. They saw that prisoners of war inside the hangar were no longer being beaten. Some were lying on the floor, some were sitting, some were standing.<sup>993</sup> At that point lists were being compiled of the people in the hangar. Everybody’s personal details were written down<sup>994</sup> by

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<sup>983</sup> The JNA soldier introduced himself by the same nickname as P022, a soldier in Miroslav Radić’s 3 coy 1/gmtbr. Considering the evidence as a whole the Chamber is unable to be satisfied that this JNA soldier was in fact P022.

<sup>984</sup> Dragutin Berghofer, T 5300-5301; Emil Čakalić, T 5911-5912.

<sup>985</sup> Vilim Karlović, T 6349; P009, T 6162-6163.

<sup>986</sup> Vilim Karlović, T 6349.

<sup>987</sup> Vilim Karlović, T 6349-6350.

<sup>988</sup> Vilim Karlović, T 6355.

<sup>989</sup> Emil Čakalić, T 5910-5911.

<sup>990</sup> P031, T 3273-3278.

<sup>991</sup> Vilim Karlović, T 6350-6351.

<sup>992</sup> Vilim Karlović, T 6352; Emil Čakalić, T 5911-5912.

<sup>993</sup> Vilim Karlović, T 6353-6355.

<sup>994</sup> Vilim Karlović, T 6353-6355; P011, T 5734-5735. Emil Čakalić testified that outside the hangar a soldier wearing a military jacket but no matching trousers wrote down their names, date of births and place of residence. (Emil

an orderly looking soldier in camouflage uniform and flak jacket.<sup>995</sup> The details of the prisoners of war then inside the hangar were recorded, in the Chamber's finding, by JNA personnel in the presence of JNA officers.

247. The group of seven men left Ovčara at dusk.<sup>996</sup> The officers who had arrived in a Pinzgauer were still at Ovčara.<sup>997</sup> The group of seven men was first taken to Velepomet. They were driven in a military van with two soldiers dressed in a regular JNA uniform.<sup>998</sup> As there was no room for them at Velepomet they were taken to Modateks, a clothing company, where they spent the night of 20/21 November 1991.<sup>999</sup> On the following day Vlado Dudas and another prisoner were released by TO friends.<sup>1000</sup> The remaining five men were taken to Velepomet in the afternoon of 21 November 1991. They were taken to the former carpenter's room, which was also referred to as "the death room".<sup>1001</sup> The room was then being guarded by two regular JNA soldiers. A local man, about 28 or 29 years old, who was probably a TO member, walked in and took four persons away, including Miroslav Perković.<sup>1002</sup> These four people remain missing and unaccounted for. Then a group of paramilitaries took Vilim Karlović from the carpenter's room and took him to a house.<sup>1003</sup> There, he was questioned, beaten and mistreated by paramilitary soldiers.<sup>1004</sup> He was eventually taken to a house occupied by JNA military police and then returned to Velepomet. There he received medical treatment for his wounds.<sup>1005</sup> Altogether witnesses saw 14 people being taken out of the former carpenter's room that day. Vilim Karlović was the only one who was returned.<sup>1006</sup> At about 2300 or 2330 hours on 21 November 1991 Dragutin Berghofer, Emil Čakalić, and P031, three of the seven men from Ovčara, were taken by bus together with about 10 other people to the JNA barracks.<sup>1007</sup> At about the same time, another of the seven, Vilim Karlović, was taken there in a

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Čakalić, T 5913-5914) P031 testified that a person who introduced himself as Dzo Ivanković, a White Eagle major working for the state security service wrote down the names of the men taken outside and then took the list to the major at the hangar, T 3278-3279. The Chamber accepts that such lists were compiled inside the hangar.

<sup>995</sup> P011, T 5734-5735.

<sup>996</sup> Vilim Karlović, T 6357, 6432. *See also* P030, T 9817. The sunset on 20 November 1991 in Vukovar was at 1611 hours. (Exhibit 594)

<sup>997</sup> Vilim Karlović, T 6350-6351.

<sup>998</sup> Emil Čakalić, T 5917-5918; P031, T 3280-3281; P030, T 9817.

<sup>999</sup> Dragutin Berghofer, T 5305; Vilim Karlović, T 6357-6358; P031, T 3282-3283; P030, T 9761-9762. *See also* Emil Čakalić, T 5921.

<sup>1000</sup> Dragutin Berghofer, T 5305.

<sup>1001</sup> Dragutin Berghofer, T 5305-5308; Emil Čakalić, T 5921-5923; P031, T 3283-3284.

<sup>1002</sup> Dragutin Berghofer, T 5305-5308; Emil Čakalić, T 5924-5927; Vilim Karlović, T 6359-6363.

<sup>1003</sup> Vilim Karlović, T 6367-6369.

<sup>1004</sup> Vilim Karlović, T 6368-6369.

<sup>1005</sup> Vilim Karlović, T 6370-6374.

<sup>1006</sup> Vilim Karlović, T 6374.

<sup>1007</sup> Dragutin Berghofer, T 5313-5316; Emil Čakalić, T 5928-5929, 6051-6053.

private car.<sup>1008</sup> They spent the night at the barracks (where they received food and cigarettes) and on the following morning were taken to Sremska Mitrovica.<sup>1009</sup>

248. Apart from the small number of men who were released from the hangar at Ovčara after the personal intervention of Serb forces who knew them, the vast majority of the prisoners of war, the men taken from the hospital on the morning of 20 November 1991, remained at Ovčara that evening. In the evening, when it was already dark outside, groups of 10 or 20 people were lined up and taken out of the hangar.<sup>1010</sup> A soldier described as wearing an olive-grey JNA uniform with epaulets of a regular soldier, took the first group out. He looked under 30 years of age. After 10 to 15 minutes the soldier returned and took another group out.<sup>1011</sup> He told the men in this group that they would be transferred to another hangar.<sup>1012</sup> They got into a JNA military truck parked outside the hangar. It was a regular JNA freight vehicle, covered with a tarpaulin.<sup>1013</sup> The soldier who took the group out of the hangar joined the driver in the front cab. The truck set off in the direction of Grabovo.<sup>1014</sup>

249. In a depression the vehicle lowered its speed and turned left towards the swamp that was part of the farm.<sup>1015</sup> P011, who was among this group of prisoners of war, decided to jump from the truck, which was moving slowly. He gripped something above him and jumped in the darkness. He looked back to see if anyone would follow, or if the vehicle would stop.<sup>1016</sup> Neither occurred. He set out in the direction of Vukovar. Shortly after this, P011 felt it was a minute or two, he heard the vehicle stopping. He then described hearing a short volley of gunfire and several individual shots from the same direction.<sup>1017</sup> P011 was later arrested in a village and was eventually taken to the prison at Sremska Mitrovica.<sup>1018</sup>

250. At about 2300 hours on 20 November 1991, Colonel Vujić and his team of senior security administration officers set out from Negoslavci to go to Šid in a column escorted by an APC vehicle. He heard gunfire coming from an area he judged to be Ovčara. The shooting he heard

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<sup>1008</sup> Vilim Karlović, T 6370-6374.

<sup>1009</sup> Dragutin Berghofer, T 5315-5317; Emil Čakalić, T 5930; Vilim Karlović, T 6374.

<sup>1010</sup> P011, T 5737-5738.

<sup>1011</sup> P011, T 5738-5740, 5817, 5855.

<sup>1012</sup> P011, T 5734-5740.

<sup>1013</sup> P011, T 5739.

<sup>1014</sup> P011, T 5740.

<sup>1015</sup> P011, T 5739.

<sup>1016</sup> P011, T 5741.

<sup>1017</sup> P011, T 5741-5742.

<sup>1018</sup> P011, T 5742-5749.

lasted for some time. He thought this was at some time between 2200 and 2400 hours,<sup>1019</sup> although it is apparent he had no precise awareness of the time.

251. During the night of 20/21 November 1991, P014 heard at intervals bursts of fire coming from the direction of Grabovo.<sup>1020</sup> He also described hearing after midnight at intervals what he concluded was the sound of a digging machine.<sup>1021</sup> In this last respect the Chamber notes that the grave having been dug in the afternoon it would need to be covered again after the killing of the prisoners of war. That could explain what P014 heard even though, if so, there are unanswered questions as to who operated the machine and related matters.

252. In the Chamber's finding, in the evening and night hours of 20/21 November 1991 the prisoners of war were taken in groups of 10 to 20 from the hangar at Ovčara to the site where earlier that afternoon a large hole had been dug. There, members of Vukovar TO and paramilitary soldiers executed at least 194 of them. The killings started after 2100 hours and continued until well after midnight. The bodies were buried in the mass grave and remained undiscovered until several years later. These events will be dealt with in more detail later in this Judgement.<sup>1022</sup>

253. On 21 November 1991, pursuant to an order from the command of OG South the Vukovar TO detachment was re-subordinated to the command of the 80 mtbr and Leva Supoderica volunteer detachment to the 12<sup>th</sup> Mechanical Corps.<sup>1023</sup> The command of OG South transferred responsibilities for Vukovar to the 80 mtbr on 23 November 1991,<sup>1024</sup> as the gmtbr was preparing to withdraw. On 24 November 1991 the gmtbr, as has been stated earlier, left for Belgrade.

## 6. Serb forces and JNA officers involved in the events at Ovčara

### (a) JNA officers present at Ovčara during the events of the afternoon

254. At what he thought was around 1400 hours on 20 November 1991 from a distance, P014, being himself a JNA officer, saw a convoy of buses arriving in front of the hangar at Ovčara and he started walking toward the hangar.<sup>1025</sup> When he was some 150 to 200 metres away he saw that a gauntlet had been formed comprising TO members and volunteers. The prisoners who disembarked from the buses were forced to run the gauntlet.<sup>1026</sup> To the left of the gauntlet, he saw officers of the

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<sup>1019</sup> Bogdan Vujić, T 4568-4570, 4707.

<sup>1020</sup> P014, T 7724.

<sup>1021</sup> P014, T 7725.

<sup>1022</sup> See *infra*, paras 487-511.

<sup>1023</sup> Exhibit 422; Radoje Trifunović, T 8138.

<sup>1024</sup> Exhibit 426. See also *supra*, para 82.

<sup>1025</sup> P014, T 7703.

<sup>1026</sup> P014, T 7703.

gmtbr and military policemen of the gmtbr.<sup>1027</sup> To the right, away from this group of gmtbr personnel, were standing LtCol Vojnović and LtCol Panić.<sup>1028</sup> It is P014's evidence that he stayed at Ovčara 15 to 20 minutes and then left, first to visit some units, and later to attend a pre-arranged meeting at 1600 hours.<sup>1029</sup>

255. Major Vukašinić, Veselin Šljivančanin's deputy in the security organ of OG South, was also at Ovčara at about the time of the prisoners' arrival. He claimed to have arrived at Ovčara between about 1330 and 1400 hours, with, he said, three buses from the JNA barracks.<sup>1030</sup> Other buses had come previously and were empty when he arrived. There were 40-50 TOs in front of the hangar.<sup>1031</sup> On his evidence he did not see a gauntlet. However, when he entered the hangar he saw a group of 15 to 20 TO members hitting people from the buses.<sup>1032</sup> Prisoners of war and TO soldiers were intermingled inside the hangar.<sup>1033</sup> There were also five or six military policemen of the 80 mtbr.<sup>1034</sup> Miroljub Vujović, the commander of Vukovar TO, was in front of the hangar.<sup>1035</sup> Major Vukašinić decided, he says, that all TO members should be removed outside the hangar. He called his policemen and went to talk to Miroljub Vujović.<sup>1036</sup> Vujović eventually agreed and started pushing his TO members outside the hangar with the assistance of Vukašinić.<sup>1037</sup> On the evidence of Major Vukašinić no further beatings occurred. Vukašinić says he put JNA soldiers as guards.<sup>1038</sup> He said that then with the assistance of the soldiers, he put the people he had brought to Ovčara back on the buses<sup>1039</sup> and between 1500 and 1530 hours,<sup>1040</sup> left Ovčara with the people he had brought, loaded on the buses.<sup>1041</sup> While at Ovčara he saw LtCol Panić there, who left before him.<sup>1042</sup> He says he saw no other JNA officers and it is his evidence that he did not address anyone except for Vujović.<sup>1043</sup> He specified in particular that he did not see LtCol Milorad Vojnović of the 80 mtbr, Veselin Šljivančanin, or Captain Karanfilov.<sup>1044</sup> It is his evidence that he did not return to Ovčara again.<sup>1045</sup>

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<sup>1027</sup> P014, T 7705.

<sup>1028</sup> P014, T 7705.

<sup>1029</sup> P014, T 7707-7708.

<sup>1030</sup> Ljubiša Vukašinić, T 15042, 15037.

<sup>1031</sup> Ljubiša Vukašinić, T15037.

<sup>1032</sup> Ljubiša Vukašinić, T 15037, 15040.

<sup>1033</sup> Ljubiša Vukašinić, T 15038.

<sup>1034</sup> Ljubiša Vukašinić, T 15038.

<sup>1035</sup> Ljubiša Vukašinić, T 15038.

<sup>1036</sup> Ljubiša Vukašinić, T 15038.

<sup>1037</sup> Ljubiša Vukašinić, T 15039.

<sup>1038</sup> Ljubiša Vukašinić, T 15041-15042.

<sup>1039</sup> Ljubiša Vukašinić, T 15039.

<sup>1040</sup> Major Vukašinić testified that he left Ovčara after approximately one and a half hours, T 15042.

<sup>1041</sup> Ljubiša Vukašinić, T 15042.

<sup>1042</sup> Ljubiša Vukašinić, T 15037.

<sup>1043</sup> Ljubiša Vukašinić, T 15041.

<sup>1044</sup> Ljubiša Vukašinić, T 15041, 15045, 15050.

<sup>1045</sup> Ljubiša Vukašinić, T 15047.

256. LtCol Milorad Vojnović, the commander of the 80 mtbr, was also at Ovčara. It is his evidence that on 20 November 1991, at approximately 1400 hours, he was visiting a unit located in the immediate vicinity of the hangar at Ovčara.<sup>1046</sup> He saw several buses in front of the hangar and people coming out of the buses passing through a gauntlet of troops and being beaten.<sup>1047</sup> When all prisoners of war entered the hangar Vojnović saw Major Vukašinić, Veselin Šljivančanin's deputy, standing in the middle of the hangar.<sup>1048</sup> Around him there was a group of military police personnel wearing the standard olive-drab JNA uniform.<sup>1049</sup> It is Milorad Vojnović's evidence that he did not know who these military police were.<sup>1050</sup> He saw also the TO commanders Miroљub Vujović and Stanko Vujanović at Ovčara.<sup>1051</sup> Vojnović did not see LtCol Panić there.<sup>1052</sup>

257. As established elsewhere in this Judgement, at about 1430 or 1500 hours Veselin Šljivančanin was seen at Ovčara. He was standing alone on the road towards the entrance to the hangar. He looked angry.<sup>1053</sup>

258. LtCol Miodrag Panić, OG South's Chief of Staff and Mrkšić's deputy, confirmed that he was at Ovčara on 20 November 1991. In his evidence, he estimated his arrival there at about 1500 hours and he considered he remained there for 15 to 20 minutes.<sup>1054</sup> He saw small groups of armed men lingering about outside the hangar. The hangar was secured by members of the military police company of the 80 mtbr.<sup>1055</sup> Panić did not enter the hangar.<sup>1056</sup> There were no members of the military police of the gmtbr at Ovčara, except for the military policemen on the buses which he saw leaving Ovčara as he arrived.<sup>1057</sup> At the entrance to the hangar he saw LtCol Vojnović of the 80 mtbr who told him that some of the men in front of the hangar had tried to enter the hangar but the military police did not allow that.<sup>1058</sup> They both agreed that security should be reinforced.<sup>1059</sup> On his evidence, LtCol Panić himself did not see the gauntlet, but was informed by Vojnović that the prisoners from the buses had gone through a gauntlet.<sup>1060</sup> He saw Major Vukašinić, Veselin

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<sup>1046</sup> Milorad Vojnović, T 9032.

<sup>1047</sup> Milorad Vojnović, T 8838. He was not at the hangar when the buses arrived, T 9089.

<sup>1048</sup> Milorad Vojnović, T 8840.

<sup>1049</sup> Milorad Vojnović, T 8841-8842.

<sup>1050</sup> Milorad Vojnović, T 8841.

<sup>1051</sup> Milorad Vojnović, T 8831.

<sup>1052</sup> Milorad Vojnović, T 8842, 9091. Throughout his evidence, LtCol Vojnović is consistent that he did not see LtCol Panić at Ovčara. He clarified, however, that in 1998 during the investigation into the events at Ovčara conducted in Belgrade he spoke with Panić and Panić informed him that he had seen Vojnović at Ovčara, T 8842-8843, 8946, 9091, 9148.

<sup>1053</sup> See *infra*, paras 377, 383.

<sup>1054</sup> Miodrag Panić, T 14325, 14481.

<sup>1055</sup> Miodrag Panić, T 14324, 14326.

<sup>1056</sup> Miodrag Panić, T 14465, 14468.

<sup>1057</sup> Miodrag Panić, T 14326.

<sup>1058</sup> Miodrag Panić, T 14324-14325.

<sup>1059</sup> Miodrag Panić, T 14325, 14326, 14463, 14466-14468.

<sup>1060</sup> Miodrag Panić, T 14463-14464, 14466.

Šljivančanin's deputy at the hangar and talked to him briefly.<sup>1061</sup> Both Major Vukašinić and LtCol Vojnović remained at Ovčara when Panić left for Negoslavci.<sup>1062</sup>

259. Factual differences in this evidence are obvious. Not all of them can be resolved. The evidence of Veselin Šljivančanin's deputy, Major Vukašinić, does not fit with much of the general body of evidence. The Chamber accepts that he arrived with buses of prisoners, although not that there were only three buses, and that he arrived later than his estimate of 1330 to 1400 hours. The scene that he described at the time of his arrival is contrary to other evidence which the Chamber accepts to be more reliable. In particular, he does not describe the searching of prisoners as they left the buses or the violent gauntlet which, in the Chamber's finding, all but four prisoners were forced to run. Instead he says he saw only limited violence inside the hangar and, on his account, acted promptly and effectively to deal with this. In the Chamber's finding, he must have seen the searching and the violent gauntlet outside and the presence of a larger group of TOs and paramilitary soldiers than his evidence indicates. In light of other evidence, the Chamber does not accept that he was influential in making Miroljub Vujović and his men withdraw, as his evidence suggests, nor that he did not see LtCol Vojnović of the 80 mtbr.

260. The evidence that he had the prisoners he accompanied reloaded on the buses is contrary to the events the Chamber finds occurred. In his account of ensuing events, Major Vukašinić never mentioned what happened to the prisoners he claims to have withdrawn from Ovčara and the three buses they travelled in. In the Chamber's finding all five buses were progressively unloaded and after searching and the gauntlet the prisoners were held in the hangar. The five empty buses left together. Major Vukašinić thus could not have withdrawn any prisoners from Ovčara. Further, given the events that even he accepts occurred, the Chamber is not able to accept that he only spoke to Miroljub Vujović of the TO. In the view of the Chamber, aspects of his evidence cannot be accepted. His evidence appears to seek to minimize the mistreatment of prisoners and the serious nature of the security risk he saw at Ovčara and to misrepresent his own role in, and knowledge of, what was in truth occurring during the period he was at Ovčara. The Chamber is not able to accept as honest or reliable his evidence that he did not see at Ovčara LtCol Milorad Vojnović of the 80 mtbr or his immediate superior Veselin Šljivančanin. The Chamber does find that both Major Vukašinić and LtCol Vojnović remained at Ovčara when LtCol Panić left there. Indeed, at a time after LtCol Panić left Ovčara, LtCol Vojnović instructed one of his own officers Captain Vukić to

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<sup>1061</sup> Miodrag Panić, T 14327.

<sup>1062</sup> Miodrag Panić, T 14327.

take orders from Major Vukašinić, who was still there, with respect to the use of the 80 mtbr military police who had been reinforced by then and who were securing the prisoners of war.<sup>1063</sup>

261. The evidence of LtCol Panić and some others such as P014 as to the timing of events that afternoon appeared to the Chamber to be based substantially on genuine attempt to rationalize the events of the afternoon rather than precise recollection. Some evidence would suggest, for example, that LtCol Panić's visit was earlier than he indicated in his evidence. The Chamber does accept as generally reliable the evidence of LtCol Vojnović about his experiences that afternoon. It does so having considered his evidence that he did not recognise the military police around Major Vukašinić in the hangar. The evidence indicates that these military police were most probably from the brigade commanded by LtCol Vojnović. The Chamber accepts that LtCol Vojnović was not aware at that time that his military police had been ordered to Ovčara (as Vojnović had been away from his headquarters) and had not been aware that prisoners were to be held at Ovčara on 20 November. The whole scene was, therefore, unexpected by Vojnović. Further, it is possible that a brigade commander in such circumstances would not recognise a small number of individual troops from one of his units. There was no officer from his brigade with these military policemen at the time.

262. The Chamber has also considered that LtCol Vojnović did not recall seeing LtCol Panić at Ovčara, whereas Panić recalled their meeting and matters they discussed. P014, whom the Chamber accepts as honest and frank (although not necessarily accurate about time) saw them talking together outside the hangar. In these respects the Chamber accepts the evidence of LtCol Panić, and that this episode had been forgotten by LtCol Vojnović. While on his evidence LtCol Panić may not have remained at Ovčara for more than 15 or 20 minutes, as to which the Chamber cannot make a finding, even were this so, he had the opportunity to assess the situation and in particular the security risk to the prisoners of war presented by the TO and paramilitary forces present. The Chamber also recognises that LtCol Panić may have seen more of the mistreatment of the prisoners of war outside the hangar than he acknowledged in his evidence in which event his evidence in this respect would not have been entirely frank, no doubt out of self interest.

(b) Serb forces present at Ovčara and JNA units securing the hangar

263. LtCol Vojnović remained at Ovčara for some hours. While at Ovčara he contacted the 80 mtbr command so that additional soldiers should be sent to help with the security situation.<sup>1064</sup>

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<sup>1063</sup> Milorad Vojnović, T 8845-8846.

<sup>1064</sup> Milorad Vojnović, T 8954. While not all cars of the 80 mtbr were equipped with phones the Chamber is satisfied that means of communication between the 80 mtbr and its subordinate units existed. (See Rade Danilović, T 12368-12369)

After about 30 or 40 minutes, or almost one hour,<sup>1065</sup> Captain Svetolik Vukić from the command of the 80 mtbr, responded by arriving at Ovčara with 15-20 soldiers.<sup>1066</sup> LtCol Vojnović then introduced Captain Vukić to Major Vukašinović and instructed him to report to Vukašinović.<sup>1067</sup> LtCol Vojnović also called Captain Dragi Vukosavljević, the chief of the security organ of the 80 mtbr, and instructed him to go to Ovčara,<sup>1068</sup> although the time of this call is not clear on the evidence. References to LtCol Vojnović's requests for assistance are reflected in the entries in the 80 mtbr's operational diary made at 1600 hours on 20 November 1991, to the effect that the brigade commander had requested that shifts of officers be assigned for guarding the captured ZNG and MUP members, for which the military police company was engaged.<sup>1069</sup> In the Chamber's finding the conduct of Vojnović in calling for reinforcements from his headquarters and in instructing Captain Vukosavljević to go to Ovčara, reveals that he was genuinely concerned about the risk to the prisoners of war at Ovčara presented by the TO and paramilitary elements that had gathered there. This is further confirmed by Vojnović's action in reporting the situation at Ovčara to Mile Mrkšić as is discussed later in this Judgement.

264. Branko Korica, a retired counter-intelligence warrant officer of 1 MD, who was called to serve as a non-commissioned officer to interview prisoners of war and to perform other counter-intelligence tasks in the Vukovar area, testified that he and three other counter-intelligence officers went to Ovčara on 20 November 1991 to see whether they could interview any prisoners there. Just before dusk they arrived there.<sup>1070</sup> It is his evidence that two of the officers, but not Korica, went inside the hangar and came out five minutes later. One of them said that they were leaving as there were no conditions for them to work there. There was no separate room for them to work and it was getting dark.<sup>1071</sup> From the car Korica saw a military policeman by the door, two military policemen a few metres away talking to each other, and a group of officers and soldiers talking to each other. There were no buses. Korica's group then left for Šid.<sup>1072</sup>

265. Captain Vezmarović, the commander of the military police company of the 80 mtbr, testified that in the afternoon of 20 November 1991, when it was already dark outside,<sup>1073</sup> the duty officer from his company headquarters told him that there was a new security job to perform. There was a new group of prisoners at Ovčara. Most of the members of his military police company had

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<sup>1065</sup> Milorad Vojnović, T 9033.

<sup>1066</sup> Milorad Vojnović, T 8845-8846.

<sup>1067</sup> Milorad Vojnović, T 8845.

<sup>1068</sup> Milorad Vojnović, T 8851.

<sup>1069</sup> Exhibit 371.

<sup>1070</sup> Branko Korica, T 14737.

<sup>1071</sup> Branko Korica, T 14743-14744.

<sup>1072</sup> Branko Korica, T 14744-14745.

<sup>1073</sup> Dragan Vezmarović, T 8606. He received this task upon returning from Njemci, Dragan Vezmarović, T 8436.

already gone there.<sup>1074</sup> Captain Vezmarović drove in a Pinzgauer straight to Ovčara.<sup>1075</sup> When he arrived there, which would be after 1700 hours, he found “mayhem” at the hangar.<sup>1076</sup> He saw people wearing uniform, parts of uniform or no uniform at all, many of them had bandages.<sup>1077</sup> The effect of this evidence, in the finding of the Chamber, is that military police guards, JNA soldiers, TOs and paramilitary troops, and prisoners of war were once again completely intermingled in the hangar at the time of Captain Vezmarović’s arrival. No proper security was being provided.<sup>1078</sup> Captain Vezmarović managed to establish some order: he made the prisoners stand on one side and he strung out a rope to divide off the prisoners.<sup>1079</sup> He tried to get the soldiers out of the hangar. Eventually all non-military police soldiers who were in the hangar left to go outside, although the TO members expressed clear dissatisfaction with this.<sup>1080</sup> Only the military policemen remained in the hangar.<sup>1081</sup> Because of ongoing complaints by TO members outside the building, Captain Vezmarović then allowed them to come inside the hangar in small groups, to walk by the rope and see who was there among the prisoners.<sup>1082</sup>

266. Captain Vezmarović asked whether there were then officers at Ovčara, but no one responded, which led him to think he was the only officer in the area at the time.<sup>1083</sup> He noticed that whenever he said something to TO members they would look for approval or instructions from a man referred to as Mirko and from another man with a hat.<sup>1084</sup> Later, Captain Karanfilov, who had arrived at the hangar in the meantime,<sup>1085</sup> introduced the man referred to as Mirko to Captain Vezmarović as Miroљjub Vujović.<sup>1086</sup> Miroљjub Vujović that day was appointed by Mile Mrkšić as commander of all the Vukovar TO units, *i.e.* Vukovar TO.<sup>1087</sup>

267. At some point after the rope was set up, Captain Vezmarović saw Captain Joca Kafić, whose real name appears to be Jovan Novaković, from the village command of Ovčara,<sup>1088</sup> drawing up a list of prisoners with the assistance of a soldier.<sup>1089</sup> Earlier LtCol Vojnović had also seen a soldier in uniform making a list,<sup>1090</sup> but he did not receive a copy of any such list.<sup>1091</sup> He conjectured that

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<sup>1074</sup> Dragan Vezmarović, T 8419, 8606, 8431.

<sup>1075</sup> Dragan Vezmarović, T 8419; 8431.

<sup>1076</sup> Dragan Vezmarović, T 8419-8420, 8479-9480.

<sup>1077</sup> Dragan Vezmarović, T 8420.

<sup>1078</sup> Dragan Vezmarović, T 8420.

<sup>1079</sup> Dragan Vezmarović, T 8420-8421. The rope was not there when he arrived, T 8561.

<sup>1080</sup> Dragan Vezmarović, T 8421-8422.

<sup>1081</sup> Dragan Vezmarović, T 8429.

<sup>1082</sup> Dragan Vezmarović, T 8429.

<sup>1083</sup> Dragan Vezmarović, T 8422.

<sup>1084</sup> Dragan Vezmarović, T 8428.

<sup>1085</sup> Dragan Vezmarović, T 8432.

<sup>1086</sup> Dragan Vezmarović, T 8424, 8425, 8427, 8428.

<sup>1087</sup> *See supra*, para 92.

<sup>1088</sup> Milorad Vojnović, T 8972.

<sup>1089</sup> Dragan Vezmarović, T 8489-8490, 8563.

<sup>1090</sup> Milorad Vojnović, T 8972.

the local commander at Ovčara may have ordered this.<sup>1092</sup> In the finding of the Chamber this was before the arrival of Captain Vezmarović.

268. P014 also testified that at approximately 1700 hours, he returned to the hangar.<sup>1093</sup> He saw a large group of TO members and volunteers at the hangar. In front of the entrance to the hangar he saw LtCol Vojnović who asked him to help out by providing three soldiers to establish order in the hangar.<sup>1094</sup> He saw in the hangar a military policeman from the gmtbr, who, it appeared, had come in to settle accounts with one of the prisoners, and that at least four military policemen from the gmtbr, one of whom was an officer, took him outside.<sup>1095</sup> At this time he also saw a group of JNA officers who were not from the gmtbr, standing in the middle of the hangar collecting the personal data of the prisoners of war.<sup>1096</sup> P014 concluded that they were security officers,<sup>1097</sup> but the evidence does not enable the Chamber to identify these or to determine how long they were at Ovčara. P014 left the hangar 15 to 20 minutes after he entered.<sup>1098</sup>

269. Captain Dragi Vukosavljević, chief of security organ of the 80 mtbr, testified that at dusk on 20 November 1991, at the command post of the 80 mtbr in Negoslavci, he was contacted by the commander of the 80 mtbr, LtCol Vojnović, and was ordered to go to Ovčara. LtCol Vojnović assigned two officers from the 80 mtbr command, Captain Dacić and Captain Vukić, to go there with him.<sup>1099</sup> He arrived there at around 1730 hours.<sup>1100</sup> Outside the hangar he saw about 300 armed men, some of whom said that the prisoners of war inside the hangar had surrendered to them.<sup>1101</sup> There were no JNA guards outside the hangar.<sup>1102</sup> Captain Vukosavljević saw members of the 80 mtbr there, both military policemen and members from the staff units.<sup>1103</sup> The 80 mtbr military police commander, Captain Vezmarović was there. Captain Vezmarović informed him that he could not keep the armed men out of the hangar and that they were threatening the prisoners of war. Captain Vukosavljević thought that the situation was getting out of control and the JNA people there were no longer able to safeguard order inside the hangar.<sup>1104</sup> Captain Vukosavljević stayed at Ovčara for about 10 minutes. Having assessed the situation he then left for the OG South

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<sup>1091</sup> Milorad Vojnović, T 8973.

<sup>1092</sup> Milorad Vojnović, T 8973.

<sup>1093</sup> He testified he went there after his pre-arranged meeting at 1600 hours, which lasted for about one hour, P014, T 7708-7709.

<sup>1094</sup> P014, T 7711.

<sup>1095</sup> P014, T 7715.

<sup>1096</sup> P014, T 7716-7718.

<sup>1097</sup> P014, T 7718.

<sup>1098</sup> P014, T 7719.

<sup>1099</sup> Dragi Vukosavljević, T 8672, 8796.

<sup>1100</sup> Dragi Vukosavljević, T 8744.

<sup>1101</sup> Dragi Vukosavljević, T 8673-8674.

<sup>1102</sup> Dragi Vukosavljević, T 8674.

<sup>1103</sup> Dragi Vukosavljević, T 8674.

<sup>1104</sup> Dragi Vukosavljević, T 8674.

command at Negoslavci to report the situation. He arrived at Negoslavci at 1800 or 1810 hours.<sup>1105</sup> Captains Dacić and Vukić remained at Ovčara.<sup>1106</sup>

270. In the Chamber's finding, Serb TO members and volunteers or paramilitaries, including Miroljub Vujović and soldiers under his command, were at the hangar at Ovčara in the afternoon on 20 November 1991.<sup>1107</sup> Apart from Vujović who probably arrived later, they were there as the buses with prisoners of war from Vukovar hospital arrived and, as it will be discussed below, remained there until late that evening. They participated in the ill-treatment of prisoners of war in front of and inside the hangar that afternoon.

271. In the Chamber's further finding, JNA soldiers, from the military police of the 80 mtbr and possibly from the village command at Ovčara, which was located near the hangar and which was also within the structure of OG South,<sup>1108</sup> arrived at Ovčara at about the time of the arrival of the buses. LtCol Vojnović, the commander of the 80 mtbr was at Ovčara on 20 November 1991, from about 1400 or 1430 hours until at least 1700 hours. The military police of the 80 mtbr had been ordered to go to Ovčara. LtCol Vojnović had not ordered the original deployment to Ovčara as he was visiting other locations that afternoon. The order was no doubt given by duty staff at his command in his absence. The original order to the 80 mtbr can only have come from the command of OG South.

272. After he arrived at Ovčara, however, LtCol Vojnović did call from the hangar during the afternoon to 80 mtbr for assistance and Captains Vukić and Dacić together with 15 or 20 soldiers responded. Indeed, when Captain Vezmarović arrived in Negoslavci later that afternoon most of his soldiers had already gone to Ovčara. Later Vojnović also asked P014 to provide soldiers to establish order in the hangar.<sup>1109</sup> Later that afternoon LtCol Vojnović also asked Captain Vukosavljević to go to Ovčara and he did so at about 1730 hours. LtCol Vojnović left Ovčara at about 1700 hours to go to Negoslavci to attend the daily command briefing of OG South.

273. Captain Vezmarović arrived at Ovčara when it was already dark, probably at about 1700 hours. TO members, volunteers and prisoners of war were intermingled in the hangar and events somewhat similar to what had occurred earlier that day returned. While Captain Vezmarović managed to establish some control inside, the situation he described indicates the fragility of the degree of order and the gravity of the risk to the prisoners of war. It appears that by that time all other JNA officers, LtCol Vojnović, Major Vukašinić, P014, and the senior counterintelligence

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<sup>1105</sup> Dragi Vukosavljević, T 8675-8676.

<sup>1106</sup> Dragi Vukosavljević, T 8676.

<sup>1107</sup> See *supra*, paras 235, 237, 238.

<sup>1108</sup> See *supra*, paras 72, 80.

officers accompanying Branko Korica, had left. There were even more armed TOs and paramilitaries, probably about 300, at Ovčara. Miroljub Vujović, the Vukovar TO commander, and at least one other unidentified TO commander were present. The TO soldiers were looking to them for orders. Captain Karanfilov also had arrived.

274. The Chamber would also observe that while the evidence indicates that one or more lists of the prisoners of war in the hangar were being prepared no such lists are in evidence and no further information about them has been made available to the Chamber.

(c) Withdrawal of the military police of the 80 mtbr from Ovčara and ensuing events

275. The Chamber will discuss in more detail the evidence concerning the decision to withdraw the military police of the 80 mtbr from Ovčara later in this Judgement.<sup>1110</sup> The Chamber notes briefly here its findings that, following his return to Negoslavci from Ovčara, LtCol Vojnović reported to Mile Mrkšić twice about the situation at Ovčara, first at the regular OG South briefing which started at 1800 hours, and then later in a meeting with Mile Mrkšić and Captain Vukosavljević at which a similar report was also made by Captain Vukosavljević. The essence of these reports was that the prisoners of war from the hospital had been mistreated and that the security situation at Ovčara was serious. During the second meeting LtCol Vojnović, commander of the 80 mtbr, understood from Mile Mrkšić that it was his view that LtCol Vojnović's men should not be at Ovčara at that stage. After the second meeting Vojnović and Mile Mrkšić walked together a little, then LtCol Vojnović returned and gave to Captain Vukosavljević an order to go to Ovčara to withdraw the 80 mtbr from there.

276. Captain Vukosavljević then returned to Ovčara. He thought he arrived there between 2000 and 2100 hours,<sup>1111</sup> although, in the Chamber's finding, closer to 2000 hours. There he saw the military police of the 80 mtbr, their commander Captain Vezmarović and Captains Vukić and Ducić from 80 mtbr command. They had already left the hangar and were getting ready to get into their vehicles and leave.<sup>1112</sup> Captain Vukosavljević could not remember whether he specifically conveyed LtCol Vojnović's order to Captain Vezmarović, because it was clear that Vezmarović had already started acting accordingly.<sup>1113</sup> Captain Vezmarović and the other remaining 80 mtbr personnel then left and Captain Vukosavljević left with them.<sup>1114</sup> These were the last JNA units to

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<sup>1109</sup> P014, T 7711.

<sup>1110</sup> See *infra*, paras 315-322.

<sup>1111</sup> Dragi Vukosavljević, T 8744.

<sup>1112</sup> Dragi Vukosavljević, T 8684.

<sup>1113</sup> Dragi Vukosavljević, T 8685.

<sup>1114</sup> Dragi Vukosavljević, T 8686.

leave Ovčara. In the Chamber's finding the time was no later than 2100 hours.<sup>1115</sup> By the time Captain Vukosavljević left Ovčara there were even more armed TOs and paramilitaries milling outside the hangar.<sup>1116</sup> Vukosavljević did not mention in his evidence seeing there TO leaders such as Miroljub Vujović, or Captain Karanfilov.

277. It is apparent from Captain Vukosavljević's evidence that the order to withdraw the military police of the 80 mtr from Ovčara had already been conveyed to Captain Vezmarović by the time Captain Vukosavljević reached Ovčara. The evidence of this is complex. Captain Vezmarović testified that approximately one and a half hours after he arrived at Ovčara he saw Captain Karanfilov, from the security organ of OG South. Captain Vezmarović informed him of the situation and of the actions he had taken. Karanfilov told him that the prisoners were from the hospital, that there had been a meeting and an arrangement had been made between the JNA and the Vukovar TO that the Vukovar TO was to take control of the security of the building and the prisoners.<sup>1117</sup> Captain Karanfilov then introduced the Vukovar TO commanders, including Miroljub Vujović, to Captain Vezmarović and told him that they would now be taking charge of the prisoners' security and that Vezmarović was to pull his unit out. Captain Vezmarović had received orders from Captain Karanfilov beforehand<sup>1118</sup> and thus it was not unusual for him that Karanfilov gave him an order again on 20 November. Captain Karanfilov also told Vezmarović that civilian authorities were being established and they were supposed to take over the prisoners.<sup>1119</sup> Vezmarović asked the Vukovar TO commanders whether they had sufficient number of men to perform all the security tasks. The answer was in the affirmative. Captain Vezmarović and his military police then left Ovčara and drove to Negoslavci.<sup>1120</sup> Captain Karanfilov and the Vukovar TO commanders remained at Ovčara.<sup>1121</sup>

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<sup>1115</sup> Dragi Vukosavljević, T 8744.

<sup>1116</sup> Dragi Vukosavljević, T 8686.

<sup>1117</sup> Dragan Vezmarović, T 8433-8434.

<sup>1118</sup> Dragan Vezmarović, T 8432-8433. Captain Vezmarović testified that on 18 November 1991 during the evacuation of prisoners of war from Mitnica (*see supra*, para 153), upon the arrival of the prisoners of war to Ovčara, LtCol Vojnović told him that from then on, he was to take orders from Captain Karanfilov. (Dragan Vezmarović, T 8395-8396; 8450; 8534) However, LtCol Vojnović did not recall having given such instructions to Vezmarović. (Miodrag Vojnović, T 8912-8914; 8927; 9082-9085). Karanfilov then handed over the security of the prisoners to Captain Vezmarović. (Dragan Vezmarović, T 8397; 8669) The evidence of Captain Vezmarović is roughly corroborated by the account of Captain Karanfilov, who stated that his task, which he had received from Veselin Šljivančanin, was to go to Ovčara to instruct the officer in charge of the security that the prisoners of war, who had been brought there, should be treated in accordance with the international rules. (Borčw Karanfilov, T 15411) Captain Karanfilov did not remember the name of the officer in charge of security, but the evidence of Captain Vezmarović makes it clear that Karanfilov spoke of him. (Both witnesses referred to the decision, which was made at the time, to allow Filip Karaula, the leader of the surrendered Croatian prisoners of war, to keep a small knife. (Dragan Vezmarović, T 8397; Borče Karanfilov, T 15412) The account of the meeting of the two captains is confirmed by the evidence of Captain Vukosavljević. (Dragi Vukosavljević, T 8669)

<sup>1119</sup> Dragan Vezmarović, T 8434-8435, 8437.

<sup>1120</sup> Dragan Vezmarović, T 8437.

<sup>1121</sup> Dragan Vezmarović, T 8439.

278. Captain Karanfilov denied that he had given the order to Captain Vezmarović to pull out his troops from Ovčara. He stated that he was in Belgrade at the time. It is the evidence of Captain Karanfilov that in the afternoon of 20 November 1991, he met Veselin Šljivančanin by a ZNG shelter in Vukovar and was told to deliver documents found in the shelter to Belgrade.<sup>1122</sup> The testimony of Captain Karanfilov leaves unclear whether, on his present account, he travelled immediately to Belgrade from Vukovar or went first to Negoslavci before travelling to Belgrade.<sup>1123</sup> It is of significance that even if it were to be accepted (which the Chamber does not) that Captain Karanfilov travelled to Belgrade on 20 November 1991 on the order of Veselin Šljivančanin given when the two met, either in Vukovar or Negoslavci, as a matter of timing this would not necessarily have precluded Captain Karanfilov going to Ovčara, after meeting Veselin Šljivančanin and conveying to Captain Vezmarović the order to withdraw the 80 mtbr troops, before driving to Belgrade.

279. The account of Captain Vezmarović tallies with the testimony of Captain Vukosavljević. As discussed earlier, on arrival at Ovčara Captain Vukosavljević found that the order to withdraw the military police of 80 mtbr, which he was told to convey, was in the process of being implemented by Captain Vezmarović.<sup>1124</sup> Captain Vukosavljević could not accept that Vezmarović would decide to abandon Ovčara of his own accord.<sup>1125</sup> This is entirely consistent with the Chamber's assessment of Captain Vezmarović and of the improbability that he would take on himself the responsibility of such a significant decision. He suggested that it was more likely that Vezmarović had been informed of the order in some other way.<sup>1126</sup> Captain Vukosavljević ruled out radio communications. He stated that there was a ban on radio communications at the time and telephones were used instead. However, there was no connection between Ovčara and the command of 80 mtbr.<sup>1127</sup> Captain Vezmarović also testified that he could not communicate via radio on that day.<sup>1128</sup> This led Captain Vukosavljević to the conclusion that Vezmarović had probably received the order from someone else before Vukosavljević arrived.<sup>1129</sup> The Chamber accepts this evidence.

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<sup>1122</sup> Borče Karanfilov, T 15430.

<sup>1123</sup> Borče Karanfilov, T 15431. In an earlier statement Captain Karanfilov made it is his account that it was in Negoslavci, not Vukovar, that he met Veselin Šljivančanin and was instructed by him to go to Belgrade. (Borče Karanfilov, T 15493-15495)

<sup>1124</sup> See *supra*, para 276.

<sup>1125</sup> Dragi Vukosavljević, T 8804-8805.

<sup>1126</sup> Dragi Vukosavljević, T 8685.

<sup>1127</sup> Dragi Vukosavljević, T 8675. LtCol Danilović also stated that there was no wire connection between the yellow house at Ovčara and the command at Negoslavci. He did not exclude that there might have been radio connection in place between the command of 80 mtbr and its subordinate unit, but remembered that messengers were sent. (T 12368-12369).

<sup>1128</sup> Dragan Vezmarović, T 8464.

<sup>1129</sup> Dragan Vukosavljević, T 8804.

280. In 2003, Captain Vukosavljević learned from Captain Vezmarović himself that Captain Karanfilov was the means of conveying the order. It was his testimony that Vezmarović was grateful to him for having told the Prosecution investigators that there had been an order from the commander to withdraw, which, Vezmarović said, provided him with a cover for his action.<sup>1130</sup>

281. As discussed earlier, Captain Vukosavljević was sent to Ovčara with the order for the military police of 80 mtbr to withdraw as a result of a conversation between LtCol Vojnović and Mile Mrkšić. Mrkšić seemed to Vojnović to be surprised to learn that the unit was then at Ovčara, which convinced Vojnović to send Vukosavljević with the order to withdraw. In the Chamber's assessment, the evidence of LtCol Vojnović makes it clear that Mile Mrkšić's apparent surprise did not relate to the fact that the military police of 80 mtbr had been sent to Ovčara:<sup>1131</sup>

"I think that [Mile Mrkšić] didn't know that we were at Ovčara, especially during the initial period. Perhaps later, through the command line he was informed about it, Panić saw me there,<sup>1132</sup> so this is normal. But judging by his reaction when we spoke about that situation when he told me what he did, he decisively said to me, "What were you doing there?" ... And I saw and understand (*sic*) that I really should not have been there."

As discussed elsewhere in this Judgement and confirmed by the evidence of LtCol Vojnović, before this conversation with Vojnović, Mile Mrkšić had indeed been informed that the military police of 80 mtbr had been sent to Ovčara.<sup>1133</sup> Therefore, in the Chamber's finding, when talking to Vojnović, Mile Mrkšić's surprise was that the military police unit was *still* at Ovčara. He seemed certain that that unit should have left Ovčara by then. This evidence, coupled with the testimony of Captain Vezmarović and Captain Vukosavljević, indicates that Mile Mrkšić was aware, before talking to Vojnović, that the order to withdraw the remaining 80 mtbr troops had been sent to Ovčara.

282. As has been indicated, the Chamber is not persuaded by the account of Captain Karanfilov in so far as he sought to deny his involvement in the transmission of the order to withdraw to Captain Vezmarović. It is noted further that Captain Karanfilov had a personal interest in refuting the allegation of involvement in this episode which led to the commission of crimes. In addition, his testimony is inconsistent on the issues whether and where he spoke with Veselin Šljivančanin in the afternoon of 20 November 1991. The testimony of Veselin Šljivančanin provides only partial corroboration.

283. There is no such apparent personal interest in contriving the story on the part of Captain Vezmarović. As evidenced by the testimony of Captain Vukosavljević, Vezmarović was aware of

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<sup>1130</sup> Dragan Vukosavljević, T 8804; 8808.

<sup>1131</sup> Milorad Vojnović, T 8852.

<sup>1132</sup> See *infra*, para 378.

the risk of being accused of having withdrawn his unit of his own accord and was glad that Captain Vukosavljević confirmed that the withdrawal was ordered by the commander. It would not have been reasonable for Captain Vezmarović to invent a story involving Captain Karanfilov. Receiving an order through his ordinary chain of command was more likely to be believed and would disavow the suspicion of him leaving Ovčara without an order or approval of his commander. He also must have learned of the order sent through Captain Vukosavljević on his return to Negoslavci that evening. Yet, it was his testimony that it was Captain Karanfilov who conveyed the order to him. For these reasons, the Chamber finds the evidence of Captain Vezmarović reliable.

284. In the Chamber's finding, Captain Karanfilov arrived at Ovčara before Captain Vukosavljević and conveyed to Captain Vezmarović the order to withdraw the military police unit of 80 mtbr. Mile Mrkšić was aware that this order had been sent this way and was surprised to hear afterwards from LtCol Vojnović that the unit was still at Ovčara. Mrkšić expressed his dissatisfaction in a way that made Vojnović realise that he should withdraw the military police. This he did and Captain Vukosavljević was sent to Ovčara to convey again the order to the military police troops of the 80 mtbr to withdraw.

285. There is no direct evidence indicating who told Captain Karanfilov to convey the order to withdraw the troops from Ovčara. His immediate superior was Veselin Šljivančanin. While normal JNA procedures, if observed, would suggest the order was passed through Šljivančanin to Captain Karanfilov, the Chamber is not able to accept that normal JNA procedures were consistently observed, or regarded as so binding, as the Šljivančanin Defence has so strongly urged. The facts of this case disclose frequent non-observance of normal JNA procedures and standards, at all levels, affecting matters as varied as the very establishment and structure of OG South to the observance of the chain of command. In those circumstances, while Veselin Šljivančanin was the immediate superior of Captain Karanfilov, it cannot be concluded on this basis alone that Šljivančanin gave or transmitted the order to Captain Karanfilov. Mile Mrkšić was, above Veselin Šljivančanin, the superior of Captain Karanfilov in OG South. As the commander of OG South, Mile Mrkšić had the authority to give orders to Captain Karanfilov. Indeed the evidence discloses that on that same day another immediate subordinate of Veselin Šljivančanin, Major Vukašinović reported directly to Mile Mrkšić.<sup>1134</sup> This demonstrates that the participation of Veselin Šljivančanin was not essential in professional contacts between officers of his security organ and Mile Mrkšić, who was their ultimate commander in OG South. Further, Mile Mrkšić was directly concerned, through LtCol Panić, in dealings that day between the JNA and the SAO "government". It was the will of the

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<sup>1133</sup> See *infra*, para 308.

<sup>1134</sup> See *infra*, para 311.

“government” to take over the prisoners of war from the JNA. The prisoners were in the physical custody of the JNA at Ovčara. Thus, virtually inevitably Mile Mrkšić had a direct responsibility in the making of decisions and their implementation in the course of that process. For these reasons, the Chamber finds that it was on the order of Mile Mrkšić that Captain Karanfilov was sent to Ovčara to convey the order to withdraw the military police of the 80 mtbr from Ovčara. On the circumstances established by the evidence, Veselin Šljivančanin could have been an intermediary in conveying the order of Mile Mrkšić to Captain Karanfilov, but for the reasons given, in the absence of direct evidence to this effect and as Mrkšić was in a position to address Šljivančanin’s officers directly, the Chamber is not able to find that Veselin Šljivančanin was involved in the process of conveying this order.

286. The operational diary of the 80 mtbr contain entries indicating that the security for the prisoners of war was withdrawn from Ovčara at 2235 hours on 20 November 1991. The effect of this was that the duty to provide security for the prisoners of war was taken over by the Vukovar TOs.<sup>1135</sup> In the Chamber’s finding this entry is not reliable as to the time, otherwise it does accord with the material events. As found elsewhere in this Judgement the withdrawal of the remaining military police troops and officers of 80 mtbr from Ovčara was effected by 2100 hours. They then returned to Negoslavci.

287. The Chamber also heard evidence from P022 who was a soldier in 3coy 1/gmtbr.<sup>1136</sup> He somewhat dramatically gave an account of events at Ovčara from the arrival of the buses in the afternoon until he left, there then being only some 30 to 40 prisoners remaining, the others having been taken in groups of 20 to 35 to a ditch about a kilometre from the hangar where they were executed.<sup>1137</sup> He also admitted killing 3 prisoners in a ditch by the hangar, and he heard, he said, of the remaining 40 being shot outside the hangar.<sup>1138</sup> He described specifically the presence and role of certain key people including Major Vukašinić and Captain Karanfilov of the JNA, the TO commander Miroljub Vujović and his deputy Stanko Vujanović, and Milan Lančuzanin the commander of Leva Supoderica.<sup>1139</sup> Elsewhere in this Judgement<sup>1140</sup> the Chamber describes the circumstances in which, after he had been charged with murder in Serbia, in his own interest P022 had come to identify the roles of at least 10 persons in the events at Ovčara. The circumstances leave the Chamber unable to be satisfied that P022’s identification of persons and his description of their roles have not been concocted to ensure his own immunity from prosecution in Serbia. The

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<sup>1135</sup> Exhibit 371.

<sup>1136</sup> P022, T 4940; P018, T 7390; Miroslav Radić, T 12681.

<sup>1137</sup> P022, T 5015, 5023.

<sup>1138</sup> P022, T 5023.

<sup>1139</sup> P022, T 5002, 5005, 5019, 5025.

<sup>1140</sup> See *infra*, paras 343-348.

Chamber would emphasize that it has only limited knowledge of these circumstances. Those with more complete knowledge may well be able to view P022's evidence with more confidence but we are not able to do so.

288. In addition there are some particular difficulties with his evidence concerning these events. While other evidence indicates that both Major Vukašinić and Captain Karanfilov were at Ovčara that day, only P022 suggests they were together and that they argued with Miroljub Vujović about the prisoners.<sup>1141</sup> Vukašinić does not mention such an argument although had it occurred the tenor of his other evidence would suggest to the Chamber that he would indeed refer to the argument. P022 suggests the executions commenced at about 1730 hours<sup>1142</sup> whereas such other evidence indicates it was after 2100 hours. There is no suggestion in the evidence of bodies being found at or near the hangar whereas P022's account he killed 3 prisoners outside the hangar and the remaining 30 or 40 prisoners were also killed there. Having regard to all these matters the Chamber is not able to be satisfied about the truthfulness and reliability of the evidence of P022.

289. P001 testified that on 20 November 1991 he was ordered to go to Ovčara.<sup>1143</sup> He stated that he arrived there between 2100 and 2200 hours, and met with Major Vukašinić who told him that his task was to ensure that the prisoners held in the hangar were safe. Captain Karanfilov was also there.<sup>1144</sup> Major Vukašinić then told him that there was no longer any need for him and his unit to be there and P001 left Ovčara with his unit.<sup>1145</sup>

290. Even though the Chamber accepts that P001 was honest in his evidence, it became clear from evidence of other witnesses that he may well be mistaken as to the date and time of his visit to Ovčara. In some respects details provided in his account of the visit correspond roughly with the description of the evening of 20 November 1991 provided by other witnesses. However, they match as well with evidence relating to the evening of 18 November 1991 during the Mitnica evacuation. The Chamber has taken note of details such as the rope,<sup>1146</sup> which was strung inside the hangar on both evenings,<sup>1147</sup> the headlights of a vehicle,<sup>1148</sup> which were used to assist to provide some light in the hangar on both evenings,<sup>1149</sup> and the sound of firing,<sup>1150</sup> heard on both 18

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<sup>1141</sup> P022, T 5002, 5005, 5016, 5022.

<sup>1142</sup> P022, T 5004, 5005, 5015.

<sup>1143</sup> P001, T 10083.

<sup>1144</sup> P001, T 10084-10085.

<sup>1145</sup> P001, T 10085-10086.

<sup>1146</sup> P001, T 10085.

<sup>1147</sup> Dragan Vezmarović, T 8421; it was put to him in cross-examination that he tied the rope on both occasions, to which the captain did not object, T 8489; Razvigor Virijejić, T 11560; Mladen Marić, T 15226; Stevan Bišić, T 11422; Rade Danilović, T 12308; P011, T 5874-5875; P014, T 7711-7712; Milorad Vojnović, T 8967; 9039; 9089.

<sup>1148</sup> P001, T 10084; Exhibit 558.

<sup>1149</sup> Mladen Marić, T 15225; Dragan Vezmarović, T 8465.

November 1991<sup>1151</sup> and 20 November 1991.<sup>1152</sup> P001's recollection of the number of prisoners of war in the hangar at the time of his arrival<sup>1153</sup> is difficult to reconcile with the circumstances known about either 18<sup>1154</sup> or 20 November 1991.<sup>1155</sup>

291. In the course of cross-examination, in particular when faced with statements of persons, who went with P001 to Ovčara or were apparently there at the same time, and who each put the date of their visit as 18 November 1991<sup>1156</sup> rather than 20 November 1991, apparently quite genuinely, P001 was prepared to accept that he may have been mistaken in his attempt to recall the date.<sup>1157</sup> P001 says he saw at Ovčara both Major Vukašinović and Captain Karanfilov.<sup>1158</sup> While Vukašinović and Karanfilov deny being at the Ovčara farm on the evening of 20 November,<sup>1159</sup> other witnesses do place both of them there, but earlier than P001 recalls. Both were there on 18 November.

292. Having regard, in particular, to the evidence and issues just summarised, the Chamber is unable to be satisfied that P001 visited Ovčara on 20 November 1991. That date of his visit remains a matter of unresolved factual dispute, although the balance favours it being 18 November 1991. We would observe that in these circumstances we have emphasised apparent difficulties about his recollection that he was there on 20 November. We have not similarly considered everything that favours the correctness of his honest recollection.

293. In summary, the Chamber finds that the order to withdraw the last remaining JNA troops, securing the prisoners of war, the military police of the 80 mtbr, from Ovčara was made by Mile Mrkšić in the early evening of 20 November 1991, shortly before or after the regular OG South briefing.<sup>1160</sup> It was conveyed to the commander of the military police of the 80 mtbr, Captain Vezmarović at Ovčara by Captain Karanfilov of the security organ of OG South. Later, following

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<sup>1150</sup> P001, T 10086.

<sup>1151</sup> Stevan Bišić, T 11428-11429.

<sup>1152</sup> *See supra*, paras 250-251.

<sup>1153</sup> Between 20 and 30; P001, T 10170.

<sup>1154</sup> 70 until the arrival of a further one hundred or so during the night; Exhibit 371; Rade Danilović, T 12462.

<sup>1155</sup> By contrast, on 20 November 1991, the prisoners arrived in one convoy of buses in the afternoon and numbered about 200. This number remained roughly unchanged until late the evening, when progressively small groups were removed and driven to the mass grave site and executed; *See supra*, para 252.

<sup>1156</sup> The Chamber accepts the indication of the date provided by these witnesses. They referred a member of the Croatian forces, known as Big Džo, whom they saw among the prisoners in the hangar while they were there. One of these two witnesses was later told that Big Džo was Filip Karaula. (Razvigor Virijević, T 11563; Stevan Bišić; T 11422-11423) The evidence indicates that Filip Karaula was the commander of the Croatian forces who had surrendered at Mitnica on 18 November 1991. (*See supra*, para 146) Filip Karaula arrived at Ovčara in the first group of prisoners of war on 18 November, at about 1600 hours and was at the hangar throughout the night, (*See supra*, para 153; Filip Karaula is mentioned on the list of Croatian commanders received at Ovčara on that day; Exhibit 432) being moved to Sremska Mitrovica on 19 November.

<sup>1157</sup> P001, T 10161.

<sup>1158</sup> P001, T 10084-10085.

<sup>1159</sup> Ljubiša Vukašinović, T 15087-15094; Borče Karanfilov, T 15496.

a conversation between LtCol Vojnović and Mile Mrkšić, Captain Vukosavljević, at the security organ of the 80 mtbr, was ordered by LtCol Vojnović to go to Ovčara also to convey an order to withdraw the military police of 80 mtbr. Captain Vukosavljević did go to Ovčara but on arrival found that an order to withdraw was already in the process of being implemented. The Chamber accepts and finds that Mile Mrkšić had an order for 80 mtbr to withdraw its remaining military police sent to Ovčara, first through Captain Karanfilov and later through LtCol Vojnović and Captain Vukosavljević.

294. The military police with officers of the 80 mtbr withdrew from Ovčara at no later than 2100 hours on 20 November 1991. Before that hour, TO members from Vukovar, including Miroljub Vujović, Vukovar TO commander and Serb volunteers from Vukovar and other areas had gathered at Ovčara. Following the withdrawal of 80 mtbr, they murdered at least 200 prisoners of war who had been taken from the Vukovar hospital. While the evidence is insufficient to enable the Chamber to make a finding as to who the specific perpetrators were, the evidence is that in particular Miroljub Vujović exercised authority in respect of these events. The Chamber accepts that one or more individual JNA soldiers, such as P022, may have stayed at Ovčara after the withdrawal of the military police of the 80 mtbr, and participated in the killings, but if they did so, they did not act under orders.

#### **D. Role of Mile Mrkšić**

##### **1. Evidence and findings**

295. On 19 November 1991, during the regular OG South briefing held in the command post at Negoslavci, which commenced that day at about 1800 hours, Mile Mrkšić announced that he had ordered Veselin Šljivančanin to conduct the evacuation of the Vukovar hospital. He had actually given the order to Veselin Šljivančanin orally earlier that day.<sup>1161</sup> The evacuation was to take place in the morning of 20 November 1991. The task given to Veselin Šljivančanin by Mrkšić involved the evacuation of civilians and wounded and sick, and the transportation to prison of war crime suspects. On the following day, 20 November 1991, at 0600 hours, Mile Mrkšić issued a written order from the OG South command post in Negoslavci, to, among other things, “simultaneously, evacuate and transport civilians, the wounded and sick from the hospital in Vukovar”.<sup>1162</sup> The written order says nothing of the movement of prisoners of war from Vukovar hospital. No subsequent written order was issued in this regard. In the Chamber’s finding the written order did not truly reflect the full nature and extent of the responsibility which Mile Mrkšić conferred on

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<sup>1160</sup> See *infra*, para 321.

<sup>1161</sup> See *supra*, para 191.

Veselin Šljivančanin in particular the written order omitted reference to the Croat forces or war crime suspects. By Mrkšić's specific oral order Šljivančanin was to transfer war crimes suspects to prison at Sremska Mitrovica in Serbia.<sup>1163</sup> In the Chamber's finding, it is apparent from the distinction between civilians and war crimes suspects made by Mile Mrkšić in his order, that all involved in the Croat forces were regarded as war crimes suspects, including those who were patients in the hospital. Further, all non Serb males of military age were thought to be members of the Croat forces. That is confirmed by what was done at Šljivančanin's direction on 20 November 1991. Two reasons are suggested in the evidence. Further investigations by the JNA were needed to determine who among the Croat forces should be prosecuted for war crimes, and prisoners of war were to be held at Sremska Mitrovica for possible future exchange for JNA prisoners of war held by Croatia. There was also the possibility that a few non Serb males might be found not to have been involved in the Croat forces.

296. While that was the plan regarding members of the Croat forces at the hospital, which Veselin Šljivančanin proceeded to implement on 20 November 1991, during that morning, at around 1030 hours, Mile Mrkšić had a telephone conversation with LtCol Miodrag Panić, his Chief of Staff.<sup>1164</sup> Panić was then at the JNA barracks. During this telephone conversation, Mile Mrkšić instructed him to attend, on Mrkšić's behalf, what was described as "a cabinet session" of the SAO Government that was to take place at Velepomet that day.<sup>1165</sup> The Chamber accepts LtCol Panić's evidence that he was given instructions by Mile Mrkšić to indicate to the participants of the "government" meeting that Mile Mrkšić was prepared to accept and act in accordance with the decision of the "government" meeting as to what should be done with the prisoners of war from Vukovar hospital.<sup>1166</sup> Panić acted in accordance with this specific order of Mile Mrkšić; he attended the meeting and conveyed the decision of Mrkšić.<sup>1167</sup>

297. During that same telephone conversation, LtCol Panić informed Mile Mrkšić that a bus with prisoners from Vukovar hospital was stationed in the barracks compound, and that members of the TO and other local men were trying to approach the bus in order to identify the men on the bus.<sup>1168</sup> The Chamber notes that it has reviewed the evidence of Panić, with great care, especially about the relevant events of 19 and 20 November 1991, and has considered it in light of the other evidence about these events. It has also carefully weighed its assessment of the credibility of Panić, taking

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<sup>1162</sup> Exhibit 419.

<sup>1163</sup> *See supra*, para 191.

<sup>1164</sup> Miodrag Panić, T 14305;14402.

<sup>1165</sup> Miodrag Panić, T 14305;14402. What occurred at this session is discussed earlier in this Judgement. *See supra*, paras 225-233.

<sup>1166</sup> Miodrag Panić, T 14307.

<sup>1167</sup> Miodrag Panić, T 14307-14308; 14313.

<sup>1168</sup> Miodrag Panić, T 14304-14305;14318; 14402.

into account his demeanour as he gave evidence, the events that are otherwise established to have occurred, and the demeanour of those who gave differing accounts about these events. In the Chamber's assessment LtCol Panić was generally, and in respect of most matters, an honest and reliable witness. Regrettably, the Chamber also finds that in his evidence LtCol Panić sought to present aspects of his own role in a more favourable light and to avoid disclosing matters which could be construed as implicating Panić himself in criminal conduct. Because of this, while the Chamber is entirely persuaded it should accept much of his evidence, it has and will identify its reservations about some issues. Accordingly, the Chamber accepts that Mile Mrkšić and LtCol Panić did have this telephone conversation that morning while Panić was at the JNA barracks and that Panić was then instructed to attend the so called "government" meeting to be held that day at Velepromet and to convey Mrkšić's decision, which he later did, the Chamber is also persuaded that the evidence of LtCol Panić underplays the full extent of his knowledge of the situation at the barracks that morning. It is his evidence that before going to the "government of SAO" meeting he was aware of only one bus load of prisoners from the hospital at the barracks.<sup>1169</sup> Yet, evidence concerning the loading and movement of the buses from the hospital to the barracks satisfies the Chamber that the five buses moved and arrived at the JNA barracks in a convoy.<sup>1170</sup> LtCol Panić further says that he told Mile Mrkšić that members of the TO and others were trying to approach the bus in order to identify the men on the bus.<sup>1171</sup> That is not fully consistent with evidence which the Chamber accepts, about the aggressive and threatening words and actions of the TOs and others as they milled about the buses at the barracks, which is dealt with more fully elsewhere in this decision.<sup>1172</sup> When questioned about this aspect, it was the evidence of LtCol Panić that there was no threat to the prisoners on the bus as all security measures had been taken,<sup>1173</sup> and he appeared to deny seeing any mistreatment of prisoners at the barracks that day. In the Chamber's finding, the role of LtCol Panić in conveying the instructions from Mile Mrkšić for the meeting, and his own role at the meeting, provide reason for LtCol Panić not to be fully frank and honest about the events he saw at the barracks concerning the convoy of prisoners of war. While the Chamber accepts that LtCol Panić was not at the JNA barracks throughout the entire time that the buses loaded with prisoners were held there, it is satisfied and finds that the five buses were there by the time of the telephone conversation between LtCol Panić and Mile Mrkšić and that by the time of that conversation it was already apparent that there were physical and verbal threats to the prisoners from members of the crowd of Serb TOs, which also included paramilitaries and local Serb

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<sup>1169</sup> Miodrag Panić, T 14305;14318;14401.

<sup>1170</sup> *See supra*, paras 209; 215.

<sup>1171</sup> Miodrag Panić, T 14305-14306;14318.

<sup>1172</sup> *See supra*, para 216.

<sup>1173</sup> Miodrag Panić, T 14306; 14318.

volunteers, who were milling about the buses and attempting to get to the prisoners.<sup>1174</sup> Given the content of the conversation between Mile Mrkšić and LtCol Panić, it is not credible that LtCol Panić would not have discussed with Mile Mrkšić what was really occurring at the JNA barracks in respect of the prisoners of war. While the telephone conversation may well have been a little later than the estimated 1030 hours, the state of the evidence about the time and the progress of events at the barracks does not enable the Chamber to be entirely satisfied, however, that by the time of the telephone conversation there had actually been physical offences against prisoners on the buses by TOs and others at the barracks.

298. Relevant to Mile Mrkšić's role in the events on 20 November 1991 is also the evidence of Captain Jovan Šušić. It is his evidence that as commander of 1 MP/gmtbr, he was performing his regular duties at the JNA barracks at Vukovar during the morning of 20 November 1991.<sup>1175</sup> He was seen there by LtCol Panić.<sup>1176</sup> During the morning, he put it at sometime between 1000 and 1100 hours, Captain Predojević, who was responsible for the security in the JNA barracks and was the commander of an armoured vehicle company of military police,<sup>1177</sup> called Captain Šušić and told him that he had problems securing some of the buses that had arrived at the barracks from Vukovar hospital.<sup>1178</sup> It is Captain Šušić's account that he went to where the buses were parked and there he saw that members of the TO were verbally insulting prisoners on the buses.<sup>1179</sup> The mood of the situation concerned Captain Šušić to such an extent that, after assessing the situation for some minutes, he called Mile Mrkšić.<sup>1180</sup> It is his evidence that he told Mile Mrkšić that "buses with people [had arrived at] the barracks and that civilians [were] threatening them and that the safety and security of these people are in danger".<sup>1181</sup> Mile Mrkšić responded by ordering Captain Šušić to "[c]reate full security for these people who are on the buses." Mile Mrkšić went on to say "Now a meeting of the government of Krajina is under way at which [...] the question of where they will be transported will be decided."<sup>1182</sup> Because of this order, Captain Šušić says that he in turn gave Captain Predojević the task of upgrading the strength of his troops and removing the group of TOs away from the buses and out of the barracks compound.<sup>1183</sup> Captain Šušić saw that after some 30

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<sup>1174</sup> See *supra*, para 216.

<sup>1175</sup> Jovan Šušić, T 14888.

<sup>1176</sup> Miodrag Panić, T 14395.

<sup>1177</sup> Jovan Šušić, T 14879; 14917.

<sup>1178</sup> Jovan Šušić, T 14889.

<sup>1179</sup> Jovan Šušić, T 14889-14890.

<sup>1180</sup> Jovan Šušić, T 14890-14891.

<sup>1181</sup> Jovan Šušić, T 14950.

<sup>1182</sup> Jovan Šušić, T 14891.

<sup>1183</sup> Jovan Šušić, T 14892.

minutes the situation in the JNA barracks compound was back to normal.<sup>1184</sup> The TOs with some paramilitaries and local Serb volunteers had been removed from the barracks.<sup>1185</sup>

299. The credibility of this evidence was strongly challenged during the trial. In particular emphasis was placed on what Captain Šušić first said, that he had telephoned Mile Mrkšić from the barracks building,<sup>1186</sup> which is adjacent to and faces the area where the buses had been parked in a rough semi-circle, whereas, at another time in his evidence Captain Šušić stated he had used a radio link from a vehicle parked outside the barracks building *i.e.* between the buses and the building and right next to the building.<sup>1187</sup> In the Chamber's final assessment after weighing the issues carefully, this matter of detailed discrepancy is understandable and does not indicate a fabricated account. The critical event to Captain Šušić at the time was his assessment that, because of the situation around the buses, he should report it to Mile Mrkšić, a step of some significance even for a person in his position. Whether he picked up a radio microphone in a vehicle outside the barracks building, or a telephone inside the building, would hardly be a matter of significance to him at the time, or when he gave evidence about this event some 15 years later. The critical event at the time and for his memory is likely to be reporting to Mile Mrkšić, and the order he received when he did.

300. Much attention was also focused during Captain Šušić's evidence on the issues why Captain Predojević reported to Captain Šušić, and why Šušić reported to Mile Mrkšić when, in each case, this was not in accordance with the JNA chain of command. At that time Captain Predojević and his armoured vehicles military police company had been subordinated as elements of 2 AD, which was commanded by Major Lukić who also commanded the barracks.<sup>1188</sup> JNA formal order would, therefore, require Captain Predojević to report to Major Lukić. This contention has some apparent force but, in the Chamber's view, it over-emphasises formal procedures and fails to give adequate weight to other relevant considerations. Before being temporarily subordinated to 2 AD with his company, Captain Predojević and his company were part of Captain Šušić's military police battalion so that he was used to reporting to Šušić.<sup>1189</sup> The subject matter of the report was more naturally a matter within the normal role of military police, rather than the combat operations of an assault detachment. Indeed the JNA security for the prisoners on each of the buses and at all material points that day was provided by military police. It is the case that Captain Šušić could well

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<sup>1184</sup> Jovan Šušić, T 14892.

<sup>1185</sup> Jovan Šušić, T 14892. In his evidence Jovan Šušić refers both to civilians and TOs, apparently interchangeably. In the Chamber's finding "civilians" was used to refer to non JNA personnel. It included members of Serb TO and paramilitary units as well as "volunteers" who were able under the applicable law to present themselves (with their own arms) to military units to join in fighting.

<sup>1186</sup> Jovan Šušić, T 14890-14891.

<sup>1187</sup> Jovan Šušić, T 14916.

<sup>1188</sup> Jovan Šušić, T 14878-14879; 14888; 14891; Miodrag Panić, T 14549. *See also supra*, para 103.

<sup>1189</sup> Jovan Šušić, T 14914-14916; 14945-14946. The witness explains that although Captain Predojević's company was at the time 2 AD, it had been part of the IMP/gmtbr headed by Jovan Šušić.

have first approached Major Lukić rather than directly reporting as a battalion commander to Mile Mrkšić, it is Captain Šušić's explanation that, at the time, he did not know whether Major Lukić was at the barracks.<sup>1190</sup> He did recall seeing Major Lukić there later that morning when the situation had been brought under control,<sup>1191</sup> but not at the earlier time of his report to Mile Mrkšić.<sup>1192</sup> The Chamber is satisfied from other evidence that Major Lukić was in fact at the barracks at the time in question,<sup>1193</sup> but that does not mean that Captain Šušić's explanation is false or not credible. The Chamber is also conscious of the evidence of Captain Karanfilov that he saw Major Lukić at the barracks, and as he saw it, the situation did not appear alarming and was being kept under control by Major Lukić.<sup>1194</sup> Elsewhere in this Judgement the Chamber has concluded that it cannot accept aspects of material evidence of Captain Karanfilov.<sup>1195</sup> The Chamber is also not able to accept his evidence in this respect, from its assessment of his credibility as it appears intended to avoid the conclusion that Karanfilov had knowledge of security problems for prisoners at the barracks. There is a further element which should be considered. The issue that morning was not one about the ordinary military order or security of the JNA barracks. The situation, while occurring in the barracks, concerned the security of prisoners of war of the JNA who were being transported under the authority of Mile Mrkšić as commander of OG South, and who were being temporarily held in vehicles in the JNA barracks compound while in transit. The Chamber finds that the buses were being held at the orders of Mile Mrkšić, at a time when Mrkšić was waiting to hear the outcome of a meeting of the so called government of SAO, which was to consider what should be done about the prisoners of war. The transport of these prisoners of war, their security and their ultimate destination, were at that time matters under the command of Mile Mrkšić.<sup>1196</sup> These were not matters being directly controlled by Major Lukić or anyone at the barracks that morning.

301. Further, the cause of concern was the conduct of a group of people, comprising TOs, paramilitary personnel, including local Serb volunteers, who together were marking the surrender of the Croat forces by pursuing Croat prisoners of war. This group, while some of them were still formally under the command of OG South, were also persons who, it can be understood in the political situation, saw the so called government of SAO as their "government", and it was the concern of these people that the prisoners of war were "their" prisoners, not JNA prisoners, and that it was for them or at least for their "government" to determine the fate of the prisoners. In such a

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<sup>1190</sup> Jovan Šušić, T 14896; 14946.

<sup>1191</sup> Jovan Šušić, T 14896; 14946.

<sup>1192</sup> Jovan Šušić, T 14896; 14946.

<sup>1193</sup> Miodrag Panić, T 14395; 14304-14306; Borče Karanfilov, T 15426; 15445.

<sup>1194</sup> Borče Karanfilov, T 15426; 15445.

<sup>1195</sup> *See supra*, para 282.

<sup>1196</sup> *See infra*, para 607.

context, the issue of the security of the prisoners of war in the buses was not merely a military issue which concerned the commander of the barracks, it was a highly political and emotionally charged issue. A decision to remove these people from the JNA barracks, and deny them contact with the prisoners of war being held on the buses, was, therefore, an issue in which Mile Mrkšić had a very direct concern and responsibility, just as he had a direct concern and responsibility in the decision as to what should be done with the prisoners that day. In the Chamber's view it is not so surprising, therefore, that it was to Mile Mrkšić that the circumstances concerning the security of the prisoners in the buses was reported by Captain Šušić. As a battalion commander of military police who was on the spot, he saw a situation which concerned him and he felt the need for action, action which he knew Mile Mrkšić could authorize. The Chamber has also had to take into account its assessment of the personal credibility of Captain Šušić and the other witnesses relevant to this issue. The Chamber also observes that there is a telling echo in the words which Captain Šušić says were spoken to him by Mile Mrkšić in that conversation, words concerning the meeting of the "government" of SAO and the role Mrkšić saw that "government" playing in determining what should happen to the prisoners of war, and the evidence of others about Mile Mrkšić's knowledge of the meeting and his attitude to its role. In particular the Chamber refers to the evidence of LtCol Panić. Not only is there consistency, but it is not apparent how Captain Šušić would know of Mile Mrkšić's attitude to these matters, if Šušić had not been told by Mile Mrkšić himself.

302. In light of these matters and the circumstances at the time, the Chamber accepts the evidence of Captain Šušić that he did make the report to Mile Mrkšić described in his evidence and that he received from Mile Mrkšić the order he also described. The Chamber finds, accordingly, that it was pursuant to this order of Mile Mrkšić that the local TOs and others milling around the buses in the barracks were removed from the barracks so that they could no longer be a threat to the prisoners of war being held on the buses.

303. Also relevant to Mile Mrkšić's knowledge about the events at the JNA barracks is evidence of conversations he had with Colonel Tomić, the leader of a group of quite senior officers mainly from the Security Administration in Belgrade. It is Colonel Vujić's evidence that Colonel Tomić was at the JNA barracks in Vukovar in the morning of 20 November 1991 with a view to screening prisoners of war detained on the buses to identify criminals. Later that day, at approximately 1800 hours, Colonel Tomić told Colonel Vujić at Negoslavci that, because the Security Administration officers had found JNA soldiers on the buses at the barracks, he, Colonel Tomić had been to see Mile Mrkšić "two or three times" that day. It was Colonel Vujić's evidence that in this conversation Colonel Tomić said to Vujić that he had warned Mile Mrkšić that at the JNA barracks

“TO members wanted to take the buses to Ovčara by using force”,<sup>1197</sup> and that Mile Mrkšić was silent when warned, but “raised his hand and put it in front of his eyes”.<sup>1198</sup> There is a possible inconsistency in the positions taken by Colonel Tomić on this evidence because it is not clear whether the concern he had was that he found JNA soldiers on the buses or that TO members wanted to take the buses to Ovčara by using force. As far as the evidence reveals, the group of officers, to which both Colonel Tomić and Colonel Vujić belonged, had arrived in Vukovar when the Croat forces capitulated, to “screen” members of the Croat forces and others for persons of particular interest as war criminals.<sup>1199</sup> The evidence is not precise as to some of their movements but, after reporting to the OG South command at Negoslavci, they sought to pursue their task at various times, in particular, wherever Croat prisoners of war were being held, including the hospital, Velepromet, the JNA barracks and Ovčara. It is established that having been extremely active at Velepromet on 19 November 1991,<sup>1200</sup> the group were at the hospital during the morning of 20 November 1991,<sup>1201</sup> remaining there at least for a time after the main body of male prisoners of war had left the hospital, and then were again at Velepromet, which is close to the JNA barracks.<sup>1202</sup> It is entirely consistent that, as the buses with the prisoners of war were being held at the JNA barracks, Colonel Tomić, with or without other members of the group, would move across to the barracks from Velepromet to continue this work among the prisoners on the buses, but there is no direct evidence that this occurred that day. The evidence does indicate that at least two members of this group were at the hangar at Ovčara later that day.<sup>1203</sup> Colonel Tomić has since died and could not be called to give evidence. This conversation described second-hand by Colonel Vujić would, of course, be quite material were the Chamber in a position to accept its content as accurate. While the Chamber has no reason to doubt that this evidence accords with Colonel Vujić’s recollection of what he was told by Colonel Tomić, the Chamber finds itself unable to be entirely satisfied that the conversation between Colonel Tomić and Mile Mrkšić, as retold in the evidence of Colonel Vujić, did occur as Vujić understood it occurred. It may well be the case, but this hearsay evidence, with the difficulties mentioned, leaves the Chamber not sufficiently satisfied about the reliability of its content to be able to accept it unhesitatingly. The Chamber is not able to conclude, therefore, what Mile Mrkšić was told by Colonel Tomić of the situation at the JNA barracks on 20 November 1991 concerning the Croat prisoners of war from the hospital who were held there for a time on buses.

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<sup>1197</sup> Bogdan Vujić, T 4567.

<sup>1198</sup> Bogdan Vujić, T 4566-4567.

<sup>1199</sup> Bogdan Vujić, T 4487;4619;4622-4624;4557-4558;4501-4502; Branko Korica, T 14711.

<sup>1200</sup> *See supra*, paras 171-173.

<sup>1201</sup> *See supra*, para 201.

<sup>1202</sup> Bogdan Vujić, T 4544, 4691.

<sup>1203</sup> *See supra*, para 264.

304. Later in the morning of 20 November 1991 a session of the so-called SAO “government” was held at Velepromet.<sup>1204</sup> It concluded not later than 1300 hours.<sup>1205</sup> As mentioned earlier, LtCol Panić, the Chief of Staff of OG South and Mrkšić’s deputy, attended the meeting under the instructions of Mrkšić.<sup>1206</sup> The view was emphatically expressed at this meeting, by persons involved in the meeting, that the prisoners of war should not be transported to Sremska Mitrovica and then exchanged by the JNA. Instead, members of the “government” expressed their wish to have the prisoners detained in Vukovar.<sup>1207</sup> Some spoke of the prisoners being put on trial before local judiciary.<sup>1208</sup> In an interview to the media given at a later hour on 20 November 1991, Goran Hadžić, the prime-minister of the “government” is reported as stating that there was an agreement with the military authorities to have the Croatian prisoners of war detained in “our detention camps.”<sup>1209</sup> While it is not shown by the evidence that any such agreement or decision had been reached by the end of the meeting, events that transpired following the meeting indicate that the issue must have been pursued further with Mile Mrkšić or his representatives following the meeting and the statement attributed to Hadžić appears to have taken account of this development subsequent to the meeting.

305. It is the evidence of LtCol Panić that when he returned from the “government” meeting to the barracks, he immediately called Mile Mrkšić, who, having heard from Panić that it had been said at the meeting of the “government” that the prisoners of war would be put on trial, and that there would be a prison at Ovčara, said: “[v]ery well, let it be as they decided”.<sup>1210</sup> This evidence could indicate that during this same conversation Mile Mrkšić had reached a final decision to hand over the custody of the prisoners of war from the hospital to the TO and other forces pursuant to the wishes of the “government”. For a number of reasons, however, the Chamber is not able to make such a finding. It was not suggested by the evidence of LtCol Panić that he regarded the words of Mile Mrkšić, as Panić remembered them, as an order. Nor did Panić suggest that he took any steps to treat the words of Mile Mrkšić as a decision by implementing them, or by conveying them to anyone as the decision of the commander. Instead, the Chamber accepts from what followed and the silence of Panić, that following the telephone conversation with Panić, Mrkšić reached at least an interim decision about what should be done regarding the transport of the prisoners of war, who had been held on buses for some hours. An order was given for the prisoners of war to be taken to Ovčara, which was the location used by the JNA to hold prisoners of war over the night of 18/19

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<sup>1204</sup> See *supra*, para 225.

<sup>1205</sup> See *supra*, para 233.

<sup>1206</sup> See *supra*, para 296.

<sup>1207</sup> See *supra*, para 229.

<sup>1208</sup> See *supra*, para 226.

<sup>1209</sup> Exhibit 576. See *supra*, para 228.

<sup>1210</sup> Miodrag Panić, T 14321-14322.

November 1991 during the Mitnica evacuation. At the same time, however, military police of 80 mtbr were despatched to Ovčara to be ready to secure the prisoners of war when the buses arrived.<sup>1211</sup> This last action is inconsistent with the view that Mile Mrkšić had already decided to hand over the prisoners of war to the TO pursuant to the wishes of the “government.” In accordance with normal practice these orders were no doubt given by Mile Mrkšić through his command staff at OG South.

306. There is no direct evidence of either order but it is clear that the buses with the prisoners went from the JNA barracks to Ovčara, arriving between 1330 and 1430 hours, and military police of 80 mtbr went to Ovčara and had arrived there before the prisoners arrived.<sup>1212</sup> The Chamber notes that it is the evidence of Major Vukašinić (corroborated by the evidence of Veselin Šljivančanin<sup>1213</sup>) that he had been told by Captain Predojević that the buses had left the barracks for Ovčara on the order of the commander (*i.e.* Mile Mrkšić).<sup>1214</sup> The Chamber accepts that the orders of the military police of 80 mtbr to go to Ovčara did not pass through the commander of 80 mtbr, LtCol Vojnović or the commander of the military police of 80 mtbr, Captain Vezmarović; neither of them was at the command post of 80 mtbr at the time. In the normal course this order would have passed from the OG South command to the command post of 80 mtbr to be dealt with by duty staff. The 80 mtbr was the JNA unit with responsibility for local security in the area which included Ovčara. Some of the military police of the 80 mtbr went immediately to Ovčara. LtCol Vojnović knew nothing of this, but on noticing buses at Ovčara he went to the hangar.<sup>1215</sup> As detailed elsewhere, he called for more reinforcements from 80 mtbr and Captain Vezmarović did not go to the hangar until he heard of the security duty late in the afternoon.<sup>1216</sup>

307. Not long after the arrival of the buses at Ovčara, on his evidence at approximately 1500 hours, but in the Chamber’s finding earlier, LtCol Panić, Mile Mrkšić’s Deputy and Chief of Staff, arrived at Ovčara.<sup>1217</sup> He testified that as he was on his way from the JNA barracks to Negoslavci, he decided to stop at Ovčara to see if the buses had arrived and to see how the trials of the prisoners of war, which had been the subject of discussion at the SAO “government” meeting at Velepomet discussed earlier, were progressing so that he could report this to his commander, Mile Mrkšić.<sup>1218</sup> While the Chamber accepts that Panić arrived at Ovčara shortly after the arrival of the buses from the JNA barracks, it is unable to accept his explanation as to why he was at Ovčara. It is entirely

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<sup>1211</sup> See *supra*, para 261.

<sup>1212</sup> See *supra*, para 261.

<sup>1213</sup> Veselin Šljivančanin, T 13663.

<sup>1214</sup> Ljubiša Vukašinić, T 15036.

<sup>1215</sup> See *supra*, para 256.

<sup>1216</sup> See *supra*, para 265.

<sup>1217</sup> Miodrag Panić, T 14328.

<sup>1218</sup> Miodrag Panić, T 14324.

lacking in credibility that he believed that trials of prisoners could be in progress at Ovčara. There was manifestly no time for this to have been implemented, even had there been the necessary skilled investigators, prosecutors, defence counsel, or judges and physical facilities, which was manifestly not the case. In the Chamber's finding his presence at Ovčara was to assess the position and to report to Mile Mrkšić.

308. LtCol Panić, having visited Ovčara in the afternoon of 20 November 1991, returned to the command post of OG South at Negoslavci and immediately reported the situation he had seen there directly to Mile Mrkšić.<sup>1219</sup> On his account he was at Ovčara for only 15 minutes.<sup>1220</sup> LtCol Panić did not suggest that he could remember the precise details of all that he reported to Mile Mrkšić. He was able to say only that from his report, Mile Mrkšić "received complete information" about what Panić had seen at Ovčara.<sup>1221</sup> In the Chamber's finding, however, his true appreciation of the situation is evident from his statement to Mile Mrkšić to the effect that there was a serious threat to the prisoners held there.<sup>1222</sup> He underlined his concern by going on to advise Mile Mrkšić that although the 80 mtbr had sufficient units at their disposal to secure the prisoners, Mile Mrkšić should offer LtCol Miodrag Vojnović (the commander of the 80 mtbr) security assistance at Ovčara, "if required".<sup>1223</sup> As indicated earlier, while the Chamber had the clear impression of LtCol Panić as he gave his evidence, that the witness was not being frank when speaking of his own knowledge of mistreatment of the prisoners of war that day, so as to minimise the truth in that respect, the Chamber is entirely persuaded that in other respects the evidence of LtCol Panić is reliable and reflects what did occur that afternoon when LtCol Panić reported to Mile Mrkšić.

309. The Chamber also accepts the evidence in the circumstances and finds that at the time of his report as Chief of Staff to his commander, Panić would have reported reliably what he had seen and heard and his own concerns about the situation. Elsewhere in this Judgement the Chamber has recorded its findings as to the situation at Ovčara that afternoon at the time of LtCol Panić's visit.<sup>1224</sup> While he may have been at Ovčara only some 15 minutes that is more than time enough for him to make a reliable assessment of the situation. He does say that he did not actually enter the hangar.<sup>1225</sup> If that were so, it is extremely surprising that he did not directly view the prisoners of war who had been taken into the custody of the JNA by OG South that morning and for which OG South, of which LtCol Panić was Chief of Staff, was then responsible. That was the evident point of his visit to Ovčara. Even without actually entering the hangar, however, the presence outside the

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<sup>1219</sup> Miodrag Panić, T 14328.

<sup>1220</sup> Miodrag Panić, T 14481.

<sup>1221</sup> Miodrag Panić, T 14328.

<sup>1222</sup> Miodrag Panić, T 14470.

<sup>1223</sup> Miodrag Panić, T 14328; 14474.

<sup>1224</sup> *See supra*, para 262.

hangar, as confirmed by other evidence, of a large group comprising TOs and paramilitaries including volunteers, some of whom were armed, with heightened emotions, seeking to gain access to the “enemy” prisoners, can only have been too obvious. While he was at Ovčara, in the Chamber’s finding, Panić had also received the report of LtCol Milorad Vojnović, the commander of 80 mtbr, who was also at Ovčara at the time.<sup>1226</sup> Despite contrary evidence, the Chamber accepts that LtCol Panić was told by LtCol Vojnović that there had been attempts by some men to enter the hangar, but that his 80 mtbr military police had prevented them.<sup>1227</sup> LtCol Vojnović also told Panić of his impression that the armed men trying to enter the hangar were wanting to take revenge on the prisoners detained there.<sup>1228</sup> On some evidence, by the time of LtCol Panić’s visit, the 80 mtbr may have been able to establish some order. That did occur, as is apparent from the evidence, including that of Major Ljubiša Vukašinić (deputy to Veselin Šljivančanin), although not surprisingly recollections about some of the detail as to time and circumstances vary. Even if that had by then occurred, the problem posed by the group of people remained, however, and the disparity between the numbers of this large group, which included armed people, and the relatively small number of JNA soldiers providing the security for the hangar and the prisoners inside, can only have been too obvious. The Chamber has no hesitancy in accepting from Panić’s evidence, therefore, that when reporting he expressly put to Mrkšić what he had concluded from what he had seen at Ovčara, that there was a serious threat to the prisoners held there and that Mrkšić should offer to the commander of the 80 mtbr security assistance if required. The Chamber would further note that there is no evidence to suggest that any action was taken by Mile Mrkšić about the situation at Ovčara following this report by his Deputy and Chief of Staff, Panić.

310. It was submitted that the Chamber should not accept that LtCol Panić did report to Mile Mrkšić at Negoslavci that afternoon. In particular, LtCol Panić did not identify the exact location in the OG South command post of his meeting with Mile Mrkšić, his time estimates did not accord with all other evidence, and he did not give an account of all he had said to Mile Mrkšić. In the Chamber’s view, although it is relevant and has been weighed, it is not a telling consideration against the credibility and reliability of Panić’s evidence about these matters that he did not specify the precise location of this particular meeting, or that the many estimates, rationalisations or assumptions as to time, and the order of particular events, varies as between witnesses, or that Panić does not recall after some 15 years all that was said between Mile Mrkšić and himself at that particular meeting.

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<sup>1225</sup> Miodrag Panić, T 14882-14483.

<sup>1226</sup> *See supra*, para 258.

<sup>1227</sup> Miodrag Panić, T 14325;14462.

<sup>1228</sup> Miodrag Panić, T 14325.

311. Major Ljubiša Vukašinić, deputy to Veselin Šljivančanin, also gave evidence of reporting the situation at Ovčara to Mile Mrkšić at the OG South command post at Negoslavci late in the afternoon of 20 November 1991.<sup>1229</sup> It is his evidence that “I entered the hall, addressed my commander, and literally, I said, “Colonel comrade, I was at Ovčara. People are lodged there. I had some problems with the Territorial Defence members. I calmed down the situation. They departed somewhere. I propos[e] that we strengthen security detail there, because I have a feeling that there might be some problems in the future.”<sup>1230</sup> He said that Mile Mrkšić replied “You may go”, and said nothing further.<sup>1231</sup> In his testimony, discussed in more detail elsewhere in this Judgement,<sup>1232</sup> Major Vukašinić described seeing earlier in the afternoon, TO members slapping and hitting a group of prisoners from Vukovar hospital inside the Ovčara hangar.<sup>1233</sup> After seeing this, Major Vukašinić said he spoke to Miroljub Vujović, who was at Ovčara, convinced him that the TOs had to be removed from the hangar, and called on the JNA soldiers of the 80 mtbr to guard the hangar.<sup>1234</sup> He left Ovčara and as soon as he reached Negoslavci he had a rest, and then he met Mile Mrkšić and made his report.<sup>1235</sup> Once again his evidence as to time does not pretend to be precise. He felt he must have met Mile Mrkšić at around 1700 hours.<sup>1236</sup> For reasons given elsewhere the Chamber is not able to accept as honest aspects of Major Vukašinić’s evidence as to events at Ovčara while he was there, nor as to the timing or duration of his visit.<sup>1237</sup>

312. The reference of Major Vukašinić to meeting Mrkšić in the “hall”,<sup>1238</sup> appears to the Chamber to be to the main room at the OG South command post. It is the case that Major Vukašinić does not suggest that he provided specific details to Mile Mrkšić of what he saw at Ovčara but he was, in the Chamber’s view, quite clear in his advice to strengthen the security detail there. There is no evidence that any action was taken by Mile Mrkšić in response to his advice.

313. Having weighed the evidence relating to this evidence of Major Vukašinić, the Chamber is satisfied and finds that he did report to Mile Mrkšić essentially as he described about the events at Ovčara that afternoon, and that Mile Mrkšić made no response to his report or the advice it contained which is noted above.

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<sup>1229</sup> Ljubiša Vukašinić, T 15045.

<sup>1230</sup> Ljubiša Vukašinić, T 15045.

<sup>1231</sup> Ljubiša Vukašinić, T 15045.

<sup>1232</sup> *See supra*, para 255.

<sup>1233</sup> Ljubiša Vukašinić, 15037.

<sup>1234</sup> Ljubiša Vukašinić, T 15038-15042.

<sup>1235</sup> Ljubiša Vukašinić, T 15045-15046.

<sup>1236</sup> Ljubiša Vukašinić, T 15179.

<sup>1237</sup> *See supra*, paras 259-260.

<sup>1238</sup> Ljubiša Vukašinić, T 15045.

314. Although Colonel Radoje Trifunović testified that the daily briefings at the OG Sought command post in Negoslavci “were most often” held at 1700 hours,<sup>1239</sup> the Chamber heard evidence from several JNA officers that the briefing on 20 November 1991 began at approximately 1800 hours.<sup>1240</sup> In the Chamber’s finding, the evening briefing at the OG Sought command post began at approximately 1800 hours on 20 November 1991. The daily briefings were regularly attended by battalion commanders of OG South and other subordinate commanders, their assistant commanders, and the OG South commander, Mile Mrkšić, and his Chief of Staff, LtCol Panić.<sup>1241</sup> The commanders would report the situation developing on the ground to Mile Mrkšić.<sup>1242</sup> On 20 November 1991, Colonel Trifunović, Colonel Boriša Gluščević, assistant to the commander of the gmtbr for logistics, LtCol Milovan Lešanović, commander of the gmtbr’s anti-aircraft defence, and LtCol Panić, among others, attended the briefing.<sup>1243</sup>

315. It is the evidence of LtCol Milorad Vojnović, the commander of 80 mtbr, that at this briefing he made a report to Mile Mrkšić about what he had seen at Ovčara during the afternoon of 20 November 1991. It was Vojnović’s evidence that he was late returning from Ovčara to Negoslavci for the evening briefing. He went immediately to the operations room where the briefing was in progress.<sup>1244</sup> It is his evidence that he reported to Mile Mrkšić at the briefing: “I’m coming from Ovčara. At Ovčara there’s a mess. Some prisoners of war have been brought there from a hospital, I don’t know. I don’t know who exactly organised them and brought them there. I saw that they were being treated improperly, that they are being made to go through a gauntlet, that they were beaten with equipment people had. And I saw a man hit one of the prisoners with a rifle-butt as he was passing through the gauntlet up to the entrance to the hangar.”<sup>1245</sup> It is LtCol Vojnović’s evidence that Mile Mrkšić responded by waiving his hand dismissively and saying either “don’t talk to me about this”,<sup>1246</sup> or “don’t even tell me about that”.<sup>1247</sup>

316. It is LtCol Vojnović’s evidence that he left the operations room with the other officers at the end of the briefing and may then have gone to the 80 mtbr command post which was located in another building.<sup>1248</sup> He then met Mile Mrkšić again outside the OG South command post.<sup>1249</sup> He

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<sup>1239</sup> Radoje Trifunović, T 8229.

<sup>1240</sup> Miodrag Vojnović, T 8229-8232; Miodrag Panić, T 14330, T 14358, 14358-14359; Dragi Vukosavljević, T 8745; Radoje Paunović, T14150.

<sup>1241</sup> Radoje Trifunović, T 7988; Miodrag Panić, T 14383-14984.

<sup>1242</sup> Radoje Trifunović, T 7987.

<sup>1243</sup> Radoje Trifunović, T 8172 ; Boriša Gluščević, T 12519; Milan Lešanović, T 12189; Miodrag Panić, T 14330.

<sup>1244</sup> Milorad Vojnović, T 8848; 8825;8980.

<sup>1245</sup> Milorad Vojnović, T 8849.

<sup>1246</sup> Milorad Vojnović, T 8849.

<sup>1247</sup> Milorad Vojnović, T 8980.

<sup>1248</sup> Milorad Vojnović, T 8850; 8991.

<sup>1249</sup> Milorad Vojnović, T 8990-8991.

explained the situation he had experienced at Ovčara,<sup>1250</sup> perhaps, he said, describing the situation “more in detail” than during the briefing.<sup>1251</sup> It is LtCol Vojnović’s recollection that Mile Mrkšić then said in effect “what were you doing there? Why were you there?”<sup>1252</sup> LtCol Vojnović understood from this reaction that Mile Mrkšić was surprised to hear about the 80 mtbr’s presence, and Vojnović’s presence, at Ovčara on 20 November 1991.<sup>1253</sup>

317. As mentioned earlier, Colonel Gluščević, and LtCol Milovan Lešanović were also present at this briefing,<sup>1254</sup> but did not give evidence of hearing LtCol Vojnović’s report to Mrkšić. They did not, however, deny that this occurred. Colonel Trifunović who was present at the briefing did not remember Vojnović, nor did he say that the mistreatment of prisoners at Ovčara was mentioned during the briefing.<sup>1255</sup> Colonel Trifunović, however, recalled that he later heard from some officers at the command that Vojnović had been to the command post later that evening to speak to Mrkšić about the mistreatment of prisoners “on one of the previous days”.<sup>1256</sup>

318. It is the case that LtCol Panić in his evidence did not mention seeing LtCol Vojnović at the OG South briefing, or hearing him report on Ovčara. Again this may be simply because of an incomplete recollection of Panić. The briefings were a daily occurrence, including a large number of participants and some 15 years have passed. However, there is also the evidence of Captain Vukosavljević, chief of the 80 mtbr security organ, that he did meet LtCol Vojnović that evening at, in the Chamber’s estimate, around 1930 hours, outside the operations room.<sup>1257</sup> It was after the regular briefing.<sup>1258</sup> As will be discussed shortly, Captain Vukosavljević says he had come to report to his own commander LtCol Vojnović, his concerns about the developing situation at Ovčara.<sup>1259</sup> He was there told by LtCol Vojnović that Vojnović had informed Mile Mrkšić about the events unfolding at Ovčara at the regular briefing and that Mile Mrkšić had not reacted to the information given.<sup>1260</sup> Captain Vukosavljević also testified that a further discussion about the situation at Ovčara involving both LtCol Vojnović and Mile Mrkšić followed. In these respects the evidence of Captain Vukosavljević tends to confirm, indirectly for the first, and directly for the second, that there were two discussions about Ovčara between LtCol Vojnović and Mile Mrkšić that evening at

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<sup>1250</sup> Milorad Vojnović, T 8991.

<sup>1251</sup> Milorad Vojnović, T 8850-8851.

<sup>1252</sup> Milorad Vojnović, T 8852; 8990-8991.

<sup>1253</sup> Milorad Vojnović, T 8852-8853.

<sup>1254</sup> *See supra*, para 314.

<sup>1255</sup> Radoje Trifunović, T 8171-8172.

<sup>1256</sup> Radoje Trifunović, T 8171.

<sup>1257</sup> Dragi Vukosavljević, T 8676-8680; 8678.

<sup>1258</sup> Dragi Vukosavljević, T 8677;8730.

<sup>1259</sup> Dragi Vukosavljević, T 8675.

<sup>1260</sup> Dragi Vukosavljević, T 8680.

Negoslavci. In other respects his evidence about the second discussion will be considered more closely shortly.

319. There is also evidence of Colonel Gluščević, assistant for logistics to Mile Mrkšić,<sup>1261</sup> that he and Mile Mrkšić stayed in the operations room of OG South command post for approximately 20 minutes after the briefing while Mile Mrkšić gave him instructions.<sup>1262</sup> The Defence of Mrkšić submits that because of this evidence it cannot be accepted that there was a second discussion between LtCol Vojnović and Mile Mrkšić. In the Chamber's view, this submission depends on too restrictive a view of the evidence of LtCol Vojnović. It is not the effect of his evidence, in the Chamber's understanding, that he spoke to Mile Mrkšić for the second time immediately after the briefing. Rather, the Chamber understands from Vojnović's evidence that he only met Mile Mrkšić later. LtCol Vojnović may well have been in the 80 mtbr command post during the time Colonel Gluščević spent with Mile Mrkšić. The Chamber has also considered the evidence of Captain Vukosavljević in this respect. He waited at the OG South command post to see LtCol Vojnović for what could have been some one and a half hours.<sup>1263</sup> However, he did go to have a meal while he waited for the briefing to finish.<sup>1264</sup> While he saw both LtCol Vojnović and Mile Mrkšić after the briefing, it is not his evidence that he saw them the moment the briefing finished. The meeting between Mile Mrkšić and Colonel Gluščević may well have taken place before Mile Mrkšić met LtCol Vojnović and Captain Vukosavljević.

320. A matter which the Chamber has had to consider closely indeed is that there is no mention of reporting to Mile Mrkšić, in the official notes of interviews with LtCol Vojnović in the course of military investigations held in Belgrade in 1998 into the events in Vukovar and Ovčara in November 1991.<sup>1265</sup> LtCol Vojnović explained, *inter alia*, that he consistently mentioned reporting the situation he had witnessed at Ovčara to Mile Mrkšić when interviewed, but that those questioning him and recording the interviews, including, it appears, the then president of the military court, omitted to record what he said about this.<sup>1266</sup> To the limited extent that the Chamber has been informed about the circumstances and nature of this military investigation in 1998, it does appear that it was undertaken at a time of some agitation that Serbia should make available the present Accused to this Tribunal for trial on an indictment. The outcome of the military investigation was to the effect that there was no case against the Accused. The Accused were not then made available to this Tribunal until several years later. Of course others have since been tried

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<sup>1261</sup> Boriša Gluščević, T 12505.

<sup>1262</sup> Boriša Gluščević, T 12519

<sup>1263</sup> Dragi Vukosavljević, T 8676-8680; 8678.

<sup>1264</sup> Dragi Vukosavljević, T 8732.

<sup>1265</sup> Milorad Vojnović, T 9097; 9144-9145.

<sup>1266</sup> Milorad Vojnović, T 9145-9147.

and convicted in Serbia in respect of the deaths at Ovčara on 20 November 1991. These have been members of the Serb TOs or paramilitary forces at the time, rather than members of the JNA. The explanation before this Tribunal of LtCol Vojnović has to be viewed in light of that background and without any full investigation of the circumstances in which the interviews were conducted in 1998. It remains clear, however, that the official records of what was there said by LtCol Vojnović do not mention that he made any report to Mile Mrkšić on 20 November 1991 about Ovčara. Because of this, it is submitted that Vojnović's present evidence of making these reports should not be accepted.

321. The Chamber is not able to make a direct finding about the truth or falsity of the explanation of LtCol Vojnović for the absence of any reference to reports to Mile Mrkšić. The circumstances as disclosed by the evidence leave the issue as contentious and unresolved. Because of this, the Chamber approaches the evidence of LtCol Vojnović with extreme caution. The Chamber observes, however, that when dealing with this issue, Vojnović gave a clear impression of being frank and honest, in respect of the question of reporting to Mile Mrkšić, as best as his recollection of the interviews or proceedings in 1998 allowed. The Chamber is also conscious, as it discusses in this section of this decision, that other JNA officers, who like LtCol Vojnović had been at Ovčara on the afternoon of 20 November 1991, saw it to be their duty to go to Mile Mrkšić and report their concerns. Significantly, it is the fact in the finding of the Chamber as discussed earlier, that the 80 mtbr military police, who had been providing security at Ovčara, withdrew from Ovčara following the regular OG South briefing at Negoslavci. The evidence of LtCol Vojnović of his two reports to Mile Mrkšić, is, in the Chamber's finding, entirely consistent with this, indeed it explains how it came to happen. It is the effect of the evidence of Vojnović that from the discussion following the briefing, during his second report to Mile Mrkšić, he understood that it was not Mrkšić's view that he and his troops should be at Ovčara at that stage. The Chamber finds that accordingly, Vojnović then acted from the command post in Negoslavci to withdraw his troops from Ovčara. Equally significantly, Vukosavljević, who was sent by LtCol Vojnović to convey the order, found on his arrival at Ovčara that they had already prepared to withdraw indicating that an order to do so had reached them independently of LtCol Vojnović.<sup>1267</sup> This preparation to withdraw is confirmed by the evidence of Captain Vezmarović.<sup>1268</sup> Such an order can only have originated from Mile Mrkšić. It was communicated to Ovčara from Mile Mrkšić quite independently of LtCol Vojnović and Captain Vukosavljević of 80 mtbr.<sup>1269</sup> In the Chamber's finding it is clear that Vojnović would never have dared to withdraw his soldiers from Ovčara had he not understood this

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<sup>1267</sup> Dragi Vukosavljević, T 8684-8685.

<sup>1268</sup> Dragan Vezmarović, T 8437.

<sup>1269</sup> See *supra*, para 284.

to be the view of Mile Mrkšić. In these circumstances, having also weighed the other matters discussed very carefully, the Chamber concludes and finds that LtCol Vojnović did indeed report to Mile Mrkšić, twice in the evening of 20 November 1991, about the situation at Ovčara, the essence of his reports being as indicated in his evidence although the circumstances of the second are more fully developed in the evidence of Captain Vukosavljević to which the Chamber now turns. The evidence does not allow the Chamber to make a finding as to the precise time of the order of Mile Mrkšić for the withdrawal of the JNA security, then provided by the 80 mtbr, from Ovčara. The course of events and the available evidence both indicate that the order of Mile Mrkšić was made shortly before, or perhaps shortly after, the evening briefing. In the Chamber's finding, as discussed elsewhere in this Judgement the order of Mile Mrkšić to withdraw was in fact conveyed to Captain Vezmarović at Ovčara by Captain Karanfilov of the OG South security staff. The direct consequence of the implementation of this order to withdraw the JNA security guarding the prisoners of war in the hangar at Ovčara, was that, thereafter, the prisoners of war were entirely in the custody of the Serb TO and paramilitary forces at Ovčara, forces which remained at that time under the *de jure* command of Mile Mrkšić.

322. In reaching the findings just discussed the Chamber also took into account the further evidence of Captain Vukosavljević that in company with LtCol Vojnović he too reported to Mile Mrkšić at Negoslavci on 20 November 1991, in the Chamber's estimate, it would have been about 1930 hours, that he had seen a group of armed men at Ovčara that were threatening the prisoners being secured by the 80 mtbr, and that the group of men contended that the prisoners belonged to them and not to the 80 mtbr.<sup>1270</sup> He said that Mile Mrkšić reacted angrily to the information received about Ovčara and told the two men that he had no time to deal with the matter.<sup>1271</sup> It is Captain Vukosavljević's evidence that he had then withdrawn a little as the two more senior officers conversed.<sup>1272</sup> They walked away a little as they talked and Mile Mrkšić did not return.<sup>1273</sup> After the two men walked away, Vojnović returned and gave Vukosavljević the order to go to Ovčara to withdraw the 80 mtbr.<sup>1274</sup> LtCol Vojnović confirmed that he had met Mile Mrkšić together with Captain Vukosavljević.<sup>1275</sup> In the Chamber's finding this was the meeting between LtCol Vojnović and Mile Mrkšić which occurred following the evening briefing and which in part is considered earlier,<sup>1276</sup> *i.e.* the second of their meetings that night. It was Captain Vukosavljević's report to LtCol Vojnović that appears to have prompted Vojnović to raise Ovčara again with Mile

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<sup>1270</sup> Dragi Vukosavljević, T 8681.

<sup>1271</sup> Dragi Vukosavljević, T 8681.

<sup>1272</sup> Dragi Vukosavljević, T 8682.

<sup>1273</sup> Dragi Vukosavljević, T 8683.

<sup>1274</sup> Dragi Vukosavljević, T 8682.

<sup>1275</sup> Milorad Vojnović, T 8851.

<sup>1276</sup> *See supra*, paras 316; 321.

Mrkšić. The evidence of LtCol Vojnović and Captain Vukosavljević does differ in particular respects about the meeting. In particular, LtCol Vojnović said that it was he who stood back a little as Captain Vukosavljević reported to Mile Mrkšić and, as he understood from Vukosavljević, Mile Mrkšić responded by saying “Well, just leave it. Don’t bother me with that kind of thing”.<sup>1277</sup> In the Chamber’s finding, however, toward the end of the encounter between the three men, Mile Mrkšić and LtCol Vojnović, as the two senior officers, did talk together as they walked a little away from Captain Vukosavljević,<sup>1278</sup> that being the conversation which LtCol Vojnović’s evidence detailed earlier dealt with.<sup>1279</sup> Aspects of the evidence of LtCol Vojnović and Captain Vukosavljević differ, but the Chamber is satisfied in the end that they are honestly recounting their respective recollections, the essence of which are sufficiently confirmatory to persuade the Chamber that they are dealing with events that did occur, rather than fabricated events, and in the respects indicated they support the findings recorded above.

## 2. Mile Mrkšić’s departure to Belgrade

323. A further issue, which is in dispute between the parties, needs to be considered, namely whether Mile Mrkšić remained at the command post at Negoslavci in the evening hours of 20 November 1991. The Mrkšić Defence submits that Mile Mrkšić was not at his command post.<sup>1280</sup> It is advanced in the evidence that in the evening hours of 20 November 1991 he left Negoslavci to go to Belgrade and that he returned to Negoslavci on 22 November 1991.<sup>1281</sup> The Prosecution, on the other hand argues that Mile Mrkšić left Negoslavci at 0815 hours the following day as indicated in the gmtbr war log.

324. The evidence of Nenad Relić and Djudjica Mrkšić, Mile Mrkšić’s wife, is that Mile Mrkšić had arrived at his home in Belgrade from Negoslavci while the evening news on 20 November 1991 was being broadcast on television.<sup>1282</sup> The evidence of Nenad Relić and Djudjica Mrkšić, if correct, indicates that Mile Mrkšić could not have left the command post in Negoslavci later than some time between 1800 and 1830 hours. That is contrary to the Chamber’s findings on the evidence discussed elsewhere that the regular briefing at OG South that evening commenced at about 1800 hours and may have lasted about an hour and a half,<sup>1283</sup> and that Mile Mrkšić was at the briefing, and also the evidence of Defence witness Colonel Gluščević, a JNA officer who spent approximately 20 minutes with Mile Mrkšić after the regular briefing, and also the evidence, which

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<sup>1277</sup> Milorad Vojnović, T 8852; 8986.

<sup>1278</sup> Dragi Vukosavljević, T 8683.

<sup>1279</sup> *See supra*, paras 316; 321.

<sup>1280</sup> Mrkšić Defence Final Brief, para 239.

<sup>1281</sup> Mrkšić Defence Final Brief, paras 239-246.

<sup>1282</sup> Djudjica Mrkšić, T 11369-11370; Nenad Reljić, T 11490-11491.

<sup>1283</sup> Dragi Vukosavljević, T 8678.

the Chamber has accepted, that following the regular briefing Mile Mrkšić had a second discussion about Ovčara involving LtCol Vojnović and Captain Vukosavljević.<sup>1284</sup>

325. The evidence of Nenad Relić and Djudjica Mrkšić is also contrary to Defence evidence that Mile Mrkšić left the OG South command post in Negoslavci only well after the regular briefing came to an end. Velimir Ćorić testified that in the evening of 20 November 1991, he accompanied Mile Mrkšić to Belgrade,<sup>1285</sup> accepting that they may have arrived before midnight.<sup>1286</sup> The effect of Velimir Ćorić's evidence is that Mile Mrkšić was much later leaving Negoslavci on 20 November 1991 than is the effect of the evidence of his wife and Nenad Relić.

326. Leaving aside the precise time at which Mile Mrkšić allegedly left the command post on 20 November 1991, the Chamber notes that among the witnesses mentioned, Nenad Relić, Djudjica Mrkšić, and Velimir Ćorić are the only witnesses that testified that Mile Mrkšić left the command post that evening to go to Belgrade or had planned to do so. Colonel Trifunović, however, further stated that Mile Mrkšić returned to the command post at Negoslavci just before midnight on 20 November 1991.<sup>1287</sup> It is his evidence that, earlier during the day Mile Mrkšić had tasked him to draw up a chart on the operations that had been carried out in Vukovar. The chart was in preparation for a briefing that was going to be held the following day in Belgrade.<sup>1288</sup> Upon Mile Mrkšić's return to the command post before midnight, Colonel Trifunović informed Mile Mrkšić that he had completed the chart.<sup>1289</sup> It is his testimony that Mile Mrkšić's replied that he would look at the chart the following morning, and then went to bed.<sup>1290</sup> The effect of this evidence is that Mile Mrkšić remained in Negoslavci during the night of 20/21 November 1991 and did not travel to Belgrade.

327. There is further evidence lending support to the Prosecution's submission that Mile Mrkšić did not leave for Belgrade on 20 November 1991. The entry of 21 November 1991 of the gmtbr war log records that at 0815 hours, Mile Mrkšić and a group of officers went to a reception by the Federal Secretary for National Defence in Belgrade.<sup>1291</sup> The accuracy of the entry which is signed by Colonel Trifunović, was confirmed by Trifunović in court.<sup>1292</sup> Colonel Trifunović further testified that he thought that Mile Mrkšić together with a group of officers travelled to Belgrade that

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<sup>1284</sup> As discussed elsewhere in this Judgement, at around 2000 hours on 20 November 1991, Mile Mrkšić also met Veselin Šljivančanin at the command post. *See infra*, para 389.

<sup>1285</sup> Velimir Ćorić, T 11718. *See also* Milovan Lešanović, T 12189.

<sup>1286</sup> Velimir Ćorić, T 11722-11723;11729.

<sup>1287</sup> Radoje Trifunović, T 8262-8263.

<sup>1288</sup> Radoje Trifunović, T 8166-8167.

<sup>1289</sup> Radoje Trifunović, T 8166-8168.

<sup>1290</sup> Radoje Trifunović, T 8168.

<sup>1291</sup> Exhibit 401, p 41.

<sup>1292</sup> Radoje Trifunović, T 8138; 8262-8264; 8166-8168.

day on a helicopter.<sup>1293</sup> It is also the evidence of LtCol Panić that Mile Mrkšić left for Belgrade in a helicopter in the morning of 21 November 1991 to attend a reception at the Federal Secretary for National Defence.<sup>1294</sup>

328. In respect of this evidence the Mrkšić Defence sought to establish that Mile Mrkšić could not have travelled to Belgrade by helicopter on 21 November 1991. Four pilots belonging to the 890<sup>th</sup> helicopter squadron of the JNA (“890 Squadron”), which assisted the OG South during the relevant time, testified to this effect.<sup>1295</sup> In the Chamber’s assessment the pilots depended for their evidence on the flight logs of 890 Squadron<sup>1296</sup> and had no independent personal recollection. The flight logs of 890 Squadron helicopters had either omitted at least one material flight or erroneously recorded critical information. Hence the Chamber is not able to accept from the flight logs and the evidence of the pilots, that Mile Mrkšić did not fly from Negoslavci to Belgrade by Gazelle helicopter at around 0815 hours on the morning of 21 November 1991. It is not able to disregard the evidence that he did so. This evidence, however, does not enable any positive finding one way or the other, although as a matter of weight and reliability, in the Chamber’s assessment, the evidence favours the view that he did fly by helicopter on 21 November 1991.

329. In the Chamber’s finding, it is established that Mile Mrkšić did travel to Belgrade but it is not established whether he did so late on 20 November 1991 or early on 21 November 1991. If he did travel to Belgrade late on 20 November 1991, in the Chamber’s finding he was still in Negoslavci at the time he gave his order for the 80 mtbr of the JNA to withdraw the security it was providing for the prisoners of war held in the hangar at Ovčara, and also, thereafter, when he heard a further report about Ovčara from LtCol Vojnović, and a report from Captain Vukosavljević, and confirmed by his reaction that LtCol Vojnović should withdraw his 80 mtbr military police personnel from the hangar at Ovčara. It was the former of these orders of Mile Mrkšić, conveyed to Captain Vezmarović at the hangar at Ovčara by Captain Karanfilov, on which Captain Vezmarović acted and prepared the 80 mtbr personnel to withdraw from Ovčara, although Captain Vukosavljević arrived at Ovčara from Negoslavci just before Captain Vezmarović and his personnel actually withdrew. It is possible on the evidence, that Mile Mrkšić could have departed from Negoslavci by road for Belgrade before the remaining 80 mtbr personnel actually withdrew from Ovčara, thus leaving the prisoners of war in the custody of the Serb TOs and paramilitary forces which were there.

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<sup>1293</sup> Radoje Trifunović, T 8264.

<sup>1294</sup> Miodrag Panić, T 14413.

<sup>1295</sup> Nenad Novičević, T 11817-11819; Milan Babić, T 11802-11803;11790; Ivan Minić, T 11766; Dušan Milošević, T 12080-12082.

<sup>1296</sup> Exhibit 764; Exhibit 765.

## **E. Role of Miroslav Radić**

### **1. Evidence and Findings**

330. As discussed elsewhere in this Judgement, the second Accused, Miroslav Radić, was the commander of a company within 1/gmtbr and also of an assault group part of 1 AD.<sup>1297</sup> The Prosecution case against Miroslav Radić is *inter alia* that through his participation in the evacuation of the hospital and what followed he participated in the joint criminal enterprise alleged in the Indictment, or aided and abetted the crimes charged.<sup>1298</sup> The Chamber will review below the evidence about Miroslav Radić's involvement in the events described in this Chapter.

331. Two witnesses testified that Miroslav Radić was present at Vukovar hospital on 18 November 1991. There are difficulties, however, affecting this evidence. Dr Juraj Njavro gave evidence that a JNA captain arrived at the hospital on 18 November 1991 at about 1300 hours with a JNA unit and placed guards.<sup>1299</sup> He testified further that the captain returned that evening and inspected the basement of the hospital with Bogdan Kuzmić to identify individuals.<sup>1300</sup> On 19 November 1991 the captain introduced himself to the doctor as Miroslav Radić.<sup>1301</sup> The Chamber accepts from the main body of evidence, and from other incidents described by Dr Njavro as occurring on 18 November 1991,<sup>1302</sup> that he is mistaken as to the date that the JNA captain was first at the hospital. It was in fact on 19 November 1991.<sup>1303</sup> In a book published in 1992, co-authored by Dr Njavro, the JNA captain is identified as Samardžić. The name of Miroslav Radić is not mentioned at all in this book.<sup>1304</sup> Dr Njavro suggested the editor had made this change,<sup>1305</sup> which the Chamber finds surprising and is unconvinced about this. Therefore, the Chamber is not able to rely on Dr Njavro's identification of Miroslav Radić at the hospital on any date.

332. P016 testified that he saw Miroslav Radić at the hospital on 18 November 1991 at around 1300-1400 hours.<sup>1306</sup> He said he was in Vukovar on 18 and 19 November 1991, but had no more specific recollection about the dates, nor any written record confirming his recollection of the

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<sup>1297</sup> See *supra*, paras 46; 101.

<sup>1298</sup> Prosecution Final Brief, para 461.

<sup>1299</sup> Juraj Njavro, T 1520-1522.

<sup>1300</sup> Juraj Njavro, T 1524-1525.

<sup>1301</sup> Juraj Njavro, T 1523; 1533.

<sup>1302</sup> Juraj Njavro testified that Dr Vesna Bosanac had been talking on the phone with Mile Mrkšić prior to the arrival of the JNA soldiers on 18 November 1991, and that Vesna Bosanac had left to attend talks with Mile Mrkšić on that day. However, he admits that he may have been mistaken about the dates, T 1649. Further, his recollection of the dates is contrary to the evidence of Vesna Bosanac, that Bosanac only received a call from Mrkšić and attended a meeting with him on 19 November 1991, T 676-677, see *supra*, paras 182-187.

<sup>1303</sup> See *supra*, para 187.

<sup>1304</sup> Juraj Njavro, T 1665-1669.

<sup>1305</sup> Juraj Njavro, T 1663-1664. See also T 1662.

<sup>1306</sup> P016, T 2176; 2317.

dates.<sup>1307</sup> It is his evidence that he thought he saw Miroslav Radić on 18 November 1991, just as “the evacuation of the Croatian soldiers had begun.”<sup>1308</sup> Other evidence overwhelmingly established this occurred on 20 November, a date on which P016 does not recall being in Vukovar.<sup>1309</sup> P016 was watching Croatian soldiers being carried out on stretchers, he says he asked the man he identified as Miroslav Radić how many wounded there were, to which Miroslav Radić responded by asking: “Do you know how many of our men they killed?” and then stated: “These are dead men.”<sup>1310</sup> However, P016 was unable to explain satisfactorily how he knew that the person he says he saw at the hospital on 18 November 1991 was Miroslav Radić. P016 did not indicate he had ever met Miroslav Radić before 18 November 1991. While, as a journalist, he had written about the gmtbr,<sup>1311</sup> he had not written about Miroslav Radić or his unit,<sup>1312</sup> and it was apparent from his evidence that he knew little of Radić’s position and role in the gmtbr. Further, when he gave a statement to the Prosecution in 1996, P016 did not know Miroslav Radić’s first name.<sup>1313</sup> For these reasons the Chamber is unable to be satisfied that P016 was at the hospital on 20 November 1991, or on 18 November 1991, that he identified Miroslav Radić and spoke to him, and that it was Miroslav Radić who spoke the words quoted by P016 in his evidence. Miroslav Radić testified that on 18 November 1991 he was helping with the transport of people from various shelters to Velepromet,<sup>1314</sup> and that he was not at the hospital that day.<sup>1315</sup> This is consistent with other evidence that civilians were transported to Velepromet from various locations late on 18 November 1991 after the surrender of the Croat forces that afternoon.<sup>1316</sup>

333. As recorded earlier in this Judgement, in the late morning of 19 November 1991, JNA soldiers led by Miroslav Radić reached and entered the hospital.<sup>1317</sup> Miroslav Radić had been ordered to do so by the commander of 1/gmtbr Major Tešić.<sup>1318</sup> Having arranged for guards at each entrance of the hospital in order to prevent people from accessing or leaving the hospital,<sup>1319</sup> it is the evidence of Miroslav Radić that he followed Major Tešić and Captain Bojkovski, the commander of 1coy 1/gmtbr, on a tour of the hospital, including the basement.<sup>1320</sup> Then, Major Tešić having left with Dr Vesna Bosanac, Miroslav Radić and Captain Bojkovski walked around

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<sup>1307</sup> P016 testified that he had a notebook at the time, but that he found it easier to make recordings on a tape. The tapes, however, were deleted and reused, T 2240; 2303-2304.

<sup>1308</sup> P016, T 2176; 2317.

<sup>1309</sup> P016, T 2211.

<sup>1310</sup> P016, T 2179.

<sup>1311</sup> P016, T 2177; 2301.

<sup>1312</sup> P016, T 2301.

<sup>1313</sup> P016, T 2310-2311.

<sup>1314</sup> Miroslav Radić, T 12646-12647.

<sup>1315</sup> Miroslav Radić, T 12708-12709.

<sup>1316</sup> *See supra*, paras 140; 161; 188.

<sup>1317</sup> *See supra*, para 187.

<sup>1318</sup> Miroslav Radić, T 12647-12648. *See also* Slavko Stijaković, T 12859-12860; Zoran Zirojević, T 13119.

<sup>1319</sup> Miroslav Radić, T 12649. *See also* 2D4, T 13001.

the hospital. They found two pistols that had been discarded.<sup>1321</sup> Miroslav Radić left before Major Tešić returned to the hospital and he was not at the hospital for the actual handover of the security from his soldiers to Captain Paunović of 2MP/gmtbr during the afternoon.<sup>1322</sup> It is his evidence that he then returned to his observation post<sup>1323</sup> at Nova Street 81 in Vukovar where he spent the evening.<sup>1324</sup> However, he attended the regular evening briefing at the command of Major Tešić.<sup>1325</sup>

334. Dr Njavro also testified that on 19 November 1991 Miroslav Radić came to the hospital in the morning before noon,<sup>1326</sup> introduced himself and told the witness that he was under arrest and was not to leave his room.<sup>1327</sup> Miroslav Radić explained that this detention was pursuant to an order from his superior,<sup>1328</sup> and that the mistreatment of the patients the previous night was done pursuant to orders or upon the permission of the “commander, Major Šljivančanin.”<sup>1329</sup> Dr Njavro further testified that he was kept in the room until 1900 hours when the guard was moved away.<sup>1330</sup> The Chamber has already recorded that it is not able to be satisfied with the reliability of Dr Njavro’s identification of Miroslav Radić, and there is uncertainty whether Dr Njavro is reliable in his recollection that these events were on 19 November.<sup>1331</sup> They could have been on 20 November. Indeed, while Dr Njavro testified that he was detained in his room until 1900 hours on 19 November 1991, Dr Vesna Bosanac testified that she saw him in the basement in the afternoon of 19 November 1991.<sup>1332</sup> Hence, the Chamber is unable to accept that Dr Njavro was detained on 19 November 1991, or that this was by Miroslav Radić. Further, it is difficult to accept that Miroslav Radić would have said, as Dr Njavro suggests, that mistreatment of patients occurred and that this was carried out upon the orders of Veselin Šljivančanin.

335. In light of these observations, the Chamber accepts that Miroslav Radić reached the hospital on 19 November 1991 around noon, that he had guards placed at the entrances and then moved around the hospital before returning to his observation post before the arrival of Captain Paunović with military police of 2MP/gmtbr, who took over security of the hospital from Miroslav Radić’s

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<sup>1320</sup> Miroslav Radić, T 12649-12650.

<sup>1321</sup> Miroslav Radić, T 12653.

<sup>1322</sup> Miroslav Radić, T 12653-12654. *See also* 2D4, T 13012.

<sup>1323</sup> When referring to the house where Miroslav Radić stayed and planned the operations on Nova Street no 81, the Chamber will refer to this as his observation post. The Chamber is aware that whether this post in the formal JNA structure was an observation post, command post or headquarters, is in great contention between the parties. The Chamber’s reference to this house as a observation post is only used as description of the house, and has no further implications.

<sup>1324</sup> Miroslav Radić, T 12653;12655.

<sup>1325</sup> Miroslav Radić, T 12798. *See also* Slavko Stijaković, T 12865; Zoran Zirojević, T 13122.

<sup>1326</sup> Juraj Njavro, T 1523; 1533.

<sup>1327</sup> Juraj Njavro, T 1523; 1533.

<sup>1328</sup> Juraj Njavro, T 1533.

<sup>1329</sup> Juraj Njavro, T 1535.

<sup>1330</sup> Juraj Njavro, T 1533.

<sup>1331</sup> *See supra*, para 331.

<sup>1332</sup> Vesna Bosanac, T 857.

soldiers. Other than this, there is no reliable evidence as to Miroslav Radić's actions at the hospital on this day. JNA soldiers under Miroslav Radić's command<sup>1333</sup> thus provided the initial security of the hospital, for a few hours, under Major Tešić's direction, until 2MP/gmtbr arrived.<sup>1334</sup> These soldiers were part of Miroslav Radić's assault group (3 AG).<sup>1335</sup>

336. Turning to 20 November 1991, the Chamber heard evidence that Miroslav Radić was present in front of the hospital participating in the triage of men and that he was at the JNA barracks later that morning. P030, who was at the triage, testified that a JNA officer addressed the person next to him as Captain Radić and asked him to carry out a search.<sup>1336</sup> P030 said he heard the name of Radić that morning four or five times.<sup>1337</sup> It is his evidence that, later on television, P030 saw Veselin Šljivančanin and recognised him as the officer who had given these orders to Radić.<sup>1338</sup> P030 also testified that on 20 November 1991 he saw the same Captain Radić calling out names at the JNA barracks.<sup>1339</sup> P030 identified Miroslav Radić on a photoboard, Exhibit 205 when giving evidence in court.<sup>1340</sup> However, in March 1993 when P030 gave a statement to the Prosecution he then stated that he did not know the rank or name of the officer whom he identified as Miroslav Radić in his evidence.<sup>1341</sup> There is no satisfactory explanation of this. It leaves the Chamber unable to be satisfied that P030 heard the name Radić at the hospital or that his identification of Miroslav Radić on a photoboard was reliable. Names were called out at the JNA barracks as efforts were made to identify hospital staff members and their husbands and return them to the hospital. This followed representations to Veselin Šljivančanin at the hospital. Their return to the hospital appears to have been under the direction of a member of Veselin Šljivančanin's security organ staff, Ljubiša Vukašinović, not Miroslav Radić.<sup>1342</sup>

337. P024 also testified that Miroslav Radić was at the Vukovar barracks when the buses with prisoners arrived.<sup>1343</sup> He testified that the people on the buses were beaten and that Miroslav Radić did nothing to stop the beating.<sup>1344</sup> When the buses left the barracks, Radić was in a military

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<sup>1333</sup> Miroslav Radić, T 12649; 2D4, T 13001. Even though evidence suggests that some paramilitaries were present outside the hospital on 19 November 1991 (P007, T 4007), even identified as members of Leva Supoderica and Petrova Gora TO (P022, T 4996), there is no evidence suggesting that any member of Petrova Gora TO or Leva Supoderica was taking part in the security detail at the hospital led by Miroslav Radić.

<sup>1334</sup> See *supra*, paras 182-183; 187.

<sup>1335</sup> See *infra*, para 640.

<sup>1336</sup> P030, T 9732; 9734.

<sup>1337</sup> P030, T 9734.

<sup>1338</sup> P030, T 9732; 9736.

<sup>1339</sup> P030, T 9739.

<sup>1340</sup> P030, T 9764.

<sup>1341</sup> P030, T 9834.

<sup>1342</sup> See *infra*, para 373.

<sup>1343</sup> P024, T 4205.

<sup>1344</sup> P024, T 4205-4206.

vehicle in front of the column.<sup>1345</sup> P024 purported to identify Miroslav Radić in an excerpt from the documentary film “100 days in Vukovar.”<sup>1346</sup> The Chamber is not able to accept, however, that the image he identifies as that of Miroslav Radić is the Accused. There is a lack of physical resemblance. The Chamber is not persuaded that the person who features in this excerpt is Miroslav Radić. Further, there are other deficiencies in his evidence. P024 had said to the Prosecution that there were ten or more buses at the barracks while in court he said five to seven buses.<sup>1347</sup> The Chamber has found there were five buses.<sup>1348</sup> It is established that the buses proceeded from the JNA barracks in the direction of Negoslavci,<sup>1349</sup> but P024 claimed that the buses went towards Sotin, which is in another direction.<sup>1350</sup> It is also his evidence that Miroslav Radić was not the commander of 3coy 1/gmtbr,<sup>1351</sup> which is contrary to the established factual situation. These matters in combination leave the Chamber unable to accept as reliable P024’s evidence that he saw Miroslav Radić at the barracks.

338. Miroslav Radić testified that in the morning on 20 November 1991, together with his deputy, Lieutenant Hadžić, he went to Vukovar hospital after first visiting his soldiers near Radnička Street. As they arrived at the hospital, Miroslav Radić saw a group of civilians, for the most part women and children, who were moving towards the main gate. Miroslav Radić denied having entered the hospital. He testified that none of his soldiers were present at the hospital or in the hospital compound. Miroslav Radić thought that something was going on in the hospital, but he was not particularly interested to find out what and left. He stayed no more than half an hour in the compound and then left for Danube Hotel.<sup>1352</sup> He denied having received any orders from Veselin Šljivančanin or any other person to take prisoners from the bus at the JNA barracks and return them to the hospital, nor was he in a position to do that.<sup>1353</sup> There is also the evidence of Major Vukašinović that he did not see Miroslav Radić at the hospital on 20 November 1991 or later at the JNA barracks.<sup>1354</sup>

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<sup>1345</sup> P024, T 4207.

<sup>1346</sup> P024, T 4186-4188; Exhibit 192; Exhibit 193, Excerpts from the documentary film “100 days of Vukovar.” In relation to this identification issue, the Chamber notes the following: In another excerpt from this film, Exhibit 171, Razvigor Virijević explained that when he saw this film in Serbia and it was shown on television in Serbia several times, in the Croatian subtitles which were later deleted, the words of Saša Bojkovski who featured in Exhibit 171 were attributed to Miroslav Radić, T 11570-11572. (This may explain P024’s identification of Miroslav Radić).

<sup>1347</sup> P024, T 4360; 4390.

<sup>1348</sup> *See supra*, para 203.

<sup>1349</sup> *See supra*, para 222.

<sup>1350</sup> P024, T 4363.

<sup>1351</sup> P024, T 4415.

<sup>1352</sup> Miroslav Radić, T 12657-12659.

<sup>1353</sup> Miroslav Radić, T 12690.

<sup>1354</sup> Ljubiša Vukašinović, T 15081. Miodrag Panić and Jovan Šušić both testified that they did not see Miroslav Radić at the JNA barracks on 20 November 1991, T 14424; 14931.

339. The Chamber accepts that Miroslav Radić was present at the compound of the hospital in the morning of 20 November 1991, but is unable to be satisfied that he participated in the activities described by P030. The Chamber is unable to be satisfied that Miroslav Radić was at the JNA barracks on 20 November 1991.

340. Dr Njavro also testified that on 20 November 1991 around 1700 hours Miroslav Radić came to the hospital with a female officer, and later, together with Ante Arić, they were taken to the JNA barracks in a military vehicle by Miroslav Radić.<sup>1355</sup> Miroslav Radić denied this evidence.<sup>1356</sup> For reasons already given the Chamber is unable to be satisfied about the date or the reliability of Dr Njavro's identification of Miroslav Radić.

341. The Chamber observes that, apart from a possible inference from the evidence of P024 noted above that Miroslav Radić left the barracks in a vehicle in front of the buses, which evidence the Chamber is unable to accept, there is no evidence which could suggest that Miroslav Radić was at Ovčara on 20 November 1991.

342. As to Miroslav Radić's knowledge about the events at Ovčara, the Prosecution relies primarily on the evidence of P022, a JNA soldier in Miroslav Radić's 3coy 1/gmtbr. Before discussing his evidence, the Chamber will address issues related to his general credibility.

343. P022 testified before the Tribunal that he was at Ovčara in the evening hours of 20/21 November 1991, and that he participated in an execution squad that shot prisoners as well as killing three individuals by the hangar at Ovčara.<sup>1357</sup> He had given a number of statements in relation to his involvement in these events and had been under investigation by authorities in Serbia. He gave a statement before an investigative judge in Novi Sad on 4 November 2003 and was detained the same day.<sup>1358</sup> While in detention, but before an indictment was issued, he gave a further statement to the investigative judge on 17 November 2003.<sup>1359</sup> He also gave a statement on 18 December 2003.<sup>1360</sup> On 4 December 2003, an indictment was issued by the Serbian War Crimes Prosecutor's Office in Belgrade, charging P022, among others, with murders allegedly committed at Ovčara in the evening hours of 20/21 November 1991.<sup>1361</sup> He gave a further statement on 2 February 2004.<sup>1362</sup> On 10 February 2004 he was released from detention.<sup>1363</sup>

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<sup>1355</sup> Juraj Njavro, T 1549-1550.

<sup>1356</sup> Miroslav Radić, T 12732-12733.

<sup>1357</sup> P022, T 5007-5008.

<sup>1358</sup> P022, T 4941.

<sup>1359</sup> P022, T 4942; 5227.

<sup>1360</sup> P 022, T 4942; 5139. *See also* P022, T 5053-5054.

<sup>1361</sup> Exhibit 606.

<sup>1362</sup> P022, T 4942.

344. In his statements of November 2003, P022 said that Predrag Milojević, aka Kinez, Milan Lančuzanin, aka Kameni, and he were not at Ovčara in the evening hours of 20/21 November 1991 as they went to a dinner party.<sup>1364</sup> He explained to the Chamber that he attempted to create an alibi for himself as well as Kinez and Kameni.<sup>1365</sup> He did not consider then that it was a “propitious moment to tell the truth”.<sup>1366</sup> Then, while still in detention, in his statement of 18 December 2003, P022 confessed to having killed three prisoners at Ovčara.<sup>1367</sup> Following this statement other persons named by P022 were arrested by the Serb authorities.<sup>1368</sup> In his statement of 2 February 2004, for the first time he identified some 10 or more people whom he alleged were involved in the killings at Ovčara. He gave a similar account in the Belgrade Ovčara trial in 2004.<sup>1369</sup> He testified in more than one trial in Belgrade.<sup>1370</sup>

345. Sometime after he was indicted in December 2003, but before he gave his statement of 2 February 2004, P022 was given the status of a “co-operating witness” by the Trial Chamber in Belgrade. The charges against him were terminated on the condition that he maintain his statement of 2 February 2004 before the court in Belgrade and that he provide the names of 10 or more people who had committed murders at Ovčara.<sup>1371</sup> P022 testified, nevertheless, that the reason for changing his statement was that he wanted to tell the truth and not that he was seeking to evade criminal responsibility.<sup>1372</sup> However, he wished to obtain the status of co-operating witness and had asked for guarantees that he would not become a defendant himself.<sup>1373</sup> Before he changed his statement of 18 December 2003, he was told that he would receive the status of co-operating witness if he told “everything.”<sup>1374</sup> There were therefore strong reasons for P022 to change his statement as by doing so he would evade criminal prosecution for the serious crimes with which he had been charged.

346. P022 affirmed that there were no conditions associated with his testimony before the Tribunal,<sup>1375</sup> and that it had not been said he would lose his status as a co-operating witness in

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<sup>1363</sup> P022, T 4941.

<sup>1364</sup> P022, T 4944; 5088. It appears that there was an agreement that Miroslav Radić and Dragan Vidaček were to be included in this “alibi”, however, in his statements of November 2003, it appears that P022 only said Kameni, Kinez and he going to the dinner party, P022, T 4944; 5088.

<sup>1365</sup> P022, T 4944.

<sup>1366</sup> P022, T 5256.

<sup>1367</sup> P022, T 5175.

<sup>1368</sup> P022, T 5053-5054. “Before I gave the statement, only five of us were in detention. After I gave the statement, the rest were arrested. That took place on the 20th or between the 24th or 25<sup>th</sup> December to the 27th of December.”

<sup>1369</sup> P022, T 4943.

<sup>1370</sup> P022, T 4943-4944.

<sup>1371</sup> P022, T 4942-4943.

<sup>1372</sup> P022, T 5195.

<sup>1373</sup> P022, T 5257.

<sup>1374</sup> P022, T 5241.

<sup>1375</sup> P022, T 5182.

Serbia if he changed his account when giving evidence before the Tribunal.<sup>1376</sup> He said that he had come to tell the truth.<sup>1377</sup> In one passage in his evidence he said, “Since I was given the status of cooperating witness, this is what it is called in Serbia, here I have a status of protected witness.”<sup>1378</sup> In one view this could imply that he considered the two were inter-dependent. This is not the case however, since he was a protected witness only in the sense that protective measures were ordered to avoid his public identification.

347. The Chamber notes that P022 sought guarantees that he would not be arrested by Interpol while in the Netherlands to give evidence before the Tribunal, as P022 knew there was an arrest warrant issued against him in Croatia.<sup>1379</sup> It is clear from this, as was to be expected, that P022 was concerned that by leaving Serbia he could expose himself to arrest and trial in Croatia, at least, by virtue of his evidence before this Chamber admitting his own role in the killings.

348. There is no question that P022 has fundamentally changed his account on most material matters, affecting not only his own role but also the role of others, including the Accused Miroslav Radić. His evidence to the Chamber is materially against his own interest, but the circumstances disclose that he may well have come to change his account, in particular when identifying others at Ovčara, to gain immunity from prosecution in Serbia. After extremely close scrutiny of his evidence, while the Chamber has formed the view that P022 may have been honest in his evidence, despite his original denials, in particular with respect to his own role in killing at Ovčara, the Chamber is not able to rely on it alone in so far as he identifies others as participants in relation to the events at Ovčara, unless this identification is confirmed by independent evidence which the Chamber accepts. In other respects the Chamber will treat evidence of P022 with great care.

349. P022 who admitted in his evidence to participating in the crimes at Ovčara, gave evidence that around 1230-1300 hours on 20 November 1991, at his observation post, Miroslav Radić ordered P022 to go to the Ovčara farm “to check the information, according to which the TO people were trying to snatch prisoners away” and to report back to him.<sup>1380</sup> Miroslav Radić told P022 to go with Mica Djanković, a member of Miroljub Vujović’s TO unit,<sup>1381</sup> in his car because Djanković knew the road to Ovčara.<sup>1382</sup> P022 left immediately for Ovčara with Mica Djanković as well as Dragan Vidaček.<sup>1383</sup> He says they arrived at Ovčara about 30-40 minutes later,<sup>1384</sup> which the

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<sup>1376</sup> P022, T 5182.

<sup>1377</sup> P022, T 4943.

<sup>1378</sup> P022, T 4941.

<sup>1379</sup> P022, T 5253.

<sup>1380</sup> P022, T 4997-4998; 5131.

<sup>1381</sup> P022, T 4999.

<sup>1382</sup> P022, T 5133-5134.

<sup>1383</sup> P022, T 4999; 5002.

<sup>1384</sup> P022, T 5002; 5137-5138.

Chamber observes is a surprisingly long time as the journey is short. This account differs in material respects from a statement given by P022 to the Prosecution on 4 November 2003, in which P022 stated that “in the afternoon as it was getting dark”, Miroslav Radić ordered him to go to Ovčara to verify whether there were any of their soldiers there and to bring them back.<sup>1385</sup> P022 explained these significant differences by saying that in November 2003 he wanted to create an alibi for himself.<sup>1386</sup> Even that explanation is hardly credible as the killings at Ovčara commenced around 2100 hours or later.<sup>1387</sup> The nature of the explanation serves to further illustrate why the Chamber has deep concerns about the general credibility of P022, as set out above.

350. Captain Zirojević gave evidence that Miroslav Radić came to the Danube hotel in Vukovar several times in the morning on 20 November 1991, and when Captain Stijaković arrived there around noon or early afternoon, he stayed a while with Miroslav Radić.<sup>1388</sup> This conflicts with P022’s evidence that Radić gave him the order at around 1230-1300 hours at the observation post. Miroslav Radić confirms having been at the Danube hotel twice that morning, but the times are not specified.<sup>1389</sup> A critical problem with the actual evidence of P022, aside from his general credibility, is that the buses with prisoners first arrived at Ovčara at 1330-1430 hours.<sup>1390</sup> There were no prisoners of war at Ovčara around 1230-1300 hours so that it could not have been thought, at the time P022 says he received the order from Miroslav Radić, that at Ovčara TOs were trying to “snatch prisoners away.” While it is possible that later that day P022 did himself go to Ovčara and see the gauntlet,<sup>1391</sup> the Chamber does not accept his evidence that Miroslav Radić gave P022 an order of the nature claimed by P022 at around the time he suggests.

351. Although less obvious, a further difficulty with P022’s evidence about the order he says he received from Miroslav Radić, who was his commander, is that P022 did not act in compliance with such an order. The supposed order required P022 to check certain alleged activities by TO members at Ovčara and report back.<sup>1392</sup> P022 accepted that he was supposed to report back right away.<sup>1393</sup> Instead of complying with the order of his commander Miroslav Radić, it is P022’s evidence that he did not return to the observation post until around 2300 hours or 0100 hours.<sup>1394</sup> This is not consistent with the conduct of a soldier of the gmtbr under orders to perform a task for his commander. P022 testified that once he was at Ovčara, there were no opportunities to return

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<sup>1385</sup> P022, T 5160-5162. This is around 1630 hours, T 5161.

<sup>1386</sup> P022, T 5162.

<sup>1387</sup> See *supra*, para 252.

<sup>1388</sup> Zoran Zirojević, T 13123.

<sup>1389</sup> Miroslav Radić, T 12657-12659.

<sup>1390</sup> See *supra*, para 234.

<sup>1391</sup> P022, T 5003.

<sup>1392</sup> See *supra*, para 349.

<sup>1393</sup> P022, T 5136.

<sup>1394</sup> P022, T 5009.

before he actually did as Mica Djanković did not want to drive him back.<sup>1395</sup> Even though other JNA soldiers were present, it did not “occur” to P022 to ask them for transport.<sup>1396</sup> The Chamber does not accept this account.

352. The evidence of P022 as to what he actually did at Ovčara is dramatic. It is his own account in evidence that immediately upon arrival at Ovčara he joined the gauntlet he saw there and mistreated the prisoners out of revenge for his wounded and murdered colleagues.<sup>1397</sup> Later he killed at least three prisoners at Ovčara.<sup>1398</sup> He explained that he was forced to kill out of fear,<sup>1399</sup> an explanation that does not fit readily in with his evidence of his initial conduct toward the prisoners at Ovčara.

353. The evidence of P022 is extremely difficult to assess. In some material respects he has been inconsistent with his earlier statement, he cannot have received the order from Miroslav Radić at the time he asserts, he did not act as he would had he been under orders, yet he gave the impression of truthfulness as he described his role in the gauntlet and in murdering some prisoners. The Chamber’s general discussion earlier in this Judgement<sup>1400</sup> about the general credibility of P022 is also directly relevant. Having regard to these matters the Chamber is unable to accept the otherwise unconfirmed evidence of P022 that he was ordered by Miroslav Radić to go to Ovčara. It does accept that P022 may well have gone to Ovčara and there participated in a gauntlet beating prisoners, and that he killed at least three of them, but, if these events really did occur they are not shown to have occurred other than entirely at P022’s own volition. It is not proved by the Prosecution that P022 acted pursuant to any order of Miroslav Radić.

354. P022 further testified that he told Miroslav Radić about the mistreatment and murder of the detainees at Ovčara upon his eventual return to the observation post.<sup>1401</sup> The Chamber also finds this evidence unreliable and cannot accept it. P022 could not tell with whom and how he got back to the observation post even though he purported to be able to give a detailed account about most other events on 20 November 1991.<sup>1402</sup> Further, P022 first testified that, upon his arrival at the observation post, he told Predrag Milojević, aka Kinez, about the events at Ovčara and then went to bed. P022 did not mention Miroslav Radić being present or that he spoke with him.<sup>1403</sup> Later in his evidence, Prosecuting counsel having (wrongly) referred to P022 having testified that both Kinez

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<sup>1395</sup> P022, T 5066; 5167.

<sup>1396</sup> P022, T 5066-5067.

<sup>1397</sup> P022, T 5205.

<sup>1398</sup> P022, T 5007-5008.

<sup>1399</sup> P022, T 5032; 5066; 5164.

<sup>1400</sup> See *infra*, paras 343-348.

<sup>1401</sup> P022, T 5031-5032.

<sup>1402</sup> P022, T 5157.

<sup>1403</sup> P022, T 5009.

and Miroslav Radić were present, P022 for the first time testified that Miroslav Radić was also present and was told of the events by P022.<sup>1404</sup> Even more significantly, however, this evidence represents a radical change from his earlier statement to the Prosecution of 4 November 2003, in which P022 stated that he did not dare to tell Miroslav Radić about the events at Ovčara.<sup>1405</sup>

355. There is also evidence of P018, that on 20 November 1991, around 2200-2300 hours, Stanko Vujanović, P022 and Dragan Vidaček were at Miroslav Radić's observation post celebrating and loudly talking about the execution at Ovčara of the people from the hospital, saying that they had been involved in the killings themselves. According to P018 Miroslav Radić was in the building at this time and would have been able to hear this conversation from another room. He described Miroslav Radić as seeming nervous and agitated.<sup>1406</sup>

356. Of course, this evidence of P018 is not in agreement with that of P022 because, on the evidence of P022, the persons present at the observation post on his return were Miroslav Radić and Kinez.<sup>1407</sup> Further, and more significantly, P018 testified that he was not at Ovčara on 20 November 1991.<sup>1408</sup> However, in October or November 1992 he had given a statement that he was at Ovčara on that day when the killings occurred, and that he was asked to be in the firing squad.<sup>1409</sup> It is not clear to whom this earlier statement was given. He recalled that he gave the statement in a monastery in Slavonski Brod but he was not sure whether the persons who took the statement acted in any official capacity.<sup>1410</sup> P018's initial explanation for this most critical difference is that it must have been added by someone else.<sup>1411</sup> P018 did, however, give essentially the same information in a statement to the Prosecution in 1995.<sup>1412</sup> In this statement, P018 purported to name other persons also involved in the killings at Ovčara.<sup>1413</sup> When P018 came to explain in turn this earlier statement to OTP, he did so by saying that he had "exaggerated" these facts because he had lost some of his family in Bosnia,<sup>1414</sup> and was angry with the Serbs, including the Yugoslav army, the Chetniks and the "locals" (apparently Serb locals) who expelled him from his home.<sup>1415</sup> The most material differences between his evidence in this trial and his earlier statements leaves the Chamber also unable to accept from the evidence of P018 that Miroslav Radić heard on the evening of 20 November 1991, at his observation post, that people from the hospital

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<sup>1404</sup> P022, T 5032.

<sup>1405</sup> P022, T 5162-5163.

<sup>1406</sup> P018, T 7412-7415.

<sup>1407</sup> P022, T 5032.

<sup>1408</sup> P018, T 7473; 7655.

<sup>1409</sup> P018, T 7419-7420.

<sup>1410</sup> P018, T 7419-7420.

<sup>1411</sup> P018, T 7419-7420.

<sup>1412</sup> P018, T 7568; 7582.

<sup>1413</sup> P018, T 7473-7474.

<sup>1414</sup> P018, T 7568, 7584.

<sup>1415</sup> P018, T 7605-7611.

had been executed at Ovčara, or that he heard that one of his JNA soldiers P022, or TO members of his 3 AG, had participated in the executions. These matters have not been established by the Prosecution.

357. Miroslav Radić denied having met with P022 and P018 at the observation post in the evening on 20 November 1991,<sup>1416</sup> but claimed to have attended a dinner party in the evening of 20 November and stayed almost until daybreak.<sup>1417</sup> Miroslav Radić's evidence is supported by the evidence of Captain Zirojević and Davor Vučković.<sup>1418</sup> The Chamber, however, does not accept this "alibi" attempt. The demeanour of these witnesses in dealing with this issue was one of apparent discomfort, and their evidence appeared to be rehearsed. Both Captain Zirojević and Miroslav Radić accepted that they had no record of this dinner and yet they purported to be able to remember the day and details of this dinner, which occurred 15 years ago, such as who sat where and who left when.<sup>1419</sup> The details remembered by all three witnesses are curiously similar. Further, the Chamber finds it unlikely that Miroslav Radić and his fellow officers would go to a party and stay until near dawn knowing, as they did, that a formal review of their soldiers was to take place the next morning, in the case of Miroslav Radić at 0800 hours.<sup>1420</sup> The Chamber, therefore, is not able to find that Miroslav Radić was at a dinner on the night of 20/21 November 1991. While Miroslav Radić's "alibi" is not accepted, this does not establish that Miroslav Radić was informed of the events at Ovčara that night, nor of the involvement of his subordinates.

358. The Chamber also heard two pieces of evidence that on the morning of 21 November 1991, Miroslav Radić was made aware of crimes committed at Ovčara the previous night. P022 gave evidence that he learned about additional murders at Ovčara and the soldiers who perpetrated them and subsequently provided Miroslav Radić with this information at his observation post.<sup>1421</sup> P002 testified that he heard from a man from Smederovo and from a female paramilitary soldier by the name of Daca about the killings at Ovčara the previous night in which they both had been involved.<sup>1422</sup> P002 testified that he wrote this information down immediately<sup>1423</sup> and confirmed that the words of Dragica (Daca) were accurately recorded.<sup>1424</sup> Later that day, P002 approached Miroslav Radić to have this information confirmed<sup>1425</sup> and during an encounter which lasted only a

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<sup>1416</sup> Miroslav Radić, T 12775-12777.

<sup>1417</sup> Miroslav Radić, T 12664-12666; 12775-12779.

<sup>1418</sup> Zoran Zirojević, T 13129-13131; Davor Vučković, T 13205-13207.

<sup>1419</sup> Zoran Zirojević, T 13149;13161; Miroslav Radić, T 12776;12778.

<sup>1420</sup> Slavko Stijaković, T 12869-12870; Miroslav Radić, T 12664.

<sup>1421</sup> P022, T 5009; 5032; 5034.

<sup>1422</sup> P002, T 10396-10398.

<sup>1423</sup> P002, T 10399-10400.

<sup>1424</sup> P002, T 10657.

<sup>1425</sup> P002, T 10400.

few seconds, Miroslav Radić responded: "It's a mess. I'm afraid there will be some retaliation."<sup>1426</sup> Miroslav Radić denied having met P002 in the morning on 21 November 1991.<sup>1427</sup> Contrary to his evidence in this trial, before the military court in Belgrade, P002 apparently testified that this encounter with Radić occurred one or two days later.<sup>1428</sup> The Chamber will soon turn to the general credibility issues affecting P002. When dealing with P002 it will become apparent why the Chamber is hesitant to rely on the evidence of P002, even where P002 says he recorded this information in his notebook at the time. In particular the general disorder in the notebook, and the manner in which it was maintained and added to, raises concerns as to when this information was obtained, and from whom, as well as the time it was recorded.<sup>1429</sup> By virtue of the matters affecting their respective general credibility the Chamber is unable to accept the evidence either of P022 or P002 about their alleged conversations with Miroslav Radić on 21 November 1991.

359. It is said by the Prosecution that P002 published an article in 1995 in which P002 referred to a conversation with Radić in the morning on 21 November 1991.<sup>1430</sup> This article, however, is not in evidence. On the evidence of P002, a story that something had happened at Ovčara was in circulation at Miroslav Radić's observation post on 21 November 1991.<sup>1431</sup> There were, however, no publications about Ovčara at the time,<sup>1432</sup> whether by P002 or any other journalist. This evidence does not suggest that these rumours contained information that any of Miroslav Radić's subordinates had been involved. Even were this evidence correct, and even if Miroslav Radić came to hear the story, it provides no basis for the Chamber to conclude that Miroslav Radić had reason to know that his subordinates had committed crimes at Ovčara.

360. On Miroslav Radić's evidence, it was not until mid-1992 that he for the first time received information that "something had happened at Ovčara," through a newspaper article.<sup>1433</sup> For the reasons given it is not established by the evidence that Miroslav Radić was put on notice of the events at Ovčara or the possibility that his subordinates were involved, before he left for Belgrade on 24 November 1991. Neither is it established that he acquired knowledge of the involvement of P022 before he terminated his military service on 21 January 1992.<sup>1434</sup>

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<sup>1426</sup> P002, T 10400.

<sup>1427</sup> Miroslav Radić, T 12776-12778.

<sup>1428</sup> P002, T 10528-10529.

<sup>1429</sup> See *infra*, paras 362-364.

<sup>1430</sup> Miroslav Radić, T 12804.

<sup>1431</sup> P002, T 10400; 10439-10440.

<sup>1432</sup> P002, T 10401.

<sup>1433</sup> Miroslav Radić, T 12689-12690; 12822.

<sup>1434</sup> P022, T 4940.

361. It is clear that Miroslav Radić did not report known or suspected crimes at Ovčara to his superior or to investigative authorities<sup>1435</sup> and he did not take any action against any of his subordinates for crimes committed at Ovčara. The Prosecution has failed to establish, however, that he had reason to do so.

## 2. Credibility of Witness P002

362. Turning to the assessment of P002's general credibility, P002 testified that he was a journalist in 1991 who from September until 23 November 1991 stayed in the vicinity of Vukovar, especially in Negoslavci and in the suburbs of Vukovar.<sup>1436</sup> P002 has given several statements to the Prosecution, a statement to a military court in Belgrade in February 2000, and he has given evidence in one trial in Belgrade in 2004 concerning events at Ovčara that are also the subject of this trial.<sup>1437</sup> P002 refreshed his memory from and based significant parts of his evidence on a notebook he says he kept during the events.<sup>1438</sup> This notebook is a diary with calendar dates. It is clear that many entries for particular dates do not correspond with the actual date of the events.<sup>1439</sup> Despite the dates, the entries are not made in a sequential order.<sup>1440</sup> P002 accepted that very often he would just open his notebook, find an empty page and make notes. The result is chaotic.<sup>1441</sup> P002 insisted that the entry regarding Šešelj's visit to Vukovar on 13 November 1991 was entered as the meeting was held and that his conversation with a woman called Daca on 21 November 1991 was written down on the spot,<sup>1442</sup> although it then transpired that a sentence could have been added later.<sup>1443</sup> It was his practice to make additions in his notebook at a later stage. So, he did not know if or when an addition was made.<sup>1444</sup> He was not sure whether anything was added to his notebook after he returned to Belgrade from the frontline.<sup>1445</sup> These are matters of significance because he learned many details from various sources about the Vukovar operations after November 1991.<sup>1446</sup>

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<sup>1435</sup> Miroslav Radić, T 12768.

<sup>1436</sup> P002, T 10372-10373.

<sup>1437</sup> P002, T 10444-10445.

<sup>1438</sup> P002, T 10654.

<sup>1439</sup> Exhibit 884, p 266; Exhibit 885, p 266 (entries for 20 November appear on the page for 30 September (the page which is *printed* in the notebook). See also, Exhibit 884, p 212-213; Exhibit 885, p 212-213 (entry for 13 November appears on the pages *printed* 6 and 7 August).

<sup>1440</sup> Exhibit 884, pp 255-256 and p 266; exhibit 885, pp 255-256 and p 266 (entry for 20 November is made on the page printed 30 September and the entry for 21 November is made prior to this, on the pages printed 18 and 19 September).

<sup>1441</sup> P002, T 15998; 16005-16007; 16012.

<sup>1442</sup> P002, T 10672; 10382-10383; 10661.

<sup>1443</sup> P002, T 15994, 15996, 15999-16000.

<sup>1444</sup> Regarding the man from Smederevo, Exhibit 884, pp 255-256; Exhibit 885, pp 255-256; P002, T 15974-15975. Regarding Šešelj's visit, Exhibit 884, p 212; Exhibit 885, p 212. The names recorded with pencil "number one, Šljivo, number 2, illegible, number 3, illegible, and number 4, Bojkovski" were added later, after the main text in pen but P002 does not know when exactly P002, T 15992-15994; 16019.

<sup>1445</sup> P002, T 15931.

<sup>1446</sup> P002, T 10653-10656.

P002 further testified that he used quotation marks when he wished to record accurately.<sup>1447</sup> However, it became clear that at a later time he had made changes to at least one such quotation.<sup>1448</sup> Having regard to these matters, and the Chamber's appreciation of the quite limited recollection of P002 of relevant events without the assistance of his notebook, the Chamber must be very careful about the evidence of this witness, especially as to particular dates or order of events, and as to quoted words attributed to individuals.

363. Further, both in his statement to the Prosecution in 1995 and in his evidence before the Chamber, P002 stated that his recollection was based on what he had written down in his notebook.<sup>1449</sup> However, it is apparent that in some respects his evidence did not correspond to any entry in his notebook. This is the case, for example with respect to evidence he gave regarding regular meetings held at Stanko Vujanović's house in the days following Šešelj's departure, which he said were attended by the Accused Radić and Šljivančanin, Stanko Vujanović and others,<sup>1450</sup> and also his evidence regarding the morning of 21 November 1991 that there was time for coffee and brandy.<sup>1451</sup> P002 then insisted that he had recorded this information somewhere, maybe in some other notes.<sup>1452</sup>

364. It is also disputed that P002 was in Vukovar during the time periods he claimed he had been there, and in particular in the period 18 to 21 November 1991. Entries in his notebook on their face would indicate that P002 was in other locations at the times he claimed to have been in Vukovar.<sup>1453</sup> It is indeed surprising in the view of the Chamber, that P002 cannot say what he was doing on 18 November 1991, and no entries appear on this day,<sup>1454</sup> even though it was the day when the Croatian forces capitulated and a large group of Croatian combatants surrendered at Mitnica. Further, relying on reference to his notebook, P002 stated that he heard from others that there were killings at Ovčara and Petrova Gora during the nights 19/20 and 20/21 November 1991.<sup>1455</sup> Yet it was P002's evidence he did not remember, and he did not know, where he was on the evenings of 19, 20 and 21 November 1991. He did not remember where he slept, nor could he remember whether he was actually in Vukovar.<sup>1456</sup> He did testify, however, that he and other journalists assembled in front of the hospital in Vukovar while women and children were evacuated on

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<sup>1447</sup> P002, T 16011-16012.

<sup>1448</sup> P002, T 15992-15995.

<sup>1449</sup> P002, T 10670.

<sup>1450</sup> P002, T 10374-10375 (on what he said in court); 10672 (on what he told OTP).

<sup>1451</sup> P002, T 10397 (on what he said in court); 10673 (on what he told OTP).

<sup>1452</sup> P002, T 16002-16004.

<sup>1453</sup> Exhibit 885, p 171, entry on 8 November 1991: "I promise I would make inquiries if I went to the front in Vukovar again" and pp 234-236, referring to 14 November 1991: "I am going to Belgrade."

<sup>1454</sup> P002, T 15946-15951 even though earlier on he stated that he was in Vukovar as it "fell", T 10542.

<sup>1455</sup> Exhibit 885, p 255; P002, T 15971.

<sup>1456</sup> P002, T 15971-15972.

20 November 1991.<sup>1457</sup> This at least is confirmed by video footage from Radio-Television Serbia of 20 November 1991 which shows P002 during the evacuation of a patient.<sup>1458</sup> It is clear that the recollection of P002 of the material events is incomplete, and in some respects confused, and there are matters about which it cannot be determined whether his present evidence is based on actual memory, on contemporary notes, or unwittingly on second-hand information from unidentified sources which came to P002 at some later time. In these circumstances there can be no assurance of the reliability of much of what he says. For these reasons the Chamber cannot make findings based on many parts of P002's evidence in the absence of independent evidence accepted by the Chamber confirming P002's evidence in that regard. There are aspects of his evidence, however, which the Chamber is able to accept having taken into account the matters dealt with above.

## F. Role of Veselin Šljivančanin

### 1. Participation in the events

365. Veselin Šljivančanin was actively involved in preparations for the evacuation. On 19 November 1991, he visited Vukovar hospital and received from Vesna Bosanac a list of the people to be evacuated.<sup>1459</sup> In the evening of 19 November, Veselin Šljivančanin briefed the JNA counter-intelligence officers from the Federal Secretariat for National Defence and from 1 MD before their visit to Velepromet and, upon their return, received a report on the acts of mistreatment witnessed by Colonel Vujić.<sup>1460</sup> In the morning of 20 November 1991, shortly before 0600 hours, Veselin Šljivančanin set off for the Vukovar hospital.<sup>1461</sup> Colonel Vujić testified that Veselin Šljivančanin gave a briefing at the Velepromet gate. During the briefing Colonel Vujić mentioned the information he had received from Colonel Kijanović about killings at Velepromet and that there were bodies there.<sup>1462</sup> Veselin Šljivančanin travelled to the hospital in one vehicle with Colonel Vujić and warrant officer Korica.<sup>1463</sup> They talked about the evacuation.<sup>1464</sup> Veselin Šljivančanin stated that in the conversation they had on the way to the hospital he told Colonel Vujić that he believed it would be better to take crime suspects to the JNA barracks instead of Velepromet.<sup>1465</sup> They arrived at about 0700 hours.<sup>1466</sup> As discussed earlier, Veselin Šljivančanin attended a meeting with the staff of the hospital, while a triage of the persons taken from the hospital was carried out.

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<sup>1457</sup> P002, T 10394-10395.

<sup>1458</sup> Exhibit 568.

<sup>1459</sup> See *supra*, para 141.

<sup>1460</sup> See *supra*, paras 170, 174.

<sup>1461</sup> Veselin Šljivančanin, T 13619-13620.

<sup>1462</sup> Bogdan Vujić, T 4526-4527.

<sup>1463</sup> Bogdan Vujić, T 4531-4532; Veselin Šljivančanin, T 13620; Branko Korica, T 14727.

<sup>1464</sup> Branko Korica, T 14728; Veselin Šljivančanin, T 13620.

<sup>1465</sup> Veselin Šljivančanin, T 13620.

<sup>1466</sup> Branko Korica, T 14762; Bogdan Vujić, T 4533-4534.

During the meeting Mara Bučko gave him a list of spouses or family members of hospital employees who were being taken away by the JNA.<sup>1467</sup> On his evidence, after the meeting Veselin Šljivančanin talked to Dr Bosanac, who was going to establish contact with Croatian leaders in Zagreb. Veselin Šljivančanin stated that, subsequently, he went to a ZNG shelter that had been uncovered in the area.<sup>1468</sup>

366. At about 1000 hours, Veselin Šljivančanin left the hospital and went to one of the bridges on the Vuka River.<sup>1469</sup> It was his evidence that when he arrived at the bridge, he was informed that Colonel Pavković asked him to come to the other bridge.<sup>1470</sup> As discussed earlier, Veselin Šljivančanin then talked to the ECMM monitors and the ICRC representative, who were on their way to the hospital, and stated that they could not proceed for safety reasons.<sup>1471</sup> Subsequently, he returned to the hospital and was there when the monitors arrived.<sup>1472</sup>

367. Meanwhile, the persons removed from the hospital had been taken to the JNA barracks. There is evidence of the presence of Veselin Šljivančanin at the barracks. P009 testified that on 20 November 1991, at the time of his visit to the JNA barracks, he saw a JNA officer, whom he later identified as Veselin Šljivančanin.<sup>1473</sup> P009 recognised that officer as he had seen him in front of the hospital on the preceding day. On that other occasion, P009 had the chance to look at that officer for about a couple of minutes.<sup>1474</sup> However, as P009 put it, the officer made a “huge impression” on him.<sup>1475</sup> It was the evidence of P009 that the officer was “distinctively different” and seemed to be in charge.<sup>1476</sup> The distinctiveness of that officer apparently enhanced P009’s ability to remember a number of details of his appearance, such as his camouflage uniform, Tito hat and a moustache,<sup>1477</sup> which tally with the description of Veselin Šljivančanin given by other witnesses and films recording him at that time. The evidence of Veselin Šljivančanin confirms that in the afternoon of 19 November 1991, he was present in front of the hospital.<sup>1478</sup> P009 stated that he learned the name of the officer he saw in front of the hospital, and at other locations, from

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<sup>1467</sup> See *supra*, para 202.

<sup>1468</sup> Veselin Šljivančanin, T 13629-13632.

<sup>1469</sup> Veselin Šljivančanin, T 13635-13637.

<sup>1470</sup> Veselin Šljivančanin, T 13641-13642.

<sup>1471</sup> See *supra*, para 209.

<sup>1472</sup> Jan Allan Schou, T 6900-6901.

<sup>1473</sup> P009, T 6141; 6185; 6190.

<sup>1474</sup> P009, T 6123; 6301.

<sup>1475</sup> P009, T 6142.

<sup>1476</sup> P009, T 6122.

<sup>1477</sup> P009, T 6122-6123.

<sup>1478</sup> Veselin Šljivančanin, T 13585-13587.

television. A few days after the alleged sighting of that officer, P009 watched a news programme in which the officer was shown. P009 learned that his name was Veselin Šljivančanin.<sup>1479</sup>

368. It was the evidence of P009 that on 20 November 1991 he saw the officer whom he later learned was Veselin Šljivančanin within the compound of the JNA barracks. Šljivančanin was standing about 15 metres from the buses with prisoners removed from the hospital and was talking to at least two other JNA officers. At some point, Miroљjub Vujović and Stanko Vujanović arrived and talked to the JNA officers. They seemed upset and had a heated argument.<sup>1480</sup> Subsequently, P009 noticed a person whom he knew on one of the buses and, in order to obtain permission to get on that bus, he approached the JNA officers, including the one who, he learned, was Veselin Šljivančanin. The officers only waved their hands, which P009 took as a sign of approval. After having got on the bus, P009 talked to his acquaintance. He then got off and approached the officers again, to enquire whether something could be done to release that person. P009 stated that on both occasions he came very close to Veselin Šljivančanin.<sup>1481</sup>

369. Veselin Šljivančanin denied having visited the barracks on 20 November 1991 during the day.<sup>1482</sup> A number of witnesses who were present at the barracks at some point on that day testified that they did not see Veselin Šljivančanin. Among them there were persons who were brought to the barracks on the buses from the hospital: Hajdar Dodaj, P030 and P031.<sup>1483</sup> However, as discussed earlier, people on the buses were threatened and verbally abused by TO members and paramilitaries milling around the buses. Some prisoners were mistreated. In such circumstances, the prisoners kept on the buses were not in a good position to notice all persons that at some time appeared near the buses.

370. LtCol Panić and Major Vukašinović<sup>1484</sup> also ruled out having seen Veselin Šljivančanin at the barracks on that day. However, both of them were present there only for short periods of time. Major Vukašinović was engaged in the transport of the prisoners of war and, as established earlier, LtCol Panić went to Velepromet to attend the meeting of the SAO “government”.<sup>1485</sup> Veselin Šljivančanin might have thus arrived at the barracks when both of them were away. Captain Šušić, who stated that he stayed at the JNA barracks throughout the day,<sup>1486</sup> did not see Veselin Šljivančanin.<sup>1487</sup> However, he did not spend much time near the buses, where P009 claimed he saw

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<sup>1479</sup> P009, T 6180; 6185; Exhibits 283, 284, 285.

<sup>1480</sup> P009, T 6141-6143.

<sup>1481</sup> P009, T 6144-6146.

<sup>1482</sup> Veselin Šljivančanin, T 13659.

<sup>1483</sup> Hajdar Dodaj, T 5659; P030, T 9884; P031, T 3370.

<sup>1484</sup> Miodrag Panić, T 14322; Ljubiša Vukašinović, T 15030.

<sup>1485</sup> Ljubiša Vukašinović, T 15022-15023. *See supra*, para 225.

<sup>1486</sup> Jovan Šušić, T 14888.

<sup>1487</sup> Jovan Šušić, T 14896.

Veselin Šljivančanin. Captain Šušić did not see the arrival of the buses.<sup>1488</sup> At some point, he went to see the buses and called Mile Mrkšić to inform him about the situation.<sup>1489</sup> Captain Šušić might have been near the spot where Veselin Šljivančanin is alleged to have talked to other JNA officers, but at a different time. His evidence confirms that he was in no position to take note of all visitors to the barracks. He did not see Major Vukašinić there,<sup>1490</sup> even though the evidence demonstrates that the major visited the barracks at least twice on 20 November 1991.<sup>1491</sup>

371. As discussed earlier, Veselin Šljivančanin was also at the hospital when the ECMM monitors and ICRC representative arrived, at 1030 hours.<sup>1492</sup> He was also there at some time before 1200 hours, when a sixth bus with prisoners returned from the barracks.<sup>1493</sup> That small group of prisoners included the person P009 had recognised at the barracks on the five buses there.<sup>1494</sup> The sighting of Veselin Šljivančanin by P009 took place shortly before the departure of that small group of prisoners from the barracks, and thus at some time around 1100-1130 hours. Therefore, there was time for Veselin Šljivančanin to have visited the barracks shortly after the arrival of the monitors at the hospital and before the return there of the small group of prisoners. This is confirmed by the evidence of Jan Allan Schou that Veselin Šljivančanin was not present all the time during the monitors' stay at the hospital.<sup>1495</sup>

372. For these reasons, the Chamber is persuaded by the evidence of P009 that Veselin Šljivančanin was present at the barracks at some time around 1100-1130 hours on 20 November 1991. The Chamber further notes that Veselin Šljivančanin was in charge of the removal of crime suspects from the hospital and their transport to Sremska Mitrovica, it is not surprising that he would go to the barracks to check on the implementation of the process.

373. As established earlier, a number of prisoners were brought back on a sixth bus from the barracks to the Vukovar hospital,<sup>1496</sup> under the personal supervision of Major Vukašinić.<sup>1497</sup> Veselin Šljivančanin, together with Miroljub Vujović, questioned the men in order to determine whether they had been involved in the fighting on the Croatian side. Some were returned to the

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<sup>1488</sup> Jovan Šušić, T 14893.

<sup>1489</sup> Jovan Šušić, T 14889-14891.

<sup>1490</sup> Jovan Šušić, T 14956.

<sup>1491</sup> Ljubiša Vukašinić, T 15022-15023; 15032.

<sup>1492</sup> *See supra*, para 210.

<sup>1493</sup> Veselin Šljivančanin, T 13656-13657.

<sup>1494</sup> *See supra*, paras 217; 221.

<sup>1495</sup> Jan Allan Schou, T 6901.

<sup>1496</sup> *See supra*, para 221.

<sup>1497</sup> Ljubiša Vukašinić, T 15031.

bus, the others were released and joined the women and children and hospital staff who were being evacuated.<sup>1498</sup>

374. After his return to the hospital, Major Vukašinić reported to Veselin Šljivančanin about the conduct of the TOs at the barracks and said that further transports of prisoners to and from the barracks might be difficult in such conditions.<sup>1499</sup> This report provided Veselin Šljivančanin with more details of the situation at the barracks, in addition to what he could personally observe when visiting the place.

375. Veselin Šljivančanin could also see signs of mistreatment on the prisoners brought back from the barracks. Irinej Bučko, who was among the persons returned to the hospital, stated one prisoner was covered with blood on the bus. The man got off the bus together with the others. Veselin Šljivančanin talked to them at that moment.<sup>1500</sup> P012 also gave similar evidence.<sup>1501</sup> Veselin Šljivančanin was present while P012 and the others were getting off the bus. Even a person standing at a distance from the scene could see that the men were bloody.<sup>1502</sup> The persons from the bus were then asked to line up. Veselin Šljivančanin and Miroljub Vujović talked to each of them.<sup>1503</sup> Veselin Šljivančanin must have noticed that the men had been beaten. On the same afternoon, Veselin Šljivančanin also received a report on the events at the barracks from Captain Karanfilov.<sup>1504</sup> In the evidence of Karanfilov, Veselin Šljivančanin knew what had happened at the barracks and said that everything was alright.<sup>1505</sup> The Chamber finds that after his visit to the barracks and the reports from Vukašinić and Karanfilov, Veselin Šljivančanin was aware that the TOs were capable of resorting to physical abuse. He could appreciate the severity of that abuse when men with visible signs of mistreatment returned from the barracks to the hospital.

376. In the meantime, the evacuation of other people from the hospital, the women and children, elderly and hospital staff and their families was in progress.<sup>1506</sup> Veselin Šljivančanin was directing the process.<sup>1507</sup> Although the evidence is not specific, the wounded who were not capable of leaving the hospital unaided were also removed. Some accompanied the convoy of civilians but in military ambulances.<sup>1508</sup> Others such as one of the Došen brothers were taken to the JNA

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<sup>1498</sup> See *supra*, para 221.

<sup>1499</sup> Ljubiša Vukašinić, T 15032-15034.

<sup>1500</sup> Irinej Bučko, T 2826-2829; 2942.

<sup>1501</sup> P012, T 3659; 3737.

<sup>1502</sup> P013, T 1195; 1220.

<sup>1503</sup> Rudolf Vilhelm, T 4876-4877.

<sup>1504</sup> Borče Karanfilov, T 15443.

<sup>1505</sup> Borče Karanfilov, T 15490-15491.

<sup>1506</sup> See *supra*, para 213.

<sup>1507</sup> See *infra*, para 400.

<sup>1508</sup> See *supra*, para 212.

barracks.<sup>1509</sup> Meanwhile, Veselin Šljivančanin talked to the ICRC representative, following which both were interviewed by the Sky News team.<sup>1510</sup> Veselin Šljivančanin also organised a press conference at which he spoke to journalists about the ongoing events.<sup>1511</sup> He was present at the hospital when the convoy with civilians left, that is at about 1400 or 1430 hours.<sup>1512</sup>

377. It is the evidence of Veselin Šljivančanin that after the departure of the convoy he visited the ZNG shelter near the hospital and returned to the hospital only when night was falling. He met Dr Ivezić and then had coffee with hospital staff.<sup>1513</sup> Veselin Šljivančanin testified that he did not go to Ovčara at any point in time on 20 November 1991.<sup>1514</sup> However, two witnesses claimed that they saw him at Ovčara on that day.<sup>1515</sup> It was the testimony of P009 that the JNA officer, whom he later learned was Veselin Šljivančanin, was standing alone on the road towards the entrance to the hangar. The officer looked very angry.<sup>1516</sup> P009 greeted the officer, who did not even look at him.<sup>1517</sup> As discussed earlier, P009 could recognise Veselin Šljivančanin, as he had seen him on the preceding day at the hospital, and on the same day at the JNA barracks. P009 must have arrived at Ovčara towards the end of the process of placing the prisoners of war in the hangar. He stated that he saw the buses being unloaded and the people being placed in the hangar,<sup>1518</sup> after which he left the scene for about 15 minutes.<sup>1519</sup> He claimed to have seen Veselin Šljivančanin when he was on his way back to the scene.<sup>1520</sup> P009 stated that there were no more people entering the hangar when he returned.<sup>1521</sup>

378. LtCol Vojnović arrived at Ovčara at about 1400 or 1430 hours, when the prisoners of war from the first five buses were passing through the gauntlet in front of the hangar, and remained there until at least 1700 hours.<sup>1522</sup> LtCol Vojnović stated that he did not see Veselin Šljivančanin.<sup>1523</sup> The Chamber notes, however, that LtCol Vojnović did not see LtCol Panić at

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<sup>1509</sup> See *supra*, para 220.

<sup>1510</sup> See *supra*, para 214.

<sup>1511</sup> Veselin Šljivančanin, T 13650-13655; Exhibits 839, 840.

<sup>1512</sup> Veselin Šljivančanin, T 13658.

<sup>1513</sup> Veselin Šljivančanin, T 13661-13662.

<sup>1514</sup> Veselin Šljivančanin, T 13939.

<sup>1515</sup> There is also evidence of P002, who stated that he heard from someone that Veselin Šljivančanin was himself involved in the executions at Ovčara. However, this evidence cannot be accepted. Not only is it hearsay evidence, the reliability of which could not be tested, but the account was also questioned by P002 himself. The witness said that the story did not seem believable to him at the time. P002, T 10398; 10645-10647; 10659-10661; 15999-16000.

<sup>1516</sup> P009, T 6164.

<sup>1517</sup> P009, T 6165; 6284.

<sup>1518</sup> P009, T 6159; 6162.

<sup>1519</sup> P009, T 6163.

<sup>1520</sup> P009, T 6164.

<sup>1521</sup> P009, T 6283.

<sup>1522</sup> See *supra*, paras 256; 271.

<sup>1523</sup> Milorad Vojnović, T 9066-9067.

Ovčara at the time, even though Panić remembered seeing and talking to him.<sup>1524</sup> Therefore, the evidence of LtCol Vojnović that he did not see Veselin Šljivančanin at Ovčara does not necessarily call in question the evidence of P009.

379. Major Vukašinić also stated that he did not see Veselin Šljivančanin at Ovčara.<sup>1525</sup> Given Major Vukašinić's description of his own activities at Ovčara that afternoon and the events that were occurring, it would not be surprising if he did not notice the presence of Veselin Šljivančanin who was not there for an extended period. Further, when considering the evidence as to the JNA officers present at Ovčara, the Chamber was not able to accept as honest or reliable material aspects of the evidence of Major Vukašinić dealing in part with these events.<sup>1526</sup> In addition, the Chamber is conscious that Major Vukašinić was the deputy of Veselin Šljivančanin at the time, and that his evidence may be affected by loyalty to his former superior. The evidence of Major Vukašinić does not call in question the evidence of P009.

380. LtCol Panić testified that he did not see Veselin Šljivančanin at Ovčara on 20 November 1991.<sup>1527</sup> However, his evidence does not negate the testimony of P009, as he apparently arrived later, after the prisoners of war had been placed in the hangar.<sup>1528</sup> As indicated earlier, P009 says he saw Šljivančanin at a time when the process of bringing the prisoners of war into the hangar had just ended or was about to end, and thus before the arrival of LtCol Panić.

381. P014, who was also present at Ovčara on 20 November 1991, testified that he did not remember seeing Veselin Šljivančanin at the relevant time.<sup>1529</sup> However, it appears that he left Ovčara during the time when the prisoners of war were passing through the gauntlet and returned only after 1700 hours.<sup>1530</sup> He thus was absent from the place at the time when P009 says he saw Šljivančanin.

382. Two of the prisoners of war, who were at Ovčara at the relevant time, testified that they did not see Veselin Šljivančanin.<sup>1531</sup> However, in the circumstances, they were in no position to notice the presence of all the JNA officers outside the hangar. Therefore, their evidence does not necessarily contradict that of P009.

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<sup>1524</sup> Milorad Vojnović, T 8946; 9091; Miodrag Panić, T 14324-14325.

<sup>1525</sup> Ljubiša Vukašinić, T 15045.

<sup>1526</sup> See *supra*, para 260.

<sup>1527</sup> Miodrag Panić, T 14327.

<sup>1528</sup> See *supra*, paras 258; 309.

<sup>1529</sup> P014, T 7899-7900.

<sup>1530</sup> See *supra*, paras 254; 268.

<sup>1531</sup> P030, T 9884; Dragutin Berghofer, T 5433-5434.

383. Having carefully weighed this evidence the Chamber accepts the evidence of P009 that he saw Veselin Šljivančanin at Ovčara on 20 November 1991. The reliability of the identification of Veselin Šljivančanin is strengthened by his previous sightings of the Accused and the big impression he had made on P009, which in the Chamber's assessment is entirely consistent with the manifestly distinctive physical build, bearing and manner of the Accused. The Chamber does not accept the evidence of Veselin Šljivančanin that he remained at the ZNG shelter from about 1400 or 1430 hours until the night fell. It finds that he was at Ovčara at about 1430 or 1500 hours.

384. The other witness who claimed to have seen Veselin Šljivančanin at Ovčara on 20 November 1991 was Zlatko Zlogledja. He stated that he saw Veselin Šljivančanin arrive at Ovčara in a military vehicle.<sup>1532</sup> It was the testimony of Zlatko Zlogledja that Veselin Šljivančanin talked to Serbian reservists who were beating people in the gauntlet. Veselin Šljivančanin spoke with them briefly and left shortly thereafter.<sup>1533</sup> The testimony of Zlatko Zlogledja is not consistent on certain points. For instance, the witness gave two different indications of the time of the arrival of Veselin Šljivančanin. In examination-in-chief, Zlatko Zlogledja said that Veselin Šljivančanin arrived at the time when beatings in the gauntlet were taking place and talked to the reservists involved in the beating.<sup>1534</sup> However, in cross-examination, Zlatko Zlogledja stated that Veselin Šljivančanin arrived when the people from the hospital had already been brought into the hangar.<sup>1535</sup> Furthermore, the testimony of Zlatko Zlogledja is not corroborated by the account given by his colleague, who was with him at Ovčara at the time when he allegedly saw Veselin Šljivančanin. Hajdar Dodaj, who, in the testimony of Zlatko Zlogledja, was standing with him when Veselin Šljivančanin allegedly arrived,<sup>1536</sup> testified that he did not see Veselin Šljivančanin during the time he spent at Ovčara.<sup>1537</sup> It is to be noted that Hajdar Dodaj also referred in his testimony to the arrival of an officer in a military vehicle.<sup>1538</sup> Yet, it was not the evidence of Hajdar Dodaj that the officer who arrived was Veselin Šljivančanin. In the testimony of Dodaj, this was another officer, who arrived in order to take him and Zlogledja to Negoslavci.<sup>1539</sup>

385. The evidence of Zlatko Zlogledja, if accepted, does not appear to relate to the visit of Veselin Šljivančanin which P009 observed. Zlatko Zlogledja claimed to have seen Veselin Šljivančanin in front of the hangar and that after a brief talk with the reservists Šljivančanin departed. P009 saw Veselin Šljivančanin standing alone on the road towards the entrance to the

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<sup>1532</sup> Zlatko Zlogledja, T 10196.

<sup>1533</sup> Zlatko Zlogledja, T 10196.

<sup>1534</sup> Zlatko Zlogledja, T 10196.

<sup>1535</sup> Zlatko Zlogledja, T 10272-10273.

<sup>1536</sup> Zlatko Zlogledja, T 10189-10190; 10196.

<sup>1537</sup> Hajdar Dodaj, T 5664.

<sup>1538</sup> Hajdar Dodaj, T 5537-5538.

<sup>1539</sup> Hajdar Dodaj, T 5537-5538.

hangar. There is no reference in the account of Zlatko Zlogledja to any departure of Šljivančanin from the area where the beatings took place. On the contrary, this evidence suggests that during his brief visit Veselin Šljivančanin remained in front of the hangar. It follows that the evidence of Zlatko Zlogledja, even if accepted, could not corroborate the evidence of P009.

386. In view of the lack of confirmation from the evidence of other witnesses and the contradictory evidence of Hajdar Dodaj, which the Chamber finds persuasive, the account of Zlatko Zlogledja cannot be accepted. The reliability of this account is further affected by the witness' demonstrated ability to deviate from evidence previously given by him, without explanation.

387. As indicated, Veselin Šljivančanin testified that he returned to the hospital when night was falling.<sup>1540</sup> Subsequently, he went to Negoslavci. On his way, he stopped at the gate of the JNA barracks and briefly talked to Captain Predojević.<sup>1541</sup> It was the testimony of Major Vukašinić that Veselin Šljivančanin attended the regular briefing at the command post, although he arrived late.<sup>1542</sup> As discussed earlier, the briefing commenced at 1800 hours.<sup>1543</sup> The accounts of participants in the meeting do not confirm the account of Major Vukašinić. Neither LtCol Panić,<sup>1544</sup> nor LtCol Vojnović<sup>1545</sup> saw Veselin Šljivančanin there. Captain Vukosavljević did not see him after the briefing.<sup>1546</sup> It is not the evidence of Veselin Šljivančanin that he attended the briefing.<sup>1547</sup> The Chamber is not able to accept this evidence of Major Vukašinić and finds that Veselin Šljivančanin did not attend the briefing at the command post on 20 November 1991.

388. After his arrival at Negoslavci, Veselin Šljivančanin received a report on the events at Ovčara from his deputy Major Vukašinić.<sup>1548</sup> It is the evidence of Vukašinić that he conveyed to Šljivančanin the same information he had previously provided to Mile Mrkšić.<sup>1549</sup> Major Vukašinić says he informed them about problems with TO members at Ovčara and that he had managed to calm them down, after which they had departed. Nevertheless, he said he had the feeling that there might be more problems in the future and suggested the strengthening of security detail.<sup>1550</sup> In the testimony of Major Vukašinić, Veselin Šljivančanin was surprised when he learned that the prisoners of war had been taken to Ovčara.<sup>1551</sup> However, the Chamber has found

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<sup>1540</sup> Veselin Šljivančanin, T 13661-13662.

<sup>1541</sup> Veselin Šljivančanin, T 13662.

<sup>1542</sup> Ljubiša Vukašinić, T 15046.

<sup>1543</sup> See *supra*, para 314.

<sup>1544</sup> Miodrag Panić, T 14329-14330.

<sup>1545</sup> Milorad Vojnović, T 9067-9069.

<sup>1546</sup> Dragi Vukosavljević, T 8732-8734, 8658-8659.

<sup>1547</sup> Veselin Šljivančanin, T 13665-13666.

<sup>1548</sup> Ljubiša Vukašinić, T 15045-15046.

<sup>1549</sup> Ljubiša Vukašinić, T 15160.

<sup>1550</sup> Ljubiša Vukašinić, T 15045.

<sup>1551</sup> Ljubiša Vukašinić, T 15046.

that Veselin Šljivančanin himself visited Ovčara after the prisoners of war had been brought there. For this reason, and for reasons given earlier when the Chamber was not able to accept as honest and reliable other material aspects of the evidence of this witness, the Chamber does not accept this evidence of Major Vukašinić.

389. After having talked to Major Vukašinić, Veselin Šljivančanin met with Captain Borisavljević, who told him about the meeting of the SAO “government”.<sup>1552</sup> Subsequently, Veselin Šljivančanin says he went to the command post and reported to Mile Mrkšić. LtCol Panić was there.<sup>1553</sup> LtCol Panić testified that Veselin Šljivančanin arrived at the command post after the briefing, at around 2000 hours.<sup>1554</sup> Veselin Šljivančanin testified that Mile Mrkšić told him that General Vasiljević had asked to speak to Veselin Šljivančanin. Subsequently, Šljivančanin made a phone call and spoke with General Vasiljević, or a colonel who was on duty in Belgrade, about documents collected from the ZNG shelter.<sup>1555</sup>

## 2. Did Mile Mrkšić confer on Veselin Šljivančanin special authority?

390. It is the case of the Prosecution that Mile Mrkšić delegated some of his authority to Veselin Šljivančanin in relation to the evacuation of the hospital.<sup>1556</sup> Veselin Šljivančanin denied having received an order conferring on him the power to conduct the evacuation.<sup>1557</sup> In his testimony, he presented his role in the evacuation as that of an officer carrying out specific tasks received from his commander. He did accept that Mile Mrkšić, orally, had specifically assigned him these tasks. Veselin Šljivančanin described the tasks given to him in respect of the evacuation of the hospital. He stated that on 19 November Mile Mrkšić informed him that the evacuation would start on the following morning. Mile Mrkšić told him to ensure the transport of war crime suspects from the hospital to the prison in Sremska Mitrovica. Civilians could be taken either to the Red Cross headquarters in Šid, or to a place at the Croatian border where they would be received. Mile Mrkšić gave assignments to Veselin Šljivančanin in relation to the triage. He told him not to take anyone out of the hospital without a prior examination by military doctors.<sup>1558</sup>

391. The Chamber has difficulty with the contention of Veselin Šljivančanin that, even on his own description of what was said by Mrkšić, these were merely specific tasks. They comprehend the identification of “war crime suspects” at the hospital, their separation from “civilians”, he was

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<sup>1552</sup> Veselin Šljivančanin, T 13663-13665.

<sup>1553</sup> Veselin Šljivančanin, T 13665-13666.

<sup>1554</sup> Miodrag Panić, T 14330.

<sup>1555</sup> Veselin Šljivančanin, T 13665-13667.

<sup>1556</sup> Indictment, paras 17, 30.

<sup>1557</sup> Veselin Šljivančanin, T 13598.

<sup>1558</sup> Veselin Šljivančanin, T 13596-13597; 13621.

to ensure the war crimes suspects were transported to the prison at Sremska Mitrovica, whereas the civilians were to go to Šid in Serbia or to the Croatian border, in either case he was to transport them to the destination, at Šid they were to be delivered to the Red Cross and at the Croatian border they were to be delivered to those waiting to receive them. In the Chamber's view, even as Veselin Šljivančanin sought to present this, he was given the responsibility for the complete evacuation of the hospital, involving the identification and separation of hundreds of people at the hospital into two categories, war crimes suspects and civilians, a large proportion of these people in both categories were wounded and seriously ill hospital patients who would require special transport facilities, care and attention, he was to transport war crimes suspects who would require security especially as he was to ensure their delivery to the prison in Serbia designated by Mile Mrkšić, and the civilians going to Croatia had to be transported through areas in which armed hostilities continued. There were also complications that ECMM and ICRC were expecting to have a role as had been agreed by the JNA. On any view this was a major undertaking, necessitating the coordinated assistance of a wide variety of military personnel, transport and logistical support. It was for him to organise this. This undertaking was to commence the next morning and he was to be sure that he did not move patients without the approval of military doctors.

392. The Chamber cannot accept Veselin Šljivančanin's attempt to downplay the responsibility placed on him by Mile Mrkšić. Nor can it accept that this was not an order from Mile Mrkšić which Veselin Šljivančanin was obliged to obey. With this responsibility, of necessity, went the authority of Mile Mrkšić invested in Veselin Šljivančanin to ensure that this order was implemented. This was particularly so, because, as the Šljivančanin Defence has so stressed, the rank and the normal role of Veselin Šljivančanin did not entitle him to do all he was ordered to do.

393. What occurred the next day, in the Chamber's view, provides telling support for its finding that Veselin Šljivančanin was given the responsibility to achieve the evacuation of the hospital the next morning. The evidence discloses that Veselin Šljivančanin planned the evacuation during the afternoon and evening of 19 November 1991, briefing his key officers on their responsibilities that evening. He personally oversaw the commencement of the evacuation first thing the next morning which involved JNA and some TO soldiers, in particular JNA military police from several units, and military transport of various types with distinct tasks and escorting vehicles. JNA medical staff, including a newly designated JNA medical director, arrived at the hospital and the existing staff were called to a meeting addressed by Veselin Šljivančanin who announced that he and the new medical director were now in charge and giving the orders. While this staff meeting was held, JNA soldiers ordered all males except the elderly and those who could not leave unaided to leave the hospital where waiting soldiers searched them and they were then placed on waiting buses under armed guard. These were the "war crimes suspects" of Mile Mrkšić's order. The "civilians" were

the women and children and elderly males, as well as some hospital staff and their family members. These were directed in another direction and to different buses from the men. They were divided according to whether they elected to go to Šid in Serbia or Croatia, and eventually they were transported accordingly.

394. Veselin Šljivančanin was also personally involved in delaying the ECMM and ICRC representatives from reaching the hospital, which he justified with false explanations, until the buses had left the hospital with the men. Throughout these various events the evidence establishes, in the Chamber's finding, that Veselin Šljivančanin had charge of those involved and ordered and co-ordinated what happened. His role and conduct was not that of a mere underling performing some identified tasks. He was responsible for all that occurred in connection with the evacuation of the hospital, and relevantly, the selection, transport and security of the men from the hospital.

395. His own appreciation of his role at the time, rather than 15 years later and in the face of this prosecution, is also compelling. The Chamber accepts the evidence of Colonel Vujić that, at a meeting outside the command post at Negoslavci at around 0100 or 0200 hours on 20 November 1991, Veselin Šljivančanin announced that he would be in charge of the evacuation of the hospital the following day.<sup>1559</sup> Similarly, when Veselin Šljivančanin addressed the staff at the hospital around 0800 hours that morning, he stated that he was the one giving orders and that everything was under his command,<sup>1560</sup> a position confirmed in the context of his introduction to the staff of the new medical director when he indicated that he and the new director would be issuing orders from then on.<sup>1561</sup>

396. The Chamber also accepts from the evidence of LtCol Panić that Mile Mrkšić then clearly understood that he had ordered Veselin Šljivančanin to be in charge of the evacuation, and further, that he had authorised Veselin Šljivančanin to use as many military police as necessary to escort the prisoners and ensure their safe passage.<sup>1562</sup> The Chamber finds that this accurately reflected the tenor of the words of Mile Mrkšić at the regular OG South briefing on the evening of 19 November 1991. With respect to the use of military police by Veselin Šljivančanin for securing the prisoners, this was further reinforced at the meeting by Mile Mrkšić's specific direction to Captain Paunović, who was present, to provide his military police to secure the buses. In this respect the Chamber accepts the honesty and correctness of the account of Mile Mrkšić's statement to the briefing, given by LtCol Panić in a written statement he gave to the Prosecution investigators.<sup>1563</sup> The Chamber

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<sup>1559</sup> Bogdan Vujić, T 4530.

<sup>1560</sup> Juraj Njavro, T 1537-1538.

<sup>1561</sup> Mara Bučko, T 2726.

<sup>1562</sup> Miodrag Panić, T 14382; 14492; 14495.

<sup>1563</sup> Miodrag Panić, T 14382; 14492; 14495.

does so after careful consideration of the course of evidence of LtCol Panić in which he sought to qualify the effect of his prior statement. When this was more fully explored with LtCol Panić, however, it became clear in the view of the Chamber that his evidence sought to accommodate what he described as documents, with which he had been familiarised, and which he said helped him realise that in his statement he had ascribed to Veselin Šljivančanin certain powers which he did not have at the relevant time.<sup>1564</sup> From his evidence, as with a number of other JNA and former JNA witnesses, it appears that attempts were made to persuade LtCol Panić that, in light of the military rules applicable at the relevant time, his recollection of the words of Mile Mrkšić about Veselin Šljivančanin's role was erroneous. The Chamber will discuss the contention of the Šljivančanin Defence about the effect of the military rules shortly. It does not accept the view of the Šljivančanin Defence. What is significant for the present, however, is that despite aspects of his evidence, LtCol Panić did not appear to the Chamber to be convinced that his recollection was mistaken. Rather, he appeared to have accepted the possibility of an error. In the Chamber's finding, the effect of the evidence of LtCol Panić is that the words of Mile Mrkšić in the statement of Panić to the Prosecution were the words as recalled by Panić. In this regard the Chamber has also taken into account that no other JNA witness who was at the briefing gave evidence about Mile Mrkšić making such a statement at the briefing.

397. Much attention was given in evidence and submissions to the contention of the Šljivančanin Defence that, as the security organ of OG South and of the gmtbr, Veselin Šljivančanin had no power of command over military police or any other forces outside his security organ. This appears to the Chamber to misstate the true effect of relevant provisions; the preferable view being that in respect of military police within OG South, Veselin Šljivančanin, in his function as security organ, could issue orders but these were subject to any orders of the commanders of the unit to which the military police were subordinated. However, in the Chamber's view, this is not a material issue because, at the relevant time, Veselin Šljivančanin was not functioning as the security organ and limited by the powers of that office. He was exercising the power and authority conferred on him by Mile Mrkšić to conduct the evacuation of the hospital. As such he was exercising *de jure* authority, and in particular this was the case with respect to the JNA military police forces of OG South he employed in the evacuation.

398. This brings the Chamber to the further contention of the Šljivančanin Defence that Mile Mrkšić could not delegate or confer power and authority on another officer, at least not without a written record, there being no written record in the present case. As the Chamber understands the

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<sup>1564</sup> Miodrag Panić, T 14494. LtCol Panić had said in his statement that Veselin Šljivančanin was able to issue orders to the military police participating in the evacuation; T 14384.

contention this is advanced as a general proposition in the JNA, but it is also particularly advanced because Veselin Šljivančanin was the security organ. With respect to this second limb of the contention, in the Chamber's view, it fails to acknowledge that while in respect of some matters of security there is a distinct command structure for security organs, subject to the head of security in the Federal Secretariat, at the time General Vasiljević, at the same time in respect of all other matters and functions a security organ is subject to the commander of his unit as any other officer.<sup>1565</sup>

399. With respect to the primary contention, delegation of even full command responsibility was recognized in the command system of the JNA. Pursuant to Article 6 of the Regulations on the Responsibility of the Land Army Corps Command in Peacetime, the commander could authorise certain officers from the command to command units.<sup>1566</sup> In the more limited context of a delegation or conferral of limited powers or authorities of a commander, Captain Vukosavljević, who was himself chief of the security organ of the 80 mtbr, accepted that a commander could pass his authority to a security organ for a specific purpose. The security organ would then be vested with some of his commander's authority.<sup>1567</sup> However, the military expert for the Šljivančanin Defence, Petar Vuga, was of the view that empowering Veselin Šljivančanin to be in command of the evacuation of the hospital would be against "doctrine". He expressed the view that such a deviation from the rules would need to be effected in a special procedure.<sup>1568</sup> Captain Vukosavljević considered that a transfer of authority should be in writing.<sup>1569</sup> The Chamber observes, however, that neither Captain Vukosavljević, nor Petar Vuga, relied on specific regulations or statements of doctrine requiring a special procedure for issuing such an order. The impression of the Chamber is that they were speaking out of concern for certainty and to ensure a proper record. While that might well be desirable, in the Chamber's finding it is not shown to be a requirement that affects the legality of the order of the commander. Further, as a matter of common sense and practicality, there will inevitably be circumstances where a commander must be able to act by giving oral orders of this nature.

400. It follows, in the finding of the Chamber, that Veselin Šljivančanin was properly, probably orally, appointed by Mile Mrkšić to evacuate the hospital, including the conduct of the triage and selection of war crime suspects removed from the hospital on 20 November 1991, and to be responsible for their transport and security, as well as for the evacuation of the civilians. Consistently with that, Veselin Šljivančanin had from Mile Mrkšić temporary *de jure* authority to

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<sup>1565</sup> See *supra*, para 129.

<sup>1566</sup> Exhibit 580.

<sup>1567</sup> Dragi Vukosavljević, T 8814-8816.

<sup>1568</sup> Petar Vuga, T 15814-15824.

do what was necessary to fulfil that task, and *de jure* powers to give orders to the forces used for this task, including relevantly military police.

401. The Chamber also notes that eye-witnesses of the evacuation of the hospital on 20 November 1991 had the impression that Veselin Šljivančanin was in charge. It was P012's testimony that Veselin Šljivančanin was the one to say who could leave the hospital compound and who could get off the buses.<sup>1570</sup> Similarly, P013 stated that Veselin Šljivančanin was in charge and others were obeying him.<sup>1571</sup> It was P013's impression that Veselin Šljivančanin was the one determining what would happen to everyone.<sup>1572</sup> Also another witness, P031 stated that a JNA major, who, he later learned, was Veselin Šljivančanin, was in charge of the entire operation and "everything transpired under his control and on his orders". Veselin Šljivančanin issued orders to his soldiers.<sup>1573</sup> Zlatko Zlogledja stated that the officer, whose name he later learned to be Veselin Šljivančanin, seemed to be in charge of the soldiers at the hospital. No one else was issuing orders.<sup>1574</sup> Doctor Bosanac believed that on 20 November it was Major Šljivančanin who organised the evacuation of the hospital.<sup>1575</sup> Ljubica Došen stated that Veselin Šljivančanin appeared in charge of the evacuation and had a high rank. The soldiers were coming to him to report and were addressing him as Major, Sir or Major Šljivančanin.<sup>1576</sup> Colonel Vujić stated that the military police guarding the hospital in the morning of 20 November 1991 were under Veselin Šljivančanin's command.<sup>1577</sup> He insisted in cross-examination that Veselin Šljivančanin was both the security organ present at the hospital and the commander of the military police unit.<sup>1578</sup> Colonel Vujić stated that he asked Veselin Šljivančanin to assign two soldiers to accompany Vujić when touring the hospital. Subsequently, a military police commander brought two military police officers.<sup>1579</sup> It appears that Veselin Šljivančanin issued an order for two officers of the military police to accompany Colonel Vujić. Captain Paunović, who commanded the military police who were on the buses in which the prisoners travelled, said in evidence, however, that Veselin Šljivančanin never issued an order to him during his stay in Vukovar.<sup>1580</sup> The Chamber does not accept the reliability of this statement, which stands in contradiction with the evidence of Veselin Šljivančanin himself that at about the nightfall of 19 November 1991, and thus after Mile Mrkšić

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<sup>1569</sup> Dragi Vukosavljević, T 8814-8816.

<sup>1570</sup> P012, T 3660.

<sup>1571</sup> P013, T 1180; 1182-1183.

<sup>1572</sup> P013, T 1184.

<sup>1573</sup> P031, T 3240; 3370-3371.

<sup>1574</sup> Zlatko Zlogledja, T 10182-10183; 10249.

<sup>1575</sup> Vesna Bosanac, T 806.

<sup>1576</sup> Ljubica Došen, T 3800; 3803-3805.

<sup>1577</sup> Bogdan Vujić, T 4534.

<sup>1578</sup> Bogdan Vujić, T 4799.

<sup>1579</sup> Bogdan Vujić, T 4535.

<sup>1580</sup> Radoje Paunović, T 14137.

had given him the order in respect of the evacuation,<sup>1581</sup> he had Captain Paunović bring Doctor Bosanac and Marin Vidić to Negoslavci.<sup>1582</sup> It is probable, however, that Veselin Šljivančanin rarely had reason to give an order to Captain Paunović. The deputy of Captain Paunović, Captain Simić, confirmed that his orders only came from Captain Paunović. This may add nothing to the effect of the evidence of Captain Paunović. It is significant, however, that in other court hearings in 1999 and 2005, Captain Simić stated that at the time he thought that Veselin Šljivančanin was in charge of what was going on in the hospital compound on 19 and 20 November 1991.<sup>1583</sup> His explanation for this difference in evidence was not convincing and depended much on an understanding he had by the time he gave evidence in this trial of the JNA chain of command.

402. There was also some evidence that Veselin Šljivančanin gave orders to TOs and volunteers. Ljubica Došen testified that on 20 November reservists and Chetniks present in the courtyard of the hospital reported to Veselin Šljivančanin. On one occasion he told two of them to bring back Martin Došen's stretcher. The order was apparently carried out.<sup>1584</sup> In his testimony, Veselin Šljivančanin stated that the triage in front of the hospital was carried out by a number of people, including members of the Territorial Defence. It is to be noted that, in the testimony of Veselin Šljivančanin, those persons were "chosen to participate" in the process, as they knew people from Vukovar.<sup>1585</sup> It remains unclear whether other members of the TO, who did not participate in the evacuation in and around the hospital, would disclose a similar degree of obedience towards Veselin Šljivančanin. The TO commander, Miroljub Vujović, was present after the sixth bus, with a group of prisoners, returned from the JNA barracks to the hospital. Veselin Šljivančanin asked Miroljub Vujović about each person from the bus. Then Veselin Šljivančanin decided which of those persons would return to the barracks.<sup>1586</sup> The accounts of this event, given by Major Vukašinović, Rudolf Vilhelm and Irinej Bučko, suggest that Veselin Šljivančanin did not appear to exercise authority in relation to Miroljub Vujović. Rather, Veselin Šljivančanin sought his advice on who might be a crime suspect.<sup>1587</sup>

403. While the evidence indicates that Veselin Šljivančanin exercised some command in respect of the members of TO involved in the selection of persons removed from the hospital, it is not apparent that his powers over TO members extended beyond the scope of this part of the operation. Unlike the military police, the TO formations appeared to have no function in the conduct of the

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<sup>1581</sup> See *supra*, para 191.

<sup>1582</sup> Veselin Šljivančanin, T 13593-13594. Being confronted with that testimony, Captain Paunović accepted that Veselin Šljivančanin "might remember [some things] better" than him; Radoje Paunović, T 14223.

<sup>1583</sup> Milivoj Simić, T 14635.

<sup>1584</sup> Ljubica Došen, T 3800-3805.

<sup>1585</sup> Veselin Šljivančanin, T 13628.

<sup>1586</sup> Veselin Šljivančanin, T 13657-13658.

<sup>1587</sup> Rudolf Vilhelm, T 4877.

evacuation, apart from the limited role they could play in the process of selection. It is thus unlikely that in respect of other aspects of the evacuation Veselin Šljivančanin had, or purported to exercise, any powers of command or authority over the TO or paramilitary forces, by virtue of the order to Veselin Šljivančanin of Mile Mrkšić.

## VII. JURISDICTION

404. The three Accused are charged with three counts of violations of the laws or customs of war, namely murder (count 3), torture (count 8) and cruel treatment (count 9) and five counts of crimes against humanity, namely persecutions (count 1), extermination and murder (counts 2 and 3) and torture and inhumane acts (counts 5 and 6) under Articles 3 and 5 of the Statute, respectively.

### A. Jurisdiction under Article 3

#### 1. Chapeau requirements

405. In order for the Tribunal to have jurisdiction over crimes punishable under Article 3 of the Statute, several preliminary requirements must be satisfied: there must be an armed conflict and the crimes charged must be linked therewith (the so-called *nexus* requirement). Further, four jurisdictional requirements (known as the four *Tadić* conditions) must be fulfilled for the offence charged to fall within the scope of Article 3 of the Statute.

#### (a) Existence of an armed conflict

406. First, there must be an armed conflict, whether international or internal, at the time material to the Indictment. Crimes committed anywhere in the territory under the control of a party to the conflict, until a peaceful settlement of the conflict is achieved, fall within the jurisdiction of the Tribunal.<sup>1588</sup>

407. The test for determining the existence of an armed conflict was set out in the *Tadić* Jurisdiction Decision and has been applied consistently by the Tribunal since:

an armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State.<sup>1589</sup>

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<sup>1588</sup> *Tadić* Jurisdiction Decision, para 70; *Kunarac* Appeals Judgement, para 57.

<sup>1589</sup> *Tadić* Jurisdiction Decision, para 70. See also *Tadić* Trial Judgement, paras 561-571; *Aleksovski* Trial Judgement, paras 43-44; *Čelebići* Trial Judgement, paras 182-192; *Furundžija* Trial Judgement, para 59; *Blaškić* Trial Judgement, paras 63-64; *Kordić* Judgement, para 24; *Krstić* Judgement, para 481; *Stakić* Trial Judgement, para 568.

Two criteria are to be assessed under this test: (i) the intensity of the conflict and (ii) the organisation of the parties.<sup>1590</sup> Both are factual matters which ought to be determined in light of the particular evidence available and on a case-by-case basis.<sup>1591</sup> Relevant for establishing the intensity of a conflict are, *inter alia*, the seriousness of attacks and potential increase in armed clashes, their spread over territory and over a period of time, the increase in the number of government forces, the mobilisation and the distribution of weapons among both parties to the conflict, as well as whether the conflict has attracted the attention of the United Nations Security Council, and if so whether any resolutions on the matter have been passed.<sup>1592</sup> While some degree of organisation by the parties will suffice to establish the existence of an armed conflict, this degree need not be the same as that required for establishing the responsibility of superiors for the acts of their subordinates within the organisation, as no determination of individual criminal responsibility is intended under this provision of the Statute.<sup>1593</sup>

408. The present Indictment alleges that at all relevant times, a state of armed conflict existed in the territory of the former Yugoslavia and that all acts and omissions charged were closely related to that state of armed conflict. It is alleged further that the JNA undertook operations against towns in Eastern Slavonia, resulting in their take-over by JNA and other Serb forces and that in late August 1991 it laid siege to the city of Vukovar.

409. The Chamber is satisfied from the evidence discussed elsewhere in this Judgement<sup>1594</sup> that from late August 1991 the Serb forces in the Vukovar municipality were progressively increased in strength and in October and November 1991 a large number of JNA, Serb TOs and volunteer or paramilitary units were deployed in the city and municipality of Vukovar. Towards the end of the siege their number was estimated to be between 4,000 and 6,000.<sup>1595</sup> Relevantly to the events charged in the Indictment, all Serb forces acted under the command of OG South, a temporary military structure formed by the command of the 1 MD of the JNA, *inter alia*, to conduct military operations in and around a part of the city of Vukovar. The military hierarchy of the units participating in these operations is discussed elsewhere in this Judgement.<sup>1596</sup> These units constitute “government authorities” within the meaning of the *Tadić* test.

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<sup>1590</sup> *Tadić* Trial Judgement, para 562.

<sup>1591</sup> *Rutaganda* Trial Judgement, para 93; *Limaj* Trial Judgement, para 90.

<sup>1592</sup> *Limaj* Trial Judgement, para 90. See also *Tadić* Trial Judgement, paras 565-567; *Čelebići* Trial Judgement, paras 188-190; *Milošević* Rule 98bis Decision, paras 28-31.

<sup>1593</sup> *Limaj* Trial Judgement, para 89.

<sup>1594</sup> See *supra*, paras 73; 78.

<sup>1595</sup> See *supra*, para 39.

<sup>1596</sup> See *infra*, paras 60-129.

410. In the months immediately prior to the capitulation of the Croatian forces in Vukovar in November 1991, opposing the Serb forces, there were up to 1,500-1,700 Croat combatants within the city.<sup>1597</sup> One estimate suggested that at the most intense stages of hostilities the total may have reached 1,700-1,800.<sup>1598</sup> The Croat forces consisted of three groups of personnel, organised under one central leadership.<sup>1599</sup> The smaller groups were: (a) permanent and reserve members of the police from the Ministry of Internal Affairs of the Republic of Croatia (“MUP”); (b) members of the National Guard Corps (“ZNG”) and in the closing stages members of the newly created Croatian Army (“HV”), and (c) members of other local volunteer defence groups.

411. The MUP of Croatia was responsible for dealing with the internal affairs of Croatia.<sup>1600</sup> To do this, the MUP had a regular police force in combination with reserve forces of police that numbered 20,000 spread across the whole of Croatia.<sup>1601</sup> Additionally, the MUP was also in charge of the state security apparatus.<sup>1602</sup> For a time, the MUP personnel were Croatia’s main line of organised defence force since the Territorial Defence had been largely disarmed in Croatia (except for some units in Serb occupied locations) and the ZNG and the HV were in early stages of development and were not fully organised.<sup>1603</sup>

412. There were members of the MUP within Vukovar.<sup>1604</sup> These MUP members were usually police from Vukovar and the surrounding areas, although the evidence does not allow an exact number present in Vukovar to be determined.<sup>1605</sup>

413. The ZNG was formed in Croatia on 28 May 1991,<sup>1606</sup> shortly after the Croatian referendum on independence of 18 May 1991. It was set up under the auspices of and within the MUP.<sup>1607</sup> Initially, the ZNG was armed with weapons that had been previously obtained by the MUP and a large number of the ZNG members were part of the reserve forces of the MUP.<sup>1608</sup>

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<sup>1597</sup> Irma Agotić, T 2130.

<sup>1598</sup> Exhibit 391, pp 207-208.

<sup>1599</sup> Irma Agotić, T 2070; Peter Kypr, T 6508-6510.

<sup>1600</sup> Exhibit 75, pp 8, 10.

<sup>1601</sup> Irma Agotić, T 2070-2071.

<sup>1602</sup> Irma Agotić, T 2070-2071.

<sup>1603</sup> Exhibit 75, pp 5, 8; Aernaut van Lynden, T 3171-3172; Mark Wheeler, T 9308. It should be noted that the ZNG and the Croatian Army are not, technically, the same entity. The ZNG was formed as a precursor to a standing Croatian Army. On 21 September 1991, the Main Staff of the Croatian Army was formed, headed by General Tus. The ZNG and the Army remained separate entities during the fighting in Vukovar, although there was some overlap and both grew in number during that period. (Irma Agotić, T 2034; Mark Wheeler, T 9308; Exhibit 75, pp 6, 14)

<sup>1604</sup> Irma Agotić, T 2063, 2070; Vesna Bosanac, T 7082.

<sup>1605</sup> Exhibit 391, p 208; Josip Čović, T 3576-3577.

<sup>1606</sup> Irma Agotić, T 2035; P011, T 5789.

<sup>1607</sup> Exhibit 75, p 10.

<sup>1608</sup> Irma Agotić, T 2035.

414. The ZNG was set up to be a professional army but consisted of many volunteers at first.<sup>1609</sup> Before November 1991, the entire ZNG in Croatia consisted of four brigades, or eight to nine thousand men, although a large number were not properly armed.<sup>1610</sup> A small number of the ZNG took part in the fight for Vukovar.<sup>1611</sup>

415. Individual non-Serb citizens of Vukovar also formed groups, as they described it, to defend their city. In almost every street, people became organised and took turns keeping watch.<sup>1612</sup> Tomislav Merčep was defence secretary for Vukovar municipality and he was involved in organising Vukovar's defence system along with that of the general area.<sup>1613</sup> They were organised in part along military and police lines.<sup>1614</sup> Many of the people that he organised were volunteers bringing their own weapons.<sup>1615</sup> Many of the weapons were shared among the defenders so that those "on duty" were armed to protect their homes and families.<sup>1616</sup>

416. A Croatian paramilitary group, Croatia's Liberation Forces or HOS, was also active in the general area around Vukovar.<sup>1617</sup> It is not clear on the evidence whether members of HOS were present in the city of Vukovar, at least for any extended period of time, but there may have been members outside the city.<sup>1618</sup>

417. The MUP, ZNG, and the various Croat volunteer forces present in Vukovar were unified under a common command.<sup>1619</sup> Mile Dedaković, aka Jastreb ("the Hawk"), came to be recognised as the leader of the Vukovar defence.<sup>1620</sup> Whoever was armed and was involved in the defence of Vukovar came under the command of Mile Dedaković.<sup>1621</sup> This included ZNG, policemen, Merčep's men, and other volunteers.<sup>1622</sup> The headquarters of the defence of Vukovar was in a shelter across the street from the municipal building.<sup>1623</sup>

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<sup>1609</sup> Exhibit 75, p 7.

<sup>1610</sup> Exhibit 75, p 7; Irma Agotić, T 2035.

<sup>1611</sup> Irma Agotić, T 2063, 2070; Binazija Kolesar, T 985-986.

<sup>1612</sup> Irinej Bučko, T 2770-2771; P011, T 5703-5706.

<sup>1613</sup> Irma Agotić, T 2027; Exhibit 798, p 62.

<sup>1614</sup> Irma Agotić, T 2028.

<sup>1615</sup> Irma Agotić, T 2027.

<sup>1616</sup> Šarlota Foro, T 2511, 2515.

<sup>1617</sup> Irma Agotić, T 2040; Šarlota Foro, T 2474.

<sup>1618</sup> Irma Agotić, T 2062-2063; Šarlota Foro, T 2474; P007, T 4123; Exhibit 391, p 4830; Josip Čović, T 3494; P011, T 5789, but *see also infra* para 479.

<sup>1619</sup> Irma Agotić, T 2070.

<sup>1620</sup> Irma Agotić, T 2070; Šarlota Foro, T 2492-2493; Vesna Bosanac, T 727; P011, T 5707-5708; Exhibit 798, p 62. On or about 1 September 1991, the Chief of Staff of the ZNG sent Dedaković and Branko Borković to take over command of the forces defending Vukovar. (Irma Agotić, T 2070; Juraj Njavaro, T 1706)

<sup>1621</sup> Irma Agotić, T 2070.

<sup>1622</sup> P011, T 5789; Irma Agotić, T 2070. This would also have included HOS men if and when they were present in Vukovar.

<sup>1623</sup> Josip Čović, T 3425.

418. In light of the above brief description of the Croatian forces the Chamber is satisfied that the Croatian forces involved in the fighting in the municipality and in the city of Vukovar, possessed the characteristics of an organised armed group within the meaning of the jurisprudence of the Tribunal.

419. Turning next to the intensity of the armed clashes the Chamber refers to its findings made earlier in this Judgement, that combat operations in the Vukovar area, usually involving artillery, mortars, armoured vehicles, including tanks, weapons such as multiple rocket launchers and anti aircraft batteries, as well as infantry weapons, and at times air and naval forces, took place on a daily basis from 2 October till 18 November 1991.<sup>1624</sup> The combat operations had built up in intensity during August and September 1991. Despite the general surrender of Croat forces on 18 November 1991, isolated combat activities continued in and around the city of Vukovar at least on 19 and 20 November 1991, although they were certainly not as intense as in the days preceding the fall of Vukovar.<sup>1625</sup>

420. Many nations were deeply concerned with what was happening. In September 1991 the European Community (“EC”) held a formal conference on Yugoslavia, chaired by Lord Carrington, the aim of which was to try to reach an overall political settlement for the problems in Yugoslavia with the aid of the Yugoslav parties themselves. In addition, the EC was in charge of the diplomatic efforts to find a solution to the problem, and it had hundreds of monitors, mostly in Croatia, organised in ECMM.<sup>1626</sup>

421. The conflict also attracted the attention of the United Nations Security Council. On 25 September 1991, the Security Council passed Resolution 713 strongly urging all parties to the conflict in Yugoslavia to abide strictly to prior cease-fire agreements. It also set forth the legal framework for a fact-finding mission that would report to the Security Council.<sup>1627</sup> As already noted, this mission was conducted by Cyrus Vance with the assistance of Herbert Stuart Okun from October 1991<sup>1628</sup> until after the events charged in the Indictment.<sup>1629</sup> Vukovar would be almost invariably mentioned in their preliminary meetings,<sup>1630</sup> and, after commencing their mission, they heard so many disturbing reports about Vukovar that at the first opportunity they visited the town. This was on 19 November 1991, the day after the Croat forces surrendered.<sup>1631</sup>

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<sup>1624</sup> See *supra*, para 52.

<sup>1625</sup> Exhibit 735; Exhibit 421; Exhibit 419.

<sup>1626</sup> Herbert Stuart Okun, T 1760.

<sup>1627</sup> Herbert Stuart Okun, T 1823-1824.

<sup>1628</sup> Herbert Stuart Okun, T 1828-1829.

<sup>1629</sup> Herbert Stuart Okun, T 1757-1758.

<sup>1630</sup> Herbert Stuart Okun, T 1760.

<sup>1631</sup> Herbert Stuart Okun, T 1765. See also *supra*, paras 176-179.

422. In view of the above the Chamber is persuaded, and finds, that the level of organisation of the Croatian forces, and the Serbian forces, and the intensity of the armed clashes, reached the levels required to establish that an armed conflict existed in the broader area of the municipality of Vukovar and elsewhere in Croatia, at the material time. The conflict had commenced by the end of August 1991 and continued until after the events charged in the Indictment.

(b) Nexus between the acts of the accused and the armed conflict

423. Further, to meet the jurisdictional preconditions of Article 3 of the Statute, the Prosecution must establish a sufficient link between the alleged acts of the accused and the armed conflict.<sup>1632</sup> The nexus requirement serves to distinguish war crimes from purely domestic crimes and also prevents purely random or isolated criminal occurrences from being characterized as war crimes. The armed conflict need not have been causal to the commission of the crime charged, but it must have played a substantial part in the perpetrator's ability to commit that crime. In determining whether such a nexus exists, reliance may be placed upon, *inter alia*, whether the perpetrator was a combatant, whether the victim was a non-combatant, whether the victim was a member of the opposing party, whether the act may be said to have served the ultimate goal of a military campaign, and whether the crime is committed as part of or in the context of the perpetrator's official duties.<sup>1633</sup>

424. Having regard to evidence considered elsewhere in this Judgement, the Chamber is satisfied that the requisite nexus between the conduct alleged in the Indictment and the armed conflict for the purposes of Article 3 of the Statute has been established. As discussed elsewhere, after the capitulation of the Croat forces the victims, as alleged in the Indictment, were selected by members of the Serb forces having regard, *inter alia*, to their ethnicity and their known or believed involvement in the Croat forces in the conflict. They were searched for weapons, placed under guard by Serb forces and taken by Serb forces eventually to the place where the crimes alleged in the Indictment were committed.<sup>1634</sup> While those matters are sufficient to establish the necessary nexus under Article 3 of the Statute, the Chamber would add its further finding that the primary motive for the offences was revenge or punishment because the victims were known or believed to have been in the Croat forces.

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<sup>1632</sup> *Tadić* Trial Judgement, paras 572-573.

<sup>1633</sup> *Kunarac* Appeals Judgement, paras 58-59.

<sup>1634</sup> *See supra*, paras 203, 207.

(c) The four *Tadić* conditions

425. It is established in the jurisprudence of the Tribunal that for an offence to fall under the scope of Article 3 of the Statute, four conditions must be met:

- (i) the violation must constitute an infringement of a rule of international humanitarian law;
- (ii) the rule must be customary in nature or, if it belongs to treaty law, the required conditions must be met;
- (iii) the violation must be serious, that is to say that it must constitute a breach of a rule protecting important values and the breach must involve grave consequences for the victim;
- (iv) the violation of the rule must entail, under customary or conventional law, the individual criminal responsibility of the person breaching the rule.<sup>1635</sup>

426. In the present case, the three Accused are charged with three counts of violations of the laws and customs of war pursuant to Article 3 of the Statute, for cruel treatment, torture and murder. All three counts are based on Common Article 3 of the 1949 Geneva Conventions. It is settled jurisprudence that violations of Common Article 3 fall within the scope of Article 3 of the Statute. In particular, it is now established that Common Article 3 forms part of customary international law and that violation of this provision entails criminal liability. Accordingly, the Appeals Chamber has accepted that serious violations of Common Article 3 would at once satisfy the four *Tadić* conditions.<sup>1636</sup>

427. Further, as Common Article 3 protects persons taking no active part in the hostilities, it must be established that the victims of the alleged violation were not taking active part in the hostilities at the time the crime was committed.<sup>1637</sup> The Chamber refers to its findings made elsewhere that the victims taken from the Vukovar hospital in the morning of 20 November 1991 were not at the relevant time taking an active part in the hostilities.<sup>1638</sup>

## 2. Conclusion

428. The Trial Chamber concludes that in the present case the jurisdictional prerequisites of Article 3 of the Statute have been established.

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<sup>1635</sup> *Tadić* Jurisdiction Decision, para 94. See also *Aleksovski* Appeals Judgement, para 20; *Kunarac* Appeals Judgement, para 66.

<sup>1636</sup> *Tadić* Jurisdiction Decision, paras 89, 98, 134; *Čelebići* Appeals Judgement, paras 125, 136, 153-174; *Kunarac* Appeals Judgement, para 68.

<sup>1637</sup> *Čelebići* Appeals Judgement, para 420; *Blagojević* Trial Judgement, para 540; *Kvočka* Trial Judgement, para 124 and *Jelisić* Trial Judgement, para 34.

<sup>1638</sup> See *supra*, para 207.

## B. Jurisdiction under Article 5

### 1. Chapeau requirements

429. The preliminary requirements that must be satisfied in order for the Tribunal to have jurisdiction over crimes punishable under Article 5 are as follows. First, a crime listed in Article 5 of the Statute only constitutes a crime against humanity when “committed in armed conflict” (the “nexus requirement”). Second, the crime must be part of a widespread or systematic attack against any civilian population.

#### (a) Nexus to an armed conflict

430. Under Article 5 of the Statute of the Tribunal, in order to constitute a crime against humanity, a crime listed in that Article must be committed “in an armed conflict”. The nature of the conflict is immaterial: the conduct must be linked in time and space to an armed conflict, be it international or non-international.<sup>1639</sup>

431. The nexus requirement for crimes against humanity finds its origin in Article 6(c) of the Nuremberg Charter which defined crimes against humanity as crimes committed “in the execution of or in connection with any crime within the jurisdiction of the Tribunal”. The Appeals Chamber in *Tadić* has observed that the Security Council may have defined the crimes in Article 5 more narrowly than necessary under customary international law<sup>1640</sup> and has held that under customary international law these crimes may also be committed in times of peace.<sup>1641</sup> Instruments adopted after the Statute of the Tribunal, including the Rome Statute, the Statute of the Special Court for Sierra Leone, and the Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia no longer require such nexus.<sup>1642</sup>

432. The nexus requirement for crimes against humanity resembles the nexus requirement for war crimes described above, but is not identical.<sup>1643</sup> Whereas for war crimes, a sufficient link

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<sup>1639</sup> *Tadić* Jurisdiction Decision, para 141: “It is by now a settled rule of customary international law that crimes against humanity do not require a connection to *international* armed conflict” (emphasis added) .

<sup>1640</sup> *Tadić* Appeals Judgement, para 296.

<sup>1641</sup> *Tadić* Appeals Judgement, para 251.

<sup>1642</sup> Article 7, Rome Statute (1998) states: “For the purposes of this Statute, “crime against humanity” means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: [...]”. Article 2 of the Statute of the Special Court for Sierra Leone (2002) states: “The Special Court shall have the power to prosecute persons who committed the following crimes as part of a widespread or systematic attack against any civilian population: [...]”. Article 5 of the Law on Establishment of Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea (2004) in the relevant part states: “Crimes against humanity, which have no statute of limitations, are any acts committed as part of a widespread or systematic attack directed against any civilian population on national, ethnic, political or religious grounds, such as [...]”.

<sup>1643</sup> See *Kunarac* Appeals Judgement, para 83.

between the conduct of the accused and the armed conflict must be established<sup>1644</sup>, the nexus requirement for crimes against humanity is satisfied by proof that there was an armed conflict at the relevant time and place, and that, objectively, the acts of the accused were linked geographically, as well as temporally, with the armed conflict.<sup>1645</sup>

433. The jurisprudence has held that the nexus between the acts of the accused and the *armed conflict* is not part of the accused's *mens rea*.<sup>1646</sup> The requirement that an act must not have been carried out for purely personal motives is not a prerequisite for the applicability of Article 5.<sup>1647</sup> By contrast, the accused's *mens rea* in relation to the nexus between the acts of the accused and the *attack* must be established.<sup>1648</sup>

(b) Widespread or systematic attack and nexus to the attack

434. Although not explicitly provided for in the text of Article 5 of the Statute, it is established in the jurisprudence of the Tribunal that a crime against humanity must be committed in the context of a widespread or systematic attack against a civilian population.

435. According to the *Kunarac* Appeals Chamber, the following general elements must be satisfied: (i) there must be an attack; (ii) the attack must be widespread or systematic; (iii) the attack must be directed against any civilian population; and (iv) there must be a nexus between the acts of the accused and the attack.<sup>1649</sup>

436. An “attack” within the meaning of Article 5 has been defined as a course of conduct involving the commission of acts of violence.<sup>1650</sup> It is not limited to the use of armed force but it may also encompass any mistreatment of the civilian population.<sup>1651</sup> The attack may be, but need not be, part of the armed conflict as such.<sup>1652</sup>

437. Further, the attack must be widespread or systematic, the requirement being disjunctive rather than cumulative. The term “widespread” refers to the large scale nature of the attack and the number of victims, while the phrase “systematic” refers to the organised nature of the acts of

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<sup>1644</sup> See *supra*, para 423.

<sup>1645</sup> *Tadić* Appeals Judgement, paras 249, 251; *Kunarac* Appeals Judgement, paras 83, 89; *Kordić* Trial Judgement, para 23.

<sup>1646</sup> *Tadić* Appeals Judgement, para 272: “For the above reasons, however, the Appeals Chamber does not consider it necessary to further require, as a substantive element of *mens rea*, a nexus between the specific acts allegedly committed by the accused and the armed conflict, or to require proof of the accused's *motives*.”

<sup>1647</sup> *Tadić* Appeals Judgement, para 272.

<sup>1648</sup> See *infra*, para 439.

<sup>1649</sup> *Kunarac* Appeals Judgement, para 85.

<sup>1650</sup> *Vasiljević* Trial Judgement, paras 29-30; *Kunarac* Appeals Judgement, para 86; *Naletilić* Trial Judgement, para 233.

<sup>1651</sup> *Kunarac* Appeals Judgement, para 86.

<sup>1652</sup> *Kunarac* Appeals Judgement, para 86.

violence and the improbability of their random occurrence.<sup>1653</sup> This requirement only applies to the attack itself, not to the individual acts of the accused.<sup>1654</sup> Only the attack, not the accused's individual acts, must be widespread or systematic.<sup>1655</sup>

438. Article 5 further requires the existence of a nexus between the acts of the accused and the attack on a civilian population. According to the Tribunal's jurisprudence, the acts of the perpetrator must be objectively part of the attack, as opposed to being isolated acts. They need not be committed in the midst of that attack provided that they are sufficiently connected to that attack.<sup>1656</sup>

439. Concerning the required *mens rea* in relation to the attack, the Appeals Chamber has held that in addition to the intent to commit the underlying offence charged, the accused must have known that there is an attack on the civilian population and that his acts comprise part of that attack, or at least that he took the risk that his acts were part of the attack.<sup>1657</sup> This requirement does not entail knowledge of the details of the attack.<sup>1658</sup> It is also irrelevant whether the accused intended his acts to be directed against the targeted population or merely against his victim. It is the attack, not the acts of the accused, which must be directed against the target population and the accused need only know that his acts are part thereof.<sup>1659</sup>

(c) Directed against any civilian population

440. The attack must be directed against any civilian population. As held by the Appeals Chamber "in the context of a crime against humanity the civilian population is the primary object of the attack."<sup>1660</sup> Factors relevant to the consideration whether an attack was directed against a civilian population include, *inter alia*, the means and method used in the course of the attack, the status of the victims, their number, the discriminatory nature of the attack, the nature of the crimes committed in its course, the resistance to the assailants at the time and the extent to which the attacking force may be said to have complied or attempted to comply with the precautionary requirements of the laws of war.<sup>1661</sup>

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<sup>1653</sup> *Blaškić* Appeals Judgement, para 101.

<sup>1654</sup> *Kunarac* Appeals Judgement, para 96; *Kordić* Appeals Judgement, para 94; *Naletilić* Trial Judgement, para 236; *Kunarac* Trial Judgement, para 431.

<sup>1655</sup> *Kunarac* Appeals Judgement, para 96.

<sup>1656</sup> *Tadić* Appeals Judgement, para 248; *Naletilić* Trial Judgement, para 234; *see also* *Kunarac* Appeals Judgement, para 96 and para 100 for a definition of an 'isolated act'; *Kordić* Trial Judgement, para 178.

<sup>1657</sup> *Kunarac* Appeals Judgement, paras 102, 105.

<sup>1658</sup> *Kunarac* Appeals Judgement, paras 102, 105.

<sup>1659</sup> *Kunarac* Appeals Judgement, paras 103, 105.

<sup>1660</sup> *Kunarac* Appeals Judgement, para 91 (footnotes omitted); *Naletilić* Trial Judgement, para 235.

<sup>1661</sup> *Kunarac* Appeals Judgement, para 91.

441. The nationality of the victims is irrelevant for the purposes of Article 5 of the Statute. Historically, this was one of the main distinguishing factors between war crimes and crimes against humanity: whereas war crimes could only be committed against enemy nationals (combatants and civilians), crimes against humanity could also be committed against the state's own population. This factor is now obsolete for war crimes, as the jurisprudence has accepted that war crimes can also be committed against a state's own nationals.<sup>1662</sup> It stays, however, relevant to an understanding of the difference between the two categories of crimes.

442. The term "civilian population" must be interpreted broadly and refers to a population that is predominantly civilian in nature. A population may qualify as "civilian" even if non-civilians are among it, as long as it is predominantly civilian.<sup>1663</sup> The presence within a population of members of armed resistance groups, or former combatants, who have laid down their arms, does not as such alter its civilian nature.<sup>1664</sup> This jurisprudence is in line with Article 50(3) of Additional Protocol I ("Definition of civilians and civilian population"), which states that "[t]he presence within the civilian population of individuals who do not come within the definition of civilians does not deprive the population of its civilian character".

(d) Applicability of Article 5 to non-civilian victims

443. A related but distinct legal issue arises in the circumstances of the present case. While it has been clarified by the jurisprudence of the Tribunal that the mere presence of non-civilians among what is a predominantly civilian population does not alter the civilian character of the *population* for the purposes of the *chapeau* requirements of Article 5, the jurisprudence of the Tribunal has not yet been called upon to pronounce on the question whether the notion of crimes against humanity is intended to apply to crimes listed in Article 5 when the *individual victims* of such crimes are not civilians. On 14 March 2007 the Chamber sought submissions from the Parties on this issue. It put to the Parties the following question:

"Is the question whether the victims of a crime against humanity were civilians or not relevant to the applicability of Article 5? In other words, is the general condition of the civilian status of the targeted population that is required for a *chapeau* requirement [...] identical to the condition of the civilian status of the victims of the underlying crime?"<sup>1665</sup>

The Parties' arguments in response, delivered orally on 16 March 2007, are briefly reviewed below.

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<sup>1662</sup> See *Tadić* Appeals Judgement, paras 164-166. The Appeals Chamber confirmed that the nationality criterion (or the formal bond) has been replaced by the substantial relations criterion, *i.e.* control by a party of a conflict over persons in a given territory. (*Tadić* Appeals Judgement, para 166) This will be the case, for example, of war crimes committed by Bosnian Serbs against Bosnian Croats or Bosnian Muslims and *vice versa*.

<sup>1663</sup> *Jelisić* Trial Judgement, para 54; *Kupreškić* Trial Judgement, paras 547-549; *Naletilić* Trial Judgement, para 235; *Kordić* Trial Judgement, para 180; *Blagojević* Trial Judgement, para 544.

(i) Submissions

444. As a preliminary point the Prosecution submits that *all* victims of the crimes alleged under Article 5 of the present Indictment qualify as civilians under Article 5, as they were either persons who had never participated in hostilities, or were persons placed *hors de combat*, and so were no longer participating in hostilities.<sup>1666</sup>

445. According to the Prosecution, the definition of "civilian" under Article 5 of the Statute is broad and includes all persons who are not participating in hostilities.<sup>1667</sup> In its submission, a civilian under Article 5 is anyone who is not the lawful object of attack under international humanitarian law, including persons placed *hors de combat* through sickness or detention.<sup>1668</sup> Therefore, according to the Prosecution, the term "civilian" under Article 5 does not have an identical meaning to the term "civilian" in Additional Protocol I, which treats persons *hors de combat* as a separate category not subsumed in the term "civilian." It is the Prosecution's submission that under international humanitarian law persons *hors de combat* and civilians are accorded substantially similar protections, because, most significantly, neither category of persons can be the object of attack.<sup>1669</sup> Reference is made to Common Article 3 and Additional Protocol II, in which the only distinction drawn is between persons taking no active part in hostilities and persons taking an active part in hostilities, and the proposition is advanced that the reference to civilians in Article 5 of the Statute is intended to reflect the same distinction as set out in Common Article 3, thus including persons not taking an active or a direct part or who have ceased to take part in hostilities, such as persons placed *hors de combat*.<sup>1670</sup> The Prosecution further submits that the operation of international humanitarian law as *lex specialis* does not prevent such a conclusion, as it does not require that the term "civilian" in Article 5 be given precisely the same definition as under international humanitarian law regulating international armed conflicts.<sup>1671</sup>

446. In support of its proposition the Prosecution seeks to rely on selected jurisprudence of the Tribunal and cites in particular the *Mrkšić* Rule 61 Decision,<sup>1672</sup> the *Akayesu* Trial Judgement,<sup>1673</sup>

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<sup>1664</sup> *Blaškić* Appeals Judgement, para 113.

<sup>1665</sup> Closing Arguments, T 16031.

<sup>1666</sup> Closing Arguments, T 16283-16284.

<sup>1667</sup> Closing Arguments, T 16284.

<sup>1668</sup> Closing Arguments, T 16284.

<sup>1669</sup> Closing Arguments, T 16284-16285.

<sup>1670</sup> Closing Arguments, T 16285.

<sup>1671</sup> Closing Arguments, T 16285-16286.

<sup>1672</sup> Closing Arguments, T 16286; *The Prosecutor v. Mile Mrkšić, Miroslav Radić, and Veselin Šljivančanin*, Case No. IT-95-13-R61, Review of the Indictment Pursuant to Rule 61 of the Rules and Procedures of Evidence, 3 April 1996 ("*Mrkšić* Rule 61 Decision"), para 29.

<sup>1673</sup> Finding that civilian population are people who are not taking any active part in the hostilities, including members of the armed force who have laid down their arms and those persons placed *hors de combat*. (T 16287; *Akayesu* Trial Judgement, para 582)

the *Tadić* Trial Judgement,<sup>1674</sup> and the *Limaj* Trial Judgement.<sup>1675</sup> It further submits that the present case is distinguishable from the *Blaškić* Appeals Judgement as in the present circumstances the *hors de combat* victims were no longer participating in any hostilities at all for the time that they had that status.<sup>1676</sup>

447. The Mrkšić Defence, joined by the Radić<sup>1677</sup> and Šljivančanin<sup>1678</sup> Defences, submits that for Article 5 of the Statute to apply the victims of the alleged crimes need to be civilians.<sup>1679</sup> In support of this submission the Mrkšić Defence seeks to rely on the *Kunarac* (Trial) Judgement, in so far as it was held that civilians are a group separate from members of the armed forces and other legitimate combatants,<sup>1680</sup> and on the *Krnojelac* (Trial) Judgement ruling that the victims of acts charged as crimes against humanity must be civilians.<sup>1681</sup> The Mrkšić Defence further submits that the *Blaškić* Appeals Chamber has accepted the ICRC Commentary to the Additional Protocols and advances the proposition that if a person is indeed a member of an armed organisation, the fact that he is not armed or in combat at the time of the commission of crimes, does not accord him civilian status.<sup>1682</sup> The Šljivančanin Defence further submits that in both its Pre-Trial and Final Trial Briefs it has already sought to rely on the ICRC Commentary to the Additional Protocols quoted in the *Blaškić* Appeals Judgement and that these authorities require that the victims of the crimes alleged in the present case not be deemed as civilians.<sup>1683</sup>

(ii) Discussion

448. At the outset the Chamber would observe that all Parties appear to be in agreement that the victims of a crime against humanity must be civilians, the Defence for each of the three Accused, by explicitly advancing this proposition,<sup>1684</sup> and the Prosecution, implicitly, by accepting that all victims of the crimes charged under Article 5 of the present Indictment qualify as civilians.<sup>1685</sup> The issue in dispute appears to be the definition of “civilian” that should be applied.

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<sup>1674</sup> Finding that a wide definition of civilian population is justified and that the presence of those actively involved in the conflict should not prevent the characterisation of a population as civilian and those actively involved in a resistance movement can qualify as victims of crimes against humanity. (T 16287; *Tadić* Trial Judgement, para 643)

<sup>1675</sup> The presence within a population of members of resistance armed groups or former combatants who have laid down their arms does not as such alter its civilian nature. (T 16287-16288; *Limaj* Trial Judgement, para 186).

<sup>1676</sup> Closing Arguments, T 16289.

<sup>1677</sup> Closing Arguments, T 16295.

<sup>1678</sup> Closing Arguments, T 16296.

<sup>1679</sup> Closing Arguments, T 16292-16294.

<sup>1680</sup> Closing Arguments, T 16292; *Kunarac* Trial Judgement, para 425.

<sup>1681</sup> Closing Arguments, T 16292; *Krnojelac* Trial Judgement, para 56.

<sup>1682</sup> Closing Arguments, T 16292, 16294; *Blaškić* Appeals Judgement, para 114.

<sup>1683</sup> Closing Arguments, T 16296-16297.

<sup>1684</sup> Closing Arguments, T 16292, 16295, 16296.

<sup>1685</sup> Closing Arguments, T 16283-16284.

449. In the jurisprudence of the Tribunal to date, the term “civilian” has been defined *only* in the context of the *chapeau* requirements of Article 5, *i.e.*, in the context of the requirement of an attack directed against a civilian population. Over the years, this jurisprudence has evolved.

450. The first decision in which this question arose before the Tribunal was the *Mrkšić* Rule 61 Decision in 1996. In this case, the Trial Chamber held that the specific situation of the victim at the moment the crimes were committed, rather than his status, must be taken into account in determining civilian status for the purposes of Article 5.<sup>1686</sup> The implication of this reasoning was that those who were members of a resistance movement or former combatants, regardless of whether they were bearing arms or not, but who were no longer taking part in the hostilities when the crimes were committed, could qualify as victims of crimes against humanity under Article 5 of the Statute. This position was followed in *Tadić* in 1997<sup>1687</sup> and in a number of other trial judgements,<sup>1688</sup> including the *Blaškić* Trial Judgement in 2000 which accepted that the definition of a “civilian” is expansive and includes individuals who at one time performed acts of resistance, as well as persons who were *hors de combat* when the crime was committed.<sup>1689</sup>

451. This approach, however, was rejected by the *Blaškić* Appeals Chamber in 2004, when it overturned the Trial Chamber’s decision that the specific status of the victim at the time of the crime may be determinative of his civilian or non-civilian status. Basing itself on Article 50(1) of Additional Protocol I, the Appeals Chamber held that members of the armed forces and members of militias or volunteer corps forming part of such armed forces, cannot claim civilian status, and neither can members of organised resistance groups.<sup>1690</sup> The Appeals Chamber also accepted that

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<sup>1686</sup> This decision was inspired by French jurisprudence in the *Barbie* case (*Federation Nationale des Deportés et Internes Résistants et Patriotes and Others v. Barbie* (“*Barbie*”). In that case, the head of the Gestapo in Lyons, Klaus Barbie, was alleged to have been responsible for the murder of 4,343 persons, the deportation of 7,591 Jews and the arrest and deportation of 14,311 members of the French Resistance. Under French law, crimes against humanity are not statute-barred, whereas war crimes prescribe under the limitation statute. This faced the court with either the dismissal of the charges against Barbie for the alleged crimes committed against members of the Resistance (because of the statute of limitations for war crimes) or the inclusion of members of the Resistance as victims of crimes against humanity (which are imprescriptable). The investigating judge of Lyons, followed by the Court of Appeal, had taken the view that only acts of persecution of innocent Jews constituted crimes against humanity whereas the crimes allegedly committed against the members of the French Resistance were to be characterised as war crimes, which were subject to such a limitation and therefore statute-barred. However, the Court of Cassation annulled the decision of the Court of Appeal of Lyons. The Court found that it was “wrong to exclude from the category of crimes against humanity all the acts imputed to the accused which had been committed against members or possible members of the Resistance” because this “excluded the possibility that the accused acted with the element of intent necessary for the commission of crimes against humanity.” As a result, the prosecution could proceed and a conviction was eventually obtained. (78 I.L.R. 128 (1988))

<sup>1687</sup> *Tadić* Trial Judgement, paras 641, 643.

<sup>1688</sup> See for example *Galić* Trial Judgement, para 143; *Limaj* Trial Judgement, para 186.

<sup>1689</sup> *Blaškić* Trial Judgement, para 214.

<sup>1690</sup> *Blaškić* Appeals Judgement, paras 113, 114.

both the status of the victim as a civilian and the scale on which the crime is committed or the level of organisation involved characterise a crime against humanity.<sup>1691</sup>

452. This jurisprudence was followed by later Appeals Chamber judgements. In *Kordić* the Appeals Chamber held that the term “civilian” in the context of Article 5 must be defined in accordance with Article 50(1) of Additional Protocol I.<sup>1692</sup> In *Galić*, the Appeals Chamber held that “it would not necessarily be correct to state [...] that a person *hors de combat* is a civilian in the context of international humanitarian law.”<sup>1693</sup> In an important footnote, the Appeals Chamber noted that “[e]ven *hors de combat* [combatants] would still be members of the armed forces of a party to the conflict and therefore fall under the category of persons referred to in Article 4(A)(1) of the Third Geneva Convention; as such they are not civilians in the context of Article 50(1) of Additional Protocol I.”<sup>1694</sup> This position was followed, more recently, by the *Martić* Trial Chamber.<sup>1695</sup>

453. In sum, the jurisprudence of the Tribunal consistently refers to Article 50 of Additional Protocol I when interpreting the term “civilian” in Article 5 of the Statute. It accepts that the mere presence of non-civilians among what is predominantly a civilian population does not alter its civilian characteristic (in line with Article 50(3) of Additional Protocol I) but likewise adopts the definition of “civilian” in Article 50(1) of Additional Protocol I, which it has held to be reflective of customary international law.<sup>1696</sup>

454. In the light of this jurisprudence, the Chamber cannot accept the Prosecution’s proposition that the reference to civilians in Article 5 of the Statute is intended to reflect Common Article 3 of the Geneva Conventions, thus including persons not taking an active or a direct part or who have ceased to take part in hostilities, such as persons placed *hors de combat*.<sup>1697</sup> Apart from being

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<sup>1691</sup> *Blaškić* Appeals Judgement, para 107.

<sup>1692</sup> *Kordić* Appeals Judgement, para 97. The Chamber notes that in the same decision the Appeals Chamber accepted that murder of soldiers after their arrest and after being placed *hors de combat* meets the elements of Article 5 as these soldiers were “civilians.” (*Kordić* Appeals Judgement, para 421) This position seems to be in contradiction with some factual holdings of the Appeals Chamber in the same case, as observed by the *Martić* Trial Chamber (*Martić* Trial Judgement, para 53). This Chamber is guided by the Appeals Chamber finding in para 97, quoted above, as it more fully reflects the position of the Appeals Chamber.

<sup>1693</sup> *Galić* Appeals Judgement, para 144.

<sup>1694</sup> *Galić* Appeals Judgement, footnote 437.

<sup>1695</sup> *Martić* Trial Judgement, para 55.

<sup>1696</sup> *Blaškić* Appeals Judgement, para 110.

<sup>1697</sup> Common Article 3 provides in so far as relevant:

“In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

1. Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

contrary to the Appeals Chamber's jurisprudence, the effect of this proposition would be that the notion of "civilian" would be differently interpreted under Article 3 and Article 5 of the Statute, respectively.<sup>1698</sup> This Chamber agrees with the conclusion of the *Martić* Trial Chamber where it held that

"Article 5 of the Statute defines crimes against humanity more narrowly than required under customary international law by including a requirement of a nexus between the crime and the armed conflict. This requirement in Article 5 necessarily links crimes against humanity to an armed conflict in which distinction must be made between combatants and non-combatants. Therefore, to allow for the term "civilians" to include all persons, who were not actively participating in combat, including those who were *hors de combat*, at the time of the crime would impermissibly blur this necessary distinction."<sup>1699</sup>

455. The Chamber is not persuaded by the Prosecution's submission in which it points out the distinction between the present case and the *Blaškić* case in that, in the present circumstances the *hors de combat* victims were no longer participating in any hostilities at all for the time that they had that status. This is precisely why the *Blaškić* Appeals Chamber overturned the *Blaškić* Trial Chamber: the criterion is not the position of the victims at the time of the crime but their status as civilians under Article 50 of Additional Protocol I<sup>1700</sup> read together with Article 4 of Geneva Convention III<sup>1701</sup> and Article 43 of Additional Protocol I.<sup>1702</sup> In other words, the determining

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To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (b) taking of hostages;
- (c) outrages upon personal dignity, in particular humiliating and degrading treatment;
- (d) the passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples."

<sup>1698</sup> In the jurisprudence of the Tribunal the term "civilian" in the context of Article 3 of the Statute has been defined in accordance with Article 50 of Additional Protocol I. (See *Galić* Trial Judgement, para 47; *Kordić* Appeals Judgement, para 50)

<sup>1699</sup> *Martić* Trial Judgement, para 56 (footnotes omitted).

<sup>1700</sup> Article 50(1) of Additional Protocol I provides: "A civilian is any person who does not belong to one of the categories of persons referred to in Article 4A(1), (2), (3) and (6) of the Third Convention and in Article 43 of this Protocol. In case of doubt whether a person is a civilian, that person shall be considered to be a civilian. [...]"

<sup>1701</sup> Article 4A(1) and (2) of the Third Geneva Convention provides the following:

"Prisoners of war, in the sense of the present Convention, are persons belonging to one of the following categories, who have fallen into the power of the enemy:

1. Members of the armed forces of a Party to the conflict, as well as members of militias or volunteer corps forming part of such armed forces.
2. Members of other militias and members of other volunteer corps, including those of organized resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that such militias or volunteer corps, including such organized resistance movements, fulfil the following conditions:
  - (a) That of being commanded by a person responsible for his subordinates;
  - (b) That of having a fixed distinctive sign recognizable at a distance;
  - (c) That of carrying arms openly;
  - (d) That of conducting their operations in accordance with the laws and customs of war. [...]"

<sup>1702</sup> Article 43(1) of Additional Protocol I provides: "The armed forces of a Party to a conflict consist of all organized armed forces, groups and units which are under a command responsible to that Party for the conduct of its subordinates, even if that Party is represented by a government or an authority not recognized by an adverse Party. Such armed forces shall be subject to an internal disciplinary system which, inter alia, shall enforce compliance with the rules of international law applicable in armed conflict. [...]"

element is not Common Article 3 of the Geneva Conventions (which distinguishes between persons taking active part in the hostilities and persons not taking active part in the hostilities, including members of armed forces who have laid down their arms),<sup>1703</sup> but Article 50 of Additional Protocol I which defines the notion of “civilian”.

456. Basing its submissions on Common Article 3 and Additional Protocol II, the Prosecution seems to suggest that the relevant international humanitarian law provisions to determine the notion “civilian” in Article 5 of the Statute are those dealing with non-international armed conflicts rather than the provisions on international armed conflicts. It is true that the Appeals Chamber in *Blaškić* was, on the facts of that case, dealing with an international armed conflict. In determining the scope of the term “civilian population”, the *Blaškić* Appeals Chamber looked to customary law in force at the time the crimes were committed, noting the Report of the Secretary General stating that the Geneva Conventions “constitute rules of international humanitarian law and provide the core of customary law applicable in *international* armed conflicts”.<sup>1704</sup> However, when turning to Article 50 of Additional Protocol I to determine the scope of civilian population in Article 5 of the Statute of the Tribunal, the Appeals Chamber must have been fully aware that this Article contains a statutory armed conflict requirement in which the international or internal character of the conflict is immaterial. It would have been totally incongruous for the Appeals Chamber to have drawn a customary law definition of civilians and civilian population from the sources above, as applied to Article 5, and not intended the definitions thereafter to apply whether in international or non-international armed conflict. Had the question arisen in the context of alleged errors of law concerning Article 3 of the Statute, the answer might not have been so clear. As it stands, *Blaškić* must be read as applying to the full spectrum of armed conflict.

457. At this point, the Chamber wishes to make a terminological observation. In the present case, this Chamber has not been called upon to make a finding on the nature of the conflict (international or non-international), as this is not relevant for the applicability of Articles 3 and 5 of the Statute under which the crimes alleged in the Indictment are charged. As observed above, the distinction is immaterial for the purposes of defining the notion of “civilian” in Article 5 of the Statute, which is based on Article 50 of Additional Protocol I. However, the distinction retains its relevance for terminological purposes. In giving its negative definition of civilians (a civilian is any

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<sup>1703</sup> It is noteworthy in this context that even Common Article 3 was primarily meant to apply to civilians rather than combatants. The ICRC Commentary to Common Article 3 makes the following observation: “As we have already mentioned, Article 3 has an extremely wide field of application and covers members of armed forces as well as persons who do not take part in hostilities. *In this instance, however, the Article naturally applies first and foremost to civilians, that is people who do not bear arms.* In the case of members of the armed forces, it is the corresponding article in the Third Convention to which in most cases appeal will be made”. ICRC Commentary on Geneva Convention IV, p 40 (emphasis added).

<sup>1704</sup> *Blaškić* Appeals Judgement, para 110 (emphasis added).

person who does not belong to one of the categories of persons referred to in Article 4 of the Third Geneva Convention and Article 43 of Additional Protocol I), Article 50 refers to the definition of “combatants” in international armed conflicts. The formal status of “combatant” does not apply in non-international armed conflicts. This does not, however, mean that the principle of distinction, the cornerstone of international humanitarian law, is not applicable to non-international armed conflicts.<sup>1705</sup> The principle applies, but is conceptualised in a different manner in non-international armed conflicts.<sup>1706</sup> Whereas the term “civilian” is used for both types of conflict,<sup>1707</sup> the term “fighter” now seems to be the appropriate term to be used as the equivalent for “combatants” in non-international armed conflict.<sup>1708</sup> In this Judgement, both terms are used interchangeably.

458. In addition to the reasons set out above, there is yet another reason why the Chamber cannot accept the Prosecution’s proposition that the definition of “civilian” under Article 5 of the Statute is broad and includes all persons who are not participating in hostilities, including combatants *hors de combat*. Certain crimes listed in Article 5 of the Statute<sup>1709</sup> can only be committed against civilians, not against combatants. For example, deportation under Article 5(d) cannot be committed against prisoners of war.<sup>1710</sup> Imprisonment (Article 5(e))<sup>1711</sup> and in certain circumstances forced labour

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<sup>1705</sup> International Institute of Humanitarian Law, *The Manual on the Law of Non-International Armed Conflict*, Schmitt, M.N., Garraway, H.B., Dinstein, Y. San Remo, 2006 (“*San Remo Manual on the Law of Non-International Armed Conflict*”) Chapter 1.1.2, pp 4-5.

<sup>1706</sup> Kleffner, J.K. *From ‘Belligerents’ to ‘Fighters’ and Civilians Directly Participating in Hostilities – on the Principle of Distinction in Non-International Armed Conflict One Hundred Years after the Second Hague Peace Conference*, Netherlands International Law Review, Vol LIV 2007/2, pp 323-335.

<sup>1707</sup> It is, however, noteworthy that the term “civilian” does not figure in Common Article 3 of the Geneva Conventions.

<sup>1708</sup> This term is used in the *San Remo Manual on the Law of Non-International Armed Conflict*, Chapter 1.1.2, *Fighters*, p 4 states: “For the purposes of this Manual, fighters are members of armed forces and dissident armed forces or other organised armed groups, or taking an active (direct) part in hostilities. [...]”

<sup>1709</sup> Article 5 of the Statute lists the following crimes: murder (Article 5 (a)); extermination (Article 5(b)); enslavement (Article 5(c)); deportation (Article 5(d)); imprisonment (Article 5(e)); torture (Article 5(f)); rape (Article 5(g)); persecutions on political, racial and religious grounds (Article 5(h)); other inhumane acts (Article 5(i)).

<sup>1710</sup> Article 49 of Geneva Convention IV prohibits individual or mass forcible transfer and deportation of civilians, whereas Article 46 of Geneva Convention III specifically allows for the transfer of prisoners of war. Further Article 6(b) of the Nuremberg Charter defines as a war crime the “deportation to slave labour or for any other purpose of civilian population [...]” (emphasis added). The jurisprudence of the Tribunal has held that deportation is the forced displacement of persons by expulsion or other coercive acts from the area in which they are lawfully present, *without grounds permitted under international law*. (*Krnjelac* Trial Judgement, para 474; *Blaškić* Trial Judgement, para 234; *Stakić* Trial Judgement, para 679, emphasis added) It has been held that “the prohibition against deportation serves to provide *civilians* with a legal safeguard against forcible removal in time of armed conflict and the uprooting and destruction of communities by an aggressor or occupant of the territory in which they reside.” (*Stakić* Trial Judgement, para 681, emphasis added)

<sup>1711</sup> Article 70 of Geneva Convention IV prohibits the arrest of protected persons for acts or opinions expressed before the occupation (except for breaches of the laws or customs of war), whereas the arrest of prisoners of war is lawful under international humanitarian law. The Tribunal’s jurisprudence has defined imprisonment under Article 5(e) of the Statute, *inter alia*, as deprivation of liberty imposed arbitrarily, that is no legal basis can be invoked to justify the deprivation of liberty. (*Kordić* Trial Judgement, para 302; *Krnjelac* Trial Judgement, para 115) If national law is relied upon as justification, the relevant provisions must not violate international law. (*Krnjelac* Trial Judgement, para 114)

(Article 5(h))<sup>1712</sup> as a crime against humanity, can, most probably, only be committed against civilians. In the eyes of the Chamber, this is in line with the historical origin of crimes against humanity which, from the outset, focused on civilian victims as was clear from the notion “against any civilian population” in Article 6(c) of the Nuremberg Charter. This further supports the proposition that crimes against humanity are committed against civilians, not combatants or fighters. The requirement that the attack should be “widespread or systematic” was developed by the Tribunal’s jurisprudence basically as a threshold requirement, to avoid isolated yet serious human rights violations being brought before the Tribunal. In that jurisprudence, a preponderance criterion has been developed (the population must be *preponderantly* civilian), inspired by Article 50(3) of Additional Protocol I, but this does not have the effect of abandoning the underlying principle, *i.e.* that crimes against humanity, as opposed to war crimes, are directed against civilian victims.

459. It has been argued that the distinction between civilians and combatants in Article 5 is obsolete and that it would be contrary to the whole spirit of modern international human rights law and humanitarian law to limit to civilians (especially in times of peace) the international protection of individuals against horrendous and large-scale atrocities. The point has been made that, if crimes against humanity may be committed in times of peace as well (*i.e.* outside armed conflicts)<sup>1713</sup> it no longer makes sense to require that such crimes can be perpetrated against civilians alone. Why, the argument goes, should members of military forces be excluded, since they would not be protected by international humanitarian law?<sup>1714</sup>

460. It is important to observe that failing to consider atrocities against fighters *hors de combat* as crimes against humanity does not mean that these acts will go unpunished. If committed in the context of an armed conflict, they are likely to qualify as war crimes, as will be the situation in the typical case before the ICTY.<sup>1715</sup> If committed in peacetime, they will be punishable under national law. There may perhaps be a “protection gap” in those situations, as crimes of this nature would fall outside the jurisdiction of international criminal courts and national authorities may not always be willing to prosecute. However, it is not for this Tribunal to fill this gap through its case law.

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<sup>1712</sup> Article 51 of Geneva Convention IV, does not allow compelling protected persons to work unless they are above certain age and unless the work is necessary for several exhaustively listed purposes, whereas Article 49 of Geneva Convention III explicitly allows for the use of labour of prisoners of war. The jurisprudence of the Tribunal has held that forced labour assignments which require civilians to work in certain conditions may constitute cruel treatment as the underlying act of persecutions under Article 5(h) of the Statute. (*Simić* Trial Judgement, para 93)

<sup>1713</sup> As discussed earlier under customary international law nexus to an armed conflict is no longer required for a crime against humanity. (*See supra*, para 431. *See Tadić* Appeals Judgment, para 251).

<sup>1714</sup> Cassese, A., *International Criminal Law*, Oxford University Press, UK, (2003) (“Cassese”), p 90.

<sup>1715</sup> The protection gap would not arise for most crimes against humanity under the Statute of the Tribunal as the latter presupposes the existence of an armed conflict (*see supra*, paras 430-431) and many, though not all of the crimes listed as crimes against humanity are likewise punishable as war crimes under Article 3 (or Article 2, in case of an international armed conflict) of the Statute.

There are limits to teleological interpretation. The Tribunal is bound to apply customary international law, and to interpret the crimes that come under its jurisdiction in such a way that they reflect customary international law at the time the crimes were committed.<sup>1716</sup> The Tribunal could not, without infringing the legality principle, adopt an interpretation of Article 5 that would make it applicable to situations for which it was not originally intended. There is insufficient evidence in support of the proposition that the notion of crimes against humanity has expanded, under customary international law, so as to include crimes against combatants.

461. In view of the above, the Chamber concludes that the term “civilian” in Article 5 of the Statute has to be interpreted in accordance with Article 50 of Additional Protocol I and therefore does not include combatants or fighters *hors de combat*.

462. The Chamber is aware of the fact that, to date, the Tribunal’s jurisprudence has not been called upon to address the question whether the individual victims of crimes against humanity need to be civilians.<sup>1717</sup> Whereas this jurisprudence accepts that the attack requirement for crimes against humanity allows for the presence of non-civilians in the population that is the target of the widespread or systematic attack, there is nothing to suggest that a crime, listed under Article 5 of the Statute, would qualify as a crime against humanity if the victims were non-civilians. As stated by the Appeals Chamber in *Blaškić* both the status of the victim as a civilian and the scale on which the crime is committed or the level of organization involved characterize a crime against humanity.<sup>1718</sup>

(iii) Conclusion

463. The Chamber, therefore, concludes that, for the purposes of Article 5 of the Statute, the victims of the underlying crime must be civilians. If the victims are non-civilians, the more appropriate charge is war crimes.<sup>1719</sup> In the view of the Chamber, this is a proper and specific requirement for the application of Article 5, which takes into account the historical origins and development of crimes against humanity as a category distinct from war crimes. In reaching this

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<sup>1716</sup> Cassese quotes a number of precedents in support of his proposition that applying Article 5 to enemy combatants is recognised by customary international law (Cassese, p 64): there are some cases of the British Occupation Tribunals under Allied Control Council Law No 10 that entered convictions for crimes against humanity in cases where the victims were servicemen (pp 86-88), but there are also examples of decisions that rule out from the notion of victims of crimes against humanity persons who belonged or who had belonged to the military (for example the *Neddermeier* case, quoted at p 88). In his commentary to the article on crimes against humanity in the Rome Statute (Article 7), Cassese admits that, in the current state of the law, crimes against humanity (at least the “murder variety”), can only apply where the victims are civilians: Cassese, A. *Commentary of the Rome Statute*, Vol I, p 375.

<sup>1717</sup> The Chamber notes that the Appeals Chamber addressed this issue in *Kordić*. It considered, *inter alia*, that TO members cannot claim civilian status and consequently overturned the Trial Chamber’s conclusion that the charge of murder with respect to these TO victims had been established. (*Kordić* Appeals Judgement, paras 458, 461).

<sup>1718</sup> *Blaškić* Appeals Judgement, para 107.

conclusion, the Chamber does no more than to interpret Article 5 of the Statute in the context of the factual situation in which it is called upon to apply the Article, which is without precedent in the Tribunal's jurisprudence. The analysis above leads the Chamber to conclude that, in order for a crime listed in Article 5 to constitute a crime against humanity, it is not sufficient for that crime to be part of a widespread or systematic attack against the civilian population. The victims of the crime must also be civilians. Accordingly, a crime listed in Article 5, despite being part of a widespread or systematic attack against the civilian population, does not qualify as a crime against humanity if the victims were non-civilians.

464. As this is the first case of this nature before the Tribunal, there is no case law defining the required *mens rea* in these circumstances. The jurisprudence has hitherto only considered the *mens rea* required in relation to the armed conflict (the nexus requirement)<sup>1720</sup> and the attack.<sup>1721</sup> As the civilian status of the victims is only a jurisdictional requirement and not an element of the crime, the Chamber believes that it is sufficient for the perpetrator to have been aware of the factual circumstances that established the status of the victim.<sup>1722</sup>

## 2. Findings

### (a) Widespread or systematic attack directed against a civilian population

465. As discussed earlier in this Judgement, from 23 August 1991 until 18 November 1991 the town of Vukovar and its surroundings were increasingly subjected to shelling and other fire: it came to be almost on a daily basis.<sup>1723</sup> The damage to the city of Vukovar was devastating. Relevant to the presence of the three Accused in the area, the attack spanned through October and November until 18 November 1991. It had commenced earlier in August and September 1991. A large Serb force comprising mainly well armed and equipped troops were involved in far greater numbers than the Croat forces. In essence the city of Vukovar was encircled and under siege from Serb forces, including air and naval forces, until the Croat forces capitulated on 18 November 1991. By the beginning of November virtually none of the houses along the road from Vukovar to Mitnica were left standing above the cellar.<sup>1724</sup> The supply of essential services to the whole of Vukovar was disrupted. Electricity and water supplies and the sewage system all failed. The damage to civilian

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<sup>1719</sup> Unlike crimes against humanity, war crimes can be committed against both civilians and combatants/fighters.

<sup>1720</sup> See *supra*, paras 430-432.

<sup>1721</sup> See *supra*, para 438.

<sup>1722</sup> The Chamber does not consider this to be an element of the crime that needs to be established by the Prosecutor. Under international humanitarian law, the civilian status of the victims is *presumed, absent evidence to the contrary*. (Additional Protocol I, Article 50(1), second sentence states: "In case of doubt whether a person is a civilian, that person shall be considered to be a civilian.")

<sup>1723</sup> See *supra*, para 52.

<sup>1724</sup> Šarlota Foro, T 2398.

property was extensive. By 18 November 1991, the city had been more or less totally destroyed.<sup>1725</sup> It was absolutely devastated. Those still living in the city had been forced to take shelter in cellars, shelters and the like.

466. The Chambers accepts that the Vukovar hospital, schools, public buildings, offices, wells, the water and electricity supply and roads were severely damaged during the conflict. All buildings were shelled, including the hospital, schools and kindergartens.<sup>1726</sup> Many wells were also targeted and destroyed.<sup>1727</sup> Most of the wells in Vukovar were privately owned,<sup>1728</sup> so houses with a water supply were among the first to be destroyed.<sup>1729</sup> From September to November 1991 there was no drinking water available, except from the remaining wells.<sup>1730</sup>

467. From the beginning of January 1991 until the fall of Vukovar on 18 November 1991, the number of people displaced or expelled from Vukovar is registered as 14,043.<sup>1731</sup> A video report broadcast by Sky News in November 1991 shows many people leaving the town.<sup>1732</sup> This was not limited to the city of Vukovar. According to Ambassador Okun, by mid-November more than 200,000 people in Croatia had been displaced with the number increasing to half a million by the end of the year.<sup>1733</sup>

468. The battle for Vukovar caused a large number of casualties, both dead and wounded, combatants and civilians. There can be no exact number for the wounded treated in Vukovar by Croat services, because the extremely difficult and improvised treatment facilities did not allow the luxury of thorough records. There is no overall evidence of the Serb forces' casualties. What remained of Vukovar hospital, together with a secondary nursing facility in a nearby cellar of a warehouse, dealt with most of the wounded, but there were other facilities in the Vukovar area. The Chamber has heard testimony estimating that the number of casualties admitted to the hospital on a daily basis from October ranged initially from 40 to 50, by October the number grew to 70 and 80, but an average could be 30 wounded a day.<sup>1734</sup> Civilians, including women and children were amongst the wounded.<sup>1735</sup> While precise statistics were not maintained in the circumstances, the Chambers accepts as a reliable estimate that the casualties were 60-75% civilian.<sup>1736</sup> A report to

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<sup>1725</sup> Exhibit 317; Exhibit 355; Dragutin Berghofer, T 5318-5320.

<sup>1726</sup> P011, T 5712.

<sup>1727</sup> Dragutin Berghofer, T 5317-5318; Šarlota Foro, T 2400;

<sup>1728</sup> P007, T 4002, 4063.

<sup>1729</sup> Šarlota Foro, T 2400.

<sup>1730</sup> P007, T 4002-4003.

<sup>1731</sup> Ivan Grujić, T10330.

<sup>1732</sup> Exhibit 136.

<sup>1733</sup> Herbert Stuart Okun, T 1759-1760.

<sup>1734</sup> Juraj Njavro, T 1515; P006, T 1104-1107; Exhibit 92; Binazija Kolesar, T 922-923.

<sup>1735</sup> Binazija Kolesar, T 920; Juraj Njavro, T 1515.

<sup>1736</sup> Juraj Njavro, T 1515.

Zagreb on 25 October 1991 from the medical director of the hospital noted that 1250 wounded had been admitted since 25 August with a further 300 dead on arrival.<sup>1737</sup>

469. For similar reasons no exact count of the number of civilians or of the number of members of the opposing forces who were killed can be given. Large numbers of persons are still simply designated as missing. An illustration of the scale of deaths, at least on the Croatian side, is provided by an exhumation of one mass grave in 1998 at the new cemetery in Vukovar. This was the largest exhumation in relation to the conflict in Croatia as a whole; 938 people were exhumed. Of the 938, 800 bodies were identified; 644 of these were Croatian, with 358 classified as civilians.<sup>1738</sup> This grave had been dug following the fall of Vukovar. It is the evidence of Ivan Grujić, the president of the Governmental Commission for Missing Persons, that the majority of those buried there died of violent causes.<sup>1739</sup>

470. There can be no question that the Serb forces were, in part, directing their attack on Vukovar, which included much difficult building-by-building fighting, and the immediately surrounding villages (some in truth more like suburbs of the city of Vukovar), as well at the comparatively small and very poorly armed and organised Croatian forces that were against them. The duration of the fighting, the gross disparity between the numbers of the Serb and Croatian forces engaged in the battle and in the armament and equipment available to the opposing forces and, above all, the nature and extent of the devastation brought on Vukovar and its immediate surroundings by the massive Serb forces over the prolonged military engagement, demonstrate, in the finding of the Chamber, that the Serb attack was also consciously and deliberately directed against the city of Vukovar itself and its hapless civilian population, trapped as they were by the Serb military blockade of Vukovar and its surroundings and forced to seek what shelter they could in the basements and other underground structures that survived the ongoing bombardments and assaults. What occurred was not, in the finding of the Chamber, merely an armed conflict between a military force and an opposing force in the course of which civilians became casualties and some property was damaged. The events, when viewed overall, disclose an attack by comparatively massive Serb forces, well armed, equipped and organised, which slowly and systematically destroyed a city and its civilian and military occupants to the point where there was a complete surrender of those that remained. While the view is advanced before the Chamber that the Serb forces were merely liberating besieged and wronged Serb citizens who were victims of Croatian oppressiveness and discrimination, this is a significant distortion of the true position as revealed by the evidence, when reviewed impartially.

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<sup>1737</sup> Exhibit 10.

<sup>1738</sup> Ivan Grujić, T 9956; Exhibit 545.

<sup>1739</sup> Ivan Grujić, T 9957.

471. The terrible fate that befell the city and the people of Vukovar was but one part of a much more widespread action against the non-Serb peoples of Croatia and the areas of Croatia in which they were substantial majorities. The declaration by Croatia of its independence of the Yugoslav Federation and the associated social unrest within Croatia was met with determined military reaction by Serb forces. It was in this political scenario that the city and people of Vukovar and those living in its close proximity in the Vukovar municipality became a means of demonstrating to the Croatian people, and those of other Yugoslav Republics, the harmful consequences to them of their actions. In the view of the Chamber the overall effect of the evidence is to demonstrate that the city and civilian population of and around Vukovar were being punished, and terribly so, as an example to those who did not accept the Serb controlled Federal government in Belgrade, and its interpretation of the laws of SFRY, or the role of the JNA for which the maintenance of the Yugoslav Federation was a fundamental element in the continued existence of the JNA.

472. It is in this setting that the Chamber finds that, at the time relevant to the Indictment, there was in fact, not only a military operation against the Croat forces in and around Vukovar, but also a widespread and systematic attack by the JNA and other Serb forces directed against the Croat and other non-Serb civilian population in the wider Vukovar area. The extensive damage to civilian property and civilian infrastructure,<sup>1740</sup> the number of civilians killed or wounded during the military operations<sup>1741</sup> and the high number of civilians displaced or forced to flee<sup>1742</sup> clearly indicate that the attack was carried out in an indiscriminate way, contrary to international law. It was an unlawful attack. Indeed it was also directed in part deliberately against the civilian population. The widespread nature of the attack is indicated by the number of villages in the immediate area around Vukovar which was damaged or destroyed and the geographical spread of these villages,<sup>1743</sup> as well as by the damage to the city of Vukovar itself. The systematic character of the attack is also evidenced by the JNA's approach to the taking of each village or town<sup>1744</sup> and the damage done therein<sup>1745</sup> and the forced displacement of those villagers fortunate enough to survive the taking of their respective villages.

(b) Status of the victims of the crimes alleged in the Indictment

473. As discussed elsewhere,<sup>1746</sup> the Indictment is limited to acts of mistreatment and murder of 264 individuals removed from Vukovar hospital on 20 November 1991, after the fall of the city. It

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<sup>1740</sup> See *supra*, paras 55-58; 465-466.

<sup>1741</sup> See *supra*, para 468.

<sup>1742</sup> See *supra*, para 467.

<sup>1743</sup> See *supra*, paras 46-48.

<sup>1744</sup> See *supra*, para 43.

<sup>1745</sup> See *supra*, paras 55; 465.

<sup>1746</sup> See *supra*, para 8.

does not charge acts of destruction of property and killing of civilians during the attack by Serb force on the city of Vukovar and its surroundings.

474. The Chamber has already established that these acts were directed against a specifically selected group of persons.<sup>1747</sup> Non-Serb men (apart from male children and elderly) who were able to make their way outside the hospital were dealt with as a group. This group included patients and men pretending to be patients or hospital staff. Women and children and elderly males were dealt with separately and eventually were transported by the JNA to Serbia or Croatia as they chose. Hospital staff and their families were included with the women and children, *unless* male staff and male family members had been involved in the Croat forces in which case they were included with the main body of men. Some identified male patients who were apparently not able to make their way unassisted outside the hospital were taken out by the JNA, apparently because of their role in the Croat forces and included with the main body of men. Some males in the hospital had been specifically identified by Serb forces and earlier removed from the hospital. They were no longer present at the hospital.

475. Defence evidence sought to indicate that the purpose of the triage at the hospital was to identify suspected Croat war criminals, some evidence indicating they were to be the subject of investigation and trial. However, other evidence suggest they were held for later exchange for Serb prisoners of war held by the Croat forces. The reality was that all non-Serb males of military age—apart from some hospital staff—were taken into custody by the JNA, searched and removed from the hospital eventually to Ovčara under armed JNA guard. In this last respect (a) virtually all non-Serb males of military age had become involved in the Croat forces given the grave situation, and (b) the Serb view appears to have been that all Croat forces were criminals as they were regarded as an unlawful terrorist force under the laws of SFRY. On this basis all involved in the Croat forces would appear to have been regarded as war criminals or war crime suspects in the Serb view. In truth, in the eyes of the Serb forces, the men (with two women) taken into JNA custody at the hospital on 20 November 1991 were “enemy” against whom the Serb forces had fought.

476. Other evidence analysed earlier indicates further that the crimes charged in the present Indictment were intended against individuals who had participated in the conflict<sup>1748</sup>. As early as October 1991, reports available at the command of OG South indicated that members of the Croat ZNG and MUP forces were present at the hospital. JNA soldiers released from Vukovar hospital after the take-over by the JNA on 19 November 1991 further reported that among the patients and

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<sup>1747</sup> See *supra*, para 207.

<sup>1748</sup> For example, one of the victims listed in the Annex to the Indictment (Martin Jakubowski) was seen firing at a JNA helicopter from the roof of a school building. (Ljubica Došen, T 3857-3858).

civilians who had sought refuge at the hospital in the last days of the fighting, there was a large number of ZNG and MUP members.<sup>1749</sup> To assist with the identification and interviewing of suspected war criminals a group of senior counter-intelligence officers from Belgrade had arrived in Vukovar.<sup>1750</sup> The decision of the command of OG South, which was in charge of the evacuation of Vukovar hospital, not to evacuate to Croatia the members of the Croat forces, which was expressed by Colonel Pavković to the ECMM representatives at Negoslavci on 19 November 1991,<sup>1751</sup> further indicates that this group of men (with two women) was intended to be treated differently from the civilians who were present at the hospital. Indeed, those at the hospital were, on the order of Mile Mrkšić, separated into two groups, designated in his terminology as war crimes suspects and civilians. Therefore, from the outset, the victims of the crimes charged in this Indictment were treated differently from the civilian population; they were selected and separated because of their known or believed involvement in the Croatian resistance against the Serb forces.

477. The Chamber turns now to consider the evidence regarding the actual status of the victims charged in the Indictment. Later in the Judgement the Chamber finds that not less than 200 of the male persons (with two women) removed from Vukovar hospital in the morning of 20 November 1991 were murdered by Serb forces in the evening and night hours of 20/21 November 1991 at Ovčara. Of these persons, the Chamber also finds that 194 have been identified as among those named and alleged in the Indictment as victims of murder.<sup>1752</sup> The evidence adduced by the Prosecution to establish the identity of these persons also provides information about their status at the relevant time. The Chamber has considered in this respect in particular Exhibit 345, Exhibit 554 and Exhibit 346. These exhibits are considered in more detail later in this Judgement so that the reasoning expressed at this point is limited.<sup>1753</sup> The Chamber has also relied on the evidence of several witnesses who themselves testified to having been involved in various capacities in the defence of Vukovar, who were present at the Vukovar hospital or at Ovčara at the relevant time<sup>1754</sup> as well as on other evidence indicating that specific victims were prominent in the activities of the Croatian forces in Vukovar.<sup>1755</sup>

478. Exhibit 345 is a document entitled “Comparison between Vukovar Hospital Admittance Register and Lists of Victims.” The Chamber finds Exhibit 345 of some value for the purpose of establishing the status of the individuals listed in the document. Exhibit 554 is a document

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<sup>1749</sup> See *supra*, para 190.

<sup>1750</sup> See *supra*, paras 169-175.

<sup>1751</sup> See *supra*, para 139.

<sup>1752</sup> See *infra*, para 509.

<sup>1753</sup> See *infra*, paras 500-502.

<sup>1754</sup> The Chamber refers to, *inter alia*, Dragutin Berghofer, Irinej Bučko, Josip Čović, Vilim Karlović, P011, P030, P032.

<sup>1755</sup> See for example Ljubica Došen, T 3857-3858 (with respect to Martin Jakubovski).

comprising 237 missing person questionnaires completed by family and friends of persons listed in the Annex to the Indictment. The Chamber finds Exhibit 554 of value with respect to the status of the persons listed in it. This information usually was known to the relatives at least for some time before their family member went missing. Further, for the purpose of determining the status of the victims, the Chamber also regards Exhibit 346<sup>1756</sup> as of some value, in particular, the list compiled according to data provided by the Main Medical Staff of the Health Ministry (Exhibit 346, List B) and the list compiled according to the data of the Croatian Association of Prisoners of Serbian Concentration Camps (Exhibit 346, List C).

479. The evidence indicates that of the 194 persons identified as among those alleged in the Indictment to have been murdered at Ovčara in the evening and night hours of 20/21 November 1991, 181 were known to be active in the Croatian forces in Vukovar. While, because of evidentiary difficulties, the numbers below may not be entirely precise, the effect of the evidence is that the majority of these men (and two women) were members or reserve members of ZNG (87) and that there was also a considerable number of members of the HV (30) and the Croatian MUP (17). There were some members of the Croatian protection force of Vukovar (9) and a few members of the Croatian paramilitary formation HOS. In the cases of nine other victims a military involvement has been identified by some evidence which is accepted, although there is also evidence not consistent with this.<sup>1757</sup> There were also 13 persons in respect of whom no known military involvement has been established by the evidence before the Chamber.<sup>1758</sup>

480. In the Chamber's finding, the effect of the evidence is to establish that the persons removed by the JNA forces from the Vukovar hospital on 20 November 1991 and taken to Ovčara and murdered there by Serb forces had been specifically identified and selected at the hospital by Serb forces, on the specific orders of Mile Mrkšić, implemented by Veselin Šljivančanin, the basis for their specific identification being that they were known, or were believed, to have been active in the Croatian forces in Vukovar, and thus in Serb eyes were war crimes suspects. They were identified and taken into JNA custody as prisoners of war. Given the evidentiary difficulties, the absence of

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<sup>1756</sup> See *infra*, para 502.

<sup>1757</sup> They are: ASAĐANIN, Ilija (P012, T 3667; Exhibit 554; Exhibit 346); JAJLO, Marko (Exhibit 345, Exhibit 554); HOLJEVAČ, Nikica (P021, T 7254; P007, T 4074; Exhibit 554; Exhibit 346); PAPP, Tomislav (P030, T 9760; Dragutin Berghofer, T 5326; Exhibit 346); POLOVINA, Branimir (Zvezdana Polovina, T 2578; 2679; Exhibit 554; Exhibit 346); ŠRENK, Đuro (P012, T 3667-3669; Exhibit 554; Exhibit 346); TARLE, Đujo (P013, T 1209-1210; Exhibit 345; Exhibit 554); ZELJKO, Josip (Binazija Kolesar, T 963; P013, T1196; Exhibit 554; Exhibit 346); ZUGEC, Borislav (Exhibit 554, Exhibit 346).

<sup>1758</sup> They are: ADŽAGA, Jozo (Binazija Kolesar, T 662-963; P012, T 3739; Exhibit 554), BALOG, Josip (Exhibit 346), BARBIR, Lovro (P007, T 4071), BOSANAC, Dragutin (Exhibit 554; Exhibit 346), ČUPIĆ, Stanoja (Exhibit 346), GLAVAŠEVIĆ, Siniša (P012, T 3666-3667; P006, T 1116; Exhibit 554), ILEŠ, Zvonko (Exhibits 554; Exhibit 346), KNEŽIĆ, Đuro (Exhibit 554), MARKOBAŠIĆ, Ružica (Ljubica Došen, T 3796; Tanja Došen, T 3929), PETROVIĆ, Stjepan (Josip Čović, T 3610-3611), PODHORSKI, Janja (Exhibit 346), VLAHO, Mate (P012, T 3739; P007, T 4075; Exhibit 554), and VLAHO, Miroslav (P012, T 3739).

adequate evidence before this Chamber to establish a role of a few of those victims in the Croat forces in Vukovar does not establish that these victims had no such role or that the Serb forces acted in error in some cases. Those matters cannot be resolved on the available evidence. It is established by the evidence, however, and the Chamber finds that the members of the Serb forces who had custody of the victims on 20 November 1991, and those who executed them that evening and night at Ovčara, acted in the knowledge or belief that the victims were involved in the Croatian forces at Vukovar. In their awareness of the factual circumstances, the victims were prisoners of war, not civilians.<sup>1759</sup>

481. While there may have been a small number of civilians among the 194 identified murder victims charged in the Indictment, in the Chamber's finding, the perpetrators of the offences against the prisoners at Ovčara on 20/21 November 1991 charged in the Indictment, acted in the understanding that their acts were directed against members of the Croatian forces. The possibility now identified that a small number of civilians may have been among the prisoners, therefore, does not change the finding which the Chamber makes that the crimes charged in the present Indictment do not qualify as crimes against humanity in the particular circumstances of this case.

### 3. Conclusion

482. The Chamber concludes that in the present case the jurisdictional prerequisites of Article 5 of the Statute have not been established.

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<sup>1759</sup> See *supra*, para 464.

## VIII. THE CHARGES

483. The three Accused are charged with five counts of crimes against humanity pursuant to Article 5 of the Statute of the Tribunal, namely persecutions (Count 1), extermination (Count 2), murder (Count 3), torture (Count 5), and inhumane acts (Count 6), and with three counts of violations of the laws or customs of war pursuant to Article 3 of the Statute, namely murder (Count 4), torture (Count 7), and cruel treatment (Count 8) for their alleged involvement in the events outlined in Chapter VI of this Judgement.

484. The offences in Counts 1, 2, 3, 5 and 6 are charged under Article 5 of the Statute of the Tribunal. For the reasons already set out in this Judgement, the jurisdictional requirements for the applicability of Article 5 of the Statute to the victims have not been established. It has not been shown that the victims of the crimes alleged in the Indictment as crimes against humanity had the status of civilians.<sup>1760</sup> They were being held as prisoners of war. It follows that that Counts 1, 2, 3, 5 and 6 must be dismissed. It should be appreciated, however, that in substance the same conduct was relied on to support Counts 1, 2, 3, 5 and 6, and also to support the remaining charges alleging violations of the laws and customs of war. The conduct of each Accused will, therefore, be fully considered.

### A. Murder (Count 4)

485. It is alleged in the Indictment that during the evening hours of 20/21 November 1991, at least 264 Croat and other non-Serb persons, who had been present in the Vukovar hospital after the fall of Vukovar, were taken to a location a little southeast of the Ovčara farm, where Serb forces executed them.<sup>1761</sup> The names of the alleged victims are set out in the Annex to the Indictment. These allegations support two counts of murder as a crime against humanity under Article 5 of the Statute (Count 3) and as a violation of the laws or customs of war under Article 3 of the Statute (Count 4) charged against each of the three Accused. For the reasons given only Count 4 remains to be determined in the present case.

#### 1. Law on murder

486. The offence of murder as a violation of the laws or customs of war under Article 3 of the Statute, requires proof of the following three elements: (1) the death of a victim, although it is not

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<sup>1760</sup> See *supra*, paras 479-482.

<sup>1761</sup> Indictment, paras 43-44.

necessary to establish that the body of the deceased person has been recovered;<sup>1762</sup> (2) that the death was the result of an act or an omission of the perpetrator; and (3) that the perpetrator, at the time of the act or omission, intended to kill the victim or, in the absence of such a specific intent, knew that death was a probable consequence of the act or omission.<sup>1763</sup>

## 2. Findings on murder

487. The Chamber has already found from the evidence that on 20 November 1991 a large number of non-Serbs from the Vukovar hospital were brought as prisoners to a hangar at the Vupik pig farm at Ovčara via the JNA barracks in Vukovar by Serb forces.<sup>1764</sup> In the evening and night hours of 20/21 November 1991 the prisoners of war were taken in groups of some 10 to 20 from the hangar at Ovčara to the site where earlier that afternoon a large hole had been dug.<sup>1765</sup> That same evening following the movement of the first group from the hangar, at times gunfire coming from this area was heard.<sup>1766</sup>

488. The evidence also discloses that at various times on 19 and 20 November, and perhaps 18 November 1991, individual non-Serbs were removed from the Vukovar hospital by Serb forces, and on 20 November from the buses that took the non-Serbs from the hospital to the hangar at Ovčara, via the JNA barracks, and from the hangar at Ovčara. Some of these non-Serbs may have been “rescued” from the Serb forces by family members or friends, but others were removed for other reasons. Some of these were held as prisoners by Serb forces at Velepomet near the JNA barracks in Vukovar, others were taken to Negoslavci where OG South had its command post. What happened to these is not established by the evidence save that, as will appear, the bodies of a few have been recovered from various locations in Croatia and Serbia in the years that followed.

489. About one year later, on 22 October 1992, Dr Clyde Snow, an experienced forensic pathologist who was acting under the mandate of the UN Special Rapporteur on the human rights situation in the former Yugoslavia, Mr Tadeusz Mazowiecki, announced that a mass grave had been discovered in the area of Vukovar.<sup>1767</sup> The actual site was in a lonely location at Ovčara near to the Vupik farm in Ovčara and between it and Grabovo. Dr Snow, together with another forensic pathologist and an expert in summary executions, had visited the location in the area of Ovčara on

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<sup>1762</sup> See *Krnjelac* Trial Judgement, para 326, confirmed in *Kvočka* Appeals Judgement, para 260, “The fact of a victim’s death can be inferred circumstantially from all of the evidence presented to the Trial Chamber. All that is required to be established from that evidence is that the only reasonable inference from the evidence is that the victim is dead as a result of acts or omissions of the accused or of one or more persons for whom the accused is criminally responsible.” See also *Tadić* Trial Judgement, para 240.

<sup>1763</sup> See *Strugar* Trial Judgement, para 236; *Limaj* Trial Judgement, para 241.

<sup>1764</sup> See *supra*, paras 234-252.

<sup>1765</sup> See *supra*, para 252.

<sup>1766</sup> See *supra*, paras 250-251.

18 October 1992 and had discovered remains of human bodies.<sup>1768</sup> The site was placed under a 24-hour guard by UNPROFOR soldiers.<sup>1769</sup> Dr Snow's visit to Ovčara followed reports in Croatian media from early October 1992 that an extra-judicial execution had taken place in 1991.<sup>1770</sup> There is evidence that even earlier, in September 1992, the UN representative for civil affairs for the area of Erdut had received vague information from the Osijek authorities about a mass grave at Ovčara, which the UN civil police had investigated, but without success.<sup>1771</sup>

490. The Croatian media reports were based on the accounts of an eye-witness, "Ivan", who, according to the newspaper article, had been taken by truck from Ovčara to what was described as the pond of Grabovo.<sup>1772</sup> A few days after Dr Snow's announcement of the discovery of a mass grave, a Belgrade based correspondent for the French newspaper *Le Monde*, and another journalist, decided to follow the route described in the Croatian media.<sup>1773</sup> While they were trying to follow the route described by "Ivan", the journalists saw six Russian UNPROFOR soldiers who took them to the actual site where remains of human bodies had been found.<sup>1774</sup> It was shown by the evidence, in the Chamber's finding, that this location coincides with the location where a large hole was dug in the afternoon on 20 November 1991 by a worker using a digging machine from the Vupik farm at the direction of a soldier of the Serb forces.<sup>1775</sup> The site is in the direction of Grabovo from the Vupik farm in a lonely location. For convenience it will be referred to as the mass grave or the Ovčara grave.

491. No exhumation followed Dr Snow's announcement of the discovery of the Ovčara grave until nearly four years later.<sup>1776</sup> During this time the mass grave was in territory controlled by the "government" of the "Republic of Serbian Krajina" or the autonomous province of Eastern Slavonia, Baranja, and Srem.<sup>1777</sup> During this time, however, the mass grave remained under UN protection.<sup>1778</sup>

492. The exhumation of the mass grave began on 31 August 1996.<sup>1779</sup> Bodies were retrieved from the site and transported to Zagreb where full post mortem examinations was conducted.<sup>1780</sup>

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<sup>1767</sup> Davor Strinović, T 9436; Florence Hartmann, T 9608; Exhibit 521.

<sup>1768</sup> Davor Strinović, T 9437; Exhibit 521.

<sup>1769</sup> Florence Hartmann, T 9609; Exhibit 521.

<sup>1770</sup> Florence Hartmann, T 9609-9610.

<sup>1771</sup> Exhibit 521; Florence Hartmann, T 9618.

<sup>1772</sup> Florence Hartmann, T 9609-9610, 9613.

<sup>1773</sup> Florence Hartmann, T 9613; Exhibit 521.

<sup>1774</sup> Florence Hartmann, T 9616-9617; Exhibit 520.

<sup>1775</sup> *See supra*, paras 240-241; Exhibit 520; Exhibit 450.

<sup>1776</sup> Davor Strinović, T 9437-9438, 9443.

<sup>1777</sup> Davor Strinović, T 9503.

<sup>1778</sup> Davor Strinović, T 9443.

<sup>1779</sup> Davor Strinović, T 9443.

<sup>1780</sup> Davor Strinović, T 9444, 9453, 9592-9593.

The exhumation and the autopsies were conducted by international and domestic experts. Representatives of the Croatian and the Yugoslav government were present during the exhumation and the autopsies.<sup>1781</sup> The exhumation was conducted under the authority of this Tribunal.<sup>1782</sup> Other international organisations, including ECMM, OSCE, and the International Commission for Missing People also participated in the exhumation.<sup>1783</sup>

493. Once the bodies were exhumed, they were transferred to the Institute of Forensic Medicine in Zagreb.<sup>1784</sup> International forensic experts carried out the autopsies of the bodies under the monitoring of Dr Davor Strinović, Deputy Head of the Institute of Forensic Medicine in Croatia and a member of the Republic of Croatia Government Commission for Detainees and Missing Persons (“Commission for Missing Persons”).<sup>1785</sup> The primary task of the international experts was to determine the cause of death in each case. They carried out the autopsies according to applicable Croatian requirements and in accordance with international standards and described all their findings, including findings that may not have been linked directly to the cause of death but may have had relevance to the process of identification.<sup>1786</sup> Exhibit 458, tendered through Dr Strinović, is a table prepared by the international forensic experts providing a summary of the findings of their examinations of the bodies exhumed at the Ovčara mass grave.<sup>1787</sup> The chart includes findings on cause and manner of death. Exhibit 462 contains the autopsy reports.

494. The remains of 200 human bodies were exhumed from this mass grave at Ovčara. There were 198 males and two females. The age range of those exhumed was between 16 and 72.<sup>1788</sup> The cause of death was established in 195 cases. 188 individuals died of gunshot wounds or multiple gunshot wounds. For the seven other persons the cause of death was trauma.<sup>1789</sup> It was established during the post mortem examinations that 86 individuals had also suffered from wounds or injuries caused before death.<sup>1790</sup> For the remaining 114 persons the autopsy reports contained no entries indicating that these persons had visible signs of trauma or injuries caused before death.<sup>1791</sup> The Chamber accepts in accordance with this evidence that at least 200 persons had been buried in the mass grave, that 195 of these persons died from trauma, including 188 from gunshot wounds, and that 86 of these persons also suffered bodily injuries caused before death. The Chamber’s finds

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<sup>1781</sup> Davor Strinović, T 9444.

<sup>1782</sup> Davor Strinović, T 9444.

<sup>1783</sup> Ivan Grujić, T 9912; Exhibit 534.

<sup>1784</sup> Davor Strinović, T 9444.

<sup>1785</sup> Davor Strinović, T 9453, 9592.

<sup>1786</sup> Davor Strinović, T 9454.

<sup>1787</sup> Davor Strinović, T 9410, 9416, 9459-94463; Exhibit 458.

<sup>1788</sup> Davor Strinović, T 9458.

<sup>1789</sup> Davor Strinović, T 9455-9457; Exhibit 457; Exhibit 458; Exhibit 462.

<sup>1790</sup> Davor Strinović, T 9457.

<sup>1791</sup> Davor Strinović, T 9458.

from the evidence that the 200 persons had been killed at the mass grave site on 20/21 November 1991. The death of more persons than the 200 mentioned above at Ovčara on 20/21 November 1991 is not precluded by these findings, although, apart from a few specific cases identified later in this judgement, this is not established by the evidence in this case.

495. The cause of death could not be established by autopsy in the case of five of the 200 bodies buried in the mass grave. The Chamber accepts Dr Strinović's evidence that in cases where gunshots have not damaged the bones but only soft tissue of a body, such as the heart, an autopsy performed several years after the death will not reveal the cause of death as the soft tissue will have decomposed. Given the surrounding circumstances, as found by the Chamber from all the evidence, the presence of 200 bodies in the one grave, of whom it is demonstrated by autopsy findings that 195 died from trauma including 188 from gunshot wounds, the Chamber finds by inference that all 200 persons buried in the grave died on 20/21 November 1991 at Ovčara from trauma caused by physical violence, in almost all cases from one or more gunshot wounds, and further, in the case of each of the five persons whose cause of death could not be determined by autopsy examination, that the trauma causing death was most probably gunshot wound to the soft tissue of the body.

496. After the autopsies were completed, the process of identification began.<sup>1792</sup> In 1997, the Commission for Missing Persons took custody of the bodies exhumed at the Ovčara mass grave in order to carry out this task.<sup>1793</sup> Two methods of identification were used: the classical method and the DNA method.<sup>1794</sup> Classical identification was conducted by gathering of identifying elements through autopsy and *ante mortem* material, including clothing, any items found on a body including jewellery, documents, and keys, as well as the teeth and skin in appropriate cases. The skin of each body was examined for identifying elements including any scars from previous surgery, injuries, old injuries, scar tissue, and tattoos. *Ante mortem* information was gathered from the families of the victims and then compared with elements found in the course of the autopsy.<sup>1795</sup> Of the 200 bodies exhumed at Ovčara, 192 were identified, 93 by the classical method and 99 by DNA.<sup>1796</sup> Of those identified almost all were of Croatian ethnicity.<sup>1797</sup> Even where an identification had been established by these means the identification was not accepted as final unless confirmed by the

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<sup>1792</sup> Davor Strinović, T 9445.

<sup>1793</sup> Davor Strinović, T 9453.

<sup>1794</sup> Davor Strinović, T 9465.

<sup>1795</sup> Davor Strinović, T 9422-9425, 9472.

<sup>1796</sup> Davor Strinović, T 9467; Exhibit 460.

<sup>1797</sup> Davor Strinović, T 9467.

family of the victim. Each body remained classified as unidentified until final confirmation was obtained.<sup>1798</sup>

497. The Annex to the Indictment lists the names of 264 individuals who are alleged to have been taken from the Vukovar hospital and murdered near Ovčara during the evening hours of 20/21 November 1991. Of these 264 named individuals, the bodies of 190 have been identified as described and were among those exhumed from the mass grave at Ovčara.<sup>1799</sup> Other evidence further established that another 16 of those listed in the Annex to the Indictment were found in other graves and were subsequently identified. 13 of those 16 were exhumed from the New Cemetery in Vukovar, one person from the Lovas mass grave,<sup>1800</sup> and the mortal remains of another two of those listed in the Annex were received from the authorities of Serbia and Montenegro (from Sremska Mitrovica in 1997 and from Belgrade in 1995, respectively).<sup>1801</sup> The bodies of 58 persons listed in the Annex to the Indictment have not been found and they remain reported as missing.<sup>1802</sup> No evidence was led during the trial concerning the cause of death of the 16 persons listed in the Annex to the Indictment but whose remains were found elsewhere than at Ovčara, so that the evidence does not establish that these persons were murdered or when they died.

498. Of those 190 persons listed in the Annex to the Indictment whose bodies have been identified and were exhumed from the mass grave at Ovčara, in 184 cases the cause of death was shown by autopsy to have been gunshot wound or multiple gunshot wounds. The cause of death of two more of these persons was trauma. The cause of death of the remaining four persons was not able to be determined by autopsy but, in accordance with the finding of the Chamber noted a little earlier in this Judgement, in each case the cause of death was trauma, occurring on 20/21 November 1991 at Ovčara, the trauma being most probably a gunshot wound to the soft tissue of the body.

### 3. Findings on identity of the victims

499. The evidence in this case establishes that no reliable contemporary lists had been located by investigators or provided by Serbia, of the persons removed by Serb forces from the Vukovar hospital early in the morning of 20 November 1991 and transported by buses to the hangar at Ovčara via the JNA barracks in Vukovar. Some attempts may have been made at the hangar by JNA personnel to list these prisoners, but, if so, no list has been made available. No list was prepared at the time the prisoners were removed from the hospital despite international obligations. While arrangements had been made for the ICRC, under ECOMM monitoring, to prepare lists at the

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<sup>1798</sup> Davor Strinović, T 9422-9425.

<sup>1799</sup> Ivan Grujić, T 9961-9962; Exhibit 460; Exhibit 462; Exhibit 549.

<sup>1800</sup> Ivan Grujić, T 9961-9963; Exhibit 550; Exhibit 552; Exhibit 549.

<sup>1801</sup> Ivan Grujić, T 9961-9962; Exhibit 551; Exhibit 549.

hospital, in the finding of the Chamber the JNA, and in particular Veselin Šljivančanin, ensured that these agencies did not reach the hospital in time to be able to list the prisoners. Rough patient lists prepared by Dr Vesna Bosanac, as well as lists of hospital staff, were given to the ICRC and Veselin Šljivančanin, but have not been made available to be led in evidence. As a consequence it has been necessary for the Prosecution to go to considerable lengths to seek to establish the identity of the prisoners from the hospital who were taken to the hangar at Ovčara on 20 November 1991, and to establish which of those are among the persons whose bodies have been found and identified in the mass grave at Ovčara, and to identify the number and identity of prisoners taken to Ovčara that day and whose remains have not been found and identified.

500. To establish that the 264 persons, whose names are listed in the Annex to the Indictment, were present in the Vukovar hospital after the fall of Vukovar on 18 November 1991 the Prosecution has tendered several documents. Exhibit 345, a document entitled “Comparison between Vukovar Hospital Admittance Register and Lists of Victims” (“blue folder”) was tendered into evidence through Dr Vesna Bosanac. It is a comparison of the Vukovar hospital register and the names of the victims listed in the Annex to the Indictment. The list was compiled in the following manner: upon their arrival at the hospital, personal details of patients were recorded in the emergency ward. Patients were then hospitalised or sent home or to a shelter.<sup>1803</sup> This information was then transcribed into a computer and sent electronically to the information section of the Ministry of Health in Zagreb.<sup>1804</sup> Dr Bosanac was not able to send this information to Zagreb from around 9 November 1991. Some entries made after that nevertheless reached Zagreb, having been sent by the police or the Red Cross.<sup>1805</sup> In 1997, Dr Bosanac received a CD with this information, *i.e.* the “blue folder” from the Ministry of Health in Zagreb. Dr Bosanac, in her evidence, confirmed the accuracy of the “blue folder”.<sup>1806</sup> It is her evidence, however, that the document contains information on persons who were wounded or ill in the Eastern Slavonia area, and was not specifically confined to Vukovar hospital.<sup>1807</sup> Further, the information contained in the “blue folder” does not indicate whether a person was then admitted to the hospital or immediately released.<sup>1808</sup> Exhibit 345, therefore, merely indicates that on a specified date a certain person visited the hospital or an associated nursing post because of an injury received on a listed date. Exhibit 345, the “blue folder”, therefore, does not establish whether or not a person listed in the

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<sup>1802</sup> Ivan Grujić, T 9961-9962.

<sup>1803</sup> Vesna Bosanac, T 7078.

<sup>1804</sup> Vesna Bosanac, T 7084.

<sup>1805</sup> Vesna Bosanac, T 7144-7145, 7153.

<sup>1806</sup> Vesna Bosanac, T 7986.

<sup>1807</sup> Vesna Bosanac, T 7099-7100.

<sup>1808</sup> The Chart was tendered in B/C/S and it was not translated into English so Vesna Bosanac translated the headings of the columns in the chart. According to her testimony, the third column indicates the date of injury and the sixth

“blue folder” was present at the Vukovar hospital on 20 November 1991. Therefore, the Chamber is not able to rely on Exhibit 345 for this purpose.

501. Exhibit 554 is a document comprising 237 missing person questionnaires completed by family and friends of persons listed in the Annex to the Indictment. The missing person questionnaire was developed by the Government Commission for Detainees and Missing Persons. Questionnaires from ICRC, UN Human Rights Centre and INTERPOL were used.<sup>1809</sup> Questionnaires were distributed to 102 branches of the Croatian Red Cross and many places where displaced persons were living communally. A TV advertisement was made to inform the public of this. Written material was prepared and sent to the print media. A public campaign for renewal of requests for searches lasted from 14 February to 5 March 1994. Requests were renewed for searches for a total of 3,052 missing people.<sup>1810</sup> The information gathered was stored, at the Commission for Detainees and Missing Persons, in a database which allowed a broad spectrum of analyses and searches.<sup>1811</sup> Ivan Grujić, who from 1993 to 2000 served as the president of the Government Commission for Detainees and Missing Persons (later, the Administration for Detainees and Missing Persons), pointed out that the accuracy of the information in all questionnaires could not be guaranteed because the information was provided by relatives,<sup>1812</sup> the quality of the sources for this information varied considerably and, generally, was not known. It became apparent that in a number of cases, despite information in the questionnaire, the missing person had no apparent connection with Vukovar hospital.<sup>1813</sup> Further, the information contained in Exhibit 554 was provided some years after the events charged in the Indictment. Given these matters the Chamber is only able to place reliance on Exhibit 554 when the information, as to presence of the missing person in Vukovar hospital on 20 November 1991, contained in it is confirmed in material aspects by other evidence. It, nevertheless, finds Exhibit 554 of value with respect of establishing the status of the persons listed in it.

502. Exhibit 346 is a document compiled after consultations were held between the Croatian Ministry of Health, the Croatian Mother’s Association, the Vukovar hospital, the Croatian police, and the Croat Association of Former Prisoners of Serbian Concentration Camps (a Vukovar based non-governmental organisation).<sup>1814</sup> The document contains three distinct lists of names: (i) a list of names “Taken from the War Hospital in Vukovar on 20 November 1991 Who Went Missing up

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column indicates the date that information was entered into the chart. (Vesna Bosanac, T 7079-7080) There is no indication of the date that persons attended the hospital.

<sup>1809</sup> Exhibit 530, pp 5-6.

<sup>1810</sup> Exhibit 530, pp 5-6.

<sup>1811</sup> Exhibit 530, p 8.

<sup>1812</sup> Ivan Grujić, T 10063-10064.

<sup>1813</sup> Ivan Grujić, T 10067-10068.

<sup>1814</sup> Vesna Bosanac, T 7090.

to Date (Unidentified)” containing 45 names (“List A”); (ii) “A List of the Wounded from the Vukovar Hospital that Were Exhumed at Ovčara and Identified according to Data Provided by the Main Medical Staff of the Health Ministry,” containing 97 names (“List B”);<sup>1815</sup> and (iii) a list of “Identified Persons from the Vukovar Hospital Exhumed at Ovčara according to the Data of the Croatian Association of Prisoners of Serbian Concentration Camps” containing 95 names (“List C”). The document also contains information sheets of the persons listed in List B and in List C. While the sources of List A are not clear, Lists B and C are compilations of a number of sources identified by Dr Bosanac,<sup>1816</sup> each of which had a role in the identification of persons missing in the Vukovar area during the conflict. Dr Bosanac had a role in the compilation of each of these lists in Exhibit 346. She could identify all people in these lists as patients at the hospital.<sup>1817</sup>

503. Exhibit 47 is a document dated 20 October 2005 sent by Ivan Grujić to Dr Bosanac. The document contains a cover letter, a list of 192 names (“List A”), a list of 97 names (“List B”), and several graphs. Dr Vesna Bosanac testified that she had requested the Croatian Ministry of Family, Veteran’s Affairs and Intergenerational Solidarity to send her an updated list of persons identified from the mass grave at Ovčara.<sup>1818</sup> She explained that on 20 December 2005, the Ministry sent her the list of 192 names contained in Exhibit 47, which sets out the names and other personal information of the persons whose bodies were identified from the mass grave at Ovčara.<sup>1819</sup> It is her evidence that she then checked the list of 192 names with the database on patients registered at Vukovar hospital at the time relevant to the Indictment. She identified 97 names, on both lists; these are the names in List B.<sup>1820</sup>

504. In addition to this documentary evidence, to establish whether a person named in the Annex to the Indictment was taken from the Vukovar hospital to the hangar at Ovčara by Serb forces on 20 November 1991 the Chamber has also relied on *viva voce* evidence of witnesses who were present at the hospital, the JNA barracks in Vukovar, and at Ovčara, and on other documentary evidence.

505. In the Chamber’s finding, other evidence demonstrates that six persons listed in the Annex to the Indictment were killed at Velepromet on 19, 20 or 21 November 1991, not at Ovčara.<sup>1821</sup>

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<sup>1815</sup> List B sets out the same names as one of the lists contained in Exhibit 47.

<sup>1816</sup> Vesna Bosanac, T 7090.

<sup>1817</sup> Vesna Bosanac, T 7107.

<sup>1818</sup> Vesna Bosanac, T 893.

<sup>1819</sup> Vesna Bosanac, T 893.

<sup>1820</sup> Vesna Bosanac, T 893.

<sup>1821</sup> Miroslav Blašković, 1959/male (Exhibit 549 (listed as not found); P007, T 4028, 4042-4045; Exhibit 188); Karlo Fituš, 1964/male (Exhibit 549 (listed as not found); Exhibit 554, pp 862-873); Krunoslav Golac, 1959/male (Exhibit 549 (listed as exhumed from mass grave Vukovar new cemetery); Exhibit 552; P031, T3288-3289; Exhibit 554, pp 350-363); Martin Marijanović, 1959/male (Exhibit 549 (listed as not found); P007, T 4042-4045; Exhibit 188); Davor Šajtović, 1961/male (Exhibit 549 (listed as not found); Martin Šajtović, 1928/male (Exhibit 549 (listed as not found); Emil Čakalić, T 5923).

Acts of murder or ill-treatment that may have occurred at Velepromet have not been charged in the present Indictment.<sup>1822</sup> The death of these six persons, therefore, is not attributable to any conduct as charged in the Indictment. Further, as indicated earlier, in the view of the Chamber, no evidence or no sufficient evidence has been presented to establish that the deaths of the 16 persons, whose bodies were recovered from locations other than the mass grave at Ovčara, are related to the acts or omissions charged in the Indictment. No evidence explaining how the bodies came to be in other graves elsewhere than Ovčara, no evidence about the cause of death and in many cases, no sufficient evidence to establish that that these persons were taken from the Vukovar hospital on 20 November 1991, has been led by the Prosecution.

506. There is evidence in the trial, however, which the Chamber accepts, that three persons listed in the Annex to the Indictment, Ivan Došen,<sup>1823</sup> Martin Došen<sup>1824</sup> and Tadija Došen<sup>1825</sup> were present in the Vukovar hospital on the morning of 20 November 1991.<sup>1826</sup> Martin Došen, who had been partly paralysed, was carried from the hospital on a stretcher.<sup>1827</sup> He was not seen to board or to be taken on a bus.<sup>1828</sup> Ivan Došen and Tadija Došen were seen to board one of the buses of male prisoners parked outside the hospital,<sup>1829</sup> and later in the day at the JNA barracks these two brothers Ivan Došen and Tadija Došen were taken out of one of the buses and beaten for several minutes by Serb TOs or paramilitary personnel. It is further established that Martin Došen was taken out of a military truck also parked at the JNA barracks at that time, and that all three Došen brothers were then taken in a minivan to Negoslavci.<sup>1830</sup> There is no evidence that any one of the three brothers was seen at Ovčara. The three Došen brothers have not been seen since 20 November 1991 and to date remain unaccounted for. Their remains were not found at the mass grave at Ovčara, nor anywhere else. The only evidence of what may have happened was given by Ljubica Došen, Martin Došen's wife, who had heard that Martin Došen may have been killed at Negoslavci.<sup>1831</sup> While their death by Serb forces is to be inferred from these circumstances, the evidence is insufficient to establish whether Martin Došen, or either or both of his brothers, was killed at Negoslavci. The evidence before the Chamber does not support a conclusion that any one or more of the three Došen brothers were killed at Ovčara in the evening and night of 20/21 November

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<sup>1822</sup> See *supra*, para 8.

<sup>1823</sup> Ljubica Došen, T 3777-3782; P030, T 9725-9226.

<sup>1824</sup> Ljubica Došen, T 3758; Dragutin Berghofer, T 5446; P031, T 3371-3372; Rudolf Vilhelm, T 4885; P030, T 9725-9726; P013, T 1190, 1219.

<sup>1825</sup> Ljubica Došen, T 3777-3782; 3793-3794; P030, T 9725-9226.

<sup>1826</sup> Ljubica Došen, T 3777-3782. See also P030, T 9725-9226.

<sup>1827</sup> Ljubica Došen, T 3777-3782; P031, T 3244-3245; 3372; P013, T 1190, 1219.

<sup>1828</sup> See P031, T 3372.

<sup>1829</sup> Ljubica Došen, T 3777-3782, 3793-3794, 3781-3782.

<sup>1830</sup> P009, T 6149-6151.

<sup>1831</sup> Ljubica Došen, T 3783.

1991, or that their death may be attributed to any conduct of the Accused as charged in the Indictment.

507. Having regard to all the evidence the Chamber is satisfied, and finds, that all of the 190 persons whose bodies have been identified, and were found in the mass grave at Ovčara, and who are listed in the Annex to the Indictment, died on 20/21 November 1991 at Ovčara from trauma caused by physical violence inflicted by Serb forces, in almost every case the trauma being one or more gunshot wounds. Further, the Chamber is satisfied, and finds, that each of these 190 persons were taken as prisoners from the Vukovar hospital on the morning of 20 November 1991 by Serb forces, via the JNA barracks at Vukovar to a hangar at the Vupik farm at Ovčara and from there, during the evening of 20/21 November 1991, to the site of the mass grave where they were killed. Elsewhere the Chamber has established that these 190 persons were selected at the hospital because they were known or were believed to have been active in the Croatian forces in Vukovar.

508. In addition, the Chamber is further satisfied and finds that Damir Kovačić, Kemal (Ćeman) Saiti, Damjan Samardžić, and Dražen Tuškan, who are listed in the Annex to the Indictment, were also murdered at Ovčara in the evening of 20/21 November 1991. While their bodies have not been found, these four persons were seen on the buses that departed from Vukovar hospital in the morning of 20 November 1991 and at the hangar at Ovčara in the afternoon of 20 November 1991.<sup>1832</sup> They have not been seen since that day. There is evidence that at least three of them were severely beaten by Serb forces that day. Some witnesses believed that Kemal (Ćeman) Saiti and Damjan Samardžić died from the actual injuries they received during the beatings in the hangar on 20 November 1991.<sup>1833</sup> In the absence of specific autopsy findings about the actual cause of death, however, the Chamber is unable to specifically conclude that the death of Kemal (Ćeman) Saiti and Damjan Samardžić was caused by these beatings. As these persons were last seen in the hangar in the custody of armed men of the Serb forces at Ovčara in the afternoon of 20 November 1991, and they remain unaccounted for, the Chamber infers in all the circumstances, and finds, that they died from trauma inflicted by Serb forces, most probable due to gunshot wounds on 20/21 November 1991 at Ovčara.

#### 4. Conclusion

509. Thus, the Chamber is satisfied and finds that 194 of the persons named in the Annex to the Indictment were taken from Vukovar hospital in the morning of 20 November 1991 and were murdered in the evening and night hours of 20/21 November 1991 at Ovčara. The evidence

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<sup>1832</sup> See *supra*, para 237. With respect to Dražen Tuškan, see Dragutin Berghofer, T 5325.

<sup>1833</sup> See *supra*, para 237.

supporting the Chamber's finding with respect to each of these 194 persons is detailed in the Schedule to this Judgement. At the material time these 194 persons were prisoners of Serb armed forces, under armed guard, and, therefore, were taking no active part in the hostilities.

510. The evidence further demonstrates, in the finding of the Chamber, that at the time of these 194 killings, the perpetrators acted with the requisite intent for murder. The circumstances demonstrate this. The Chamber refers in particular to the very large number of victims and to the fact that almost all victims died from multiple gunshot wounds. The Chamber also refers here to its findings made elsewhere in the Judgement, that a large grave had been dug before the killings, that the grave was in an isolated location, that the bodies of at least 190 of the victims were covered and left, and that the killings occurred in the evening and at night. To establish the intent of the actual perpetrators it is further relevant that the victims were prisoners of war, that they were unarmed, the majority also being sick or wounded patients from a hospital. The Chamber would also observe here that the perpetrators were among the victors in a bitter armed conflict in which the victims had been among the Croat losers.

511. On the basis of the foregoing, and leaving aside for the present the question of the criminal responsibility of the three Accused, the Chamber finds that the elements of the offence of murder (Count 4) are established in relation to 194 identified persons listed in the Schedule to the Judgement.

### **B. Torture and cruel treatment (Counts 7 and 8)**

512. It is alleged in the Indictment that approximately 300 Croats and other non-Serbs who were present in the Vukovar hospital after the fall of Vukovar, were imprisoned at Ovčara, that the conditions at this detention facility were brutal and characterised by inhumane treatment and constant physical and psychological assault, that after the initial beating in front of the farm building, Serb forces continued to beat and assault the detainees for several hours so seriously that at least two men died from the beatings, and that at least one female detainee was sexually assaulted.<sup>1834</sup> It is alleged further that among the detainees there were women, elderly men and sick and wounded patients from the Vukovar hospital who did not receive any care for their illnesses or injuries after they were removed from the Vukovar hospital, while they were at the JNA barracks, and during their detention at Ovčara.<sup>1835</sup> These allegations support two counts of torture, charged as a crime against humanity under Article 5 of the Statute (Count 5) and as a violation of the laws or customs of war under Article 3 of the Statute (Count 7), one charge of inhumane acts as a crime

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<sup>1834</sup> Indictment, para 46.

<sup>1835</sup> Indictment, para 47.

against humanity under Article 5 of the Statute (Count 6), and one charge of cruel treatment as a violation of the laws or customs of war under Article 3 of the Statute (Count 8), charged against each of the three Accused. For reasons given earlier Counts 5 and 6 must be dismissed in the present case as it has not been shown that the victims of the crimes against humanity alleged in the Indictment had the status of civilians.<sup>1836</sup> They were being held as prisoners of war. It should be appreciated, however, that in substance the same conduct was relied on to support Counts 5 and 6, and also Counts 7 and 8 alleging violations of the laws and customs of war. The conduct of each Accused will therefore be fully considered.

## 1. Law

### (a) Torture (Count 7)

513. The elements required to establish the crime of torture are: (1) there must be an act or omission inflicting severe pain or suffering, whether physical or mental; (2) the act or omission must be intentional; (3) the act or omission must have been carried out with a specific purpose such as to obtain information or a confession, to punish, intimidate or coerce the victim or a third person, or to discriminate, on any ground, against the victim or a third person.<sup>1837</sup>

514. Assessment of whether the acts charged as torture inflict severe pain or suffering will be made in light of all the circumstances of the case. These include the nature and context of the infliction of pain, the premeditation and institutionalization of the ill-treatment, the physical condition of the victim, the manner and the method used and the position of inferiority of the victim,<sup>1838</sup> the physical or mental effect of the treatment on the victim, the victim's age, sex, and state of health,<sup>1839</sup> and whether the mistreatment occurred over a prolonged period of time.<sup>1840</sup> There is no requirement that the act or omission has caused a permanent injury,<sup>1841</sup> or a physical injury as such, as mental harm is recognised as a prevalent form of torture.<sup>1842</sup> Further, it is now settled in the jurisprudence of the Tribunal that the perpetrator need not have acted in an official capacity.<sup>1843</sup>

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<sup>1836</sup> See *supra*, paras 479-481.

<sup>1837</sup> *Kunarac* Appeals Judgement paras 142, 144 confirming *Kunarac* Trial Judgement, para 497. See also *Brdanin* Trial Judgement, para 481, *Krnjelac* Trial Judgement, para 179; *Limaj* Trial Judgement, para 235; *Furundžija* Appeals Judgement, para 111.

<sup>1838</sup> *Krnjelac* Trial Judgement, para 182; *Limaj* Trial Judgement, para 237.

<sup>1839</sup> *Kvočka* Trial Judgement, para 143; *Limaj* Trial Judgement, para 237.

<sup>1840</sup> *Krnjelac* Trial Judgement, para 182; *Limaj* Trial Judgement, para 237.

<sup>1841</sup> *Kvočka* Trial Judgement, paras 148; *Limaj* Trial Judgement, para 236.

<sup>1842</sup> *Kvočka* Trial Judgement, paras 149; *Limaj* Trial Judgement, para 236.

<sup>1843</sup> *Kunarac* Appeals Judgement, para 148; *Kvočka* Appeals Judgement, para 284.

515. The required *mens rea* is that the perpetrator intended to act in a way which, in the normal course of events, would cause severe pain or suffering, whether physical or mental, to his victims.<sup>1844</sup> Whether the perpetrator had a different motivation is irrelevant provided that he acted with the requisite intent.<sup>1845</sup> Further, the act or omission must have been carried out with a specific purpose. This includes, albeit not exhaustively,<sup>1846</sup> the purpose to obtain information or a confession, to punish, intimidate or coerce the victim or a third person, or to discriminate, on any ground, against the victim or a third person. The prohibited purpose need not be the sole or the main purpose of the act or omission in question.<sup>1847</sup>

(b) Cruel treatment (Count 8)

516. Cruel treatment under Article 3 of the Statute is defined as an intentional act or omission causing serious mental or physical suffering or injury to, or constituting a serious attack on human dignity upon, a person taking no active part in the hostilities. The perpetrator must have acted with a direct intent to commit cruel treatment, or with indirect intent, *i.e.* in the knowledge that cruel treatment was a probable consequence of his act or omission.<sup>1848</sup>

517. In the present circumstances the charges of torture and cruel treatment are based, *inter alia*, on allegations of deprivation of medical care from “women, elderly men and wounded and sick patients” of Vukovar hospital who were among the detainees.<sup>1849</sup> Whether particular conduct amounts to cruel treatment is a question of fact to be determined on a case by case basis. In the Chamber’s view, the failure to provide adequate medicine or medical treatment would constitute the offence of “cruel treatment” if, in the specific circumstances, it causes serious mental or physical suffering or injury, or constitutes a serious attack on human dignity and if it is carried out with the requisite *mens rea*.

## 2. Findings

(a) Scope of Counts 7 and 8

518. In its final submissions the Prosecution sought to rely in support of Counts 7 and 8 on evidence as to mistreatment of detainees at the Vukovar hospital,<sup>1850</sup> incidents of verbal and physical abuse in front of the Vukovar hospital early in the morning on 20 November 1991, and

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<sup>1844</sup> *Kunarac* Appeals Judgement, para 153.

<sup>1845</sup> *Kunarac* Appeals Judgement, para 153.

<sup>1846</sup> *Čelebići* Trial Judgement, para 470; *Kvočka* Trial Judgement, para 140; *Limaj* Trial Judgement, para 239.

<sup>1847</sup> *Kunarac* Appeals Judgement, para 155; *Kvočka* Trial Judgement, para 153; *Krnjelac* Trial Judgement, para 184.

<sup>1848</sup> *Čelebići* Appeals Judgement, para 424; *Blaškić* Appeals Judgement, para 595; *Strugar* Trial Judgement, para 261; *Limaj* Trial Judgement, para 231.

<sup>1849</sup> Indictment, para 47.

conduct of paramilitaries present at the hospital in the late morning of 20 November 1991 after the removal of most male patients.<sup>1851</sup> The Prosecution further seeks to rely on evidence of physical and verbal abuse, against those removed as prisoners from the Vukovar hospital, that took place at the JNA barracks in or about the late morning of 20 November 1991.<sup>1852</sup>

519. However, Counts 7 and 8 of the Indictment are based on allegations about imprisonment of approximately 300 persons at Ovčara, the conditions of detention, constant physical and psychological assault, both in front and inside the hangar at Ovčara, and deprivation of medical care at the JNA barracks and during detention at Ovčara.<sup>1853</sup> No allegations of mistreatment at or in front of the Vukovar hospital on 20 November 1991 are included in the Indictment in support of Counts 7 and 8. No allegations of physical or verbal abuse occurring at the JNA barracks in the morning of 20 November 1991 are included in support of Counts 7 and 8 of the Indictment. Further, no allegations of mistreatment at the Vukovar hospital or of physical or verbal abuse at the JNA barracks are included in the Prosecution Pre-Trial Brief in support of Counts 7 and 8.<sup>1854</sup> The allegations in the Indictment supporting Counts 7 and 8 are, therefore, specifically limited to (i) imprisonment at Ovčara; (ii) conditions of detention at Ovčara; (iii) physical abuse at Ovčara; and (iv) deprivation of medical care both at the JNA barracks and at Ovčara.

520. The Chamber notes that Count 1 of the Indictment, which has been dismissed for the reasons given, did charge the three Accused with persecutions committed, *inter alia*, through the cruel or inhumane treatment of Croats and other non-Serbs, including torture, beatings, sexual assault and psychological abuse.<sup>1855</sup> This allegation is not limited to mistreatment occurring at Ovčara. Paragraph 34 of the Indictment which is relied on by the Prosecution contains allegations of humiliation and threats of detainees by Serb forces occurring at the JNA barracks. In the Chamber's view, however, paragraph 34 relates only to the charge of persecutions (Count 1), and is not properly construed as supporting the charges of torture (Count 7) or cruel treatment (Count 8).

521. No allegation about acts of mistreatment occurring at the Vukovar hospital is included at all in the Indictment. The Accused were not otherwise put on notice that the Prosecution would seek to support Counts 7 and 8 by allegations of mistreatment at the Vukovar hospital and at the JNA barracks. The Defences of the three Accused were not conducted on that basis. It would be contrary to the principles of a fair trial to include such allegations in support of Counts 7 and 8 at this stage.

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<sup>1850</sup> Prosecution Final Brief, para 233.

<sup>1851</sup> Prosecution Final Brief, paras 229-232.

<sup>1852</sup> Prosecution Final Brief, paras 234-242.

<sup>1853</sup> Indictment, paras 46-47.

522. For the reasons set out above the Chamber must limit its consideration of whether Counts 7 and 8 have been established against the Accused to the matters alleged and particularised in the Indictment, that is, in essence, to: (i) imprisonment at Ovčara; (ii) conditions of detention at Ovčara; (iii) physical abuse at Ovčara, including deaths resulting from mistreatment, and sexual abuse; and (iv) deprivation of medical care both at the JNA barracks and at Ovčara.

(b) Findings on Counts 7 and 8

523. The Chamber has already established that in the morning hours of 20 November 1991 a large number of non-Serb men (with two women) were removed from Vukovar hospital and taken as prisoners to the hangar at Ovčara by Serb forces.<sup>1856</sup> They arrived there between 1330 and 1430 hours on 20 November. The Chamber would also refer here to its earlier finding that by the time of their removal from Vukovar hospital they were held as prisoners of war.<sup>1857</sup> Among them there were many wounded and sick. To the extent that the evidence presently available does not demonstrate the participation of everyone of these prisoners in the Croat forces, they were at the time held as prisoners of war by the Serb forces. They were in no position to take part in the hostilities.

524. The Indictment includes allegations of imprisonment in support of the charges of torture and cruel treatment.<sup>1858</sup> The Chamber observes that the offences of torture and cruel treatment have never been established before this Tribunal in relation to “unlawful detention for prolonged periods” or imprisonment.<sup>1859</sup> The Chamber is of the view that whether particular conduct amounts to cruel treatment or torture is a question of fact to be determined on a case by case basis. The Chamber finds that, at least in the circumstances of this case, the fact of imprisonment, in and of itself, does not amount to an act inflicting severe pain or suffering or constituting a serious attack on human dignity, within the meaning of torture or cruel treatment under Article 3 of this Statute.

525. Turning next to the conditions of detention at Ovčara, the Chamber observes that the prisoners from the hospital were kept under armed guard in the hangar at Ovčara from their arrival at between approximately 1330 and 1430 hours until late evening, some may even have still been alive and in the hangar until after midnight. Inside the hangar there were at least 200 prisoners from the hospital. Many were forced to lean against the wall with their arms held up and their legs

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<sup>1854</sup> See in particular paras 179-180 and paras 183-184 of the Prosecution Pre-Trial Brief.

<sup>1855</sup> Indictment, para 41(b).

<sup>1856</sup> See *supra*, paras 234-252.

<sup>1857</sup> See *supra*, para 207.

<sup>1858</sup> Indictment, para 46.

<sup>1859</sup> See *Limaj* Trial Judgement, para 232.

spread.<sup>1860</sup> There was nothing in the hangar, only some hay at one end. The floor was concrete.<sup>1861</sup> The detainees were terribly frightened. It was apparent that something bad awaited them.<sup>1862</sup> The atmosphere was miserable.<sup>1863</sup> Screams, moans, sobs, and cries for help were to be heard.<sup>1864</sup> A JNA officer who arrived at the hangar in the afternoon of 20 November 1991 described what he saw inside the hangar as “mayhem.”<sup>1865</sup> These conditions were such as to cause serious mental or physical suffering and they indeed did so.

526. Turning next to the allegations of beatings in support of the charges of torture and cruel treatment, the Chamber refers to its earlier findings, that at the arrival of the prisoners of war at Ovčara, they were received by a large number of TO and paramilitary members of the Serb forces as well as some JNA troops. The buses were emptied one by one and the prisoners of war, apart from four, had to pass through a gauntlet of two rows of Serb soldiers, about 10 to 15 on each side, who were beating them severely as they passed through.<sup>1866</sup> The prisoners were beaten with a variety of implements including wooden sticks, rifle-butts, poles, chains and crutches. They were kicked and punched.<sup>1867</sup> One witness described the beatings in front of the hangar the following way:

I don't know if the civilised world will be able to comprehend this. It is very difficult to describe this. You can't even see this in the movies, the beatings were terrible. People lost their teeth. There was so much blood, once we entered the hangar this straw was strewn on the floor and it was all covered in blood, it's hard to describe it. They were kicking, hitting, yelling, screaming [...].<sup>1868</sup>

In effect, everyone but four, of the approximately 200 male prisoners from the five buses had to pass through the gauntlet and was heavily beaten. It is not clear from the evidence whether the two women were treated any differently. The soldiers were yelling “Ustashas” and were verbally abusing the prisoners going through the gauntlet.<sup>1869</sup>

527. Further, as has been set out earlier in this Judgement, beatings by members of the Serb forces continued inside the hangar. The beatings were not isolated acts, they lasted for some hours during which the vast majority of the prisoners in the hangar was severely beaten. The Chamber refers to its earlier findings that many of the approximately 200 men from the Vukovar hospital

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<sup>1860</sup> Emil Čakalić, T 5909.

<sup>1861</sup> P011, T 5735-5737; P031, T 3267-3268, 3270-3272.

<sup>1862</sup> P011, T 5735-5737.

<sup>1863</sup> Vilim Karlović, T 6346-6347; P011, T 5734; Dragutin Berghofer, T 5292.

<sup>1864</sup> Vilim Karlović, T 6352; Emil Čakalić, T 5912-5913.

<sup>1865</sup> Dragan Vezmarović, T 8419-8420.

<sup>1866</sup> Dragutin Berghofer, T 5288, 5299; Emil Čakalić, T 5905-5907; Vilim Karlović, T 6338-6340; P009, T 6159-6160; P011, T 5728-5730; Hajdar Dodaj, T 5539-5540; P030, T 9743-9745.

<sup>1867</sup> Dragutin Berghofer, T 5288-5289, 5299; Emil Čakalić, T 5905-5907; Vilim Karlović, T 6338-6340; P009, T 6161; P031, T 3260-3264; Zlatko Zlogledja, T 10188-10189.

<sup>1868</sup> Dragutin Berghofer, T 5289.

were hit in many cases with implements such as iron rods and rifle-butts and kicked.<sup>1870</sup> Siniša Glavašević, Vlado (Vladimir) Đukić, Tomislav Baumgartner who was 16 or 17 at the time, Damir Kovačić, Damjan Samardžić and Kemal (Ćeman) Saiti are shown by the evidence to have been beaten particularly severely.<sup>1871</sup> According to one witness, 12 of the Serb soldiers descended on Siniša Glavašević and beat and kicked him badly.<sup>1872</sup> Damir Kovačić was kicked.<sup>1873</sup> Damjan Samardžić was punched and beaten by five or six soldiers so severely that for a long time he could not move.<sup>1874</sup> Kemal (Ćeman) Saiti was grabbed by the hair by a Serb paramilitary soldier and his head was violently banged several times against the concrete floor.<sup>1875</sup> These beatings were capable of inflicting serious pain and suffering and they indeed did so in many cases.

528. The Chamber turns next to the allegations of deprivation of medical care which also support the charges of cruel treatment and torture in the Indictment. The evidence indicates that many of the prisoners taken from the hospital on 20 November 1991 had injuries for which they were being treated in the hospital or otherwise were injured before their death.<sup>1876</sup> As has been noted elsewhere in this Judgement no medical care of any kind was provided to any of the prisoners, whether at the JNA barracks, or later at Ovčara.<sup>1877</sup> In the circumstances of the present case, however, the Chamber is not persuaded that the acts of deprivation of medical care of those who had been previously injured, in and of themselves, were of the nature to cause severe or serious pain or suffering to amount to torture or cruel treatment. The Chamber would observe that the more seriously injured patients at Vukovar hospital were not included in this group of prisoners and that, both at the JNA barracks and at Ovčara, they were not held for any extended time. Further, in the Chamber's view, while many prisoners received serious injuries at Ovčara, in such cases the infliction of injuries and the failure to provide treatment for the injuries caused, is in reality the same behaviour. The deprivation of medical care in such cases is subsumed in the acts of mistreatment themselves.

529. The Indictment further alleges that at least one female detainee was sexually abused at Ovčara. There were two women among the prisoners held at Ovčara: Ružica Markobašić and Janja Podhorski. Ružica Markobašić was visibly pregnant. She was married to a man believed by the

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<sup>1869</sup> Dragutin Berghofer, T 5289.

<sup>1870</sup> Dragutin Berghofer, T 5291-5292; Emil Čakalić, T 5909.

<sup>1871</sup> See *supra*, para 237.

<sup>1872</sup> Dragutin Berghofer, T 5293-5294.

<sup>1873</sup> P030, T 9750.

<sup>1874</sup> Dragutin Berghofer, T 5294-5295; Emil Čakalić, T 5906, 5909-5910; P031, T 3272-3273; P030, T 9747.

<sup>1875</sup> P031, T 3270-3272.

<sup>1876</sup> The autopsies conducted on the bodies found at the mass grave at Ovčara reveal that 86 individuals of the 200 bodies exhumed had suffered from wounds or injuries caused before death. (Davor Strinović, T 9457)

<sup>1877</sup> Dragutin Berghofer, T 5471; Dragan Vezmarović, T 8421.

Serb forces to be a “dangerous Ustasha”.<sup>1878</sup> There is no specific evidence about Janja Podhorski. The cause of death of both women was established as wounds from multiple gunshots.<sup>1879</sup> Only one witness gave evidence about an act of assault directed against one of the women. P022 testified that Ružica Markobašić was taken outside the hangar and a little later shot in the abdomen with a rifle by a man called Zoran from Karaburma.<sup>1880</sup> For reasons set out elsewhere the Chamber is unable to rely on P022’s evidence unless it is confirmed by independent evidence. P022’s account of Ružica Markobašić’s death stands alone. The autopsy report indicates that Ružica Markobašić died from multiple gunshot wounds and, not from a single shot in the abdomen. The Chamber accepts that Ružica Markobašić was killed by shooting in the evening hours of 20 November 1991 at the mass grave. There is no evidence to establish that she was sexually abused.

### 3. Conclusion

530. The Chamber is persuaded and finds that the beatings of prisoners of war from Vukovar hospital outside the hangar on 20 November 1991 were well capable of inflicting severe physical pain, and in very many cases they did so. They constitute the *actus reus* of torture. The Chamber is also satisfied that the acts of grave and persistent mistreatment to so many prisoners that occurred inside the hangar during the afternoon of 20 November 1991 were such as to constitute the *actus reus* of torture.

531. Turning to the *mens rea* requisite for the offence of torture the Chamber refers to the nature and duration of the beatings, the implements used by the perpetrators to inflict suffering, the number of persons attacking individual victims, the verbal threats and abuse occurring simultaneously with the beatings, and the terribly threatening atmosphere in which the victims were detained as they were beaten. All these factors indicate that the beatings outside and in the hangar were carried out intentionally.

532. For an act or omission to constitute torture it is necessary that it is carried out with a specific purpose such as to obtain information or a confession, to punish, intimidate or coerce the victim or a third person, or to discriminate, on any ground, against the victim or a third person. In the Chamber’s finding the specific purpose of punishment is sufficiently established with respect to the acts of mistreatment outside and inside the hangar at Ovčara on 20 November 1991.

533. When the buses of prisoners arrived at Ovčara in the early afternoon of 20 November 1991, they encountered Serb TO and paramilitary personnel there. These men had followed the prisoners

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<sup>1878</sup> Ljubica Došen, T 3796-3797; P022, T 5004.

<sup>1879</sup> Exhibit 460, ID No 95 and 71, respectively; Exhibit 549, ID No 95 and 71, respectively; Exhibit 458.

<sup>1880</sup> P022, T 5004, 5009.

from the JNA barracks to Ovčara and were intent on exacting revenge on their enemy *i.e.* the prisoners of war, for their role in the Vukovar conflict.

534. Upon the arrival at Ovčara the prisoners were also forced to pass through a gauntlet where they were severely beaten as they passed through. The beatings continued inside the hangar. Among the prisoners who were most severely beaten at Ovčara were persons who have been prominently involved in the Croatian defence of Vukovar. For example, Kemal (Ćeman) Saiti was a commander of the HV Reserve Forces, in the 240<sup>th</sup> Vukovar Brigade,<sup>1881</sup> and Vlado (Vladimir) Đukić was a battalion commander of the HV Reserve Forces.<sup>1882</sup>

535. The Serb TO and paramilitary harboured quite intense feelings of animosity toward the Croat forces. The prisoners of war taken from Vukovar hospital and transported to Ovčara were representative of the Croat forces and, therefore, represented their enemy. The brutality of the beatings that took place at Ovčara on 20 November 1991 by the Serb TO and paramilitaries, and possibly by some JNA soldiers acting on their own account, is evidence of the hatred and the desire to punish the enemy forces. It is clear from this evidence, in the Chamber's finding, that acts of mistreatment outside and inside the hangar were intended to punish the prisoners for their involvement, or believed involvement, in Croat forces before the fall of Vukovar.

536. Further, the Chamber is persuaded and finds that the beatings of prisoners of war from Vukovar hospital outside and inside the hangar on 20 November 1991 constitute the *actus reus* of cruel treatment. The Chamber is satisfied that these beatings were carried out with the requisite *mens rea* to constitute cruel treatment.

537. The Chamber is also satisfied and finds that the conditions at the hangar constituted cruel treatment under Article 3 of the Statute. The prisoners were under constant risk of being hit by members of Serb forces who appeared to have had free access to the hangar at least at times during the afternoon and evening. The prisoners from the hospital did not know why they were held there and what would happen to them. They were in grave fear. The atmosphere was miserable. Despite the fact that they had been without food or water from the time they left the hospital, no water or food was provided to them during the afternoon and evening as they were held in the hangar.

538. With respect to the *mens rea* requisite for cruel treatment, the Chamber accepts that in keeping the prisoners under constant threat of beatings and physical abuse, in creating an atmosphere of fear, in depriving the prisoners of food and water as well as toilet facilities, the direct

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<sup>1881</sup> Exhibit 554, p 2669.

perpetrators acted with the intent to cause physical suffering, or an affront to the detainees' human dignity, or in the knowledge that cruel treatment was a probable consequence of their acts, or with all or some of these intents. The Chamber finds that the intent requisite for cruel treatment has been established.

539. For the foregoing reasons, and leaving aside for the present the question of the criminal responsibility of the three Accused, the Chamber finds that the elements of the offence of torture (Count 7) and cruel treatment (Count 8) are established in relation to the acts of mistreatment that occurred outside and inside the hangar at Ovčara on 20 November 1991. The Chamber also finds that the elements of the offence cruel treatment (Count 8) are established with respect to the conditions of detention at Ovčara.

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<sup>1882</sup> Exhibit 554, p 918.

## IX. RESPONSIBILITY

### A. Law

540. It is alleged that each of the three Accused is responsible, under Article 7(1) of the Statute, for planning, instigating, ordering, committing through participation in a joint criminal enterprise, or otherwise aiding and abetting the planning, preparation or execution of the crimes charged in the Indictment.<sup>1883</sup> The liability of each of the three Accused is also alleged to arise, pursuant to Article 7(3) of the Statute, from their position of superior authority over the Serbian forces, including members of the JNA, TO, volunteer and paramilitary soldiers, who allegedly committed the crimes charged in the Indictment.<sup>1884</sup>

#### 1. Responsibility under Article 7(1)

541. Article 7(1) of the Statute reads:

A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in Articles 2 to 5 of the present Statute, shall be individually responsible for the crime.

542. The Appeals Chamber has held that Article 7(1) “covers first and foremost the physical perpetration of a crime by the offender himself, or the culpable omission of an act that was mandated by a rule of criminal law.”<sup>1885</sup> However, criminal liability not only attaches to the physical perpetrator of a particular crime but in certain circumstances, it extends to those who participate in and contribute to its commission in various ways.<sup>1886</sup>

#### (a) Committing through participation in a joint criminal enterprise

543. The Indictment alleges that the three Accused are individually criminally responsible for the crimes charged through their participation in a joint criminal enterprise (“JCE”).

544. In *Tadić*, the Appeals Chamber held that JCE as a form of accomplice liability was firmly established in customary international law at the time covered in that indictment, 1992.<sup>1887</sup> The crimes charged in the present Indictment occurred in November 1991. The Appeals Chamber conclusion in *Tadić* was based on sources dating back to the 1940s<sup>1888</sup> and, therefore, this Chamber

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<sup>1883</sup> It is expressly pleaded in the Indictment that the form of liability “committing” is limited to the participation of each Accused in a joint criminal enterprise and that it is not alleged that any of the accused physically committed any or all of the crimes charged; Indictment, para 4.

<sup>1884</sup> Indictment, paras 13-20.

<sup>1885</sup> *Tadić* Appeals Judgement, para 188.

<sup>1886</sup> *Kordić* Trial Judgement, para 373; *Tadić* Appeals Judgement, para 192.

<sup>1887</sup> *Tadić* Appeals Judgement, para 220.

<sup>1888</sup> *Tadic* Appeals Judgement, paras 193-220.

accepts that JCE existed in customary international law at the time of the events charged in the present Indictment.

545. The jurisprudence of the Tribunal has established three categories of JCE. The *actus reus* of a participant in a JCE is common to all three categories. First, a plurality of persons is required.<sup>1889</sup> They need not be organised in a military, political, or administrative structure.<sup>1890</sup> Secondly, the existence of a common plan, design or purpose, which amounts to or involves the commission of a crime provided for in the Statute, must be established.<sup>1891</sup> There is no need for the plan, design or purpose to have been previously arranged or formulated. Nor does JCE liability require an understanding or an agreement between the accused and the principal perpetrator of the crime to commit that particular crime. The common plan or purpose may materialise extemporaneously and be inferred from the fact that a plurality of persons acts in a unison to put into effect a JCE.<sup>1892</sup> Thirdly, the accused must have participated in the common design, either by participating directly in the commission of the agreed crime itself, or by assisting or contributing to the execution of the common purpose.<sup>1893</sup> The accused's contribution need not be necessary, in a sense of *sine qua non*, to achieve the common criminal purpose;<sup>1894</sup> indeed, the accused's contribution to the common purpose does not even need to be substantial, as a matter of law.<sup>1895</sup> However, the contribution of the accused in the common plan should at least be a *significant* one.<sup>1896</sup> Not every type of conduct amounts to a significant enough contribution to the common purpose to impute criminal liability to the accused for the crimes committed.<sup>1897</sup> The presence of the participant in the JCE at the time the crime is committed by the principal offender is not required.<sup>1898</sup>

546. As to the *mens rea*, the requirements of the three categories of JCE differ. In the first, basic type of JCE the accused intends to perpetrate a crime and this intent is shared by all co-perpetrators.<sup>1899</sup> In the second type, embracing the so-called "concentration camp" cases, or systemic JCE, the accused has knowledge of the system of repression, in the enforcement of which he participates, and the intent to further the common concerted design to ill-treat the inmates of a concentration camp.<sup>1900</sup> The third type concerns cases in which one of the participants commits a

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<sup>1889</sup> *Vasiljević* Appeals Judgement, para 100.

<sup>1890</sup> *Tadić* Appeals Judgement, para 227; *Stakić* Appeals Judgement, para 64.

<sup>1891</sup> *Tadić* Appeals Judgement, para 227; *Vasiljević* Appeals Judgement para 100.

<sup>1892</sup> *Tadić* Appeals Judgement, para 227; *Krnjelac* Appeals Judgement, para 97, *Vasiljević* Appeals Judgement, paras 100, 109; *Brdanin* Appeals Judgement, paras 415, 418.

<sup>1893</sup> *Tadić* Appeals Judgement, para 227.

<sup>1894</sup> *Kvočka* Appeals Judgement, para 98.

<sup>1895</sup> *Kvočka* Appeals Judgement, para 97.

<sup>1896</sup> *Brdanin* Appeals Judgement, para 430.

<sup>1897</sup> *Brdanin* Appeals Judgement, para 427.

<sup>1898</sup> *Krnjelac* Appeals Judgement, para 81.

<sup>1899</sup> *Tadić* Appeals Judgement, paras 220, 228.

<sup>1900</sup> *Tadić* Appeals Judgement, paras 202-203; 227-228.

crime outside the common design. The *mens rea* in such cases is twofold. First, the accused must have the intention to take part in and contribute to the common criminal purpose. Secondly, in order to be held responsible for crimes which were not part of the common criminal purpose, but which were nevertheless a natural and foreseeable consequence of it, the accused must also know that such a crime might be perpetrated by a member of the group, and willingly take that risk by joining or continuing to participate in the enterprise.<sup>1901</sup> Whether the crimes committed outside the common purpose of the JCE were “a natural and foreseeable consequence thereof” must be assessed in relation to the knowledge of a particular accused, *i.e.* the Prosecution must prove that the accused had sufficient knowledge that the additional crimes were a natural and foreseeable consequence.<sup>1902</sup>

547. The Chamber notes that the Appeals Chamber has recently clarified that the principal perpetrators carrying out the *actus reus* of the crimes set out in the indictment do not have to be members of the JCE. What matters in such cases is whether the crime in question forms part of the common purpose<sup>1903</sup> and whether at least one member of the JCE used the principal perpetrator acting in accordance with the common plan.<sup>1904</sup> In this respect, when a member of the JCE uses a person outside the JCE to carry out the *actus reus* of a crime, the fact that this person knows of the existence of the JCE, *i.e.* of the common purpose, may be a factor taken into consideration when determining whether the crime forms part of the common criminal purpose.<sup>1905</sup> When the direct perpetrator commits a crime beyond the common purpose of the JCE, but which is its natural and foreseeable consequence<sup>1906</sup> the accused may be found responsible if he participated in the common criminal purpose with the requisite intent and if, in the circumstances of the case, (i) it was foreseeable that such a crime might be perpetrated by one or more of the persons used by him (or by any other member of the JCE) in order to carry out the *actus reus* of the crimes forming part of the common purpose; and (ii) the accused willingly took that risk – that is the accused, with the awareness that such a crime was a possible consequence of the implementation of that enterprise, decided to participate in that enterprise.<sup>1907</sup>

(b) Planning

548. The *actus reus* of “planning” requires that one or more persons plan or design, at both the preparatory and execution phases, the criminal conduct constituting one or more crimes provided

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<sup>1901</sup> *Tadić* Appeals Judgement, paras 204; 227-228; *Kvočka* Appeals Judgement, para 83.

<sup>1902</sup> *Kvočka* Appeals Judgement, para 86.

<sup>1903</sup> *Brdanin* Appeals Judgement, paras 410, 418.

<sup>1904</sup> *Brdanin* Appeals Judgement, paras 413, 430.

<sup>1905</sup> *Brdanin* Appeals Judgement, para 410.

<sup>1906</sup> *Brdanin* Appeals Judgement, paras 431.

<sup>1907</sup> *Brdanin* Appeals Judgement, para 411.

for in the Statute, which are later perpetrated.<sup>1908</sup> Such planning need only be a feature which contributes substantially to the criminal conduct.<sup>1909</sup> As regards the *mens rea*, the accused must have acted with an intent that the crime be committed, or with an awareness of the substantial likelihood that a crime will be committed in the execution of that plan.<sup>1910</sup>

(c) Instigating

549. The term “instigating” has been defined to mean “prompting another to commit an offence.”<sup>1911</sup> Both acts and omissions may constitute instigating, which covers express and implied conduct.<sup>1912</sup> There must be proof of a nexus between the instigation and the perpetration of the crime, which is satisfied where the particular conduct substantially contributed to the commission of the crime. It need not be proven that the crime would not have occurred without the instigation.<sup>1913</sup> As regards the *mens rea*, it must be shown that the accused intended to provoke or induce the commission of the crime, or was aware of the substantial likelihood that a crime would be committed as a result of that instigation.<sup>1914</sup>

(d) Ordering

550. The *actus reus* of “ordering” requires that a person in a position of authority instructs another person to commit an offence.<sup>1915</sup> Closely related to “instigating”, this form of liability additionally requires that the accused possess the authority, either *de jure* or *de facto*, to order the commission of an offence.<sup>1916</sup> That authority may reasonably be implied from the circumstances.<sup>1917</sup> Further, there is no requirement that the order be given in writing, or in any particular form, and the existence of the order may be proven through circumstantial evidence.<sup>1918</sup> With regard to the *mens rea*, the accused must have intended to bring about the commission of the crime, or have been aware of the substantial likelihood that a crime would be committed as a consequence of the execution or implementation of the order.<sup>1919</sup>

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<sup>1908</sup> *Brdanin* Trial Judgement, para 268; *Krstić* Trial Judgement, para 601; *Stakić* Trial Judgement, para 443; *Kordić* Appeals Judgement, para 26, citing *Kordić* Trial Judgement, para 386.

<sup>1909</sup> *Kordić* Appeals Judgement, para 26; *Limaj* Trial Judgement, para 513.

<sup>1910</sup> *Kordić* Appeals Judgement, para 31.

<sup>1911</sup> *Krstić* Trial Judgement, para 601; *Akayesu* Trial Judgement, para 482; *Blaškić* Trial Judgement, para 280; *Kordić* Appeals Judgement, para 27; *Kordić* Trial Judgement, para 387; *Limaj* Trial Judgement, para 514.

<sup>1912</sup> *Brdanin* Trial Judgement, para 269; *Blaškić* Trial Judgement, para 280.

<sup>1913</sup> *Kordić* Appeals Judgement, para 27.

<sup>1914</sup> *Kordić* Appeals Judgement, para 32.

<sup>1915</sup> *Kordić* Appeals Judgement, para 28, citing *Kordić* Trial Judgement, para 388; *Semanza* Appeals Judgement, para 361.

<sup>1916</sup> *Brdanin* Trial Judgement, para 270.

<sup>1917</sup> *Brdanin* Trial Judgement, para 270; *Limaj* Trial Judgement, para 515.

<sup>1918</sup> *Kordić* Trial Judgement, para 388; see also *Blaškić* Trial Judgement, para 281; *Limaj* Trial Judgement, para 515; with respect to proving an order by circumstantial evidence, see also *Galić* Appeals Judgment, paras 170 -171.

<sup>1919</sup> *Blaškić* Appeals Judgement, para 42; *Kordić* Appeals Judgement, para 30; *Brdanin* Trial Judgement, para 270.

(e) Aiding and abetting

551. “Aiding and abetting” is a form of accomplice liability<sup>1920</sup> which has been defined as the act of rendering practical assistance, encouragement or moral support, which has a substantial effect on the perpetration of a certain crime.<sup>1921</sup> Strictly, “aiding” and “abetting” are not synonymous.<sup>1922</sup> “Aiding” involves the provision of assistance, while “abetting” need merely involve encouragement, or even sympathy, to the commission of a particular act.<sup>1923</sup>

552. With respect to the *actus reus*, a cause-effect relationship between the conduct of the aider or abettor and the commission of the crime, or proof that such conduct was a condition precedent to the commission of the crime need not be proven.<sup>1924</sup> However, it needs to be shown that the assistance provided by the accused had a *substantial* effect on the commission of the crime,<sup>1925</sup> which requires a fact-based inquiry.<sup>1926</sup> Such assistance may occur before, during or after the principal crime has been perpetrated.<sup>1927</sup>

553. Further, an omission may, in the particular circumstances of a case, constitute the *actus reus* of aiding and abetting.<sup>1928</sup> While each case turns on its own facts, mere presence at the scene of a crime will not usually constitute aiding or abetting; however, where the presence bestows legitimacy on, or provides encouragement to, the actual perpetrator, that may be sufficient. For example, the presence of a superior may operate as an encouragement or support, in the relevant sense.<sup>1929</sup> Responsibility for having aided and abetted a crime by omission may arise, regardless of whether the accused’s presence at the crime scene provided encouragement to the perpetrators, when the accused was under a duty to prevent the commission of the crime but failed to act, provided his failure to act had a substantial effect on the commission of the crime and he had the requisite *mens rea*. Such a responsibility has been recognised in other trial judgements, although no convictions were entered on this basis.<sup>1930</sup> The jurisprudence has also addressed, although not

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<sup>1920</sup> *Tadić* Appeals Judgement, para 229.

<sup>1921</sup> *Krstić* Trial Judgement, para 601; *Aleksovski* Appeals Judgement, para 162, citing *Furundžija* Trial Judgement, para 249.

<sup>1922</sup> *Kvočka* Trial Judgement, para 254, citing *Akayesu* Trial Judgement, para 484.

<sup>1923</sup> *Kvočka* Trial Judgement, para 254, citing *Akayesu* Trial Judgement, para 484.

<sup>1924</sup> *Blaškić* Appeals Judgement, para 48, *Limaj* Trial Judgement, para 517.

<sup>1925</sup> *Blaškić* Appeals Judgement, para 48, *Furundžija* Trial Judgement, para 249, *Kunarac* Trial Judgement, para 391, *Limaj* Trial Judgement, para 517.

<sup>1926</sup> *Blagojević* Appeals Judgement, para 134.

<sup>1927</sup> *Brdanin* Trial Judgement, para 271, *Blaškić* Appeals Judgement, para 48, *Krnjelac* Trial Judgement, para 88, *Limaj* Trial Judgement, para 517.

<sup>1928</sup> *Blaškić* Appeals Judgement, para 47. See also *Krnjelac* Trial Judgement, para 88; *Kunarac* Trial Judgement, para 391.

<sup>1929</sup> *Limaj* Trial Judgment, para 517; *Strugar* Trial Judgement, para 349; *Brdanin* Trial Judgement, para 271; *Vasiljević* Trial Judgement, para 70.

<sup>1930</sup> *Orić* Trial Judgement, para 283; *Strugar* Trial Judgement, para 349. See also *Ntagerura* Appeals Judgement, para 338, where the ICTR Appeals Chamber referred to omission as one of the forms of aiding and abetting, the others being encouragement and tacit approval.

specifically in respect of aiding and abetting, the issue of a duty to act, a failure to discharge which may incur responsibility. The Appeals Chamber has held that a crime can be perpetrated by omission pursuant to Article 7(1), “whereby a legal duty is imposed, *inter alia* as a commander, to care for the persons under the control of one’s subordinates.” “Wilful failure to discharge such a duty may incur criminal responsibility pursuant to Article 7(1) of the Statute in the absence of a positive act.”<sup>1931</sup>

554. In the *Blaškić* case the Appeals Chamber entered a conviction for omission in respect of the crime of inhuman treatment of detainees occasioned by their use as human shields. The Appeals Chamber found that the appellant knew that human shields were being used and failed to prevent their continued use. It was the view of the Appeals Chamber that the appellant was under a legal duty “to care for the protected persons put in danger, and to intervene and alleviate that danger”, which he breached. The duty was imposed on the appellant by the laws and customs of war.<sup>1932</sup> Although not expressly stated, the appellant was apparently convicted for having by omission aided and abetted the crime in issue. The appellant was found responsible “as charged in the Second Amended Indictment”.<sup>1933</sup> The Second Amended Indictment lists planning, instigating, ordering and aiding and abetting as the forms of responsibility under Article 7(1) of the Statute charged in respect of the crime in issue.<sup>1934</sup> It does not refer to committing. The mode of ordering was specifically rejected by the Appeals Chamber,<sup>1935</sup> whereas both planning and instigating were clearly not considered. The remaining mode charged in the Second Amended Indictment is aiding and abetting. It is also of significance that elsewhere in its judgement the Appeals Chamber left open the possibility that in the circumstances of a given case, an omission may constitute the *actus reus* of aiding and abetting.<sup>1936</sup>

555. The responsibility for omission under Article 7(1) resembles that of a commander under Article 7(3) of the Statute. The distinguishing factor between those modes of responsibility may be seen, *inter alia*, “in the degree of concrete influence of the superior over the crime in which his subordinates participate: if the superior’s intentional omission to prevent a crime takes place at a time when the crime has already become more concrete or currently occurs, his responsibility would also fall under Article 7(1) of the Statute.”<sup>1937</sup>

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<sup>1931</sup> *Blaškić* Appeals Judgement, para 663. See also *Galić* Appeals Judgement, para 175.

<sup>1932</sup> *Blaškić* Appeals Judgement, para 668.

<sup>1933</sup> *Blaškić* Appeals Judgement, para 670.

<sup>1934</sup> *Prosecutor v. Tihomir Blaškić*, Case No IT-95-14-PT, Second Amended Indictment, para 16.

<sup>1935</sup> *Blaškić* Appeals Judgement, paras 659; 670.

<sup>1936</sup> *Blaškić* Appeals Judgement, para 47.

<sup>1937</sup> *Blaškić* Appeals Judgement, para 664.

556. The *mens rea* required is knowledge that, by his or her conduct, the aider and abettor is assisting or facilitating the commission of the offence,<sup>1938</sup> a knowledge which need not have been explicitly expressed and may be inferred from all the relevant circumstances.<sup>1939</sup> The aider and abettor need not share the *mens rea* of the principal; he must, however, be aware of the essential elements of the crime ultimately committed by the principal, including his state of mind.<sup>1940</sup> While it has been held that it need not be shown that the aider and abettor was aware of the specific crime that was intended or committed, provided that he was aware that one of a number of crimes would probably be committed, and one of those crimes is in fact committed,<sup>1941</sup> the Appeals Chamber recently confirmed that this ruling does not extend the definition of *mens rea* of aiding and abetting.<sup>1942</sup>

## 2. Responsibility under Article 7(3)

557. Article 7(3) of the Statute reads:

The fact that any of the acts referred to in Article 2 to 5 of the present Statute was committed 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 reasonable and necessary measures to prevent such acts or to punish the perpetrators thereof.

The principle of individual criminal responsibility of superiors for failure to prevent or to punish crimes committed by subordinates is an established principle of customary international law,<sup>1943</sup> applicable to both international and internal armed conflicts.<sup>1944</sup>

558. To hold a superior responsible under Article 7(3) of the Statute, the jurisprudence of the Tribunal has enumerated three elements which must be satisfied:

1. the existence of a superior-subordinate relationship;
2. the superior knew or had reason to know that the criminal act was about to be or had been committed; and
3. the superior failed to take the necessary and reasonable measures to prevent the criminal act or punish the perpetrator thereof.<sup>1945</sup>

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<sup>1938</sup> *Furundžija* Trial Judgement, para 249; *Tadić* Appeals Judgement, para 229; *Blaškić* Appeals Judgement, para 49; *Vasiljević* Appeals Judgement, para 102; *Brdanin* Appeals Judgement, para 484.

<sup>1939</sup> *Čelebići* Trial Judgement, para 328; *Tadić* Trial Judgement, para 676; *Limaj* Trial Judgement, para 518.

<sup>1940</sup> *Aleksovski* Appeals Judgement, para 162; *Tadić* Appeals Judgement, para 229.

<sup>1941</sup> *Blaškić* Appeals Judgement, para 50, citing *Blaškić* Trial Judgement, para 287; *Furundžija* Trial Judgement, para 246; *Brdanin* Trial Judgement, para 272.

<sup>1942</sup> *Blagojević* Appeals Judgement, para 222.

<sup>1943</sup> *Čelebići* Appeals Judgement, para 195; *Strugar* Trial Judgement, para 357; *Limaj* Trial Chamber, para 519; *Halilović* Trial Judgement, para 55. For the failure to punish, see *Blaškić* Appeals Judgement, para 85; *Halilović* Trial Judgement, para 94.

<sup>1944</sup> For application of the principle of command responsibility to internal armed conflicts, see *Prosecutor v Hadžihasanović et al.*, Case No IT-01-47-AR72, Appeals Chamber Decision on Interlocutory Appeal Challenging Jurisdiction in Relation to Command Responsibility, 16 July 2003, para 31.

(a) Superior-subordinate relationship

559. The doctrine of command responsibility is ultimately predicated upon the position of command over and the power to control the acts of the perpetrators. It is this position which forms the legal basis for the superior's duty to act, and for his corollary liability for a failure to do so.<sup>1946</sup>

560. The existence of the position of command may arise from the formal or *de jure* status of a superior, or from the existence of *de facto* powers of control. It derives essentially from the "actual possession or non-possession of powers of control over the actions of subordinates."<sup>1947</sup> In determining the degree of control to be exercised by the superior over the subordinate, the Appeals Chamber endorsed the effective control standard, which it defined as the material ability to prevent or punish criminal conduct.<sup>1948</sup> The existence of a superior-subordinate relationship does "not [...] import a requirement of *direct* or *formal* subordination".<sup>1949</sup> Likewise, there need not be a permanent relationship of command and subordination,<sup>1950</sup> and the temporary nature of a unit has been held not to be, in itself, sufficient to exclude the existence of a superior-subordinate relationship.<sup>1951</sup> Further, the Chamber recalls that "the test of effective control [...] implies that more than one person may be held responsible for the same crime committed by a subordinate."<sup>1952</sup>

561. Although the issue will always turn on the particular facts of the case, a number of factors have been identified, albeit not exhaustively, from which effective control may be inferred. These include the official position held by the accused, his capacity to issue orders, whether *de jure* or *de facto*, the procedure for appointment, the position of the accused within the military or political structure and the actual tasks that he performed.<sup>1953</sup>

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<sup>1945</sup> *Čelebići* Trial Judgement, para 346, *Blaškić* Appeals Judgement, para 484; *Aleksovski* Appeals Judgement, para 72. See also *Kordić* Appeals Judgement, para 827; *Blaškić* Trial Judgement, para 294; *Kvočka* Trial Judgement, para 314; *Halilović* Trial Judgement, para 56.

<sup>1946</sup> *Aleksovski* Appeals Judgement, para 76; *Strugar* Trial Judgement, para 359; *Limaj* Trial Judgement, para 521.

<sup>1947</sup> *Čelebići* Trial Judgement, para 370; *Strugar* Trial Judgement, para 362; *Limaj* Trial Judgement, para 522.

<sup>1948</sup> *Čelebići* Appeals Judgement, para 256. The Appeals Chamber has rejected the argument that a superior may be held criminally liable on the basis of his powers of influence as it held that "substantial influence as a means of control in any sense which falls short of possession of effective control over subordinates" (*i.e.* possession of material ability to prevent or to punish) has no standing of rule of customary law, especially such that may trigger criminal liability. See *Čelebići* Appeals Judgement, para 266.

<sup>1949</sup> *Čelebići* Appeals Judgement, para 303.

<sup>1950</sup> *Strugar* Trial Judgement, para 362.

<sup>1951</sup> *Kunarac* Trial Judgement, para 399, *Strugar* Trial Judgement, para 362.

<sup>1952</sup> *Blaškić* Trial Judgement, para 303, referring to *Aleksovski* Trial Judgement, para 106; see also, *Strugar* Trial Judgement, para 365.

<sup>1953</sup> *Kordić* Trial Judgement, paras 418-424.

(b) Mental element: the superior knew or had reasons to know

562. Strict liability does not attach to the principle of command responsibility; it must therefore be proven that the superior knew or had reasons to know that his subordinates were committing or about to commit crimes. An assessment of the mental element required by Article 7(3) of the Statute is determined on the specific circumstances of each case and the specific situation of the accused at the relevant time.<sup>1954</sup>

563. A superior's actual knowledge that his subordinates were committing or were about to commit a crime cannot be presumed; it may, however, be established by circumstantial evidence,<sup>1955</sup> including the number, type and scope of illegal acts, time during which the illegal acts occurred, number and type of troops and logistics involved, geographical location, whether the occurrence of the acts is widespread, tactical tempo of operations, *modus operandi* of similar illegal acts, officers and staff involved, and location of the commander at the time.<sup>1956</sup>

564. In determining whether a superior "had reason to know" that his subordinates were committing or about to commit a crime, it must be shown that specific information was in fact available to him which would have provided notice of offences committed or about to be committed by his subordinates.<sup>1957</sup> It is not required that he actually acquainted himself with the information, it must only be available to him.<sup>1958</sup> The superior may not be held liable for failing to acquire such information in the first place.<sup>1959</sup> However the information in fact available need not be such that, by itself, it was sufficient to compel the conclusion of the existence of such crimes.<sup>1960</sup> It is sufficient that the superior be in possession of sufficient information, even general in nature, to be on notice of the likelihood of illegal acts by his subordinates, *i.e.*, so as to justify further inquiry in order to ascertain whether such acts were indeed being or about to be committed.<sup>1961</sup> If the superior *deliberately* refrains from obtaining further information, even though he had the means to do so, he may well be considered to have "had reason to know" of the crimes.<sup>1962</sup>

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<sup>1954</sup> *Čelebići Appeals Judgement*, para 239, *Halilović Trial Judgement*, para 70.

<sup>1955</sup> *Čelebići Trial Judgement*, para 386; *Strugar Trial Judgement*, para 368.

<sup>1956</sup> *Čelebići Trial Judgement*, para 386. *See also Kordić Trial Judgement*, para 427; *Blaškić Trial Judgement*, para 307; *Strugar Trial Judgement*, para 368.

<sup>1957</sup> *Čelebići Trial Judgement*, para 393; *Strugar Trial Judgement*, para 369; *Limaj Trial Judgement*, para 525.

<sup>1958</sup> *Čelebići Appeals Judgement*, para. 239.

<sup>1959</sup> *Blaškić Appeals Judgement*, paras 62-63, *Čelebići Appeals Judgement*, para 226, 241.

<sup>1960</sup> *Čelebići Trial Judgement*, para 393; *Strugar Trial Judgement* para 369; *Limaj Trial Judgement*, para 525.

<sup>1961</sup> *Čelebići Trial Judgement*, para 393; *Kordić Trial Judgement*, para 437; *Strugar Trial Judgement*, para 370; *Limaj Trial Judgement*, para 525.

<sup>1962</sup> *See Čelebići Appeals Judgement*, para 226; *Blaškić Appeals Judgement*, para 406; *Halilović Trial Judgement*, para 69.

(c) Necessary and reasonable measures

565. A superior's duty to take the necessary and reasonable measures to prevent the commission of a crime or punish the perpetrators thereof relates directly to his possession of effective control, *i.e.* of his material ability to take such measures. A superior may be held liable for failing to take measures even in the absence of explicit legal capacity to do so, if it is proven that it was within his material ability.<sup>1963</sup> Accordingly, what constitutes "necessary and reasonable measures" is to be determined on the basis of the particular evidence of the case.<sup>1964</sup>

566. Article 7(3) contains two distinct legal obligations: to prevent the commission of the offence and to punish the perpetrators.<sup>1965</sup> These are not alternative obligations.<sup>1966</sup> The duty to prevent arises from the time a superior acquires knowledge, or has reason to know that a crime is being or is about to be committed, while the duty to punish arises after the superior acquires knowledge of the commission of the crime.<sup>1967</sup> A superior is required to act from the moment that he acquires such knowledge, and his duty to prevent will not be met by simply waiting and punishing afterwards.<sup>1968</sup>

567. Whether a superior has discharged his duty to prevent the commission of a crime will depend on his material ability to intervene in a specific situation. Factors which may be taken into account in making that determination include whether specific orders prohibiting or stopping the criminal activities were issued, what measures to secure the implementation of these orders were taken, what other measures were taken to ensure that the unlawful acts were interrupted and whether these measures were reasonably sufficient in the specific circumstances, and, after the commission of the crime, what steps were taken to secure an adequate investigation and to bring the perpetrators to justice;<sup>1969</sup> as well as the superior's failure to secure reports that military actions have been carried out in accordance with international law, the failure to issue orders aiming at bringing the relevant practices into accord with the rules of war, the failure to protest against or to criticize criminal action, the failure to take disciplinary measures to prevent the commission of atrocities by the troops under the superior's command, and the failure to insist before a superior authority that immediate action be taken.<sup>1970</sup> While in itself, the prior and precautionary failure to

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<sup>1963</sup> *Čelebići* Trial Judgement, para 395, *Kordić* Trial Judgement, para 443, *Halilović* Trial Judgement, para 73; *Limaj* Trial Judgement, para 526; *Strugar* Trial Judgement, para 373; see also *Blagojević* Trial Judgement, para 793; *Brdanin* Trial Judgement, para 279; *Stakić* Trial Judgement, para 461.

<sup>1964</sup> *Blaškić* Appeals Judgement, para 72, *Halilović* Trial Judgement, para 74.

<sup>1965</sup> *Blaškić* Appeals Judgement, para 83; *Halilović* Trial Judgement, para 72; *Limaj* Trial Judgement, para 527.

<sup>1966</sup> *Blaškić* Appeals Judgement, para 83; *Limaj* Trial Judgement, para 527.

<sup>1967</sup> *Kordić* Trial Judgement, paras 445-446; *Limaj* Trial Judgement, para 527; *Strugar* Trial Judgement, para 372; see also *Blaškić* Appeals Judgement, para 83.

<sup>1968</sup> *Strugar* Trial Judgement, para 373; *Limaj* Trial Judgement, para 527.

<sup>1969</sup> *Strugar* Trial Judgement, para. 378; *Halilović* Trial Judgement, para 74.

<sup>1970</sup> *Limaj* Trial Judgement, para 528; *Strugar* Trial Judgement, para 374, referring to military tribunals set up in the aftermath of World War II.

inform subordinates of their responsibilities does not suffice to attach criminal liability, it may be regarded as a relevant factor when examining the factual circumstances of the case.<sup>1971</sup>

568. A superior's duty to punish the perpetrators of a crime encompasses the obligation to conduct an effective investigation with a view to establishing the facts.<sup>1972</sup> This translates into an obligation on the part of the superior to take active steps to ensure that the perpetrators will be punished. To that end, the superior may exercise his own powers of sanction, or if he lacks such powers, report the perpetrators to the competent authorities.<sup>1973</sup> He is required, however, to utilise all measures at his disposal.<sup>1974</sup>

## **B. Findings**

### **1. Joint Criminal Enterprise**

569. The Indictment alleges that the three Accused, together with other individuals including Miroljub Vujović and Stanko Vujanović, participated in a joint criminal enterprise the purpose of which was the persecution of Croats or other non-Serbs who were present in the Vukovar hospital after the fall of Vukovar, through the commission of murder, torture and cruel treatment. It is alleged further that the crimes charged in the Indictment were within the object of the joint criminal enterprise, and that each of the Accused held the state of mind necessary for the commission of each of these crimes. Alternatively, it is alleged, that the crimes charged in Counts 2 to 8 were the natural and foreseeable consequence of the execution of the joint criminal enterprise and that each of the Accused was so aware.<sup>1975</sup> Of various modes of criminal liability pleaded in the Indictment the alleged participation of the three Accused in this joint criminal enterprise has been given prominence in the Prosecution case. The Indictment lists a number of acts and omissions of each of the Accused that the Prosecution alleges contributed to achieving the objective of the joint criminal enterprise.<sup>1976</sup>

570. As has been established earlier in this decision, in the morning hours on 20 November 1991 not less than 200 primarily Croats and other non-Serbs were removed as prisoners of war from the Vukovar hospital by the JNA.<sup>1977</sup> They were first taken to the JNA barracks in Vukovar, then to the hangar at Ovčara where they were mistreated. In the evening and night hours of 20/21 November

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<sup>1971</sup> *Strugar* Trial Judgement, para 420, *Halilović* Trial Judgement, paras 87-88.

<sup>1972</sup> *Strugar* Trial Judgement, para 376; *Limaj* Trial Judgement, para 529.

<sup>1973</sup> *Kordić* Trial Judgement, para 446; *Strugar* Trial Judgement, para 376; *Limaj* Trial Judgement, para 529; *Halilović* Trial Judgement, para 100.

<sup>1974</sup> *Krnjelac* Trial Judgement, para 95, *Halilović* Trial Judgement, para 100.

<sup>1975</sup> Indictment, paras 5-6.

<sup>1976</sup> Indictment, paras 9; 10; 11.

1991, these prisoners were taken progressively from the hangar to a nearby location between Ovčara and Grabovo where at least 200 of the prisoners were murdered, in almost all cases by shooting, and their bodies were buried in a mass grave at that location.<sup>1978</sup> The bodies of 200 persons were found in the mass grave at Ovčara, of which 190 were listed in the Annex to the Indictment. The Chamber has found elsewhere that the charge of murder has been established with respect to these 190 persons and also with respect to four other persons, whose bodies were not identified in the mass grave, but who were seen in the hangar in the late afternoon of 20 November 1991.<sup>1979</sup> In respect of these events there is no direct evidence of any common plan or purpose involving any of the three Accused to persecute Croats or other non-Serbs or to murder or torture them or to subject them to cruel treatment. The Prosecution, therefore, necessarily seeks to rely on inference to establish this alleged joint criminal enterprise. The Chamber will, therefore, consider the essential matters on which the Prosecution seeks to rely to establish this inference.

571. In particular, the Prosecution case is that the removal, leading to the execution, of the not less than 200 persons as prisoners of war from the Vukovar hospital on 20 November 1991 was undertaken in implementation of the alleged common plan and not for the purpose of being held as prisoners of war of the JNA. It is alleged in particular that they were taken to the hangar at Ovčara where a mass grave was being prepared almost as the prisoners arrived, the prisoners being killed and their bodies buried in the mass grave that evening. All of this was done, it is alleged, by Serb forces under the command of the Accused Mile Mrkšić, with the Accused Veselin Šljivančanin being in charge of the events described and the Accused Miroslav Radić taking an active part in the events. In essence, these events, and the roles played in them by each of the Accused, are alleged to give rise to the inference that the three Accused, with others, formed the joint criminal enterprise alleged, and that these events were carried out in execution of that enterprise.

572. In order to establish whether these acts were carried out in execution of a common plan, which is required to establish responsibility for participation in a joint criminal enterprise, the Chamber turns to the question whether the evacuation of these not less than 200 persons from the Vukovar hospital was conducted as part of the common plan alleged in the Indictment.

(a) Purpose of the removal of not less than 200 persons from the Vukovar hospital on 20 November 1991

(i) Did OG South act to secure prisoners of war for exchanges?

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<sup>1977</sup> The detailed finding made elsewhere identify that among these were two women and a few men who are not shown to have been active in the Croat forces at Vukovar.

<sup>1978</sup> See *supra*, paras 509-511.

<sup>1979</sup> See *supra*, paras 509-511.

573. Evidence was adduced which suggests that the not less than 200 persons who were, or were thought to be members of the Croat forces at Vukovar, most of whom were wounded, were removed from the Vukovar hospital in order to secure for the JNA prisoners who could later be exchanged for JNA soldiers captured by Croat forces. During the autumn of 1991 negotiations for exchange of prisoners were conducted between the JNA and the Croatian side. On 6 November 1991 Ivan Milas, Deputy Minister of Defence, for the Croatian side and Lieutenant General Andrija Rašeta, plenipotentiary of the Armed Forces of SFRY, for the JNA, concluded a prisoner exchange agreement.<sup>1980</sup> By this agreement the JNA and the Croatian side agreed that they would exchange all prisoners or persons deprived of liberty on the principle “all for all.”<sup>1981</sup> It was agreed further that each side should hand over to the other side and to the ICRC a list of all prisoners and the place where they were held.<sup>1982</sup> The exchange of prisoners was to take place immediately after the ICRC had registered and visited the prisoners<sup>1983</sup> and in the presence of European Community observers.<sup>1984</sup> By this agreement the JNA and the Croatian side further undertook to place all prisoners under the protection of the ICRC immediately and to “abide by the requirements and standards of the ICRC in all respects regarding the treatment and accommodation of prisoners.”<sup>1985</sup>

574. On 19 November 1991, in implementation of an order of the JNA Chief of General Staff of 19 November 1991 regarding prisoners’ exchange, the command of 1 MD issued an order to the units subordinated to 1 MD, which included OG South and gmtbr, that their competent organs should continue working “intensely” on the agreement on exchange of arrested SFRY armed forces and members of the Croatian MUP and ZNG according to the principle “all for all”. However, the order prohibited the exchange of prisoners without permission of the command of 1 MD.<sup>1986</sup> This order confirms an awareness, and the active pursuit, of the prisoner exchange agreement. It should be noted, however, that while the ICRC and ECMM were present and supervised the surrender of Croat forces to the JNA at Mitnica on 18 November 1991, and lists of the prisoners of war were prepared, it was apparently accepted by all parties that the JNA should then hold these prisoners of war in the Sremska Mitrovica prison. They were not handed over to the Croat side forthwith. It seems to have been accepted that an “exchange” of the prisoners would need to be organised at a later date.

575. On 19 November 1991 at 1400 hours a meeting took place in Negoslavci between JNA officers and ECMM monitors. Among others Petr Kypr and Jan Allan Schou for the ECMM and

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<sup>1980</sup> Irma Agotić, T 2023; Exhibit 869.

<sup>1981</sup> Exhibit 869, point 1.

<sup>1982</sup> Exhibit 869, point 3.

<sup>1983</sup> Exhibit 869, point 4.

<sup>1984</sup> Exhibit 869, point 9.

<sup>1985</sup> Exhibit 869, point 10.

Colonel Pavković representing OG South, were present.<sup>1987</sup> At the meeting the imminent evacuation of Vukovar hospital was discussed. Colonel Pavković stated that prisoners of war would not be allowed to be evacuated because, among other reasons, they would be exchanged for JNA prisoners of war at some future time.<sup>1988</sup> This position was taken by OG South despite the apparent effect of the Zagreb Agreement for the evacuation of the hospital, in respect of the wounded. It does not obviously contravene the prisoner exchange agreement. A reason given then and in the trial is that there were members of the Croat forces who had not surrendered and who were posing as wounded and hospital staff.

576. Witnesses called by the Šljivančanin Defence testified that in the evening hours of 18 November 1991 Veselin Šljivančanin also received a telegram from the Chief of the Security Administration in Belgrade, General Vasiljević, that approximately 2000 JNA soldiers were being kept in Croatian prisons, and that in order to carry out an exchange, Veselin Šljivančanin should “bring in” as many “perpetrators of crimes” as possible.<sup>1989</sup> This telegram is not in evidence. The fact that the principle “all for all” and not “one for one” had been agreed to be applied in exchanges of prisoners of war between the JNA and the Croatian forces, is not consistent with the evidence suggesting that in a telegram to Veselin Šljivančanin special emphasis was apparently placed on the number of prisoners to be secured for exchange. Of course, it may have been considered that a large number of Croat prisoners would add a practical persuasiveness to the desire of the JNA to secure the return of all its personnel held prisoner by the Croatian side.

577. It is also relevant that at about 2000 hours on 19 November 1991 a group of senior officers from the Security Administration in Belgrade and the command of 1 MD, including in the Chamber’s finding the Chief of Security Administration General Vasiljević and his deputy General Tumanov, visited the headquarters of OG South in Negoslavci and met with Mile Mrkšić and other senior officers.<sup>1990</sup> The evidence indicates that the subject of evacuation of individuals and transfer of prisoners of war may have been discussed but the Chamber is unable to make a finding on this.<sup>1991</sup> No conclusions can be reached about this. There was also a group of logistics staff from 1 MD which arrived at OG South command at around 0100 hours on 20 November 1991.<sup>1992</sup> This

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<sup>1986</sup> Exhibit 442.

<sup>1987</sup> Jan Allan Schou, T 6885; 6994-6995; Petr Kypr, T 6580-6581; Exhibit 316; Exhibit 344. *See also supra*, para 139.

<sup>1988</sup> Petr Kypr, T 6599-6602; Exhibit 316; Exhibit 333, para 1. *See also supra*, para 139.

<sup>1989</sup> Veselin Šljivančanin, T 13565-13566; Ljubiša Vukašinović, T 15003. Similarly, Mladen Karan testified that in the evening of 19 November 1991 he received a telegram or instructions from the Chief of the Security Administration that as many Croatian forces as possible should be secured for an exchange against the equivalent in JNA prisoners. (Mladen Karan, T 15715) *See also supra*, para 152.

<sup>1990</sup> Radoje Trifunović, T 8154. *See also supra*, para 195.

<sup>1991</sup> *See supra*, para 195.

<sup>1992</sup> Radoje Trifunović, T 8154, 8160. *See also supra*, para 196.

was at the request of OG South, however, and they discussed *inter alia* issues such as transport and security.<sup>1993</sup> This indicates no more than OG South needed assistance with the logistics task of feeding and transporting the civilian and prisoner of war population of Vukovar, including those at the hospital.

578. In the Chamber's finding, at the time material to the Indictment, there was an agreement between the JNA and the Croatian side that prisoners of war should be exchanged and that this should be on the principle "all for all." The agreement required that the prisoners' names be provided to the other side and to the ICRC in advance and that the ICRC and ECMM be present at the time of the exchange. In accordance with this agreement, observers were present at the surrender of members of the Croatian forces at Mitnica on 18 November 1991.<sup>1994</sup> These prisoners of war were held by OG South in the hangar at Ovčara overnight 18/19 November before being transported to the prison in Sremska Mitrovica. As is noted a little later, it is clear from what Colonel Pavković told the ECMM monitors on 19 November 1991, that neither an evacuation to Croatia of patients who were prisoners of war, *i.e.* members of the Croat forces, nor an immediate exchange of prisoners of war from the hospital, was intended by the JNA or OG South at that time, despite the Zagreb Agreement for the evacuation of the Vukovar hospital. The events that followed confirm this.

579. Despite the Agreement for the evacuation of the hospital, to which the JNA was a party, the transfer of prisoners of war from Mitnica via Ovčara to Sremska Mitrovica that had occurred on 18/19 November suggests that at least on 19 November, a purpose of the selection and removal of not less than 200 member of the Croat forces from the Vukovar hospital was for them to be taken into JNA custody, transferred to a prisoners of war facility, perhaps at least in some cases for questioning as war crimes suspects and trial and subject to that, for a prisoner of war exchange at a later time.

(ii) Was Sremska Mitrovica originally the planned destination?

580. On 19 November 1991, Mile Mrkšić informed the officers attending the regular briefing of OG South at Negoslavci that the Croatian forces taken from the hospital were to be transferred to Sremska Mitrovica.<sup>1995</sup> In Sremska Mitrovica, which was across the border in Serbia, there was a camp being used for prisoners of war.<sup>1996</sup> Veselin Šljivančanin stated that he had received similar

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<sup>1993</sup> Radoje Trifunović, T 8160-8161. *See also supra*, para 196.

<sup>1994</sup> *See supra*, paras 147; 150.

<sup>1995</sup> Miodrag Panić, T 14294-14295.

<sup>1996</sup> Radoje Paunović, T 14134; Veselin Šljivančanin, T 13482.

instructions from Mile Mrkšić that day.<sup>1997</sup> It was his evidence that General Vasiljević also told him about this,<sup>1998</sup> so that there was concurrence in Šljivančanin's two chains of command.<sup>1999</sup> Veselin Šljivančanin in turn conveyed this order to other officers involved,<sup>2000</sup> including those who were going to Velepromet,<sup>2001</sup> and Sremska Mitrovica was the destination given to the military police who were detailed to provide security for the prisoners during their transport.<sup>2002</sup>

581. The plan of sending the perceived members of the Croat forces to the camp for prisoners of war in Sremska Mitrovica is consistent with the order of 18 November 1991 from the command of 1 MD, according to which JNA units in the area of Vukovar, including OG South, should observe Geneva Convention III when carrying out the "mopping up" of the remaining Croatian forces.<sup>2003</sup> Indeed, on the evidence of Colonel Radoje Trifunović, the command of 1 MD had also directed that those who surrendered should be sent to Sremska Mitrovica for interrogation.<sup>2004</sup> Other arrangements indicate that Sremska Mitrovica was the intended destination. On 18 November 1991, the Security Administration in Belgrade ordered that its operations team be transferred to the camp for prisoners of war in Sremska Mitrovica. It was expected that a large number of prisoners would be brought there in light of the imminent fall of Vukovar.<sup>2005</sup> The 181 Croatian soldiers, who surrendered at Mitnica on 18 November 1991, were transported to Sremska Mitrovica,<sup>2006</sup> as were a number of other Croatian prisoners of war from Velepromet, on 19 November.<sup>2007</sup>

582. However, the transfer of wounded members of the Croat forces from the Vukovar hospital to the prison camp in Sremska Mitrovica was not in accordance with the Zagreb Agreement of 18 November 1991.<sup>2008</sup> Despite this, on 19 November 1991, in the afternoon, Colonel Pavković from the OG South made it clear to the ECMM monitors, who were to supervise the evacuation of the hospital, that prisoners of war would not be allowed to leave the hospital together with the humanitarian convoy.<sup>2009</sup> Colonel Pavković reiterated this position to the monitors on the following day, shortly before the evacuation. He invoked instructions from General Rašeta that the wounded Croatian "paramilitaries" would have to remain prisoners of war and that the Geneva Convention

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<sup>1997</sup> Veselin Šljivančanin, T 13596-13597.

<sup>1998</sup> Veselin Šljivančanin, T 13617.

<sup>1999</sup> *See supra*, para 129.

<sup>2000</sup> Mladen Karan, T 15554-15556; Ljubiša Vukašinić, T 15007-15008; 15054-15055.

<sup>2001</sup> Branko Korica, T 14726.

<sup>2002</sup> Radoje Paunović, T 14134.

<sup>2003</sup> Exhibit 415.

<sup>2004</sup> Radoje Trifunović, T 8111-8112.

<sup>2005</sup> Bogdan Vujić, T 4484-4485.

<sup>2006</sup> *See supra*, para 155.

<sup>2007</sup> *See supra*, para 168.

<sup>2008</sup> Exhibit 40.

<sup>2009</sup> *See supra*, para 139.

should be applied.<sup>2010</sup> Colonel Pavković did not specifically mention Sremska Mitrovica, but in light of the matters discussed above, it could be anticipated that, if the declaration to treat the defenders from the hospital as prisoners of war was genuine, they would be transferred to the prisoner of war camp in Sremska Mitrovica.

583. However, as established earlier, the Croatian prisoners of war taken from the hospital in the morning of 20 November 1991 were not taken to Sremska Mitrovica as JNA officers say they were told on the eve of the evacuation. The statements of each of the JNA officers are consistent in this respect. It, therefore, appears that they were either deliberately misinformed or there was a last minute change of plan for the destination of the prisoners removed from the hospital on 20 November 1991. In either case, the evidence suggests that in the evening of 19 November 1991, JNA officers, including Colonel Vujić, LtCol Panić and Captain Paunović, were informed, and seemed to believe, that the prisoners would be transferred to Sremska Mitrovica. That appears to have been the destination given to Veselin Šljivančanin, who had been placed in charge of the selection, removal and transfer of the prisoners of war, on 19 November 1991 by Mile Mrkšić, sanctioned by General Vasiljević from the Security Administration in Belgrade, and communicated by Veselin Šljivančanin on the evening of 19 November 1991 to those who were to have a role in the removal of the Croatian prisoners of war from the hospital the following morning.

584. It was contended by the Prosecution that the non-adherence to basic JNA rules during the evacuation, such as the failure to compile lists recording the detainees' names, demonstrates that from the outset the intended ultimate destination was not Sremska Mitrovica, but Ovčara and death.<sup>2011</sup> As discussed earlier, such lists were compiled after the Mitnica surrender.<sup>2012</sup> The fact that no lists were drawn up for the purposes of the evacuation on 20 November 1991 might indicate that it was not intended to hold the Croatian combatants as prisoners of war in Sremska Mitrovica. However, it must be borne in mind that the triage at the hospital on 20 November 1991 was effected in some haste, especially as the international observers were being delayed until the prisoners were removed.<sup>2013</sup> The non-observance of the Zagreb Agreement for the evacuation of the hospital provides a sufficient reason for this. Warrant Officer Branko Korica stated that they had no time to conduct a proper selection in front of the hospital and left the final triage for Sremska Mitrovica.<sup>2014</sup> Therefore, the failure to follow relevant JNA procedures, or to follow the procedures agreed for prisoners of war, does not necessarily establish that, at the hospital on 20 November 1991, Sremska Mitrovica was not the intended destination of the convoy with the prisoners from the hospital.

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<sup>2010</sup> Exhibit 333.

<sup>2011</sup> Prosecution Final Brief, para 390.

<sup>2012</sup> *See supra*, paras 154-155.

(iii) The SAO “government” meeting

585. The Prosecution and, in particular the Šljivančanin Defence, see the implications very differently of the meeting of the recently self appointed SAO “government”, which was held at Velepromet toward the middle of the day of 20 November 1991.<sup>2015</sup> As discussed earlier in this decision, LtCol Panić attended this meeting as Mile Mrkšić’s representative. It is apparent, in particular, from the views which Mile Mrkšić expressed to LtCol Panić just before Panić was sent to the meeting, and which Panić was authorised by Mrkšić to communicate to the meeting, that by this time Mrkšić was well conscious of the opposition of the TO and paramilitary forces and the SAO “government” to the JNA presuming to deal with the Croat prisoners of war by moving them to Serbia, opposition which was reiterated at the meeting by the view that Croat forces who surrendered or were captured were prisoners of the TO forces who, in their own territory, albeit with help of the JNA, had defeated the Croats who had disrupted the local order, and should be dealt with accordingly.<sup>2016</sup> In the Chamber’s finding from the circumstances, Mile Mrkšić had become well conscious that the local Serb TOs and the SAO “government” of the Serb people of the region, took the view that the members of the Croat forces who surrendered or were captured should be dealt with as their prisoners, not prisoners of the JNA. This had been an issue between the local TOs, in particular, and the JNA in more than one incident following the surrender of the Croat forces at Mitnica on 18 November 1991, and at Velepromet and Ovčara on 19 November 1991, and became a significant issue dealt with at the meeting of the SAO “government” on 20 November 1991. There is nothing in the evidence in this trial, and no legal basis is advanced, which provides justification for a view that this SAO “government” had legal authority, or that it had the legal or practical structures to investigate and conduct trials of war criminals or to keep in custody a large number (in the order of more than 200) prisoners of war. In particular, it is clear that it had no legal capacity to make decisions binding on the JNA or OG South, or to give binding orders to either of them, and most clearly, it had not the means to compel the JNA or OG South to comply with its wishes. Whatever might have been the plans of the “government” and the Serb TOs and local people, at that moment in Vukovar all were dependent on the JNA to re-establish essential services and basic law and order. Despite this, the Chamber

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<sup>2013</sup> See *infra*, para 604.

<sup>2014</sup> Branko Korica, T 14782.

<sup>2015</sup> See *supra*, paras 225-233.

<sup>2016</sup> To further illustrate the sentiments the following, attributed to Arkan, claimed to have been present at the “government” meeting, could be noted. On the evidence, shortly before the meeting, Arkan had a conversation with Colonel Vujić, whom he asked how he dared to take away “2000 Ustashas and war criminals” and urged him to bring them back. Vujić replied that there were only 800 POWs and that it was his mission to evacuate them. (Bogdan Vujić, T 4549-4550; 4695) A hostile exchange ensued. Arkan indicated that he and his guards recognised no such things as surrendered persons and that all those who had killed Serbian people were war criminals. It was the impression of Vujić that Arkan’s philosophy was that all that had killed ought to be killed themselves. (Bogdan Vujić, T 4550-4554)

accepts from the evidence and finds, as discussed earlier, that Mile Mrkšić authorised LtCol Panić, as his Chief of Staff, to attend the government meeting on his behalf and to indicate that the wishes of the government would be respected.<sup>2017</sup> In his evidence about the meeting, LtCol Panić sought to say that from the debate at the meeting it appeared that the SAO “government” planned to put the war criminals on trial. While he indicated he believed this to be their intention when he conveyed Mile Mrkšić’s position,<sup>2018</sup> the Chamber is quite unable to accept the honesty of this aspect of his evidence. It was obviously self-serving, and also an attempt to put the JNA and Mile Mrkšić in a more favourable light. From his description, the discussion at the meeting, rather than demonstrating that the SAO “government” had the capacity to detain, care for, investigate and try the Croatian prisoners of war then in the custody of the JNA, could only have emphasised that in truth it was utterly beyond the capacity of the SAO “government” to do so.<sup>2019</sup>

586. The reasons for this course of action by Mile Mrkšić are therefore not obvious. The Croatian forces at Vukovar having capitulated, there was no ongoing military need for the strength and power of the gmtbr to remain and it is evident that Mile Mrkšić, with his brigade, was keen to return to Belgrade at the earliest moment.<sup>2020</sup> Once the Croat forces were disarmed and in custody, other JNA forces in Vukovar, including the 80 mtbr, were adequate for the tasks of mopping up and restoring some function and order to Vukovar. But a desire to return quickly to Belgrade would not appear to provide an adequate reason for Mile Mrkšić’s position as indicated to the “government” about the Croatian prisoners. They would not be an ongoing burden to OG South once transported to Sremska Mitrovica in Serbia. In the circumstances, it is more likely that Mile Mrkšić was concerned to avoid a confrontation between the gmtbr, and the other JNA forces under his command, and the local Serb population, represented by the SAO “government” which was an attempt by the Serb people of the region to establish their own non-Croat governmental administration, and in particular the local TOs who saw themselves as the armed force of the local Serb people and the “government”, and Serb paramilitaries who had fought the Croat forces. As discussed elsewhere, emotions were highly charged among these people. While a confrontation with the TOs and any who might support them could be dealt with, given the numbers and power of the JNA forces commanded by Mile Mrkšić, it would create an embarrassing and politically difficult situation. Despite suspicions, there is no basis in the evidence on which it could be concluded that Mile Mrkšić consulted his superiors in Belgrade. No communications of this nature

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<sup>2017</sup> See *supra*, para 296.

<sup>2018</sup> Miodrag Panić, T 14321-14322.

<sup>2019</sup> As LtCol Panić had to accept, he was not aware of any functioning judicial bodies in Vukovar at the time or of any role the SAO “government” played in Vukovar. (T 14431-14432) There was no civilian police capacity, (Radoje Paunović, T 14196) so that the SAO “government” could only turn to the local TO forces to provide any form of security for the prisoners.

<sup>2020</sup> See *supra*, para 68.

have been produced, and there is no hint of such matters in the oral evidence. There is evidence of involvement of officers from 1 MD and the Security Administration, including General Vasiljević and Colonel Pavković, in the preparation of the evacuation of the prisoners of war from Vukovar hospital,<sup>2021</sup> but no evidence has been adduced demonstrating or suggesting their participation in the final handover of the prisoners to the TOs and paramilitaries. On the evidence, the relevant decisions with respect to the prisoners of war then in the custody of forces under his command were those of Mile Mrkšić.

587. The Prosecution contend that in truth the SAO “government” was no more than a convenient façade, advanced as a reason why the prisoners came to be delivered into the custody of the local TOs and killed, whereas in truth that was the common plan all along of Mile Mrkšić and the other Accused.<sup>2022</sup> The fundamental difficulty with this view is the absence of evidence to support it. At best, this is but a rather strained possible inference, which ignores much of the evidence. In particular, it is not apparent why this alleged common plan of the three Accused and others should have existed in respect of members of the Croat forces in the hospital, almost all of whom were wounded, but not others. Croat prisoners of war held at Velepomet on 19 November 1991 were transferred by the JNA to Sremska Mitrovica, as were the prisoners of war who surrendered at Mitnica.<sup>2023</sup> The ICRC was allowed full access to the prisoners surrendering at Mitnica but not at Velepomet. In any event, the façade suggested by the Prosecution is an obvious sham, as it could not have been believed at the time that the SAO “government” had the legal authority or the practical capacity to imprison the prisoners for any length of time, investigate them for war crimes, and conduct genuine trials, especially as ICRC and ECMM were already present in Vukovar and would obviously seek to monitor any trials. Nor does this view argued by the Prosecution explain the various steps taken by the JNA to prepare for Croat prisoners at Sremska Mitrovica, such as the interrogation teams,<sup>2024</sup> and for the transfer there of the prisoners from the hospital, which were put in place late on 19 November 1991.

588. For these reasons, the contention that the SAO “government” was used by the JNA as a façade cannot be accepted.

(b) Was there a common plan between the three Accused and others to commit the crimes charged in the Indictment?

(i) Knowledge of soldiers involved in the events on 20 November 1991

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<sup>2021</sup> See *supra*, paras 139; 195.

<sup>2022</sup> Prosecution Final Brief, paras 397-398.

<sup>2023</sup> See *supra*, paras 155; 168.

<sup>2024</sup> Bogdan Vujić, T 4484-4485.

589. Indicative of whether a common plan to commit crimes of the nature charged in the Indictment existed is whether the soldiers involved in the removal of people from the Vukovar hospital and their transfer to Ovčara acted in a way suggesting that there was any such plan. The evidence which comes nearest to supporting this, as now argued by the Prosecution, is of two kinds: comments of individual soldiers which Croat witnesses say they heard at the hospital and Ovčara, and the digging of a mass grave at Ovčara during the afternoon of 20 November 1991.

590. Ljubica Došen and Tanja Došen who in the morning of 20 November 1991 were allowed to accompany Martin Došen to the buses outside Vukovar hospital testified that they heard remarks made by soldiers, which may indicate that these soldiers knew what would happen to the prisoners from the hospital. It is the evidence of Ljubica Došen and Tanja Došen that when Ljubica Došen asked what would happen with Martin Došen's personal belongings, a major, whom she believed was Veselin Šljivančanin, although there is no demonstrated basis for that belief, told her that Martin Došen would not need his clothes anymore. The major then corrected himself and said that no one would be able to carry his bag for him.<sup>2025</sup> Ljubica Došen and Tanja Došen also testified that a soldier took some money out of the bag of Ružica Markobašić, a pregnant woman who was taken away with the men from the hospital, gave it to Ljubica Došen and said that Ružica Markobašić certainly would not be needing any money anymore.<sup>2026</sup> Ljubica and Tanja Došen also testified that they heard a soldier guarding one of the buses saying that all people on the bus should be "swallowed by the night in broad daylight."<sup>2027</sup>

591. Other witnesses who were also present at the Vukovar hospital, however, heard soldiers making remarks, which suggest something quite different. Zvezdana Polovina testified that a man she believed was Veselin Šljivančanin told her that the men who were being separated were going for a brief questioning at the JNA barracks and would follow the women and children soon thereafter.<sup>2028</sup> P031 testified that the soldier who searched him said: "All of you would be two metres below the ground if it weren't for a large number of our people captured by your people."<sup>2029</sup>

592. In the view of the Chamber, while some of this evidence may be indicative of an antagonistic atmosphere in front of the hospital in the morning of 20 November 1991, this evidence alone is manifestly insufficient to establish that soldiers involved in the frisking and security of the men at the Vukovar hospital knew of, or were acting in implementation of, a plan to commit the crimes charged in the Indictment. The evidence of Ljubica and Tanja Došen is unsupported by the

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<sup>2025</sup> Ljubica Došen, T 3800-3802; Tanja Došen, T 3922-3923.

<sup>2026</sup> Ljubica Došen, T 3796-3797; Tanja Došen, T 3920-3921.

<sup>2027</sup> Ljubica Došen, T 3797-3798; Tanja Došen, T 3922.

<sup>2028</sup> Zvezdana Polovina, T 2580-2581.

<sup>2029</sup> P031, T 3239.

evidence of any other witness and it is not inherently convincing; indeed their evidence about the actions of the soldier with regard to money is difficult to accept. It is contradicted by the evidence of witnesses that the frisking and the security measures for the prisoners outside the hospital was part of routine military actions preceding transportation of prisoners.<sup>2030</sup> The evidence of Ljubica Došen and Tanja Došen may have been influenced by what the two witnesses learned later about the fate of three of their closest relatives.

593. The five buses from the Vukovar hospital having arrived at the JNA barracks, TO members, and paramilitaries started to threaten and to verbally abuse the men on the buses.<sup>2031</sup> About 15 or 20 men who were taken off the buses and moved to a sixth bus to be returned to the hospital, were beaten severely with rifle-butts, punched and kicked.<sup>2032</sup> Witnesses who were at the JNA barracks heard TO members and paramilitaries and other Serbs making remarks indicating a grave depth of ill feeling toward the Croatian prisoners. Rudolf Vilhelm testified that when the buses arrived at the JNA barracks a man yelled: “You ought to be killed.”<sup>2033</sup> Dragutin Berghofer, aka Beli, who was known in Vukovar as being a passionate football fan, testified that a neighbour of his shouted: “What is it, Beli? There is no more soccer at the pond.”<sup>2034</sup> A man told Rudolf Vilhelm that he would never be able to fish on the banks of the Danube.<sup>2035</sup> One witness, Zlatko Zlogljeda testified that Serbs around the buses at the JNA barracks told the people on the buses that they would be taken to an execution site and shot.<sup>2036</sup> However, Zlogljeda’s evidence regarding the events in the JNA barracks went materially farther than the evidence of other prisoner witnesses regarding the same events, was unsupported and unpersuasive, and the Chamber was left unable to accept it as reliable.<sup>2037</sup>

594. In the Chamber’s view, the behaviour and the verbal attacks by TO members and paramilitaries at the JNA barracks, which is more fully described elsewhere, indicate that TO members and paramilitaries wished to commit crimes of the nature of the crimes charged in the Indictment. This evidence alone, however, does not demonstrate that these TO members and paramilitaries were acting in execution of a common plan. Moreover, although imperfectly, it is clear that the JNA military police present at the buses, and later those who removed the TO members and paramilitaries from the barracks, were preventing effect being given to any such

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<sup>2030</sup> See for example Radoje Paunović, T 14128.

<sup>2031</sup> See *supra*, para 216.

<sup>2032</sup> See *supra*, para 217.

<sup>2033</sup> Rudolf Vilhelm, T 4923.

<sup>2034</sup> Dragutin Berghofer, T 5282.

<sup>2035</sup> Rudolf Vilhelm, T 4873.

<sup>2036</sup> Zlatko Zlogljeda, T 10185.

<sup>2037</sup> For example, he testified that the prisoners of war on the buses were beaten by TOs and paramilitaries (T 10185). Other witnesses testified and the Chamber found that the prisoners on the buses were only verbally abused, and only those transferred to the sixth bus were physically assaulted. (See *supra*, paras 216; 217)

wishes. This tends to contradict the proposition that there was any common purpose as alleged, involving JNA troops under the command any of the Accused.

595. Turning to the events at Ovčara, the Chamber first notes that the buses and the JNA military police on each bus departed from Ovčara once the prisoners of war had left the buses.<sup>2038</sup> The Chamber infers that this was in accordance with their orders from Mile Mrkšić, *i.e.* it was no longer intended that the prisoners would be taken to Sremska Mitrovica, at least not on that day. The evidence does not disclose whether, by then, it had been determined or agreed that the prisoners should be held at Ovčara, but, in any event, it is the evidence that it had been determined on 18 November by the JNA that Ovčara was the most suitable place in the Vukovar area for holding such a large number of prisoners. While this circumstance could support the view that by then, at least Mile Mrkšić had decided that the prisoners would remain at Ovčara, it is also the case, as found by the Chamber elsewhere in this Judgement, that Mile Mrkšić had ordered that the prisoners be secured at Ovčara by JNA forces.<sup>2039</sup> For this reason, the Chamber cannot conclude that at this stage Mile Mrkšić had decided that the prisoners of war should be surrendered to and placed in the custody of the TO forces at Ovčara.

596. Further, the Chamber refers to its finding that upon their arrival prisoners from the Vukovar hospital were subjected to brutal beatings, both inside and outside the hangar.<sup>2040</sup> The Chamber has already found that the TO members and paramilitaries who participated in the beatings and later in the killing of the prisoners from the Vukovar hospital acted with the intent required for crimes such as those charged in the Indictment.<sup>2041</sup> That evidence does not establish, however, that these TO members and paramilitary soldiers were acting pursuant to any purpose they held in common, either amongst themselves or with JNA officers. Further, security measures put in place at times in the afternoon at Ovčara by JNA military police, albeit temporarily and insufficiently, prevented effect being given to any common purpose as alleged, which tends to contradict the proposition that there was any common purpose, as alleged, involving JNA troops under the command of any of the Accused.

597. As the Chamber has found earlier, several prisoners who were brought from the hospital were released at the hangar at Ovčara.<sup>2042</sup> Emil Čakalić testified that he was “saved” by a man he knew who appeared to be a local Serb.<sup>2043</sup> The man told him that he was “saving” him because

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<sup>2038</sup> See *supra*, para 260.

<sup>2039</sup> See *supra*, para 305.

<sup>2040</sup> See *supra*, paras 234; 237.

<sup>2041</sup> See *supra*, paras 510; 535; 536; 538.

<sup>2042</sup> See *supra*, paras 236; 242.

<sup>2043</sup> Emil Čakalić, T 5913-5914.

Čakalić had made him a big favour.<sup>2044</sup> Vilim Karlović was taken out of the hangar by a man he believed was a JNA soldier. The soldier asked his superior officer whether they could “save” Vilim Karlović.<sup>2045</sup> When Vilim Karlović asked the soldier what would happen to the people at the hangar the soldier responded: “They will kill all of you.”<sup>2046</sup> In the hangar a soldier asked P031 to give him all his money as P031 would not need it any longer. The soldier told P031 that they were surrounded by cold-blooded murderers and that they all would be killed that night.<sup>2047</sup> While soldiers are mentioned in this evidence the evidence is also clear that for quite some time TO and paramilitary soldiers were inside the hangar. Despite the present belief of a witness such as Vilim Karlović, it is not possible to conclude that these comments, if made, were made by JNA soldiers rather than Serb TO or paramilitary soldiers.

598. In the view of the Chamber, this evidence could demonstrate that some TO members and paramilitaries and possible JNA soldiers (although not on orders) present at Ovčara on 20 November 1991 had the intent to commit crimes such as those charged, or were aware that others had that intent. In each case there is only the evidence and the recollection of one man. Otherwise, there is, however, no reason why the Chamber does not accept this evidence. The evidence does not demonstrate that the soldiers were in fact members of the JNA. Even so, the Chamber is unable to conclude on this evidence alone, that there was a common plan of, or known by, the Serb forces, including the JNA at Ovčara to commit the crimes charged, or that there was a common plan of, or known by, the TO and paramilitary troops present at Ovčara to do so.

(ii) Preparations for the burial of a large number of people

599. The Chamber has found earlier that on 20 November 1991, commencing at about 1500 or 1530 hours, a large pit was dug in a location between Ovčara and Grabovo. This pit was used as a mass grave for the prisoners killed at Ovčara on the evening and night 20/21 November 1991.<sup>2048</sup>

600. It is P017’s evidence that the soldier who had him dig the pit had arrived at the Vupik farm some 30 minutes after the buses. The soldier was wearing a JNA uniform and an officer’s belt and a pistol. P017 found this to be unusual.<sup>2049</sup> The soldier had what he described as the regular, oblong, soldier’s cap. He had a clean and orderly appearance and was clean-shaven.<sup>2050</sup> Much of this description, especially as to the clean, orderly and clean shaven appearance, is consistent with a

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<sup>2044</sup> Emil Čakalić, T 5913-5914.

<sup>2045</sup> Vilim Karlović, T 6343-6344.

<sup>2046</sup> Vilim Karlović, T 6352.

<sup>2047</sup> P031, T 3268-3269.

<sup>2048</sup> See *supra*, para 241.

<sup>2049</sup> P017, T 9342.

<sup>2050</sup> P017, T 9352.

JNA soldier, although the officer's belt and pistol but a soldier's cap is not. The description could also fit a TO soldier but not a typical one.

601. Although the Chamber is not able to make a positive finding that this was a JNA officer or soldier who directed the digging of what became that night the mass grave, it is open on the evidence that it was. There is nothing to connect this soldier with any unit or to indicate on whose orders he acted. The digging machine appears to have driven along the road past the hangar, in which event it would have been in the view of anyone at the hangar who was concerned to take notice of it. No one questioned or interfered with the machine as it went off to the grave site and later returned. While the significance of this event is obvious, the nature and limited extent of the evidence does not enable the Chamber to reach a finding that the mass grave was dug at the direction of a JNA officer or soldier. If it was, the Chamber is unable, on the evidence, to connect this event with any order of Mile Mrkšić, Veselin Šljivančanin or Miroslav Radić, or to infer from what is known that there was a common plan involving any of the three Accused to murder or mistreat the prisoners in the hangar at Ovčara, or that such a common plan involved the JNA. On the evidence the soldier could have been a member of a JNA unit or a TO. While it is clear from this event that someone foresaw or planned what could happen later that night, the available evidence falls short of establishing that it involved any of the three Accused, or that those involved in the plan acted in furtherance of a common purpose shared by any of the Accused.

(c) Blocking access of ECMM and ICRC representatives to the Vukovar hospital

602. As established earlier, in the morning of 20 November 1991, JNA officers blocked the way of the international representatives from ECMM and ICRC, seeking to reach the hospital. Colonel Pavković and Veselin Šljivančanin sought to justify to them that the delay was for their own safety.<sup>2051</sup> In the Chamber's finding, as detailed elsewhere, safety considerations were not the real reason for obstructing the passage of the monitors. On the same occasion, Colonel Pavković also made reference to prisoners of war disguised as civilians at the hospital.<sup>2052</sup> It appears thus that there may have been a connection between the blocking of the monitors' passage and the disguised Croat forces in the hospital.

603. When the monitors eventually were able to reach the hospital at 1030 hours, the five buses of Croat prisoners of war had already left.<sup>2053</sup> The sequence of events reveals, in the Chamber's finding, that the blocking was to facilitate the process of removing the male prisoners from the hospital. The evidence of Warrant Officer Branko Korica further confirmed that this was the

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<sup>2051</sup> See *supra*, para 209.

<sup>2052</sup> See *supra*, para 209.

purpose of the blocking. It was his testimony that “those people needed to be separated and that everything needed to be cleared at the hospital and prepared for the arrival of the ICRC so as to avoid any incident.”<sup>2054</sup> In response to the question whether by an “incident” he meant an incident between the ICRC and the JNA, Warrant Officer Korica stated “[i]t probably wasn’t just that” and explained that it was suspected that weapons were hidden in the area.<sup>2055</sup> As indicated earlier, already on 19 November 1991, the JNA had made it clear to the monitors that members of the Croat forces would not be evacuated from the hospital.<sup>2056</sup> Viewed in this light, the evidence of Warrant Officer Korica confirms that the presence of international monitors at the hospital was considered a potential source of opposition to the removal by the JNA of members of the Croat forces from the hospital and was therefore to be avoided. The intention of some JNA officers involved in the evacuation of the hospital to prevent international observers being at the hospital until members of the Croat forces, including suspected members, were removed by the JNA can also be inferred from earlier conduct of Veselin Šljivančanin. On 19 November 1991, Veselin Šljivančanin obstructed access to the hospital by the ECMM monitors and Cyrus Vance.<sup>2057</sup> As established, on both 19 and 20 November 1991, the reasons given by Šljivančanin for denial were at best not convincing. The evidence of Warrant Officer Korica, confirms that they were deliberately contrived in order to ensure an unhindered JNA control of the hospital. In the Chamber’s finding, Veselin Šljivančanin and the JNA officers responsible for the evacuation of the hospital knew that the presence of the international monitors, whose task was to supervise the evacuation of the *wounded*, in accordance with the Zagreb Agreement, could not obstruct the process of removing members of the Croat forces (or as they might describe them war crimes suspects).

604. The Chamber finds it established that the purpose of the blocking of the passage of the international monitors on 20 November 1991 was to enable the JNA to select and remove from the hospital persons thought to be members of the Croat forces. The Prosecution contends that this lends support to the proposition that there was a plan to transfer the prisoners from the hospital to Ovčara and to kill them. The efforts made to prevent the arrival of the monitors do confirm that Veselin Šljivančanin and the JNA officers in charge of removal of members of the Croat forces from the hospital were acting contrary to the obligations of the JNA under the Zagreb Agreement. However, the evidence does not enable the conclusion to be reached that the breach of the Zagreb Agreement was intended to facilitate the commission of crimes such as those alleged in the Indictment. As discussed earlier, there were other purposes of the JNA which would entirely

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<sup>2053</sup> See *supra*, para 209.

<sup>2054</sup> Branko Korica, T 14726. See also T 14783.

<sup>2055</sup> Branko Korica, T 14783.

<sup>2056</sup> See *supra*, para 139.

<sup>2057</sup> See *supra*, paras 143; 178.

explain their actions in obstructing the access of international monitors to the hospital until late in the morning of 20 November 1991. Further, for the same reasons, it cannot be concluded that the breach of the Zagreb Agreement demonstrates the intent to commit crimes.

(d) Reasons for stopping at the JNA barracks

605. At the JNA barracks the evidence discloses that the three Došen brothers were taken to Negoslavci in a small JNA vehicle. While the buses were there, a sixth bus arrived and the persons on a list given to Veselin Šljivančanin at the hospital, this being a list of staff members and the spouses of hospital staff members, were called off the five buses and transported back to the hospital in the sixth bus. That process had not been anticipated because it only arose when female staff members spoke to Veselin Šljivančanin after their husbands had been included in the males who were taken to the five buses for transport from the hospital. Rather than the removal of these persons on the list from the five buses being the reason for the buses going to the barracks and waiting there for some two or more hours, the events disclose, in the view of the Chamber, that advantage was taken by Veselin Šljivančanin of the fact that he knew the buses were waiting at the barracks to retrieve the staff members and the spouses of the female staff. Similarly, there is no reason to conclude that the buses went to the barracks and were held there for more than two hours because of the Došen brothers. It is also suggested that the buses went to the barracks to join with a convoy of other vehicles to Sremska Mitrovica. There is no other evidence of prisoners of war or war crimes suspects being taken to Sremska Mitrovica that day. War crimes suspects were clearly being transported separately from civilians. Hence, the Chamber is not able to accept this to have been the case.

606. In the finding of the Chamber, a quite different reason for the buses being held at the JNA barracks, rather than driving directly to Sremska Mitrovica, is revealed by the totality of the evidence on this issue. While the previous evening Mile Mrkšić had been clear in his order that the Croat prisoners of war from the hospital should be taken to Sremska Mitrovica in Serbia on 20 November 1991, and Veselin Šljivančanin had planned and given the necessary orders accordingly, it is apparent that a further development had intervened which left unclear what should be done with the Croat prisoners of war from the hospital. This appears from the fact that during the morning of 20 November 1991, as the removal of the prisoners from the hospital was being undertaken under Veselin Šljivančanin's direction, Mile Mrkšić gave LtCol Panić instructions to attend the meeting of the SAO "government" and to inform the meeting that the JNA would comply with the wishes of the "government" as to the prisoners.<sup>2058</sup> The evidence does not specifically

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<sup>2058</sup> See *supra*, para 296.

disclose how and when Mile Mrkšić became aware of the meeting of the “government” or of its concerns as to what should be done with the Croat prisoners of war from the hospital. It is clear, however, that he had been made aware of these matters by mid-morning on 20 November. His instructions to LtCol Panić disclose that Mile Mrkšić had decided that the “government’s” decision as to what should be done with the prisoners would prevail.<sup>2059</sup> In the circumstances, it is inevitable that he expected the “government” to oppose the removal of the prisoners to Serbia. It is also the case, from the evidence of what occurred at the meeting, that even by the end of the “government” meeting, no firm decision or agreement had been reached about the place of detention of the prisoners.<sup>2060</sup> Hence it would not be known by Mile Mrkšić what was to be done with the prisoners. Whatever the “government” might ultimately wish, there would also be a need for practical arrangements involving the JNA to be discussed and resolved to facilitate any hand-over of the prisoners.

607. The Chamber is persuaded, in these circumstances and finds, that Mile Mrkšić countermanded his order of the previous evening for the prisoners to be taken to Sremska Mitrovica in Serbia, and the five buses were held at the JNA barracks awaiting a final decision about the destination for the prisoners. There being no clear decision following the JNA’s reaction to the “government’s” wish, the prisoners were moved to and held at the hangar at Ovčara as had been done by OG South with the previous Croat combatants on 18/19 November 1991.<sup>2061</sup> Again there is no direct evidence as to who made this decision and whether there was any involvement of representatives of the “government”. It is clear, however, that the five buses remained under JNA military police security when the prisoners were transported to Ovčara. It is also the case that after a time the JNA asserted its authority and secured, to a degree, the prisoners at Ovčara for the rest of the afternoon, at times to the exclusion of local Serb TOs and paramilitaries. In these circumstances the Chamber finds that the movement of the prisoners to Ovčara and their detention in the hangar was pursuant to JNA orders. Inevitably these were orders of Mile Mrkšić, as he had personally instituted the detention and movement of these prisoners and had placed Veselin Šljivančanin in charge of the operation.<sup>2062</sup> That detention of the prisoners by the JNA in the hangar at Ovčara remained until, as found elsewhere in this decision, the order was given by Mile Mrkšić to withdraw the remaining JNA security at the hangar which was then being provided by the military police of the 80 mtr.<sup>2063</sup> This occurred at a time approaching but before 2100 hours on 20 November 1991. The Croat prisoners of war were then left to the local Serb TO and

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<sup>2059</sup> See *supra*, para 296.

<sup>2060</sup> See *supra*, para 229.

<sup>2061</sup> See *supra*, para 150.

<sup>2062</sup> See also *supra*, paras 305; 400.

<sup>2063</sup> See *supra*, paras 284-285.

paramilitary forces who had gathered at Ovčara, and within a few hours the prisoners of war had been murdered.

(e) Conclusion

608. The facts, as the Chamber has found them to be established by the evidence, do not support the Prosecution case that there was a joint criminal enterprise involving any of the three Accused, together with others including local TOs, to murder and maltreat the Croat prisoners of war, who had been taken from the hospital to the hangar at Ovčara via the JNA barracks on 20 November 1991. The evidence demonstrates that the prisoners were murdered by TOs with some paramilitary support, although it is the case that one or more JNA soldiers may have been directly involved on their own individual volition. The evidence does not offer any support for the view that Mile Mrkšić, or either of the other Accused, ordered or participated in the murders or the maltreatment of the prisoners, or that they planned or intended that the murders or maltreatment should occur, or that the murders or maltreatment were pursuant to their common purpose or were the natural and foreseeable consequence of their common purpose.

2. Responsibility of Mile Mrkšić

(a) Mile Mrkšić's responsibility under Article 7(1) of the Statute

609. The Indictment charges the Accused Mile Mrkšić with individual criminal liability under Article 7(1) of the Statute for allegedly planning, instigating, ordering or otherwise aiding and abetting the crimes referred to in Article 3 of the Statute and described in the Indictment, or committing them by participation in a joint criminal enterprise.

610. It is convenient at this point to summarize some material findings relevant to the responsibility of Mile Mrkšić. On 19 November 1991, when Mile Mrkšić ordered the removal of prisoners of war from the Vukovar hospital on the following morning, the evidence demonstrates that the prisoners were to be transported by the JNA to the prison at Sremska Mitrovica.<sup>2064</sup> That was the specific order of Mile Mrkšić.<sup>2065</sup> This was in accord with what had been done with the Croat and other non-Serb prisoners of war on 18 and 19 November 1991. It facilitated the interests of the JNA, which were investigation and trial of possible war criminals and an exchange for Serb prisoners of war at a future time.<sup>2066</sup> In the Chamber's finding it was not then intended by Mile

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<sup>2064</sup> See *supra*, para 191.

<sup>2065</sup> See *supra*, para 295.

<sup>2066</sup> See *supra*, para 579.

Mrkšić that the prisoners of war would leave the custody of the JNA and be left in the custody of other Serb forces.<sup>2067</sup>

611. It is apparent that by mid morning on 20 November 1991, Mike Mrkšić was aware of the strong views held among Serb TO and paramilitary forces, and the so called “government” of the area, that, *inter alia*, the prisoners of war should not be removed by the JNA from Vukovar. In the Chamber’s finding, it was because of this pressure, and not with a view to forming some further convoy as suggested by some evidence, that the buses loaded with the prisoners of war were diverted to and held at the JNA barracks in Vukovar, rather than driving directly to Sremska Mitrovica.<sup>2068</sup> While Mile Mrkšić, by his Deputy and Chief of Staff, informed a meeting involving “government” members and others late that morning in effect that he would comply with the wishes of the “government” with respect to the prisoners, it was not then finalised what that would involve.<sup>2069</sup>

612. Following that meeting, in the Chamber’s finding, Mile Mrkšić ordered that the prisoners of war be taken to Ovčara, which had been mentioned at the meeting but which was also in accord with the JNA’s handling of its prisoners of war, during the Mitnica surrender, on the night of 18/19 November 1991 before those prisoners were taken to Sremska Mitrovica.<sup>2070</sup> However, on 20 November 1991, unlike 18 November 1991, there was plenty of time for the prisoners on the buses to be driven to Sremska Mitrovica before nightfall, as the buses reached Ovčara between 1330 and 1430 hours, and the buses left Ovčara after the prisoners of war were unloaded.<sup>2071</sup> These circumstances indicate, in the Chamber’s view, that it was not then the intention of Mile Mrkšić that the prisoners of war should be transported to Sremska Mitrovica on 20 November 1991.<sup>2072</sup> Even so, on the orders of Mile Mrkšić, JNA military police were sent to Ovčara to guard the prisoners of war, revealing, in the Chamber’s finding, that Mile Mrkšić had not at that stage decided that the custody of the prisoners of war should be handed over by the JNA to the TO and other Serb forces who had gathered at Ovčara.<sup>2073</sup>

613. It was not until late in the afternoon or the early evening of 20 November 1991 that Mile Mrkšić ordered the withdrawal from Ovčara of the remaining JNA soldiers guarding the prisoners of war. These were military police of 80 mtbr. That withdrawal was completed by 2100 hours.<sup>2074</sup>

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<sup>2067</sup> See *supra*, para 583.

<sup>2068</sup> See *supra*, para 607.

<sup>2069</sup> See *supra*, para 606.

<sup>2070</sup> See *supra*, para 305.

<sup>2071</sup> See *supra*, paras 234; 260.

<sup>2072</sup> See *supra*, para 607.

<sup>2073</sup> See *supra*, paras 261; 607.

<sup>2074</sup> See *supra*, paras 294; 321.

It left the prisoners of war in the sole physical custody of the TO and paramilitary forces which of their own volition had gathered at Ovčara because of the presence there of prisoners of war. These forces were at that time still within the composition of OG South and subject to the *de jure* command of Mile Mrkšić.<sup>2075</sup> Within a short time of the withdrawal of the remaining JNA soldiers from Ovčara, the Serb TO and paramilitary forces gathered at Ovčara (among which were members of the Petrova Gora TO and their leader Miroljub Vujović and volunteer members of Leva Supoderica and their leader, Milan Lančuzanin, aka Kameni) murdered the prisoners of war. The bodies of at least 200 were buried that night in a mass grave which had been dug during that afternoon.<sup>2076</sup>

(i) Planning, instigating

614. In its final submissions, the Prosecution sought to rely solely on allegations that Mile Mrkšić ordered or aided and abetted the crimes charged in the Indictment, or committed them by participation in a joint criminal enterprise. It made no explicit submissions that Mile Mrkšić planned or instigated the commission of the crimes. Taking into account the Prosecution's failure to pursue the charges that Mile Mrkšić planned and instigated the aforementioned crimes and having analysed the evidence before it, which does not support either allegation, the Chamber finds that the modes of liability of "planning" and "instigating" have not been established. It will not, therefore, enter a finding of guilt on the basis that Mile Mrkšić planned or instigated either of the crimes charged.

(ii) Ordering

615. The Prosecution submits that Mile Mrkšić is responsible for having ordered JNA soldiers under his command to deliver custody of the detainees taken from the Vukovar hospital to other Serb forces under his command (members of TO and paramilitary units) which allegedly committed the crimes charged in this Indictment.<sup>2077</sup> It is submitted that when he made this order, Mile Mrkšić either intended, or at least was aware of the substantial likelihood, that the order would result in the persecution, extermination, murder, cruel treatment, torture and other inhumane acts of the detainees by members of the TO and paramilitary units.<sup>2078</sup>

616. This submission appears to confuse the *actus reus* of ordering and the mental element or *mens rea* that must accompany an order. The Prosecution contends that Mile Mrkšić ordered JNA soldiers to deliver custody of the prisoners of war to other Serb forces. It is more accurately the

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<sup>2075</sup> See *supra*, para 88.

<sup>2076</sup> See *supra*, paras 494; 509-511.

<sup>2077</sup> Prosecution Final Brief, paras 419-438.

case that Mile Mrkšić ordered the withdrawal of the remaining JNA soldiers guarding the prisoners of war; it was a consequence of that withdrawal that custody of the prisoners passed to the Serb TO and paramilitary forces that were then at Ovčara.<sup>2079</sup>

617. However, this order is precisely formulated, Mile Mrkšić did not order that the prisoners of war be murdered. His order to the JNA soldiers was not an order to commit any offence. He gave no order to the Serb TO and paramilitary forces that were then at Ovčara and who later executed the prisoners of war. That being the case one of the essential elements of ordering has not been established. The *actus reus* has not been proved. It is therefore not necessary to consider the other and distinct element, namely the *mens rea*. For this reason the Prosecution has failed to establish that Mile Mrkšić is guilty of ordering the murder of the prisoners of war who were killed at Ovčara.

618. With respect to the other offences charged, in substance the relevant conduct against the prisoners of war which could constitute these offences occurred before Mile Mrkšić ordered the withdrawal of the JNA guards. Earlier, he had ordered that the prisoners of war be taken to Ovčara, but he had also ordered that JNA soldiers guard them there.<sup>2080</sup> Apart from what may have occurred as incidents of the murders of the prisoners of war, and which is not relied on by the Prosecution as constituting distinct offences, correctly so, there is no evidence to support the Prosecution case that offences other than the murders were a consequence of the order of Mile Mrkšić for the withdrawal of the JNA guards from Ovčara. The evidence does not suggest, let alone establish, that at any stage on 20 November 1991 Mile Mrkšić ordered JNA, or any other forces under his command, to commit any of the other offences charged against the prisoners of war. He gave no order to commit any offence against the prisoners of war. Therefore, as with the offence of murder, the Prosecution has failed to establish the *actus reus* of ordering in respect of any of the other offences charged.

(iii) Aiding and abetting

619. The Prosecution submits that Mile Mrkšić, through his orders and failures to act, made a substantial contribution to the commission of the crimes charged.<sup>2081</sup> It is further submitted that Mile Mrkšić was aware that the crimes charged were likely to be committed by TO forces.<sup>2082</sup> These submissions do not accurately reflect the elements of aiding and abetting which must be applied by the Chamber and which have been set out earlier in this Judgement in its discussion of the law.

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<sup>2078</sup> Prosecution Final Brief, paras 419-438.

<sup>2079</sup> See *supra*, para 321.

<sup>2080</sup> See *supra*, para 305.

620. In the finding of the Chamber the withdrawal from Ovčara of the only remaining JNA soldiers guarding the prisoners of war had an immediate and direct effect on the commission of the murders that followed. While the JNA soldiers, like other Serb TO and paramilitary forces, had been engaged in a prolonged bitter fight against the Croat forces and had suffered many casualties and hardships, the JNA was, in the main, a disciplined military force with a strong leadership which had an understanding of the legal responsibilities of the JNA towards the prisoners of war.<sup>2083</sup> This was in marked contrast to many members of the Serb TO and paramilitary forces who generally lacked military discipline and strong leadership and who harboured quite intense feelings of extreme animosity toward their enemy, the Croat forces, animosity inflamed by the conflict and recent political and social events, but which also drew on historical, cultural and even religious differences.<sup>2084</sup> The presence of the JNA guards at Ovčara that day had provided some restraint, albeit inconsistent and at times not an effective restraint, against the all too apparent wish of members of the TO and paramilitary forces to have revenge against the Croat prisoners of war.<sup>2085</sup> The withdrawal of the JNA guards removed this one restraint. What followed dramatically demonstrates that the JNA guards had been effective, and the gravity and intensity of the hatred and the desire for revenge was then able to be unleashed without restraint.

621. In the circumstances, by his order for the withdrawal of the remaining JNA soldiers guarding the prisoners of war, Mile Mrkšić in truth rendered substantial practical assistance to the TO and paramilitary forces at Ovčara who were determined to have revenge on the prisoners. By withdrawing the JNA guards, he at once enabled the TO and paramilitary forces to have direct and unrestrained physical access to the prisoners of war. This substantially assisted them to commit the murders that followed, in that it had an immediate effect on their ability to perpetrate the murders. Further, by the removal of the restraint it encouraged the release of their emotions. In the findings of the Chamber, the order of Mile Mrkšić need not share the *mens rea* of the actual perpetrators which is required to commit murder. Elsewhere in this Judgement, the Chamber has considered the state of knowledge of Mile Mrkšić on 20 November 1991, and in particular by the time he gave the order for the withdrawal of the remaining JNA soldiers guarding the prisoners of war.<sup>2086</sup> By virtue of its findings about his state of knowledge, the Chamber is satisfied that Mile Mrkšić was indeed aware that the TO and paramilitary forces at Ovčara presented a grave threat to the prisoners of war,

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<sup>2081</sup> Prosecution Final Brief, paras 440-443.

<sup>2082</sup> Prosecution Final Brief, paras 442-443.

<sup>2083</sup> See for example *infra*, para 668.

<sup>2084</sup> Significantly, the Chamber recalls that Colonel Pavković, during the meeting held on 19 November 1991 in the presence of Mile Mrkšić and the ECMM monitors, had said that if the prisoners of war leave the hospital, Serb irregulars/local citizens would attack the convoy. This is indicative, in the Chamber's finding, that Mile Mrkšić was well aware of the great threat that the prisoners of war were subjected to and of the animosity that the local Serb volunteers had for the prisoners of war. (See *supra*, para 139)

<sup>2085</sup> See *supra*, paras 255; 273.

a threat he anticipated would manifest itself in considerable and life threatening violence and indeed death. The probability, indeed the considerable likelihood, that prisoners of war would be gravely injured and murdered was, in the established circumstances, one which the Chamber finds to have been obvious to Mile Mrkšić and to anyone with his knowledge of the attitude of the TO and paramilitary forces to the Croat forces. He was aware that some prisoners had indeed been executed by TO and paramilitary forces the previous day and of the difficulties experienced by JNA soldiers on 20 November 1991 by virtue of the efforts of TO and paramilitary forces to gain access to the prisoners of war.<sup>2087</sup> In the Chamber's finding, when he ordered the withdrawal of the JNA guards, he well knew that this left the TO and paramilitary with unrestrained access to the prisoners and that by enabling this he was assisting in the commission of the offences of violence and murder that he was aware would indeed probably follow. These matters, in the view of the Chamber, establish the *mens rea* on the part of Mile Mrkšić necessary to constitute aiding and abetting the commission of the murders for the purposes of Article 7(1) of the Statute.

622. The Chamber therefore finds pursuant to Article 7(1) of the Statute that Mile Mrkšić aided and abetted the commission of the crime of murder as charged in Count 4 of the Indictment.

623. Mile Mrkšić is also charged with aiding and abetting the offences of torture and cruel treatment in Counts 7 and 8. The events relevant to these charges occurred at Ovčara on the afternoon of 20 November 1991 but before the order of Mile Mrkšić to withdraw the remaining JNA soldiers guarding the prisoners of war. Different considerations are relevant, therefore, to aiding and abetting in the context of these two offences. As has been indicated, it is the finding of the Chamber that Mile Mrkšić had ordered the prisoners of war to be taken to Ovčara and had ordered that the JNA provide security at Ovčara of the prisoners of war.<sup>2088</sup> These orders were given only shortly before the prisoners were taken to Ovčara.<sup>2089</sup> There was no time for Veselin Šljivančanin or other staff officers to plan effectively to deal with some over 200 prisoners of war, most of them wounded or otherwise hospital patients. The only facility at Ovčara to hold the prisoners of war was a large hangar normally used for farming activities. The military police of the 80 mtbr sent to Ovčara to guard the prisoners, were unprepared for this duty, they had no clear instructions and were without the leadership of both the commander of the 80 mtbr and the military police commander.<sup>2090</sup>

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<sup>2086</sup> See *supra*, paras 174-175; 302; 309; 313; 315.

<sup>2087</sup> See *supra*, paras 174-175; 302; 309; 313; 315.

<sup>2088</sup> See *supra*, para 305.

<sup>2089</sup> See *supra*, para 306.

<sup>2090</sup> See *supra*, para 306.

624. When the five buses of prisoners of war arrived at Ovčara there also arrived Serb TO and paramilitary personnel, many of whom were armed, who had followed the prisoners from the JNA barracks and were intent on exacting revenge on their enemy, the prisoners of war, for their role in the Croat forces at Vukovar.<sup>2091</sup> The intensity of the hatred and other emotions of the TO and paramilitary forces has been considered elsewhere in this Judgement.<sup>2092</sup> The lack of clear instructions and strong leadership of the JNA guards securing the prisoners in this situation had the inevitable result, that immediately on their arrival, TO and paramilitary personnel established a system whereby the prisoners of war, as they left the buses, were subjected to severe physical beatings as they were forced to run a gauntlet of TO and paramilitary personnel.<sup>2093</sup> This gauntlet may also have included some JNA personnel who were present and acting on their own volition and who were not members of the 80 mtbr.<sup>2094</sup> Further, the belongings, including money, passports or other means of identification of the prisoners of war, were forcibly taken from them.<sup>2095</sup> Having run this gauntlet, inside the hangar severe beatings of individual prisoners of war were continued by some TO and paramilitary personnel who were allowed to move among the prisoners in the hangar.<sup>2096</sup> For some time a roster system of beaters from the TO and paramilitary personnel was implemented.<sup>2097</sup> Also, in a number of other ways identified elsewhere in this Judgement, the prisoners were subjected to other forms of cruel treatment.<sup>2098</sup> Many beatings were grave, indeed it appeared to some witnesses at the time that some prisoners actually died during the beatings, although this has not been established.<sup>2099</sup>

625. At times during the afternoon attempts were made, on the initiative of individual JNA officers including the commander of 80 mtbr who had arrived at Ovčara, to remove the TO and paramilitary personnel from the hangar so as to prevent their access to the prisoners of war. Some of these attempts had limited or temporary success, but the evidence also reveals that at various times TO and paramilitary personnel regained access to the prisoners of war or threatened to do so forcibly.<sup>2100</sup> The members of TO and paramilitary personnel at Ovčara very significantly exceeded the number of JNA guards, even after reinforcements had arrived from 80 mtbr on the initiative of the commander of 80 mtbr.<sup>2101</sup> At times during the afternoon the situation is aptly described as chaotic and, even when TO and paramilitary personnel were separated from the prisoners of war, it

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<sup>2091</sup> See *supra*, paras 234; 237; 533.

<sup>2092</sup> See *supra*, para 526.

<sup>2093</sup> See *supra*, para 234.

<sup>2094</sup> See *supra*, para 352.

<sup>2095</sup> See *supra*, para 234.

<sup>2096</sup> See *supra*, para 237.

<sup>2097</sup> See *supra*, para 238.

<sup>2098</sup> See *supra*, paras 537-538.

<sup>2099</sup> See *supra*, para 237.

<sup>2100</sup> See *supra*, paras 255; 273.

<sup>2101</sup> See *supra*, paras 235; 263.

was apparent to JNA officers who were from time to time present, that there was a clear risk that TO and paramilitary personnel could act to forcibly overcome JNA resistance and resume the violent mistreatment of the prisoners of war.<sup>2102</sup>

626. This state of affairs was reported to Mile Mrkšić at the command post of OG South in Negoslavci.<sup>2103</sup> He was the commander of all the Serb forces at Ovčara, including the TO and paramilitary personnel.<sup>2104</sup> The prisoners of war were being held at Ovčara on his orders.<sup>2105</sup> The Chamber has detailed elsewhere the findings it has made as to the several reports made to him that afternoon.<sup>2106</sup> Relevantly, the effect of the reports, in the Chamber's view, can be adequately summarised as advising that the security at Ovčara needed to be strengthened. In addition to these specific reports, as considered elsewhere in this Judgement, Mile Mrkšić was aware of the level of animosity of TO and paramilitary personnel (and also of a number of his JNA forces) to the Croat forces, and had received earlier reports of the killing of Croat prisoners by TO and paramilitary personnel.<sup>2107</sup> Despite this, Mile Mrkšić took no steps whatever during the afternoon of 20 November 1991 to reinforce the guards at Ovčara or to improve in any way the measures for better securing the prisoners of war from violence and other cruel treatment at the hands of the TO and paramilitary forces.

627. In these circumstances it is established, in the finding of the Chamber, that Mile Mrkšić both knew that violence and cruel treatment was occurring to the prisoners of war, despite the existing security arrangements he had ordered, and was well aware of the animosity to the prisoners of the TO and paramilitary personnel who had gathered at Ovčara and of their propensity to extreme violence against the prisoners. Yet, he took no action to prevent the continuance of the offences of cruel treatment that had been occurring. He had readily available to him more than adequate military police and other soldiers and adequate officers to ensure that the incidents of mistreatment that had been occurring during the afternoon were not repeated. His omission, or failure to act, in these circumstances, constituted, in the view of the Chamber, aiding and abetting the acts of cruel treatment that continued during the afternoon.

628. The Chamber has set out the necessary *actus reus* and *mens rea* for aiding and abetting earlier in this Judgement. By failing to act Mile Mrkšić rendered both practical assistance and encouragement to those at Ovčara who sought revenge on the prisoners of war. This failure had a substantial effect on the continuance of the acts of cruel treatment. It could only have been

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<sup>2102</sup> See *supra*, paras 263; 265.

<sup>2103</sup> See *supra*, paras 308; 313; 315.

<sup>2104</sup> See *supra*, para 88.

<sup>2105</sup> See *supra*, para 305.

<sup>2106</sup> See *supra*, paras 308; 313; 315.

apparent to Mile Mrkšić that if no action was taken the cruel treatment would continue. He was aware of the essential nature of the criminal conduct that was occurring at Ovčara and of the propensity, if not the determination, of the TO and paramilitary personnel gathered to continue their cruel treatment against the prisoners of war.

629. For those reasons, in the decision of the Chamber, it has been established that Mile Mrkšić is guilty of aiding and abetting the offence of cruel treatment charged in Count 8 of the Indictment.

630. With respect to the allegation in Count 7 of the Indictment that Mile Mrkšić aided and abetted the offence of torture, in the finding of the Chamber, as in the case of cruel treatment alleged in Count 8, the relevant events said to constitute torture occurred at Ovčara during the afternoon of 20 November 1991 before Mile Mrkšić ordered the withdrawal of the remaining JNA military police guarding the prisoners of war.

631. As has been indicated, in the Chamber's finding, it has been established that Mile Mrkšić knew that violence and cruel treatment in the form of beatings causing severe pain and suffering, was occurring to the prisoners of war at Ovčara during the afternoon of 20 November 1991. In the Chamber's finding, it is further established that Mile Mrkšić knew that these beatings were being committed by members of the TO and paramilitary forces who had gathered at Ovčara, they being forces under his command in the composition of OG South. The circumstances further establish, in the view of the Chamber, that Mile Mrkšić also knew that the primary motivation of the TO and paramilitary forces was to punish members of the Croat forces, who had been their enemies in the conflict, for the deaths and suffering they perceived to have been caused by Croat forces. It was the strength of this desire to punish, in a real sense, for revenge, which had so constantly motivated the TOs and paramilitaries to gain access to members of the Croat forces held by the JNA as prisoners of war and which had led to the ferocity and savagery of many of the beatings. The objective of causing at least severe pain and suffering was obvious. The conduct of the TOs and paramilitaries responsible for these severe beatings constituted the offence of torture in these circumstances. Mile Mrkšić was aware of the essential nature of the conduct and of the intention of the perpetrators to punish, and also of the propensity, if not determination, of the TO and paramilitary personnel to continue their conduct, which constituted torture, against the prisoners of war. As with cruel treatment, the failure of Mile Mrkšić to act rendered both practical assistance and encouragement to the TO and paramilitary personnel at Ovčara, and had a substantial effect on the continuance of the conduct constituting torture.

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<sup>2107</sup> See *supra*, paras 174-175.

632. For these reasons, in the decision of the Chamber, it has been established that Mile Mrkšić is guilty of aiding and abetting the offence of torture charged in Count 7 of the Indictment.

(iv) Joint criminal enterprise

633. For reasons detailed earlier the Prosecution has not proved that Mile Mrkšić or either of the other two Accused, in any way participated in a joint criminal enterprise involving or leading to the commission of any of the crimes charged.<sup>2108</sup>

(b) Mile Mrkšić's responsibility under Article 7(3) of the Statute

634. The Chamber would record here that had it not been persuaded of Mile Mrkšić's responsibility under Article 7(1) of the Statute, on the basis of the findings it has made in Chapters IV and VI(D) of this Judgement it would have been satisfied that Mile Mrkšić is responsible for the same crimes under Article 7(3) of the Statute. In light of the Appeals Chamber finding in *Blaškić* the Chamber does not make a further finding of guilt of the same offences under Article 7(3).<sup>2109</sup>

3. Responsibility of Miroslav Radić

(a) Miroslav Radić's responsibility under Article 7(1) of the Statute

(i) Planning, instigating

635. Leaving aside joint criminal enterprise, which is considered separately, it is not the Prosecution case that Miroslav Radić planned or instigated the commission of any of the crimes charged, within the scope of Article 7(1) of the Statute.<sup>2110</sup> As has been indicated there is, indeed, no evidence that he did so. It is not proved by the Prosecution, therefore, that Miroslav Radić is guilty of planning or instigating the commission of any of the offences charged.

(ii) Ordering

636. There is no evidence presented that Miroslav Radić ordered the commission of any of the crimes charged. It is not proved, by the Prosecution, therefore, that Miroslav Radić is guilty of ordering the commission of any of the offences charged.

(iii) Aiding and abetting

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<sup>2108</sup> See *supra*, para 608.

<sup>2109</sup> *Blaškić* Appeals Judgement, para 91.

<sup>2110</sup> Prosecution Final Brief, paras 73-74.

637. There is no evidence that Miroslav Radić was at Ovčara on 20 November 1991 when the crimes charged were committed. He was present outside the hospital at the time of the triage of the men by JNA soldiers on 20 November 1991 and, at the highest, the evidence is that he assisted in searching the men as they left the hospital building, although the evidence only establishes his presence. Even if he had assisted in searching the men, this does not amount to a substantial contribution to the commission of the crimes charged which were committed that evening, at a different location, by different Serb military personnel. The *actus reus* of aiding and abetting is not established. Further, the evidence demonstrates that the triage was undertaken pursuant to orders to transport the men to the prison in Sremska Mitrovica. At that stage there was no reason for Miroslav Radić to know that the men would be taken to Ovčara or to be left there in the custody of TO and paramilitary forces, rather than JNA units, and therefore he did not, and had no reason to, anticipate or be aware that offences such as those charged would be committed. The *mens rea* of aiding and abetting is not established. For these reasons it has not been proved by the Prosecution that Miroslav Radić is guilty of aiding and abetting the commission of any of the offences charged.

(iv) Joint criminal enterprise

638. For reasons detailed earlier the Prosecution has not proved that Miroslav Radić, or either of the other two Accused, in any way participated in a joint criminal enterprise involving or leading to the commission of any of the crimes charged.

(b) Miroslav Radić's responsibility under Article 7(3) of the Statute

639. Miroslav Radić is also charged with command responsibility pursuant to Article 7(3) of the Statute. It is alleged that he is responsible as a commander for the criminal acts of subordinates of his who were among those who committed the crimes charged.<sup>2111</sup>

640. Earlier in this Judgement,<sup>2112</sup> the Chamber has recorded its findings that Miroslav Radić was the commander of both 3coy 1/gmtbr and 3 AG which was formed within 1 AD commanded by Major Tešić. 3 AG comprised 3coy 1/gmtbr, Petrova Gora TO including its commander Miroslav Vujović (but not one company of Petrova Gora TO commanded by Stanko Vujanović which Major Tešić had assigned to another assault group)<sup>2113</sup> and also the Leva Supoderica volunteer or paramilitary unit including its commander Milan Lančuzanin, aka Kameni<sup>2114</sup> (subject to the

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<sup>2111</sup> Indictment, para 13; *see supra*, para 3.

<sup>2112</sup> *See supra* paras 100-101.

<sup>2113</sup> Slavko Stijaković, T 12839; Dusan Jakšić, T 12011; Miroslav Radić, T 12673-12674; P022, T 4957.

<sup>2114</sup> *See supra* para 102.

proviso that on occasions some men of Leva Supoderica could be temporarily used to reinforce other assault groups.<sup>2115</sup>)

641. The Chamber has found that in respect of 3 AG, Miroslav Radić was the commander for all combat operations.<sup>2116</sup> While combat operations is not a narrow concept, as discussed earlier by the Chamber,<sup>2117</sup> it was the case that at times, in the absence of any functions within the concept of combat operations, the powers of command over the men of Petrova Gora TO reverted to Miroljub Vujović and over the men of Leva Supoderica to Milan Lančuzanin.<sup>2118</sup> In such situations Miroslav Radić remained in command of the men of 3coy 1/gmtbr by virtue of his distinct appointment as commander of that JNA company.

642. The Chamber has also found that this situation existed from the formation of 3 AG by Major Tešić in October 1991 and continued under 21 November 1991 when, by order of Mile Mrkšić as commander of OG South, Petrova Gora TO and Leva Supoderica were both removed from the composition of 1 AD and necessarily thereby from the composition of 3 AG, it being a subordinate element of 1 AD.<sup>2119</sup> The power of command exercisable by Miroslav Radić over men of Petrova Gora TO and Leva Supoderica also necessarily ceased when those units were removed from the composition of 1 AD.

643. The Chamber has also found that on 20 November 1991, also by order of Mile Mrkšić, Miroljub Vujović was appointed to command all of the Vukovar TO units.<sup>2120</sup> The evidence indicates there were some ten of these.<sup>2121</sup> This would suggest that he thereby ceased to be the commander of Petrova Gora TO. In that event Miroljub Vujović would have ceased to be within the composition of 1 AD and of 3 AG and so ceased to be subject to command of Miroslav Radić.

644. As the commander of 3 AG, Miroslav Radić had *de jure* authority over the men of that assault group for combat operations. The evidence also establishes, in the finding of the Chamber, that Miroslav Radić had and exercised effective command and control over the men of 3 AG for combat operations. In view of some aspects of the evidence, this finding should be commented on with respect to the TO and volunteer (or paramilitary) members of 3 AG.

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<sup>2115</sup> As of 29 October 1991, Leva Supoderica was part of 1 AD, Exhibit 410. Miroslav Radić testified that only “two or three squads” from Leva Supoderica participated in combat operations on his axis, T 12619. *See also* P022, T 4957.

<sup>2116</sup> *See supra* para 102.

<sup>2117</sup> *See supra* paras 87-88.

<sup>2118</sup> Miroslav Radić, T 12619;12794-12795; P022, T 5078-5079; Slavko Stijaković, T 12848; 12924.

<sup>2119</sup> *See supra* para 108.

<sup>2120</sup> *See supra* para 92.

<sup>2121</sup> *See supra* para 91.

645. 3 AG was a unit within the structure of OG South. All members of 3 AG, including TO and volunteer personnel, were ultimately subject to the legal authority vested in Mile Mrkšić. At all other levels OG South was commanded by JNA officers, including 1 AD and its subordinate unit 3 AG. In the context of effective control in these circumstances, it is significant indeed that JNA units, including the prestigious gmtbr, were the numerically dominant force of OG South. Not only was the JNA component vastly superior to the TO and volunteer forces in numbers, the JNA was better led, trained and equipped. This formidable force stood behind Miroslav Radić in his role as the JNA officer commanding 3 AG. It provided the ultimate assurance of his material ability to prevent or punish unlawful conduct by the TO and volunteer forces of 3 AG.

646. The evidence demonstrates, however, that on a personal and local level Miroslav Radić had firmly established effective control of the men of 3 AG and was well accepted as their leader. The evidence does indicate that there were difficulties in OG South, in particular in 1 AD, in ensuring discipline, compliance with orders, and a willingness to fight effectively in some TO and volunteer elements.<sup>2122</sup> In the early stages of 3 AG these were experienced by Miroslav Radić. The strength and effectiveness of his powers of command were demonstrated by the way he dealt with this. He explained this to a journalist from Intervju Magazine in an interview on 24 November 1991,<sup>2123</sup> in the following terms, which the Chamber accepts as reflecting his comments despite a reservation expressed by Miroslav Radić in his evidence<sup>2124</sup>:

[...] I (then) withdrew soldiers from all positions with the help of the Leva Supoderica Regiment which was, if I could put it that way, sponsored by the Serbian Radical Party. The regiment stayed to hold on to the conquered positions. I made it perfectly clear to all the soldiers - regardless of whether they were reservists, volunteers, active servicemen or Vukovar TO members – who could fight and how.

[...]

I did not give the Territorial Defence the opportunity to decide whether they wanted to fight or not. It was their town and they had to fight for it.

[...]

That day, 44 volunteers left my unit. A unit of 300 soldiers remained and we reorganised it. We formed an assault platoon which was tasked with raiding houses, clearing and expelling Ustashes and clearing mines in the area. The remaining soldiers secured the positions which were taken later. People realised that we advanced much better than before and things started to move. One or two streets were taken each day, a town district every two or three days.<sup>2125</sup>

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<sup>2122</sup> Radoje Trifunović, T 8194-8195; 8280; 8306.

<sup>2123</sup> Exhibit 353; Miroslav Radić, T 12684-12685.

<sup>2124</sup> Miroslav Radić denied having said that he commanded the soldiers, in particular not the “Chetniks”, T 12684-12685.

<sup>2125</sup> Exhibit 353, p 2.

The Chamber also accepts that on another occasion Miroslav Radić lined up and disarmed 100-150 volunteers because of drinking and looting. Forty of them, from Leva Supoderica, were removed from 3 AG. Both the commander of Leva Supoderica Milan Lančuzanin and Miroljub Vujović were present but no objections were raised to his actions to restore order and discipline.<sup>2126</sup>

647. In addition to his strength and fitness, and his personal courage, it is significant that Miroslav Radić was the best trained officer in 3 AG; he was indeed the only officer who had graduated from the military academy.<sup>2127</sup> He was regarded as a very professional and disciplined commander.<sup>2128</sup> By contrast, Miroljub Vujović was not able to plan combat operations,<sup>2129</sup> yet he commanded the main TO element of 3 AG. Miroslav Radić also placed his JNA deputy, Lieutenant Hadžić in charge of the mortar platoon of 3 AG which comprised Leva Supoderica men because they lacked the skill necessary to accurately aim and fire the mortars,<sup>2130</sup> and Miroslav Radić himself would often pass orders directly to Lieutenant Hadžić for firing the mortars.<sup>2131</sup> Miroslav Radić's orders were always obeyed.<sup>2132</sup>

648. The improvement Miroslav Radić was able to achieve in the motivation and discipline of 3 AG is reflected in the war diary of 1/gmtbr. Initially, around 21 and 22 October 1991 there are reports of the lack of motivation among TOs in 3 AG and of some 42 volunteers requesting to be replaced.<sup>2133</sup> This type of entry is not generally to be found after then in respect of 3 AG, although problems continued in other elements of 1 AD.<sup>2134</sup> Instead, evidence confirms that there was discipline on Miroslav Radić's axis of operation.<sup>2135</sup>

649. For these briefly stated reasons the Chamber finds that Miroslav Radić had effective control in the relevant sense, which is discussed earlier, of the men of 3 AG at the time relevant to the Indictment. As detailed more fully a little earlier, these men comprised 3coy 1/gmtbr, Petrova Gora TO, but not one company commanded by Stanko Vujanović, and the Leva Supoderica volunteer or paramilitary unit.

650. The findings of the Chamber which have been detailed a little earlier in this Judgement reveal, however, that it has not been established by the Prosecution that, on 20 November 1991,

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<sup>2126</sup> P022, T 4982-4984.

<sup>2127</sup> Miroslav Radić, T 12619-12620.

<sup>2128</sup> Davor Vučković, T 13209; Zoran Zirojević, T 13133; Miodrag Panić, T 14423-14424. *See also* Slavko Stijaković, T 12923; P024, T 4387; P022, T 4982-4985; Exhibit 807, entry on 4 November 1991 "Captain Miroslav Radić has distinguished himself with his actions, example, courage and personal contribution so far."

<sup>2129</sup> Miroslav Radić, T 12620-12621.

<sup>2130</sup> Miroslav Radić, T 12622; P024, T 4174. *See also* P022, T 4977-4978.

<sup>2131</sup> P022, T 4977-4978.

<sup>2132</sup> P024, T 4173; 4339; P022, T 4979; P018, T 7394-7395.

<sup>2133</sup> Exhibit 807, p 5, entry on 21 October 1991 and the following day (the exact date is illegible).

<sup>2134</sup> Radoje Trifunović, T 8194-8195; 8280; 8306.

Miroslav Radić knew, or had reason to know, that subordinates of his in 3 AG or in 3coy 1/gmtbr were about to commit offences against the prisoners of war at Ovčara, or that they had done so.<sup>2136</sup> He is not criminally responsible, therefore, for failing to take measures to prevent the crimes pursuant to Article 7(3) of the Statute.

651. Neither has it been established by the Prosecution that on 21 November 1991 Miroslav Radić knew or had reason to know that his subordinates had committed offences at Ovčara.<sup>2137</sup> His authority to punish as commander in respect of the Petrova Gora TO and Leva Supoderica men of 3 AG ceased on that day. While there is evidence that a member of his 3coy 1/gmtbr participated in the offences at Ovčara, it has not been established that Miroslav Radić knew or had reason to know of the involvement of this man in the offences, during the time that man remained under the authority to punish of Miroslav Radić, or indeed while he remained a member of the JNA.<sup>2138</sup>

652. For these reasons it has not been established by the Prosecution that Miroslav Radić is guilty, pursuant to Article 7(3) of the Statute, of any of the offences charged in the Indictment.

#### 4. Responsibility of Veselin Šljivančanin

##### (a) Veselin Šljivančanin's responsibility under Article 7(1) of the Statute

###### (i) Planning, instigating

653. The Prosecution has not pursued the charges under these modes of liability. It did not adduce evidence in support of them, nor did it mention them in its Final Brief. The charges of planning and instigating shall accordingly be dismissed.

###### (ii) Ordering

654. The Chamber has found that the crimes charged in the Indictment were committed by Serb TO members and paramilitaries.<sup>2139</sup> It has not been established that Veselin Šljivančanin was a "person in a position of authority" who could have ordered any of the perpetrators to commit the crimes established by the evidence. As discussed earlier, there is evidence demonstrating that Veselin Šljivančanin exercised some *de facto* command authority over local Vukovar TOs involved in the triage at the Vukovar hospital. While this could have occurred by virtue of the authority Mile Mrkšić had vested in him for the evacuation of the hospital, or because the TOs agreed to assist

<sup>2135</sup> Miodrag Panić, T 14423-14424.

<sup>2136</sup> See *supra*, paras 350; 353; 357.

<sup>2137</sup> See *supra*, para 358.

<sup>2138</sup> See *supra*, paras 350; 353; 357; 360.

<sup>2139</sup> See *supra*, para 235; 237; 252.

Veselin Šljivančanin in the triage as they had personal knowledge of persons living in Vukovar, the evidence does not suggest or establish that he retained, or purported to exercise, authority over these TO after the triage (including the identification of the men returned from the barracks on his orders) was completed, or that he had, or purported to exercise any authority to give orders to the TOs and paramilitaries who committed the crimes at Ovčara. Therefore, the Prosecution has failed to establish that Veselin Šljivančanin should be convicted of any of the offences charged on the basis that he ordered them to be committed.

(iii) Aiding and abetting

655. The Prosecution alleges that Veselin Šljivančanin aided and abetted the crimes charged in the Indictment by, *inter alia*, ordering the selection of prisoners of war from amongst the persons taken from the hospital, ordering their transport to the barracks and then to Ovčara, transmitting the order to withdraw the military police of 80 mtbr issued by Mile Mrkšić and failing to issue orders required to prevent the crimes.<sup>2140</sup> While other acts have been identified by the Prosecution in support of this allegation, they are either irrelevant or entirely unsubstantiated by evidence.

a. Operations conducted under the direction of Veselin Šljivančanin

656. The Chamber has found that Veselin Šljivančanin directed the triage in and in front of the hospital, and the subsequent transport of the prisoners of war from the hospital to the JNA barracks. He also personally acted to delay the ECMM monitors and the ICRC representative on their way to the hospital. The Chamber accepts that by virtue of these events the members of the Croat forces who were patients in the hospital were, in fact, not included in the humanitarian convoy, pursuant to the Zagreb Agreement, which would have evacuated them to Zagreb. As a consequence of his involvement the prisoners of war selected in the triage were placed in the buses which eventually took them to Ovčara where they were mistreated and most of them killed. The involvement of Veselin Šljivančanin in these events therefore may be seen as having had a substantial effect on the commission of the crimes which were committed against the prisoners of war at Ovčara.

657. However, as found elsewhere in this Judgement,<sup>2141</sup> the withdrawal of JNA guards and the hand-over of the prisoners of war to the TOs and paramilitaries at Ovčara was not contemplated at the time when the process of selection and transfer of the prisoners to the barracks was conducted under the direction of Veselin Šljivančanin. As discussed earlier, the objective at the time was to remove from the hospital persons, including patients, thought to be involved in the Croat forces so

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<sup>2140</sup> Prosecution Final Brief, para 648.

<sup>2141</sup> See *supra*, para 606.

they could be sent to the prison camp in Sremska Mitrovica by the JNA. There is no evidence establishing or even suggesting that Veselin Šljivančanin knew at the time of his involvement in these events that the destination of the prisoners of war would be Ovčara, or that they would not be under the security of the JNA, or that they would be mistreated or killed.<sup>2142</sup>

658. As will be discussed, in the Chamber's view, the Accused Šljivančanin was aware of the acts of mistreatment and killings that had occurred on the preceding day at Velepromet, as well as of the alarming degree of animosity shown by the local Serb TOs and paramilitaries to the Croat forces. However, in view of the planned transfer of the prisoners of war to the prison camp in Sremska Mitrovica, he could not have been aware at the time of his involvement in the triage and the transport of the prisoners to the barracks, that crimes would probably be committed. For these reasons, the Chamber is unable to conclude that Veselin Šljivančanin conducted the triage and the transport of the prisoners to the barracks, including delaying the ECMM and ICRC representatives, with the knowledge that his conduct would assist in the commission of the crimes established in this Judgement, or that he then had reason to be aware that crimes of the type charged would probably be committed. It is the Chamber's finding that, at the most, he could have been aware that crimes *might* be committed if the TOs and paramilitaries were allowed access to the prisoners of war without proper security. This, however, does not suffice to conclude that the conduct in issue constituted the aiding and abetting of any of the alleged offences.

b. Directing the buses to Ovčara

659. The order to send the buses with the prisoners of war from the JNA barracks in Vukovar to Ovčara, in the Chamber's finding, also facilitated the commission of the crimes committed at Ovčara that day. As the Chamber has found, this occurred on the order of Mile Mrkšić. There is no direct evidence of the involvement of Veselin Šljivančanin in the giving, transmitting or implementing of this order. Nevertheless, in the Chamber's view, it can be inferred that he was directly involved. In this regard the Chamber has regard to the visit of Veselin Šljivančanin to the JNA barracks while the buses with the prisoners were there, his demonstrated continuing control of the prisoners at the barracks, in that prisoners listed by him were removed from the buses and returned to the hospital, the responsibility and authority conferred on him by Mile Mrkšić to direct the process of the selection and transport of the prisoners of war from the hospital, the authority expressly given him by Mile Mrkšić to use such military police of OG South as he required, and the fact that military police of 2 MP/gmtbr guarded the prisoners until they reached Ovčara where

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<sup>2142</sup> The Chamber is not persuaded by the evidence of Ljubica and Tanja Došen concerning remarks made by Veselin Šljivančanin, which might be indicative of his awareness that crimes would be committed. *See supra*, para 592.

military police of 80 mtbr, who had been ordered urgently to Ovčara, were ready to secure the prisoners on their arrival, the personal involvement of Veselin Šljivančanin's deputy Major Vukašinović in the transportation of the prisoners to Ovčara, and, as the Chamber has also found elsewhere in this Judgement, Veselin Šljivančanin's presence at Ovčara within about an hour of the arrival there of the prisoners of war. These matters, in combination, and notwithstanding contrary evidence, including that of Veselin Šljivančanin, persuade the Chamber that in accordance with normal chain of command procedures, Veselin Šljivančanin was directly involved in the communication and implementation of the order to transfer the prisoners to Ovčara and to secure them there. It finds accordingly.

660. By his involvement in the redirection of the buses carrying the prisoners to Ovčara, the assistance rendered this way had a substantial effect on the commission of the crimes in Ovčara. Nevertheless, it has not been established that Veselin Šljivančanin had the required state of mind to constitute him an aider and abettor of the offences at Ovčara. In the finding of the Chamber, as discussed elsewhere, at the time of the transfer of the prisoners of war to Ovčara, there had been no final decision by Mile Mrkšić as to the custody of the prisoners of war. Further, at Ovčara the prisoners were to be secured by JNA military police. Given these circumstances, it cannot be concluded that Veselin Šljivančanin, when participating in the process of redirecting the buses to Ovčara, was in a position to anticipate the crimes. It has not been established by the prosecution that he was then aware that his conduct was assisting any of the crimes charged, or that the TOs and paramilitaries would be able or likely to commit such crimes. Therefore, in the absence of requisite *mens rea*, Veselin Šljivančanin's involvement in the transfer of the prisoners of war to Ovčara does not constitute aiding and abetting any of the crimes subsequently committed at Ovčara.

c. Transmitting the order to withdraw the 80 mtbr

661. The Chamber has found, having weighed the contrary evidence, that the order to withdraw the military police of the 80 mtbr from Ovčara, as a result of which the TO and volunteers gained unrestricted access to, and the exclusive custody of, the prisoners of war, was transmitted in the early evening of 20 November 1991 from Negoslavci to Ovčara by Captain Karanfilov and Captain Vukosavljević, independently from one another. The Chamber accepts that the withdrawal of the military police facilitated the commission of crimes. Karanfilov was a direct subordinate of Veselin Šljivančanin. There are obvious indications that in respect of this final order of the day with respect of the prisoners of war, Veselin Šljivančanin could also have been involved in the transmission of the order delivered to Ovčara by Captain Karanfilov. The natural chain of command procedures would suggest this, although, on its own, this is not sufficiently compelling in the face of contrary evidence. There is also some evidence that Šljivančanin and Karanfilov were together for a short

time late in the day at Vukovar, however, the Chamber is unable to accept the truth of the evidence concerning what occurred at this meeting and is not able to be satisfied therefore about its reliability in any respect. There is no indication in the evidence that Veselin Šljivančanin was at Negoslavci at the time the order was first given by Mile Mrkšić. He could have been informed by other means but this is merely conjecture. It is the evidence that Šljivančanin did not attend the evening briefing that evening at OG South in Negoslavci and there are indications in the evidence that he had remained later than usual in Vukovar, especially at the hospital, and may not have arrived at the OG South command post until about 2000 hours. Despite his own contrary evidence that he had left for Belgrade, it is well open in all the circumstances that Karanfilov was at Negoslavci a little before or immediately after the evening briefing when the order appears to have been first given. In the absence of Veselin Šljivančanin from Negoslavci it is not surprising that one of his subordinates would be called on to deliver the order to Ovčara. The circumstances are materially different from those relating to the order earlier that afternoon for the prisoners to be transported to Ovčara. There are not other circumstances established, relating to the order in the evening for the withdrawal of the 80 mtr military police from Ovčara, which together enable the Chamber to be satisfied to the required standard that Veselin Šljivančanin was directly involved in its transmission. Despite the possibility that he was, the Chamber is not able to find on the available evidence that he was involved. For this reason, in the circumstances, there is no basis on which he could be criminally responsible for the consequences of the withdrawal.

d. Failure to give orders to prevent the commission of crimes

662. The Indictment alleges that Veselin Šljivančanin is responsible under Article 7(1) for having aided and abetted in the planning, preparation or execution of the crimes charged.<sup>2143</sup> The Prosecution contends that Veselin Šljivančanin aided and abetted the crimes charged in the Indictment by having failed to give orders necessary for the prevention of those crimes.<sup>2144</sup> It is established that a person may aid and abet by omission. The Indictment alleges that Veselin Šljivančanin “permitted JNA soldiers under his command to deliver custody of ... detainees to other Serb forces who physically committed the crimes” and “was personally present at Ovčara farm on 20 November 1991 when criminal acts charged in this indictment were being committed”.<sup>2145</sup> The Chamber is satisfied that the Defence had notice that the Prosecution case in part relied on aiding and abetting by omission.

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<sup>2143</sup> Indictment, para 4.

<sup>2144</sup> Prosecution Final Brief, para 648.

<sup>2145</sup> Indictment, para 11(g) and (h); emphasis added.

663. As established earlier, Veselin Šljivančanin personally visited Ovčara. He was seen there at about 1430 or 1500 hours, at which time in the Chamber's finding the unloading of the prisoners of war and their having to pass through the gauntlet towards the hangar were still in progress. While the evidence does not establish that he entered the hangar the violence of TOs and paramilitaries to the prisoners, and the freedom of the TOs and paramilitaries to enter the hangar were only too obvious. Veselin Šljivančanin was thus present at Ovčara at the time when prisoners of war were seriously mistreated by TOs and volunteers and must have witnessed the mistreatment. In the Chamber's finding he was aware that crimes were being committed. The evidence does not allow a conclusion to be reached that during his visit to Ovčara Veselin Šljivančanin observed the actual conditions in which the prisoners were detained inside the hangar and thus it is not established that he was aware that the offence of cruel treatment was being committed this way.

664. In addition to what he could personally observe at Ovčara that day, Veselin Šljivančanin was aware of instances of grave mistreatment of prisoners of war by TOs and paramilitaries that had taken place in the Vukovar area in the preceding weeks. Already in October 1991 there were reports of incidents involving violence directed against prisoners of war. A report dated 18 October 1991 describes paramilitary formations that treat brutally and kill prisoners of war.<sup>2146</sup> Veselin Šljivančanin remembered having read this report. He stated, however, that he did not know at the time that the mistreatment and killing of prisoners of war was taking place,<sup>2147</sup> a position which, in the view of the Chamber, cannot be accepted at least after he read that report. There were other reports on killing, "sadistic abuse" and looting,<sup>2148</sup> which demonstrated the extent of antagonism between the local paramilitaries and Croats. Veselin Šljivančanin, as the OG South security organ, among other duties had responsibilities with respect to war crimes and was in charge of the disarmament of paramilitaries.<sup>2149</sup> He was in the area of Vukovar since the beginning of October 1991.<sup>2150</sup>

665. At the time of the fall of Vukovar, similar incidents occurred and were known even to the command of the 1 MD. On 18 November 1991, it issued an order, in which it states:<sup>2151</sup>

"... nobody has the right to retribution and other kinds of revenge, which some local TO units carried out."

Colonel Trifunović understood that on 19 November Veselin Šljivančanin knew of problems with TO members.<sup>2152</sup> Captain Karanfilov, who was Veselin Šljivančanin's direct subordinate, testified

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<sup>2146</sup> Exhibit 718.

<sup>2147</sup> Veselin Šljivančanin, T 13782-13783.

<sup>2148</sup> Exhibit 636 p 2; Exhibit 819.

<sup>2149</sup> Veselin Šljivančanin, T 13459.

<sup>2150</sup> Veselin Šljivančanin, T 13460-13461.

that on 18 November 1991 he received from Veselin Šljivančanin the task of going to Ovčara, where ZNG soldiers who had surrendered at Mitnica were held overnight. It is of significance that Captain Karanfilov was asked to convey to the ZNG soldiers and the security commander in charge of the facility the specific request that both parties refrain from acts that might escalate into a clash.<sup>2153</sup> This demonstrates that Veselin Šljivančanin was aware and concerned about the risk of hostile acts directed against Croatian prisoners of war, in that case even by JNA soldiers.

666. Further, as discussed earlier, on the night of 19/20 November, Colonel Vujić, having visited Velepromet, met Veselin Šljivančanin in Negoslavci and told him of the actions there of some TOs and paramilitaries and specifically that killings had occurred and that he had been threatened himself.<sup>2154</sup> A few hours later Colonel Vujić had another opportunity to talk to Veselin Šljivančanin. During the briefing Veselin Šljivančanin gave in the morning of 20 November, at the Velepromet gate, Colonel Vujić mentioned the information he had received from Colonel Kijanović about killings at Velepromet and that there were bodies there.<sup>2155</sup> The Chamber finds that Veselin Šljivančanin had been informed of the acts of mistreatment and killings committed at Velepromet by TOs and paramilitaries on the night preceding the evacuation of the Vukovar hospital. He also personally observed and was informed of the acts of mistreatment committed at the JNA barracks in the late morning of 20 November 1991. Having regard to these matters, it is clear that Veselin Šljivančanin was on notice of the occurrence of acts similar to those subsequently committed at Ovčara. He was aware of the alarming degree of hostility of local TOs and paramilitaries towards members of the Croat forces and that many of them were ready to commit grave criminal acts if given an opportunity. Given his knowledge, Veselin Šljivančanin can only have been aware that the acts of mistreatment that were being committed at Ovčara while he was there were intended to punish the prisoners of war for their involvement, or believed involvement, in Croat forces before the fall of Vukovar.

667. The evidence indicates that, despite having witnessed the mistreatment of prisoners of war at Ovčara and being aware of similar and worse previous acts, Veselin Šljivančanin made no effort to prevent the continuing commission of crimes at Ovčara. There is nothing to suggest that his immediate subordinates were committing the offences at the time of his visit at Ovčara. In this respect the circumstances of the present case differ from those which gave rise to the responsibility of Tihomir Blaškić under Article 7(1) for omission, as discussed earlier.<sup>2156</sup> However, Veselin

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<sup>2151</sup> Exhibit 415.

<sup>2152</sup> Radoje Trifunović, T 8150-8153.

<sup>2153</sup> Borče Karanfilov, T 15411-15412; 15463.

<sup>2154</sup> *See supra*, para 175.

<sup>2155</sup> *See supra*, para 365.

<sup>2156</sup> *See supra*, paras 553-554.

Šljivančanin had been officially vested by Mile Mrkšić with authority of a considerable scope in respect of the removal and security of the prisoners of war from the hospital, authority which, in the Chamber's finding, continued at the time of Veselin Šljivančanin's visit to Ovčara that afternoon. In particular, he had been specifically invested with command authority over OG South military police for these purposes, as found elsewhere in this Judgement. Yet, he gave no orders to the military police or to his own immediate subordinates present, directed to the prevention of the commission of further crimes. No evidence has been adduced, and it has not been advanced, that Veselin Šljivančanin made any attempt to stop the mistreatment of prisoners of war then occurring at Ovčara, even though he was in a position to take necessary measures.

668. Veselin Šljivančanin was under a duty to protect the prisoners of war taken from the Vukovar hospital. The duty to protect prisoners of war was imposed on him by the laws and customs of war.<sup>2157</sup> It was also part of his remit as security organ of OG South. Further, the evidence indicates that from the time of removal of the prisoners of war from the hospital until that night when the JNA guards securing them were withdrawn, Veselin Šljivančanin was responsible for their security, a responsibility which included both their protection and prevention of their escape. This was a responsibility with which he had been entrusted by Mile Mrkšić in relation with the operation of removing war crime suspects from the hospital.<sup>2158</sup> The Chamber observes that this responsibility was not novel. On the evening of 18 November 1991, Veselin Šljivančanin participated in the security of the surrendered Croat forces, who were brought to Ovčara and were awaiting transfer to the prison camp in Sremska Mitrovica. Captain Vukosavljević, who as Veselin Šljivančanin's indirect subordinate as the security organ of 80 mtbr, had primary responsibility.<sup>2159</sup> Even so, towards the evening of 18 November 1991, Veselin Šljivančanin sent Captain Karanfilov to Ovčara, where the prisoners of war were kept, with the message, *inter alia*, that the prisoners should be treated in accordance with the rules and that nobody should be harmed.<sup>2160</sup>

669. For these reasons, the Chamber is satisfied that Veselin Šljivančanin's duty to protect the prisoners of war brought to Ovčara on the afternoon of 20 November 1991 was of significance.

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<sup>2157</sup> Article 13 of Geneva Convention III states: "Prisoners of war must at all times be humanely treated. Any unlawful act or omission by the Detaining Power causing death or seriously endangering the health of a prisoner of war in its custody is prohibited, and will be regarded as a serious breach of the present Convention. . . Prisoners of war must at all times be protected, particularly against acts of violence or intimidation and against insults and public curiosity." See also *Blaškić Appeals Judgement*, footnote 1384. Further, the JNA had its own regulations (*Regulations on the Application of International Laws of War in the Armed Forces of the SFRY*, 1988) on the application of international laws of war, which included the relevant Geneva Convention and held every individual responsible for the application of the regulations. (Exhibit 600, para 49; Exhibit 578, pp 131-134; Exhibit 396) The regulations also state that "prisoners of war shall be treated humanely. In particular, they must be protected against violence, insults and intimidation". (Regulations para 210, Exhibit 396; Exhibit 600, para 52)

<sup>2158</sup> See *supra*, para 400.

<sup>2159</sup> Dragi Vukosavljević, T 8666.

<sup>2160</sup> Borče Karanfilov, T 15411.

Veselin Šljivančanin was bound by the laws and customs of war, he was also entrusted, as security organ, with the task of implementing some of those laws, as far as the security of prisoners of war in the custody of the JNA was concerned, and he was under specific orders of Mile Mrkšić for the security of the prisoners. It follows that his omission, when visiting Ovčara, or immediately after, to take necessary measures to prevent the continuing commission of crimes against the prisoners of war protected by the laws and customs of war, amounts to a breach of his legal duty. As discussed earlier, a failure to discharge a legal duty of this kind may incur criminal responsibility pursuant to Article 7(1) of the Statute.<sup>2161</sup>

670. The breach of the legal duty imposed on Veselin Šljivančanin resulted in the intermittent but continuing, and at times virtually unimpeded, commission of crimes by TOs and paramilitaries during the afternoon. Had he chosen to give clear direction to the military police present, and if necessary to order other military police to assist at Ovčara, he would have been able to obstruct the commission of further crimes. It is also to be noted that the military police of 2MP/gmtbr, who had provided security for the prisoners of war on the buses, left with the buses when all prisoners had been unloaded. Among other obvious measures, Veselin Šljivančanin could have prevented their departure from Ovčara or ordered their return. He could have called for other members of 2 MP/gmtbr, or other military police from within OG South. Had there been more military police at Ovčara during the afternoon, and had they had clear instructions, the TOs and paramilitaries perpetrating crimes against the prisoners of war would have been unable to pursue their criminal conduct, or at least would have been restrained in doing so. Accordingly, the failure of Veselin Šljivančanin to act pursuant to the legal duty on him to ensure the security of the prisoners of war had a substantial effect on the commission of crimes in Ovčara, in the afternoon of 20 November 1991. As established earlier, Veselin Šljivančanin knew that the TOs and paramilitaries were mistreating the prisoners of war and thereby committing the crimes of torture and cruel treatment. In the circumstances, he must have been aware that by failing to give clear direction to the military police present or to secure other military police to assist at Ovčara he facilitated the commission of those crimes.

671. The Chamber reiterates that mere presence at the scene of a crime may, in specific circumstances, provide encouragement to the perpetrator.<sup>2162</sup> However, in the present case no evidence has been adduced suggesting that the presence of Veselin Šljivančanin at Ovčara was

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<sup>2161</sup> See *supra*, para 553.

<sup>2162</sup> See *supra*, para 552.

noticed by or known to any of the perpetrators.<sup>2163</sup> Therefore, it cannot be concluded that his presence was deemed by the perpetrators as tacit approval or encouragement.

672. During the visit of Veselin Šljivančanin at Ovčara crimes of torture and cruel treatment were being committed. As the security of the prisoners of war was insufficient, the commission of crimes continued. As established earlier, in the evening of that day, TOs and paramilitaries who had gathered at Ovčara took the prisoners of war to the mass grave site and murdered them. It is true that Veselin Šljivančanin must have been aware, on the basis of his knowledge of the events at Velepomet on 19 November 1991, that at least some of the TOs and paramilitaries were capable of killing. However, at the time of his visit to Ovčara, the prisoners of war remained under the security and authority of the JNA. Veselin Šljivančanin could reasonably have believed in the circumstances that the TOs and paramilitaries would be unlikely to resort to killing. It was only after the final withdrawal that evening of the JNA troops from Ovčara, the military police of 80 mtbr, when the TOs and paramilitaries were able to have unrestrained access to the prisoners of war who had been left in their control, that murder became a likely occurrence. Therefore, the Chamber is unable to conclude that Veselin Šljivančanin knew at the time of his visit to Ovčara that killings would probably be committed. He can only be held responsible for the crimes that he witnessed when visiting Ovčara and for the continued commission of similar crimes during the afternoon.

673. The Chamber further observes that the acts of murder took place after the order to withdraw the military police of 80 mtbr of the JNA from Ovčara had been issued and the prisoners of war were in the custody of the TO and paramilitaries. This withdrawal had been ordered by Mile Mrkšić. It follows that the responsibility for providing security for the prisoners of war removed from the hospital, which Veselin Šljivančanin had received on the preceding day from Mile Mrkšić, was necessarily at an end with the withdrawal of the last JNA troops. For this reason, the Chamber finds that it has not been established that Veselin Šljivančanin aided and abetted the commission of murder at Ovčara by failing to discharge a legal duty.

674. For the reasons given, the Chamber concludes that by the failure to discharge his legal duty to protect the prisoners of war held in Ovčara from acts of mistreatment, Veselin Šljivančanin aided and abetted the crimes of torture and cruel treatment; not the crime of murder.

(iv) Joint criminal enterprise

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<sup>2163</sup> See *Brdanin Appeals Judgement*, para 277.

675. As discussed earlier, the evidence does not enable the Chamber to conclude that the crimes which have been proved by the Prosecution were committed within the common purpose of a joint criminal enterprise including Veselin Šljivančanin or either of the other Accused. Accordingly, the allegation that Veselin Šljivančanin committed crimes through participation in a joint criminal enterprise must be dismissed.

(b) Veselin Šljivančanin's responsibility under Article 7(3) of the Statute

676. The Prosecution alleges that Veselin Šljivančanin had command authority over the TOs committing the crimes charged in the Indictment and, despite having been on notice that crimes were being or about to be committed, he failed to take measures to stop the perpetrators. As discussed earlier, there is evidence suggesting that Veselin Šljivančanin might have exercised some authority over the TOs and paramilitaries who participated in the triage at the hospital. However, it has not been established that he retained, or purported to exercise, any authority thereafter or that, in particular, he had any effective control over the TOs and paramilitaries who committed the crimes at Ovčara. Therefore, command responsibility under Article 7(3) for the crimes committed by the TOs and paramilitaries has not been established by the Prosecution in respect of Veselin Šljivančanin. The charges against him pursuant to this mode of responsibility must be dismissed.

## X. CUMULATIVE CONVICTIONS

677. The question of cumulative convictions arises where more than one charge arises out of what is essentially the same criminal conduct. It is established in the jurisprudence of the Tribunal that it is only permissible to enter cumulative convictions under different statutory provisions to punish the same criminal conduct if “each statutory provision involved has a materially distinct element not contained in the other.”<sup>2164</sup> Where, in relation to two offences, this test is not met, the Chamber should enter a conviction on the more specific provision.<sup>2165</sup>

678. For reasons given earlier, the Chamber had found that the elements of the offences of murder (Count 4), torture (Count 7), and cruel treatment (Count 8) as violations of the laws or customs of war have been established.

679. In the present case, the issue of cumulation arises in relation to the offences of torture (Count 7) and cruel treatment (Count 8). The statutory basis and the elements of each of these two offences of torture and cruel treatment have been analysed earlier in this decision.<sup>2166</sup> Both offences require that the victim must have suffered serious bodily harm or mental harm, this harm must be as a result of an act or omission of the accused or his subordinate, and the perpetrator’s act must have been intentional. The offence of torture has an additional element in that the act or omission must have been carried out with a specific purpose such as to obtain information or a confession, to punish, intimidate or coerce the victim or a third person, or to discriminate, on any ground, against the victim or a third person.<sup>2167</sup> The offence of cruel treatment, however, does not require proof of an element not required for the offence of torture. Accordingly, where the offences of torture and cruel treatment arise out of the same criminal conduct of the Accused, the Chamber will enter a conviction only in respect of the charge of torture (Count 7). The Chamber has done so with respect to the beatings, which occurred outside and inside the hangar at Ovčara on 20 November 1991 and which in the Chamber’s finding amounted both to cruel treatment and torture. The charge of cruel treatment (Count 8) remains, therefore, only in respect to the conditions of detention at Ovčara.

680. In the instant case, the issue of cumulation does not arise in relation to the offences of torture (Count 7) and of murder (Count 4) as these offences are not based upon the same criminal conduct. The same can be said for the offences of cruel treatment (Count 8) and of murder (Count 4).

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<sup>2164</sup> *Čelebići Appeals Judgement*, 412-413; *Kordić Appeals Judgement*, para 1032.

<sup>2165</sup> *Čelebići Appeals Judgement*, 412-413; *Kordić Appeals Judgement*, para 1032.

<sup>2166</sup> *See supra*, paras 513-517.

<sup>2167</sup> *Kunarac Appeals Judgement*, paras 142, 144.

681. For the reasons given earlier in this decision, and having regard to the law as to the cumulative convictions, the Chamber will enter convictions against the Accused Mile Mrkšić in respect of Count 4 (murder), Count 7 (torture), and Count 8 (cruel treatment). The Chamber will enter a conviction against the Accused Veselin Šljivančanin only with respect to Count 7 (torture).

## XI. SENTENCING

682. The Prosecution submits that Mile Mrkšić and Veselin Šljivančanin, if convicted of ordering, aiding and abetting or participation in the first or third category of JCE, should receive a sentence of life imprisonment.<sup>2168</sup>

683. Sentencing is governed by Article 24 of the Statute and Rule 101 of the Rules.<sup>2169</sup> In accordance with Rule 101(A) of the Rules, a convicted person may be sentenced to imprisonment for a term up to and including the remainder of his life. The Chamber shall, in accordance with Article 24(2) of the Statute and Rule 101(B) of the Rules, take into account such factors as the gravity of the offence and the individual circumstances of the convicted person, and any aggravating and mitigating circumstances. The Chamber is also to take into account the general practice of prison sentences in the former Yugoslavia,<sup>2170</sup> although the Chamber is not bound by this practice.<sup>2171</sup> The decision as to the length of sentence is a discretionary one, turning on the circumstances of the case.<sup>2172</sup> In the exercise of its discretion, the Chamber is guided by the relevant provisions of the Statute and the Rules. The Chamber also takes note of the primary objectives of sentencing as defined by the Appeals Chamber, namely deterrence and retribution.<sup>2173</sup>

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<sup>2168</sup> Closing Arguments, 15 March 2007, T 16131.

<sup>2169</sup> Article 24 of the Statute provides: "1. The penalty imposed by the Trial Chamber shall be limited to imprisonment. In determining the terms of imprisonment, the Trial Chambers shall have recourse to the general practice regarding prison sentences in the courts of the former Yugoslavia. 2. In imposing the sentences, the Trial Chambers should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person. 3. In addition to imprisonment, the Trial Chambers may order the return of any property and proceeds acquired by criminal conduct, including by means of duress, to their rightful owners."

Rule 101 of the Rules provides: "(A) A convicted person may be sentenced to imprisonment for a term up to and including the remainder of the convicted person's life. (B) In determining the sentence, the Trial Chamber shall take into account the factors mentioned in Article 24, paragraph 2, of the Statute, as well as such factors as: (i) any aggravating circumstances; (ii) any mitigating circumstances including the substantial co-operation with the Prosecutor by the convicted person before or after conviction; (iii) the general practice regarding prison sentences in the courts of the former Yugoslavia; (iv) the extent to which any penalty imposed by a court of any State on the convicted person for the same act has already been served, as referred to in Article 10, paragraph 3, of the Statute. (C) Credit shall be given to the convicted person for the period, if any, during which the convicted person was detained in custody pending surrender to the Tribunal or pending trial or appeal."

<sup>2170</sup> Article 24(1) of the Statute; Rule 101(B)(iii) of the Rules.

<sup>2171</sup> *Krstić Appeals Judgement*, para 260; *Kunarac Appeals Judgement*, para 377; *Blaškić Appeals Judgement*, para 681-682, referring to the *Kunarac Trial Judgement*, para 829: "Although the Trial Chamber is not bound to apply the sentencing practice of the former Yugoslavia, what is required certainly goes beyond merely reciting the relevant criminal code provisions of the former Yugoslavia. Should they diverge, care should be taken to explain the sentence to be imposed with reference to the sentencing practice of the former Yugoslavia, especially where international law provides no guidance for a particular sentencing practice. The Trial Chamber notes that, because very important underlying differences often exist between national prosecutions and prosecutions in this jurisdiction, the nature, scope and the scale of the offences tried before the International Tribunal do not allow for an automatic application of the sentencing practices of the former Yugoslavia."

<sup>2172</sup> *Krstić Appeal Judgement*, para 248; *Semanza Appeals Judgement*, para 394; *Brdanin Appeals Judgement*, para 500.

<sup>2173</sup> *Tadić Sentencing Appeals Judgement*, para 48; *Deronjić Appeals Judgement*, para 136-137, referring to *Čelebići Appeals Judgement*, para 800-801; 860; *Kordić Appeals Judgement*, para 1073-1075; 1079; *Blaškić Appeals Judgement*, para 678; *Alekovski Appeals Judgement*, para 145; 185; *Dragan Nikolić Appeals Judgement*, para 46; *Stakić Appeals Judgement*, para 402.

Further, a sentence must not be capricious or excessive, *i.e.* it should not be out of reasonable proportion with a line of sentencing passed in similar circumstances for the same offences.<sup>2174</sup>

### **A. The gravity of the offence**

684. The gravity of the offence is a factor of primary importance in the determination of the sentence.<sup>2175</sup> In assessing the gravity of the offence the Chamber may consider the nature of the crimes, the scale and brutality of the crime, the role of the accused and the overall impact of the crimes upon the victims and their families.<sup>2176</sup> A sentence must reflect the inherent gravity or the totality of the criminal conduct of an accused, giving due consideration to the particular circumstances of the case and to the form and degree of the participation of the accused.<sup>2177</sup> It is an established principle in the jurisprudence of the Tribunal that war crimes are not inherently less serious than crimes against humanity.<sup>2178</sup>

685. Apart from a very few persons subjected to cruel treatment or torture, in the present case the victims of the offences were all murdered on the day. The consequences for them were absolute. Close family members have been left without their loved ones. In almost all cases the anguish and hurt of such tragedy has been aggravated by uncertainty about the fate which befell these victims.

#### **1. Mile Mrkšić**

686. The Chamber has found Mile Mrkšić guilty of the crime of murder (Count 4), torture (Count 7) and cruel treatment (Count 8). It was established by the evidence that, on 20 November 1991, two days after the Croat forces surrendered to Serb forces at Vukovar, over 200 persons were removed as prisoners from the Vukovar hospital by JNA soldiers of OG South under the command of Mile Mrkšić. The prisoners were almost all men, at least the vast majority of whom had been members of the Croat forces. They were taken to a hangar at Ovčara, near Vukovar, where they were subjected to beatings and other forms of mistreatment. That evening JNA military police guarding the prisoners were withdrawn by order of Mile Mrkšić. Following this, prisoners were taken in groups from the hangar to a nearby site by Serb TO and paramilitary forces of OG South who then executed them. The bodies of 200 were buried in a mass grave, which had been dug

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<sup>2174</sup> *Momir Nikolić* Appeals Judgement para 39, referring to *Jelisić* Appeals Judgement, para 96; *see also Babić* Appeals Judgement, para 33.

<sup>2175</sup> *Momir Nikolić* Appeals Judgement, para 11; *Aleksovski* Appeals Judgement, para 182; *Čelebići* Appeals Judgement, para 731; *Kupreškić* Appeals Judgement, para 442; *Jelisić* Appeals Judgement, para 101; *Blaškić* Appeals Judgement, para 683.

<sup>2176</sup> *See Rajić* Sentencing Judgement, paras 83-95.

<sup>2177</sup> *Furundžija* Appeals Judgement, para 249; *Blaškić* Appeals Judgement, para 683.

during the afternoon. The grave remained undiscovered for nearly a year. The conviction of murder is in respect of 194 prisoners, the remains of 190 of whom were found in the mass graves and have been identified and also four other identified victims.

687. Relevant in considering the gravity of the offences is Mile Mrkšić's role in the commission of these crimes. In this respect, it should be noted that Mile Mrkšić has not been found guilty of ordering the commission of these crimes. It was not established that he participated in a joint criminal enterprise with the common purpose of committing these crimes. Mile Mrkšić has been found guilty for his decision to withdraw the JNA officers and soldiers who were guarding the prisoners of war at Ovčara. By this act Mile Mrkšić rendered substantial practical assistance to the TO and paramilitary forces at Ovčara who were then able to commit the murders. Further, Mile Mrkšić has been held responsible for his failure during the afternoon to prevent the continuance of offences of cruel treatment and torture occurring at Ovčara, of which he was informed. It is material that Mile Mrkšić was the commander of all Serb forces at Ovčara on 20/21 November 1991.

688. The Appeals Chamber has held that a previous decision on sentence by Chambers of the Tribunal may provide guidance if it relates to "the same offence and was committed in substantially similar circumstances."<sup>2179</sup> It has also clarified that such comparison may be limited.<sup>2180</sup> The Chamber notes that several cases at the Tribunal involved mass killings committed in a concerted geographical area and during a limited period of time.<sup>2181</sup> However, sentences are not imposed on the convicted person merely for the violation of a specific Article under the Statute but for his conduct and role in those crimes. As explained by the Appeals Chamber, Chambers have an overriding obligation to tailor a penalty to fit the gravity of the crime and the individual circumstances of the accused, which also include the consideration of both aggravating and mitigating circumstances.<sup>2182</sup> The Chamber cannot identify a case before the Tribunal that may be said to involve the same offence and substantially similar circumstances as in the present case. The Chamber does not, therefore, engage in a comparison with previous decisions on sentence.

## 2. Veselin Šljivančanin

689. The Chamber has found Veselin Šljivančanin guilty of the crime of torture (Count 7). It was established by the evidence that on 20 November 1991 over 200 prisoners of war from Vukovar

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<sup>2178</sup> *Tadić* Sentencing Appeals Judgement, para 69; *Furundžija* Appeals Judgement, para 247; *Rajić* Sentencing Judgement, para 83.

<sup>2179</sup> *Furundžija* Appeals Judgement, para 250; *Čelebići* Appeals Judgement, para 720.

<sup>2180</sup> *Čelebići* Appeals Judgement, para 721.

<sup>2181</sup> See for example *Blagojević* Trial Judgement, paras 797-798; *Stakić* Trial Judgement, para 468, 616.

<sup>2182</sup> *Momir Nikolić* Appeals Judgement, para 38, referring to *Čelebići* Appeals Judgement, paras 717, 719.

hospital were brought by buses to Ovčara, where TOs and paramilitary soldiers mistreated many of them by severe beatings intended to punish them for their involvement in the Croat forces.

690. In considering Veselin Šljivančanin's role in the commission of the crime, the Chamber observes that he has been acquitted of the charges of murder. He has not been found guilty for having ordered any of the crimes charged in the Indictment or for having participated in a joint criminal enterprise to commit such crimes. It has not been established that he was a person in the position of authority in respect of any of the perpetrators, or that he had either *de jure* or *de facto* control over the perpetrators of the crimes established in this Judgement. The Chamber has found Veselin Šljivančanin responsible for what happened at Ovčara during the afternoon and well before the executions. Despite being responsible for the security of the prisoners of war and having visited Ovčara at a time when they were being mistreated, Veselin Šljivančanin did nothing to stop the beatings or to prevent their continuation. He failed to give appropriate directions to military police guarding the prisoners, and he failed to secure, or even to seek, their reinforcement, it being within his capacity, and also his authority, to do those things. For these reasons, it has only been established that Veselin Šljivančanin is criminally responsible for having aided and abetted the crimes of torture and cruel treatment by his omission to act, pursuant to Article 7(1) of the Statute. Further, as the same physical beatings of the prisoners constitute the cruel treatment and the physical element of the torture, Veselin Šljivančanin has been convicted only of aiding and abetting the crime of torture.

691. The Chamber also would observe here that while Veselin Šljivančanin was in charge of the evacuation, transport and security of the prisoners of war from Vukovar hospital, the Chamber is not satisfied that he was aware or foresaw at that time that the prisoners of war would be executed. It has not been established that Veselin Šljivančanin played any role in the withdrawal of the JNA forces securing the prisoners at the hangar at Ovčara which led to their execution by members of the Serb TO and paramilitary forces. The Chamber has found that the responsibility of Veselin Šljivančanin for the security of the prisoners of war ended with the withdrawal of the last JNA military police guarding the prisoners, in accordance with the orders of Mile Mrksić.

#### **B. Individual circumstances of the Accused: aggravating and mitigating circumstances**

692. The Statute and the Rules do not endeavour to exhaustively define factors which may appropriately constitute aggravating and mitigating circumstances with a view of determining a sentence. Rule 101(B) only refers to substantial cooperation with the Prosecutor as a mitigating circumstance. The jurisprudence of the Tribunal has identified further factors which a Chamber

might take into account.<sup>2183</sup> The accused's superior position under Article 7(3) of the Statute can be taken into consideration as an aggravating factor.<sup>2184</sup> These are not exhaustive. Necessarily, what constitutes aggravating and mitigating circumstances, and the weight each should be accorded, must be determined in light of the particular circumstances of each case.<sup>2185</sup>

693. Aggravating circumstances must be directly related to the commission of the offence,<sup>2186</sup> and must be established beyond reasonable doubt.<sup>2187</sup> The exercise by an accused of his right to remain silent may not constitute an aggravating circumstance.<sup>2188</sup>

694. Mitigating circumstances may be taken into account regardless of whether they are directly related to the alleged offence,<sup>2189</sup> and are to be determined on a balance of probabilities.<sup>2190</sup> Factors, such as the family situation of an accused, his efforts to be reintegrated into society and the absence of prior criminal record have been taken into consideration in mitigation.<sup>2191</sup>

695. The Prosecution does not submit that any specific aggravating or mitigating circumstances Chamber should be taken into account.

#### 1. Mile Mrkšić

696. The Mrkšić Defence submits that the following factors should be taken into consideration as mitigating and personal circumstances when determining the appropriate sentence: clean criminal record, career as an "irreproachable officer," organisational difficulties with the establishment of OG South, which made it difficult for him to have full control over all soldiers under his command, family circumstances, his ethnic tolerance,<sup>2192</sup> and the fact that he willingly surrendered to the custody of the Tribunal.<sup>2193</sup>

697. The Appeals Chamber recently held that "respect towards all people, regardless of their nationality, ethnicity or religion, is the demeanour expected of any individual and does not constitute a factor to be considered in mitigation of sentence."<sup>2194</sup>

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<sup>2183</sup> *Blaškić* Appeals Judgement, paras 686 and 696.

<sup>2184</sup> *Blaškić* Appeals Judgement, para 91; *Rajić* Sentencing Judgement, para 106.

<sup>2185</sup> *Čelebići* Appeals Judgement, paras 777; 780; *Blaškić* Appeals Judgement, para 685; *Stakić* Appeals Judgement, para 405; *Brdanin* Appeals Judgement, para 500.

<sup>2186</sup> *Kunarac* Trial Judgement, para 850; *Stakić* Trial Judgement, para 911 ; *Blaškić* Appeals Judgement, para 686.

<sup>2187</sup> *Čelebići* Appeals Judgement, para 763; *Blaškić* Appeals Judgement, paras 736-737.

<sup>2188</sup> *Čelebići* Appeals Judgement, para 783; *Blaškić* Appeals Judgement, para 687.

<sup>2189</sup> *Stakić*, Appeals Judgement, para 920.

<sup>2190</sup> *Blaškić* Appeals Judgement, para 697.

<sup>2191</sup> *Rajić* Sentencing Judgement, para 160.

<sup>2192</sup> Mrkšić Defence Final Brief, paras 834-840.

<sup>2193</sup> Mrkšić Defence Final Brief, para 840.

<sup>2194</sup> *Galić* Appeals Judgement, para 429.

698. An accused's voluntary surrender to the Tribunal may properly be taken into account as a mitigating circumstance,<sup>2195</sup> even if he may well be considered to be under an obligation to surrender.<sup>2196</sup> Mile Mrkšić surrendered voluntarily but not until almost seven years after the initial Indictment against him was confirmed and an international arrest warrant issued. While there might be different reasons for this, no evidence has been led in this respect. The Chamber will not take Mile Mrkšić's surrender as a mitigating or as an aggravating circumstance when considering sentencing.

699. At the end of this trial Mile Mrkšić made the following statement to the Chamber, in which he *inter alia* apologised and expressed regret to the citizens of Vukovar:

I am sorry for my own officers, for my own COs, for my troops, all those who fought in the area. They were volunteers there and all sorts of other units as well. I am sorry for the common folks who lived in the area. I am sorry for the citizens of Vukovar, their defenders, their own citizens; people that I at one time lived with. I lived there for four years when I still went to school. I first fell in love there, of all places. My officers knew that. They respected the fact. It's been a long time and now I realise that all of this was just a pure act of madness that should never have happened. The one essential issue that needs to be raised is this, and this is something that we've been discussing all along: Why did Ovčara occur? I'm asking the question now. I'll still be asking the question once this trial is over. Who stood to profit from this? Why did this have to happen, and so on and so forth? All I can say is, I am sorry it ever happened. If I'd known that it would happen, I would have prevented it. I wouldn't have left for Belgrade. I would have stuck around. I would have dealt with it. Nonetheless, this is just proof that there was no sort of joint criminal enterprise at all. It was never our intention for this to happen. When I say "we," I mean the three of us sitting here now as well as those back in Belgrade. Who is behind it is something that remains a mystery to me.<sup>2197</sup>

700. An expression of remorse has been recognised as a mitigating factor.<sup>2198</sup> To be accepted as a mitigating circumstance, however, the remorse expressed by an accused has to be real and sincere.<sup>2199</sup> The statement of Mile Mrkšić is directed to the factual context advanced by the Mrkšić Defence, *i.e.* that the executions occurred because of his absence in Belgrade. The facts as established by the evidence are quite different. The remorse indicated by Mile Mrkšić does not deal with his conduct as it has now been established. Effectively, therefore, Mile Mrkšić's statement is an expression of sorrow for the citizens of Vukovar and their defenders, for what he appears to regard as an "an act of madness" by others. The Chamber is not able to regard this as an expression of genuine remorse for his own conduct in respect of these offences.

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<sup>2195</sup> *Naletilić* Appeals Judgement, para 599; *Kordić* Appeals Judgement, para 1053 (indicating that this factor has to be taken into account); *Blaškić* Appeals Judgement, para 702 (indicating that this factor may be taken into account). See also *Kupreškić* Appeals Judgement, para 430; *Plavšić* Sentencing Judgement, para 84; *Blaškić* Trial Judgement, para 776; *Kunarac* Trial Judgement, para 868.

<sup>2196</sup> See *Blagojević* Appeals Judgement, para 344, referring to *Blaškić* Appeals Judgement, para 701 fn. 1512.

<sup>2197</sup> Closing Arguments, 16 March 2007, T 16301-16302.

<sup>2198</sup> See cases cited in *Momir Nikolić* Appeals Judgement, footnote 271.

<sup>2199</sup> *Momir Nikolić* Appeals Judgement, para 117; *Blaškić* Appeals Judgement, para 705. See also *Vasiljević* Appeals Judgement, para 177; *Kvočka* Appeals Judgement, para 715.

701. The Chamber accepts that Mile Mrkšić has not previously been convicted of any offence and has reached retirement after a long and successful military career in which he has reached a very senior rank and held positions of significant responsibility. It is advanced in mitigation that by virtue of the effects on the JNA of the breaking-up of the SFRY the gmtbr, which he commanded at the time of these offences, suffered particular manpower and organisational problems, in particular a shortage of experienced officers and men and the presence of a large proportion of reserve personnel called in to help with the emergency. Further, in his additional command of OG South, it is contended he was not provided with a command staff as would normally be the case, and he had command responsibility for TO and volunteer forces which often lacked appropriate leadership, training and discipline. There is some truth in this and it may have placed demands on Mile Mrkšić beyond the normal. He did, however, have his full gmtbr command structure and the evidence does not suggest that it was by virtue of such organisational difficulties that these offences were committed by him.

702. It is also advanced that his conduct was that of an irreproachable officer. In respect of these offences his conduct in respect of the prisoners of war revealed, in the Chamber's view, a preparedness to ignore the responsibility which was on him as commander, and by virtue of international law, to take appropriate measures for the care of prisoners of war in JNA custody, and a preference for an "easy" solution to the problem of the demands of the TO (and other) forces and the SAO "government" in respect of the prisoners. In these respects he failed to act as an officer in his position should have acted, with terrible consequences for the prisoners of war and their loved ones.

703. The Chambers accepts that he and his wife were looking forward to a period of retirement which they planned to share and that a significant term of imprisonment at this stage of his life will place a heavy personal burden on both Mile Mrkšić and his wife. While that will be weighed, it is also necessary for the Chamber to have due regard for the serious nature of his conduct and its consequences for so many other persons and families.

## 2. Veselin Šljivančanin

704. The Prosecution has not identified specific mitigating or personal factors which should be taken into account in considering Veselin Šljivančanin's sentence. The circumstances of his conduct which led to his conviction have been identified. In particular, they reveal a failure to act to protect from severe criminal abuse the prisoners of war who were his immediate responsibility. This reflects most adversely on him as a person and an officer. During the day of 20 November 1991, and on 19 November 1991, he had been deceitful in ensuring that international representatives were not able to gain access to the hospital from which the prisoners were removed

under his direction. By contrast, however, the Chamber accepts that on his own decision some spouses and family members of hospital staff were allowed to join the civilians who were evacuated to safety.

705. As far as the evidence as to character and other material before the Chamber discloses, he was a capable and successful officer in the JNA until his resignation. He had integrated successfully into civilian life following his resignation. There is nothing adverse to him about his past record or other personal circumstances.

### **C. The general practice in the courts of the former Yugoslavia and this Tribunal**

706. In the determination of the appropriate sentence, the Chamber will also take into account the general practice regarding prison sentences in the courts of the former Yugoslavia.<sup>2200</sup> The factors to be taken into consideration for the purpose of sentencing in the former Yugoslavia are set out in Article 41(1) of the SFRY Criminal Code which and which was in force at the time of the commission of the crimes alleged in the Indictment.<sup>2201</sup> It was renamed FRY Criminal Code after the time of the commission of the crimes alleged in the Indictment.

707. Article 143 of the SFRY Criminal Code, prohibited ordering or committing “murder, torture, inhuman treatment” of the wounded and sick, and provided for a sentence of not less than five years or the death penalty.<sup>2202</sup> Article 144 prohibited ordering or committing “killings, torture, inhuman treatment” of prisoners of war and provided for a sentence of not less than five years or the death penalty.<sup>2203</sup> Article 146 prohibited “killing or wounding” of an enemy unable to defend

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<sup>2200</sup> Article 24(1) of the Statute and Rule 101(B)(iii) of the Rules. Article 24 and Rule 101 B refer to actual practice of the courts of the former Yugoslavia. It is, however, settled in the jurisprudence of the Tribunal that the sources to be consulted pursuant to these provisions are not limited to actual case law from the former Yugoslavia, but also include statutory provisions, *Dragan Nikolić* Sentencing Judgement, para 148; *See also Čelebići Appeals Judgement*, para 715; *Jokić Appeals Judgement*, para 36-38; *Stakić Appeals Judgement*, para 888-890.

<sup>2201</sup> The SFRY Criminal Code was adopted on 28 September 1976 by the SFRY Assembly at the Session of Federal Council, declared by decree of the President of the Republic on 28 September 1976, published in the official Gazette SFRY No. 44 of 8 October 1976 and took effect on 1 July 1977.

Article 41(1) of the SFRY Criminal Code states: “The court shall determine the sentence for the perpetrator of a given crime within the limits prescribed by the law for this crime, bearing in mind the purpose of the punishment and taking into account all the circumstances that could lead to this sentence being more or less severe, in particular: the degree of criminal responsibility, the motives of the crime, the degree of the threat or damage to protected property, the circumstances under which the crime was committed, the background of the perpetrator, his personal circumstances and behavior after the commission of the crime as well as other circumstances which related to the character of the perpetrator.”

<sup>2202</sup> Article 143 of the SFRY Criminal Code provides: “Whoever issues, orders during a war or armed conflict, in breach of the rules of international law, for the wounded and sick [...] to be subjected to murder, torture, inhuman treatment [...] or whosoever commits any of the said acts shall be punished by not less than five years or by death.”

<sup>2203</sup> Article 144 of the SFRY Criminal Code provides: “Whoever, in violation of the rules of international law, orders that the prisoners of war be subject to killings, torture, inhuman treatment [...] or whosoever commits any of the said acts shall be punished by imprisonment of not less than five years or by death.”

himself and provides for a sentence of not less than one year.<sup>2204</sup> Article 150 prohibited “cruel treatment” of wounded, sick and prisoners of war and provided for a prison sentence of six months to five years.<sup>2205</sup> Further, Article 38 (1) and Article 38 (2) of the SFRY Criminal Code provided that a sentence of imprisonment should not exceed 15 years unless the crime was eligible for the death penalty, in which case the term of imprisonment should not exceed 20 years.<sup>2206</sup> The death penalty was abolished by the Constitution of 1992. In 2002 the maximum term of imprisonment was increased to 40 years, but Serbian courts have applied the *lex mitior* principle and regard 20 years as the maximum applicable to offences committed before that change.<sup>2207</sup>

708. The Chamber also takes note of three cases before the War Crimes Chamber of the District Court in Belgrade, Serbia, in which a number of the accused were charged with having physically committed crimes of killing at Ovčara on 20 November 1991. The accused were members of the TO or paramilitary forces. In two cases, the majority of the accused persons were convicted of crimes under Article 144 and were sentenced to 20 years imprisonment, the maximum term applicable. Others were sentenced to lesser terms. However, these verdicts and sentences were rescinded on appeal and a retrial ordered.<sup>2208</sup> In the third trial, the accused was also convicted of physically committing other crimes at Ovčara on 20 November 1991, contrary to Article 144. The convictions have been confirmed on appeal but the sentence was reduced from 8 years to 2 years imprisonment for personal mitigating reasons.<sup>2209</sup> While these trials arose from the events at Ovčara on 20 November 1991, in each case the accused were actual perpetrators, in some cases

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<sup>2204</sup> Article 146 of the SFRY Criminal Code provides: “(1) Whosoever, in violation of the rules of the international law during a war or an armed conflict, kills or wounds an enemy who has laid down his arms or has unconditionally surrendered or has no means to defend himself, shall be punished by imprisonment of not less than one year.”

<sup>2205</sup> Article 150 of the SFRY criminal Code provides: “Whosoever, in violation of the rules of the international law, cruelly treats the wounded, the sick or the prisoners of war [...] shall be punished by imprisonment from six months to five years.”

<sup>2206</sup> Article 38 of the SFRY Criminal Code states, “Imprisonment: (1) The punishment of imprisonment may not be shorter than 15 days nor longer than 15 years. (2) The court may impose a punishment of imprisonment for a term of 20 years for criminal acts eligible for the death penalty. See *Rašević* and *Todović*, 11*bis* Decision, 8 July 2005, para 44; *Janković* 11*bis* Decision, 22 July 2005, para 53; *Lukić* and *Lukić* 11*bis* Decision, 5 April 2007, para 49.

<sup>2207</sup> See the three “Ovčara” judgements of the War Crimes Chamber of the Belgrade District Court: Judgement of the War Crimes Chamber of the Belgrade District Court (case number: K.V. 1/2003) of 12 December 2005, p 134; Judgement of the War Crimes Chamber of the Belgrade District Court (case number: K.V. 02/2005) of 30 January 2006, pp 49-50; Judgement of the War Crimes Chamber of the Belgrade District Court (case number: K.V. 01/2005) of 6 January 2006, pp 47-48.

<sup>2208</sup> The judgment of 12 December 2005 was reversed through the decision of the Supreme Court of Serbia (case number Kž.I r.z.1/06) of 18 October 2006, after an appeal of the prosecutor and the convicted persons, and a retrial ordered, see page 2 of this decision. The judgment of 6 January 2006, concerning Saša Radak, was reversed and a re-trial ordered through the decision of the Supreme Court of Serbia (case number Kž.I r.z. 1/07) of 29 Februar 2007. These two cases were joined in a new trial under the reference number 04/06.

<sup>2209</sup> Case of Milan Bulić, judgment of the War Crimes Chamber of the Belgrade District Court (case number: K.V. 02/2005) of 30 January 2006, convicted for war crimes against prisoners of war pursuant to Article 144 of the FRY Criminal Code and sentenced to eight years of imprisonment. The appeals judgment in the same case of the Supreme Court of Serbia (case number Kž.I r.z. 2/06) of 9 February 2007, confirmed the conviction but reduced the sentence to two years of imprisonment (page 1 of the appeals judgment), because of several mitigating circumstances (no criminal history, father of three children, two of them minors, and in particular complicated and permanent illness, see page 6 of the appeals judgment).

leaders among the perpetrators, which is in contrast to the situation of the two Accused in this present case.

**D. Credit for time served in custody**

709. Pursuant to Rule 101(C) of the Rules, the Accused is entitled to credit for the time spent in detention pending and during trial. The Chamber notes that Mile Mrkšić has been in custody in relation to this Indictment since 15 May 2002 and that Veselin Šljivančanin since 13 June 2003.

## XII. DISPOSITION

710. For the foregoing reasons, having considered all of the evidence and the submissions of the Parties, the Chamber decides as follows:

711. The Chamber finds that the jurisdictional requirements for the applicability of Article 5 of the Statute have not been established. Accordingly, the charges of crimes against humanity brought under Article 5 of the Statute, namely Count 1 (persecutions), Count 2 (extermination), Count 3 (murder), Count 5 (torture), and Count 6 (inhumane acts), are dismissed.

712. The Chamber finds the Accused Mile Mrkšić **GUILTY**, pursuant to Article 7(1) of the Statute, of the following counts:

Count 4: Murder, a violation of the laws or customs of war, under Article 3 of the Statute, for having aided and abetted the murder of 194 persons identified in the Schedule to this Judgement, at a site located near the hangar at Ovčara on 20 and 21 November 1991;

Count 7: Torture, a violation of the laws or customs of war, under Article 3 of the Statute, for having aided and abetted the torture of prisoners of war at the hangar at Ovčara on 20 November 1991;

Count 8: Cruel treatment, a violation of the laws or customs of war, under Article 3 of the Statute for having aided and abetted the maintenance of inhumane conditions of detention at the hangar at Ovčara on 20 November 1991.

713. The Chamber hereby sentences Mile Mrkšić to a single sentence of 20 (twenty) years imprisonment. Mile Mrkšić has been in custody since 15 May 2002. Pursuant to Rule 101(C) of the Rules, he is entitled to credit for time spent in detention so far. Pursuant to Rule 103(C) of the Rules, Mile Mrkšić shall remain in custody of the Tribunal pending the finalisation of arrangements for his transfer to the State where he shall serve his sentence.

714. The Chamber finds the Accused Miroslav Radić **NOT GUILTY** on all counts in the Indictment. Pursuant to Rule 99(A) of the Rules, the Chamber orders that Miroslav Radić be released from the United Nations Detention Unit immediately on the completion of the necessary modalities.

715. The Chamber finds the Accused Veselin Šljivančanin **GUILTY**, pursuant to Article 7(1) of the Statute, of the following count:

Count 7: Torture, a violation of the laws or customs of war, under Article 3 of the Statute, for having aided and abetted the torture of prisoners of war at the hangar at Ovčara on 20 November 1991;

but finds the Accused Veselin Šljivančanin **NOT GUILTY** on all other counts in the Indictment.

716. The Chamber hereby sentences Veselin Šljivančanin to a single sentence of 5 (five) years imprisonment. Veselin Šljivančanin has been in custody since 13 June 2003. Pursuant to Rule 101(C) of the Rules, he is entitled to credit for time spent in detention so far. Pursuant to Rule 103(C) of the Rules, Veselin Šljivančanin shall remain in custody of the Tribunal pending the finalisation of arrangements for his transfer to the State where he shall serve his sentence.

Done in English and French, the English text being authoritative.

Dated this twenty-seventh day of September 2007  
At The Hague  
The Netherlands

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Judge Kevin Parker  
Presiding

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Judge Christine Van Den Wyngaert

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Judge Krister Thelin

**[Seal of the Tribunal]**

**XIII. SCHEDULE: LIST OF PERSONS KILLED AT OVČARA IN THE  
EVENING HOURS OF 20/21 NOVEMBER 1991**

Number	Name	Year of Birth	Gender
1.	ADŽAGA, Jozo <sup>2210</sup>	1949	Male
2.	ASMETOVIĆ, Ismet-Ivo <sup>2211</sup>	1969	Male
3.	ANRIJANIC, Vinko <sup>2212</sup>	1953	Male
4.	ARNOLD, Krešimir <sup>2213</sup>	1958	Male
5.	ASAĐANIN, Ilija <sup>2214</sup>	1952	Male
6.	BABIĆ, Dražen <sup>2215</sup>	1966	Male
7.	BAINRAUH, Ivan <sup>2216</sup>	1956	Male
8.	BAJNRAUH, Tomislav <sup>2217</sup>	1938	Male
9.	BALAŠ, Stjepan <sup>2218</sup>	1956	Male

<sup>2210</sup> Exhibit 460, No 28; Exhibit 549, No 28; Exhibit 547, No 28; Exhibit 458; Exhibit 462, p 127; Binazija Kolesar, T 963; P013, T 1196; P012, T 3662-3663; Exhibit 346, List C.

<sup>2211</sup> Exhibit 460, No 80 (“Ismet Ahmetović”); Exhibit 549, No 80 (“Ismet-Ivo Ahmetović”); Exhibit 547, No 80 (“Ismet-Ivo Ahmetović”); (“Ismet-Ivo Ahmetović”); Exhibit 458; Exhibit 462, p 381; Ljubica Došen, T 3781-3782, 3793-3794; P007, T 4042-4044, Exhibit 188; Exhibit 346, List C (“Ismet Ahmetović”).

<sup>2212</sup> Exhibit 460, No 126 (“Vinko Andrijanić”); Exhibit 549, No 126 (“Vinko Andrijanić”); Exhibit 547, No 126 (“Vinko Andrijanić”); Exhibit 47, List A (“Vinko Andrijanić”); Exhibit 458; Exhibit 462, p 594; Exhibit 346, List C (“Vinko Andrijanić”).

<sup>2213</sup> Exhibit 460, No 148; Exhibit 549, No 148; Exhibit 547, No 148; Exhibit 458; Exhibit 462, p 704; Exhibit 346, List C.

<sup>2214</sup> Exhibit 460, No 114; Exhibit 549, No 114; Exhibit 547, No 114; Exhibit 458; Exhibit 462, p 532; P012, T 3667-3669; Exhibit 554, pp 295-307; Exhibit 346, List C.

<sup>2215</sup> Exhibit 460, No 81; Exhibit 549, No 81; Exhibit 547, No 81; Exhibit 458; Exhibit 462, p 385; Exhibit 346, List B.

<sup>2216</sup> Exhibit 460, No 119; Exhibit 549, No 119; Exhibit 547, No 119; Exhibit 458; Exhibit 462, p 557; P012, T 3667-3669; Exhibit 554, pp 322-335 (“Ivan Bainrauch”); Exhibit 346, List C.

<sup>2217</sup> Exhibit 460, No 75; Exhibit 549, No 75; Exhibit 547, No 75; Exhibit 458; Exhibit 462, p 355; Dragutin Berghofer, T 5301-5304, Exhibit 228; Exhibit 346 List C.

<sup>2218</sup> Exhibit 460, No 5; Exhibit 549, No 5; Exhibit 547, No 5; Exhibit 458; Exhibit 462, p 22; P011, T 5780-5781, Exhibit 258; Exhibit 346, List C.

10.	BALOG, Dragutin <sup>2219</sup>	1974	Male
11.	BALOG, Josip <sup>2220</sup>	1928	Male
12.	BALOG, Zvonko <sup>2221</sup>	1958	Male
13.	BALVANAC, Đuro <sup>2222</sup>	1952	Male
14.	BANOŽIĆ, Boris <sup>2223</sup>	1967	Male
15.	BARANJI, Pero <sup>2224</sup>	1968	Male
16.	BARBARIĆ, Branko <sup>2225</sup>	1967	Male
17.	BARBIR, Lovro <sup>2226</sup>	1935	Male
18.	BARIĆ, Đuka <sup>2227</sup>	1950	Male
19.	BARIŠIĆ, Franjo <sup>2228</sup>	1946	Male
20.	BARTA, Anđelko-Ivan <sup>2229</sup>	1967	Male
21.	BATARELO, Željko <sup>2230</sup>	1955	Male
22.	BAUMGERTNER, Tomislav <sup>2231</sup>	1973	Male

<sup>2219</sup> Exhibit 460, No 118; Exhibit 549, No 118; Exhibit 547, No 118; Exhibit 458; Exhibit 462, p 553; Exhibit 346, List C.

<sup>2220</sup> Exhibit 460, No 9; Exhibit 549, No 9; Exhibit 547, No 9; Exhibit 458; Exhibit 462, p 40; Exhibit 346, List C.

<sup>2221</sup> Exhibit 460, No 54; Exhibit 549, No 54; Exhibit 547, No 54; Exhibit 458; Exhibit 462, p 244; Exhibit 554, pp 68-80; Exhibit 346, List C.

<sup>2222</sup> Exhibit 460, No 14; Exhibit 549, No 14; Exhibit 547, No 14; Exhibit 458; Exhibit 462, p 65; Exhibit 554, pp 81-94; Exhibit 346, List B.

<sup>2223</sup> Exhibit 460, No 89; Exhibit 549, No 89; Exhibit 547, No 89; Exhibit 458; Exhibit 462, p 418; Exhibit 554, pp 95-113; Exhibit 346, List B.

<sup>2224</sup> Exhibit 460, No 180 (“Pero Baranjaji”); Exhibit 549, No 180 (“Pero Baranjaji”); Exhibit 547, No 180 (“Pero Baranjaji”); Exhibit 47, List A (“Pero Baranjaji”); Exhibit 458; Exhibit 462, p 858; Exhibit 346, List C (“Pero Baranjaji”).

<sup>2225</sup> Exhibit 460, No 17; Exhibit 459, No 17; Exhibit 47, List B; Exhibit 547, No 17; Exhibit 346, List B; Exhibit 462, p 77.

<sup>2226</sup> Exhibit 460, No 154; Exhibit 549, No 154; Exhibit 547, No 154; Exhibit 458; Exhibit 462, p 733; Rudolf Vilhelm, T 4865-4869; Exhibit 554, pp 143-151; Exhibit 346, List C.

<sup>2227</sup> Exhibit 460, No 175; Exhibit 549, No 175; Exhibit 547, No 175; Exhibit 458; Exhibit 462, p 833; Exhibit 346, List B.

<sup>2228</sup> Exhibit 460, No 91; Exhibit 549, No 91; Exhibit 547, No 91; Exhibit 458; Exhibit 462, p 426; Exhibit 346, List B.

<sup>2229</sup> Exhibit 460, No 21; Exhibit 459, No 21; Exhibit 346, List B; Exhibit 547, No 21; Exhibit 462, p 95.

<sup>2230</sup> Exhibit 460, No 189; Exhibit 549, No 189; Exhibit 547, No 189; Exhibit 458; Exhibit 462, p 903; Exhibit 346, List B.

23.	BEGČEVIĆ, Marko <sup>2232</sup>	1968	Male
24.	BEGOV, Željko <sup>2233</sup>	1968	Male
25.	BINGULA, Stjepan <sup>2234</sup>	1958	Male
26.	BJELANOVIĆ, Ringo <sup>2235</sup>	1970	Male
27.	BLAŽEVIĆ, Zlatko <sup>2236</sup>	1964	Male
28.	BOSAK, Marko <sup>2237</sup>	1967	Male
29.	BOSANAC, Dragutin <sup>2238</sup>	1919	Male
30.	BOSANAC, Tomislav <sup>2239</sup>	1941	Male
31.	BRAČIĆ, Zvonimir <sup>2240</sup>	1970	Male
32.	BUKVIĆ, Dorde <sup>2241</sup>	1966	Male
33.	BUOVAC, Ivan <sup>2242</sup>	1966	Male
34.	CRNJAC, Ivan <sup>2243</sup>	1966	Male

- <sup>2231</sup> Exhibit 460, No 195; Exhibit 549, No 195; Exhibit 547, No 195; Exhibit 458; Exhibit 462, p 938; P030,T 9729-9731, 9735; P031, T 3269-3270;  
Dragutin Berghofer, T 5291-5293, 5366-5368, 5301-5304, Exhibit 228, 5323-5327; Exhibit 346 List C.
- <sup>2232</sup> Exhibit 460, No 135; Exhibit 549, No 135; Exhibit 547, No 135; Exhibit 458; Exhibit 462, p 640; Exhibit 346, List C.
- <sup>2233</sup> Exhibit 460, No 90; Exhibit 549, No 90; Exhibit 547, No 90; Exhibit 458; Exhibit 462, p 422;  
Dragutin Berghofer, T 5288, 5301-5304, Exhibit 228, 5323-5327; Exhibit 554, pp 161-174; Exhibit 346, List B.
- <sup>2234</sup> Exhibit 460, No 165; Exhibit 549, No 165; Exhibit 547, No 165; Exhibit 458; Exhibit 462, p 785; Exhibit 346, List B.
- <sup>2235</sup> Exhibit 460, No 179; Exhibit 549, No 179; Exhibit 547, No 179; Exhibit 458; Exhibit 462, p 854; Exhibit 346, List B.
- <sup>2236</sup> Exhibit 460, No 187, Exhibit 459, No 187; Exhibit 346, List B; Exhibit 547, No 187; Exhibit 462, p 896.
- <sup>2237</sup> Exhibit 460, No 97; Exhibit 549, No 97; Exhibit 547, No 97; Exhibit 458; Exhibit 462, p 455;; Exhibit 346, List B.
- <sup>2238</sup> Exhibit 460, No 150; Exhibit 549, No 150; Exhibit 547, No 150; Exhibit 458; Exhibit 462, p 714;  
Dragutin Berghofer, T 5301-5304, Exhibit 228, 5323-5327; Exhibit 554, pp 201-213; Exhibit 346, List C.
- <sup>2239</sup> Exhibit 460, No 152; Exhibit 549, No 152; Exhibit 547, 152; Exhibit 458; Exhibit 462, p 725;  
Dragutin Berghofer, T 5301-5304, Exhibit 228, 5323-5327; Exhibit 554, pp 214-226; Exhibit 346, List C.
- <sup>2240</sup> Exhibit 460, No 153; Exhibit 549, No 153; Exhibit 547, No 153; Exhibit 458; Exhibit 462, p 729; Exhibit 346, List B (“Zvonko Bračić).
- <sup>2241</sup> Exhibit 460, No 49; Exhibit 459, No 49; Exhibit 346, List B; List 547, No 49; Exhibit 462, p 220.
- <sup>2242</sup> Exhibit 460, No 34 (“Ivan Bukovac”); Exhibit 549, No 34; Exhibit 547, No 34; Exhibit 458; Exhibit 462, p 153; P006, T 1119; Exhibit 346, List C.
- <sup>2243</sup> Exhibit 460, p 157; Exhibit 549, No p 157; Exhibit 574, No 157; Exhibit 458; Exhibit 462, p 745; Exhibit 346, List C.

35.	ČUPIĆ, Stanoja <sup>2244</sup>	1953	Male
36.	DALIĆ, Tihomir <sup>2245</sup>	1966	Male
37.	DOLIŠNI, Ivica <sup>2246</sup>	1960	Male
38.	DRAGUN, Josip <sup>2247</sup>	1962	Male
39.	DUVNJAK, Stanko <sup>2248</sup>	1959	Male
40.	ĐUĐAR, Saša <sup>2249</sup>	1968	Male
41.	ĐUKIĆ, Vladimir <sup>2250</sup>	1948	Male
42.	EBNER, Vinko-Đuro <sup>2251</sup>	1961	Male
43.	FRIŠČIĆ, Dragutin <sup>2252</sup>	1958	Male
44.	FURUNDŽIJA, Petar <sup>2253</sup>	1949	Male
45.	GAJDA, Robert <sup>2254</sup>	1966	Male
46.	GALIĆ, Milenko <sup>2255</sup>	1965	Male

<sup>2244</sup> Exhibit 460, No 177 (“Stanoja Čepić); Exhibit 549, No 177; Exhibit 547, No 177; Exhibit 458; Exhibit 462, p 843; Exhibit 346, List C.

<sup>2245</sup> Exhibit 460, No 170, Exhibit 549, No 170; Exhibit 547, No 170; Exhibit 458; Exhibit 462, p 809; Exhibit 554, pp 733-745; Exhibit 346, List B.

<sup>2246</sup> Exhibit 460, No 110 (“Ivica Dolišnji”); Exhibit 549, No 110; Exhibit 547, No 110; Exhibit 458; Exhibit 462, p 110; Exhibit 346, List B.

<sup>2247</sup> Exhibit 460, No 164; Exhibit 549, No 164; Exhibit 547, No 164; Exhibit 458; Exhibit 462, p 779; Exhibit 346, List B.

<sup>2248</sup> Exhibit 460, No 84; Exhibit 549, No 84; Exhibit 547, No 84; Exhibit 458; Exhibit 462, p 398; P011, T 5732, 5780-5781, Exhibit 258; Exhibit 346, List C.

<sup>2249</sup> Exhibit 460, No 171; Exhibit 549, No 171; Exhibit 547, No 171; Exhibit 458; Exhibit 462, p 813; Exhibit 554, pp 902-915; Exhibit 346, List B.

<sup>2250</sup> Exhibit 460, No 108; Exhibit 549, No 108; Exhibit 547, No 108; Exhibit 458; Exhibit 462, p 502; P011, T 5730-5732; Dragutin Berghofer, T 5301- 5304, Exhibit 228, 5323- 5327, 5291- 5293; P011, T 5780-5781, Exhibit 258; Exhibit 554, pp 916-929; Exhibit 346, List B.

<sup>2251</sup> Exhibit 460, No 163; Exhibit 159, No 163; P007, T 4042-4045; Exhibit 188; Exhibit 554, pp. 874-887; Exhibit, 346, List B; Exhibit 47, List A, Exhibit 547, No. 163; Exhibit 462, p. 775.

<sup>2252</sup> Exhibit 460, No 196; Exhibit 549, No 196; Exhibit 547, No 196; Exhibit 458; Exhibit 462, p 944; Exhibit 554, pp 844-861; Exhibit 346, List C.

<sup>2253</sup> Exhibit 460, No 60; Exhibit 549, No 60; Exhibit 547, No 60; Exhibit 458; Exhibit 462, p 275; Exhibit 554, pp 831-843; Exhibit 346, List C.

<sup>2254</sup> Exhibit 460, No 127; Exhibit 549, No 127; Exhibit 547, No 127; Exhibit 458; Exhibit 462, p 601; Exhibit 346, List B.

<sup>2255</sup> Exhibit 460, No 149; Exhibit 549, No 149; Exhibit 547, No 149; Exhibit 458; Exhibit 462, p 708; Exhibit 554, pp 807-818; Exhibit 346, List C.

47.	GALIĆ, Vedran <sup>2256</sup>	1973	Male
48.	GARVANOVIĆ, Borislav <sup>2257</sup>	1954	Male
49.	GAVRIĆ, Dragan <sup>2258</sup>	1956	Male
50.	GLAVAŠEVIĆ, Siniša <sup>2259</sup>	1960	Male
51.	GRAF, Branislav <sup>2260</sup>	1955	Male
52.	GRANIĆ, Dragan <sup>2261</sup>	1960	Male
53.	GRUBER, Zoran <sup>2262</sup>	1969	Male
54.	GUDELJ, Drago <sup>2263</sup>	1940	Male
55.	HEGEDUŠIĆ, Mario <sup>2264</sup>	1972	Male
56.	HERCEG, Željko <sup>2265</sup>	1962	Male
57.	HERMAN, Ivan <sup>2266</sup>	1969	Male
58.	HERMAN, Stjepan <sup>2267</sup>	1955	Male

<sup>2256</sup> Exhibit 460, No 140; Exhibit 549, No 140; Exhibit 547, No 140; Exhibit 458; Exhibit 462, p 663; Exhibit 554, pp 965-977; Exhibit 346, List C.

<sup>2257</sup> Exhibit 460, No 191 ("Borislav Gavranović"); Exhibit 549, No 191; Exhibit 547, No 191; Exhibit 458; Exhibit 462, p 913; Exhibit 554, pp 978-991; Exhibit 346, List C.

<sup>2258</sup> Exhibit 460, No 53; Exhibit 549, No 53; Exhibit 547, No 53; Exhibit 458; Exhibit 462, p 240; P012, T 3667-3669; Dragutin Berghofer, T 5301-5304, Exhibit 228, 5323-5327; P011, T 5708-5781, Exhibit 258; Exhibit 554, pp 992-1006; Exhibit 346, List B.

<sup>2259</sup> Exhibit 460, No 112; Exhibit 549, No 112; Exhibit 547, No 112; Exhibit 458; Exhibit 462, p 523; Ljubica Došen, T 3798; P030, T 9755-9760; Dragutin Berghofer, T 5301-5304, Exhibit 228, 5323-5327; P011, T 5737, 5780-5781, Exhibit 258; Exhibit 554, pp 1007-1025; Exhibit 346, List B.

<sup>2260</sup> Exhibit 460, No 184; Exhibit 549, No 184; Exhibit 547, No 184; Exhibit 458; Exhibit 462, p 881; Exhibit 346, List B.

<sup>2261</sup> Exhibit 460, No 159; Exhibit 549, No 159; Exhibit 547, No 159; Exhibit 458; Exhibit 462, p 754; Exhibit 346, List C.

<sup>2262</sup> Exhibit 460, No 161; Exhibit 549, No 161; Exhibit 547, No 161; Exhibit 458; Exhibit 462, p 764; Vilim Karlovic, T 6332-6333; Exhibit 346, List B.

<sup>2263</sup> Exhibit 460, No 111; Exhibit 549, No 111; Exhibit 547, No 111; Exhibit 458; Exhibit 462, p 519; P011, T 5781-5783, Exhibit 258; Exhibit 554, pp 377-389; Exhibit 346, List B.

<sup>2264</sup> Exhibit 460, No 156; Exhibit 549, No 156; Exhibit 547, No 156; Exhibit 458; Exhibit 462, p 741; Exhibit 346, List C.

<sup>2265</sup> Exhibit 460, No 92; Exhibit 549, No 92; Exhibit 547, No 92; Exhibit 458; Exhibit 462, p 431; Exhibit 346, List B.

<sup>2266</sup> Exhibit 460, No 43; Exhibit 549, No 43; Exhibit 547, No 43; Exhibit 458; Exhibit 462, p 192; P030, T 9755-9760; Exhibit 346, List C.

<sup>2267</sup> Exhibit 460, No 37; Exhibit 549, No 37; Exhibit 547, No 37; Exhibit 458; Exhibit 462, p 165; Dragutin Berghofer, T 5301-5304, 5323-5327, Exhibit 228; Exhibit 346, List B.

59.	HLEVNJAK, Nedeljko <sup>2268</sup>	1964	Male
60.	HOLJEVAC, Nikica <sup>2269</sup>	1955	Male
61.	HORVAT Ivica <sup>2270</sup>	1958	Male
62.	ILEŠ, Zvonko <sup>2271</sup>	1941	Male
63.	IMBRIŠIĆ, Ivica <sup>2272</sup>	1958	Male
64.	IVEZIĆ, Aleksander <sup>2273</sup>	1950	Male
65.	JAJALO, Marko <sup>2274</sup>	1957	Male
66.	JAKUBOVSKI, Martin <sup>2275</sup>	1971	Male
67.	JAMBOR, Tomo <sup>2276</sup>	1966	Male
68.	JANIĆ, Mihael <sup>2277</sup>	1939	Male
69.	JANTOL, Boris <sup>2278</sup>	1959	Male
70.	JARABEK, Zlatko <sup>2279</sup>	1956	Male

<sup>2268</sup> Exhibit 460, No 29; Exhibit 549, No 29; Exhibit 547, No 29; Exhibit 458; Exhibit 462, p 131; Exhibit 554, pp 442-454 (“Nedjeljko Hlevnjak”); Exhibit 346, List B.

<sup>2269</sup> Exhibit 460, No 66 (“Nikica Holljevac”); Exhibit 549, No 66; Exhibit 547, No 66; Exhibit 458; Exhibit 462, p 394; P021, T 1368-1370; Dragutin Berghofer, T 5301-5304, Exhibit 228, 5323-5327; Exhibit 554, pp 455-467; Exhibit 346, List C.

<sup>2270</sup> Exhibit 460, No 109; Exhibit 549, No 109; Exhibit 547, No 109; Exhibit 458; Exhibit 462, p 506; Exhibit 346, List B.

<sup>2271</sup> Exhibit 460, No 10; Exhibit 549, No 10; Exhibit 547, No 10; Exhibit 458; Exhibit 462, p 46; Exhibit 554, pp 509-521; Exhibit 346, List C.

<sup>2272</sup> Exhibit 460, No 147; Exhibit 549, No 147; Exhibit 547, No 147; Exhibit 458; Exhibit 462, p 700; Exhibit 346, List C.

<sup>2273</sup> Exhibit 460, No 52; Exhibit 549, No 52; Exhibit 547, No 52; Exhibit 458; Exhibit 462, p 236; Exhibit 346, List C.

<sup>2274</sup> Exhibit 460, No 102; Exhibit 459, No 102; Exhibit 554, pp. 549-561; Exhibit 346, List B; Exhibit 547, No. 102; Exhibit 462, p. 477.

<sup>2275</sup> Exhibit 460, No 74; Exhibit 549, No 74; Exhibit 547, No 74; Exhibit 458; Exhibit 462, p 346; Ljubica Došen, T 3777-3782, 3793-3794, 3781-3782; Exhibit 346, List B.

<sup>2276</sup> Exhibit 460, No 45; Exhibit 549, No 45; Exhibit 547, No 45; Exhibit 458; Exhibit 462, p 202; Exhibit 554, pp 588-600; Exhibit 346, List B.

<sup>2277</sup> Exhibit 460, No 131; Exhibit 549, No 131; Exhibit 547, No 131; Exhibit 458; Exhibit 462, p 619; Exhibit 347, List B.

<sup>2278</sup> Exhibit 460, No 101; Exhibit 549, No 101; Exhibit 547, No 101; Exhibit 458; Exhibit 462, p 473; Exhibit 554, pp 629-640; Exhibit 346, List B.

<sup>2279</sup> Exhibit 460, No 194; Exhibit 549, No 194; Exhibit 547, No 194; Exhibit 458; Exhibit 462, p 932; Exhibit 554, 1344-1355; Exhibit 346, List C.

71.	JEZIDŽIĆ, Ivica <sup>2280</sup>	1957	Male
72.	JOVAN, Zvonimir <sup>2281</sup>	1967	Male
73.	JOVANOVIĆ, Branko <sup>2282</sup>	1955	Male
74.	JOVANOVIĆ, Oliver <sup>2283</sup>	1972	Male
75.	JURELA, Damir <sup>2284</sup>	1969	Male
76.	JURELA, Željko <sup>2285</sup>	1956	Male
77.	JURENDIĆ, Drago <sup>2286</sup>	1966	Male
78.	JURIŠIĆ, Marko-Josip <sup>2287</sup>	1946	Male
79.	JURIŠIĆ, Pavao <sup>2288</sup>	1966	Male
80.	JURIŠIĆ, Željko <sup>2289</sup>	1963	Male
81.	KAČIĆ, Igor <sup>2290</sup>	1975	Male
82.	KAPUSTIĆ, Josip <sup>2291</sup>	1965	Male
83.	KELAVA, Krešimir <sup>2292</sup>	1953	Male

- <sup>2280</sup> Exhibit 460, No 47; Exhibit 549, No 47; Exhibit 547, No 47; Exhibit 458; Exhibit 462, p 219; Exhibit 346, List C.
- <sup>2281</sup> Exhibit 460, No 99; Exhibit 549, No 99; Exhibit 547, No 99; Exhibit 462, p 464; Exhibit 554, pp 1368-1379; Exhibit 346, List B.
- <sup>2282</sup> Exhibit 460, No 125; Exhibit 549, No 125; Exhibit 547, No 125; Exhibit 458; Exhibit 462, p 588; Exhibit 346, List B.
- <sup>2283</sup> Exhibit 460, No 151; Exhibit 549, No 151; Exhibit 547, No 151; Exhibit 458; Exhibit 462, p 721; P030, T 9755-9760; Dragutin Berghofer, T 5326; Exhibit 554, pp 1380-1391.
- <sup>2284</sup> Exhibit 460, No 137; Exhibit 549, No 137; Exhibit 547, No 137; Exhibit 458; Exhibit 462, p 650; Exhibit 346, List B.
- <sup>2285</sup> Exhibit 460, No 103; Exhibit 549, No 103; Exhibit 547, No 103; Exhibit 458; Exhibit 462, p 481; P011, 5720- 5722, 5732, 5737- 5740, 5780- 5781, Exhibit 258; Exhibit 554, pp 1224-1235; Exhibit 346, List C.
- <sup>2286</sup> Exhibit 460, No 106; Exhibit 549, No 106; Exhibit 547, No 106; Exhibit 458; Exhibit 462, p 493; Exhibit 346, List B.
- <sup>2287</sup> Exhibit 460, No 198 (“Marko Josi Jurišić”); Exhibit 549, No 198; Exhibit 547, No 198; Exhibit 458; Exhibit 462, p 957; Exhibit 554, pp 1236-1247; Exhibit 346, List B.
- <sup>2288</sup> Exhibit 460, No 24; Exhibit 549, No 24; Exhibit 547, No 24; Exhibit 458; Exhibit 462, p 107; Exhibit 554, pp 1248-1259; Exhibit 346, List C.
- <sup>2289</sup> Exhibit 460, No 200 (“Zlatko Jurišić”); Exhibit 549, No 200; Exhibit 547, No 200; Exhibit 458; Exhibit 462, p 968; Exhibit 346, List C.
- <sup>2290</sup> Exhibit 460, No 183; Exhibit 549, No 183; Exhibit 547, No 183; Exhibit 458; Exhibit 462, p 872; P011, T 9752; P030, T 9755-9760; Exhibit 346, List C.
- <sup>2291</sup> Exhibit 460, No 57 (“Josip Kapistic”); Exhibit 549, No 57; Exhibit 547, No 57; Exhibit 458; Exhibit 462, p 257; Ivica Kostović, T 10986-10991; Exhibit 346, List B.
- <sup>2292</sup> Exhibit 460, No 67; Exhibit 549, No 67; Exhibit 547, No 67; Exhibit 458; Exhibit 462, p 308; Exhibit 554, pp 1296-1307; Exhibit 346, List B.

84.	KNEŽIĆ, Đuro <sup>2293</sup>	1937	Male
85.	KOLAK, Tomislav <sup>2294</sup>	1962	Male
86.	KOLAK, Vladimir <sup>2295</sup>	1966	Male
87.	KOMORSKI, Ivan <sup>2296</sup>	1952	Male
88.	KOSTOVIĆ, Borislav <sup>2297</sup>	1962	Male
89.	KOVAČ, Ivan <sup>2298</sup>	1953	Male
90.	KOVAČEVIĆ, Zoran <sup>2299</sup>	1962	Male
91.	KOVAČIĆ, Damir <sup>2300</sup>	1970	Male
92.	KOŽUL, Josip <sup>2301</sup>	1968	Male
93.	KRAJINOVIĆ, Ivan <sup>2302</sup>	1966	Male
94.	KRAJINOVIĆ, Zlatko <sup>2303</sup>	1969	Male
95.	KRASIĆ, Ivan <sup>2304</sup>	1964	Male
96.	KREZO, Ivica <sup>2305</sup>	1963	Male

<sup>2293</sup> Exhibit 460, No 86 (“Đuro Knezić”); Exhibit 549, No 86; Exhibit 547, No 86; Exhibit 458; Exhibit 462, p 406; P031, T 3246-3247; Exhibit 554, pp 1320-1332; Exhibit 346, List C.

<sup>2294</sup> Exhibit 460, No 41; Exhibit 549, No 41; Exhibit 547, No 41; Exhibit 458; Exhibit 462, p 183; Dragutin Berghofer, T 5301- 5304, Exhibit 228, 5323- 5327; Exhibit 346, List C.

<sup>2295</sup> Exhibit 460, No 186; Exhibit 549, No 186; Exhibit 547, No 186; Exhibit 458; Exhibit 462, p 891; Dragutin Berghofer, T 5301- 5304, 5323- 5327, Exhibit 228; Exhibit 554, pp 641- 654; Exhibit 346, List C.

<sup>2296</sup> Exhibit 460, No 138; Exhibit 549, No 138; Exhibit 547, No 138; Exhibit 346, List C.

<sup>2297</sup> Exhibit 460, No 143; Exhibit 549, No 143; Exhibit 547, No 143; Exhibit 458; Exhibit 462, p 679; Exhibit 346, List B.

<sup>2298</sup> Exhibit 460, No 121; Exhibit 549, No 121; Exhibit 547, No 121; Exhibit 458; Exhibit 462, p 570; Dragutin Berghofer, T 5301-5304, Exhibit 228, 5323-5327; Exhibit 346, List C.

<sup>2299</sup> Exhibit 460, No 77; Exhibit 459, No 77; Exhibit 63; P021, T 1385; Exhibit 346, List B; Exhibit 547; No. 77.

<sup>2300</sup> P030, T 9749-9750, 9755-9760; Exhibit 554, pp 1077-1088.

<sup>2301</sup> Exhibit 460, No 1; Exhibit 549, No 1; Exhibit 547, No 1; Exhibit 458; Exhibit 462, p 3; Ljubica Došen, T 3798; Exhibit 554, pp 1089-1100; Exhibit 346, List C.

<sup>2302</sup> Exhibit 460, No 82; Exhibit 549, No 82; Exhibit 547, No 82; Exhibit 458; Exhibit 462, p 389; Exhibit 554, pp 1101-1112; Exhibit 346, List B.

<sup>2303</sup> Exhibit 460, No 83; Exhibit 549, No 83; Exhibit 547, No 83; Exhibit 458; Exhibit 462, p 393; P030, T 9755-9760; P0006, T 1119; Exhibit 554, pp 1113- 1125; Exhibit 346, List C.

<sup>2304</sup> Exhibit 460, No 19 (“Ivan Krastić”); Exhibit 549, No 19; Exhibit 547, No 19; Exhibit 458; Exhibit 462, p 85; Exhibit 554, pp 1126-1137; Exhibit 346, List B.

<sup>2305</sup> Exhibit 460, No 16; Exhibit 549, No 16; Exhibit 547, No 16; Exhibit 458; Exhibit 462, p 73; Exhibit 346, List B.

97.	KRISTIČEVIĆ, Kazimir <sup>2306</sup>	1957	Male
98.	KRUNEŠ, Branimir <sup>2307</sup>	1966	Male
99.	LESIĆ, Tomislav <sup>2308</sup>	1950	Male
100.	LET, Mihajlo <sup>2309</sup>	1956	Male
101.	LILI, Dragutin <sup>2310</sup>	1951	Male
102.	LJUBAS, Hrvoje <sup>2311</sup>	1971	Male
103.	LOVRIĆ, Joko <sup>2312</sup>	1968	Male
104.	LUCIĆ, Marko <sup>2313</sup>	1954	Male
105.	LUKIĆ, Mato <sup>2314</sup>	1963	Male
106.	MAGOČ-MAMIĆ, Predrag <sup>2315</sup>	1965	Male
107.	MAJOR, Željko <sup>2316</sup>	1960	Male
108.	MARIČIĆ, Zdenko <sup>2317</sup>	1956	Male
109.	MARKOBAŠIĆ, Ružica <sup>2318</sup>	1959	Female
110.	MEĐEŠI, Andrija <sup>2319</sup>	1936	Male
111.	MEĐEŠI, Zoran <sup>2320</sup>	1964	Male

<sup>2306</sup> Exhibit 460, No 4; Exhibit 549, No 4; Exhibit 547, No 4; Exhibit 462, p 18; Exhibit 346, List C.

<sup>2307</sup> Exhibit 460, No 15; Exhibit 549, No 15; Exhibit 547, No 15; Exhibit 346, List C.

<sup>2308</sup> Exhibit 460, No 142; Exhibit 549, No 142; Exhibit 547, No 142; Exhibit 458; Exhibit 462, p 673; Exhibit 346, List B.

<sup>2309</sup> Exhibit 460, 185; Exhibit 549, No 185; Exhibit 547, No 185; Exhibit 458; Exhibit 462, p 886; Exhibit 346, List B.

<sup>2310</sup> Exhibit 460, No 190; Exhibit 549, No 190; Exhibit 547, No 190; Exhibit 458; Exhibit 462, p 910; Dragutin Berghofer, T 5301- 5304, Exhibit 228, T 5323; Exhibit 346, List B.

<sup>2311</sup> Exhibit 460, No 116; Exhibit 549, No 116; Exhibit 547, No 116; Exhibit 458; Exhibit 462, p 542; Exhibit 346, List B.

<sup>2312</sup> Exhibit 460, No 22, Exhibit 549, No 22; Exhibit 547, No 22; Exhibit 458; Exhibit 462; p 99; Exhibit 554, pp 186-2198; Exhibit 346, List C.

<sup>2313</sup> Exhibit 460, No 76; Exhibit 549, No 76; Exhibit 346, List B; Exhibit 47, List A, Exhibit 547.

<sup>2314</sup> Exhibit 460, No 3; Exhibit 549, No 3; Exhibit 547, No 3; Exhibit 458; Exhibit 462, p 14; Exhibit 346, List C.

<sup>2315</sup> Exhibit 460, No 79 (“Predrag Magoč”); Exhibit 549, No 79; Exhibit 547, No 79; Exhibit 47, List A (“Predrag Magoč (Mamić)”); Exhibit 458; Exhibit 462, p 377; Exhibit 346, List C.

<sup>2316</sup> Exhibit 460, No 13; Exhibit 549, No 13; Exhibit 547, No 13; Exhibit 458; Exhibit 462, p 61; Vilim Karlovic, T 6339; Exhibit 346, List B.

<sup>2317</sup> Exhibit 460, No 68; Exhibit 549, No 68; Exhibit 547, No 68; Exhibit 458; Exhibit 462, p 317; Exhibit 554, pp 2317-2328.

<sup>2318</sup> Exhibit 460, No 95; Exhibit 549, No 95; Exhibit 547, No 95; No Exhibit 458; Exhibit 462, p 445; Ljubica Dosen, T 3796-3798; P022, T 5004, 5009, 5150-5151; Dragutin Berghofer, T 5281-5282, T 5301-5304, Exhibit 228, T 5323-5327; Exhibit 346 List C.

<sup>2319</sup> Exhibit 460, No 139; Exhibit 549, No 139; Exhibit 547, No 139; Exhibit 458; Exhibit 462, p 657; Exhibit 554, pp 2355-2367 (“Zoran Medesi”); Exhibit 346, List C.

112.	MIHOVIĆ, Tomislav <sup>2321</sup>	1963	Male
113.	MIKULIĆ, Zdravko <sup>2322</sup>	1961	Male
114.	MIŠIĆ, Ivan <sup>2323</sup>	1968	Male
115.	MLINARIĆ, Mile <sup>2324</sup>	1966	Male
116.	MOKOŠ, Andrija <sup>2325</sup>	1955	Male
117.	MOLNAR, Saša <sup>2326</sup>	1965	Male
118.	MUTVAR, Antun <sup>2327</sup>	1969	Male
119.	NAĐ, Darko <sup>2328</sup>	1965	Male
120.	NAĐ, Franjo <sup>2329</sup>	1935	Male
121.	NEJAŠMIĆ, Ivan <sup>2330</sup>	1958	Male
122.	OMEROVIĆ, Mufat <sup>2331</sup>	1963	Male
123.	OREŠKI, Vladislav <sup>2332</sup>	1967	Male
124.	PAPP, Tomislav <sup>2333</sup>	1963	Male
125.	PATARIĆ, Željko <sup>2334</sup>	1959	Male

<sup>2320</sup> Exhibit 460, No 141; Exhibit 549, No 141; Exhibit 547, No 141; Exhibit 458; Exhibit 462, p 669; Dragutin Berghofer, T 5374, 5377; Exhibit 346 List C.

<sup>2321</sup> Exhibit 460, No 72; Exhibit 549, No 72; Exhibit 547, No 72; Exhibit 458; P031, T 3232-3234; Exhibit 462, p 336; Exhibit 554, pp 2394-2405; Exhibit 346, List C.

<sup>2322</sup> Exhibit 460, No 133; Exhibit 549, No 133; Exhibit 547, No 133; Exhibit 458; Exhibit 462, p 629; Exhibit 554, pp 2419-2429; Exhibit 346, List B.

<sup>2323</sup> Exhibit 460, No 113; Exhibit 549, No 113; Exhibit 547, No 113; Exhibit 458; Exhibit 462, p 527; Exhibit 346, List C.

<sup>2324</sup> Exhibit 460, No 178; Exhibit 549, No 178; Exhibit 547, No 178; Exhibit 458; Exhibit 462, p 849; Exhibit 554, pp 2467-2477; Exhibit 346, List B.

<sup>2325</sup> Exhibit 460, No 23; Exhibit 549, No 23; Exhibit 547, No 23; Exhibit 458; Exhibit 462, p 103; Jurai Njavro, T 1539; Exhibit 346, List C.

<sup>2326</sup> Exhibit 460, No 44; Exhibit 549, No 44; Exhibit 547, No 44; Exhibit 458; Exhibit 462, p 198; Exhibit 554, pp 2492-2503 ("Saša (Aleksander) Molnar"); Exhibit 346, List C.

<sup>2327</sup> Exhibit 460, No 2; Exhibit 549, No 2; Exhibit 547, No 2; Exhibit 458; Exhibit 462, p 9; Exhibit 554, pp 2505-2515; Exhibit 346, List B.

<sup>2328</sup> Exhibit 460, No 30; Exhibit 549, No 30; Exhibit 547, No 30; Exhibit 458; Exhibit 462, p 136; Exhibit 554, pp 2517-2529; Exhibit 346, List B.

<sup>2329</sup> Exhibit 460, No 39; Exhibit 549, No 39; Exhibit 547, No 39; Exhibit 458; Exhibit 462, p 175; P030, T 9738, 9759; Exhibit 346, List C.

<sup>2330</sup> Exhibit 460, No 182; Exhibit 549, No 182; Exhibit 547, No 182; Exhibit 458; Exhibit 462, p 866; P030, T 9759; Exhibit 554, pp 2545-2555; Exhibit 346, List C.

<sup>2331</sup> Exhibit 460, No 51 ("Mufad Omerovic"), Exhibit 549, No 51; Exhibit 547, No 51; Exhibit 458; Exhibit 462, p 230; Exhibit 346, List B.

<sup>2332</sup> Exhibit 460, No 88; Exhibit 459, No 88; Exhibit 346, List B; Exhibit 547, No. 88; Exhibit 462, p. 414.

<sup>2333</sup> Exhibit 460, No 70; Exhibit 549, No 70; Exhibit 547, No 70; Exhibit 458; Exhibit 462, p 326; P007, T 4042-4045, Exhibit 188; P030, T 9749-9750; P031, T 3239; Draguntin Berghofer, T 5326; P030, T 9760; Exhibit 346, List C.

<sup>2334</sup> Exhibit 460, No 62; Exhibit 549, No 62; Exhibit 547, No 62; Exhibit 458; Exhibit 462, p 285;

126.	PAVLIĆ, Slobodan <sup>2335</sup>	1965	Male
127.	PAVLOVIĆ, Zlatko <sup>2336</sup>	1965	Male
128.	PERAK, Mata <sup>2337</sup>	1961	Male
129.	PERKO, Aleksandar <sup>2338</sup>	1967	Male
130.	PERKOVIĆ, Damir <sup>2339</sup>	1965	Male
131.	PERKOVIĆ, Josip <sup>2340</sup>	1963	Male
132.	PETROVIĆ, Stjepan <sup>2341</sup>	1949	Male
133.	PINTER, Nikola <sup>2342</sup>	1940	Male
134.	PLAVŠIĆ, Ivan-Zvonimir <sup>2343</sup>	1939	Male
135.	PODHORSKI, Janja <sup>2344</sup>	1931	Female
136.	POLHERT, Damir <sup>2345</sup>	1962	Male
137.	POLOVINA, Branimir <sup>2346</sup>	1950	Male
138.	POSAVEC, Stanko <sup>2347</sup>	1952	Male
139.	POLJAK, Vjekoslav <sup>2348</sup>	1951	Male
140.	PRAVDIĆ, Tomo <sup>2349</sup>	1934	Male

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Exhibit 554, pp 2568-2579; Exhibit 346, List B.

- <sup>2335</sup> Exhibit 460, No 40; Exhibit 549, No 40; Exhibit 547, No 40; Exhibit 458; Exhibit 462, p 179; Exhibit 346, List B.
- <sup>2336</sup> Exhibit 460, No 199; Exhibit 549, No 199; Exhibit 547, No 199; Exhibit 458; Exhibit 462, pp 960-961; Dragutin Berghofer, T 5301-5304, Exhibit 228, 5323-5327; Exhibit 346, List C.
- <sup>2337</sup> Exhibit 460, No 8 (“Mato Perak”); Exhibit 549, No 8 (“Mato Perak”); Exhibit 547, No 8 (“Mato Perak”); Exhibit 47, List A (“Mato Perak”); Exhibit 458; Exhibit 462, p 36; P011, T 5737-5740, 5780-5781, Exhibit 258; Exhibit 346, List C (“Mato Perak”).
- <sup>2338</sup> Exhibit 460, No 174; Exhibit 549, No 174; Exhibit 462, p 829; Exhibit 554, pp 2617-2628; Exhibit 346, List C.
- <sup>2339</sup> Exhibit 460, No 169; Exhibit 549, No 169; Exhibit 547, No 169; Exhibit 458; Exhibit 462, p 805; P030, T 9754; Exhibit 346, List B.
- <sup>2340</sup> Exhibit 460, No 7; Exhibit 549, No 7; Exhibit 547, No 7; Exhibit 458; Exhibit 462, p 32; Exhibit 346, List B.
- <sup>2341</sup> Exhibit 460, No 56; Exhibit 549, No 56; Exhibit 547, No 56; Exhibit 458; Exhibit 462, p 253; Josip Čović, T 3610-3611; Exhibit 346, List C.
- <sup>2342</sup> Exhibit 460, No 122; Exhibit 549, No 122; Exhibit 547, No 122; Exhibit 458; Exhibit 462, p 574; Exhibit 346, List C.
- <sup>2343</sup> Exhibit 460, No 20 (“Ivan Zvoni Plavšić”); Exhibit 549, No 20; Exhibit 547, No 20; Exhibit 458; Exhibit 462, p 89; P030, T 9755-9760; Exhibit 346, List C.
- <sup>2344</sup> Exhibit 460, No 71; Exhibit 549, No 71; Exhibit 547, No 71; Exhibit 458; Exhibit 462, p 330; Exhibit 346, List B (“Janja Pothorski”).
- <sup>2345</sup> Exhibit 460, No 158; Exhibit 549, No 158; Exhibit 547, No 158; Exhibit 458; Exhibit 462, p 749; Dragutin Berghofer, T 5301-5304, Exhibit 228, 5323-5327; Exhibit 346, List B.
- <sup>2346</sup> Exhibit 460, No 197; Exhibit 549, No 197; Exhibit 547, No 197; Exhibit 458; Exhibit 462, p 947, 952; Exhibit 346, List C.
- <sup>2347</sup> Exhibit 460, No 87; Exhibit 549, No 87; Exhibit 547, No 87; Exhibit 458; Exhibit 462, p 410; Exhibit 346, List C.
- <sup>2348</sup> Exhibit 460, No 98; Exhibit 549, No 98; Exhibit 547, No 98; Exhibit 458; Exhibit 462, p 460; Exhibit 346, List C.

141.	PUCAR, Dmitar <sup>2350</sup>	1949	Male
142.	RADAČIĆ, Ivan <sup>2351</sup>	1955	Male
143.	RAGUŽ, Ivan <sup>2352</sup>	1955	Male
144.	RAČIĆ, Milan <sup>2353</sup>	1954	Male
145.	RATKOVIĆ, Krešimir <sup>2354</sup>	1968	Male
146.	RIBIČIĆ, Marko <sup>2355</sup>	1951	Male
147.	RIMAC, Salvador <sup>2356</sup>	1960	Male
148.	ROHAČEK, Karlo <sup>2357</sup>	1942	Male
149.	ROHAČEK, Željko <sup>2358</sup>	1971	Male
150.	SAITI, Ćeman <sup>2359</sup>	1960	Male
151.	SAMARDŽIĆ, Damjan <sup>2360</sup>	1946	Male
152.	SPUDIĆ, Pavao <sup>2361</sup>	1965	Male
153.	STANIĆ, Marko <sup>2362</sup>	1958	Male
154.	STANIĆ, Željko <sup>2363</sup>	1968	Male
155.	STEFANKO, Petar <sup>2364</sup>	1942	Male

<sup>2349</sup> Exhibit 460, No 100; Exhibit 549, No 100; Exhibit 547, No 100; Exhibit 458; Exhibit 462, p 469; P012, T 3667-3669; Exhibit 346, List C.

<sup>2350</sup> Exhibit 460, No 61; Exhibit 549, No 61; Exhibit 547, No 61; Exhibit 458; Exhibit 462, p 281; Exhibit 346, List B.

<sup>2351</sup> Exhibit 460, No. 85; Exhibit 459, No. 85; Exhibit 547, No. 85; Exhibit 47, List B; Exhibit 462, p. 402; Exhibit 346, List B.

<sup>2352</sup> Exhibit 460, No 64; Exhibit 549, No 64; Exhibit 547, No 64; Exhibit 458; Exhibit 462, p 295; Exhibit 346, List B.

<sup>2353</sup> Exhibit 460, No 78 (“Milan Rašić”); Exhibit 549, No 78 (“Milan Rašić”); Exhibit 547, No 78 (“Milan Rašić”); Exhibit 458; Exhibit 462, p 372; Exhibit 346, List C (“Milan Rašić”).

<sup>2354</sup> Exhibit 460, No 94; Exhibit 549, No 94; Exhibit 547, No 94; Exhibit 458; Exhibit 462, p 440; Exhibit 346, List B.

<sup>2355</sup> Exhibit 460, No 188 (“Marko Ribić”); Exhibit 549, No 188; Exhibit 547, No 188; Exhibit 458; Exhibit 462, p 900; Exhibit 556; Exhibit 346, List B.

<sup>2356</sup> Exhibit 460, No 129; Exhibit 549, No 129; Exhibit 547, No 129; Exhibit 458; Exhibit 462, p 610; Exhibit 346, List B.

<sup>2357</sup> Exhibit 460, No 168 (“Karlo Mohaček”); Exhibit 549, No 168; Exhibit 547, No 168; Exhibit 458; Exhibit 462, p 799; Exhibit 554, pp 2641-2652; Exhibit 346, List C.

<sup>2358</sup> Exhibit 460, No 145; Exhibit 549, No 145; Exhibit 547, No 145; Exhibit 458; Exhibit 462, p 690; Exhibit 554, pp 2654-2665; Exhibit 346, List C.

<sup>2359</sup> P030, T 9747, T 9755-9760; Emil Cakalic, T 5906, 5909-5910; P031, T 3272-3273. Exhibit 145; P011, T 5271-5722, 5780-5781; Exhibit 258; Exhibit 346, List A.

<sup>2360</sup> Dragutin Berghofer, T 5288, 5294-5295; 5299, 5301-5304, 5323-5327, 5364-5365; 5445-5446; Exhibit 554, pp. 2685-2696; Vesna Bosanac, T 727; P030, T 9747, 9755-9760; Exhibit 231; Exhibit 228; Emil Cakalic, T 5898, 5906, 5909-5910, 5997-6000; P031, T3272-3273; Exhibit 145, P011, T 5732-5733; Exhibit 346, List A.

<sup>2361</sup> Exhibit 460, No 96; Exhibit 549, No 96; Exhibit 547, No 96; Exhibit 458; Exhibit 462, p 451; Exhibit 346, List B.

<sup>2362</sup> Exhibit 460, No 69; Exhibit 549, No 69; Exhibit 547, No 69; Exhibit 458; Exhibit 462, p 322; Exhibit 346, List B.

<sup>2363</sup> Exhibit 460, No 162; Exhibit 549, No 162; Exhibit 547, No 162; Exhibit 458; Exhibit 462, p 769; Exhibit 346, List B.

156.	STOJANOVIĆ, Ivan <sup>2365</sup>	1949	Male
157.	STUBIČAR, Ljubomir <sup>2366</sup>	1954	Male
158.	ŠARIK, Stjepan <sup>2367</sup>	1955	Male
159.	ŠIMUNIĆ, Pero <sup>2368</sup>	1943	Male
160.	ŠINDILJ, Vjekoslav <sup>2369</sup>	1971	Male
161.	ŠRENK, Đuro <sup>2370</sup>	1943	Male
162.	ŠTEFULJ, Dražen <sup>2371</sup>	1963	Male
163.	TADIĆ, Tadija <sup>2372</sup>	1959	Male
164.	TARLE, Dujo <sup>2373</sup>	1950	Male
165.	TEREK, Antun <sup>2374</sup>	1940	Male
166.	TIČLJARIĆ, Darko <sup>2375</sup>	1971	Male
167.	TIVANOVAC, Ivica <sup>2376</sup>	1963	Male
168.	TOMAŠIĆ, Tihomir <sup>2377</sup>	1963	Male
169.	TORDINAC, Željko <sup>2378</sup>	1961	Male

- <sup>2364</sup> Exhibit 460, No 12; Exhibit 549, No 12; Exhibit 547, No 12; Exhibit 458; Exhibit 462, p 57; Exhibit 346, List C.
- <sup>2365</sup> Exhibit 460, No 58; Exhibit 549, No 58; Exhibit 554, pp 2841-2852; Exhibit 346, List B; Exhibit 547, No 58; Exhibit 462, p 265.
- <sup>2366</sup> Exhibit 460, No 35; Exhibit 459, No 35; Exhibit 554, pp 2853-2865; Exhibit 346, List B; Exhibit 547, No 35; Exhibit 462, p157.
- <sup>2367</sup> Exhibit 460, No 25; Exhibit 549, No 25; Exhibit 547, No 25; Exhibit 458; Exhibit 462, p 113; P012, T 3667-3669; Exhibit 554, pp 1455-1467; Exhibit 346, List C.
- <sup>2368</sup> Exhibit 460, No 63; Exhibit 549, No 63; Exhibit 547, No 63; Exhibit 458; Exhibit 462, p 289; Exhibit 346, List C.
- <sup>2369</sup> Exhibit 460, No 73; Exhibit 549, No 73; Exhibit 547, No 73; Exhibit 458; Exhibit 462, p 342; P030, T 9755-9760; Exhibit 346, List B.
- <sup>2370</sup> Exhibit 460, No 6; Exhibit 549, No 6; Exhibit 547, No 6; Exhibit 458; Exhibit 462, p 28; P012, T 3667-3669; Exhibit 346, List C.
- <sup>2371</sup> Exhibit 460, No 166; Exhibit 549, No 166; Exhibit 547, No 166; Exhibit 458; Exhibit 462, p 166; Exhibit 554, pp 1516-1531; Exhibit 346, List B.
- <sup>2372</sup> Exhibit 460, No 33; Exhibit 549, No 33; Exhibit 547, No 33; Exhibit 458; Exhibit 462, p 149; P011, T 5781-5783, Exhibit 258.
- <sup>2373</sup> Exhibit 460, No 173; Exhibit 549, No 173; Exhibit 547, No 173; Exhibit 47, List B; Exhibit 458; Exhibit 462, p 825; P013, T 1166, 1171, 1209, 1266; P013, T 1209, 1211; Exhibit 554, pp 1567-1580; Exhibit 346, List B.
- <sup>2374</sup> Exhibit 460, No 181; Exhibit 549, No 181; Exhibit 547, No 181; Exhibit 458; Exhibit 462, p 862; Exhibit 346, List C.
- <sup>2375</sup> Exhibit 460, No 120 (“Darko Tišljarić”); Exhibit 549, No 120 (“Darko Tišljarić”); Exhibit 547, No 120 (“Darko Tišljarić”); Exhibit 47, List A (“Darko Tišljarić”); Exhibit 458; Exhibit 462, p 564; Exhibit 554, pp 1595-1609 (“Darko Tišljarić”); Exhibit 346, List B (“Darko Tišljarić”).
- <sup>2376</sup> Exhibit 460, No 130; Exhibit 549, No 130; Exhibit 547, No 130; Exhibit 458; Exhibit 462, p 615; Exhibit 346, List C.
- <sup>2377</sup> Exhibit 460, No 104; Exhibit 549, No 104; Exhibit 547, No 104; Exhibit 458; Exhibit 554, pp 1627-1640; Exhibit 346, List C.
- <sup>2378</sup> Exhibit 460, No 123; Exhibit 549, No 123; Exhibit 547, No 123; Exhibit 458; Exhibit 462, p 580; Exhibit 554, pp 1641-1657; Exhibit 346, List B.

170.	TOT, Tomislav <sup>2379</sup>	1967	Male
171.	TRALJIĆ, Tihomir <sup>2380</sup>	1967	Male
172.	TURK, Miroslav <sup>2381</sup>	1950	Male
173.	TURK, Petar <sup>2382</sup>	1947	Male
174.	TUSTONJIĆ, Dane <sup>2383</sup>	1959	Male
175.	TUŠKAN, Dražen <sup>2384</sup>	1966	Male
176.	UŠAK, Branko <sup>2385</sup>	1958	Male
177.	VAGENHOFER, Mirko <sup>2386</sup>	1937	Male
178.	VARENICA, Zvonko <sup>2387</sup>	1957	Male
179.	VARGA, Vladimir <sup>2388</sup>	1944	Male
180.	VASIĆ, Mikajlo <sup>2389</sup>	1963	Male
181.	VEBER, Siniša <sup>2390</sup>	1969	Male
182.	VIDOŠ, Goran <sup>2391</sup>	1960	Male
183.	VIRGES, Antun <sup>2392</sup>	1953	Male

<sup>2379</sup> Exhibit 460, No 32; Exhibit 549, No 32; Exhibit 547, No 32; Exhibit 458; Exhibit 462, p 144; Exhibit 554, pp 1658-1670; Exhibit 346, List C (“Tomislav Toth”).

<sup>2380</sup> Exhibit 460, No 38; Exhibit 549, No 38; Exhibit 547, No 38; Exhibit 458; Exhibit 462, p 169; Exhibit 346, List B.

<sup>2381</sup> Exhibit 460, No 167; Exhibit 549, No 167; Exhibit 547, No 167; Exhibit 458; Exhibit 462, p 795; Exhibit 346, List B.

<sup>2382</sup> Exhibit 460, No 115; Exhibit 549, No 115; Exhibit 547, No 115; Exhibit 458; Exhibit 462, p 536; Exhibit 554, pp 1712-1728; Exhibit 346, List C.

<sup>2383</sup> Exhibit 460, No 55; Exhibit 549, No 55; Exhibit 547, No 55; Exhibit 458; Exhibit 462, p 249; P030, T 9755-9760; Exhibit 554, pp 1729-1741; Exhibit 346, List B.

<sup>2384</sup> Dragutin Berghofer, T 5301-5304; 5323-5327; Exhibit 228; Exhibit 554, pp 1742-1754; Exhibit 346, List A.

<sup>2385</sup> Exhibit 460, No 132; Exhibit 549, No 132; Exhibit 547, No 132; Exhibit 458; Exhibit 462, p 625; Exhibit 346, List C.

<sup>2386</sup> Exhibit 460, No 46; Exhibit 549, No 46; Exhibit 547, No 46; Exhibit 458; Exhibit 462, p 206; Exhibit 554, pp 1778-1798, 1799-1814; Exhibit 346, List B.

<sup>2387</sup> Exhibit 460, No 117; Exhibit 549, No 117; Exhibit 547, No 117; Exhibit 458; Exhibit 462, p 548; P012, T 3685; Dragutin Berghofer, T 5280-5281; P011, T 5732, 5780-5781, Exhibit 258; Exhibit 554, pp 1815-1828; Exhibit 346, List C.

<sup>2388</sup> Exhibit 460, No 18; Exhibit 549, No 18; Exhibit 547, No 18; Exhibit 458; Exhibit 462, p 81; Exhibit 346, List B.

<sup>2389</sup> Exhibit 460, No 192 (“Mihajlo Vasić”); Exhibit 549, No 192; Exhibit 547, No 192; Exhibit 47, List A (“Mikajilo Vasić”); Exhibit 458; Exhibit 462, p 920, 923; Exhibit 346, List B (“Mihajlo Vasić”).

<sup>2390</sup> Exhibit 460, No 144; Exhibit 549, No 144; Exhibit 547, No 144; Exhibit 458; Exhibit 462, p 685; P007, T 4042-4045, Exhibit 188; Dragutin Berghofer, T 5390, 5393, 5301-5304, Exhibit 228, 5323-5327; Exhibit 554, pp 1829-1842; Exhibit 346, List B.

<sup>2391</sup> Exhibit 460, No 176; Exhibit 549, No 176; Exhibit 547, No 176; Exhibit 458; Exhibit 462, p 839; P031, T 3311, 3312, 3232-3234; Dragutin Berghofer, T 5301-5304, Exhibit 228, 5323-5327; Exhibit 554, pp 1843-1858; Exhibit 346, List C.

<sup>2392</sup> Exhibit 460, No 160 (“Anton Virges”); Exhibit 549, No 160; Exhibit 547, No 160; Exhibit 458; Exhibit 462, p 758; Exhibit 346, List C.

184.	VLAHO, Mate <sup>2393</sup>	1959	Male
185.	VLAHO, Miroslav <sup>2394</sup>	1967	Male
186.	VOLODER, Zlatan <sup>2395</sup>	1960	Male
187.	VUJEVIĆ, Zlatko <sup>2396</sup>	1951	Male
188.	VUKOJEVIĆ, Slaven <sup>2397</sup>	1970	Male
189.	VUKOVIC, Rudolf <sup>2398</sup>	1961	Male
190.	VULIĆ, Ivan <sup>2399</sup>	1946	Male
191.	ZERA, Mihajlo <sup>2400</sup>	1955	Male
192.	ZELJKO, Josip <sup>2401</sup>	1953	Male
193.	ŽERAVICA, Dominik <sup>2402</sup>	1959	Male
194.	ŽUGEČ, Borislav <sup>2403</sup> 1963/male	1963	Male

<sup>2393</sup> Exhibit 460, No 128; Exhibit 549, No 128; Exhibit 547, No 128; Exhibit 458; Exhibit 462, p 605; P007 T 4042-4045, Exhibit 188; P012, T 3659-3670, 3741-3742; Exhibit 554, pp 1885-1895; Exhibit 346, List C.

<sup>2394</sup> Exhibit 460, No 155; Exhibit 549, No 155; Exhibit 547, No 155; P012, T 3659, 3670, 3741; Exhibit 458; Exhibit 462, p 737; Exhibit 346, List C.

<sup>2395</sup> Exhibit 460, No 26; Exhibit 549, No 26; Exhibit 547, No 26; Exhibit 458; Exhibit 462, p 119; Exhibit 346, List C.

<sup>2396</sup> Exhibit 460, No 105; Exhibit 549, No 105; Exhibit 547, No 105; Exhibit 458; Exhibit 462, p 489; Exhibit 554, pp 1931-1943; Exhibit 346, List B.

<sup>2397</sup> Exhibit 460, No 193; Exhibit 549, No 193; Exhibit 547, No 193; Exhibit 458; Exhibit 462, p 926-927; P011, T 5732, 5780-5781, Exhibit 258; Exhibit 346, List B.

<sup>2398</sup> Exhibit 460, No 93 (“Rudolf Vuković”); Exhibit 549, No 93 (“Rudolf Vuković”); Exhibit 547, No 93 (“Rudolf Vuković”); Exhibit 47, List A (“Rudolf Vuković”); Exhibit 458; Exhibit 462, p 436; Exhibit 554, pp 1957-1972 (“Rudolf Vuković”); Exhibit 346, List B (“Rudolf Vuković”).

<sup>2399</sup> Exhibit 460, No 27; Exhibit 549, No 27; Exhibit 547, No 27; Exhibit 458; Exhibit 462, p 123; P007, T 4042-2045, Exhibit 188; Ljubica Došen, T 3793-3794, 3781-3782; Exhibit 346, List B.

<sup>2400</sup> Exhibit 460, No 48; Exhibit 549, No 48; Exhibit 547, No 48; Exhibit 458; Exhibit 462, p 214; P012, T 3666; Exhibit 554, pp 2039-2050; Exhibit 346, List C.

<sup>2401</sup> Exhibit 460, No 59; Exhibit 549, No 59; Exhibit 547, No 59; Exhibit 458; Exhibit 462, p 269; Binazija Kolesar, T 962-963; P013, 1196; Rudolf Vilhelm, T 4875-4881; Exhibit 554, pp 2027-2038 (“Josip Zelko”); Exhibit 346, List C.

<sup>2402</sup> Exhibit 460, No 65; Exhibit 459, No 65; Exhibit 554, pp 2051-2063; Exhibit 346, List B; Exhibit 47, List B; Exhibit 547, No 65; Exhibit 462, p 300.

<sup>2403</sup> Exhibit 460, No 31; Exhibit 549, No 31; Exhibit 547, No 31; Exhibit 458; Exhibit 462, p 140; Exhibit 346, List C.

#### XIV. ANNEX I: GLOSSARY OF TERMS

1AD	1 <sup>st</sup> Assault Detachment
1coy 1/gmtbr	1 <sup>st</sup> Company of the 1 <sup>st</sup> Motorised Battalion of the Guards Motorised Brigade
1/gmtbr	1 <sup>st</sup> Motorised Battalion of the Guards Motorised Brigade
1MD	1 <sup>st</sup> Military District
1MP/gmtbr	1 <sup>st</sup> Military Police Battalion of the Guards Motorised Brigade
2AD	2 <sup>nd</sup> Assault Detachment
2coy 1/gmtbr	2 <sup>nd</sup> Company of the 1 <sup>st</sup> Motorised Battalion of the Guards Motorised Brigade
2/gmtbr	2 <sup>nd</sup> Motorised Battalion of the Guards Motorised Brigade
2MP/gmtbr	2 <sup>nd</sup> Military Police Battalion of the Guards Motorised Brigade
3AD	3 <sup>rd</sup> Assault Detachment
3coy 1/gmtbr	3 <sup>rd</sup> Company of the 1 <sup>st</sup> Motorised Battalion of the Guards Motorised Brigade
80 mtbr	80 <sup>th</sup> Motorised Brigade (Kragujevac)
Additional Protocol I	Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), Geneva, 8 June 1977
Additional Protocol II	Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), Geneva, 8 June 1977
<i>Akayesu</i> Trial Judgement	<i>Prosecutor v. Jean-Paul Akayesu</i> , Case No. ICTR-96-4-T, Judgement, 2 September 1998
<i>Aleksovski</i> Appeals Judgement	<i>Prosecutor v. Zlatko Aleksovski</i> , Case No. IT-95-14/1-A, Judgement, 24 March 2000
<i>Aleksovski</i> Trial Judgement	<i>Prosecutor v. Zlatko Aleksovski</i> , Case No. IT-95-14/1-T, Judgement, 25 June 1999

<i>Babić</i> Appeals Judgement	<i>Prosecutor v. Milan Babić</i> , Case No. IT-03-72-A, Judgement on Sentencing Appeal, 18 July 2005
BCS	Bosnian Croatian Serbian language
<i>Blagojević</i> Appeals Judgement	<i>Prosecutor v. Vidoje Blagojević &amp; Dragan Jokić</i> , Case No. IT-02-60-A, Judgement, 9 May 2007
<i>Blagojević</i> Trial Judgement	<i>Prosecutor v. Vidoje Blagojević &amp; Dragan Jokić</i> , Case No. IT-02-60-T, Judgement, 17 January 2005
<i>Blaškić</i> Appeals Judgement	<i>Prosecutor v. Tihomir Blaškić</i> , Case No. IT-95-14-A, Judgement, 29 July 2004
<i>Blaškić</i> Trial Judgement	<i>Prosecutor v. Tihomir Blaškić</i> , Case No. IT-95-14-T, Judgement, 3 March 2000
<i>Brdanin</i> Appeals Judgement	<i>Prosecutor v. Radoslav Brdanin</i> , Case No. IT-99-36-A, Judgement, 3 April 2007
<i>Brdanin</i> Trial Judgement	<i>Prosecutor v. Radoslav Brdanin</i> , Case No. IT-99-36-T, Judgement, 1 September 2004
<i>Čelebići</i> Appeals Judgement	<i>Prosecutor v. Zejnil Delalić et al</i> , Case No. IT-96-21-A, Judgement, 20 February 2001
<i>Čelebići</i> Trial Judgement	<i>Prosecutor v. Zejnil Delalić et al</i> , Case No. IT-96-21-T, Judgement, 16 November 1998
Chamber	Section III of Trial Chamber II of the Tribunal
Common Article 3	Article 3 of Geneva Conventions I to IV
Defence	Counsel for the Accused Mile Mrkšić, Miroslav Radić and Veselin Šljivančanin
Mrkšić Defence	Counsel for the Accused Mile Mrkšić
Radić Defence	Counsel for the Accused Miroslav Radić
Šljivančanin Defence	Counsel for the Accused Veselin Šljivančanin
<i>Deronjić</i> Appeals Judgement	<i>Prosecutor v. Miroslav Deronjić</i> , Case No. IT-02-61-A, Judgement on Sentencing Appeal, 20 July 2005
<i>Dokamović</i> Trial	<i>Prosecutor v. Mile Mrksić, Miroslav Radić, and Veselin Šljivančanin, and Slavko Dokamović</i> , Case No. IT-95-13a
ECMM	European Community Monitoring Mission

<i>Furundžija</i> Appeals Judgement	<i>Prosecutor v. Anto Furundžija</i> , Case No. IT-95-17/1-A, Judgement, 21 July 2000
<i>Furundžija</i> Trial Judgement	<i>Prosecutor v. Anto Furundžija</i> , Case No. IT-95-17/1-T, Judgement, 10 December 1998
<i>Galić</i> Appeals Judgement	<i>Prosecutor v. Stanislav Galić</i> , Case No. IT-98-29-A, Judgement, 30 November 2006
<i>Galić</i> Trial Judgement	<i>Prosecutor v. Stanislav Galić</i> , Case No. IT-98-29-T, Judgement and Opinion, 5 December 2003
Geneva Convention I	Geneva Convention I for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949
Geneva Convention II	Geneva Convention II for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12 August 1949
Geneva Convention III	Geneva Convention III Relative to the Treatment of Prisoners of War of 12 August 1949
Geneva Convention IV	Geneva Convention IV Relative to the Protection of Civilian Person in Time of War of 12 August 1949
Geneva Conventions	Geneva Conventions I to IV of 12 August 1949
Gmtbr	Guards Motorised Brigade
<i>Halilović</i> Trial Judgement	<i>Prosecutor v. Sefer Halilović</i> , Case No. IT-01-48-T, Judgement, 16 November 2005
HOS	“Croatia’s Liberation Forces” ( <i>Hrvatske Oslobodilacke Snage</i> )
HV	Croatian Army ( <i>Hrvatska Vojska</i> )
ICC	International Criminal Court
ICMP	International Commission on Missing Persons
ICRC	International Committee of the Red Cross
ICRC Commentary on the Additional	Commentary on the Additional Protocols of Protocols 8 June 1977 to the Geneva Conventions of 12 August 1949, International Committee of the Red Cross, Geneva, 1987
ICRC Commentary on Geneva Convention IV	J. Pictet, ed., <i>The Geneva Conventions of 12 August 1949: Commentary, Part: IV Geneva Convention relative to the protection of civilian persons in time of war</i> (Geneva, International Committee of the Red Cross 1958)

ICTR	International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States, between 1 January 1994 and 31 December 1994
Indictment	<i>Prosecutor v. Mrkšić, Radić and Šljivančanin</i> , Case No. IT-95-13/1-PT, Decision on Third Modified Consolidated Amended Indictment, 9 March 2005
INTERPOL	International Criminal Police Organization
<i>Janković</i> Rule 11 <i>bis</i> Decision	<i>Prosecutor v. Gojko Janović</i> , Case No. IT-96-23/2-PT, Decision on Referral of Case under Rule 11 <i>bis</i> , 22 July 2005
<i>Jelisić</i> Appeals Judgement	<i>Prosecutor v. Goran Jelisić</i> , Case No. IT-95-10-A, Judgement, 5 July 2001
<i>Jelisić</i> Trial Judgement	<i>Prosecutor v. Goran Jelisić</i> , Case No. IT-95-10-T, Judgement, 14 December 1999
<i>Jokić</i> Appeals Judgement	<i>Prosecutor v. Miodrag Jokić</i> , Case No. IT-01-41/1-A, Judgement on Sentencing Appeals, 30 August 2005
<i>Kamuhanda</i> Appeals Judgement	<i>Prosecutor v. Jean de Dieu Kamuhanda</i> , Case No. ICTR-99-54A-A, Judgement, 19 September 2005
<i>Kayishema and Ruzindana</i> Trial Judgement	<i>Clément Kayishema and Obed Ruzindana v. The Prosecutor</i> , Case No. ICTR-95-1-T, Judgement, 21 May 1999
<i>Kordić</i> Appeals Judgement	<i>Prosecutor v. Dario Kordić &amp; Mario Čerkez</i> , Case No. IT-95-14/2-A, Judgement, 17 December 2004
<i>Kordić</i> Trial Judgement	<i>Prosecutor v. Dario Kordić &amp; Mario Čerkez</i> , Case No. IT-95-14/2-T, Judgement, 26 February 2001
<i>Krnojelac</i> Appeals Judgement	<i>Prosecutor v. Milorad Krnojelac</i> , Case No. IT-97-25-A, Judgement, 17 September 2003
<i>Krnojelac</i> Trial Judgement	<i>Prosecutor v. Milorad Krnojelac</i> , Case No. IT-97-25-T, Judgement, 15 March 2002
<i>Krstić</i> Appeals Judgement	<i>Prosecutor v. Radislav Krstić</i> , Case No. IT-98-33-A, Judgement, 19 April 2004
<i>Krstić</i> Trial Judgement	<i>Prosecutor v. Radislav Krstić</i> , Case No. IT-98-33-T, Judgement, 2 August 2001

<i>Kunarac</i> Appeals Judgement	<i>Prosecutor v. Dragoljub Kunarac et al.</i> , Case No. IT-96-23&23/1-A, Judgement, 12 June 2002
<i>Kunarac</i> Trial Judgement	<i>Prosecutor v. Dragoljub Kunarac et al.</i> , Case No. IT-96-23/1-T, Judgement, 22 February 2001
<i>Kupreškić</i> Appeals Judgement	<i>Prosecutor v. Zoran Kupreškić et al.</i> , Case No. IT-95-16-A, Appeal Judgement, 23 October 2001
<i>Kupreškić</i> Trial Judgement	<i>Prosecutor v. Zoran Kupreškić et al.</i> , Case No. IT-95-16-T, Judgement, 14 January 2000
<i>Kvočka</i> Appeals Judgement	<i>Prosecutor v. Miroslav Kvočka et al.</i> , Case No. IT-98-30/1-A, Judgement, 28 February 2005
<i>Kvočka</i> Trial Judgement	<i>Prosecutor v. Miroslav Kvočka et al.</i> , Case No. IT-98-30-T, Judgement, 2 November 2001
<i>Limaj</i> Trial Judgement	<i>Prosecutor v. Fatmir Limaj et al.</i> , Case No. IT-03-66-T, Judgement, 30 November 2005
<i>Lukić</i> Rule 11bis Decision	<i>Prosecutor v. Milan Lukić and Sredoje Lukić</i> , Case No. IT-98-32/1-PT, Decision on Referral of Case Pursuant to Rule 11bis, 5 April 2007
<i>Martić</i> Trial Judgement	<i>Prosecutor v. Milan Martić</i> , Case No. IT-95-11-T, Judgement, 12 June 2007
Mrkšić Defence Final Brief	<i>Prosecutor v. Mrkšić, Radić, Šljivančanin</i> , Case No. IT-95-13/1-T, Mile Mrkšić's Defence Final Trial Brief (Confidential), 26 February 2007
Mrkšić Defence Pre-Trial Brief	<i>Prosecutor v. Mrkšić, Radić, Šljivančanin</i> , Case No. IT-95-13/1-PT, Defence Pre-Trial Brief, 23 September 2005; Supplement to Defence Pre-Trial Brief, 14 October 2005
Malteser Kreuz	Maltese Cross
<i>Milošević</i> Rule 98bis Decision	<i>Prosecutor v. Slobodan Milošević</i> , Case No. IT-02-54-T, Decision on Motion for Judgement of Acquittal, 16 June 2004
MSF	Médecins Sans Frontières
MUP	Ministry of Internal Affairs of the Republic of Croatia
<i>Naletilić</i> Appeals Judgement	<i>Prosecutor v. Mladen Naletilić and Vinko Martinović</i> , Case No. 98-34-A, 3 May 2006
<i>Naletilić</i> Trial Judgement	<i>Prosecutor v. Mladen Naletilić and Vinko Martinović</i> , Case No. 98-34-T, Judgement, 31 March 2003

<i>Dragan Nikolić</i> Sentencing Judgement	<i>Prosecutor v. Dragan Nikolić</i> , Case No. IT-94-2-S, Sentencing Judgement, 18 December 2003
<i>Dragan Nikolić</i> Appeals Judgement	<i>Prosecutor v. Dragan Nikolić</i> , Case No. IT-94-2-S, Judgement on Sentencing Appeal, 4 February 2005
<i>Momir Nikolić</i> Appeals Judgement	<i>Prosecutor v. Momir Nikolić</i> , Case No. IT-02-60/1-A, Judgement on Sentencing Appeal, 8 March 2006
OG South	Operational Group South
Prosecution	The Office of the Prosecutor
Prosecution Final Brief	<i>Prosecutor v. Mrkšić, Radić, Šljivančanin</i> , Case No. IT-95-13/1-T, Prosecution's Final Brief (Confidential), 26 February 2007
Prosecution Pre-Trial Brief	<i>Prosecutor v. Mrkšić, Radić, Šljivančanin</i> , Case No. IT-95-13/1-T, Prosecutions filing of Pre-Trial Brief, List of Witnesses, Witness Summaries, and List of Exhibits Pursuant to Rule 65 <i>ter</i> , 29 August 2005
Radić Defence Final Brief	<i>Prosecutor v. Mrkšić, Radić, Šljivančanin</i> , Case No. IT-95-13/1-T, Final Trial Brief of the Defence of Mr. Miroslav Radić (Confidential), 26 February 2007
Radić Defence Pre-Trial Brief	<i>Prosecutor v. Mrkšić, Radić, Šljivančanin</i> , Case No. IT-95-13/1-PT, Pre-Trial Brief of the Defence of Accused Miroslav Radić, 23 September 2005; Accused Miroslav Radić's Pre-Trial Brief Supplement, 14 October 2005
<i>Rajić</i> Sentencing Judgement	<i>Prosecutor v. Ivica Rajić</i> , Case No. IT-95-12-S, Sentencing Judgement, 8 May 2006
<i>Rašević and Todović</i> Rule 11bis Decision	<i>Prosecutor v. Mitar Rašević and Savo Todović</i> , Case No. IT-97-25/1-PT, Decision on Referral of Case under Rule 11bis, 8 July 2005
<i>Mrkšić</i> Rule 61 Decision	<i>Prosecutor v. Mrkšić, Radić, Šljivančanin</i> , Case No. IT-95-13/1-PT, Review of the Indictment Pursuant to Rule 61 of the Rules and Procedures of Evidence, 3 April 1996
Rules	Rules of Procedure and Evidence of the Tribunal
<i>Rutaganda</i> Trial Judgement	<i>Prosecutor v. Georges Anderson Nderubumwe Rutaganda</i> , Case No. ICTR-96-3-T, Judgement, 6 December 1999
<i>Semanza</i> Appeals Judgement	<i>Prosecutor v. Laurent Semanza</i> , Case No. ICTR-97-20-A, Judgement, 20 May 2005
SFRY	Socialist Federal Republic of Yugoslavia

Šljivančanin Defence Final Brief	<i>Prosecutor v. Mrkšić, Radić, Šljivančanin</i> , Case No. IT-95-13/1-T, Veselin Šljivančanin's Defence Final Brief (Confidential), 26 February 2007
Šljivančanin Defence Pre-Trial Brief	<i>Prosecutor v. Mrkšić, Radić, Šljivančanin</i> , Case No. IT-95-13/1-PT, Pre-Trial Motion of Veselin Šljivančanin, 23 September 2005; Accused Veselin Šljivančanin's Supplement to the Pre-Trial Brief, 20 October 2005
Statute	Statute of the International Criminal Tribunal for the former Yugoslavia established by Security Council Resolution 827
<i>Stakić</i> Trial Judgement	<i>Prosecutor v. Milomir Stakić</i> , Case No. IT-97-24-T, Judgement, 31 July 2003
<i>Stakić</i> Appeals Judgement	<i>Prosecutor v. Milomir Stakić</i> , Case No. IT-97-24-A, Judgement, 22 March 2006
<i>Strugar</i> Trial Judgement	<i>Prosecutor v. Pavle Strugar</i> , Case No. IT-01-42-T, Judgement, 31 January 2005
T	Transcript of hearing in the present case. All transcript pages referred to in this Judgement are taken from the uncorrected version of the transcript. Minor differences may therefore exist between the pagination therein and that of the final transcript released to the public
<i>Tadić</i> Appeals Judgement	<i>Prosecutor v. Duško Tadić aka "Dule"</i> , Case No. IT-94-1-A, Judgement, 15 July 1999
<i>Tadić</i> Jurisdiction Decision	<i>Prosecutor v. Duško Tadić aka "Dule"</i> , Case No. IT-94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995
<i>Tadić</i> Sentencing Appeal Judgement	<i>Prosecutor v. Duško Tadić aka "Dule"</i> , Case No. IT-94-1-A and IT-94-1-Abis, Judgement in Sentencing Appeals, 26 January 2000
<i>Tadić</i> Trial Judgement	<i>Prosecutor v. Duško Tadić aka "Dule"</i> , Case No. IT-94-1-T, Opinion and Judgement, 7 May 1997
TO	Territorial Defence
<i>Todorović</i> Sentencing Judgement	<i>Prosecutor v. Stevan Todorović</i> , Case No. IT-95-9/1-S, Sentencing Judgement, 31 July 2001
Tribunal	International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

UN	United Nations
UNPROFOR	United Nations Protection Force
<i>Vasiljević Appeals Judgement</i>	<i>Prosecutor v. Mitar Vasiljević</i> , Case No. IT-98-32-A, Judgement, 25 February 2004
<i>Vasiljević Trial Judgement</i>	<i>Prosecutor v. Mitar Vasiljević</i> , Case No. IT-98-32-T, Judgement, 29 November 2002
ZNG	“National Guards Corps” ( <i>Zbor Narodne Garde</i> )

## **XV. ANNEX II: MAPS**

Map 1: Map of Vukovar area with photos of Vukovar hospital, Ovčara and Velepomet (Exhibit 59)

Map 2: Map of Eastern Croatia (Exhibit 103)

Map 3: Map of Vukovar municipality (Exhibit 115)

Map 4: City Map of Vukovar (Exhibit 357)









## XVI. ANNEX III: PROCEDURAL HISTORY

### A. Pre-trial proceedings

#### 1. Initial indictment and Rule 61 proceeding

717. The initial indictment against the Accused was confirmed by Judge Fouad Riad on 7 November 1995.<sup>2404</sup> Warrants of arrest against each of the Accused were issued on 8 November 1995.<sup>2405</sup> As the arrest warrants against each of the Accused were not executed within a “reasonable time” of their issuance, in accordance with Rule 61 of the Rules, the Prosecution was invited to report on the measures it had taken to effect personal service of the indictment. Satisfied that the Prosecution had acted with diligence, the Judge who confirmed the initial indictment against the Accused ordered the Prosecution to submit the case for review to the full panel of Judges of Trial Chamber I.<sup>2406</sup> Pursuant to Rule 61, during the review, the Trial Chamber was to decide whether there were reasonable grounds for believing that each of the Accused had committed all or any of the crimes charged in the initial indictment, and if so, to issue international arrest warrants. In order for the Trial Chamber to reach its decision, the evidence submitted to the confirming Judge was made available to Trial Chamber I. In addition, Trial Chamber I heard prospective Prosecution witnesses during hearings held on 20, 26, 27, and 28 March 1996. The Accused were not represented at the hearings. Following the review process, Trial Chamber I concluded that there were reasonable grounds to believe that the three Accused had committed the crimes charged in the initial indictment, reconfirmed all counts in the indictment, and issued, on 3 April 1996, international arrest warrants against the three Accused.<sup>2407</sup> As a result of the Rule 61 review, on 3 April 1996, the initial indictment was also amended to include one other co-accused, Slavko Dokmanović.<sup>2408</sup> A further amended indictment against all four Accused was filed on 2 December 1997.<sup>2409</sup> Slavko Dokmanović was transferred to the custody of the Tribunal on 27 June 1998, and the trial against him commenced on 19 January 1998. Slavko Dokmanović passed away on 29 June 1998, and proceedings against him were thus terminated.<sup>2410</sup>

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<sup>2404</sup> *Prosecutor v. Mrkšić, Radić and Šljivančanin*, Case No. IT-95-13-I, Indictment, 7 November 1995.

<sup>2405</sup> *Prosecutor v. Mrkšić, Radić and Šljivančanin*, Case No. IT-95-13/1-PT, Warrant of Arrest and Order for Surrender, 8 November 1995.

<sup>2406</sup> *Prosecutor v. Mrkšić, Radić and Šljivančanin*, Case No. IT-95-13/1-PT, Order for Review in Open Court of the Indictment by the Trial Chamber 1 (Rule 61 of the Rules of Procedure and Evidence), 6 March 1996.

<sup>2407</sup> *The Prosecutor v. Mrkšić, Radić, and Šljivančanin*, Case No. IT-95-13-R61, Review of the Indictment Pursuant to Rule 61 of the Rules of Procedure and Evidence, 3 April 1996.

<sup>2408</sup> *Prosecutor v. Mrkšić, Radić, Šljivančanin and Dokmanović*, Case No. IT-95-13a-I, Indictment, 1 April 1996. This amendment was granted by Judge Riad on 3 April 1996.

<sup>2409</sup> *Prosecutor v. Mrkšić, Radić, Šljivančanin and Dokmanović*, Case No. IT-95-13a-PT, Amended Indictment, 2 December 1997.

<sup>2410</sup> *Prosecutor v. Mrkšić, Radić, Šljivančanin and Dokmanović*, Case No. IT-95-13a-PT, Order Terminating Proceedings against Slavko Dokmanović, 15 July 1998.

## 2. Initial appearance and history of indictments

718. The Accused Mile Mrkšić surrendered to the Tribunal on 15 May 2002. At his initial appearance on 16 May 2002, Mile Mrkšić pleaded not guilty to all counts.

719. The Accused Miroslav Radić surrendered to the Tribunal and was transferred on 17 May 2003. At his initial appearance, on 21 May 2003, Miroslav Radić pleaded not guilty to all counts.

720. The Accused Veselin Šljivančanin was arrested in Belgrade by Serbian authorities on 13 June 2003 and was transferred to the seat of the Tribunal on 1 July 2003. At his initial appearance held on 3 and 10 July 2003, Veselin Šljivančanin pleaded not guilty to all charges.

721. On 29 August 2002, following Mile Mrkšić's transfer to the Tribunal, the Prosecution filed a second amended indictment against the Accused Mile Mrkšić alone.<sup>2411</sup> On 21 July 2004, the Prosecution filed a motion for leave to file a consolidated amended indictment against the three Accused. On 23 January 2004, the Trial Chamber issued a decision on the Prosecution's motion, also deciding on motions by the Accused challenging the form of the indictment.<sup>2412</sup> On 9 February 2004, pursuant to the Trial Chamber's decision, the Prosecution filed a consolidated amended indictment against the three Accused.<sup>2413</sup> Following further Defence motions alleging defects in the form of that indictment, the Trial Chamber ordered the Prosecution to file a modified Indictment,<sup>2414</sup> which it did on 26 August 2004.<sup>2415</sup> That indictment was again amended, by order of the Trial Chamber, and the Prosecution filed the "Third Modified Consolidated Amended Indictment" on 15 November 2004. The "Third Modified Consolidated Amended Indictment" is the operative Indictment.

## 3. Applications for provisional release

722. On 23 May 2002 Mile Mrkšić filed a "Defence Motion for Provisional Release" in which he sought to be provisionally released for health reasons to his family home in Belgrade in Serbia and which was denied by the Trial Chamber in its "Decision on Mile Mrkšić's Application for Provisional Release" of 24 July 2002 as it was not demonstrated that, if provisionally released, Mile

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<sup>2411</sup> *Prosecutor v. Mrkšić, Radić, Šljivančanin*, Case No. IT-95-13/1-PT, Second Amended Indictment, 29 August 2002.

<sup>2412</sup> *Prosecutor v. Mrkšić, Radić, Šljivančanin*, Case No. IT-95-13/1-PT, Decision on form of Consolidated Amended Indictment and on Prosecution Application to Amend, 23 January 2004.

<sup>2413</sup> *Prosecutor v. Mrkšić, Radić and Šljivančanin*, Case No. IT-95-13/1-PT, Consolidated Amended Indictment, 9 February 2004.

<sup>2414</sup> *Prosecutor v. Mrkšić, Radić and Šljivančanin*, Case No. IT-95-13/1-PT, Decision on Form of Modified Consolidated Amended Indictment, 20 July 2004.

Mrkšić would appear for trial.<sup>2416</sup> On 29 January 2004, Mile Mrkšić filed a “Defence Request for Provisional Release for the Purpose of Attending Mother’s Funeral in Lieu of Previously Filed Defence Request for Provisional Release for the Purpose of Visiting his Mother” in which the Accused sought to be allowed to travel to Belgrade to attend the funeral of his mother. On 30 January 2004, in its “Decision Pursuant to Rule 65 Granting Mrkšić’s Request to Attend his Mother’s Funeral” the Trial Chamber allowed that the Accused be provisionally released to attend his mother funeral for a period of period of three days.

723. On 20 May 2004 the Trial Chamber denied a motion by Miroslav Radić for provisional release to attend a memorial service in commemoration of his father’s death.<sup>2417</sup>

724. On 23 February 2005, Mile Mrkšić filed a new request for provisional release which was denied on 9 March 2005. The Trial Chamber was not satisfied that, if provisionally released, Mile Mrkšić would appear for trial and would not pose a danger to any victim, witness or other person.<sup>2418</sup> No subsequent motions were filed by Mile Mrkšić.

#### 4. Rule 11bis proceedings

725. On 9 February 2005 the Prosecutor filed a “Motion by the Prosecutor under Rule 11bis for referral of the Indictment to Another Court” and a related “Request by the Prosecutor under Rule 11bis for Referral of the Indictment to another Court” requesting that the case against the three Accused be referred to the authorities of Serbia and Montenegro, or to the authorities of Croatia for trial (“Motion for Referral”). On 14 February 2005, the President of the Tribunal issued an “Order Appointing a Trial Chamber for the purposes of determining whether the Indictment should be Referred to another Court under Rule 11bis”, appointing the Referral Bench composed of Judges Alphons Orié, O-Gon Kwon, and Kevin Parker, to review the request. On 1 March 2005, the Defence filed a “Joint Defence Response to Request by the Prosecutor under Rule 11bis for Referral of the Indictment to another Court” submitting that while the conditions for referral of the Indictment to another court as set out in Rule 11bis(C) are met, the conditions for referral pursuant to Rule 11bis(B) are only met with respect to Serbia and Montenegro. On 15 April 2005, the Referral Bench ordered the Parties and invited the Governments of Croatia and Serbia and

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<sup>2415</sup> *Prosecutor v. Mrkšić, Radić and Šljivančanin*, Case No. IT-95-13/1-PT, Second Modified Consolidated Indictment, 26 August 2004.

<sup>2416</sup> *Prosecutor v. Mrkšić, Radić and Šljivančanin*, Case No. IT-95-13/1-PT, Defence Motion for Provisional Release, 23 May 2002; Decision on Mile Mrkšić’s Application for Provisional Release, 24 July 2002.

<sup>2417</sup> *Prosecutor v. Mrkšić, Radić and Šljivančanin*, Case No. IT-95-13/1-PT, Decision on Request by the Accused Radić for Provisional Release, 20 May 2004.

<sup>2418</sup> *Prosecutor v. Mrkšić, Radić and Šljivančanin*, Case No. IT-95-13/1-PT, Defence Motion for Provisional Release, 23 February 2005; *Prosecutor v. Mrkšić, Radić and Šljivančanin*, Case No. IT-95-13/1-PT, Decision on Defence Motion for Provisional Release, 9 March 2005.

Montenegro to submit their views on the gravity of crimes and the level of responsibility of the Accused, as well as on the substantive and procedural law that would apply, should the case be referred to the authorities of Croatia or Serbia and Montenegro. On 12 May 2005, a hearing on the request for referral was held with participation of the Parties and the representatives of the Governments of Croatia and Serbia and Montenegro.

726. On 9 June 2005, the Prosecution filed a motion requesting the Referral Bench to grant leave to withdraw the Motion for Referral and to order the reinstatement of the case to the appropriate Trial Chamber of the Tribunal.<sup>2419</sup> On 13 June 2005, the Defence for the three Accused filed a joint response, opposing the motion for withdrawal and requesting that the Indictment be referred to the authorities of Serbia and Montenegro.<sup>2420</sup> On 30 June 2005, the Referral Bench granted the motion to withdraw the Motion for Referral finding that there was no sufficient justification for it to act *proprio motu* and that justice would be better met by the trial being conducted before the Tribunal.<sup>2421</sup>

#### 5. Commencement of trial

727. The Prosecution filed its Pre-Trial Brief together with a list of witnesses and a list of exhibits pursuant to Rule 65ter(E) of the Rules on 29 August 2005. The Defence for the three Accused filed their respective pre-trial briefs on 23 September 2005 pursuant to Rule 65ter(F). By a motion dated 28 September 2005, the Prosecution submitted that the Pre-Trial Briefs filed by the Defence of the three Accused did not comply with Rule 65ter(F),<sup>2422</sup> and on 10 October 2005, the Chamber ordered the Defence of the three Accused to supplement their Pre-Trial Briefs.<sup>2423</sup> On 14 October 2005 the Mrkšić Defence filed a supplement to its Pre-Trial Brief, while the Radić Defence and the Šljivančanin Defence filed a supplement to their respective Pre-Trial Briefs on 20 October 2005.<sup>2424</sup>

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<sup>2419</sup> *Prosecutor v. Mrkšić, Radić and Šljivančanin*, Case No. IT-95-13/1-PT, Prosecution Motion to Withdraw the Motion and Request for Referral of the Indictment to another Court under Rule 11bis, 9 June 2005.

<sup>2420</sup> *Prosecutor v. Mrkšić, Radić and Šljivančanin*, Case No. IT-95-13/1-PT, Joint Defense response to the “Prosecution Motion to Withdraw the Motion and Request for Referral of the Indictment to another Court under Rule 11bis”, 13 June 2005.

<sup>2421</sup> *Prosecutor v. Mrkšić, Radić and Šljivančanin*, Case No. IT-95-13/1-PT, Decision on Prosecutor’s Motion to Withdraw Motion and Request for Referral of the Indictment under Rule 11bis, 30 June 2005.

<sup>2422</sup> *Prosecutor v. Mrkšić, Radić and Šljivančanin*, Case No. IT-95-13/1-PT, Prosecution’s Motion for Relief pursuant to Rule 65ter (E), 23 September 2005.

<sup>2423</sup> *Prosecutor v. Mrkšić, Radić and Šljivančanin*, Case No. IT-95-13/1-PT, Supplement to the Defence Pre-Trial Brief, 14 October 2005.

<sup>2424</sup> *Prosecutor v. Mrkšić, Radić and Šljivančanin*, Case No. IT-95-13/1-PT, The Accused Veselin Šljivančanin’s Supplement to the Pre-Trial Brief, 20 October 2005; *Prosecutor v. Mrkšić, Radić and Šljivančanin*, Case No. IT-95-13/1-PT, The Accused Miroslav Radić’s Pre-Trial Brief Supplement, 20 October 2005.

728. On 6 October 2005 the President of the Tribunal assigned the case for trial to Trial Chamber II, consisting of Judge Kevin Parker (presiding), Judge Christine Van Den Wyngaert, and Judge Krister Thelin.

729. The trial was scheduled to commence on 3 October 2005. On 13 September 2005, the Defences for the three Accused filed a joint motion seeking four to six weeks postponement of the commencement of the trial. On 22 September 2005 the Pre-Trial Judge granted the motion in part and ordered that the pre-trial conference be held on 10 October 2005, that the Parties make their opening statement on 11 October 2005, and that the presentation of evidence commence on 25 October 2005.<sup>2425</sup>

## **B. Trial proceedings**

### 1. Overview

730. The Prosecution case opened on 11 October 2005 and closed on 28 June 2006. The case for Mile Mrkšić started on 30 August 2006 and continued until 2 October 2006. The case for Miroslav Radić started on 9 October 2006 and closed on 19 October 2006. The case for Veselin Šljivančanin started on 25 October 2006 and was completed on 7 December 2006. The presentation of evidence was closed on 9 February 2007,<sup>2426</sup> and a further Prosecution motion to reopen its case was denied on 23 February 2007.<sup>2427</sup>

731. The Prosecution called 52 *viva voce* witnesses. Two of these witnessed testified through video-conference.<sup>2428</sup> The evidence of 10 further Prosecution witnesses was given, in full or in part, in the form of written statements. The Mrkšić Defence called 14 *viva voce* witnesses. The Radić Defence called 6 *viva voce* witnesses and the written statements of two witnesses were admitted pursuant to Rule 92*bis*. The Šljivančanin Defence called 12 witnesses to give evidence *viva voce* and the statements of two more were admitted pursuant to Rule 92*bis*. In total 885 exhibits were admitted into evidence. The Final Briefs were submitted on 26 February 2007, and closing arguments were heard on 14, 15 and 16 March 2007.

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<sup>2425</sup> *Prosecutor v. Mrkšić, Radić and Šljivančanin*, Case No. IT-95-13/1-PT, Decision on Joint Defence Motion for Postponement of Trial, 22 September 2005.

<sup>2426</sup> *Prosecutor v. Mrkšić, Radić and Šljivančanin*, Case No. IT-95-13/1-T, Order Closing Presentation of Evidence, 9 February 2007.

<sup>2427</sup> *Prosecutor v. Mrkšić, Radić and Šljivančanin*, Case No. IT-95-13/1-T, Decision on Motion to Reopen Prosecution case, 23 February 2007.

<sup>2428</sup> *Prosecutor v. Mrkšić, Radić and Šljivančanin*, Case No. IT-95-13/1-T, Decision on Prosecution Motion for the Testimony of Witnesses via Video-Conference Link, 21 November 2005; *Prosecutor v. Mrkšić, Radić and Šljivančanin*, Case No. IT-95-13/1-T, *Confidential* Decision on Prosecution Motion for the Testimony of a Witness to be Heard via Video-Conference Link, 15 February 2006.

## 2. Matters related to witnesses

732. On 25 October 2005 the Chamber granted a Prosecution motion for protective measures and ordered protective measures for the testimony of 15 witnesses.<sup>2429</sup> On 4 April 2006 the Chamber granted a further Prosecution motion that the evidence of one witness be given with protective measures.<sup>2430</sup> By a confidential decision dated 27 September 2006, a Defence witness was allowed to give testimony with protective measures.<sup>2431</sup> Throughout the trial, the Chamber issued subpoenas with respect to seven witnesses.

733. On 17 August 2006 the Prosecution filed confidentially a “Prosecution’s Motion to Interview Defence Witnesses”, whereby the Prosecution sought leave from the Chamber to interview some prospective Defence witnesses. In a decision filed on 1 September 2006, the Chamber allowed the Prosecution to interview Defence witnesses as the Prosecution had a “justifiable interest in conducting interviews after close of its case, as evidence in rebuttal could be presented”.<sup>2432</sup> The Prosecution was ordered to give the Defence notice of its intention to interview a prospective Defence witnesses.<sup>2433</sup>

## 3. Evidentiary matters

734. On 25 October 2005 the Chamber granted in part a Prosecution motion seeking the admission into evidence without cross-examination of written statements or transcripts pursuant to Rule 92bis.<sup>2434</sup> The Chamber did not allow the admission into evidence pursuant to Rule 92bis of the written statement of one deceased witness, Slavko Tomić, and of the transcripts from previous testimony of one other witness.<sup>2435</sup> Motions for reconsideration of the Chamber’s decision of 25 October 2005, filed by both the Prosecution and the Defence were denied by the Chamber on 8 and 9 December 2005, respectively.<sup>2436</sup>

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<sup>2429</sup> *Prosecutor v. Mrkšić, Radić and Šljivančanin*, Case No. IT-95-13/1-T, Decision on Prosecution’s Additional Motion for Protective Measures of Sensitive Witnesses, 25 October 2005.

<sup>2430</sup> *Prosecutor v. Mrkšić, Radić and Šljivančanin*, Case No. IT-95-13/1-T, Decision on Prosecution’s Additional Motion for Variation of Protective Measures, 4 April 2006.

<sup>2431</sup> *Prosecutor v. Mrkšić, Radić and Šljivančanin*, Case No. IT-95-13/1-T, *Confidential* Decision on the Defence of Mr. Radić’s Motion for Protective Measures, 27 September 2006.

<sup>2432</sup> *Prosecutor v. Mrkšić, Radić and Šljivančanin*, Case No. IT-95-13/1-T, Decision on Prosecution’s Motion to Interview Defence Witnesses, 1 September 2006.

<sup>2433</sup> *Prosecutor v. Mrkšić, Radić and Šljivančanin*, Case No. IT-95-13/1-T, Decision on Prosecution’s Motion to Interview Defence Witnesses, 1 September 2006.

<sup>2434</sup> *Prosecutor v. Mrkšić, Radić and Šljivančanin*, Case No. IT-95-13/1-T, *Confidential* Decision on Prosecution’s Motion for Admission of Transcripts and Written Statements Pursuant to Rule 92bis, 25 October 2005.

<sup>2435</sup> *See Prosecutor v. Mrkšić, Radić and Šljivančanin*, Case No. IT-95-13/1-T, *Confidential* Decision on Prosecution’s Motion for Admission of Transcripts and Written Statements Pursuant to Rule 92bis, 25 October 2005.

<sup>2436</sup> *Prosecutor v. Mrkšić, Radić and Šljivančanin*, Case No. IT-95-13/1-T, Decision on Prosecution Motion for Reconsideration to Admit Prosecution Witness’ Written Statement Pursuant to Rule 92bis(C), 8 December 2005; *Prosecutor v. Mrkšić, Radić and Šljivančanin*, Case No. IT-95-13/1-T, Decision on Defence Joint Request for

735. On 9 October 2006 the Chamber issued its “Decision concerning the Use of Statements given by the Accused” allowing the use of statements given by the Accused before the authorities in Belgrade in 1998 but solely in cross-examination of the respective Accused.<sup>2437</sup>

#### 4. Decision on clarification of the Indictment

736. Because of a dispute between the Parties over the scope of Count 1 of the Indictment and, in particular, over the question whether the Accused are charged in Count 1 for the events that are alleged to have occurred at the Velepromet facility, on 10 April 2006 the Prosecution confidentially filed a “Prosecution’s Motion Seeking Clarification with regard to Count 1 of the Indictment and the Particulars Relied Upon”. In the Motion the Prosecution submitted that paragraph 40 of the Indictment set forth a broad time frame, which also included the crimes allegedly committed at the Velepromet facility. On 28 April 2006 the Defence of the three Accused filed a “Joint Defence Response to the Prosecution Motion Seeking Clarification with regard to Count 1 of the Indictment and the Particulars Relied Upon” opposing the motion. In a decision issued on 19 May 2006, the Chamber clarified that alleged acts of mistreatment and killings of detainees at the Velepromet facility are not charged in the Indictment, and that the crimes alleged to have been committed there were described in the Indictment only in order to demonstrate the Accused’s knowledge of instances of abuse similar to those that are said to have occurred at the JNA barracks and the Ovčara farm.<sup>2438</sup>

#### 5. Rule 98bis decision

737. On 28 June 2006 at the close of the Prosecution case, the Defence for each Accused orally made a motion for acquittal under Rule 98bis. The Defence for each Accused submitted that there was insufficient evidence to support the allegations charged in the Indictment. On the same day, after hearing the Prosecution’s response, the Chamber gave an oral decision dismissing the Defence motion in all respects. In its decision, the Chamber held that the three Accused had a case to answer on all counts of the Indictment.

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Reconsideration of the Decision on Prosecution’s Motion for Admission of Transcripts and Written Statements Pursuant to Rule 92bis, 9 December 2005.

<sup>2437</sup> *Prosecutor v. Mrkšić, Radić and Šljivančanin*, Case No. IT-95-13/1-T, Decision concerning the Use of Statements given by the Accused, 9 October 2006.

<sup>2438</sup> *Prosecutor v. Mrkšić, Radić and Šljivančanin*, Case No. IT-95-13/1-T, Decision on Motion Seeking Clarification on Count 1 of the Indictment, 19 May 2006.

## 6. Motion to admit evidence in rebuttal

738. On 28 December 2006 the Chamber granted a Prosecution motion to present in rebuttal the evidence of one witness, the audio recording of an interview of this witness, and its transcript.<sup>2439</sup> A subpoena was issued on the same day. The rebuttal witness was not available to testify at the dates set by the Chamber. On 1 February 2007 the Prosecution filed a motion to substitute the rebuttal witness, which was denied by the Chamber on 6 February 2007.<sup>2440</sup> As the rebuttal witness remained unavailable, on 9 February 2007 the Chamber declared the presentation of evidence closed.<sup>2441</sup> On 13 February 2007 the Prosecution filed a motion to reopen the Prosecution case for the limited purpose of receiving as exhibits the audio recording of the interview by the rebuttal witness and its transcript.<sup>2442</sup> On 23 February 2007 the Chamber denied the Prosecution motion as it was not satisfied that without the evidence anticipated from the rebuttal witness the proposed audio recording was of sufficient probative value to be admitted into evidence at that stage of the proceedings, or that its admission would be fair to the Accused.<sup>2443</sup>

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<sup>2439</sup> *Prosecutor v. Mrkšić, Radić and Šljivančanin*, Case No. IT-95-13/1-T, *Confidential* Decision on Prosecution's Motion to Admit Evidence in Rebuttal, 28 December 2006.

<sup>2440</sup> *Prosecutor v. Mrkšić, Radić and Šljivančanin*, Case No. IT-95-13/1-T, *Confidential* Decision on Prosecution's Motion to Substitute Rebuttal Witness, 6 February 2007.

<sup>2441</sup> *Prosecutor v. Mrkšić, Radić and Šljivančanin*, Case No. IT-95-13/1-T, Order Closing Presentation of Evidence, 9 February 2007.

<sup>2442</sup> *Prosecutor v. Mrkšić, Radić and Šljivančanin*, Case No. IT-95-13/1-T, Decision on Motion to Reopen Prosecution Case, 23 February 2007.

<sup>2443</sup> *Prosecutor v. Mrkšić, Radić and Šljivančanin*, Case No. IT-95-13/1-T, Motion to Reopen Prosecution Case, 13 February 2007.