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**IN TRIAL CHAMBER I**

**Before:** **Judge Alphons Orie, Presiding**
**Judge Uldis Ķinis**
**Judge Elizabeth Gwaunza**

**Registrar:** **Mr John Hocking**

**Judgement of:** **15 April 2011**

**PROSECUTOR**

**v.**

**ANTE GOTOVINA**
**IVAN ČERMAK**
**MLADEN MARKAČ**

***PUBLIC***

# JUDGEMENT
## VOLUME II OF II

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## 4.5 Deportation and forcible transfer

### *4.5.1 Overview of the charges*

1509. The Indictment charges the Accused with deportation and inhumane acts (forcible transfer) as crimes against humanity and as underlying acts of the crime against humanity of persecution from at least July 1995 to about 30 September 1995, in all the Indictment municipalities.

1510. According to the Indictment, members of the Krajina Serb population were forcibly transferred and/or deported from the southern portion of the Krajina region to the SFRY, Bosnia-Herzegovina, and/or other parts of Croatia by the threat and/or commission of violent and intimidating acts (including plunder and destruction of property).[1] The Indictment sets out that "[t]he orchestrated campaign to drive the Serbs from the Krajina region" began before Operation Storm largely by the use of propaganda, disinformation and psychological warfare.[2] During the operation, Croatian forces shelled civilian areas, entered civilian Serb settlements at night, and threatened those civilians who had not already fled, with gunfire and other intimidation.[3] Further, according to the Indictment, organized and systematic plunder and destruction of Serb owned or inhabited property was part and parcel of the campaign to drive out any remaining Serbs from the area and/or to prevent or discourage those who had fled from returning.[4] Additionally, "[s]ome who were attempting to flee were rounded up, loaded into vehicles and transported to detention facilities and 'collection centres,' to better ensure that they did not return to their settlements".[5] In the Final Brief, the Prosecution summarized its position and identified two means of deportation and forcible transfer: 1) unlawful artillery attacks on civilian populated areas during Operation Storm, and 2) a subsequent campaign of crimes, including killings, destruction, plunder, and unlawful detentions.[6] In respect of the former, the Trial Chamber recalls its findings with regard to unlawful attacks against civilians and civilian objects in chapters 4.4.3 to 4.4.6 and chapter 5.8.2 (i). The Trial Chamber further recalls its findings in chapters 4.1 to 4.3, some of which are relevant here.

[1] Indictment, para. 49.
[2] Indictment, para. 28.
[3] Indictment, para. 28.
[4] Indictment, para. 31.
[5] Indictment, para. 31.
[6] Prosecution Final Brief, paras 481, 643.



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1511. The Trial Chamber has received much evidence with regard to the plans for and implementation of an evacuation of the Serb civilian population in the Krajina, organized by RSK and SVK authorities. This evidence will be reviewed separately. The Trial Chamber will then analyze incidents of alleged deportation and forcible transfer in the Indictment municipalities. It will deal both with incidents of individuals leaving their homes and general observations of the situation in towns and villages. Further, the Trial Chamber will review the evidence with regard to people who stayed at the UN compound from the beginning of Operation Storm until 16 September 1995, when they were escorted to Serbia. Finally, it will review the evidence with regard to the category of people who left their homes in August and September 1995 and ended up in reception centres in Knin and elsewhere, from where they either moved back to their homes or were escorted to Serbia on 16 September 1995.

### *4.5.2 Serb evacuation plans*

1512. The Trial Chamber has received much evidence with regard to the involvement by RSK and SVK authorities in the transfer of Serbs from towns and villages in the Krajina, through organized evacuations. In this chapter, the Trial Chamber will primarily review the testimonies of representatives of these authorities, in particular Mile Mrkšić and Kosta Novaković. The Trial Chamber has also considered evidence from witnesses who left and the role that the RSK and SVK authorities may have played in their decisions to do so. Most of this evidence is reviewed in other parts of the Judgement.

1513. **Kosta Novaković**, who was a member of the SVK General Staff and assistant commander to Mile Mrkšić during Operation Storm,[7] testified that the RSK Civilian Protection was a part of the RSK Ministry of Defence and that its primary purpose was to protect the civilian population from danger, including wars and natural disasters.[8] Duško Babić was assistant Minister for Defence and head of civilian protection.[9] Novaković testified that there were no plans for evacuation of the population at the RSK level, but that there were such plans at the municipality and village level, for the

[7] P1092 (Kosta Novaković, witness statement, 5 April 2001), pp. 1-2; P1093 (Kosta Novaković, witness statement, 8 March 2007), paras 4-5; Kosta Novaković, T. 11708, 11711, 11775-11776, 11858.
[8] Kosta Novaković, T. 11712.
[9] Kosta Novaković, T. 11713, 11743, 11854, 11860.



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purpose of protecting the population and moving it to safer areas within RSK territory.[10] All municipalities had such evacuation plans.[11] According to Novaković, the villages listed in the evacuation plan for Benkovac municipality as places where people were supposed to go, were located some 20 to 25 kilometres north-east of Benkovac town.[12] None of the municipal plans contemplated a permanent removal of the population or evacuations beyond the RSK.[13]

1514. On 14 July 1995, the RSK Civilian Protection Staff adopted a document entitled "Assessment of threats and possibilities for protection and rescue" dated August 1994.[14] In this document the RSK was assessed as vulnerable since its territory was very long and with relatively small depth.[15] The document contained the Civilian Protection's general position that the population should not abandon villages, especially frontier ones, except in case of immediate danger and planned for an evacuation of the population from zones of the first degree of vulnerability, especially from frontier villages and those on a certain tactical axis. The evacuation plans should include pregnant women, women with children up to ten years old, children between ten and 15, the elderly, the sick, and the frail. The evacuated population was to be received and provided accommodation in less vulnerable zones.[16] On 29 July 1995, the RSK Civilian Protection Staff ordered that the regional civilian protection staffs be immediately activated and were to update sheltering and evacuation plans.[17] On 2 August 1995, Duško Babić sent a document to all regional civilian protection staffs in which he ordered that preparations be immediately conducted for the evacuation of material goods, archives, population registers, movable cultural assets, money, and accompanying documents.[18] He further ordered that daily reports on the progress of preparations be sent to his staff from 4 August 1995 onwards.[19]

[10] P1092 (Kosta Novaković, witness statement, 5 April 2001), p. 11; Kosta Novaković, T. 11716, 11869, 11969.
[11] Kosta Novaković, T. 11723, 11742.
[12] Kosta Novaković, T. 11721.
[13] Kosta Novaković, T. 11723-11724.
[14] D933 (Assessment of threats and possibilities for protection and rescue, 14 July 1995), pp. 2-4, 32.
[15] D933 (Assessment of threats and possibilities for protection and rescue, 14 July 1995), p. 6.
[16] D933 (Assessment of threats and possibilities for protection and rescue, 14 July 1995), pp. 19-20.
[17] D255 (Civilian Protection order, 29 July 1995), p. 1.
[18] Kosta Novaković, T. 11868; D938 (RSK document regarding the evacuation of material, cultural and other assets, Duško Babić, 2 August 1995), p. 2.
[19] D938 (Document by Duško Babić re evacuation of material, cultural and other assets), p. 3.



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1515. **Mile Mrkšić**, the commander of the SVK Main Staff from May 1995,[20] testified that the SVK engaged in an evacuation exercise in Knin because a commander organizing a defence has an obligation to evacuate the civilian population out of an area which will be subject to direct artillery fire and to remove them from the axis of the attack.[21] Footage of the exercise was broadcast on television to show people that the SVK was preparing for war.[22] **Novaković** testified that TV Knin broadcasted evacuation drills in order to familiarize the people with the procedure in case of an attack, including regarding how to survive and what to pack.[23] The evacuation drills consisted of initial procedures such as people boarding vehicles, moving a hundred metres, and returning.[24] Such drills were not conducted often and would usually be conducted on the scale of hamlets of 15-20 households.[25] Novaković had information that drills were carried out in, among other places, Kistanje and Đevrske in Kistanje municipality.[26]

1516. According to **Mrkšić**, the fall of Grahovo, in Bosnia-Herzegovina, was the first indication for persons to leave.[27] In television broadcasts, the RSK stated that people should not leave the area, that they would appeal to the Republika Srpska for assistance and that the presence of UNPROFOR might prevent a large scale attack.[28] On 29 July 1995, Mrkšić issued an order prohibiting families of professional servicemen from moving away from RSK territory and for the SVK to take measures to explain the situation so as to prevent the population leaving the RSK territory.[29] On 30 July 1995, Mrkšić proposed the creation of ad hoc military courts with the power to issue the death penalty, as rich persons who did business on the black-market were leaving and Mrkšić believed that others would follow as a result.[30] These people had received information from those engaged in similar business activities on the other side and wanted to flee before the anticipated HV attack.[31] Upon seeing such people leave, some officers started to send their families away in a clandestine manner.[32] Mrkšić wanted to send a message

[20] Mile Mrkšić, T. 18751, 18993.
[21] Mile Mrkšić, T. 18819-18821, 18840.
[22] Mile Mrkšić, T. 18821.
[23] Kosta Novaković, T. 11859, 11983.
[24] Kosta Novaković, T. 11982-11983.
[25] Kosta Novaković, T. 11983-11984.
[26] Kosta Novaković, T. 11989.
[27] Mile Mrkšić, T. 18827.
[28] Mile Mrkšić, T. 18827.
[29] D1512 (SVK Main Staff order on the moving away of families of professional servicemen and the population from RSK territory, Mile Mrkšić, 29 July 1995).
[30] Mile Mrkšić, T. 18825-18827, 18845, 18995.
[31] Mile Mrkšić, T. 18826-18827.
[32] Mile Mrkšić, T. 18845-18846.



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that fleeing would not be tolerated and all persons should stay and fight.[33] The SVK also erected check-points to stop people from leaving the area, but persons still tried to flee to Slunj.[34] **Novaković** confirmed that, prior to Operation Storm, the RSK faced a serious problem of people leaving the RSK territory and a number of individuals deserted the SVK and left for Republika Srpska or the FRY.[35]

1517. Novaković testified that in the first hours of the attack of 4 August 1995, people were panic-stricken and started leaving Knin.[36] He did not believe that the Croatian breakthrough on the Dinara was an important factor in causing this panic, because few people would have known about it.[37] According to Novaković, at 8 a.m. the population of Obrovac moved out.[38] Novaković saw individual civilians arriving at Knin from the front line area of Drniš in the morning of 4 August 1995, and saw a bigger influx of civilians in the afternoon.[39] These people spent some time in Knin and then moved on.[40] Novaković testified that these people had left Drniš spontaneously, out of fear of shelling, before an evacuation order was issued and before evacuation plans were worked out.[41]

1518. **Mrkšić** testified that during the shelling, villagers tried to find refuge with their relatives or in the wooded areas and, individually or in groups, left towards Licka Kaldrma and Srb, in Donji Lapac municipality.[42] The only way out of Knin was the curving, winding road leading towards Otrić, in Gračac municipality, Srb and Grahovo.[43] Had the HV captured this exit and thus encircled the SVK in Knin, then nobody could have left the town, including the command. According to Mrkšić, people left Knin prior to the HV troops advancing into Knin because they feared encirclement, but also because they could not stand the firing from the mortars and rocket launchers any more.[44] People were also afraid because of the excessive force used by the Croatian

[33] Mile Mrkšić, T. 18825-18826.
[34] Mile Mrkšić, T. 18825-18826.
[35] Kosta Novaković, T. 11869-11870, 11873, 11875; D923 (Report by General Mile Mrkšić, Commander of the SVK to the Chief of Staff of the VJ, 26 August 1995), p. 16.
[36] Kosta Novaković, T. 11726, 11792, 11801-11802.
[37] Kosta Novaković, T. 11885, 11887-11888.
[38] Kosta Novaković, T. 11726, 11792.
[39] Kosta Novaković, T. 11864, 11967, 11984.
[40] Kosta Novaković, T. 11984.
[41] Kosta Novaković, T. 11864, 11967, 11985.
[42] Mile Mrkšić, T. 19065-19066.
[43] Mile Mrkšić, T. 18832, 19079.
[44] Mile Mrkšić, T. 19079.



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government previously in Western Slavonia.[45] The Supreme Council, including supreme commander Martić and the President of the Assembly met and Mrkšić explained that if the civilian population were to withdraw, defending the area would be a big problem.[46] After 4 p.m. on 4 August 1995, Martić told Mrkšić that he had consulted Milan Babić, as a member of the Supreme Command, who was in Belgrade, by telephone and that they had agreed that the civilian population should be moved from the Krajina to Srb, in Donji Lapac municipality.[47] The Supreme Council decided that civilians should leave the territory "into the depth" so that they would be out of harm's way.[48]

1519. **Novaković** testified that at 4:30 p.m. on 4 August 1995, Mrkšić summoned him to his office, where Martić and a number of military and civilian officials were present.[49] Mrkšić informed those present that Martić had spoken with Babić and with Belgrade and Pale, which Novaković understood to mean that Martić had also spoken with Milošević and Karadžić.[50] Martić had also consulted the Ministers of Defence and of the Interior.[51] Mrkšić said that the Supreme Defence Council had decided to evacuate the population from Knin, Benkovac, Obrovac, Drniš, and Gračac municipalities.[52] Novaković was told that the population should be relocated to Srb and Lapac in Donji Lapac municipality and that he should write a decision to that effect.[53] Novaković went back to his office and wrote the decision from 4:45 p.m. to 5:15 p.m.[54] He then took it to Martić who signed it.[55]

1520. The order by Milan Martić, with the time and date 4:45 p.m. on 4 August 1995, called for the evacuation of all inhabitants not fit for combat from the municipalities of

[45] Mile Mrkšić, T. 18935.
[46] Mile Mrkšić, T. 18837, 18937.
[47] Mile Mrkšić, T. 18930, 18934.
[48] Mile Mrkšić, T. 18835, 18837, 18839-18840.
[49] Kosta Novaković, T. 11728, 11811, 11971. See also D1493 (Witness AG-58, witness statement, 20 February 2007), para. 12; D1494 (Witness AG-58, witness statement, 8 June 2009), p. 2; Witness AG-58, T. 18477.
[50] P1092 (Kosta Novaković, witness statement, 5 April 2001), p. 11; Kosta Novaković, T. 11729.
[51] P1092 (Kosta Novaković, witness statement, 5 April 2001), p. 11; Kosta Novaković, T. 11729, 11811, 11974-11975.
[52] Kosta Novaković, T. 11729, 11805-11806, 11811, 11974-11975; D923 (Report by General Mile Mrkšić, Commander of the SVK to the Chief of Staff of the VJ, 26 August 1995), p. 7; D929 (Video and transcript of an interview with Milan Martić, Banja Luka, Autumn 1995), p. 2.
[53] Kosta Novaković, T. 11729, 11743, 11812.
[54] Kosta Novaković, T. 11727, 11730, 11805, 11972.
[55] P1092 (Kosta Novaković, witness statement, 5 April 2001), p. 11; Kosta Novaković, T. 11730, 11972; D923 (Report by General Mile Mrkšić, Commander of the SVK to the Chief of Staff of the VJ, 26 August 1995), p. 7.



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Knin, Benkovac, Obrovac, Drniš, and Gračac.[56] The order further stated that the evacuation was to be carried out in a planned manner according to prepared plans, along routes leading towards Knin and then through Otrić in Gračac municipality, toward Srb in Donji Lapac municipality and Lapac.[57] The order also stated that help for the evacuation should be sought from the UNPROFOR Sector South headquarters.[58]

1521. **Novaković** emphasized that this decision applied exclusively to civilians from Northern Dalmatia and Gračac municipality in Lika, but not to other areas nor to members of the army and police.[59] According to Novaković, prior to the signing of the decision, there was no discussion about moving the population to Bosnia-Herzegovina.[60] Novaković testified that the main reason for the evacuation of the population was to protect it from further Croatian artillery attacks.[61] In addition, a part of the civilian population was already on the move, and the decision was intended to bring some order to "the evacuation process".[62] According to Novaković, at this time, the SVK units on the Senj-Vrlika axis, as well as those on the western slope of Mount Velebit at Mali Alan, in Gračac municipality, were threatened.[63] As a result, there was a risk that the army and population in Dalmatia would find themselves encircled, if the only route to Donji Lapac via Otrić[64], in Gračac municipality was cut off by a military advance from Gospić, across Mount Velebit, and via Mali Alan, Gračac, and Malovan, all in Gračac municipality.[65] Novaković further testified that "the prepared plans" mentioned in the evacuation order referred to the municipal and village-level plans on evacuation of the five municipalities mentioned in the decision.[66] Novaković confirmed that the population of Benkovac and Obrovac should have moved through Pađene, in

[56] D137 (Civilian evacuation order issued by Milan Martić, 4 August 1995). See also D1449 (Article of Martić interview in Vreme, 24 August 1996).
[57] D137 (Civilian evacuation order issued by Milan Martić, 4 August 1995). See also D1449 (Article of Martić interview in Vreme, 24 August 1996).
[58] D137 (Civilian evacuation order issued by Milan Martić, 4 August 1995).
[59] P1092 (Kosta Novaković, witness statement, 5 April 2001), p. 11; Kosta Novaković, T. 11743, 11805.
[60] Kosta Novaković, T. 11743, 11790-11791, 11806, 11972, 11975; D923 (Report by General Mile Mrkšić, Commander of the SVK to the Chief of Staff of the VJ, 26 August 1995), p. 7.
[61] Kosta Novaković, T. 11730, 11741.
[62] Kosta Novaković, T. 11792, 11977-11978; D923 (Report by General Mile Mrkšić, Commander of the SVK to the Chief of Staff of the VJ, 26 August 1995), pp. 7, 21.
[63] Kosta Novaković, T. 11728.
[64] On T. 11729 witness initially says via Otocac, but given the direction of the route, the Trial Chamber understands that to be a mistake.
[65] Kosta Novaković, T. 11729, 11960.
[66] Kosta Novaković, T. 11742-11743.



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Knin municipality, rather than through Knin.[67] According to Novaković, the evacuation would have taken place even if the decision had not been taken.[68]

1522. **Mrkšić** commented that the decision to evacuate was made because of the fear of encirclement and fears regarding the subsequent treatment the civilian population would receive at the hands of the Croatian forces.[69] Mrkšić further believed that had the evacuation not been ordered and had the SVK been encircled at Otrić, the Krajina Serbs would have suffered great losses.[70] The SVK was left with the choice of either fighting in an encirclement at the cost of many human lives, or evacuating to Otrić, in Gračac municipality, Srb and on to the territory that was under SVK control.[71] According to Mrkšić, the plan for the evacuation was not to leave the RSK, but to move the civilian population to the Srb area until the international community intervened and pressured Croatia to stop the advance, after which the people could return to their villages.[72] In a report to the Chief of the Main Staff of the VJ on 26 August 1995, Mrkšić wrote that the evacuation decision was for a temporary evacuation to the area of Srb and Donji Lapac, not to the area of the Republika Srpska or the FRY.[73]

1523. Mrkšić testified that the evacuation order was distributed at 5:20 p.m. to the brigades and municipalities to which it referred, being the Dalmatia Corps, the Benkovac, Obrovac, and Drniš Brigades, and to the municipalities of Obrovac and Gračac, being the area that could be cut off and encircled.[74] The order was not distributed directly to the civilian population.[75] Mrkšić did not watch TV or listen to the radio at the time, but believed the evacuation order was not publicly broadcast because third parties, including the enemy, could have heard the broadcast and abused the information to launch an all-out attack.[76]

1524. **Novaković** testified that at about 6 p.m. on 4 August 1995, at a meeting attended by RSK Civilian Protection Staff officials, including Duško Babić, several police

[67] Kosta Novaković, T. 11747, 11794.
[68] Kosta Novaković, T. 11977-11978; D923 (Report by General Mile Mrkšić, Commander of the SVK to the Chief of Staff of the VJ, 26 August 1995), pp. 7, 21.
[69] Mile Mrkšić, T. 18935.
[70] Mile Mrkšić, T. 18836, 18840-18841, 18915, 18929, 18935.
[71] Mile Mrkšić, T. 18832, 18841, 19150.
[72] Mile Mrkšić, T. 18837, 19076-19077.
[73] D923 (Report by General Mile Mrkšić, Commander of the SVK to the Chief of Staff of the VJ, 26 August 1995), p. 7.
[74] Mile Mrkšić, T. 18837, 18937-18938, 19143-19144.
[75] Mile Mrkšić, T. 19143.
[76] Mile Mrkšić, T. 19144-19145, 19149.



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officers and five or six journalists, he read out the decision on the evacuation of the civilian population from the areas of Northern Dalmatia and Gračac municipality in Lika.[77] He then handed the decision over to Duško Babić, after which it was Babić's responsibility to implement it.[78] Novaković did not read out a route for persons to travel further than Srb or Lapac at the meeting.[79] The decision was not forwarded through the official mail and was not publicised through the media, which were not functioning at the time, but, according to Novaković, the representatives of Civilian Protection informed the population about the evacuation.[80] The decision on evacuation stopped being a secret after Novaković had read it out at 6 p.m. on 4 August 1995, although they told the journalists present to wait with publishing the decision until it had been conveyed through the Civilian Protection's channels.[81] At the same time, at a meeting at the main headquarters, the commander of the Northern Dalmatian Corps and brigade commanders were acquainted with the decision.[82] As Novaković read out the decision, UNCRO representatives arrived.[83]

1525. **Alain Forand**, UNCRO Sector South Commander from 8 July 1995 to 10 October 1995,[84] testified that in the evening of 4 August 1995, at 6 p.m., he and Al-Alfi met several SVK and RSK officials at the RSK parliament in Knin.[85] Minutes of the meeting, recorded by **Alain Gilbert**, reflect that the meeting was chaired by Novaković, and attended by the Minister of Information, the Minister of Health, the SVK Chief of Residents Evacuation, Forand, the CAC, ECMM, and the UNHCR Assistant Head of Office.[86] Novaković stated that the Supreme Defence Council had decided on the general evacuation of the Northern Dalmatia of all women, elderly, and boys younger than 14.[87] According to **Forand**, the SVK representatives appeared totally confused and

[77] P1092 (Kosta Novaković, witness statement, 5 April 2001), p. 11; Kosta Novaković, T. 11743-11745, 11747, 11793-11794, 11878, 11815.
[78] Kosta Novaković, T. 11745, 11794, 11882.
[79] Kosta Novaković, T. 11747, 11794-11795, 11972, 11975.
[80] P1092 (Kosta Novaković, witness statement, 5 April 2001), p. 11; Kosta Novaković, T. 11813-11814.
[81] Kosta Novaković, T. 11815.
[82] P1092 (Kosta Novaković, witness statement, 5 April 2001), p. 11.
[83] Kosta Novaković, T. 11745.
[84] P330 (Alain Forand, witness statement, 20 August 1996), pp. 2, 15; P333 (Alain Forand, witness statement, 25 January 2008), para. 2; Alain Forand, T. 4098-4099, 4180, 4186.
[85] P330 (Alain Forand, witness statement, 20 August 1996), p. 5; P331 (Alain Forand, witness statement, 29 September 1997), pp. 5, 10-11; Alain Forand, T. 4380, 4384; P399 (Video and transcript of an interview with Alain Forand), p. 1; P401 (Presentation by Alain Forand, 24 June 1996), p. 23.
[86] P589 (Alain Gilbert, witness statement, 5 February 2008), paras 24-25, 27; Alain Gilbert, T. 6467-6468; P592 (Minutes of a meeting between SVK and UNPROFOR officials, 4 August 1995).
[87] P589 (Alain Gilbert, witness statement, 5 February 2008), para. 24; Alain Gilbert, T. 6467-6468; P592 (Minutes of a meeting between SVK and UNPROFOR officials, 4 August 1995).



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in panic, and they requested the UN to supply 450 trucks and 70,000 litres of fuel to evacuate around 32,000 civilians from Knin and the surrounding areas that same night.[88] Forand informed them that the UN was prepared to help and to give fuel to civilians passing by the UN compound, but could not provide any trucks.[89] He added that he would need the approval of his superiors as well as UNPROFOR headquarters and UNHCR amongst others, as well as further details from the SVK.[90] According to the minutes of the meeting, Forand raised concerns as to how people would be advised of the plan to evacuate, whether people were willing to leave, and what those people would take with them.[91] The minutes also record that the SVK authorities seemed unprepared for a decision to evacuate.[92] Forand testified that at the end of the meeting he was told that a plan for evacuation would be ready within a few hours.[93] Forand never saw it.[94] Forand testified that the phone lines were not working, so he gave the RSK persons a radio to coordinate humanitarian assistance.[95] The Trial Chamber has received further evidence on the meeting between Forand and Serb authorities on 4 August 1995 from Hussein Al-Alfi, as reviewed in chapter 4.4.3.

1526. Both Novaković and Mrkšić indicated that some of the information about evacuation spread to the public at the time did not emanate from RSK or SVK authorities. **Novaković** testified that he heard the broadcasts operating on Radio Knin frequencies at a time when he was in the presence of the bosses, editors, and journalists of Radio Knin and he knew that Radio Knin was without power.[96] These radio

[88] P330 (Alain Forand, witness statement, 20 August 1996), p. 5; P331 (Alain Forand, witness statement, 29 September 1997), p. 11; Alain Forand, T. 4422; P343 (UNCRO Sector South daily situation report, 11 p.m., 4 August 1995), p. 5; P399 (Video and transcript of an interview with Alain Forand), p. 1; P401 (Presentation by Alain Forand, 24 June 1996), pp. 23-24; D328 (Radio interview of Forand with the Canadian Broadcasting Service, 4 August 1995), p. 2; D337 (Letter from Yasushi Akashi to Kofi Annan, 4 August 1995), para. 2. See also P589 (Alain Gilbert, witness statement, 5 February 2008), para. 24; P592 (Minutes of a meeting between SVK and UNPROFOR officials, 4 August 1995).
[89] P330 (Alain Forand, witness statement, 20 August 1996), p. 5; P331 (Alain Forand, witness statement, 29 September 1997), p. 11; Alain Forand, T. 4380-4381; P401 (Presentation by Alain Forand, 24 June 1996), p. 24.
[90] P589 (Alain Gilbert, witness statement, 5 February 2008), para. 24; P592 (Minutes of a meeting between SVK and UNPROFOR officials, 4 August 1995).
[91] P589 (Alain Gilbert, witness statement, 5 February 2008), para. 24; P592 (Minutes of a meeting between SVK and UNPROFOR officials, 4 August 1995).
[92] P589 (Alain Gilbert, witness statement, 5 February 2008), paras 24-25; P592 (Minutes of a meeting between SVK and UNPROFOR officials, 4 August 1995).
[93] P330 (Alain Forand, witness statement, 20 August 1996), p. 5; P331 (Alain Forand, witness statement, 29 September 1997), p. 11; Alain Forand, T. 4375-4376; P399 (Video and transcript of an interview with Alain Forand), pp. 1-2; P401 (Presentation by Alain Forand, 24 June 1996), p. 24.
[94] P330 (Alain Forand, witness statement, 20 August 1996), p. 5; P331 (Alain Forand, witness statement, 29 September 1997), p. 11; Alain Forand, T. 4375-4376.
[95] Alain Forand, T. 4387, 4389-4390.
[96] Kosta Novaković, T. 11978-11980.



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broadcasts called upon people to leave the Krajina, specifying the routes they were to take.[97] Novaković also testified that Croatian authorities threw leaflets throughout the RSK territory purporting to be from RSK authorities calling upon the people to leave, although he did not indicate when this happened or any source for his knowledge.[98]

1527. P480 is a note, headed by the words "Republic of Serbian Krajina" and "Distribute by leaflet", and contained the following text: "Because of the attack by the Ustasha army that we are expecting, and in order to secure conditions for mounting a decisive defence I hereby order that the entire civilian population is to withdraw from the sector of combat operations by the route Benkovac – Žegar – Srb". The note contained the name Colonel General Mile Mrkšić, although it was not signed. The stamp on the note was in Cyrillic with exception for some of the letters.[99] During his testimony, **Mrkšić** was shown this purported evacuation order in his name and testified that he had not seen it before and had not issued such an order.[100] On 7 August 1995, the commander of the HV 81st Guards Brigade, which was stationed in the area of Bosansko Grahovo in Bosnia-Herzegovina, reported that in the night of 6 August 1995 a helicopter had been spotted, dropping leaflets.[101] To his report, he attached an example of the leaflets.[102] The leaflet was headed "Republic of Serbian Krajina, Ministry of Defence, Deliver as leaflet" and it read: "Due to the expected attack by the Ustasha army, in order to provide conditions for a decisive defence, I hereby order complete evacuation of civilian population from the area of combat activities, along the following axis: Knin-Plavno-Lička Kaldrma". The leaflet contained the name Colonel General Mile Mrkšić, although it was not signed. The stamp on the note was in Cyrillic with exception for some of the letters.[103] Mrkšić testified that he had heard from civilians who had left the Krajina that aircraft had dropped printed flyers containing instructions ostensibly on his behalf as well as information that Mrkšić had died, and his mother later told him that leaflets had been disseminated stating that the RSK had been dissolved, all of which Mrkšić believed to be Croatian propaganda.[104]

[97] Kosta Novaković, T. 11978, 11987-11988.
[98] P1092 (Kosta Novaković, witness statement, 5 April 2001), pp. 11-12.
[99] P480 (Undated note with regard to the withdrawal of civilian population).
[100] Mile Mrkšić, T. 19145-19146.
[101] P483 (Report by the commander of HV 81st Guards Brigade, 7 August 1995), pp. 1, 3-4.
[102] P483 (Report by the commander of HV 81st Guards Brigade, 7 August 1995), pp. 3, 7.
[103] P483 (Report by the commander of HV 81st Guards Brigade, 7 August 1995), p. 7.
[104] Mile Mrkšić, T. 18965, 19002, 19143-19144, 19146. See also P484 (Report by the commander of the Zagreb airport police station, 5 August 1995).



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1528. According to a 9 August 1995 report by Kovačević, the commander of the SVK 7th Corps, during the night between 4 and 5 August 1995, there was "a general chaos and the disorganized evacuation of the population and the units commenced". According to the report, on 5 August 1995, the entire population of the Dalmation region of approximately 50,000 to 60,000 persons, evacuated over the Otrić notch, along the route Otrić-Srb-Donji Lapac.[105] According to **Mrkšić**, while the SVK's move to Srb had proceeded in an organized manner, the withdrawal away from Srb was spontaneous as people rejoined their families and left in a variety of military and civilian vehicles, including tanks and agricultural machinery.[106] Mrkšić did not know who decided to withdraw the SVK units from the RSK areas of Otrić, Srb, and Donji Lapac towards Banja Luka and Bosanski Petrovac, in Bosnia-Herzegovina, but testified that the withdrawal was necessary as there were some 50,000 to 60,000 people on a small area without food or shelter and the Croatian forces were expected to push forward.[107] Crossing over into the Republika Srpska, SVK soldiers laid down their arms.[108] According to Kovačević's 9 August 1995 report, on 6 and 7 August 1995, the SVK units passed through Bosanski Petrovac, in Bosnia-Herzegovina, in a disorganized manner.[109] By 10 August 1995, the majority of the SVK units had left the RSK area for Republika Srpska, although some units remained in the RSK area, in the regions of Lika and Mount Dinara.[110] These units were cut off from communication with command and they broke up into smaller groups of five or six and tried to leave the area clandestinely through the woods and over the River Una into Ostrelj, in Bosnia-Herzegovina.[111] Most of these groups reached Republika Srpska between a week and 20 days later.[112]

1529. **Novaković** testified that despite the decision that the population be evacuated within the RSK, on 4 and 5 August 1995, the civilian population went to Lapac and Srb and from there to Martin Brod, Bosanski Petrovac and then to Banja Luka, all in

[105] D1516 (Report on the conduct of combat activities of the 7th Corps from 29 July to 6 August 1995, Slobodan Kovačević, 9 August 1995), p. 2.
[106] Mile Mrkšić, T. 19004-19006.
[107] Mile Mrkšić, T. 18945, 19003-19004.
[108] Mile Mrkšić, T. 19006; D1516 (Report on the conduct of combat activities of the 7th Corps from 29 July to 6 August 1995, Slobodan Kovačević, 9 August 1995), p. 3.
[109] D1516 (Report on the conduct of combat activities of the 7th Corps from 29 July to 6 August 1995, Slobodan Kovačević, 9 August 1995), p. 3.
[110] Mile Mrkšić, T. 19007, 19010.
[111] Mile Mrkšić, T. 19007-19010.
[112] Mile Mrkšić, T. 19007.



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Bosnia-Herzegovina.[113] Civilians left in tractors, civilian vehicles, and occasionally a military vehicle.[114] Many soldiers left their units in order to take care of their families.[115] As a result, those units collapsed.[116] In a report to the Chief of the Main Staff of the VJ on 26 August 1995, Mrkšić noted that on 5 and 6 August 1995, some of the SVK formations stopped fighting and mingled with the refugee columns.[117]

1530. With regard to Knin town, **Witness 56**, a Serb policeman in Knin between May 1994 and 5 August 1995,[118] testified that on 28 or 29 July 1995, he attended a meeting at the northern barracks where protection of the civilian population in the event of an attack was discussed.[119] The meeting was chaired by the commander of the North Dalmatia Corps, Veso Kozomara.[120] The commander of the civilian protection in the Knin area, Milivoj Dondur, was given the task of preparing an evacuation plan, that included taking care of the schedule of buses and fuel supplies, for women, children, and elderly.[121] The witness never saw such a plan.[122] From the witness's observations and from what he heard from people leaving the area, people just spontaneously packed their belongings and left which triggered other people to do the same.[123] According to the witness, if a plan existed, it was not followed on 4 August 1995.[124]

1531. Witness 56 testified that in the days before "the attack" small numbers of people left the towns of Knin, Strmica, and Golubić and went to surrounding villages.[125] On 3 August 1995, only those who worked in essential civilian posts, elderly males, women, and children were in Knin.[126] The witness testified that at 5 p.m. on 4 August 1995,

[113] P1092 (Kosta Novaković, witness statement, 5 April 2001), p. 11; Kosta Novaković, T. 11795, 11806, 11976.
[114] Kosta Novaković, T. 11802, 11883.
[115] Kosta Novaković, T. 11802, 11930-11931.
[116] Kosta Novaković, T. 11802.
[117] D923 (Report by General Mile Mrkšić, Commander of the SVK to the Chief of Staff of the VJ, 26 August 1995), pp. 9-10.
[118] P286 (Witness 56, witness statement, 5 December 1996), pp. 1-2; P287 (Witness 56, witness statement, 18 September 2000), p. 1; P288 (Witness 56, witness statement, 12 June 2007), p. 1, para. 2; P289 (Witness 56, witness statement, 21 May 2008), p. 1; Witness 56, T. 3686.
[119] P288 (Witness 56, witness statement, 12 June 2007), para. 36; Witness 56, T. 3578, 3653, 3696.
[120] P288 (Witness 56, witness statement, 12 June 2007), para. 36; Witness 56, T. 3578, 3696.
[121] P287 (Witness 56, witness statement, 18 September 2000), p. 8; P288 (Witness 56, witness statement, 12 June 2007), paras 36, 38; Witness 56, T. 3576-3578, 3695.
[122] P287 (Witness 56, witness statement, 18 September 2000), p. 8; P288 (Witness 56, witness statement, 12 June 2007), para. 38; Witness 56, T. 3648.
[123] Witness 56, T. 3647-3648.
[124] P288 (Witness 56, witness statement, 12 June 2007), para. 38.
[125] P288 (Witness 56, witness statement, 12 June 2007), para. 12; Witness 56, T. 3696.
[126] P288 (Witness 56, witness statement, 12 June 2007), para. 12.



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there was a meeting at the Ministry of Interior headquarters.[127] Present at this meeting were the Minister of the Interior Tošo Pajić, Nikola Rastović, Neboša Pavković, and Rajko Ćosić.[128] It was decided to retreat Ministry of Interior facilities to a reserve position, a school located between Pađene in Knin municipality and Oton in Ervenik municipality and a new meeting was scheduled for midnight.[129] At that time, both soldiers and civilians from Drniš, Vrlika, and Knin were leaving on a massive scale.[130] Around 10 p.m., the witness left the police station and went to Oton.[131] Upon returning to Knin, he saw the road leaving Knin crowded with people trying to leave the town.[132] Between midnight and 1 a.m., the witness saw a lot of officers, as well as Mrkšić and Martić in the SVK command headquarters.[133] As no one had shown up for the midnight meeting, around 1 a.m., the witness left Knin for Benkovac in order to see his family.[134] However, his family had already left for Bosnia-Herzegovina.[135] The situation in Benkovac was a little calmer with only two or three houses on fire (towards the "Kastel" and behind the post office towards the barracks) and some people leaving town in columns towards Kistanje.[136] Around 3 a.m. on 5 August 1995, the witness saw that the villages of Kistanje and Đevrske in Kistanje municipality were abandoned.[137] The witness estimated the populations of Kistanje before Operation Storm at around 1,500 people and of Đevrske at around 1,000 people.[138] On his way from Kistanje to Knin, the witness saw convoys of refugees going in the direction of Pađene.[139] The convoy contained mostly civilians but also some military persons and military vehicles transporting civilians and military equipment.[140] After reaching Srb in Donji Lapac municipality at 4 p.m. on 5 August 1995, the column continued in the direction of

[127] P286 (Witness 56, witness statement, 5 December 1996), pp. 4, 7; P288 (Witness 56, witness statement, 12 June 2007), para. 29; Witness 56, T. 3660.
[128] P288 (Witness 56, witness statement, 12 June 2007), para. 29.
[129] P288 (Witness 56, witness statement, 12 June 2007), para. 30; Witness 56, T. 3661-3662.
[130] Witness 56, T. 3720, 3724.
[131] P286 (Witness 56, witness statement, 5 December 1996), p. 8; Witness 56, T. 3661.
[132] P286 (Witness 56, witness statement, 5 December 1996), p. 8; Witness 56, T. 3608.
[133] Witness 56, T. 3543.
[134] P286 (Witness 56, witness statement, 5 December 1996), p. 8; P287 (Witness 56, witness statement, 18 September 2000), p. 8; P288 (Witness 56, witness statement, 12 June 2007), paras 26, 32; Witness 56, T. 3543.
[135] Witness 56, T. 3546-3547.
[136] P286 (Witness 56, witness statement, 5 December 1996), p. 8; P288 (Witness 56, witness statement, 12 June 2007), para. 26; Witness 56, T. 3714-3715.
[137] P286 (Witness 56, witness statement, 5 December 1996), p. 8; P288 (Witness 56, witness statement, 12 June 2007), para. 27.
[138] Witness 56, T. 3545.
[139] P286 (Witness 56, witness statement, 5 December 1996), p. 8.
[140] P286 (Witness 56, witness statement, 5 December 1996), p. 9; Witness 56, T. 3545-3546, 3697.



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Martin Brod in Bosnia-Herzegovina.[141] The witness, together with some friends, took a different route through the woods towards Drvar in Bosnia-Herzegovina.[142] The convoy proceeded in the direction of Bravsko and on 7, 8, or 9 August 1995, the witness saw a plane, on which he thought he saw a Croatian coat of arms, flying above Petrovac where he was located at the time, following the convoy.[143] Members of the Knin police who were part of the convoy had their own vehicles and smaller weapons.[144] A few minutes later, the witness heard explosions.[145] When arriving at the scene, around twelve to fifteen kilometres from Petrovac, the witness saw that two non-military trucks, one of them carrying canned food, and several cars had been hit.[146] The witness testified that those who left Knin and surroundings on 4 and 5 August 1995 only took their most essential belongings as they wanted to return to their homes after the shelling.[147] Through conversations with people in the column, the witness gathered that people had stories of survivors from Operation Flash, which had been broadcast on TV and which conveyed that one had to flee to save one's life, on their minds when they decided to flee.[148]

1532. With regard to Benkovac municipality, the Trial Chamber has received evidence from two witnesses who were involved in assisting the population to leave the municipality. **Dušan Sinobad**, Director of a state-run transport company called "Zagrebacki Transporti" and as of 1990 "Auto Transport Benkovac" from 1984 to 1995 at the branch office in Benkovac,[149] testified that his job included preparing evacuation plans for any type of emergency.[150] The witness stated that his company owned 20 buses and had about 35 drivers.[151] According to Sinobad, the Civilian Protection staff ordered him to prepare such a plan in 1993.[152] Sinobad stated that in case of danger

[141] P286 (Witness 56, witness statement, 5 December 1996), p. 9; P288 (Witness 56, witness statement, 12 June 2007), para. 33; P289 (Witness 56, witness statement, 21 May 2008), para. 1; Witness 56, T. 3542.
[142] P286 (Witness 56, witness statement, 5 December 1996), p. 9; P289 (Witness 56, witness statement, 21 May 2008), para. 1; Witness 56, T. 3542.
[143] P286 (Witness 56, witness statement, 5 December 1996), p. 9; P287 (Witness 56, witness statement, 18 September 2000), p. 8; P288 (Witness 56, witness statement, 12 June 2007), para. 35; P289 (Witness 56, witness statement, 21 May 2008), para. 1.
[144] Witness 56, T. 3722-3723.
[145] P286 (Witness 56, witness statement, 5 December 1996), p. 9.
[146] P286 (Witness 56, witness statement, 5 December 1996), p. 9; Witness 56, T. 3546.
[147] P286 (Witness 56, witness statement, 5 December 1996), p. 10.
[148] Witness 56, T. 3548.
[149] P2362 (Dušan Sinobad, witness statement, 7 March 2007), p. 1, paras 1-4; Dušan Sinobad, T. 16938.
[150] P2362 (Dušan Sinobad, witness statement, 7 March 2007), para. 4.
[151] P2362 (Dušan Sinobad, witness statement, 7 March 2007), para. 3.
[152] P2362 (Dušan Sinobad, witness statement, 7 March 2007), para. 4.



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caused by military operations, the drivers would receive instructions from a member of the military regarding where to drive the civilian population.[153] Sinobad stated that on 4 August 1995 at about 4 p.m., one member of the war staff of the municipality called the witness to the municipal office.[154] The war staff included the mayor Stevo Vukša, his advisers, the president of the municipality, and other prominent officials of the municipality. At that meeting, the war staff ordered the witness to prepare his buses with fuel for the transfer of the civilians to safer areas. According to the witness, there was no explanation as to whether any order had been received for evacuation.[155] Sinobad also received instructions that the population should return on the same buses once the situation had calmed down.[156] Sinobad stated that he issued orders to his dispatchers to fill up with fuel the 20 buses he had at his disposal at that time and get them to the bus station.[157] According to Sinobad, people from Benkovac started arriving at the bus station at about 6-7 p.m. and it was primarily women and children and those from the villages who did not have their own transport. The witness stated that the reason these people had come to the bus station was mainly out of fear because according to the witness there was no order issued by the municipal authorities for the civilian population to leave.[158] Sinobad testified that people who had their own means of transportation started leaving the town at 4 p.m. and that by 8 p.m. columns had already formed.[159] The evacuation plan was not known to the population but only to the municipal staff.[160] The first bus left at about 7 p.m. with Bosanski Petrovac in Bosnia-Herzegovina as its destination, in accordance with the instructions given at the meeting at the municipal office.[161] According to the witness, there was panic at the bus station as the people did not know when the HV would enter the town. Sinobad stated that the buses were leaving around every ten minutes with the last bus leaving at about 11 p.m. on 4 August 1995.[162] At 4 a.m. on 5 August 1995, Sinobad saw people from "the villages" leaving on tractors and tanks.[163] On 5 August 1995, the witness left with his

[153] P2362 (Dušan Sinobad, witness statement, 7 March 2007), para. 5; Dušan Sinobad, T. 16970-16971.
[154] P2362 (Dušan Sinobad, witness statement, 7 March 2007), paras 14, 21; Dušan Sinobad, T. 16949-16950.
[155] P2362 (Dušan Sinobad, witness statement, 7 March 2007), para. 21; Dušan Sinobad, T. 16950.
[156] P2362 (Dušan Sinobad, witness statement, 7 March 2007), para. 26.
[157] P2362 (Dušan Sinobad, witness statement, 7 March 2007), para. 24.
[158] P2362 (Dušan Sinobad, witness statement, 7 March 2007), para. 25.
[159] Dušan Sinobad, T. 16948-16949.
[160] P2362 (Dušan Sinobad, witness statement, 7 March 2007), para. 25.
[161] P2362 (Dušan Sinobad, witness statement, 7 March 2007), paras 21, 26; Dušan Sinobad, T. 16950.
[162] P2362 (Dušan Sinobad, witness statement, 7 March 2007), para. 27.
[163] P2362 (Dušan Sinobad, witness statement, 7 March 2007), para. 28.



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manager and Mile Šuša, a soldier, towards Knin and on to Bosanski Petrovac.[164] After a night in Banja Luka, the witness headed towards Belgrade.[165]

1533. **Đuro Vukašinović**, the Serb acting Deputy Chief of the Public Security Station for the RSK in Benkovac during Operation Storm,[166] stated that on 4 August 1995 around 4:15 p.m. three representatives of the local government, Stevan Vukša (Municipal President in Benkovac), Ratomir Ivaniš (President of the Executive Council), and Radomir Kužet (lawyer), visited him at his office in order to organize the movement of the civilians from the areas at risk.[167] The witness testified that Vukša informed him that they should organize the displacement of the civilian population to the area of Srb and Lika.[168] The witness agreed with them that they would meet at around 6 p.m. at the municipality building in order to evacuate the civilians.[169] After that the witness went home at around 5 p.m. where he found his wife and children hiding in the neighbour's basement.[170] Around 6 p.m. Vukašinović returned to the municipal hall where he met the three representatives of the government, the manager of civil protection, a representative of the bus company, a representative from the petrol station, and other managers of companies who had trucks, and they planned the temporary evacuation of civilians.[171] However, according to the witness, the people in Benkovac were already panicking due to the shelling and news of military setbacks and had around 4 p.m. started fleeing the area with any and all vehicles they were able to find.[172] The witness stated that the authorities organized transportation by buses from the bus station and that they used the buses they had at their disposal at that time.[173] According to the witness, Benkovac was deserted by the evening.[174] After the meeting the witness returned to the police station where he remained the entire night.[175] Between 8 p.m. and 10 p.m. the witness arranged for transportation to Benkovac for the retreating

[164] P2362 (Dušan Sinobad, witness statement, 7 March 2007), para. 29; Dušan Sinobad, T. 16968.
[165] P2362 (Dušan Sinobad, witness statement, 7 March 2007), para. 30.
[166] D1499 (Đuro Vukašinović, witness statement, 3 April 2007), p. 1, paras 1, 4; Đuro Vukašinović, T. 18533, 18537, 18566.
[167] D1499 (Đuro Vukašinović, witness statement, 3 April 2007), paras. 10, 11; Đuro Vukašinović, T. 18556.
[168] Đuro Vukašinović, T. 18556.
[169] D1499 (Đuro Vukašinović, witness statement, 3 April 2007), para. 11.
[170] D1499 (Đuro Vukašinović, witness statement, 3 April 2007), paras 11, 13.
[171] D1499 (Đuro Vukašinović, witness statement, 3 April 2007), para. 14; Đuro Vukašinović, T. 18573.
[172] D1499 (Đuro Vukašinović, witness statement, 3 April 2007), para. 15; Đuro Vukašinović, T. 18558-18560, 18590.
[173] Đuro Vukašinović, T. 18559.
[174] Đuro Vukašinović, T. 18590.
[175] D1499 (Đuro Vukašinović, witness statement, 3 April 2007), para. 16.



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police officers who had walked from the Dinara Mountains to Kistanje, and he also gave fuel to the police officers who had cars and told them to come back at 5 a.m.[176] At 11 p.m. a soldier told the witness that the 3rd Brigade, located toward Biograd and the sea, had been told to evacuate. According to Vukašinović, when the 3rd Brigade evacuated it opened the way for the HV and at that point he knew it was over. He told the police and his family to proceed toward Srb, in Donji Lapac municipality. His family arrived at the police station at around 1 a.m., said good-bye and then left (he saw them again nine days later in Serbia).[177] During the night, the witness helped evacuate certain documents and equipment from the police station.[178] At around 7:30 a.m. on 5 August 1995 the last inspector, the witness and three other policemen left the police station and drove all the way to Serbia, arriving on 10 August 1995.[179]

1534. On 25 August 1995, Uzelac, the Commander of the SVK 92nd Motorized Brigade, reported to the SVK Main Staff that on 4 August 1995 at 7 p.m. Uzelac received an instruction from the authorities that it was necessary to evacuate the civilian population, and they transferred the order to the persons in charge of evacuation.[180] At 8 p.m. Uzelac met with General Mrkšić and other Brigade commanders at the command post in Knin and told Mrkšić that no civilians had been evacuated from Benkovac.[181] After 11 p.m., Uzelac ordered his units to make possible the pull-out of civilians from the front line and did not authorize any withdrawal until the last of the civilians were pulled out.[182] On 9 August 1995, the commander of the SVK 4th Light Infantry Brigade reported that on 5 August 1995 around 10 a.m., after having ensured that the civilians had been evacuated from Benkovac, he ordered his brigade to withdraw towards Žegar in Nadvoda municipality and from there further towards Mokro Polje in Ervenik municipality. According to the same report, the 4th Light Infantry Brigade withdrew in an organized manner following the civilian column, and the whole civilian population was evacuated except for a small number of people who refused to leave the area.[183]

[176] D1499 (Đuro Vukašinović, witness statement, 3 April 2007), para. 16; Đuro Vukašinović, T. 18538, 18540.
[177] D1499 (Đuro Vukašinović, witness statement, 3 April 2007), para. 17.
[178] Đuro Vukašinović, T. 18579.
[179] D1499 (Đuro Vukašinović, witness statement, 3 April 2007), para. 18; Đuro Vukašinović, T. 18579.
[180] D828 (Report by the commander of the 92nd Motorized Brigade to the SVK Main Staff on the period from 4 to 10 August 1995, 25 August 1995), pp. 1, 3, 8.
[181] D828 (Report by the commander of the 92nd Motorized Brigade to the SVK Main Staff on the period from 4 to 10 August 1995, 25 August 1995), pp. 3-4.
[182] D828 (Report by the commander of the 92nd Motorized Brigade to the SVK Main Staff on the period from 4 to 10 August 1995, 25 August 1995), p. 4.
[183] D520 (Combat report of the command of SVK 4th Light Brigade, 9 August 1995), p. 1.



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1535. With regard to Obrovac municipality, **Jovan Dopuđ**, an SVK officer in the 4th Light Infantry Brigade until 1993 and a representative of the Obrovac Municipal Assembly in August 1995,[184] testified that on 4 August 1995, when the shelling of Obrovac commenced, the villagers, including the witness's family, started to leave the town for Serbia.[185] Obrovac had at the time about 2,000 inhabitants.[186] By midnight on the same day 80 per cent of the population had left town although with the expectation to return which was why they had not brought any luggage with them.[187] As far as Dopuđ knew, there was no planned and organized evacuation by municipal authorities.[188] Dopuđ testified that the Obrovac Municipal Assembly never discussed or took any decision in relation to an evacuation of Obrovac.[189] According to the witness, on 5 August 1995, during a trip through Obrovac and towards Žegar in Nadvoda municipality, he did not see any military personnel evacuating civilians.[190]

1536. The Trial Chamber has further considered evidence from witnesses who left, or observed people leaving the Indictment municipalities. This evidence has been reviewed and referred to in chapter 4.5.3 below, with regard to each municipality and includes the testimonies of Jovan Vujnović, Alun Roberts, Søren Liborius, Eric Hendriks, Witness 3, Witness 67, and Witness 1.

1537. Based on the above, the Trial Chamber considers that although there were evacuation plans for certain municipalities, the extent to which they were implemented in connection with Operation Storm varied. In some municipalities, for example Benkovac, such plans appear to have been implemented. However, considering how and when people left their homes, any action by municipal authorities had little or no influence on their behaviour. The population were already on the move. Similarly, the evacuation order by Milan Martić late in the afternoon of 4 August 1995 was signed and distributed at a time when a large number of people had already left their homes. That people had started to leave was well known by the RSK and SVK authorities and Novaković considered that Martić's order was an attempt to bring some order in the

[184] P548 (Jovan Dopuđ, witness statement, 21 February 2007), para. 1; Jovan Dopuđ, T. 5993, 6005-6006, 6063-6064.
[185] P548 (Jovan Dopuđ, witness statement, 21 February 2007), paras 3-4; Jovan Dopuđ, T. 5979, 5982, 6002-6004, 6039.
[186] Jovan Dopuđ, T. 6004.
[187] P548 (Jovan Dopuđ, witness statement, 21 February 2007), para. 3.
[188] Jovan Dopuđ, T. 5982, 6010-6012, 6016, 6019-6020.
[189] Jovan Dopuđ, T. 6036.
[190] Jovan Dopuđ, T. 6026-6027.



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events that were already unfolding. It is further uncertain as to what possibilities the RSK and SVK authorities had to implement the evacuation order in practice. This is illustrated by the meeting between UNCRO and SVK officials that followed the issuing of the order, when the SVK requested extensive assistance from UNCRO without, in Forand's impression, having any clear plans on how any evacuation was to be carried out in practice.

1538. In this respect, the Trial Chamber has also considered the leaflets found, ordering evacuation of the civilians population. Two such leaflets are evidence as P480 and part of P483. Considering in particular that the stamp was only partially in Cyrillic and that Mrkšić denied having issued or even seen this order, and in light of the discussions at the Brioni meeting (reviewed in chapter 6.2.2), the Trial Chamber is not convinced they emanated from the RSK and SVK authorities.

1539. In addition, reviewing the testimonies of people who left their homes, there are no or few indications that their decisions to do so was initiated by RSK or SVK authorities. Further, the evidence does not indicate that the movement of people itself was in any way organized, for example with SVK providing assistance or security for the people leaving. Rather, as Mrkšić testified, many SVK soldiers left their units in order to assist their own families leaving and as a result the units collapsed. Based on the above, the Trial Chamber finds that in general people did not leave their homes due to any evacuation planned or organized by the RSK and SVK authorities. Below, the Trial Chamber will consider the factual circumstances of different incidents of alleged deportation and forcible transfer.

#### *4.5.3 Deportation and forcible transfer in the Indictment municipalities*

*Benkovac municipality*

1540. The Trial Chamber has received evidence on alleged deportation and forcible transfer from and within Benkovac municipality, all of which is reviewed in other chapters of the Judgement but has been considered for this chapter. This includes evidence by Jacques Morneau and P233 reviewed in chapter 4.1.2 (Ljubica Stegnajić); evidence by Rajko Guša reviewed in chapter 4.2.2 (Buković); evidence by Dušan Sinobad, Đuro Vukašinović, Alain Forand, and Witness 56 reviewed in chapter 4.5.2; HV report P2436 reviewed in chapter 4.4.4; and evidence of Konstantin Drča reviewed



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in chapter 4.3.2 (Konstantin Drča). The Trial Chamber has further considered evidence on the ethnic composition of Benkovac reviewed in chapter 4.2.2 (Benkovac town).

1541. The Trial Chamber finds that the inhabitants of Benkovac town started leaving the town at, at latest, 6:55 a.m. on 4 August 1995. Between 6-7 p.m. on the same day, civilians without their own transportation began arriving at the bus station, and Sinobad claimed that this was mainly due to fear. Buses, organized by municipal authorities, left Benkovac with Bosanski Petrovac in Bosnia-Herzegovina as their destination beginning at 7 p.m. and left every ten minutes until 11 p.m. On the basis of the evidence of Sinobad, Vukašinović, Witness 56, Forand, and P2436 the Trial Chamber finds that between the morning of 4 August 1995 and early morning of 5 August 1995, large numbers of people, including Sinobad, Vukašinović, and Vukašinović's family (all of whom were Serbs), left Benkovac town. Vukašinović and his family reunited on 14 August 1995 in Serbia. The Trial Chamber further finds, based on the ethnic composition of Benkovac in 1991, that a significant number of the persons who left on 4 August 1995 were Krajina Serbs. The Trial Chamber will further consider this incident in relation to Counts 1 through 3 of the Indictment in chapter 5.4 and 5.8.2 (d) below.

1542. Based on the evidence of Rajko Guša, the Trial Chamber finds that most of the villagers left Buković in Benkovac municipality on 4 August 1995 or in the night between 4 and 5 August 1995. Guša did not provide evidence regarding where the villagers went. The Trial Chamber further finds, based on the ethnic composition of the town in 1991, that an overwhelming majority, if not all of the persons who left Buković on this day were Krajina Serbs. The Trial Chamber further recalls its finding in chapter 4.2.2 (Buković) on the destruction of five or six houses in Buković in the morning of 5 August 1995. The Trial Chamber will further consider this incident in relation to Counts 1 through 3 of the Indictment in chapters 5.4 and 5.8.2 (d) below.

1543. The Trial Chamber recalls its finding in chapter 4.3.2 (Konstantin Drča) and 5.8.2 (e) and 5.7.2 with regard to the detention and ill-treatment of Konstantin Drča from Benkovac town. The Trial Chamber finds that after this incident, Drča was transferred to Split District Prison and then subsequently released on 30 May 1996, after having signed a statement in front of the prison warden that he was leaving Croatia voluntarily. Drča was then taken to a refugee centre in Đakovo and arrived in Serbia on 8 June 1996, after having signed another statement that he was leaving Croatia



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voluntarily. The Trial Chamber will further consider this incident in relation to Counts 1 through 3 of the Indictment in chapters 5.4 and 5.8.2 (d) below.

1544. The evidence indicates that on 21 August 1995, Mile Stegnajić left his home in Stegnajić in Benkovac municipality due to death threats he received from two armed persons referred to by the witness as Croats wearing civilian clothing. Since the evidence indicates that these persons were civilians, the Trial Chamber will not further consider this incident in relation to Counts 1 through 3 of the Indictment. The Trial Chamber refers in this regard to chapter 2.

*Civljane municipality*

1545. The Trial Chamber has received evidence from Ružica Šarac, reviewed in chapter 4.1.9 (Ilija Šarac) on alleged deportation and forcible transfer from and within Civljane municipality. The Trial Chamber has further considered evidence from the 1991 Population Census reviewed in chapter 4.2.3 (Civljane village).

1546. Based on the evidence, the Trial Chamber finds that almost all of the villagers in Civljane left on 4 August 1995. This included Ružica Šarac, a Serb from Civljane, who departed from Civljane in the late afternoon on 4 August 1995 with her family. Šarac left Civljane after learning that the person whose task it was according to the "evacuation plan" to inform people on the need to evacuate was advising people that the HV were close by and that they should leave Civljane for Knin. The witness arrived in Kovačić in Knin municipality. With regard to the events on 5 August 1995, the Trial Chamber recalls its findings in chapters 4.1.9 (Ilija Šarac) and 5.3.2 on the murder of Ilija Šarac. Based on the evidence underlying those findings, the Trial Chamber finds that members of Croatian military forces or Special Police transported Ružica Šarac and her family, except for her husband, to the UN compound in Knin (in this respect, see also chapter 4.5.4). On 16 September 1995, Šarac was transported to Serbia where she was living as of 1 April 1998. The Trial Chamber has not received evidence as to where the remaining villagers went. Considering the ethnic composition of Civljane in 1991 and that significant numbers of non-Serbs left the former Sector South between 1991 and 1995 (see chapter 5.1.2), the Trial Chamber finds that a vast majority of those leaving were Krajina Serbs. The Trial Chamber will further consider this incident in relation to Counts 1 through 3 of the Indictment in chapters 5.4 and 5.8.2 (d) below.



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*Ervenik municipality*

1547. The Trial Chamber has received evidence on alleged deportation and forcible transfer from and within Ervenik municipality, all of which is reviewed in other chapters of the Judgement but has been considered for this chapter. This includes evidence by Jovan Vujinović, Petar Knežević, Petro Romassev, and the 1991 Population Census reviewed in chapter 4.1.6 (Marta Vujnović, Stevo Vujnović, and Marija Vujnović - Schedule no. 9; Further Clarification no. 17).

1548. Based on the evidence received, the Trial Chamber finds that on 4 August 1995, RSK officials told the inhabitants of Oton Polje in Ervenik municipality to leave, because a group of persons they referred to as "Ustashi" forces were approaching the village. Furthermore, the Trial Chamber finds that on 4 and 5 August 1995 most of the inhabitants of Oton Polje, including family members of Jovan Vujinović, left their homes. Vujinović stated that the villagers left voluntarily. The Trial Chamber further finds that on 21 August 1995, almost all remaining persons left Oton Polje, with the assistance of members of the international community. In this respect, the Trial Chamber also recalls its findings in chapter 4.1.6 (Marta Vujnović, Stevo Vujnović, and Marija Vujnović - Schedule no. 9; Further Clarification no. 17). The Trial Chamber has not received evidence as to where the villagers of Oton Polje went. Considering the ethnic composition of Oton in 1991 and Jovan Vujinović's testimony, the Trial Chamber finds that the overwhelming majority, if not all of the inhabitants who left Oton Polje in August 1995, including Jovan Vujinović's family, were Krajina Serbs. The Trial Chamber will further consider this incident in relation to Counts 1 through 3 of the Indictment in chapters 5.4 and 5.8.2 (d) below.

*Gračac municipality*

1549. The Trial Chamber has received evidence on alleged deportation and forcible transfer in Gračac municipality, much of which is reviewed in other chapters of the Judgement but has been considered for this chapter. This includes evidence by Mile Sovilj reviewed in chapters 4.1.7 (Vlade Sovilj) and 4.4.5 and evidence by Vida Gaćeša reviewed in chapter 4.4.5. The Trial Chamber has further considered evidence on the ethnic composition of Gračac town reviewed in chapter 4.2.7 (Gračac town). According



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to the 1991 Population Census, the population of Kijani in Gračac municipality consisted of 217 Serbs out a total of 222 persons in 1991.[191]

1550. The Trial Chamber recalls its findings in chapter 4.4.5 that shells were fired at Gračac town from approximately 5 a.m. on 4 August 1995 and that there was a civilian population in Gračac when the shelling began on 4 August 1995, many of whom had left by 2 p.m. on 5 August 1995. With regard to Mile Sovilj and Vida Gaćeša, the Trial Chamber finds that Sovilj reached Serbia on 6 August 1995 and Gaćeša arrived there on 9 August 1995. Further, based on the evidence of Sovilj and the 1991 Population Census data, the Trial Chamber finds that the overwhelming majority of people who left Gračac town between 4 and 5 August 1995 were Krajina Serbs. The Trial Chamber will further consider this incident in relation to Counts 1 through 3 of the Indictment in chapters 5.4 and 5.8.2 (d) below.

1551. Based on the evidence of Mile Sovilj, the Trial Chamber further finds that around 1 a.m. on 5 August 1995, ten people from two of the three Sovilj families in the village of Kijani left their homes. Considering that Mile Sovilj travelled with them and that he arrived in Serbia on 6 August 1995, the Trial Chamber finds that these ten people also reached Serbia on 6 August 1995. Further, given the fact that Kijani was predominately Serb in 1991 and also considering that they were all part of Mile Sovilj's family, the Trial Chamber finds that these ten persons were Krajina Serbs. The Trial Chamber will further consider this incident in relation to Counts 1 through 3 of the Indictment in chapters 5.4 and 5.8.2 (d) below.

*Kistanje municipality*

1552. The Trial Chamber has received much evidence on alleged deportation and forcible transfer from and within Kistanje municipality, all of which is reviewed in other chapters of the Judgement but has been considered also for this chapter. This includes evidence by Dušan Torbica and Zdravko Bunčić reviewed in chapter 4.1.9 (Stevo Večerina and others - Further Clarification nos 150-154); evidence from Milan Letunica reviewed in chapter 4.2.8 (Gošić); Mirko Ognjenović reviewed in chapter 4.2.8 (Kakanj); Pero Perković, Alun Roberts, and Edward Flynn reviewed in chapter 4.2.8

[191] C5 (State Bureau of Statistics Population Census of 1991, National Structure of the Population of Croatia According to Settlement), p. 94.



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(Kistanje town); and the 1991 Population Census reviewed in chapter 4.2.8 (Kakanj and Kistanje town); and evidence by Witness 56 reviewed in chapter 4.5.2.

1553. The Trial Chamber finds that between 25 and 27 July 1995, some of the villagers, including Dušan Torbica's children, left Torbica hamlet in Kistanje village. Torbica stated that the village was shelled on 4 and 5 August 1995 and the Trial Chamber finds that on 5 August 1995 Torbica, his wife, and many others left the village. Torbica and his wife left heading for Ervenik and Torbica claimed that they did so in order to escape the shelling. With regard to what subsequently happened to Dušan Torbica and his wife, the Trial Chamber recalls its findings in chapter 4.1.9 (Stevo Večerina and others - Further Clarification nos 150-154). Based on the ethnic composition of the town in 1991 and the testimony of Torbica, the Trial Chamber finds that an overwhelming majority, if not all of the persons who left Torbica hamlet in Kistanje village on these days were Krajina Serbs. The Trial Chamber will further consider this incident in relation to Counts 1 through 3 of the Indictment in chapters 5.4 and 5.8.2 (d) below.

1554. The Trial Chamber finds that Zdravko Bunčić, a Serb from Ivoševci in Kistanje municipality, heard rumours during July and early August which led him to assume the HV was coming and as a result Bunčić decided that he and his family should leave which they did on 5 August 1995. With regard to the subsequent events, the Trial Chamber recalls its findings in chapter 4.1.9 (Stevo Večerina and others - Further Clarification nos 150-154). Considering that Zdravko Bunčić was a Serb, the Trial Chamber finds that his family members were also Serbs. The Trial Chamber will further consider this incident in relation to Counts 1 through 3 of the Indictment in chapters 5.4 and 5.8.2 (d) below.

1555. The Trial Chamber finds that Mirko Ognjenović on 4 or 5 August 1995 heard and saw shells falling near Kakanj village in Kistanje municipality and that he had heard that the "local committee" told villagers in Kakanj to leave and that they would distribute fuel. Ognjenović claimed that after 5 August 1995 people fled Kakanj due to fear that the village would be shelled and overrun. The Trial Chamber finds that all but around ten of the villagers left Kakanj between on 4 and 5 August 1995. With regard to the subsequent events, the Trial Chamber recalls its findings in chapter 4.2.8 (Kakanj). Following these events, Mirko Ognjenović and his aunt left Kakanj on 26 August 1995 and went to the UN compound (in this respect, see also chapter 4.5.4). From there they



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left for Serbia on 15 September 1995 in a convoy under UN escort. The Trial Chamber further finds based on the ethnic composition of the town in 1991 and the testimony of Mirko Ognjenović, that an overwhelming majority, if not all of the persons who left Kakanj village on these days, including Mirko Ognjenović himself, were Krajina Serbs.

1556. The Trial Chamber finds that the majority of the inhabitants of Kistanje had left the town by at least 13 August 1995. The Trial Chamber further finds based on the ethnic composition of the town in 1991, that an overwhelming majority, if not all of the persons who left Kistanje town were Krajina Serbs. The Trial Chamber will further consider this incident in relation to Counts 1 through 3 of the Indictment in chapters 5.4 and 5.8.2 (d) below.

1557. The Trial Chamber further finds that Milan Letunica, a Serb from Gošić in Kistanje municipality, on 5 August 1995, upon discovering that Knin had been captured by the HV, decided to hide in the forest. On 28 August 1995, Letunica saw the bodies of a number of persons who appeared to have been killed in Gošić in Kistanje municipality. In early September 1995, he was helped by the ICRC to leave for Serbia. The Trial Chamber will further consider this incident in relation to Counts 1 through 3 of the Indictment in chapters 5.4 and 5.8.2 (d) below.

*Knin municipality*

1558. The Trial Chamber has received a great deal of evidence on alleged deportation and forcible transfer from and within Knin municipality, much of which is reviewed in other chapters of the Judgement but has been considered for this chapter. This includes evidence by Witness 56 reviewed in chapters 4.5.2 and 4.4.8; evidence by Witness 1, Dušan Dragičević, and Witness 13 reviewed in chapter 4.1.9 (Nikola Dragičević and others - Schedule no. 1); evidence by Milica Đurić in chapter 4.1.9 (Sava Đurić - Schedule no. 2); evidence by Nikola Plavša in chapter 4.1.9 (Jovica Plavša - Further Clarification no. 126); evidence by Ilija Mirković reviewed in chapter 4.1.9 (Jovan and Stevo Dmitrović and two unknown males - Further Clarification nos 129-132); evidence by Sava Mirković, Smiljana Mirković, and Jovan Mirković reviewed in chapter 4.1.9 (Đurđija Mirković); evidence by Marko Rajčić, Alain Gilbert, Murray Dawes, Philip Berikoff, Søren Liborius, Andrew Leslie, Witness 54, Witness 6, and Hussein Al-Alfi reviewed in chapter 4.4.3; evidence by expert Harry Konings reviewed in chapter 4.4.2;



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and evidence by Alun Roberts and Petro Romassev reviewed in chapter 4.2.9 (Plavno Valley). Further evidence from Robert Williams, Joseph Bellerose, and Witness 136 regarding persons taking refuge at the UN compound has been reviewed in chapter 4.4.3. The Trial Chamber has also considered the evidence on the number of persons remaining in Knin from Ivan Zelić's report P1133 reviewed in chapter 6.2.5. The Trial Chamber has further considered the evidence on the ethnic composition of Knin, Žagrović, and Plavno, including from the 1991 Population Census, reviewed in chapter 4.2.9 (Knin town, Plavno Valley, and Žagrović). According to the 1991 Population Census, the population of Polača in Knin municipality consisted of 1,577 Serbs out of a total of 1,586 persons in 1991.[192] In addition, the Trial Chamber has considered the evidence reviewed below in this chapter.

1559. A number of witnesses (in addition to those referred to above) testified about themselves or others leaving Knin town. **Witness 54**, a Serb from Knin,[193] testified that on 4 August 1995, the witness and some of his family members left Knin by car for Pribudić in Gračac municipality.[194] They had packed only a few clothes, since they did not know that they would not be returning to Knin for a long time and the witness testified that, at the time, he planned to return to Knin from Pribudić.[195] The witness testified that he had never taken part in any evacuation drills while he was in Knin and that he did not hear of any evacuation order by the RSK authorities, either directly or from others.[196] The witness testified that he and his family members left Knin for Pribudić due to the shelling and uncertainty over how long it was going to last, due to seeing other people leaving, and to having no electricity, heating or communications in Knin.[197] While driving, the witness observed large amounts of glass and bricks in the streets and destroyed asphalt, and that the building at the bus station was damaged, although the witness did not see any soldiers. While on Bulina Strana, a hill on the main road between Knin and Zadar, shells from the direction of Grahovo in Bosnia-Herzegovina, and Unešić and Miljevački plateau in Drniš municipality fell all around

[192] C5 (State Bureau of Statistics Population Census of 1991, National Structure of the Population of Croatia According to Settlement), p. 135.
[193] P186 (Witness 54, witness statement, 2 July 1996), pp. 1-2; Witness 54, T. 2781; P188 (Photograph of Knin, with Witness 54's house marked).
[194] P186 (Witness 54, witness statement, 2 July 1996), pp. 2-4; Witness 54, T. 2797-2798, 2868-2869; P190 (Map of southern portion of Krajina).
[195] P186 (Witness 54, witness statement, 2 July 1996), p. 4; Witness 54, T. 2797, 2826, 2833, 2849, 2855-2856; P190 (Map of southern portion of Krajina).
[196] Witness 54, T. 2851-2854, 2867.
[197] Witness 54, T. 2827, 2844, 2853-2855.



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them.[198] On Bulina Strana, the witness also observed damaged vehicles, dead cattle, and wounded or dead people, but could not give precise numbers because he was driving in a state of panic.[199] The witness stated that there was a convoy of cars on the road. After Bulina Strana, at the village of Stara Straža, the witness turned off the main road which lead towards Zrmanja in Gračac municipality and Srb in Donji Lapac municipality and took another road leading towards Pribudić.[200] According to the witness, most of the other cars in the convoy continued towards Srb.[201]

1560. The witness and his relatives spent the night of 4 August 1995 in Pribudić and left on the morning of 5 August 1995 in a convoy established during the night on the road through the village.[202] The witness testified that he had intended to stay in Pribudić longer but that some of the many people travelling on foot on the road told him they were leaving the villages of upper Žagrović, Plavno, and Radljevac in Knin municipality because of shelling of these villages.[203] The witness testified that he was able to hear the shelling.[204] According to the witness, only civilians lived in those villages. The witness further stated that these people also told him that Croatian forces were shooting around a bridge, Čupković Most, two kilometres from Pribudić. According to the witness, the convoy was composed of people from Plavno and Radljevac, and of those who had diverted from the main convoy on the main road onto this smaller road to avoid traffic. The witness and his relatives travelled very slowly to Otrić in Gračac municipality, and then joined the main road running from Knin to Srb.[205] The witness stated that no one had told them or instructed them to go to Srb but that they had just followed the other cars and that this was the only way out. On the way, the witness could hear shelling, but stated they were not shelled and that he could not tell where the shells were falling. They spent the whole day driving but, according to the witness, only travelled approximately four kilometres because the roads were so crowded. A few kilometres past Srb, they stopped for a break for a few hours. When they were near Martin Brod in Bosnia-Herzegovina, the witness stated that he could

[198] P186 (Witness 54, witness statement, 2 July 1996), p. 4; Witness 54, T. 2798.
[199] P187 (Witness 54, supplemental information sheet, 2 April 2007), para. 4.
[200] P186 (Witness 54, witness statement, 2 July 1996), p. 5; Witness 54, T. 2798, 2859-2860, 2868-2869; P190 (Map of southern portion of Krajina).
[201] P186 (Witness 54, witness statement, 2 July 1996), p. 5.
[202] P186 (Witness 54, witness statement, 2 July 1996), p. 5; Witness 54, T. 2797, 2850, 2853-2854, 2857-2858, 2868-2869.
[203] P186 (Witness 54, witness statement, 2 July 1996), p. 5; Witness 54, T. 2798, 2856-2857; P190 (Map of southern portion of Krajina).
[204] Witness 54, T. 2856.



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hear very close shelling.[206] They passed over the bridge over the River Una, passed Martin Brod, passing Drvar in Bosnia-Herzegovina and then towards Bosanski Petrovac.[207] The witness stated that they continued their journey and stopped just before Bosanski Petrovac in a field where about 10,000 to 15,000 people of the convoy rested and where they united with other family members.[208] They soon left, passing through Bosanski Petrovac and travelling on towards Ključ in Bosnia-Herzegovina.[209] The witness and his relatives went to Banja Luka and then on to Serbia.[210] The witness testified that he had taken the route Knin-Bulina Strana-Pribudić-Otrić-Srb-Martin Brod-Bosanski Petrovac-Banja Luka.[211] Witness 54 testified that he returned to Knin in 1997 but that he was unable to move into his house until December 1999 since someone else was living there and that person had papers authorizing him to stay there.[212]

1561. **Mira Grubor**, a Serb who was working as a laboratory assistant in a hospital in Knin on and before 4 August 1995,[213] sent her five-year-old daughter to a relative's home in Serbia during the last week of July 1995, because of rumours she had heard from unspecified sources regarding the HV's recent take-over of Bosansko Grahovo in Bosnia-Herzegovina and possible military activity in Knin.[214] At that time, the witness saw that more people wanted to leave Knin than could fit on the bus for Belgrade.[215] On 4 August 1995, when the shelling of Knin started, people started leaving Knin towards Bosnia-Herzegovina.[216] The columns of disorganized and unprepared fleeing people clogged the only escape route, according to the witness.[217] At about 10:30 a.m. on 5 August 1995 she saw Croatian soldiers at the hospital, and she fled to the UN

[205] P186 (Witness 54, witness statement, 2 July 1996), p. 5; Witness 54, T. 2868-2869.
[206] P186 (Witness 54, witness statement, 2 July 1996), p. 5.
[207] P186 (Witness 54, witness statement, 2 July 1996), pp. 5-6; Witness 54, T. 2803-2805; P190 (Map of southern portion of Krajina).
[208] P186 (Witness 54, witness statement, 2 July 1996), p. 6; Witness 54, T. 2808.
[209] P186 (Witness 54, witness statement, 2 July 1996), p. 6; Witness 54, T. 2807; P190 (Map of southern portion of Krajina).
[210] P186 (Witness 54, witness statement, 2 July 1996), p. 7.
[211] Witness 54, T. 2859-2860, 2863.
[212] P187 (Witness 54, supplemental information sheet, 2 April 2007), para. 7.
[213] P54 (Mira Grubor, witness statement, 3 April 1998), pp. 1-2.
[214] P54 (Mira Grubor, witness statement, 3 April 1998), p. 2; Mira Grubor, T. 1388-1389, 1406, 1410-1412.
[215] Mira Grubor, T. 1410-1411.
[216] P54 (Mira Grubor, witness statement, 3 April 1998), pp. 2-3; Mira Grubor, T. 1446.
[217] P54 (Mira Grubor, witness statement, 3 April 1998), p. 3; P55 (Mira Grubor, witness statement, 12 July 2007), paras 3, 6.



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compound, where she worked as a nurse.[218] When the witness was in the UN compound, she was disturbed by Croatian soldiers saying things like "come out Chetnik bitches", and other similar pejorative statements.[219] The witness stayed in the UN compound until 16 September 1995 when she and others were transported in buses and escorted by persons whom she did not identify through Croatia into Serbia.[220] Before they could board the bus and leave the compound, people she thought of as responsible to the Croatian authorities required them to sign a document stating that they had been treated in a humane way and that they voluntarily wished to move from Croatia to Serbia.[221]

1562. Numerous international observers testified about the events in Knin on 4 and 5 August 1995. **Alun Roberts**, Press and Information Officer for UN Sector South in Knin from mid-September 1993 until about mid-October 1995,[222] testified that around 5 a.m. on 4 August 1995, Knin radio informed the population of the attack on Knin and the bombardment of other cities in the Krajina.[223] Roberts testified that at about 1:30 p.m., a growing number of civilians were starting to pack their cars and leaving town, heading to either surrounding villages, to see how the situation developed, or in the direction Bosnia-Herzegovina for Serbia.[224] According to Roberts though, about 900 displaced Serb civilians from Knin and the surrounding villages had come to the UN compound from 4 August 1995 onwards.[225] At the time Roberts testified that most of these people and 100-150 persons accommodated in a gymnasium and a school in Knin

[218] P54 (Mira Grubor, witness statement, 3 April 1998), p. 4; P55 (Mira Grubor, witness statement, 12 July 2007), para. 5; Mira Grubor, T. 1393, 1459-1460, 1462-1463, 1479; D75 (UNCIVPOL report on possible human rights violations, 8 August 1995), p. 2.
[219] P55 (Mira Grubor, witness statement, 12 July 2007), para. 11.
[220] P54 (Mira Grubor, witness statement, 3 April 1998), p. 5.
[221] P54 (Mira Grubor, witness statement, 3 April 1998), p. 5; P55 (Mira Grubor, witness statement, 12 July 2007), para. 12; P56 (Unsigned statement regarding voluntary movement from Croatia to Serbia); P57 (Unsigned statement regarding voluntary departure from Croatia and desire to reside in Serbia).
[222] P675 (Alun Roberts, witness statement, 27 August 1997), p. 1, para. 1; P676 (Alun Roberts, witness statement, 31 July 1998), p. 1; P677 (Alun Roberts, witness statement, 28 February 2007), pp. 1-2; P678 (Alun Roberts, witness statement, 7 February 2008), p. 1, paras 3-4, 6; P680 (Alun Roberts, witness statement, 1 July 2008), p. 1.
[223] P676 (Alun Roberts, witness statement, 31 July 1998), pp. 3-4; Alun Roberts, T. 7084-7086.
[224] P677 (Alun Roberts, witness statement, 28 February 2007), p. 5; Alun Roberts, T. 7092-7093.
[225] P675 (Alun Roberts, witness statement, 27 August 1997), para. 29; P676 (Alun Roberts, witness statement, 31 July 1998), p. 5; P677 (Alun Roberts, witness statement, 28 February 2007), pp. 5-6; P678 (Alun Roberts, witness statement, 7 February 2008), para. 34, nos 1-2; Alun Roberts, T. 7096; P691 (Grubori village report by Alun Roberts, 29 August 1995), para. 24; P707 (Photographs destruction in Knin and villages and displaced persons in UN compound), second row, left picture; third row, both pictures; fourth row, right picture; P708 (Photographs destruction in villages and displaced persons in UN compound and on convoy), first row, right picture; third row, both pictures; D1366 (Chicago Tribune, 6 August 1995), p. 1.



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wanted to leave for Serbia.[226] Roberts did not get the impression that the civilians leaving Knin on 4 August 1995 were being evacuated, as they were fleeing in an unorganized manner.[227] Roberts was not aware of any communication of the RSK leadership to the population to evacuate, nor did he see any sign of military reaction from the SVK.[228] On 15 September 1995, displaced Serb civilians who had come to the UN compound left in a major convoy of 35 buses.[229] They left Croatia for Serbia and elsewhere with the permission of the Croatian authorities.[230]

1563. Roberts's report listed the voter turnout in the non-recognised elections of December 1993 as supporting that at the end of 1994, Knin's population consisted of 32,000 Serbs and 100 Croats.[231] He further reported that UN/UNHCR patrols assessed that at the end of September 1995 there were 700 Serbs and 600 Croats living in Knin.[232] Čermak was reported in a newspaper interview of 26 October 1995 as stating that at that moment about 6,000-7,000 persons lived in the territory of Knin, and that a population census was underway to get new accurate numbers. He said there were 3,500 Croats in Knin before the war, 1,500 of who had returned to Knin. According to Čermak, about 3,500 persons from Kijevo municipality, from Oklaj and surrounding villages, the Vojvodina, Srijem in Županja municipality, and from Bosnia-Herzegovina, had now sought accommodation in Knin and surrounding settlements. According to him, there were about 1,000 Serbs living in Knin and surroundings at the time of the interview. After Operation Storm there were only 200 Serbs left, and about 350 returned from the UN compound. To the best of Čermak's knowledge, 100 Serbs returned to the area of Knin from Serbia.[233]

[226] P691 (Grubori village report by Alun Roberts, 29 August 1995), para. 24; P712 (Report and interview with Alun Roberts on UN radio, 1 September 1995), D1366 (Chicago Tribune, 6 August 1995), p. 2.
[227] P680 (Alun Roberts, witness statement, 1 July 2008), para. 21.
[228] P680 (Alun Roberts, witness statement, 1 July 2008), paras 21-22.
[229] P675 (Alun Roberts, witness statement, 27 August 1997), para. 29; P678 (Alun Roberts, witness statement, 7 February 2008), para. 34, nos 2-3; Alun Roberts, T. 6902, 6907-6908; P708 (Photographs destruction in villages and displaced persons in UN compound and on convoy), second row, left picture; fourth row, both pictures; P709 (Photographs destruction in Knin and countryside and displaced persons in UN compound), third row, right picture.
[230] P675 (Alun Roberts, witness statement, 27 August 1997), para. 29; P678 (Alun Roberts, witness statement, 7 February 2008), para. 34, no. 2; Alun Roberts, T. 6902, 6907-6908; P708 (Photographs destruction in villages and displaced persons in UN compound and on convoy), second row, left picture.
[231] P684 (Alun Roberts's report to the press on HV's human rights violations in Sector South, 12 October 1995), p. 1.
[232] P684 (Alun Roberts's report to the press on HV's human rights violations in Sector South, 12 October 1995), p. 1.
[233] P719 (Newspaper interview Ivan Čermak, 27 October 1995), pp. 2-3.



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1564. **Andries Dreyer**, UN Security Coordinator for Sector South in 1995,[234] testified that during the offensive on Knin, which began on 4 August 1995, almost all civilian inhabitants first tried to seek shelter, but this gradually changed as people realized their fate. He stated that some left with a Serb convoy during the night and that some sought shelter at the UN compound.[235] Dreyer further stated that during the same night, there was heavy traffic from Drniš into Knin and out to Srb in Donji Lapac municipality.[236] According to Dreyer, the only population that remained after the Croatians entered Knin were the refugees in the UN compound.[237]

1565. **Søren Liborius**, an ECMM Operations Officer and team leader based in Knin from 28 July 1995 until 27 November 1995,[238] testified that after May 1995, and in particular in July 1995, psychological messages were broadcast on local radio stations that suggested an overwhelmingly victorious attack from the HV. As a result, Serb soldiers left the front line to protect their families and many Serbs, both SVK and civilians, began to leave the area.[239] On 30 July 1995, Liborius heard from his local staff that they took their children to Banja Luka and Belgrade.[240] On 31 July 1995, RSK police erected check-points in order to stop soldiers and civilians from leaving the area.[241] During the night between 4 and 5 August 1995, Liborius observed large columns of people fleeing Knin towards the north.[242] Liborius stated that on 7 August 1995, the stream of refugees was growing "colossally", and grew even more on the following day.[243]

1566. **Eric Hendriks**, an ECMM monitor in Knin from 21 July 1995 until 30 October 1995,[244] testified that his landlady and her family tried to leave Croatia days prior to

[234] P72 (Andries Dreyer, witness statement, 22 February 2008), p. 1, para. 1; D109 (Andries Dreyer, witness statement, 4 February 1996), p.1; D110 (Andries Dreyer, witness statement, 8 November 1995), p. 1; Andries Dreyer, T. 1710, 1745-1746, 1748, 1812, 1831.
[235] D109 (Andries Dreyer, witness statement, 4 February 1996), p. 3.
[236] P72 (Andries Dreyer, witness statement, 22 February 2008), para. 7; D109 (Andries Dreyer, witness statement, 4 February 1996), p. 3.
[237] D109 (Andries Dreyer, witness statement, 4 February 1996), p. 3.
[238] P799 (Søren Liborius, witness statement, 2 November 1995), pp. 1, 3; P800 (Søren Liborius, witness statement, 11 November 1997), p. 2; P801 (Søren Liborius, witness statement, 12 October 2005), p. 2; P803 (Søren Liborius, witness statement, 6 September 2008), para. 6; Søren Liborius, T. 8229; D741 (Diary of Liborius), p. 3.
[239] P801 (Søren Liborius, witness statement, 12 October 2005), p. 10.
[240] Søren Liborius, T. 8585, 8587; D741 (Diary of Liborius), pp. 3-4.
[241] P801 (Søren Liborius, witness statement, 12 October 2005), p. 10; D741 (Diary of Liborius), p. 4.
[242] P799 (Søren Liborius, witness statement, 2 November 1995), p. 4.
[243] D741 (Diary of Liborius), pp. 8-9.
[244] P931 (Eric Hendriks, witness statement, 4 April 2008), para. 3; D820 (Eric Hendriks, witness statement, 18 April 1996), pp. 1-2; Eric Hendriks, T. 9734-9735, 9755-9756.



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Operation Storm as she told Hendriks that she was "scared".[245] Hendriks testified that his landlady was prevented from leaving at the border.[246] Hendriks testified that from his interpreter he learned that in the afternoon of 4 August 1995, a recorded tape of Martić was broadcast with a statement that there is no reason to panic because the defence positions were stable.[247] The boyfriend of Hendriks's interpreter came home from the military barracks because "everybody left the barracks to join their families".[248] During the evening and night of 4 August 1995, a big exodus started and most of the inhabitants fled. Around 700 "refugees" who did not know where else to go entered the UN compound at 11:30 p.m.[249]

1567. **Peter Marti**, an UNMO and later a member of HRAT in Sector South from 19 June to 27 November 1995,[250] testified that on the evening of 4 August 1995, on his way to the UN compound from Podkonje, just south of Knin, he saw that there were hundreds of people trying to leave Knin and many trying to get into the UN compound.[251] The witness does not remember any shelling at that point of the day.[252] Most people managed to leave just before the HV took Knin. Only the elderly stayed in their homes.[253]

1568. **Andrew Leslie**, Chief of Staff of UNCRO Sector South in Knin from 1 March to 7 August 1995 and a military officer with extensive experience in artillery,[254] observed in the evening of 4 August 1995 a stream of vehicles which passed the UN compound in Knin.[255] The vehicles were mostly trucks carrying people, including Serb soldiers, women, and children, although occasionally a tank with soldiers passed by.[256] The

[245] P931 (Eric Hendriks, witness statement, 4 April 2008), para. 13; D820 (Eric Hendriks, witness statement, 18 April 1996), p. 3.
[246] P931 (Eric Hendriks, witness statement, 4 April 2008), para. 13; D820 (Eric Hendriks, witness statement, 18 April 1996), p. 3; Eric Hendriks, T. 9781.
[247] D820 (Eric Hendriks, witness statement, 18 April 1996), p. 3; Eric Hendriks, T. 9784.
[248] D820 (Eric Hendriks, witness statement, 18 April 1996), p. 3; Eric Hendriks, T. 9783.
[249] D820 (Eric Hendriks, witness statement, 18 April 1996), p. 4.
[250] P415 (Peter Marti, witness statement, 13 February 1996), pp. 1-2; P416 (Peter Marti, witness statement, 29 June 1997), pp. 1, 6; P417 (Peter Marti, witness statement, 14 December 2007), paras 1, 5, 9, 17
[251] P415 (Peter Marti, witness statement, 13 February 1996); p. 1; P416 (Peter Marti, witness statement, 29 June 1997), p. 3; P417 (Peter Marti, witness statement, 14 December 2007), para. 35.
[252] P417 (Peter Marti, witness statement, 14 December 2007), para. 35; Peter Marti, T. 4677-4678.
[253] P415 (Peter Marti, witness statement, 13 February 1996), p. 1.
[254] Andrew Leslie, T. 1930-1931, 1933-1936, 2099, 2189, 2195-2196; P84 (Report on possible violations of international humanitarian law, signed by Andrew Leslie, 12 August 1995), p. 1.
[255] Andrew Leslie, T. 1963-1964, 1993.
[256] Andrew Leslie, T. 1964-1965, 1993.



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people were on their way into Knin to, as Leslie later learned, pick up their families or their possessions and then leave town towards the north and the west.[257]

1569. **Philip Berikoff**, UN Military Information Officer for UN Sector South who was based in Knin between 21 July and 5 September 1995,[258] stated that when he first arrived, he was on numerous occasions prevented at SVK check-points from entering certain areas in Sector South, but that he was mostly able to travel.[259] Berikoff stated that on 27 July 1995 when he was driving from Primošten to Knin, SVK soldiers at check-points stopped him, told him that there was now a stricter restriction on movement and that he was no longer allowed to enter some areas where they had previously allowed him to go.[260] Soldiers were standing at many intersections carrying military gear, and when Berikoff asked some of them what was happening, they answered that they were being mobilized, that civilians were told to leave the area and that there might be an offensive.[261] When he reached Knin in the evening he found it suddenly deserted, the men having disappeared from the streets and all shops being closed.[262] On Saturday 29 July 1995, Berikoff noticed that many UN civilian employees did not show up for work.[263] Those locals who did come to work said that the others had started to evacuate in fear of a Croatian offensive into the Krajina.[264] Berikoff observed significant amounts of people leaving Knin before Operation Storm, but he did not observe any SVK military or police involvement in this departure.[265]

[257] Andrew Leslie, T. 1964-1965.
[258] P739 (Philip Berikoff, witness statement, 24 August 1996), pp. 1-2; P740 (Philip Berikoff, witness statement, 21 May 1997), p. 1, paras 1-2; P741 (Philip Berikoff, witness statement, 11 December 2007), p. 1; D284 (Philip Berikoff, witness statement, 26-27 May 1997), pp. 1-2, 45; Philip Berikoff, T. 7589, 7655-7656, 7734-7735, 7759-7760, 7768, 7776, 7813, 7823; P748 (Berikoff's daily journal, 17 July – 6 September 1995), pp. 2, 16.
[259] D284 (Philip Berikoff, witness statement, 26-27 May 1997), pp. 3-4; P742 (Report by Berikoff on Destruction in Sector South, 22 November 1995), para. 1; Philip Berikoff, T. 7659-7660, 7662-7664, 7666.
[260] P740 (Philip Berikoff, witness statement, 21 May 1997), para. 2 (a); D284 (Philip Berikoff, witness statement, 26-27 May 1997), p. 4; Philip Berikoff, T. 7665-7666; P748 (Berikoff's daily journal, 17 July – 6 September 1995), p. 3.
[261] Philip Berikoff, T. 7876, 7909-7910; P748 (Berikoff's daily journal, 17 July – 6 September 1995), p. 3.
[262] P740 (Philip Berikoff, witness statement, 21 May 1997), para. 2 (a); D284 (Philip Berikoff, witness statement, 26-27 May 1997), p. 4; P748 (Berikoff's daily journal, 17 July – 6 September 1995), p. 3.
[263] P740 (Philip Berikoff, witness statement, 21 May 1997), para. 2 (b); D284 (Philip Berikoff, witness statement, 26-27 May 1997), p. 4; Philip Berikoff, T. 7876; P748 (Berikoff's daily journal, 17 July – 6 September 1995), p. 4.
[264] P740 (Philip Berikoff, witness statement, 21 May 1997), para. 2 (b); D284 (Philip Berikoff, witness statement, 26-27 May 1997), pp. 4, 11; Philip Berikoff, T. 7675, 7909-7910.
[265] D735 (Philip Berikoff, witness statement, 30 August 2008), p. 1; Philip Berikoff, T. 7880-7881.



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1570. **Normand Boucher**, UNCIVPOL's Sector South Chief from 30 April 1995 until 22 August 1995,[266] testified that local Serbs singly and sporadically left for Serbia, with more movement being noticed just prior to 4 August 1995.[267] There was no mass exodus before Operation Storm, and only people with contacts seemed to be getting out of Knin.[268]

1571. **Witness 136**, a Serb field interpreter for UNCIVPOL and UNCRO,[269] testified that masses of women and children were leaving Knin in the ten days preceding the start of Operation Storm.[270] The last two regular buses full of women and children left Knin on the evening of 3 August 1995.[271] Witness 136 believed that people left because there were rumours that something was going to happen, and there were food shortages and a lack of electricity.[272] She testified that there were between three and five scheduled buses a day between Knin and Belgrade, adding that extra buses had also been put on in the week before the attack by people who had private businesses in order to make some money from those wanting to leave.[273] The witness was not aware of anyone being instructed to leave.[274]

1572. **Witness AG-58**, a Serb who held various positions in the RSK government in Knin and lived there until 5 August 1995,[275] testified that on 4 August 1995 he saw thousands of people fleeing towards Knin that morning, from towns such as Vrlika and Drniš that were located near the frontlines.[276] The witness thought these people to have come from the outlying towns instead of from Knin itself because he believed that those

[266] P1176 (Normand Boucher, witness statement, 20 February 1996), paras 1, 13; P1177 (Normand Boucher, witness statement, 12 November 1999), paras 5, 81; P1178 (Normand Boucher, witness statement, 24 November 2008), para. 51; D1217 (Normand Boucher, witness statement, 17 December 2008), para. 27; Normand Boucher, T. 14036, 14063-14064.
[267] P1176 (Normand Boucher, witness statement, 20 February 1996), para. 3; P1177 (Normand Boucher, witness statement, 12 November 1999), para. 32; P1178 (Normand Boucher, witness statement, 24 November 2008), para. 4; Normand Boucher, T. 14006, 14010, 14013.
[268] P1178 (Normand Boucher, witness statement, 24 November 2008), para. 8.
[269] P2 (Witness 136, witness statement, 4 July 1996), pp. 1-2; Witness 136, T. 620, 622, 641, 726, 765, 768, 780-782.
[270] P2 (Witness 136, witness statement, 4 July 1996), p. 2; P3 (Witness 136, witness statement, 11 June 2007), para. 2; Witness 136, T. 668-670, 671.
[271] P2 (Witness 136, witness statement, 4 July 1996), p. 2; P3 (Witness 136, witness statement, 11 June 2007), para. 2; Witness 136, T. 668, 671.
[272] P2 (Witness 136, witness statement, 4 July 1996), p. 2; P3 (Witness 136, witness statement, 11 June 2007), para. 2; Witness 136, T. 668-669.
[273] P3 (Witness 136, witness statement, 11 June 2007), para. 2; Witness 136, T. 669-670.
[274] P3 (Witness 136, witness statement, 11 June 2007), para. 2.
[275] D1493 (Witness AG-58, witness statement, 20 February 2007), paras 1, 3; D1494 (Witness AG-58, witness statement, 8 June 2009), p. 1; Witness AG-58, T. 18430-18431, 18458, 18491, 18494-18495; D1492 (Witness AG-58, Pseudonym Sheet, 9 June 2009).



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in Knin would remain there while their family members were on the frontline with the army.[277]

1573. **Sava Mirković**, a Serb from Mirkovići hamlet in Polača village in Knin municipality who was at times mobilized in the SVK,[278] testified that throughout the day of 4 August 1995, when Polača village was shelled, he heard President Tuđman on Radio Zagreb calling for the Serbs to surrender, saying that nobody would hurt them and that they would get a "fair trial".[279] Around 12 to 1 p.m., the witness observed people and many vehicles including cars, tractors, and trucks on the Split-Knin road, leaving the villages and heading for Knin.[280] Around 9:30-10 p.m., the witness together with his wife and two daughters left Mirkovići, drove in their car through Knin and joined the convoy towards Bosnia-Herzegovina.[281] The witness explained that the convoy could not go to Bosansko Grahovo because the town had been attacked and seized by the HV a week before, so instead it moved through Lika, Srb in Donji Lapac municipality, and onwards.[282] The witness and his family continued into Bosnia-Herzegovina, spent a night in Banja Luka, and two days later entered Serbia.[283] The witness testified that they were not told to leave their hamlet, stating they left because everybody else left and because they feared what the Croats would do to them.[284] The witness testified that only five of Mirkovići's 55-60 inhabitants, who were all Serb, stayed behind after Operation Storm and that the hamlet was deserted at the time he made his statement.[285] Some people had returned to the general area of Polača.[286]

[276] D1494 (Witness AG-58, witness statement, 8 June 2009), p. 2; Witness AG-58, T. 18471, 18513-18514.
[277] Witness AG-58, T. 18512.
[278] P723 (Sava Mirković, witness statement, 9 March 2007), p. 1, para. 1; D720 (Sava Mirković, Prosecution supplemental information sheet, 25 August 2008), p. 1; Sava Mirković, T. 7409, 7413-7415, 7434-7436, 7438-7440, 7480-7481, 7484-7485.
[279] P723 (Sava Mirković, witness statement, 9 March 2007), para. 3; Sava Mirković, T. 7421; D720 (Sava Mirković, Prosecution supplemental information sheet, 25 August 2008), p. 1.
[280] P723 (Sava Mirković, witness statement, 9 March 2007), para. 4; Sava Mirković, T. 7443-7444; D722 (Colour satellite image of Mirkovići area with markings by Sava Mirković), road marked blue, Knin direction marked "K" and Split direction marked "S".
[281] P723 (Sava Mirković, witness statement, 9 March 2007), paras 4, 6, 8; Sava Mirković, T. 7418, 7425, 7457.
[282] P723 (Sava Mirković, witness statement, 9 March 2007), para. 4; Sava Mirković, T. 7433-7434, 7449-7450, 7484-7485.
[283] P723 (Sava Mirković, witness statement, 9 March 2007), paras 8-9.
[284] P723 (Sava Mirković, witness statement, 9 March 2007), para. 6; D720 (Sava Mirković, Prosecution supplemental information sheet, 25 August 2008), p. 1; Sava Mirković, T. 7418, 7447.
[285] P723 (Sava Mirković, witness statement, 9 March 2007), para. 12; D720 (Sava Mirković, Prosecution supplemental information sheet, 25 August 2008), p. 1; Sava Mirković, T. 7413, 7424, 7482-7483, 7488.
[286] P723 (Sava Mirković, witness statement, 9 March 2007), para. 11; Sava Mirković, T. 7488-7489.



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1574. **Witness 69**, a Serb from a village in Knin municipality,[287] observed that in the afternoon of 4 August 1995, people left Žagrović in Knin municipality heading north across Lika, reportedly towards Prijedor, Banja Luka, and Bijeljina, all in Bosnia-Herzegovina.[288] According to the witness, the persons left because other people left.[289] Witness 69 left Croatia in September 1995 in the UN convoy to Serbia and returned in March or April 2000.[290] According to the witness, in May 2008 there were only seven or eight old women living in a hamlet of Žagrović village, compared to approximately 100 inhabitants before Operation Storm.[291]

1575. **Jovan Grubor**, a Serb from Grubori hamlet in Plavno village in Knin municipality,[292] testified that on 4 August 1995, a neighbour had told him that Knin had been attacked and subsequently "fallen". The neighbour said that he would try to escape to the village of Srb in Donji Lapac municipality, and encouraged the witness to do the same. According to the witness, on the night of 4-5 August 1995, 44 young people from Grubori fled, whereas 13 elderly and ill persons, including the witness, remained.[293] Further relevant evidence from Jovan Grubor is reviewed in chapter 4.1.9 (Jovo Grubor and others - Schedule no. 4).

1576. **William Hayden**, a researcher for the IHF who was on mission in the Krajina between 15 and 20 August 1995,[294] testified that it was his impression, based on conversations with Serb refugees and Croatian officials, that civilians left the Knin area in a largely disorganised, mass panic fashion in the first 31 hours of the Croatian offensive.[295] Hayden testified that displaced individuals at the UN compound informed him that they left out of fear of what was taking place and some of them informed him that they had heard of evacuation plans.[296]

1577. The Trial Chamber will first consider evidence regarding the alleged deportation and forcible transfer from Knin town. The Trial Chamber has considered evidence of

[287] P179 (Witness 69, witness statement, 31 May 1997), pp. 1-2; P180 (Witness 69, witness statement, 18 October 2004), p. 1; Witness 69, T. 2707.
[288] P179 (Witness 69, witness statement, 31 May 1997), p. 2; Witness 69, T. 2707, 2726.
[289] Witness 69, T. 2726-2727.
[290] Witness 69, T. 2756.
[291] Witness 69, T. 2709.
[292] P633 (Jovan Grubor, witness statement, 12 May 1997), pp. 1-2.
[293] P633 (Jovan Grubor, witness statement, 12 May 1997), p. 2.
[294] P986 (William Hayden, witness statement, 15 May 1996), para. 1; P987 (William Hayden, witness statement, 15 March 2004), paras 1-3.
[295] P986 (William Hayden, witness statement, 15 May 1996), para. 2; William Hayden, T. 10616-10617.
[296] P987 (William Hayden, witness statement, 15 March 2004), para. 8; William Hayden, T.10691-10692.



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persons leaving Knin town prior to 4 August 1995 from Liborius, Ilija Mirković, Hendriks, Mira Grubor, Boucher, and Witness 136. The Trial Chamber further recalls the evidence it reviewed in chapter 4.4.3 on the civilian presence in Knin, including the estimates of Witness 6 and Leslie's report P84, that in early August 1995, approximately 1,000 people left Knin. Based on the aforementioned evidence, the Trial Chamber finds that approximately 1,000-2,500 people left Knin in late July and early August 1995, a number of who left for Bosnia-Herzegovina and Serbia in the days prior to Operation Storm. Among the reasons they gave for doing so was that they believed a Croatian military operation was imminent. The Trial Chamber recalls its finding in chapter 4.4.3 that there were at least 15,000 civilians in Knin on 4 August 1995. The Trial Chamber notes that the reasons given for leaving Knin before 4 August 1995 included rumours of the HV taking over Bosanko Grahovo, rumours of possible military activity in Knin, as well as food shortages, and a lack of electricity.

1578. The Trial Chamber has further considered evidence from numerous witnesses, including Mira Grubor, Roberts, Witness 56, Hendriks, Liborius, and Dreyer, regarding large numbers of persons leaving Knin on 4 and 5 August 1995. In addition, several witnesses testified about individual cases of persons leaving Knin, including Witness 136, Witness 54, Witness 56, and Mira Grubor. The Trial Chamber has also considered the evidence regarding the number of persons who remained in Knin at the end of 5 August 1995, including from Dreyer, Marti, Roberts, and the 26 October 1995 newspaper interview with Čermak. Further, on 6 August 1995 HV Colonel Ivan Zelić reported that when Croatian units entered Knin, they encountered around 1,000 persons who had remained in town. Based on all of the aforementioned evidence, the Trial Chamber finds that approximately 14,000 civilians left the town on 4 and 5 August 1995. Considering the evidence on the ethnic composition of Knin in chapter 4.2.9 (Knin town), the Trial Chamber finds that a vast majority of the persons who left Knin on these days were Krajina Serbs.

1579. In respect of the destination of those who left Knin on 4 and 5 August 1995, the Trial Chamber has considered the testimony of Mira Grubor, Roberts, Witness 54, Witness 56, Witness 136, Bellerose, Dawes, Roberts, Marti, and Hendriks. Based on all the aforementioned evidence the Trial Chamber finds that the columns of people leaving Knin headed west towards Gračac municipality and north to Donji Srb, and on to Bosnia-Herzegovina, and Serbia, while a relatively small minority of people left Knin



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for the UN compound and surrounding villages near Knin. In respect of those who headed to the UN compound, see also chapter 4.5.4.

1580. The Trial Chamber notes the following explanations and reasons given for leaving Knin on 4 and 5 August 1995. Witness 6 testified that the shells, which fell everywhere in Knin, appeared to have been aimed at scaring people and made everyone feel like they had to flee. Witness 54 testified that the atmosphere in the basement of the hotel he and others had gathered in on the morning of 4 August 1995 was one of panic and that people were afraid for their safety. Witness 54 and his family left Knin that day due to the shelling, because they saw other people leaving, and because of the lack of electricity, heating and communications in Knin. Witness 136 left for the UN compound that day after a shell hit and destroyed a house near the apartment she was in. Expert Konings also testified generally about the harassing and frightening effect the use of artillery can have on civilians, causing fear, panic, and disorder. Dawes testified that he saw 15 civilians running for shelter in a state of panic in near the ECMM headquarters in Knin that day. On the same day, Berikoff described seeing a number of confused and panicked Serb civilians on a street in Knin. The Trial Chamber will further consider this incident in relation to Counts 1, 2, and 3 of the Indictment in chapters 5.4 and 5.8.2 (d) below.

1581. The Trial Chamber now turns to the evidence of inhabitants from several villages in Knin municipality. The Trial Chamber finds, based on the evidence of several witnesses including Witness 1, Sava Mirković, Smiljana Mirković, and Jovan Mirković, Witness 13, and Dušan Dragičević, that on 4 August 1995 Polača in Knin municipality was shelled. The Trial Chamber further finds that most of the inhabitants of Polača left on 4 August 1995. These inhabitants included Sava Mirković, a Serb, and his family, who eventually arrived in Serbia. The Trial Chamber has not received evidence regarding the destination of the other villagers who left on that day. The Trial Chamber finds, based on the ethnic composition of Polača in 1991 and Sava Mirković's testimony that the village was entirely Serb, that an overwhelming majority, if not all, of the persons who left Polača on this day were Krajina Serbs. The Trial Chamber notes that Witness 1 testified that on 4 August 1995, people had been talking about the SVK's warning to flee to Pađani in Knin municipality. Sava Mirković testified that he had heard a radio message from Tuđman that day calling on Serbs to surrender and that nobody would hurt them, but that he left because everybody else had left and because he



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feared what the Croats might do to him and his family. The Trial Chamber will further consider this incident in relation to Counts 1, 2, and 3 of the Indictment in chapters 5.4 and 5.8.2 (d) below.

1582. The Trial Chamber finds that on 5 August 1995, Witness 1, Dušan Dragičević and Witness 13 and her family, and Anica Andić, all Serbs, together with approximately twenty other villagers, left Polača and headed in the direction of Knin. The Trial Chamber notes that Witness 1 testified that he decided to leave Polača after hearing that his uncle's SVK unit had left the area. Dušan Dragičević's wife and children had left about two days earlier, as they knew that the fighting would start soon. The Trial Chamber refers to its findings in chapter 4.1.9 (Nikola Dragičević and others - Schedule no. 1), 5.3.2, and 5.8.2 (e) with regard to the murder of villagers and detention of Dušan Dragičević and Witness 1. The Trial Chamber finds that following these incidents, Dušan Dragičević, after being escorted by regular police to a refugee centre in Đakovo in Slavonia municipality, was given the choice of remaining in Croatia or leaving to Serbia and opted to leave for Serbia by bus on 13 January 1996, where he eventually met his family. Dragičević testified that he was given this choice either by "the government", which the Trial Chamber understands to refer to the Croatian government, or by the ICRC. Following the same incidents, Witness 1 was taken to the Gašinci camp in Croatia, where he signed paperwork declaring his voluntary decision to travel to Serbia, instead of returning to Croatia. Witness 1 was then taken to Serbia with others in Croatian buses. The Trial Chamber notes that Witness 1 testified that he was afraid that he would be killed by Croatian soldiers if he returned. Also following the incidents referenced above, Witness 13 and Anica Andić made their way to Knin where they were taken to the UN compound. Some seven weeks later, Witness 13 left the UN compound and went to Serbia in a convoy of Croatian buses, escorted by the UN (in this respect, see also chapter 4.5.4). In view of the events Dušan Dragičević, Witness 13, and Anica Andić experienced prior to their departure, the Trial Chamber will further consider these incidents in relation to Counts 1, 2, and 3 of the Indictment in chapters 5.4 and 5.8.2 (d) below.

1583. The Trial Chamber recalls its findings in chapter 4.2.9 (Polača), 5.5, and 5.6 regarding the destruction and plunder in Polača and in chapter 4.1.9 (Đurđija Mirković) and 5.3.2 with regard to the murder of Đurđija Mirković on 12 August 1995, which Smiljana Mirković witnessed. The Trial Chamber finds that after this incident, Smiljana



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Mirković, a Serb from Polača, fled her village and went to the UN compound in Knin (in this respect, see also chapter 4.5.4). From there, after meeting her husband, Jovan Mirković, she travelled in a convoy to Sremska Mitrovica in Serbia. The Trial Chamber will further consider this incident in relation to Counts 1, 2, and 3 of the Indictment in chapters 5.4 and 5.8.2 (d) below.

1584. Based on the evidence of Nikola Plavša, the Trial Chamber finds that his son, also called Nikola Plavša, and his son's wife left their home in Golubić in Knin municipality on the evening of 4 August 1995. According to Nikola Plavša, his son left because everybody was leaving. Considering that Nikola Plavša was a Serb, the Trial Chamber finds that his son was also a Serb. The Trial Chamber will further consider this incident in relation to Counts 1, 2, and 3 of the Indictment in chapters 5.4 and 5.8.2 (d) below. The Trial Chamber further recalls its findings in chapter 4.1.9 (Jovica Plavša - Further Clarification no. 126) and 5.3.2 with regard to the murder of Nikola's son Jovica Plavša on 5 August 1995. Following this incident, on 8 or 9 August 1995, Nikola Plavša testified that persons he referred to as Croatian soldiers with 4th Guards Brigade vehicles brought him to a Knin school where he stayed for six days. The persons referred to as soldiers told him they did so for his safety. Around 14 or 15 August 1995, he was returned to Golubić by persons he referred to as belonging to the Croatian army. Based on the aforementioned evidence, the Trial Chamber finds that on 8 or 9 August 1995, members of the HV transported Nikola Plavša to a school in Knin, and on 14 or 15 August 1995 returned him to Golubić. Under these circumstances, the Trial Chamber will not further consider this incident.

1585. Based on the evidence of Witness 69 and Witness 54, the Trial Chamber finds that on 4 August 1995 a number of inhabitants of Žagrović in Knin municipality left the village. Witness 69 testified that the inhabitants headed north towards Bosnia-Herzegovina and that they left because other people left. Witness 54 testified that on 5 August 1995 he met people who had left Zagrović and who told him they left because of the shelling of the village. The Trial Chamber recalls its findings in chapter 4.1.9 (Dmitar Rašuo, Milka Petko, Ilija Petko, Đuro Rašuo, and one unidentified person - Schedule no. 3) and 5.3.2 with regard to the murder incident witnessed by Witness 69 on 5 August 1995. The Trial Chamber finds that immediately following this incident, Witness 69 left Žagrović and returned on 11 or 12 August 1995. The Trial Chamber further recalls its findings in chapters 4.2.9 (Žagrović), and 5.5 regarding the destruction



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in Žagrović on 5 August 1995, in the days following 11 or 12 August 1995, and on 15 August 1995. Further, based on his testimony, the Trial Chamber finds that Witness 69 sought refuge at the UN compound towards the end of August or at the beginning of September 1995, after which in September 1995 he left Croatia in a UN convoy for Serbia. In respect of Witness 69's stay at the UN compound, see also chapter 4.5.4. The Trial Chamber finds, based on the ethnic composition of the town in 1991, that an overwhelming majority, if not all, of the persons who left Žagrović on 4 August 1995, were Krajina Serbs. The Trial Chamber will further consider this incident in relation to Counts 1, 2, and 3 of the Indictment in chapters 5.4 and 5.8.2 (d) below.

1586. According to Milica Đurić, Plavno village, in Knin municipality, was shelled on 4 August 1995, including from the direction of Strmica, at which point inhabitants of Đurići hamlet in Plavno village began to leave. Đurič further testified that most of the villagers from Đurići hamlet left in the night of 4 August 1995. Jovan Grubor, a Serb from Grubori hamlet, in Plavno village, testified that on 4 August 1995, a neighbour told him that Knin had been attacked and had fallen, and that he would try to escape via Donji Srb, and encouraged Jovan Grubor to do the same. According to Jovan Grubor, on the night of 4 August 1995, 44 villagers left Grubori hamlet. Witness 54 also testified that on 5 August 1995, he met people who had left Plavno and who told him they left because of the shelling of the village. The Trial Chamber also considered evidence from Roberts that Plavno had 3,000 inhabitants prior to Operation Storm and that on 24 August 1995, only 12 per cent of Plavno's inhabitants remained. Based on the evidence of Đurić, Grubor, and Roberts, the Trial Chamber finds that on 4 and 5 August 1995 a large portion of the population left Plavno. The Trial Chamber further finds, based on the ethnic composition of Plavno village in 1991, that the overwhelming majority, if not all, of the persons who left on these days were Krajina Serbs. The Trial Chamber will further consider this incident in relation to Counts 1, 2, and 3 of the Indictment in chapters 5.4 and 5.8.2 (d) below.

1587. The Trial Chamber recalls its finding in chapter (Jovo Grubor and others - Schedule no. 4) with regard to the destruction and murders in Grubori on 25 August 1995. The Trial Chamber finds that following this incident, on 28 August 1995, Jovan Grubor left Grubori hamlet and stayed in a sports hall in Knin (in this respect, see also chapter 4.5.5). On 16 September 1995, Jovan Grubor left for Belgrade to join his son.



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The Trial Chamber will further consider this incident in relation to Counts 1, 2, and 3 of the Indictment in chapters 5.4 and 5.8.2 (d) below.

*Lišane Ostrovičke municipality*

1588. With regard to alleged deportation and forcible transfer from and within Lišane Ostrovičke, the Trial Chamber has received evidence from **Bogdan Dobrić**, a Serb from Dobropoljci in Lišane Ostrovičke municipality.[297] Dobrić stated that in September 1995, he went to Zadar together with Mile Letunica. Dobrić spent nine days with a former neighbour, and then he went with Letunica to the refugee centre in Zadar, which contained about 1,000 people. While there, the witness was told that it was the Jazine stadium. The witness and Letunica stayed there for one or two days, then four policemen told them to prepare to leave and get on one of seven buses when their name was read. They travelled for a day and a night, first to Knin and then to Đelatovac, close to Sremska Mitrovica in Serbia, from where people whom the witness thought were Norwegian brought them to Sremska Mitrovica.[298] The Trial Chamber has reviewed further relevant evidence from Dobrić in 4.1.8 (Dušan Borak and others - Further Clarification nos 87-93).

1589. The Trial Chamber finds that in September 1995 Bogdan Dobrić, a Serb from Dobropoljci in Lišane Ostrovičke municipality, left his home and, after having spent nine days with a former neighbour, went to what he described as the refugee centre in Zadar. Before leaving his home, on 27 August 1995, Dobrić saw the bodies of a number of persons who appeared to have been killed in Gošić in Kistanje municipality. After one or two days, four men who the witness described as policemen told him to go on one of seven buses which took him to Serbia. The Trial Chamber will further consider this incident in relation to Counts 1 through 3 of the Indictment in chapters 5.4 and 5.8.2 (d) below.

[297] P2508 (Bogdan Dobrić, witness statements), 7 September 2003 statement, p. 1, para. 1, 10 September 2003 statement, p. 1.
[298] P2508 (Bogdan Dobrić, witness statements), 7 September 2003 statement, paras 13-14.



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*Obrovac municipality*

1590. The Trial Chamber has received evidence on alleged deportation and forcible transfer from and within Obrovac municipality, all of which is reviewed in other chapters of the Judgement but has been considered for this chapter. This includes evidence by Marija Večerina reviewed in chapter 4.1.9 (Stevo Večerina and others - Further Clarification nos 150-154), as well as Jovan Dopuđ and Kosta Novaković reviewed in chapter 4.5.2. The Trial Chamber has further considered evidence from the 1991 Population Census with regard to Obrovac reviewed in chapter 4.4.6. According to the 1991 Population Census, the population of Muškovci in Obrovac municipality consisted of 537 Serbs out of a total of 543 persons in 1991.[299]

1591. The Trial Chamber recalls its finding in chapters 4.4.6 and 5.8.2 (i) on the unlawful attack on civilians and civilian objects in Obrovac. Based on the evidence of Dopuđ and Novaković, the Trial Chamber finds that the villagers of Obrovac began leaving when the shelling commenced and that by midnight of the same day, approximately 80 per cent of the population had left the town. The Trial Chamber has not received evidence as to where the villagers went. Considering the ethnic composition of Obrovac in 1991, and that significant numbers of non-Serbs left the former Sector South between 1991 and 1995 (see chapter 5.1.2), the Trial Chamber finds that a significant number of the persons who left Obrovac on this day were Krajina Serbs. The Trial Chamber will further consider this incident in relation to Counts 1 through 3 of the Indictment in chapters 5.4 and 5.8.2 (d) below.

1592. The Trial Chamber further finds, based on the evidence of Marija Večerina, that on 5 August 1995, after having learned from her son that Knin and possibly Gračac had fallen, and that as a result thereof people were fleeing and that they should do this as well, the witness, her two daughters, her son Stevo Večerina, as well as Sava and Dragana Večerina, immediately left Muškovci in Obrovac municipality. The Trial Chamber recalls its findings in chapter 4.1.9 (Stevo Večerina and others - Further Clarification nos 150-154) with regard to what happened to these persons subsequent to their departure. The Trial Chamber further finds that on 16 September 1995, the witness and her daughters joined an organized convoy from Knin to Serbia. The Trial Chamber also finds, based on the evidence of Marija Večerina, that she, her sons and her two

[299] C5 (State Bureau of Statistics Population Census of 1991, National Structure of the Population of Croatia According to Settlement), p. 135.



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daughters were Serb and, additionally, based on the last names and the ethnic composition of Muškovci in 1991, that Sava and Dragana Večerina were also Krajina Serbs. The Trial Chamber will further consider this incident in relation to Counts 1 through 3 of the Indictment in chapters 5.4 and 5.8.2 (d) below.

*Orlić municipality*

1593. The Trial Chamber has received evidence on alleged deportation and forcible transfer from and within Orlić municipality, much of which is reviewed in other chapters of the Judgement but has been considered for this chapter. This includes evidence by Witness 3 and Witness 67 reviewed in chapter 4.1.15 (Stevo Berić and others - Schedule no. 7), by Vesela Damjanić in chapter 4.1.15 (Lazo Damjanić - Further Clarification no. 258), and Stevan Zarić reviewed in chapter 4.1.15 (Predrag Simić - Further Clarification no. 271). The Trial Chamber has further considered evidence from the 1991 Population Census reviewed in chapter 4.2.15 (Biskupija, Knin-Drniš road, Orlić town). In addition, the Trial Chamber has received evidence relevant to these charges from two witnesses reviewed below.

1594. **Petar Čolović**, a physically disabled Serb from Čolovići in Orlić municipality,[300] testified that at the end of July 1995, there were rumours that people were leaving because the HV was coming.[301] Furthermore, they had heard shelling nearby.[302] On 4 August 1995, the witness and his family were told by someone that they should leave their house and go to Pađene in Knin municipality for a day or two.[303] Čolović stated that his family had not received any official communication advising them to leave, and had heard President Tuđman on the radio stating that if they had not committed crimes they should stay.[304] Because many were leaving, the witness's wife and children also left on or about 5 August 1995.[305] Čolović and others stayed behind.[306]

[300] P631 (Petar Čolović, witness statements), witness statement of 3 September 2003, p. 1, para. 2; P631 (Petar Čolović, witness statements), witness statement of 5 September 2003, p. 1, para. 6.
[301] P631 (Petar Čolović, witness statements), witness statement of 3 September 2003, para. 3.
[302] P631 (Petar Čolović, witness statements), witness statement of 3 September 2003, para. 3.
[303] P631 (Petar Čolović, witness statements), witness statement of 3 September 2003, para. 3.
[304] P631 (Petar Čolović, witness statements), witness statement of 3 September 2003, para. 3.
[305] P631 (Petar Čolović, witness statements), witness statement of 3 September 2003, paras 3-4.
[306] P631 (Petar Čolović, witness statements), witness statement of 3 September 2003, paras 3-4.



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1595. **Draginja Urukalo**, a Serb from Urukali hamlet in Biskupija village in Orlić municipality, who was 73 years old in 1995,[307] testified that one Friday after the beginning of August 1995, she saw people fleeing from her village in vehicles and tractors.[308] She was told that soldiers were coming and that everyone who stayed behind would be killed.[309] Everyone except for about 17 elderly individuals left the hamlet.[310] Urukalo remained because she did not want to leave her house.[311]

1596. The Trial Chamber finds that Witness 3 heard and saw the results of shelling on Promina hill in the morning of 4 August 1995. At 9 p.m. on the same day, an SVK unit passed through Uzdolje and upon their suggestion people started leaving. The Trial Chamber further finds that on 4 or 5 August 1995, the majority of inhabitants left Uzdolje, including Witness 3, Stevo Berić, his wife Janja, Đuro Berić, and Boiljka Berić, who were all Serbs.

1597. The Trial Chamber finds that Witness 3, left Uzdolje on 5 August 1995, with Stevo Berić, his wife Janja, Đuro Berić, and Boiljka Berić, in the direction of Knin via Vrbnik in Orlić municipality. Witness 3 and her companions left after she had heard and seen the results of nearby shelling. Witness 3 and the four others returned briefly to Uzdolje, and then left again, in the direction of the main road from Knin to Drniš, around 7 a.m. on 6 August 1995. With regard to what subsequently happened to the group, the Trial Chamber recalls its findings in chapter 4.1.15 (Stevo Berić and others - Schedule no. 7). Witness 3 was taken to the UN compound later that day (in this respect, see chapter 4.5.4). As a result of what happened to the group, Witness 67 went into hiding. Witness 67 returned to Uzdolje on 17 August 1995, and on the following day, persons referred to as Croatian soldiers took Witness 67 to the hospital. After spending five days at the hospital, the witness was taken to what she described as the sports centre in Knin, and arrived in Serbia on 16 September 1995 where she was still living as of March 1998. In respect of Witness 67's stay at the sports centre in Knin, see also chapter 4.5.5. The Trial Chamber finds, based on the ethnic composition of the town in 1991, that an overwhelming majority, if not all of the persons who left Uzdolje

[307] P964 (Draginja Urukalo, witness statement, 3 September 2003), p. 1, paras 1-2; Draginja Urukalo, T. 10088.
[308] P964 (Draginja Urukalo, witness statement, 3 September 2003), paras 2-3; Draginja Urukalo, T. 10090.
[309] P964 (Draginja Urukalo, witness statement, 3 September 2003), para. 3.
[310] P964 (Draginja Urukalo, witness statement, 3 September 2003), para. 9.
[311] P964 (Draginja Urukalo, witness statement, 3 September 2003), para. 3.



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on this day were Krajina Serbs. The Trial Chamber will further consider this incident in relation to Counts 1 through 3 of the Indictment in chapters 5.4 and 5.8.2 (d) below.

1598. The Trial Chamber finds that on 4 August 1995, Stevan Zarić from Zarići hamlet in Orlić village heard shelling around Knin and prior to that, people in the village voiced their fear regarding what would happen when the "Ustashi" arrived. The Trial Chamber further finds that on 4 and 5 August 1995, the majority of villagers, including Zarić's family, left Zarići hamlet. Zarić's family left for Serbia, however, the Trial Chamber has not received evidence regarding where the other persons went. The Trial Chamber further finds based on the ethnic composition of Orlić town in 1991, that an overwhelming majority, if not all of the persons who left Zarići hamlet in Orlić village on this day were Krajina Serbs. The Trial Chamber will further consider this incident in relation to Counts 1 through 3 of the Indictment in chapters 5.4 and 5.8.2 (d) below.

1599. The Trial Chamber finds that on or about 5 August 1995 Petar Čolović's wife and children left Čolovići in Orlić municipality. Čolović claimed that his family left because many others were also leaving. The Trial Chamber has not received evidence as to where the Čolović family went. Considering that Čolović was a Serb, the Trial Chamber finds his family, or at least his children, were also Serbs. The Trial Chamber will further consider this incident in relation to Counts 1 through 3 of the Indictment in chapters 5.4 and 5.8.2 (d) below.

1600. The Trial Chamber finds that on 4 or 11 August 1995 nearly all the villagers left Urukali hamlet in Biskupija village in Orlić municipality. Urukalo was told that soldiers were coming and everyone who stayed behind would be killed. The Trial Chamber has not received evidence as to where these persons went. The Trial Chamber further finds, based on the ethnic composition of the village of Biskupija in 1991, that an overwhelming majority, if not all of the persons who left Urukali on this day were Krajina Serbs. The Trial Chamber will further consider this incident in relation to Counts 1 through 3 of the Indictment in chapters 5.4 and 5.8.2 (d) below.

*People crossing the border in Donji Lapac*

1601. The Trial Chamber has received evidence from several witnesses, as well as documentary evidence, regarding people travelling through Donji Lapac municipality,



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towards Bosnia-Herzegovina. **Milan Ilić**, a Serb from Donji Lapac,[312] noticed columns of people and vehicles moving through Donji Lapac on 5 and 6 August 1995.[313] **Josip Turkalj**, commander of the Anti-Terrorist Unit Lučko and commander of the Special Police artillery unit during Operation Storm,[314] testified that he received information that before the Special Police entered Donji Lapac on 6 August 1995, a convoy of Serb civilians and soldiers had left the town towards Srb in Donji Lapac municipality along the Srb/Donji Lapac road.[315]

1602. **Edward Flynn**, a Human Rights Officer with the Office of the UNHCHR and the leader of one of the HRATs in the former Sector South from 7 August to mid-September 1995,[316] Alain Forand and others travelled on 12 August 1995 to Donji Lapac, observing on the way many abandoned vehicles and two HV tanks firing shells towards Bosnia.[317] In Donji Lapac, Flynn observed many burned houses.[318] At the border with Bosnia, a member of a Jordanian UN battalion told Flynn that at least 72,000 persons, many vehicles, 13 tanks and 31 artillery pieces had passed the border crossing into Bosnia between 4 and 7 August.[319] Flynn stated that on 24 August 1995 he saw five houses burning in Doljani, in Donji Lapac municipality, and police and HV soldiers relaxing within two kilometres of the location.[320] He also saw approximately 25-30 freshly burned houses in the area.[321] HRAT reported that on 6 September 1995 HRAT travelled from Donji Lapac through Srb, in Donji Lapac municipality, to Otrić, in Gračac municipality, and observed hundreds of recently burned houses, as well as

[312] P725 (Milan Ilić, witness statement, 6 July 1999), pp. 1-2; P726 (Milan Ilić, witness statement, 25 March 2005), p. 1, paras 1-2; Milan Ilić, T. 7547-7548, 7551, 7570, 7573.
[313] P726 (Milan Ilić, witness statement, 25 March 2005), paras 3-4; Milan Ilić, T. 7572-7573, 7579.
[314] P1149 (Josip Turkalj, witness statement, 4 February 2004), paras 11, 31; P1150 (Josip Turkalj, witness interview of 11 March 2005), pp. 14-15, 34; Josip Turkalj, T. 13541, 13551.
[315] P1149 (Josip Turkalj, witness statement, 4 February 2004), para. 38.
[316] P20 (Edward Flynn, witness statement, 29 June 1997), pp. 1-2, 6, 13, 23; P21 (Edward Flynn, witness statement, 26-27 February 2008), p. 1, paras 3-4, 36; Edward Flynn, T. 1044, 1270, 1291-1292, 1312, 1325.
[317] P20 (Edward Flynn, witness statement, 29 June 1997), p. 19; P21 (Edward Flynn, witness statement, 26-27 February 2008), para. 10; Edward Flynn, T. 1324; P32 (HRAT daily report, 12 August 1995), p. 1.
[318] P21 (Edward Flynn, witness statement, 26-27 February 2008), para. 10; P32 (HRAT daily report, 12 August 1995), p. 1.
[319] P21 (Edward Flynn, witness statement, 26-27 February 2008), para. 10; P32 (HRAT daily report, 12 August 1995), p. 1. See also P363 (UNCRO Sector South daily situation report, 8:30 p.m., 11 August 1995), p. 7; P744 (Report by Robert Williams on the situation in Sector South between 8 July and 18 August 1995), p. 7; P748 (Berikoff's daily journal, 17 July – 6 September 1995), p. 11.
[320] P21 (Edward Flynn, witness statement, 26-27 February 2008), para. 22; P27 (HRAT cumulative daily report, 24-27 August 1995), p. 2.
[321] P21 (Edward Flynn, witness statement, 26-27 February 2008), para. 22; P27 (HRAT cumulative daily report, 24-27 August 1995), p. 2.



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three burning houses in the area between Doljani and Srb.[322] This HRAT patrol was stopped at the Otrić check-point by VP who accused them of coming from a "UN prohibited area" and who disclaimed knowledge of the Šarinić-Akashi agreement.[323]

1603. The Trial Chamber has further considered evidence from Ivan Herman and Davorin Pavlović reviewed in chapter 4.2.4 (Donji Lapac town) and SVK report D1521 reviewed in chapter 4.4.7.

1604. **Witness MM-25**, a Croat living in Korenica in Titova Korenica municipality,[324] left Korenica on Thursday evening at the beginning of Operation Storm to report to his SVK unit.[325] On Friday afternoon, he returned to Korenica and found that the town was empty.[326] He was told by a man that the inhabitants, including the witness's parents, had been ordered to withdraw towards Donji Lapac, and had left Korenica at around 6 a.m that morning.[327] The witness testified that a colleague had told him that he was working on fixing and widening the road between Doljani in Donji Lapac municipality and Martin Brod a few months before.[328] The witness subsequently left Korenica and drove along a narrow dirt road in the direction of Donji Lapac in search of his family. The road was crowded with a convoy of horses, horse-drawn carts, tractors, lorries and other vehicles, most in disrepair, which was approximately 40 kilometres long and moving very slowly.[329] The witness testified that among the people in the convoy, there were some individuals wearing SVK uniforms.[330] Arriving outside Donji Lapac on Saturday evening, the witness spent the night in a field.[331] On Sunday, the witness entered Donji Lapac and drove around the town looking for fuel.[332] He entered what he believed was a

[322] P21 (Edward Flynn, witness statement, 26-27 February 2008), para. 31; P38 (Weekly report from Hussein Al-Alfi, 2-8 September 1995), p. 5; P51 (HRAT daily report, 6 September 1995), p. 1.
[323] P20 (Edward Flynn, witness statement, 29 June 1997), pp. 19-20; P21 (Edward Flynn, witness statement, 26-27 February 2008), para. 31; Edward Flynn, T. 1322-1323; P51 (HRAT daily report, 6 September 1995), pp. 1-2.
[324] D1902 (Witness MM-25, witness statement, 3 October 2006), pp. 1-2; Witness MM-25, T. 26279, 26293, 26301; D1901 (Witness MM-25, pseudonym sheet).
[325] D1902 (Witness MM-25, witness statement, 3 October 2006), p. 2; Witness MM-25, T. 26307, 26329-26330, 26337-26341.
[326] D1902 (Witness MM-25, witness statement, 3 October 2006), p. 2; Witness MM-25, T. 26307-26308, 26330, 26332.
[327] D1902 (Witness MM-25, witness statement, 3 October 2006), p. 2; Witness MM-25, T. 26307-26309, 26330-26331.
[328] D1902 (Witness MM-25, witness statement, 3 October 2006), pp. 2-3; Witness MM-25, T. 26333-26336, 26342-26343.
[329] D1902 (Witness MM-25, witness statement, 3 October 2006), p. 3; Witness MM-25, T. 26308-26310.
[330] D1902 (Witness MM-25, witness statement, 3 October 2006), p. 3.
[331] Witness MM-25, T. 26310-26311, 26335.
[332] D1902 (Witness MM-25, witness statement, 3 October 2006), p. 3; Witness MM-25, T. 26310-26311, 26335.



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municipal building, which was burning, where he found military equipment and uniforms stored.[333] The witness also observed that the motel next to the petrol station was on fire, as were two or three houses.[334] The witness testified that there were no Croatian military units in Donji Lapac. The witness continued on towards Dobroselo in Donji Lapac municipality and began to notice tanks, trucks and other military equipment along the road.[335] At that stage, the convoy also included tanks and military trucks in disrepair.[336] The witness spent the night in his car by some bushes on the road to Doljani.[337] On Monday the witness arrived in Doljani where the convoy converged with a column of civilians, approximately ten kilometres long, coming from Knin.[338] The merged convoy continued towards Martin Brod.[339]

1605. The Trial Chamber has also considered evidence from Mrkšić, Novaković, and Witness 56 reviewed in chapter 4.5.2 and from Witness 54 and Sava Mirković reviewed in relation to Knin municipality in 4.5.3, above.

1606. Based on the above evidence, the Trial Chamber finds that between 4 and 7 August 1995 columns of people travelled through Donji Lapac municipality and crossed the border to Bosnia-Herzegovina. Based on the evidence received, including the estimates of a member of a Jordanian UN battalion that the columns consisted of at least 72,000 persons and in a 9 August 1995 SVK 7th Corps report that 50,000-60,000 evacuated along the route Otrić-Srb-Donji Lapac, the Trial Chamber finds that approximately 50,000-70,000 persons travelled in these columns through Donji Lapac municipality and to Bosnia-Herzegovina. These persons came from several municipalities in the Indictment area including Knin and Gračac, as well as from other municipalities, including Korenica.

[333] D1902 (Witness MM-25, witness statement, 3 October 2006), p. 3; Witness MM-25, T. 26311, 26336.
[334] D1902 (Witness MM-25, witness statement, 3 October 2006), p. 3; Witness MM-25, T. 26310-26311, 26336.
[335] D1902 (Witness MM-25, witness statement, 3 October 2006), p. 3; Witness MM-25, T. 26311-26312, 26315, 26335.
[336] Witness MM-25, T. 26311.
[337] Witness MM-25, T. 26311-26312, 26335.
[338] D1902 (Witness MM-25, witness statement, 3 October 2006), p. 3; Witness MM-25, T. 26296, 26313-26315; D1904 (Map depicting MM-25's position in Doljani).
[339] Witness MM-25, T. 26314-26315.



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*4.5.4 The persons who took refuge at the UN compound*

1607. The Trial Chamber has received a great deal of evidence, some of which has been reviewed or referenced above, with regard to people leaving their homes and taking refuge at the UN compound. **Alain Forand**, UNCRO Sector South Commander from 8 July 1995 to 10 October 1995,[340] testified that by 8-9 p.m. on 4 August 1995, a crowd of refugees was gathering at the front gate of the UN compound and that as they were endangered by the artillery, he allowed them in around 9:30 p.m.[341] Initially, 250 people entered, but by the morning of 5 August 1995 the number had risen to 450 and by that evening, more than 700 people had taken refuge there.[342] Forand testified that UNCRO staff found weapons on some of them.[343] Together with the UNMOs, UNCIVPOL, and the UN civilian employees, there were close to 2,000 people in a camp envisaged for about 250.[344] **Witness 136**, a Serb field interpreter for UNCIVPOL and UNCRO,[345] testified that around noon on 5 August 1995, HV soldiers brought a

[340] P330 (Alain Forand, witness statement, 20 August 1996), pp. 2, 15; P333 (Alain Forand, witness statement, 25 January 2008), para. 2; Alain Forand, T. 4098-4099, 4180, 4186.
[341] P330 (Alain Forand, witness statement, 20 August 1996), p. 6; Alain Forand, T. 4382, 4445; P343 (UNCRO Sector South daily situation report, 11 p.m., 4 August 1995), p. 5; P399 (Video and transcript of an interview with Alain Forand), pp. 2, 4-5; P401 (Presentation by Alain Forand, 24 June 1996), p. 25.
[342] P330 (Alain Forand, witness statement, 20 August 1996), p. 6; Alain Forand, T. 4099-4101, 4130; P344 (UNCRO Sector South update situation report, 8 a.m., 5 August 1995), pp. 1-2; P348 (UNCRO Sector South report, 7 a.m., 6 August 1995), p. 2; P351 (UNCRO Sector South daily situation report, 1 p.m., 6 August 1995), p. 3; P352 (UNCRO Sector South daily situation report, 8:30 p.m., 6 August 1995), p. 6; P355 (UNCRO Sector South daily situation report, 8:30 p.m., 7 August 1995), p. 7; P366 (UNCRO Sector South daily situation report, 8:30 p.m., 14 August 1995), pp. 2, 4; P374 (UNCRO Sector South daily situation report, 8:30 p.m., 24 August 1995), p. 2; P380 (UNCRO Sector South daily situation report, 8:30 p.m., 31 August 1995), p. 2; P381 (UNCRO Sector South daily situation report, 1 September 1995, with attached letters), p. 1; P399 (Video and transcript of an interview with Alain Forand), pp. 2, 4-6; P400 (Press statement, 12 October 1995), p. 2; P401 (Presentation by Alain Forand, 24 June 1996), pp. 25, 33; P403 (UNCRO Sector South daily situation report, 8:30 p.m., 21 August 1995), p. 2; P406 (UNCRO Sector South update situation report, 10 p.m., 5 August 1995), p. 1; D317 (UNCRO Sector South update situation report, 5 August 1995), p. 1; D318 (Minutes of a meeting between Brigadier Budimir Pleština and Colonel Pettis, 6 August 1995), p. 2; D333 (UNCRO Sector South update situation report, 6 p.m., 9 August 1995); D620 (HRAT daily report, 10 August 1995), p. 1. See also P2 (Witness 136, witness statement, 4 July 1996), p. 3; P291 (John Hill, witness statement, 23 August 1996), p. 5; P292 (John Hill, witness statement, 21 January 1998), p. 14; John Hill, T. 3746-3747, 3828; P301 (UNCRO Military Police report 4-7 August 1995), p. 3; D271 (John Hill's diary, entries for 3 and 4 August); P1292 (Stig Marker Hansen, personal diary), pp. 2-3.
[343] Alain Forand, T. 4443-4444; P399 (Video and transcript of an interview with Alain Forand), p. 2. See also P292 (John Hill, witness statement, 21 January 1998), p. 14; John Hill, T. 3746-3748, 3873-3874; P301 (UNCRO Military Police report 4-7 August 1995), p. 3; D271 (John Hill's diary, entries for 3 and 4 August); D283 (Report by John Hill on confiscated weapons, 12 August 1995); D1696 (Karolj Dondo, witness statement, 18 August 2009), para. 21; D1698 (Letter from S.P. Tymchuk to HV Liaison Officer about confiscated Serb weapons, 12 August 1995), pp. 1-3.
[344] P330 (Alain Forand, witness statement, 20 August 1996), p. 6; P331 (Alain Forand, witness statement, 29 September 1997), pp. 16, 24; Alain Forand, T. 4131, 4217; P401 (Presentation by Alain Forand, 24 June 1996), p. 25.
[345] P2 (Witness 136, witness statement, 4 July 1996), pp. 1-2; Witness 136, T. 620, 622, 641, 726, 765, 768, 780-782.



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group of frightened civilians, consisting of mainly old people, women and children from shelters "downtown" to the UN compound.[346] Witness 136 stated that within the first three days of the start of Operation Storm, there were over 1000 civilians in the camp.[347] Forand testified that the HV did not allow anyone to leave the camp for several days after the attack.[348] **Edward Flynn**, a Human Rights Officer with the Office of the UNHCHR and the leader of one of the HRATs in the former Sector South from 7 August to mid-September 1995,[349] testified that as the Croatian forces restricted their movement out of the compound, Flynn, Akashi and others interviewed people in the compound.[350] According to Flynn, the great majority wished to be temporarily evacuated, mainly for their security, while a few wished to return to their homes.[351] According to a UN report of 6 August 1995 which summarizes the interviews with some of the refugees at the UN compound, none of the approximately one dozen people interviewed reported serious human rights abuses and in general stated that they had been treated well by the Croatian troops.[352]

1608. On 6 August 1995, Yasushi Akashi and Hrvoje Šarinić signed an agreement between Croatia and UNCRO, in which Croatia pledged to allow UNCRO to monitor and report on the human rights situation in former Sectors North and South and intervene with the Croatian authorities on human rights matters when appropriate.[353] Under the agreement, Croatia encouraged all previous inhabitants of Croatia who so wished, to remain peacefully within Croatia. Croatia would allow the departure of those who expressed their desire to leave, except those who committed violations of international criminal law. Croatia undertook to allow UNCRO and humanitarian organizations to assist and coordinate such departures.[354] Croatia further undertook to

[346] P2 (Witness 136, witness statement, 4 July 1996), p. 4; P3 (Witness 136, witness statement, 11 June 2007), para. 8. See also John Hill, T. 3828; P301 (UNCRO Military Police report 4-7 August 1995), p. 4.
[347] P2 (Witness 136, witness statement, 4 July 1996), p. 4.
[348] P330 (Alain Forand, witness statement, 20 August 1996), pp. 6, 11; P331 (Alain Forand, witness statement, 29 September 1997), p. 16; D346 (Alain Forand's interview in Globus newspaper, 12 March 2004), p. 3.
[349] P20 (Edward Flynn, witness statement, 29 June 1997), pp. 1-2, 6, 13, 23; P21 (Edward Flynn, witness statement, 26-27 February 2008), p. 1, paras 3-4, 36; Edward Flynn, T. 1044, 1270, 1291-1292, 1312, 1325.
[350] P20 (Edward Flynn, witness statement, 29 June 1997), pp. 4-5; Edward Flynn, T. 1159-1160, 1306; P29 (HRAT daily report, 8 August 1995), p. 2; D29 (Cable from Akashi to Annan regarding his trip to Knin, 7 August 1995), paras 1, 5-6.
[351] P21 (Edward Flynn, witness statement, 26-27 February 2008), para. 6; Edward Flynn, T. 1160-1162, 1198; P29 (HRAT daily report, 8 August 1995), p. 2.
[352] D272 (UN report on interviews with displaced persons at the UN compound in Knin, 6 August 1995).
[353] D28 (Akashi-Šarinić agreement, 6 August 1995), pp. 1-2, para. 2.
[354] D28 (Akashi-Šarinić agreement, 6 August 1995), para. 3.



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allow UNCRO and humanitarian organizations full access to the civilian population, for the purpose of providing for their humanitarian needs and to the extent allowed by objective security considerations.[355] UNMOs and human rights monitoring elements of UNCRO undertook to immediately monitor all areas except where, in the opinion of the local UNCRO military commanders after consulting HV commanders, the security situation did not permit it.[356] The agreement further asserted the inviolability of UN premises, establishments and vehicles.[357]

1609. **Tomislav Penić**, the Croatian Secretary of the State Commission for Pardons and Assistant Minister of Justice for Criminal Law during the Indictment period and until 2000,[358] testified that two or three days after the liberation of Knin, he discussed the suspected presence of war criminals in the UN compound in Knin and the Akashi-Šarinić Agreement with the Minister of Justice, Šeparović.[359] Šeparović informed him that pursuant to the agreement, Croatia was entitled to put in custody approximately 70 persons suspected of war crimes from among the 1,000 refugees in the UN compound in Knin, while the rest of the refugees were to be released.[360] Šeparović provided Penić with documents from Croatian courts, relating to persons reasonably suspected of having committed war crimes.[361] According to Penić, the persons who were not on this list would be covered by an amnesty.[362]

1610. **Karolj Dondo**, HV Liaison Officer with the UN and EC in Sector South in 1995,[363] also testified that among the people at the UN compound, there were some people suspected of war crimes and that Čermak, on behalf of Croatia, requested the UN personnel to isolate and hand these people over to the Croatian judicial authorities.[364] Čermak told him that the Ministry of Justice had requested him to do this.[365] **Forand** recalled that sometime after 7 August 1995, Čermak addressed the refugees and told

[355] D28 (Akashi-Šarinić agreement, 6 August 1995), para. 4.
[356] D28 (Akashi-Šarinić agreement, 6 August 1995), para. 5.
[357] D28 (Akashi-Šarinić agreement, 6 August 1995), para. 8.
[358] D1935 (Tomislav Penić, witness statement, 15 May 2009), paras 2, 4-5, 11; Tomislav Penić, T. 26933, 26935.
[359] Tomislav Penić, T. 26957-26958.
[360] Tomislav Penić, T. 26958-26959.
[361] Tomislav Penić, T. 26959-26961, 26982-26985; D1941 (Report by Tomislav Penić on persons suspected of war crimes in Knin UN compound, 19 September 1995), pp. 3-12.
[362] Tomislav Penić, T. 26984-26985.
[363] D1695 (Karolj Dondo, witness statement, 9 March 2005), p. 1, paras 1-2; D1696 (Karolj Dondo, witness statement, 18 August 2009), p. 1, para. 2.
[364] D1696 (Karolj Dondo, witness statement, 18 August 2009), para. 40.
[365] D1696 (Karolj Dondo, witness statement, 18 August 2009), para. 40.



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them that they should not leave the region.[366] Forand testified that on several occasions Čermak met with a committee of refugees staying at the UN compound to discuss housing, liberty, and security matters with them.[367] The evidence on Čermak's involvement in the matter of the refugees at the UN compound will be reviewed in detail below.

1611. **Yasushi Akashi**, Special Representative of the Secretary-General to the former Yugoslavia and Chief of UNPROFOR/UNCRO from January 1994 to October 1995,[368] testified that, during his visit to Knin on 7 August 1995, he met with General Čermak.[369] According to the notes on this meeting made by Akashi's assistant, Anthony Banbury, Čermak indicated that it was safe for everyone to leave the UN compound in Knin, and expressed his hope that everyone would remain in Knin. Čermak also stated that he would do everything to help and improve the conditions of life there, but that he would not do anything to prevent them from leaving.[370] He also gave his personal assurance for security in Knin.[371] According to Banbury's notes, Akashi also requested assurances for the safety of those who wished to leave Knin, whereupon Čermak gave him guarantees for the freedom of movement of these people.[372] Akashi further testified that the UN assisted with departures once established procedures had confirmed the voluntary nature thereof.[373] At the meeting, Čermak raised the issue of military persons staying in the UN compound and stated that they would have to be interviewed by the civilian police about their possible involvement in crimes.[374] When Akashi requested UN presence throughout that process, Čermak assured him that that would be no problem.[375]

1612. **Forand** testified that when he met with Čermak on 7 August 1995, Čermak requested to speak to the refugees at the UN compound on 8 August 1995, and they

[366] Alain Forand, T. 4162, 4206-4207.
[367] Alain Forand, T. 4220.
[368] D1646 (Yasushi Akashi, witness statement, 20 July 2009), para. 1; Yasushi Akashi, T. 21621.
[369] Yasushi Akashi, T. 21721-21724; D29 (Cable from Akashi to Annan regarding his trip to Knin, 7 August 1995), para. 4.
[370] Yasushi Akashi, T. 21726-21728; D29 (Cable from Akashi to Annan regarding his trip to Knin, 7 August 1995), para. 4; D1667 (Notes of Anthony Banbury, undated), pp. 34-36.
[371] Yasushi Akashi, T. 21727; D29 (Cable from Akashi to Annan regarding his trip to Knin, 7 August 1995), para. 4; D1667 (Notes of Anthony Banbury, undated), p. 35.
[372] Yasushi Akashi, T. 21728; D29 (Cable from Akashi to Annan regarding his trip to Knin, 7 August 1995), para. 4; D1667 (Notes of Anthony Banbury, undated), p. 36.
[373] Yasushi Akashi, T. 21729.
[374] D1667 (Notes of Anthony Banbury, undated), p. 37; D29 (Cable from Akashi to Annan regarding his trip to Knin, 7 August 1995), para. 5.



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agreed that he could do that.[376] Forand stated that aside from his complaints on freedom of movement, lack of discipline of Croatian troops, and human rights violations, his biggest difference with Čermak was the latter's attempt to take from the UN compound up to 76 refugees whom the Croatians considered to be war criminals.[377] Forand would not deliver those individuals unless he was provided with proof that they were criminals, and that proof was accepted by the UN.[378] On 8 August 1995, when Čermak came to the UN compound and met with Forand, Čermak also met with a committee of the refugees.[379] Čermak told Forand that he wanted to tell the refugees that they could return to the area where they had lived.[380] On 9 August 1995, Akashi wrote to Kofi Annan that Čermak had met with a committee of refugees, reaching an agreement that "they" would be allowed to attend interviews with refugees aiming to screen out war criminals.[381]

1613. **Flynn** testified that on 8 August 1995, at least 25 persons sought and obtained protection in the UN compound.[382] On 9 August 1995, a few more displaced persons arrived at the compound.[383]

1614. According to UN documentary evidence, on 8 August 1995, at a meeting with UN staff and representatives of the displaced persons, Čermak stated that the displaced persons were welcome to remain in Knin; that they could return to their houses, escorted by UN military police, or could go to their homes and collect their belongings if they opted to leave Croatia; and that the Croatian government would fund the repair of damaged property, issue documents of identification and citizenship, and provide welfare, pensions, food supplies, and employment.[384] According to the UN documents, Čermak further stated that SVK soldiers who had not committed "war crimes" would

[375] Yasushi Akashi, T. 21730; D29 (Cable from Akashi to Annan regarding his trip to Knin, 7 August 1995), para. 4; D1667 (Notes of Anthony Banbury, undated), p. 37.
[376] P356 (UNCRO Sector South situation report, 7:30 a.m., 8 August 1995), p. 3.
[377] P331 (Alain Forand, witness statement, 29 September 1997), p. 23; P333 (Alain Forand, witness statement, 25 January 2008), para. 13; Alain Forand, T. 4274; D346 (Alain Forand's interview in Globus newspaper, 12 March 2004), p. 2.
[378] P331 (Alain Forand, witness statement, 29 September 1997), p. 23; Alain Forand, T. 4280.
[379] Alain Forand, T. 4130; P359 (UNCRO Sector South daily situation report, 8:30 p.m., 8 August 1995), pp. 3-4.
[380] Alain Forand, T. 4130.
[381] D619 (Letter from Yasushi Akashi to Kofi Annan, 9 August 1995), p. 2.
[382] P21 (Edward Flynn, witness statement, 26-27 February 2008), para. 6; P29 (HRAT daily report, 8 August 1995), p. 1.
[383] P21 (Edward Flynn, witness statement, 26-27 February 2008), para. 7; P30 (HRAT daily report, 9 August 1995), p. 2.
[384] D1208 (UN Sector South report, by Hussein Al-Alfi, 8 August 1995), pp. 1-2; D1211 (UN Sector South report, by Hussein Al-Alfi, 12 August 1995), p. 3.



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"be arrested for one year".[385] In a letter of 8 August 1995, Čermak asked **Forand** to provide him with a list of refugees at the UN compound so that he could start resolving their problems and issue passes to all who wanted to leave the compound and continue living in the Knin region.[386] He added that all of those who had not committed any crimes against Croatia would be allowed to return to Knin or else be transported to Bosnia-Herzegovina or Serbia.[387] Čermak wrote that they would provide all of the conditions of normal life to those who chose to stay.[388]

1615. **Goran Dodig**, Head of the Office for Interethnic Relations of the Croatian Government from 6 April 1995 to 5 March 1998,[389] testified that around 7 August 1995 he went to the UN compound.[390] He saw members of Croatian forces outside the compound.[391] Inside the compound, six or seven persons introduced themselves to the witness as members of the Refugee Council. Dodig introduced himself as a representative of the Croatian Government and told them that the Croatian state's position was that no one may harm them, but since it was currently impossible to place enough policemen to protect them he recommended that they stay in the compound before returning to their homes.[392] They told the witness that there were sick people in the compound, and took him to a building in the compound, in which there were about fifty men, all between 20 and 25 years old, lying covered up to their waists in blankets. The men did not look very sick to the witness, and he shook hands with them to see whether they had a fever, which he concluded none of them did.[393] Having stayed approximately three of four hours in the compound, the witness concluded that medical and sanitary conditions there were bad. The following day, Dodig organized a truckload of sanitary and medical supplies, which he had someone distribute to the people in the compound.[394] The people in the compound asked whether it would be best for them to leave the compound all together or individually, and the witness answered that all together would be best.[395] He also encouraged them to stay in Croatia.[396]

[385] D1208 (UN Sector South report, by Hussein Al-Alfi, 8 August 1995), p. 2.
[386] Alain Forand, T. 4216-4217; P388 (Letter from Ivan Čermak to Alain Forand re refugees, 8 August 1995).
[387] P388 (Letter from Ivan Čermak to Alain Forand re refugees, 8 August 1995).
[388] P388 (Letter from Ivan Čermak to Alain Forand re refugees, 8 August 1995).
[389] D1705 (Goran Dodig, witness statement, 16 May 2009), pp. 1-3, 14; Goran Dodig, T. 22628.
[390] D1705 (Goran Dodig, witness statement, 16 May 2009), p. 6; Goran Dodig, T. 22686.
[391] D1705 (Goran Dodig, witness statement, 16 May 2009), p. 6.
[392] D1705 (Goran Dodig, witness statement, 16 May 2009), p. 7.
[393] D1705 (Goran Dodig, witness statement, 16 May 2009), p. 8; Goran Dodig, T. 22694-22698.
[394] D1705 (Goran Dodig, witness statement, 16 May 2009), p. 8; Goran Dodig, T. 22686.
[395] D1705 (Goran Dodig, witness statement, 16 May 2009), p. 8.



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1616. On 9 August 1995, the witness visited the UN compound with Čermak and Petar Pašić, a Serb, who was the Croatian Government's commissioner for the town of Knin.[397] The witness testified that a video recording of the Croatian Radio Television from 9 August 1995 was a recording of a meeting they had with the Refugee Council of the compound. The witness testified that at this meeting there was a discussion on the departure of people from the compound and they were told that they could all leave the UN compound immediately and return to their homes, if they so wished. According to the witness, Čermak explained to those present that they would get passes immediately, in which their personal details would be recorded and that such passes would serve as identification until they received official identity documents. Someone also said that those who had worked in a company or factory previously should report back there once they had left the compound as they could start working again immediately.[398] While the meeting lasted between two and a half and three hours, Čermak only spent a few minutes with them before going to see the Military Commander of the compound.[399] The witness testified that a woman in uniform accompanied Čermak to the compound and started filling in passes for all who requested one.[400]

1617. The witness visited the people in the compound several more times during August and September 1995, spending on average between two and three and a half hours there.[401] The witness testified that after his second or third visit, the medical situation was under control, people were no longer afraid, had met with humanitarian organizations and had made contact with their families.[402] Finally, a large number of Serbs in the compound who did not want to stay in Croatia went to Serbia in an organized convoy on 16 September 1995. Dodig testified that he received a letter from the people in the compound thanking him for the help that he had provided for them on behalf of the Croatian Government.[403] The Trial Chamber has also considered further relevant evidence from Goran Dodig, reviewed in chapter 6.4.6.

1618. On 10 August 1995, HRAT reported that Čermak and the Croatian Assistant Minister for Minorities Dodig met with UN officials and separately with the committee

[396] D1705 (Goran Dodig, witness statement, 16 May 2009), p. 9.
[397] D1705 (Goran Dodig, witness statement, 16 May 2009), pp. 9-10, 12; Goran Dodig, T. 22631-22637.
[398] D1705 (Goran Dodig, witness statement, 16 May 2009), p. 9.
[399] Goran Dodig, T. 22688, 22698-22699.
[400] D1705 (Goran Dodig, witness statement, 16 May 2009), p. 9.
[401] D1705 (Goran Dodig, witness statement, 16 May 2009), p. 10; Goran Dodig, T. 22649-22651.
[402] D1705 (Goran Dodig, witness statement, 16 May 2009), p. 10; Goran Dodig, T. 22699-22700.
[403] D1705 (Goran Dodig, witness statement, 16 May 2009), p. 10.



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representing the displaced persons, and they reached an agreement that male displaced persons of military age would be interviewed in the UN compound.[404] HRAT also reported that Čermak reiterated that the Croatian authorities would agree to transport the displaced persons to check their houses in order to decide whether to stay in Croatia or not.[405] Also on 10 August 1995, HRAT reported that approximately 60 displaced persons left the UN compound in Knin with safe passage cards from the Croatian Ministry of Defence, and that four new persons arrived.[406]

1619. On 11 August 1995, HRAT reported that 29 displaced persons, mostly Croat and non-military age males, left the UN compound in Knin with safe passage cards from the Ministry of Defence.[407] On 12 August 1995, **Flynn** heard Čermak promise that safe passage cards would be issued to some 20 military aged men who wished to be interviewed immediately, and reported that later in the afternoon Croatian soldiers came to the UN compound with the cards, which facilitated the men's immediate departure from the camp.[408] Also on 12 August 1995, HRAT reported that 53 persons left the UN compound, after which there was a total of 740 displaced persons in the compound and 45 more in other locations in the sector. HRAT further reported that Čermak said that Croatia would help escort those who wished to leave for Bosnia-Herzegovina and the FRY.[409] Flynn testified that safe passage cards, issued by Čermak, allowed persons inside the UN compound to leave it, until Čermak ordered on 15 August 1995 that they were no longer necessary.[410]

[404] P21 (Edward Flynn, witness statement, 26-27 February 2008), para. 8; Edward Flynn, T. 1088-1089; P31 (HRAT daily report, 10 August 1995), p. 2. See also D1209 (UN Sector South report, by Hussein Al-Alfi, 10 August 1995), p. 2; D1210 (UN Sector South report, by Hussein Al-Alfi, 11 August 1995), p. 3; D121 (UN Sector South report, by Hussein Al-Alfi, 12 August 1995), p. 4.
[405] P21 (Edward Flynn, witness statement, 26-27 February 2008), para. 8; P31 (HRAT daily report, 10 August 1995), p. 2. See also P361 (UNCRO Sector South daily situation report, 8:30 p.m., 9 August 1995), p. 2; D620 (HRAT daily report, 10 August 1995), pp. 1-2; P21 (Edward Flynn, witness statement, 26-27 February 2008), para. 7; Edward Flynn, T. 1161; P30 (HRAT daily report, 9 August 1995), pp. 2-3.
[406] P21 (Edward Flynn, witness statement, 26-27 February 2008), para. 8; P31 (HRAT daily report, 10 August 1995), pp. 1-2, 4. See also P361 (UNCRO Sector South daily situation report, 8:30 p.m., 9 August 1995), p. 2; D620 (HRAT daily report, 10 August 1995), pp. 1-2; P21 (Edward Flynn, witness statement, 26-27 February 2008), para. 7; Edward Flynn, T. 1161; P30 (HRAT daily report, 9 August 1995), pp. 2-3.
[407] P21 (Edward Flynn, witness statement, 26-27 February 2008), para. 9; P41 (HRAT daily report, 11 August 1995), p. 3.
[408] P21 (Edward Flynn, witness statement, 26-27 February 2008), para. 10; Edward Flynn, T. 1090-1091, 1201; P32 (HRAT daily report, 12 August 1995), p. 2.
[409] P21 (Edward Flynn, witness statement, 26-27 February 2008), para. 10; P32 (HRAT daily report, 12 August 1995), p. 2.
[410] P21 (Edward Flynn, witness statement, 26-27 February 2008), para. 14; Edward Flynn, T. 1089-1090, 1092, 1200-1201, 1371-1372; P31 (HRAT daily report, 10 August 1995), p. 4; P33 (HRAT daily report, 15 August 1995), p. 3.



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1620. On 12 August 1995, Forand met Čermak who asked Forand for a list of refugees who wanted to leave Croatia.[411] On 14 August 1995, Čermak wrote to Forand, reiterating the request for a list of persons in the UN compound who had expressed a wish to leave Croatia.[412] On 15 August 1995, Branko Pupavac issued, on behalf of the refugees at the UN compound, Čermak with a certificate of gratitude for the help he had given them.[413]

1621. According to an IHF report dated 25 August 1995, detailing an IHF mission of 17 August 1995 to 19 August 1995, 600 persons out of approximately 720 at the UN compound in Knin declared that they wanted to leave for Serbia or another safe country out of fear that the Croatian military and police would not protect them and that they would be harmed.[414]

1622. **Forand** testified that besides the UN compound, there were also refugees in UNCRO unit locations outside Knin.[415] In the afternoon of 18 August 1995, Al-Alfi, Flynn, Tymchuk and Alun Roberts met with Čermak, who approved the transfer, that same afternoon and under Croatian police escort, of 55 displaced persons from UNCRO battalion locations to the UN compound in Knin.[416] According to **Flynn**, Čermak addressed the issue as if it was within his area of responsibility.[417] Čermak asked for a list of displaced persons in the UN compound in Knin who had made a final decision to leave Croatia, and received from the other participants in the meeting the promise that he would get it by the same evening.[418] Čermak stated that the Croatian authorities would ask for a few displaced persons in the UN compound to be handed over in order to conduct investigations, and the others reaffirmed that such investigations should be carried out inside the UN compound, after which the UNPF headquarters and the Croatian Government should discuss the individual cases.[419] **Vesna Škare-Ožbolt**, Assistant Chief of Staff of the Office of the President of Croatia from January 1995,[420]

[411] P364 (UNCRO Sector South daily situation report, 8:30 p.m., 12 August 1995), p. 3.
[412] D1106 (Various letters from Ivan Čermak to Alain Forand), p. 8.
[413] D301 (Certificate of gratitude, 15 August 1995).
[414] P988 (IHF report from a fact-finding mission to the Krajina, 25 August 1995), p. 2, paras 2.2-2.3.
[415] Alain Forand, T. 4130, 4271; P401 (Presentation by Alain Forand, 24 June 1996), pp. 33-34.
[416] D56 (Report from H. Al-Alfi on meetings with Croatian officials, 18 August 1995), pp. 1, 3.
[417] P20 (Edward Flynn, witness statement, 29 June 1997), p. 10.
[418] D56 (Report from H. Al-Alfi on meetings with Croatian officials, 18 August 1995), p. 3.
[419] D56 (Report from H. Al-Alfi on meetings with Croatian officials, 18 August 1995), p. 3.
[420] Vesna Škare-Ožbolt, T. 18039; D1472 (Decision appointing Škare-Ožbolt Assistant Head of the Office of the President, 30 January 1995).



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testified that Čermak was probably acting upon the request of the Ministry of Justice, as the latter was in possession of the names of suspected perpetrators of crimes.[421]

1623. At a meeting on 18 August 1995, Tymchuk agreed with Čermak that the refugees be given an option to either go to Knin under UN protection or return to their homes.[422] The same day, UNCRO and HV jointly moved 51 refugees who wished to remain under UN protection from unit locations to Knin.[423] On 19 August 1995, **Forand** sent a letter to Čermak thanking him for his assistance the day before with escorting these refugees from UN camps to the UN compound in Knin.[424] On 21 August 1995, Al-Alfi sent Čermak a list of 687 people in the compound who wanted to leave Croatia (because they did not feel secure there), requesting his agreement for their departure.[425] Later that day, Čermak met with Al-Alfi and Forand, and they discussed the departure of the refugees from the UN compound.[426] Čermak said that he had a list of 74 refugees at the UN compound who were suspected of war crimes but that he continued having contacts with Zagreb to have the list shortened.[427] He promised to identify the reasons why these persons should be handed over, and the charges against them.[428] He added that once he provided the list to UNCRO, it should hand these persons over to the Croatian authorities.[429] Čermak ruled out the possibility of interviewing the suspected war

[421] Vesna Škare-Ožbolt, T. 18110-18111; P388 (Letter by Ivan Čermak to Alain Forand, 8 August 1995).
[422] Alain Forand, T. 4131, 4272; P369 (UNCRO Sector South daily situation report, 8:30 p.m., 18 August 1995), p. 3.
[423] P330 (Alain Forand, witness statement, 20 August 1996), pp. 10-11; P372 (UNCRO Sector South daily situation report, 8:30 p.m., 19 August 1995), pp. 2-3; P401 (Presentation by Alain Forand, 24 June 1996), p. 34. See also P292 (John Hill, witness statement, 21 January 1998), pp. 86-87; P123 (UNMO Sector South daily situation report, 7 p.m., 19 August 1995), p. 5; P1098 (Maria Teresa Mauro, witness statement, 3 March 2000), p. 4; P45 (HRAT daily report, 21 August 1995), p. 3.
[424] Alain Forand, T. 4273; D311 (Letter from Alain Forand to Ivan Čermak re refugees, 19 August 1995).
[425] Alain Forand, T. 4132; P403 (UNCRO Sector South daily situation report, 8:30 p.m., 21 August 1995), p. 2; D621 (Letter from Al-Alfi to Čermak with list of refugees at the UN compound who wanted to leave Croatia, 21 August 1995), pp. 1-17.
[426] P403 (UNCRO Sector South daily situation report, 8:30 p.m., 21 August 1995), p. 2; D622 (UN Civil Affairs report, 4:55 p.m., 21 August 1995), pp. 1-2. See also P1098 (Maria Teresa Mauro, witness statement, 3 March 2000), p. 4; P45 (HRAT daily report, 21 August 1995), p. 3.
[427] Alain Forand, T. 4277, 4279; P403 (UNCRO Sector South daily situation report, 8:30 p.m., 21 August 1995), p. 2; D312 (List of persons accused of crimes against Croatia by Croatian authorities, 21 August 1995), pp. 1-5; D622 (UN Civil Affairs report, 4:55 p.m., 21 August 1995), p. 1. See also P1098 (Maria Teresa Mauro, witness statement, 3 March 2000), p. 4; P45 (HRAT daily report, 21 August 1995), p. 3; P1160 (Hussein Al-Alfi, witness statement, 5 March 1998), pp. 52, 77-79.
[428] P403 (UNCRO Sector South daily situation report, 8:30 p.m., 21 August 1995), p. 2; D623 (UNCRO Sector South daily situation report, 8:30 p.m., 21 August 1995), p. 2.
[429] P403 (UNCRO Sector South daily situation report, 8:30 p.m., 21 August 1995), p. 2. See also P1098 (Maria Teresa Mauro, witness statement, 3 March 2000), p. 4; P45 (HRAT daily report, 21 August 1995), p. 3.



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criminals among the refugees at the UN compound.[430] According to a UN civil affairs report, Čermak accepted that once the list of persons wanted for war crimes was given to UNCRO, the other refugees could leave Croatia unconditionally.[431] Čermak accepted to provide Croatian escort through Croatia up to the Serbian border.[432] According to a cable from Akashi to Annan, on 21 August 1995 Forand and Čermak had orally agreed that anyone who wished to go to FRY could leave the UN compound on 26 August 1995, except those identified by the Croatian government, with documentary evidence, as suspected war criminals, who would be interrogated at the UN compound.[433]

1624. On 22 August 1995, UNCRO, UNHCR, and ICRC representatives planned the departure of the refugees from the UN compound to take place on 26 August 1995.[434] On 23 August 1995, UNCRO staff refused to receive from an HV liaison officer a list, addressed from Čermak to Forand, of 62 persons among the refugees at the UN compound against whom the Croatian authorities had filed charges for crimes against Croatia, demanding instead evidence of the charges and permission for the remaining refugees to depart from the UN compound already upon receipt of that evidence.[435] On 24 August 1995 at 1:30 p.m., Forand and Al-Alfi met Čermak in Čermak's office.[436] They discussed the refugees, and Čermak provided Forand with a list of 62 persons that the Croatian government wanted him to hand over before it would allow the others to leave Croatia.[437] Also on 24 August 1995, Čermak wrote a letter to Forand indicating that Croatia would not allow the displacement of anyone in the UN compound until the 62 individuals charged with crimes against Croatia were handed over to the Croatian police.[438] Also on 24 August 1995, Al-Alfi wrote to Čermak, enclosing lists of

[430] Alain Forand, T. 4275; P403 (UNCRO Sector South daily situation report, 8:30 p.m., 21 August 1995), p. 3; D622 (UN Civil Affairs report, 4:55 p.m., 21 August 1995), pp. 1-2; D623 (UNCRO Sector South daily situation report, 8:30 p.m., 21 August 1995), p. 2. See also P1098 (Maria Teresa Mauro, witness statement, 3 March 2000), p. 4; P45 (HRAT daily report, 21 August 1995), p. 3.
[431] D622 (UN Civil Affairs report, 4:55 p.m., 21 August 1995), p. 2.
[432] D622 (UN Civil Affairs report, 4:55 p.m., 21 August 1995), p. 2; D623 (UNCRO Sector South daily situation report, 8:30 p.m., 21 August 1995), p. 2.
[433] D314 (Cable from Akashi to Annan, 4:12 p.m. 25 August 1995), pp. 1-3.
[434] D624 (UNCRO Sector South daily situation report, 10:30 p.m., 21 August 1995), p. 2.
[435] D313 (UNCRO Sector South update situation report, 3 a.m., 24 August 1995), pp. 1, 3; D625 (Letter from Ivan Čermak to Alain Forand, 23 August 1995), pp. 1-2.
[436] P374 (UNCRO Sector South daily situation report, 8:30 p.m., 24 August 1995), p. 3; D626 (Invitation for a meeting from Ivan Čermak to Forand, 24 August 1995). See also D151 (Summary of Meeting with Ivan Čermak, 24 August 1995), p. 1.
[437] P374 (UNCRO Sector South daily situation report, 8:30 p.m., 24 August 1995), p. 3. See also D151 (Summary of Meeting with Ivan Čermak, 24 August 1995), p. 1; P1160 (Hussein Al-Alfi, witness statement, 5 March 1998), pp. 52, 79; P1164 (UN Sector South report, by Hussein Al-Alfi, 8 September 1995), pp. 2-3.
[438] D628 (Letter from Ivan Čermak to Alain Forand, 24 August 1995), p. 1.



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additional persons under UN protection who wished to leave Croatia and requesting his agreement for their departure.[439]

1625. **Maria Teresa Mauro**, a UN civil affairs officer and HRAT member in the former Sector South based in Knin from March to December 1995,[440] confirmed that around 24-27 August 1995 elderly residents of isolated hamlets arrived daily at the UN compound, as described in an HRAT report of 24-27 August 1995.[441]

1626. On 25 August 1995, Šarinić informed Akashi that the Croatian government would not allow interviews with suspects to take place on UN premises and would not allow any displaced persons to leave the UN compound until the 65 suspects had been handed over to Croatian authorities.[442] On 27 August 1995, Forand wrote to Čermak that their superiors had not been able to find a solution to the question of the departure of refugees from the UN compound in Knin.[443] He added that he required a list specifying the charges against the persons in the UN compound whom Croatia wished to receive, and assurance that the others would be free to go.[444]

1627. In the days up to 27 August 1995, **Flynn** spoke with some displaced persons in the UN compound who told him that their houses had been destroyed and that they were scared of being harmed if they returned to their villages.[445] On 28 August 1995, HRAT reported that it obtained the agreement of "the mayor of Knin" that all homeless displaced persons henceforth coming to the UN compound in Knin could be transferred to Knin school.[446]

1628. According to an ECMM report of 28 August 1995, an increasing number of elderly people were arriving at the UN compound asking for shelter and transport to Serbia, however the UN could not take in any more people.[447] Balfour reported on 28

[439] D627 (Letter from Hussein Al-Alfi to Ivan Čermak, 24 August 1995), pp. 1-3.
[440] P1098 (Maria Teresa Mauro, witness statement, 3 March 2000), pp. 1-2; P1099 (Maria Teresa Mauro, witness statement, 6 February 2008), p. 1, paras 1, 7-9, 11-12; Maria Teresa Mauro, T. 11998, 12000, 12024, 12075-12076.
[441] P1098 (Maria Teresa Mauro, witness statement, 3 March 2000), p. 5.
[442] D314 (Cable from Akashi to Annan, 4:12 p.m., 25 August 1995), p. 1.
[443] D629 (Letter from Alain Forand to Ivan Čermak, 27 August 1995).
[444] D346 (Alain Forand's interview in Globus newspaper, 12 March 2004), pp. 2-3; D629 (Letter from Alain Forand to Ivan Čermak, 27 August 1995).
[445] P21 (Edward Flynn, witness statement, 26-27 February 2008), para. 22; Edward Flynn, T. 1080; P27 (HRAT cumulative daily report, 24-27 August 1995), p. 4.
[446] P20 (Edward Flynn, witness statement, 29 June 1997), p. 11; P21 (Edward Flynn, witness statement, 26-27 February 2008), para. 26; Edward Flynn, T. 1244-1245, 1338; P48 (HRAT daily report, 28 August 1995), p. 3.
[447] D1273 (ECMM Knin daily report, 28 August 1995), p. 1. See also P20 (Edward Flynn, witness statement, 29 June 1997), p. 14; Edward Flynn, T. 1366.



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August 1995 that besides the UN compound, internally displaced persons were housed in available open-storey buildings and tents in Knin.[448] He further reported that at the UN compound all but 162 people who were in tents, were housed in buildings.[449] Balfour also reported that all refugees at the UN compound slept on mattresses and that beds were only available to around 60 hospital patients, that deteriorating weather was a problem, that hygiene and sanitation was rudimentary, and that there was a growing concern of an outbreak of contagious diseases.[450] **Forand** testified that Croatian forces did not allow refugees to leave for Serbia as they sought among the refugees 65 individuals they accused of war crimes, whom Forand refused to deliver until he received proof.[451] According to a report by an HRAT from Knin of 29 August 1995, Čermak said on that day that he was unable to provide the UN with specific allegations against the 62 suspects, because only a court could do that.[452] The report further records Čermak informing the HRAT that there was an unknown number of persons in Šibenik who wished to be transported to the FRY.[453] On 30 August 1995, Assistant Commander of the SIS Ante Zečić wrote to Čermak, providing a list of 62 persons in the UN compound in Knin against whom criminal reports had been filed, along with brief descriptions of who they were and/or what they had done.[454] The list included a number of persons for whom it was noted only that they were or may have been related to high-ranking SVK officials, as well as one person for whom only a name and date of birth were given.[455] On 31 August 1995, Al-Alfi wrote to Čermak, providing him with lists of 757 persons in the UN compound in Knin, 21 persons in the UNCRO unit in Korenica, and 13 persons in the Knin hospital, all of who wished to leave Croatia.[456]

1629. **Škare-Ožbolt** testified that in September 1995, she went to the UN compound in Sector South at the request of Akashi to resolve the situation that occurred due to what she described as several hundred Serbs having barricaded themselves inside to avoid prosecution by the Ministry of Justice and Croatian Courts.[457] Škare-Ožbolt testified

[448] P377 (UNCRO Sector South daily situation report, 8:30 p.m., 28 August 1995), pp. 1-3.
[449] P377 (UNCRO Sector South daily situation report, 8:30 p.m., 28 August 1995), p. 3.
[450] P376 (UNCRO Sector South daily situation report, 8:30 p.m., 27 August 1995), pp. 1-2; P377 (UNCRO Sector South daily situation report, 8:30 p.m., 28 August 1995), pp. 1, 3.
[451] P330 (Alain Forand, witness statement, 20 August 1996), p. 11; P399 (Video and transcript of an interview with Alain Forand), p. 6; P401 (Presentation by Alain Forand, 24 June 1996), p. 34.
[452] D631 (HRAT daily report, 29 August 1995), pp. 1, 3.
[453] D631 (HRAT daily report, 29 August 1995), p. 4.
[454] D632 (Letter from Ante Zečić to Ivan Čermak, 30 August 1995), pp. 1-14.
[455] D632 (Letter from Ante Zečić to Ivan Čermak, 30 August 1995), pp. 2, 5, 9-10, 12-13.
[456] D633 (Letter from Hussein Al-Alfi to Ivan Čermak, 31 August 1995), pp. 1-2.
[457] Vesna Škare-Ožbolt, T. 18076.



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that she went to the UN compound (accompanied by the Assistant Minister of Justice), as had been agreed between herself, Šarinić, and Akashi, with the goal of persuading the Serbs to stay (particularly the families whose male members were supposed to be taken before Croatian courts).[458] At the compound, she told the Serbs that their safety would be absolutely guaranteed should they go back home, and that those who were tried before the courts would receive legal assistance where necessary. Škare-Ožbolt testified that some of the Serbs decided immediately to stay, whereas others declared that they would not remain under any circumstances.[459] She further testified that during her time spent at the UN compound, Krajina Serbs signed documents declaring that they were voluntarily leaving Croatia. According to her, a form to this effect was given to the persons inside the compound by the UN.[460]

1630. On 2 September 1995, Škare-Ožbolt received a letter from Julian Harston from the Office of the Special Representative of the Secretary-General for the former Yugoslavia, referencing their conversation from the previous day and recommending several points as a basis for agreement regarding the people displaced in the UN compound in Knin. In essence, Harston encouraged Croatian authorities to make all evidence available to the UN related to the charges against each of the 62 persons listed. Following this, the UN would be prepared to release those persons to the Croatian government assuming an adequate basis for the charges and a guarantee that anyone released into Croatian custody would be treated in accordance with internationally accepted standards. Lastly, Harston suggested that anyone not referenced in the list of 62 persons should be released immediately so that they could depart to the FRY.[461] The witness testified that she told Harston that Croatia would absolutely adhere to all the provisions of international law, but as Harston had just arrived and was not familiar with the subject matter he was charged with there was a certain degree of nervousness both on the Croatian side and in Akashi's office.[462]

1631. HRAT reported that on 5 September 1995, six elderly persons came to the UN compound and requested shelter and transport to Serbia.[463] They were transported to

[458] Vesna Škare-Ožbolt, T. 18078.
[459] Vesna Škare-Ožbolt, T. 18079.
[460] Vesna Škare-Ožbolt, T. 18084.
[461] D1479 (Letter by Julian Hartson to Vesna Škare-Ožbolt, 2 September 1995), pp. 1-2.
[462] Vesna Škare-Ožbolt, T. 18119.
[463] P21 (Edward Flynn, witness statement, 26-27 February 2008), para. 30; P50 (HRAT daily report, 5 September 1995), p. 2.



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Knin school, which **Flynn** confirmed held 110 displaced persons and had an insufficient supply of hygiene, mattresses, and food.[464]

1632. At noon on 6 September 1995, Al-Alfi and others met with Tomas, the Head of the Croatian Office for UN and ECMM, regarding the refugees at the UN compound. Tomas reiterated the official position that the departure of the refugees was conditional on the handing over of 62 war crime suspects.[465] On 7 September 1995, Forand, Al-Alfi, and others met with Čermak, who informed them that he had been in Zagreb where he had discussed the problems surrounding the refugees at the UN compound with Tuđman and Šarinić and that he expected that the list of the suspected war criminals among the refugees could be shortened to 35, for whom he could provide individual criminal reports and arrest warrants, and that the rest of the refugees could be released once those 35 had been handed over.[466] Čermak indicated that the people outside the camp who wanted to leave Croatia were in the hands of the Refugee Office and the Office for Social Welfare and that Čermak would get them to hurry up. Al-Alfi complained that the procedure for obtaining documents for those who wanted to stay was too long and deterred them from initiating the procedure, and Čermak promised to rapidly give him instructions on how to obtain the documents, and that he would try to do everything possible to speed it up. Čermak indicated that he would accept those who wanted to stay in Croatia.[467] Al-Alfi testified that Čermak later returned with a list of 38 or 39 names, stating this was the lowest that Zagreb would allow him to go and that President Tuđman had approved the handover agreement.[468] On 8 September 1995, Akashi wrote that the negotiations about the fate of 750 refugees at the UN compound were at an impasse, since the Croatian authorities insisted that they should only supply a judicial warrant to appear before an investigative judge, whereas the UN refused to hand anyone over if the Croatian authorities did not supply charges and supporting evidence.[469]

[464] P21 (Edward Flynn, witness statement, 26-27 February 2008), para. 30; P50 (HRAT daily report, 5 September 1995), p. 2.
[465] D635 (Report by Hussein Al-Alfi, 4:30 p.m., 6 September 1995), pp. 1-2.
[466] D618 (Minutes of the meeting between Ivan Čermak, Forand, and others on 7 September 1995), p. 1. See also Edward Flynn, T. 1289; P38 (Weekly report from Hussein Al-Alfi, 2-8 September 1995), p. 3; P1164 (UN Sector South report, by Hussein Al-Alfi, 8 September 1995), p. 3.
[467] D618 (Minutes of the meeting between Ivan Čermak, Forand, and others on 7 September 1995), pp. 2-3. See also P1164 (UN Sector South report, by Hussein Al-Alfi, 8 September 1995), p. 3.
[468] P1160 (Hussein Al-Alfi, witness statement, 5 March 1998), pp. 52-53, 57, 78-79; T. 13873-13874.
[469] D636 (Letter from Yasushi Akashi to UN headquarters in New York, 8 September 1995), pp. 1-2.



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Akashi met with Šarinić on the next day to discuss the issue.[470] On 9 September 1995, Harston from the Office of the Special Representative of the Secretary-General for the former Yugoslavia, wrote to the office of President Tuđman that following the meeting between Akashi and Šarinić, it was his understanding that Croatian authorities would soon provide charge sheets for 35 of the refugees at the UN compound to UNCRO Sector South, which would then turn them over to the Croatian authorities.[471] On 11 September 1995, Škare-Ožbolt replied, indicating that under Croatian law it was not possible to provide such charge sheets.[472] On 12 September 1995, Harston replied, seeking confirmation that the Croatian authorities would provide the grounds of suspicion against each of the 35 men, and that they would inform these men of the reasons for their detention.[473]

1633. At 2 p.m. on 13 September 1995, UN representatives met with Čermak and the Croatian Assistant Minister of Justice in Knin to discuss the hand-over from the UN compound of 34 persons suspected of a serious criminal offence, of whom the Croatian representatives handed over a list.[474] At noon on 14 September 1995, Leslie and Blahna met with Čermak and confirmed the agreement reached on the day before that the refugees at the UN compound, with the exception of 34 accused individuals, and now also around 500 refugees in the Knin secondary school and surrounding areas, would leave to FRY on 16 September 1995.[475]

1634. **Forand** testified that once Croatian forces had submitted satisfactory information to the UN supporting their claims against 38 Serbs on 16 September 1995, he delivered these 38 Serbs to the Croatian authorities, after which the UN transferred 1,184 refugees on 27 buses to Serbia on 16-17 September 1995.[476] The majority of the

[470] D636 (Letter from Yasushi Akashi to UN headquarters in New York, 8 September 1995), p. 3; D638 (Letter from Vesna Škare-Ožbolt to Julian Harston, 11 September 1995), p. 1; D641 (Letter from Yasushi Akashi to UN headquarters in New York, 14 September 1995).
[471] D637 (Letter from Julian Harston to the office of President Franjo Tuđman, 9 September 1995), pp. 1-3.
[472] D638 (Letter from Vesna Škare-Ožbolt to Julian Harston, 11 September 1995), pp. 1-2.
[473] D639 (Letter from Julian Harston to Vesna Škare-Ožbolt, 12 September 1995).
[474] D640 (Note by Gary Collins, 13 September 1995), pp. 1-3, 5-7.
[475] Alain Forand, T. 4133; P387 (UNCRO Sector South daily situation report, 14 September 1995), pp. 1-22.
[476] P330 (Alain Forand, witness statement, 20 August 1996), p. 11; P331 (Alain Forand, witness statement, 29 September 1997), p. 22; Alain Forand, T. 4099-4101, 4131, 4133, 4278; P400 (Press statement, 12 October 1995), pp. 2-3; P401 (Presentation by Alain Forand, 24 June 1996), pp. 34-35; D315 (Report by Andrew Leslie on the move of internally displaced persons from the Krajina, 18 September 1995), pp. 1-3; D316 (Letter from Colonel Karel Blahna to the Croatian Minister of Defence); D346 (Alain Forand's interview in Globus newspaper, 12 March 2004), p. 3; D642 (Letter from ICRC to



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refugees were elderly and young children.[477] On 18 September 1995, COS UNCRO reported that on 14 September 1995, Čermak had provided clothing and food and drinks for the refugees to use during their travel and that initial Croatian cooperation was good.[478] **Dondo** testified that much of what was necessary for the convoy, including the hiring of buses, was organized by the UN Department for Civil Affairs. The Croatian civilian police were also involved in the organization of the convoy and escorted it. At every important corner, cross-roads, bridge, and highway, Croatian police officers were present.[479] On 20 September 1995, Acting Sector South Commander Colonel Karel Blahna also reported that the UN transported the refugees, by their own wish, from Croatia on 16-17 September 1995 and that, amongst others, Čermak played a key role in the success of the operation.[480]

1635. **Hussein Al-Alfi**, the UN Civil Affairs Coordinator, later renamed Political and Human Affairs Coordinator, for Sector South in Knin from June 1995 to January 1996,[481] testified that Croatia agreed that the UN would be kept informed of the investigations and trials against the 38 or 39 persons handed over. Al-Alfi's staff monitored the court proceedings against those who had been handed over. The accused in these proceedings were all Serbs. The UN lost track of the persons on trial for a period of time, but Al-Alfi's staff managed to find five or six of them in Split, and a further 20 or more in Zadar. According to Al-Alfi, many of the accused were later released without trial, on a pardon or an amnesty.[482]

1636. When interviewed by the Prosecution, Čermak also provided information about his involvement with the persons who had ended up at the UN compound. He stated that he went with Akashi to the UNCRO camp.[483] At the camp, a part of the Serb population had sought refugee, which included 10 or 20 wounded members of the "Serbian

Ivan Čermak regarding 38 persons who surrendered to Croatian authorities, 16 September 1995), pp. 1-2. See also P1160 (Hussein Al-Alfi, witness statement, 5 March 1998), pp. 52, 59, 77, 102.

[477] P330 (Alain Forand, witness statement, 20 August 1996), p. 11; P399 (Video and transcript of an interview with Alain Forand), pp. 3, 6; P401 (Presentation by Alain Forand, 24 June 1996), p. 35; D346 (Alain Forand's interview in Globus newspaper, 12 March 2004), p. 3.

[478] D315 (Report by Andrew Leslie on the move of internally displaced persons from the Krajina, 18 September 1995), p. 1. See also D1696 (Karolj Dondo, witness statement, 18 August 2009), para. 39.

[479] D1696 (Karolj Dondo, witness statement, 18 August 2009), para. 39.

[480] D316 (Letter from Colonel Karel Blahna to the Croatian Minister of Defence).

[481] P1160 (Hussein Al-Alfi, witness statement, 5 March 1998), p. 5; Hussein Al-Alfi, T. 13805-13806, 13932-13933.

[482] P1160 (Hussein Al-Alfi, witness statement, 5 March 1998), pp. 98-99, 102.

[483] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 17, 107.



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military".[484] According to Čermak, some of them were transferred to the hospital. Čermak and others offered things such as food, fruit, and cigarettes to the refugees at the camp.[485] Čermak gave a speech, in the presence of media, telling the Serb refugees in the camp not to leave and that Croatia did not want empty territories, for which Akashi thanked him.[486] Čermak stated that the statement issued in his name on 9 August 1995 informing the people who fled Knin of their rights, was based on a government decision and destined for the Serbs who had not left Knin during Operation Storm. Čermak stated that he and others made some of these rights work out in practice, such as food, humanitarian aid, a public kitchen, and freedom of movement, while basic documents and pensions took some time, and the rest, such as jobs, remained declarative.[487] Čermak stated that point 3 in the 9 August 1995 statement referred to owners taking their own property.[488]

1637. According to Čermak, among the refugees at the compound were some people accused of war crimes.[489] He further stated that SZUP and SIS supplied a list of "people who were free to go to the territory of the former Yugoslavia", and a list of people who were sought by the justice system. Čermak and others provided the latter list, which was modified several times, to UNCRO.[490] Representatives of the justice system, whom Čermak thought were Assistant Minister Penić and Vesna Škare-Ožbolt, came to solve the issue with the representatives of UNCRO.[491] Čermak stated that all refugees in the UN compound left for Serbia, except for 30-40 persons who were suspected of having committed war crimes and were handed over to the Croatian civilian police and judicial authorities.[492] Of these people, Čermak stated, some were taken to Split and some went to court and to prison in Zadar.[493]

1638. Besides the evidence reviewed in chapter 4.5.3, the Trial Chamber has received evidence from a few more witnesses who left their homes and ended up at the UN compound in August 1995. **Witness 3**, a Serb from the all-Serb village Uzdolje in Orlić

[484] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 17, 51.
[485] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), p. 17.
[486] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 32, 108-109; D37 (Slobodna Dalmacija interview with Ivan Čermak, 10 August 1995), p. 2; D38 (Večernji list interview with Ivan Čermak, 11 August 1995), p. 4.
[487] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 147-148.
[488] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), p. 148.
[489] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 51, 105-106.
[490] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 51-52.
[491] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), p. 52.
[492] P2526 (Suspect interview with Ivan Čermak, 17 March 1998), pp. 19, 106.



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municipality,[494] testified that she stayed at the UN compound in Knin for 40 days starting on 6 August 1995.[495] A few days before 16 September 1995, unknown persons told the witness that she had to sign a form stating she was leaving Croatia voluntarily in order to be allowed to leave the UN compound.[496] The witness signed the form to be allowed to leave the camp, but testified that she was not leaving Croatia voluntarily.[497] The Croatian authorities told the witness she could stay in Croatia.[498] The witness testified that she had heard that some persons who had opted to return had been killed before they even reached their homes.[499] The witness left the compound in a convoy of buses in the early morning hours of 16 September 1995 and arrived in FRY the day after.[500]

1639. **Witness IC-16**, a Serb doctor from Knin,[501] stated that on 4 August 1995 he and his wife were among some 50 people sheltering from shelling in the cellar of his home in Knin. During the morning the shelling stopped and around 9 a.m. members of the Pumas of Varaždin came and advised them that for their own safety they should go to UNCRO transporters in front of the hospital, which would take them to the "southern camp". They followed this advice and someone took them in UNCRO transporters to the "southern camp".[502] At the camp, which housed both Serbs and Croats, UNCRO workers recorded their personal details and provided them with accommodation, food, and water.[503] Together with nine other doctors in the camp, the witness treated about twenty seriously ill patients who had been brought to the camp from Knin hospital.[504] Those staying in the camp were free to leave at any time. According to the witness, HV representatives told the doctors in the camp to go to work in Knin hospital, and others to go back to their homes.[505] On 7 August 1995 the witness and his wife left the camp and returned to their home, which they found was in the same condition that it had been in

[493] P2526 (Suspect interview with Ivan Čermak, 17 March 1998), p. 106.
[494] P81 (Witness 3, witness statement, 13 October 2003), paras 1, 3, 5; Witness 3, T. 1872-1873, 1906.
[495] P81 (Witness 3, witness statement, 13 October 2003), paras 9, 18; Witness 3, T. 1901.
[496] P81 (Witness 3, witness statement, 13 October 2003), para. 18; P82 (Witness 3, witness statement, 10 July 2007), para. 8, pp. 5-6; Witness 3, T. 1882-1884, 1890.
[497] P82 (Witness 3, witness statement, 10 July 2007), para. 8; Witness 3, T. 1890-1891.
[498] Witness 3, T. 1901.
[499] Witness 3, T. 1901.
[500] P81 (Witness 3, witness statement, 13 October 2003), para. 18; Witness 3, T. 1883.
[501] D1795 (Witness IC-16, witness statement, 16 May 2009), p. 1, paras 1-2.
[502] D1795 (Witness IC-16, witness statement, 16 May 2009), para. 2.
[503] D1795 (Witness IC-16, witness statement, 16 May 2009), para. 3.
[504] D1795 (Witness IC-16, witness statement, 16 May 2009), paras 3, 5.
[505] D1795 (Witness IC-16, witness statement, 16 May 2009), para. 5.



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before Operation Storm.[506] According to the witness only four doctors, including him, left the camp and returned to work in the hospital. Many people in the camp did not want to return to their homes, but rather wanted to be transported to Serbia. These people remained in the camp for approximately one month, after which they left for Serbia.[507]

1640. **Witness IC-12**, a Croatian Serb born in Knin in 1930,[508] stated that on 4 August 1995 when Operation Storm began he and his family sought shelter in their basement in Knin.[509] On 5 August 1995, at approximately 10 a.m., a polite Croatian Army officer accompanied by two soldiers came to Witness IC-12's house telling his family and the approximately ten other persons present that he would escort them to a temporary collection centre in town for their own safety.[510] Upon leaving his house, the witness saw that several roofs of buildings next to the RSK ministries and the Senjak barracks of the SVK (both of which were located right next to his house) were on fire.[511] He also looked down the street and saw smoke coming from the direction of the SVK military depot. The Croatian Army officer and the two Croatian soldiers brought them to a temporary collection centre in a clothes shop in the centre of Knin, where there were approximately 200 other Serbs and Croats who had been brought from their houses and apartments by members of the Croatian Army. Then members of the Croatian Army brought them in military trucks to the UN compound.[512]

1641. Witness IC-12 stated that the conditions in the UN compound were poor, characterized by a lack of food and water coupled with extreme heat.[513] In the UN compound, someone told the witness and others that those who wanted could get a pass to leave the compound and return home. One representative of the displaced persons advocated for those present to remain in Croatia and return to their homes, while another representative encouraged their departure to Serbia. The witness stated that the UN registered people who wanted to go to Serbia. Witness IC-12 and his wife decided to return to their home, and a soldier at the exit of the camp examined their passes and allowed them to leave. On 11 August 1995, the witness and his wife returned home to

[506] D1795 (Witness IC-16, witness statement, 16 May 2009), paras 2, 4.
[507] D1795 (Witness IC-16, witness statement, 16 May 2009), para. 5.
[508] D1796 (Witness IC-12, witness statement, 16 May 2009), p. 1, para. 1.
[509] D1796 (Witness IC-12, witness statement, 16 May 2009), para. 2.
[510] D1796 (Witness IC-12, witness statement, 16 May 2009), para. 3.
[511] D1796 (Witness IC-12, witness statement, 16 May 2009), paras 2-3, 8.
[512] D1796 (Witness IC-12, witness statement, 16 May 2009), para. 3.
[513] D1796 (Witness IC-12, witness statement, 16 May 2009), para. 3.



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find that their household was in disorder with some belongings missing.[514] That same day, after hearing on the radio that all people who left the UN camp should report to the police station, the witness and his wife went to the police station and received new ID cards and passports free of charge.[515] Witness IC-12 stated that, at that time, Knin was lacking electric power, food, water, and garbage pick-up while some shop windows were broken.[516] Also on 11 August 1995, a Croatian VP Commander asked the witness's wife if VP could use their shower due to lack of water in the barracks. Witness IC-12 stated that the VP delivered food and they were very polite.[517] The witness stated that most shops in Knin reopened on 22 August 1995, with life gradually returning to normal.[518]

1642. Based on the above, the Trial Chamber finds that some people in Knin and other municipalities who started to leave their homes on 4 August 1995 sought shelter at the UN compound. The majority of people arrived between the evening of 4 August and the evening of 5 August 1995. Between 5 August and 16 September 1995 there were around 700 people at the compound, although the number varied since some people arrived during this period while others returned to their homes. On 16 September 1995, the people at the compound were, with the assistance of the UN, transported to Serbia. The Trial Chamber finds that there were some possibilities to leave the compound (with safe passage cards) during the first 10 to 15 days. This was then severely restricted when Croatia imposed as condition for anyone leaving, the handover of persons suspected of certain crimes. Throughout the period, some people chose not to leave the compound out of fear of what might happen to them if they returned to their homes.[519]

### *4.5.5 Reception and collection centres*

1643. The Trial Chamber received evidence from numerous witnesses, including Bogdan Dobrić, Dušan Torbica, Zdravko Bunčić, Marija Večerina, Witness 67, and Nikola Dragičević who stayed in centres as described below. Another such witness is

[514] D1796 (Witness IC-12, witness statement, 16 May 2009), para. 5.
[515] D1796 (Witness IC-12, witness statement, 16 May 2009), para. 6.
[516] D1796 (Witness IC-12, witness statement, 16 May 2009), para. 7.
[517] D1796 (Witness IC-12, witness statement, 16 May 2009), para. 8.
[518] D1796 (Witness IC-12, witness statement, 16 May 2009), para. 11.
[519] See, for example, Witness 3 who testified that she had heard that some persons who had opted to return had been killed before they even reached their homes (Witness 3, T. 1901).



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**Dragutin Junjga**, a Serb from Uzdolje village in Orlić municipality,[520] who stated that on 19 August 1995, he was in his house with his mother, Bosiljka Šare, and Rade Šare. Two soldiers, one of whom (Dušan Konforta) the witness knew from before, came to the witness's house and took the witness, Bosiljka Šare, and Rade Šare to a factory where a bus was waiting. They rode the bus to Knin. At Knin, unidentified persons detained the witness in a small room in a school building. Someone took Bosiljka Šare to the hospital. The following day, the police transported the witness with his hands cuffed to Zadar. They brought him to a "collection centre", where he was interrogated concerning many issues, including who was involved in weapons delivery, who was in the army, and so on. On 28 August 1995, the witness was released with the assistance of a former policeman, who signed a paper of some kind and brought the witness back to the village. Within eight days, the witness received a Croatian identification document and 200 kunas.[521]

1644. The Trial Chamber received evidence with regard to the setting-up and administration of the centres primarily through documentary material and through testimonies of Joško Morić, Zdravko Židovec, and Ive Kardum.

1645. On 3 August 1995, Mate Laušić ordered VP commanders to establish check-points in liberated areas, hand over all discovered documents to the SIS, and ensure public order and the "isolation of civilians and their security evacuation".[522] He ordered that anti-terrorist VP units, strengthened by VP and soldiers with dogs, search and destroy remaining enemy groups.[523] In addition, he ordered that VP hand over arrested members of paramilitary formations, militia and civilians fit for military service, together with their possessions, to "the commander of the reception centre", and hand over women, children and elderly people to police stations.[524] On the same day, Joško Morić ordered a number of police administrations, including the one for Zadar-Knin, that women, children, and elderly from the "liberated areas" who are brought by the VP to police stations, or who arrive there in some other way, should be turned over to holding centres for refugees in the territory of the police administration.[525] On 4 August

[520] P2518 (Dragutin Junjga, witness statement, 22 April 1998), pp. 1-2.
[521] P2518 (Dragutin Junjga, witness statement, 22 April 1998), p. 3.
[522] D44 (Order issued by Major general Mate Laušić, 3 August 1995), pp. 1, 4; paras 1.1-1.4, 1.7-1.8.
[523] D44 (Order issued by Major general Mate Laušić, 3 August 1995), para. 1.5.
[524] D44 (Order issued by Major general Mate Laušić, 3 August 1995), paras 2-3; see also D45 (Minutes of meeting held at the Ministry of Defence, 4 August 1995), p. 8.
[525] P493 (Order by Joško Morić to chiefs of police administrations on the cooperation with the VP, 3 August 1995), pp. 1-2.



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1995, Joško Morić made a number of police administration chiefs, including the one of Zadar-Knin Police Administration, responsible for instituting and operating collection centres for captured persons.[526] The commander of a collection centre could approve the taking away or release of prisoners only with the approval of police administration staff.[527]

1646. **Joško Morić**, who in 1995 was Assistant Minister of the Interior in charge of regular police,[528] testified that his 4 August 1995 order was motivated by the experience of population movements after the liberation of other occupied areas, which led him and others to come up with the idea of centres to receive all persons in need of assistance, in compliance with the Geneva Conventions.[529] They also intended the centres to be a place where all categories of people would be interviewed by police to find out who wanted to stay in Croatia so that they could be issued with the appropriate documents and be accommodated in areas where their safety could be guaranteed, and also to find out who had committed the crime of participating in armed rebellion.[530] Morić testified that collection centres and reception centres were two different kinds of institutions, the former being for prisoners, and the latter being for persons having nothing to do with combat.[531] On 8 August 1995, Nađ wrote to the police administrations, indicating that the correct terminology to be used in reports for POW centres was Admissions Centres for Prisoners-of-war and for civilian centres, Reception Centres for Civilians.[532]

1647. On 5 August 1995, **Zdravko Židovec**, the Assistant Minister for Information, Analysis and Fire and Civilian Protection throughout 1995 and a member of the Command Staff of Operation Return,[533] instructed a number of police administrations, including the Zadar-Knin Police Administration to establish reception centres for civilians. The centres were to be organized in accordance with the Geneva Convention

[526] P494 (Order issued by the Assistant Minister of the Interior Joško Morić to police administrations, 4 August 1995).
[527] P494 (Order issued by the Assistant Minister of the Interior Joško Morić to police administrations, 4 August 1995), section B, para. 6.
[528] D1841 (Joško Morić, witness statement, 15 May 2009), p. 1, paras 1-2; D1842 (Joško Morić, witness interview, 17 January 2004), pp. 1-10, 13, 25, 110, 119; Joško Morić, T. 25502-25505, 25508-25511, 25514-25515, 25523, 25528, 25640, 25785, 25806, 25842, 25926-25927.
[529] Joško Morić, T. 25553-25555, 25899-25902.
[530] Joško Morić, T. 25554-25556, 25849-25850; D1845 (Letter by Joško Morić regarding MUP obligations in a UN peace keeping operation, 30 January 1992, with attachments), pp. 4, 17.
[531] Joško Morić, T. 25905-25908, 25910-25911.
[532] P2396 (Ive Kardum, witness statement, 3-4 May 2007), para. 28; P914 (Letter from Ivan Nađ regarding reporting terminology, 8 August 1995). When not quoting or referring to specific evidence, the Trial Chamber has opted for the terms reception centres for civilians and collection centres for POWs.
[533] D1570 (Zdravko Židovec, witness statement, 15 June 2007), paras 6, 8; Zdravko Židovec, T. 19921.



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on the Treatment of Civilians, within the organization of Civilian Protection and with the full cooperation of the Regional Offices for Expelled Persons and Social Work Centres. Židovec added that when encountering persons in the zone of combat, it would be compulsory to separate civilians and send them to the reception centres.[534] Židovec testified that the reception centres were set up by the Civilian Protection in schools and similar public facilities in order to house civilians of both Croat and Serb ethnicity in Knin, Obrovac, Benkovac, Zadar, and the island of Obonjan, Šibenik municipality.[535] According to Židovec, the people in the reception centres were those whose basic livelihood was jeopardized, such as those incapable of living alone**,** and they were taken in vehicles if they decided to go to the centres, where they received medical care and elementary assistance.[536]

1648. Židovec testified that civilians were free to leave reception centres any time they wanted and that some did.[537] However, due to security concerns, it was suggested that people should remain in the reception centres.[538] On 6 August 1995, Židovec informed the Action Operation Return Staffs in a number of police administrations, including the one in Zadar-Knin, that individuals kept at the reception centres could leave if they were picked up by their family, that a record should be kept of the released individuals in cooperation with the Red Cross and the Social Welfare Centre, and that the Return Staffs should regularly report back to the MUP Operations Staff on what had been done.[539] According to Židovec, police administrations were to issue Croatian identification material and Croatian citizenship to those who remained in the territory.[540] Approximately 4,000 people went through all the reception centres in 1995, with approximately 1,000 in Knin.[541] Židovec testified that he attended meetings with the ICRC in Zagreb in 1995 because he was a vice-president of the Croatian Red Cross, and further that he never received any objection about conditions in the centres from the

[534] P1045 (Instruction by Zdravko Židovec to police administrations, 5 August 1995), p. 1.
[535] Zdravko Židovec, T. 19906, 19909, 19994, 20021.
[536] D1570 (Zdravko Židovec, witness statement, 15 June 2007), para. 42; Zdravko Židovec, T. 19909, 20010-20012, 20026.
[537] Zdravko Židovec, T. 19907-19908, 20007-20009, 20020.
[538] Zdravko Židovec, T. 20011.
[539] D462 (Order by Zdravko Židovec on release of individuals from collection centres, 6 August 1995), pp. 1-2. See also Zdravko Židovec, T. 20007-20008.
[540] D1570 (Zdravko Židovec, witness statement, 15 June 2007), para. 43.
[541] Zdravko Židovec, T. 19995, 20019.



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ICRC, who would visit reception centres either alone or along with the Croatian Red Cross.[542]

1649. **Ivan Jurić**, a Major in the VP Administration in August 1995 who was sent by General Laušić to coordinate the work of the 72nd and 73rd VP Battalions and the military and civilian police in the former Sector South between 3 and 13 August 1995,[543] testified that the VP had a twofold role in relation to civilians: it was supposed to evacuate them quickly and efficiently from combat areas and then hand them over to the civilian police who were organizing collection centres.[544] Outside of combat areas, civilians fell under the responsibility of the civilian police.[545] Jurić, however, specified that some civilians were not in collection centres, such as the civilians in the UN compound in Knin and civilians in the areas of Sinj and Sibenik. The scope of the authority of the VP did not include the return of civilians after combat activities were over.[546]

1650. On the basis of the instruction issued by Joško Morić on 4 August 1995, the Zadar-Knin Police Administration designated on the same day Šimuna Kožičića-Benje primary school in Zadar and the Arbanasi primary school as "holding centres" and the Mocire sports centre and the Jazine sports hall as collection centre and reserve collection centre, respectively.[547] The collection centre at the Mocire sports centre was closed at 6 p.m. on 19 August 1995.[548] According to a report by the Zadar-Knin Police Administration, dated 21 August 1995, there was also a reception centre located at the Knin secondary school centre (sports hall).[549] On 6 August 1995, Commander Marko Bilobrk sent to the 10th police station, Sinj, a list of 91 persons in the Knin collection

[542] Zdravko Židovec, T. 20022-20023.
[543] Ivan Jurić, T. 27407, 27412-27417, 27426-27428, 27481, 27534.
[544] Ivan Jurić, T. 27451, 27517.
[545] Ivan Jurić, T. 27451.
[546] Ivan Jurić, T. 27452.
[547] P2396 (Ive Kardum, witness statement, 3-4 May 2007), para. 17; P900 (Telegram of Ivica Cetina regarding the establishment of collection centres and holding centres, 4 August 1995); P909 (Final report on the treatment of POWs at the POW reception centre in Zadar, 21 August 1995), p. 5.
[548] P2397 (Ive Kardum, witness statement, 22-23 March 2004), para. 51; Ive Kardum, T. 9307-9308, 9310; P909 (Final report on the treatment of POWs at the POW reception centre in Zadar, 21 August 1995), pp. 5, 19.
[549] P909 (Final report on the treatment of POWs at the POW reception centre in Zadar, 21 August 1995), pp. 1, 5.



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centre.[550] According to a VP report, dated 12 August 1995, there was also a collection centre for POWs located at the school through which 56 POWs had passed.[551]

1651. **Ive Kardum**, Chief of the crime police department for the Zadar-Knin police administration in 1995,[552] testified that he visited the civilian reception centre in Knin a few days after 7 August 1995, where three members of his crime police were.[553] They interviewed the people there in order to find out if they had participated in armed rebellion against Croatia or committed war crimes, in which case the police would escort them to Zadar.[554] They also drew up lists of those persons and checked in Zadar whether there were any criminal reports filed against them.[555] When the crime police officers were involved in a criminal investigation for a serious offence, they would immediately inform him.[556] There were three centres for civilians in Zadar, which were under the jurisdiction of the ODPR, and which were located at the Šimun Kožičić Benjo elementary school, the Šime Budinić elementary school, and one other school.[557] On 6 August 1995, there were 135 elderly persons and children in the holding centre of whom the Zadar-Knin Police Administration had housed one elderly Croat woman and one elderly Serb woman, at the request of their sons, in their sons' respective homes.[558] On 10 August 1995, 93 persons were transferred from the Šimun Kožičić Benjo elementary school to the Šime Budinić elementary school.[559] A further 60 persons were transferred from the Šimun Kožičić Benjo elementary school to the B. Kašić elementary

[550] D52 (List of persons at the Knin collection centre, 6 August 1995).
[551] P979 (Report on activities of military crime police by VP investigation department, VP administration, Ante Glavan, to Spomenko Eljuga, 12 August 1995), p. 3.
[552] P2396 (Ive Kardum, witness statement, 3-4 May 2007), p. 1, paras 2-3; P2397 (Ive Kardum, witness statement, 22-23 March 2004), p. 1, paras 1-3, 12, 15, 17; Ive Kardum, T. 9231, 9251-9252, 9398, 9498-9499.
[553] P2397 (Ive Kardum, witness statement, 22-23 March 2004), paras 47-49; Ive Kardum, T. 9291-9292, 9357-9359, 9502-9503, 9508; P909 (Final report on the treatment of POWs at the POW reception centre in Zadar, 21 August 1995), p. 5.
[554] Ive Kardum, T. 9292, 9398-9399.
[555] Ive Kardum, T. 9293-9294.
[556] Ive Kardum, T. 9359.
[557] P2396 (Ive Kardum, witness statement, 3-4 May 2007), paras 17, 20, 33; P2397 (Ive Kardum, witness statement, 22-23 March 2004), para. 20; Ive Kardum, T. 9341; P909 (Final report on the treatment of POWs at the POW reception centre in Zadar, 21 August 1995), p. 5; P916 (List of persons transferred from the Š. K. Benja Elementary School to the Š. Budinić Elementary School, 11 August 1995); P917 (List of persons transferred from the Š. K. Benja Elementary School to the Š. Kašić Elementary School, 21 August 1995).
[558] P2396 (Ive Kardum, witness statement, 3-4 May 2007), para. 23; Ive Kardum, T. 9310-9311, 9313; P904 (Telegram from Ivica Cetina to Operation Povratak headquarters listing 23 prisoners in the collection centre, and noting the presence of 135 persons in the holding centre, 6 August 1995).
[559] P916 (List of persons transferred from the Š. K. Benja Elementary School to the Š. Budinić Elementary School, 11 August 1995).



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school.[560] According to Kardum, civilians arrived there because they needed documents, medication, hospitalization or other treatment, and later when the services had been established they were brought there primarily to be issued with Croatian documents.[561] Police were present at these centres for security reasons.[562] When the crime police learned that someone in a centre qualified as a POW, they would go to the centre to interview the person.[563] Crime police identified several members of Serb paramilitary units wanted for crimes against Croatia, who were brought to the POW centre for criminal processing, and later to the competent investigating centres.[564] Kardum went to civilian centres once or twice a week and noticed there mainly elderly people, both men and women whom he thought were accommodated separately.[565] Kardum testified that anyone could freely leave the reception centres unless obviously unable to take care of him- or herself.[566] Up to 1 September 1995, the Croatian authorities put many of them, usually elderly, infirm and/or suffering from mental illness, in hospital, and some even died there.[567] Many others returned to their homes.[568] Kardum testified that he never received reports of civilians in reception centres being beaten or forced to work.[569]

1652. **Boris Milas**, (acting) Head of the Crime Prevention Service of the 72nd VP Battalion from about mid-September 1992 to the end of 1996,[570] testified that officials in the MUP were obliged to provide reception centres for POWs and reception sites for civilians in Knin, Šibenik, Zadar, and Sinj.[571] In an agreement reached prior to Operation Storm at the level of the Ministers of the Interior and Defence, and pursuant to an order by the Chief of the VP Administration, those organizing and working in the reception centres for civilians were exclusively civilian policemen.[572] At a meeting of 4 August 1995 at the forward command post of the 72nd VP Battalion in Gornji Rujani

[560] P917 (List of persons transferred from the Š. K. Benja Elementary School to the B. Kašić Elementary School, 21 August 1995).
[561] P2396 (Ive Kardum, witness statement, 3-4 May 2007), para. 35; Ive Kardum, T. 9340-9341.
[562] P2396 (Ive Kardum, witness statement, 3-4 May 2007), para. 33.
[563] P2396 (Ive Kardum, witness statement, 3-4 May 2007), para. 34; Ive Kardum, T. 9398-9399.
[564] P909 (Final report on the treatment of POWs at the POW reception centre in Zadar, 21 August 1995), p. 5.
[565] P2396 (Ive Kardum, witness statement, 3-4 May 2007), paras 32, 34.
[566] Ive Kardum, T. 9502-9503.
[567] Ive Kardum, T. 9314, 9340, 9502.
[568] Ive Kardum, T. 9317.
[569] Ive Kardum, T. 9502.
[570] D1532 (Boris Milas, witness statement, 19 May 2009), p. 1, paras 1-4, 6, 8, 11, 31; D1533 (Boris Milas, witness statement, 22 June 2009), p. 1; Boris Milas, T. 19158, 19168-19169, 19227-19230, 19322; P2548 (Official note of MUP crime police interview with Boris Milas), p. 1.
[571] D1532 (Boris Milas, witness statement, 19 May 2009), para. 37; Boris Milas, T. 19197.
[572] Boris Milas, T. 19197.



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very close to Sajković, Major Jurić instructed Milas and others to visit the officials in Sinj, Zadar, and Šibenik and inform them of the tasks of the Crime Investigation VP and to prioritize the reception and transfer of POWs and civilians at reception centres/sites.[573] The VP interviewed POWs in cooperation with the civilian police and the security service, with an aim to obtain information about remaining weapon stocks of the SVK, remaining enemy groups, and mine fields in the territories the HV gained control over.[574] Out of the seven employees of the 72nd Crime Prevention Service who were in Knin, four were authorized to conduct interviews for POW processing, and at least two would conduct interviews in reception centre(s) in the area of Knin.[575] The witness testified that this processing was conducted in reception centres in Zadar, Šibenik, Knin, and Sinj.[576]

1653. Glavan submitted daily reports on the number of POWs processed each day to Captain Eljuga, Chief of the Crime VP at the VP Administration, beginning on 4 August 1995.[577] Based on this information, Eljuga drafted a report dated 15 September 1995, stating that a total of 1,576 individuals had been received at the various holding/reception centres for paramilitaries and civilians in Sisak, Ozalj, Gospić, Zadar, Šibenik, Sinj, and Knin.[578] A total of 659 people were sent to a military investigation and county court with a criminal or separate report.[579] Of these people, 400 were charged with armed rebellion, 119 with serving in an enemy army, 117 with a terrorism-related crime, six with war crimes against civilians, and 17 with threatening territorial integrity.[580] Eight of the paramilitaries received were not residents of Croatia.[581] A total of 356 civilians were sent from the holding centres for paramilitaries to holding centres for civilians once they were identified and processed.[582] Civilian holding centres had

[573] D1532 (Boris Milas, witness statement, 19 May 2009), paras 38-39; D1533 (Boris Milas, witness statement, 22 June 2009), paras 6-7; Boris Milas, T. 19175.
[574] D1532 (Boris Milas, witness statement, 19 May 2009), para. 42; D1533 (Boris Milas, witness statement, 22 June 2009), para. 7; Boris Milas, T. 19196.
[575] D1533 (Boris Milas, witness statement, 22 June 2009), para. 1; Boris Milas, T. 19172, 19196-19197.
[576] Boris Milas, T. 19197-19198; D1535 (Analysis of criminally processed paramilitaries and civilians, 15 September 1995), pp. 2-10.
[577] D1532 (Boris Milas, witness statement, 19 May 2009), para. 38; Boris Milas, T. 19175, 19197-19198, 19363.
[578] D1533 (Boris Milas, witness statement, 22 June 2009), para. 6; Boris Milas, T. 19197-19198; D1535 (Analysis of criminally processed paramilitaries and civilians, 15 September 1995); D1536 (Report on VP policing of areas taken in Operation Storm, 3 December 1995), p. 2.
[579] D1535 (Analysis of criminally processed paramilitaries and civilians, 15 September 1995), pp. 2-9; D1536 (Report on VP policing of areas taken in Operation Storm, 3 December 1995), p. 2.
[580] D1535 (Analysis of criminally processed paramilitaries and civilians, 15 September 1995), pp. 2-9.
[581] D1535 (Analysis of criminally processed paramilitaries and civilians, 15 September 1995), pp. 3, 6, 8.
[582] D1535 (Analysis of criminally processed paramilitaries and civilians, 15 September 1995), pp. 4-9.



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received 547 further civilians, of whom 218 had been released to family and friends with the consent of the competent police administrations, including the Zadar-Knin police administration.[583] The witness testified that VP crime police interviewed about 550 members of enemy formations, of whom approximately 180 were handed over to a military judge.[584]

1654. **Witness 86** testified that the reception centres in the area of Kotar-Knin Police Administration, including the one in the Knin high school building, were under the command of the crime police at the Zadar-Knin Police Administration.[585] According to the witness, the Knin reception centre was set up to receive people who were fleeing and were afraid.[586] According to the witness, some people came on their own initiative and there were also occasions where the police brought individuals to the centre.[587] The Kotar-Knin Police Administration provided the physical security at the centre.[588] According to the witness, the centre was run by a man called Raspović from the Zadar-Knin Police Administration.[589] According to Witness 86, the police conducted interviews with all the refugees coming from the Serb controlled areas.[590] Persons that were not suspected of crimes could request Croatian documents, they were recorded, and could freely leave the reception centre.[591]

1655. The Trial Chamber has also received evidence from international observers who visited the reception centres. HRAT reported that in the afternoon of 9 August 1995, Croatian civilian police guarding a school in Knin used as a POW detention centre denied HRAT access for lack of written authorization from the local police commander.[592] As they left, they saw four military trucks deliver approximately 40 male prisoners to the school. HRAT went to the local police station to obtain the authorization, but waited half an hour without being received by the chief.[593] In the

[583] D1535 (Analysis of criminally processed paramilitaries and civilians, 15 September 1995), pp. 4, 8.
[584] Boris Milas, T. 19196-19197.
[585] P489 (Witness 86, witness statement, 23 November 2007), para. 5; Witness 86, T. 5368, 5602-5603, 5763.
[586] P487 (Witness 86, witness statement, 19 September 2001), para. 39.
[587] Witness 86, T. 5368-5369.
[588] Witness 86, T. 5602-5603.
[589] Witness86, T. 5368, 5602, 5763.
[590] Witness 86, T. 5763.
[591] Witness 86, T. 5764.
[592] P21 (Edward Flynn, witness statement, 26-27 February 2008), para. 7; Edward Flynn, T. 1243; P30 (HRAT daily report, 9 August 1995), pp. 1-2. See also P1099 (Maria Teresa Mauro, witness statement, 6 February 2008), para. 20.
[593] P21 (Edward Flynn, witness statement, 26-27 February 2008), para. 7; P30 (HRAT daily report, 9 August 1995), p. 2.



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evening, HRAT returned to the school with UNHCR and obtained access to a gymnasium in which they found approximately 150 women, children, elderly and a few men living in "acceptable" conditions.[594] Someone brought in 42 POWs from another room, and HRAT observed that three or four of them had cuts and bruises on their face.[595] **Maria Teresa Mauro**, a UN civil affairs officer and HRAT member in the former Sector South based in Knin from March to December 1995,[596] testified that the HRAT report incorrectly stated that these POWs were brought in from a separate room that HRAT did not observe, whereas in fact HRAT was brought into a room where the POWs stood in a line and ate.[597] On 9 August 1995, Akashi wrote to Annan that the Croatian Red Cross had informed the CAC that there were 300 Serb prisoners in Zadar, of whom 50-100 were military, and 50 military persons detained in Knin school.[598]

1656. On 10 August 1995, HRAT reported that approximately 130 out of 250 persons had left the school in Knin with safe passage cards issued by the Croatian MoD.[599] **Edward Flynn**, a Human Rights Officer with the Office of the UNHCHR and the leader of one of the HRATs in the former Sector South from 7 August to mid-September 1995,[600] visited the collection centre in Knin school, where a police officer explained that it took only a short time to issue a pass to someone at the school.[601] He further explained that the approximately 40 men whom HRAT had seen the evening before were POWs who surrendered or were arrested by the VP.[602] The policeman stated that the other people at the school were in a hurry to return to their homes to tend to their livestock.[603] HRAT interviewed non-military age persons at the school, who

[594] P21 (Edward Flynn, witness statement, 26-27 February 2008), para. 7; Edward Flynn, T. 1365-1366, 1371; P30 (HRAT daily report, 9 August 1995), p. 2. See also P1099 (Maria Teresa Mauro, witness statement, 6 February 2008), para. 21.
[595] P21 (Edward Flynn, witness statement, 26-27 February 2008), para. 7; P30 (HRAT daily report, 9 August 1995), p. 2. See also P1099 (Maria Teresa Mauro, witness statement, 6 February 2008), para. 21.
[596] P1098 (Maria Teresa Mauro, witness statement, 3 March 2000), pp. 1-2; P1099 (Maria Teresa Mauro, witness statement, 6 February 2008), p. 1, paras 1, 7-9, 11-12; Maria Teresa Mauro, T. 11998, 12000, 12024, 12075-12076.
[597] P1099 (Maria Teresa Mauro, witness statement, 6 February 2008), para. 21.
[598] D619 (Letter from Yasushi Akashi to Kofi Annan, 9 August 1995), p. 2.
[599] P21 (Edward Flynn, witness statement, 26-27 February 2008), para. 8; P31 (HRAT daily report, 10 August 1995), pp. 1, 4.
[600] P20 (Edward Flynn, witness statement, 29 June 1997), pp. 1-2, 6, 13, 23; P21 (Edward Flynn, witness statement, 26-27 February 2008), p. 1, paras 3-4, 36; Edward Flynn, T. 1044, 1270, 1291-1292, 1312, 1325.
[601] Edward Flynn, T. 1239, 1243-1244, 1340-1342, 1345; D67 (Video and transcript of visit of HRAT to Knin school).
[602] Edward Flynn, T. 1340-1342; D67 (Video and transcript of visit of HRAT to Knin school).
[603] Edward Flynn, T. 1340-1342; D67 (Video and transcript of visit of HRAT to Knin school).



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reported that the HV had brought them there and, as Flynn recalled in court, most of whom indicated their wish to return to their homes.[604]

1657. According to a VP report, dated 12 August 1995, on that day, the number of civilians in the reception centre of civilians in the area of responsibility of Knin company, 72nd VP battalion, in the sports hall of the secondary school centre in Knin was around 136, even though the exact number kept changing due to new arrivals and releases.[605]

1658. Flynn testified that around 14 August 1995, most Serbs who remained in Knin were either in the school or in the UN compound, including a small number of men of military age.[606] He further testified that around that time living conditions were better for the approximately 250 displaced persons at the school than for the approximately 500 displaced persons at the UN compound.[607] He also testified that Serbs in both places were told that they could leave if they wished, as soon as they obtained a safe passage card.[608] Flynn testified that several people left the school in the first couple of weeks and he believed most of them returned home, at least to begin with.[609]

1659. HRAT reported that on 23 August 1995, in the afternoon, it visited the 41 displaced persons (one being a POW) accommodated at the Knin high school and spoke with some of the displaced persons who all wanted to go to Belgrade and urged the UN to facilitate their transfer. Some of the people told HRAT that they had witnessed killing, looting and burning and some told HRAT that they felt humiliated when they were insulted and beaten by HV soldiers. HRAT further reported that only one HRAT member was allowed, in the presence of a Croatian police officer, to see the POW, who was kept in a separate room, appeared very worried and started crying and told HRAT that he had been interviewed during the day. The Croatian police officer told HRAT that the POW would be transported to Zadar the next day.[610]

[604] P21 (Edward Flynn, witness statement, 26-27 February 2008), para. 8; Edward Flynn, T. 1345-1346; P31 (HRAT daily report, 10 August 1995), p. 1.
[605] P979 (Report on activities of military crime police by VP investigation department, VP administration, Ante Glavan, to Spomenko Eljuga, 12 August 1995), pp. 1, 3.
[606] P21 (Edward Flynn, witness statement, 26-27 February 2008), para. 6; Edward Flynn, T. 1336; P29 (HRAT daily report, 8 August 1995), p. 1.
[607] Edward Flynn, T. 1336-1337.
[608] Edward Flynn, T. 1337-1338, 1371.
[609] Edward Flynn, T. 1366.
[610] P1098 (Maria Teresa Mauro, witness statement, 3 March 2000), pp. 4-5; P1099 (Maria Teresa Mauro, witness statement, 6 February 2008), para. 34; P47 (HRAT report, 23 August 1995), pp. 2-3. See also D94 (UNMO Sector South daily situation report, 7 p.m., 23 August 1995), p. 4.



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1660. **Witness 136**, a Serb field interpreter for UNCIVPOL and UNCRO,[611] testified that on 27 August 1995, the witness accompanied a UN patrol that transferred seven people remaining in Grubori to Knin High School, where according to the witness, Serb civilians were being accommodated, as there was no space in the UN compound. At that time, there were about 100 people in the gym of the school, and the witness was told this number later increased to 200. The Croatian Civil Defence ran the facilities. Despite the poor conditions in which the people at the school lived, the witness got the impression that they were safe and being protected by the Croatian police. The witness believed the school was "some sort of registration centre", as some people were sent back to their village by bus.[612]

1661. **Peter Marti**, an UNMO and later a member of HRAT in Sector South from 19 June to 27 November 1995,[613] testified that on 28 August 1995, UNMO team Podkonje went on a patrol, on which the witness was not present but of which he was informed about later by his team, and found two elderly Serb couples in the village of Milivojevići, Knin municipality, and six Serbs in the village of Mušića Stanovi, Knin municipality, who asked the UNMOs to help them with food and to provide them with transportation to the HQ Sector South "refugee camp", expressing the wish to be taken to Serbia. The UNMOs were also informed that there were a large number of civilians from the general area of Podinarje, Knin municipality, hiding in the nearby forests, who also wanted to be transferred to Serbia under UN protection.[614]

1662. At a meeting in the week before 1 September 1995, Čermak and Pasic informed UN officials that they had a number of displaced persons from the area temporarily sheltered in Šibenik and in a school in Knin and asked whether these people could join a convoy leaving Croatia.[615] HRAT reported on 1 September 1995 that there were 99 persons sheltered at the Knin school, all of who wished to depart on a convoy to

[611] P2 (Witness 136, witness statement, 4 July 1996), pp. 1-2; Witness 136, T. 620, 622, 641, 726, 765, 768, 780-782.
[612] P2 (Witness 136, witness statement, 4 July 1996), pp. 11-12; P3 (Witness 136, witness statement, 11 June 2007), para. 20.
[613] P415 (Peter Marti, witness statement, 13 February 1996), pp. 1-2; P416 (Peter Marti, witness statement, 29 June 1997), pp. 1, 6; P417 (Peter Marti, witness statement, 14 December 2007), paras 1, 5, 9, 17.
[614] P417 (Peter Marti, witness statement, 14 December 2007), paras 66, 76-77; D391 (Summary of humanitarian violations from HQ Sector South daily situation reports, 7 August-8 September 1995), p. 21.
[615] D1210 (UN Sector South report, by Hussein Al-Alfi, 11 August 1995), p. 3.



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FRY.[616] Witness 136 testified that on 3 September 1995, four elderly women remaining in the hamlet of Crnogorac were transferred to Knin High School and from there to Serbia. The Grubori villagers were later transferred to the UN compound and from there to Serbia.[617]

1663. Marti testified that on 3 September 1995, he went on an UNMO patrol to the Knin school where there were 103 civilian Serbs, and the patrol was told that there were also ten former SVK soldiers amongst them.[618] HRAT reported on 7 September 1995 that there were 110 mostly elderly displaced persons at the Knin secondary school.[619]

1664. An UNMO team Podkonje report authored by Marti, dated 10 September 1995, records that up to 9 September 1995 the team found and noted down details of a total of 228 persons in the area of Podinarje, Golubić, and Plavno in Knin municipality, Mala Popina in Gračac municipality, and Mokro Polje in Ervenik municipality, who had been visited for the first time by someone after Operation Storm. Many people wanted to be evacuated to Knin for official registration by the Croatian authorities.[620] On 11 or 12 September 1995, Marti and, *inter alia*, Tor Munkelien took four elderly women to the school in Knin.[621] On 11 September 1995, the UNMO team assisted UN Civil Affairs to evacuate three elderly people from Kanaziri, Ervenik municipality, to the school in Knin.[622] On 12 September 1995, HRAT reported that several more elderly persons had requested or received UN assistance in being evacuated from their villages to Knin school, which now held more than 200 persons, all of whom hoped to join an imminent convoy.[623] Flynn testified that he recalled no complaints of mistreatment by persons sheltering at the school, but that "there was an issue" with POWs held in a separate area of the school.[624]

[616] P21 (Edward Flynn, witness statement, 26-27 February 2008), para. 28; P49 (HRAT daily report, 30-31 August, 1 September 1995), p. 3.
[617] P2 (Witness 136, witness statement, 4 July 1996), pp. 11-13.
[618] P416 (Peter Marti, witness statement, 29 June 1997), p. 12; P417 (Peter Marti, witness statement, 14 December 2007), para. 85; Peter Marti, T. 4625; P424 (Report on Activities HRAT, 16 September 1995), p. 2.
[619] P21 (Edward Flynn, witness statement, 26-27 February 2008), para. 32; P37 (HRAT daily report, 7 September 1995), p. 2.
[620] P422 (Humanitarian Aspects in the Area of Responsibility of UNMO team Podkonje, 4 August 1995 to 10 September 1995), pp. 1-2.
[621] P416 (Peter Marti, witness statement, 29 June 1997), p. 12.
[622] P417 (Peter Marti, witness statement, 14 December 2007), paras 87, 93; P68 (Summary of UNMO Sector South situation reports from 7 August to 22 November 1995), p. 35.
[623] P21 (Edward Flynn, witness statement, 26-27 February 2008), para. 34; P35 (HRAT daily report, 8-11 September 1995), pp. 1, 3.
[624] Edward Flynn, T. 1334-1335.



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1665. On 12 September 1995, the Office for Expelled Persons, Refugees, and Displaced Persons in Zadar submitted to Ivan Čermak a list of 217 names of persons who were or had been in "reception centres in Zadar and who wants [sic] to leave the territory of Republic of Croatia".[625] According to an ECMM report, on 13 September 1995 an ECMM humanitarian officer met the Secretary of "LRC" Zadar-Knin who said that Serb displaced persons kept in schools in Zadar and Knin would be released that day and that those who chose to remain in Croatia would be taken to their houses, and those who opted to go to Serbia would be taken there escorted by international organizations.[626] According to the diary of Marker Hansen, on 14 September 1995 there were 250 people at the school in Knin, all aged over 60 years with more people arriving each day. Up to that day ECMM was still finding elderly people in the outlying districts who wished to leave but were unable to do so without help, who they then took to the school in Knin.[627]

1666. An HRAT report dated 16 September 1995 records that following a visit earlier in the week by UNMOs to the Plavno area, the team escorted a total of 11 people, all between 60 and 85 years old and from a number of hamlets in the area, to the school in Knin on 15 September 1995.[628] On that same day, a further 26 people from Podinarje, Knin municipality, were escorted to the school in Knin.[629] People were complaining that the looters and the army had threatened them, looted and in some cases damaged their houses, and forced them to give up food and domestic animals, robbing them of their livelihood.[630] The authorities told Marti that a convoy would be ready to take Serbs to Belgrade on 16 September 1995.[631]

1667. With regard to the centres in Zadar, an ECMM report of 7 September 1995 set out that on that day, the ECMM humanitarian officer for Split visited one of three "collective centres" in Zadar where 150 Serbs had been brought to by force and were

[625] P656 (List of persons at detention centres in Zadar, sent from the Zadar Office for Expelled Persons, Refugees, and Displaced Persons to Ivan Čermak, 12 September 1995).
[626] P2148 (ECMM daily report, 13 September 1995), pp. 1-2.
[627] P1292 (Stig Marker Hansen, personal diary), p. 18.
[628] P417 (Peter Marti, witness statement, 14 December 2007), paras 87, 95, 114; Peter Marti, T. 4625-4626, 4728-4729; P424 (Report on Activities HRAT, 16 September 1995), p. 2.
[629] P417 (Peter Marti, witness statement, 14 December 2007), paras 87, 95; Peter Marti, T. 4728-4729; P424 (Report on Activities HRAT, 16 September 1995).
[630] P416 (Peter Marti, witness statement, 29 June 1997), p. 12; P417 (Peter Marti, witness statement, 14 December 2007), para. 114; Peter Marti, T. 4625-4626; P424 (Report on Activities HRAT, 16 September 1995), p. 2.
[631] P417 (Peter Marti, witness statement, 14 December 2007), para. 54; Peter Marti, T. 4728; P424 (Report on Activities HRAT, 16 September 1995), pp. 2-3.



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being kept. Most had come from the Benkovac, Gračac, and Knin areas, and every day people were coming out of hiding from the forests and were being brought to these centres.[632] At 2 p.m. on 14 September 1995, the mayor of Benkovac told UNMO that approximately 200 Serb refugees from the Zadar refugee collection point were returning to their original villages in his municipality, but that there were insufficient resources to provide security for them outside of Benkovac town.[633] Sometime before 8 p.m. on 19 September 1995, the chief of police of Benkovac told UNMO that the police had registered approximately 300 Serbs in Benkovac municipality and that, in order to provide security, police would on a daily basis patrol the villages of Serbs returning from the Zadar refugee collection point.[634]

1668. Based on the above, the Trial Chamber finds that in the beginning of August Croatian authorities established collection centres for POWs and reception centres for civilians in, among other places, Knin and Zadar. The MUP was responsible for these centres. The Trial Chamber finds that people at the reception centres as a rule had the possibility of leaving, sometimes on the condition that relatives came and picked them up. The Trial Chamber received evidence that some people did leave the centres. Therefore, the Trial Chamber finds that the people at the reception centres were not deprived of their liberty. As for the situation at the UN compound, some people chose not to leave the centres out of fear of what might happen to them if they returned to their homes. The people who remained in the reception centre in Knin (as well as other reception centres) were transported to Serbia on 16 September 1995, with the assistance of the UN and together with the people who had stayed at the UN compound.

[632] D1277 (ECMM Split daily report, 7 September 1995), p. 1.
[633] P149 (UNMO Sector South daily situation report, 8 p.m., 14 September 1995), p. 3. See also P1294 (ECMM daily report, 15 September 1995), p. 1.
[634] P154 (UNMO Sector South daily situation report, 8 p.m., 19 September 1995), pp. 1, 3. See also P1294 (ECMM daily report, 15 September 1995), p. 1.



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## 5. Legal findings on crimes

### 5.1 Violations of the laws or customs of war: general elements and jurisdictional requirements

#### *5.1.1 Applicable law*

1669. The Indictment charges the Accused with four counts of violations of the laws or customs of war under Article 3 of the Statute. Count 4 charges them with plunder of public or private property under Article 3 (e). Count 5 charges them with wanton destruction of cities, towns or villages, or devastation not justified by military necessity, under Article 3 (b). Count 7 charges them with murder, based on Common Article 3 (1) (a) to the four Geneva Conventions of 1949. Count 9 charges them with cruel treatment, on the same basis. Article 3 of the Statute states: "The International Tribunal shall have the power to prosecute persons violating the laws or customs of war". The jurisdictional requirements and general elements are analysed below.

1670. Article 3 of the Statute is a "residual clause" which gives the Tribunal jurisdiction over any serious violation of international humanitarian law not covered by Articles 2, 4, or 5 of the Statute.[635] To fall within this residual jurisdiction, the offence charged must meet four conditions: (i) it must violate a rule of international humanitarian law; (ii) the rule must bind the parties at the time of the alleged offence; (iii) the rule must protect important values and its violation must have grave consequences for the victim; and (iv) such a violation must entail the individual criminal responsibility of the perpetrator.[636]

1671. It is well established in the jurisprudence of this Tribunal that violations of Common Article 3 to the four Geneva Conventions of 1949 fall within the ambit of Article 3 of the Statute.[637] In the present case, the charges of murder and cruel treatment under Common Article 3 (1) (a) clearly meet the four jurisdictional requirements set out above. The rules contained in Common Article 3 are part of customary international law applicable in both international and non-international armed conflict.[638] The acts prohibited by Common Article 3 undoubtedly breach rules protecting important values

[635] *Tadić* Jurisdiction Decision, paras 89-93; *Čelebići* Appeal Judgement paras 125, 131, 133.
[636] *Tadić* Jurisdiction Decision, paras 94, 143.
[637] *Tadić* Jurisdiction Decision, para. 89; *Čelebići* Appeal Judgement, paras 125, 133-136; *Kunarac et al.* Appeal Judgement, para. 68.
[638] *Tadić* Jurisdiction Decision, paras 89, 98; *Čelebići* Appeal Judgement, paras 138-139, 147.



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and involve grave consequences for the victims. They also entail individual criminal responsibility.[639] The Trial Chamber therefore has jurisdiction over such violations.

1672. The charges of plunder of public or private property, and wanton destruction of cities, towns or villages or devastation not justified by military necessity, are based on rules of customary international law applicable in both international and non-international armed conflict.[640] Such wanton destruction or devastation breaches rules protecting important values and involves grave consequences for the victims.[641] The prohibition on plunder of public or private property protects important values, but a case-by-case assessment is necessary to determine whether such acts involve grave consequences for the victims.[642] This would always be the case where the plunder concerns the property of a large number of people, even in the absence of grave consequences for each individual.[643] Both plunder and wanton destruction, as referred to above, entail individual criminal responsibility.[644] The Trial Chamber therefore has jurisdiction over such violations, except to the extent that plunder cannot be shown to involve grave consequences for the victims.

1673. Once jurisdiction is established, certain general conditions must be met for the applicability of Article 3 of the Statute: first, there must be an armed conflict; second, there must be a nexus between the alleged offence and the armed conflict;[645] and third, for charges based on Common Article 3, the victim must not take active part in the hostilities at the time of the alleged offence.[646]

1674. *Armed Conflict*. The test for determining the existence of an armed conflict was set out by the Appeals Chamber in the *Tadić* Jurisdiction Decision:

[639] *Tadić* Jurisdiction Decision, para. 134; *Čelebići* Appeal Judgement, paras 173-174.
[640] *Hadžihasanović and Kubura* Rule 98 *bis* Appeal Decision, paras 29, 37.
[641] *Brđanin* Trial Judgement, para. 157; *Strugar* Trial Judgement, para. 231; *Martić* Trial Judgement, para. 46.
[642] *Kordić and Čerkez* Appeal Judgement, paras 81-82.
[643] *Kordić and Čerkez* Appeal Judgement, para. 83.
[644] *Hadžihasanović and Kubura* Rule 98 *bis* Appeal Decision, paras 30, 38.
[645] *Tadić* Jurisdiction Decision, para. 70; *Kunarac et al.* Appeal Judgement, para. 55; *Stakić* Appeal Judgement, para. 342.
[646] Common Article 3 (1); *Čelebići* Appeal Judgement, para. 420; *Krajišnik* Trial Judgement, para. 847; *Haradinaj et al.* Trial Judgement, para. 62.



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> [A]n 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.[647]

1675. In its judgement in *Tadić*, the Appeals Chamber observed that it is "indisputable that an armed conflict is international if it takes place between two or more States".[648] The Appeals Chamber went on to find that an internal armed conflict,

> may become international (or, depending on the circumstances, be international in character alongside an internal armed conflict) if (i) another State intervenes in that conflict through its troops, or alternatively if (ii) some of the participants in the internal armed conflict act on behalf of that other State.[649]

The Appeals Chamber subsequently set out the standard of "overall control" for determining when an organized armed group may be considered to be acting on behalf of another State, thereby making the conflict international in character.[650] This test is satisfied where, *inter alia*, a State has a role in organizing, coordinating or planning the military actions of the organized armed group and that State finances, trains, equips or provides operational support to that group.[651] The test calls for an assessment of all the elements of control taken as a whole, and thus contains no requirement, e.g., that the third-party State issue specific instructions or orders to the organized armed group.[652]

1676. The armed conflict extends to the whole territory of the warring States or, in the case of internal conflicts, the whole territory under the control of a party, whether or not actual combat takes place there.[653] The armed conflict ends when there is a general conclusion of peace (for international armed conflicts) or when a peaceful settlement is achieved (for armed conflicts not of an international character).[654]

1677. *Nexus*. The alleged crime need not have occurred at a time and place in which there was actual combat, so long as the acts of the perpetrator were "closely related" to hostilities occurring in territories controlled by parties to the conflict.[655] The existence

[647] *Tadić* Jurisdiction Decision, para. 70. See also *Kunarac et al*. Appeal Judgement, para. 56; *Kordić and Čerkez* Appeal Judgement, para. 336.
[648] *Tadić* Appeal Judgement, para. 84.
[649] *Tadić* Appeal Judgement, para. 84.
[650] *Kordić and Čerkez* Appeal Judgement, para. 306.
[651] *Kordić and Čerkez* Appeal Judgement, paras 306, 308.
[652] *Aleksovski* Appeal Judgement, paras 143-146.
[653] *Tadić* Jurisdiction Decision, para. 70.
[654] *Tadić* Jurisdiction Decision, para. 70. See also *Kunarac et al*. Appeal Judgement, para. 57; *Kordić and Čerkez* Appeal Judgement, para. 319.
[655] *Kunarac et al.* Appeal Judgement, para. 57; *Stakić* Appeal Judgement, para. 342.



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of this close relationship between the crime and the armed conflict will be established where it can be shown that the conflict played a substantial part in the perpetrator's ability to commit the crime, his or her decision to commit it, the manner in which it was committed, or the purpose for which it was committed.[656]

1678. *Status of Victims*. The final requirement for the application of an Article 3 charge based on Common Article 3 is that the victim was not actively participating in the hostilities at the time the offence was committed.[657] The Appeals Chamber has explained that active participation in hostilities means participating in acts of war intended by their nature or purpose to cause actual harm to the personnel or equipment of enemy armed forces.[658] Protected victims include members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause.[659] The perpetrator must know or should have known the status of the victims as persons taking no active part in the hostilities.[660]

### *5.1.2 Findings on armed conflict*

1679. The Prosecution submits that the nature of the armed conflict is not relevant in the present case because all war crimes charged in the indictment are based on law applicable in both international and non-international armed conflict under Article 3 of the Statute.[661] The Gotovina Defence, relying on a decision of the Appeals Chamber,[662] submits that the Prosecution was required as a matter of law to plead the international character of the conflict and, as a consequence of its failure to do so, may only rely on a non-international armed conflict to satisfy the nexus requirement.[663]

1680. The authority relied on by the Gotovina Defence does not lay down any general rule which would require the Prosecution to plead the nature of the armed conflict in the present case. The purpose of an indictment, and the pleadings contained therein, is to

[656] *Kunarac et al.* Appeal Judgement, para. 58.
[657] Common Article 3 (1); *Čelebići* Appeal Judgement, paras 420, 424; *Strugar* Appeal Judgement, paras 172, 178; *Boškoski and Tarčulovksi* Appeal Judgement, para. 66.
[658] *Strugar* Appeal Judgement, para. 178.
[659] Common Article 3 (1); *Strugar* Appeal Judgement, para. 175.
[660] *Boškoski and Tarčulovksi* Appeal Judgement, para. 66.
[661] T. 29043-29044; 29405-29406.
[662] *Prosecutor v. Enver Hadžihasanović, Mehmed Alagić and Amir Kubura*, Appeals Chamber, Decision Pursuant to Rule 72(E) as to Validity of Appeal, 21 February 2003, paras 11-12; see also *Prosecutor v. Dragomir Milošević*, Trial Chamber, Decision on Defence Preliminary Motion under Rule 72(A)(ii), 18 July 2005, para. 17.
[663] T. 29262-29263, 29453.



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inform the accused of the case he or she has to meet.[664] Therefore, the indictment must inform the accused of the nature of his or her alleged responsibility and the material facts by which the Prosecution intends to prove that responsibility.[665] To the extent that the Article 3 charges in the present case are based on rules applicable in both international and non-international armed conflict, there is no need to specifically plead the existence of an *international* armed conflict in order to inform the Accused of the case against them.

1681. All the parties agree that an armed conflict existed between the HV and the SVK at the beginning of the Indictment period and lasted at least until 8 August 1995.[666] There is also general agreement that Croatia and Serbia (the Trial Chamber notes that Serbia was at the time part of the FRY[667]) were, during this time, engaged more broadly in hostilities.[668] The Prosecution, Gotovina Defence, and Čermak Defence all classify the relevant armed conflict as being international in character and brought to an end by the Erdut Agreement on 12 November 1995.[669] The Markač Defence, by contrast, submits that the relevant armed conflict was not of an international character and that it ended on or about 8 August 1995 when the *Tadić* criteria for determining the existence of an armed conflict ceased to be fulfilled.[670] The Markač Defence also argued that the *Tadić* test for the termination of an armed conflict is inapplicable in the present case because it does not account for a variety of ways in which an armed conflict can come to an end under customary international law.[671]

[664] *Kupreškić et al.* Appeal Judgement, para. 122; *Simić et al.* Appeal Judgement, para. 74.
[665] *Prosecutor v. Milorad Krnojelac*, Trial Chamber, Decision on the Defence Preliminary Motion on the Form of the Indictment, 24 February 1999, para. 7.
[666] T. 27320, 27399; Gotovina Defence Stipulation to Portions of Prosecution's Pre-Trial Brief, 4 February 2010, para. 1; The Defence for Mladen Markač's Stipulation to Sections of the Prosecution's Pre-Trial Brief, 16 April 2010, para. 1; Prosecution's Pre-Trial Brief, 16 March 2007, para. 105; Prosecution's Final Trial Brief, 16 July 2010, para. 469; Gotovina Defence Final Trial Brief, 16 July 2010, para. 562; Defendant Mladen Markač's Final Trial Brief, 16 July 2010, para. 14; Notice of Communication with the Parties Regarding Closing Arguments, 27 August 2010, Annex, item 3.
[667] P451 (Peter Galbraith, The United States and Croatia – A Documentary History, 1992-1997), p. 157.
[668] T. 27320, 27399; Gotovina Defence Stipulation to Portions of Prosecution's Pre-Trial Brief, 4 February 2010, para. 1; The Defence for Mladen Markač's Stipulation to Sections of the Prosecution's Pre-Trial Brief, 16 April 2010, para. 1; Prosecution's Pre-Trial Brief, 16 March 2007, para. 105; Prosecution's Final Trial Brief, 16 July 2010, para. 469; Gotovina Defence Final Trial Brief, 16 July 2010, para. 562.
[669] T. 27339, 29043-29044, 29262, 29411; Gotovina Defence Stipulation to Portions of Prosecution's Pre-Trial Brief, 4 February 2010, para. 1; Prosecution's Pre-Trial Brief, 16 March 2007, para. 108; Notice of Communication with the Parties Regarding Closing Arguments, 27 August 2010, Annex, item 3.
[670] The Defence for Mladen Markač's Stipulation to Sections of the Prosecution's Pre-Trial Brief, 16 April 2010, para. 1; Defendant Mladen Markač's Final Trial Brief, 16 July 2010, paras 14, 32, 41, 50.
[671] T. 29358; Defendant Mladen Markač's Final Trial Brief, 16 July 2010, para. 32.



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1682. The Trial Chamber accepts, based on the above-mentioned agreed facts, that an armed conflict existed at the beginning of the Indictment period. The Trial Chamber will first consider whether the armed conflict was of an international or non-international character and will examine the evidence to evaluate the merit of the argument that the armed conflict was international.

1683. Regarding the first half of the 1990s, prior to the indictment period, the parties agreed to certain facts based on the *Martić* trial judgement.[672] According to the parties, from around June 1991 through December 1991, the JNA was involved in military operations or raids on predominantly Croat villages, including Podkonje, Kijevo, Vrlika, and Drniš.[673] The villagers suffered killings and beatings, and property was looted and destroyed.[674] In Knin, Croat businesses and properties were blown up, and Croats suffered from discriminatory policies. Following the fighting in the area of Knin and elsewhere in August 1991, Croat civilians began to leave their homes.[675] Hundreds of Croats and other non-Serbs were detained in facilities in Knin, Benkovac, and elsewhere, where they were severely mistreated.[676] Acts such as killings, beatings, theft, and destruction of houses and Catholic churches took place between 1992 and 1995, and resulted in an exodus of the Croat and other non-Serb population from the territory of the RSK.[677] According to a report dated 17 November 1993 of the Special Rapporteur of the UN Commission on Human Rights on the situation of human rights in the territory of the former Yugoslavia, there were 1,161 ethnic Croats residing in Sector South and the Pink Zones, an area inhabited by 44,000 ethnic Croats in 1991.[678]

1684. The Trial Chamber received evidence concerning the continued state of hostilities, including military actions between Croatia and Serbian forces, up to 1995. **Mate Granić**, Deputy Prime Minister of Croatia 1991-2000 and Minister of Foreign

[672] See entry on agreed facts in chapter 2.
[673] Second Joint Submission by the Defence for Ivan Čermak and the Prosecution in Respect of Agreed Facts, 15 April 2010, Annex A, pp. 1, 3.
[674] Second Joint Submission by the Defence for Ivan Čermak and the Prosecution in Respect of Agreed Facts, 15 April 2010, Annex A, pp. 1, 3; see also Joint Submission by the Defence for Ivan Čermak and the Prosecution in Respect of Agreed Facts, 14 January 2010, Appendix A, p. 5.
[675] Second Joint Submission by the Defence for Ivan Čermak and the Prosecution in Respect of Agreed Facts, 15 April 2010, Annex A, p. 2.
[676] Second Joint Submission by the Defence for Ivan Čermak and the Prosecution in Respect of Agreed Facts, 15 April 2010, Annex A, p. 3; Joint Submission by the Defence for Ivan Čermak and the Prosecution in Respect of Agreed Facts, 14 January 2010, Appendix A, p. 6.
[677] Second Joint Submission by the Defence for Ivan Čermak and the Prosecution in Respect of Agreed Facts, 15 April 2010, Annex A, pp. 2-3.
[678] D1361 (Report of the Special Rapporteur of the UN Commission on Human Rights on the situation of human rights in the territory of the former Yugoslavia, 17 November 1993), para. 147.



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Affairs 1993-2000,[679] testified that he participated in the decision on operations by the Croatian armed forces in order to liberate occupied areas, including Operation Miljevački Plateau, Operation Maslenica, Operation Medak Pocket, and Operation Flash. According to the witness, the purpose of Operation Miljevački Plateau was to prevent Šibenik from being shelled from the Miljevački Plateau. The aim of Operation Maslenica was to preserve the main traffic corridor linking Dalmatia with Central Croatia.[680] The purpose of Operation Medak Pocket was to prevent the constant shelling of Gospić and its surroundings from the area of the RSK.[681] The objective of Operation Flash was the opening up of the Zagreb-Belgrade motorway and the liberation of the occupied UNPA West.[682] The witness testified that the HV, in cooperation with the army of Bosnia-Herzegovina and pursuant to the Split Agreement of 22 July 1995, launched military operations to liberate Grahovo, Glamoč, both in Bosnia-Herzegovina, and areas on Mount Dinara.[683]

1685. **Goran Dodig**, Head of the Office for Interethnic Relations of the Croatian Government from 6 April 1995 to 5 March 1998,[684] testified that from 1991 to 1993 he acted as negotiator of the Croatian Government for the exchange of prisoners in Central and Northern Dalmatia.[685] The purpose of the negotiations was to arrange for prisoner exchanges and ceasefire agreements.[686] The witness testified that during the period between the departure of Croats from that area and the liberation of Knin by the Croatian Army, he negotiated on several occasions with representatives of the military and civilian authorities of the RSK, including Milan Babić, General Vuković and General Mladić (Commander of the Bosnian Serb Army).[687] The witness testified that he had spent three days in Drniš in 1991 during its occupation by the JNA.[688]

1686. Evidence regarding links between the RSK, SVK, JNA, and Serbia/FRY was provided by Slobodan Lazarević, Witness AG-10 and Milan Babić. **Slobodan Lazarević**, a KOS intelligence officer and an SVK liaison officer of the 21st corps

[679] D1797 (Mate Granić, witness statement, 12 May 2009), paras 2-3, 6, 8, 13; Mate Granić, T. 24614-24615, 24621-24622.
[680] D1797 (Mate Granić, witness statement, 12 May 2009), para. 17.
[681] D1797 (Mate Granić, witness statement, 12 May 2009), para. 17; Mate Granić, T. 24848.
[682] Mate Granić, T. 24643.
[683] D1797 (Mate Granić, witness statement, 12 May 2009), paras 7, 20.
[684] D1705 (Goran Dodig, witness statement, 16 May 2009), pp. 1-3, 14; Goran Dodig, T. 22628.
[685] D1705 (Goran Dodig, witness statement, 16 May 2009), pp. 2-3.
[686] D1705 (Goran Dodig, witness statement, 16 May 2009), p. 3.
[687] D1705 (Goran Dodig, witness statement, 16 May 2009), p. 3; P451 (Peter Galbraith, The United States and Croatia – A Documentary History, 1992-1997), p. 18.



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stationed in Topusko in Sector North before and during Operation Storm,[689] testified that from early 1992 onwards local Serbs working for international organizations reported back to him as cooperating agents.[690] This was achieved upon instructions from KOS and RSK officials.[691] KOS officials reported to Belgrade and all of them were Serbs from Serbia.[692] For any meeting RSK officials would attend, there would be clear instructions from Belgrade.[693] Lazarević stated that all supplies and finances for the SVK would come from Serbia.[694] Goran Hadžić as well as others often referred to "the boss" in the context of Slobodan Milošević (the Serbian President).[695] According to Lazarević, Tošo Pajić, who was de facto in charge of the RSK's state security section, addressed Jovica Stanišić, the head of Serbia's state security, as "Chief" or "Daddy".[696] Also according to Lazarević, Pajić stated on numerous occasions that he worked for Stanišić.[697]

1687. **Witness AG-10**, a member of the JNA Airforce,[698] stated that within Airforce Headquarters a Team for Propaganda and War existed, called OPERA. OPERA's purpose was to instil fear, panic, and disorganization amongst the Croatian population in the Krajina. According to the witness, 80-90 per cent of this team's work was focused on the Croats in the Serb Autonomous Regions.[699] Colonel Slobodan Rakočević, Chief of the Airforce Security Section and a superior of the witness, was part of OPERA.[700] The witness stated that before the war in Slovenia commenced OPERA launched

[688] D1705 (Goran Dodig, witness statement, 16 May 2009), pp. 3, 5.
[689] D1461 (Slobodan Lazarević, witness statement, 21 June 1999), pp. 1-2, 11; Slobodan Lazarević, T. 17874-17876, 17878, 17882, 17890, 17990-17991.
[690] D1461 (Slobodan Lazarević, witness statement, 21 June 1999), pp. 10-11; D1462 (Slobodan Lazarević, prior testimony from Slobodan Milošević case, 29-30 October 2002), pp. 10-11; Slobodan Lazarević, T. 17880, 18004-18006.
[691] D1461 (Slobodan Lazarević, witness statement, 21 June 1999), pp. 10-11; D1462 (Slobodan Lazarević, prior testimony from Slobodan Milošević case, 29-30 October 2002), p. 10; Slobodan Lazarević, T. 17883-17884.
[692] D1461 (Slobodan Lazarević, witness statement, 21 June 1999), p. 13; D1470 (Organigram of RSK and Serbian structures).
[693] D1461 (Slobodan Lazarević, witness statement, 21 June 1999), pp. 13-15; Slobodan Lazarević, T. 17903.
[694] D1462 (Slobodan Lazarević, prior testimony from Slobodan Milošević case, 29-30 October 2002), p. 6; Slobodan Lazarević, T. 17922-17923.
[695] D1461 (Slobodan Lazarević, witness statement, 21 June 1999), pp. 16, 18; D1462 (Slobodan Lazarević, prior testimony from Slobodan Milošević case, 29-30 October 2002), p. 3; P451 (Peter Galbraith, The United States and Croatia – A Documentary History, 1992-1997), p. 16.
[696] D1461 (Slobodan Lazarević, witness statement, 21 June 1999), p. 29; D1462 (Slobodan Lazarević, prior testimony from Slobodan Milošević case, 29-30 October 2002), pp. 2-3.
[697] D1462 (Slobodan Lazarević, prior testimony from Slobodan Milošević case, 29-30 October 2002), pp. 2-3; Slobodan Lazarević, T. 17876-17877, 17887; D1470 (Organigram of RSK and Serbian structures).
[698] D1782 (Witness AG-10, witness statement, 27 May 2002), pp. 15-16.
[699] D1782 (Witness AG-10, witness statement, 27 May 2002), p. 24.



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Operation LABRADOR, handled by Major Čedomir Knežević, of the 2nd Detachment of the Central Counter Intelligence Group, and involving agents working in Zagreb.[701] The purpose of Operation LABRADOR was, firstly, to form a network of co-operatives within the Croatian authorities and police force and, secondly, to arm the Serbs in Croatia so as to enable them to use these weapons against the Croats.[702]

1688. The witness also stated that after the war in Slovenia ended, the Log Rebellion had already occurred and for this reason parts of the JNA were moved to Lika, Baranja, Kordun, and Slavonia in Croatia.[703] In October 1991, Rakočević sent the witness to Bihać, Bosnia-Herzegovina, where he spent three or four days.[704] According to the witness, Major Čedomir Knežević and Lieutenant Colonel Dušan Smiljanić of the 2nd Detachment of the Central Counter Intelligence Group in Bihać formed and ran an operation to arm the Serbs in Banija, Lika, Kordun, all regions in the Krajina part of Croatia, and Bosanska Krajina, Bosnia-Herzegovina, called PROBOJ 1.[705] The witness obtained this information from Knežević with whom he met in Bihać. Knežević also said that the weapons were coming from the TO warehouses in the area around Bihać. Knežević took the witness to the warehouses, where he saw automatic rifles, grenades, and mortars. The witness estimated that there were around 20,000-30,000 infantry weapons stored in there. According to the witness, Serbs were coming to Bihać in their own trucks to pick up weapons for their villages. He also stated that every day he saw at least three or four trucks loaded with weapons, which were driven by JNA soldiers and escorted by Military Police, leave the warehouses. According to the witness, they went to Serb villages where they distributed these weapons. Knežević told the witness that those responsible for the distribution of the weapons reported to him the number of weapons distributed and the number of weapons left in reserve.[706]

1689. During those days, Knežević prepared a confidential report entitled "PROBOJ 1" to General Aleksander Vasiljević, listing the municipalities to which the weapons had been distributed, the type of weapons and the receivers. According to the witness, Milan Babić would come to Bihać to arrange for weapons distribution. There were members of

[700] D1782 (Witness AG-10, witness statement, 27 May 2002), pp. 16, 24.
[701] D1782 (Witness AG-10, witness statement, 27 May 2002), pp. 18-19, 24.
[702] D1782 (Witness AG-10, witness statement, 27 May 2002), p. 24.
[703] D1782 (Witness AG-10, witness statement, 27 May 2002), p. 18; P451 (Peter Galbraith, The United States and Croatia – A Documentary History, 1992-1997), p. 10.
[704] D1782 (Witness AG-10, witness statement, 27 May 2002), pp. 18-20.
[705] D1782 (Witness AG-10, witness statement, 27 May 2002), pp. 18-19.
[706] D1782 (Witness AG-10, witness statement, 27 May 2002), pp. 19-20.



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the State Security Service (SDB) of Serbia at the Hunting Lodge in Bihać, some of whom were Croatian Serbs who had been hired by the SDB to work in areas like Lika, Baranja, and Knin. To the witness it appeared as if part of their responsibilities were to lead paramilitary operations in this area.[707]

1690. **Milan Babić**, the first President of the Republic of Serbian Krajina and Prime Minister from 27 July 1995 until 5 August 1995,[708] stated that in 1990, Slobodan Milošević, whom he, together with the people in Knin, regarded to be the political leader and protector of Serbia and the Serbs in Yugoslavia, assured him of JNA support for the Krajina Serbs.[709] It was around this time, in August 1990, that a parallel structure emerged in the Krajina that reported directly and exclusively to Milošević.[710] According to Babić, the parallel structure, over the course of its existence, was formed of members of the Serbian MUP, Serbian State Security Service, members of Serb police in Croatia, members of the municipal assemblies and government of the Krajina and others, headed by Jovica Stanisić, Franko Simatović and Captain Dragan "Rasko" Vasiljković, with Martić in charge of the police.[711] Also according to Babić, there were two lines of command, with Milošević at the top, after the JNA went to war with Croatia in August 1991: (1) the JNA over the TOs, which would be folded into the JNA during joint operations, and (2) Serbian State Security (Part of the Serbian MUP) over militia, Krajina police, volunteer units and regular police.[712] Additionally, Milošević would appoint the commanders of the TOs until August 1995.[713] In a series of meetings with Milošević in March and April 1991, Babić became aware that the parallel structure was not being used to protect the Krajina Serbs but to use the armed forces of the Krajina to establish the borders of a new Serbian State, including parts of a divided Bosnia-Herzegovina that Milošević had agreed to with Tuđman.[714]

[707] D1782 (Witness AG-10, witness statement, 27 May 2002), pp. 19-20.
[708] D1736 (Factual Statement from *Prosecutor v. Babić* and testimony of Milan Babić in other cases), pp. 2, 22-23,
[709] D1736 (Factual Statement from *Prosecutor v. Babić* and testimony of Milan Babić in other cases), pp. 4, 36-37.
[710] D1736 (Factual Statement from *Prosecutor v. Babić* and testimony of Milan Babić in other cases), p. 4.
[711] D1736 (Factual Statement from *Prosecutor v. Babić* and testimony of Milan Babić in other cases), pp. 4, 38-39, 41, 45, 91-92.
[712] D1736 (Factual Statement from *Prosecutor v. Babić* and testimony of Milan Babić in other cases), pp. 6, 76, 97-98, 211-214.
[713] D1736 (Factual Statement from *Prosecutor v. Babić* and testimony of Milan Babić in other cases), pp. 6, 99.
[714] D1736 (Factual Statement from *Prosecutor v. Babić* and testimony of Milan Babić in other cases), pp. 4, 7.



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1691. As early as September 1991, the Serbian Krajina was subsidized by Serbia on requests by Krajina officials to officials in Serbia for funding.[715] The SVK inherited the weapons left behind by the JNA when it completed its withdrawal from Croatia in May 1992 and some JNA officers stayed in the Krajina as part of the local TOs; in addition, some also remained on the JNA payroll.[716] According to Babić, Serbia had also opened on his request a training camp for the Krajina police in Golubić in April 1991, which was run by Simatović.[717] RSK forces subsequently fought in Bosnia under the overall command of Mladić.[718]

1692. Further according to Babić, in 1994 Stanišić would supply oil to the RSK, whose authorities would in turn consult Milošević before negotiations with Croatia in order to get his approval for their actions.[719] As late as April 1995 Milošević had a decisive role in the appointment of people to positions in the RSK and SVK, as his recommendations, instead of those of the RSK Prime Minister, would be approved by the Assembly of the RSK.[720] Although in April Milošević told Babić that Serbia stood behind the Krajina, he nevertheless ordered SVK forces to engage alongside the forces of the Republika Srpska in Bosnia and the State Security Service of Serbia against the Army of Bosnia and Herzegovina, a move Babić felt compromised the RSK.[721] The President of the RSK also had an agreement with the Republika Srpska for military support.[722] Babić met with Milošević for the last time around 8 August 1995.[723] On 11 August 1995, five SVK soldiers from the FRY were interviewed at the compound of the Czech UN battalion at

[715] D1736 (Factual Statement from *Prosecutor v. Babić* and testimony of Milan Babić in other cases), pp. 6, 47, 49, 51-52, 55, 59, 217-218.
[716] D1736 (Factual Statement from *Prosecutor v. Babić* and testimony of Milan Babić in other cases), pp. 100, 102-103, 159.
[717] D1736 (Factual Statement from *Prosecutor v. Babić* and testimony of Milan Babić in other cases), pp. 5, 89, 95, 235.
[718] D1736 (Factual Statement from *Prosecutor v. Babić* and testimony of Milan Babić in other cases), p. 111.
[719] D1736 (Factual Statement from *Prosecutor v. Babić* and testimony of Milan Babić in other cases), pp. 85-86, 103-104.
[720] D1736 (Factual Statement from *Prosecutor v. Babić* and testimony of Milan Babić in other cases), pp. 115, 118-121.
[721] D1736 (Factual Statement from *Prosecutor v. Babić* and testimony of Milan Babić in other cases), pp. 54, 93-94, 109-110, 112-113.
[722] D1736 (Factual Statement from *Prosecutor v. Babić* and testimony of Milan Babić in other cases), p. 113.
[723] D1736 (Factual Statement from *Prosecutor v. Babić* and testimony of Milan Babić in other cases), p. 88.



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Bjelo Polje, and stated that they had been mobilized and sent to the Krajina by FRY authorities.[724]

1693. The Trial Chamber considered the evidence that from 1991 to 1995 Croatia and Serbian forces conducted military operations against one another. The Trial Chamber also considered the evidence from Dodig, Lazarević, Witness AG-10, and Babić regarding links between the SVK, RSK, JNA and Serbia/FRY, including in the eve of Croatia's transition towards independence and the outbreak of the armed conflict. In particular, the Trial Chamber considered the evidence pertaining to Serbian President Milošević's control and influence over SVK forces and Serbia/FRY's funding, arming and supplying of the Krajina Serbs. Based on the above evidence, the Trial Chamber finds that Serbia/FRY had overall control of the SVK. Recalling the agreement of all the parties that Croatia and Serbia were engaged more broadly in hostilities around the beginning of the Indictment period, the Trial Chamber further finds that the armed conflict that existed at the outset of the Indictment period was international. If it was not already an international armed conflict in 1991, then it became one based on the SVK acting on behalf of Serbia/FRY.

1694. The Trial Chamber next considers the Markač Defence's arguments regarding the end of the armed conflict. In its final brief, the Markač Defence situated its arguments in the framework of a non-international armed conflict, but partly extended them to an international armed conflict during closing arguments.[725] The Trial Chamber understands the Markač Defence's submission to be that the armed conflict was terminated by a drastically decreased level of intensity, and/or level of organization of one of its participants, resulting in the non-applicability of the law of armed conflict. This position does not accurately reflect the law. As a rule, the fourth Geneva Convention of 12 August 1949 ceases to apply at the general close of military operations.[726] However, the Appeals Chamber has pointed out that the Geneva Conventions contain language intimating that their application may extend beyond the cessation of fighting.[727] The Appeals Chamber concluded that international armed conflicts end when there is a general conclusion of peace.[728] Once the law of armed

[724] P21 (Edward Flynn, witness statement, 26-27 February 2008), para. 9; P41 (HRAT daily report, 11 August 1995), pp. 1-2.
[725] Compare Defendant Mladen Markač's Final Trial Brief, 16 July 2010, pp. 6-26, with T. 29358.
[726] Geneva Convention IV, Art. 6.
[727] *Tadić* Jurisdiction Decision, para. 67.
[728] *Tadić* Jurisdiction Decision, para. 70.



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conflict has become applicable, one should not lightly conclude that its applicability ceases. Otherwise, the participants in an armed conflict may find themselves in a revolving door between applicability and non-applicability, leading to a considerable degree of legal uncertainty and confusion. The Trial Chamber will therefore consider whether at any point during the Indictment period the international armed conflict had found a sufficiently general, definitive and effective termination so as to end the applicability of the law of armed conflict. It will consider in particular whether there was a general close of military operations and a general conclusion of peace.

1695. There is evidence of further clashes between the HV and Serbian forces including the SVK beyond 8 August 1995, taking place in Bosnia-Herzegovina. **Marko Rajčić**, the chief of artillery of the Split MD from April 1993 to June 1996,[729] testified that on 9 August 1995, the HV needed to go through Srb to reach the border, as the President of the Republic of Croatia had ordered that the HV reach the state border.[730] From 9 to 13 August 1995, there was heavy fighting to the east of Grahovo, in Bosnia-Herzegovina, in the border area between the HV and the combined Serb forces, where the SVK launched infantry and artillery attacks while building up forces in Drvar, in Bosnia-Herzegovina, while to the west of Grahovo up to the state border, there was sporadic fighting.[731] On 9 August 1995, Gotovina ordered Rajčić to use the 112th Brigade, the 7th Home Guard Brigade and 134th Home Guard Regiment to take positions along the state border in the area of Srb. Rajčić then ordered the 130-millimetre guns of the TS-4 and TS-5 to take up fire positions in the village of Kupirovo, south of Srb.[732] Rajčić further ordered shells to be fired at an intersection of roads at Donji Lapac in the Srb area, to the west of Lička Kaldrma, and to the east of a road leading to the Una river springs, to prevent the SVK from organizing a defence and putting up resistance, and the TS-4 fired 36 shells of 130 millimetre at the target.[733] The information suggested the enemy forces could number between 100 and 300, so the target could be qualified as a target the strength of an artillery battalion, and the dimension of the target was 300 by 200 metres.[734] At 1 p.m., the TS-3 fired 19 shells on

[729] D1425 (Marko Rajčić, witness statement, 13 February 2009), para. 1; Marko Rajčić, T. 16236, 16275; P2323 (Military Police official note of Rajčić interview, 11 July 2008), p. 1.
[730] Marko Rajčić, T. 17696-17697.
[731] Marko Rajčić, T. 17690, 17720-17721.
[732] Marko Rajčić, T. 17701.
[733] Marko Rajčić, T. 17658-17659, 17698, 17718; P2533 (War diary of TS-4, August 1995), p. 8.
[734] Marko Rajčić, T. 17703.



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the main cross-roads in the town of Drvar.[735] Following this use of artillery, the SVK left that area.[736] On 12 August 1995, Rajčić had information from intelligence officers of the Split MD in Knin that the enemy was regrouping its forces in the Drvar area, in cooperation with the Bosnian Serb Krajina and the 2nd Krajina Corps, and that they were likely to launch a counter-attack against the HV in the Bosansko Grahovo area.[737] According to Rajčić, the headquarters of the 2nd Krajina corps of the VRS was in Drvar at this time.[738] The witness ordered the TS-4 to fire 130-millimetre shells at a road intersection on an exit road out of Drvar, in order to prevent the SVK from passing along that road and advancing in the area of Drvar, and at 8:30 a.m. the TS-4 fired 25 shells at the target from a position in the village of Luka, in Bosnia-Herzegovina.[739] On the evening of 12 August 1995, in Knin, Gotovina informed Rajčić that a Bosnian Serb counter-attack had been launched in the area of Bosansko Grahovo, during which the HV had suffered 24 casualties in the afternoon.[740] Gotovina ordered Rajčić to take the 7th Guards Brigade battalion from Knin and return to Bosansko Grahovo.[741] Shortly after 12 August 1995, the HV stopped the Serb counteroffensive in the area of Bosansko Grahovo and began their attack again, still commanded at the highest level by Gotovina.[742] On 13 August 1995, at 5:45 a.m., the VRS and SVK again attacked HV forces in the area of Grahovo.[743]

1696. The Trial Chamber received further evidence regarding military operations from **Reynaud Theunens**, a military expert.[744] According to Theunens, the Croatian and Serbian armed forces engaged in military manoeuvres between 12 August 1995 and 15 September 1995.[745] On 12 August 1995, the VRS carried out a "limited" counterattack in the Bosanko Grahovo area, where the 141st HV Brigade was located.[746] A counterattack, by the 4th and 7th Guard Brigades and the 6th and 126th Home Guard

[735] P2336 (Analysis of Split MD actions from 4 to 9 August 1995, by Marko Rajčić, 17 October 2008), p. 15; P2340 (Reconstruction of the Split MD artillery from 4 to 9 August 1995, by Marko Rajčić, 28 November 2008), p. 22; P2341 (Reconstruction of command and control of TS-3 and TS-4, by Marko Rajčić), p. 7.
[736] Marko Rajčić, T. 17700.
[737] Marko Rajčić, T. 17659, 17701, 17703.
[738] Marko Rajčić, T. 17690.
[739] Marko Rajčić, T. 17659-17660, 17691, 17701-17702; P2533 (War diary of TS-4, August 1995), p. 8.
[740] Marko Rajčić, T. 17659, 17690-17691, 17702, 17721.
[741] Marko Rajčić, T. 17702.
[742] Marko Rajčić, T. 17691.
[743] Marko Rajčić, T. 17720.
[744] Reynaud Theunens, T. 12170-12274; P1112 (Curriculum Vitae of Reynaud Theunens).
[745] P1113 (Reynaud Theunens, Expert Report, December 2007), pp. 406-423.
[746] P1113 (Reynaud Theunens, Expert Report, December 2007), p. 406.



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Regiments was ordered by Gotovina.[747] From 15 through 18 August 1995, armed skirmishes were reported in various parts of the Split MD zone of responsibility.[748] On 16 August 1995, the Split MD Daily report stated that OG Otrić started combat operations in the general direction of Drvar, Bosnia-Herzegovina, including the opening of "direct fire" on Drvar in accordance with an order of Gotovina.[749] The Split MD weekly operations report covering 25 August to 1 September 1995 referred to skirmishes along the first defence lines.[750] Operation "Maestral" was conducted from 8 to 15 September 1995 by the HV, units of the HVO, and in cooperation with the Army of Bosnia-Herzegovina, with the aim of liberating areas in the south-west of Bosnia-Herzegovina.[751] The Trial Chamber also considered the evidence on search operations after Operation Storm, reviewed in chapter 3.3.

1697. The above evidence refers to events occurring after 8 August 1995, which the Markač Defence argued was the approximate date of the end of the armed conflict. The Trial Chamber recognizes that the bulk of this evidence relates to events that occurred outside of the Indictment area, as the participants in the armed conflict moved across the border and continued fighting in Bosnia-Herzegovina. Considering the international character of the conflict, the Trial Chamber is satisfied that this evidence is relevant for whether the armed conflict continued beyond 8 August 1995. The evidence shows that a general close of military operations did not take place until at least the middle of September 1995. The search operations that continued throughout the Indictment period provide further indication that during the Indictment period there was no termination of the international armed conflict sufficiently general, definitive and effective so as to end the applicability of the law of armed conflict. Finally, no parties stipulate, nor does the evidence indicate, that a general conclusion of peace was reached during the Indictment period.

1698. In conclusion, the Trial Chamber finds that an international armed conflict existed throughout the Indictment period and area.

[747] P1113 (Reynaud Theunens, Expert Report, December 2007), pp. 406-407. See also P1212 (Decision by Damir Krstičević on operation to secure the road between Knin and Bosanko Grahovo, 14 August 1995).
[748] P1113 (Reynaud Theunens, Expert Report, December 2007), p. 412.
[749] P1113 (Reynaud Theunens, Expert Report, December 2007), p. 412. See also D983 (Weekly operative report of Split MD, 18 August 1995).
[750] P1113 (Reynaud Theunens, Expert Report, December 2007), p. 419.
[751] P1113 (Reynaud Theunens, Expert Report, December 2007), pp. 422-423.



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## 5.2 Crimes against humanity: general elements and jurisdictional requirements

### *5.2.1 Applicable law*

1699. The Indictment charges the Accused with five counts of crimes against humanity under Article 5 of the Statute. Count 1 charges them with persecution under Article 5 (h). Counts 2 and 3 charge them with deportation and forcible transfer as inhumane acts under Article 5 (d) and (i), respectively. Count 6 charges them with murder under Article 5 (a). Count 8 charges them with inhumane acts under Article 5 (i). Article 5 states: "The International Tribunal shall have the power to prosecute persons responsible for the following crimes when committed in armed conflict, whether international or internal in character, and directed against a civilian population". The jurisdictional requirement and general elements are analysed below.

1700. *Committed in armed conflict.* The crimes must be committed in an armed conflict, whether international or internal in character. This requirement is not part of the customary law definition of crimes against humanity.[752] It is a jurisdictional requirement,[753] which translates into the need for proof that there was an armed conflict at the relevant time and place.[754] The definition of armed conflict is found above, in chapter 5.1.1.

1701. *Widespread or systematic attack directed against a civilian population.* The general elements for the applicability of Article 5 of the Statute are:

(i) there was an attack;
(ii) the attack was widespread or systematic;
(iii) the attack was directed against a civilian population;
(iv) the acts of the perpetrator were part of the attack;
(v) the perpetrator knew that there was, at the time of his or her acts, a widespread or systematic attack directed against a civilian population and that his or her acts were part of that attack.[755]

1702. *Attack.* An attack on a civilian population is a separate and distinct concept from that of an armed conflict.[756] The attack is not limited to the use of force, but

[752] *Tadić* Appeal Judgement, para. 249.
[753] *Tadić* Appeal Judgement, para. 249; *Kunarac et al.* Appeal Judgement, para. 83.
[754] *Tadić* Appeal Judgement, paras 249, 251; *Kunarac et al.* Appeal Judgement, para. 83.
[755] *Kunarac et al.* Appeal Judgement, para. 85.
[756] *Tadić* Appeal Judgement, para. 251.



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encompasses any mistreatment of the civilian population, and can commence before, outlast, or continue during the armed conflict.[757] An attack is composed of acts of violence, or the kind of mistreatment referred to in Article 5 (a) through (i).[758]

1703. *Widespread or systematic*. "Widespread" refers to the large-scale nature of the attack and the number of targeted persons.[759] "Systematic" refers to the "organized nature of the acts of violence".[760] The existence of a plan or policy can be indicative of the systematic character of the attack but it is not a distinct legal element.[761]

1704. *Directed against a civilian population.* "Directed against" indicates that it is the civilian population which is the primary object of the attack.[762] The attack does not have to be directed against the civilian population of the entire area relevant to the indictment.[763] It is sufficient to show that enough individuals were targeted in the course of the attack, or that they were targeted in such a way as to satisfy the Trial Chamber that the attack was in fact directed against a civilian "population", rather than against a limited and randomly selected number of individuals.[764]

1705. According to the Appeals Chamber, the definition of civilian for the purpose of Article 5 of the Statute corresponds with the definition of civilian contained in Article 50 of Additional Protocol I to the 1949 Geneva Conventions.[765] Additional Protocol I defines a "civilian" as an individual who is not a member of the armed forces or otherwise a combatant.[766] The Appeals Chamber has emphasized that the fact that an attack for the purpose of crimes against humanity must be directed against a civilian population, does not mean that the criminal acts within that attack must be committed

[757] *Tadić* Appeal Judgement, para. 251; *Kunarac et al.* Appeal Judgement, para. 86; *Kordić and Čerkez* Appeal Judgement, para. 666.
[758] *Nahimana et al.* Appeal Judgement, para. 918.
[759] *Kunarac et al.* Appeal Judgement, para. 94; *Blaškić* Appeal Judgement, para. 101; *Kordić and Čerkez* Appeal Judgement, paras 94, 666; *Nahimana et al.* Appeal Judgement, para. 920.
[760] *Kunarac et al.* Appeal Judgement, para. 94; *Blaškić* Appeal Judgement, para. 101; *Kordić and Čerkez* Appeal Judgement, para. 666; *Nahimana et al.* Appeal Judgement, para. 920.
[761] *Kunarac et al.* Appeal Judgement, paras 98, 101; *Blaškić* Appeal Judgement, para. 120; *Nahimana et al.* Appeal Judgement, para. 922.
[762] *Kunarac et al.* Appeal Judgement, para. 91.
[763] *Kunarac et al.* Appeal Judgement, para. 90.
[764] *Kunarac et al.* Appeal Judgement, para. 90; *Blaškić* Appeal Judgement, para. 105; *Kordić and Čerkez* Appeal Judgement, para. 95; *Stakić* Appeal Judgement, para. 247.
[765] *Blaškić* Appeal Judgement, para. 110; *Kordić and Čerkez* Appeal Judgement, para. 97; *Galić* Appeal Judgement, para. 144; *Martić* Appeal Judgement, para. 302.
[766] Additional Protocol I, Art. 50 (1), compared with Geneva Convention III, Art. 4 (A) (1), (2), (3), and (6) and Additional Protocol I, Art. 43.



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against civilians only.[767] A person placed *hors de combat*, for example by detention, may also be a victim of an act amounting to a crime against humanity, provided that all the other necessary conditions are met, in particular that the act in question is part of a widespread or systematic attack against a civilian population.[768]

1706. *Acts of the perpetrator are part of the attack*. Acts which cannot reasonably be understood to be objectively part of the attack fail this requirement.[769]

1707. *Perpetrator's knowledge*. The perpetrator must know that there is a widespread or systematic attack against a civilian population and that his or her acts are part of that attack.[770] The perpetrator does not need to have detailed knowledge of the attack or share the purpose of it.[771]

### *5.2.2 Legal findings*

1708. As concluded in chapter 5.1.2, the Trial Chamber finds that an international armed conflict existed throughout the Indictment period and area. The jurisdictional requirement for crimes against humanity has therefore been met. The Trial Chamber will now deal with the general elements of crimes against humanity.

1709. The Prosecution alleges that all acts, practices, omissions, and conduct charged as crimes in the Indictment occurred as part of a widespread or systematic attack directed against the Serb population of the southern portion of the Krajina region, including the Indictment municipalities and the municipalities of Kijevo, Lovinac, Polača, Smilčić, Titova Korenica, and Udbina.[772]

1710. When assessing whether the general elements of crimes against humanity are fulfilled, the Trial Chamber will primarily consider the evidence with regard to the individual counts in the Indictment. This evidence is dealt with in detail in chapter 4 and elsewhere in this chapter, and the review and analysis of this evidence will not be repeated here. As set out in the mentioned chapters, the Trial Chamber finds that

[767] *Martić* Appeal Judgement, para. 305; *Mrkšić et al.* Appeal Judgement, paras 27-29, 32; *Dragomir Milošević* Appeal Judgement, para. 58.
[768] *Kordić and Čerkez* Appeal Judgement paras 421, 570-571, 580; *Martić* Appeal Judgement, para. 313.
[769] *Kunarac et al.* Appeal Judgement, para. 100.
[770] *Kunarac et al.* Appeal Judgement, para. 99; *Blaškić* Appeal Judgement, paras 124, 126; *Kordić and Čerkez* Appeal Judgement, paras 99-100.
[771] *Tadić* Appeal Judgement, paras 248, 252; *Kunarac et al.* Appeal Judgement, paras 102-103; *Blaškić* Appeal Judgement, para. 124; *Kordić and Čerkez* Appeal Judgement, para. 99.
[772] Indictment, paras 24, 56.



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members of Croatian military forces and the Special Police committed more than 40 murders and acts of inhumane treatment and cruel treatment as crimes against humanity and violations of the laws or customs of war against Krajina Serbs and were responsible for a large number of incidents of destruction and plunder as violations of the laws or customs of war, of property owned or inhabited by Krajina Serbs. Moreover, as set out in chapters 4.5 and 5.4, the Trial Chamber finds that members of the Croatian military forces and the Special Police committed deportation as a crime against humanity of more than 20,000 Krajina Serbs. The Trial Chamber finds that all the mentioned crimes constituted underlying acts of persecution as well. Furthermore, the Trial Chamber finds that members of the Croatian military forces and the Special Police committed unlawful attacks on civilians and civilian objects, as the crime against humanity of persecution, against the towns of Knin, Benkovac, Obrovac, and Gračac. The Trial Chamber finds that crimes were committed throughout the Indictment area in August and September 1995.

1711. This summary of the Trial Chamber's findings on the crime base evidence is to a large extent consistent with the witness testimonies and other evidence describing the general situation in the Indictment municipalities during the Indictment period. Some of this evidence will be referenced here. For example, **Elisabeth Rehn**, the Special Rapporteur of the UN Commission on Human Rights on the situation of human rights in the territory of the former Yugoslavia between 27 September 1995 and early 1998,[773] testified that according to information received from UN monitoring and other humanitarian organizations, at least 150 Krajina Serbs died "under suspicious circumstances" in the former UN Sectors following Croatian military operations in the summer of 1995 (and the Trial Chamber understand this to include the murders which it has found proven beyond a reasonable doubt).[774] On 7 November 1995, Rehn reported information received from Croatian authorities on 30 August 1995 according to which Operation Storm had caused 526 Serb casualties, including 116 civilians, in addition to 211 casualties among Croatian soldiers and policemen and 42 Croatian civilian casualties.[775]

[773] P598 (Elisabeth Rehn, witness statement, 13-14 October 2005), pp. 1-2; P599 (Elisabeth Rehn, witness statement, 21 February 2007), p. 1; Elisabeth Rehn, T. 6494, 6499, 6543, 6562, 6695.
[774] P598 (Elisabeth Rehn, witness statement, 13-14 October 2005), p. 5; P640 (Report of Special Rapporteur Elisabeth Rehn, 12 November 1996), para. 123; P650 (Report of UN Secretary-General, 21 December 1995), para. 9; D669 (Report of Special Rapporteur Elisabeth Rehn, 14 March 1996), para. 67.
[775] P639 (Report of Special Rapporteur Elisabeth Rehn, 7 November 1995), p. 1, para. 22.



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1712. Rehn further testified that according to the UN, in 1991 Serbs constituted 75.8 per cent and Croats 21.2 per cent of the population of the area later known as UN Sector South.[776] In all of Croatia, Serbs made up 12 per cent and Croats 84 per cent of the total population of 4.78 million.[777] In the three years before the military operations of 1995, the proportion of Serbs in the Krajina had significantly increased.[778] The UN Secretary-General reported that according to a nation-wide official Croatian registration of refugees and displaced persons carried out in the summer of 1994 and not verified by independent sources, there were approximately 198,000 registered displaced persons inside Croatia, of whom 94 per cent were Croats and two per cent were Serbs.[779] According to collected information from various international organizations, approximately 200,000 out of a total of 581,000 Croatian Serbs fled, mainly to Bosnia-Herzegovina and FRY, in the wake of Croatian military actions in former Sectors West, North, and South in the summer of 1995.[780] The Croatian state maintained that the number was 150,000.[781] Rehn thought that 180,000 was the most accurate estimate.[782] According to a UN Secretary-General report, dated 23 August 1995, as the situation in Sector South began to stabilize, Croatian civilian authorities began to assert their control over the area and Croatian displaced persons started returning to identify their homes. The report also states that the mass exodus of the Krajina Serb population created a humanitarian crisis, with only 3,500 Serbs remaining in the former Sector North and 2,000 Serbs remaining in the former Sector South, representing a small percentage of the former Krajina Serb population. The report states that most of those leaving, which UNHCR estimated to be above 150,000, had fled to Serbia and Montenegro. Other refugees remained in transit, with an approximate 10,000-15,000 estimated by UNHCR to be in Banja Luka, in Bosnia-Herzegovina. The report further states that it was

[776] P639 (Report of Special Rapporteur Elisabeth Rehn, 7 November 1995), para. 13.
[777] P640 (Report of Special Rapporteur Elisabeth Rehn, 12 November 1996), para. 101.
[778] P598 (Elisabeth Rehn, witness statement, 13-14 October 2005), p. 3; P639 (Report of Special Rapporteur Elisabeth Rehn, 7 November 1995), para. 13.
[779] P644 (Report of UN Secretary-General, 18 October 1995), p. 1, para. 24.
[780] P598 (Elisabeth Rehn, witness statement, 13-14 October 2005), pp. 4, 6; P639 (Report of Special Rapporteur Elisabeth Rehn, 7 November 1995), para. 37; P640 (Report of Special Rapporteur Elisabeth Rehn, 12 November 1996), paras 101, 122, 128; P644 (Report of UN Secretary-General, 18 October 1995), paras 13, 26-27; P646 (Letter from Elisabeth Rehn to Chairman of the UN Commission on Human Rights Gilberto V. Saboia, 20 August 1996), p. 1; P650 (Report of UN Secretary-General, 21 December 1995), paras 28, 34; P651 (Report of Special Rapporteur Elisabeth Rehn, 14 January 1998), para. 32; D682 (Report of UN Secretary-General, 5 March 1997), para. 14; D684 (Report of Special Rapporteur Elisabeth Rehn, 31 October 1997), para. 50; D690 (Statement by UN High Commissioner for Refugees Sadako Ogata, 10 October 1995), p. 1.
[781] P598 (Elisabeth Rehn, witness statement, 13-14 October 2005), p. 6; P601 (Minutes of meetings), p. 11.



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difficult to determine the extent to which the mass exodus of the Krajina Serb population was brought about by fear of Croatian forces, as opposed to the desire not to live under Croatian authority, or encouragement by local leaders to depart.[783] According to another report by the UN Secretary-General to the UN Security Council, dated 29 September 1995, more than 90 per cent of the Serb inhabitants had fled Sectors North and South, and the continuing reports of human rights abuses and of looting and burning were not conducive to their possible return.[784] According to the report, despite Croatian government statements that Serbs were welcome to return, UNCRO continued to receive well-documented reports of human rights abuses and destruction of property from HRAT.[785] On 21 December 1995, the UN Secretary-General reported that according to the ICRC, there were slightly more than 9,000 Serbs in the former UN Sectors North and South, whereof approximately 75 per cent were elderly, disabled, or otherwise "vulnerable".[786] Rehn testified that during her several visits to former UN Sector South she visited abandoned villages with a few elderly and sick people left behind.[787]

1713. With regard to destruction and plunder in the Indictment municipalities, the Trial Chamber received extensive evidence from international observers working in the area. Some of this evidence were reports on their observations and activities at the time. Besides detailing specific incidents of destruction and plunder, the international observers also generally described the situation during August and September 1995. This evidence has assisted the Trial Chamber to understand the scale of these crimes and who was involved in their commission during the different phases of the conflict. **Edward Flynn**, a Human Rights Officer with the Office of the UNHCHR and the leader of one of the HRATs in the former Sector South from 7 August to mid-September 1995,[788] estimated on 14 August 1995, based on his personal observations and information from other agencies, that at least 200 buildings had burned since approximately 8 August 1995 in dozens of locations, including almost all of Kistanje

[782] P598 (Elisabeth Rehn, witness statement, 13-14 October 2005), p. 4; Elisabeth Rehn, T. 6653.
[783] D90 (UN Secretary-General report, S/1995/730, 23 August 1995), p. 3. See also D1666 (Cable from Akashi to Annan entitled "report pursuant to resolution 1009", 22 August 1995), para. 11.
[784] D1665 (Report of the UN Secretary-General 29 September 1995), para. 5.
[785] D1665 (Report of the UN Secretary-General, 29 September 1995), para. 14.
[786] P650 (Report of UN Secretary-General, 21 December 1995), p. 1, para. 28.
[787] P598 (Elisabeth Rehn, witness statement, 13-14 October 2005), pp. 2-3, 7.
[788] P20 (Edward Flynn, witness statement, 29 June 1997), pp. 1-2, 6, 13, 23; P21 (Edward Flynn, witness statement, 26-27 February 2008), p. 1, paras 3-4, 36; Edward Flynn, T. 1044, 1270, 1291-1292, 1312, 1325.



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and Đevrske in Kistanje municipality, and Otrić in Gračac municipality, as well as many hectares of farmland, and that dozens of farm animals had been shot and were lying dead throughout Sector South.[789] Flynn saw that in many of the villages he visited at least half of the buildings were burned, amounting at the very least to 500 destroyed structures by the end of August 1995 (which, he considered, was a conservative estimate).[790] Flynn stated that, based on his observations and reports of other UN observers, there was an increase in the number of burning houses and plumes of smoke in Sector South around 13 August 1995, and that the phenomenon began to decrease by approximately 20 August 1995, although it continued into the first half of September.[791] On multiple occasions, Flynn saw people, sometimes wearing military uniforms, loading material onto vehicles, often without licence plates, that were parked in front of homes and other buildings.[792] Flynn stated that it was generally possible to distinguish between burnings that occurred in 1991, in which buildings often had exploded or been hit by artillery, and those that occurred in 1995, where they had fresh burn marks.[793]

1714. **Tor Munkelien**, an UNMO based in Knin from 14 August 1995 to 1 December 1995,[794] testified that he and his colleagues spoke to civilians and other UNMOs who were in the area during Operation Storm and learned that the first wave of looting was committed by soldiers.[795] He added that several waves of looting followed, some of which he observed in Knin and surrounding villages and that he saw both soldiers and civilians, although no police officers, looting.[796] Munkelien testified that UNMOs directly observed the act of looting in only ten per cent, maybe less, of all the looting that the UNMOs reported.[797] He testified that while he saw both civilian and military vehicles used for looting in the Knin area, civilian vehicles were in the majority.[798] From information he received at the time, the houses that were looted were Serb

[789] P21 (Edward Flynn, witness statement, 26-27 February 2008), para. 13; P42 (HRAT daily report, 14 August 1995), p. 1.
[790] P20 (Edward Flynn, witness statement, 29 June 1997), pp. 21-22; Edward Flynn, T. 1314, 1318.
[791] P20 (Edward Flynn, witness statement, 29 June 1997), pp. 13-14, 23, 28; Edward Flynn, T. 1311-1313.
[792] P20 (Edward Flynn, witness statement, 29 June 1997), p. 15.
[793] P20 (Edward Flynn, witness statement, 29 June 1997), pp. 22-23; Edward Flynn, T. 1056-1058.
[794] P60 (Tor Munkelien, witness statement, 18 December 1995, co-signed by Kari Anttila), p. 1; P61 (Tor Munkelien, witness statement, 10 January 2008), paras 1, 3; Tor Munkelien, T. 1514, 1546; D91 (Tor Munkelien, witness statement, 4 September 1999), p. 3.
[795] P61 (Tor Munkelien, witness statement, 10 January 2008), para. 21.
[796] P61 (Tor Munkelien, witness statement, 10 January 2008), paras 21-22, 34; Tor Munkelien, T. 1647.
[797] Tor Munkelien, T. 1682-1683.
[798] P61 (Tor Munkelien, witness statement, 10 January 2008), para. 36; Tor Munkelien, T. 1693.



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houses.[799] The witness testified that looting was going on the whole time, starting first with jewellery, followed by furniture and ending up with door frames and windows.[800] He testified that they could normally see from the outside whether a house had been looted, but that they sometimes went inside the houses to observe.[801]

1715. **Peter Marti**, an UNMO and later a member of HRAT in Sector South from 19 June to 27 November 1995,[802] testified that after Operation Storm, he and his team resumed their patrol work in their area of responsibility and found that not everyone had fled and that mostly elderly people still remained in the villages.[803] They discovered that some of these people were not being threatened by the troops themselves but by individual groups or gangs who were looting the villages.[804] Marti testified that generally, it was not easy to determine whether the looters were soldiers or civilians, and that there was a lot of confusion as to who was responsible for the looting.[805] He saw groups of young men roaming around, wearing parts of uniforms, one of them usually carrying an AK-47, and people were afraid of them.[806] While he testified that most of the looters were wearing uniforms, he added that he was told by remaining Serbs that they did not think that the persons looting were "real soldiers".[807] According to the witness, most of the looters were civilians, adding that some of them might have been in the army before, or had recently been discharged.[808] Marti testified that there were Croats returning who had been pushed out of the Krajina in 1991, and that according to him, there was an element of revenge in looting and seizing property.[809] He testified that the soldiers he saw during his patrols in Sector South resembled pirates, as

[799] P61 (Tor Munkelien, witness statement, 10 January 2008), para. 21.
[800] P61 (Tor Munkelien, witness statement, 10 January 2008), para. 37; Tor Munkelien, T. 1596-1597; D91 (Tor Munkelien, witness statement, 4 September 1999), p. 2.
[801] Tor Munkelien, T. 1682.
[802] P415 (Peter Marti, witness statement, 13 February 1996), pp. 1-2; P416 (Peter Marti, witness statement, 29 June 1997), pp. 1, 6; P417 (Peter Marti, witness statement, 14 December 2007), paras 1, 5, 9, 17.
[803] P416 (Peter Marti, witness statement, 29 June 1997), p. 4; P420 (Six maps highlighting areas visited by UNMOs).
[804] P416 (Peter Marti, witness statement, 29 June 1997), p. 4.
[805] P416 (Peter Marti, witness statement, 29 June 1997), pp. 4, 12; Peter Marti, T. 4688-4690, 4726.
[806] P416 (Peter Marti, witness statement, 29 June 1997), pp. 4, 12; Peter Marti, T. 4688-4690, 4726.
[807] P416 (Peter Marti, witness statement, 29 June 1997), p. 4; Peter Marti, T. 4689-4690; P154 (UNMO HQ Sector South Daily Sitrep 19 September 1995).
[808] P415 (Peter Marti, witness statement, 13 February 1996), pp. 2-3; P416 (Peter Marti, witness statement, 29 June 1997), p. 13; P417 (Peter Marti, witness statement, 14 December 2007), para. 15.
[809] P416 (Peter Marti, witness statement, 29 June 1997), p. 5; Peter Marti, T. 4638, 4690-4691, 4726-4727.



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depicted on a number of pictures of a local newspaper.[810] He saw a house in Knin that was marked "Croatian house" and testified that the purpose of this marking was to show the looters that they should not loot or destroy the house. However, according to the witness, marking a house as Croatian was not always a guarantee that the house would remain untouched, although the house of the witness's neighbour which had been marked in such a way was not destroyed.[811] In this respect, the Trial Chamber also refer to the evidence reviewed in chapter 4.2.9 (Knin town) and the testimony of Berikoff, reviewed in chapter 4.2.1. Marti testified that the best way to describe the looting in the Knin area was "shopping without paying", and that people would arrive mainly on weekends from various places, taking whatever they could. He saw cars with trailers driving into the area in the morning and leaving with a full trailer on the same day.[812] The Croatian authorities, when informed about the fact that there were soldiers looting, insisted that the looters were criminals wearing Croatian uniforms, and had nothing to do with them.[813] According to Marti, the looting was not ordered by anyone, there was no systematic pattern to it, but it was "more or less total".[814] In his view, the houses in the mountains were left untouched because the looters could not reach them with their small cars.[815] Marti testified that when the UN vehicles approached, the looters would often disappear.[816]

1716. With regard to destruction, **Witness 136**, a Serb field interpreter for UNCIVPOL and UNCRO,[817] testified that based on observations made during her travels throughout the area as of 9 August 1995, she gained the impression that small villages were deliberately razed to the ground, while the bigger towns of Knin, Gračac, Drniš, Korenica, Benkovac, and Donji Lapac did not seem to have been so badly damaged that it was impossible to live there.[818]

[810] Peter Marti, T. 4617-4620; P423 (Copy of a Newspaper "Ratni Album" with photographs of soldiers in Knin and other locations, 1995).
[811] P416 (Peter Marti, witness statement, 29 June 1997), p. 10; Peter Marti, T. 4635-4636, 4686.
[812] P415 (Peter Marti, witness statement, 13 February 1996), p. 2; P416 (Peter Marti, witness statement, 29 June 1997), p. 13.
[813] P415 (Peter Marti, witness statement, 13 February 1996), p. 2; P416 (Peter Marti, witness statement, 29 June 1997), p. 5.
[814] P415 (Peter Marti, witness statement, 13 February 1996), p. 4.
[815] P415 (Peter Marti, witness statement, 13 February 1996), p. 3.
[816] Peter Marti, T. 4638, 4691.
[817] P2 (Witness 136, witness statement, 4 July 1996), pp. 1-2; Witness 136, T. 620, 622, 641, 726, 765, 768, 780-782.
[818] P2 (Witness 136, witness statement, 4 July 1996), pp. 6, 11; P3 (Witness 136, witness statement, 11 June 2007), para. 18; Witness 136, T. 641-642, 698-699, 764-765; P5 (Map of Sector South marked by Witness 136).



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1717. According to an ECMM report, ECMM estimated that following Operation Storm six major cities were intact, and out of 210 monitored villages 55 had been completely damaged, 55 partly damaged, 50 slightly damaged, and 50 were intact.[819] **Stig Marker Hansen**, an ECMM monitor in Knin from June to September 1995 and head of ECMM Knin from approximately 5 September to 23 September 1995,[820] testified that following Operation Storm, initially HV soldiers and then returning "displaced persons and refugees" were involved in looting and burning of houses.[821] He testified that to him it looked like three waves of a looting campaign, with combat troops doing the looting until 8 August 1995, troops and police doing the looting from 8 to 17 August 1995, and as of September 1995 civilians being involved in the looting.[822] The witness testified that in the course of his patrols he saw houses set alight using a variety of means, including burning using wood and paper and large organized actions with jerrycans and petrol undertaken by uniformed persons.[823] The heaviest damage was along the road from Knin to Donji Lapac where every village featured some destruction, with the most damage in Srb and Donji Lapac. The most destroyed parts of the Knin-Benkovac area were Đevrske and Kistanje, and villages on the main roads from Knin-Benkovac, Knin-Drniš, Knin-Vrlika, and Kistanje-Obrovac. ECMM estimated that as of 27 August 1995, 60-80 per cent of Serb houses had been destroyed and six per cent of the Serb population remained.[824] **Søren Liborius**, an ECMM Operations Officer and team leader based in Knin from 28 July 1995 until 27 November 1995,[825] testified that after Operation Storm he saw houses which had signs saying "Croatian house".[826] Liborius stated that when asking a number of HV soldiers why they participated in looting and destruction, they responded that the loot was considered part of their wages

[819] P1289 (ECMM special report, 12 September 1995), p. 1.
[820] P1283 (Stig Marker Hansen, witness statement, 18 December 1995) p. 2; P1284 (Stig Marker Hansen, witness statement, 22 August 1997), p. 2; P1285 (Stig Marker Hansen, witness statement, 24 April 2008), para. 3.
[821] P1285 (Stig Marker Hansen, witness statement, 24 April 2008), para. 10; Stig Marker Hansen, T. 14923-14924; P1300 (ECMM daily monitoring activity report, 7 August 1995), p. 3; P2151 (ECMM Knin situation report, 27 August 1995), p. 1.
[822] Stig Marker Hansen, T. 14923-14924.
[823] P2151 (ECMM Knin situation report, 27 August 1995), p. 1; Stig Marker Hansen, T. 14936-14937.
[824] P2151 (ECMM Knin situation report, 27 August 1995), p. 2.
[825] P799 (Søren Liborius, witness statement, 2 November 1995), pp. 1, 3; P800 (Søren Liborius, witness statement, 11 November 1997), p. 2; P801 (Søren Liborius, witness statement, 12 October 2005), p. 2; P803 (Søren Liborius, witness statement, 6 September 2008), para. 6; Søren Liborius, T. 8229; D741 (Diary of Liborius), p. 3.
[826] P848 (Video of villages in Sector South with commentary by Liborius, 17, 19-21 May 1997), p. 1; Søren Liborius, T. 8434.



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as they were lowly paid.[827] They also said that their superiors had specifically authorized them to "help themselves to the goods".[828] They further stated that the destruction was intended to prevent the Serbs from returning.[829] **Eric Hendriks**, an ECMM monitor in Knin from 21 July 1995 until 30 October 1995,[830] testified that most churches in the Krajina were left undamaged.[831]

1718. The Trial Chamber has also received some evidence on destruction and plunder through the testimonies of Croatian soldiers and police. Some of this evidence is reviewed in chapter 4.2. In addition, for example, **Vladimir Gojanović**, a former HV soldier,[832] testified that for the first three days of Operation Storm, it became somewhat accepted and tolerated that looting was going on and that at no time did the Political Affairs Department or the SIS issue instructions to cease the looting or destruction.[833] He also testified that the looting during those three days was of such scale that it must have been noticed by anyone who was in the field at that time.[834] Gojanović testified that on or about 16 August 1995, as he was travelling from Šibenik to Donji Srb, in Donji Lapac municipality, there were check-points manned by civilian police at the entrance into Krajina.[835] He further testified that he believed anyone could pass through these check-points and that on this journey, he saw civilians search houses.[836]

1719. **Petar Pašić**, a Croatian Serb and the Croatian Government Commissioner for Knin from January 1992 to April 1996,[837] testified that on one occasion in August or September 1995, when travelling from Knin to Šibenik, he saw the results of large scale

[827] P801 (Søren Liborius, witness statement, 12 October 2005), p. 5; P802 (Søren Liborius, witness statement, 20 June 2008), para. 29.
[828] P801 (Søren Liborius, witness statement, 12 October 2005), p. 5.
[829] P801 (Søren Liborius, witness statement, 12 October 2005), p. 6.
[830] P931 (Eric Hendriks, witness statement, 4 April 2008), para. 3; D820 (Eric Hendriks, witness statement, 18 April 1996), pp. 1-2; Eric Hendriks, T. 9734-9735, 9755-9756.
[831] Eric Hendriks, T. 9694-9695; see also P951 (ECMM special report, 9 September 1995).
[832] P194 (Vladimir Gojanović, witness statement, 20 January 2005), paras 2-3; Vladimir Gojanović, T. 2973, 2983, 2987, 3010-3011, 3015, 3018-3019, 3039, 3119, 3121-3122, 3131-3133, 3138; C2 (Gojanović's military record), pp. 1, 3-4, 19; P198 (Further record of Gojanović's military service), pp. 1-2; P200 (Letter of Daniel Kotlar terminating the mobilization of Vladimir Gojanović, 30 August 1995), p. 1.
[833] P194 (Vladimir Gojanović, witness statement, 20 January 2005), para. 23; P195 (Vladimir Gojanović, witness statement, 25 January 2008), para. 10; Vladimir Gojanović, T. 2970-2971.
[834] Vladimir Gojanović, T. 2971-2972, 2975.
[835] P194 (Vladimir Gojanović, witness statement, 20 January 2005), para. 21; P196 (Vladimir Gojanović, supplemental information sheet, 14 May 2008), para. 15.
[836] P194 (Vladimir Gojanović, witness statement, 20 January 2005), para. 21.
[837] D1706 (Petar Pašić, witness statement, 3 March 2002), pp. 1-2; D1707 (Petar Pašić, witness statement, 23 April 2009), paras 2, 4, 13, 15, 32; D1709 (Petar Pašić, supplemental information sheet, 6 October 2009), para. 10; Petar Pašić, T. 22740, 22778, 22844, 22847, 22858, 23026, 23053.



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burning along the main road in Kistanje, although he did not see smoke or flames.[838] According to Pašić, there was a great deal of looting and destruction in Kistanje, which the police should have stopped, but there was a revenge mentality, as people, whether ordinary citizens or members of the HV, who had been forced out of their homes and expelled five or six years ago returned to their homes and found that their houses no longer existed, could not resist burning and could not easily be reined in.[839]

1720. The above mentioned evidence, in particular that reviewed in chapter 4 shows that the whole Serb population of the southern portion of the Krajina region during a relatively short period of time became victim of a large number of crimes, including persecution, murder, inhumane acts, destruction and plunder of property, and deportation. Although the categories of perpetrators might have changed over time, the victims were always Krajina Serbs remaining in the area and as a result almost all of the Krajina Serb population left their homes during or within weeks or months following Operation Storm. The evidence shows that the persons targeted primarily were members of the civilian population.

1721. Based on the evidence described above, including the evidence with regard to individual counts in the Indictment, the Trial Chamber finds beyond a reasonable doubt that there was a widespread and systematic attack directed against the Serb civilian population of the southern portion of the Krajina region.

1722. When assessing the mental element of the perpetrators, the Trial Chamber considers in particular the scale of the attack. The different crimes encompassed by the attack took place throughout the Indictment area and many of them (in particular plunder and destruction) were carried out in a manner that was fully visible, in particular to members of the Croatian military forces who had no or limited restriction of their movement. Based on the foregoing, the Trial Chamber finds beyond a reasonable doubt that the perpetrators knew about the attack and that their acts were part thereof.

1723. Having determined the existence of an armed conflict and a widespread and systematic attack against a civilian population at the relevant time and place, the Trial Chamber will now examine the individual acts charged as crimes against humanity, including whether they were part of the attack against the civilian population.

[838] Petar Pašić, T. 22757-22758.



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## 5.3 Murder

### *5.3.1 Applicable law*

1724. Count 6 of the Indictment charges the Accused with murder as a crime against humanity, punishable under Article 5 (a) of the Statute. Count 7 of the Indictment charges the Accused with murder as a violation of the laws or customs of war under Article 3. The general elements and jurisdictional requirements for these crimes have been discussed in chapters 5.1 and 5.2, above.

1725. The crime of murder requires proof of the following elements:

(a) the victim died;

(b) an act or omission of the perpetrator caused the victim's death; and

(c) the act or omission was committed with intent to kill the victim or to wilfully cause serious bodily harm which the perpetrator should reasonably have known might lead to death.[840]

### *5.3.2 Legal findings*

1726. In chapter 4.1, the Trial Chamber decided to further consider the following incidents of alleged murder against the backdrop of the applicable law:

*Donji Lapac municipality*: Marko Ilić, Rade Bibić, Ruža Bibić, and Stevo Ajduković (Schedule no. 10);

*Ervenik municipality:* Marta Vujnović (Schedule no. 9); Stana Popović and Mirko Popović (Further Clarification nos 5-6);

*Gračac municipality:* Đurad Čanak (Further Clarification no. 26); Milan Marčetić and Dušan Šuica (Further Clarification nos 27-28);

*Kistanje municipality:* Manda Tišma (Further Clarification no. 107);

*Knin municipality:* Nikola Dragičević, Sava Čeko, and Mile Dragičević (Schedule no. 1); Sava Đurić (Schedule no. 2); Milka Petko, Ilija Petko, and Dmitar Rašuo (Schedule no. 3); Miloš Grubor, Jovo Grubor, Marija Grubor, Mika Grubor, and Đuro Karanović (Schedule no. 4); Jovica Plavša (Further Clarification no. 126); Stevo Večerina, Stevan Baljak, Đuro Mačak, Momčilo Tišma, and Mile Gnjatović (Further Clarification nos 150-154); Sava Šolaja (Further Clarification no. 155); Ilija Šarac (Further Clarification

[839] D1706 (Petar Pašić, witness statement, 3 March 2002), p. 9; Petar Pašić, T. 22755, 23011.



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no. 159); Jovanka Mizdrak (Further Clarification no. 180); Živko Stojakov (Further Clarification no. 184); Đurđija Mirković;

*Orlić municipality:* Milica Šare, Stevo Berić, Janja Berić, Đuka Berić, Krste Šare, Miloš Ćosić, Jandrija Šare (Schedule no. 5) (Judge Ķinis dissenting); Lazo Damjanić (Further Clarification no. 258); Predrag Simić (Further Clarification no. 271).

1727. Counts 6 and 7 of the Indictment are limited to murder of Krajina Serbs. Based on the factual findings made in chapter 4.1, the Trial Chamber finds that all of the victims in the incidents referred to above were Krajina Serbs.

1728. In assessing whether the victims died and whether their deaths were caused by an act or omission of a perpetrator, the Trial Chamber considered in particular forensic evidence and evidence from witnesses who either observed the incident or otherwise could provide information about the circumstances surrounding the death. This included witnesses who provided evidence about where and with whom the victim was last seen alive and about encounters between the victim and a possible perpetrator prior to the victim's death. Based on the factual findings made in chapter 4.1, the Trial Chamber finds that all of the aforementioned victims died, and that these deaths were caused by acts of perpetrators.

1729. When assessing the mental element of murder, the Trial Chamber considered the forensic evidence about the cause of death and other injuries to the victim's body. The Trial Chamber further considered evidence concerning the circumstances surrounding the incidents. With regard to all incidents, the Trial Chamber finds that the perpetrators acted with intent to kill the victims or at least wilfully caused them serious bodily harm which they should reasonably have known might lead to death.

1730. In relation to three incidents (Manda Tišma, Sava Šolaja, and Jovanka Mizdrak), the issue of self-defence was raised by the parties or in local courts trying the perpetrators. The Trial Chamber considered it necessary to establish the status of the victims under international humanitarian law before turning to the question of self-defence. All three victims were civilians and Tišma and Mizdrak had not taken up arms. In relation to the killing of Sava Šolaja, the Trial Chamber is satisfied that the victim was not involved in the exploding of the grenade which injured the perpetrator. As a result, in all three incidents, the victims were civilians not having taken part in

[840] *Kvočka et al.* Appeal Judgement, para. 261.



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hostilities. In relation to the question of self-defence, the Trial Chamber considered that neither incident presented an immediate illegitimate attack on the perpetrator. The Trial Chamber further considered the perpetrators' conduct, even if an immediate illegitimate attack could be assumed, to be disproportionate, where other ways of thwarting any possible danger instead of firing lethal shots were available.

1731. Based on the foregoing, the Trial Chamber finds that all of the above mentioned incidents of murder, as charged in the Indictment, have been proven beyond a reasonable doubt.

1732. The Trial Chamber recalls its findings in chapters 5.1 and 5.2 with regard to the general elements and jurisdictional requirements for violations of the laws or customs of war and crimes against humanity.

1733. The Trial Chamber has found that Manda Tišma, Sava Šolaja, and Jovanka Mizdrak were civilians not having taken part in hostitlities. Considering the age, gender, and clothing of the other victims as well as the circumstances under which the murders were carried out, the Trial Chamber finds that these victims were civilians, or at least detained or otherwise placed *hors de combat* when they were killed.

1734. Considering circumstances such as the ethnicity of the victims and the time and place where the acts took place, the Trial Chamber finds that the murders were part of a widespread and systematic attack against a civilian population.

1735. The Trial Chamber further finds, based on the affiliation of the perpetrators and the manner in which the acts took place, that there was a close relationship between the killings and the armed conflict.

1736. Therefore, the Trial Chamber finds that all of the above incidents constitute murders as crimes against humanity and as violations of the laws or customs of war.

## 5.4 Deportation and forcible transfer

### *5.4.1 Applicable law*

1737. Counts 2 and 3 of the Indictment charge the Accused with deportation and forcible transfer as crimes against humanity. The crime of deportation (Count 2) is listed in Article 5 (d) of the Statute, whereas forcible transfer (Count 3) is a charge under



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"other inhumane acts" in Article 5 (i). The general elements and jurisdictional requirements for these crimes have been discussed in chapters 5.1 and 5.2, above.

1738. Deportation and forcible transfer both entail the forcible displacement of persons from the area in which they are lawfully present, without grounds permitted under international law.[841] The crime of deportation requires that the victims be displaced across a *de jure* state border, or, in certain circumstances, a *de facto* border.[842] Forcible transfer involves displacement of persons within national boundaries.[843]

1739. Forcible displacement means that people are moved against their will or without a genuine choice.[844] Fear of violence, duress, detention, psychological oppression, and other such circumstances may create an environment where there is no choice but to leave, thus amounting to the forcible displacement of people.[845] Displacement of persons carried out pursuant to an agreement among political or military leaders, or under the auspices of the ICRC or another neutral organization, does not necessarily make it voluntary.[846]

1740. International humanitarian law recognizes limited circumstances under which the displacement of civilians during armed conflict is allowed, namely if it is carried out for the security of the persons involved, or for imperative military reasons.[847] In such cases the displacement is temporary and must be carried out in such a manner as to ensure that displaced persons are returned to their homes as soon as the situation allows.[848] Whether a forcible displacement of people is lawful is, however, more appropriately dealt with when considering the general elements of crimes against humanity (see chapter 5.2, above).[849]

[841] *Stakić* Appeal Judgement, paras 278, 317; *Krajišnik* Appeal Judgement, paras 304, 308.
[842] *Stakić* Appeal Judgement, paras 278, 300; *Krajišnik* Appeal Judgement, para. 304.
[843] *Stakić* Appeal Judgement, para. 317.
[844] *Krnojelac* Appeal Judgement, paras 229, 233; *Stakić* Appeal Judgement, para. 279.
[845] *Stakić* Appeal Judgement, para. 281.
[846] *Stakić* Appeal Judgement, para. 286; *Naletilić and Martinović* Trial Judgement, para. 523; *Simić et al.* Trial Judgement, para. 127; *Krajišnik* Trial Judgement, para. 724.
[847] Geneva Convention III, Art. 19; Geneva Convention IV, Art. 49; Additional Protocol II, Art. 17; *Stakić* Appeal Judgement, paras 284-285; *Blagojević and Jokić* Trial Judgement, paras 597-598; *Krajišnik* Trial Judgement, para. 725; *Krajišnik* Appeal Judgement, para. 308.
[848] Geneva Convention IV, Art. 49; *Krstić* Trial Judgement, para. 524; *Blagojević and Jokić* Trial Judgement, para. 599; *Krajišnik* Trial Judgement, para. 725.
[849] See *Brđanin* Appeal Judgement, para. 167.



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1741. The perpetrator of deportation or forcible transfer must intend to forcibly displace the persons, however, the intent need not be to displace on a permanent basis.[850]

### *5.4.2 Legal findings*

1742. The Trial Chamber will now address the alleged forcible transfer and deportation of persons from towns in the Indictment area in August and September 1995. Firstly, the Trial Chamber will consider the departure of persons from the towns of Knin, Benkovac, Gračac, and Obrovac on 4 and 5 August 1995. Secondly, the Trial Chamber will address the departure of persons from other locations after shells impacted on or nearby these locations on 4 and 5 August 1995. Thirdly, the Trial Chamber will turn to the departure of persons who were victims of or witnessed crimes committed by members of the Croatian military forces or Special Police during and after Operation Storm. Fourth and finally, the Trial Chamber will consider the departures of other persons, for which the evidence does not establish a geographic or temporal link to incidents of shelling, crimes, or other threatening acts committed by members of the Croatian military forces or Special Police.

1743. The Trial Chamber will first consider its findings on persons leaving the towns of Knin, Benkovac, Gračac, and Obrovac on 4 and 5 August 1995. In chapter 5.8.2(i), the Trial Chamber found that the HV and Special Police deliberately targeted civilian areas in these towns and treated the towns themselves as targets for artillery fire and that the shelling of these towns constituted an unlawful attack on civilians and civilian objects. In respect of Knin, the Trial Chamber further refers to its findings in chapter 4.4.3, in particular with regard to the number of projectiles fired at Knin on 4 and 5 August 1995 and the locations where projectiles impacted. In chapter 4.5.3, the Trial Chamber established that approximately 14,000 persons left Knin town on 4 and 5 August 1995. In determining the cause of this mass departure, the Trial Chamber considers that several witnesses testified that the shelling caused panic and fear in Knin and resulted in persons leaving the town, as reviewed in chapter 4.5.3. For instance, Witness 6 testified that the shells, which fell everywhere in Knin, made everyone feel like they had to flee. In addition, the Trial Chamber refers to the testimony of expert

[850] *Stakić* Appeal Judgement, paras 278, 304-307, 317; *Brđanin* Appeal Judgement, para. 206; *Krajišnik* Appeal Judgement, para. 304.



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Konings on the psychological effects of artillery on civilians reviewed in chapter 4.4.2. The Trial Chamber further considers that the mass departure of persons occurred during and just after the shelling of Knin. In chapter 4.5.2, the Trial Chamber concluded that in general people did not leave their homes due to any evacuation planned or organized by the RSK and SVK authorities. The Trial Chamber acknowledges that in some cases, factors such as the poor living conditions in Knin, the departure of others, and the imminent approach of Croatian forces may have had some bearing on persons leaving Knin. However, based on the aforementioned considerations, the Trial Chamber finds that the artillery attack instilled great fear in those present in Knin on 4 and 5 August 1995. For the vast majority, if not all, of those leaving Knin on 4 and 5 August 1995, this fear was the primary and direct cause of their departure.

1744. The Trial Chamber further recalls its findings in chapters 4.5.3 on persons leaving Benkovac, Gračac, and Obrovac on 4 and 5 August 1995. The Trial Chamber refers to its findings in chapters 4.4.4-4.4.6, including with regard to the number of projectiles fired at Benkovac and Gračac and the locations where projectiles impacted in Benkovac, Gračac, and Obrovac on those days. The mass departure of persons occurred during and just after the shelling of these towns. The Trial Chamber recalls its conclusions regarding any planned or organized evacuation. In light of the testimony of expert Konings on the psychological effects of artillery on civilians mentioned above, and the time of their departure, the Trial Chamber finds that the artillery attack instilled great fear in those present in Benkovac, Gračac, and Obrovac on 4 and 5 August 1995. For the vast majority, if not all, of those leaving these towns on 4 and 5 August 1995, this fear was the primary and direct cause of their departure.

1745. The Trial Chamber considers that the fear of violence and duress caused by the shelling of the towns of Benkovac, Gračac, Knin, and Obrovac created an environment in which those present there had no choice but to leave. Consequently, the Trial Chamber finds that the shelling amounted to the forcible displacement of persons from Benkovac, Gračac, Knin, and Obrovac on 4 and 5 August 1995.

1746. The Trial Chamber considered several factors in establishing whether the HV and Special Police forces who shelled these four towns on 4 and 5 August 1995 did so with the intent to forcibly displace persons from the towns. Firstly, the Trial Chamber recalls its findings in chapter 5.8.2(i) that the HV and Special Police did not limit themselves to shelling areas containing military targets, but also deliberately targeted



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civilian areas in these towns and treated the towns themselves as targets for artillery fire. In the same chapter, the Trial Chamber found that the unlawful attack on civilians and civilian objects in these towns was carried out with the intention to discriminate against Krajina Serbs on political, racial, or religious grounds. The Trial Chamber further refers to the evidence reviewed in chapter 6.2.7 regarding the existence and objective of a joint criminal enterprise and particularly the evidence regarding the Brioni meeting of 31 July 1995. Based on the aforementioned evidence and conclusions, the Trial Chamber finds that the HV and Special Police forces who shelled Benkovac, Gračac, Knin, and Obrovac did so with the intent to forcibly displace persons from these towns.

1747. The Trial Chamber further finds that the persons who left the aforementioned towns had been lawfully present there. The Trial Chamber found in chapters 4.4.3 and 4.5.3 that there were at least 15,000 civilians in Knin on 4 August 1995, the vast majority of whom were women, children, and elderly men, and approximately 14,000 of whom left on 4 and 5 August 1995. Similarly, the Trial Chamber concluded in chapters 4.4.4-4.4.6 that there was a civilian presence and only a minimal SVK presence in the towns of Benkovac, Gračac, and Obrovac on 4 August 1995. Based on these conclusions, the Trial Chamber finds that the vast majority, if not all, of the persons who left Benkovac, Gračac, Knin, and Obrovac on 4 and 5 August 1995 were civilians or at least persons placed *hors de combat* at the time.

1748. The Gotovina Defence has argued that the Serbs who fled the Krajina region during and after Operation Storm were not Croatian citizens, but citizens of the FRY/RSK, an enemy state at the time.[851] The Gotovina Defence argues that international humanitarian law allows a belligerent state to expel the nationals of an enemy state during an armed conflict, and to deny them immediate or unconditional return.[852] The Gotovina Defence's argument relies on the findings in one of the decisions of the Eritrea-Ethiopia Claims Commission, which deals with expulsion of persons holding citizenship of the enemy state.[853] It concerned a situation in which, at the outbreak of an international armed conflict between the states of Eritrea and Ethiopia, the latter denationalized, expelled and took over the property of many people

[851] Gotovina Defence Final Trial Brief, paras 568, 570, 847; T. 29455.
[852] Gotovina Defence Final Trial Brief, paras 568-570, 865-867; T. 29261.
[853] Eritrea Ethiopia Claims Commission, Partial Award, Civilians Claims, Eritrea's Claims 15, 16, 23, 27-32, 17 December 2004 ("EECC Partial Award").



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of Eritrean origin living in Ethiopia, after they had allegedly adopted Eritrean citizenship or had left Ethiopian territory voluntarily. Most of these people were recognized by the EECC as dual nationals.[854] The EECC recognized the existence in international humanitarian law of a principle according to which belligerents States have broad powers to expel nationals of an enemy state from their territory during an armed conflict, although their discretion in exercising these powers is not absolute.[855] The Trial Chamber considers that the present case is distinguishable from the Eritrea-Ethiopia case. Whereas in the latter case the EECC recognized that people concerned were dual nationals, in the present case the citizenship of people of Serb origin who fled the Krajina region, especially of those who had lived the whole of their lives in Croatian territory, is at least unclear. In any case, even assuming that those people were citizens of an enemy state (FRY/RSK), the Trial Chamber considers that their forcible displacement was abusive and arbitrary if only as a result of the means used (an unlawful attack on civilians and civilian objects which itself amounted to a crime) and not comparable with the procedure which the EECC established had been followed by the Ethiopian authorities.[856] For these reasons, the principle mentioned above stated by the EECC, namely the lawfulness of expulsion of enemy nationals during armed conflicts, does not apply to the circumstances of the present case. Hence, the Trial Chamber finds that the forcible displacement was without grounds permitted under international law.

1749. The Trial Chamber further recalls its findings regarding specific individuals who left the aforementioned towns on those days and travelled to Bosnia-Herzegovina and Serbia. In chapter 4.5.3 the Trial Chamber established that approximately 50,000 to 70,000 persons crossed the border between Donji Lapac municipality and Bosnia-Herzegovina from 4 to 7 August 1995. The Trial Chamber finds that those who left the aforementioned towns crossed a *de jure* state border.

1750. The Gotovina Defence has argued that deportation and forcible transfer require forcible displacement from territory under the actual control of an opposing

[854] EECC Partial Award, paras 51 and 65.
[855] EECC Partial Award, para. 81.
[856] EECC Partial Award, para. 81, quoting *Oppenheim's International Law*, vol. I, § 413, pp. 940-941 (Sir Robert Jennings and Sir Arthur Watts eds., 1996): "The right of states to expel aliens is generally recognized. […] On the other hand, while a state has a broad discretion in exercising its right to expel an alien, its discretion is not absolute. Thus, by customary international law, it must not abuse its right by acting arbitrarily in taking its decision to expel an alien, and it must act reasonably in the manner in which it effects an expulsion."



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belligerent.[857] On 19 March 2007, the Pre-Trial Chamber decided that "occupation" was not an element of deportation as a crime against humanity under Article 5 of the Statute and that there was no additional requirement that the civilian victim be in the power of a party to the conflict.[858] On 6 June 2007, the Appeals Chamber found that the Gotovina Defence had failed to demonstrate that the Trial Chamber erred in dismissing his argument as to "occupied territory" being a necessary requirement for the crimes of deportation and forcible transfer as crimes against humanity.[859] The Trial Chamber refers to the discussion in the aforementioned decisions and dismisses the Gotovina Defence argument.

1751. For the foregoing reasons, the Trial Chamber finds that the forcible displacement by the HV and Special Police forces of persons from the towns of Benkovac, Gračac, Knin, and Obrovac on 4 and 5 August 1995 constituted deportation.

1752. Counts 2 and 3 of the Indictment are limited to the deportation of Krajina Serbs. Based on the factual findings made in chapter 4.5.3, the Trial Chamber finds that the overwhelming majority, if not all, of the victims in the incidents referred to above were Krajina Serbs. Insofar as there were inhabitants of the Krajina among those leaving the aforementioned towns on 4 and 5 August 1995 who were not of Serb ethnicity, the Trial Chamber does not consider them victims of deportation as charged in the Indictment.

1753. Considering circumstances such as the ethnicity of the victims and the time and place where this deportation took place, the Trial Chamber finds that it was part of a widespread and systematic attack against a civilian population.

1754. The Trial Chamber now turns to the evidence of and its findings on other towns or villages in the Indictment area from which the vast majority of inhabitants fled after shells impacted on or nearby these places on 4 and 5 August 1995. Recalling its conclusions in chapter 4.5.3 (Kistanje municipality, Knin municipality, and Orlić municipality), the Trial Chamber finds that these towns or villages included Kistanje and the Torbica hamlet thereof, Kakanj, Uzdolje,[860] the Zarići hamlet of Orlić, Polača,

[857] Gotovina Defence Final Trial Brief, para. 860; T. 29256-29257.
[858] *Prosecutor v. Gotovina et al.*, Case no. IT-06-90-PT, Decision on Several Motions Challenging Jurisdiction, 19 March 2007, paras 54-56.
[859] *Prosecutor v. Gotovina et al.*, Case no. IT-06-90-AR72.1, Decision on Ante Gotovina's Interlocutory Appeal Against Decision on Several Motions Challenging Jurisdiction, 6 June 2007, paras 14-15.
[860] The Trial Chamber notes, based on Witness 3's evidence, that the vast majority of inhabitants fled Uzdolje before two houses in Uzdolje were set on fire by members of Croatian military forces on 5 August 1995.



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Zagrović, and Plavno. The Trial Chamber notes that persons leaving most of these towns or villages referred to the shelling as the reason for their departure. In light of the psychological effects of shelling, the Trial Chamber is satisfied that the shelling will have had some bearing on persons leaving these places. However, as the Trial Chamber considered in chapter 4.4.1, the evidence is insufficient to establish the number of projectiles fired at these places and, with only a few exceptions, to determine the times and locations of impacts of the projectiles. As the evidence lacks details on the timing, duration, and intensity of the shelling on or nearby such places, the Trial Chamber cannot conclusively determine that the shelling on or nearby these places was the primary and direct cause of flight, or that fear of the shelling created an environment in which those present had no choice but to leave. In this respect, the Trial Chamber also considered that the evidence indicated other factors which may have influenced people to leave. These factors include information provided by local committees or SVK units in Kakanj and Uzdolje, and, as in the case of Sava Mirković from Polača and the inhabitants of Zarići, the departure of others and fears of what would happen when the Croats arrived.

1755. Moreover, the Trial Chamber recalls that the evidence does not establish whether there was an SVK presence in these towns, nor whether there were other objects offering a definite military advantage if fired at. The artillery reports which the Trial Chamber has received in evidence do not provide further details as to what the HV fired at in or nearby these towns. Under these circumstances, the Trial Chamber considered in chapter 4.4.1 that an unlawful attack on civilians or civilian objects in these towns or villages was not the only reasonable interpretation of the evidence. Instead, the evidence allowed for the reasonable interpretation that the forces who fired artillery projectiles which impacted on or nearby these places were deliberately targeting military targets. In this respect, the Trial Chamber notes that Witness 3 testified that from Uzdolje, she heard and saw the shelling of the Promina hill prior to leaving the village on the morning of 4 August 1995. Other evidence, including the testimony of Marko Rajčić and Mile Mrkšić and the artillery reports of the TS-4 (P1267 and P1268), indicates that Promina was the location of a repeater which served as part of the SVK communications system and which the HV considered an artillery target and fired at during Operation Storm. Further, Mirko Ognjenović testified with regard to the shelling near Kakanj, that the shells fell along a corridor where he saw some SVK soldiers



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retreating, as well as on Đevrske, where a cooperative building was used by the SVK. Under these circumstances, the Trial Chamber cannot conclusively establish that those who left such towns or villages were forcibly displaced, nor that those firing artillery at such towns had the intent to forcibly displace those persons.

1756. The Trial Chamber now turns to its findings on persons fleeing from towns in the Indictment area after being the victim of, or witnessing, crimes committed by members of the Croatian military forces or Special Police after 5 August 1995. Recalling its conclusions in chapters 4.5.3 (Benkovac municipality, Civljane municipality, Obrovac municipality, Kistanje municipality, Orlić municipality, and Knin municipality) and its findings in other parts of the Judgement cited therein, the Trial Chamber finds that these persons included Konstantin Drča, Ružica Šarac, Sava Večerina, Dragana Večerina, Marija Večerina and her two daughters Mira and Branka, Zdravko Bunčić, Dušan Torbica and his wife, Mirko Ognjenović and his aunt, Dušan Dragičević, Witness 1, Witness 13, Anica Andić, Smiljana Mirković, Witness 69, and Jovan Grubor. The majority of the Trial Chamber, with Judge Ķinis dissenting, further finds that these persons also included Witness 3 and Witness 67. A number of the aforementioned persons were themselves the victims of crimes including inhumane acts and detention. Others witnessed crimes including plunder and destruction and murder committed against close relatives, fellow villagers, and other Krajina Serbs. The Trial Chamber considers that these crimes caused duress and fear of violence in their victims and those who witnessed them, such that the crimes created an environment in which these persons had no choice but to leave. Consequently, the Trial Chamber finds that the commission of these crimes also amounted to the forcible displacement of the victims and those who witnessed them in August 1995. The Trial Chamber notes that a number of the aforementioned persons left their villages prior to becoming the victims of or witnessing crimes. In these instances, the Trial Chamber considers that, to the extent they left their villages voluntarily and had not already been subjected to forcible displacement, the crimes they experienced or observed created an environment in which they no longer had a choice to return and could only continue to flee and leave the area.

1757. The Trial Chamber has considered several factors in establishing whether the members of Croatian military forces and Special Police who committed the crimes which resulted in the forcible displacement of the victims of and witnesses to the crimes did so with the intent to forcibly displace these persons. Firstly, the Trial Chamber



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recalls its conclusions in chapters 5.8.2 that the perpetrators committed these crimes with the intention to discriminate against Krajina Serbs on political, racial, or religious grounds. The Trial Chamber further considered its findings in the same chapters that these crimes were committed as part of an attack against a civilian population. This attack included deportation of Krajina Serbs from the towns of Benkovac, Gračac, Knin, and Obrovac by means of unlawful attack on civilians and civilian objects. Moreover, the crimes were committed against the relatively few Krajina Serbs who remained after Croatian forces took over the territory of the former RSK. In some cases, the crimes were committed near the homes of the Krajina Serbs, while in other cases, the crimes were committed shortly after they had departed from their villages. In view of the number and violent nature of the crimes committed, and based on the aforementioned evidence and findings, the Trial Chamber finds that the members of the Croatian military forces and Special Police who committed these crimes did so with the intent to forcibly displace the Krajina Serb victims and witnesses of the crimes.

1758. The Trial Chamber finds that the aforementioned persons had been lawfully present at the locations from which they were forcibly displaced. Recalling the conclusions referenced in chapter 4.5.3 (Benkovac municipality, Civljane municipality, Kistanje municipality, Knin municipality, Obrovac municipality, and Orlić municipality), the Trial Chamber finds that the aforementioned persons were civilians or at least persons placed *hors de combat*. Considering that the forcible displacement was committed by means of crimes including murder, inhumane acts, detention, plunder, and destruction, the Trial Chamber finds that the forcible displacement was without grounds permitted under international law.

1759. In chapter 4.5.3 (Benkovac municipality, Civljane municipality, Kistanje municipality, Knin municipality, Obrovac municipality, and Orlić municipality), the Trial Chamber established that the aforementioned persons travelled to Serbia. The Trial Chamber recalls that some of these persons travelled to Serbia in convoys from Knin in mid-September 1995, after staying at the UN compound or at reception centres. Some of those leaving were also asked to sign statements that they were doing so voluntarily. In light of the conclusions reached in chapters 4.5.4 and 4.5.5, the Trial Chamber considers that neither their stay at these facilities, nor the statements they were asked to sign prior to departure, render their flight voluntary given the circumstances under which they originally left. The Trial Chamber further considers that the assistance



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provided by UNCRO to the convoys does not in itself affect the forcible nature of their displacement. The Trial Chamber finds that those who left the aforementioned towns crossed a *de jure* state border. Based on the foregoing, the Trial Chamber finds that the forcible displacement by members of the Croatian military forces and Special Police of the aforementioned persons in August 1995 constituted deportation.

1760. Counts 2 and 3 of the Indictment are limited to the deportation of Krajina Serbs. Recalling the conclusions the Trial Chamber reached in this regard in chapter 4.5.3 (Benkovac municipality, Civljane municipality, Kistanje municipality, Knin municipality, Obrovac municipality, and Orlić municipality) and the evidence and conclusions in other parts of the Judgement cited therein, the Trial Chamber finds that these persons were all Krajina Serbs.

1761. Considering circumstances such as the ethnicity of the victims and the time and place where this deportation took place, the Trial Chamber finds that it was part of a widespread and systematic attack against a civilian population.

1762. The Trial Chamber finally turns to the evidence and its findings on other incidents of persons leaving towns in the Indictment area in August and September 1995. The Trial Chamber recalls its findings in chapter 4.5.3 (Benkovac municipality, Civljane municipality, Gračac municipality, Knin municipality, and Orlić municipality) in respect of the inhabitants leaving from Buković,[861] Civljane, Oton Polje, and Kijani on 4 and 5 August 1995; from the Urukali hamlet of Biskupija on 4 or 11 August 1995; as well as the departure of Nikola Plavša's son and his son's wife from Golubić on 4 August 1995, Petar Čolović's family from Čolovići on 5 August 1995, and of Milan Letunica and Bogdan Dobrić on 5 August and in September 1995. The Trial Chamber considers that for these incidents, the evidence does not establish a geographic or temporal link to shelling, crimes, or other threatening acts committed by members of the Croatian military forces or Special Police. The Trial Chamber recalls its finding in chapter 5.1.2 that international armed conflict existed throughout the Indictment period and area. The Trial Chamber considers that the commencement of the armed conflict may in itself have brought about fears of the violence associated with armed conflict, as a result of which civilians fled. In this respect, the Trial Chamber also considers the

[861] The Trial Chamber notes that inhabitants fled Buković on 4 and in the night from 4 to 5 August 1995, prior to the destruction of five or six houses in Buković by members of Croatian military forces or Special Police on 5 August 1995.



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evidence of and its findings in chapter 4.5.3 (Knin municipality) on persons leaving the RSK in late July and early August 1995, in part because they believed a Croatian military operation was imminent. In a number of the aforementioned incidents, the evidence indicates that the reasons for departure included the departure of others and a fear of violence associated with the expected imminent arrival of Croatian armed forces. For instance, Petar Čolovići testified that his family left because many others were leaving. RSK officials told the inhabitants of Oton Polje to leave on 4 August 1995, because "Ustashi" forces were approaching. Sovilj told his family to leave Kijani at 1 a.m. on 5 August 1995 for security reasons, because the HV might have entered the area. Considering that persons left the aforementioned locations prior to the commission of crimes or other threatening acts by members of Croatian military forces or Special Police in or near these locations, the Trial Chamber cannot conclusively determine that acts by members of Croatian military forces or Special Police created an environment in which those present had no choice but to leave. Instead, the Trial Chamber considers that the evidence allows for the reasonable interpretation that these persons left because of a fear of the violence commonly associated with armed conflict, or general fears of Croatian forces or distrust of Croatian authorities. Consequently, the Trial Chamber cannot conclude that these persons were forcibly displaced.

1763. In conclusion, the Trial Chamber finds that members of Croatian military forces and Special Police committed the crime of deportation in the municipalities of Benkovac, Civljane, Gračac, Kistanje, Knin, Obrovac, and Orlić in August 1995, as specified above.

## 5.5 Wanton destruction

### *5.5.1 Applicable law*

1764. Count 5 of the Indictment charges the Accused with the wanton destruction of cities, towns or villages, or devastation not justified by military necessity, as a violation of the laws or customs of war, punishable under Article 3 (b) of the Statute. The general elements and jurisdictional requirements for this crime have been discussed in chapter 5.2.1, above.



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1765. The crime of wanton destruction of cities, towns or villages requires proof of the same elements as devastation not justified by military necessity.[862] These elements are:

(a) an act or omission caused destruction of property on a large scale;

(b) the destruction was not justified by military necessity;

(c) the act or omission was committed with intent or in reckless disregard of the likelihood of the destruction.[863]

1766. The prohibition on wanton destruction covers property located in any territory involved in the armed conflict.[864] The requirement of destruction "on a large scale" may be met either if many objects are damaged or destroyed, or if the value of one or a few destroyed objects is very high.[865] Military necessity may never justify the targeting of civilian objects.[866] Civilian objects are defined by opposition to military objectives, which are limited to those objects which by their nature, location, purpose, or use make an effective contribution to military action and whose total or partial destruction, capture, or neutralization, in the circumstances ruling at the time, offers a definite military advantage.[867] As a rule, destruction carried out before fighting begins or after fighting has ceased cannot be justified by military necessity.[868]

### *5.5.2 Legal findings*

1767. In chapters 4.2, the Trial Chamber decided to further consider the following incidents of alleged wanton destruction against the backdrop of the applicable law:

*Benkovac municipality:* Buković (5 August 1995);

*Donji Lapac municipality:* Donji Lapac town (7-8 and 11 August 1995);

*Ervenik municipality:* Ervenik town (approximately 10 August-10 September 1995); Mokro Polje (6 August 1995);

[862] *Brđanin* Trial Judgement, paras 591-593; *Strugar* Trial Judgement, paras 290-297; *Orić* Trial Judgement, para. 580 (note 1561); *Martić* Trial Judgement, para. 91; *Boškovski and Tarčulovski* Trial Judgement, para. 350.
[863] *Kordić and Čerkez* Appeal Judgement, para. 74.
[864] *Kordić and Čerkez* Appeal Judgement, para. 74; *Naletilić and Martinović* Trial Judgement, para. 580; *Brđanin* Trial Judgement, para. 592; *Orić* Trial Judgement, para. 582.
[865] *Hadžihasanović and Kubura* Trial Judgement, para. 43; *Boškovski and Tarčulovski* Trial Judgement, para. 352.
[866] *Kordić and Čerkez* Appeal Judgement, para. 54, with corrigendum of 26 January 2005; *Galić* Appeal Judgement, para. 130.
[867] Additional Protocol I, Arts 52 (1) and (2).



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*Gračac municipality:* Gračac town (5-6 August 1995) (Judge Ķinis dissenting);

*Kistanje municipality:* Kakanj (4, 5, and 5-6, and 9 August 1995); Kistanje town (6, 9, two separate instances on the 10, and one on 23 August 1995); Parčić (6-8 August 1995);

*Knin municipality:* Grubori (25 August 1995); Knin town (sometime between 5 and 10 August 1995, 12 or 13 August 1995; Očestevo (24 August 1995); Plavno Valley (4, 5, and 10 September 1995); Žagrović (5 August 1995);

*Nadvoda municipality:* Cičevac and Kaštel Žegarski (1 September 1995);

*Obrovac municipality:* Guglete (22 August 1995);

*Orlić municipality:* Biskupija (9 August 1995); Čenići (10 August 1995); Kaldrma (19 August 1995); Kosovo village (10 August 1995); Orlić town (10 or 11 August 1995); Ramljane (26 August 1995); Uzdolje (5 and 8 August 1995); and the Knin-Drniš road (8 and 10 August 1995).

1768. Destruction of property in Count 5 of the Indictment is limited to property owned or inhabited by Krajina Serbs. In this respect, the Trial Chamber considered the 1991 Population Census and evidence about the circumstances surrounding the acts of alleged destruction. In a number of incidents involving acts of destruction of property, the Trial Chamber had insufficient evidence to determine whether the property was owned or inhabited by Serbs.[869] The Trial Chamber will not further consider these incidents. Based on the findings made in chapters 4.1 and 4.2, the Trial Chamber finds that all of the remaining incidents concerned destruction of property that was owned or inhabited by Krajina Serbs or, with regard to certain incidents, that at least some of the property was owned or inhabited by Krajina Serbs.

1769. In assessing the requirement of destruction "on a large scale", the Trial Chamber considered that in many instances the acts of destruction concerned a house or building and the Trial Chamber finds that in those instances the requirement was met on the basis of the value of a house or building alone. The Trial Chamber further finds that the total

[868] *Naletilić and Martinović* Trial Judgement, para. 589; *Orić* Trial Judgement, para. 588; *Martić* Trial Judgement, para. 93.
[869] *Knin municipality:* Knin town (12 or 13 August 1995);
*Nadvoda municipality:* in a valley near Cičevac in relation to the shooting of stray cattle (1 September 1995);
*Obrovac municipality:* Guglete (22 August 1995);



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number of destroyed items was very high. For example, the Trial Chamber found in chapter 4.2.4 (Donji Lapac town) that a substantial part of Donji Lapac town was destroyed and that 180 houses, a village school, and a shop in Ervenik town were burnt. Under these circumstances, the requirement of "large scale" is met either on the basis of the value or the number of destroyed objects.

1770. In assessing whether the referenced acts of alleged destruction were justified by military necessity, the Trial Chamber considered in particular evidence about the circumstances surrounding these acts. One incident of destruction of property in Knin sometime between 5 and 10 August 1995 involved tanks running over cars. In an urban setting, such destruction could be justified by military necessity to allow the passage of tanks. However, considering how the military operation in Knin had developed, and considering how it is referred to on page 4 of SIS report P1134, the Trial Chamber finds that at least some cases of tanks running over cars in Knin were not justified by military necessity. For all the remaining incidents, the Trial Chamber has considered the level of hostilities in the places where destruction took place and that the objects were civilian. Based on this and the factual findings made in chapters 4.2, the Trial Chamber finds that for all the remaining incidents, the destruction cannot reasonably be explained by military necessity.

1771. Based on the factual findings made in chapter 4.2, and considering in particular the circumstances under which the destruction occurred, the Trial Chamber finds that for all the destruction referred to above the perpetrators intended the destruction or at least carried out their acts in reckless disregard of the likelihood of the destruction.

1772. Based on the foregoing, the Trial Chamber finds that the following incidents, as charged in the Indictment, have been proven beyond a reasonable doubt:

*Benkovac municipality:* Buković (5 August 1995);

*Donji Lapac municipality:* Donji Lapac town (7-8 and 11 August 1995);

*Ervenik municipality:* Ervenik town (approximately 10 August-10 September 1995); Mokro Polje (6 August 1995);

*Gračac municipality:* Gračac town (5-6 August 1995) (Judge Ķinis dissenting);

*Orlić municipality:* Čenići (10 August 1995); Kaldrma (19 August 1995); and along the Knin-Drniš road (10 August 1995).



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*Kistanje municipality:* Kakanj (4, 5, and 5-6, and 9 August 1995**)**; Kistanje town (6, 9, two separate instances on the 10, and one on 23 August 1995); Parčić (6-8 August 1995);

*Knin municipality:* Grubori (25 August 1995); Knin town (sometime between 5 and 10 August 1995); Očestevo (24 August 1995); Plavno Valley (4, 5, and 10 September 1995); Žagrović (5 August 1995);

*Nadvoda municipality:* Cičevac and Kaštel Žegarski (1 September 1995);

*Orlić municipality:* Biskupija (9 August 1995); Kosovo village (10 August 1995); Orlić town (10 or 11 August 1995); Ramljane (26 August 1995); Uzdolje (5 and 8 August 1995); and Knin-Drniš road (8 August 1995).

1773. The Trial Chamber recalls its findings in chapter 5.1.2 with regard to the general elements and jurisdictional requirements for violations of the laws or customs of war.

1774. The Trial Chamber finds, based on the affiliation of the perpetrators and the time, place, and manner in which the wanton destruction took place, that there was a close relationship between the acts of wanton destruction and the armed conflict.

1775. Therefore, the Trial Chamber finds that the incidents referred to in the latter list above constitute wanton destruction as violations of the laws or customs of war.

## 5.6 Plunder of public or private property

### *5.6.1 Applicable law*

1776. Count 4 of the Indictment charges the Accused with plunder of public or private property as a violation of the laws or customs of war, punishable under Article 3 (e) of the Statute. The general elements and jurisdictional requirements for this crime have been discussed in chapter 5.1.1, above.

1777. The crime of plunder requires proof of the following elements:

(a) an act of appropriation of public or private property;
(b) the appropriation was unlawful; and
(c) the act was committed with intent.[870]

[870] Statute, Art. 3 (e); *Kordić and Čerkez* Appeal Judgement, paras 79, 84.



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1778. As to the first element, all forms of seizure of public or private property constitute acts of appropriation, including isolated acts committed by individual soldiers for their private gain and acts committed as part of a systematic campaign to economically exploit a targeted area.[871]

1779. The second element requires that the appropriation must have been unlawful. In certain circumstances appropriation of property may not be regarded as unlawful where it can be justified under international humanitarian law.[872] Under international humanitarian law there is a general exception to the prohibition of appropriation of property when the appropriation is justified by military necessity.[873] In the context of an international armed conflict, treaty law and international customary law justify battlefield seizures of military equipment of the adverse party as war booty.[874]

### *5.6.2 Legal findings*

1780. In chapter 4.2, the Trial Chamber decided to further consider the following incidents of alleged plunder against the backdrop of the applicable law:

*Benkovac municipality:* Benkovac town (6-10 August 1995, 11 August 1995 and onwards for one month, and during August and September 1995);

*Donji Lapac municipality:* Donji Lapac town (11 August 1995); Srb (8 August 1995 for 2-4 days, 10 August 1995);

*Ervenik municipality:* Ervenik town (approximately 10 August-10 September 1995); Mokro Polje (6 and 7 August 1995);

*Gračac municipality*: Gračac town (two separate incidents on 6 August 1995, one on 6-7 August 1995, and two on 8 August 1995); Mala Popina (7 August 1995); near Zrmanja and Zrmanja Vrelo (unspecified date);

[871] *Kordić and Čerkez* Appeal Judgement, para. 79; *Čelebići* Trial Judgement, para. 590; *Jelisić* Trial Judgement, para. 48; *Blaškić* Trial Judgement, para. 184; *Naletilić and Martinović* Trial Judgement, para. 612; *Hadžihasanović and Kubura* Trial Judgement, para. 49; *Martić* Trial Judgement, para. 101, note 188.
[872] *Krajišnik* Trial Judgement, para. 769; *Martić* Trial Judgement, para. 102.
[873] Geneva Convention IV, Art. 147; J.-M. Henckaerts, L. Doswald-Beck (eds), *Customary International Humanitarian Law*, Cambridge 2005, Rule 50, pp. 175-177. See also *Krajišnik* Trial Judgement, para. 769.
[874] *Hadžihasanović and Kubura* Trial Judgement, paras 51, 56; *Martić* Trial Judgement, para. 102.



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*Kistanje municipality:* Kakanj (4, 5-6, and 14 August 1995, and unspecified dates in August 1995); Kistanje town (6, 7, 9, and 10 August 1995, and 31 August-3 September 1995); Parčić (approximately 6-8 August 1995);

*Knin municipality:* Golubić area (5 and 8 September 1995); Knin town (5-8 August 1995, 10 and 11 August 1995, 12 or 13 August 1995, 16 and 31 August 1995, and 6 September 1995); Plavno Valley (end of August or beginning of September, 2 or 3 September 1995, 10 September 1995, 12 or 13 September 1995, and 30 September 1995); Podkonje (20 August 1995); Žagrović (the days following 11 or 12 August 1995);

*Oklaj municipality:* Oklaj town (10 August 1995); Razvođe (10 August 1995);

*Orlić municipality:* Biskupija (9 August 1995); Čolovići (two separate incidents a few days after 5 August 1995 and one over the next few days); Kosovo village (2 September 1995); Vrbnik (6 August 1995 and around 17 August 1995); Uzdolje (8 August 1995); and Knin-Drniš road (8 and 10 August 1995).

1781. Plunder of property in Count 4 of the Indictment is limited to property owned or inhabited by the Krajina Serbs. In this respect, the Trial Chamber considered in particular the 1991 Population Census and evidence from witnesses who either observed the incidents or otherwise could provide information about the circumstances surrounding the acts of alleged plunder. In a number of incidents involving acts of appropriation of property, the Trial Chamber had insufficient evidence to determine whether the property was owned or inhabited by Serbs.[875] The Trial Chamber will not further consider these incidents. Based on the factual findings made in chapters 4.1, 4.2, and 4.3 the Trial Chamber finds that all of the remaining incidents concerned the appropriation of property that was owned or inhabited by Krajina Serbs or, with regard to certain incidents, that at least some of the property was owned or inhabited by Krajina Serbs.

[875] *Benkovac municipality:* Benkovac town (in relation to the incident from 11 August 1995 and onwards for one month);
*Gračac municipality:* near Zrmanja and Zrmanja Vrelo (unspecified date);
*Kistanje municipality:* Kistanje (in relation to the incidents on 7 and on 31 August-3 September 1995, except for one incident on 31 August 1995);
*Knin municipality:* Knin (in relation to the incidents on 10, 11, 12 or 13, 16, and 31 August and 6 September), Podkonje (20 August 1995);
*Oklaj municipality:* Oklaj (10 August 1995), Razvođe (10 August 1995);
*Orlić municipality:* Čolovići (one incident a few days after 5 August 1995), and Kosovo (2 September 1995).



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1782. In assessing whether the remaining acts of appropriation were unlawful, the Trial Chamber considered in particular evidence from witnesses who either observed the incidents, or otherwise could provide information about the circumstances surrounding these acts, as well as documentary evidence. In relation to a number of incidents,[876] the appropriated items were unspecified. One incident of appropriation of property in Srb, Donji Lapac municipality from 8 August 1995, included the taking away of unspecified items which were then transported in a significant number of military and private vehicles and civilian buses commandeered by the HV for the duration of two to four days. Considering the large amount of items transported away from the town over several days, the Trial Chamber finds that the appropriation of at least of some if not most of these items could not plausibly be justified by military necessity. Similar considerations apply to the incident in Kistanje town on 9 August 1995, where 150-200 individuals were found to take items away. With regard to the remaining incidents involving unspecified items, the Trial Chamber considered in particular that in some instances acts of plunder were carried out simultanously and by the same persons as acts of destruction. The Trial Chamber also considered that in other incidents members of Croatian military forces and civilians were plundering together, or at least at the same time and the same place and that in many instances items were taken from many houses. The Trial Chamber further considered that in the overwhelming number of incidents in which the appropriated items were specified, the possibility of military necessity could clearly be ruled out. Based on all the foregoing, the Trial Chamber finds that also for the remaining incidents involving unspecified items, there is no reasonable possibility that their appropriation was justified by military necessity. The Trial Chamber finds that their appropriation was unlawful.

1783. With regard to all incidents of appropriation for which the property was specified, the Trial Chamber found that it consisted of personal, domestic, or agricultural items or vehicles, or animals. Considering this, as well as the circumstances under which the appropriation took place, the Trial Chamber finds that the acts of

[876] *Donji Lapac municipality*: Donji Lapac (11 August 1995); Srb (8 August 1995 for 2-4-days and 10 August 1995);
*Kistanje municipality*, Kistanje town (9 and 10 August 1995);
*Knin municipality:* Golubić area (5 September 1995); Plavno valley (12 or 13 September 1995); Žagrović (the days following 11 or 12 August 1995); and
*Orlic municipality:* Biskupija (9 August 1995).



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appropriation with regard to those incidents were not justified by military necessity, and they were unlawful.

1784. In assessing the mental element of the crime of plunder, the Trial Chamber considered in particular evidence from witnesses who either observed the incidents, or otherwise could provide information about the circumstances surrounding the acts of appropriation, as well as documentary evidence. With regard to the above listed incidents, except for those that it has decided not to consider further, the Trial Chamber finds that the acts of appropriation were committed with intent.

1785. Based on the foregoing, the Trial Chamber finds that the following incidents, as charged in the Indictment, have been proven beyond a reasonable doubt:

*Benkovac municipality:* Benkovac town (6-10 August 1995 and during August and September 1995);

*Donji Lapac municipality:* Donji Lapac (11 August 1995); Srb (8 August 1995 for 2-4 days and 10 August 1995);

*Ervenik municipality:* Ervenik town (approximately 10 August-10 September 1995); Mokro Polje (6 and 7 August 1995);

*Gračac municipality:* Gračac town (two separate incidents on 6 August 1995, one on 6-7 August 1995, and two on 8 August 1995); Mala Popina (7 August 1995);

*Kistanje municipality:* Kakanj (4, 5-6, and 14 August 1995, and unspecified dates in August 1995); Kistanje town (6, 9 and 10 August 1995, 31 August 1995); Parčić (approximately 6-8 August 1995);

*Knin municipality:* Golubić area (5 and 8 September 1995); Knin town (5-8 August 1995); Plavno Valley (end of August or beginning of September, 2 or 3 September 1995, 10 September 1995, 12 or 13 September 1995, and 30 September 1995); Žagrović (the days following 11 or 12 August 1995);

*Orlić municipality:* Biskupija (9 August 1995); Čolovići (one incident a few days after 5 August 1995 and one over the next few days); Vrbnik (6 August 1995 and one around 17 August 1995); Uzdolje (8 August 1995); and Knin-Drniš road (8 and 10 August 1995).

1786. The Trial Chamber recalls its findings in chapter 5.1.2 with regard to the general elements and jurisdictional requirements for violations of the laws or customs of war.



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1787. In assessing whether all incidents of plunder had grave consequences for the victims, the Trial Chamber considered in partcular evidence from witnesses who either observed the incidents, or otherwise could provide information about the circumstances surrounding the acts of plunder. The Trial Chamber finds that certain incidents had in themselves grave consequences for the victims. Moreover, considering the overall effect of the various incidents of plunder on the civilian population, and the multitude of offences committed, the Trial Chamber finds that the plunder concerns property of a large number of people, and that the cumulative effect of the various incidents constitutes grave consequences.

1788. The Trial Chamber further finds, based on the affiliation of the perpetrators and the time, place, and manner in which the plunder took place, that there was a close relationship between the acts of plunder and the armed conflict.

1789. Therefore, the Trial Chamber finds that the incidents referred to in the latter list above constitute plunder as violations of the laws or customs of war.

## 5.7 Inhumane acts and cruel treatment

### *5.7.1 Applicable law*

1790. Counts 3 and 8 of the Indictment charge the Accused with inhumane acts as crimes against humanity, punishable under Article 5 (i) of the Statute. Count 3 covers forcible transfer as a form of inhumane acts. The Trial Chamber has dealt with forcible transfer in chapter 5.4.1, above. Count 9 charges the Accused with cruel treatment as a violation of the laws or customs of war, punishable under Article 3 of the Statute. Counts 8 and 9 specify the inhumane acts and cruel treatment as acts "including […] humiliation and/or degradation, by firing upon (including by aerial attack), assaulting, beating, stabbing, threatening and burning [Krajina Serb civilians and persons taking no part in hostilities]".[877] The general elements and jurisdictional requirements for these crimes have been discussed in chapter 5.2.1, above.

1791. Cruel treatment and inhumane acts require proof of the same set of elements,[878] namely:

[877] Indictment, para. 53.
[878] *Krnojelac* Trial Judgement, para. 130.



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(a) an act or omission caused serious mental or physical suffering or injury or constituted a serious attack on human dignity;[879] and

(b) the act or omission was committed with intent, or alternatively with knowledge that the act or omission was likely to cause serious mental or physical suffering or a serious attack on human dignity and the perpetrator was indifferent as to whether such consequences would result from his act or omission.[880]

### *5.7.2 Legal findings*

1792. In chapters 4.3, the Trial Chamber decided to further consider the following incidents of alleged inhumane acts and cruel treatment against the backdrop of the applicable law:

*Benkovac municipality:* Konstantin Drča;

*Gračac municipality:* Bogdan Brkić;

*Knin municipality:* Dušan, Djuka and Milica Drpa; Ilija Mirković; unidentified man in Knin; Predrag Šare; wife of Živko Stojakov; Witness 67 (Judge Ķinis dissenting); Witness 1; Witness 13; Pera Bilbija;

*Orlić municipality:* Đurdija Amanović.

1793. Counts 8 and 9 of the Indictment are limited to inhumane acts and cruel treatment committed against Krajina Serbs. Based on the factual findings made in chapters 4.1 and 4.3, the Trial Chamber finds that all of the victims in the incidents referred to above, with the exception of the unidentified man in Knin, were Krajina Serbs. The mentioned incident will not be further considered.

1794. When assessing whether the acts directed against the victims in those incidents caused serious mental or physical suffering or injury, the Trial Chamber considered the circumstances under which the acts were carried out, in particular where the victims were at the time, as well as the victims' age and gender. The Trial Chamber further considered the number of perpetrators, whether the perpetrators were armed, and whether they used some kind of weapon for the ill-treatment. The Trial Chamber finds

[879] *Čelebići* Appeal Judgement, para. 424; *Blaškić* Appeal Judgement, para. 595; *Haradinaj et al.* Appeal Judgement, para. 94.
[880] *Krnojelac* Trial Judgement, para. 132; *Vasiljević* Trial Judgement, para. 236; *Simić et al.* Trial Judgement, para. 76; *Haradinaj et al.* Trial Judgement, para. 126.



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that all the victims in the incidents referred to above were subjected to acts that caused serious mental or physical suffering or injury and that the perpetrators of the acts intended this result.

1795. Based on the foregoing, the Trial Chamber finds that the above mentioned incidents of inhumane acts and cruel treatment, as charged in the Indictment, have been proven beyond a reasonable doubt.

1796. The Trial Chamber recalls its findings in chapters 5.1.2 and 5.2.2 with regard to the general elements and jurisdictional requirements for violations of the laws or customs of war and crimes against humanity. In this respect, the Trial Chamber makes the following findings.

1797. Considering the age and gender of the victims and the circumstances under which the acts were carried out, the Trial Chamber finds that the victims in all cases were civilians, or at least detained or otherwise placed *hors de combat* when they were subjected to the acts of inhumane acts and cruel treatment.

1798. Considering circumstances such as the ethnicity of the victims and the time and place where the acts took place, the Trial Chamber finds that the acts of cruel treatment and inhumane acts were part of a widespread and systematic attack against a civilian population.

1799. The Trial Chamber further finds, based on the affiliation of the perpetrators and the manner in which the acts took place, that there was a close relationship between the acts and the armed conflict.

1800. Therefore, the Trial Chamber finds that the above incidents constitute inhumane acts as crimes against humanity and cruel treatment as violations of the laws or customs of war.

## 5.8 Persecution

### *5.8.1 Applicable law*

#### *Common elements of persecution as a crime against humanity*

1801. Count 1 of the Indictment charges the Accused with persecution as a crime against humanity, punishable under Article 5 (h) of the Statute, committed against the Krajina Serb population in the southern portion of the Krajina region. The general



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requirements and jurisdictional requirements for this crime have been discussed in chapter 5.2.1, above.

1802. The crime of persecution consists of an act or omission which:

(a) discriminates in fact and denies a fundamental human right laid down in international law; and

(b) is carried out with the intention to discriminate on political, racial, or religious grounds.[881]

1803. Acts listed under the other sub-headings of Article 5 of the Statute or provided for elsewhere in the Statute, as well as acts not explicitly mentioned in the Statute, may qualify as underlying acts of persecution.[882] The underlying act itself need not constitute a crime in international law.[883] However, not every denial of a fundamental human right will be serious enough to constitute a crime against humanity.[884] The underlying act committed on discriminatory grounds, considered in isolation or in conjunction with other acts, must be of the same gravity as other crimes listed under Article 5 of the Statute.[885]

*Underlying acts of persecution*

*(a) Imposition of restrictive and discriminatory measures, including the imposition of discriminatory laws and discriminatory expropriation of property*

1804. Count 1 of the Indictment charges the Accused with persecution through the "imposition of restrictive and discriminatory measures, including the imposition of discriminatory laws [and] discriminatory expropriation of property". Paragraph 17 (b) adds in this respect that various persons participated in the alleged joint criminal enterprise by

[881] *Krnojelac* Appeal Judgement, para. 185; *Vasiljević* Appeal Judgement, para. 113; *Blaškić* Appeal Judgement, para. 131; *Kordić and Čerkez* Appeal Judgement, paras 101, 671, 674; *Kvočka et al.* Appeal Judgement, para. 320; *Stakić* Appeal Judgement, para. 327; *Simić et al.* Appeal Judgement, para. 177.
[882] *Krnojelac* Appeal Judgement, para. 219; *Brđanin* Appeal Judgement, para. 296; *Tadić* Trial Judgement, paras 700, 702-703; *Kupreškić et al.* Trial Judgement, paras 605, 614.
[883] *Kvočka et al.* Appeal Judgement, para. 323; *Brđanin* Appeal Judgement, para. 296.
[884] *Kupreškić et al.* Trial Judgement, para. 621; *Krnojelac* Trial Judgement, para. 434; *Krajišnik* Trial Judgement, para. 735.
[885] *Krnojelac* Appeal Judgement, paras 199, 221; *Blaškić* Appeal Judgement, para. 135; *Kordić and Čerkez* Appeal Judgement, paras 102, 671; *Kvočka et al.* Appeal Judgement, para. 321; *Naletilić and Martinović* Appeal Judgement, para. 574; *Simić et al.* Appeal Judgement, para. 177; *Brđanin* Appeal Judgement, para. 296.



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> Initiating, promoting, planning, preparing, participating in, supporting and/or encouraging the development, formulation, dissemination and/or military policies, programs, plans, decrees, decisions, regulations, strategies or tactics which were used as bases or vehicles for various actions against or to the disadvantage of Serbs, such as depriving them of fundamental human rights, housing, property and/or humanitarian assistance, as part of the joint criminal enterprise.[886]

Therefore, the Trial Chamber interprets this charge to be limited to the discriminatory deprivation of housing, property, and humanitarian assistance.

1805. The case law of the Tribunal has discussed the imposition of various restrictive and discriminatory measures as persecution. For example, the *Brđanin* Trial Chamber considered the denial of freedom of movement, the denial of employment, the denial of the right to judicial process, and the denial of equal access to public services and concluded that these acts constituted persecution only when taken in conjunction with each other since, taken in isolation, they were not of the same gravity as the other crimes listed in Article 5 of the Statute.[887] This was upheld by the Appeals Chamber.[888]

1806. The Trial Chamber further considers that the deprivation of housing, property, and humanitarian assistance is comparable to plunder and looting of public and private property, which the Trial Chamber finds could, under certain circumstances, constitute the crime of persecution (see chapter 5.8.2 (f)).

1807. Based on the above, the Trial Chamber finds that the imposition of restrictive and discriminatory measures in the form of deprivation of housing, property, and humanitarian assistance, carried out on discriminatory grounds, and for which the general elements of crimes against humanity are fulfilled, may only meet the gravity threshold and constitute a crime of persecution when taken in conjunction with other acts.

### *(b) Murder*

1808. Count 1 of the Indictment charges the Accused with persecution through murder. These acts are also charged elsewhere in the Indictment as murders as crimes against humanity under Article 5 of the Statute and murders as violations of the laws or customs

[886] See also Indictment, para. 35.
[887] *Brđanin* Trial Judgement, para. 1049.



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of war under Article 3 of the Statute. The elements of the crime of murder have been discussed in chapter 5.3.1, above.

1809. An act of murder, carried out on discriminatory grounds, and for which the general elements of crimes against humanity are fulfilled, constitutes the crime of persecution.[889]

*(c) Inhumane acts and cruel treatment, including the shelling of civilians*

1810. Paragraph 48 of the Indictment charges the Accused with persecution through "other inhumane acts, including the shelling of civilians and cruel treatment". These acts are also charged elsewhere in the Indictment as inhumane acts as crimes against humanity under Article 5 of the Statute and cruel treatment as a violation of the laws or customs of war under Article 3 of the Statute. The elements of inhumane acts and cruel treatment have been discussed in chapter 5.7.1, above.

1811. An act of cruel or inhumane treatment, carried out on discriminatory grounds, and for which the general elements of crimes against humanity are fulfilled, constitutes the crime of persecution.[890]

*(d) Deportation and forcible transfer*

1812. Count 1 of the Indictment charges the Accused with persecution through "deportation and forcible transfer". These acts are also charged elsewhere in the Indictment as deportation and forcible transfer as crimes against humanity punishable under Article 5(d) and (i) of the Statute. The elements of deportation and forcible transfer have been discussed in chapter 5.4.1, above.

1813. An act of forcible transfer or deportation, carried out on discriminatory grounds, and for which the general elements of crimes against humanity are fulfilled, constitutes the crime of persecution.[891]

[888] *Brđanin* Appeal Judgement, paras 292-297.
[889] *Vasiljević* Appeal Judgement, para. 143; *Blaškić* Appeal Judgement, para. 143; *Kordić and Čerkez* Appeal Judgement, para. 106.
[890] *Krnojelac* Appeal Judgement, para. 188; *Vasiljević* Appeal Judgement, para. 143; *Blaškić* Appeal Judgement, paras 143, 155; *Kordić and Čerkez* Appeal Judgement, paras 106-107.
[891] *Krnojelac* Appeal Judgement, para. 222; *Blaškić* Appeal Judgement, para. 153; *Naletilić and Martinović* Appeal Judgement, paras 153-154; *Simić et al.* Appeal Judgement, paras 172, 174.



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*(e) Unlawful detentions*

1814. Count 1 of the Indictment charges the Accused with persecution through "unlawful detentions". Unlawful detention is not listed, as such, as a crime in the Statute although Article 5(e) provides for the act of imprisonment as a crime against humanity. The Trial Chamber interprets the charge in paragraph 48 of the Indictment as relating to this act.

1815. The term imprisonment in Article 5(e) is understood as arbitrary imprisonment, that is deprivation of liberty of an individual without due process of law.[892] The crime of imprisonment consists of the following elements:

(1) an individual is deprived of his or her liberty;

(2) the deprivation of liberty is carried out arbitrarily, that is, there is no legal basis for it; and

(3) the perpetrator acted with the intent to deprive the individual arbitrarily of his or her liberty.[893]

1816. If there is a legal basis for the deprivation of liberty, it must apply throughout the period of imprisonment, for the deprivation of liberty will become arbitrary as soon as the legal basis ceases to exist.[894] When a national law is relied upon to justify a deprivation of liberty, this law must not violate international law.[895] The Trial Chamber considers that the question of legal basis is appropriately dealt with when considering the general elements of crimes against humanity and when considering whether an act is carried out on discriminatory grounds.[896]

1817. Unlawful detention, carried out on discriminatory grounds, and for which the general elements of crimes against humanity are fulfilled, constitutes the crime of persecution.[897]

[892] *Kordić and Čerkez* Appeal Judgement, para. 116; *Krajišnik* Trial Judgement, para. 752; *Martić* Trial Judgement, para. 87.
[893] *Krnojelac* Trial Judgement, para. 115; *Simić et al.* Trial Judgement, paras 64-65; *Krajišnik* Trial Judgement, para. 752.
[894] *Krnojelac* Trial Judgement, para. 114; *Krajišnik* Trial Judgement, para. 753.
[895] *Krnojelac* Trial Judgement, para. 114; *Krajišnik* Trial Judgement, para. 753.
[896] See *Brđanin* Appeal Judgement, para. 167.
[897] *Blaškić* Appeal Judgement, para. 155; *Tadić* Trial Judgement, paras 714, 717; *Kupreškić et al.* Trial Judgement, para. 629; *Krnojelac* Trial Judgement, para. 438; *Naletilić and Martinović* Trial Judgement, paras 641-642; *Krajišnik* Trial Judgement, para. 754.



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*(f) Plunder and looting of public and private property*

1818. Count 1 of the Indictment charges the Accused with persecution through the "plunder and looting of public and private […] property". These acts are also charged elsewhere in the Indictment as plunder of public or private property as a violation of the laws or customs of war under Article 3 of the Statute. The elements of plunder of public and private property have been discussed in chapter 5.6.1, above.

1819. Plunder of public and private property was explicitly included in the Nuremberg Charter and Control Council Law No. 10 as a war crime. Acts of plunder were charged both as a war crime and as a crime against humanity in many of the trials based on these instruments, including the trial of the major war criminals in Nuremberg.[898] The Nuremberg Tribunal dealt with plunder as a crime against humanity and considered, for example, "looting of Jewish businesses" as part of the persecution of the Jews.[899]

1820. The Nuremberg Tribunal entered convictions on plunder only for appropriations on a nation-wide scale.[900] This was also true of some of the cases tried under Control Council Law No. 10.[901] In the *Flick* case, however, the American Military Tribunal held that the scale of the appropriation was not the critical issue when the act is considered as a crime against humanity. Rather, it was the impact of the appropriation on the victim. Under one of the counts, Friedrich Flick, an industrialist, was charged with crimes against humanity for acquiring industrial property formerly owned or controlled by Jews. The Tribunal stated that:

> A distinction could be made between industrial property and the dwellings, household furnishings, and food supplies of a persecuted people. In this case, however, we are only concerned with industrial property ... The 'atrocities and offenses' listed [in Article 6(c) of the Charter] 'murder, extermination,' etc., are all offenses against the person. Property is not mentioned. Under the doctrine of *ejusdem generis* the catch-all words 'other

[898] Indictment in the case *United States et al. v. Hermann Göring et al.*, International Military Tribunal (6 October 1945), in 1 TMWC 27, 55-60, 65; Indictment in the case *United States v. Ulrich Greifelt et al.* (*RuSHA* case), American Military Tribunal (July 1947), in 4 TWC 608, 610, 616, 618; Indictment in the case *United States v. Oswald Pohl et al.* (*Pohl* case), American Military Tribunal (13 January 1947), in 5 TWC 200, 204, 207.
[899] Nuremberg Judgement, pp. 248, 283.
[900] Nuremberg Judgement, p. 296 (Alfred Rosenberg), p. 298 (Hans Frank), pp. 306-307 (Walter Funk), pp. 328-329 (Arthur Seyβ-Inquart), p. 335 (Konstantin von Neurath), p. 171 (Martin Bormann).
[901] *RuSHA* case, American Military Tribunal (10 March 1948), in 5 TWC 88, 147-52; *Pohl* case, American Military Tribunal (3 November 1947), in 5 TWC 958, 976-978; *United States v. Ernst von Weizsäcker et al.* (*Ministries* case), American Military Tribunal (13 April 1949), in 14 TWC 314, 680-794.



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> persecutions' must be deemed to include only such as affect the life and liberty of the oppressed peoples.[902]

1821. Based on the foregoing, the Trial Chamber considers that plunder and looting of public and private property as an underlying act of persecution is to be understood as any intentional and unlawful appropriation of public or private property that has a serious impact on the owner or user of the property.[903] The Trial Chamber considers that the question of whether the appropriation of property was lawful is appropriately dealt with when considering the general elements of crimes against humanity and when considering whether an act is carried out on discriminatory grounds.[904]

1822. The Appeals Chamber has confirmed that plunder, in conjunction with "killings, beatings, unlawful attacks on civilians and civilian objects, the unlawful imprisonment of civilians, [and] destruction of civilian objects", constitutes persecution.[905]

1823. Based on the above, the Trial Chamber finds that an act of plunder that has a serious impact on the victim, carried out on discriminatory grounds, and for which the general elements of crimes against humanity are fulfilled, constitutes the crime of persecution.[906]

1824. An act of plunder which in itself does not have a serious impact on the victim, may still, when carried out on discriminatory grounds, and when the general elements of crimes against humanity are fulfilled, constitute the crime of persecution, when considered in conjunction with other acts.[907]

### *(g) Destruction and burning of private property*

1825. Count 1 of the Indictment charges the Accused with persecution through the "destruction and burning of Serb homes and businesses". These acts are also charged elsewhere in the Indictment as wanton destruction as a violation of the laws or customs

[902] *United States v. Friedrich Flick et al.*, American Military Tribunal (22 December 1947), in 6 TWC 1187, 1214-1215. This reasoning was adopted by the American Military Tribunal in the *I.G. Farben* case when considering various instances of plunder and spoliation of industrial property in German occupied territory (*United States v. Carl Krauch et al.* (*I.G. Farben* case), American Military Tribunal (30 July 1948), in 8 TWC 1081, 1129-1130).
[903] See *Krajišnik* Trial Judgement, paras 766-768.
[904] See *Brđanin* Appeal Judgement, para. 167.
[905] *Kordić and Čerkez* Appeal Judgement, paras 109, 672-673. See also *Blaškić* Appeal Judgement, para. 148.
[906] *Krajišnik* Trial Judgement, para. 771.
[907] *Krajišnik* Trial Judgement, para. 772.



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of war under Article 3 of the Statute. The elements of wanton destruction have been discussed in chapter 5.5.1, above.

1826. The Appeals Chamber has clarified that acts of destruction of property, "depending on the nature and extent of the destruction", may constitute persecution.[908] As with appropriation of property, it is the impact on the victims that is the determining factor.[909] The Appeals Chamber has held that there are "certain types of property whose destruction may not have a severe enough impact on the victim as to constitute a crime against humanity, even if such a destruction is perpetrated on discriminatory grounds: an example is the burning of someone's car (unless the car constitutes an indispensable and vital asset to the owner)".[910]

1827. The Trial Chamber considers that destruction of private property as an underlying act of persecution is to be understood as any intentional destruction of private property that has a serious impact on the victim and that was not justified by military necessity.[911] The Trial Chamber considers that the question of whether the destruction was justified by military necessity is appropriately dealt with when considering the general elements of crimes against humanity and when considering whether an act is carried out on discriminatory grounds.[912]

1828. The Appeals Chamber has confirmed that "destruction of civilian objects", in conjunction with "killings, beatings, unlawful attacks on civilians and civilian objects, the unlawful imprisonment of civilians, [...] and looting", constitutes persecution.[913]

1829. Based on the above, the Trial Chamber finds that an act of destruction of property that has a severe impact on the victim, carried out on discriminatory grounds, and for which the general elements of crimes against humanity are fulfilled, constitutes the crime of persecution.[914]

1830. An act of destruction of property which in itself does not have a severe impact on the victim, may still, when carried out on discriminatory grounds, and when the general

[908] *Blaškić* Appeal Judgement, para. 149.
[909] *Blaškić* Appeal Judgement, paras 146, 149.
[910] *Blaškić* Appeal Judgement, para. 146 (quoting *Kupreškić et al.* Trial Judgement, para. 631).
[911] See *Krajišnik* Trial Judgement, paras 774-776.
[912] See *Brđanin* Appeal Judgement, para. 167.
[913] *Kordić and Čerkez* Appeal Judgement, paras 108, 672.
[914] *Blaškić* Appeal Judgement, para. 149.



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elements of crimes against humanity are fulfilled, constitute the crime of persecution, when considered in conjunction with other acts.[915]

*(h) Disappearances*

1831. Count 1 of the Indictment charges the Accused with persecution through "disappearances". The Preamble of the 1992 UN Declaration on the Protection of All Persons from Enforced Disappearances, adopted by the UN General Assembly, defines "enforced disappearances" as occurring when:

> […] persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government, or by organized groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law.[916]

1832. The 1994 Inter-American Convention on Forced Disappearances of Persons defines "forced disappearance" as:

> […] the act of depriving a person or persons of his or their freedom, in whatever way, perpetrated by agents of the state or by persons or groups of persons acting with the authorization, support or acquiescence of the state, followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person, thereby impeding his or her recourse to the applicable legal remedies and procedural guarantees.[917]

1833. The IACtHR has considered the issue of enforced disappearances in a number of cases under the provisions of the ACHR.[918] It found violations of Article 4 (right to life), Article 7 (right to personal liberty), and, in some cases, Article 5 (right to the integrity of the person). In the case *Velásquez Rodríguez v. Honduras*, the IACtHRCourt stated:

[915] *Krajišnik* Trial Judgement, para. 779.
[916] United Nations General Assembly Resolution 47/133, 18 December 1992, Preamble.
[917] Inter-American Convention on Forced Disappearances of Persons, 9 June 1994, Article II.
[918] See IACtHR, *Velásquez Rodríguez v. Honduras* Judgement, 29 July 1988; IACtHR, *Godínez Cruz v. Honduras* Judgement, 20 January 1989; IACtHR, *Cabellero-Delgado and Santana v. Colombia* Judgement, 8 December 1995.



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> The forced disappearance of human beings is a multiple and continuous violation of many rights under the Convention that the States Parties are obligated to respect and guarantee. The kidnapping of a person is an arbitrary deprivation of liberty, an infringement of a detainee's right to be taken without delay before a judge and to invoke the appropriate procedures to review the legality of the arrest […] Moreover, prolonged isolation and deprivation of communication are in themselves cruel and inhuman treatment, harmful to the psychological and moral integrity of the person and a violation of the right of any detainee to respect for his inherent dignity as a human being. […] In addition, investigations into the practice of disappearances and the testimony of victims who have regained their liberty show that those who are disappeared are often subjected to merciless treatment, including all types of indignities, torture and other cruel, inhuman and degrading treatment, in violation of the right to physical integrity recognized in Article 5 of the Convention. The practice of disappearances often involves secret execution without trial, followed by concealment of the body to eliminate any material evidence of the crime and to ensure the impunity of those responsible. This is a flagrant violation of the right to life […].

1834. The ECtHR has also dealt with the phenomenon of disappearances on many occasions under different articles of the ECHR. Liability for a State under this Convention for disappearances first arose in the *Kurt v. Turkey* case, where the applicant's son had been arrested by soldiers and subequently not heard from again.[919] In the absence of concrete evidence as to his fate, the ECtHR could not conclude that he had died or had been the target of ill-treatment in state custody and therefore rejected the complaints with regard to breach of the right to life (Article 2) and of the prohibition of torture, inhuman or degrading treatment (Article 3).[920] Instead it dealt with the case under Article 5 (right to liberty and security).[921] The ECtHR stressed that:

> any deprivation of liberty must not only have been effected in conformity with the very substantive and procedural rule of national rules but must equally be in keeping with the very purpose of Article 5, namely to protect the individual from arbitariness […] What is at stake is both the protection of the physical liberty of individuals as well as their personal security in a context which, in the absence of safeguards, could result in a subversion of the rule of law and place detainees beyond the reach of the most rudimentary form of legal protection.[922]

[919] ECtHR, *Kurt v. Turkey* Judgement, 25 May 1998, paras 87-99.
[920] Ibid., paras 100-117.
[921] Ibid., paras 118-129.
[922] Ibid., paras 122-123.



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1835. In subsequent cases, the ECtHR established that disappearance of an individual may also lead to State liability for a breach of his right to life under Article 2 of the European Convention.[923] The ECtHR even found a violation under Article 2 when the State is not responsible for the disappearance or death itself, but there was proof that the respondent State has failed to conduct an effective investigation aimed at clarifying the whereabouts and fate of missing persons who disappeared in life-threatening circumstances.[924]

1836. The Trial Chamber notes the definitions of "enforced disappearance" contained in the 2006 International Convention for the Protection of All Persons from Enforced Disappearance[925], and the Rome Statute of the International Criminal Court[926], and recognizes that they cover corresponding elements to the definitions outlined above.

1837. Considering the foregoing, the Trial Chamber finds that the crime of disappearances includes the following elements:

(a) an individual is deprived of his or her liberty; and

(b) the deprivation of liberty is followed by the refusal to disclose information regarding the fate or whereabouts of the person concerned, or to acknowledge the deprivation of liberty, and thereby denying the individual recourse to the applicable legal remedies and procedural guarantees.

1838. When considering whether the act of disappearances is of the same gravity as the crimes listed in Article 5, the Trial Chamber notes that one other Trial Chamber has opined that it is included under "other inhumane acts" in Article 5(i) of the Statute.[927] More importantly, however, a central element of the act of disappearances is deprivation of liberty which is also the main element of the act of unlawful detentions. As set out above in chapter 5.8.1 (e), the act of unlawful detentions, carried out on discriminatory grounds and for which the general elements of crimes against humanity are fulfilled, constitutes the crime of persecution.

[923] ECtHR, *Çakici v. Turkey* Judgement, 8 July 1999,.
[924] Ibid.; ECtHR, *Cyprus v. Turkey* Judgement, 10 May 2001,.
[925] See International Convention for the Protection of All Persons from Enforced Disappearance, 20 December 2006, Article 2
[926] See Rome Statute of the International Criminal Court, 17 July 1998, Article 7(2)(i).
[927] *Kupreškić et al.*Trial Judgement, para. 566. See also *Kvočka et al.* Trial Judgement, para. 208.



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1839. Based on the above, the Chamber finds that enforced disappearances, carried out on discriminatory grounds, and for which the general elements of crimes against humanity are fulfilled, constitutes the crime of persecution.

*(i) Unlawful attacks on civilians and civilian objects*

1840. Count 1 of the Indictment charges the Accused with persecution through "unlawful attacks on civilians and civilian objects". Since there is an absolute prohibition on the targeting of civilians and civilian objects in customary international law all attacks on civilians and civilian objects are unlawful.[928]

1841. An attack on civilians or civilian objects in the context of crimes against humanity is to be understood as acts of violence deliberately launched against civilians or civilian objects, although with no requirement of a particular result caused by the attack, as well as indiscriminate attacks on cities, towns, and villages.[929] With regard to the term "civilian", the Trial Chamber refers to chapters 5.2.1 and 5.5.1, above.

1842. An attack on civilians and civilian objects, carried out on discriminatory grounds, and for which the general elements of crimes against humanity are fulfilled, constitutes the crime of persecution.[930]

*5.8.2 Legal findings*

*(a) Imposition of restrictive and discriminatory measures, including the imposition of discriminatory laws and discriminatory expropriation of property*

1843. As set out above, the Trial Chamber considers this charge to be limited to the discriminatory deprivation of housing, property, and humanitarian assistance. The Trial Chamber has received no or limited evidence with regard discriminatory deprivation of humanitarian assistance and will therefore not further consider this part of the charge. With regard to deprivation of housing and property, the Trial Chamber recalls its findings with regard to property laws in chapter 6.2.4. The Trial Chamber finds that the imposition of restrictive and discriminatory measures with regard to housing and

[928] *Blaškić* Appeal Judgement, para. 109; *Kordić and Čerkez* Appeal Judgement, para. 54, with corrigendum of 26 January 2005; *Galić* Appeal Judgement, paras 130, 190.
[929] *Blaškić* Appeal Judgement, para. 159; *Kordić and Čerkez* Appeal Judgement, paras 47, 57, 105.
[930] *Blaškić* Appeal Judgement, para. 159; *Kordić and Čerkez* Appeal Judgement, paras 104, 672-673.



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property, considered in conjunction with deportation and other crimes against Krajina Serbs, constitutes persecution. The Trial Chamber finds that under the circumstances at the time the vast majority of those affected by these restrictive and discriminatory measures were Krajina Serbs and that they therefore were discriminatory in fact. Considering the evidence reviewed in chapter 6.2.4 about the circumstances surrounding the drafting and adoption of the laws, and that these measures were imposed in the context of a wider discriminatory attack against Krajina Serbs, the Trial Chamber finds that they were imposed on discriminatory grounds.

1844. The Trial Chamber recalls its findings in chapters 5.2.2 with regard to the general elements and jurisdictional requirements for crimes against humanity.

1845. Considering the circumstances under which the acts were carried out, the Trial Chamber finds that they affected or targeted persons who were civilians or at least hors de combat. Considering circumstances such as the ethnicity of the victims and the context in which the measures were imposed, the Trial Chamber finds that the imposition of the restrictive and discriminatory measures were part of a widespread and systematic attack against a civilian population.

1846. In conclusion, the Trial Chamber finds that the imposition of restrictive and discriminatory measures with regard to housing and property constitute persecution as a crime against humanity.

*(b) Murder*

1847. The Trial Chamber will first turn to the alleged murder of Petar Bota in Benkovac municipality, and consider this incident against the backdrop of the applicable law. The incident is not dealt with in chapter 5.3.2, as Counts 6 and 7 do not charge murders in Benkovac municipality.

1848. Based on the factual findings made in chapter 4.1.2, the Trial Chamber finds that Petar Bota, who was a Serb, died and that this death was caused by an act of the perpetrator who acted with an intent to kill. Consequently, the Trial Chamber finds that this murder, as charged in the Indictment, has been proven beyond a reasonable doubt.

1849. The Trial Chamber recalls its findings in chapter 5.2.2 with regard to the general elements and jurisdictional requirements for crimes against humanity. Considering the



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description of the victim and circumstances under which he was murdered, the Trial Chamber finds that he was a civilian. Considering his ethnicity and the time and place where the act took place, the Trial Chamber finds that the murder was part of a widespread and systematic attack against a civilian population. Therefore, the Trial Chamber finds that the incident constitutes murder as crimes against humanity.

1850. The Trial Chamber now turns to the incidents dealt with in chapter 5.3.2. It recalls its findings in that chapter, including that the murders were part of a widespread and systematic attack against a civilian population. These findings also include that the murders were committed against Krajina Serbs. Based on this, the Trial Chamber finds that the murders were discriminatory in fact. Based on the findings with regard to Petar Bota above, the Trial Chamber finds that also this murder was discriminatory in fact.

1851. In assessing whether the murders were committed with discriminatory intent, the Trial Chamber considered instances in which the perpetrators used the term "Chetniks", referring to the victims or members of their family. With regard to many incidents, the perpetrators used this discriminatory language, or cursed the victims' Serb mothers, immediately before or after the victims were murdered. In relation to Scheduled Killing no. 1 the perpetrators boasted immediately after the murder about having killed a lot of "Chetniks". In another incident in Knin municipality (Further Clarification no. 180), the perpetrators questioned the victim about the presence of other "Chetniks" in her house immediately before murdering her.

1852. The Trial Chamber further considered incidents in which the perpetrators killed the victims for their support for the Krajina or suggested that it was in retribution for previous crimes committed by Serbs. With regard to the murder of Manda Tišma (Further Clarification no. 107), the perpetrator asked Tišma who she supported, and when she replied that she supported the Krajina, he murdered her. The perpetrators of the murders of Sava Đurić (Scheduled Killing no. 2) and Stevo Berić and others (Scheduled Killing no. 7), told the victims before killing them that they were acting in retribution for what the Serbs had done in Kijevo village a few years before, and cursed the victims' mothers for what they had done in Vukovar.

1853. The Trial Chamber further considered that the murders were committed in the context of a wider discriminatory attack against Krajina Serbs, as described in chapter 5.2.2.



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1854. Based on the above, the Trial Chamber finds that the murders were committed on discriminatory grounds.

1855. In conclusion, the Trial Chamber finds that the murders as set out in chapter 5.3.2 and the murder of Petar Bota constitute persecution as a crime against humanity.

*(c) Inhumane acts and cruel treatment, including the shelling of civilians*

1856. With regard to shelling of civilians, the Trial Chamber has dealt with this matter as unlawful attacks against civilians and civilian objects, as the crime against humanity of persecution. The Trial Chamber will therefore not deal with it as inhumane acts and cruel treatment.

1857. The Trial Chamber recalls its findings on inhumane acts and cruel treatment in chapter 5.7.2, dealing with beating and illtreatment of individuals, including that these acts were part of a widespread and systematic attack against a civilian population. These findings also include that the acts of inhumane acts and cruel treatment were committed against Krajina Serbs. Based on this, the Trial Chamber finds that the inhumane acts and cruel treatment were discriminatory in fact.

1858. In assessing whether the acts were committed with discriminatory intent, the Trial Chamber considered instances in which the perpetrator(s) addressed the victim with the ethnic derogatory term "Chetnik" or called members of the family of the victim(s) "Chetnik". As set out in chapter 4.1, the perpetrator of Scheduled Killing no. 7 (Stevo Berić and others) cursed some of the victims' mothers and referred to them as "Chetnik". As set out in chapter 4.3, the perpetrators of the incident involving Đurdija Amanović in Vrbnik accused her sons of being "Chetniks". Ilija Mirković and others kept with him where forced to sing Croatian songs and were made to kiss the ground when they disembarked the bus in Zadar.

1859. The Trial Chamber further considered that the inhumane acts and the cruel treatment were committed in the context of a wider discriminatory attack against Krajina Serbs, as described in chapter 5.2.2.

1860. Based on the above, the Trial Chamber finds that the inhumane acts and the cruel treatment were committed on discriminatory grounds.



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1861. In conclusion, the Trial Chamber finds that the inhumane acts and cruel treatment as set out in chapter 5.7.2 constitute persecution as a crime against humanity.

*(d) Deportation and forcible transfer*

1862. The Trial Chamber recalls its findings on the deportation of persons from Benkovac, Gračac, Knin, and Obrovac on 4 and 5 August 1995 in chapter 5.4.2, by means of an unlawful attack on civilians and civilian objects. The Trial Chamber further recalls its findings in the same chapter on the deportation of persons from several locations in the Indictment area in August 1995 by the commission of crimes of which they were the victims or which they witnessed. Considering the conclusions the Trial Chamber reached in those chapters regarding the ethnicity of these persons, the Trial Chamber finds that the deportation discriminated in fact against Krajina Serbs. In chapter 5.8.2 (i), the Trial Chamber found that the unlawful attack on civilians and civilian objects in Benkovac, Gračac, Knin, and Obrovac on 4 and 5 August 1995 was committed with the intention to discriminate on political, racial, or religious grounds. Further, in chapter 5.8.2 the Trial Chamber found that the crimes including murder, inhumane acts, cruel treatment, destruction, and plunder, of which a number of the deported persons were the victims or which they witnessed, were committed with the intention to discriminate on political, racial, or religious grounds. Consequently, the Trial Chamber finds that the deportation, which was brought about by the commission of the aforementioned crimes, was also committed on discriminatory grounds.

1863. In conclusion, the Trial Chamber finds that the deportation as set out in chapter 5.4.2 constitute persecution as a crime against humanity.

*(e) Unlawful detentions*

1864. In chapters 4.1.9 and 4.3.2, the Trial Chamber decided to further consider the following incidents of alleged unlawful detention as persecution against the backdrop of the applicable law:

The alleged unlawful detention of Dušan Dragičević, Pera Bilbija, Witness 1, more than 20 SVK soldiers, 10-12 persons from Polača, about 30 other persons held at the Slavko Rodić barracks (see chapter 4.1.9);



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The alleged unlawful detention of Ružica Šarac, her children and her mother-in-law, and at least ten other persons (see chapter 4.1.9);

The alleged unlawful detention of Zdravko Bunčić, Stevan Nikolić, Marija Večerina, Mira Večerina, Branka Večerina, Sava Večerina, Dragana Večerina, Rajko Mutić, Jovo and Milka Berić, Dušan and Dara Torbica, Lazo Kovačević, Ilija Perić, and about three more persons (see chapter 4.1.9); and

The alleged unlawful detention of Konstantin Drča (see chapter 4.3.2).

1865. With regard to the underlying act of unlawful detentions, Count 1 of the Indictment is limited to persecution of Krajina Serbs. Based on the factual findings made in chapters 4.1.9 and 4.3.2, the Trial Chamber was not able to conclude that the following the victims were Krajina Serbs: other persons held at the Slavko Rodić barracks in the first listed incident; Ružica Šarac's mother-in-law and at least ten other persons in the second listed incident; Stevan Nikolić, Sava Večerina, Dragana Večerina, and about three more persons in the third listed incident. These incidents will not be considered further. The Trial Chamber finds that all of the remaining victims in the incidents referred to above were Krajina Serbs.

1866. The Trial Chamber recalls that Witness 1, Dušan Dragičević, and more than 20 SVK soldiers in the first listed incident were members of the SVK and therefore could have been taken prisoner by the enemy force, thus their detention was not arbitrary. The Trial Chamber notes that some persons of the group of 10-12 persons from Polača that were captured together with Dušan Dragičević, were elderly and females. For the other persons of this group, the Trial Chamber cannot exclude the reasonable possibility that they were members of the SVK that could have been imprisoned as POWs. With regard to the second incident, Ružica Šarac and her children appear to have been held in a room for interrogatory purposes. Consequently, the Trial Chamber cannot exclude the reasonable possibility that they were held there with a legal basis. With regard to the remaining captives in the third incident who were male (Zdravko Bunčić, Rajko Mutić, Jovo Berić, Dušan Torbica, Lazo Kovačević, and Ilija Perić), the Trial Chamber cannot exclude the reasonable possibility that they were members of the SVK and could have been taken captive. Konstantin Drča as an SVK reservist could have been taken captive as a POW. These incidents discussed will not be considered further.



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1867. The Trial Chamber finds that the persons in the remaining incidents were arbitrarily deprived of their liberty. Considering the circumstances of the situations comprising the deprivation of liberty, this was done intentionally. The Trial Chamber further finds that the acts of unlawful detentions were discriminatory in fact.

1868. In assessing whether the acts of unlawful detention were committed on discriminatory grounds, the Trial Chamber considered in particular incidents in which the perpetrators used derogatory ethnic terms. For instance, after the murder incident that immediately preceded the first listed detention incident, the perpetrators boasted about having killed a lot of "Chetniks". The persons capturing the victims of the third listed incident used the term "Chetniks" and cursed their Serb mothers respectively. The Trial Chamber further considers that the acts of unlawful detention were committed in the context of a wider discriminatory attack against Krajina Serbs, as described in chapter 5.2.2.

1869. Based on the above, the Trial Chamber finds that the acts of unlawful detention were committed on discriminatory grounds.

1870. The Trial Chamber recalls its findings in chapters 5.2.2 with regard to the general elements and jurisdictional requirements for crimes against humanity.

1871. The Trial Chamber finds that the victims in all remaining incidents were civilians. It further considers circumstances such as the ethnicity of the victims, the time and place where the acts took place, the affiliation of the perpetrators, and the proximity in time and place to murders that were found to have been part of a widespread and systematic attack against a civilian population. Consequently, the Trial Chamber finds that the remaining incidents of unlawful detention were part of a widespread and systematic attack against a civilian population.

1872. In conclusion, the Trial Chamber finds that the remaining incidents of unlawful detention of the list above constitute persecution as a crime against humanity. These are the alleged unlawful detention of Pera Bilbija and elderly and females out of the group of 10-12 persons from Polača (see chapter 4.1.9); and the alleged unlawful detention of Marija Večerina, Mira Večerina, Branka Večerina, Milka Berić, and Dara Torbica (see chapter 4.1.9).



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*(f) Plunder and looting of public and private property*

1873. The Trial Chamber recalls its findings on plunder of public and private property in chapter 5.6.2, including that there was a close relationship between the acts of plunder and the armed conflict. These findings also include that the plunder concerned property which was owned or inhabited by Krajina Serbs. Based on this, the Trial Chamber finds that the acts of plunder and looting of public and private property was discriminatory in fact. The findings further include that the plunder had grave consequences for the victims. Based on this, the Trial Chamber finds that plunder had a serious impact on the victim, for the purpose of persecution.

1874. In assessing whether the plunder and looting was committed on discriminatory grounds, the Trial Chamber considered in particular the observations of **Jacques Morneau** in chapter 4.2.1 (Benkovac town) who testified that, immediately following the Croatian offensive in August 1995, throughout Canbat 1's area of responsibility including Benkovac, some houses and some villages were completely looted and burned down, sometimes set on fire more than once, while others were preserved. For instance, two Croat enclaves in Bruška and Rodaljice, both in Lisičić municipality, which Canbat 1 had protected prior to Operation Storm, were left untouched after Operation Storm, while Serbian villages nearby were looted and completely burned. The Trial Chamber further considered reporting within the HV (P2349, see chapter 4.2.7 (Kistanje town)) that HV members torched a number of houses and committed robbery in the liberated areas, particularly in places inhabited by Serbs and in the area of Đevrska, Kistanje, and Drniš.

1875. The Trial Chamber also considered incidents in which the perpetrators used derogatory ethnic terms and called the victims or members of their family "Chetnik". For example, the perpetrators of the plunder of Đurdija Amanović's property in Vrbnik, Orlić municipality, accused her sons of being "Chetniks" and in relation to the incidents of plunder after 5 August 1995 in Čolovići, Orlić municipality, one perpetrator referred to the victim's mother as "Chetnik".

1876. The Trial Chamber further considered incidents in which houses marked as Croatian were spared from plunder. This included houses on the Knin-Drniš road which had Croatian markings on them (see chapter 4.2.15 (Knin-Drniš road)). As set out in chapter 4.2.9 (Knin town), in Knin town it was a common sight that houses were marked as "Croatian house" etc. so as to prevent it from being looted, although that did



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not always make a difference for what then happened to the house. The Trial Chamber finds the widespread practice of marking houses in such a manner at the time to be an indicator that ethnic considerations were expected to play a considerable role for the motivation of the perpetrators at the time and is consistent with the selective destruction of Serb villages.

1877. The Trial Chamber further considers that the plunder and looting was committed in the context of a wider discriminatory attack against Krajina Serbs, as described in chapter 5.2.2.

1878. Based on the above, the Trial Chamber finds that the plunder and looting was committed on discriminatory grounds.

1879. The Trial Chamber recalls its findings in chapters 5.2.2 with regard to the general elements and jurisdictional requirements for crimes against humanity.

1880. Considering what was plundered and looted as well as the circumstances under which this was carried out, the Trial Chamber finds that the victims in all incidents were civilians or hors de combat. Considering circumstances such as the ethnicity of the victims and the time and place where the acts took place, the Trial Chamber finds that the plunder and looting was part of a widespread and systematic attack against a civilian population.

1881. In conclusion, the Trial Chamber finds that the plunder and looting as set out in chapter 5.6.2 constitutes persecution as a crime against humanity.

*(g) Destruction and burning of private property*

1882. The Trial Chamber recalls its findings on wanton destruction in chapter 5.5.2, including that there was a close relationship between the acts of wanton destruction and the armed conflict. These findings also include that the destruction concerned property which was owned or inhabited by Krajina Serbs. Based on this, the Trial Chamber finds that the acts of destruction and burning of private property was discriminatory in fact. The findings also include that the destruction took place on a large scale. Based on this, the Trial Chamber finds that the destruction had a severe impact on the victims.

1883. The Chamber recalls its observations in chapter 5.8.2 (f) about evidence of Jacques Morneau who reported of selective destruction and looting of houses and



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villages in the aftermath of Operation Storm, *inter alia*, in the town of Benkovac. It also recalls its observations in the same chapter about the internal HV report dated 11 August 1995 (P2349), according to which HV members torched a number of houses and committed robbery particularly in those places in the liberated areas inhabited by Serbs, including the area of Drniš and Kistanje.

1884. The Trial Chamber further recalls its observations in the same chapter about the often reported practice of marking houses as Croatian houses in order to spare them from looting and destruction. In this respect, the Trial Chamber refers in particular to the testimony of **Marker Hansen** who regularly saw houses in Knin bearing signs saying something like "Croat houses, do not touch", and his estimate that he saw between 20 and 50 such houses (see chapter 4.2.9 (Knin town)). The Trial Chamber further notes Witness 82's evidence in chapter 4.2.4 (Donji Lapac town) who stated that the house where his unit was based in in Donji Lapac town was set on fire, whereupon the witness's unit complained, but they were told that it was their own fault as they had not marked the house with the HV sign. All the observations mentioned or referred to above relate to places in which the Trial Chamber found crimes of destruction to have taken place (see chapter 5.5.2).

1885. The Trial Chamber considered the testimony of Berikoff, reviewed in chapter 4.2.1. He stated that from the first time he was allowed out of the UN compound in Knin until 5 September he became familiar with persons that he referred to as Croatian soldiers at check-points who told him that one of the causes of buildings burning was that soldiers would enter a house, turn up the gas, light a candle, and leave. They explained that this was to ensure that there were no "evil Chetniks" around.

1886. The Trial Chamber further considers that the acts of destruction and burning of private property were committed in the context of a wider discriminatory attack against Krajina Serbs, as described in chapter 5.5.2.

1887. Based on the above, the Trial Chamber finds that these acts were committed on discriminatory grounds.

1888. The Trial Chamber recalls its findings in chapters 5.5.2 with regard to the general elements and jurisdictional requirements for crimes against humanity.

1889. Considering what was destroyed and burned as well as the circumstances under which the acts of destruction and burning were carried out, the Trial Chamber finds that



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the victims in all incidents were civilians. Considering circumstances such as the ethnicity of the victims and the time and place where the acts took place, the Trial Chamber finds that the destruction and burning was part of a widespread and systematic attack against a civilian population.

1890. In conclusion, the Trial Chamber finds that the acts of destruction and burning of private property as set out in chapter 5.5.2 constitute persecution as a crime against humanity.

*(h) Disappearances*

1891. The Trial Chamber finds that no incidents of disapperances have been proved beyond reasonable doubt.

*(i) Unlawful attacks on civilians and civilian objects*

1892. The Trial Chamber has received and reviewed in chapter 4.4 above, evidence in relation to incidents of an alleged unlawful attack on civilian and civilian objects in Benkovac, Donji Lapac, Gračac, Knin, and Obrovac. In relation to each of these towns, the Trial Chamber has considered its findings on the HV's orders and artillery reports, if any, and compared them with its findings on the locations of artillery impacts, with a view to establishing what the HV targeted when firing its artillery during Operation Storm. To the same end, the Trial Chamber has considered the amounts of shells fired, the types of artillery weaponry used, and the manner in which they were used during the attacks. The Trial Chamber has evaluated this evidence in light of the expert testimony provided by witnesses Konings and Corn, including with regard to the accuracy of artillery weapons and the effects of artillery fire.

*Knin town*

1893. The Trial Chamber will now consider its findings in chapter 4.4.3 regarding the HV artillery attack against Knin on 4 and 5 August 1995. The Trial Chamber first turns to its findings on the HV's artillery orders. The Trial Chamber recalls that on 2 August 1995, Gotovina and Rajčić issued orders (P1125 and D970, respectively) for the HV artillery to put the towns of Drvar, Knin, Benkovac, Obrovac, and Gračac under artillery



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fire. On 3 August 1995, Fuzul, the commander of the OG Zadar, ordered the TS-5 to lay down fire on Benkovac and Obrovac, using a similar although not identical expression to that found in Gotovina and Rajčić's orders. On the same day, Firšt, the chief of artillery for the OG Zadar, ordered the TS-5/TRS-5 to put the towns of Benkovac, Gračac, and Obrovac under artillery fire, using the same formulation found in Gotovina's and Rajčić's orders. The Trial Chamber has considered the testimony of experts Konings and Corn on interpreting the formulation "putting towns under artillery fire". The language of these orders, when looked at separately from other evidence and taken at face value, indicates an order to the HV artillery to treat whole towns, including Knin, as targets when firing artillery projectiles during Operation Storm. The Trial Chamber notes Rajčić's explanation that this language should be and was in fact interpreted to mean that previously selected targets with specific coordinates in these towns should be put under constant disruptive artillery fire. The Trial Chamber will now consider whether Rajčić's explanation constitutes a reasonable interpretation of the evidence before it.

1894. The Trial Chamber recalls that from 1993, Rajčić identified artillery targets in Knin with x, y, and z coordinates and listed these on target lists with KV-numbers for training purposes prior to June 1995. Two such lists are in evidence as P1271 and P1272. The existence of lists of previously selected targets with specific coordinates in Knin is consistent with Rajčić's explanation of the HV artillery orders. The Trial Chamber has not received in evidence any target lists which were compiled after June 1995 for the purposes of Operation Storm.

1895. The Trial Chamber now turns to its findings on the HV's artillery reports of 4 and 5 August 1995. The Trial Chamber recalls that the TS-4 reported firing at targets in Knin with KV-numbers which matched those on lists P1271 and P1272. This finding indicates that the HV's artillery units had and used lists of targets with KV-numbers and x, y, and z coordinates in Knin, which is consistent with Rajčić's explanation of the HV artillery orders. However, TS-4 also reported firing at least 18 shells at Knin or at the general area of Knin at irregular intervals after 3 p.m. on 4 August 1995 and another six shells at Knin on 5 August 1995, without further specifying a target. The language of these latter reports, when looked at separately from other evidence and taken at face value, could indicate that the TS-4 treated the town of Knin itself as a target when firing artillery projectiles on at least two occasions on 4 and 5 August 1995. However, the



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Trial Chamber further recalls that the HV artillery reports it has received in evidence provide only a partial and at times coded account of the targets fired at in Knin. Consequently, based on these reports alone, the Trial Chamber is unable to determine whether the TS-4 in fact treated Knin itself as a target, or whether its reporting falsely created the impression that it was doing so as a result of a lack of details, errors, or other inaccuracies in the reports. The Trial Chamber will further evaluate these reports in light of its findings on the locations of impacts in Knin.

1896. The Trial Chamber recalls that on 4 and 5 August 1995, the 7th Guards Brigade reported firing MBRLs at S-15, "left where is /illegible/ S-54" and at "right from the bridge S-16", with the S-numbers referring to circles on the coded map Ivančića (P2338). The Trial Chamber considers that the Ivančića map contains large S-numbered circles with a diameter of approximately 300 metres. According to Rajčić, the Ivančiča map was not an artillery map, but was used to track infantry movements. The language of these reports, when looked at separately from other evidence and taken at face value, could indicate that the 7th Guards Brigade used the Ivančića map to direct MBRL fire at and to the right and left of 300-metre-diameter areas in Knin. S-54 centres on the railway station and SVK headquarters, while S-15 centres on the intersection in the centre of Knin. S-16 covers the police station in the south-western periphery, but centres on a residential area north-east of the police station. Konings testified that in general, the rocket systems used in 1995 were less accurate than the Howitzers and that depending on whether it uses ten, eight, or six digits, a grid system of coordinates gives an accuracy of up to one, ten or 100 metres. The Trial Chamber considers that using the 300-metre-diameter circles of the Ivančića map to direct MBRL fire would yield very inaccurate fire results on a specific target in Knin, when compared to using a ten digit grid system of coordinates. The Trial Chamber considers that such an inherently inaccurate use of artillery fire would show a disregard for directly striking or otherwise effectively using artillery against identified targets in Knin and would be inconsistent with Rajčić's explanation of the HV artillery orders. However, in light of the Trial Chamber's findings on the partial and at times coded nature of the HV artillery reports, it is not clear whether the 7th Guards Brigade's referred to the Ivančića map only when reporting on artillery fire, or also used it to actually direct its MBRL fire on Knin. Consequently, based on these reports alone, the Trial Chamber is unable to determine whether the 7th Guards Brigade in fact used the Ivančića map to direct MBRL fire at



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Knin, or whether its reporting falsely created the impression that it was doing so as a result of a lack of details, errors, or other inaccuracies in the reports. The Trial Chamber will evaluate these reports in light of its findings on the locations of impacts in Knin.

1897. The Trial Chamber now turns to its findings on the means and methods employed by the HV in the shelling of Knin. The Trial Chamber recalls that on 4 August 1995 the HV fired artillery projectiles at Knin at defined intervals. Experts Konings and Corn both testified about the uses of such intermittent firing at artillery targets, including with a view to achieving a harassment or disruption effect on the opposing military forces. According to Konings and Corn, this method of fire can, depending on the target and the intended effect, be used for a military purpose or to psychologically harass civilians. The evidence does not establish the locations of impacts of the artillery projectiles which the HV fired at defined intervals. Under these circumstances, the Trial Chamber is unable to conclude from the use of this method of fire whether the artillery projectiles fired in this manner were intended to harass civilians or to disrupt the SVK. Further, based primarily on the testimony of expert Corn, the Trial Chamber considers that although MBRLs are generally less accurate than Howitzers or mortars, their use by the HV in respect of Knin on 4 and 5 August 1995 was not inherently indiscriminate.

1898. The Trial Chamber now turns to its findings on the locations of artillery impacts in Knin as compared to the objects which the HV identified as artillery targets and reported firing at. The Trial Chamber has considered the testimony of expert Konings and of Rajčić and Leslie on the accuracy of the HV's artillery weaponry at the range used on 4 and 5 August 1995 during the shelling of Knin. The Trial Chamber notes that during the shelling of Knin, the HV used 130-millimetre guns at distances of 25 and 27 kilometres and 122-millimetre BM-21 MBRLs at distances of 18-20 kilometres. Konings testified that, in the case of an unguided 155-millimetre shell fired at 14,5 kilometres, internal factors can lead to variations in the locations of impacts of up to 55 metres in range and five metres in deflection; while a number of external factors (such as muzzle velocity, wind speed, air temperature and density) can lead to variations in the locations of impacts of between 18 and 60 metres per factor. The Trial Chamber notes that a number of these factors can be measured and taken into account prior to firing. Further, the HV's artillery lists which are in evidence (P1271 and P1272) indicate that the HV used a ten digit coordinate system, which would enable it to plot its



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targets with an accuracy of up to one metre. According to Rajčić, the 130-millimetre cannon at a distance of 26 kilometres has an error range of about 15 metres along the axis, and about 70 to 75 metres in distance, with the normal scattering dispersion of a 130-millimetre shell being an area with a diameter of 35 metres. Both Konings and Rajčić testified that the BM-21 122-millimetre launcher generally covers a broader area than the 130-millimetre cannon. Leslie considered that when using 130-millimetre guns or MBRLs, landing within a 400-metre radius of the target with the first shot would be "acceptable". The Trial Chamber understands primarily from Konings's evidence that the variation in the locations of impacts of the artillery weaponry employed by the HV is difficult to delimit precisely, as it depends on a number of factors on which the Trial Chamber has not received detailed evidence. The Trial Chamber notes that unlike Konings, Leslie was not called as an artillery expert in this case and did not testify in detail about his basis for concluding that landing within a 400-metre radius of a target was acceptable for a first shot. As a result, it is not clear which of the factors described by Konings Leslie took into account. Evaluating all of this evidence, the Trial Chamber considers it a reasonable interpretation of the evidence that those artillery projectiles which impacted within a distance of 200 metres of an identified artillery target were deliberately fired at that artillery target.

1899. The Trial Chamber has found that the HV fired at least 600 projectiles into Knin on 4 August 1995 and at least 300 projectiles into Knin on 5 August 1995. The Trial Chamber has been able to conclusively determine the precise locations of impacts of only a portion of these projectiles. The Trial Chamber recalls that on 4 and 5 August 1995, the HV fired artillery projectiles which impacted within a 200-metre radius of the SVK headquarters, the Northern barracks, the Senjak barracks, the railway station, the police station, and Milan Martić's residence in Knin. The HV had identified these six facilities as artillery targets prior to Operation Storm. The HV had also identified the post office near the SVK headquarters as an artillery target. The HV reported firing at these facilities on 4 and/or 5 August 1995. The Trial Chamber has further considered the evidence of experts Konings and Corn with regard to the military or civilian nature of the objects fired at in Knin.[931] The Trial Chamber is satisfied that the SVK headquarters, the Northern barracks, and the Senjak barracks constituted military

[931] At this stage, the Trial Chamber considers primarily whether firing at the objects offered a definite military advantage and does not pronounce on the proportionality of these attacks in view of the risk of incidental loss of civilian life, injury to civilians, or damage to civilian objects.



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targets. Further, given Martić's position within the RSK and SVK, the Trial Chamber is satisfied that firing at his residence could disrupt his ability to move, communicate, and command and so offered a definite military advantage, such that his residence constituted a military target. The Trial Chamber further considers that the testimony of witnesses including Mrkšić, Novaković, Witness 56, and Vukašinović indicates that the RSK police participated in the armed conflict alongside the SVK on the front lines during Operation Storm. In light of this evidence, the Trial Chamber is satisfied that firing at the police station in Knin offered a definite military advantage. The Trial Chamber further recalls its findings on the possible SVK use of the railway station to transport ammunition in late July or early August 1995. The Trial Chamber further recalls the inconsistent evidence regarding the role of the post office in the SVK and/or RSK police communications. In light of these findings, the Trial Chamber considers that the evidence allows for the reasonable interpretation that the HV may have determined in good faith that firing at the railway station and post office would have offered a definite military advantage.

1900. On 4 and 5 August 1995, the HV fired artillery projectiles which impacted within a 200-metre radius of the intersection in the centre of Knin. The HV had identified this intersection as an artillery target prior to Operation Storm and reported firing at it on 4 and 5 August 1995. Konings and Corn testified that while firing artillery projectiles at an intersection would not destroy it so as to render it unusable, it could damage it and, at least temporarily, deny the opposing military forces use of the area. Rajčić testified that he believed SVK operational reserve forces to be in the Northern barracks on 4 August 1995. The Trial Chamber recalls that there was only a very limited presence of 50 to 150 SVK and police personnel in Knin at the beginning of Operation Storm. However, this SVK presence included part of the Main Staff. Further, a small number of SVK trucks, tanks, and RSK police moved through Knin on 4 and 5 August 1995. Thus, regardless of the presence of the SVK operational forces in the Northern barracks, disrupting or denying the SVK's ability to make use of this intersection and move through Knin could offer a definite military advantage. Under these circumstances, the Trial Chamber considers that the evidence allows for the reasonable interpretation that the HV may have determined in good faith that firing at the intersection would have offered a definite military advantage.



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1901. The Trial Chamber has further found that on 4 August 1995, the HV fired artillery projectiles which impacted within a 200-metre radius of a field north of the school across from the Northern barracks. The HV had identified the field north of this school as an artillery target known as "Hospital" prior to Operation Storm and reported firing at it on 4 August 1995. On 4 August 1995, there was an SVK mortar section in this school. Experts Konings and Corn testified that firing at the field north of the school could have a suppressing or inhibiting effect on the mortar unit. Under these circumstances, the Trial Chamber considers that the evidence allows for the reasonable interpretation that the HV may have determined in good faith that firing at this field would have offered a definite military advantage.

1902. On 4 August 1995 the HV also fired artillery projectiles which impacted within a 200-metre radius of the TVIK factory. The HV had identified the TVIK factory as an artillery target prior to Operation Storm and reported firing at it on 4 August 1995. Expert Corn testified that if the TVIK factory was a logistics supply facility and ammunition components production facility, then harassing fire at this factory could degrade the SVK's ability to use the resources stored there to re-supply forces engaged in combat. The Trial Chamber recalls that the evidence before it indicates that the SVK planned to produce weapons-related products at the TVIK factory, although it does not establish whether and if so to what extent these plans were in operation by early August 1995. Under these circumstances, the Trial Chamber considers that the evidence allows for the reasonable interpretation that the HV may have determined in good faith that firing at the TVIK factory would have offered a definite military advantage.

1903. The Trial Chamber will now address its findings concerning artillery impacts on 4 and 5 August 1995 on areas which are further removed (beyond 200 metres) from the objects the HV identified as military targets and reported firing on. The Trial Chamber recalls its findings that on 4 and/or 5 August 1995, the HV fired approximately 40 artillery projectiles which impacted near the ECMM building and at least one artillery projectile which damaged a house at a location marked L on P681. Both the ECMM building and this house were approximately 300 metres from the nearest artillery target identified by Rajčić.

1904. On the morning of 4 August 1995, the HV fired at least three artillery projectiles at three separate times which impacted in the empty field in front of the UN compound in the Southern barracks. The St Ante Monastery, which was approximately 200 metres



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north of the edge of this field, was listed as target KV-110 on the HV's target lists P1271 and P1272. The Southern barracks across the road from the field was listed as target KV-210 on the HV's target lists P1271 and P1272. The eastern part of the Southern barracks housed an SVK facility in August 1995. However, the coordinates of target KV-210 correspond with the main western part of the barracks which housed the UN compound. Rajčić testified that the HV did not fire at targets KV-110 and KV-210 during Operation Storm. The HV's artillery reports which are in evidence do not mention firing at either of these targets. Under these circumstances, the Trial Chamber does not consider it a reasonable interpretation of the evidence that the HV fired projectiles at either the St Ante Monastery or the SVK facility at the Southern barracks, which projectiles then would have impacted in the aforementioned field.

1905. On 4 August 1995, the HV also fired at least one artillery projectile which impacted on an area east of Knin (see marking J on P984), which was approximately 350 metres from the nearest artillery target identified by Rajčić. There is no evidence indicating that the HV considered the railway fuel storage located in this area to have been an artillery target, nor that it was used by the SVK. Further, on 4 and/or 5 August 1995 the HV fired at least four artillery projectiles which impacted in the immediate vicinity of the hospital in Knin, which was approximately 450 metres from the nearest artillery target identified by Rajčić, as well as at least one projectile which impacted near the Knin cemetery, which was approximately 700 metres from the nearest artillery target identified by Rajčić.

1906. The Trial Chamber has considered several factors in determining whether the artillery impacts in these areas could have been the result of errors or inaccuracies in the HV's artillery fire. In this respect, the Trial Chamber has considered specifically the abovementioned testimony of expert Konings and of Rajčić and Leslie on the accuracy of the HV's artillery weaponry at the range used on 4 and 5 August 1995 during the shelling of Knin. The Trial Chamber considers firstly that at distances of 300 to 700 metres, these areas of impacts were relatively far away from identified artillery targets. Secondly, a significant number of artillery projectiles, namely at least 50, landed in these areas. Thirdly, the areas are spread out across Knin, to its southern, eastern, and northern outskirts. Finally, the Trial Chamber recalls that on at least two occasions, the TS-4 reported firing at the general area of Knin or at Knin, without specifying an artillery target. In conclusion, the Trial Chamber finds that too many projectiles



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impacted in areas which were too far away from identified artillery targets and which were located around Knin, for the artillery projectiles to have impacted in these areas incidentally as a result of errors or inaccuracies in the HV's artillery fire.[932] Thus, the Trial Chamber finds that the HV deliberately fired the artillery projectiles targeting these areas in Knin.

1907. There is no evidence indicating any fixed SVK or police presence in or near the aforementioned areas, nor evidence otherwise indicating that firing at these areas would offer a definite military advantage. A police car was hit by an artillery projectile, as observed by Dawes and Dreyer, in the area east of Knin on 4 August 1995. The Trial Chamber has considered whether the HV could have deliberately targeted this police car and/or other SVK or police units or vehicles moving through the aforementioned areas. Mrkšić testified that in the days prior to Operation Storm, Gotovina's forces were above Knin and were observing SVK activities with binoculars. However, Mrkšić's testimony does not establish clearly whether he believed that the HV was able to observe the SVK's movements in Knin. Rajčić testified that commanders of artillery groups at artillery observation points and sometimes from the front line of the unit directed and corrected artillery fire during Operation Storm and that the Split MD had 22 artillery observation points from the Velebit to the Dinara Mountains. Rajčić also testified that there was no clear line of sight from the HV's positions to the settlement of Knin before Operation Storm. The HV's artillery reports and orders do not mention the use of artillery observers in Knin. For instance, the Operative Logbook of the 4th Guards Brigade noted for 4 August 1995 at 7 a.m. that electronic operations reported that their forces were hitting the barracks in Knin and doing a good job, but makes no explicit mention of any such reports coming from artillery observers. Further, according to Rajčić, the HV's belief that Martić was present at a location marked R on P2337 on the evening of 4 August 1995 was based on intelligence and electronic reconnaissance, rather than on any reports from artillery observers. Thus, the evidence does not establish whether the HV had artillery observers with a view of Knin at any point during 4 August 1995. If they did not, at least on 4 August 1995, the HV would have been unable to spot, report on, and then direct fire at SVK or police units or vehicles, which would

[932] The Trial Chamber notes that had these impacts which were at a distance of up to 700 metres from artillery targets been the result of the inaccuracy of the artillery weapons used, that would require a further consideration of whether such inaccurate weaponry can be used in the context of an artillery attack on specific targets within a town.



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have presented so-called opportunistic targets (i.e. not previously identified), also referred to as tactical (as opposed to operational) targets.

1908. However, even if the HV had had artillery observers with a view of Knin on 4 and 5 August 1995, the Trial Chamber has received evidence of only very few occasions on which SVK or police trucks, tanks or units were observed moving through Knin, mainly on the afternoon of 4 and the morning of 5 August 1995. Other than the police car hit by an artillery projectile observed by Dawes and Dreyer, the limited evidence of SVK or police movements does not relate to the areas of the ECMM building, the hospital, the area on Knin's eastern outskirts,[933] or the field across from the UN compound. While there is evidence indicating that SVK tanks and trucks passed the UN compound on the morning of 5 August 1995, there is no reliable evidence of such presence on the morning of 4 August 1995. Moreover, the limited SVK and police presence in Knin indicates that there would, in any event, have been few opportunistic targets in Knin on 4 and 5 August 1995. For the foregoing reasons, the Trial Chamber does not consider it a reasonable interpretation of the evidence that the HV could have determined in good faith that targeting these areas would have offered a definite military advantage.

1909. The Trial Chamber considers that the number of civilian objects or areas in Knin deliberately fired at by the HV may appear limited in view of the total of at least 900 projectiles fired at the town on 4 and 5 August 1995. However, the Trial Chamber recalls that it was able to conclusively determine the precise locations of impact for only some of these 900 projectiles. Of the locations of impact which the Trial Chamber was able to establish, a considerable portion are civilian objects or areas. Further, while the Trial Chamber was not able to establish exactly how many projectiles impacted on some of these civilian objects or areas, the Trial Chamber considers that even a small number of artillery projectiles can have great effects on nearby civilians.

1910. The Trial Chamber recalls that the HV reported firing a total of twelve shells of 130 millimetres at Milan Martić's apartment on two occasions between 7:30 and 8 a.m. on 4 August 1995. Further, on the evening of 4 August 1995, the HV fired an unknown number of 130-millimetre shells at a location marked R on P2337 where they believed

[933] The Trial Chamber notes in this respect that the SVK trucks and RSK special police unit observed in the morning of 4 August 1995 by Dawes, as marked on P985 and D864, appear to have travelled along the road by the Senjak barracks, the POL station, and the TVIK factory, which road runs past the eastern area of Knin at a distance of approximately 250 metres.



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Martić to be present. The Trial Chamber has found above that firing at Martić's apartment could disrupt his ability to move, communicate, and command and so offered a definite military advantage. Rajčić recognized that the chance of hitting or injuring Martić by firing artillery at his building was very slight. Rajčić testified that the HV sought to harass and put pressure on Martić and that the HV took the rules of distinction and of proportionality into account when deciding whether to target the apartment block. The Trial Chamber considers that Martić's apartment was located in an otherwise civilian apartment building and that both the apartment and the area marked R on P2337 were in otherwise predominantly civilian residential areas. The Trial Chamber has considered this use of artillery in light of the evidence on the accuracy of artillery weapons reviewed above and the testimony of expert Konings on the blast and fragmentation effects of artillery shells. At the times of firing, namely between 7:30 and 8 a.m. and in the evening on 4 August 1995, civilians could have reasonably been expected to be present on the streets of Knin near Martić's apartment and in the area marked R on P2337. Firing twelve shells of 130 millimetres at Martić's apartment and an unknown number of shells of the same calibre at the area marked R on P2337, from a distance of approximately 25 kilometres, created a significant risk of a high number of civilian casualties and injuries, as well as of damage to civilian objects. The Trial Chamber considers that this risk was excessive in relation to the anticipated military advantage of firing at the two locations where the HV believed Martić to have been present.[934] This disproportionate attack shows that the HV paid little or no regard to the risk of civilian casualties and injuries and damage to civilian objects when firing artillery at a military target on at least three occasions on 4 August 1995.[935]

1911. The Trial Chamber considers that the deliberate firing at areas in Knin which were devoid of military targets is inconsistent with Rajčić's explanation of the HV artillery orders. Instead, it is consistent with the plain text of those orders to put towns under artillery fire, meaning to treat whole towns, including Knin, as targets when firing artillery projectiles during Operation Storm. The interpretation of the HV's artillery orders as being orders to treat whole towns as targets is also supported by the TS-4's

[934] The Trial Chamber's analysis in respect of the proportionality of the attack is informed by the relevant testimony of experts Konings and Corn and Additional Protocol I, Art. 51.
[935] The Trial Chamber has considered the targeting of the two locations where the HV believed Martić to have been present as an indicative example of a disproportionate attack during the shelling of Knin. The Trial Chamber does not pronounce on the proportionality of the HV's use of artillery against other targets in Knin on 4 and 5 August 1995.



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reporting of firing at Knin or at the general area of Knin on two occasions on 4 and 5 August 1995, as well as with the 7th Guards Brigade's reports of firing at S-numbered targets on the Ivančića map. This interpretation is further supported by the general impression gained by several witnesses present in Knin during the attack (such as Dreyer, Forand, Bellerose, Hendriks, Gilbert, Liborius, and Stig Marker Hansen), that the shelling impacted all over Knin and was indiscriminate. Moreover, the interpretation is consistent with the insufficient regard paid to the risk of civilian casualties and injuries and damage to civilian objects in the disproportionate firing at two locations where the HV believed Martić to have been present. Finally, the Trial Chamber further refers to its findings below on artillery projectiles impacting on civilian objects or areas in Benkovac, Gračac, and Knin. Consequently, the Trial Chamber finds that on 4 and 5 August 1995, at the orders of Gotovina and Rajčić, the HV fired artillery projectiles deliberately targeting previously identified military targets and also targeting areas devoid of such military targets. In light of the language of the artillery orders and considering that the HV did not limit itself to shelling areas containing military targets, but also deliberately targeted civilian areas, the Trial Chamber finds that the HV treated the town of Knin itself as a target for artillery fire. The Trial Chamber finds beyond a reasonable doubt that as a result the HV's shelling of Knin on 4 and 5 August 1995 constituted an indiscriminate attack on the town and thus an unlawful attack on civilians and civilian objects in Knin.

1912. Considering the evidence on the ethnic composition of Knin in Chapter 4.2.9 (Knin town), the Trial Chamber finds that the unlawful attack on civilians and civilian objects in Knin discriminated in fact against Krajina Serbs. In establishing the intention with which this unlawful attack was committed, the Trial Chamber has considered the language of the HV's artillery orders and the deliberate shelling of areas devoid of military targets. The Trial Chamber has further considered its findings in chapters 5.4.2, 5.8.2 (d), and 6.2.7. The Trial Chamber further considers that the unlawful attack against civilians and civilian objects was committed in the context of a wider discriminatory attack against Krajina Serbs, as described in chapter 5.2.2. The Trial Chamber finds that the unlawful attack on civilians and civilian objects in Knin was carried out with the intention to discriminate on political, racial, or religious grounds.

1913. Considering circumstances such as the ethnicity of the victims and the time and place where the acts took place, the Trial Chamber finds that the unlawful attack against



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civilians and civilian objects was part of a widespread and systematic attack against a civilian population. In conclusion, the Trial Chamber finds that the unlawful attack on civilians and civilian objects in Knin on 4 and 5 August 1995 constituted persecution as a crime against humanity.

*Benkovac town*

1914. The Trial Chamber will now consider its findings in chapter 4.4.4 regarding the artillery attack against Benkovac on 4 and 5 August 1995. The Trial Chamber refers to the discussion of its findings on the HV's artillery orders in the legal findings on the shelling of Knin. The Trial Chamber has not received any documentary evidence containing lists of artillery targets prepared for Operation Storm in relation to Benkovac. Several objects in Benkovac are listed on the "Jagoda" list and the Poskok-93 map, although the evidence does not establish whether and if so how and for what purpose the HV used these two documents in relation to the shelling of Benkovac during Operation Storm.

1915. The Trial Chamber has not received any artillery reports from the HV units who fired artillery projectiles at Benkovac. The Trial Chamber has received a report of the 134th Home Guard Regiment, P1200, which stated that on 4 August 1995 the OG Zadar was shelling, without monitoring, the general area of Benkovac. The same report recorded the following message sent 5:30 a.m. that day: "Is anything falling on Benkovac?". This report indicates that the HV were shelling Benkovac without artillery observers. Further, when looked at separately from other evidence and taken at face value, the language of the report could indicate that the HV treated the town of Benkovac as a target when firing artillery projectiles on 4 August 1995. The Trial Chamber will further evaluate this report in light of its findings on the locations of impacts in Benkovac.

1916. The Trial Chamber now turns to its findings on the locations of artillery impacts in Benkovac as compared to the artillery targets identified by the HV. The Trial Chamber notes that during the shelling of Benkovac, the HV used 130-millimetre guns at distances of approximately 19 kilometres, as well as MBRLs. The Trial Chamber refers to its discussion of the accuracy of artillery weapons and the use of MBRLs in the legal findings on the shelling of Knin, above. The Trial Chamber recalls that at least 150



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projectiles fell on Benkovac and its immediate vicinity on 4 and 5 August 1995. The Trial Chamber has only been able to conclusively determine the precise locations of impacts of a portion of these projectiles.

1917. The Trial Chamber recalls that between 5 and 7 a.m. on 4 August 1995 artillery shells landed on or near the Slobodan Macura barracks, which the HV had identified as an artillery target prior to Operation Storm. The Trial Chamber is satisfied that this SVK barracks constituted a military target.

1918. On 4 August 1995, between 5 and 7 a.m. the HV fired shells which fell on or near the police station, and around 4:30 p.m. shells fell within 50 metres of the police station on the high school building and the ticket office of the stadium. The HV had identified the police station as an artillery target prior to Operation Storm. The Trial Chamber considers it a reasonable interpretation of the evidence that the HV fired artillery projectiles targeting the police station in Benkovac, which projectiles landed in the aforementioned locations. On 4 or 5 August 1995, artillery projectiles also impacted on a house marked X on P290 which was less than 100 metres from the location of the police station according to the "Jagoda" list. The Trial Chamber recalls that the "Jagoda" list's coordinates of the police station placed it some 150 metres south of its actual location in Benkovac. Rajčić's marking of the police station in Benkovac covered both its location according to Jagoda and its actual location (see marking 2 on P2327; D1460 and D1466; and D248, p. 3, respectively). The Trial Chamber considers that the evidence allows for the reasonable interpretation that the HV fired artillery projectiles at what they considered to be the location of the police station based on the coordinates provided by the "Jagoda" list, which projectiles impacted the aforementioned location as a result of errors or inaccuracies in the artillery fire. The Trial Chamber further considers that the testimony of witnesses including Mrkšić, Novaković, Witness 56, and Vukašinović indicates that the RSK police participated in the armed conflict alongside the SVK on the front lines during Operation Storm. Further, police weaponry which had been supplied by the SVK was stored at the police station in Benkovac. The Trial Chamber is satisfied that firing at the police station in Benkovac offered a definite military advantage.

1919. Between 5 and 7 a.m. on 4 August 1995, the HV also fired shells which impacted on the firemen's hall and the petrol station located 150 metres from the firemen's hall, both of which were at least 500 metres from the nearest artillery target identified by



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Rajčić. The firemen's hall itself was not identified by Rajčić as an artillery target, but was listed on the "Jagoda" list. In the absence of more detailed evidence of what the HV targeted in Benkovac, such as artillery target lists or reports, the Trial Chamber considers that the evidence allows for the reasonable interpretation that the HV fired artillery projectiles deliberately targeting the firemen's hall, which projectiles impacted on the hall itself and the petrol station. Although there were no SVK troops stationed at the fireman's hall, the hall did contain the offices of the TO and the Secretariat of National Defence. This evidence allows for the reasonable interpretation that the HV may have determined in good faith that firing at the firemen's hall would have offered a definite military advantage.

1920. On 4 August 1995 between 5 and 7 a.m., the HV fired shells which impacted on the Bagat and Kepol factories and the cool storage, located approximately 700 metres south of the nearest artillery target in Benkovac. During the same period, the HV also fired shells which impacted on at least three areas to the north of Benkovac, namely on the Ristić pine woods (marked B on D1501), at least 500 metres from the nearest artillery target, and in the hamlets of Ristić and Benkovačko Selo. On 4 August 1995, the HV fired shells which impacted in the Barice area, which was approximately 400 metres from the actual location of the police station and approximately 250 metres from the police station as provided by the "Jagoda" list. On 4 or 5 August 1995, the HV fired shells on a second house marked X on P290, which was approximately 250-300 metres from the actual location of the police station, and an equal distance from the location of the police station according to the "Jagoda" list. The Trial Chamber has considered the distances between the aforementioned objects and areas and the artillery targets identified by Rajčić. The Trial Chamber has further considered the number of objects and areas, their locations to the north of, in the centre of, and in the south of Benkovac, as well as the evidence that multiple projectiles impacted on these areas. In light of these factors, the Trial Chamber does not consider it a reasonable interpretation of the evidence that the projectiles impacted in these areas incidentally as a result of errors or inaccuracies in the artillery fire. Instead, the Trial Chamber finds that the HV deliberately fired artillery projectiles targeting these areas in and in the immediate vicinity of Benkovac.

1921. Of the aforementioned objects and areas, the cool storage and the Bagat factory were listed on the "Jagoda" list. However, there was no military production at or other



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military use of the Bagat and Kepol factories and the cool storage. There is no evidence indicating any fixed SVK or police presence in or near the aforementioned areas of Benkovac, nor evidence otherwise indicating that firing at these areas would offer a definite military advantage. Furthermore, there is no indication that SVK or police units or vehicles moved through these areas either between 5 and 7 a.m. on 4 August 1995 or at other times on 4 or 5 August 1995, which would have presented so-called opportunistic targets (i.e. not previously identified), also referred to as tactical (as opposed to operational) targets. Moreover, the 134th Home Guard Regiment report, P1200, indicates that the HV did not have artillery observers with a view of Benkovac early in the morning of 4 August 1995. For the foregoing reasons, the Trial Chamber does not consider it a reasonable interpretation of the evidence that the HV could have determined in good faith that targeting these areas would have offered a definite military advantage.

1922. The Trial Chamber considers that the number of civilian objects or areas in Benkovac deliberately fired at by the HV may appear limited in view of the at least 150 projectiles fired at the town. However, the Trial Chamber recalls that it was able to conclusively determine the precise locations of impact of only some of these 150 projectiles. Of the locations of impact which the Trial Chamber was able to establish, a considerable portion are civilian objects or areas. Further, while the Trial Chamber was not able to establish exactly how many projectiles impacted on these civilian objects or areas, the Trial Chamber considers that even a small number of artillery projectiles can have great effects on nearby civilians.

1923. The Trial Chamber recalls its legal findings on the shelling of Knin above with regard to Gotovina's and Rajčić's orders to the artillery, namely that these were orders to treat whole towns, including Benkovac, as targets when firing artillery projectiles during Operation Storm. The Trial Chamber further refers to the evidence it has reviewed regarding artillery projectiles impacting on civilian objects or areas in Gračac, Knin, and Obrovac. The deliberate firing at areas in Benkovac which were devoid of military targets is consistent with the Trial Chamber's finding on the interpretation of the HV's artillery orders. The Trial Chamber finds that Firšt and Fuzul's artillery orders in respect of Benkovac must be interpreted in the same manner. These findings are further supported by the 134th Home Guard Regiment's report of firing at the general area of Benkovac. Consequently, the Trial Chamber finds that on 4 and 5 August 1995,



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at the orders of Gotovina, Rajčić, Firšt, and Fuzul, the HV fired artillery projectiles deliberately targeting previously identified military targets and also targeting areas devoid of such military targets in Benkovac. In light of the language of the artillery orders and considering that the HV did not limit itself to shelling areas containing military targets, but also deliberately targeted civilian areas, the Trial Chamber finds that the HV treated the town of Benkovac itself as a target for artillery fire. The Trial Chamber finds beyond a reasonable doubt that as a result, the HV's shelling of Benkovac on 4 and 5 August 1995 constituted an indiscriminate attack on the town and thus an unlawful attack on civilians and civilian objects in Benkovac.

1924. Considering the evidence on the ethnic composition of Benkovac in chapter 4.2.2 (Benkovac town), the Trial Chamber finds that the unlawful attack on civilians and civilian objects in Benkovac discriminated in fact against Krajina Serbs. In establishing the intention with which this unlawful attack was committed, the Trial Chamber has considered the language of the HV's artillery orders and the deliberate shelling of areas devoid of military targets. The Trial Chamber has also considered its findings in chapters 5.4.2, 5.8.2 (d), and 6.2.7. The Trial Chamber further considers that the unlawful attack against civilians and civilian objects was committed in the context of a wider discriminatory attack against Krajina Serbs, as described in chapter 5.2.2. The Trial Chamber finds that the unlawful attack on civilians and civilian objects in Benkovac was carried out with the intention to discriminate on political, racial, or religious grounds.

1925. Considering circumstances such as the ethnicity of the victims and the time and place where the acts took place, the Trial Chamber finds that the unlawful attack against civilians and civilian objects was part of a widespread and systematic attack against a civilian population.

*Gračac town*

1926. The Trial Chamber will now consider its findings in chapter 4.4.5 regarding the artillery attack against Gračac on 4 August 1995. The Trial Chamber refers to the discussion of its findings on the HV's artillery orders in the legal findings on the shelling of Knin. The Trial Chamber further recalls its finding in chapter 3.3 that on 3 August 1995, Gotovina detached for operational purposes the three 130-millimetre



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cannons of the TS-5/TRS-5 located in the Rovansjka area to the Special Police. The Trial Chamber has not received any documentary evidence containing lists of artillery targets prepared for Operation Storm in relation to Gračac. Several objects in Gračac are listed on the "Jagoda" list and the Poskok-93 map, although the evidence does not establish whether and if so how and for what purpose the Croatian forces used these two documents in relation to the shelling of Gračac during Operation Storm.

1927. The Trial Chamber now turns to its findings on the Croatian forces' reports of artillery fire on Gračac. The Trial Chamber recalls that artillery report P2346 reported firing 17 shells of 130 millimetres at Gračac on three separate occasions on 4 August 1995 and Special Police log P2385 reported firing artillery targeting Gračac on two occasions on 4 August 1995, all without further specifying which targets were fired at. The language of these reports, when looked at separately from other evidence and taken at face value, could indicate that the Croatian forces treated the town of Gračac itself as a target when firing artillery projectiles on at least five occasions on 4 August 1995. However, the Trial Chamber further recalls that the artillery reports it has received in evidence provide only a partial account of the targets fired at in Gračac. Consequently, based on these reports alone, the Trial Chamber is unable to determine whether the Croatian forces in fact treated Gračac itself as a target, or whether its reporting falsely created the impression that it was doing so as a result of a lack of details, errors, or other inaccuracies in the reporting. The Trial Chamber will further evaluate these reports in light of its findings on the locations of impacts in Gračac.

1928. The Trial Chamber now turns to its findings on the locations of artillery impacts in Gračac as compared to the artillery targets identified by the Croatian forces. The Trial Chamber notes that while shelling Gračac, the Croatian forces used 130-millimetre guns at distances of approximately 23 kilometres. The evidence does not establish whether MBRLs were used against Gračac. The Trial Chamber refers to its discussion of the accuracy of artillery weapons in the legal findings on the shelling of Knin, above. The Trial Chamber further recalls that no fewer than 150 projectiles fell on Gračac and its immediate vicinity on 4 August 1995. The Trial Chamber has only been able to conclusively determine a small number of precise locations of impacts relating to a portion of these projectiles.

1929. The Trial Chamber recalls that on 4 August 1995 artillery projectiles struck the police station in Gračac, which the Croatian forces had designated an artillery target for



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Operation Storm. The Trial Chamber further considers that the testimony of witnesses including Mrkšić, Novaković, Witness 56, and Vukašinović indicates that the RSK police participated in the armed conflict alongside the SVK on the front lines during Operation Storm. In light of this evidence, the Trial Chamber is satisfied that firing at the police station in Gračac offered a definite military advantage. The Trial Chamber further recalls that artillery projectiles struck the command post of the Gračac Brigade in Gračac. The Trial Chamber is satisfied that the command post of the Gračac Brigade constituted a military target. The Trial Chamber notes that the evidence does not establish the exact location of this command post.

1930. The Trial Chamber recalls that one or more artillery projectiles struck a house marked X on D1900, which was located near a factory which served as an SVK military depot containing weapons and ammunition. Turkalj testified that a depot in Gračac was an artillery target, without specifying its location. Rajčić testified that on the tactical level, the targets for Operation Storm included depots for military equipment. Under these circumstances, the Trial Chamber considers that the evidence allows for the reasonable interpretation that the Croatian forces fired artillery projectiles targeting this depot deliberately, which projectiles impacted on the house marked X on D1900. The evidence further allows for the reasonable interpretation that the Croatian forces may have determined in good faith that firing at this depot would have offered a definite military advantage.

1931. The Trial Chamber recalls that between ten and twenty artillery projectiles struck intersection "D" marked on maps P537 and D439, which the Croatian forces had designated an artillery target for Operation Storm. The Trial Chamber further recalls that artillery projectiles struck three locations within 100 metres of a separate intersection, known as intersection "B", in eastern Gračac, namely: a veterinary operating room (marked C on P192); a warehouse (D on P192); and a spot 100 metres from Sovilj's apartment (location of impact marked B on P88). The Trial Chamber notes that Rajčić did not identify this intersection as an artillery target. However, Turkalj testified that an intersection in Gračac was an artillery target, without specifying its location. The Trial Chamber notes that, with the exception of the police station, Turkalj and Rajčić listed different artillery targets in Gračac. Thus, the intersection identified by Turkalj need not have been one of the three intersections identified as targets by Rajčić. The major roads which cross at intersection B are the same as those



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which cross at intersection "D", as well as at the other two intersections identified by Rajčić as targets. Under these circumstances, the Trial Chamber considers that the evidence allows for the reasonable interpretation that the Croatian forces fired artillery projectiles targeting this intersection "B" deliberately, which projectiles impacted on the three previously mentioned locations within 100 metres of the intersection (namely markings B on P88, C and D on P192). Konings and Corn testified that while firing artillery projectiles at an intersection would not destroy it so as to render it unusable, it could damage it and, at least temporarily, deny the opposing military forces use of the area. The Trial Chamber recalls that there was minimal, if any, SVK presence in Gračac on 4 August 1995. However, there was an SVK Gračac Brigade command post in Gračac. Disrupting or denying the SVK's ability to make use of these intersections and move through Gračac could offer a definite military advantage. Under these circumstances, the Trial Chamber considers that the evidence allows for the reasonable interpretation that the Croatian forces may have determined in good faith that firing at these intersections would have offered a definite military advantage.

1932. The Trial Chamber recalls that from 5:05 a.m. on 4 August 1995 several artillery projectiles landed near Gačeša's house (marked A on P192). This area is located approximately 300 metres from the nearest artillery target identified by the Croatian forces in Gračac and an equal distance from the nearest object listed on the "Jagoda" list. The Trial Chamber further recalls that around 5 a.m. on the same day, artillery projectiles impacted near Steenbergen's house in Gračac (marked G on P538). This area is located approximately 800 metres from the nearest artillery target in Gračac and 450 metres from the nearest object listed on the "Jagoda" list. The Trial Chamber has considered the distances between these two areas and the possible artillery targets in Gračac and makes reference to its discussion of the accuracy of 130-millimetre guns in the legal findings on the shelling of Knin, above. In light of both the distance from artillery targets and the evidence that multiple projectiles impacted on both of these two areas, the Trial Chamber does not consider it a reasonable interpretation of the evidence that these projectiles impacted there incidentally as a result of errors or inaccuracies in the artillery fire. Instead, the Trial Chamber finds that the Croatian forces deliberately fired artillery projectiles targeting these areas in Gračac.

1933. There is no evidence indicating any fixed SVK presence in or near either of the two aforementioned areas, nor evidence otherwise indicating that firing at these areas



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would offer a definite military advantage. The evidence does not clearly establish the location of the Gračac command post within Gračac town. The parties have not in their final briefs or oral arguments pointed to any evidence establishing the location of this command post, nor put forward arguments in relation to the shelling of Gračac on the basis of its location. There is no indication that it was near either Gačeša's or Steenbergen's house. Considering the distance of approximately 450 metres between these two houses, the Trial Chamber does not consider it a reasonable interpretation of the evidence that the HV could have fired artillery projectiles deliberately targeting the command post, which projectiles then impacted on these two houses as a result of errors or inaccuracies in the artillery fire. There is no indication that SVK or police units or vehicles moved through these areas at 5 a.m. on 4 August 1995, which would have presented so-called opportunistic targets (i.e. not previously identified), also referred to as tactical (as opposed to operational) targets. Nor would such SVK or police troop movement be expected around 5 a.m., given that there was only a minimal, if any, SVK presence in Gračac on 4 August 1995. Finally, while Turkalj's evidence indicates that Special Police direction and unit commanders operated as forward-spotters for artillery, there is no evidence indicating that the Special Police had artillery observers with a view of Gračac at the very start of the operation at 5 a.m. on 4 August 1995. For the foregoing reasons, the Trial Chamber does not consider it a reasonable interpretation of the evidence that the Croatian forces could have determined in good faith that targeting these areas would have offered a definite military advantage.

1934. The Trial Chamber considers that the number of civilian objects or areas in Gračac deliberately fired at by the HV may appear limited in view of the at least 150 projectiles fired at the town. However, the Trial Chamber recalls that it was able to conclusively determine only a small number of precise locations of impact relating to some of these 150 projectiles. Of the locations of impact which the Trial Chamber was able to establish, a considerable portion are civilian objects or areas. Further, while the Trial Chamber was not able to establish exactly how many projectiles impacted on these civilian objects or areas, the Trial Chamber considers that even a small number of artillery projectiles can have great effects on nearby civilians.

1935. The Trial Chamber recalls its findings on the shelling of Knin with regard to Gotovina's and Rajčić's orders to the artillery, namely that these were orders to treat whole towns, including Gračac, as targets when firing artillery projectiles during



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Operation Storm. The Trial Chamber further refers to the evidence it has reviewed regarding artillery projectiles impacting on civilian objects or areas in Benkovac, Knin, and Obrovac. The deliberate firing at areas in Gračac which were devoid of military targets is consistent with the Trial Chamber's finding on the interpretation of the HV's artillery orders. The Trial Chamber finds that Firšt's order to the TS-5/TRS-5 in respect of Gračac must be interpreted in the same manner. These findings are further supported by the artillery reports and the Special Police's logs of firing artillery projectiles at Gračac. Consequently, the Trial Chamber finds that on 4 August 1995, following the orders of Gotovina, Rajčić, and Firšt, the Croatian forces fired artillery projectiles deliberately targeting previously identified military targets and also targeting areas devoid of such military targets in Gračac. In light of the language of the HV's artillery orders and considering that the Croatian forces did not limit themselves to shelling areas containing military targets, but also deliberately targeted civilian areas, the Trial Chamber finds that the Croatian forces treated the town of Gračac itself as a target for artillery fire. The Trial Chamber finds beyond a reasonable doubt that as a result, the shelling of Gračac on 4 and 5 August 1995 constituted an indiscriminate attack on the town and thus an unlawful attack on civilians and civilian objects in Gračac.

1936. Considering the evidence on the ethnic composition of Gračac in chapter 4.2.7 (Gračac town), the Trial Chamber finds that the unlawful attack on civilians and civilian objects in Gračac discriminated in fact against Krajina Serbs. In establishing the intention with which this unlawful attack was committed, the Trial Chamber has considered the language of the HV's artillery orders and the deliberate shelling of areas devoid of military targets. The Trial Chamber has also considered its findings in chapters 5.4.2, 5.8.2 (d), and 6.2.7. The Trial Chamber further considers that the unlawful attack against civilians and civilian objects was committed in the context of a wider discriminatory attack against Krajina Serbs, as described in chapter 5.2.2. The Trial Chamber finds that the unlawful attack on civilians and civilian objects in Gračac was carried out with the intention to discriminate on political, racial, or religious grounds.

1937. Considering circumstances such as the ethnicity of the victims and the time and place where the acts took place, the Trial Chamber finds that the unlawful attack against civilians and civilian objects was part of a widespread and systematic attack against a civilian population.



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*Obrovac town*

1938. The Trial Chamber will now consider its findings in chapter 4.4.6 regarding the artillery attack against Obrovac on 4 August 1995. The Trial Chamber refers to its discussions on the HV's artillery orders in the legal findings on the shelling of Knin. The Trial Chamber has not received any documentary evidence containing lists of artillery targets prepared for Operation Storm in relation to Obrovac. Several objects in Obrovac are listed on the "Jagoda" list and the Poskok-93 map, although the evidence does not establish whether and if so how and for what purpose the HV used these two documents in relation to the shelling of Obrovac during Operation Storm.

1939. The Trial Chamber has not received any artillery reports from the units who fired artillery projectiles at Obrovac. The Trial Chamber recalls that the HV fired one or more artillery projectiles which struck a bus station in Obrovac. As the evidence does not establish the location of the bus station, the Trial Chamber is unable to determine what the HV targeted when firing the projectile(s) which struck the bus station. The HV also fired one or more artillery projectiles which struck a restaurant in the centre of Obrovac. The evidence indicates this restaurant is in the centre of Obrovac, but does not establish its exact location. The HV had identified as an artillery target a bridge in the centre of Obrovac. Under these circumstances, the Trial Chamber is unable to determine what the HV targeted when firing the projectile(s) which struck the restaurant. The HV also fired one or more artillery projectiles which struck a movie theatre in the centre of Obrovac, which was located approximately 150 metres from the police station. Rajčić did not identify the police station in Obrovac as an artillery target during his testimony, nor did the police station appear on the "Jagoda" list or Poskok-93 map. The Trial Chamber has found in chapters 4.4.3-4.4.5 that the HV designated the police stations in Gračac, Benkovac, and Knin as artillery targets prior to Operation Storm. In the absence of target lists or artillery reports related to the shelling of Obrovac, the Trial Chamber considers it a reasonable interpretation of the evidence that the HV fired artillery projectiles targeting the police station in Obrovac, which projectiles impacted on the movie theatre. The Trial Chamber further considers that the testimony of witnesses including Mrkšić, Novaković, Witness 56, and Vukašinović indicates that the RSK police participated in the armed conflict alongside the SVK on the front lines during Operation Storm. The Trial Chamber is satisfied that firing at the police station in Obrovac offered a definite military advantage.



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1940. The HV also fired one or more artillery projectiles which struck a health clinic located approximately 200-300 metres away from the nearest artillery target in Obrovac. The HV further fired one or more artillery projectiles which struck the Trio factory, which was approximately 450 metres from the nearest artillery target. The Trial Chamber has considered the distances between the aforementioned objects and the artillery targets identified by the HV and makes reference to its discussion of the accuracy of the HV's artillery weapons in the legal findings on the shelling of Knin, above. In light of the distance from artillery targets and the locations of the two areas in Obrovac, the Trial Chamber does not consider it a reasonable interpretation of the evidence that the projectiles impacted in these areas in Obrovac incidentally as a result of errors or inaccuracies in the artillery fire. Instead, the Trial Chamber finds that the HV deliberately fired artillery projectiles targeting these areas in Obrovac.

1941. There is no evidence indicating any fixed SVK or police presence in or near the aforementioned areas of Obrovac, nor evidence otherwise indicating that firing at these areas would offer a definite military advantage. Furthermore, there is no indication that SVK or police units or vehicles moved through these areas on 4 August 1995, which would have presented so-called opportunistic targets (i.e. not previously identified), also referred to as tactical (as opposed to operational) targets. For the foregoing reasons, the Trial Chamber does not consider it a reasonable interpretation of the evidence that the HV could have determined in good faith that targeting these areas would have offered a definite military advantage.

1942. The Trial Chamber considers that the number of civilian objects or areas in Obrovac deliberately fired at by the HV may appear limited. However, the Trial Chamber recalls that it was able to conclusively determine only a small number of precise locations of impact in Obrovac. Of the locations of impact which the Trial Chamber was able to establish, a considerable portion are civilian objects or areas. Further, while the Trial Chamber was not able to establish exactly how many projectiles impacted on these civilian objects or areas in Obrovac, the Trial Chamber considers that even a small number of artillery projectiles can have great effects on nearby civilians.

1943. The Trial Chamber recalls its legal findings on the shelling of Knin above with regard to Gotovina's and Rajčić's orders to the artillery, namely that these were orders to treat whole towns, including Obrovac, as targets when firing artillery projectiles during Operation Storm. The Trial Chamber further refers to the evidence it has



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reviewed regarding artillery projectiles impacting on civilian objects or areas in Benkovac, Gračac, and Knin. The deliberate firing at areas in Obrovac which were devoid of military targets is consistent with the Trial Chamber's finding on the interpretation of the HV's artillery orders. The Trial Chamber finds that Firšt and Fuzul's artillery orders in respect of Obrovac must be interpreted in the same manner. Consequently, the Trial Chamber finds that on 4 August 1995, at the orders of Gotovina, Rajčić, Firšt, and Fuzul, the HV fired artillery projectiles deliberately targeting previously identified military targets and also targeting areas devoid of such military targets in Obrovac. In light of the language of the artillery orders and considering that the HV did not limit itself to shelling areas containing military targets, but also deliberately targeted civilian areas, the Trial Chamber finds that the HV treated the town of Obrovac itself as a target for artillery fire. The Trial Chamber finds beyond a reasonable doubt that as a result, the HV's shelling of Obrovac on 4 August 1995 constituted an indiscriminate attack on the town and thus an unlawful attack on civilians and civilian objects in Obrovac.

1944. Considering the evidence on the ethnic composition of Obrovac in chapter 4.2.13 (Obrovac town), the Trial Chamber finds that the unlawful attack on civilians and civilian objects in Obrovac discriminated in fact against Krajina Serbs. In establishing the intention with which this unlawful attack was committed, the Trial Chamber has considered the language of the HV's artillery orders and the deliberate shelling of areas devoid of military targets. The Trial Chamber has also considered its findings on chapters 5.4.2, 5.8.2 (d), and 6.2.7. The Trial Chamber further considers that the unlawful attack against civilians and civilian objects was committed in the context of a wider discriminatory attack against Krajina Serbs, as described in chapter 5.2.2. The Trial Chamber finds that the unlawful attack on civilians and civilian objects in Obrovac was carried out with the intention to discriminate on political, racial, or religious grounds.

1945. Considering circumstances such as the ethnicity of the victims and the time and place where the acts took place, the Trial Chamber finds that the unlawful attack against civilians and civilian objects was part of a widespread and systematic attack against a civilian population.



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*Donji Lapac town*

1946. The Trial Chamber recalls its finding in chapter 4.4.7 above that in Donji Lapac, prior to 3:30 p.m. on 7 August 1995, the 9th and 118th Home Guards Regiments fired artillery projectiles, at least one of which struck an army truck. Based on this finding, the Trial Chamber considers it a reasonable interpretation of the evidence that the HV deliberately targeted this truck. The Trial Chamber further considers that the army truck constituted a military target. The Trial Chamber recalls its finding in chapter 4.4.7 above that on the same day, the 9th and 118th Home Guards Regiments fired artillery projectiles which struck the police station in the centre of Donji Lapac and between one and three houses in the centre of Donji Lapac, one of which was behind the police station. The evidence received does not further establish the precise distance between the house(s) hit and the police station. The Trial Chamber did not receive evidence on the designated artillery targets in Donji Lapac. However, the Trial Chamber has found in chapter 4.4.3-4.4.5 that the HV designated the police stations in Gračac, Benkovac, and Knin as artillery targets prior to Operation Storm. Considering this and the locations of the impacts in Donji Lapac, the Trial Chamber considers that the evidence allows for the reasonable interpretation that the HV deliberately targeted the police station in Donji Lapac and fired artillery projectiles at it, which projectiles impacted both the police station and between one and three houses in the centre of town. The Trial Chamber notes in this respect that Donji Lapac was not among the towns mentioned in Gotovina's and Rajčić's orders to the artillery, P1125 and D970 respectively.

1947. The Trial Chamber further considers that the testimonies of witnesses including Mrkšić, Novaković, Witness 56, and Vukašinović indicate that the RSK police participated in the armed conflict alongside the SVK on the front lines during Operation Storm. In light of this evidence, the Trial Chamber cannot conclude that an attack directed at the police station in Donji Lapac would have constituted an attack on civilians or civilian objects. For the aforementioned reasons, the Trial Chamber does not find beyond reasonable doubt that the artillery attack of 7 August 1995 in Donji Lapac constituted an act of violence deliberately launched against civilians or civilian objects or an indiscriminate attack on the town.



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## 6. The liability of the Accused

### 6.1 Applicable law

#### *6.1.1 Joint criminal enterprise*

1948. The Indictment charges each of the Accused as participants in a JCE, pursuant to Article 7 (1) of the Statute, for all the crimes charged.[936] The members of the JCE allegedly used or cooperated with others to facilitate or achieve crimes that formed part of the common purpose. According to the Indictment, the members of the JCE are responsible for the crimes committed in furtherance of the JCE or forming part of the common purpose, which were physically committed or facilitated by these persons.[937]

1949. The Indictment further specifies that the crimes charged in Counts 1 through 5 were intended and within the purpose of the JCE and were committed in its course.[938] Each Accused allegedly participated in and/or contributed to the JCE, accomplishing or attempting to accomplish its purpose or objectives.[939] According to the Indictment, each Accused intended that each of these crimes be committed.[940] The Indictment further alleges, in addition or in the alternative, that any crime charged not within the purpose of the JCE was the natural and foreseeable consequence of implementing or attempting to implement the JCE and that each Accused was aware of this possible consequence and nevertheless persevered in the enterprise, willingly taking the risk that the crimes would be committed.[941]

1950. In the context of the Tribunal's jurisprudence, the JCE doctrine received its first detailed treatment in the *Tadić* Appeal Judgement.[942] The *Tadić* Appeals Chamber found in broad terms that a person who in execution of a common criminal purpose contributes to the commission of crimes by a group of persons may be held criminally liable subject to certain conditions.[943] The Appeals Chamber's analysis of customary international law resulted in the identification and definition of three forms of JCE liability. In the first JCE form:

[936] Indictment, paras 12, 14-15, 17-20, 36-38, 44-45, 48-53.
[937] Indictment, paras 16, 38.
[938] Indictment, paras 12, 39.
[939] Indictment, paras 17-20, 40-41.
[940] Indictment, para. 40.
[941] Indictment, para. 42.
[942] *Tadić* Appeal Judgement, paras 172-185.
[943] *Tadić* Appeal Judgement, para. 190.



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> all co-defendants, acting pursuant to a common design, possess the same criminal intention; for instance, the formulation of a plan among the co-perpetrators to kill, where, in effecting this common design (and even if each co-perpetrator carries out a different role within it), they [...] all possess the intent to kill.
>
> The objective and subjective prerequisites for imputing criminal responsibility to a participant who did not, or cannot be proven to have effected the killing are as follows:
>
> (i) the accused must voluntarily participate in one aspect of the common design (for instance, by inflicting non-fatal violence upon the victim, or by providing material assistance to or facilitating the activities of his co-perpetrators); and
>
> (ii) the accused, even if not personally effecting the killing, must nevertheless intend this result.[944]

1951. The second form of JCE, which is described as a type of the first form, was found to have served cases where the offences charged were alleged to have been committed by members of military or administrative units, such as those running concentration camps and comparable "systems".[945]

1952. The third form of JCE is characterized by a common criminal design to pursue a course of conduct where one or more of the co-perpetrators commit an act which, while outside the common design, is a natural and foreseeable consequence of the implementation of that design.[946] There are two additional requirements for this form, one objective, the other subjective.[947] The objective element does not depend upon the accused's state of mind. This is the requirement that the resulting crime was a natural and foreseeable consequence of the JCE's execution. It is to be distinguished from the subjective state of mind, namely that the accused was aware that the resulting crime was a possible consequence of the execution of the JCE, and participated with that awareness.[948]

1953. To summarize the elements of the first and third forms of JCE:

[944] *Tadić* Appeal Judgement, para. 196.
[945] *Tadić* Appeal Judgement, paras 202-203. For the notion of "system", see *Krnojelac* Appeal Judgement, para. 89, and *Vasiljević* Appeal Judgement, para. 105.
[946] *Tadić* Appeal Judgement, para. 204; *Prosecutor v. Radovan Karadžić*, Appeals Chamber, Decision on Prosecution's Motion Appealing Trial Chamber's Decision on JCE III Forseeability, 25 June 2009, para. 18.
[947] *Prosecutor v. Radoslav Brđanin and Momir Talić*, Trial Chamber, Decision on Form of Further Amended Indictment and Prosecution Application to Amend, 26 June 2001, paras 28-30; *Haradinaj et al.* Trial Judgement, para. 137.
[948] *Blaškić* Appeal Judgement, para. 33; *Haradinaj et al.* Trial Judgement, para. 137.



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*(i) Plurality of persons*. A joint criminal enterprise exists when a plurality of persons participates in the realization of a common criminal objective.[949] The persons participating in the criminal enterprise need not be organized in a military, political, or administrative structure.[950] They must be identified with specificity, for instance by name or by categories or groups of persons.[951]

*(ii) A common objective which amounts to or involves the commission of a crime provided for in the Statute*. The first form of the JCE exists where the common objective amounts to, or involves the commission of a crime provided for in the Statute. The mens rea required for the first form is that the JCE participants, including the accused person, had a common state of mind, namely the state of mind that the statutory crime(s) forming part of the objective should be carried out.[952]

The third form of the JCE depends on whether it is natural and foreseeable that the execution of the JCE in its first form will lead to the commission of one or more other statutory crimes. In addition to the intent of the first form, the third form requires proof that the accused person took the risk that another statutory crime, not forming part of the common criminal objective, but nevertheless being a natural and foreseeable consequence of the JCE, would be committed.[953]

According to the Appeals Chamber, the common objective need not have been previously arranged or formulated.[954] This means that the second JCE element does not presume preparatory planning or explicit agreement among JCE participants, or between JCE participants and third persons.[955]

Moreover, a JCE may exist even if none or only some of the principal perpetrators of the crimes are members of the JCE. For example, a JCE may exist where none of the principal perpetrators are aware of the JCE or its objective, yet are procured by one or more members of the JCE to commit crimes which further that objective. Thus, "to hold a member of a JCE responsible for crimes committed by non-members of the enterprise,

[949] *Kvočka et al.* Trial Judgement, para. 307; *Haradinaj et al.* Trial Judgement, para. 138.
[950] *Tadić* Appeal Judgement, para. 227.
[951] *Brđanin* Appeal Judgement, para. 430; *Krajišnik* Appeal Judgement, paras 156-157.
[952] *Tadić* Appeal Judgement, paras 227-228; *Krajišnik* Appeal Judgement, paras 200, 707.
[953] *Tadić* Appeal Judgement, paras 227-228; *Blaškić* Appeal Judgement, para. 33; *Martić* Appeal Judgement, para. 83; *Prosecutor v. Radoslav Brđanin and Momir Talić*, Trial Chamber, Decision on Form of Further Amended Indictment and Prosecution Application to Amend, 26 June 2001, para. 31; *Krstić* Trial Judgement, para. 613; *Haradinaj et al.* Trial Judgement, para. 138.
[954] *Tadić* Appeal Judgement, para. 227.



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it has to be shown that the crime can be imputed to one member of the joint criminal enterprise, and that this member – when using a principal perpetrator – acted in accordance with the common plan".[956]

*(iii) Participation of the accused in the objective's implementation.* This is achieved by the accused's commission of a crime forming part of the common objective (and provided for in the Statute). Alternatively, instead of committing the intended crime as a principal perpetrator, the accused's conduct may satisfy this element if it involved procuring or giving assistance to the execution of a crime forming part of the common objective.[957] A contribution of an accused person to the JCE need not be, as a matter of law, necessary or substantial, but it should at least be a significant contribution to the crimes for which the accused is found responsible.[958]

1954. In relation to the first two elements of JCE liability, it is the common objective that begins to transform a plurality of persons into a group, or enterprise, because what this plurality then has in common is the particular objective. It is evident, however, that a common objective alone is not always sufficient to determine a group, because different and independent groups may happen to share identical objectives. It is thus the interaction or cooperation among persons – their joint action – in addition to their common objective, that forges a group out of a mere plurality.[959] In other words, the persons in a criminal enterprise must be shown to act together, or in concert with each other, in the implementation of a common objective, if they are to share responsibility for crimes committed through the JCE.[960]

### *6.1.2 Committing, planning, instigating, ordering, and aiding and abetting*

1955. Each Count of the Indictment charges each of the Accused, in addition or alternatively to their participation in a JCE, with individual criminal responsibility under

[955] *Kvočka et al.* Appeal Judgement, paras 115-119; *Brđanin* Appeal Judgement, para. 418, *Haradinaj et al.* Trial Judgement, para. 138.
[956] *Brđanin* Appeal Judgement, para. 413; *Martić* Appeal Judgement, para. 168; *Krajišnik* Appeal Judgement, paras 225-226, 235.
[957] *Tadić* Appeal Judgement, para. 227; *Prosecutor v. Milorad Krnojelac*, Trial Chamber, Decision on Form of Second Amended Indictment, 11 May 2000, para. 15; *Krajišnik* Appeal Judgement, paras 215, 218, 695.
[958] *Kvočka et al.* Appeal Judgement, paras 97-98; *Brđanin* Appeal Judgement, para. 430; *Krajišnik* Appeal Judgement, paras 215, 662, 675, 695-696.
[959] *Krajišnik* Trial Judgement, para. 884; *Haradinaj et al.* Trial Judgement, para. 139.
[960] *Brđanin* Appeal Judgement, paras 410, 430; *Haradinaj et al.* Trial Judgement, para. 139.



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Article 7 (1) of the Statute pursuant to the modes of liability of committing, planning, instigating, ordering, and/or aiding and abetting the planning, preparation, and/or execution of the crimes charged.[961]

1956. Article 7 (1) covers first and foremost the direct participation in the commission of a crime or the culpable omission of an act that was mandated by law.[962] Article 7 (1) also reflects the principle that criminal responsibility for a crime in Articles 2 to 5 of the Statute does not attach solely to individuals who commit crimes, but may also extend to individuals who plan, instigate, order, and/or aid and abet the crimes. For an accused to be found liable for a crime pursuant to one of these modes of responsibility, the crime in question must actually have been committed.[963] Furthermore, his or her actions must have contributed substantially to the commission of the crime.[964] Liability may also attach to omissions, where there is a duty to act.[965]

1957. *Planning*. Liability may be incurred by planning a crime that is later committed by the principal perpetrator.[966] The planner must intend that the crime be committed, or intend that the plan be executed in the awareness of the substantial likelihood that it would lead to the commission of the crime.[967]

1958. *Instigating*. Liability may be incurred by instigating the principal perpetrator to commit a crime.[968] The instigator must intend that the crime be committed or be aware

[961] Indictment, paras 36-37, 44-45, 48-53.
[962] *Tadić* Appeal Judgement, para. 188; *Nahimana et al.* Appeal Judgement, para. 478; *Seromba* Appeal Judgement, para. 161; *Kalimanzira* Appeal Judgement, paras 218-219.
[963] For planning, see *Kordić and Čerkez* Appeal Judgement, para. 26. For instigating, see *Kordić and Čerkez* Appeal Judgement, para. 27. For ordering, see *Kamuhanda* Appeal Judgement, para. 75. For aiding and abetting, see *Simić et al.* Appeal Judgement, para. 85.
[964] For planning, see *Kordić and Čerkez* Appeal Judgement, para. 26; *Nahimana et al.* Appeal Judgement, para. 479; *Milošević* Appeal Judgement, para. 268. For instigating, see *Kordić and Čerkez* Appeal Judgement, para. 27; *Nahimana et al.* Appeal Judgement, paras 480, 660. For ordering, see *Kayishema and Ruzindana* Appeal Judgement, para. 186; *Kamuhanda* Appeal Judgement, para. 75. For aiding and abetting, see *Tadić* Appeal Judgement, para. 229; *Čelebići* Appeal Judgement, para. 352; *Vasiljević* Appeal Judgement, para. 102; *Blaškić* Appeal Judgement, paras 45-46, 48; *Kvočka et al.* Appeal Judgement, para. 89; *Simić et al.* Appeal Judgement, para. 85; *Blagojević and Jokić* Appeal Judgement, para. 127; *Nahimana et al.* Appeal Judgement, para. 482; *Orić* Appeal Judgement, para. 43; *Mrkšić and Šljivančanin* Appeal Judgement, paras 49, 81, 156; *Kalimanzira* Appeal Judgement, paras 74, 86.
[965] *Blaškić* Appeal Judgement, para. 663; *Galić* Appeal Judgement, para. 175; *Brđanin* Appeal Judgement, para. 274; *Orić* Appeal Judgement, paras 41, 43; *Mrkšić and Šljivančanin* Appeal Judgement, paras 49, 134, 156, 200.
[966] *Kordić and Čerkez* Appeal Judgement, para. 26; *Nahimana et al.* Appeal Judgement, para. 479; *Milošević* Appeal Judgement, para. 268.
[967] *Kordić and Čerkez* Appeal Judgement, paras 29, 31; *Nahimana et al.* Appeal Judgement, para. 479; *Milošević* Appeal Judgement, para. 268.
[968] *Kordić and Čerkez* Appeal Judgement, para. 27: *Nahimana et al.* Appeal Judgement, para. 480.



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of the substantial likelihood that the crime would be committed as a consequence of his or her conduct.[969]

1959. *Ordering*. Liability may be incurred by ordering the principal perpetrator to commit a crime or to engage in conduct that results in the commission of a crime.[970] The person giving the order must, at the time it is given, be in a position of formal or informal authority over the person who commits the crime.[971] The person giving the order must intend that the crime be committed or be aware of the substantial likelihood that the crime would be committed in the execution of the order.[972]

1960. *Aiding and abetting*. Liability may be incurred by assisting, encouraging or lending moral support to the commission of a crime.[973] Aiding and abetting by omission requires that the accused had the means to fulfil his or her duty to act.[974] Aiding and abetting may occur before, during, or after the commission of the principal crime.[975] The aider and abettor must have knowledge that his or her acts or omissions assist in the commission of the crime of the principal perpetrator.[976] The aider and abettor must also be aware of the principal perpetrator's criminal acts, although not their legal characterization, and his or her criminal state of mind.[977] This includes the specific

[969] *Kordić and Čerkez* Appeal Judgement, paras 29, 32; *Nahimana et al.* Appeal Judgement, para. 480; *Nchamihigo* Appeal Judgement, para. 61.
[970] *Kordić and Čerkez* Appeal Judgement, para. 28; *Galić* Appeal Judgement, para. 176; *Nahimana et al.* Appeal Judgement, para. 481.
[971] *Kordić and Čerkez* Appeal Judgement, para. 28; *Semanza* Appeal Judgement, para. 361; *Galić* Appeal Judgement, para. 176; *Nahimana et al.* Appeal Judgement, para. 481; *Milošević* Appeal Judgement, para. 290; *Boškoski and Tarčulovksi* Appeal Judgement, paras 160, 164; *Kalimanzira* Appeal Judgement, para. 213.
[972] *Blaškić* Appeal Judgement, para. 42; *Kordić and Čerkez* Appeal Judgement, paras 29-30; *Nahimana et al.* Appeal Judgement, para. 481.
[973] *Tadić* Appeal Judgement, para. 229; *Čelebići* Appeal Judgement, para. 352; *Vasiljević* Appeal Judgement, para. 102; *Blaškić* Appeal Judgement, paras 45-46, 48; *Kvočka et al.* Appeal Judgement, para. 89; *Simić et al.* Appeal Judgement, para. 85; *Blagojević and Jokić* Appeal Judgement, para. 127; *Nahimana et al.* Appeal Judgement, para. 482; *Orić* Appeal Judgement, para. 43; *Mrkšić and Šljivančanin* Appeal Judgement, paras 49, 81, 146, 159; *Kalimanzira* Appeal Judgement, paras 74, 86.
[974] *Mrkšić and Šljivančanin* Appeal Judgement, paras 49, 82, 154.
[975] *Blaškić* Appeal Judgement, para. 48; *Simić et al.* Appeal Judgement, para. 85; *Blagojević and Jokić* Appeal Judgement, paras 127, 134; *Nahimana et al.* Appeal Judgement, para. 482; *Mrkšić and Šljivančanin* Appeal Judgement, paras 81, 200.
[976] *Vasiljević* Appeal Judgement, para. 102; *Blaškić* Appeal Judgement, paras 45-46; *Simić et al.* Appeal Judgement, para. 86; *Brđanin* Appeal Judgement, paras 484, 488; *Blagojević and Jokić* Appeal Judgement, para. 127; *Nahimana et al.* Appeal Judgement, para. 482; *Orić* Appeal Judgement, para. 43; *Mrkšić and Šljivančanin* Appeal Judgement, paras 49, 146, 159; *Haradinaj et al.* Appeal Judgement, paras 57-58; *Kalimanzira* Appeal Judgement, para. 86.
[977] *Aleksovski* Appeal Judgement, para. 162; *Simić et al.* Appeal Judgement, para. 86; *Brđanin* Appeal Judgement, paras 484, 487-488; *Nahimana et al.* Appeal Judgement, para. 482; *Orić* Appeal Judgement, para. 43; *Mrkšić and Šljivančanin* Appeal Judgement, paras 49, 146, 159; *Haradinaj et al.* Appeal Judgement, paras 57-58.



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intent of the principal perpetrator, if the crime requires such intent.[978] The aider and abettor does not, however, need to know either the precise crime that was intended or the one that was actually committed; it is sufficient that he or she be aware that one of a number of crimes will probably be committed, if one of those crimes is in fact committed.[979]

### *6.1.3 Superior responsibility*

1961. Each Count of the Indictment charges each of the Accused with superior responsibility under Article 7 (3) of the Statute.[980] Each of the Accused allegedly had effective control over his subordinates, knew or had reason to know through various means that they were about to commit or had committed crimes charged in the Indictment, and failed to take the necessary and reasonable measures to prevent the crimes or punish the perpetrators.[981]

1962. For a superior to incur criminal liability under Article 7 (3) with regard to a crime that is within the jurisdiction of the Tribunal and that was perpetrated by his or her subordinate, the following elements must be established:

(a) the existence of a superior-subordinate relationship;

(b) the superior knew or had reason to know that his or her subordinate was about to commit a crime or had done so; and

(c) the superior failed to take the necessary and reasonable measures to prevent his or her subordinate's criminal conduct or punish his or her subordinate for that conduct.[982]

1963. *Superior-subordinate relationship.* A superior may be held liable only if he or she has the material ability to prevent and punish crimes perpetrated by the subordinate

[978] *Krnojelac* Appeal Judgement, para. 52; *Krstić* Appeal Judgement, para. 140; *Simić et al.* Appeal Judgement, para. 86; *Blagojević and Jokić* Appeal Judgement, para. 127; *Kalimanzira* Appeal Judgement, para. 86.
[979] *Blaškić* Appeal Judgement, para. 50; *Simić et al.* Appeal Judgement, para. 86; *Nahimana et al.* Appeal Judgement, para. 482; *Mrkšić and Šljivančanin* Appeal Judgement, paras 49, 159; *Haradinaj et al.* Appeal Judgement, paras 57-58.
[980] Indictment, paras 46, 48-53.
[981] Indictment, paras 46-47.
[982] Statute, Art. 7 (3); *Aleksovski* Appeal Judgement, para. 72; *Blaškić* Appeal Judgement, para. 484; *Kordić and Čerkez* Appeal Judgement, paras 827, 839; *Gacumbitsi* Appeal Judgement, para. 143; *Halilović* Appeal Judgement, para. 59; *Nahimana et al.* Appeal Judgement, para. 484; *Boškoski and Tarčulovksi* Appeal Judgement, para. 230.



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("effective control").[983] The relationship of subordination can be direct or indirect,[984] within a hierarchy that is formal or informal,[985] *de jure* or *de facto*,[986] and civilian or military.[987]

1964. *Superior's knowledge*. A superior may be held liable only if general or specific information was available to him or her that was sufficiently alarming to put him or her on notice of offences committed or about to be committed by his or her subordinates and justify further inquiry by the superior.[988] A deliberate failure to conduct or conclude such an inquiry, despite having the means to do so, satisfies this standard.[989] The subordinate may be liable under any of the modes of liability set out in Article 7 (1) of the Statute.[990] The superior need not know the identities of the subordinates who perpetrate the crimes.[991]

1965. *Failure to take the necessary and reasonable measures to prevent or punish*. Necessary measures are those measures appropriate for the superior to fulfil his or her obligation to genuinely try to prevent or punish, and reasonable measures are those which reasonably fall within the material powers of the superior.[992] The duty to prevent and the duty to punish are distinct legal obligations, and a superior may be held liable for violating either duty.[993] The duty to prevent attaches to a superior from the moment

[983] *Aleksovski* Appeal Judgement, para. 76; *Čelebići* Appeal Judgement, paras 191-192, 196-198, 256, 266, 303; *Kayishema and Ruzindana* Appeal Judgement, para. 294; *Bagilishema* Appeal Judgement, paras 50, 52, 55, 61; *Blaškić* Appeal Judgement, paras 375, 484; *Kajelijeli* Appeal Judgement, paras 86-87; *Halilović* Appeal Judgement, paras 59, 85, 210; *Nahimana et al.* Appeal Judgement, paras 484, 605, 625; *Hadžihasanović and Kubura* Appeal Judgement, paras 20-21; *Orić* Appeal Judgement, paras 20, 91-92.
[984] *Čelebići* Appeal Judgement, paras 252, 303; *Halilović* Appeal Judgement, para. 59; *Orić* Appeal Judgement, para. 20.
[985] *Čelebići* Appeal Judgement, para. 197; *Kayishema and Ruzindana* Appeal Judgement, para. 294; *Halilović* Appeal Judgement, paras 59, 210.
[986] *Čelebići* Appeal Judgement, paras 192-193, 195; *Kayishema and Ruzindana* Appeal Judgement, para. 294; *Bagilishema* Appeal Judgement, paras 50, 56, 61; *Kajelijeli* Appeal Judgement, para. 85; *Gacumbitsi* Appeal Judgement, para. 143; *Nahimana et al*. Appeal Judgement, paras 484, 605; *Hadžihasanović and Kubura* Appeal Judgement, para. 20.
[987] *Aleksovski* Appeal Judgement, para. 76; *Čelebići* Appeal Judgement, paras 195-196; *Bagilishema* Appeal Judgement, paras 50-51; *Kajelijeli* Appeal Judgement, paras 85-86; *Nahimana et al*. Appeal Judgement, para. 605.
[988] *Čelebići* Appeal Judgement, paras 238-239, 241; *Bagilishema* Appeal Judgement, paras 28, 42; *Krnojelac* Appeal Judgement, paras 59, 155; *Blaškić* Appeal Judgement, paras 62, 64; *Nahimana et al.* Appeal Judgement, para. 791; *Hadžihasanović and Kubura* Appeal Judgement, paras 27-31; *Strugar* Appeal Judgement, paras 297-301, 304.
[989] *Čelebići* Appeal Judgement, paras 226, 232; *Blaškić* Appeal Judgement, para. 406; *Hadžihasanović and Kubura* Appeal Judgement, para. 28; *Strugar* Appeal Judgement, para. 298.
[990] *Blagojević and Jokić* Appeal Judgement, paras 280-282; *Nahimana et al.* Appeal Judgement, paras 485-486; *Orić* Appeal Judgement, para. 21.
[991] *Blagojević and Jokić* Appeal Judgement, para. 287.
[992] *Halilović* Appeal Judgement, para. 63; *Orić* Appeal Judgement, para. 177.
[993] *Hadžihasanović and Kubura* Appeal Judgement, para. 259.



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he or she knows or has reason to know that a crime is about to be committed, while the duty to punish only arises after the commission of a crime.[994] The duty to punish includes, at a minimum, the obligation to investigate possible crimes or have the matter investigated, and if the superior has no power to sanction, to report them to the competent authorities.[995]

[994] *Blaškić* Appeal Judgement, para. 83; *Hadžihasanović and Kubura* Appeal Judgement, para. 260.
[995] *Halilović* Appeal Judgement, para. 182; *Hadžihasanović and Kubura* Appeal Judgement, para. 154; *Boškoski and Tarčulovksi* Appeal Judgement, paras 230-234.



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## 6.2 The alleged objective and membership of a joint criminal enterprise

### *6.2.1 Overview of the charges*

1966. According to the Indictment, from at least July to 30 September 1995, the three Accused participated in a joint criminal enterprise, the common purpose of which was the permanent removal of the Serb population from the Krajina region by force, fear or threat of force, persecution, forced displacement, transfer and deportation, appropriation and destruction of property or other means.[996] The crimes charged in Counts 1 through 5 were intended and within the purpose of the joint criminal enterprise and were committed in the course of the enterprise.[997] In the alternative, any such crime which was not within the purpose, was the natural and foreseeable consequence of the execution of the joint criminal enterprise.[998] In addition, the crimes of murder, inhumane acts, and cruel treatment were natural and foreseeable consequences of the execution.[999] The joint criminal enterprise was in the process of being conceived, planned, and prepared by at least July 1995 and was fully implemented in August 1995 and thereafter.[1000]

1967. According to the Indictment, the participants in the joint criminal enterprise included, besides the Accused, Franjo Tuđman, Gojko Šušak, Janko Bobetko, and Zvonimir Červenko.[1001] The members of the joint criminal enterprise used or cooperated with others, including those under their command and effective control, to facilitate or carry out the actus reus of crimes against the Serbian civilian population and civilian property.[1002] Those who were used or cooperated included:

> Various officers, officials and members of the Croatian government and political structures, at all levels (including those in municipal governments and local organizations); various leaders and members of the HDZ; various officers and members of the HV, Special Police, civilian police, military police, and other Republic of Croatia security and/or intelligence services; and other persons, both known and unknown.[1003]

[996] Indictment, para. 12.
[997] Indictment, paras 12, 39.
[998] Indictment, para. 42.
[999] Indictment, paras 12, 42.
[1000] Indictment, para. 14.
[1001] Indictment, para. 15.
[1002] Indictment, para. 16.
[1003] Indictment, para. 16.



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1968. In order to assess whether there was a joint criminal enterprise with the common purpose to permanently remove the Serb population from the Krajina region by force or threat of force and, if so, who were the participants of this enterprise, the Trial Chamber considered all the evidence before it. In this chapter, the Trial Chamber will first review the evidence with regard to the Brioni meeting and the preparation for Operation Storm. It will then review the evidence on the policy of the Croatian political leadership with regard to the Serb minority in Croatia and with regard to the issue of return of refugees and internally displaced persons. It will further review the evidence on the property laws which came into force subsequent to Operation Storm. The Trial Chamber will also review the response of the Croatian civil and military justice system to crimes committed during August and September 1995. In this respect, the Trial Chamber will in particular (and in a separate chapter) deal with the Grubori incident.

1969. Finally, the Trial Chamber considered the body of evidence on the crimes committed in the Indictment municipalities during the Indictment period. This evidence has been reviewed in other chapters in the Judgement and the Trial Chamber here considered what, if anything, could be inferred from this evidence with regard to the alleged objective of the joint criminal enterprise.

### *6.2.2 The Brioni meeting on 31 July 1995 and the preparation for Operation Storm*

1970. The Croatian political and military leadership's final planning of, and decision to launch Operation Storm took place between the end of July and 4 August 1995. One central element in this respect was the Brioni meeting on 31 July 1995, when Franjo Tuđman consulted high-ranking military officials on whether the operation should be launched. According to the Prosecution, it was also during this meeting that the plan "to permanently and forcibly remove the Krajina Serbs crystallised".[1004] Because of the central role the Brioni meeting plays in the Prosecution's case, the minutes of this meeting will be reviewed in detail.[1005]

1971. The high-ranking military officials who met with Franjo Tuđman on that day included Gojko Šušak, Zvonimir Červenko, Ante Gotovina, Mladen Markač, Davor

[1004] Prosecution Final Brief, para. 4.
[1005] During the meeting, the participants were occasionally referring to maps. Without access to those maps, the Trial Chamber did not always manage to deduce the exact meaning of statements and



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Domazet, and Mirko Norac.[1006] The purpose of the meeting, according to Tuđman, was to assess the current situation and hear the views of the military commanders before deciding on the next steps to be taken in the days to come. Tuđman stated that the original political justification for future military activities was to lift the blockade of Bihać but that the UN and the Serbs had deprived Croatia of this reason since the Serbs were in the process of withdrawing their forces and allowing UNCRO to deploy on the borders. Tuđman nevertheless proposed that Croatia take advantage of the favourable political situation in the country, the demoralization in the Serbian ranks, and the sympathy Croatia enjoyed from the international community, in order to proceed with military operations. Moreover, he considered that if the military commanders carried out the military operation "professionally", Croatia would not sustain any political damage but rather score political points, although Croatia "would now have to find some kind of pretext for [its] actions" since "every military operation must have its political justification".[1007] Tuđman indicated that Croatia had to inflict total defeat upon the enemy in the south and north and "inflict such blows that the Serbs will [for] all practical purposes disappear, that is to say, the areas we do not take at once must capitulate within a few days".[1008] According to him, the main task was now "to inflict such powerful blows in several directions that the Serbian forces will no longer be able to recover, but will have to capitulate". Tuđman believed that the FRY would not become directly involved.[1009]

1972. Tuđman then discussed a reply which he had sent to Akashi, which had the form of an ultimatum.[1010] Tuđman invited the meeting to consider the reactions to this reply, as indicated by news reports, as well as the international situation.[1011] Tuđman also recapitulated a discussion involving Stoltenberg, Šarinić, and himself, according to which a Croatian delegation lead by Šarinić would meet that Thursday with a Serbian delegation from Knin. Tuđman had told Šarinić that they were in favour of negotiations, provided that the conditions set out in the reply to Akashi were accepted, but that Šarinić would not head the delegation if the meeting was held. Tuđman stated that

comments made at the meeting. The Trial Chamber has taken this into account when reviewing and interpreting the minutes.

[1006] P461 (Minutes of a meeting with Franjo Tuđman and military officials, 31 July 1995), p. 1; D1453 (Cover page of minutes of a meeting with Franjo Tuđman and military officials on 31 July 1995).

[1007] P461 (Minutes of a meeting with Franjo Tuđman and military officials, 31 July 1995), p. 1.

[1008] P461 (Minutes of a meeting with Franjo Tuđman and military officials, 31 July 1995), pp. 1-2.

[1009] P461 (Minutes of a meeting with Franjo Tuđman and military officials, 31 July 1995), p. 2.

[1010] P461 (Minutes of a meeting with Franjo Tuđman and military officials, 31 July 1995), p. 2.



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Croatia would accept the talks "as a mask", but that meanwhile they should discuss whether, either the following day or in the next few days, they should undertake a military operation to liberate the area from Banija to Kordun to Lika and from Dalmatia to Knin. They should also discuss how to carry it out in three, four or eight days at most, leaving only some minor enclaves which would have to surrender. As a final point, before asking the other participants in the meeting to express their views, and give the floor to Domazet, Tuđman underlined that everybody would bear responsibility for the decisions taken on that day, stressing the importance of cooperation in order to successfully liberate the areas within a short time, and asking the participants to consider deploying "these forces from Grahovo in this direction for offensive action".[1012]

1973. Domazet described the information Croatia had about the Serb enemy forces and concluded that the situation at the time was favourable for carrying out operations to liberate occupied Banovina, Lika, and Kordun and assessed that there was a realistic chance of executing this within the planned time limit.[1013] He explained that breaking through Grahovo and cutting through the enemy lines had resolved one of the four key points. According to Domazet, three key points remained at the operative and strategic level in order to surround the enemy and his entire operational structure.[1014]

1974. Tuđman proceeded to discuss the risk that the FRY would militarily intervene on Croatian territory.[1015] Tuđman then considered that the plan as explained by Domazet, consisting of closing off the three remaining exits available to the Serbs, did not provide the latter with any way out thus forcing them to fight, which would result in a greater engagement of and greater losses for Croatia. According to Tuđman, the Serbs were absolutely demoralized and just as they had started moving from Grahovo and Glamoč when Croatia put pressure on them, "now they are already partly moving out of Knin". Therefore, continued Tuđman, the possibility of leaving them a way out somewhere to pull out their forces had to be considered. In response, Domazet stated that there would be two ways out: Srb in the Lika area and Dvor na Uni, and that the Croatian forces would advance gradually and allow the Serbs to leave. Červenko stated that all the preparations to proceed with their plan had been undertaken, and that if the political

[1011] P461 (Minutes of a meeting with Franjo Tuđman and military officials, 31 July 1995), pp. 12-13.
[1012] P461 (Minutes of a meeting with Franjo Tuđman and military officials, 31 July 1995), p. 2.
[1013] P461 (Minutes of a meeting with Franjo Tuđman and military officials, 31 July 1995), pp. 3-5
[1014] P461 (Minutes of a meeting with Franjo Tuđman and military officials, 31 July 1995), p. 3.



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circumstances were not ripe to adopt a decision "to go all out", he suggested to start in two or three days instead than on the following day, and to at least undertake the first strategic stage of the plan which, as Domazet specified, consisted of seizing Ljubovo, placing Udbina under control, as well as an attack by the Split MD and MUP's forces from the slopes of Mount Velebit to Gračac. He added that this would create the conditions to emerge at Otrić in the second stage of the operation.[1016] The first stage would not last more than two or three days, and would include a breakthrough to the north and south of the Plitvice lakes, in order to remove the danger of an attack against Zagreb, Karlovac, and Sisak.[1017] This way the Krajina would be cut in half, all the vital facilities would be under control and the conditions for the second stage, which was expected to last as long as the first one, would be in place.[1018]

1975. Tuđman considered that a general offensive in the entire area would cause an increase in the level of panic in Knin, and found it necessary that certain forces be directly engaged in the direction of Knin. He then exhorted the meeting to remember how many Croatian villages and towns had been destroyed, and recalled that that was still not the situation in Knin. He concluded that a counterattack by the Serbs from Knin would provide the Croats with a very good justification for the Croatian operations, and accordingly Croatia would "have the pretext to strike, if we can with artillery […] for complete demoralisation". In response, Gotovina told Tuđman that they completely controlled Knin and that HV hardware was positioned 20 kilometres from the centre of town, and if there was an order to strike it, it could be destroyed in a few hours with armoured forces and medium and long range missile systems. He added that 400 men from the 3rd Battalion of the 126th regiment, who were supposed according to the plan to head towards Knin, were from the area and knew it well, had reasons to fight there, and at that point in time "it was difficult to keep them on a leash". Moreover, considering the infantrymen of the 1st Croatian brigade, as well as MUP units, Gotovina estimated a force of about 1.000 assault-trained infantrymen which could take Knin without any problem.[1019] Tuđman stated that the successes in Western Slavonia and in Bosnia-Herzegovina had brought about a favourable situation, with support from the people and the international community, the goodwill of the army, and the

[1015] P461 (Minutes of a meeting with Franjo Tuđman and military officials, 31 July 1995), p. 6.
[1016] P461 (Minutes of a meeting with Franjo Tuđman and military officials, 31 July 1995), p. 7.
[1017] P461 (Minutes of a meeting with Franjo Tuđman and military officials, 31 July 1995), pp. 7-8.
[1018] P461 (Minutes of a meeting with Franjo Tuđman and military officials, 31 July 1995), p. 8.
[1019] P461 (Minutes of a meeting with Franjo Tuđman and military officials, 31 July 1995), p. 10.



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demoralization of the enemy.[1020] He therefore underlined that they should focus on entering Knin as soon as possible without, however, risking to suffer losses.[1021] Červenko, however, questioned whether Gotovina would be able to achieve what he planned with the available forces, but Gotovina guaranteed that he could reach Muškovica with the forces he had at the time.[1022]

1976. During the meeting, Tuđman requested information about enemy forces in Benkovac, and Gotovina replied that, according to intelligence sources, the bulk of the enemy forces from Benkovac were now in the area of Grahovo and Glamoč, shattered and with a low morale. He therefore considered their return to Benkovac and an offensive to be unlikely. He concluded that the HV had sufficient forces to defend the Benkovac area, and that a swift Croatian offensive would certainly compel enemy forces capable of a counterattack to withdraw to the north. Tuđman accepted that HV forces could go north, but insisted that some smaller units entered Benkovac and Gotovina agreed, specifying that these would be local units.[1023]

1977. Tuđman then enquired whether there were proposals on when to undertake the operation, and stated that further details, such as the points to take and the axes to follow, still needed to be planned. He stressed that it was important to leave a way out for the civilians, because the army would follow them, and "when the columns set out, they will have a psychological impact on each other". Gotovina responded:

> A large number of civilians are already evacuating Knin and heading towards Banja Luka and Belgrade. That means that if we continue this pressure, probably for some time to come, there won't be so many civilians just those who have to stay, who have no possibility of leaving.

Tuđman then asked whether an attack on Knin would be possible without hitting the UNCRO camp whereupon Gotovina reassured him that all their weapons were directly guided, and that they could attack Knin very precisely without targeting the barracks where UNCRO was located. Domazet further clarified that the barracks were in the southern part of Knin, while enemy forces were in the north, which meant Croatian forces could fire with great precision without hitting them.[1024]

[1020] P461 (Minutes of a meeting with Franjo Tuđman and military officials, 31 July 1995), pp. 10-11.
[1021] P461 (Minutes of a meeting with Franjo Tuđman and military officials, 31 July 1995), p. 11.
[1022] P461 (Minutes of a meeting with Franjo Tuđman and military officials, 31 July 1995), pp. 11-12.
[1023] P461 (Minutes of a meeting with Franjo Tuđman and military officials, 31 July 1995), p. 14.
[1024] P461 (Minutes of a meeting with Franjo Tuđman and military officials, 31 July 1995), p. 15.



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1978. Tuđman concluded that further preparation would be needed and asked how much time that would take.[1025] Červenko replied that it would take no longer than two days. This led to discussions between the meeting's participants, including Gotovina and Norac, concerning the best use of the 5th Corps of the army of Bosnia-Herzegovina.[1026] Norac proposed to lead one of his units towards Lapac from Ljubovo, via Debelo Brdo, in order to close off that direction, while the 5th Corps would link up with forces of the Split MD and close off another part. However, this course of action would require blocking off Korenica. Miroslav Tuđman commented on Norac's proposal that if that action was completed in 48 hours, the Serbs would not have time to pull out. At this point, Domazet recapped the planned operations and stated that only the final preparations remained, which would take two or three days. Tuđman then told Markač, who was to advance towards Gračac and block it off, that a state of panic could arise. Thus, Markač was to act as quickly as possible and once inside the town he should report it immediately, because the psychological effect resulting from the fall of the town would be greater than the one obtained by shelling it for two days.[1027]

1979. Tuđman stressed that regardless of the demoralisation in the enemy's ranks, Croatia should not commit mistakes and suffer unnecessary losses. He mentioned that before the start of the operation they needed a provocation from the enemy as a pretext.[1028] Červenko suggested that Markač could do that, and Markač proposed to accuse the Serbs of having launched a sabotage attack - of wanting to head towards Maslenica and to go over Mount Velebit to the road from Karlobag to Starigrad, which they wanted to cut off - and this would be the reason Croatia had to intervene.[1029] Domazet instead proposed to cause an explosion in the Udbina airport and blame a Serbian air strike. Zagorec recalled the need to open up a pocket to allow the Serbs to flee. He suggested Dvor na Uni, because the Serbs would not go towards Knin or Kostajnica. Červenko then enquired what to do if the Serbs began shelling Osijek, to which Tuđman replied that Croatia should not respond to provocation and provide the FRY with a pretext to enter the war. He further added that Croatia would not be able to advance simultaneously on eastern Slavonia and Baranja, and to do so could result in loss of the international support. Shelling Osijek would compromise the Serbs before

[1025] P461 (Minutes of a meeting with Franjo Tuđman and military officials, 31 July 1995), p. 15.
[1026] P461 (Minutes of a meeting with Franjo Tuđman and military officials, 31 July 1995), p. 16.
[1027] P461 (Minutes of a meeting with Franjo Tuđman and military officials, 31 July 1995), p. 18.
[1028] P461 (Minutes of a meeting with Franjo Tuđman and military officials, 31 July 1995), p. 19.
[1029] P461 (Minutes of a meeting with Franjo Tuđman and military officials, 31 July 1995), pp. 19-20.



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the international community and, in addition, he considered that, aside from some village, Croatia would have no targets to retaliate on, which was confirmed by Červenko.[1030] Gotovina mentioned Beli Manastir as a possible target. Tuđman then considered that the decision to proceed with the planned operation would have its political and economic costs but that the adoption and implementation of the decisions discussed at the meeting were of immense historical significance.[1031]

1980. The discussion then shifted to the resources available for the planned operations and Tuđman urged the commanders to start saving ammunition by using smaller units, carrying out sabotage operation, and using helicopter assaults.[1032] He also stated that, had they had enough ammunition, he too would have been in favour of destroying everything before advancing. Gotovina added, referring to the use of artillery ammunition in the previous operation, that the enemy had heavily fortified bunkers, and had they sent the infantry forward there would have been hundreds of dead.[1033]

1981. With regard to the issue of propaganda, Tuđman stressed that they had not exploited it sufficiently and that for the next two days they should advocate their victory.[1034] He added that the number of killed enemy soldiers and the capture of three of their tanks, the 400 casualties suffered by the SVK Grahovo brigade, and the fact that an entire artillery battalion had been captured and used to equip the 3rd HVO Brigade, should be announced. Tuđman also requested that Croatian military achievements be constantly repeated on TV and radio, and to broadcast that the Serbs were attacking, that their pull out was just a manoeuvre, and that they had not abandoned the areas they had conquered in Bihać.[1035] In addition, Miroslav Tuđman proposed to broadcast via radio which routes were open to pull out.[1036] Tuđman suggested to formulate the broadcast differently, and to announce that the civilians were pulling out using certain routes whereupon the participants indicated on maps certain routes leading to Bosanski Petrovac and Drvar.[1037]

[1030] P461 (Minutes of a meeting with Franjo Tuđman and military officials, 31 July 1995), p. 20.
[1031] P461 (Minutes of a meeting with Franjo Tuđman and military officials, 31 July 1995), p. 21.
[1032] P461 (Minutes of a meeting with Franjo Tuđman and military officials, 31 July 1995), pp. 21-22.
[1033] P461 (Minutes of a meeting with Franjo Tuđman and military officials, 31 July 1995), p. 22.
[1034] P461 (Minutes of a meeting with Franjo Tuđman and military officials, 31 July 1995), p. 22.
[1035] P461 (Minutes of a meeting with Franjo Tuđman and military officials, 31 July 1995), pp. 22-23.
[1036] P461 (Minutes of a meeting with Franjo Tuđman and military officials, 31 July 1995), p. 23.
[1037] P461 (Minutes of a meeting with Franjo Tuđman and military officials, 31 July 1995), pp. 23-24.



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1982. Then Markač and Gotovina discussed tactical details and the time needed for the operation.[1038] Tuđman added that after reaching Otrić, Gotovina should proceed "to see what the situation is like in Knin, extend assistance in destroying a part and, if possible, go in".[1039] Markač informed Tuđman that by taking Ćelavac they would destroy the enemy's communication system and that would bring about total chaos for the enemy.[1040] Domazet specified in detail the various phases of the plan to take out the enemy's communication system.[1041] Tuđman then added that he would have liked to see an airborne attack on some positions which were important and where the enemy did not have a large concentration of forces. Gotovina stated that in the first 24 hours of the operation they would only use infantry, artillery attacks, and landing operations and later, they could land inside Ravni Kotari, and after having come out of Otrić they would approach the enemy from a more southerly direction. Tuđman also suggested landing on the Knin fortress to protect UNCRO.[1042] Šušak then discussed the possibility of as many as 100.000 refugees moving to Zagreb if the enemy shelled Osijek and Vinkovci. He also stated that it was necessary to give clear instructions to the commanders on the ground on how to react if UNCRO became involved, which could not be excluded, and to appoint somebody in Knin to keep relations with UNCRO.[1043] The issue of getting two brigades from the army of Bosnia-Herzegovina was also discussed.[1044]

1983. After a further discussion between Tuđman, Gotovina, and Šušak, of the tactical aspects of the future operations, Šušak suggested that, after the first day of the operation in Benkovac and Obrovac, they should drop leaflets in which they would point out the routes which could be used to pull out, and formulate them in such a manner as to double the level of confusion which would already be there.[1045] Tuđman suggested that the leaflets should report the victory of Croatia supported by the international community and the situation of general chaos. They should also mention the fact that Serbs were already withdrawing, while making an appeal to the remaining ones not to withdraw, "so in that way, to give them a road, while ostensibly guaranteeing them civil

[1038] P461 (Minutes of a meeting with Franjo Tuđman and military officials, 31 July 1995), p. 24.
[1039] P461 (Minutes of a meeting with Franjo Tuđman and military officials, 31 July 1995), pp. 24-25.
[1040] P461 (Minutes of a meeting with Franjo Tuđman and military officials, 31 July 1995), p. 25.
[1041] P461 (Minutes of a meeting with Franjo Tuđman and military officials, 31 July 1995), pp. 25-26.
[1042] P461 (Minutes of a meeting with Franjo Tuđman and military officials, 31 July 1995), p. 26.
[1043] P461 (Minutes of a meeting with Franjo Tuđman and military officials, 31 July 1995), p. 27.
[1044] P461 (Minutes of a meeting with Franjo Tuđman and military officials, 31 July 1995), pp. 27-28.
[1045] P461 (Minutes of a meeting with Franjo Tuđman and military officials, 31 July 1995), pp. 28-29.



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rights, etc.". The use of leaflets dropped directly amongst the Serbs, together with announcements on TV and radio, was agreed upon. It was then decided to re-establish a staff for propaganda.[1046] Šušak suggested that, in addition to Markač, Norac should launch a provocation as well, and proposed that two shells could be fired at Gospić or somewhere else, in an inhabited place.[1047]

1984. Tuđman then announced that on Thursday he would go to Zagreb with Šarinić and that on the same day the negotiations would be held in Geneva, and that time should be used to make preparations. Tuđman specified that he was going to Geneva on Thursday to hide their plans for the day after, and that he would only send the Assistant Foreign Minister. It was also decided that on Wednesday at 4 p.m. there would be a meeting of the commanders of "the military district" at the Main Staff to coordinate matters for the operation. Finally, Tuđman concluded the meeting by exhorting the commanders to draw up programmes for the operation and then coordinate them at the meeting scheduled the next Wednesday at the Main Staff.[1048]

1985. Various witnesses were asked to comment on different parts of the transcript of this meeting. For example, **Marko Rajčić**, the chief of artillery of the Split MD from April 1993 to June 1996,[1049] testified that he attended the Brioni meeting and disputed excerpts of the presidential transcripts of that meeting, denying that President Tuđman, Gotovina, and Miroslav Tuđman made the statements recorded on those transcripts.[1050] When interviewed by the Prosecution, Markač stated that he did attend the meeting.[1051] However, he did not recall that Červenko and Šušak suggested to Tuđman that Markač could be tasked with causing a provocation from the Serb side.[1052] Markač also did not recall discussions about the Geneva negotiations.[1053]

1986. **Mate Granić**, Deputy Prime Minister of Croatia 1991-2000 and Minister of Foreign Affairs 1993-2000,[1054] commented that the authorities of Croatia avoided unnecessary civilian casualties at all costs, which was largely achieved by opening a

[1046] P461 (Minutes of a meeting with Franjo Tuđman and military officials, 31 July 1995), p. 29.
[1047] P461 (Minutes of a meeting with Franjo Tuđman and military officials, 31 July 1995), p. 30.
[1048] P461 (Minutes of a meeting with Franjo Tuđman and military officials, 31 July 1995), p. 31-33.
[1049] D1425 (Marko Rajčić, witness statement, 13 February 2009), para. 1; Marko Rajčić, T. 16236, 16275; P2323 (Military Police official note of Rajčić interview, 11 July 2008), p. 1.
[1050] Marko Rajčić, T. 16596-16601, 16603-16605, 16608-16609, 16619.
[1051] P2530 (Suspect interview with Mladen Markač, 3-4 March 2003), p. 17.
[1052] P2530 (Suspect interview with Mladen Markač, 3-4 March 2003), pp. 17-18, 22-23, 25.
[1053] P2530 (Suspect interview with Mladen Markač, 3-4 March 2003), p. 18.
[1054] D1797 (Mate Granić, witness statement, 12 May 2009), paras 2-3, 6, 8, 13; Mate Granić, T. 24614-24615, 24621-24622.



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corridor for the evacuation of the civilian population and the SVK.[1055] On 31 July 1995, sometime between 12 and 1 p.m., the witness briefed Tuđman on the phone, during a break at the Brioni meeting, on the diplomatic circumstances and the position of the international community with regard to a possible police and military operation in the area of the RSK.[1056] Granić stated that he told Tuđman that the most important thing with regard to a military operation was to comply with the Geneva Conventions, to comply with Croatia's obligations towards UNCRO and to protect the UNCRO soldiers, to make the operation "clean", and to make it as short as possible.[1057] Tuđman told Granić that he would do his utmost to respect civilians, UNCRO soldiers, and property.[1058] Tuđman also said that he would convey Granić's message to Sušak and the soldiers.[1059] Granić testified that Croatia had received warnings from various governments about launching any military operation.[1060] According to the witness, the most important reason for launching Operation Storm was the liberation of the occupied territories of Croatia while the second reason was Bihać.[1061] The third reason was to end the war in Bosnia-Herzegovina.[1062]

1987. On 2 August 1995, a number of high-ranking military officials, including Ante Gotovina and Mladen Markač, met with the Minister of Defence, Gojko Šušak.[1063] During the meeting, the Minister stressed to the participants that the "[m]ilitary police must be more energetic in its actions and must prevent all offences". Further, the Minister instructed that the MD commanders must pass on to other commanders the prohibition "of any kind of uncontrolled conduct (torching, looting, etc.)". Further, he told those present that nothing must happen to UNPROFOR, and that they had to prevent having to take "the heroes of the Homeland War" to court.[1064]

[1055] D1797 (Mate Granić, witness statement, 12 May 2009), para. 22.
[1056] D1797 (Mate Granić, witness statement, 12 May 2009), para. 20; Mate Granić, T. 24841, 24846, 24984-24985; P2662 (Excerpt of Mate Granić: Foreign Affairs – Behind the screens of politics), p. 6.
[1057] Mate Granić, T. 24768, 24846, 24985; P2662 (Excerpt of Mate Granić: Foreign Affairs – Behind the screens of politics), p. 6.
[1058] Mate Granić, T. 24768; P2662 (Excerpt of Mate Granić: Foreign Affairs – Behind the screens of politics), p. 6.
[1059] Mate Granić, T. 24985.
[1060] Mate Granić, T. 24838.
[1061] Mate Granić, T. 24702-24703, 24840, 24842-24843, 24976; P2662 (Excerpt of Mate Granić: Foreign Affairs – Behind the screens of politics), p. 7; D1813 (Record of Croatian Government session, 7 August 1995), p. 4.
[1062] Mate Granić, T. 2484; P2662 (Excerpt of Mate Granić: Foreign Affairs – Behind the screens of politics).
[1063] D409 (Minutes of three meetings at the Ministry of Defence, 2 August 1995), p. 1.
[1064] D409 (Minutes of three meetings at the Ministry of Defence, 2 August 1995), p. 3.



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1988. On 3 August 1995, a VONS meeting was held including Franjo Tuđman, Miomir Žužul, Mate Granić, Ivan Jarnjak, Nikica Valentić, Gojko Šušak, Zvonimir Červenko, Miroslav Tuđman, Hrvoje Šarinić, and Jure Radić.[1065] At this meeting, Tuđman announced his decision to undertake military and police action to liberate the "occupied territories".[1066] There was further a general discussion about preparations for Operation Storm and in particular using the media as a propaganda tool.[1067] Žužul stated that he had informed Galbraith that Croatia would be ready to offer the same terms to the Serbs after the completion of any military action as were offered to them before the fighting began.[1068] Tuđman proposed that he call upon the Serb population to lay down their weapons and that he would announce a guarantee to vouch for the civil rights of Serbs and implement elections. Tuđman further stated that he would also inform the international community that the Serbs did not accept a peaceful solution.[1069]

1989. The Trial Chamber finds that P461 accurately reflects the discussions at the meeting at Brioni on 31 July 1995. Further, considering P461 and D1453, the Trial Chamber finds that Gotovina and Markač were among the participants at the meeting.

1990. From the minutes of the Brioni meeting it is clear that the primary focus of the meeting was on whether, how, and when a military operation against the SVK should be launched. The participants were considering the strength and positions of the enemy forces, possible reactions by the international community, the level of prepardness of the Croatian military forces, and the risk that the FRY would become directly involved in the conflict. The Trial Chamber duly considered this context when interpreting statements made by different participants during the meeting. For example, on one occasion Tuđman stated that Croatia must "inflict such blows that the Serbs will [for] all practical purposes disappear". In its Final Brief, the Prosecution appears to suggest that this refers to Serb civilians.[1070] However, the end of the sentence reads "that is to say, the areas we do not take at once must capitulate within a few days" and when Tuđman later again used the expression "blows" he referred explicitly to "the Serbian forces". When read in its context, the Trial Chamber considers that this particular statement focused mainly on the Serb military forces, rather than the Serb civilian population.

[1065] D1454 (Presidential transcript, VONS meeting, 3 August 1995).
[1066] D1454 (Presidential transcript, VONS meeting, 3 August 1995), p. 2.
[1067] D1454 (Presidential transcript, VONS meeting, 3 August 1995), pp. 10-12, 26.
[1068] D1454 (Presidential transcript, VONS meeting, 3 August 1995), p. 5.
[1069] D1454 (Presidential transcript, VONS meeting, 3 August 1995), p. 22.
[1070] Prosecution Final Brief, para. 4.



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1991. With regard to other statements made during the meeting it might be less clear whether the participants referred to Serb military forces or Serb civilians. On a number of occasions, participants referred to Serbs moving out and to providing Serbs with a way out. Since this is a matter that the participants came back to many times, and addressed in a similar manner each time, the Trial Chamber considered that all the statements have to be assessed together. Relatively early in the meeting, Tuđman was commenting on the plan described by Domazet, including the idea to close off three remaining exits available to the Serbs. Tuđman expressed some hesitation since this would force the Serbs to fight, rather than to flee, which could result in greater losses for Croatia. He added that Serbs were already moving out of Knin. Domazet then explained that the two ways out were Srb and Dvor na Uni and that the Croatian forces would advance gradually to allow the Serbs to leave. Later in the meeting, Tuđman returned to this issue and stressed that it was important to leave a way out for the civilians, because the army would follow them, and "when the columns set out, they will have a psychological impact on each other". Gotovina then added that a large number of civilians were already evacuating Knin and if Croatian forces continued to exert pressure, the only civilians left would be those with no possibility of leaving. When discussing the issue of propaganda, Miroslav Tuđman proposed to broadcast via radio which routes were open to pull out whereupon Franjo Tuđman suggested to formulate it in the way that civilians were already pulling out, using certain routes. Šušak proposed that after the first day of operation, Croatia should drop leaflets indicating which routes could be used to pull out and that they should be formulated in a way that would increase the level of confusion. Tuđman again stressed that the message should be that Serbs were already withdrawing and added that they should also make an appeal to the remaining ones not to withdraw, "so in that way, to give them a road, while ostensibly guaranteeing them civil rights, etc."

1992. As seen above, both Tuđman (in some of his statements) and Gotovina referred explicitly to Serb civilians. Tuđman further speaks about "ostensibly guaranteeing […] civil rights" which the Trial Chamber finds to be a reference to Serb civilians, rather than Serb military forces. The Trial Chamber considered that, because of the language used when this matter was discussed by the participants at the meeting, it did refer, if not exclusively then primarily to Serb civilians. In conclusion, the Trial Chamber finds



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that the participants, including Gotovina, were discussing how to provide the Serb civilians in Knin and elsewhere a way out during the military attack.

1993. Granić commented that by opening a corridor for the evacuation of the civilian population and the SVK, the authorities of Croatia aimed at avoiding unnecessary civilian casualties at all costs. This raises the question of whether the participants merely discussed a way to ensure that the civilians would get out of harm's way during the hostilities. The Trial Chamber has considered the minutes of the meeting in this respect and whether this would constitute a reasonable interpretation. In general, the participants made no reference to how the military operation should be conducted as to avoid or minimize the impact on the civilian population. Rather, after recalling how many Croatian villages and towns had been destroyed, Tuđman concluded that a counterattack by the Serbs from Knin would provide a pretext for Croatia to use artillery for complete demoralization. Gotovina responded that if there was an order to strike it, Knin could be destroyed in a few hours. He also reassured Tuđman that they could attack Knin very precisely without targeting the UNCRO barracks. Later in the meeting, Tuđman also made a reference to destroying a part of Knin. The Trial Chamber further considered that when Tuđman stressed that a way out should be left for civilians, Gotovina stated that if Croatian forces only continued to exert pressure, the only civilians left would be those who could not leave. The above statements do not lend support to an interpretation that the discussions at the meeting were about the protection of civilians.

1994. Finally, the Trial Chamber considered Tuđman's statement about "ostensibly guaranteeing […] civil rights" to the Serbs while at the same time showing them a way out. With regard to this particular statement, the Trial Chamber recalls that there was a dispute between the parties about the translation and the contextual interpretation of the Croatian word *tobože*.[1071] In order to resolve the dispute, the Trial Chamber sought the assistance of the CLSS which translated *tobože* as "ostensibly".[1072] The word refers to "guaranteeing" but the Trial Chamber considered that even if it referred to "civil rights" that would not fundamentally alter the meaning of the statement. Tuđman contrasted two concepts that are not, or at least not fully, reconcilable, namely showing Serbs the

[1071] Defendant Ante Gotovina's Submission Regarding P461 Brioni Transcript, 1 April 2009.
[1072] The Gotovina Defence also tendered into evidence exhibit D2169, a linguistic analysis of the use of the word *tobože* in Croatian political speeches, with a particular focus on the use of this word by Tuđman.



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way out while guaranteeing them civil rights (which would require the Serbs to stay). The Trial Chamber therefore considered that the statement was an expression of the true intent to show Serbs out but at the same time give them the impression that they could stay. This interpretation is also consistent with the general discussion at the Brioni meeting with regard to this matter.

1995. Considering the above, the Trial Chamber finds that the references at the meeting to civilians being shown a way out was not about the protection of civilians but about civilians being forced out.

1996. In chapter 6.2.7, the Trial Chamber will further consider, together with the evidence reviewed in chapters 6.2.3-6.2.6, what inferences to draw from the minutes of the Brioni meeting with regard to the alleged joint criminal enterprise.

### *6.2.3 The policy of the Croatian political leadership with regard to the Serb minority and return of refugees and internally displaced persons*

1997. The Trial Chamber considered the evidence it has received on the policies of the Croatian political leadership prior to, during, and after Operation Storm, relating to the Krajina Serbs and the Serb minority in Croatia in general. It further considered evidence specifically related to the return of both Croats and Serbs. Evidence with regard to property laws, which the Trial Chamber also consider relevant in this respect, is reviewed separately in chapter 6.2.4.

1998. A number of witnesses gave evidence on how they perceived the Croatian leadership's policy with regard to the Serb minority in Croatia. One of them was **Peter Galbraith**, the US ambassador to Croatia 1993-1998.[1073] He testified that he had very frequent contacts with Franjo Tuđman and the Croatian leadership and that, during the war years, he met with them several times a week and sometimes several times a day.[1074] Galbraith met with Minister of Defence, Gojko Šušak, and Minister of Foreign Affairs, Mate Granić, four to five times a week and sometimes more.[1075] Galbraith also had a lot of contact with Hrvoje Sarinić, Tuđman's chief of staff.[1076] According to

D2169 (Ironic Denial: *tobože* in Croatian political discourse, Mirjana N. Dedaić, in Journal of Pragmatics 37(2005) 667-683).
[1073] P444 (Peter Galbraith, witness statement, 13 April 2007), p. 1, paras 1, 3; Peter Galbraith, T. 4901.
[1074] P444 (Peter Galbraith, witness statement, 13 April 2007), para. 3; Peter Galbraith, T. 4935.
[1075] Peter Galbraith, T. 4935.
[1076] Peter Galbraith, T. 4936.



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Galbraith, irrespective of formal structures, all decisions were made by Tuđman and his key advisors which included Šušak, Granić, Miroslav Tuđman, and Žužul.[1077] He added that under the Croatian system as it existed under Tuđman, the President, not the prime minister, was in charge of national security and of the MoD.[1078]

1999. According to Galbraith, Tuđman preferred a reasonably or basically homogenous Croatia.[1079] He believed and stated that the Serbs in Croatia were too numerous and constituted a strategic threat to the state.[1080] Tuđman spoke approvingly of population transfers, and also believed that Croats should leave areas that he did not think they could hold.[1081] He considered both Muslims and Serbs as part of a different civilization than Croats.[1082] Tuđman believed in the idea of a "Greater Croatia".[1083]

2000. Tuđman informed Galbraith after the Krajina Serbs had left Croatia in August 1995 that these Serbs could not return.[1084] According to a US embassy cable dated 11 December 1995, Tuđman had told a visiting US congressman that it would be "impossible for these Serbs to return to the place where their families lived for centuries".[1085] Galbraith stated that since this was Tuđman's policy, it was also Croatia's policy.[1086] He added that senior figures in the Croatian leadership, including Šarinić, shared this view.[1087] Galbraith recalled, for example, Šarinić describing Serbs as "a cancer on the stomach of Croatia".[1088]

2001. Further, Tuđman's wish was that Croats from the diaspora might come and settle in the Krajina.[1089] According to Galbraith, Tuđman took action to ensure that Serbs did not return. This included enacting laws confiscating property with the aim of preventing

[1077] P444 (Peter Galbraith, witness statement, 13 April 2007), para. 40; P445 (Peter Galbraith, supplemental information sheet, 13 June 2008), para. 9.
[1078] Peter Galbraith, T. 5177-5178.
[1079] P444 (Peter Galbraith, witness statement, 13 April 2007), paras 31, 68; P445 (Peter Galbraith, supplemental information sheet, 13 June 2008), para. 20; Peter Galbraith, T. 4949, 4959.
[1080] P444 (Peter Galbraith, witness statement, 13 April 2007), paras 31-32, 68; Peter Galbraith, T. 4937.
[1081] P444 (Peter Galbraith, witness statement, 13 April 2007), para. 31; Peter Galbraith, T. 4937; P459 (Presidential transcript, 8 January 1992), p. 25.
[1082] P444 (Peter Galbraith, witness statement, 13 April 2007), para. 32; P453 (Presidential transcript, 16 August 1995), p. 11.
[1083] Peter Galbraith, T. 4938.
[1084] P444 (Peter Galbraith, witness statement, 13 April 2007), paras 33, 74, 81; P445 (Peter Galbraith, supplemental information sheet, 13 June 2008), para. 16; Peter Galbraith, T. 4938, 4959, 5113, 5119. See also P447 (US Embassy cable, 11 December 1995).
[1085] P447 (US Embassy cable, 11 December 1995), p. 1.
[1086] P445 (Peter Galbraith, supplemental information sheet, 13 June 2008), para. 15; Peter Galbraith, T. 5113.
[1087] Peter Galbraith, T. 4938-4939.
[1088] P444 (Peter Galbraith, witness statement, 13 April 2007), paras 65, 74.
[1089] Peter Galbraith, T. 4959, 5135.



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people from returning. Initially people were only given 30 days to return with the risk of otherwise losing their property.[1090] According to Galbraith, given the disciplined nature of the HV and the fact that the leadership was fully in command and had full power to prevent crimes, these crimes that were committed, in particular the destruction of Serb property, were either ordered, or it was a matter of policy to tolerate or encourage them.[1091] Further indications of this were the scale and time over which the crimes occurred.[1092] Galbraith knew of no specific attempts by Croatia to bring matters under control.[1093]

2002. According to a US embassy cable dated 31 August 1995, the offensive "Summer Storm" had caused a massive refugee problem.[1094] The Croatian public announcement to give security guarantees to the Serbs in the region was intended for Western propaganda purposes and the goal of Croatia was to "ethnically cleanse" the Krajina to make room for 1,000,000 Croatian refugees.[1095] According to Galbraith, in his experience this correctly reflected the thinking of Croatian officials.[1096]

2003. On 1 August 1995, Galbraith met with Tuđman in Brioni.[1097] He advised Tuđman that the United States would give neither a green light nor a red light to any military operation and warned that Croatia was on its own if it got into trouble and that there would be bad consequences if Croatia targeted UN personnel and did not protect civilians.[1098] Galbraith issued the latter warning since he knew that Tuđman saw the Serbs as a threat and wanted an ethnically homogenous Croatia and because Serbian civilians had been attacked in previous Croatian military operations, such as Medak and Flash.[1099] Galbraith testified that he had complained to Tuđman about the large number of Serbs that were forced away as a result of the Medak pocket operation.[1100] According

[1090] P444 (Peter Galbraith, witness statement, 13 April 2007), paras 34, 45, 75, 81; P445 (Peter Galbraith, supplemental information sheet, 13 June 2008), paras 12-15; Peter Galbraith, T. 5115, 5125.
[1091] P444 (Peter Galbraith, witness statement, 13 April 2007), para. 46; P445 (Peter Galbraith, supplemental information sheet, 13 June 2008), paras 14-15; Peter Galbraith, T. 4946-4949, 4960-4962, 5048-5049, 5073-5074, 5078-5079, 5083, 5119. See also P447 (US Embassy cable, 11 December 1995), p. 1.
[1092] Peter Galbraith, T. 4948, 4961.
[1093] Peter Galbraith, T. 5049, 5074, 5076-5077.
[1094] Peter Galbraith, T. 4958; P446 (US Embassy cable, 31 August 1995), p. 1.
[1095] Peter Galbraith, T. 4958; P446 (US Embassy cable, 31 August 1995), p. 1.
[1096] P444 (Peter Galbraith, witness statement, 13 April 2007), paras 64-65.
[1097] P444 (Peter Galbraith, witness statement, 13 April 2007), para. 22.
[1098] P444 (Peter Galbraith, witness statement, 13 April 2007), para. 22; Peter Galbraith, T. 4928-4929, 5033, 5037; D408 (Excerpt from meeting between Tuđman, Holbrooke, and Galbraith, 1 August 1995).
[1099] P444 (Peter Galbraith, witness statement, 13 April 2007), para. 23; Peter Galbraith, T. 4929, 5051; D408 (Excerpt from meeting between Tuđman, Holbrooke, and Galbraith, 1 August 1995).
[1100] P444 (Peter Galbraith, witness statement, 13 April 2007), para. 24.



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to the witness, Tuđman appeared to take the warning on board and indicated that Croatia would protect civilians.[1101]

2004. During a meeting on 18 August 1995 between the Croatian leadership, including Tuđman and Šušak and an American delegation, including Holbrooke, Holbrooke repeatedly urged Tuđman that the Serbs who had left the Krajina should have the right to return and, if they choose not to, to receive compensation for lost property.[1102] Tuđman responded that he "would be very content if about 10% of them returned".[1103]

2005. The Trial Chamber also considered a number of public statements, as well as statements during meetings, by Tuđman. For example, on 4 August 1995, Tuđman addressed the Croatian citizens of Serbian nationality, inviting these citizens

> which have not actively partaken in the rebellion to stay in their homes and without fear for their life or property, welcome the Croatian authorities with assurances that they will be given all civil rights and will be enabled elections for local administration according to the Croatian Constitution and Constitutional Law, with the presence of international observers.

Furthermore, Tuđman stated that "We are determined to end the sufferings and uncertainty of Croatian refugees from the occupied territories, with the guarantee of human and ethnic rights to Croatian Serbs in the constitutional order of democratic Croatia".[1104]

2006. On 5 August 1996, Tuđman spoke in Knin, addressing troops. Tuđman described the historical importance of the liberation of Knin and stated that "[w]e have returned Zvonimir's Croatian town [Knin] to the fold of its motherland, Croatia, as pure as it was in [King] Zvonimir's time."[1105]

2007. At a meeting held on 17 August 1995, Tuđman and Valentić discussed not conducting a population census because the low percentage of Serbs remaining in Croatia would be politically damaging. At this meeting, Valentić reported that Dukić had determined the number of Serbs who had left Croatia to be 500,000. Tuđman and Valentić were not prepared to accept this figure, estimating the number to be around

[1101] P444 (Peter Galbraith, witness statement, 13 April 2007), para. 22; D408 (Excerpt from meeting between Tuđman, Holbrooke, and Galbraith, 1 August 1995).
[1102] P449 (Presidential transcript, 18 August 1995), pp. 1, 3-4, 17.
[1103] P449 (Presidential transcript, 18 August 1995), p. 17.
[1104] D1809 (Speech by Franjo Tuđman, 4 August 1995), p. 2.
[1105] P474 (Speech by Tuđman in Knin, 5 August 1996), pp. 1-3.



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350,000.[1106] On 12 December 1995, Tuđman stated that the original purpose of the census was to establish how many Serbs would leave Croatia and at the time of the meeting it was already known that 98 per cent of Serbs had left. Given that the international community had already accepted this fact, Tuđman stated that the census was no longer necessary at that point in time.[1107]

2008. In a televised address on 26 August 1995, Franjo Tuđman stated:

> [F]rom biblical times, as of the Old Testament which advocated the principle of an eye for an eye, a tooth for a tooth, and its New Testament which was unsuccessful in overcoming this type of resentment amongst people against whom sufferance and evil have been afflicted, so that they never again … respond to those who committed evil with evil. No country in the world, not even the most sophisticated armies […] were able to prevent incidents from happening during the wars, and neither were we able to, although we condemn all incidents which took place and call upon the Croatian people not to commit acts of retaliation, not to destroy the homes of Serbs who left because this is now Croatian property!

Tuđman claimed that these homes would be used to house the 380,000 refugees and displaced persons. Tuđman also invited the remaining Serbs to accept Croatia as their homeland, thereby guaranteeing their human rights. He warned, however, that they must never again dream of reigning over the whole of Croatia.[1108]

2009. Also on 26 August 1995, Tuđman spoke at a public gathering in Knin.[1109] He described the liberation of the occupied territories as the creation of the foundation for an independent and sovereign Croatian state. With regard to Knin, he stated:

> Up until […] when it has been captured by Turkish Ottoman conquerors and together with them the ones who stayed till yesterday in our Croatian Knin. But today it is Croatian Knin and never again it will go back to what was before, when they spread cancer which has been destroying Croatian national being in the middle of Croatia and didn't allow Croatian people to be truly alone on it's [sic] own, that Croatia becomes capable of being independent and sovereign state.[1110]

Tuđman then described the ethnic composition of the population during different times in history and concluded: "They were gone in a few days as if they had never been here,

[1106] P2497 (Presidential transcripts, Meeting between Tuđman and Valentić, 17 August 1995), pp. 1-3.
[1107] P2498 (Excerpt of VONS meeting transcript, 12 December 1995), pp. 3-4.
[1108] D1451 (Video of Franjo Tudjman speaking in Karlovac on 26 Aug 1995 (from HTV)).
[1109] P473 (Transcript of video of speeches in Knin, 26 August 1995), p. 1.



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as I said […] They did not even have time to collect their rotten money and dirty underwear".[1111]

2010. On 30 October 1995, Franjo Tuđman held a meeting with the Steering Group at the Central Committee of the HDZ Croatian Democratic Community for the Establishment of the Committee for the Restoration of Confidence among the Serbian Population in the Republic of Croatia. At this meeting, Tuđman emphasized that he wished to guarantee the human and ethnic rights of the Serbs of Eastern Slavonia and stated that he did not want them to leave the area in the same way that they left Knin. To this end, Tuđman stated that the Serbs should inform other Serbs that the government's good will was sincere but that if the Serbs did not accept Croatian state policies they would go through another Operation Storm. Tuđman advocated a peaceful resolution which would require only those who had "bloodied their hands" to leave. For the Serbs who chose to return to Croatia, Tuđman stated that while it was not possible to allow all to return to Knin and Glina, the Serbs who had fled these areas to Eastern Slavonia should have the right to return.[1112]

2011. According to Galbraith, Mate Granić did not share Tuđman's view of an ethnically homogenous Croatia.[1113] Granić had also told Galbraith that he could not defend Croatia's conduct after Operation Storm since he disapproved of it.[1114] Galbraith stated there were also others in the Croatian Government who did not like what was going on.[1115]

2012. A number of witnesses, with links to the Croatian political and military leadership, did not share Galbraith's assessment of the policies with regard to the Serb minority at the time. **Mate Granić**, Deputy Prime Minister of Croatia 1991-2000 and Minister of Foreign Affairs 1993-2000,[1116], testified that there was never any mention in the highest political circles that the purpose of the liberation operations was to expel or

[1110] P473 (Transcript of video of speeches in Knin, 26 August 1995), p. 3.
[1111] P473 (Transcript of video of speeches in Knin, 26 August 1995), pp. 3-4.
[1112] D1452 (Presidential Transcript, meeting with the Steering Group at the Central Committee of the HDZ Croatian Democratic Community for the Establishment of the Committee for the Restoration of Confidence among the Serbian Population in the Republic of Croatia, 30 October 1995), p. 2, 5, 7.
[1113] P444 (Peter Galbraith, witness statement, 13 April 2007), para. 38.
[1114] P445 (Peter Galbraith, supplemental information sheet, 13 June 2008), para. 13; Peter Galbraith, T. 5177.
[1115] Peter Galbraith, T. 5177-5178.
[1116] D1797 (Mate Granić, witness statement, 12 May 2009), paras 2-3, 6, 8, 13; Mate Granić, T. 24614-24615, 24621-24622.



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molest the Serb population of Croatia.[1117] According to Granić, there were never "any dilemmas or doubts" within the Croatian Government about the fact that the Serbs in Croatia were Croatian citizens and should enjoy the highest possible degree of protection.[1118] The only policy of the Croatian leadership was the reintegration of the occupied territory into Croatia.[1119] Tuđman's intention was also that as many Croats as possible, from Bosnia-Herzegovina and all over the world, were to resettle into areas that were virtually empty.[1120] However, according to Granić, this did not happen.[1121]

2013. Granić testified that Tuđman was always conscious of the position of the Serbian minority within Croatia and never considered that the Serbian minority should be expelled from Croatia.[1122] According to Granić, it was in Croatia's interest to have as many Croatian Serbs remain in Croatia as possible, except those who had committed war crimes and those who did not wish to recognize Croatia as a state.[1123] The Croatian leadership knew that there were plans by the "rebel Serbs" to evacuate the entire Serb population from Croatia, that many Serbs did not wish to accept Croatia as a state, and that many of them had committed crimes.[1124]

2014. Granić further stated that the strategic goal of the local Serbs in Croatia was to expel and ethnically cleanse the occupied territory of the remaining Croatian population. During the period of occupation, the local Serbs expelled or liquidated almost the entire group of ethnic Croats who lived in that territory.[1125] According to the witness, Tuđman favoured a peaceful resolution to the dissolution of Yugoslavia.[1126] Croatia attempted to reintegrate the occupied areas into its state and legal system by diplomatic and political means and launched numerous peace initiatives in this respect, although they were all rejected.[1127] In parallel, the Croatian state leadership planned an alternative military solution.[1128]

[1117] D1797 (Mate Granić, witness statement, 12 May 2009), para. 17; Mate Granić, T. 24993.
[1118] Mate Granić, T. 24630-24631, 24689, 24981-24982.
[1119] D1797 (Mate Granić, witness statement, 12 May 2009), para. 22.
[1120] Mate Granić, T. 24773, 24989.
[1121] Mate Granić, T. 24773, 24989-24990.
[1122] D1797 (Mate Granić, witness statement, 12 May 2009), para. 13.
[1123] Mate Granić, T. 24665, 24706.
[1124] D1797 (Mate Granić, witness statement, 12 May 2009), para. 22; Mate Granić, T. 24665, 24762.
[1125] D1797 (Mate Granić, witness statement, 12 May 2009), para. 16.
[1126] D1797 (Mate Granić, witness statement, 12 May 2009), para. 13.
[1127] D1797 (Mate Granić, witness statement, 12 May 2009), paras 18, 20; Mate Granić, T. 24629-24630, 24640, 24644, 24665-24666, 24691; D1813 (Records of Croatian Government session, 7 August 1995), p. 4.
[1128] D1797 (Mate Granić, witness statement, 12 May 2009), para. 20.



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2015. Granić reported at a meeting of the Croatian government of 9 September 1995, that the French foreign minister had stressed to him the day before that the Croatians should take care of private property.[1129] Granić further reported that on the day before, he had also addressed the issue of the Serb departure, stating that it would not be realistic to expect those who had participated in the fighting to return, that they cannot and will not return, and that their families do not want to return.[1130]

2016. With regard to Tuđman, Granić argued that there was a distinction between Tuđman as an historian and as a statesman. As an historian Tuđman frequently addressed the international community and presented his position concerning the relations between Croats and Serbs.[1131] As a statesman he was pragmatic and always abided by the recommendations of the international community.[1132] According to the witness, when Tuđman was asked about the return of Krajina Serbs he responded as an historian.[1133] The witness also argued that the fact that there was a conflict in the former Yugoslavia at the time Tuđman made certain statements, had to be considered.[1134] The witness further testified that Tuđman was a politician who did not understand the issue of respecting human rights which was the reason he did not consistently insist on investigation of human rights violations, although he never prevented them either.[1135] Granić opined that Gojko Šušak was the closest associate of Tuđman.[1136] Granić wrote in his book that only two other politicians enjoyed the same status; Hrvoje Šarinić and Ivić Pašalić.[1137] Gotovina was one of the closest associates of Šušak's.[1138]

2017. **Goran Dodig**, Head of the Office for Interethnic Relations of the Croatian Government from 6 April 1995 to 5 March 1998,[1139] testified that in this capacity he was responsible for relations between the Republic of Croatia and ethnic minorities. Dodig testified that his Office aimed at establishing good relations with all minorities in Croatia, especially the dominant Serb ethnic minority. According to the witness, his

[1129] P2540 (Minutes of meeting between Franjo Tuđman, Mate Granić, Miomir Žužul in the presidential palace, 9 September 1995), pp. 1, 11.
[1130] P2540 (Minutes of meeting between Franjo Tuđman, Mate Granić, Miomir Žužul in the presidential palace, 9 September 1995), pp. 1, 11.
[1131] Mate Granić, T. 24918, 24934.
[1132] Mate Granić, T. 24918.
[1133] Mate Granić, T. 24920-24921.
[1134] Mate Granić, T. 24921-24923, 34935, 24959.
[1135] Mate Granić, T. 24833; P2662 (Excerpt of Mate Granić: Foreign Affairs – Behind the screens of politics), p. 3.
[1136] Mate Granić, T. 24844-24845.
[1137] P2662 (Excerpt of Mate Granić: Foreign Affairs – Behind the screens of politics), p. 14
[1138] Mate Granić, T. 24845.



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Office, the state leadership, the President, and the Government shared a common objective to turn Croatia into a state in which all citizens, including ethnic minorities, would feel safe and satisfied.[1140] The witness testified that, given his position, he would have known of any political policy to drive the Serbs out of Croatia.[1141] Furthermore, the witness testified that he had close personal contact with the most senior state officials and never even had a hint that they harboured such an attitude towards the Serbian community in Croatia.[1142] Between November 1993 and approximately May 1994 he often spoke with President Tuđman in his office in Zagreb.[1143] Tuđman told him at least ten times that he wanted Croatia to be a country in which every citizen would be free and able to exercise all civil rights.[1144] According to the witness, Tuđman wanted to use positive discrimination to create conditions for Serbs to start loving Croatia as their homeland.[1145] Tuđman said that the Serbs were and would remain an integral part of Croatia.[1146]

2018. **Nadan Vidošević**, the Croatian Minister of Economy from 12 October 1993 to 18 September 1995,[1147] testified that if anything was happening that targeted Croatian citizens of Serb ethnicity, he and many of his colleagues would have rejected those actions and would probably have left the government.[1148] The witness testified that the Croatian Government did not have plans to disadvantage Serbs, to spread misinformation to encourage their departure, to foster violence against Serbs in order to create a climate of fear, or to tolerate or conceal crimes committed against Serbs.[1149] Vidošević claimed that he probably would have known if such a plan existed because of his position in the government.[1150]

2019. **Borislav Škegro**, Deputy Prime Minister of the Republic of Croatia for the Economy from April 1993 until 2000,[1151] stated that normalisation of life in the former occupied areas included the return of all persons, regardless of their ethnic affiliation,

[1139] D1705 (Goran Dodig, witness statement, 16 May 2009), pp. 1-3, 14; Goran Dodig, T. 22628.
[1140] D1705 (Goran Dodig, witness statement, 16 May 2009), pp. 3-4.
[1141] D1705 (Goran Dodig, witness statement, 16 May 2009), p. 14; Goran Dodig, T. 22630-22631.
[1142] D1705 (Goran Dodig, witness statement, 16 May 2009), p. 14; Goran Dodig, T. 22631, 22638.
[1143] D1705 (Goran Dodig, witness statement, 16 May 2009), p. 13; Goran Dodig, T. 22637.
[1144] D1705 (Goran Dodig, witness statement, 16 May 2009), p. 13.
[1145] D1705 (Goran Dodig, witness statement, 16 May 2009), p. 13; Goran Dodig, T. 22640.
[1146] D1705 (Goran Dodig, witness statement, 16 May 2009), p. 13; Goran Dodig, T. 22638-22640.
[1147] D1775 (Nadan Vidošević, witness statement, 4 May 2009), p. 1, paras 1-2, 12.
[1148] Nadan Vidošević, T. 23739.
[1149] D1775 (Nadan Vidošević, witness statement, 4 May 2009), para. 12; Nadan Vidošević, T. 23739.
[1150] D1775 (Nadan Vidošević, witness statement, 4 May 2009), para. 12.



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who were displaced in 1991 and had lived in hotels and refugee camps from that time onwards but also those who left their homes in 1995.[1152] He stated that the Croatian government never planned, implemented, or intended to implement a discriminatory policy that only ten per cent of the displaced Serbs could return but instead, that the program of return was aimed at both Croat and Serb returnees.[1153] Škegro stated that although the Croatian government put sufficient effort into enabling the police to control the area, there were not enough police forces to cover the suddenly free territory and the government was not prepared to face the new realities.[1154] The witness inferred from reports received at government cabinet meetings (where Šušak and Jarnjak or their deputies would be present) and from discussions during those meetings, that the HV was issuing orders to prevent looting and arson.[1155] He also testified that the Croatian Government tried to get prosecutors and courts to start working as soon as possible.[1156] According to Škegro, on 6 August 1995, Jarnjak took over the whole area pursuant to a formal government decision and sent additional forces to make sure that perpetrators of crimes were arrested and prosecuted.[1157]

2020. Škegro never felt that there was a spirit of approving the crimes that were committed.[1158] He stated that, had there been a plan to persecute Serbs, he would probably have known by virtue of his.[1159] According to Škegro, there were no groups organized to loot, and there was no plan to loot, burn or kill, but rather that one motive to commit these crimes was personal revenge.[1160]

2021. The Office of the President consisted of the Ministries of Defence, Foreign Affairs, Finance, and the Interior, the ministers of which reported to Prime Minister Valentić and President Tuđman, the latter of whom was directly addressed in case of

[1151] D1679 (Borislav Škegro, witness statement, 21 April 2009), p. 1, paras 1-2; Borislav Škegro, T. 22219.
[1152] D1679 (Borislav Škegro, witness statement, 21 April 2009), para. 8; Borislav Škegro, T. 22246-22247.
[1153] Borislav Škegro, T. 22246-22247.
[1154] D1679 (Borislav Škegro, witness statement, 21 April 2009), para. 14; Borislav Škegro, T. 22209-22210, 22220.
[1155] D1679 (Borislav Škegro, witness statement, 21 April 2009), para. 14; Borislav Škegro, T. 22253, 22257.
[1156] D1679 (Borislav Škegro, witness statement, 21 April 2009), paras 14, 16.
[1157] D1679 (Borislav Škegro, witness statement, 21 April 2009), para. 15.
[1158] Borislav Škegro, T. 22210.
[1159] D1679 (Borislav Škegro, witness statement, 21 April 2009), para. 16; Borislav Škegro, T. 22246-22247.
[1160] D1679 (Borislav Škegro, witness statement, 21 April 2009), para. 17.



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urgent matters.[1161] Škegro stated that in practice Prime Minister Valentić and President Tuđman directly coordinated those four ministries and that the distribution of work was within the purview of Valentić.[1162] Škegro stated that President Tuđman did not have the authority to overturn decisions of the government or the parliament.[1163]

2022. **Miomir Žužul**, special envoy of President Tuđman for dealings with the contact group (a diplomatic initiative to end the war in Bosnia-Herzegovina) and the international community since 27 June 1994,[1164] testified that he had never heard of any plan to expel the Krajina Serb population, but rather that the necessity to protect Serb civilians was emphasized at meetings.[1165] The witness had also not heard of any plan or agreement by the Croatian authorities to allow crimes such as burning and looting to take place after Operation Storm, in order to drive the Serb civilians out of the Krajina and keep them out.[1166] This was, according to the witness, because Tuđman was against crimes, and also because he would never risk losing US support and jeopardizing Croatia's position in the international community.[1167] Confronted with an entry in Galbraith's diary about the witness's statement on 5 September 1995, that Galbraith should forget about the return of the Krajina Serbs because this "would only cause trouble", the witness denied having said this.[1168]

2023. **Gordan Radin**, Chef de Cabinet of the President of the Republic of Croatia from 30 January 1995 to 30 January 2000,[1169] testified that the President's Cabinet was not involved in any plan to disadvantage Serbs, to spread misinformation to encourage their departure, to foster violence against Serbs in order to create a climate of fear, or to tolerate or conceal crimes committed against Serbs.[1170] He affirmed that he would have known of such a plan had one existed given his position, the location of his office next to the President's and the fact that he worked seven days a week.[1171] He also acknowledged that he was not privy to all discussions between the President and the

[1161] D1679 (Borislav Škegro, witness statement, 21 April 2009), para. 3; Borislav Škegro, T. 22195.
[1162] Borislav Škegro, T. 22195.
[1163] Borislav Škegro, T. 22247.
[1164] D1485 (Miomir Žužul, witness statement, 20 May 2009), para. 5, Miomir Žužul, T. 18276-18277.
[1165] D1485 (Miomir Žužul, witness statement, 20 May 2009), para. 23; Miomir Žužul, T. 18326, 18339, 18359, 18366.
[1166] D1485 (Miomir Žužul, witness statement, 20 May 2009), para. 25; T. Miomir Žužul, T. 18327, 18359, 18366.
[1167] D1485 (Miomir Žužul, witness statement, 20 May 2009), para. 25.
[1168] Miomir Žužul, T. 18383-18385.
[1169] D1678 (Gordan Radin, witness statement, 14 April 2009), p. 1, paras 1-2, 4, 18; Gordan Radin, T. 22155, 22168.
[1170] D1678 (Gordan Radin, witness statement, 14 April 2009), para. 18.



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officials of his Office as well as government representatives.[1172] He testified that Tuđman's political agenda was not directed against any national minority and that Tuđman invited the Serbs to remain in Croatia, but they left at the invitation of their leadership.[1173] Radin testified that he never heard Tuđman oppose any Government order to prevent crime and that the President never got involved in the decisions or documents passed by the government, though he did occasionally preside over the sessions of the government.[1174] Radin testified that the President discussed matters with his advisors, including VONS, but he as President was the chief decision maker in relation to key strategic decisions within his remit.[1175] On or about 16 August 1995, Radin learned through the media and various correspondence about arson and other "unfortunate" incidents in the Knin area.[1176] Radin testified that President Tuđman, himself and others had daily morning briefings to discuss the latest Croatian and international media developments concerning Croatia and that reports of crimes perpetrated in the Krajina irritated President Tuđman.[1177]

2024. **Vesna Škare-Ožbolt**, Assistant Chief of Staff of the Office of the President of Croatia from January 1995,[1178] testified that, Tuđman had no intention to expel the Serbs, because he knew that Croatia could not be an ethnically pure state.[1179] She added that with regard to an alleged plan to expel the Serb population, she never heard Tuđman utter such a sentence, nor was there such a policy in place.[1180] In identifying a purpose for Operation Flash, she testified that economic reasons (i.e., opening transit routes and establishing communications) constituted the sole basis.[1181] According to the witness, Tuđman was angry with regard to the conduct (i.e., burning and looting) exhibited during Operation Storm as it was completely unexpected and it blemished the overall efforts made by the Croatian government.[1182] She also stated that when an analysis of these crimes committed was undertaken it turned out that this conduct was a

[1171] D1678 (Gordan Radin, witness statement, 14 April 2009), paras 4-5, 18; Gordan Radin, T. 22149.
[1172] Gordan Radin, T. 22148.
[1173] D1678 (Gordan Radin, witness statement, 14 April 2009), para. 18; Gordan Radin, T. 22179-22180.
[1174] D1678 (Gordan Radin, witness statement, 14 April 2009), para. 18; Gordan Radin, T. 22149-22150.
[1175] Gordan Radin, T. 22154.
[1176] D1678 (Gordan Radin, witness statement, 14 April 2009), paras 14, 17-18.
[1177] Gordan Radin, T. 22147-22148.
[1178] Vesna Škare-Ožbolt, T. 18039; D1472 (Decision Appointing Škare-Ožbolt Assistant Head of the Office of the President, 30 January 1995).
[1179] D1471 (Vesna Škare-Ožbolt, witness statement, 3 October 2007), para. 7.
[1180] Vesna Škare-Ožbolt, T. 18054, 18072.
[1181] Vesna Škare-Ožbolt, T. 18055.
[1182] Vesna Škare-Ožbolt, T. 18089.



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matter of revenge which the Croatian leadership was aware of.[1183] While Škare-Ožbolt believed that Tuđman publicly condemned large scale crimes, she did not recall a specific declaration to the population that crimes must stop.[1184]

2025. **Jure Radić**, Deputy Prime Minister and the Minister for Reconstruction, and Development between 1994 and 2000,[1185] testified that he believed that as of July 1995, of the ethnic Serbs in Croatia, 60 per cent were born there, whilst the other 40 per cent had settled there from other parts of the former Yugoslavia.[1186] According to Radić, it was the opinion of President Tuđman and the Croatian Government that Serbs in Croatia had been misled and encouraged to leave by Serbian authorities.[1187] Despite several appeals by the President and the Croatian Government to the Serbs to remain, many left of their own free will.[1188] On several occasions, Radić heard Tuđman refer to those Serbs who left Croatia of their own free will as having opted out of being a Croatian citizen.[1189]

2026. According to Ivan Čermak when interviewed by the Prosecution, the purpose of Operation Storm was to liberate the parts of Croatia that had been taken by Serb paramilitary forces.[1190] He stated that he spoke two or three times with President Tuđman about what he dealt with in Knin.[1191] The first time they spoke about the actions taken to clear up the town, protect buildings, and restore normal living conditions.[1192] The second time, Tuđman asked him on the phone why the issue of the refugees in the UN compound in Knin had not been sorted out, and asked him to sort it out. Čermak answered that he was receiving different lists of people who should be handed over to justice, and that it was up to the judiciary, because those who had not committed crimes under Croatian law should be released.[1193] Čermak stated that once or twice he also called Tuđman, on his own initiative, spoke about the crimes on the

[1183] Vesna Škare-Ožbolt, T. 18213.
[1184] Vesna Škare-Ožbolt, T. 18250.
[1185] Jure Radić, T. 27127, 27215, 27378.
[1186] Jure Radić, T. 27315.
[1187] Jure Radić, T. 27312-27313.
[1188] Jure Radić, T. 27312.
[1189] Jure Radić, T. 27316.
[1190] P2526 (Suspect interview with Ivan Čermak, 17 March 1998), p. 7.
[1191] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), p. 176; P2526 (Suspect interview with Ivan Čermak, 17 March 1998), p. 19.
[1192] P2526 (Suspect interview with Ivan Čermak, 17 March 1998), p. 19.
[1193] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), p. 176; P2526 (Suspect interview with Ivan Čermak, 17 March 1998), p. 19.



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ground and asked for reinforcements of police and security forces.[1194] According to Čermak, Tuđman was sorry, responded that he knew what was going on, that they had to stop it immediately, and that they would do so.[1195] Čermak stated that Tuđman knew better than himself what was happening, as he received information from, among others, the police, SIS, and the international community.[1196] Čermak added that despite all warnings, the Croatian Government never responded.[1197]

2027. With regard to the policy on return of Croats and Serbs to the Krajina, the Trial Chamber considered in particular evidence in relation to a number of meetings with high-level Croatian political and military officials in August and September 1995.

2028. During a meeting between Tuđman and Jure Radić on 22 August 1995, Radić outlined how the return of Croats had been organized.[1198] Radić explained that it would be carried out in three phases or groups; the first one was people who could return to their homes right away and who were assisted with paint and glass; the second was people who could go to "deserted houses" near their own houses; and the third was people who did not have any possibilities for provisional accommodation in their area, such as those from the Drniš area, which was completely destroyed. With regard to the second group, Radić explained that they had encountered resistance since some people did not want to move twice: first to a temporary location and then to their own house.[1199] When Tuđman proposed that they should simply stay in the "deserted houses", Radić explained that people did not want to because they did not feel safe and were afraid that "some Serb might come tomorrow", and because they would rather go to their own houses. Radić and Tuđman agreed that people who refused to move should be taken off the refugee list.[1200] Radić estimated that out of 120,000 persons, they would be able to bring back 80,000 persons, or take them off refugee status.[1201] Tuđman stated that they should invite people to come back, pay for their trips from Argentina,

[1194] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 47, 49, 176-177, 179; P2532 (Accused interview with Ivan Čermak, 7 June 2004), pp. 14-19, 42-43, 46-47; P2355 (Nacional interview with Ivan Čermak, 29 October 1997), p. 6.
[1195] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), p. 176; P2526 (Suspect interview with Ivan Čermak, 17 March 1998), pp. 79-80; P2532 (Accused interview with Ivan Čermak, 7 June 2004), pp. 43, 46, 48.
[1196] P2532 (Accused interview with Ivan Čermak, 7 June 2004), pp. 44-45.
[1197] P2532 (Accused interview with Ivan Čermak, 7 June 2004), p. 45.
[1198] P463 (Presidential transcript, 22 August 1995), pp. 1-2.
[1199] P463 (Presidential transcript, 22 August 1995), pp. 2-3.
[1200] P463 (Presidential transcript, 22 August 1995), p. 3.
[1201] P463 (Presidential transcript, 22 August 1995), p. 4.



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Australia, etc., and give them houses and land.[1202] Tuđman continued: "That would mean a thousand people, and they would enter the Serb houses etc".[1203] When discussing the return of Croat refugees from Germany, Tuđman instructed Radić to "create a project now, say, we offer apartments, land in this and this areas etc., come back", whereupon Radić responded that they would take care of that in accordance with an instruction from the government.[1204] He added that "[a]ccording to present instruction it wont be given in possession but in use […] To use it for 10 years [and] [a]fter 10 years man [sic] would become owner".[1205]

2029. Radić explained that one of the problems was the destruction in the area: "Our men torched a lot, they are torching today, as they did yesterday. President, it's no good".[1206] Radić mentioned that he had observed the Serb village of Cviljane burning on 15 August 1995 and commented: "That is our property, it's not someone else's, what if he burned down the Serb village near Kijevo where we could accommodate our population?" Radić believed that the perpetrators were people who were not in the army, but who were wearing military uniforms.[1207] Radić considered that the main problem was the army-police relationship, because "there is nothing the police can do to the army". With regard to Knin, Tuđman stated "hadn't I sent Čermak to Knin, it would have been horrible there". Radić agreed, but added that the military authority could not run civilian matters, whereby Tuđman responded that it could not, but that it could "maintain order in these transitional periods".[1208] Radić added that the elected civilian authority in Knin, a Serb, was no good, and that Čermak had to "do everything", whereupon Tuđman proposed to replace the civilian authority: "There is no reason for a Serb being there right now. […] There's a majority of Croats there, so change that". Radić responded: "Yes sure, they wanted to put some Serb in Okučani as well, not a chance, a Croat is over there and we did Okučani nicely. A thousand families came to the Okučani area".[1209]

[1202] P463 (Presidential transcript, 22 August 1995), pp. 4, 26.
[1203] P463 (Presidential transcript, 22 August 1995), p. 4.
[1204] P463 (Presidential transcript, 22 August 1995), pp. 22-23.
[1205] P463 (Presidential transcript, 22 August 1995), pp. 23-24.
[1206] P463 (Presidential transcript, 22 August 1995), p. 4.
[1207] P463 (Presidential transcript, 22 August 1995), pp. 5, 9.
[1208] P463 (Presidential transcript, 22 August 1995), p. 5.
[1209] P463 (Presidential transcript, 22 August 1995), p. 6.



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2030. During the meeting, Radić and Tuđman also discussed a map prepared by Radić which indicated in which areas Croatia should focus on return.[1210] With regard to one area, Radić commented: "we should bring Croats back here urgently and this area should be urgently colonised with Croats and we should by no means let more that [sic] 10 per cent of Serbs be here ever again". To this Tuđman responded: "Not even 10 per cent".[1211] Radić informed Tuđman that Donji Lapac was "ethnically the cleanest municipality" in Croatia, and consisted of 99 per cent of one ethnicity. Tuđman asked "Probably none of them remained?" and Radić responded "Yes, none".[1212] Radić further commented that "[i]t was a beautiful picture to see people from Varaždin and Split entering the [sic] Knin together. On the one wall in Kupres, the message "Čedo, you will not come back" can be seen. Our future has to built on such things …". Tuđman concluded: "We have to return 1,000 people this year, until next year 200,000, 300,000 people. In that case, from the political point of view, we solved the problem".[1213]

2031. Radić testified that during this meeting, they discussed an area which covered parts of the municipalities of Vrginmost, Vojnić, Karlovac, Duga Resa, Ogulin, and Slunj, and concluded that it was of critical strategic importance.[1214] According to Radić, this was the area where Croatia was at its "thinnest", sparsely populated, and where Croatia faced the greatest danger from JNA attacks aiming to cut Croatia in two.[1215] In order to counter this threat, Radić believed it was necessary to station HV military units in the area.[1216] This would be the first and easiest step, as members of the HV could be accommodated in the empty apartments previously owned by the JNA and would bring their wives and children.[1217] In addition, it was a priority to populate this area with Croatian citizens.[1218] In general, the witness believed that the "original" population of this area was 60 per cent Croat, being circa 50,000 to 60,000 persons, and 40 per cent Serb, being circa 30,000 to 40,000 persons.[1219] Radić testified that what he discussed with President Tuđman was that while the Serbs who had left the area and would accept Croatian citizenship should return to the area, the Government should also strategically

[1210] P463 (Presidential transcript, 22 August 1995), pp. 9-37.
[1211] P463 (Presidential transcript, 22 August 1995), p. 10.
[1212] P463 (Presidential transcript, 22 August 1995), p. 12.
[1213] P463 (Presidential transcript, 22 August 1995), p. 35.
[1214] Jure Radić, T. 27181-27182, 27184, 27256; C3 (Map of SAO's as declared and as controlled by the end of 1991, marked by the witness in court, 24 February 2010).
[1215] Jure Radić, T. 27181-27182, 27185-27186, 27188, 27256, 27259, 27319.
[1216] Jure Radić, T. 27256, 27259, 27319.
[1217] Jure Radić, T. 27256-27257, 27305.
[1218] Jure Radić, T. 27258-27260.



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settle in this area ten times more Croatian citizens than Serbs. According to Radić, the reference to Croatian citizens included both ethnic Croats and ethnic Serbs who accepted Croatian citizenship. The Serbs he referred to as a minority were Serbs who fought against Croatia and did not intend to take citizenship.[1220] According to Radić, another 100,000 inhabitants could be settled in the area over a number of decades.[1221] Despite this, Radić testified that many Croat and Serb displaced persons, having settled elsewhere, did not return to this area.[1222] Radić considered it unrealistic to expect displaced Serbs who had previously lived there to return at short notice, while some Serbs, who had taken part in the aggression against Croatia and were members of the JNA or paramilitary units, could not be expected to return at all.[1223]

2032. Also during this meeting of 22 August 1995, President Tuđman and Radić discussed the towns of Kupres and Grahovo in Bosnia-Herzegovina, which were under the control of the HV and allied friendly forces of the Bosnian Croats.[1224] Due to the threat of JNA reprisals, Radić considered it of strategic importance to populate those areas of Bosnia-Herzegovina that bordered Knin municipality with Croats.[1225] With regard to his discussion with Tuđman on the Mayor of Knin at the same meeting, Radić testified that the issue was not that the mayor of Knin was of Serb ethnicity but rather that he was incompetent to deal with the difficult task of reconstruction following Operation Storm.[1226] Radić further testified that Knin required the appointment of a mayor who would be accepted by the population at that time.[1227] Radić and Tuđman mentioned the mayor's ethnicity as under the law on ethnic minorities an ethnically Serb majority city had to have an ethnically Serb mayor.[1228] Radić testified that at that time, whilst he believed that a Croat majority was present in villages surrounding Knin town and that displaced Croats would be moved into the state-owned apartments in Knin, if all of the displaced Serbs who had left Knin were to return, Knin would have to have a Serb mayor.[1229] However, at least 30 per cent of Knin town's population before Operation Storm comprised on-duty officers of the JNA who were stationed there and

[1219] Jure Radić, T. 27186-27187.
[1220] Jure Radić, T. 27186-27187, 27189-27193, 27304.
[1221] Jure Radić, T. 27189.
[1222] Jure Radić, T. 27192.
[1223] Jure Radić, T. 27259-27260, 27305.
[1224] Jure Radić, T. 27194-27195, 27264.
[1225] Jure Radić, T. 27195, 27264.
[1226] Jure Radić, T. 27169, 27306-27308.
[1227] Jure Radić, T. 27169-27170.
[1228] Jure Radić, T. 27306-27307.



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who would not accept Croatia as their state and would not return.[1230] Pašić remained the mayor of Knin until March 1996.[1231] Regarding the mayors of Okučani, Istria, in Pula municipality, and Dubrovnik Radić testified that they did not select mayors on grounds of ethnicity, but on the basis of their competence.[1232]

2033. Further, at the meeting on 22 August 1995, Radić and Tuđman discussed moving displaced Croats from Saborsko, a Croat majority village in Ogulin municipality to Plaški, a Serb majority village in the same municipality.[1233] According to Radić, as Saborsko had been completely destroyed, the plan was to temporarily move the displaced Croats from Saborsko who were staying in hotels in Dalmatia, to abandoned property in Plaški, whilst their homes were being reconstructed.[1234] Radić testified that only those housed in the many state-owned apartments could remain in Plaški, whereas the others would be moved twice: first to houses abandoned by Serbs and then into their own houses, once these had been rebuilt.[1235] The witness approximated that there was state-owned accommodation for at least 30 families in Plaški.[1236] As the houses of the small number of Croats who lived in Donji Lapac and Vojnić had been destroyed during the Serb occupation, Radić proposed to accommodate them temporarily in state-owned apartments, while their properties were reconstructed.[1237] In almost 90 per cent of the cases in Donji Lapac, the apartments were socially or state owned and those living there were tenants of apartments owned, for instance, by the JNA.[1238] The Croatian Government offered the displaced Croats from Bosnia-Herzegovina temporary accommodation in Vojnić and promised them that they would be offered other accommodation if the refugee returned.[1239]

2034. **Škare-Ožbolt** testified that the discussion between Tuđman and Radić during this meeting on the possibility of refugees returning and occupying Serb houses, was a reflection of the situation that required these empty spaces to be filled because they

[1229] Jure Radić, T. 27171-27172.
[1230] Jure Radić, T. 27173-27175.
[1231] Jure Radić, T. 27308.
[1232] Jure Radić, T. 27170, 27176.
[1233] Jure Radić, T. 27230.
[1234] Jure Radić, T. 27230-27231.
[1235] Jure Radić, T. 27230-27231, 27361.
[1236] Jure Radić, T. 27363-27364.
[1237] Jure Radić, T. 27224-27225.
[1238] Jure Radić, T. 27135, 27223.
[1239] Jure Radić, T. 27226.



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would pose a strategic danger if left vacant.[1240] In explaining Tuđman's comment that not even ten per cent of Serbs should be allowed to return to the area, she testified that he often had a different story for each of his ministers, that it was necessary to look at the context in which he made these comments, and that none of these "things" was put into practice.[1241]

2035. During a meeting between Tuđman and military officials, including Šušak and Červenko, on 23 August 1995 the participants discussed military and administrative organisation and deployment of military units.[1242] Tuđman explained to the participants that the current "essential problem" was "Croatia's demographic situation", and that "[t]he location of military commands, districts, brigades and other training institutions and so on may represent a very effective and efficient resolution of such situation as we have, that is, where it is necessary […] to strengthen national solidarity".[1243] He added "today is not so much a matter of changing the kind of population as of populating certain places, certain areas. This means if you put large commands, training institutions and so on, in certain places, dozens and hundreds of people will go there who will have to have families and so on, and immediately the situation, the life, and so on will be different". Tuđman subsequently invited Radić to address the meeting's participants.[1244] Radić identified the main problem as being "a very, very unfavourable distribution of population […] [t]his is why we have areas that are completely empty in the Croatian territory, where there are almost no Croats".[1245] Radić further identified "the sequence of demographic priorities […] that are strategically important for Croatia according to where there are no Croats, so that we might try in various ways to populate these areas".[1246] According to Radić, one of the priorities was to populate the municipalities of Donji Lapac and Knin since they were border municipalities and had low numbers of Croat inhabitants.[1247] Radić informed the participants that "the ethnically purest municipality in Croatia was Donji Lapac […] with over 99 per cent Serbs".[1248] Radić further stated that the area around Benkovac also used to have a Serb majority in many parts, but that it was not a priority since there was a good economic basis for it to be

[1240] Vesna Škare-Ožbolt, T. 18156-18159.
[1241] Vesna Škare-Ožbolt, T. 18162-18165.
[1242] P464 (Presidential transcript, 23 August 1995), pp. 1, 7-8.
[1243] P464 (Presidential transcript, 23 August 1995), pp. 2, 21.
[1244] P464 (Presidential transcript, 23 August 1995), p. 2.
[1245] P464 (Presidential transcript, 23 August 1995), p. 3.
[1246] P464 (Presidential transcript, 23 August 1995), pp. 3, 7.
[1247] P464 (Presidential transcript, 23 August 1995), pp. 5-6.



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populated quickly.[1249] At the end of the meeting, Červenko informed Tuđman that they would put together a plan for Tuđman's approval.[1250]

2036. During a Government meeting of 23 August 1995, Radić stated that following Operation Flash and Storm conditions had to be created for the return of people to the liberated areas. This included the 120,000 people who "the Serbian occupier" had expelled four years earlier. Radić added that the Croatian President and Government had called upon the Serbian population to stay, adding that many of them had been expelled by the same "aggressors" who had expelled Croats from the liberated areas. Radić reported that particular villages which had a majority Croatian population before the war were completely destroyed. Radić also distanced himself from the destruction of Serb property that had occurred during the last couple of days. The destruction was, according to Radić, not on a large scale, not carried out by members of the HV or the Croatian Police, and not in accordance with Croatian state policy or the position of the Croatian Government. Setting out the plan for return which would be accomplished in different phases, Radić described the first phase as the return of people whose houses had only suffered minor damage. According to Radić, this first phase would include the return of "about one third of these 120,000 people […] by the end of this month or the beginning of September". The second phase was the return of people, whose homes had been completely destroyed, to houses and apartments that the Croatian authorities had at their disposal in the vicinity of those homes in the liberated areas. The third phase included people whose houses had been completely destroyed and for whom there was no empty living space, and whose return therefore had to await reconstruction.[1251]

2037. During a meeting with Tuđman and other high ranking Croatian officials on 30 August 1995, Jarnjak brought up the issue of Serbs coming through Hungary and wanting to return to Croatia.[1252] Šarinić stated that these people had Yugoslav passports, and Jarnjak asked for Tuđman's permission to instruct them to get entry visas in Belgrade. Tuđman responded that he would not give them anything, and stated: "you have to give instructions to the customs that they should not let people without papers to cross border". Šarinić added: "President, let us get inspired the way it is in Western

[1248] P464 (Presidential transcript, 23 August 1995), pp. 6, 43.
[1249] P464 (Presidential transcript, 23 August 1995), pp. 6-7.
[1250] P464 (Presidential transcript, 23 August 1995), p. 84.
[1251] D1815 (Minutes from the 261st session of the Government of the Republic of Croatia, 23 August 1995), pp. 4, 9-12, 14.
[1252] P466 (Presidential transcript, 30 August 1995), pp. 1, 25.



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Slavonia. It was very positive for us, because no one came back. Let them report to the international humanitarian organisations […]".Tuđman insisted however that they should simply be told that they could not enter. Granić stated that there were 204 registered in Belgrade "[a]ccording to the agreement", whereupon Tuđman concluded: "If we let 204 persons come here, tomorrow you would have 1,204 and in ten days 12,000. Nothing for now".[1253]

2038. At a presidential meeting on 12 September 1995, Radić stated that the reconstruction effort lacked manpower, that the number of returnees was far too small for populating the liberated area, that the return needed to be accelerated through legislation or by other means, that his Ministry had sent invitations to highly skilled people, and that 12,000 people had applied for settling in the area.[1254] He further stated that his Ministry aimed at having 120,000 Croats return to the area, but that 30-35 per cent of the 123,000 houses which were in the area according to the 1991 census were completely destroyed or badly damaged, although the remaining houses could be used to attract highly-skilled people and returnees from abroad.[1255] He added that returnees who came to the area subsequently left.[1256]

2039. On 26 September 1995, Červenko and other military officials, including Gotovina, met Tuđman again with proposals for military-territorial division, the overall size of armed forces, deployment of units in the liberated areas, and for the liberation of Eastern Slavonia.[1257] One proposal was to deploy the 4th Guards Brigade in the area of Knin, Srb, and Donji Lapac, and in this connection Šušak informed Tuđman that Donji Lapac had been completely destroyed: "President, Donji Lapac as such does not exist. There is only its name on the map. Everything is destroyed. Everything".[1258] Tuđman responded that he could not imagine that "he was destroying schools and hotels" and added "[i]t is the destruction of Croatian property now. What were you doing, commanders?" Šušak responded that it was not the army that went to Donji Lapac, and Norac added that the Special Police had entered first.[1259] When discussing Gračac,

[1253] P466 (Presidential transcript, 30 August 1995), pp. 25-26.
[1254] P2590 (Presidential transcript, 12 September 1995), pp. 1, 11-13.
[1255] P2590 (Presidential transcript, 12 September 1995), pp. 11-12.
[1256] P2590 (Presidential transcript, 12 September 1995), p. 12.
[1257] P470 (Presidential transcript, 26 September 1995), pp. 1-2.
[1258] P470 (Presidential transcript, 26 September 1995), p. 53.
[1259] P470 (Presidential transcript, 26 September 1995), p. 54.



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Tuđman explained that the purpose was to bring people there, to settle there, to get married, and so on […] To change the demographic picture".[1260]

2040. At the 277th closed session of the Croatian Government on 5 October 1995, the Decree on the Return of Expelled Persons and Refugees to the Liberated Areas was discussed and issued. The decree regulated the return of expelled persons and refugees to the liberated areas of Croatia and specified the conditions for acquiring returnee status. Article 2 of the Decree defined different forms of return, depending on the level of destruction, if any, of the houses of the expelled persons or refugees.[1261] For instance, for expelled persons or refugees whose houses were undamaged, Article 2 paragraph 1 provided that they must return to their houses by 30 November 1995, or they would be deprived of their status as expelled persons or refugees.[1262] Such persons would become a returnee once they returned to their undamaged place of domicile.[1263] Article 11 of the Decree provided that Croats who were refugees from Serb occupied areas in Bosnia-Herzegovina or Serbia and Montenegro, and received temporary occupancy or use of an abandoned house or flat, or were leased a flat in a liberated area, "shall acquire the same rights as returnees starting with the day they realize the above mentioned right".[1264]

2041. When introducing the Decree, Radić stated:

> since it is in our national interest for these people to return to their homes, in our primary national interest, not only for them to go back but also to populate the vacated Croatian areas, we should define a number of incentives which would motivate people to go and live in the areas.[1265]

When discussing the assignment of temporary accommodation in the liberated areas, Radić stated, "the Decree is not given without any conditions – you have to move into

[1260] P470 (Presidential transcript, 26 September 1995), p. 56.
[1261] D214 (Minutes of the 277th closed session of the Croatian government, 5 October 1995, including Decree on the Return of Expelled Persons and Refugees to the Liberated Areas); D215 (Transcripts from the 277th closed session of the Croatian government, 5 October 1995), pp. 2-3.
[1262] D214 (Minutes of the 277th closed session of the Croatian government, 5 October 1995, including Decree on the Return of Expelled Persons and Refugees to the Liberated Areas), p. 5, Article 2 paragraph 1; D215 (Transcripts from the 277th closed session of the Croatian government, 5 October 1995), p. 3.
[1263] D214 (Minutes of the 277th closed session of the Croatian government, 5 October 1995, including Decree on the Return of Expelled Persons and Refugees to the Liberated Areas), p. 6, Article 3; D215 (Transcripts from the 277th closed session of the Croatian government, 5 October 1995), p. 4.
[1264] D214 (Minutes of the 277th closed session of the Croatian government, 5 October 1995, including Decree on the Return of Expelled Persons and Refugees to the Liberated Areas), p. 9, Article 11.
[1265] D215 (Transcripts from the 277th closed session of the Croatian government, 5 October 1995), p. 2.



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the Serb-owned house, etc., but with many, many restrictions which actually protect an expelled person, that is, a returnee who is returning to his/her house."[1266] He also stated:

> The Croats who have been expelled from […] the part of Bosnia and Herzegovina under the Serbian occupation, those expelled from Vojvodina, inner Serbia, Kosovo and other areas […] we are settling now in a sense of this Decree – Vrginmost, Vojnić, Lapac, etc., we give them all the rights that the returnees in Croatia have, therefore, that particular category, not all the refugees from Bosnia and Herzegovina, but only those which is our national interest to settle.[1267] […] Therefore, it is about the system of positive measures with which we wish to get people who have been expelled back and not only those who have been expelled, to their homes, but also to direct other people in order that Croatia be covered, in a demographic sense, with population more evenly than it has been the case so far.[1268]

Later in the meeting, Radić stated:

> The first priority of the Croatian people's survival and populating is the Croatian soft underbelly, and that is why we have agreed, mindful of all of this, to move a portion of expelled persons from Banja Luka to Glamoć despite heavy pressure, etc. but the first priority of the overall national entity is currently to accommodate/ populate where Croatia is thinnest, and until yesterday it was thinnest… in the area south of Karlovac and up to the Slovenian border, where there was just 14 km of ethnically pure Croatian territory, and that is why we've accepted and agreed, as I said, to go for populating such areas of great strategic importance, even to the detriment of the overall number of Croats in Bosnia and Herzegovina.[1269]

2042. At a presidential meeting on 25 October 1995, President Tuđman stated that the return of 3,000 Serbs who wished to return, out of a total of 300,000 that had left, did not bother him, but that the requests for return should be processed individually.[1270]

2043. At a VONS meeting on 17 December 1996, Ivica Kostović discussed the possibility of compensating Serbs for their property on Croatian territory as an alternative to their return. T. Vinković stated that compensation should be offered, and Jure Radić stated that most Serbs would accept this option, because they were

[1266] D215 (Transcripts from the 277th closed session of the Croatian government, 5 October 1995), p. 5.
[1267] D215 (Transcripts from the 277th closed session of the Croatian government, 5 October 1995), pp. 5-6.
[1268] D215 (Transcripts from the 277th closed session of the Croatian government, 5 October 1995), p. 7.
[1269] D215 (Transcripts from the 277th closed session of the Croatian government, 5 October 1995), p. 34.
[1270] P2589 (Presidential transcript, 25 October 1995), pp. 1, 12-16.



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corrupt.[1271] Ivica Kostović further stated that Croatia should offer Serbs the possibility of return, issue them papers and offer amnesties for the armed insurrection, and show that the return of Serbs would be secured, although the majority of Serbs would not return.[1272] Further, Davorin Mlakar and T. Vinković discussed, for election purposes, issuing people who according to the 1991 census lived in Podunavlje, also known as Eastern Slavonia, Croatian certificates of citizenship and identification documents, which would amount to some 60,000 certificates of citizenship.[1273]

2044. The Trial Chamber now turns to evidence received on comments by high-level Croatian officials on the issue of return. **Jure Radić** testified that as early as the establishment of the Croatian state in 1990, the Croatian leadership was considering the strategic goal of settling Croatian citizens in areas that were sparsely populated.[1274] According to Radić, after Croatia proclaimed independence, 20,000 Serbs left Zagreb voluntarily because they could not accept Croatia as their state.[1275] From 1992, the Croatian Government developed its national program of demographic renewal, which was adopted by the Assembly in 1996, and which aimed to stimulate population growth, to encourage the settlement of empty areas and to encourage the return of Croats who had left and resided abroad.[1276] Following Operation Flash, a large portion of the Serb population in the region known as "Western Slavonia" left voluntarily, some in the UN-led operation Safe Passage.[1277]

2045. According to Radić, normalization of relations with the FRY was a prerequisite for the mass return of displaced persons, except in individual humanitarian cases.[1278] This did not mean that displaced Serbs could not return on an individual basis, provided they had applied for and received Croatian citizenship, and applied for return.[1279] Only those who were born in Croatia were entitled to apply for Croatian citizenship.[1280] After the war and as normalization progressed, it was possible to better organize the return of displaced persons.[1281] However, many Serbs who had settled elsewhere chose not to

[1271] P2593 (Minutes of a VONS meeting, 17 December 1996), pp. 1, 3-4, 14.
[1272] P2593 (Minutes of a VONS meeting, 17 December 1996), pp. 4-5.
[1273] Stjepan Šterc, T. 20426; P2593 (Minutes of a VONS meeting, 17 December 1996), pp. 6-7.
[1274] Jure Radić, T. 27134.
[1275] Jure Radić, T. 27294.
[1276] Jure Radić, T. 27215-27216.
[1277] Jure Radić, T. 27294, 27295.
[1278] Jure Radić, T. 27323, 27345, 27374-27375.
[1279] Jure Radić, T. 27214, 27287, 27323-27324, 27375.
[1280] Jure Radić, T. 27314.
[1281] Jure Radić, T. 27323.



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return.[1282] Radić testified that a year after Operation Storm, following the reconstruction of partly damaged or destroyed houses owned by Serbs in Kistanje in 1995, the Croatian Government built a new settlement of 150 houses there, with financial assistance from the Government of the United States of America.[1283] Displaced persons who had been temporarily accommodated in abandoned Serb property were transferred to these new homes, thus freeing up the property of Serbs who could then return to their homes.[1284] Circa 90 per cent of those displaced persons transferred were Croatian, while some were from Bosnia-Herzegovina.[1285]

2046. **Granić** testified that during September-October 1995 only individual cases of return, aimed at family reunions, were possible.[1286] For security and safety reasons, no mass return was possible.[1287] He added that the mobilization of Croatian Serbs into the VRS had a very negative impact on the issue of return of Croatian Serbs, in particular considering that Croatia was in a state of war with the FRY and that there were daily provocations from Republika Srpska towards Croatia.[1288] The witness did not support mass return since many of the people who had left had taken part in fighting against Croatia and would do so also in the future.[1289] Also, he stated that Tuđman did not believe that a mass return could happen because many Serbs did not wish to recognize Croatia as their state.[1290] At the same time, Tuđman supported all the plans for return.[1291]

2047. During an interview in the journal "Focus", of 4 September 1995, Tuđman stated, in response to a question of whether 150,000 displaced Krajina Serbs could go back home:

> If the Krajina Serbs wanted to stay home, they would never have left in the first place. The return of all of them is virtually unthinkable. In any case, this does not lie in the

[1282] Jure Radić, T. 27213-27214.
[1283] Jure Radić, T.27140, 27143, 27162, 27209-27210, 27353-27355.
[1284] Jure Radić, T. 27140, 27210-27212.
[1285] Jure Radić, T. 27211.
[1286] Mate Granić, T. 24677-24679, 24715-24716, 24802, 24917, 24959.
[1287] Mate Granić, T. 24677, 24679, 24802, 24917, 24959.
[1288] Mate Granić, T. 24781-24783, 24802, 24808, 24959-24961; D1821 (Video of reading of press release after meeting of Mate Granić, Jean-Jacques Gaillarde, and others, 28 August 1995).
[1289] Mate Granić, T. 24926-24927.
[1290] Mate Granić, T. 24924-24925; P2662 (Excerpt of Mate Granić: Foreign Affairs – Behind the screens of politics), p. 11.
[1291] Mate Granić, T. 24925.



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> interests of a normalization of Croatian-Serbian interests. But we will adhere to human rights and permit the Krajina Serbs to return in individual cases.[1292]

2048. A large number of witnesses have provided their opinion and impressions of what they perceived the Croatian leadership's policy with regard to the Serb minority was at the time of the Indictment. Generally speaking, Galbraith's opinions can be contrasted with those of a number of persons within, or connected with, the Croatian political and military leadership. The Trial Chamber has treated all these opinions and impressions with greatest caution and considered them against the background of concrete manifestations, such as decrees, laws and political programs. Such evidence will also be reviewed in chapter 6.2.4.

2049. In chapter 3, the Trial Chamber has reviewed evidence on the role of the President as commander-in-chief of the Croatian military forces. A number of witnesses, including Galbraith, Škegro, and Radin, further stressed the central role of Franjo Tuđman in the political and military life of Croatia at the time. For example, Škegro described how the Ministries of Defence, Foreign Affairs, Finance, and Interior reported to both the Prime minister and the President. Radin stressed that the President was chief decision maker in relation to key strategic decisions. Galbraith went further and argued that what was Tuđman's policy was also Croatia's policy. He also opined that, irrespective of formal structures, all decisions were made by Tuđman and his key advisors, which included Gojko Šušak. Granić considered that Šušak was Tuđman's closest associate.

2050. Because of this central role of Tuđman, and because he is one of the members of the alleged joint criminal enterprise, another category of evidence reviewed above consists of public statements by Tuđman. The Trial Chamber has treated also this evidence with caution. It is mindful that political statements may serve a range of purposes other than that of precisely reflecting a policy, or the intentions for concrete action by the person making the statement. In times of war, public statements by political and military leaders may have the purpose of gaining confidence of the population in the war efforts and mobilizing the military forces. This can be achieved through portraying one's own cause as just and necessary but also through demonizing the enemy. In this respect, the Trial Chamber notes that many of the statements reviewed above (for example, the speeches in Karlovac and Knin on 26 August 1995)

[1292] P2671 (Interview with Franjo Tuđman in Focus, 4 September 1995), p. 2.



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were made at a time when the level of hostilities had decreased and the focus of the political leadership to some extent had changed to normalisation of life in Krajina. Under these circumstances, some of the statements made by Tuđman cannot be dismissed as being made simply for the purpose of gaining confidence of the population in the war efforts and mobilizing the military forces. The Trial Chamber considered that they have some, although limited, importance when assessing Tuđman's policy with regard to the Serb minority in Croatia.

2051. With regard to Tuđman's public statement on 4 August 1995 addressing Serbs in Croatia, the Trial Chamber considered that also this must be treated with great caution. Although it is an appeal to the Serbs in Croatia to stay in their homes, the Trial Chamber considered this statement against the background of the discussions at the Brioni meeting a few days earlier. In this respect, the Trial Chamber recalls its considerations in chapter 6.2.2. The Trial Chamber further considered it against the events at the time, in particular as described through its findings on unlawful attacks against civilians and civilian objects in Knin, Benkovac, Gračac, and Obrovac. Based on the foregoing, the Trial Chamber finds that the appeal was not a true reflection of the will and intention of Tuđman at the time.

2052. With regard to statements by Tuđman and others at meetings, the Trial Chamber considered that the concerns described above with regard to public statements are not relevant to the same extent. For such statements, however, the Trial Chamber has viewed specific statements in the context of the discussions at the meeting, rather than focusing on certain words and formulations used.

2053. The Trial Chamber finds that one aspect which transpires from much of the evidence above is the intention of Tuđman and others to encourage and facilitate the return of Croats who had left Croatia and gone abroad. With a large part of the Krajina empty this could now become a reality. Even in his appeal of 4 August 1995, Tuđman emphasizes the determination to "end the sufferings and uncertainty of Croatian refugees from the occupied territories". In the televised address on 26 August 1995, he was more explicit when urging Croats not to destroy the homes that the Serbs had left behind since they now belonged to the Croatian people and would be used to house refugees and displaced persons. Both Galbraith and Granić testified about the wish of Tuđman that Croats from the diaspora should return and settle in the Krajina.



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2054. This aspect becomes even more apparent from the meetings attended by Tuđman, Radić, and others on 22 and 23 August 1995. The extensive and detailed discussions between Tuđman and Radić on 22 August 1995 concern the manner in which as many Croats as possible could be brought back to populate the areas which were now empty and, as Tuđman put it, "enter the Serb houses". In this respect, Radić commented that this would be taken care of in accordance with an instruction from the government, which the Trial Chamber interprets as a reference to the Decree on the Temporary Takeover and Administration of Certain Properties. They discussed what assistance should be extended to Croats returning (paying for their trips, help with reconstruction, etc.) and what pressure should be applied (losing status as refugee or expelled person). It is clear from the discussions that the Croats Tuđman and Radić had in mind were both internally displaced persons and refugees but also persons without an immediate need for humanitarian assistance. In this respect, Tuđman referred to groups from Argentina, Australia, and Germany. The number of returnees that Tuđman and Radić had in mind (and was discussed at the different meetings on 22 and 23 August 1995, but also later) was high and demonstrates how the opposition against mass return, as testified by Granić, Radić, and others, only concerned the return of Serbs who had left the Krajina in August 1995.

2055. In the meetings on 23 August and 26 September 1995, Tuđman involved the military in the policy of repopulating the Krajina with Croats. On 23 August 1995, at a meeting attended by Červenko, Šušak, and others, Tuđman explained to the military officials that the essential problem was "Croatia's demographic situation" and that it was now not a question of changing the population but of populating certain areas. He stated that where to establish "military commands, districts, brigades and other training institutions" could play a part in this respect. Radić had proposed at the meeting on 22 August 1995 that the first and easiest step to repopulate a certain area with Croats would be to move members of the HV, with wives and children, to empty apartments previously owned by the JNA. Radić also addressed the military officials on 23 August 1995 and explained that one of the priorities was to populate Knin and Donji Lapac since they were border municipalities and had low numbers of Croat inhabitants. Červenko told Tuđman that a plan would be put together in this respect, for his approval. Such a plan was presented on 26 September 1995, at a meeting attended also by Gotovina.



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2056. The discussion of burning of property during the meetings in August and September, shows the high-level political and military leadership's awareness of widespread destruction of property in the Krajina at the time. Although Tuđman and others expressed clear disapproval of this destruction, this was always linked to the idea that the property now was Croatian property needed for the return of Croats.

2057. Based on the foregoing, the Trial Chamber finds that one aspect of the policy of Tuđman and others in the political and military leadership at the time was to invite and encourage Croats to return to, and settle in Croatia and to use the homes abandoned by Krajina Serbs for this purpose. From this also followed that the return of Serbs should be limited to a minimum.

2058. In chapter 6.2.7, the Trial Chamber will further consider, together with the evidence reviewed in chapters 6.2.2 and 6.2.4-6.2.6, what inferences to draw from the above with regard to the alleged joint criminal enterprise.

### *6.2.4 Property laws*

2059. The Trial Chamber has received evidence on the content and purpose of various laws and decrees enacted after Operation Storm, dealing with the property of persons who had left the Indictment area, including evidence of the meetings in which this issue was discussed.

2060. **Jure Radić**, Deputy Prime Minister and the Minister for Reconstruction, and Development between 1994 and 2000,[1293] testified that his duties included the reconstruction of houses and infrastructure in order to create the living conditions necessary for displaced persons to return.[1294] With regard to the temporary takeover of property, Radić testified that the procedure for the enactment of the Law on the Temporary Takeover of Property and Administration of Certain Property was initiated prior to Operation Storm.[1295] At a VONS meeting on 30 June 1995, Tuđman stated that Croatia should invite Croats who had emigrated to Australia and New Zealand to return and offer them land. Further, Radić stated that the Croatian state would take over tens of thousands of Serb houses abandoned following Operation Flash, in a temporary manner initially, but in time permanently, so that persons from Australia and those who had

[1293] Jure Radić, T. 27127, 27215, 27378.
[1294] Jure Radić, T. 27128.
[1295] Jure Radić, T. 27238.



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been forced out of Bosnia-Herzegovina could return.[1296] Commenting on the minutes of the meeting, Radić stated that these Croats would be housed temporarily in abandoned property before being permanently housed elsewhere, or if the owner wished, the house could be exchanged or sold.[1297]

2061. During a meeting with the HDZ presidency on 11 August 1995, the participants, including Tuđman, discussed the matter of the allocation of Serbian houses.[1298] During the meeting, Drago Krpina proposed that they should "declare all abandoned property state property on the pretext of preserving the property".[1299] Tuđman agreed and stated "if someone has left the country and does not appear there, I don't know, a month, or three months, etc, that shall be considered, think of the wording, state property".[1300] After further discussions, Tuđman stated that the deadline should be one month and that this should be pronounced through a Government decree.[1301] When discussing compensation, Tuđman indicated that this would not be available to persons who "[took] part in the war against Croatia".[1302] **Peter Galbraith**, the US ambassador to Croatia between 1993 and 1998,[1303] commented that Krpina's comment about declaring abandoned property state property on the pretext of preserving it was consistent with what he had observed, and that the aim was to take the property, make it impossible for the Serbs who had left to return, and try to resettle Croats in the relevant areas.[1304] Galbraith testified that Tuđman's idea was to seize Serb property and give permanent ownership to Croats who settled into it, and then settle claims of the departed Serbs internationally, treating them not as Croatian citizens, but as citizens of Yugoslavia.[1305]

2062. During a Government session on 23 August 1995, Valentić described the proposed Decree on the allocation of property in the Krajina area as a "preliminary solution" awaiting a final solution, to the issue of "protection of people and property".[1306] During a closed session of the Croatian Government on 31 August 1995, the participants again discussed the proposed decree on allocation of property in the

[1296] P2711 (Minutes of VONS Meeting, 30 June 1995), pp. 2, 7.
[1297] Jure Radić, T. 27240-27241.
[1298] P462 (HDZ Presidential transcript, 11 August 1995), pp. 1-2, 14-23.
[1299] P462 (HDZ Presidential transcript, 11 August 1995), p. 15.
[1300] P462 (HDZ Presidential transcript, 11 August 1995), p. 16.
[1301] P462 (HDZ Presidential transcript, 11 August 1995), pp. 17-20.
[1302] P462 (HDZ Presidential transcript, 11 August 1995), p. 19.
[1303] P444 (Peter Galbraith, witness statement, 13 April 2007), p. 1, paras 1, 3; Peter Galbraith, T. 4901.
[1304] Peter Galbraith, T. 5202-5203.
[1305] Peter Galbraith, T. 5206.
[1306] D426 (Minutes of Croatian Government meeting, 23 August 1995), pp. 1, 21.



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Krajina area.[1307] During the meeting, Valentić stated that this decree was "clearly standing in lieu of the law before the latter is passed".[1308] Bosiljko Mišetić stated that the proposed law applied to the property of different categories of citizens, one of which was those citizens, primarily in the occupied territories, who had left Croatia after the liberation of those territories.[1309] The participants agreed that only this category of citizens would be given 30 days to return to Croatia and file a request for repossession of their property and thereby prevent it being sequestered by the state.[1310] Mišetić further stated that the property was deemed property without a proprietor, as the proprietor had left Croatia, and that:

> The purpose of this law is to make this property subject to proper management […] in order to avoid an unfathomable damage to [it], as well as to ensure that, through a proposed fashion of management and manipulation of this property, a number of Croatian citizen, primarily the Croats who were expelled by the Serbs from other areas and from other countries would benefit from this property.[1311]

Similarly, Valentić stated that the decree:

> [I]s actually about the necessity to protect the property which *de facto* lost its proprietor; the property worth billions; the property which is under no one's protection, and which is, largely because of that, partly burned and robbed; unless this property is not [sic] placed under protection, it is practically impossible to protect this property in this large area.[1312]

2063. At the meeting, **Radić** described the proposed law as "one of the most important regulations, […] a historic document, which determines, I will use the word, demographic future of the liberated areas". He further stated:

> Today at our doorstep and already inside Croatia, we have tens of thousands of people of Croatian nationality who have been expelled and are being expelled more and more each day from the neighbouring Bosnia and Herzegovina and Serbia that we have to accommodate in the premises [Croatia] has at its disposal.[1313]

Radić testified that when he spoke of the "demographic future of the liberated areas", he was referring to the even distribution of the Croatian population throughout the

[1307] D1823 (Minutes of closed session of Croatian Government, 31 August 1995).
[1308] D1823 (Minutes of closed session of Croatian Government, 31 August 1995), p. 2.
[1309] D1823 (Minutes of closed session of Croatian Government, 31 August 1995), p. 3.
[1310] D1823 (Minutes of closed session of Croatian Government, 31 August 1995), pp. 5, 11-12, 15, 17, 20-21, 26-28.
[1311] D1823 (Minutes of closed session of Croatian Government, 31 August 1995), pp. 3-4.
[1312] D1823 (Minutes of closed session of Croatian Government, 31 August 1995), p. 2.
[1313] D1823 (Minutes of closed session of Croatian Government, 31 August 1995), p. 6.



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country's territory.[1314] Several times during the meeting, participants reiterated that the proposed law regulated only the right to use and manage the properties in question and that it did not interfere with the ownership, which would be resolved in a separate law.[1315]

2064. At this session on 31 August 1995, the Government passed the Decree on the Temporary Takeover and Administration of Certain Properties.[1316] According to the Decree, "property in the previously occupied but now liberated areas of [Croatia] and abandoned by its owners shall be placed under the temporary administration and use of [Croatia]".[1317] Also according to the Decree, "ownership" could not be acquired by "appropriation (occupation)".[1318] The Decree further provided that the municipal or town government should set up a commission for temporary takeover and use of the property.[1319] According to Article 5 of the Decree, the commission could decide to allocate the property to

> expelled persons, refugees, returnees whose property was destroyed or damaged during the Homeland War, to the disabled of the Homeland War, to the families of dead and missing Croatian defenders of the Homeland War and other citizens involved in activities essential for the security, reconstruction and development of the previously occupied areas, to have and to use the said property.[1320]

According to the Decree, a complaint against the commission's decision could be filed with the Ministry of Justice within eight days, although a complaint would not stay the execution of the decision.[1321] The work of the Commission was to be directed and coordinated by the Ministry of Development and Reconstruction.[1322] According to Article 10 of the Decree:

[1314] Jure Radić, T. 27198.
[1315] D1823 (Minutes of closed session of Croatian Government, 31 August 1995), pp. 3-4, 11-13, 15-17, 19, 21-23, 27-28.
[1316] P476 (Decree on the Temporary Takeover and Administration of Certain Properties, 31 August 1995), pp. 1, 5.
[1317] P476 (Decree on the Temporary Takeover and Administration of Certain Properties, 31 August 1995), Art. 2.
[1318] P476 (Decree on the Temporary Takeover and Administration of Certain Properties, 31 August 1995), Art. 11.
[1319] P476 (Decree on the Temporary Takeover and Administration of Certain Properties, 31 August 1995), Art. 4.
[1320] P476 (Decree on the Temporary Takeover and Administration of Certain Properties, 31 August 1995), Art. 4-5.
[1321] P476 (Decree on the Temporary Takeover and Administration of Certain Properties, 31 August 1995), Art. 5.
[1322] P476 (Decree on the Temporary Takeover and Administration of Certain Properties, 31 August 1995), Art. 6.



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> If the owner of the property […] returns to [Croatia] within 30 days of this Decree coming into force and seeks restitution, the Commission […] shall quash the decision referred to in Article 5 herein.[1323]

2065. **Snježana Bagić**, Secretary of the Ministry of Justice of Croatia from 28 June 1995 through 1997,[1324] testified that, when drafting new legislation, the regulation to be enacted fell under the purview of the ministry concerned.[1325] Therein, a Working Group would be formed to prepare the draft which would be composed of professional lawyers, professors, and judicial personnel, and then it would be sent to the Government for review.[1326] A draft law would eventually be adopted and sent as the proposal of the Government to the Parliament.[1327] Following a Parliamentary debate, it would either be adopted by way of a vote or turned down.[1328] On average, this procedure of adopting a law would last between eight and ten months, but when an urgent need existed a different procedure was available by which the government may adopt a decree.[1329] A decree would have a limited effect, in that it would cease to be valid unless the Parliament effectively extended it by passing a law to the same effect within twelve months.[1330]

2066. Bagić commented that Article 4 of the Decree establishing a commission was in place because the local authorities and population would be best suited to recognize which specific property should be considered abandoned.[1331] She noted that Article 5 was intended to direct any property considered to be abandoned to specific groups of persons, mainly those returning refugees who had no accommodation.[1332] Bagić testified that, pursuant to this article, decisions of the commissions could be appealed to the Ministry of Justice.[1333] Further, the decisions of the Ministry of Justice could be appealed to an administrative court.[1334] According to Bagić, paragraph 3 of Article 7, which made null and void any transaction by which the temporary occupier attempted to

[1323] P476 (Decree on the Temporary Takeover and Administration of Certain Properties, 31 August 1995), Art. 10.
[1324] D1911 (Snježana Bagić, witness statement, 29 October 2009), paras 2, 4; Snježana Bagić, T. 26563.
[1325] Snježana Bagić, T. 26492.
[1326] Snježana Bagić, T. 26492, 26567.
[1327] Snježana Bagić, T. 26492-26493.
[1328] Snježana Bagić, T. 26493.
[1329] Snježana Bagić, T. 26494.
[1330] Snježana Bagić, T. 26495.
[1331] Snježana Bagić, T. 26507.
[1332] Snježana Bagić, T. 26507-26508.
[1333] Snježana Bagić, T. 26510-26511.
[1334] Snježana Bagić, T. 26510-26511.



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sell the property to a third party, was aimed at reinforcing the protection of the rights of the owners.[1335] However, in this context, proceedings would have to be initiated to determine whether or not the transaction in question should be nullified.[1336] Bagić testified that the intent of this 30 day time limit for restitution related to the government's goal of allowing owners to return as soon as possible.[1337]

2067. **Radić** testified that the spirit of the decree was that private property would be given back to their owners once they returned and all necessary conditions were met.[1338] He added that the Government used a short deadline for declaring abandoned property state property as an incentive for people to return to their homes as soon as possible in those areas where the living conditions were such that they could return, such as where landmines had been successfully removed, so that property would not be damaged.[1339]

2068. On 31 August 1995, at the 263rd Session of the Government of Croatia, the draft Law on Temporary Takeover and Administration of Certain Property was debated.[1340] Čedomir Pavlović, the only ethnic Serb representative in the Government, expressed concern regarding the deadline for repossession of property.[1341] Pavlović noted that a procedure of return had not been determined, leaving registered persons in Belgrade who had yet to return but wished to regain their property outside the scope of the decree.[1342]

2069. On 20 September 1995, the Croatian Parliament adopted the Law on Temporary Takeover and Administration of Certain Property.[1343] This law mirrored to a large extent the Decree of 31 August 1995.[1344] Paragraph 1 of Article 11, which corresponded Article 10 of the Decree, provided:

[1335] Snježana Bagić, T. 26512.
[1336] Snježana Bagić, T. 26512.
[1337] Snježana Bagić, T. 26513.
[1338] Jure Radić, T. 27228.
[1339] Jure Radić, T. 27164.
[1340] P2697 (Minutes of the 263rd Open Session of the Government of Croatia, 31 August 1995), pp. 17-18.
[1341] Snježana Bagić, T. 26612-26615; P2697 (Minutes of the 263rd Open Session of the Government of Croatia, 31 August 1995), pp. 17-18.
[1342] Snježana Bagić, T. 26612-26615; P2697 (Minutes of the 263rd Open Session of the Government of Croatia, 31 August 1995), pp. 17-18.
[1343] D422 (Law on Temporary Takeover and Administration of Certain Property, 20 September 1995).
[1344] Compare P476 (Decree on the Temporary Takeover and Administration of Certain Properties, 31 August 1995) and D422 (Law on Temporary Takeover and Administration of Certain Property, 20 September 1995).



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> If the owner of the property […] returns to [Croatia] and claims this property for his restitution and use within 90 days from the date of entering of the Law into force, the Commission […] shall reverse the decision under Article 5 of this Law.[1345]

According to Article 15, a special law was to regulate ownership of property placed under temporary administration pursuant to the law and not returned to its owner for possession and use.

2070. According to the Explanation of the Law, issued by the Croatian Parliament, the reason for adopting the Law was that during and after Operation Storm

> many Croatian citizens of Serbian nationality left [Croatia] and […] left behind a large quantity of valuable property […] [that was] subjected to various forms of theft and damage, and the relevant bodies of [Croatia] – despite all their efforts – cannot fully and successfully protect this property and thereby also the interests of its owners, the interests of possible creditors and especially the interests of [Croatia] in whose territory it is situated.[1346]

2071. With regard to the change of deadline, **Galbraith** testified that the Government of Croatia initially insisted that Serbs only had 30 days and that Tuđman referred to the Krajina Serbs who left Croatia, as people who had "opted out of Croatia".[1347] Only after pressure from the international community was the deadline of 30 days extended to 90 days.[1348] Under further pressure this deadline was eventually lifted.[1349] According to Galbraith, the United States exercised intense pressure on Croatia with regard to the return of refugees, including imposing sanctions.[1350] He added that people who tried to return also faced various practical problems, for instance local officials would not assist in evicting people who had occupied the property, and the property could therefore not

[1345] D422 (Law on Temporary Takeover and Administration of Certain Property, 20 September 1995), Art. 11.
[1346] D427 (Explanation of the Law on Temporary Takeover and Administration of Certain Property, 7 September 1995), pp. 9, 14.
[1347] P444 (Peter Galbraith, witness statement, 13 April 2007), paras 33, 36, 75; Peter Galbraith, T. 4939, 4945, 4968-4969, 5095, 5115, 5129-5130, 5136.
[1348] P444 (Peter Galbraith, witness statement, 13 April 2007), paras 36, 75; P445 (Peter Galbraith, supplemental information sheet, 13 June 2008), para. 17; Peter Galbraith, T. 4939, 4946, 5115, 5121, 5136; D422 (Law on Temporary Takeover and Administration of Certain Property, 20 September 1995), Article 11. See also P2670 (Note on conversation between Mate Granić and Jean-Jacques Gaillarde, 19 September 1995), p. 3.
[1349] P444 (Peter Galbraith, witness statement, 13 April 2007), paras 36, 75; P445 (Peter Galbraith, supplemental information sheet, 13 June 2008), para. 17; Peter Galbraith, T. 4946, 5090-5091, 5115-5116, 5121, 5130, 5136. See also D412 (Letter dated 11 September 1996 from the Permanent Representative of Croatia to the UN addressed to the UNSG, annex: Agreement on normalization of relations between Croatia and FRY, 23 August 1996), p. 3.
[1350] Peter Galbraith, T. 5090-5091, 5119, 5121.



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be returned to its previous owner.[1351] Galbraith stated that he raised this issue with Tuđman repeatedly.[1352] According to Galbraith, until 2000 there were no or very few returns, and the returns that did happen were a result of pressure from the United States.[1353]

2072. **Witness AG-18**, a diplomat working in Croatia before, during and after the period relevant to the Indictment,[1354] testified that he was involved in the issue of the return of the Krajina Serbs, and by intervening with the Croatian government, he and other diplomats obtained first that the 30 day term to reclaim property be extended to 90 days, and then that there be no limit at all.[1355] This was necessary because it was very difficult for the Serbs to return.[1356] According to the witness, the Croatian government openly stated that they did not want a return en masse and, in general, that there was no strong political determination to allow Serbs to return.[1357]

2073. Other witnesses also commented on the extension of the deadline. **Radić** testified that considering that an insufficient number of persons had applied to return, and in light of international pressure and ongoing mine clearance, the Government extended the deadline from the original 30 day period specified in the decree.[1358] **Bagić** testified that the deadline to reclaim property was extended from 30 to 90 days because it turned out to be unrealistic for an owner to be able to return and ask for restitution of his or her property within 30 days.[1359] Bagić reiterated that the goal of the Working Group, as well as that of the Croatian Parliament, was to allow owners to return to their property as soon as possible.[1360] Bagić added, with regard to the reasons for the law, that the situation in Eastern Slavonia following Operation Flash was characterized by an abundance of abandoned property which was subjected to plunder.[1361] Bagić testified that this problem of abandonment and plunder was exacerbated in the month of August 1995, in the wake of Operation Storm.[1362] She emphasized that the local authorities and

[1351] P444 (Peter Galbraith, witness statement, 13 April 2007), para. 75; Peter Galbraith, T. 4946, 5125.
[1352] P444 (Peter Galbraith, witness statement, 13 April 2007), para. 76.
[1353] Peter Galbraith, T. 4946, 5114, 5122.
[1354] D1505 (Witness AG-18, witness statement, 28 April 2009), pp. 2, 4; Witness AG-18, T. 18608, 18610, 18645-18646.
[1355] Witness AG-18, T. 18666.
[1356] Witness AG-18, T. 18670.
[1357] Witness AG-18, T. 18667, 18672.
[1358] Jure Radić, T. 27154, 27164, 27166.
[1359] Snježana Bagić, T. 26532-26533, 26581.
[1360] Snježana Bagić, T. 26578-26579.
[1361] Snježana Bagić, T. 26498.
[1362] Snježana Bagić, T. 26498-26499.



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competent bodies were not capable of dealing with this phenomenon of abandoned property.[1363] Considering the context, Bagić stated that the reasons for adopting the Law were twofold: the protection of abandoned property and providing temporary accommodation for internally displaced persons and refugees.[1364] In addition to these reasons, Bagić testified that there was also a need for Croatia to encourage the revitalization of the economy in the formerly occupied territories.[1365] She further emphasized that while the property regulated under the Law was placed under the temporary management of Croatia, and possession of it was given to third parties for temporary occupancy, the Law did not effect the underlying right of ownership.[1366]

2074. Bagić testified that she did not take part, nor was she directed to take part, in a plan that would discriminate against citizens of Croatia on the basis of their ethnicity.[1367] She had no knowledge of any discussion or decisions taken by the Crotian leadership in 1995 related to the procedures for the return of Serbs.[1368] Considering Article 2 of the Law, Bagić testified that of the categories of property owners identified, the group most largely affected were probably Croatian citizens of Serbian ethnicity.[1369] While Bagić believes that the Law was not written to distinguish between citizens on the basis of their ethnicity, she did concede that as a result of the factual situation after Operation Storm, mainly citizens of Croatian ethnicity were accommodated in temporarily managed property.[1370] According to Bagić, there was no discrimination inherent in the Law or Decree as they spoke about deserted property while entirely ignoring the ethnicity of the owner.[1371]

2075. The Law on Areas of Special State Concern was adopted on 17 May 1996 (and Amendments to the Law on Areas of Special State Concern were enacted on 21 July 2000).[1372] Bagić testified that this Law, specifically Article 8, allowed settlers to be given the use of property which was covered by the Law on Temporary Takeover and

[1363] Snježana Bagić, T. 26499.
[1364] D1911 (Snježana Bagić, witness statement, 29 October 2009), para. 5, Snježana Bagić, T. 26576.
[1365] Snježana Bagić, T. 26529; P2697 (Minutes of the 263rd Open Session of the Government of Croatia, 31 August 1995), pp. 17-18.
[1366] D1911 (Snježana Bagić, witness statement, 29 October 2009), para. 5; P2697 (Minutes of the 263rd Open Session of the Government of Croatia, 31 August 1995), p. 17.
[1367] Snježana Bagić, T. 26560.
[1368] Snježana Bagić, T. 26604-26605, 26611.
[1369] Snježana Bagić, T. 26574.
[1370] Snježana Bagić, T. 26573.
[1371] Snježana Bagić, T. 26526, 26528.
[1372] P2698 (Law on Areas of Special State Concern, 5 June 1996), p. 1; P2699 (Amendments to the Law on Areas of Special State Concern, 14 July 2000), p. 10.



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Administration of Certain Property.[1373] It also provided that settlers could acquire ownership of these properties after 10 years, thereby reducing the normal time of 20 years, applicable to the concept of ordinary adverse possession.[1374] Article 16 of the Amendments withdrew the ability of a settler to be granted ownership of a property that was allocated under the Law on Temporary Takeover after 10 years of occupancy.[1375] According to Bagić, the Amendments to the Law on Areas of Special State Concern reflected a change in policy from encouraging Croats to move into the areas affected by Operations Storm and Flash to facilitating the return of Serbs who used to live in those areas.[1376]

2076. **Radić** testified that when discussing the implementation of the Law on the Temporary Take-Over and Administration of Certain Property, the Government faced a number of practical concerns including the ongoing conflict, the number of damaged or destroyed homes, and the threat of looting.[1377] The law was not a pretext for preventing displaced Serbs from returning to their homes, but instead aimed at preserving abandoned property by protecting it from looting and arson, while also providing shelter to displaced persons, including those who had been expelled from Bosnia-Herzegovina or other parts of Croatia.[1378] If a house was left empty for an extended period of time it would become rundown, so having people, be it a temporary tenant or proper owner, inhabit houses was also a way to preserve them.[1379] At the same time, the Government wanted to move persons who were temporarily staying in hotels out of the hotels in time for the tourist season.[1380] Radić further testified that under Article 11 of the Law, the issue of returning certain property must be regulated by the agreement on the normalization of relations with the FRY.[1381]

[1373] Snježana Bagić, T. 26622; P2698 (Law on Areas of Special State Concern, 5 June 1996), pp. 8-9.
[1374] Snježana Bagić, T. 26623-26624; P2698 (Law on Areas of Special State Concern, 5 June 1996), pp. 8-9.
[1375] Snježana Bagić, T. 26638-26639; P2699 (Amendments to the Law on Areas of Special State Concern, 21 July 2000), p. 10.
[1376] Snježana Bagić, T. 26639-26640; P2699 (Amendments to the Law on Areas of Special State Concern, 21 July 2000), pp. 1-10.
[1377] Jure Radić, T. 27333.
[1378] Jure Radić, T. 27140-27141, 27199, 27320, 27342-27344.
[1379] Jure Radić, T. 27140-27141, 27197, 27230.
[1380] Jure Radić, T. 27199, 27230-27231.
[1381] Jure Radić, T. 27345.



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2077. **Mate Granić**, Deputy Prime Minister of Croatia 1991-2000 and Minister of Foreign Affairs 1993-2000,[1382] argued that a clear distinction had to be made between the return of refugees and the protection of an enormous amount of property that had become the target of looters and robbers. When the Government decided to take over property for management and administration it was the first time it was handling such a problem.[1383] The term of 30 days was not designed to prevent the return of Serbs since, at the time, there were no conditions for a mass return of Serbs.[1384] The aim was not to resolve the issue of property but merely to protect it at that point in time.[1385] Another purpose was to solve the humanitarian problem with 25,000-30,000 refugees, mostly Croats, who had been expelled to Croatia from the FRY and Bosnia-Herzegovina.[1386] According to the witness, Croatia seriously considered all the suggestions by the international community and postponed the deadline.[1387]

2078. **Stjepan Šterc**, Assistant Minister of Reconstruction and Development of Croatia from 11 October 1995 until the end of 1999, and President of the Working Group of Operational Procedures of Return from March 1997,[1388] testified that the Law on Temporary Takeover and Administration of Certain Property aimed at protecting property from destruction or securing it if it was occupied by tenants.[1389] The witness argued that it was often hard to determine ownership, because registry books, land books, and title deeds were unavailable, so a list of property was compiled in the field and title deeds were checked based on the statements of locals.[1390] Further, according to Šterc, the Croatian state could no longer interfere with a person's ownership rights once that person had returned and was registered.[1391]

[1382] D1797 (Mate Granić, witness statement, 12 May 2009), paras 2-3, 6, 8, 13; Mate Granić, T. 24614-24615, 24621-24622.
[1383] Mate Granić, T. 24916.
[1384] Mate Granić, T. 24917.
[1385] Mate Granić, T. 24963-24964, 24971.
[1386] Mate Granić, T. 24964.
[1387] Mate Granić, T. 24917.
[1388] D1607 (Stjepan Šterc, witness statement, 20 May 2009), p. 1, paras 4, 6, 8, 10, 15; Stjepan Šterc, T. 20265-20266, 20301, 20321, 20325, 20329-20330, 20366, 20377, 20403, 20442; D1609 (Operational agreement of the working group on returns), pp. 1, 7; D1609 (Operational agreement of the working group on returns), pp. 1, 7; D1611 (Republic of Croatia Government Report on return of persons, 26 June 1998), pp. 49, 56.
[1389] D1607 (Stjepan Šterc, witness statement, 20 May 2009), paras 4, 9; Stjepan Šterc, T. 20464; D1611 (Republic of Croatia Government Report on return of persons, 26 June 1998, 26 June 1998), p. 69.
[1390] Stjepan Šterc, T. 20463.
[1391] Stjepan Šterc, T. 20468.



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2079. **Vesna Škare-Ožbolt**, Assistant Chief of Staff of the Office of the President of Croatia from January 1995,[1392] commented that the Law on Temporary Takeover did not allow for the confiscation of private property.[1393] According to her, the law was of a temporary character and its purpose was to house refugees in homes that had been abandoned.[1394] The witness added that there was a possibility for those who did not wish to return to Croatia to sell their property, either on the open market or to the Government, and that an agency was set up for this purpose (see further below).[1395] Discussing Article 11 of the law, Škare-Ožbolt testified that if the owner did not return within 90 days, they would not lose their rights as the law only related to the restitution of property.[1396] She continued, if someone did not return to claim their property, they would continue to be the owner but they would not be the possessor.[1397] However, Škare-Ožbolt testified that the owner could not automatically exercise his ownership rights but he would have to seek the return of possession.[1398] She noted that due to Article 15 not actually being enforced until 1998 when further legislation was adopted, there was a 3 year gap where ownership issues were not regulated in accordance with the law.[1399]

2080. **Elisabeth Rehn** was the Special Rapporteur of the UN Commission on Human Rights on the situation of human rights in the territory of the former Yugoslavia between 27 September 1995 and early 1998.[1400] On 12 October 1995, Minister of Justice Miroslav Separović told Rehn that the purpose of the Law was to protect abandoned property and secure it for the owners in case they returned.[1401] Deputy Prime Minister Ivica Kostović told Rehn that all refugees able to present the required documents would be allowed to return.[1402] During her mission to the former Yugoslavia from 3 to 11 August 1996, Rehn travelled to Knin and Korenica and learned of numerous cases of Serbs who had not returned to their homes in the former UN Sectors

[1392] Vesna Škare-Ožbolt, T. 18039; D1472 (Decision Appointing Škare-Ožbolt Assistant Head of the Office of the President, 30 January 1995).
[1393] Vesna Škare-Ožbolt, T. 18092.
[1394] Vesna Škare-Ožbolt, T. 18092-18093.
[1395] Vesna Škare-Ožbolt, T. 18093-18094.
[1396] Vesna Škare-Ožbolt, T. 18245-18246.
[1397] Vesna Škare-Ožbolt, T. 18246.
[1398] Vesna Škare-Ožbolt, T. 18247.
[1399] Vesna Škare-Ožbolt, T. 18249.
[1400] P598 (Elisabeth Rehn, witness statement, 13-14 October 2005), pp. 1-2; P599 (Elisabeth Rehn, witness statement, 21 February 2007), p. 1; Elisabeth Rehn, T. 6494, 6499, 6543, 6562, 6695.
[1401] P639 (Report of Special Rapporteur Elisabeth Rehn, 7 November 1995), para. 37, p. 31; P643 (Report on meetings), p. 8.
[1402] P639 (Report of Special Rapporteur Elisabeth Rehn, 7 November 1995), para. 40, p. 31.



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because they were occupied by Croat refugees.[1403] On 31 October 1997, Rehn reported that various obstacles continued to prevent Croatian Serbs from regaining possession of their properties, and that by March 1997 not a single case brought before a local property claims commission had resulted in a Serb owner regaining possession of a property.[1404] Instead, Croatian Serbs often sold their property to Croats, and the Croatian government had established on 24 April 1997 the Agency for Mediation in Transactions with Specified Real Estate for the purpose of facilitating the sale and exchange of abandoned property in the former UN Sectors.[1405] On 14 January 1998, Rehn reported that less than ten per cent of the 200,000 Serbs who fled after Croatia's military operations in 1995 had returned to the Krajina.[1406] She reported that Croatian Serb refugees continued to face serious difficulties in regaining access to their properties inhabited by Croat refugees.[1407] Most denials of granting of citizenship papers by Croatian authorities concerned Serbs.[1408] Employers discriminated against Croatian Serbs both in the public and private sector.[1409]

2081. On 5 March 1997, the UN Secretary-General reported that the Law of Temporary Takeover and Administration of Certain Property had the effect of giving possession of abandoned Serb houses to Croat refugees, and that the Serb owners were encountering great difficulties in accessing their properties and in getting assistance for that purpose from the government's local housing commissions.[1410] He also reported that the Law on Lease of Flats in the Krajina, passed in September 1995, effectively deprived many Croatian Serbs of their socially owned apartments in the former UN Sectors.[1411] On 14 January 1998, Rehn reported that less than ten per cent of the 200,000 Serbs who fled after Croatia's military operations in 1995 had returned to the

[1403] P598 (Elisabeth Rehn, witness statement, 13-14 October 2005), p. 3; P599 (Elisabeth Rehn, witness statement, 21 February 2007), para. 10; Elisabeth Rehn, T. 6614-6615, 6696; P640 (Report of Special Rapporteur Elisabeth Rehn, 12 November 1996), para. 127; P646 (Letter from Elisabeth Rehn to Chairman of the UN Commission on Human Rights Gilberto V. Saboia, 20 August 1996), pp. 1-2.
[1404] P598 (Elisabeth Rehn, witness statement, 13-14 October 2005), p. 7; D684 (Report of Special Rapporteur Elisabeth Rehn, 31 October 1997), p. 1, paras 46-48, 111.
[1405] D684 (Report of Special Rapporteur Elisabeth Rehn, 31 October 1997), para. 49.
[1406] P651 (Report of Special Rapporteur Elisabeth Rehn, 14 January 1998), p. 1, para. 32.
[1407] Elisabeth Rehn, T. 6614-6615; P651 (Report of Special Rapporteur Elisabeth Rehn, 14 January 1998), para. 35.
[1408] P598 (Elisabeth Rehn, witness statement, 13-14 October 2005), pp. 7-8; Elisabeth Rehn, T. 6589-6591; P651 (Report of Special Rapporteur Elisabeth Rehn, 14 January 1998), para. 38.
[1409] P598 (Elisabeth Rehn, witness statement, 13-14 October 2005), p. 8; P651 (Report of Special Rapporteur Elisabeth Rehn, 14 January 1998), para. 40.
[1410] D682 (Report of UN Secretary-General, 5 March 1997), paras 17-18.
[1411] D682 (Report of UN Secretary-General, 5 March 1997), para. 18.



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Krajina.[1412] She reported that Croatian Serb refugees continued to face serious difficulties in regaining access to their properties inhabited by Croat refugees.[1413] Most denials of granting of citizenship papers by Croatian authorities concerned Serbs.[1414] Employers discriminated against Croatian Serbs both in the public and private sector.[1415]

2082. On 17 January 1996, the Croatian Parliament adopted the Law on the Change of the Law on Temporary Takeover and Administration of Certain Property.[1416] Paragraph 1 of Article 11 was changed to read:

> The issue of returning in possession and use of property which is under the ownership of persons from Article 2 of this Law will be regulated by the Agreement on the normalisation of relations between [Croatia] and the [FRY].[1417]

These changes to the Law removed the 90-day limitation in place regarding owners who may return.[1418]

2083. **Bagić** testified that, during the implementation of the Law on Temporary Takeover and Administration of Certain Property, it turned out that whatever the deadline was, it proved unrealistic since objective difficulties prevented owners from requesting restitution of their property.[1419] In addition, she testifed that negotiations were ongoing between Croatia and the FRY, and that these issues could only be resolved through mutual co-operation.[1420] When confronted with paragraph 2 of Article 11 of the Law, Bagić conceded that while the Law allowed for an owner to dispute a decision on the basis of Article 5 there was no provision which allowed an owner to request repossession of their property under the Decree, the Law, or the Amendments of 1996.[1421] However, Bagić maintained that regardless of the mechanism in place (or lack

[1412] P651 (Report of Special Rapporteur Elisabeth Rehn, 14 January 1998), p. 1, para. 32.
[1413] Elisabeth Rehn, T. 6614-6615; P651 (Report of Special Rapporteur Elisabeth Rehn, 14 January 1998), para. 35.
[1414] P598 (Elisabeth Rehn, witness statement, 13-14 October 2005), pp. 7-8; Elisabeth Rehn, T. 6589-6591; P651 (Report of Special Rapporteur Elisabeth Rehn, 14 January 1998), para. 38.
[1415] P598 (Elisabeth Rehn, witness statement, 13-14 October 2005), p. 8; P651 (Report of Special Rapporteur Elisabeth Rehn, 14 January 1998), para. 40.
[1416] P475 (Law on the Change of the Law on Temporary Takeover and Administration of Certain Property, 17 January 1996).
[1417] P475 (Law on the Change of the Law on Temporary Takeover and Administration of Certain Property, 17 January 1996), Art. 1.
[1418] See Vesna Škare-Ožbolt, T. 18172-18174.
[1419] Snježana Bagić, T. 26534-26535, 26602.
[1420] Snježana Bagić, T. 26535.
[1421] Snježana Bagić, T. 26591-26592.



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thereof), owners could return at any point to repossess their property.[1422] According to Bagić, pursuant to the Law on Basic Property an owner could request the Housing Commission to allow him to repossess his property.[1423] Bagić did not have specific information at her disposal of any cases where a Krajina Serb, between the time of the amendments in January 1996 and the time that the mechanism for repossession was instituted in 1998, was able to successfully repossess their occupied property.[1424] According to Bagić, the issue was not about permitting or not permitting return, but rather, the manner in which to make the desired goal of return possible.[1425]

2084. Bagić testified that the Agreement on Normalization of Relations, put in place on 23 August 1996, recognized the inalienable right of the owner to retake possession of his or her property, and in the absence of this, possibility to receive just compensation.[1426] According to her, this agreement went further than the Law on Temporary Takeover and Administration of Certain Property by providing equal treatment of persons regardless of ethnicity or national origin and compensation for destroyed property.[1427]

2085. A number of witnesses provided evidence on legal and factual developments with regard to the property laws from 1997 onwards. This included **Šterc** who explained that on 24 April 1997, the Croatian government established the Agency for Mediation in the Transactions of Specified Real Estate.[1428] The Agency was established to purchase the property of persons who did not wish to return to Croatia, and which had been placed under temporary administration of Croatia pursuant to the Law of Temporary Takeover and Administration of Certain Property. The Agency could then assign the property to Croatian citizens, in order to accommodate displaced persons and refugees.[1429] On 25 September 1997, the Croatian Constitutional Court declared unconstitutional a number of provisions of the Law on Temporary Takeover and

[1422] Snježana Bagić, T. 26590-26592.
[1423] Snježana Bagić, T. 26593.
[1424] Snježana Bagić, T. 26593-26594, 26600, 26603.
[1425] Snježana Bagić, T. 26603.
[1426] Snježana Bagić, T. 26536-26537; D412 (Letter dated 11 September 1996 from the Permanent Representative of Croatia to the UN addressed to the UNSG, annex: Agreement on normalization of relations between Croatia and FRY, 23 August 1996).
[1427] Snježana Bagić, T. 26537-26538.
[1428] D1607 (Stjepan Šterc, witness statement, 20 May 2009), para. 12; Stjepan Šterc, T. 20313-20314; D1609 (Operational agreement of the working group on returns), p. 1; D1611 (Republic of Croatia Government Report on return of persons, 26 June 1998), p. 56-60.
[1429] D1607 (Stjepan Šterc, witness statement, 20 May 2009), para. 12; Stjepan Šterc, T. 20317; D1611 (Republic of Croatia Government Report on return of persons, 26 June 1998), p. 57.



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Administration of Certain Property (Article 8; paragraph 2 of Article 9; and paragraph 1 and 4 of Article 11).[1430] On 10 July 1998, the Croatian Parliament adopted the Law on the Expiry of the Law on Temporary Takeover and Administration of Certain Property, which stated that the aforementioned law should cease to be in effect, and that the Program for the Return and Care of Expelled Persons, Refugees and Displaced Persons should be applied to proceedings related to the temporary use, management, and supervision of the property defined in the aforementioned Law.[1431] This Program of 26 June 1998 set out rules and mechanisms for the (re)allocation, reconstruction, and repossession of property belonging to refugees and displaced persons.[1432]

2086. The Trial Chamber will now turn to the evidence it has received relating to the laws on tenancy rights, enacted in September 1995. At a closed session of the Croatian Government on 14 September 1995, where the draft Law on the Lease of Flats in the Liberated Area of the Republic of Croatia was discussed, Bosiljko Mišetić and Miroslav Šeparović stated that this Bill would enable persons performing public functions in institutions in the liberated areas to lease flats and, after a certain time, buy flats under privileged conditions.[1433] Mišetić stated this offer would encourage people to come, use the flats, and stay in those areas, which would serve long-term demographic and economic objectives, as well as reconstruction activities and the return to the region.[1434] Mišetić further stated that all programs of return adopted by various institutions and ministries should be adopted with a view to the employment and return of Croatian immigrants.[1435] Jure Radić stated that the law's timeframes should have the effect that persons who were allocated flats stay permanently in the region and Nikica Valentić confirmed that the primary goal was to motivate people to move into the liberated territories and populate the areas in a planned fashion, with a view to the areas' development.[1436]

[1430] D425 (Decision by Constitutional Court of Croatia, 25 September 1997).
[1431] D424 (Law on the Expiry of the Law on Temporary Takeover and Administration of Certain Property, 10 July 1998).
[1432] P2594 (Human Right Watch Report, March 1999), p. 48; D428 (Program for return and care of expelled persons, refugees and displaced persons, 26 June 1998), pp. 5-9.
[1433] P2592 (Minutes of a closed session of the Croatian Government, 14 September 1995), pp. 2, 4, 7-9, 11-13,
[1434] P2592 (Minutes of a closed session of the Croatian Government, 14 September 1995), pp. 11-12, 17-18.
[1435] P2592 (Minutes of a closed session of the Croatian Government, 14 September 1995), p. 17.
[1436] P2592 (Minutes of a closed session of the Croatian Government, 14 September 1995), pp. 2, 4, 14-15, 19-21.



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2087. **Šterc** confirmed that the vast uninhabited areas in Croatia were problematic for the Croatian government, as they lacked a functioning economy or regional development, and that in order to make these areas functional again it was necessary to bring young and educated people into the area, and provide them with socially owned housing flats.[1437] The Law on the Lease of Flats in the Liberated Territory of 27 September 1995, dealt exclusively with tenants' rights relating to flats in the formerly occupied territories, which were taken over during Operations Storm and Flash, and determined that the tenancy rights of people, who had lived in socially owned property in those territories, would be extinguished by law if they failed to return within 90 days after the law was enacted.[1438] The Ministry of Development and Reconstruction subsequently leased the flats, and then leased them primarily to persons performing activities in the public interest, which included security, reconstruction and development and return of refugees, displaced persons and emigrants.[1439] These persons were under an obligation to remain in the area for three years, after which they would obtain the right to buy the flat in accordance with the Law on the Sale of Flats in Tenancy.[1440]

2088. Šterc stated that he had long and intensive negotiations with the international community with regard to tenants' rights, where it was concluded that tenants' rights did not represent private ownership rights, but instead, under the Program for Return, tenants were accorded the right to purchase the property, and would be accommodated by the state in state apartments, if they had no other inhabitable property in Croatia.[1441] A Human Rights Watch Report of March 1999 stated that the Law on the Lease of Flats in the Liberated Territory was abolished in July 1998, as envisaged by the Program for Return and Care of expelled persons, refugees and displaced persons.[1442]

[1437] Stjepan Šterc, T. 20456, 20459-20460; D1611 (Republic of Croatia Government Report on return of persons, 26 June 1998), p. 29.
[1438] D1607 (Stjepan Šterc, witness statement, 20 May 2009), para. 4; Stjepan Šterc, T. 20413-20415; P2591 (Law on the Lease of Flats in the Liberated Territory, 27 September 1995), articles 1, 2; P2594 (Human Rights Watch Report, March 1999), pp. 17-18.
[1439] Stjepan Šterc, T. 20456, 20459-20460; P2591 (Law on the Lease of Flats in the Liberated Territory, 27 September 1995), articles 1, 3, 4; P2592 (Minutes of a closed session of the Croatian Government, 14 September 1995), pp. 11-12; P2594 (Human Rights Watch Report, March 1999), p. 18.
[1440] P2591 (Law on the Lease of Flats in the Liberated Territory, 27 September 1995), articles 1, 3, 4, 8; P2592 (Minutes of a closed session of the Croatian Government, 14 September 1995), pp. 11-12; P2594 (Human Rights Watch Report, March 1999), p. 18.
[1441] D1607 (Stjepan Šterc, witness statement, 20 May 2009), para. 9; Stjepan Šterc, T. 20415-20417, 20438, 20459.
[1442] P2594 (Human Right Watch Report, March 1999), pp. 16-17, 23; D428 (Program for return and care of expelled persons, refugees and displaced persons, 26 June 1998), p. 3.



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2089. **Zdenko Rinčić**, the Croatian Assistant Minister of Economy from 1993 to 1996,[1443] testified that he was a member of the Housing Commission, of which Petar Pašić was President and which met daily for almost a month to solve housing problems. According to Rinčić, Čermak received hundreds of letters from people from all over Croatia who wanted to live in Knin, which Čermak forwarded to Pašić, who was responsible for deciding on those requests. The Housing Commission received these requests, processed them and issued letters of allocation of apartments. According to Rinčić, the abandoned apartments in Knin were not privately owned and there were very few apartments in Knin that were owned by the state. Instead, Rinčić testified that the apartments were "public housing": under socialism, enterprises such as the TVIK factory and the Croatian Railways used to purchase apartments and allocate them to their employees for use.[1444]

2090. In this chapter, the Trial Chamber has described the adoption and content of a number of legal instruments dealing with property, in particular in the Indictment area. These instruments are the Decree on the Temporary Takeover and Administration of Certain Properties, the Law on the Temporary Takeover of Property and Administration of Certain Property, and the Law on the Lease of Flats in the Liberated Territory. The Trial Chamber has received more evidence with regard to the first two instruments but has considered the three instruments together, as they all relate to, among other things, the possession of property that had been abandoned during and after Operation Storm.

2091. The Prosecution argues that these legal instruments were the means with which to provide the property of Krajina Serbs to Croats and thereby deprive Krajina Serbs of property and housing, and prevent them from returning.[1445] Many witnesses, who were Croatian politicians and state officials at the time, argued that the purpose of the Decree and Law on the Temporary Takeover and Administration of Certain Properties was to protect and preserve the abandoned property and to temporarily house refugees. International witnesses, including Peter Galbraith, argued that the purpose of the Law was to take the property, make it impossible for the Serbs who had left to return, and try to resettle Croats in the relevant areas.

[1443] D1680 (Zdenko Rinčić, witness statement, 16 May 2009), p. 1, paras 1, 3-5; Zdenko Rinčić, T. 22341.
[1444] D1680 (Zdenko Rinčić, witness statement, 16 May 2009), paras 28-29.
[1445] Indictment, para. 17(b); Prosecution Final Brief, paras 37-45.



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2092. At the outset, the Trial Chamber notes that the text of the legal instruments does not refer to ethnicities and does not make any distinctions based on ethnicity.[1446] However, a law or legal provision formulated in seemingly neutral terms may nevertheless be intended to and have the effect that one category of people are favoured over another. This would make it discriminatory. In assessing whether the legal instruments were discriminatory, the Trial Chamber has in particular considered the discussion among the Croatian leadership preceding the drafting and adoption of the instruments, the context in which and the time when they were adopted, and the specific provisions of the instruments. In this respect, the Trial Chamber has further considered evidence reviewed in chapter 6.2.3.

2093. With regard to timing, Radić testified that the issue of taking over property abandoned by Serbs following an earlier military operation, Operation Flash, had already been discussed at a VONS meeting in June 1995. According to the minutes of that meeting and the testimony of Radić, the idea was to invite Croats who had emigrated to Australia and New Zealand to return and to provide them with this property. The first discussions about the Decree and Law on the Temporary Takeover and Administration of Certain Properties, as far as the evidence indicates, had already taken place at an HDZ presidency meeting on 11 August 1995. At this meeting, only days following the mass exodus of Serbs from the Indictment area and at a time when Serb civilians were still leaving, Krpina expressed the idea that Croatia should "declare all abandoned property state property on the pretext of preserving the property". Tuđman agreed and further proposed a time limit for people to return and claim their property, with the risk of it otherwise becoming state property.

2094. The idea of transferring ownership from the original owner to the state was soon abandoned, although a time limit for people to return was not. Participants in the later discussions on the adoption of the Decree and the Law were also less explicit than Krpina had been about using the preservation of the property as a "pretext". However, many stressed the aspect of allowing Croats to move into the abandoned property as an important reason for adopting the legal instrument. Radić went as far as to argue that the proposed law would determine the "demographic future in the liberated areas". The

[1446] See ECtHR, *Kostić v. Croatia*, Decision on admissibility, 8 January 2004, para. 2; ECtHR, *Vučak v. Croatia*, Judgement, 23 October 2008, paras 45-46.



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Trial Chamber interprets this to mean that the law, according to Radić, would have a determinate effect on the demographic and ethnic composition of the liberated areas.

2095. With regard to the content of the legal instruments, both the Decree and the Law, as well as the Law on the Lease of Flats in the Liberated Territory, contained time limits within which persons should return and reclaim their property, with the risk of otherwise loosing the possibility of possessing it. As mentioned, such a time limit was proposed by Tuđman already at the HDZ Presidency meeting. Bagić argued that this related to the government's goal of allowing owners to return as soon as possible and Radić testified that the short deadline was intended as an incentive for people to return to their homes as soon as possible. Considering the circumstances for the Serb civilian population at the time, as described at length elsewhere in the Judgement (see, for example, chapters 4.1-4.3, the Trial Chamber does not find such explanations convincing.

2096. Bagić stressed that Law did not affect the right of ownership and that the main purposes were the protection of property and providing temporary accommodation for internally displaced persons and refugees. Radić provided similar purposes for the Law. Granić emphasized that a clear distinction had to be made between the return of refugees and the protection of property and the Trial Chamber interprets his testimony in this respect to be that the Law only addressed the latter. However, the Trial Chamber considers that explanations by the mentioned witnesses of the purpose of the law do not account for the need for time limits as short as 30 or 90 days for persons to reclaim their property.

2097. Taking into account the circumstances at the time of the adoption of the legal instruments, the Trial Chamber finds that the purpose of the time limits was to make it more difficult for persons who wished to return, to regain their property.

2098. The Trial Chamber acknowledges that the effects of the legal instruments could include the preservation and protection of the property and the possibility of temporarily using the property for refugees and internally displaced persons. However, the Trial Chamber stresses that the legal instruments cannot be separated from the context in which they were adopted. The instruments were discussed and adopted during a time when a large portion of the Krajina Serb population had or was moving out of their homes, leaving Croatia for Bosnia-Herzegovina or Serbia. The Trial Chamber has found in chapters 4.5 and 5.4.2 that many were the victims of deportation. In this respect, the



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Trial Chamber also recalls its findings in chapter 6.2.3 on the Croatian political and military leadership's policy with regard to the Serb minority in Croatia and the issue of return. The legal instruments further contained legal provisions, as the Trial Chamber found above, the purpose of which was to make it more difficult for people who wished to return to regain their property. Under these circumstances, the Trial Chamber finds that the motives underlying and the overall effect of the legal instruments was to provide the property left behind by Krajina Serbs in the liberated areas to Croats and thereby deprive the former of their housing and property. The instruments were therefore part of the implementation of the return policy, as described in chapter 6.2.3. In conclusion, the Trial Chamber finds that the legal instruments were discriminatory.

2099. In chapter 6.2.7, the Trial Chamber will further consider, together with the evidence reviewed in chapters 6.2.2-6.2.3 and 6.2.5-6.2.6, what inferences to draw from the above with regard to the alleged joint criminal enterprise.

### *6.2.5 Croatian investigatory policy*

2100. The Trial Chamber has received testimony from several witnesses and documentary evidence concerning the investigations and prosecutions undertaken by Croatian authorities into crimes committed against Krajina Serbs during and after Operation Storm in the Indictment area. The Trial Chamber will address a number of topics in this regard. First, the Trial Chamber will review evidence regarding the attitude of the Croatian state authorities towards the investigation of crimes. Second, it will examine the activities of the Civil Protection and Human Sanitation services following Operation Storm, and the relations between the Croatian authorities and UNCIVPOL. Third, it will consider the difficulties faced by the civilian police, the VP, and the judicial branch following Operation Storm. Finally, the Trial Chamber will examine measures taken by Croatian authorities in reaction to crimes, including crimes committed by police. The Trial Chamber will address examples of follow-up by Croatian authorities to specific crimes committed during the Indictment period, and review statistics on the Croatian law enforcement and judiciary's responses to crimes.

2101. The Trial Chamber will first review the evidence on the attitude of the Croatian state authorities towards the investigation of crimes. **Tomislav Penić**, the Croatian Secretary of the State Commission for Pardons and Assistant Minister of Justice for



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Criminal Law during the Indictment period and until 2000,[1447] testified that in his role as Secretary of the State Commission of Pardons, he received and processed requests for pardons and prepared the requests for review by the State Commission for Pardons.[1448] Penić further testified about the processing of such requests. The Croatian President made the final decision on requests for pardons, generally acting on the State Commission's recommendations.[1449] Approximately two-thirds of pardon applicants were ethnic Serbs who were members of Serbian paramilitary units, and all such Serbian paramilitary unit members who were not convicted of war crimes were pardoned.[1450] Pardon applications related to crimes committed during and in relation to the war, typically participating and aiding and abetting in an armed rebellion and failure to respond to a military call-up.[1451] Penić stated that in addition to pardons, the Croatian Parliament adopted laws, including in 1992, 1995 and 1996, to grant amnesties to persons who had committed crimes during and in relation to the war.[1452] The laws affected tens of thousands of Serbs, providing for criminal prosecutions and proceedings against them to be suspended. Those held in remand or incarcerated were to be released.[1453]

2102. On 4 December 1995, **Elisabeth Rehn**, the Special Rapporteur of the UN Commission on Human Rights on the situation of human rights in the territory of the former Yugoslavia between 27 September 1995 and early 1998,[1454] had separate meetings with President Tuđman, Minister of the Interior Jarnjak, and Minister of Defence Šušak. Rehn got the impression that they were not interested in investigating and prosecuting members of the Croatian military for crimes committed during

[1447] D1935 (Tomislav Penić, witness statement, 15 May 2009), paras 2, 4-5, 11; Tomislav Penić, T. 26933, 26935.
[1448] D1935 (Tomislav Penić, witness statement, 15 May 2009), para. 11; Tomislav Penić, T. 26933, 26935-26936.
[1449] D1935 (Tomislav Penić, witness statement, 15 May 2009), para. 12; Tomislav Penić, T. 26935-26936.
[1450] D1935 (Tomislav Penić, witness statement, 15 May 2009), para. 12; Tomislav Penić, T. 26936.
[1451] Tomislav Penić, T. 26939-26941, 26943. See also D1944 (President Tuđman report on pardons of convicted persons for the crime of armed rebellion, 29 May 1996).
[1452] D1935 (Tomislav Penić, witness statement, 15 May 2009), paras 13, 15; Tomislav Penić, T. 26945-26947, 26979, 26988; D1938 (Law on amnesty from criminal prosecution for criminal acts, 25 September 1992); D1939 (Amendment to law on amnesty from criminal prosecution for criminal acts, 31 May 1995); D1940 (Law on pardons for perpetrators of crimes from Vukovar-Srijem and Osijek-Baranja counties, 21 May 1996). See also D680 (Law on General Amnesty).
[1453] D1935 (Tomislav Penić, witness statement, 15 May 2009), para. 13; D1938 (Law on amnesty from criminal prosecution, 25 September 1992), p. 1; D1940 (Law on pardons for perpetrators of crimes from Vukovar-Srijem and Osijek-Baranja counties, 21 May 1996), pp. 1-2.
[1454] P598 (Elisabeth Rehn, witness statement, 13-14 October 2005), pp. 1-2; P599 (Elisabeth Rehn, witness statement, 21 February 2007), p. 1; Elisabeth Rehn, T. 6494, 6499, 6543, 6562, 6695.



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Operation Storm beyond what was necessary to keep up appearances to the international community.[1455] Jarnjak informed Rehn that the security situation in the former UN Sectors had normalized and that the state had launched criminal investigations against perpetrators of crimes such as looting and arson, though Rehn got the impression that he did not want to investigate reports of mass graves.[1456] He stated that he did not have data on humanitarian abuses, and seemed not to want Rehn's data.[1457] Šušak informed Rehn that her first report as Special Rapporteur focused too much on crimes of the military. He indicated that the state had undertaken 222 criminal proceedings for arson and looting, and had quickly ensured law and order in the area, which was secured by 13,000 professional soldiers.[1458] Tuđman informed Rehn that it had been impossible for the Croatian authorities to constrain Operation Storm to "fighting in gloves" and thereafter to prevent persons returning to the Krajina from committing acts of revenge such as destroying homes.[1459]

2103. According to a report by the UN Secretary-General to the UN Security Council, dated 14 February 1996:

> [t]he discrepancy […] between the number of apparent violations of the right to life recorded by United nations investigators in the former Sectors – at least 150 – and the number of cases acknowledged by the Croatian authorities continues to be unaccountably large. While the Government has pursued prosecutions in the most dramatic cases, e.g. the massacre of nine Serbs at Varivode, and some others, there is little evidence of progress in resolving the many other reported cases of individual killings.[1460]

2104. **Peter Galbraith**, the US ambassador to Croatia 1993-1998,[1461] testified that this was consistent with his observation and information.[1462] Galbraith testified that he complained to Tuđman and other Croatian officials, in particular Šušak, Granić, and Šarinić, of Croatian human rights violations and insisted that the looting and burning

[1455] P598 (Elisabeth Rehn, witness statement, 13-14 October 2005), pp. 5-6, 9; P599 (Elisabeth Rehn, witness statement, 21 February 2007), paras 4, 6-7, 13; Elisabeth Rehn, T. 6520, 6575-6577, 6580-6581; D669 (Report of Special Rapporteur Elisabeth Rehn, 14 March 1996), pp. 1, 45-46.
[1456] P598 (Elisabeth Rehn, witness statement, 13-14 October 2005), pp. 5-6; Elisabeth Rehn, T. 6576-6577; P601 (Minutes of meetings), p. 1.
[1457] P598 (Elisabeth Rehn, witness statement, 13-14 October 2005), p. 6.
[1458] P598 (Elisabeth Rehn, witness statement, 13-14 October 2005), pp. 5-6; Elisabeth Rehn, T. 6507, 6569, 6571, 6579-6581; P601 (Minutes of meetings), p. 11.
[1459] P598 (Elisabeth Rehn, witness statement, 13-14 October 2005), p. 5; Elisabeth Rehn, T. 6509, 6523-6525, 6527-6528, 6534, 6536-6539; P601 (Minutes of meetings), p. 9; D681 (Audio recording and transcript of meeting between President Franjo Tuđman and Elisabeth Rehn, 4 December 1995), pp. 2-4.
[1460] P485 (Report of UN Secretary-General, 14 February 1996), para. 13.
[1461] P444 (Peter Galbraith, witness statement, 13 April 2007), p. 1, paras 1, 3; Peter Galbraith, T. 4901.
[1462] Peter Galbraith, T. 5217.



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stop.[1463] In response, he was first met by stonewalling and denial and then grudging acknowledgement or deflections, such as asserting that Croat civilians returning to the area were doing it and it was outside the control of the Croatian authorities.[1464] In connection with the atrocities that occurred after Operation Storm, Tuđman acknowledged that there were problems, although he discounted them and would not do anything about them.[1465]

2105. According to **Petar Pašić**, a Croatian Serb and the Croatian Government Commissioner for Knin from January 1992 to April 1996,[1466] there was no official government policy to allow burning, looting and murder to take place in the former Sector South after Operation Storm.[1467] **Joško Morić**, who in 1995 was Assistant Minister of the Interior in charge of regular police,[1468] testified that he reported to Jarnjak the crimes being committed on the ground, including by persons in military uniform.[1469] According to Morić, Jarnjak was concerned by the events, and frequently discussed them with the Minister of Defence.[1470] It was clear to Morić, based on what Jarnjak told him, that the Minister of Defence's response was always for Morić and Laušić, the Chief of VP Administration, to step up security.[1471] During his occasional interactions with the Ministers of the Interior, Defence and Justice, Morić could see that they were worried about the crimes and wanted the situation to change.[1472] Morić testified that he never sensed in the MUP any atmosphere of allowing crimes to take place in order to drive Serbs out of the Krajina and prevent their return.[1473] Morić added that everyone in the MUP at the time thought of the crimes on the ground as something bad.[1474]

[1463] P444 (Peter Galbraith, witness statement, 13 April 2007), paras 46, 56.
[1464] P444 (Peter Galbraith, witness statement, 13 April 2007), para. 56.
[1465] P444 (Peter Galbraith, witness statement, 13 April 2007), para. 35.
[1466] D1706 (Petar Pašić, witness statement, 3 March 2002), pp. 1-2; D1707 (Petar Pašić, witness statement, 23 April 2009), paras 2, 4, 13, 15, 32; D1709 (Petar Pašić, supplemental information sheet, 6 October 2009), para. 10; Petar Pašić, T. 22740, 22778, 22844, 22847, 22858, 23026, 23053.
[1467] Petar Pašić, T. 22738-22739.
[1468] D1841 (Joško Morić, witness statement, 15 May 2009), p. 1, paras 1-2; D1842 (Joško Morić, witness interview, 17 January 2004), pp. 1-10, 13, 25, 110, 119; Joško Morić, T. 25502-25505, 25508-25511, 25514-25515, 25523, 25528, 25640, 25785, 25806, 25842, 25926-25927.
[1469] D1842 (Joško Morić, witness interview, 17 January 2004), pp. 198-199, 202-203; Joško Morić, T. 25837.
[1470] Joško Morić, T. 25594, 25837-25838.
[1471] Joško Morić, T. 25838-25839.
[1472] Joško Morić, T. 25641-25642.
[1473] D1842 (Joško Morić, witness interview, 17 January 2004), pp. 28, 212-214, 268-269; Joško Morić, T. 25741-25742.
[1474] Joško Morić, T. 25742.



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2106. On 6 November 1998, the Croatian Council for Cooperation with the International Criminal Tribunal held a meeting. According to minutes of that meeting, Minister of Foreign Affairs Mate Granić said that Croatian shortcomings surfaced after Operation Storm, when Croatia did not process possible perpetrators of war crimes. He stated that Croatia would have to process "some cases of violation of law". Granić and Intelligence Service Director Šeparović proposed cooperating by providing the Tribunal with documents that were not damaging to Croatian national security. Minister of the Interior Ivan Penić said that Croatia was to blame for not punishing those who committed crimes in the aftermath of Operation Storm. Deputy Prime Minister and Minister of Justice Milan Ramljak concluded that it seemed necessary to reassess the strategy taken two to three years ago, related to not processing the events and crimes committed in the aftermath of Operation Storm.[1475]

2107. **Mladen Bajić**, Deputy Military Prosecutor for the Split MD from 1992 to 1996,[1476] testified that since 2001, Croatian authorities had taken a more serious approach to investigating crimes committed by members of the HV and the police, including those committed in the aftermath of Operation Storm, noting this was a move that was important for the credibility of the country's judiciary.[1477] He testified that in 2002, when he took up the position of Prosecutor General, he undertook a review of all of the cases dating back to 1991, and noted that many things had taken a wrong turn.[1478] As an example of his discontent, he highlighted that many crimes were simply not processed.[1479] In spite of these problems, Bajić claimed that he did not see any signs of reluctance from the political leadership to prosecute alleged criminals, and more specifically, crimes committed by Croats against Serbs.[1480]

2108. **Christopher Albiston**, an independent consultant specializing in policing, security and intelligence and an expert in conflict and post-conflict policing,[1481] testified that post Operation Storm there was a functioning criminal justice system in which the Croatian authorities were genuinely attempting to address crime, and the police were

[1475] P2616 (Minutes of the 33rd session of the Croatian Council for Cooperation with the International Criminal Tribunal, 9 November 1998), pp. 1-5.
[1476] D1626 (Mladen Bajić, witness statement, 21 May 2009), para. 2; Mladen Bajić, T. 20731, 20784.
[1477] Mladen Bajić, T. 20844-20846, 20870-20872; P2613 (Statement of Mladen Bajić regarding the processing of crimes committed by members of the HV and police, 8 February 2007), p. 1.
[1478] Mladen Bajić, T. 20844-20846, 20850-20851, 20870-20872.
[1479] Mladen Bajić, T. 20850-20851, 20870-20872.
[1480] Mladen Bajić, T. 20776-20777, 20781, 20844-20846, 20851, 20866.
[1481] D1776 (Expert Report of Christopher Albiston, August 2009), pp. 53-59; Christopher Albiston, T. 23754, 23758-23762.



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playing their role in recording and passing on details of crimes in the relevant areas.[1482] Albiston testified that he saw no evidence of organized failings to re-establish law and order, or deliberate obstruction of this task, by the Croatian authorities.[1483] Nor was there an attitude of tolerance or indifference on the part of Croatian authorities towards crimes such as looting, burning and killing, although there was evidence of failings by individual police officers.[1484]

2109. The Trial Chamber will now review the evidence it has received regarding the activities of the Civil Protection and Human Sanitation services following Operation Storm. **Zdravko Židovec**, the Assistant Minister for Information, Analysis and Fire and Civil Protection throughout 1995 and a member of the Command Staff of Operation Return,[1485] testified that Civil Protection was transferred from the MoD to the MUP in January 1994 and that the military was not in a position to issue orders to Civil Protection units.[1486] Židovec stated that a few days before Operation Storm, Jarnjak assigned Židovec to prepare Fire and Civil Protection in respect of the operation.[1487] As of 4 August 1995, all work carried out was part of Operation Return.[1488] On 4 August 1995, Židovec instructed all police administrations to immediately activate a detachment for hygiene and sanitation measures and to, in cooperation with the military authorities and upon their approval, engage in the removal of dead bodies.[1489] This should be done in cooperation with the criminal police. Each police administration was to keep records of the discovery of corpses, identification, and burial and inform the Operation Return staff and the civil protection department of the MUP of this daily.[1490] On 5 August 1995, Židovec ordered the police administrations in, among other places, Zadar-Knin, to "undertake immediate hygiene and sanitation measures in the liberated

[1482] D1776 (Expert Report of Christopher Albiston, August 2009), paras 3.42, 3.71; Christopher Albiston, T. 24040, 24042-24043, 24050, 24052-24053.
[1483] Christopher Albiston, T. 23858, 24063-24065, 24117, 24119.
[1484] Christopher Albiston, T. 24062-24065, 24071.
[1485] D1570 (Zdravko Židovec, witness statement, 15 June 2007), paras 6, 8; Zdravko Židovec, T. 19921.
[1486] D1570 (Zdravko Židovec, witness statement, 15 June 2007), paras 65, 69; Zdravko Židovec, T. 19872, 19887.
[1487] D1570 (Zdravko Židovec, witness statement, 15 June 2007), para. 15.
[1488] Zdravko Židovec, T. 19882, 19890.
[1489] D232 (Instructions from the Assistant Minister of Interior to all police administrations, 4 August 1995), item b), 3-4.
[1490] D232 (Instructions from the Assistant Minister of Interior to all police administrations, 4 August 1995), item b), 4.



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areas […] focusing primarily on discovering, identifying and burying human remains".[1491] The measures were to be implemented in the following way:

> 1. After the explosive experts have examined the area surrounding the body, a forensic specialist shall do the identifying, photographing and finger-printing of the body.
> 2. Each discovered body must be given an identification number (tags can be obtained from the criminal investigation department of your police administration).
> 3. The bodies shall be buried at local cemeteries in single graves properly marked (with a cross).
> 4. Only single graves shall be dug for, under international law, any grave containing more than four bodies is considered as a mass grave.[1492]

2110. In the wake of Operation Storm, a number of bodies were found within the Indictment area, including bodies of persons who appeared to have been killed.[1493] Židovec testified that the role of the Civil Protection encompassed dealing with the consequences of war activities including sanitation by, *inter alia*, the removal of human bodies.[1494] Židovec testified that the sanitation teams were composed of a Civil Protection professional and a crime scene officer from the Police Administration.[1495] The Civil Protection was to record the burial on a form including the identification number of the body, the individual's civilian/soldier status, and other personal details.[1496] The clothing and equipment found with the body were a fundamental factor in identifying whether the person had been a soldier.[1497] The hygiene and sanitation reports were then sent to Operation Return.[1498] The forensic crime scene officer would

[1491] D233 (Order from Assistant Minister of Interior to Split-Dalmatia police administration, Šibenik police administration, and Zadar-Knin police administration, 5 August 1995), p. 1.
[1492] D233 (Order from Assistant Minister of Interior to Split-Dalmatia police administration, Šibenik police administration, and Zadar-Knin police administration, 5 August 1995), p. 2. See also P230 (UNCIVPOL weekly report 21-26 August 1995, 27 August 1995), p. 5. See also D1570 (Zdravko Židovec, witness statement, 15 June 2007), para. 72; Zdravko Židovec, T. 19874, 19878-19879, 19915-19916; D1571 (Zdravko Židovec order to Police Administration Sisak-Moslavina on clearing terrain of bodies, 6 August 1995), pp. 1-3; P2397 (Ive Kardum, witness statement, 22-23 March 2004), para. 22; Ive Kardum, T. 9518-9521.
[1493] See e.g. P688 (Report on discovery of human bodies); D69 (List of bodies discovered curing clean-up of terrain); D1783 (Report on "discovery of dead bodies in the territory liberated during Operation Storm" from the Šibenik PU Crime Police Department, 31 August 1995).
[1494] D1570 (Zdravko Židovec, witness statement, 15 June 2007), paras 8, 16; Zdravko Židovec, T. 19872.
[1495] D1570 (Zdravko Židovec, witness statement, 15 June 2007), para. 47; Zdravko Židovec, T. 19874.
[1496] D1570 (Zdravko Židovec, witness statement, 15 June 2007), paras 52, 72; Zdravko Židovec, T. 19878-19879; D1571 (Zdravko Židovec order to Police Administration Sisak-Moslavina on clearing terrain of bodies, 6 August 1995), pp. 1-3.
[1497] Zdravko Židovec, T. 19879.
[1498] Zdravko Židovec, T. 19917.



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also produce a crime report that would end up at the relevant police administration.[1499] If the crime scene officer suspected that a murder had taken place, the crime police would conduct an investigation.[1500] Bodies were buried after the crime scene investigation, even if it was determined that the individual did not die a natural death.[1501]

2111. **Ivica Cetina**, the Chief of the Zadar-Knin Police Administration throughout 1995,[1502] testified that Stanko Batur, the Chief of the Civil Protection in Cetina's Police Administration, was responsible for the clearing up of human corpses from the terrain.[1503] Batur reported on the number of bodies found, collected and buried, to Židovec and to Cetina.[1504] Cetina was involved in organizational aspects of the clearing up of the terrain, including supplying officers and the required equipment. Cetina testified that if it was reported to the police that a body had been found, the Crime Police would be informed and would visit the terrain on the same day.[1505] If in the course of sanitation of the terrain a dead body was detected, the team for the clearing up of corpses assessed objectively whether the person had been killed in the course of combat or had been murdered.[1506] The teams for clearing up would as a rule include an officer of the Crime Police and a forensic pathologist.[1507] If by examining the body, the police officer established a suspicion that a murder had been committed, he would notify the crime investigation police, and an on-site investigation would be conducted.[1508] If a person had been killed in the course of combat, there was no need for

[1499] D1570 (Zdravko Židovec, witness statement, 15 June 2007), para. 50; Zdravko Židovec, T. 19916-19917, 19972-19973.
[1500] D1570 (Zdravko Židovec, witness statement, 15 June 2007), para. 51; Zdravko Židovec, T. 19916.
[1501] Zdravko Židovec, T. 19916, 19973.
[1502] D1743 (Ivica Cetina, witness statement, 26 August 2009), p. 1; D1745 (Ivica Cetina, witness statement, 26 February 2002), pp. 3-4; Ivica Cetina, T. 23396, 23486, 23517
[1503] D1743 (Ivica Cetina, witness statement, 26 August 2009), para. 16; D1745 (Ivica Cetina, witness statement, 26 February 2002), pp. 7, 12-13. See also P2396 (Ive Kardum, witness statement, 3-4 May 2007), para. 7; P2397 (Ive Kardum, witness statement, 22-23 March 2004), para. 40.
[1504] D1743 (Ivica Cetina, witness statement, 26 August 2009), paras 2, 16; D1745 (Ivica Cetina, witness statement, 26 February 2002), pp. 12-13.
[1505] D1743 (Ivica Cetina, witness statement, 26 August 2009), para. 16.
[1506] Ivica Cetina, T. 23493, 23595-23596, 23654-23655.
[1507] D1743 (Ivica Cetina, witness statement, 26 August 2009), para. 16; Ivica Cetina, T. 23493, 23596-23597, 23654-23655.
[1508] D1743 (Ivica Cetina, witness statement, 26 August 2009), para. 16; Ivica Cetina, T. 23493, 23596, 23648-23649. See also Ive Kardum, T. 9418.



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an on-site investigation.[1509] Such investigations of bodies found did occur immediately after Operation Storm.[1510]

2112. **Witness 84**, a police officer in Knin,[1511] explained that when dead bodies were discovered in the area of Knin, the police would secure the scene until an on-site crime investigation team from Zadar, consisting of an investigative judge and forensic investigators, arrived at the scene.[1512] When dead bodies were discovered, the Knin police would also inform Batur.[1513] After crime investigations were concluded by the crime investigation police, the Civil Protection collected the bodies and arranged the burials.[1514] The Civil Protection was not allowed to move the dead bodies until after the crime department had concluded its investigations.[1515]

2113. **Ive Kardum**, Chief of the crime police department for the Zadar-Knin police administration in 1995,[1516] testified that sanitation of human and animal bodies was within the exclusive jurisdiction of civil protection.[1517] Every team going to a site to conduct sanitation would include a crime scene examiner, who would always be present if civil protection removed a body.[1518] If the body was decomposed, civil protection would place next to the body a metal plate with a number and either the name of the victim or – if the victim was unidentified – "NN".[1519] Only then would they photograph the body.[1520]

[1509] Ivica Cetina, T. 23595. See also P2396 (Ive Kardum, witness statement, 3-4 May 2007), para. 8; Ive Kardum, T. 9327-9328, 9330-9331, 9415, 9429.
[1510] Ivica Cetina, T. 23648-23649.
[1511] P1035 (Witness 84, pseudonym sheet); P2393 (Witness 84, witness statement, 20 November 2007), p. 1; P2394 (Witness 84, witness statement, 11 July 2004), p. 1; P2395 (Witness 84, witness statement 9 March 2002), pp. 1-3; Witness 84, T. 11061, 11073, 11094, 11101, 11358, 11360.
[1512] P2393 (Witness 84, witness statement, 20 November 2007), paras 8, 17; P2394 (Witness 84, witness statement, 11 July 2004), para. 22; P2395 (Witness 84, witness statement, 9 March 2002), paras 35, 38; Witness 84, T. 11326-11327, 11336-11337, 11339.
[1513] P2393 (Witness 84, witness statement, 20 November 2007), para. 8; P2394 (Witness 84, witness statement, 11 July 2004), para. 23; P2395 (Witness 84, witness statement, 9 March 2002), paras 35, 38; Witness 84, T. 11326.
[1514] P2393 (Witness 84, witness statement, 20 November 2007), para. 8; P2395 (Witness 84, witness statement, 9 March 2002), paras 35, 38.
[1515] P2393 (Witness 84, witness statement, 20 November 2007), para. 17.
[1516] P2396 (Ive Kardum, witness statement, 3-4 May 2007), p. 1, paras 2-3; P2397 (Ive Kardum, witness statement, 22-23 March 2004), p. 1, paras 1-3, 12, 15, 17; Ive Kardum, T. 9231, 9251-9252, 9398, 9498-9499.
[1517] P2397 (Ive Kardum, witness statement, 22-23 March 2004), paras 22, 44; Ive Kardum, T. 9275, 9323, 9414-9415.
[1518] Ive Kardum, T. 9415, 9417, 9422.
[1519] Ive Kardum, T. 9416.
[1520] Ive Kardum, T. 9415-9416.



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2114. Kardum testified that he had never received an order not to conduct investigations.[1521] However, he testified that if regular police found a decomposed body of someone who had died around Operation Storm, they would usually note that the body was decomposed and assign the case to sanitation.[1522] He further testified that Croatian civil police did not conduct investigations into the death of Croatian soldiers, assuming that they had died in combat.[1523] The same was true for Serb soldiers, unless Kardum had information that a war crime had been committed, in which case he would inform the VP crime police and investigate the matter together with them.[1524] He also testified that there were quite a few instances of suicides or elderly persons dying of natural causes.[1525]

2115. According to the minutes of a meeting held on 7 August 1995 between Chief of Sector Ivan Nađ and several Department Chiefs, it was crucial to clear up the terrain in the area of army activity.[1526] Furthermore, it was their task to identify persons in the prescribed manner, and it was not necessary to conduct on-site investigations.[1527] On 7 August 1995, Židovec instructed a number of police administrations, including Zadar-Knin Police Administration, to carry out reconnaissance of their terrain and report to the Staff of the Operative Action Return in the MUP on matters such as the number of persons who were killed and the manpower needed to detect, identify, and bury these persons.[1528] **Židovec** testified that human sanitation began after Operation Storm, around 7 or 8 August 1995, and at the time, there were large numbers of decomposing bodies.[1529] Židovec further testified that only the Civil Protection had the job of human sanitation and all such sanitation was carried out by the Civil Protection in cooperation with the Crime Police, who would inform them of the location of bodies to be sanitized.[1530] Civil Protection was to be informed of all cases of human sanitation, either

[1521] P2396 (Ive Kardum, witness statement, 3-4 May 2007), paras 9-10; Ive Kardum, T. 9331, 9453, 9516-9517.
[1522] P2397 (Ive Kardum, witness statement, 22-23 March 2004), para. 36; Ive Kardum, T. 9327-9328, 9414, 9428-9429.
[1523] Ive Kardum, T. 9331-9332.
[1524] Ive Kardum, T. 9332, 9495.
[1525] Ive Kardum, T. 9274.
[1526] D235 (Minutes of meeting of crime police sector chiefs, 7 August 1995), p. 1.
[1527] D235 (Minutes of meeting of crime police sector chiefs, 7 August 1995), item 1.
[1528] D601 (Instruction by Zdravko Židovec to Police Administrations, 7 August 1995). See D606 (Report by Split-Dalmatia Police Administration to MUP "Return" Operations Staff, 9 August 1995); D607 (Report by Šibenik Police Administration to MUP "Return" Operations Staff, 9 August 1995).
[1529] D1570 (Zdravko Židovec, witness statement, 15 June 2007), para. 49.
[1530] D1570 (Zdravko Židovec, witness statement, 15 June 2007), paras 50, 64, 72, 74; Zdravko Židovec, T. 19881, 19965-19967.



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directly or sometimes indirectly through Židovec, who would forward the notification to the Department.[1531] According to minutes of a VONS meeting held on 11 August 1995, Jarnjak said that there was one big problem, which was the clearing of the terrain.[1532] Even with 4,000 members of the Civil Protection, there were not enough people (and not enough vehicles) to clear up such a vast terrain. According to Jarnjak, they first had to clear up populated areas, to create conditions for people to return there. They cleared up and identified bodies first, which was a very slow process. Then they moved on to cattle and then to clearing up other areas.[1533] According to Židovec, the sanitation of human remains was finished by mid-August 1995, and in total, the Civil Protection sanitized 902 bodies throughout the area from Sisak to the area covered by the Split-Dalmatia Police Administration.[1534]

2116. Between 8 August and 20 October 1995, Cetina submitted regular reports to the "Return" Operations Staff at the MUP, listing dead individuals found while clearing up the terrain.[1535] Similar reports were submitted by other police administrations.[1536]

[1531] D1570 (Zdravko Židovec, witness statement, 15 June 2007), para. 61.
[1532] P2673 (Minutes of VONS meeting held on 11 August 1995), pp. 1-2, 7.
[1533] P2673 (Minutes of VONS meeting held on 11 August 1995), p. 7.
[1534] D1570 (Zdravko Židovec, witness statement, 15 June 2007), para 71; Zdravko Židovec, T. 19866-19867.
[1535] D348 (Report by Ivica Cetina to MUP "Return" Operations Staff, 8 August 1995); D351 (Report by Ivica Cetina to MUP "Return" Operations Staff, 10 August 1995); D352 (Report by Ivica Cetina to MUP "Return" Operations Staff, bodies nos 102-127, 11 August 1995); D354 (Report by Ivica Cetina to MUP "Return" Operations Staff, 16 August 1995); D355 (Report by Ivica Cetina to MUP "Return" Operations Staff, 18 August 1995); D356 (Report by Ivica Cetina to MUP "Return" Operations Staff, 20 August 1995); D357 (Report by Ivica Cetina to MUP "Return" Operations Staff, 21 August 1995); D358 (Report by Ivica Cetina to MUP "Return" Operations Staff, 25 August 1995); D359 (Report by Ivica Cetina to MUP "Return" Operations Staff, 27 August 1995); D360 (Report by Ivica Cetina to MUP "Return" Operations Staff, 28 August 1995); D361 (Report by Ivica Cetina to MUP "Return" Operations Staff, 29 August 1995); D362 (Report by Ivica Cetina to MUP "Return" Operations Staff, 30 August 1995); D363 (Report by Ivica Cetina to MUP "Return" Operations Staff, 2 September 1995); D364 (Report by Ivica Cetina to MUP "Return" Operations Staff, 5 September 1995); D365 (Report by Ivica Cetina to MUP "Return" Operations Staff, 6 September 1995); D366 (Report by Ivica Cetina to MUP "Return" Operations Staff, 11 September 1995); D367 (Report by Ivica Cetina to MUP "Return" Operations Staff, bodies nos 129-169, 11 August 1995); D368 (Report by Ivica Cetina to MUP "Return" Operations Staff, 12 September 1995); D369 (Report by Ivica Cetina to MUP "Return" Operations Staff, 13 September 1995); D370 (Report by Ivica Cetina to MUP "Return" Operations Staff, 15 September 1995); D371 (Report by Ivica Cetina to MUP "Return" Operations Staff, 18 September 1995); D373 (Report by Ivica Cetina to MUP "Return" Operations Staff, 19 September 1995); D375 (Report by Ivica Cetina to MUP "Return" Operations Staff, 24 September 1995); D376 (Report by Ivica Cetina to MUP "Return" Operations Staff, 2 October 1995); D377 (Report by Ivica Cetina to MUP "Return" Operations Staff, 5 October 1995); D378 (Report by Ivica Cetina to MUP "Return" Operations Staff, 9 October 1995); D379 (Report by Ivica Cetina to MUP "Return" Operations Staff, 13 October 1995); D380 (Report by Ivica Cetina to MUP "Return" Operations Staff, 17 October 1995); D381 (Report by Ivica Cetina to MUP "Return" Operations Staff, 20 October 1995); D382 (List of persons retrieved during the clearance of the ground of the Zadar-Knin police administration, 9 January 1996).
[1536] See D353 (Report by the chief of the police administration Šibenik, Drago Matić, to the MUP staff, 8 August 1995).



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2117. **Albiston** testified that a report dated 31 August 1995, which detailed action taken in relation to dead bodies found in areas where there had been combat as part of Operation Storm, demonstrated that the civilian police were undertaking procedures that would enable them to investigate crime while the conflict was ongoing.[1537] This report indicated that the crime police were conducting autopsies, providing information on crime to the relevant authorities and attempting to run normal policing, despite the difficulties they faced.[1538] According to a series of reports issued by the Šibenik Medical Centre between 5 and 8 August 1995, external examinations to establish cause of death were conducted on twelve dead bodies extracted from the areas of Smrdelj, Drniš, Kistanje and elsewhere.[1539] In relation to evidence that after Operation Storm dead bodies were treated as combat victims on a significant number of occasions, Albiston testified that ideally such deaths should have been treated as suspicious and investigated, and that this was a defect in the Croatian criminal system at the time.[1540] However, there were various practical reasons, related to health and the heat, why this practice occurred.[1541] Further, police forces operating in conflict or immediate post-conflict areas work in conditions which make the investigation of crime more difficult.[1542] For instance, before investigating a crime, it is first necessary for the police to establish effective uniformed civilian police presence in and control over the area in question, to protect individuals and buildings, and allow the police to access and control crime scenes.[1543] Given such difficulties, and the resources at the disposal of the police at the time, it would not have been possible to investigate every death.[1544]

[1537] Christopher Albiston, T. 24106, 24109, 24125-24127; D1783 (Report on "discovery of dead bodies in the territory liberated during Operation Storm" from the Šibenik PU Crime Police Department, 31 August 1995).
[1538] Christopher Albiston, T. 24106, 24108-24109, 24125-24127; D1783 (Report on "discovery of dead bodies in the territory liberated during Operation Storm" from the Šibenik PU Crime Police Department, 31 August 1995).
[1539] D2158 (Report on deceased person, 5 August 1995); D2159 (Report on deceased person, 5 August 1995); D2160 (Report on deceased person, 6 August 1995); D2161 (Report on deceased person, 6 August 1995); D2162 (Report on deceased person, exact date unclear); D2163 (Report on deceased person, 6 August 1995); D2164 (Report on deceased person, 6 August 1995); D2165 (Report on death of Nikola Subota, 7 August 1995); D2166 (Report on deceased person, 8 August 1995); D2167 (Report on deceased person, 7 August 1995); D2168 (Report on deceased person, 5 August 1995). The parties stipulated that following D2165, there was no investigative activity in that case until it resumed in 2006 (T. 28983-28986, 29005-29007). See also D1768 (Criminal report in relation to the murder of three unidentified persons, 14 October 1995).
[1540] Christopher Albiston, T. 24041-24044, 24051.
[1541] Christopher Albiston, T. 24041, 24043, 24104-24105.
[1542] Christopher Albiston, T. 24051-24053, 24113.
[1543] Christopher Albiston, T. 24051-24053, 24113.
[1544] Christopher Albiston, T. 24053-24054, 24059-24060, 24108, 24114-24115.



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2118. According to a report by Chief of Veterinary Service Boris Radović, by 5 September 1995, 418 killed persons were sanitized in the area of the Split MD.[1545] Out of these, 200 had been removed and buried at the Knin cemetery, 54 in the Zadar cemetery, 96 in the Gračac cemetery, and 21 in the orthodox cemetery in Korenica.[1546]

2119. **Bajić** testified that his office disinterred about 300 bodies in Knin in 2001.[1547] Bajić verified that most of the bodies were buried without an on-site investigation or criminal report being filed, and this was a significant factor in delaying the prosecution of the incidents.[1548] 128 of the disinterred bodies had been identified at the time of his testimony.[1549] Of those 128, 104 were killed by fire-arm wounds to the chest, head, and abdomen with some of the wounds occurring at point-blank range.[1550] Of these persons killed by fire-arms, 75 victims were killed around the time of 4-7 August 1995 with the remaining victims being killed in the 30 subsequent days (i.e., in the wake of Operation Storm).[1551] Following the identification of the bodies and explanations regarding the causes of death by experts, Bajić testified that his office opened a number of cases in Zadar and Šibenik.[1552]

2120. The Trial Chamber has received evidence with regard to the burial activities of the Croatian authorities from Branko Sruk, Karolj Dondo, Murray Dawes, Edward Flynn, Tor Munkelien, Alun Roberts, Stig Marker Hansen, Witness 136, William Hayden, Maria Teresa Mauro, Kari Anttila, Laila Malm, and John Hill, as well as documentary evidence. Apart from some evidence suggesting that a number of bodies were initially buried in a mass grave in Knin and then reburied in individual graves,[1553] no evidence conclusively establishes the existence of mass graves in the Indictment area. Instead, documentary evidence and the testimony of several witnesses indicate that in Gračac and Knin bodies were buried in individual graves marked with crosses

[1545] P507.1 (Report by Boris Radović to HV Main Staff on clearing up in the area of the Split MD, 16 September 1995), p. 4.
[1546] P507.1 (Report by Boris Radović to HV Main Staff on clearing up in the area of the Split MD, 16 September 1995), pp. 4-5.
[1547] Mladen Bajić, T. 20769, 20842-20843, 20851-20852, 20867-20870.
[1548] Mladen Bajić, T. 20842-20843, 20851-20852, 20867-20870.
[1549] Mladen Bajić, T. 20769, 20842-20843, 20867-20870.
[1550] Mladen Bajić, T. 20769-20770, 20842-20843, 20867-20870.
[1551] Mladen Bajić, T. 20842-20843.
[1552] Mladen Bajić, T. 20770.
[1553] D1737 (Branko Sruk, witness statement, 7 October 2009), para. 5; Branko Sruk, T. 23300- 23308, 23341, 23343, 23355. See also P2652 (Letter from the Chief of the Police Administration Zadar-Knin, 12 August 1995), p. 1; P2653 (Report by Kornelije Brkić to Damir Čermerin on hygiene and sanitation measures, 12 August 1995), p. 2. For further reports of mass graves, see: P292 (John Hill, witness statement, 21 January 1998), pp. 77-79; D274 (John Hill's diary, entries from 5-13 August 1995), pp. 7-8.



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containing names or the letters "NN".[1554] Several international observers testified that they were initially denied access to the Gračac and Knin cemeteries and that, when they were permitted to enter the cemeteries, they could only enter under the supervision of members of the Civil Protection.[1555] While the security reasons given for these restrictions[1556] were on some occasions unconvincing, the Trial Chamber considers that the evidence does not conclusively establish the reason for the restrictions of access.

2121. The Trial Chamber will now address the evidence it has received regarding the relations between the Croatian authorities and UNCIVPOL. **Cetina** testified that after the first ten days UNCRO representatives approached him and other officers of his Police Administration with information they had collected on crimes in the area and requested information on the police's activities.[1557] Romanić and Mihić cooperated with UNCIVPOL representatives, informing them directly about events on the ground.[1558] Between 15 days and a month after Operation Storm, the Zadar-Knin Police Administration began to have meetings with UNCRO and UNCIVPOL

[1554] P2 (Witness 136, witness statement, 4 July 1996), p. 9; P20 (Edward Flynn, witness statement, 29 June 1997), p. 8; P21 (Edward Flynn, witness statement, 26-27 February 2008), paras 14, 34, 38; P33 (HRAT daily report, 15 August 1995), p. 2; P36 (HRAT daily report, 2-4 September 1995), p. 4; P37 (HRAT daily report, 7 September 1995); P38 (Weekly report from Hussein Al-Alfi, 2-8 September 1995), p. 4; P43 (Humanitarian Crisis Cell situation report, 16 August 1995), p. 3; P61 (Tor Munkelien, witness statement, 10 January 2008), para. 25; P67 (UNMO Team Podkonje report, 27 August 1995), para. 8; P172 (Kari Anttila, witness statement, 16 October 1997), pp. 3-4; P173 (Kari Anttila, witness statement, 12 December 2007), para. 31; P774 (Laila Malm, witness statement, 30 July 2008, corrected 4 September 2008), para. 24; Laila Malm, T. 8195; P780 (UNCIVPOL incident report, S05-95-112, 11 September 1995); P988 (IHF report from a fact-finding mission to the Krajina, 25 August 1995), para. 4.3; P1098 (Maria Teresa Mauro, witness statement, 3 March 2000), pp. 4-5; P1099 (Maria Teresa Mauro, witness statement, 6 February 2008), para. 34; P47 (HRAT report, 23 August 1995), p. 2; D94 (UNMO Sector South daily situation report, 7 p.m., 23 August 1995), p. 4; P1283 (Stig Marker Hansen, witness statement, 18 December 1995), p. 3; P1292 (Stig Marker Hansen, personal diary), p. 10.
[1555] P2 (Witness 136, witness statement, 4 July 1996), p. 9; P20 (Edward Flynn, witness statement, 29 June 1997), pp. 8, 35; P21 (Edward Flynn, witness statement, 26-27 February 2008), paras 14, 29, 32, 37; P33 (HRAT daily report, 15 August 1995), p. 2; P35 (HRAT daily report, 8-11 September 1995), p. 2; P36 (HRAT daily report, 2-4 September 1995), pp. 3-4; P38 (Weekly report from Hussein Al-Alfi, 2-8 September 1995), p. 4; P43 (Humanitarian Crisis Cell situation report, 16 August 1995), p. 3; P172 (Kari Anttila, witness statement, 16 October 1997), pp. 3-4; P173 (Kari Anttila, witness statement, 12 December 2007), para. 31; P675 (Alun Roberts, witness statement, 27 August 1997), paras 11, 13-14, 45, 48, 57, 59-62, 65; Alun Roberts, T. 7118; P774 (Laila Malm, witness statement, 30 July 2008, corrected 4 September 2008), para. 24; Laila Malm, T. 8195; P780 (UNCIVPOL incident report, S05-95-112, 11 September 1995); P1098 (Maria Teresa Mauro, witness statement, 3 March 2000), pp. 4, 6; P1099 (Maria Teresa Mauro, witness statement, 6 February 2008), para. 34; P47 (HRAT report, 23 August 1995), p. 2; D94 (UNMO Sector South daily situation report, 7 p.m., 23 August 1995), p. 4; P1283 (Stig Marker Hansen, witness statement, 18 December 1995), p. 3, P1285 (Stig Marker Hansen, witness statement, 24 April 2008), para. 24; P1292 (Stig Marker Hansen, personal diary), p. 9.
[1556] P20 (Edward Flynn, witness statement, 29 June 1997), p. 8; P21 (Edward Flynn, witness statement, 26-27 February 2008), paras 14, 38; P33 (HRAT daily report, 15 August 1995), p. 2; P43 (Humanitarian Crisis Cell situation report, 16 August 1995), p. 3.
[1557] D1743 (Ivica Cetina, witness statement, 26 August 2009), para. 5.
[1558] D1743 (Ivica Cetina, witness statement, 26 August 2009), para. 6.



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representatives.[1559] For Cetina, processing the crimes was a higher priority than providing UNCIVPOL with information and he and others tried to process every reported criminal case.[1560] Moreover, the police were not authorized to give reports to anyone outside of the judicial system.[1561] On 30 August 1995, Đurica sent the Police Administrations, including Zadar-Knin, the Rules for the joint work of the Croatian MUP police and UNCIVPOL, which related to joint patrols, reporting, and access to information.[1562] Cetina received a report from Jan Elleby, dated 19 September 1995, which listed all murders within Cetina's Police Administration reported to UNCIVPOL since 4 August 1995.[1563] Based on the date of death being 5 August 1995 and the bodies being found in the area of war operations, Cetina assessed most of the persons died as a result of combat activity, while others were murdered.[1564] Cetina sent the list to Kardum, who had to correlate the persons and locations and coordinate with the civil protection for sanitation purposes, and further left the matter to Kardum and Ivan Nađ.[1565] Cetina assessed that Kardum acted properly by sending the information to the MUP, who would assess what could be done about the incidents.[1566] Investigations into some of the listed incidents had been started, but other cases could not be investigated because the bodies were moved in the sanitation of the terrain.[1567] Jan Elleby was informed orally about the murder investigations.[1568]

2122. On 13 September 1995, **Ive Kardum**, Chief of the crime police department for the Zadar-Knin police administration in 1995,[1569] forwarded to Ivan Nađ, for his information and possible further processing, a letter from Petro Romassev to the commander of the Knin police station, in which Romassev described various

[1559] Ivica Cetina, T. 23443, 23616.
[1560] D1745 (Ivica Cetina, witness statement, 26 February 2002), pp. 10, 12.
[1561] D1745 (Ivica Cetina, witness statement, 26 February 2002), p. 12.
[1562] Ivica Cetina, T. 23443; D1751 (Order to all police stations, Chief Marijan Bitanga, 12 October 1995), pp. 3-4.
[1563] D1745 (Ivica Cetina, witness statement, 26 February 2002), p. 10; Ivica Cetina, T. 23450. See also P2397 (Ive Kardum, witness statement, 22-23 March 2004), para. 39; Ive Kardum, T. 9511-9512; P923 (Letter from Ive Kardum forwarding to Ivan Nađ a list of alleged murders received on 20 September 1995 from Jan Elleby, 27 September 1995).
[1564] Ivica Cetina, T. 23450, 23527-23529.
[1565] Ivica Cetina, T. 23450, 23528-23530.
[1566] Ivica Cetina, T. 23529.
[1567] Ivica Cetina, T. 23451.
[1568] D1745 (Ivica Cetina, witness statement, 26 February 2002), p. 10; Ivica Cetina, T. 23451.
[1569] P2396 (Ive Kardum, witness statement, 3-4 May 2007), p. 1, paras 2-3; P2397 (Ive Kardum, witness statement, 22-23 March 2004), p. 1, paras 1-3, 12, 15, 17; Ive Kardum, T. 9231, 9251-9252, 9398, 9498-9499.



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incidents.[1570] Kardum testified that, as far as he knew, the police administration took action pursuant to UNCIVPOL requests for information about the results of investigations into alleged murders.[1571] Kardum testified that he was familiar with the list sent by Jan Elleby to Cetina and dated 19 September 1995, and while he recognized some of the cases on it, others had not been previously reported to him.[1572] Kardum further testified that he and others discussed the list and forwarded it to Ivan Nađ on 27 September 1995.[1573] Right after that date, Kardum and others embarked on a project to process the murder allegations in the list, which involved the arrival of Ivan Nađ, Assistant Minister Benko and many police officers.[1574]

2123. **Witness 86** testified that Elleby and Romassev of UNCIVPOL would provide information to the Kotar-Knin Police Administration about dead bodies, thefts, burning of property, and details of particular incidents.[1575] The Kotar-Knin Police Administration would inform the Zadar-Knin Police Administration of such incidents, as well as the civil protection, who would collect the corpse.[1576] UNCIVPOL would be informed that the civil protection had collected the corpse.[1577]

2124. Noting the UNCIVPOL perception that the Croatian civilian police participation and cooperation was uneven, **Albiston** testified that it is not surprising that the Croatian police may have shown some reluctance to be forthcoming with details of crimes to UNCIVPOL, because such details are almost universally regarded as confidential, and the concept of monitoring was not well developed at the time.[1578]

2125. The Trial Chamber now turns to the evidence it has received regarding the difficulties faced by the civilian police. According to **Morić**, prior to the independence of Croatia, the proportion of Serbs working in the MUP was around 60-70 per cent in Croatia, while it was only around 12-15 per cent in the general Croatian population, and

[1570] Ive Kardum, T. 9509-9510; P921 (Cover letter from Ive Kardum to the crime police sector of the Ministry of the Interior, 13 September 1995); P922 (Fax from Petro Romašev to the commander of Knin police station containing a list of incidents, 8 September 1995).
[1571] Ive Kardum, T. 9428.
[1572] P2397 (Ive Kardum, witness statement, 22-23 March 2004), paras 39-40.
[1573] Ive Kardum, T. 9511-9512; P923 (Letter from Ive Kardum forwarding to Ivan Nađ a list of alleged murders received on 20 September 1995 from Jan Elleby, 27 September 1995), p. 1.
[1574] Ive Kardum, T. 9511-9512. See also P2500 (Prosecution compilation of investigative steps taken by Croatian civilian authorities), pp. 1, 5, 11, 24, 34, 38.
[1575] Witness 86, T. 5539-5541.
[1576] Witness 86, T. 5541-5542.
[1577] Witness 86, T. 5542-5543.
[1578] D1776 (Expert Report of Christopher Albiston, August 2009), paras 3.100-3.101.



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the disproportion was even stronger in high positions.[1579] As Croatia became independent more than 2,500 officers, most of who were Serbs, left the police.[1580] This evidence was corroborated by **Kardum**,[1581] and **Witness 86**.[1582]

2126. According to **Kardum**, the crime police had difficulties conducting its duties, especially once the war broke out.[1583] Kardum testified that he and others tried to compensate by bringing in new people.[1584] In addition, a large number of police were engaged in the HV that was being created at the time, which had an effect on the manpower of the Zadar police.[1585] Kardum testified that during and after Operation Storm there were not enough police and crime police, and they were not qualified enough, to carry out all their duties, so he and others had to bring in men from Zagreb, Rijeka, Split, and Zadar.[1586] Kardum testified that the new men did not know the area on which they were going to work.[1587] In addition, the police were faced with experiences that were new to them – POWs, mass graves, and prosecuting war crimes and similar offences.[1588] Kardum also testified that there were only two, possibly three, pathologists, approximately five or six investigative judges – covering all subject matters – and as many prosecutors available to cover the territory of Zadar-Knin police administration.[1589]

2127. **Morić** testified that following Operation Storm there was an unusually high proportion of cases such as arson and theft.[1590] Morić explained the persistence of crimes by the insufficient number and consolidation of law enforcement personnel to control the vast area recently taken in Operation Storm.[1591] In this area, according to Morić, there were Serbs who had stayed; Croats who had spontaneously returned and who would generally find their property destroyed or in a neighbouring house and

[1579] D1842 (Joško Morić, witness interview, 17 January 2004), pp. 24, 26-27, 179; Joško Morić, T. 25512-25514.
[1580] Joško Morić, T. 25511-25512.
[1581] P2397 (Ive Kardum, witness statement, 22-23 March 2004), paras 4-5; Ive Kardum, T. 9395.
[1582] P487 (Witness 86, witness statement, 19 September 2001), paras 2, 4-5, 15-16; P488 (Statements of Witness 86: corrections and additional information, 25 June 2008), p. 1.
[1583] Ive Kardum, T. 9250-9251, 9336, 9395-9396.
[1584] Ive Kardum, T. 9396.
[1585] Ive Kardum, T. 9397.
[1586] P2396 (Ive Kardum, witness statement, 3-4 May 2007), para. 16 (e); Ive Kardum, T. 9305-9306, 9397-9398.
[1587] Ive Kardum, T. 9399.
[1588] Ive Kardum, T. 9401.
[1589] P2397 (Ive Kardum, witness statement, 22-23 March 2004), paras 28, 30; Ive Kardum, T. 9426.
[1590] Joško Morić, T. 25651-25653, 25656.
[1591] D1842 (Joško Morić, witness interview, 17 January 2004), pp. 203-206, 208; Joško Morić, T. 25645-25648, 25652, 25692-25693.



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repossess it, and sometimes take the property of others claiming that they recognized it as their own; some Serb forces who had remained or who crossed back over the border from Bosnia-Herzegovina; army reserves who used to live in the area; and citizens who would put on military uniforms and enter the area.[1592] Morić noted that the fact that so many people had left their homes greatly increased the opportunity for crime as well as the number of police necessary to guard the lives and property of citizens.[1593] Finally, Morić testified that the work of the police was also made more difficult by the presence of weapons, mines, and other explosives in the area, of which Morić learned through reports from chiefs of police administrations.[1594]

2128. From 5 August 1995 onwards, **Cetina** had jurisdiction over his entire area of responsibility, part of which had previously been occupied by the RSK.[1595] As part of Operation Return, police administrations and new police stations had to be opened in Korenica, Obrovac, Donji Lapac, Benkovac, Knin, and Gračac.[1596] As the Croatian army liberated areas, members of the police moved in and opened police stations.[1597] For a period of 10 to 15 days, Cetina travelled through his Police Administration area establishing and visiting police stations.[1598] On 5 August 1995, the Kotar-Knin Police Administration was formed, and on 5 or 6 August 1995, Čedo Romanić was appointed its Chief.[1599] The territory of the Kotar-Knin Police Administration had previously been occupied by the RSK.[1600] Cetina was present on 6 August 1995, when Minister Jarnjak officially opened the police station in Knin.[1601] On the second day of Operation Storm, the MUP appointed station commanders to police stations in Knin, Korenica, Donji Lapac, Gračac and Donji Srb, in Donji Lapac municipality, most of who were Serbs.[1602] There was a constitutional requirement to appoint Serbs in areas which were

[1592] D1842 (Joško Morić, witness interview, 17 January 2004), pp. 185-187, 206-208; Joško Morić, T. 25613-25614, 25646, 25670-25671, 25692-25693, 25708-25709, 25927.
[1593] Joško Morić, T. 25666-25667, 25692-25693.
[1594] Joško Morić, T. 25692-25693, 25703-25704, 25706.
[1595] Ivica Cetina, T. 23396.
[1596] D1743 (Ivica Cetina, witness statement, 26 August 2009), para. 3; Ivica Cetina, T. 23397.
[1597] D1743 (Ivica Cetina, witness statement, 26 August 2009), para. 3; D1745 (Ivica Cetina, witness statement, 26 February 2002), p. 5.
[1598] D1743 (Ivica Cetina, witness statement, 26 August 2009), paras 6, 16-17; D1745 (Ivica Cetina, witness statement, 26 February 2002), p. 6.
[1599] D1745 (Ivica Cetina, witness statement, 26 February 2002), p. 5; Ivica Cetina, T. 23396-23397, 23400.
[1600] Ivica Cetina, T. 23396, 23399, 23503.
[1601] Ivica Cetina, T. 23399-23400.
[1602] D1745 (Ivica Cetina, witness statement, 26 February 2002), p. 5; Ivica Cetina, T. 23512.



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predominately inhabited by Serbs.[1603] As there were too few experienced Serb police officers in the Zadar area to fill the commander positions, appointments were made from other parts of Croatia.[1604] Neither Romanić, nor the commanders, nor the officers of the newly opened police stations had been prepared for their positions prior to the liberation of the territory.[1605] Nor had office, storage or technical equipment for police work been prepared for the police stations or the Kotar-Knin Police Administration.[1606] There were about 100 ordinary police officers from all over Croatia under Romanić's command.[1607] The Zadar-Knin Police Administration had about 500 police officers prior to, and about 1,000 police officers after, entering the new territory.[1608] The Benkovac police station had between 70 and 90 police officers.[1609] Romanić and Cetina did not have enough police to deal with the problems in their police administrations following Operation Storm, which Cetina mentioned to senior MUP figures, who said they would increase the number of personnel, vehicles and resources.[1610] However, personnel was not increased sufficiently and only a modest number of vehicles were provided for patrols.[1611]

2129. **Witness 86** testified that the Kotar-Knin Police Administration had no organizational structure when the first police officials arrived on 6 August 1995.[1612] According to the witness, it took some days before the police could start using the Knin police station, since the building was in bad condition and could have been mined.[1613] Witness 86 testified that only after about ten days, telephone and fax communications were established between the headquarters and the police stations.[1614] Before that, communication was primarily done through courier service.[1615] According to the witness, the police in Knin had no problems with police vehicles.[1616] Witness 86 further assessed that the number of police officers in the Kotar Knin Police Administration was

[1603] Ivica Cetina, T. 23512.
[1604] D1745 (Ivica Cetina, witness statement, 26 February 2002), p. 5.
[1605] Ivica Cetina, T. 23397-23398.
[1606] Ivica Cetina, T. 23397.
[1607] Ivica Cetina, T. 23400.
[1608] Ivica Cetina, T. 23401.
[1609] Ivica Cetina, T. 23432.
[1610] Ivica Cetina, T. 23402-23403.
[1611] Ivica Cetina, T. 23403.
[1612] P487 (Witness 86, witness statement, 19 September 2001), paras 32, 40; Witness 86, T. 5352, 5781.
[1613] P487 (Witness 86, witness statement, 19 September 2001), paras 32, 38, 40; Witness 86, T. 5352-5353, 5507-5508, 5759-5760.
[1614] P487 (Witness 86, witness statement, 19 September 2001), para. 39; Witness 86, T. 5503-5505, 5513-5514, 5737-5738.
[1615] Witness 86, T. 5503-5505, 5513, 5738.



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insufficient compared to the needs in the area.[1617] **Witness 84** testified that the police suffered a shortage in work force and lacked the necessary equipment which made it difficult for it to carry out uninterrupted policing in the entire area.[1618] The witness further testified that the police made daily reports to Morić in Zagreb, requesting additional police officers and equipment, but no additional police officers or equipment were sent to them.[1619] According to **Cetina**, there were no people in the area, so when the police arrived at the scene of an incident, there was nobody to collect information from, as a result of which the police were unable to collect information on crimes in the area.[1620] The uniformed police lacked the manpower to cover the vast area; stayed mostly on the main roads; and did not often visit the villages that were far away from the main roads and the remote hamlets, where most of the murders occurred.[1621] The international representatives did patrol remote areas and they, including UNCRO, and the Civil Protection were often the only source of information about events in the area.[1622]

2130. Cetina testified that initially, only the Zadar-Knin Police Administration had a crime police department, consisting of some 40-50 police officers, as it was not possible to establish crime police departments in the police stations.[1623] The crime police were under Cetina's authority.[1624] If the coordinators or police station commanders had a problem, they would communicate with the criminal police through Cetina or Ive Kardum.[1625] Thus, as the Kotar-Knin Police Administration did not have its own crime police, Romanić had to refer any murder investigation to Kardum.[1626] The Kotar-Knin Police Administration would take note of the event, provide security for the site and assess whether they needed to call the crime police.[1627] The commander of the Knin

[1616] Witness 86, T. 5505, 5514.
[1617] Witness 86, T. 5538-5539, 5575-5576, 5583. See also D452 (Request by Tomo Ćuk, commander of Obrovac police station, to Kotar-Knin Police Administration for additional police officers, 7 September 1995).
[1618] P2395 (Witness 84, witness statement, 9 March 2002), para. 16; Witness 84, T. 11209-11210, 11314.
[1619] P2395 (Witness 84, witness statement, 9 March 2002), para. 16; Witness 84, T. 11209-11210.
[1620] D1743 (Ivica Cetina, witness statement, 26 August 2009), para. 6.
[1621] D1745 (Ivica Cetina, witness statement, 26 February 2002), pp. 9-10, 13; Ivica Cetina, T. 23577. See also P639 (Report of Special Rapporteur Elisabeth Rehn, 7 November 1995), para. 31.
[1622] D1743 (Ivica Cetina, witness statement, 26 August 2009), para. 6; D1745 (Ivica Cetina, witness statement, 26 February 2002), pp. 9-10; Ivica Cetina, T. 23577.
[1623] D1745 (Ivica Cetina, witness statement, 26 February 2002), p. 6; Ivica Cetina, T. 23400-23401, 23445.
[1624] Ivica Cetina, T. 23597.
[1625] D1745 (Ivica Cetina, witness statement, 26 February 2002), p. 6.
[1626] Ivica Cetina, T. 23400, 23445.
[1627] Ivica Cetina, T. 23401.



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police station should have forwarded any information received from UNCIVPOL on killings or bodies, to the Zadar-Knin crime department.[1628]

2131. **Kardum** testified that in August 1995, Kotar-Knin police administration contained the following police stations: Korenica, Donji Lapac, Lovinac, Gračac, Obrovac, Knin, Benkovac, Stankovci, as well as a police outpost in Kistanje.[1629] Kardum further testified that all police stations in the Kotar-Knin Police Administration, except possibly the Lovinac one, were according to the organizational chart meant to have crime sections, and Kardum himself would have been at their head, but that in August 1995 none of them did.[1630] He testified that he did not have the authority to send policemen there, nor could he spare any due to the increased workload.[1631] According to Kardum, he did not have enough crime police to cover the vast area of his police administration after Operation Storm, given the chaotic situation.[1632] Kardum testified that he often asked, unsuccessfully, Cetina to get the MUP to upgrade the Zadar-Knin police administration from a second rank police administration to a first rank police administration, which would mean that it would get more people and resources.[1633] Kardum testified that around the end of August or beginning of September 1995 he sent, from the 50-60 persons of his own department, the first crime police to the police stations in Knin, Gračac, and Benkovac.[1634] In mid- or late September 1995, the Kotar-Knin Police Administration ceased to exist, and its police stations became independent organizational units under the jurisdiction of Zadar-Knin Police Administration.[1635]

2132. **Cetina** testified that shortly after the beginning of Operation Storm, the MUP appointed coordinators, mainly experienced professionals from the Department of the Regular Police, to all police station commanders, regardless of their nationality, since some of the newly appointed commanders were inexperienced.[1636] There were 12

[1628] Ivica Cetina, T. 23447-23448.
[1629] Ive Kardum, T. 9454-9456; D806 (Maps of Zadar-Knin and Kotar Knin police administrations), pp. 2-3.
[1630] P2396 (Ive Kardum, witness statement, 3-4 May 2007), para. 16 (b); P2397 (Ive Kardum, witness statement, 22-23 March 2004), para. 20; Ive Kardum, T. 9242-9243, 9357, 9383, 9410, 9454; D806 (Maps of Zadar-Knin and Kotar Knin police administrations), p. 2.
[1631] Ive Kardum, T. 9270-9271.
[1632] P2397 (Ive Kardum, witness statement, 22-23 March 2004), paras 38, 56-57; Ive Kardum, T. 9458-9459.
[1633] Ive Kardum, T. 9457-9458.
[1634] P2396 (Ive Kardum, witness statement, 3-4 May 2007), paras 11, 16 (c); Ive Kardum, T. 9243, 9251, 9253-9254, 9410; P899 (Instructions of Joško Morić dated 6 September 1995, with various reports and statistics), p. 7.
[1635] P2396 (Ive Kardum, witness statement, 3-4 May 2007), para. 16 (b).
[1636] D1745 (Ivica Cetina, witness statement, 26 February 2002), pp. 5-6; Ivica Cetina, T. 23399, 23512.



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coordinators within Cetina's area of responsibility and they were not under Cetina's command, but reported directly to the MUP as well as to Cetina.[1637] The coordinators wore uniforms while on duty and were initially directly subordinated to Franjo Đurica, and later to Marijan Tomurad, who replaced Đurica after about a month.[1638] The Chief coordinator was responsible to the Assistant Minister for the Police.[1639] The coordinators had no authority over the crime police, nor over the units of the Special Police.[1640] Cetina liaised closely with Đurica; met with the commanders of the police stations, including Romanić and Mihić, and coordinators in the field on a daily basis to discuss all crimes and problems, including the murders in the area; and attended meetings with the coordinators as a group in the evenings in Zadar.[1641] At the end of 1995, the MUP recalled the coordinators from the area to Zagreb.[1642]

2133. On 6 August 1995, **Stjepan Buhin**, a MUP employee in 1995 and stationed in Knin between 6 August and the beginning of September 1995,[1643] arrived in Knin.[1644] At that time, Romanić, Mihić, and a couple of policemen were already in the police building in town.[1645] The building had been ransacked and had two shell holes.[1646] According to the witness, for the first five to eight days there was no water, no electricity, and no radio communications which meant that there was limited communication with the Zadar Police Administration or the MUP in Zagreb.[1647] Any communication had to go through police officers, acting as messengers, who had to travel between police stations and Zadar, which caused delays.[1648] According to the witness, already on 6 August 1995, the MUP had dispatched police officers to the different police stations in the Kotar-Knin Police Administration.[1649] However, the policemen were few, they were not always properly trained, and they came from other

[1637] D1745 (Ivica Cetina, witness statement, 26 February 2002), pp. 6, 14.
[1638] D1745 (Ivica Cetina, witness statement, 26 February 2002), pp. 5-6; Ivica Cetina, T. 23425.
[1639] D1745 (Ivica Cetina, witness statement, 26 February 2002), pp. 5-6.
[1640] D1745 (Ivica Cetina, witness statement, 26 February 2002), p. 6.
[1641] D1745 (Ivica Cetina, witness statement, 26 February 2002), pp. 6-7; Ivica Cetina, T. 23515.
[1642] D1745 (Ivica Cetina, witness statement, 26 February 2002), p. 6.
[1643] P963 (Stjepan Buhin, witness statement, 9 March 2002), pp. 1-5; Stjepan Buhin, 10017, 10037, 10058-10059.
[1644] Stjepan Buhin, T. 10017, 10037.
[1645] P963 (Stjepan Buhin, witness statement, 9 March 2002), p. 3; Stjepan Buhin, T. 10020, 10061, 10063, 10119-10120.
[1646] Stjepan Buhin, T. 10020.
[1647] Stjepan Buhin, T. 10020-10021, 10025-10026, 10042.
[1648] Stjepan Buhin, T. 10025-10026, 10042.
[1649] Stjepan Buhin, T. 10022-10023.



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areas and were therefore not familiar with Knin and its surroundings.[1650] The civilian police used up a lot of manpower for the check-points and trying to secure important facilities, such as sources of water.[1651]

2134. **Cetina** testified that under Croatian law, the police could stop and check someone in civilian clothes, but could not search that person or his vehicle without a court order, unless the object of a crime, such as suspected looted goods, was visible.[1652] The police were not authorized to check personal identification documents of persons in uniform, or check any military vehicles.[1653] Under the Law on the Interior, a criminal investigation directed against HV members could only be carried out together with the VP.[1654] If a person reported to the police a crime in which soldiers were involved, or if the police had other information that the military had committed a crime, the police would inform the VP.[1655] In theory, the regular police had the authority to stop persons in HV uniforms or members of the Croatian Army at check-points if they were found to have looted items in their possession, and then call the VP so the individuals could be processed in the military criminal justice system.[1656] However, this was different in practice: police officers decided whether to act based on their assessment of whether the person would accept such an intervention by the civilian police in the absence of the VP, or would resist being identified which would lead to a conflict.[1657] Although police officers may have been afraid to take action in certain circumstances, there were numerous occasions when they did take actions against persons in military uniforms.[1658] This situation lasted for about a month and a half, during which period Cetina considered there was a risk of such conflicts.[1659]

2135. **Kardum** testified that on the territory of Zadar-Knin Police Administration the Croatian police had check-points, which they manned for a while together with VP.[1660]

[1650] P963 (Stjepan Buhin, witness statement, 9 March 2002), pp. 2-3; Stjepan Buhin, T. 9923, 9934-9935, 9988, 10020-10022, 10024-10025, 10040, 10063, 10065.
[1651] Stjepan Buhin, T. 10022, 10031-10032, 10040, 10045. 10114.
[1652] D1745 (Ivica Cetina, witness statement, 26 February 2002), p. 11; Ivica Cetina, T. 23606.
[1653] D1743 (Ivica Cetina, witness statement, 26 August 2009), para. 9; D1745 (Ivica Cetina, witness statement, 26 February 2002), pp. 7, 11; Ivica Cetina, T. 23467.
[1654] D1743 (Ivica Cetina, witness statement, 26 August 2009), para. 9; Ivica Cetina, T. 23473.
[1655] D1743 (Ivica Cetina, witness statement, 26 August 2009), para. 9; D1745 (Ivica Cetina, witness statement, 26 February 2002), p. 14; Ivica Cetina, T. 23424, 23607.
[1656] Ivica Cetina, T. 23465, 23473, 23476, 23478, 23565.
[1657] Ivica Cetina, T. 23465, 23473-23475, 23478, 23565-23566, 23570.
[1658] Ivica Cetina, T. 23647.
[1659] Ivica Cetina, T. 23475.
[1660] P2397 (Ive Kardum, witness statement, 22-23 March 2004), para. 53; Ive Kardum, T. 9353, 9437, 9440, 9452-9454; D802 (Varivode Operative Action performance report for 6-10 October 1995 from



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According to Kardum, it happened often that a Croatian soldier passed through a check-point with property that he could not prove was his own.[1661] Kardum testified that at the check-points VP would handle members of the HV, and civilian police would handle civilians.[1662] The civilian police or VP at the check-point would temporarily confiscate the property upon mutual signed receipt, most often other police would arrive and take the items and the person(s) to the nearest police station to be interviewed, and – if they established that the items had been stolen – file a criminal complaint against the person.[1663] However, Kardum testified that police did not take every such person to a police station, due to lack of manpower, and depending on the seriousness of the incident, other incidents of the day, and the proximity of the closest police station.[1664] The policeman filing a criminal complaint would call his duty service and request the next available "KU" number in the police register, and refer it to the prosecutor along with, as a rule, the confiscated items.[1665] However, bulky items would either remain in police storage or in the custody of the suspects, who would be obliged to keep them until final resolution of the case.[1666] Upon consultation with the prosecutor, the police would sometimes detain the suspect.[1667] Kardum testified that only the courts were authorized to make a final decision with regard to the confiscated items.[1668]

2136. Kardum testified that in August 1995, they did not take action against HV officers or non-commissioned officers, and that he could not say whether they took action against soldiers, because while some persons were found taking property it was hard to tell if they were really soldiers due to the ongoing demobilization and persons wearing military uniforms.[1669] Kardum testified that there were not more investigations into incidents of burning in his area of responsibility, because the police already had as priority tasks to secure reception centres, find graves of Croats, find and mark

Damir Kozić to Mate Laušić, 11 October 1995), pp. 2, 7; D806 (Maps of Zadar-Knin and Kotar Knin police administrations), p. 1.
[1661] Ive Kardum, T. 9353, 9438.
[1662] Ive Kardum, T. 9437, 9452-9453.
[1663] P2397 (Ive Kardum, witness statement, 22-23 March 2004), para. 53; Ive Kardum, T. 9353, 9437-9442, 9447-9448, 9460-9463, 9468; D803 (Receipt for temporary confiscation of 40 sheep, 27 September 1995); D804 (Receipt for temporary confiscation of a rifle and nine calves, 28 August 1995); D805 (Receipt for temporary confiscation of various household items from a soldier which were placed in his custody, 29 August 1995).
[1664] Ive Kardum, T. 9459-9462.
[1665] Ive Kardum, T. 9353, 9444, 9449.
[1666] Ive Kardum, T. 9443-9447; D805 (Receipt for temporary confiscation of various household items from a soldier which were placed in his custody, 29 August 1995).
[1667] Ive Kardum, T. 9449-9450.
[1668] Ive Kardum, T. 9443.



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minefields, and because they feared mines in and around the burning houses.[1670] He also testified that local Serbs mistrusted the Croatian police, were very reluctant to report incidents to them, and had more trust in international organizations.

2137. **Albiston** explained the difficulties for criminal investigations that arose from the organization of the Zadar-Knin police administration, as well as from the size of the area the administration covered.[1671] These difficulties could lead to delays and impact the quality of criminal investigations.[1672] Albiston testified that the civilian police were not adequately resourced, equipped, trained, prepared or led, to have been able to make a significant and immediate impact on the crimes that were being committed.[1673]

2138. Having reviewed the difficulties faced by the civilian police, the Trial Chamber will now examine the difficulties faced by the VP following Operation Storm. On 7 August 1995, Vinko Šupe, the assistant commander for the propaganda activities department of the OG Šibenik, reported that intensive mopping up of the area in the zone of responsibility was still underway.[1674] The VP were guarding installations of vital importance in the liberated territories.[1675] The VP were insufficiently monitoring communications and preventing theft, as they were not capable of completely monitoring the vast liberated areas.[1676]

2139. Following a meeting on 16 August 1995, chief of police Bitanga reported to **Cetina** that the VP lacked personnel.[1677] According to Cetina, there were fewer VP officers than regular police officers in the Zadar-Knin and Kotar-Knin Police Administrations and the 71st and 72nd Battalion did not have enough personnel to cover their entire territory.[1678] Cetina and others informed the MUP of the shortage of VP officers in writing and raised the problem at meetings with VP commanders.[1679] **Morić**

[1669] Ive Kardum, T. 9335, 9338.
[1670] Ive Kardum, T. 9497-9498.
[1671] D1776 (Expert Report of Christopher Albiston, August 2009), paras 3.26-3.30; Christopher Albiston, T. 23776-23780, 23842, 24111, 24122-24123; D1778 (Map of Kotar-Knin Police Administration area with buffers).
[1672] Christopher Albiston, T. 23776-23778, 24122, 23780.
[1673] D1776 (Expert Report of Christopher Albiston, August 2009), para. 2.7.
[1674] P1270 (Regular report of the propaganda activities department of the OG Šibenik, Vinko Šupe, 7 August 1995).
[1675] P1270 (Regular report of the propaganda activities department of the OG Šibenik, Vinko Šupe, 7 August 1995), p. 1.
[1676] P1270 (Regular report of the propaganda activities department of the OG Šibenik, Vinko Šupe, 7 August 1995), p. 1.
[1677] Ivica Cetina, T. 23416.
[1678] Ivica Cetina, T. 23412.
[1679] Ivica Cetina, T. 23434.



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testified that VP had difficulties following the pace of the civilian police, as they were less well educated and organized, less mobile, and short of staff.[1680] According to annual reports on the work of the 72nd VP Battalion in 1995, its main task after Operation Storm was to establish VP units in the newly liberated areas.[1681] The reports further stated that the biggest problem of the Battalion in 1995 was a lack of manpower because it was constantly engaged in Sectors North and South and in the Livno OG and there were constant problems of inadequate education of personnel and insufficiency of technical equipment.[1682] **Boško Džolić**, a former Company Commander of the 72nd VP Battalion who was the Commander of the Joint VP Company in Knin from 5 to 12 August 1995,[1683] testified that the resources of the VP were stretched because the VP, and in particular the Joint VP Company in Knin, were used for tasks other than regular VP tasks.[1684] He considered the strength of the VP Company in Knin to be insufficient and estimated that at least double the amount of VP members was needed to cover the slowly expanding area and carry out their amount of assignments.[1685] According to **Jurić**, the VP was seriously understaffed, and although people worked 12 hours shifts, in those conditions it was difficult to cover such a large area of responsibility.[1686]

2140. **Boris Milas** acting Head of the Crime Prevention Service of the 72nd Battalion for the HV from about mid-September 1992 to the end of 1996,[1687] cited as constraints on the VP's work the priority given to processing POWs, deaths of HV members away from the frontline, which had to be investigated by the VP and could take up to ten days to investigate, and the vastly increased territory they were covering with the same,

[1680] Joško Morić, T. 25638, 25674-25676, 25841.
[1681] P883 (Annual report on the work of the 72nd VP Battalion by Colonel Mihael Budimir, 4 January 1996), p. 3.
[1682] P883 (Annual report on the work of the 72nd VP Battalion by Colonel Mihael Budimir, 4 January 1996), pp. 3-4; D850 (Annual report, crime investigation section 72nd VP battalion, to the VP crime investigation department Chief, Spomenko Eljuga, 31 December 1995), pp. 1-3, 32.
[1683] P875 (Boško Džolić, witness statement, 18 May 2004), p. 1, paras 3, 4, 20, 21, 53; P876 (Boško Džolić, witness statement, 20 August 2008), p. 1, paras 27, 32, 33; Boško Džolić, T. 8888, 8906, 8916, 8922, 8968, 8987, 8999, 9068; P882 (Report by Major General Mate Laušić on the use of VP units in Operation Storm, 6 August 1995); D786 (Organigram of the 72nd VP Battalion from August to October 1995); D787 (Daily Order of the Joint VP Company in Knin from 5 August to 23 September 1995), pp. 7, 10, 17, 21.
[1684] P876 (Boško Džolić, witness statement, 20 August 2008), para. 30.
[1685] P876 (Boško Džolić, witness statement, 20 August 2008), para. 8; Boško Džolić, T. 9055-9056.
[1686] Ivan Jurić, T. 27437-27438, 27464-27465.
[1687] D1532 (Boris Milas, witness statement, 19 May 2009), p. 1, paras 1-4, 6, 8, 11, 31; D1533 (Boris Milas, witness statement, 22 June 2009), p. 1; Boris Milas, T. 19158, 19168-19169, 19227-19230, 19322; P2548 (Official note of MUP crime police interview with Boris Milas), p. 1.



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insufficient staff.[1688] The witness further testified that many persons entered the newly liberated areas, and that the area of responsibility of the 72nd Military Battalion had a high number of HV members.[1689] In August 1995 the 68th VP Battalion was not deployed where Operation Storm had been carried out in anticipation of combat activities in the Dubrovnik and eastern areas.[1690]

2141. The Trial Chamber now turns to the evidence it has received regarding difficulties faced by the judicial branch following Operation Storm. **Bajić** considered that the two following primary factors were responsible for hindering the effective prosecution of crimes in the wake of Operation Storm: witnesses to and suspects of the crimes had relocated to other countries, and co-operation between police and prosecution bodies in Croatia was relatively weak initially.[1691] In spite of all of the extensive experience the staff had accumulated, the military prosecutor's offices still had a problem with insufficient personnel.[1692] He noted that the number of forensic officers and criminal investigation officers in the 72nd and 73rd VP Battalions was quite low, which lead to an inability to respond to all of the forensic examination requests.[1693] Accordingly, Bajić contended that this circumstance led to cases being inadequately processed, while the conditions for carrying out trials effectively were not in place.[1694]

2142. **Ivan Galović**, District Public Prosecutor in Zadar since 1990,[1695] testified that in the wake of Operation Storm, the work in his office increased throughout the period in which the military courts functioned until they were abolished in late 1996.[1696] Galović's basic approach was to promptly process cases which lent themselves to quick processing, such as theft, while excluding murders which required lengthy investigations.[1697] He testified that while the ordinary workload in the District Public

[1688] D1532 (Boris Milas, witness statement, 19 May 2009), paras 17-18, 71; D1533 (Boris Milas, witness statement, 22 June 2009), paras 2, 8; Boris Milas, T. 19332-19334, 19338. See also e.g. D589 (Letter by Marijan Tomurad to Joško Morić with regard to looting by individuals in HV uniforms, 28 August 1995), p. 2; D989 (Letter by Ivo Cipci to Joško Morić with regard to prevention of unlawful conduct in newly liberated areas, 24 August 1995), p. 2.
[1689] D1532 (Boris Milas, witness statement, 19 May 2009), paras 17, 71.
[1690] D1532 (Boris Milas, witness statement, 19 May 2009), paras 17, 71; Boris Milas, T. 19173; D1534 (UNPF-HQ coded cable daily report from Akashi to Annan, 16 August 1995), p. 2.
[1691] Mladen Bajić, T. 20767-20769, 20841-20842, 20870-20872.
[1692] Mladen Bajić, T. 20775.
[1693] Mladen Bajić, T. 20775.
[1694] Mladen Bajić, T. 20775, 20870-20872.
[1695] D1553 (Ivan Galović, witness statement, 18 May 2009), pp. 1-2, 5; Ivan Galović, T. 19666-19669.
[1696] Ivan Galović, T. 19678-19682.
[1697] Ivan Galović, T. 19683.



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Prosecutor's office in Zadar was 100 to 150 cases per year, the caseload increased to approximately 10,000, and he attributed the increase strictly to Operation Storm related crimes.[1698]

2143. According to Galović, after looting a location it was typical that the perpetrators would burn the house to cover their tracks.[1699] Galović said it was difficult to prosecute the crimes of arson and looting as perpetrators were nearly impossible to discover.[1700] He testified that many people were arrested at police check-points due to reasonable suspicion of possessing stolen goods having claimed the goods were theirs or had been abandoned, while perpetrators who set houses alight often claimed they were merely salvaging items from burning homes.[1701] Another frequent defence for individuals charged with larceny or robbery was a claim that they had been conducting mop-up operations in the field. Galović testified that attempts were made to pass off such conduct as patriotic or duty-bound, but he found it bestial and prosecuted it to the full extent of the law.[1702] He believed that the number of reports which were submitted and processed reflects the efficiency of the police in detecting the perpetrators, but he noted that apprehending the suspects was the difficult aspect as the local population knew the terrain and made effective use of it.[1703] In the context of arson and looting, Galović stated that all known injured persons were of Serb ethnicity, while he assumed that most of the unknown injured persons were Serb as well.[1704]

2144. **Željko Žganjer**, District State Attorney in Šibenik from June 1993 until 15 September 2002,[1705] testified that there was a shortage of staff in the judiciary to respond to every report that was made in the months after Operation Storm.[1706] According to Žganjer, in the aftermath of Operation Storm there were many cases pending before the military judiciary due to the many POWs who were former SVK soldiers.[1707] Most of these POWs were processed for causing or being part of armed

[1698] Ivan Galović, T. 19679, 19682.
[1699] D1553 (Ivan Galović, witness statement, 18 May 2009), p. 11; Ivan Galović, T. 19685.
[1700] D1553 (Ivan Galović, witness statement, 18 May 2009), p. 11.
[1701] Ivan Galović, T. 19685-19688.
[1702] Ivan Galović, T. 19699.
[1703] Ivan Galović, T. 19687.
[1704] D1553 (Ivan Galović, witness statement, 18 May 2009), p. 11.
[1705] P1046 (Željko Žganjer, witness interview of 8 December 2005), Tape 3275-1-A, p. 12, Tape 3275-1-B, p. 1.
[1706] Željko Žganjer, T. 11591-11592.
[1707] P1046 (Željko Žganjer, witness interview of 8 December 2005), Tape 3275-1-B, p. 3.



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rebellions or for endangering the territorial integrity of Croatia.[1708] Žganjer added, with regard to the prosecution of Croats, that from 1991 to 1995 or 1996, no Croats were prosecuted for war crimes by the State Attorney's Office in Šibenik.[1709] He further clarified that it was only some time after Operation Storm, when the political situation had changed, that there was a realization that the Croats may have committed some crimes.[1710]

2145. The Trial Chamber will now review the evidence regarding measures taken by Croatian authorities in reaction to crimes. **Morić** testified that at a meeting held on 2 August 1995 at which he was present, the participants discussed crimes committed during Operation Flash, by civilians, soldiers or persons in uniform, as a problem that might, but should not, be repeated in Operation Storm.[1711] The ministers present cautioned Morić and Laušić that they were in charge, at the operative level, of preventing such crimes or at least reducing them to a minimum.[1712] Morić testified that starting on 2 August 1995 he regularly discussed with Laušić trends in the field, such as individual HV members stealing, burning and killing cattle, whenever one would emerge.[1713] Morić also discussed with Laušić whenever there was a general problem with the civilian police's co-operation with VP.[1714] According to Morić, there was no one other than Laušić he could address on these matters.[1715] He further testified that Laušić was dedicated to end the crimes and told him that in reaction to Morić's reports he ordered VP units to step up co-ordination and co-operation with civilian police.[1716] According to Morić, both he and Laušić were frustrated by the state of affairs.[1717]

2146. **Laušić** testified that a brief meeting was held at 5:30 p.m. on 2 August 1995 between himself, Defence Minister Šušak, Minister of the Interior Jarnjak and Jarnjak's assistant Morić, in order to coordinate the work of the VP and the civilian police.[1718] At the meeting it was suggested – following negative experiences during Operation Flash –

[1708] P1046 (Željko Žganjer, witness interview of 8 December 2005), Tape 3275-1-B, p. 4.
[1709] P1046 (Željko Žganjer, witness interview of 8 December 2005), Tape 3276-1-A, pp. 13-14.
[1710] P1046 (Željko Žganjer, witness interview of 8 December 2005), Tape 3276-1-A, p. 14.
[1711] Joško Morić, T. 25813, 25817-25819.
[1712] Joško Morić, T. 25818-25819.
[1713] Joško Morić, T. 25594, 25636, 25731-25732, 25813, 25818, 25839-25840.
[1714] D1841 (Joško Morić, witness statement, 15 May 2009), para. 10; D1842 (Joško Morić, witness interview, 17 January 2004), pp. 90-91, 94-97, 99, 101-102; Joško Morić, T. 25635-25636, 25650, 25839.
[1715] D1842 (Joško Morić, witness interview, 17 January 2004), pp. 198-202; Joško Morić, T. 25731-25732, 25837-25841, 25857-25860.
[1716] Joško Morić, T. 25636-25638.
[1717] D1842 (Joško Morić, witness interview, 17 January 2004), p. 269; Joško Morić, T. 25642, 25732.



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that the Government close all catering businesses so that people could not buy alcohol.[1719] According to Laušić, Jarnjak said that such a decision would be taken, yet Laušić testified that such a decision was not taken during Operation Storm.[1720] Also pursuant to negative experiences during Operation Flash, it was suggested that the Government impose a curfew.[1721] Laušić understood that a curfew would be imposed, but he testified that during Operation Storm it was not.[1722]

2147. On 6 August 1995, Colonel Ivan Zelić sent a daily report to Major General Ivan Tolj, Chief of the MoD Political Administration, covering events up to 7 p.m.[1723] Zelić reported that when Croatian units entered Knin, they encountered around 1,000 persons who had remained in town. Because of terrain clearing and for their own security, UNCRO were not allowed to visit the town on 5 August 1995. Zelić described the behaviour of the units regarding property as catastrophic, and noted that immediately after entering Knin the devastation of buildings and uncontrolled collection of war booty began. However, VP had already entered the town and manned the main check-points, preventing further destruction and devastation of property.[1724] According to an SIS report dated 10 August 1995, when members of the 4th and 7th Guards Brigades entered Knin, commanders lost control over some individuals who took various food items and technical equipment from shops and flats.[1725] Some HV members demolished shops, ran tanks over cars, and drove seized cars around town, under the influence of alcohol. The VP arrived ten hours late, and were not immediately effective. At first, war booty was not collected in an organized manner. Each unit collected it individually and some HV members took household appliances, cars, etc. Most of those items were confiscated from them at VP check-points, sometimes by force.[1726]

2148. On 8 August 1995, Laušić wrote to Šušak, Červenko, the Director of the Croatian Intelligence, the Assistant Minister for Security, the Chief of the Political Administration in the MoD, and the Chief of the SIS that the VP had taken action

[1718] P2159 (Mate Laušić, witness statement, 11 August 2004), para. 153; Mate Laušić, T. 15393-15936; D409 (Minutes of three meetings at the Ministry of Defence, 2 August 1995), p. 5.
[1719] P2159 (Mate Laušić, witness statement, 11 August 2004), para. 154; D409 (Minutes of three meetings at the Ministry of Defence, 2 August 1995), p. 5.
[1720] P2159 (Mate Laušić, witness statement, 11 August 2004), paras 154, 160.
[1721] P2159 (Mate Laušić, witness statement, 11 August 2004), paras 155-156; D409 (Minutes of three meetings at the Ministry of Defence, 2 August 1995), pp. 5-6.
[1722] P2159 (Mate Laušić, witness statement, 11 August 2004), paras 155-156, 160.
[1723] P1133 (Report by Colonel Ivan Zelić to Major General Ivan Tolj, 6 August 1995), pp. 1, 3.
[1724] P1133 (Report by Colonel Ivan Zelić to Major General Ivan Tolj, 6 August 1995), p. 2.
[1725] P1134 (Report by SIS Assistant Commander Željko Pavić, 10 August 1995), pp. 1, 3-4.



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against a large number of HV members, preventing them from removing property that they were not authorized to take. On 9 August 1995, Laušić reported to the same people that on the fifth day of Operation Storm all VP units were engaged in basic military police assignments, searching the terrain, and to some extent in combat operations. Laušić stated that there were grave problems because of the large number of HV soldiers in the settlements over whom the HV commanders did not exert influence. As a result, according to Laušić, there were attempts of random plunder and burning of buildings. He recommended that appropriate measures should be taken along the chain of command in order to prevent these acts. Laušić recommended to withdraw all VP units from combat activities and to engage them in VP assignments.[1727] On 12 August 1995, Laušić reported to the same people that the VP had been redeployed to perform VP tasks.[1728] He also reported that, at check-points and through car patrols, the VP reclaimed items that HV members had taken without authorization from property that was left behind and from the war booty.[1729] Meanwhile, a letter dated 10 August 1995 and signed on behalf of Morić, alerted Laušić to reports from the Zadar-Knin police administration and elsewhere of individual HV members on liberated territory stealing movable property, burning houses and killing stray cattle. The letter further noted that there was a lack of cooperation at some check-points and road blocks between VP and civilian police. Finally, the letter requested that Laušić take measures to eliminate those things.[1730]

2149. **Witness 86** testified that on 8 or 9 August 1995, the police arranged to set up check-points to control crime.[1731] The check-points were placed along the border of the liberated area and, within the Kotar-Knin Police Administration, on the main roads and important intersections.[1732] Witness 86 testified that the system of check-points did not function efficiently because of the number of roads to cover and the lack of people and resources.[1733] Witness 86 testified that sometimes the VP had its own check-points and

[1726] P1134 (Report by SIS Assistant Commander Željko Pavić, 10 August 1995), p. 4.
[1727] D506 (Report by Mate Laušić on the use of VP during Operation Storm, 9 August 1995), pp. 1-4.
[1728] D400 (Report by Mate Laušić on the use of VP during Operation Storm, 12 August 1995), pp. 1-2, 5.
[1729] D400 (Report by Mate Laušić on the use of VP during Operation Storm, 12 August 1995), p. 2.
[1730] D46 (Letter to Mate Laušić, 10 August 1995).
[1731] P487 (Witness 86, witness statement, 19 September 2001), paras 32, 42; P489 (Witness 86, witness statement, 23 November 2007), para. 4.
[1732] P489 (Witness 86, witness statement, 23 November 2007), para. 4; Witness 86, T. 5816, 5843-5844.
[1733] P487 (Witness 86, witness statement, 19 September 2001), para. 43; Witness 86, T. 5556-5557, 5587-5589, 5594, 5596, 5599, 5843-5844.



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sometimes a VP officer would be allocated to join the civilian police.[1734] Witness 86 testified that meetings between the police commanders, and at least one of the Assistant Ministers, were held roughly every ten days at different localities in the area of the Kotar-Knin Police Administration.[1735] Witness 86 testified that both Morić and Marijan Benko were present and chaired most of the meetings.[1736] During the meetings, Cetina provided information about matters such as burning, looting, and deaths in the area of the Kotar-Knin Police Administration and the Zadar-Knin Police Administration, and informed the participants what actions should be taken, which were primarily aimed at the prevention of illegal acts rather than at investigation.[1737] The first meeting was held sometime between 10 and 14 August 1995 in the building of the elementary school in Knin and was attended by, among others, Marijan Benko, Cetina, Drago Matić, and Ivo Cipci.[1738] During the meeting, matters such as the violence apparent in the liberated areas, looting and destruction of property, and other problems related to police work were discussed.[1739]

2150. On 12 August 1995, Captain Mario Tomasović of the forward command post in Zadar issued a warning on behalf of the Assistant Commander for Political Affairs of the Split MD to the assistant commanders for political affairs of the Sajković, Otrić and Vrba OGs, and to the 72nd Military Police Battalion, with the Commander of the Split MD and the Commander of the Knin Garrison copied for information.[1740] Tomasović noted that the irresponsibility and inappropriate acts of individual soldiers, NCOs, and officers had brought into question the success of Operation Storm and compromised the HV and Croatia.[1741] He further noted that for this reason and following the policy of President Tuđman and the MoD, the continued torching and destruction of facilities and property, killing of livestock, confiscation of property, and inappropriate conduct towards remaining civilians, POWs, and peacekeepers in the liberated territory had to be immediately prevented.[1742]

[1734] P489 (Witness 86, witness statement, 23 November 2007), para. 4; Witness 86, T. 5597.
[1735] P487 (Witness 86, witness statement, 19 September 2001), paras 51, 58; Witness 86, T. 5528-5529.
[1736] P487 (Witness 86, witness statement, 19 September 2001), paras 51, 58; Witness 86, T. 5528-5529.
[1737] Witness 86, T. 5529-5530.
[1738] P487 (Witness 86, witness statement, 19 September 2001), para. 58; Witness 86, T. 5525-5526.
[1739] Witness 86, T. 5526-5528.
[1740] D645 (Warning issued by Captain Mario Tomasović, 12 August 1995), pp. 1-2.
[1741] D645 (Warning issued by Captain Mario Tomasović, 12 August 1995), p. 1.
[1742] D645 (Warning issued by Captain Mario Tomasović, 12 August 1995), p. 1. See also similar warnings by Vinko Šupe and Captain Ivan Ivković: D647 (Warning issued by Captain Vinko Šupe, 14 August 1995), pp. 1-3; D648 (Warning issued by Captain Ivan Ivković, 14 August 1995), pp. 1-3.



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2151. On 15 August 1995, Laušić recommended that all weapons, mines, and explosives be confiscated from HV members and that the equipment and other items they carried home with them be inspected, prior to demobilization, discharge, or departure.[1743] Furthermore, HV members were to be prevented from wandering around the liberated areas uncontrolled, so they would not be hurt by mines and explosives.[1744] He recommended that a ban be imposed on using unregistered motor vehicles (spoil of the war), and that measures be quickly undertaken to register these vehicles.[1745] Laušić also recommended that HV members be issued passes proving their HV membership, so that the VP could recognize them and prevent non-members from walking around in HV uniforms.[1746]

2152. **Morić** estimated that he and his co-workers became aware of the crime wave around 15 August 1995 when it experienced a great surge.[1747] At that point, according to Morić, it became clear that the method of work of the civilian police and VP no longer provided the result planned by Morić and Laušić.[1748] Morić testified that reports he received from the liberated areas showed that police stations and administrations monitored the situation but took insufficient measures to implement the law.[1749] Morić consulted experts on his team, and chiefs of police administrations, emphasizing that they had 4,000 out of a total of 11,000 policemen in the country.[1750] He also cautioned his Minister about the many obstacles preventing the police from carrying out its duties.[1751]

2153. On 17 August 1995, Morić informed Chief of VP Administration Laušić that police reports showed that there were daily instances of arson of houses and theft of property in the territory liberated in Operation Storm.[1752] He stated that the perpetrators of these acts in most cases wore HV uniforms, some of whom were HV members while others abused the uniform, which in either case prevented the civilian police from

[1743] D292 (Croatian defence report on Operation Storm, signed by Mate Laušić, 15 August 1995), pp. 1, 15.
[1744] D292 (Croatian defence report on Operation Storm, signed by Mate Laušić, 15 August 1995), p. 15.
[1745] D292 (Croatian defence report on Operation Storm, signed by Mate Laušić, 15 August 1995), pp. 15-16.
[1746] D292 (Croatian defence report on Operation Storm, signed by Mate Laušić, 15 August 1995), p. 16.
[1747] Joško Morić, T. 25561-25562, 25693, 25831-25832, 25929.
[1748] D1842 (Joško Morić, witness interview, 17 January 2004), p. 97; Joško Morić, T. 25562-25563.
[1749] Joško Morić, T. 25927-25928, 25931.
[1750] Joško Morić, T. 25928.
[1751] Joško Morić, T. 25928.



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intervening.[1753] He concluded that the joint work of the VP and civilian police in this area had not produced the results required by the Croatian state policies and legal system, and needed to be changed.[1754]

2154. On 18 August 1995, Laušić issued an order in which he, referring to the letter of Morić of 17 August 1995 and protests from foreign ambassadors, noted that the VP had not carried out its tasks to the full and expected extent, despite the fact that the need to ensure public law and order and prevent any unlawful conduct by HV troops on the liberated territory was pointed out by the VP Administration in several orders and mandatory instructions given to the units when they were visited.[1755] He further noted that the cooperation between the VP and the civilian police had not produced results, and that the forms of the cooperation hence should be changed.[1756] Therefore, Laušić ordered the commanders of the VP platoons, companies, and battalions to have meetings with the commanders of police stations and the chiefs of police administrations in order to analyze the security situation and establish specific and effective modes of cooperation, as well as with the most senior HV commander in their zone of responsibility to familiarize themselves with these HV units.[1757] Laušić further ordered the VP commanders to submit a special report about every instance and form of lack of cooperation between MUP employees and HV units.[1758]

2155. On 18 August 1995, Morić informed the chiefs of several police administrations, including Zadar-Knin and Knin, that police reports showed that there were daily instances of arson of houses and theft of moveable property in the territory liberated in

[1752] D48 (Letter by Joško Morić, 17 August 1995); P877 (Order by Major General Mate Laušić on cooperation with MUP accompanied by a letter from Joško Morić, 18 and 17 August 1995), p. 4; P2166 (Laušić's notebook), p. 45.
[1753] D48 (Letter by Joško Morić, 17 August 1995); P877 (Order by Major General Mate Laušić on cooperation with MUP accompanied by a letter from Joško Morić, 18 and 17 August 1995), p. 4. See also D49 (Order by Joško Morić, 18 August 1995), p. 1.
[1754] D48 (Letter by Joško Morić, 17 August 1995), p. 2; P877 (Order by Major General Mate Laušić on cooperation with MUP accompanied by a letter from Joško Morić, 18 and 17 August 1995), p. 4; P2166 (Laušić's notebook), p. 45.
[1755] P877 (Order by Major General Mate Laušić on cooperation with MUP accompanied by a letter from Joško Morić, 18 and 17 August 1995), pp. 1-2.
[1756] P877 (Order by Major General Mate Laušić on cooperation with MUP accompanied by a letter from Joško Morić, 18 and 17 August 1995), pp. 1-2.
[1757] P875 (Boško Džolić, witness statement, 18 May 2004), para. 54; P877 (Order by Major General Mate Laušić on cooperation with MUP accompanied by a letter from Joško Morić, 18 and 17 August 1995), p. 2.

[1758] P877 (Order by Major General Mate Laušić on cooperation with MUP accompanied by a letter from Joško Morić, 18 and 17 August 1995), p. 2.



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Operation Storm.[1759] He stated that the perpetrators of these acts in most cases wore HV uniforms, some of whom were HV members while others abused the uniform. He further stated that these acts had assumed such proportions that they were inflicting political damage, domestically and internationally, on Croatia.[1760] Morić therefore ordered the police administration chiefs to immediately convene a meeting with commanders of VP battalions to inform them of the problem and the decision to put a stop to it as of that day, while the past instances of arson and theft would not be operatively investigated.[1761] They further had to request the VP commanders that mixed VP and civilian police check-points and patrols be set up in all populated areas where HV members were present, in order to prevent such acts.[1762] They also had to agree that as of that day every case of arson of houses and theft of moveable property receive criminal processing.[1763] If VP could not do so, civilian police would do it alone, whether or not the perpetrator wore an HV uniform.[1764]

2156. Morić testified that he was faced with a choice between either investigating incidents that had already occurred while knowing that there would be many more, or assigning personnel to prevent further incidents while postponing investigations into the ones that had already occurred, and chose the latter, as reflected in his order of 18 August 1995.[1765] According to Morić, it was clear from the context of his order that once the crime wave had subsided the regular police had to help investigate the crimes committed.[1766] Morić further testified that the law, not he, Markač or anyone else, determined whether or not the police had to investigate.[1767] According to Morić, the order did not address the crime police, over whom he had no authority, which chiefs of police administrations knew.[1768] Morić testified that no one from police administrations asked him what the order was about, despite being duty-bound to warn him if they had considered the order to be illegal or unprofessional.[1769] Also according to Morić, the

[1759] D49 (Order by Joško Morić, 18 August 1995).
[1760] D49 (Order by Joško Morić, 18 August 1995), p. 1.
[1761] D49 (Order by Joško Morić, 18 August 1995), paras 1-2.
[1762] D49 (Order by Joško Morić, 18 August 1995), para. 3.
[1763] D49 (Order by Joško Morić, 18 August 1995), para. 4.
[1764] D49 (Order by Joško Morić, 18 August 1995), para. 5.
[1765] Joško Morić, T. 25561-25563, 25569, 25733-25734, 25739-25740, 25842-25844, 25928-25930, 25936-25937. See also D1776 (Expert Report of Christopher Albiston, August 2009), para. 3.76; Christopher Albiston, T. 23851-23852.
[1766] Joško Morić, T. 25564-25565, 25739-25740, 25843, 25845-25846, 25855-25856, 25931.
[1767] Joško Morić, T. 25578-25579, 25582, 25855-25856.
[1768] Joško Morić, T. 25841-25843, 25846-25847.
[1769] Joško Morić, T. 25740, 25852-25854, 25930.



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reports from various police administrations that he received in the days following his 18 August 1995 order showed a decrease in the number of crimes.[1770] Subsequently, according to Morić, the police filed reports showing that they kept investigating crimes, including those that took place prior to 18 August 1995, which indicated to Morić that his 18 August 1995 order had been properly understood and was yielding the desired results.[1771] Morić testified that with item 5 of his 18 August 1995 order, he wanted to ensure that VP's engagement increased.[1772] In response to Morić's order of 18 August 1995, Cetina informed Morić on 19 August 1995 that during meetings with representatives of the 71st and 72nd VP battalions on 16 and 17 August 1995, the tasks referred to in the order had been discussed and that the VP representatives had pointed out that coordinated action at all check-points was impossible due to lack of personnel.[1773]

2157. On 22 August 1995, Morić requested the chiefs of several police administrations, including Zadar-Knin and Knin, to report back on 24 August 1995 on various questions pertaining to the commission of new acts of destruction of houses and theft of property and the quality of the cooperation of VP and civilian police and their investigations into such acts.[1774] Morić testified that his intention behind the request for information on whether crimes were being investigated in item 6 of this order was to make sure that his previous instruction had not been misunderstood to mean that crimes committed after 18 August 1995 should not be investigated.[1775] In response to the order of 22 August 1995, Cetina informed Morić that the co-operation between civilian police and VP was satisfactory; that there were considerably fewer cases of burning and destruction of houses and removal of moveable property than before 18 August 1995; that the perpetrators were mostly persons in HV uniforms (handled by HV) and civilians and to a lesser degree police in uniform; that disciplinary and criminal processing was underway; that on-site investigations were primarily carried out by civilian police members; and that they were working hard on preventing further crimes.[1776] According

[1770] Joško Morić, T. 25561-25565, 25930-25931.
[1771] Joško Morić, T. 25561-25566, 25569-25572, 25740, 25843, 25931. See also D568 (List of charges compiled by the Gotovina Defence); P2403 (Prosecution's compilation of list of relevant entries in D568); P2404 (Selected articles of the Croatian criminal code of 1993).
[1772] Joško Morić, T. 25733-25734.
[1773] D584 (Response by Ivica Cetina to Joško Morić on cooperation with the VP, 19 August 1995).
[1774] D50/D1847 (Request by Joško Morić, 22 August 1995).
[1775] Joško Morić, T. 25568-25569, 25648; D50/D1847 (Request by Joško Morić, 22 August 1995).
[1776] P498 (Report by Ivica Cetina to Joško Morić, 24 August 1995); D1889 (Various documents), pp. 4-5. See also P499 (Report by Čedo Romanić, 1 September 1995); D591 (Reminder by Joško Morić to Chiefs



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to Morić, the response to this order showed that the former order had not been misunderstood.[1777] Morić testified that he sent a letter to chiefs of police administrations dated 30 August 1995, asking for more specific reports, because he had received from chiefs of police administrations some very general responses that made Morić realize that they, and high-level management, were not as involved with the problem as Morić wanted them to be.[1778]

2158. **Witness 86** testified that he did not recall having seen the order issued by Morić on 18 August 1995, but that the matters mentioned in the order were discussed at a meeting on 19 August 1995 in Benkovac, including the issues of the continuing burning of property.[1779] Witness 86 testified that according to him, the order suggested that crimes that were recorded up until 18 August 1995 would not be investigated, and that explained why there were no entries in the logbook of the Knin police station with regard to the burning of houses, and that one could conclude from the order that those crimes were tolerated until 18 August 1995.[1780] Witness 86 testified that from the very outset, the police tried to act against misdemeanours and crimes, and some on-site investigations were carried out with respect to burning of houses and other crimes, although not in respect of all cases.[1781] Furthermore, Witness 86 testified that the police continued working like that after the date of the order.[1782]

2159. **Cetina** testified that Morić's order of 18 August 1995 did not affect how he conducted his police operations – if a vehicle with stolen goods was found, the vehicle and the goods were confiscated and a criminal report was filed, in accordance with Croatian law.[1783] Cetina ignored Morić's order, as the Croatian laws on Internal Affairs and Criminal Procedures had supremacy over the order.[1784] By the time of Morić's order, Cetina's Police Administration had already processed a number of cases and

of Police Administrations to submit reports, 30 August 1995); D989 (Report by Ivo Cipci to Joško Morić regarding prevention of unlawful conduct in newly liberated areas, 24 August 1995); D1860 (Report by Ivan Dasović, 12 September 1995).
[1777] Joško Morić, T. 25569.
[1778] Joško Morić, T. 25572-25573; D574 (Request by Joško Morić to police administrations to report on cooperation with VP, 30 August 1995). See also D1857 (Report by Ivo Cipci to Joško Morić regarding prevention of illegal conduct in the newly liberated areas, 1 September 1995); D1858 (Report by Milan Bijelić to Joško Morić, 2 September 1995); D1859 (Report by Ivan Dasović, 2 September 1995).
[1779] P487 (Witness 86, witness statement, 19 September 2001), paras 51, 58; P489 (Witness 86, witness statement, 23 November 2007), para. 17.
[1780] P488 (Statements of Witness 86: corrections and additional information, 25 June 2008), p. 1; P489 (Witness 86, witness statement, 23 November 2007), para. 19; Witness 86, T. 5785, 5846.
[1781] Witness 86, T. 5786, 5846.
[1782] Witness 86, T. 5846.
[1783] Ivica Cetina, T. 23411, 23413-23414.



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confiscated the property involved.[1785] The police held criminal investigations into a number of cases and sent all evidence gathered to the public prosecutor's office, regardless of the severity of the criminal offence.[1786] Cetina took steps to monitor the crimes mentioned in Morić's order of 22 August 1995.[1787] On 1 September 1995, Kardum wrote to the police stations in the Zadar-Knin Police Administration on Cetina's behalf, stating that the burning of houses and taking away of property unlawfully in the liberated areas should be constantly monitored, additional measures should be taken, and that the VP and the police stations were ordered to work together to prevent these acts.[1788]

2160. **Morić** testified that his associates and lower level teams of specialists contemplated the possibility of imposing a curfew to control the crimes, but that a choice was made to normalize the situation according to democratic peacetime rules regarding restrictions on the freedom of movement.[1789] Morić further testified that it would have been practically impossible for the police to implement a curfew over the vast area taken in Operation Storm.[1790]

2161. On 20 August 1995, Captain Željko Nakić, of the Drniš military post 1108, OG West, in the Split MD, issued an order on behalf of the Commander of OG West, to a number of units that due to the observed break-down of order and discipline and for the reputation of Croatia, these units were to establish control within their ranks and take measures against the torching of buildings and the killing of animals, and take disciplinary and criminal measures against irresponsible individuals.[1791]

2162. **Witness 86** recalled an order of 20 August 1995, sent by Cetina to all police stations in the Zadar-Knin Police Administration and the Knin Police Administration district, which noted a problem regarding the transport of goods and livestock through police check-points.[1792] In order to prevent crime and protect citizens' property, Cetina ordered that civilian authorities such as chiefs of municipalities issue stamped, signed

[1784] Ivica Cetina, T. 23411, 23413-23415, 23474, 23589.
[1785] Ivica Cetina, T. 23411.
[1786] D1745 (Ivica Cetina, witness statement, 26 February 2002), p. 9.
[1787] Ivica Cetina, T. 23417-23418.
[1788] D1750 (Letter to police stations in the Zadar-Knin Police Administration, 1 September 1995), pp. 1-2.
[1789] Joško Morić, T. 25821.
[1790] Joško Morić, T. 25645, 25821-25822.
[1791] D653 (Order by Captain Željko Nakić, 20 August 1995), pp. 1-2.
[1792] Witness 86, T. 5836-5837, 5840; D585 (Order on operating procedure with regard to authorizations and inspection of goods signed for Ivica Cetina, 20 August 1995).



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and numbered authorizations to transport goods.[1793] Furthermore, police officers at check-points were to inspect the goods, note the number of the authorization, the person transporting the goods, itemize the goods, and forward that information to the supervisor in charge.[1794] Witness 86 testified that the police acted in accordance with this order.[1795]

2163. On 28 August 1995, Marijan Tomurad informed Morić that patrols had observed a significant number of armed individuals in HV uniform and in vehicles with civilian registration plates who, in concert with civilians, had taken a large quantity of different property (farming equipment, building material, and technical appliances) and transported it out of the liberated areas.[1796] They had done so on the basis of "written corroborations" issued by municipal presidents, which had obviously been misused. Tomurad requested Morić to schedule a meeting with the VP to reach an agreement in order to prevent the mentioned individuals from being present in the liberated areas and to have every MUP check-point staffed with VP officers as well since the civilian police was not in the position to apply appropriate measures to the individuals.[1797] At the end of August 1995 and in September 1995 Drago Matić, Cetina, and Romanić reported to Morić that the cooperation with the VP at the check-points and in joint patrols in Šibenik and Zadar-Knin, in order to prevent further torching of houses and illegal taking of property in August and September 1995, was inadequate due to the lack of VP officers in the areas concerned.[1798] According to Morić, some government

[1793] D585 (Order on operating procedure with regard to authorizations and inspection of goods signed for Ivica Cetina, 20 August 1995).
[1794] D585 (Order on operating procedure with regard to authorizations and inspection of goods signed for Ivica Cetina, 20 August 1995), p. 2.
[1795] Witness 86, T. 5837, 5840.
[1796] D589 (Letter by Marijan Tomurad to Joško Morić with regard to looting by individuals in HV uniforms, 28 August 1995).
[1797] D589 (Letter by Marijan Tomurad to Joško Morić with regard to looting by individuals in HV uniforms, 28 August 1995), p. 2.
[1798] Witness 86, T. 5262; P499 (Report by Čedo Romanić to Joško Morić on cooperation between MUP and VP in the area of Kotar-Knin Police Administration, 1 September 1995), pp. 1-2; P502 (Report by Čedo Romanić to Joško Morić on cooperation between MUP and VP in the area of Kotar-Knin Police Administration, 24 August 1995), pp. 1-2; D573 (Letter by Drago Matić to Joško Morić on the cooperation between MUP and VP in the area of Šibenik Police Administration, 24 August 1995), pp. 1-2; D574 (Request by Joško Morić to police administrations to report on cooperation with VP, 30 August 1995), pp. 1-2; D575 (Report by Drago Matić to Joško Morić on cooperation between MUP and VP in the area of Šibenik Police Administration, 1 September 1995), pp. 1-2; D576 (Report by Ivica Cetina to Joško Morić on cooperation between MUP and VP in the area of Zadar-Knin Police Administration, 2 September 1995), pp. 1-2; D579 (Request by Joško Morić to police administrations to, among other things, report on cooperation between MUP and VP, 11 September 1995); D580 (Report by Drago Matić to Joško Morić on cooperation between MUP and VP in the area of Šibenik Police Administration, 12 September 1995), pp. 1-2; D581 (Report by Ivica Cetina to Joško Morić on cooperation between MUP and VP in the area of Zadar-Knin Police Administration, 12 September 1995). See also D458 (Report by



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commissioners or representatives of civilian authorities had issued citizens with receipts for items that they recognized as their own in order to certify their ownership. However, when the police realized that this practice was open to abuse they asked the government to ban it, and they also informed the police structures that that they should not consider such receipts to be valid.[1799] According to **Cetina**, the police did not consider certificates or written permissions issued by municipal presidents to take away property valid and would confiscate the objects from persons who took away property on the basis of such documents.[1800]

2164. On 6 September 1995, Morić sent two official notes about the conduct of HV members, to Laušić.[1801] The first, dated 5 September 1995, concerned the removal of National Liberation Struggle monuments in the area of Donji Lapac.[1802] The second, dated 3 September 1995, concerned an incident of theft of livestock by one civilian and two persons in military uniforms from Croats and Serbs in the Jelovinc-Sladići hamlet.[1803] Morić asked Laušić to take measures to prevent such incidents and inform Morić about the measures taken.[1804]

2165. According to Laušić's notebook, at a meeting between the VP and the MUP on 13 September 1995, Morić stated that despite timely preparations of the VP and the MUP, events in the field had gotten out of control. He stated that "things in the field" were neither developing nor being implemented as agreed, and that the line of command was not operational as on the level of the MD "they believe that they are either misinformed or that things are misrepresented or misinterpreted". Still according to the notebook, Morić stated that "we must make sure military commanders know the truth".[1805]

Miloš Mihić to Čedo Romanić on measures taken by the Knin police station to upgrade the security situation, 16 September 1995), p. 2.
[1799] Joško Morić, T. 25730.
[1800] Ivica Cetina, T. 23650.
[1801] D592 (Letter by Joško Morić to Mate Laušić including two official notes on the conduct of HV members, 6 September 1995), pp. 1-5; D593 (Letter by Čedo Romanić to Joško Morić and Ivica Cetina, 5 September 1995).
[1802] D592 (Letter by Joško Morić to Mate Laušić including two official notes on the conduct of HV members, 6 September 1995), p. 2.
[1803] D592 (Letter by Joško Morić to Mate Laušić including two official notes on the conduct of HV members, 6 September 1995), pp. 4-5.
[1804] D592 (Letter by Joško Morić to Mate Laušić including two official notes on the conduct of HV members, 6 September 1995), p. 1.
[1805] P2166 (Laušić's notebook), p. 65.



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2166. On 15 September 1995 a meeting between VP and civilian police was held in Plitvice.[1806] According to **Witness 86**, it was agreed, among other things, that the VP would try to prevent crimes committed by HV soldiers since, according to Morić, the MUP had no authority over them.[1807] Morić also stated, according to Witness 86, that more check-points and more frequent patrols were needed although it was not possible due to the lack of manpower.[1808] Witness 86 testified that there was a disagreement between Morić and Laušić with regard to whether the civilian police could intervene with members of the HV, or if this had to be done by the VP.[1809] According to Witness 86, Laušić considered that there were not enough VPs to control the HV soldiers, if they were committing crimes.[1810] According to the minutes of the meeting, Morić emphasized that at that moment everyone – civilians, representatives of civilian authorities and members of the civilian police and VP – was engaged in the looting and the commanders of the 70th and 71st VP Battalions stipulated that the receipts that leaders of the civilian authorities issued to take away items had a negative influence.[1811] **Cetina** testified that he expressed at the meeting his views about the problems with cooperation with the VP in his area and those in attendance agreed that because of the problems with checking persons in uniforms, the regular police and the VP would conduct joint patrols and man joint check-points.[1812] Cetina and others would pass on the agreement to the police commanders, the VP would pass the decision through their own chain of command and it was left to the police commanders to liaise with the VP and implement the agreement.[1813] In practice, the agreement was rarely implemented, as

[1806] D1842 (Joško Morić, witness interview, 17 January 2004), pp. 198-201; Joško Morić, T. 25593, 25871; P487 (Witness 86, witness statement, 19 September 2001), para. 62; D1743 (Ivica Cetina, witness statement, 26 August 2009), para. 9; D1745 (Ivica Cetina, witness statement, 26 February 2002), p. 11; Ivica Cetina, T. 23436, 23623; Witness 86, T. 5252-5253, 5373, 5623-5624; P501 (Notebook of Witness 86, 19 August 1995 to 15 September 1995), pp. 17-19; D594 (Letter to Chiefs of the Police Administrations about planned joint operational meeting signed by Joško Morić, 13 September 1995); D595 (Minutes of the coordination meeting between the VP and the MUP of 15 September 1995, 18 September 1995), pp. 1-6. See also D567 (Report from Mate Laušić to Gojko Šušak and Zvonimir Červenko, 16 September 1995).
[1807] P487 (Witness 86, witness statement, 19 September 2001), para. 62; Witness 86, T. 5254, 5378; P501 (Notebook of Witness 86, 19 August 1995 to 15 September 1995), p. 19.
[1808] P487 (Witness 86, witness statement, 19 September 2001), para. 63.
[1809] Witness 86, T. 5251-5257, 5378, 5623-5627, 5777; P501 (Notebook of Witness 86, 19 August 1995 to 15 September 1995), pp. 17-19; D595 (Minutes of the coordination meeting between the VP and the MUP of 15 September 1995, 18 September 1995), pp. 2-3, 5-7.
[1810] Witness 86, T. 5626.
[1811] D595 (Minutes of the Coordinative meeting of the VP Administration with representatives of the Ministry of Interior on 15 September 1995, 18 September 1995), pp. 4, 6.
[1812] D1743 (Ivica Cetina, witness statement, 26 August 2009), para. 9; D1745 (Ivica Cetina, witness statement, 26 February 2002), p. 11; Ivica Cetina, T. 23436, 23566.
[1813] D1745 (Ivica Cetina, witness statement, 26 February 2002), p. 11.



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a result of an apparent shortage of VP personnel and the number of check-points.[1814] Had the VP provided the necessary men, the regular police would have included them at their check-points.[1815]

2167. **Morić** testified that around the middle of September 1995, the situation in the liberated territories was stabilizing, though the police was not fully in control yet, and since there were other security threats such as long state borders and terrorist attacks, Morić removed on 15 September 1995 a number of police officers from police stations in liberated areas, then decreased the manning of these police stations by 15 per cent each month for the next six months.[1816] The police officers who left were the ones who had reinforced the police stations in the Krajina in the wake of Operation Storm and now returned home to their usual places of residence and work.[1817]

2168. **Witness 86** testified that a report was sent to the Chief of the Zadar-Knin Police Administration, on 17 September 1995, which addressed the measures that the Kotar-Knin Police Administration had taken to improve the security situation, and reported that people who were caught in the course of committing a crime, regardless whether they were members of the HV, would be subject to uncompromising procedure.[1818] Witness 86 testified that this meant that vehicles had to be stopped and that the people inside had to be checked.[1819] Witness 86 testified that the report put emphasis on the civilians that came to the Kotar Knin area, because in September there were far fewer members of the HV around than in August, and the problems with the HV with regard to thefts were not that present anymore.[1820]

2169. On 19 September 1995, Morić informed the police administrations that as of 15 September 1995 the VP would no longer be present at the check-points in the liberated

[1814] Ivica Cetina, T. 23422, 23430, 23572-23573.
[1815] Ivica Cetina, T. 23435-23436.
[1816] Joško Morić, T. 25516-25518, 25869-25876, 25927; D483 (Order by Joško Morić on the withdrawal of police officers, 13 September 1995). See also D454 (Order by Joško Morić to police administrations on reduction of reinforcements, 20 September 1995).
[1817] Joško Morić, T. 25873-25874.
[1818] Witness 86, T. 5597-5598; D459 (Report to the Chief of the Zadar-Knin Police Administration on the measures taken by the Kotar-Knin Police Administration to upgrade the security situation, 17 September 1995), p. 1.
[1819] Witness 86, T. 5597-5598; D459 (Report to the Chief of the Zadar-Knin Police Administration on the measures taken by the Kotar-Knin Police Administration to upgrade the security situation, 17 September 1995), p. 1.
[1820] Witness 86, T. 5598-5599; D459 (Report to the Chief of the Zadar-Knin Police Administration on the measures taken by the Kotar-Knin Police Administration to upgrade the security situation, 17 September 1995), p. 1.



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areas, but would perform car patrols that would report to the check-points.[1821] On 2 October 1995, Morić ordered a number of police administrations, including the one of Zadar-Knin, to submit a report by 3 October 1995 on murders, arson, explosions, property seizure, conducted on-site investigations, whether the known perpetrators were civilians or HV soldiers, and abuse of uniform during the period of 22 August 1995 to 2 October 1995.[1822] According to a report by Mate Laušić dated 4 October 1995, VP had in order to prevent murder, arson and looting in the liberated areas stopped their activities at check-points and instead begun carrying out intensified motorized patrols in the areas.[1823] According to Laušić, this change of tactics had produced good results in the preceding month, but had not fully prevented crime as the area was too large to be controlled.[1824]

2170. The Trial Chamber has received evidence from several witnesses and documentary evidence regarding the measures taken against civilian police committing crimes. On 30 August 1995, **Morić** ordered all police administrations to implement certain measures to prevent police officers from taking property belonging to other people and bringing it with them out of the liberated areas in the course of their replacement.[1825] Morić further testified that he instructed police that when policemen rotated in the liberated areas they should not enter or leave in personal vehicles but only in organized bus transportation, and that their commanders would check their belongings before they entered the busses.[1826] Morić also asked that policemen who met each other in the field and who did not know each other personally, should show each other their identification and record it.[1827]

2171. **Witness 84** testified that the police officers in Knin were obedient and that he never personally received any reports of civilian police officers looting or treating people badly, although he was aware that some police officers were caught looting in Knin and that these officers were subjected to disciplinary action.[1828] The witness stated

[1821] D596 (Order to Chiefs of the Police Administrations on cooperation with VP with regard to check-points and car patrols signed by Joško Morić, 19 September 1995), p. 1.
[1822] D597 (Order by Joško Morić to police administrations to report about crimes committed from 22 August 1995 to 2 October 1995, 2 October 1995).
[1823] D801 (Report by Mate Laušić on murders in Varivode, 4 October 1995), pp. 1, 3-4.
[1824] D801 (Report by Mate Laušić on murders in Varivode, 4 October 1995), p. 3.
[1825] Joško Morić, T. 25575-25578; D481/D1848 (Order by Joško Morić to all police administrations on measures to prevent illegal taking of property by police officers, 30 August 1995).
[1826] D1842 (Joško Morić, witness interview, 17 January 2004), pp. 240-241.
[1827] D1842 (Joško Morić, witness interview, 17 January 2004), p. 242.
[1828] P2395 (Witness 84, witness statement, 9 March 2002), para. 29; Witness 84, T. 11182, 11187.



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that on one occasion during his time at the police station in Knin, the check-point police in Knin caught a group of police officers from Split with looted goods and that these officers were disciplined. On another occasion during the witness's time in Knin, the Knin post office informed the Knin police station that police officers from Krapina-Zagorje municipality were sending a large number of parcels to their homes. The commander of these police officers ordered the parcels to be opened and found looted goods. These police officers were disciplined.[1829] The witness stated that when police officers finished their shifts, their personal belongings were always searched before they entered the buses that transported them out of Knin.[1830] If police officers were found to be carrying looted goods, they would immediately be reported and returned to their respective police administration and appropriate action taken.[1831] According to **Cetina**, a number of members of the regular police were prosecuted for looting; others were subject to disciplinary proceedings; while others still were removed from the area and sent back to where they had been stationed prior to Operation Storm.[1832]

2172. The Trial Chamber will now turn to examples of follow-up by Croatian authorities to specific crimes committed during the Indictment period. The Trial Chamber has reviewed some of this evidence in chapter 6.2.6. The case of **Veselko Bilić**, a Croatian volunteer with the 15th Home Guard Regiment until 18 August 1995,[1833] provides an example of a Croatian murder investigation. Bilić testified that around 3 or 4 a.m. on 7 September 1995, he entered the house of Dara Milošević, a 67 year-old Serbian woman, in Pavići, in Skradin municipality, looking for a Serbian man, nicknamed Zdravčina, whom he believed had helped organize the SVK takeover of the Krajina area.[1834] He carried a handgun and wore a black uniform, and he was under the influence of alcohol and marijuana.[1835] After Milošević pushed him, called him an "Ustasha devil," and told him to leave the house, Bilić shot her in the head, killing her

[1829] P2395 (Witness 84, witness statement, 9 March 2002), para. 29.
[1830] Witness 84, T. 11176.
[1831] Witness 84, T. 11176, 11182.
[1832] D1745 (Ivica Cetina, witness statement, 26 February 2002), p. 13.
[1833] D1547 (Veselko Bilić, witness statement, 18 June 2009), p. 1, paras 1, 4; Veselko Bilić, T. 19556, 19560, 19615; P2562 (Record of interrogation of Veselko Bilić, 8 October 1995), p. 3; D1548 (Veselko Bilić, official note of interview with Veselko Bilić, 11 September 1995), p. 1.
[1834] D1547 (Veselko Bilić, witness statement, 18 June 2009), para. 5; Veselko Bilić, T. 19581, 19585-19588, 19590-19591; P2562 (Record of interrogation of Veselko Bilić, 8 October 1995), p. 4; D1549 (MUP report on arrest of Veselko Bilić, 9 September 1995), p. 2.
[1835] Veselko Bilić, T. 19565-19566, 19585-19586; P2562 (Record of interrogation of Veselko Bilić, 8 October 1995), p. 4; D1548 (Veselko Bilić, official note of interview with Veselko Bilić, 11 September 1995), p. 1; D1549 (MUP report on arrest of Veselko Bilić, 9 September 1995), p. 2; D1550 (Judgements against Veselko Bilić, 18 January 1996), p. 3.



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instantly, all within seconds of entering the house.[1836] He got back in his car and drove away.[1837] On 9 September 1995, the witness arrived in Bratiškovci, in Srkadin municipality, where he was told by a Serbian grandmother he knew, that he should take her tractor, along with some bread, wine, and ham.[1838] After leaving her home, Bilić met two friends on the road and they towed the tractor, as well as a trailer carrying another small tractor, which his friends had found by the side of the road, back towards Vodice.[1839] The civilian police stopped them at a check-point at Čista Mala in Vodice municipality, asked them to hand over the wine, and, when Bilić refused, called the VP, because Bilić was wearing a uniform.[1840] The VP arrested him and took him to Šibenik for interrogation, where they confiscated his handgun and his car.[1841] The VP questioned him about the murder, but released him shortly thereafter.[1842] The investigative Judge and Željko Žganjer conducted an on-site investigation of Milošević's house and an autopsy was performed on her body in Šibenik hospital.[1843] Bilić was apprehended again by the VP on 11 September 1995, after a ballistics report matched the bullet from Milošević's body to his handgun.[1844] The VP established that Bilić was not an HV member and he was turned over to the civilian police.[1845] The witness was tried and convicted for murder, and sentenced to 8 years imprisonment by the Šibenik County Court, which was reduced to 7.5 years on appeal by the Croatian Supreme Court.[1846] In October 1995, the MoD launched an investigation into murders of Serbian persons in the Zadar-Knin-Šibenik police administration areas, during which a number of former members of the 15th Home Guard Regiment were charged and

[1836] D1547 (Veselko Bilić, witness statement, 18 June 2009), para. 5; Veselko Bilić, T. 19588-19589; P2562 (Record of interrogation of Veselko Bilić, 8 October 1995), pp. 4-6; D1549 (MUP report on arrest of Veselko Bilić, 9 September 1995), p. 2; D1550 (Judgements against Veselko Bilić, 18 January 1996), p. 3.
[1837] P2562 (Record of interrogation of Veselko Bilić, 8 October 1995), p. 5.
[1838] Veselko Bilić, T. 19566-19567, 19569, 19572; D1548 (Veselko Bilić, official note of interview with Veselko Bilić, 11 September 1995), p. 1.
[1839] Veselko Bilić, T. 19570.
[1840] D1547 (Veselko Bilić, witness statement, 18 June 2009), para. 5; Veselko Bilić, T. 19567, 19590, 19612; P2562 (Record of interrogation of Veselko Bilić, 8 October 1995), p. 5; D1549 (MUP report on arrest of Veselko Bilić, 9 September 1995), p. 2.
[1841] D1547 (Veselko Bilić, witness statement, 18 June 2009), para. 5; Veselko Bilić, T. 19567, 19590; P2562 (Record of interrogation of Veselko Bilić, 8 October 1995), p. 5; D1549 (MUP Report on arrest of Veselko Bilić, 9 September 1995), pp. 2-3.
[1842] D1547 (Veselko Bilić, witness statement, 18 June 2009), para. 5; Veselko Bilić, T. 19614-19615; P2562 (Record of interrogation of Veselko Bilić, 8 October 1995), p. 5.
[1843] D1549 (MUP report on arrest of Veselko Bilić, 9 September 1995), pp. 2-3.
[1844] D1547 (Veselko Bilić, witness statement, 18 June 2009), para. 5; Veselko Bilić, T. 19565, 19590, 19626; D1549 (MUP report on arrest of Veselko Bilić, 9 September 1995), p. 2.
[1845] Veselko Bilić, T. 19565; D1549 (MUP report on arrest of Veselko Bilić, 9 September 1995), p. 3.



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detained.[1847] Bilić served a total of 3 years and 6 months of his sentence, having received a 2-year reduction from President Tudjman on 13 May 1998, as well as a later reduction for good conduct and ill health.

2173. The Varivode Operative Action provides another example of Croatian investigations into a number of murder incidents. According to documentary evidence, on 28 August 1995 at 12:20 a.m., the Benkovac police station informed the Knin police station that it had received from a survivor information of the killings of seven elderly people in the hamlet of Gošić in Kistanje municipality, in the afternoon of 27 August 1995.[1848] The Benkovac police provided the family names of the seven people killed as Letunica and Berak and requested further action to be taken.[1849]

2174. **Laušić** testified that he heard for the first time about the killings of civilians in Gošić and Varivode in Kistanje municipality, when he was called by the Assistant Minister of the Interior Benko on 2 October 1995 at 3 p.m.[1850] **Milas** testified that Laušić requested a report from him with any information regarding the murders.[1851] Milas requested that the head of the Crime Investigation VP in the Zadar, Šibenik, and Knin companies submit urgent reports on any information received concerning the matter.[1852] He received reports in return that contained no information indicating that the Crime Investigation VPs had been notified of these incidents.[1853] Milas compiled these reports and sent the information to the VP Administration.[1854] At a meeting at 8:30 a.m. on 3 October 1995 between Assistant Minister Benko, Spomenko Eljuga of the VP crime police, Head of Sector Ante Glavan and Milas, Benko informed the others of the murders of nine civilians in Varivode on 29 September 1995, and of two other murder

[1846] D1547 (Veselko Bilić, witness statement, 18 June 2009), para. 5; Veselko Bilić, T. 19591, 19651; D1550 (Judgements against Veselko Bilić, 18 January 1996), pp. 1, 3-4.
[1847] P2564 (Military police report, 1 November 1995), pp. 1-4.
[1848] P2394 (Witness 84, witness statement, 11 July 2004), para. 8; P1042 (Telephone report, civilian police station in Benkovac, 27 August 1995).
[1849] P2394 (Witness 84, witness statement, 11 July 2004), para. 8; P1042 (Telephone report, civilian police station in Benkovac, 27 August 1995). In light of the other evidence received regarding this incident, the Trial Chamber understands that the latter name should be Borak.
[1850] P2159 (Mate Laušić, witness statement, 11 August 2004), paras 224-225; Mate Laušić, T. 15525-15526. See also D1532 (Boris Milas, witness statement, 19 May 2009), para. 48; Boris Milas, T. 19210-19211; P2188 (Report by Mate Laušić on murders in Varivode, 4 October 1995), p. 1; D801 (Report by Mate Laušić on murders in Varivode, 4 October 1995), p. 1.
[1851] D1532 (Boris Milas, witness statement, 19 May 2009), para. 48; Boris Milas, T. 19211.
[1852] D1532 (Boris Milas, witness statement, 19 May 2009), para. 48.
[1853] D1532 (Boris Milas, witness statement, 19 May 2009), para. 48; Boris Milas, T. 19211; D849 (Report from Marijan Babić to Boris Milas re intelligence on deaths of civilians in Kistanje area, 2 October 1995).
[1854] D1532 (Boris Milas, witness statement, 19 May 2009), para. 48; P2188 (Report by Mate Laušić on murders in Varivode, 4 October 1995), p. 1; D801 (Report by Mate Laušić on murders in Varivode, 4 October 1995), p. 1.



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cases, one in Skradin municipality and one in Benkovac municipality.[1855] As for the Varivode murders, the persons at the meeting drew up a plan to investigate the camouflaged "TAM 2001" truck seen by a civilian in Varivode on 29 September 1995.[1856] At 7 p.m. on 3 October 1995, Captain Spomenko Eljuga reported that VP crime police focused on collecting information on three murder cases, one of which was the multiple murders in Gošić in Knin municipality on 27 August 1995.[1857]

2175. On 3 October 1995, UNCIVPOL met with Benko, Nađ, and Cetina, at the Zadar police station to discuss the alleged killings in Varivode. Benko stated that the killings were a shame for the Croatian people, that the case had been brought to the attention of the highest level of the Croatian Government, and that a special commission had been appointed for the purpose of the investigation.[1858] The UNCIVPOL Sector Chief was promised close monitoring of the Varivode case.[1859] During the meeting UNCIVPOL also learned that the bodies had first been brought to Zadar for a criminal medical investigation and identification and then returned to the families.[1860] During another meeting with Benko and Cetina on 6 October 1995, UNCIVPOL was informed that Boja Milošević, who at the moment was at the collection centre on the Oboljan island, had been interrogated by the Croatian police but that they had not managed to get useful information from her.[1861]

2176. According to the minutes of the session of the Croatian government held on 5 October 1995 Jarnjak, Minister of the Interior, informed the government of the killing by firearms of nine elderly Serb civilians in the village of Varivode.[1862] Jarnjak further informed the government of measures that the MUP had taken to find the perpetrators of these killings as quickly as possible, including immediately sending out the assistant for

[1855] Ive Kardum, T. 9431; P2188 (Report by Mate Laušić on murders in Varivode, 4 October 1995), pp. 1-2; D801 (Report by Mate Laušić on murders in Varivode, 4 October 1995), pp. 1-2.
[1856] P2159 (Mate Laušić, witness statement, 11 August 2004), para. 226; P2186 (Report no. 1 of working group on murders of civilians in liberated areas, 3 October 1995), pp. 1-2; P2188 (Report by Mate Laušić on murders in Varivode, 4 October 1995), pp. 1-2; D801 (Report by Mate Laušić on murders in Varivode, 4 October 1995), pp. 2-3.
[1857] D800 (Report no. 2 of working group on murders of civilians in liberated areas, 3 October 1995).
[1858] D1745 (Ivica Cetina, witness statement, 26 February 2002), p. 9; P270 (UNCIVPOL minutes of a meeting on 3 October 1995), p. 1.
[1859] D1745 (Ivica Cetina, witness statement, 26 February 2002), p. 9; P270 (UNCIVPOL minutes of a meeting on 3 October 1995), p. 2; D1754 (UNCIVPOL report on a series of meetings with Croatian officials, Leif Bjorken, 31 October 1995), pp. 1-2.
[1860] P270 (UNCIVPOL minutes of a meeting on 3 October 1995), p. 2.
[1861] P271 (UNCIVPOL minutes of a meeting on 6 October 1995), pp. 1-2.
[1862] D214 (Minutes of the 277th closed session of the Croatian government, 5 October 1995, including Decree on the Return of Expelled Persons and Refugees to the Liberated Areas), p. 3; D215 (Transcripts from the 277th closed session of the Croatian government, 5 October 1995), pp. 35-44.



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Criminal Police and a MUP inspector to manage the investigation and blocking all roads and side roads to prevent the perpetrators from escaping.[1863] Moreover, Jarnjak mentioned that he would reach out to the MoD regarding the insufficient number of VP present in the area to deal with the large number of military personnel who would not cooperate with the civilian police.[1864] Prime Minister Valentić addressed the session, stating that it would be his Government's top priority to react urgently and promptly to the situation, and that his Government would most likely request a speeding up of the investigation in order to identify and punish the perpetrators of the killings in Varivode as soon as possible.[1865] He also noted that it was a broader problem, since in the past other killings of civilians had occurred, to which they had not reacted.[1866]

2177. On 6 October 1995, Laušić ordered the establishment of Operative Action Varivode between 7 and 10 October 1995.[1867] **Cetina** testified that Operative Action Varivode was an action carried out in the investigation of the suspected murders in Varivode and Gošić.[1868] It was the first joint initiative in which senior officers of the VP and the civilian police force were engaged and was the first step in improving the cooperation between the VP and the civilian police.[1869] According to Cetina, such cooperation was previously absent, as the VP were not forthcoming in cooperating with the civilian police.[1870] On 8 October 1995, Eljuga reported to Biškić that partial criminal investigations had been conducted against Milenko Lalić of the 15th Home Guards Regiment. Lalić used a camouflage-coloured "TAM Cestar".[1871] After further investigation, Lalić was "in all likelihood" eliminated as a possible perpetrator though still awaiting a polygraph test. The report further mentioned that the Šibenik police stopped a "TAM" vehicle of camouflage design driven by HV member Joso Orlović and that an investigation was pending.[1872]

[1863] D215 (Transcripts from the 277th closed session of the Croatian government, 5 October 1995), pp. 35-37.
[1864] D215 (Transcripts from the 277th closed session of the Croatian government, 5 October 1995), p. 36.
[1865] D215 (Transcripts from the 277th closed session of the Croatian government, 5 October 1995), pp. 1, 37-38.
[1866] D215 (Transcripts from the 277th closed session of the Croatian government, 5 October 1995), p. 38.
[1867] P2189 (Order by Laušić on establishment of Operative Action Varivode, 6 October 1995), pp. 1-2, 4.
[1868] Ivica Cetina, T. 23437-23438.
[1869] Ivica Cetina, T. 23438-23439.
[1870] Ivica Cetina, T. 23439.
[1871] P2191 (Report no. 5 of working group on murders of civilians in liberated areas, 8 October 1995), pp. 1-2.
[1872] P2191 (Report no. 5 of working group on murders of civilians in liberated areas, 8 October 1995), p. 2.



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2178. On 11 October 1995, Colonel Damir Kozić reported to Laušić that pursuant to an order by the VP administration of 6 October 1995 a Varivode Operative Action staff had been established on the same day.[1873] The staff, consisting of Kozić, Major Ivan Jurić and Captain Spomenko Eljuga, met at 7 p.m. with MUP police sector chief Đurica Franjo, MUP General crime investigation department chief Milan Turkalj, Cetina and Bitanga.[1874] They decided that two VP would take part in each MUP ordinary and special police check-points, and that there would be motorized patrols in the area. Kozić reported that between 6 a.m. on 7 October 1995 and 10 p.m. on 10 October 1995, Varivode Operative Action had checked the ID of 1,282 HV members, searched 1,050 HV vehicles and 17 HV members, brought 36 HV members in for looting property, confiscated from HV members 20 motor vehicles, seven firearms, four tons of bricks, lots of household items, appliances and roofing material, and issued 15 disciplinary reports against HV members. As for murder of civilians, in two cases there were sufficient indications of the perpetrators being HV members to warrant the involvement of VP crime investigators, namely the multiple murders in Gošić on 27 August 1995, based on someone seeing an olive drab TAM road mender and several men in camouflage uniform at the place and time of the crime, and a double murder on 29 September 1995 in Zrmanja in Gračac municipality. In the Gošić case, VP crime investigators checked all TAM vehicles of that kind in the zones of responsibility of the companies in Zadar, Šibenik, Knin 72nd VP battalion and Gospić 71st VP battalion, and interviewed 45 drivers, establishing that none of these vehicles corresponded to the reported vehicle. In the Zrmanja case, the investigations did not lead to identifying any suspects. On the other hand, suspects had been identified and pursued for the murder of Dara Milošević in Pavići hamlet in Skradin municipality on 6 September 1995, and murder of Petar Bota in Kolarina in Benkovac municipality on 28 September 1995.[1875]

2179. **Kardum** testified that in the Varivode case, once it became clear that "the military" was involved, the civilian police had to involve the VP in the investigation, and they jointly carried out certain operational and tactical measures as part of the

[1873] D802 (Varivode Operative Action performance report for 6-10 October 1995 from Damir Kozić to Mate Laušić, 11 October 1995), pp. 1, 3, 7.
[1874] Ive Kardum, T. 9434; D802 (Varivode Operative Action performance report for 6-10 October 1995 from Damir Kozić to Mate Laušić, 11 October 1995), p. 1.
[1875] D802 (Varivode Operative Action performance report for 6-10 October 1995 from Damir Kozić to Mate Laušić, 11 October 1995), pp. 2-6.



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criminal processing.[1876] Kardum himself participated in an operation and implementation plan for the Varivode case, together with Benko, Nađ, Milan Turkalj, and others, and they were supposed to create a plan of measures for further investigations of similar crimes.[1877]

2180. On 11 October 1995, Cetina and Nađ met with UNCIVPOL and stated that the Varivode case was a top priority and that the police had nine suspects.[1878] At the meeting, Cetina and Nađ provided UNCIVPOL with a crime scene description, and facts relating to the victims' deaths, but failed to provide any autopsies or statements given by witnesses.[1879] Cetina and Nađ also informed UNCIVPOL that three murder cases, two rape cases and several theft cases had been successfully investigated, while a fourth murder case was still being investigated.[1880]

2181. On 15 October 1995, the Crime Police Department of the Šibenik Police Administration issued a plan of operative action with the aim of identifying the perpetrators of the crimes in Gošić and Varivode.[1881] According to this plan, the police were to find out where a number of persons resided, determine the vehicles and weapons in their possession, arrest them, and search their premises.[1882] On 18 October 1995, Jarnjak and Benko declared at a press conference that the perpetrators of the murders in Varivode and Gošići had been apprehended.[1883] On 23 October 1995, Marija Rukavina, the Deputy County Public Prosecutor in Zadar, sent a letter to the Zadar-Knin Police Administration concerning the criminal proceedings against individuals accused of crimes committed in Gošić, Varivode, and the area of Zrmanja.[1884] Rukavina asked

[1876] P2397 (Ive Kardum, witness statement, 22-23 March 2004), paras 33, 50; Ive Kardum, T. 9430-9431. See also P967 (Damir Šimić, witness statement, 27 January 2008), para. 23; P971 (Military crime police department official record of interview with Damir Šimić, 16 May 2002), pp. 2-3.
[1877] P2397 (Ive Kardum, witness statement, 22-23 March 2004), para. 50; Ive Kardum, T. 9433-9434. See also P971 (Military crime police department official record of interview with Damir Šimić, 16 May 2002), p. 2.
[1878] D1746 (Minutes of meeting between UNCIVPOL and Zadar-Knin police department authorities, 12 October 1995), p. 2.
[1879] P718 (Roberts's report on UN HRAT visit to Varivode on 2 October, dated 3 October), supplementary notes, paras 11, 14; D1746 (Minutes of meeting between UNCIVPOL and Zadar-Knin police department authorities, 12 October 1995), p. 2.
[1880] D1745 (Ivica Cetina, witness statement, 26 February 2002), p. 12; D1746 (Minutes of meeting between UNCIVPOL and Zadar-Knin police department authorities, 12 October 1995), pp. 1-2; D1754 (UNCIVPOL report on a series of meetings with Croatian officials, Leif Bjorken, 31 October 1995), p. 1.
[1881] D914 (Plan of operative action by the Šibenik Police Administration, 15 October 1995), p. 1.
[1882] D914 (Plan of operative action by the Šibenik Police Administration, 15 October 1995), pp. 1-3.
[1883] D1292 (Video and transcript of press conference with Ivan Jarnjak and Marijan Benko, 18 October 1995).
[1884] P1048 (Željko Žganjer, witness statement of 5 November 2008), para. 39; P1063 (Letter from Zadar District Public Prosecutor to Zadar-Knin Police Administration, 23 October 1995), p. 1.



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the police to conduct interviews with the individuals described in the letter and to investigate the possession of certain weapons.[1885] According to **Galović**, the incidents in Varivode and Gošići were prosecuted by the civilian justice system as it was never in dispute that the perpetrators were in fact civilians at the time of prosecution.[1886]

2182. On 23 October 1995, Cetina informed UNCIVPOL that the Varivode investigation was closed, that eight people had been arrested, and that the case had been handed over to the regional court in Zadar.[1887] Cetina also informed UNCIVPOL that the police had successfully investigated 21 murder cases and had forwarded them to the Zadar regional court, while criminal proceedings had been instituted against 13 persons.[1888]

2183. Acting upon Rukavina's letter, on 25 October 1995, Senior-Lieutenant Damir Šimić of the 72nd VP Battalion prepared a work plan with the aim of locating and arresting Goran Vunić, Željko Šunjerga, and Željko Pešić, searching their premises, and collecting evidence.[1889] On the same day, Šimić issued an order to take Goran Vunić, of the 113th HV Brigade, and Željko Šunjerga, of the 15th Home Guard Regiment, 2nd Battalion Command Company, into custody in order to interview them.[1890] Also on 25 October 1995, the Military Investigative Judge of the Military Court in Split issued a search warrant for Goran Vunić's apartment.[1891]

[1885] P1063 (Letter from Zadar District Public Prosecutor to Zadar-Knin Police Administration, 23 October 1995), p. 2; D918 (Second version of the Letter from Zadar District Public Prosecutor to Zadar-Knin Police Administration, 23 October 1995), p. 2.
[1886] D1553 (Ivan Galović, witness statement, 18 May 2009), pp. 9-10; Ivan Galović, T. 19702-19703, 19806-19809; P1076 (County Court of Zadar Judgement in the case of Varivode and Gošići, 27 May 1997), Part I, p. 1.
[1887] Ivica Cetina, T. 23453; P278 (Fax from chief of UNCIVPOL Sector South to commissioner of UNCIVPOL in Zagreb, 28 October 1995), pp. 1-2; P280 (UNCIVPOL report of the Varivode case, 6 November 1995), p. 3; D1747 (Minutes of meeting between UNCIVPOL and Zadar-Knin police department authorities, 23 October 1995), p. 1; D1754 (UNCIVPOL report on a series of meetings with Croatian officials, Leif Bjorken, 31 October 1995), p. 1.
[1888] D1745 (Ivica Cetina, witness statement, 26 February 2002), p. 12; D1747 (Minutes of meeting between UNCIVPOL and Zadar-Knin police department authorities, 23 October 1995), p. 1; D1754 (UNCIVPOL report on a series of meetings with Croatian officials, Leif Bjorken, 31 October 1995), p. 1.
[1889] P1072 (Work Plan of the 72nd Military Police Battalion, 25 October 1995). The Trial Chamber has considered the submissions of the Gotovina Defence in T. 11658-11669 and found them to be reasonable challenges, however, in light of the Trial Chamber's negative finding on the Varivode murder incident this matter will not be further considered.
[1890] P1074 (Order to take Goran Vunić and Željko Šunjerga into custody, 25 October 1995).
[1891] P1073 (Search Warrant issued by the Military Court in Split, 25 October 1995).



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2184. According to **Šimić**, he planned to conduct an investigation, to arrest Vunić and search his premises.[1892] When he reported this planned investigation to his superior Mrkota on 25 October 1995, Mrkota immediately verbally ordered him to stop the investigation, without providing an explanation.[1893] This was the only time that Šimić was ordered not to investigate an alleged criminal act by an HV member.[1894] Šimić testified that on 25 October 1995 he informed Mrkota of details related to the incident, including the fact that he had obtained a warrant to search Vunić's private premises, and to seize any weapons or ammunition found for the purposes of forensic examination.[1895] Šimić verbally reported to a superior, Milas, that Mrkota had ordered him to stop the investigation into Vunić.[1896] Šimić testified that during the VP's criminal investigation of HV members who were allegedly involved in the Gošići and Varivode crimes, they would always search the member's apartments and premises and seize weapons and ammunition, which they would then send to Zadar for forensic analysis.[1897] Mrkota never ordered Šimić to resume the investigation and as far as Šimić knew, until his retirement from the VP in 2004, the VP never resumed the investigations.[1898]

2185. **Pero Perković**, a Croat from the village of Vodice and a member of the HV 15th Home Guards Regiment prior to, during, and after Operation Storm,[1899] together with Ivica Petrić, Nikola Rašić, and Patak Ladović was accused of the murders of Serb civilians in the village of Gošići.[1900] On 16 or 17 October 1995, Perković was detained by civilian and military police and subsequently questioned by the civilian police.[1901]

[1892] P967 (Damir Šimić, witness statement, 27 January 2008), paras 22-23; P970 (Official note by Damir Šimić terminating investigation concerning Goran Vunić, 25 October 1995), p. 1; P971 (Military crime police department official record of interview with Damir Šimić, 16 May 2002), p. 3.
[1893] P967 (Damir Šimić, witness statement, 27 January 2008), paras 23-24; D840 (Damir Šimić, witness statement, 24 July 2008), p. 4; Damir Šimić, T. 10290; P970 (Official note by Damir Šimić terminating investigation concerning Goran Vunić, 25 October 1995), p. 2; P971 (Military crime police department official record of interview with Damir Šimić, 16 May 2002), pp. 3-4.
[1894] Damir Šimić, T. 10335.
[1895] P967 (Damir Šimić, witness statement, 27 January 2008), paras 1, 23; Damir Šimić, T. 10289; P970 (Official note by Damir Šimić terminating investigation concerning Goran Vunić, 25 October 1995); P971 (Military crime police department official record of interview with Damir Šimić, 16 May 2002), p. 3.
[1896] Damir Šimić, T. 10323, 10336-10337.
[1897] P971 (Military crime police department official record of interview with Damir Šimić, 16 May 2002), p. 4.
[1898] P967 (Damir Šimić, witness statement, 27 January 2008), para. 24; D840 (Damir Šimić, witness statement, 24 July 2008), p. 5.
[1899] Pero Perković, T. 19448, 19451, 19470, 19511, 19527, 19546-19547.
[1900] Pero Perković, T. 19450, 19493, 19497, 19514, 19516-19517; P2558 (Letter of the Šibenik County Prosecutor, 7 February 2002), p. 1.
[1901] Pero Perković, T. 19450-19451, 19506-19507; P1076 (Zadar District Court Judgement in the Varivode, Gošić and Zrmanja case, 27 May 1997), Part I, p. 4, Part II, p. 44; P2582 (Indictment of



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Perković testified that the statements he gave to the civilian police were "forced out of him", did not reflect the truth, and were the result of physical and psychological mistreatment by the police.[1902] Perković testified that during his interrogation he heard the moaning of other people and heard that they were being beaten in neighbouring rooms.[1903] During his trial his co-accused, amongst whom were Ivica Petrić, Zlatko Ladović, Zvonimir Lasan, and Ivan Jakovljević, testified that they had been mistreated, of which only Ladović stated that he was mistreated by the police.[1904] During the police interrogation in relation to the Gošići incident, the police brought Petrić and Perković into the same room and Perković noted that Petrić had been beaten up by the police.[1905] When the police asked Petrić whether he and Perković had set fire to a forester's house in Gošići, Petrić winked at Perković and confirmed that they had, to which Perković protested.[1906] After Perković had denied their presence in Gošići, more police came into the interrogation room and started beating them.[1907] Petrić later told Perković that he made certain statements as a result of mistreatment, and Perković believed Patak Ladović also did so.[1908] Perković stated that Nicola Rašić, Miso Jakovljević, and Neđelko Mijić were also detained and questioned by the police.[1909]

2186. According to Perković, the pressure was very high to discover perpetrators and the authorities wanted to force an admission out of the accused to be able to display them as perpetrators and to put someone away.[1910] During his interrogation, police officers brought him a paper which he had to sign, stating that he was discharged from the HV.[1911] After 36 hours, Perković was taken to an investigative judge before whom he repeated what he had told the police.[1912] On 27 October 1995, Perković again spoke to an investigative judge whom he told that what he said in his first statement to the

Perković, Rašić, Petrić, Ladović and Hrstić in Zadar County Court, 13 February 1996), pp. 1, 5; D1381 (Criminal reports), pp. 33-34.
[1902] Pero Perković, T. 19460, 19463, 19494, 19498, 19502, 19508, 19511-19512, 19516.
[1903] Pero Perković, T. 19516.
[1904] Pero Perković, T. 19516; P2560 (Transcript of a Zadar Court hearing, 25 June 1996), pp. 2-3.
[1905] Pero Perković, T. 19501-19502.
[1906] Pero Perković, T. 19465-19466, 19491-19492, 19501-19502.
[1907] Pero Perković, T. 19502.
[1908] Pero Perković, T. 19497-19498, 19503.
[1909] Pero Perković, T. 19454-19456, 19476-19477, 19481-19482.
[1910] Pero Perković, T. 19508-19509, 19523.
[1911] Pero Perković, T. 19511, 19527-19528.
[1912] Pero Perković, T. 19506, 19508-19510; D1381 (Criminal reports), pp. 33-34.



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investigative judge was influenced by events that occurred during the interrogation by the police and did not reflect the truth.[1913]

2187. On 31 October 1995, UNCIVPOL reported to Benko that although it had received insufficient documents to be able to monitor the Varivode case properly, it was satisfied that the case had been brought to an end and considered that the special investigation team had shown sterling professionalism.[1914] UNCIVPOL requested from Cetina more documentation at a meeting held on 3 November 1995.[1915] Cetina replied that the investigation had been handed over to the Zadar regional court and that by law he was now prevented from providing any further documentation.[1916] On 6 November 1995, Kardum confirmed to UNCIVPOL that requests concerning Varivode should be addressed to the Municipal Court in Zadar.[1917] Kardum also wrote that 24 murder cases had been resolved and that the courts were investigating criminal charges against 14 arrested persons.[1918]

2188. According to a report by Laušić, by 3 December 1995 the VP and the regular police had registered 41 crimes, 25 of which had been resolved, including nine murders in Varivode, seven in Gošić and three in Zrmanja.[1919] Only two identified perpetrators were found to be members of the HV.[1920] On 2 February 1996, Minister of Foreign Affairs Mate Granić informed Rehn that as of 20 January 1996 pre-trial proceedings against four defendants were close to completion in the Varivode case.[1921] In the Gošići case, pre-trial proceedings were underway against six defendants, two of whom were

[1913] Pero Perković, T. 19495, 19512-19514; P2558 (Letter of the Šibenik County Prosecutor, 7 February 2002), p. 2.
[1914] D1754 (UNCIVPOL report on a series of meetings with Croatian officials, Leif Bjorken, 31 October 1995), pp. 1-2.
[1915] P718 (Roberts's report on UN HRAT visit to Varivode on 2 October, dated 3 October), supplementary notes, para. 14; D1755 (UNCIVPOL minutes of a meeting with Cetina, Leif Bjorken, 3 November 1995).
[1916] Alun Roberts, T. 7105; P718 (Roberts's report on UN HRAT visit to Varivode on 2 October, dated 3 October), supplementary notes, para. 15; D1755 (UNCIVPOL minutes of a meeting with Cetina, Leif Bjorken, 3 November 1995).
[1917] D1745 (Ivica Cetina, witness statement, 26 February 2002), p. 12; D1748 (Letter to acting chief of the UNCIVPOL Sector South, 6 November 1995), p. 1.
[1918] D1745 (Ivica Cetina, witness statement, 26 February 2002), p. 12; D1748 (Letter to acting chief of the UNCIVPOL Sector South, 6 November 1995), p. 1.
[1919] D1532 (Boris Milas, witness statement, 19 May 2009), para. 50; D1536 (Report on VP policing of areas taken in Operation Storm, 3 December 1995), pp. 1, 3-4.
[1920] Boris Milas, T. 19202-19203; D1536 (Report on VP policing of areas taken in Operation Storm, 3 December 1995), p. 4.
[1921] P598 (Elisabeth Rehn, witness statement, 13-14 October 2005), pp. 5, 7; Elisabeth Rehn, T. 6504; P600 (Additional information from the Croatian Ministry of Foreign Affairs, received on 2 February 1996), pp. 1, 6; D1630 (Report by Croatia on the implementation of Security Council resolution 1019 (1995), p. 8.



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also defendants in the Varivode case.[1922] According to a report of 26 January 1996, 53 weapons seized from persons, including Boris Vunić, Petar Perković, Nediljko Mijić, Nikola Rašić, Ivan Jakovljević, as well as one weapon allegedly used by Zlatko Ladović, were subjected to forensic analysis.[1923] **Žganjer** testified that none of the weapons seized and subjected to ballistic examination matched the rifle bullet casings found in Gošić and Varivode.[1924]

2189. On 13 February 1996, the County State Attorney's Office in Zadar indicted Pero Perković, Nikola Rašić, Ivica Petrić, and Zlatko Ladović for seven murders in Gošić, and Petrić and Milenko Hrstić for a murder in Zrmanja.[1925] **Perković** eventually stayed in prison for nine months, during which his investigation continued and his trial in Zadar took place.[1926] During the investigations in Zadar, witnesses who were present in Gošići on the day of the murders did not identify Perković in a line-up as one of the men they had seen on that day and confirmed this during the trial.[1927] **Galović** confirmed that none of the witnesses identified the accused.[1928] On 15 February 1996, the County State Attorney's Office in Zadar indicted Nikola Rašić, Ivan Jakovljević, Zlatko Ladović, and Nedjeljko Mijić for nine murders in Varivode.[1929]

2190. On 27 May 1997, the District Court in Zadar issued a consolidated judgement concerning the killing of elderly civilians in Varivode, Gošić, and Zrmanja.[1930] The accused in relation to Varivode, Nikola Rašić, Nedjeljko Mijić, Ivan Jakovljević and Zlatko Ladović; and in relation to Gošić, Pero Perković, Nikola Rašić, Ivica Petrić, and Zlatko Ladović, were acquitted of the charges relating to the Gošić and Varivode incidents.[1931] Ivica Petrić was convicted of the murder of Đurad Ćanko (born in 1915) in

[1922] P600 (Additional information from the Croatian Ministry of Foreign Affairs, received on 2 February 1996), p. 6; D1630 (Report by Croatia on the implementation of Security Council resolution 1019 (1995), p. 8.
[1923] D919 (Record on Forensic Analysis, 26 January 1996).
[1924] Željko Žganjer, T. 11674. See also Ivan Galović, T. 19828.
[1925] D1553 (Ivan Galović, witness statement, 18 May 2009), pp. 6-7; P2582 (Indictment of Perković, Rašić, Petrić, Ladović and Hrstić in Zadar County Court, 13 February 1996), pp. 1-4.
[1926] Pero Perković, T. 19463, 19493, 19504.
[1927] Pero Perković, T. 19495, 19517.
[1928] Ivan Galović, T. 19828-19829.
[1929] D1553 (Ivan Galović, witness statement, 18 May 2009), p. 7; P2583 (Indictment of Rašić, Jakovljević, Ladović and Mijić in Zadar County Court, 15 February 1996), pp. 1-3.
[1930] P1048 (Željko Žganjer, witness statement of 5 November 2008), para. 44; P1076 (Zadar District Court Judgement in the Varivode, Gošić and Zrmanja case, 27 May 1997).
[1931] P1048 (Željko Žganjer, witness statement of 5 November 2008), para. 45; P1061 (Letter from Ivan Galović, Zadar District Public Prosecutor, to the Republic of Croatia Public Prosecutor's Office), p. 1; P1076 (Zadar District Court Judgement in the Varivode, Gošić and Zrmanja case, 27 May 1997), Part I, pp. 3-13.



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Zrmanja in mid-August 1995 and sentenced to six years in prison.[1932] In its judgement, the Croatian Court noted that during the investigation, at a pre-trial meeting and at trial, Petrić stated that while searching for weapons in Zrmanja with others, including Milenko Hrstić, they happened to meet Rašić and Zvonimir Lasan who had been given two hunting rifles by an old man.[1933] The man had previously told other soldiers that he had no guns and Petrić proceeded with Hrstić to the old man's house and asked him about the guns.[1934] Petrić admitted that after Čanak refused to answer he shot him in the leg and in the left shoulder.[1935] According to the Croatian Court, during the investigation and at trial, Hrstić stated that Petrić asked the old man where his weapons were and, when the old man answered that he had none, shot the old man in the chest several times.[1936] Forensic evidence introduced to the Croatian Court reportedly showed that Čanak died from bullet wounds to the chest area.[1937] Relying on the evidence before it, the Croatian Court found that Petrić's gun shots caused Čanak's death.[1938] The Court noted that at the time of the incident Petrić was engaged as a Croatian soldier in mop-up duties around Zrmanja.[1939] Nikola Rašić was convicted of attempted robbery and attempted murder of Jeka Tanjga in Očestovo, Knin municipality, on 20 August 1995, and sentenced to a year and six months in prison.[1940]

2191. On 27 May 1997 the County Court in Zadar acquitted Nikola Rašić, Zvonimir Lasan-Zorobabel, and Ivan Jakovljević of charges relating to the alleged murder of Sava Šolaja.[1941] The Croatian Court determined that on 20 August 1995, the accused, travelling in a personal car stopped on a road passing near Očestovo, at which point Jakovljević stayed with the car while Rašić and Lasan-Zorobabel went towards a nearby

[1932] P1048 (Željko Žganjer, witness statement of 5 November 2008), para. 45; P1076 (Zadar District Court Judgement in the Varivode, Gošić and Zrmanja case, 27 May 1997), Part I, pp. 1-3; Part II, p. 41.
[1933] P1076 (Zadar District Court Judgement in the Varivode, Gošić and Zrmanja case, 27 May 1997), Part II, pp. 26-27.
[1934] P1076 (Zadar District Court Judgement in the Varivode, Gošić and Zrmanja case, 27 May 1997), Part II, p. 27.
[1935] P1076 (Zadar District Court Judgement in the Varivode, Gošić and Zrmanja case, 27 May 1997), Part II, pp. 25, 27, 40.
[1936] P1076 (Zadar District Court Judgement in the Varivode, Gošić and Zrmanja case, 27 May 1997), Part II, p. 28.
[1937] P1076 (Zadar District Court Judgement in the Varivode, Gošić and Zrmanja case, 27 May 1997), Part II, p. 31.
[1938] P1076 (Zadar District Court Judgement in the Varivode, Gošić and Zrmanja case, 27 May 1997), Part II, pp. 38, 41-42.
[1939] P1076 (Zadar District Court Judgement in the Varivode, Gošić and Zrmanja case, 27 May 1997), Part I, p. 2; Part II, p. 42.
[1940] P1048 (Željko Žganjer, witness statement of 5 November 2008), para. 45; P1076 (Zadar District Court Judgement in the Varivode, Gošić and Zrmanja case, 27 May 1997), Part I, pp. 1-3.



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house.[1942] As determined by the statements of the accused at the main hearing and during the investigation, the Court found that as Lasan-Zorobabel and Rašić entered the home a hand grenade detonated inflicting multiple wounds on Lasan-Zorobabel and a light wound on Rašić. After Rašić helped Lasan exit the house he returned to ensure their safety and threw a hand grenade into the house. The window shutters then opened and a male appeared who Rašić shot at, killing him.[1943] The man killed was identified as Sava Šolaja, a 70 year-old handicapped Serb.[1944] The Croatian Court acquitted Lasan and Jakovljević based on their lack of involvement in the killing, and acquitted Rašić because his actions were committed in self defence.[1945] In its judgement the Court noted that the accused were engaged as Croatian soldiers of the 15th Home Guard Regiment during the relevant time of the incident.[1946] **Galović** testified that the County Prosecutor's Office in Zadar appealed this judgement to the Supreme Court.[1947]

2192. **Žganjer** testified that the Croatian Supreme Court set aside the acquittals regarding the Varivode and Gosić cases and sent them back to the County Court in Zadar for a retrial.[1948] However, the Croatian Supreme Court affirmed the acquittal of Rašić, Lasan and Jakovljević concerning the murder of Šolaja, rejecting the prosecutor's appeal and agreeing with the reasoning of the County Court.[1949] After the territorial reorganization of jurisdictions, the case came within the jurisdiction of the County Court in Šibenik.[1950] As the Šibenik District State Attorney, Žganjer was then responsible for the case and after he had reviewed and studied the case file, he concluded that there was no reliable evidence to proceed against the accused in this

[1941] P1076 (Zadar District Court Judgement in the Varivode, Gošić and Zrmanja case, 27 May 1997), Part II, pp. 45, 59-61.
[1942] P1076 (Zadar District Court Judgement in the Varivode, Gošić and Zrmanja case, 27 May 1997), Part II, pp. 53, 55-57.
[1943] P1076 (Zadar District Court Judgement in the Varivode, Gošić and Zrmanja case, 27 May 1997), Part II, p. 53.
[1944] P1076 (Zadar District Court Judgement in the Varivode, Gošić and Zrmanja case, 27 May 1997), Part I, p. 5, Part II, p. 54.
[1945] P1076 (Zadar District Court Judgement in the Varivode, Gošić and Zrmanja case, 27 May 1997), Part II, pp. 51-53, 55-56, 59-61.
[1946] P1076 (Zadar District Court Judgement in the Varivode, Gošić and Zrmanja case, 27 May 1997), Part II, p. 57.
[1947] Ivan Galović, T. 19705.
[1948] P1048 (Željko Žganjer, witness statement of 5 November 2008), para. 45; Željko Žganjer, T. 11520-11521; P1061 (Letter from Ivan Galović, Zadar District Public Prosecutor, to the Republic of Croatia Public Prosecutor's Office), p. 1; P2581 (Supreme Court of Croatia Appeal Judgement on Varivode and Gošići, 19 May 1999).
[1949] P2581 (Supreme Court of Croatia Appeal Judgement on Varivode and Gošići, 19 May 1999), pp. 21-23.
[1950] P1048 (Željko Žganjer, witness statement of 5 November 2008), para. 45; Željko Žganjer, T. 11520-11521.



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case.[1951] He discussed the case with the State Attorney of Croatia and received his approval to dismiss the charges against the five accused.[1952] Žganjer testified that after the dismissal of the charges, the proceedings against those accused ended and new pre-trial proceedings commenced in order to establish who the perpetrators were.[1953] Žganjer testified that Goran Vunić was not mentioned as a suspect in the case file he reviewed, despite the fact that Vunić had been mentioned as a suspect in relation to the crimes in Gošić and Varivode in 1995.[1954] Upon his request, on 27 June 2002, Žganjer received a special report from the Military Police Crime Investigation Section concerning the events in Gošić and Varivode.[1955] According to this report, the Military Police had collected documentation which indicated that Goran Vunić was supposed to be criminally processed for the events in Gošić and Varivode pursuant to a Court order, but that all the procedures against Goran Vunić were stopped by order of the then Commander of the Military Police Company in Šibenik, Nenad Mrkota.[1956] According to the report, it was evident that Nenad Mrkota knew about certain circumstances in connection to the committed crimes and potential perpetrators and that he directly influenced the treatment of persons during examinations, especially of Goran Vunić. Mrkota was suspected of destroying or concealing evidence related to the crimes in Gošić and Varivode. Mrkota was further alleged to have, together with Božo Bačalić, exerted pressure on witnesses in relation to the Gošić and Varivode cases.[1957] In June 2002, the focus of the investigation was to find weapons of the 113th Brigade and subject them to ballistic expertise in order to establish whether those weapons matched bullet casings found at the place where civilians had been killed in Gošić and Varivode.[1958] A number of weapons were found which had belonged to the 113th HV Brigade during 1995 and were subjected to ballistic expertise, but Žganjer did not

[1951] P1048 (Željko Žganjer, witness statement of 5 November 2008), para. 45; Željko Žganjer, T. 11542-11544, 11560-11561; P2558 (Letter of the Šibenik County Prosecutor, 7 February 2002).
[1952] P1048 (Željko Žganjer, witness statement of 5 November 2008), para. 45.
[1953] Željko Žganjer, T. 11544, 11653.
[1954] Željko Žganjer, T. 11543-11544.
[1955] P1048 (Željko Žganjer, witness statement of 5 November 2008), para. 38; Željko Žganjer, T. 11526, 11533-1534, 11653-11654; P1062 (Special Report from the Military Police Crime Investigation Section concerning the events in Gošić and Varivode, 27 June 2002).
[1956] Željko Žganjer, T. 11544, 11634, 11654; P1062 (Special Report from the Military Police Crime Investigation Section concerning the events in Gošić and Varivode, 27 June 2002), p. 2.
[1957] P1062 (Special Report from the Military Police Crime Investigation Section concerning the events in Gošić and Varivode, 27 June 2002), p. 3.
[1958] Željko Žganjer, T. 11533-11534; P1062 (Special Report from the Military Police Crime Investigation Section concerning the events in Gošić and Varivode, 27 June 2002), pp. 2-3.



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receive the results of those tests while he was the District Public Prosecutor in Šibenik until 15 September 2002.[1959]

2193. The Trial Chamber will now review the evidence received regarding statistics on the Croatian law enforcement and judiciary's responses to crimes. According to a report sent by Jarnjak to State Prosecutor Marijan Hranjski, Zadar-Knin police administration had registered 28 murders, 162 burnings, and 132 cases of removal of property for the period between 22 August and 2 October 1995.[1960] It had also conducted 192 on-site investigations, and registered 194 civilian perpetrators, 28 perpetrators who were HV members, and one case of abuse of uniform.[1961] According to a series of Croatian civilian police work orders and reports, between 15 August 1995 and 5 September 1995, there were six incidents of HV soldiers being detained by police in the Indictment area, because they were transporting suspected stolen goods and cattle.[1962] According to a series of reports issued by the Zadar-Knin Police Administration between 26 and 31 August 1995, teams including crime technicians conducted nine on-site investigations into burnings of buildings which took place between 24 and 29 August 1995 within the Indictment area.[1963] Between 14 August 1995 and 11 January 1996, 37 present or former HV soldiers and five civilians acting alongside them had criminal reports filed against them by military or civilian authorities for the crimes of *inter alia* theft, aggravated theft, armed robbery and murder, allegedly committed within the Indictment area between the time of Operation Storm and 24 September 1995.[1964]

[1959] Željko Žganjer, T. 11534; P1062 (Special Report from the Military Police Crime Investigation Section concerning the events in Gošić and Varivode, 27 June 2002), pp. 2-3.
[1960] P899 (Instructions of Joško Morić dated 6 September 1995, with various reports and statistics), pp. 2-5; D97 (Report sent by Ivan Jarnjak to Marijan Hranjski, 2 October 1995).
[1961] Ive Kardum, T. 9491-9492; D97 (Report sent by Ivan Jarnjak to Marijan Hranjski, 2 October 1995), p. 2.
[1962] D664 (Police work order and report, 20 August 1995); D1868 (Police work order and report, 15 August 1995); D1869 (Police work order and report, 17 August 1995); D1870 (Police work order and report, 18/19 August 1995); D1871/D1981 (Police work order and report, 4/5 September 1995); D1982 (Police work order and report, 28 August 1995). See also Joško Morić, T. 25700-25701.
[1963] D1883 (Croatian police report regarding burning incident, 30 August 1995); D1884 (Croatian police report regarding burning incident, 26 August 1995); D1885 (Croatian police report regarding burning incident, 26 August 1995); D1886 (Croatian police report regarding burning incident, 26 August 1995); D1887 (Croatian police report regarding burning incident, 26 August 1995); D1888 (Croatian police report regarding burning incident, 31 August 1995); D1890 (Croatian police report regarding burning incident, 30 August 1995); D1891 (Croatian police report regarding burning incident, 30 August 1995); D1892 (Croatian police report regarding burning incident, 31 August 1995). See also D1873 (Official note regarding burning house, 27 August 1995); D1874 (Official note regarding burning houses, 27 August 1995); D1875 (Report on security-related events, 28 August 1995); D1876 (Report on security-related events, 31 August 1995).
[1964] P2219 (Criminal report, 14 August 1995); P2220 (Criminal report, 16 August 1995); P2221 (Criminal report, 16 August 1995); P2224 (Criminal report, 22 September 1995); P2225 (Criminal report, 1 October 1995); P2226 (Criminal report, 10 October 1995); P2227 (Criminal report, 11 October 1995); P2228



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2194. According to a report by Laušić, from 1 August until 30 October 1995 the VP took the following measures against HV members: checked 3,795 identity papers, warned 1,821, searched 1,000, took 651 into custody, detained 350, inspected 2,830 vehicles of HV members, and filed discipline reports against 485 HV members.[1965] The Trial Chamber notes that these actions were reportedly undertaken by 2,500 VP officers over a 90-day period.[1966] The MUP filed 123 misdemeanour reports against the HV. The VP also seized various items and livestock found in the possession of HV members because they did not have documents proving ownership, including 138 vehicles, 87 tractors, 352 household appliances, 199 television sets, 87 cows, 35 pigs, and 187 sheep. These items and livestock were given to Croatian police stations or civilian authorities, or returned to the buildings from which they had been illegally taken.[1967] According to **Milas**, VP seized items from military members who could not prove ownership, in exchange for a receipt on temporary seizure, stored the items within the VP unit, and filed disciplinary or criminal charges against those from whom they had seized the items. If owners did not come forward to claim items, then the items were ceded to the HV units with a receipt.[1968] According to Laušić's report, the VP filed 201 criminal reports against 228 perpetrators for 222 crimes committed in liberated territory. Only 17 of the 228 perpetrators were civilian; the remaining perpetrators were HV, including two VP.[1969] As of 3 December 1995, the VP and the regular police were carrying out criminal processing of 15 cases of torching residential buildings and five cases of planting explosives where there was reason to believe the suspect was an HV member.[1970] The MUP were processing the rest of 1,100 reported cases of torching and planting explosives, had filed 1,069 reports for the crime of torching, and also filed 844 reports for thefts against civilians.[1971]

(Criminal report, 11 October 1995); P2229 (Criminal report, 11 October 1995); P2230/P2232 (Criminal reports), pp. 14-16; P2231 (Criminal report, 18 October 1995); P2233 (Criminal report, 11 December 1995); P2401 (Criminal report, 7 October 1995); D809 (Criminal report, 1 September 1995); D1381 (Criminal reports), pp. 1-18, 28-67; D1865 (Criminal report, 12 September 1995); D1866 (Criminal report and other documents, 31 August 1995).

[1965] D1536 (Report on VP policing of areas taken in Operation Storm, 3 December 1995), pp. 2-3.
[1966] D1536 (Report on VP policing of areas taken in Operation Storm, 3 December 1995), p. 2.
[1967] D1536 (Report on VP policing of areas taken in Operation Storm, 3 December 1995), p. 3.
[1968] D1533 (Boris Milas, witness statement, 22 June 2009), para. 13.
[1969] D1536 (Report on VP policing of areas taken in Operation Storm, 3 December 1995), p. 3.
[1970] D1536 (Report on VP policing of areas taken in Operation Storm, 3 December 1995), pp. 1, 3.
[1971] D1536 (Report on VP policing of areas taken in Operation Storm, 3 December 1995), p. 3; Boris Milas, T. 19219-19220.



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2195. Milas testified that from August to December 1995, 115 criminal charges were filed with the military prosecutor by the 72nd VP Battalion.[1972] The 72nd VP Battalion filed a total of 19 crime reports between 1 August 1995 and 31 March 1996 for crimes alleged to have been committed between August and September 1995 that are relevant for the Indictment, all of which related to aggravated theft or robbery.[1973] Milas characterized these numbers as unimpressive, but stated that the numbers of crime reports could only reflect the extent to which the 72nd VP Battalion received reports alleging that HV members had committed crimes within the jurisdiction of military courts.[1974]

2196. **Galović** testified that on 19 October 1995, he reported to the Ministry of Justice on the criminal offences and associated proceedings committed after Operation Storm.[1975] Out of a total of 364 persons who were criminally charged, 309 were charged with robbery or aggravated theft, nine were charged with murder, two were charged with rape, and two were charged with arson.[1976] Galović testified that these figures show that theft crimes were relatively easy to prosecute, while detection of arson was much more difficult.[1977] On 30 November 1995, Galović reported that 718 persons had been charged with offences against the Serb minority.[1978] In 1996, Galović reported that out of a total of 2,389 persons charged criminally, 1,883 persons were charged with aggravated larceny.[1979]

[1972] D1533 (Boris Milas, witness statement, 22 June 2009), para. 5.
[1973] P2555 (OTP generated chart, criminal reports filed by 72nd Military Battalion, 1 August 1995-31 March 1996); Boris Milas, T. 19328-19329, 19338.
[1974] D1532 (Boris Milas, witness statement, 19 May 2009), para. 71; D1533 (Boris Milas, witness statement, 22 June 2009), para. 6; Boris Milas, T. 19200-19201, 19332-19334, 19338, 19343-19344.
[1975] D1554 (Galović Report on Crimes Committed During Operation Storm, 19 October 1995), p. 1.
[1976] Ivan Galović, T. 19693, 19696-19697; D1554 (Galović Report on Crimes Committed During Operation Storm, 19 October 1995), pp. 1-3.
[1977] Ivan Galović, T. 19697-19698; D1554 (Galović Report on Crimes Committed During Operation Storm, 19 October 1995), pp. 1-3.
[1978] D1555 (Galović Report on Crimes Committed During Operation Storm, 23 November 1995), p. 2.
[1979] Ivan Galović, T. 19696; D1556 (Galović Report on Crimes Committed During Operation Storm, 12 February 1996), p. 1; D1557 (Galović Report on Crimes Committed During Operation Storm, 4 March 1996), p. 1; D1558 (Galović Report on Crimes Committed During Operation Storm, 5 April 1996), p. 1; D1559 (Galović Report on Crimes Committed During Operation Storm, 6 May 1996), p. 1; D1560 (Galović Report on Crimes Committed During Operation Storm, 5 June 1996), p. 1; D1561 (Galović Report on Crimes Committed During Operation Storm, 5 July 1996), p. 1; D1562 (Galović Report on Crimes Committed During Operation Storm, 6 May 1996), p. 1; D1563 (Galović Report on Crimes Committed During Operation Storm, 6 September 1996), p. 1; D1564 (Galović Report on Crimes Committed During Operation Storm, 5 October 1996), p. 1; D1565 (Galović Report on Crimes Committed During Operation Storm, 5 November 1996), p. 1; D1566 (Galović Report on Crimes Committed During Operation Storm, 10 January 1997), p. 1.



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2197. On 2 February 1996, Minister of Foreign Affairs Mate Granić informed **Rehn** that immediately following Operation Storm members of army units and other persons perpetrated human rights violations, which Croatian authorities were unable to prevent.[1980] However, in all cases where a crime had been established, the competent government bodies undertook actions to prosecute and punish the perpetrators.[1981] Proceedings had been instituted against 80 members of the HV, and other suspected HV crimes were being investigated.[1982] As of 19 January 1996, criminal proceedings were underway in military and civilian courts against 1,005 persons, of whom 868 were Croats and 39 were Serbs, suspected of crimes during and after Operation Storm.[1983] Of these, 28 proceedings were underway before the Split County Court (for aggravated larceny), and 66 before the Split Military Court (63 for aggravated larceny and three for murder).[1984] As of 20 January 1996, 27 murder investigations had been completed and 25 persons had been brought to trial for murders committed after Operation Storm.[1985] The Croatian authorities had received reports of 1,600 cases of grand larceny, concluded 1,151 investigations, and charged 935 persons with aggravated larceny and brought them to trial.[1986] The Croatian authorities had received reports of 41 acts of robbery, concluded 26 investigations, charged 55 persons, and brought 36 persons to trial. The Croatian authorities had information indicating that 757 houses had been deliberately destroyed, partially or totally, by arson, and the police were investigating the cases.[1987]

[1980] P598 (Elisabeth Rehn, witness statement, 13-14 October 2005), p. 7; Elisabeth Rehn, T. 6504; P600 (Additional information from the Croatian Ministry of Foreign Affairs, received on 2 February 1996), pp. 1, 4; D1630 (Report by Croatia on the implementation of Security Council resolution 1019 (1995), p. 6.
[1981] P600 (Additional information from the Croatian Ministry of Foreign Affairs, received on 2 February 1996), p. 4; D1630 (Report by Croatia on the implementation of Security Council resolution 1019 (1995), p. 6.
[1982] P600 (Additional information from the Croatian Ministry of Foreign Affairs, received on 2 February 1996), p. 5; D1630 (Report by Croatia on the implementation of Security Council resolution 1019 (1995), p. 6.
[1983] P600 (Additional information from the Croatian Ministry of Foreign Affairs, received on 2 February 1996), p. 5, table 1; D1630 (Report by Croatia on the implementation of Security Council resolution 1019 (1995), pp. 6-7, 16.
[1984] P600 (Additional information from the Croatian Ministry of Foreign Affairs, received on 2 February 1996), table 1 and two following pages; D1630 (Report by Croatia on the implementation of Security Council resolution 1019 (1995), pp. 6-7, 16-18.
[1985] P600 (Additional information from the Croatian Ministry of Foreign Affairs, received on 2 February 1996), pp. 5-6; D1630 (Report by Croatia on the implementation of Security Council resolution 1019 (1995), pp. 7-8.
[1986] P600 (Additional information from the Croatian Ministry of Foreign Affairs, received on 2 February 1996), p. 6; D1630 (Report by Croatia on the implementation of Security Council resolution 1019 (1995), p. 8.
[1987] P600 (Additional information from the Croatian Ministry of Foreign Affairs, received on 2 February 1996), p. 7; D1630 (Report by Croatia on the implementation of Security Council resolution 1019 (1995), p. 8.



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2198. The Trial Chamber has considered the evidence reviewed above with a view to establishing whether there existed among the Croatian authorities generally, or at least among certain members thereof, a policy of non-investigation of crimes committed against Krajina Serbs during and following Operation Storm in the Indictment area.

2199. In respect of the sanitation measures, the evidence, and particularly the order of 5 August 1995 from Židovec to the police administrations (in evidence as D233) and the minutes of the crime police sector chiefs meeting of 7 August 1995 (in evidence as D235), indicates that immediately following Operation Storm, the Croatian authorities made sanitation of human remains a higher priority in the area taken over during Operation Storm than the investigation of possible murders. The testimony of Židovec, Cetina, Witness 84, and Kardum indicates that sanitation teams included a police crime scene officer, who would produce a crime report for the police administration. If the crime scene officer suspected that a crime had been committed, the crime police were to conduct an investigation, after which the body would be buried. However, the testimony of Kardum suggests that, unless Kardum had information that a war crime was committed, the Croatian police did not investigate the deaths of Serb soldiers found in the area, and instead assumed that they had died in combat. Having also considered the testimony of Bajić regarding the results of the excavations from Knin cemetery undertaken in 2001, the Trial Chamber concludes that the priority placed on sanitation of the area, and the manner in which the sanitation was carried out, led to a number of possible murders not being properly investigated. However, the Trial Chamber has considered the context in which the relevant Croatian authorities were working at the time, including the recent military operations and combat casualties, the on-going armed conflict (see chapter 5.1.2), and the limited resources at the authorities' disposal. Having also considered the testimony of expert Albiston, the Trial Chamber accepts that reasons of health and hygiene may have played a role in the decision of the Croatian authorities to prioritize sanitation. The evidence does not conclusively establish that the Croatian authorities prioritized sanitation in order to purposefully hinder the investigation of possible murders.

2200. In respect of the efforts of the Croatian law enforcement authorities to investigate and prosecute crimes committed in August and September 1995, the Trial Chamber considered the testimony of several witnesses, including Kardum, Morić, Cetina, Witness 86, Witness 84, Buhin, Milas, Bajić, Galović, Žganjer, and Džolić regarding



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the obstacles faced by Croatian law enforcement authorities. These obstacles included inadequate preparation of civilian police commanders and officers and the presence of weapons, mines, and other explosives in the area. There was also a lack of qualified personnel, equipment, and vehicles to cover the large area which had been taken over during Operation Storm and respond to the large number of crimes following Operation Storm. The shortage of personnel affected law enforcement authorities and the judiciary, including ordinary civilian police officers, civilian crime police, VP officers, pathologists, prosecutors, and investigative judges. Further, the VP were also engaged in other tasks, including combat tasks, guarding installations, the processing of POWs, and the investigation of the deaths of HV members. The evidence of Cetina further indicates that civilian police could only temporarily detain members of Croatian military forces suspected of crimes and had to contact the VP for further processing, as well as that civilian police were hesitant to interfere with perpetrators in military uniform in the absence of the VP. The evidence (including the testimony of Cetina, Morić's letter to Laušić of 17 August 1995, Laušić's order of 18 August 1995, Cetina's letter to Morić of 19 August 1995, and the reports sent to Morić at the end of August 1995 and in September 1995 by Matić, Cetina, and Romanić) further indicates that there were problems in the cooperation between the civilian police and the VP, which resulted mainly from a shortage of VP.

2201. The Trial Chamber notes that on 18 August 1995, Morić ordered the civilian police not to operatively investigate past instances of arson and theft, but instead to set up check-points and patrols to prevent such acts and to criminally process every future arson or theft, with or without VP assistance in cases of perpetrators in HV uniform. Morić explained that he was faced with a choice between investigating prior incidents or assigning personnel to prevent further incidents, and chose the latter. According to Morić, the order meant only that the police should postpone investigations into earlier crimes, while focussing on crime prevention. Given the evidence on the difficulties faced by the civilian police, the Trial Chamber cannot conclusively determine that Morić's decision to prioritize prevention of further crimes over investigation of prior incidents was an attempt by him to hinder or prevent the civilian police's investigation of crimes.

2202. The evidence indicates that in certain individual cases, members of the Croatian authorities purposefully hindered investigations of possible crimes against Krajina



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Serbs. In this respect, the Trial Chamber refers to the evidence reviewed and findings made in chapter 6.2.6. The evidence of Šimić, Žganjer, and VP report P1062 indicates that VP Šibenik Company commander Mrkota intentionally prevented the VP from actively investigating Goran Vunić as a suspect in the Gošić and Varivode murders. At the same time, the evidence also provides examples of efforts on the part of the civilian police, VP, and Croatian judiciary to process crimes against Krajina Serbs, such as in the case of Veselko Bilić and through Operative Action Varivode. The Trial Chamber has further received documentary evidence, including several VP and SIS reports, some of which evidence is reviewed in chapter 4.2.2 (Benkovac town), on the civilian police and VP's attempts to seize looted goods at check-points and during patrols.

2203. The statistics the Trial Chamber has received on the measures taken by the Croatian law enforcement authorities and judiciary relate to different actors, time periods, areas, crimes, and measures taken or lack sufficient information about some of these variables. As a result, the statistics are not easily interpreted or compared and do not provide a clear account of the measures taken. At the same time, the general picture that emerges from the evidence is of an insufficient response by the Croatian law enforcement authorities and judiciary in August and September 1995 in view of the number of crimes committed during and after Operation Storm against Krajina Serbs in the Krajina area. The Trial Chamber notes in this respect that Milas also characterized some of these statistics as unimpressive. The evidence reviewed indicates that some investigatory efforts were made, but with relatively few results. Moreover, there are indications in the evidence that at the political level, these efforts were motivated at least in part by a concern for Croatia's international standing rather than by genuine concern for victims. In light of the testimony of expert Albiston, the Trial Chamber considers that the insufficient response by the Croatian law enforcement authorities and judiciary can to some extent be explained by the abovementioned obstacles they faced and their need to perform other duties in August and September 1995. In conclusion, while the evidence indicates incidents of purposeful hindrance of certain investigations, the Trial Chamber cannot positively establish that the Croatian authorities had a policy of non-investigation of crimes committed against Krajina Serbs during and following Operation Storm in the Indictment area.



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### *6.2.6 The follow-up in relation to the incidents in Grubori and Ramljane on 25 and 26 August 1995*

2204. The Trial Chamber has received much evidence about the incidents in Grubori and Ramljane on 25 and 26 August 1995, and about subsequent actions taken by Croatian authorities. The Trial Chamber recalls its findings in Chapters 4.1.9 and 4.2.15 according to which the Lučko unit of the Special Police killed five persons and destroyed property. The events following the incidents involve two of the accused and touch directly upon the charges against them. The Trial Chamber will therefore review the relevant evidence in detail. Some of the evidence which the Trial Chamber has considered can be found in Confidential Appendix C of the Judgement.

2205. With regard to events leading up to 25 August 1995, the Trial Chamber has received the following evidence. In anticipation of President Tuđman's train trip from Zagreb via Karlovac, Gospić, and Knin to Split on 26 August 1995, the MUP and MoD carried out a joint security action named "Knin 95".[1988] Since most of the route went through recently re-taken territory that still contained remnants of Serbian forces, Special Police were to provide security in and around the most critical parts of the railroad.[1989]

2206. **Witness 84**, a police officer in Knin,[1990] testified that in the morning meeting at the police station in Knin on 24 August 1995, Čedo Romanić told him that, on the following day, the special unit of the MUP would be searching the terrain in the area north of Knin, including the villages of Plavno and Strmica in Knin municipality.[1991] Čedo Romanić also told the witness that the roads in that specific area were going to be blocked and that no one was to talk to anyone about this operation.[1992] The witness acknowledged these instructions to be an order.[1993]

[1988] D1850 (Decision of Ivan Jarnjak setting up Operation "Knin 1995", 23 August 1995).
[1989] D1850 (Decision of Ivan Jarnjak setting up Operation "Knin 1995", 23 August 1995), p. 3; D1853 (Knin police station security assessment and plan for President Tuđman's train trip, 24 August 1995), p. 1; D1854 (Zadar-Knin police administration's implementation plan for securing the Knin train station area, 25 August 1995), p. 1; D1855 (Zadar-Knin police administration security plan, 25 August 1995), pp. 1, 3; D1856 (Kotar-Knin police administration security evaluation and plan for President Tuđman's train trip, 26 August 1995), p. 1; Joško Morić, T. 25611-25615, 25617-25618.
[1990] P1035 (Witness 84, pseudonym sheet); P2393 (Witness 84, witness statement, 20 November 2007), p. 1; P2394 (Witness 84, witness statement, 11 July 2004), p. 1; P2395 (Witness 84, witness statement 9 March 2002), pp. 1-3; Witness 84, T. 11061, 11073, 11094, 11101, 11358, 11360.
[1991] P2395 (Witness 84, witness statement, 9 March 2002), para. 41; Witness 84, T. 11107.
[1992] Witness 84, T. 11107, 11143.
[1993] Witness 84, T. 11107.



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2207. With regard to the events of 25 August 1995, Witness 84 testified that on 25 August 1995 Petro Romassev of UNCIVPOL came to the police station asking why the police were preventing the UNCIVPOL patrols from accessing the Plavno Valley and why the roads were closed and blocked.[1994]

2208. **Alun Roberts**, Press and Information Officer for UN Sector South in Knin,[1995] and **Maria Teresa Mauro**, a UN civil affairs officer and HRAT member in the former Sector South based in Knin,[1996] testified that on 25 August 1995 at about 3 or 4:30 p.m., they and other UN personnel reported what they had seen in Grubori earlier that day (see Chapter 4.1.9) to the assistant or main liaison officer to Čermak in Knin, Dondo.[1997] Roberts and the UN personnel considered this matter so serious that it should be pursued at the level of Čermak, because he had said at the meeting of 7 August 1995 that he would be responsible for the security in and around Knin.[1998] They therefore thought he may have had capacities to guarantee security which might go beyond the police's capacity to do so.[1999] They urged the Croatian authorities to begin investigations quickly and to send personnel to protect the villagers.[2000] Roberts specified that while they reported that they had heard shots from across the valley and that there had been burnings and panicking residents, they did not report that people had been killed.[2001] They also informed Dondo that according to the villagers, the soldiers responsible wore plain light green olive uniform with a coloured ribbon on their epaulettes.[2002] They asked Dondo to inform Čermak and report back to the UN.[2003]

[1994] P2395 (Witness 84, witness statement, 9 March 2002), para. 41; Witness 84, T. 11107-11108, 11142-11143.
[1995] P675 (Alun Roberts, witness statement, 27 August 1997), p. 1, para. 1; P676 (Alun Roberts, witness statement, 31 July 1998), p. 1; P677 (Alun Roberts, witness statement, 28 February 2007), pp. 1-2; P678 (Alun Roberts, witness statement, 7 February 2008), p. 1, paras 3-4, 6; P680 (Alun Roberts, witness statement, 1 July 2008), p. 1.
[1996] P1098 (Maria Teresa Mauro, witness statement, 3 March 2000), pp. 1-2; P1099 (Maria Teresa Mauro, witness statement, 6 February 2008), p. 1, paras 1, 7-9, 11-12; Maria Teresa Mauro, T. 11998, 12000, 12024, 12075-12076.
[1997] P675 (Alun Roberts, witness statement, 27 August 1997), paras 16, 76; P677 (Alun Roberts, witness statement, 28 February 2007), p. 10; Alun Roberts, T. 6867-6868, 6920-6923; 6934, 6941-6942; P691 (Grubori village report by Alun Roberts, 29 August 1995), para. 9; see also P1098 (Maria Teresa Mauro, witness statement, 3 March 2000), p. 5; P1099 (Maria Teresa Mauro, witness statement, 6 February 2008), para. 37; Maria Teresa Mauro, T. 12055-12056.
[1998] P675 (Alun Roberts, witness statement, 27 August 1997), para. 20; P677 (Alun Roberts, witness statement, 28 February 2007), p. 7; Alun Roberts, T. 6876, 6882-6883, 6885, 6887, 6902; 6905, 6921-6922.
[1999] Alun Roberts, T. 6921-6922.
[2000] P675 (Alun Roberts, witness statement, 27 August 1997), paras 16, 76; P677 (Alun Roberts, witness statement, 28 February 2007), p. 11; Alun Roberts, T. 6868, 6921-6923; 6941-6942; P691 (Grubori village report by Alun Roberts, 29 August 1995), para. 9.
[2001] Alun Roberts, T. 6923, 6934, 6939.
[2002] P677 (Alun Roberts, witness statement, 28 February 2007), p. 11.



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Dondo explained that there had possibly been a military action clearing that area of Serb soldiers in the nearby woods, to which the UN personnel present pointed out that Grubori was nowhere near any woods.[2004]

2209. **Karolj Dondo**, HV Liaison Officer with the UN and EC in Sector South in 1995,[2005] testified that a UN official, whom Dondo believed was from Italy, reported to him around 4 p.m. on 25 August 1995 that there had been shots fired and that there were houses on fire in Grubori.[2006] Dondo told her to report the incident to the civilian police, and that his office would get back to her as soon as they had more information.[2007] Dondo testified that he went directly to Čermak and informed him verbally of what he had been told.[2008] At this time, they did not know that people had been killed.[2009] In Dondo's presence, Čermak called the civilian police and asked them what they knew about the incident.[2010] The police responded that they did not know about the incident.[2011] Čermak then told them to go and "check things" since he had information from the UN that something was going on. According to Dondo, Čermak did not instruct the civilian police to investigate the matter, since he had no authority to do so.[2012] Dondo testified that other UN organs, such as UNCIVPOL and the ICRC also reported about the incident to his office.[2013]

2210. **Milica Karanović**, a Serb from the hamlet of Grubori in Plavno village in Knin municipality,[2014] stated that soldiers whom she identified as "Croatian" and UNPROFOR staff arrived in Grubori at around 6 p.m., on 25 August 1995, and told the

[2003] P675 (Alun Roberts, witness statement, 27 August 1997), paras 16, 76; P677 (Alun Roberts, witness statement, 28 February 2007), p. 11; Alun Roberts, T. 6941-6942; P691 (Grubori village report by Alun Roberts, 29 August 1995), para. 9.
[2004] P675 (Alun Roberts, witness statement, 27 August 1997), para. 76; see also P1098 (Maria Teresa Mauro, witness statement, 3 March 2000), p. 5.
[2005] D1695 (Karolj Dondo, witness statement, 9 March 2005), p. 1, paras 1-2; D1696 (Karolj Dondo, witness statement, 18 August 2009), p. 1, para. 2.
[2006] D1695 (Karolj Dondo, witness statement, 9 March 2005), para. 25; D1696 (Karolj Dondo, witness statement, 18 August 2009), para. 30; Karolj Dondo, T. 22465, 22486-22487, 22528.
[2007] D1695 (Karolj Dondo, witness statement, 9 March 2005), para. 25; D1696 (Karolj Dondo, witness statement, 18 August 2009), para. 30; Karolj Dondo, T. 22465, 22528, 22585.
[2008] D1695 (Karolj Dondo, witness statement, 9 March 2005), para. 25; D1696 (Karolj Dondo, witness statement, 18 August 2009), para. 30.
[2009] D1696 (Karolj Dondo, witness statement, 18 August 2009), para. 30.
[2010] D1695 (Karolj Dondo, witness statement, 9 March 2005), para. 25; D1696 (Karolj Dondo, witness statement, 18 August 2009), para. 30; Karolj Dondo, T. 22465-22466, 22492.
[2011] D1695 (Karolj Dondo, witness statement, 9 March 2005), para. 25; Karolj Dondo, T. 22465-22466, 22503.
[2012] Karolj Dondo, T. 22492.
[2013] D1695 (Karolj Dondo, witness statement, 9 March 2005), para. 25; Karolj Dondo, T. 22507-22508.
[2014] P2510 (Milica Karanović, witness statements), 1 April 1998 statement, pp. 1-2; 12 July 2007 statement, p. 1.



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villagers that they could not touch the bodies found there.[2015] **Roberts** was not certain, but believed that his colleagues did not have a meeting with Dondo after their second visit to Grubori, and he saw no report to that effect.[2016] UNCIVPOL told Roberts in the evening, that UN personnel had reported what they had seen on their first visit to Grubori to the Knin police station.[2017]

2211. With regard to the reporting on the operation of 25 August 1995 by members of the Lučko unit, including Josip Čelić, the Trial Chamber has considered the testimonies of Janić, Čelić, Žinić, Witness CW-4, Balunović, and Krajina, reviewed in Chapter 4.1.9.

2212. According to **Zdravko Janić**, the chief of the Anti-Terrorist Department of the Special Police Sector in 1995,[2018] after the operation on 25 August 1995, he received a written report from Zagreb unit commander Zoran Cvrk detailing the arrest of a certain Luka Pašić.[2019] The Zagreb unit also reported to have found ammunition in an abandoned house, which according to the witness occurred often.[2020] The witness received no reports of Special Police units having been engaged in fighting during the operation, and said that Josip Čelić's written report contained no extraordinary activities that needed to be specifically reported.[2021] Based on the hand-written reports of the six commanders involved in the operation, the witness compiled a written report addressed to Željko Sačić on the afternoon of 25 August 1995.[2022] On the basis of this report, the headquarters then sent a report to General Červenko of the Main Staff of the HV in Zagreb.[2023] According to the witness, Markač's name was put at the bottom of the report without a signature as it was sent by electronic mail.[2024] A later version of this report

[2015] P2510 (Milica Karanović, witness statements), 1 April 1998 statement, p. 6.
[2016] Alun Roberts, T. 6930.
[2017] Alun Roberts, T. 6920, 6922-6923, 6929, 6971.
[2018] P552 (Zdravko Janić, witness statement, 14 January 2004), para. 13; P553 (Zdravko Janić, Prosecution interview, 15 March 2005), part I, p. 25; Zdravko Janić, T. 6099.
[2019] P552 (Zdravko Janić, witness statement, 14 January 2004), para. 56; P553 (Zdravko Janić, Prosecution interview, 15 March 2005), part III, pp. 96-101.
[2020] P552 (Zdravko Janić, witness statement, 14 January 2004), para. 56; P553 (Zdravko Janić, Prosecution interview, 15 March 2005), part III, pp. 98-99; P560 (Report from Zdravko Janić to Željko Sačić, 25 August 1995).
[2021] P552 (Zdravko Janić, witness statement, 14 January 2004), para. 54; P553 (Zdravko Janić, Prosecution interview, 15 March 2005), part III, pp. 21, 25-26; Zdravko Janić, T. 6132.
[2022] P552 (Zdravko Janić, witness statement, 14 January 2004), paras 58-60; P553 (Zdravko Janić, Prosecution interview, 15 March 2005), part III, p. 38; Zdravko Janić, T.6130-6132, 6142-6144; P560 (Report from Zdravko Janić to Željko Sačić, 25 August 1995).
[2023] P552 (Zdravko Janić, witness statement, 14 January 2004), para. 60; Zdravko Janić, T. 6142-6143; P575 (Report from Mladen Markač to the HV Main Staff, 26 August 1995).
[2024] P552 (Zdravko Janić, witness statement, 14 January 2004), para. 60; Zdravko Janić, T. 6173-6174.



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contains an account of the Lučko Anti-Terrorist Unit having been involved in combat activities in Grubori.[2025] The initial version of this report, marked "cancelled" on the front page, is missing the relevant paragraph referring to the combat activities of the Lučko Anti-Terrorist Unit.[2026]

2213. When interviewed by the Prosecution, Markač stated that he received a written report from the coordinator, Zdravko Janić, after the Plavno search, which was based on the search commanders' reports and stated that around 100 civilians were located and identified, and material and technical equipment was found.[2027] Markač stated that his staff was in charge of writing the final report, that it copied the coordinator's report, and sent it to Červenko after he signed it.[2028] Reports were written every day.[2029] The report stated that there had been a regular search.[2030] Markač stated that Sačić had asked for permission to go back to Zagreb on 25 August 1995 for personal reasons.[2031] He granted Sačić permission and they agreed that Sačić should be back in the morning of 26 August 1995.[2032] On 25 August 1995, Čermak phoned Markač late at night and told him that he was visited by "UN members" who told him that there had been some shooting in a hamlet where an action was carried out that day.[2033] Markač told Čermak that he did not know anything about this and that he had the coordinator's report which did not say anything to that effect either.[2034] Čermak then asked Markač to verify the information from the report.[2035] Since the search commanders had already left the Special Police headquarters in Gračac for their new tasks on the following day, Markač called Sačić in Zagreb and asked him to go see Čermak to find out what this was about.[2036] Markač

[2025] P576 (Report from Mladen Markač to the HV Main Staff, 26 August 1995), para. 4.
[2026] P575 (Report from Mladen Markač to the HV Main Staff, 26 August 1995).
[2027] P2530 (Suspect interview with Mladen Markač, 3-4 March 2003), pp. 91-93, 96; P2531 (Accused interview with Mladen Markač, 8 June 2004), pp. 63-64.
[2028] P2530 (Suspect interview with Mladen Markač, 3-4 March 2003), pp. 93-94, 96; P2708 (Discrepancy report of Markač's 2003 suspect interview), p. 4.
[2029] P2708 (Discrepancy report of Markač's 2003 suspect interview), p. 4.
[2030] P2530 (Suspect interview with Mladen Markač, 3-4 March 2003), pp. 94, 117.
[2031] P2530 (Suspect interview with Mladen Markač, 3-4 March 2003), p. 96.
[2032] P2530 (Suspect interview with Mladen Markač, 3-4 March 2003), p. 97.
[2033] P2530 (Suspect interview with Mladen Markač, 3-4 March 2003), pp. 97-99; P2531 (Accused interview with Mladen Markač, 8 June 2004), p. 64; see also P2532 (Accused interview with Ivan Čermak, 7 June 2004), pp. 66-67.
[2034] P2530 (Suspect interview with Mladen Markač, 3-4 March 2003), p. 98; P2531 (Accused interview with Mladen Markač, 8 June 2004), p. 64; see also P2532 (Accused interview with Ivan Čermak, 7 June 2004), pp. 66-67.
[2035] P2530 (Suspect interview with Mladen Markač, 3-4 March 2003), p. 98; P2531 (Accused interview with Mladen Markač, 8 June 2004), p. 64.
[2036] P2530 (Suspect interview with Mladen Markač, 3-4 March 2003), pp. 98, 100-101, 107; P2531 (Accused interview with Mladen Markač, 8 June 2004), pp. 64-65.



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then decided to wait for Sačić's briefing.[2037] Markač stated that he did not know about any killings or captures on 25 August 1995.[2038] Markač stated that Sačić did not report back to him immediately after he had talked to Čermak, but that Sačić talked to commander Čelić first.[2039]

2214. With regard to the events of 26 August 1995, **Janić** testified that on that day he was in command of a search operation in the Promina mountain area, located on the borders of Knin, Orlić, and Oklaj municipalities.[2040] The starting point was the Knin-Drniš road, and the finish point of the operation a valley behind Drniš (north-west of Drniš and towards the Krka river).[2041] Around 270 men were involved from the Special Police units of Krapina-Zagorje (100 men), Slavonski Brod-Posavina (130 men), and the Lučko Anti-Terrorist Unit (40 men), with Josip Čelić commanding the men provided by the Lučko Anti-Terrorist Unit.[2042] Almost as soon as the operation began, around 9:40 a.m., Janić heard shots and the use of rocket weaponry, and received information from the Lučko unit that it had engaged two enemy soldiers.[2043] The witness could then see smoke and flames coming from some houses in a nearby village, located near the railroad where the "Freedom Train" with President Tuđman was supposed to pass by.[2044] Janić contacted Markač and asked him to come and assess the situation.[2045] **Josip Čelić**, an assistant commander of the Lučko Anti-Terrorist Unit,[2046]

[2037] P2530 (Suspect interview with Mladen Markač, 3-4 March 2003), p. 99.
[2038] P2530 (Suspect interview with Mladen Markač, 3-4 March 2003), p. 100; P2531 (Accused interview with Mladen Markač, 8 June 2004), p. 65.
[2039] P2530 (Suspect interview with Mladen Markač, 3-4 March 2003), pp. 101, 104-105; P2531 (Accused interview with Mladen Markač, 8 June 2004), p. 67.
[2040] P552 (Zdravko Janić, witness statement, 14 January 2004), para. 65; P580 (Document on activities planned by the Special Police for 26 August signed by Mladen Markač, dated 25 August 1995); P618 (Slavonski Brod-Posavina Special Police unit report, 26 August 1995), p. 1.
[2041] P552 (Zdravko Janić, witness statement, 14 January 2004), para. 65.
[2042] P552 (Zdravko Janić, witness statement, 14 January 2004), para. 65; P553 (Zdravko Janić, Prosecution interview, 15 March 2005), part III, pp. 41-42; Zdravko Janić, T. 6200-6201; P579 (Report from the Special Police to the HV Main Staff signed by Mladen Markač, 26 August 1995), p. 3; P581 (Zagorje Special Police unit report, 26 August 1995); P618 (Slavonski Brod-Posavina Special Police unit report, 26 August 1995), p. 1.
[2043] P552 (Zdravko Janić, witness statement, 14 January 2004), paras 65-66; P553 (Zdravko Janić, Prosecution interview, 15 March 2005), part III, p. 43; P618 (Slavonski Brod-Posavina Special Police unit report, 26 August 1995), p. 1.
[2044] P552 (Zdravko Janić, witness statement, 14 January 2004), para. 66; P553 (Zdravko Janić, Prosecution interview, 15 March 2005), part III, p. 43.
[2045] P552 (Zdravko Janić, witness statement, 14 January 2004), para. 66; P553 (Zdravko Janić, Prosecution interview, 15 March 2005), part III, p. 43.
[2046] P761 (Josip Čelić, witness interview of 25-26 November 2002), Part I, pp. 5, 58; P762 (Josip Čelić, witness interview of 13-14 January 2005), Part I, pp. 9, 16-17, 135, 161, Part III, pp. 6, 181-182; Josip Čelić, T. 7928.



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confirmed that he was the commander at the unit level for this operation.[2047] Čelić further confirmed Janić's observations but added that the group leaders did not request any assistance during the course of the operation.[2048]

2215. On the same day between 9 and 10 a.m., Petro Romassev came to the Knin police station stating that there had been killings of civilians in, among others, the area of Grubori on 25 August 1995.[2049] Romassev gave the names of the dead bodies found in Grubori and said that investigations should take place and that the UNCIVPOL would be at the police's disposal to assist in the case.[2050] **Witness 84** arranged for this information to be brought to the attention of Čedo Romanić, Zvonko Gambiroža, and the coordinators, Buhin and Barić, who said that they would deal with the incident.[2051] The hand-written list of the alleged killings noted that on 25 August 1995, in Plavno, in the hamlet of Grubori, Miloš Grubor (born 1915) and Jovo Grubor (about 65 years old) had been killed and Marija Grubor (born 1905), Milka or Mika Grubor (born 1944) and Jovo Grubor (born 1922) had disappeared.[2052]

2216. During a morning meeting which **Witness 86** believed took place on 27 August 1995 (although from the context of the evidence this should be 26 August 1995), Witness 86 told Čermak about the Grubori killings and suggested that UNCIVPOL should be contacted to find the corpses.[2053] Čermak suggested that the corpses should be collected from Grubori and that the police should "wait and see".[2054]

2217. **Stjepan Buhin**, a MUP employee in 1995 and stationed in Knin between 6 August and the beginning of September 1995,[2055] testified that on the morning of 26

[2047] P762 (Josip Čelić, witness interview of 13-14 January 2005), Part III, p. 9; Josip Čelić, T. 7935, 8010-8011, 8090.
[2048] Josip Čelić, T. 8012-8014, 8021-8023.
[2049] P2394 (Witness 84, witness statement, 11 July 2004), para. 6; P2395 (Witness 84, witness statement, 9 March 2002), para. 41; Witness 84, T. 11108, 11143, 11339-11340, 11345; P1041 (Official Note by the civilian police station in Knin, detailing killings of civilians in Grubori, 26 August 1995).
[2050] Witness 84, T. 11108, 11143, 11163, 11340.
[2051] P2394 (Witness 84, witness statement, 11 July 2004), para. 6; Witness 84, T. 11108-11109, 11142-11143, 11340-11342; P1041 (Official Note by the civilian police station in Knin, detailing killings of civilians in Grubori, 26 August 1995).
[2052] P2394 (Witness 84, witness statement, 11 July 2004), para. 6; P1041 (Official Note by the civilian police station in Knin, detailing killings of civilians in Grubori, 26 August 1995); P1044 (Excerpt from the Knin civilian police station logbook), p. 1.
[2053] P487 (Witness 86, witness statement, 19 September 2001), para. 67; Witness 86, T. 5268, 5292-5293, 5305, 5724-5725, 5729-5730, 5822-5823; P501 (Notebook of Witness 86, 19 August 1995-15 September 1995), p. 9; P503 (Notebook of Zvonko Gambiroža, 12 August 1995-21 September 1995), p. 27.
[2054] P487 (Witness 86, witness statement, 19 September 2001), para. 67.
[2055] P963 (Stjepan Buhin, witness statement, 9 March 2002), pp. 1-5; Stjepan Buhin, T. 10017, 10037, 10058-10059.



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August 1995 he was informed that there were bodies of civilians in Grubori.[2056] He added that the police patrol that was sent to the site, came back without having found Grubori or any bodies.[2057] The witness then informed Ivica Cetina at the Zadar-Knin Police Administration who promised to set up a team of the crime police, including an investigative judge, for an on-site investigation.[2058] According to the witness, he and Čedo Romanić had agreed that an investigation should take place.[2059]

2218. **Ivica Cetina**, the Chief of the Zadar-Knin Police Administration throughout 1995,[2060] said that he was not in his office on the day the murders occurred in Grubori, or several days afterwards, as he was in the northern part of his Police Administration.[2061] A day or two after the events, Kardum informed Cetina about the murders and told him that the coordinators Buhin and Barić of the Knin District Police Administration had been informed of the events immediately and had reported to their superiors in Zagreb.[2062] Consequently, Cetina considered further engagement in the Grubori events on his part unnecessary.[2063] The information Cetina received from the field, via Kardum, indicated that the incident took place in a combat area.[2064] Cetina was not aware of an on-site investigation being carried out into the Grubori incident.[2065] Cetina did not remember Buhin calling him in relation to Grubori. As a coordinator directly appointed from the MUP, Buhin was not subordinated to Cetina and was supposed to call the MUP to provide his opinion about the event.[2066]

2219. According to **Buhin**, around 12 p.m. on 26 August 1995, Željko Sačić arrived at the Knin police station and told him that mopping-up operations had been conducted in that area and that the killings should be treated as if they were a result of Operation

[2056] P963 (Stjepan Buhin, witness statement, 9 March 2002), p. 4; Stjepan Buhin, T. 9934, 9936-9937, 10004-10007, 10012, 10108.
[2057] P963 (Stjepan Buhin, witness statement, 9 March 2002), p. 4; Stjepan Buhin, T. 9934-9935, 9987-9988, 10107.
[2058] P963 (Stjepan Buhin, witness statement, 9 March 2002), p. 4; Stjepan Buhin. T. 9935-9936, 9981-9982, 9984, 9994-9995, 9999, 10009-10010, 10076-10078, 10108-10109, 10155.
[2059] P963 (Stjepan Buhin, witness statement, 9 March 2002), p. 4; Stjepan Buhin, T. 9985-9986, 9993, 10005, 10009.
[2060] D1743 (Ivica Cetina, witness statement, 26 August 2009), p. 1; D1745 (Ivica Cetina, witness statement, 26 February 2002), pp. 3-4; Ivica Cetina, T. 23396, 23486, 23517.
[2061] D1743 (Ivica Cetina, witness statement, 26 August 2009), para. 17; Ivica Cetina, T. 23517.
[2062] D1743 (Ivica Cetina, witness statement, 26 August 2009), para. 17; Ivica Cetina, T. 23517-23518, 23522.
[2063] D1743 (Ivica Cetina, witness statement, 26 August 2009), para. 17; Ivica Cetina, T. 23518.
[2064] Ivica Cetina, T. 23518, 23523.
[2065] Ivica Cetina, T. 23519, 23522.
[2066] Ivica Cetina, T. 23521.



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Storm and therefore should be dealt with by the civilian protection.[2067] Sačić insisted on being informed when the bodies were found.[2068] When Sačić learned what steps the witness had taken to investigate the alleged killings, he got upset.[2069] Both Barić and Romanić were present when Buhin discussed this matter with Sačić.[2070] Fifteen minutes after the discussion with Sačić, Joško Morić called the witness and told him not to get involved with the work of the crime police.[2071] Because of this, the witness did not act any further on the information he had about the incident.[2072] Eight or ten days later, the witness was returned to Zagreb with the motivation that there was no need for two coordinators in Knin.[2073]

2220. **Joško Morić**, who in 1995 was Assistant Minister of the Interior in charge of regular police,[2074] testified that he received general information about an event in Grubori, in Knin municipality, approximately two or three days after it occurred.[2075] Morić testified that he was informed that a few days after the event there were conflicting opinions in police circles, including Buhin and Šačić, as to what had happened there, with some people believing that the victims were collateral damage in a clash between the Special Police and enemy forces, and others believing that a crime had occurred.[2076] Morić testified that Buhin demanded that the matter be approached professionally, which meant that he wanted the matter investigated immediately.[2077] Morić agreed that an investigation should have been carried out right away, and initiated by informing the head of the police station.[2078] Morić testified that according to information that he had at the time, one or two days after the event Šačić was angry that

[2067] P963 (Stjepan Buhin, witness statement, 9 March 2002), p. 4; Stjepan Buhin, T. 9935, 10010, 10012, 10015, 10108. The witness testified that the meeting took place on 27 August 1995, however, other evidence received by the Trial Chamber strongly suggests that the witness made a mistake about the date.
[2068] P963 (Stjepan Buhin, witness statement, 9 March 2002), p. 4.
[2069] P963 (Stjepan Buhin, witness statement, 9 March 2002), p. 4; Stjepan Buhin, T. 10010, 10015.
[2070] P963 (Stjepan Buhin, witness statement, 9 March 2002), p. 6.
[2071] P963 (Stjepan Buhin, witness statement, 9 March 2002), p. 4; Stjepan Buhin, T. 9935, 10011, 10016, 10080, 10108-10110, 10155.
[2072] Stjepan Buhin, T. 9935-9936, 10011, 10016, 10109-10111, 10155.
[2073] P963 (Stjepan Buhin, witness statement, 9 March 2002), p. 5.
[2074] D1841 (Joško Morić, witness statement, 15 May 2009), p. 1, paras 1-2; D1842 (Joško Morić, witness interview, 17 January 2004), pp. 1-10, 13, 25, 110, 119; Joško Morić, T. 25502-25505, 25508-25511, 25514-25515, 25523, 25528, 25640, 25785, 25806, 25842, 25926-25927.
[2075] D1842 (Joško Morić, witness interview, 17 January 2004), pp. 214-218, 222; Joško Morić, T. 25754-25755, 25779.
[2076] D1842 (Joško Morić, witness interview, 17 January 2004), pp. 224-226; Joško Morić, T. 25763-25764.
[2077] D1842 (Joško Morić, witness interview, 17 January 2004), pp. 226-227; Joško Morić, T. 25768-25770.
[2078] Joško Morić, T. 25771.



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the problem had not been immediately resolved and that there were still doubts as to whether there had been a crime, which held up initiating one or another procedure.[2079]

2221. Approximately one or two days after Morić learned about the events in Grubori, he had a phone conversation with Buhin and told him, like he had done a few times before, not to encroach upon the competence of the crime police, and also reminded him that he was supposed to be replaced and return to Zagreb.[2080] In his Rule 92 *ter* statement of 2004, Morić testified that he removed Buhin from his position and called him back to Zagreb because of Buhin's conflict with the Special Police regarding Grubori, and because Morić did not think it was good to leave Buhin in a situation with so much tension.[2081] In court, Morić testified that he withdrew Buhin for two reasons – because it was time for his rotation, and because of a conflict of opinions in the Grubori case in which "he did not give initiative to his colleagues from the crime police, and he did not help them in doing their job to the extent a person from the fundamental police could".[2082] Morić explained that he had only mentioned the second reason in his Rule 92 *ter* statement of 2004 because the investigator had focused exclusively on that aspect.[2083] Morić testified that no one put pressure on him to call Buhin telling him not to get involved in the work of the crime police, or to remove him from his position.[2084] According to Morić, the rotation of Buhin and others had at that stage already been announced to Morić by the chief of the sector, due to the scope of the problems on the ground and the need for other types of experts, in, so far as Morić could recall, the areas of traffic and border control.[2085]

2222. When interviewed by the Prosecution, Čermak stated that around noon on 26 August 1995 Šačić came to Čermak's office, and said that something had happened, that he had to go to Grubori to see what was going on, after which he left.[2086]

2223. **Richard Lyntton**, a UNTV producer in August 1995,[2087] interviewed Čermak in his office in Knin at about 11:30 a.m. on 26 August 1995.[2088] To a question about why

[2079] D1842 (Joško Morić, witness interview, 17 January 2004), pp. 223-228, 251-252, 255; Joško Morić, T. 25764-25770, 25776-25777.
[2080] Joško Morić, T. 25771-25772, 25774-25775, 25777-25780, 25783.
[2081] D1842 (Joško Morić, witness interview, 17 January 2004), pp. 222-225, 251-253, 255.
[2082] Joško Morić, T. 25764, 25771-25772, 25774, 25777, 25783, 25922.
[2083] Joško Morić, T. 25772-25774.
[2084] D1842 (Joško Morić, witness interview, 17 January 2004), pp. 220-221, 252-253.
[2085] Joško Morić, T. 25778-25781, 25786, 25923.
[2086] P2532 (Accused interview with Ivan Čermak, 7 June 2004), pp. 67-68, 126.
[2087] P870 (Richard Lyntton, witness statement, 3 October 2001), para. 2; Richard Lyntton, T. 8806.



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the Croatian government should allow Serbs to stay in the area of Knin, Čermak responded that Serbs were citizens of Croatia with equal rights and that Croatia had not driven them out. Croatia's military operation had been directed towards the Serb paramilitary forces and "Chetnik" groups, and not towards the civilian population. According to Čermak, Serb leaders had made the Serb population flee Croatia. When asked about the events in Grubori on the day before, Čermak stated:

> Yes, I know about these events. That happened yesterday. As you know, in this area there are still small scattered groups of renegades and terrorists in this area. Our units, anti-terrorist units of the civilian police, are mopping up the area. Yesterday, in such an operation that covered 100 [square kilometres] towards the axis of the villages of Plavno and Grubori, the units carried out their basic task when they found 70 civilians of Serbian ethnicity who were taken care of, who stayed in their houses. During the operation itself there was an exchange of fire. In the village of Grubori itself one or two houses were burnt in the operation. One Serbian terrorist was arrested and one body was found, and we believe it was the body of a Croatian Army soldier because he had his hands tied with a wire behind his back.
>
> […]
>
> [S]ome 500-700 members of the special police were carrying out their task of encircling, and as they advanced towards the village they were fired at. And at that moment when they were fired at, our special forces returned the fire, and, well, that returning of fire resulted in, well, wounding, and it resulted in setting houses on fire.[2089]

2224. When confronted with information about the killing of two old men and houses burning in Grubori, Čermak responded that he did not know about this.[2090] He stated that "[t]he Croatian civilian authorities got to this village, looked after the people, organised humanitarian assistance for them and other assistance they need, and people stayed in their houses". Čermak stated if there had been deliberate burning of property and civilians killed, an urgent and rigorous investigation would take place and that he would even himself conduct such an investigation. In response to a general question about people's houses being burned, Čermak stated:

[2088] P870 (Richard Lyntton, witness statement, 3 October 2001), para. 27; Richard Lyntton, T. 8786, 8827-8828; P504 (UNTV interview with Ivan Čermak, 26 August 1995).
[2089] P504 (UNTV interview with Ivan Čermak, 26 August 1995). See also P870 (Richard Lyntton, witness statement, 3 October 2001), para. 29; Richard Lyntton, T. 8832.
[2090] P504 (UNTV interview with Ivan Čermak, 26 August 1995). See also P870 (Richard Lyntton, witness statement, 3 October 2001), para. 29; Richard Lyntton, T. 8805.



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> Talking about the houses that keep being mentioned, and the burning: it is neither in the interest of the Croatian state nor the Croatian military to destroy property. And rest assured that this has not occurred on a massive scale. It has happened in mopping up operations, it has happened, of course, not to mentioned [sic] combat operations, that houses have been set on fire, villages were set on fire and so forth. During the mopping up operations themselves it has happened that every now and then a house has maybe deliberately been set on fire. But you have to understand that among these, in these units there were people whose houses had been burnt, whose parents had been killed, whose brothers and sisters had been killed, and who set some houses on fire because they thought, there, this would alleviate their pain and their sorrow, but we stopped that quickly and sharply. You can see yourself in the area of Knin, that Knin was preserved, that many villages were preserved. So, there is no burning of houses, no deliberate burning of houses. And that isn't happening on a massive scale. Every now and then there is an incident. You have to know that this is a large area, Sector South is a large area, that there are civilians who are coming back to this area and that maybe some criminals in Croatian Army uniforms are coming back to this area. The civilian police, the military police, the Croatian Army are immediately stopping and preventing all these acts that could cause incidents.[2091]

2225. The interview with Čermak lasted 20-30 minutes.[2092] This was the first and last time Lyntton met Čermak.[2093]

2226. **Dondo** testified that Čermak was surprised by the questions asked by UNTV, because he did not know what had happened in Grubori.[2094] Based on the answers Čermak gave to UNTV, Dondo believed that somebody, although the witness did not know who, had provided him with false information.[2095] After the UNTV interview Čermak again called the civilian police in Dondo's presence, which again told Čermak that they had no information about the incident.[2096] Dondo thought that Čermak also contacted the VP, which had no information about the incident.[2097] Dondo suggested to

[2091] P504 (UNTV interview with Ivan Čermak, 26 August 1995).
[2092] P870 (Richard Lyntton, witness statement, 3 October 2001), para. 31; Richard Lyntton, T. 8813.
[2093] P870 (Richard Lyntton, witness statement, 3 October 2001), para. 29; Richard Lyntton, T. 8810, 8813.
[2094] D1696 (Karolj Dondo, witness statement, 18 August 2009), paras 30-31; Karolj Dondo, T. 22466, 22496, 22499.
[2095] Karolj Dondo, T. 22492, 22497-22498.
[2096] D1695 (Karolj Dondo, witness statement, 9 March 2005), paras 25-26.
[2097] D1695 (Karolj Dondo, witness statement, 9 March 2005), para. 25.



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Čermak that he should go to Grubori to see what had happened.[2098] Čermak did not instruct anybody to go to Grubori to investigate matters.[2099]

2227. Čermak stated that in the afternoon of 26 August 1995, Šačić called him and said that he was in Grubori, that there had been a clash between anti-terrorist units and left-over Krajina units, and that he would come to Čermak's office soon.[2100] Šačić then returned to Čermak's office and said that they would go back to Grubori the next day accompanied by the criminal police, and Čermak said that he would join.[2101] Čermak again requested information from the special police, and received a report indicating that during a special police cleaning operation, there had been an armed clash in Grubori during which some houses were damaged and some people died.[2102] Čermak stated that he believed the information that he received.[2103]

2228. That same afternoon, Čedo Romanić asked that information about the killings be urgently entered in the Knin police station log book.[2104] Around 3 p.m. on that day, the duty operations officer entered in the Knin station log book that an on-site investigation would be conducted on the morning of 27 August 1995.[2105]

2229. At around 3 p.m. on 26 August 1995, **Dondo** travelled to Grubori together with two persons from Čermak's logistic unit.[2106] According to the witness, at that time there had not been any civilian police, investigative judge, or other authority in Grubori to investigate the matter.[2107] He arrived in the village around 5 p.m.[2108] Dondo described the situation in the village as "disturbing"; the villagers were scared and a woman showed them dead bodies, dead livestock, and burned houses.[2109] The villagers told them that this had happened the day before and told the witness the names of the

[2098] Karolj Dondo, T. 22467.
[2099] Karolj Dondo, T. 22500.
[2100] P2532 (Accused interview with Ivan Čermak, 7 June 2004), pp. 68-69, 100-101.
[2101] P2532 (Accused interview with Ivan Čermak, 7 June 2004), p. 69.
[2102] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 90, 92-93, 96-98, 125; P2532 (Accused interview with Ivan Čermak, 7 June 2004), pp. 70, 100-101.
[2103] P2532 (Accused interview with Ivan Čermak, 7 June 2004), pp. 90, 92.
[2104] Witness 84, T. 11109, 11144, 11341.
[2105] Witness 84, T. 11111, 11144, 11341; P1044 (Excerpt from the Knin civilian police station logbook), p. 1.
[2106] D1695 (Karolj Dondo, witness statement, 9 March 2005), paras 26-27; D1696 (Karolj Dondo, witness statement, 18 August 2009), paras 31-32.
[2107] Karolj Dondo, T. 22500.
[2108] Karolj Dondo, T. 22467.
[2109] D1695 (Karolj Dondo, witness statement, 9 March 2005), para. 29; D1696 (Karolj Dondo, witness statement, 18 August 2009), para. 32; Karolj Dondo, T. 22467-22468.



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persons killed.[2110] Dondo did not see any weapons near the bodies or on the ground anywhere in the village.[2111] As far as the witness remembered, the villagers also said that they had been told on the preceding day that a search of the terrain was scheduled and that the villagers were asked to leave the village to have the terrain ready for this search.[2112] All the bodies were of elderly people and none of them were dressed in military uniform.[2113] Dondo testified that he told the villagers that he would do whatever necessary to deal with the consequences of these events and that the police would come and sanitize the ground and take all the necessary measures.[2114] Dondo stated that he had not been instructed by anyone to tell the villagers that sanitation would be conducted.[2115] Dondo believed that the reason he included a reference to sanitation in his report was that the police to whom he reported the incident wrote that sanitation would take place on the following day.[2116] He also stated, however, that the villagers themselves had asked him what to do with the bodies which had made him consider sanitation measures.[2117]

2230. Dondo testified that the report he submitted to Čermak, to his command, and to the civilian police was an accurate and truthful account of what he had seen and learnt on that day.[2118] As far as Dondo recalled, Čermak was not around when he returned from Grubori and he therefore first reported orally to the Knin police station around 7:30 or 8 p.m. and requested urgent clearing up of bodies in the village.[2119] Dondo then left his report on Čermak's desk around 10 p.m.[2120] Dondo testified that, when reporting to the police and in his report, he had not connected the incident in Grubori with Operation Storm.[2121]

[2110] D1695 (Karolj Dondo, witness statement, 9 March 2005), para. 29; D1696 (Karolj Dondo, witness statement, 18 August 2009), para. 32; Karolj Dondo, T. 22507.
[2111] Karolj Dondo, T. 22512.
[2112] Karolj Dondo, T. 22467-22468.
[2113] D1695 (Karolj Dondo, witness statement, 9 March 2005), para. 29.
[2114] Karolj Dondo, T. 22468.
[2115] Karolj Dondo, T. 22471.
[2116] Karolj Dondo, T. 22471-22472, 22593.
[2117] Karolj Dondo, T. 22593.
[2118] D1695 (Karolj Dondo, witness statement, 9 March 2005), para. 28; D1696 (Karolj Dondo, witness statement, 18 August 2009), para. 32.
[2119] D1695 (Karolj Dondo, witness statement, 9 March 2005), paras 28, 30; D1696 (Karolj Dondo, witness statement, 18 August 2009), para. 33; Karolj Dondo, T. 22469, 22500-22501, 22505, 22523, 22592; see also P764 (Report by Karolj Dondo to Ivan Čermak, 26 August 1995), p. 2.
[2120] D1696 (Karolj Dondo, witness statement, 18 August 2009), para. 33; Karolj Dondo, T. 22469, 22514-22515, 22592.
[2121] D1696 (Karolj Dondo, witness statement, 18 August 2009), para. 33; Karolj Dondo, T. 22507-22509, 22512, 22593.



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2231. According to Dondo's report, at 4:45 p.m. on 26 August 1995, a patrol including Karolj Dondo went to Grubori.[2122] The patrol saw "evidence of yesterday's clearing operation (possessions strewn about houses and outside, several houses had been set on fire and livestock were wandering without supervision)". After arriving in Grubori at 5:30 p.m., the patrol found six elderly women and one man who told them that several locals had come from Knin on 25 August 1995 and told them that civilians should take shelter in the school in Bašinac in Knin municipality. They did so at 10:30 a.m. and one hour later they heard shots and saw smoke rising from Grubori. They went back at 2 p.m. and found the village burned and their neighbours and livestock killed. In the afternoon, UNCRO visited them. The patrol inspected the village with the help of the villagers and found that 20 of the 25 houses in Grubori had been set on fire and that there were no signs of looting.[2123] The patrol also found, 300 metres above the village in a small meadow, the body of a woman born in 1944 and the body of Đuro Karanović "who allegedly came from Belgrade two days ago for the haymaking".[2124] Inside a partly burned house, the patrol found the body of man born in 1930 which allegedly had been brought there from the meadow by the man's wife. They also found a carbonized body, allegedly of a woman born in 1905, inside a burned-down house. On the upper floor in a dilapidated house, the patrol found the body of a man, born in 1915, in a pool of blood without visible injuries and dressed in a shirt and underwear. The patrol also noticed a dead cow and dog in the meadow.[2125]

2232. According to the report, the patrol informed the villagers that they were from the HV, that the bodies would most probably be cleared up on 27 August 1995, and that civilian authorities would assist the villagers with accommodation. The patrol did not find any HV soldiers along the entire route to Grubori and they only saw policemen at the check-point leaving Knin.[2126]

2233. **Jovan Grubor**, a Serb from Grubori hamlet in Plavno village in Knin municipality,[2127] in describing Dondo's visit to Grubori, stated that on 26 August 1995, two Croatian soldiers and a short-bearded civilian arrived in Grubori and told the witness that they had come for an inspection and notification of the numbers and

[2122] P764 (Report by Karolj Dondo to Ivan Čermak, 26 August 1995), pp. 1-2.
[2123] P764 (Report by Karolj Dondo to Ivan Čermak, 26 August 1995), p. 1.
[2124] P764 (Report by Karolj Dondo to Ivan Čermak, 26 August 1995), pp. 1-2.
[2125] P764 (Report by Karolj Dondo to Ivan Čermak, 26 August 1995), p. 2.
[2126] P764 (Report by Karolj Dondo to Ivan Čermak, 26 August 1995), p. 2.
[2127] P633 (Jovan Grubor, witness statement, 12 May 1997), pp. 1-2.



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locations of dead bodies. The witness showed them the corpse of Jovo Grubor. Then he showed them those of Milica Grubor and Đuro Karanović, who were lying feet to feet in a meadow, Đuro covered with blood and Milica's skin pale as wax. Finally, he showed them the body of Miloš Grubor, and one of the soldiers took two of the empty bullet cases.[2128] The three men left, telling the witness they would come back the following morning with General Ivan Čermak to help bury the bodies.[2129]

2234. **Janić** and **Čelić** testified that Markač and Sačić arrived at the finish point of the operation on 26 August 1995, one day after the Grubori incident, and Janić said that he told Markač that there had been an armed clash.[2130] According to Čelić, Janić had previously talked to him, the group leaders, and the members of the Lučko unit and they had established that there had been contact.[2131] The group leaders told Čelić that the houses were already on fire when the unit went through the village.[2132] Čelić also learned from members of the unit that two enemy soldiers had opened fire on them.[2133] Janić testified that when Markač asked how the houses in the village had caught fire, he was told by the Lučko unit that it was due to the use of rocket launchers.[2134] Čelić informed Markač about the unit's tasks and which group leaders had been on which axis.[2135] Markač then spoke privately to those who had been involved in the operation, including Drljo.[2136] Janić and Čelić then heard Markač state angrily that there would be an investigation into the matter and those responsible would be punished.[2137] It became clear that Frano Drljo had passed through what Čelić believed to be Ramljane in Orlić municipality and that there were a number of houses on fire there.[2138] Janić testified that

[2128] P633 (Jovan Grubor, witness statement, 12 May 1997), p. 3.
[2129] P633 (Jovan Grubor, witness statement, 12 May 1997), pp. 3-4.
[2130] P552 (Zdravko Janić, witness statement, 14 January 2004), para. 66; P553 (Zdravko Janić, Prosecution interview, 15 March 2005), part III, pp. 44-46; Zdravko Janić, T. 6192-6193; see also P761 (Josip Čelić, witness interview of 25-26 November 2002), Part III, pp. 40-41; P762 (Josip Čelić, witness interview of 13-14 January 2005), Part II, p. 80, Part III, p. 9; Josip Čelić, T. 8015, 8022-8024, 8027.
[2131] Josip Čelić, T. 8023, 8087-8088.
[2132] Josip Čelić, T. 8026.
[2133] Josip Čelić, T. 8017-8018.
[2134] P552 (Zdravko Janić, witness statement, 14 January 2004), para. 66.
[2135] P762 (Josip Čelić, witness interview of 13-14 January 2005), Part III, pp. 11-12; Josip Čelić, T. 8015-8017, 8041.
[2136] P553 (Zdravko Janić, Prosecution interview, 15 March 2005), part III, pp. 47-48; Zdravko Janić, T. 6196; see also P761 (Josip Čelić, witness interview of 25-26 November 2002), Part III, pp. 40-41; P762 (Josip Čelić, witness interview of 13-14 January 2005), Part III, pp. 10, 12-13; Josip Čelić, T. 8016.
[2137] P552 (Zdravko Janić, witness statement, 14 January 2004), para. 66; P553 (Zdravko Janić, Prosecution interview, 15 March 2005), part III, pp. 47-48; Zdravko Janić, T. 6193; see also P761 (Josip Čelić, witness interview of 25-26 November 2002), Part III, pp. 40-41; P762 (Josip Čelić, witness interview of 13-14 January 2005), Part III, pp. 10, 12-13; Josip Čelić, T. 8016.
[2138] P762 (Josip Čelić, witness interview of 13-14 January 2005), Part III, p. 12; Josip Čelić, T. 8010, 8016, 8026, 8029-8030.



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before leaving, Markač asked him to interview the commander of the Lučko unit, along with other commanders in order to verify the information received.[2139] Janić told Čelić and the group leaders to submit written reports.[2140] The Lučko unit was then sent back to Zagreb.[2141]

2235. Members of the Lučko unit testified similarly about this encounter with Markač.[2142] **Witness CW-4**, a member of the Lučko Anti-Terrorist Unit of the Special Police on 25 and 26 August 1995,[2143] added that Markač was angry because the state leadership could see smoke from the Freedom Train.[2144] According to Witness CW-4, Markač was also angry about the mistakes the unit had made.[2145] Frano Drljo then informed Markač that those who returned fire did so because otherwise they would have been killed, whereupon Markač told him to write a report about the incident.[2146]

2236. On 26 August 1995, Čelić submitted a report about this incident.[2147] According to Čelić, the details included in the report were provided to him by the group leaders through their reports.[2148] According to Čelić's report, the groups encountered resistance and came under fire with infantry weapons although nobody was injured. The groups returned fire with "zoljas" which resulted in "the Chetniks" immediately running off. The report further stated:

> As they were shooting at the enemy, the groups also fired with anti-tank weapons, which resulted in fires. Before setting off for the clearance, all personnel were made aware and an order was issued strictly prohibiting the burning of houses. None of the men deliberately set houses on fire, but when firing zoljas, the fire spread to stables and haylofts. During the operation there was strong wind, which enhanced the spread of the fire to neighbouring buildings.[2149]

[2139] Zdravko Janić, T. 6193-6194.
[2140] Josip Čelić, T. 8032-8033.
[2141] P552 (Zdravko Janić, witness statement, 14 January 2004), para. 68; P553 (Zdravko Janić, Prosecution interview, 15 March 2005), part III, pp. 48-49.
[2142] Stjepan Žinić, T. 28074-28077, 28079, 28126, 28153; Witness CW-4, T. 28198-28201, 28240-28241, 28243, 28261-28262, 28278, 28282-28286; Branko Balunović, T. 28361-28365, 28367-28369, 28376-28377, 28422, 28455, 28467-28468, 28473; Božo Krajina, T. 28558-28559, 28562-28567, 28581-28582, 28588-28589.
[2143] Witness CW-4, T. 28190, 28193, 28196-28197, 28319-28320.
[2144] Witness CW-4, T. 28240.
[2145] Witness CW-4, T. 28199-28200.
[2146] Witness CW-4, T. 28198-28200, 28243.
[2147] Josip Čelić, T. 8037; P767 (Report by Josip Čelić, 26 August 1995).
[2148] Josip Čelić, T. 8037-8039, 8041, 8048-8050; P768 (Report by Frano Drljo, 26 August 1995); P769 (Report by Stjepan Žinić, 26 August 1995); P770 (Report by Branko Balunović, 26 August 1995); P771 (Report by Božo Krajina, undated).
[2149] P767 (Report by Josip Čelić, 26 August 1995).



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2237. According to the reports of Frano Drljo and Branko Balunović, their groups came under fire in Vujakovići in Orlić municipality and returned fire.[2150] According to Balunović's report, they did so with infantry and anti-tank weapons and this resulted in several buildings and haystacks catching fire.[2151] According to both reports, none of the men in the groups had deliberately set fire to any buildings.[2152] Frano Drljo reported that during the search, his group came across a lot of enemy equipment and ammunition.[2153] Branko Balunović reported that when the group searched the buildings in Vujakovići that had not caught fire, they found parts of an enemy uniform and a small amount of ammunition and hand grenades.[2154] According to the report of Stjepan Žinić, his group came under fire in the hamlet of Vučenovići and returned fire with infantry and anti-tank weapons. On that occasion, several buildings, according to the report, caught fire. Since the "Chetniks" probably fled into the forest, the group searched the houses and found two semi-automatic rifles, two "zoljas", several hand grenades, and a lot of ammunition.[2155] According to the report of Božo Krajina, his group came under infantry fire as it entered Grkaniči. The group returned fire and used anti-tank weapons. As a result, some buildings caught fire. The group found several firearms.[2156]

2238. Janić received a written report from Čelić about the Lučko unit's involvement in the incident later that evening.[2157] A report on behalf of Markač was then submitted to the HV Main Staff, reporting that as a result of the use of hand-held rocket launchers in a fire exchange with two armed terrorists in uniforms, three stables and three hay stacks had caught fire in Ramljane.[2158]

2239. When interviewed by the Prosecution, Markač stated that in the afternoon of 26 August 1995, Sačić returned to Gračac and reported that an "armed conflict" had taken place in Grubori and that Čelić would write a detailed report about it.[2159] Sačić then asked Markač for the report written by the Special Police headquarters and, after

[2150] P767 (Report by Josip Čelić, 26 August 1995); P768 (Report by Frano Drljo, 26 August 1995); P770 (Report by Branko Balunović, 26 August 1995).
[2151] P770 (Report by Branko Balunović, 26 August 1995).
[2152] P768 (Report by Frano Drljo, 26 August 1995); P770 (Report by Branko Balunović, 26 August 1995).
[2153] P768 (Report by Frano Drljo, 26 August 1995).
[2154] P770 (Report by Branko Balunović, 26 August 1995).
[2155] P769 (Report by Stjepan Žinić, 26 August 1995).
[2156] P771 (Report by Božo Krajina, undated).
[2157] P553 (Zdravko Janić, Prosecution interview, 15 March 2005), part III, pp.51-52; Zdravko Janić, T. 6197.
[2158] P552 (Zdravko Janić, witness statement, 14 January 2004), para. 68; P579 (Report from the Special Police to the HV Main Staff signed by Mladen Markač, 26 August 1995), p. 3.
[2159] P2531 (Accused interview with Mladen Markač, 8 June 2004), pp. 67, 76, 79.



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reading it, said that "we have to add to this report what Čelić will find out". Sačić also confirmed to Markač that he had spoken to Čermak about Čelić's further findings.[2160]

2240. **Čelić** testified that he first heard about the incidents in Grubori one day later, on 26 August 1995, when somebody contacted him and told him to come to the headquarters in Gračac in order to report to Markač and Sačić, which he did.[2161] A man from the MUP communication department called Pavlović was also present.[2162] Sačić had the original or a copy of the witness's report of 25 August 1995.[2163] Sačić stated that the witness had submitted a report that nothing had happened while they had information that several Serb civilians had been killed.[2164] According to Čelić, Markač and Sačić told him that there had been an "armed conflict".[2165] The witness told them that what was in the report was what he had been told by the group leaders and if there was something, Markač and Sačić should contact them.[2166] Sačić then told Čelić, when Markač was still present, that he had to write a new report.[2167] Sačić and Čelić went to a separate room where Sačić dictated a report to the witness which the witness wrote by hand.[2168] This report, dated 25 August 1995, reads, in part:

> On its axis the unit encountered armed resistance from around eight to ten enemy soldiers in the village of Grubor which resulted in the killing of Đuro Karanović, around 45 years old, resident of Belgrade, and in the arrest of Stevan Karanović, around 30 years old. They were members of the Serbian Army of Krajina. One 7.9 mm sniper and one 7.62 mm semi-automatic rifle were seized from them. During an armed clash in Grubor itself a hand grenade set on fire three stables and one house, two unidentified

[2160] P2531 (Accused interview with Mladen Markač, 8 June 2004), p. 67.
[2161] P761 (Josip Čelić, witness interview of 25-26 November 2002), Part II, p. 35, 38, 40-41, 44, Part III, pp. 28-29, 43; P762 (Josip Čelić, witness interview of 13-14 January 2005), Part II, pp. 70-76, 79, 81-84, Part III, p. 7; Josip Čelić, T. 7948, 8074; P772 (Josip Čelić, MUP official note of interview with Josip Čelić, 5 December 2001), p. 3.
[2162] P761 (Josip Čelić, witness interview of 25-26 November 2002), Part II, pp. 41-42, Part III, p. 1; P762 (Josip Čelić, witness interview of 13-14 January 2005), Part II, p. 76; Josip Čelić, T. 8074.
[2163] Josip Čelić, T. 7952-7953, 8111.
[2164] P761 (Josip Čelić, witness interview of 25-26 November 2002), Part II, pp. 40-41, Part III, p. 37; P762 (Josip Čelić, witness interview of 13-14 January 2005), Part II, pp. 74-77; Josip Čelić, T. 8074-8075, 8112; P772 (Josip Čelić, MUP official note of interview with Josip Čelić, 5 December 2001), p. 3.
[2165] P761 (Josip Čelić, witness interview of 25-26 November 2002), Part II, p. 42.
[2166] P761 (Josip Čelić, witness interview of 25-26 November 2002), Part II, pp. 41-43, Part III, p. 2; P762 (Josip Čelić, witness interview of 13-14 January 2005), Part II, pp. 77, 86, 107, 111, Part III, p. 7; Josip Čelić, T. 8111-8113.
[2167] P761 (Josip Čelić, witness interview of 25-26 November 2002), Part III, pp. 2-3; Josip Čelić, T. 8119; P772 (Josip Čelić, MUP official note of interview with Josip Čelić, 5 December 2001), p. 3.
[2168] P761 (Josip Čelić, witness interview of 25-26 November 2002), Part II, p. 43, Part III, pp. 1-2, 6, 24, 43; P762 (Josip Čelić, witness interview of 13-14 January 2005), Part II, pp. 78, 83-84, 86-88, 93-96, 105, 107, 111, Part III, pp. 6-7, 37-38, 46, 69, 95-96, 109, 128-129, 177-179; Josip Čelić, T. 7948-7949, 7954-



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> women and two elderly men were killed – Miloš Grubor born in 1915 and Jovo Grubor (around 65 years old). […] May we request that civilian protection teams clear up the said area. The village of Grubor has been placed under the control of around 20 members of the Lučko ATJ under the command of ISO Franjo Drljo and Božo Krajina. The task was completed at 1600 hrs and nobody was injured or wounded.[2169]

2241. The witness was not given the opportunity to consult with the group leaders before this was dictated to him.[2170] Sačić did not indicate to the witness from where he had gotten the information he told the witness to put in the report.[2171] Čelić signed the report. [2172] Sačić did not instruct the witness with whom he could and could not discuss what had happened.[2173] When leaving the room, the witness left the report he had just written as well as his report of 25 August 1995 behind.[2174]

2242. In his interview with the Prosecution, Markač stated without mentioning the meeting with Čelić and Sačić, that in addition to Čelić's report about the 26 August 1995 operation, he also received Čelić's second report about the operation on 25 August 1995, now stating that there had been a conflict.[2175] The Special Police staff then included Čelić's second report about the 25 August 1995 operation in the final report sent to Červenko and took out Janić's previous report.[2176] Sačić verbally confirmed to Markač that Čelić's report, received by Markač on 26 August 1995, was accurate.[2177] Sačić also told Markač that he had informed the civilian police and that an on-site investigation would be conducted.[2178]

2243. With regard to the events of 27 August 1995, **Josip Turkalj**, commander of the Anti-Terrorist Unit Lučko and commander of the Special Police artillery unit during

7955, 7965, 7971, 8075; P563 (Hand-written report by Josip Čelić, 25 August 1995); P772 (Josip Čelić, MUP official note of interview with Josip Čelić, 5 December 2001), pp. 3-4.
[2169] P563 (Hand-written report by Josip Čelić, 25 August 1995). See also P761 (Josip Čelić, witness interview of 25-26 November 2002), Part III, pp. 37-38; P762 (Josip Čelić, witness interview of 13-14 January 2005), Part III, pp. 94-95, 128-129; Josip Čelić, T. 7954, 7959.
[2170] P761 (Josip Čelić, witness interview of 25-26 November 2002), Part II, p. 43.
[2171] P762 (Josip Čelić, witness interview of 13-14 January 2005), Part II, pp. 107-109.
[2172] P761 (Josip Čelić, witness interview of 25-26 November 2002), Part II, p. 43; Josip Čelić, T. 8112.
[2173] P762 (Josip Čelić, witness interview of 13-14 January 2005), Part III, pp. 69-70, 110; Josip Čelić, T. 8117.
[2174] Josip Čelić, T. 7953-7954.
[2175] P2530 (Suspect interview with Mladen Markač, 3-4 March 2003), pp. 101-102, 106; P2531 (Accused interview with Mladen Markač, 8 June 2004), p. 76.
[2176] P2530 (Suspect interview with Mladen Markač, 3-4 March 2003), pp. 94-95, 102; P2531 (Accused interview with Mladen Markač, 8 June 2004), pp. 64, 67-68.
[2177] P2530 (Suspect interview with Mladen Markač, 3-4 March 2003), p. 102; P2531 (Accused interview with Mladen Markač, 8 June 2004), p. 67.
[2178] P2530 (Suspect interview with Mladen Markač, 3-4 March 2003), pp. 103, 109.



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Operation Storm,[2179] testified that on the morning of that day, Sačić called him in Zagreb and told him to go to Plavno as "something horrible" or "something" had happened there on 25 August 1995.[2180] The witness first went from Zagreb to Gračac, where he met up with Čelić and Balunović who, at the witness's request, had also come from Zagreb, at the Special Police building around 7 or 8 a.m.[2181] According to the record of his interview, Balunović stated that on the morning after the operation in Grubori (other evidence suggests that this should refer to 27 August 1995), Čelić called him to tell him to immediately report to Sačić. They went together to his office, somewhere in Knin where there were also two other persons from the Internal Inspection whose names he did not know. On this occasion, Balunović was informed for the first time that people had been killed in Grubori and realized that he was called in to provide information about that. After the meeting, they all went to Čermak's office and after picking him up they went to Grubori.[2182]

2244. That same morning, **Mile Serdarević**, a member of the MUP civilian protection performing human sanitations in Knin,[2183] and four other civilian protection team members arrived in Knin between 9 and 9:30 a.m. and met Vrtičević and Bilobrk at the usual spot: a coffee bar opposite the Knin police station.[2184]

2245. **Jozo Bilobrk**, a crime lab technician in the Split-Dalmatia Police Administration since early 1993,[2185] testified that on 27 August 1995, he and his team received reports at 11 a.m. from the Operations Duty Officer of the Zadar-Knin Police Administration on five or six dead bodies found in Grubori, Plavno, and Strmica, all in Knin municipality, and were ordered to go there.[2186] They proceeded to go out into the field and collect a dead body in both the villages of Strmica and Plavno, in addition to five bodies in

[2179] P1149 (Josip Turkalj, witness statement, 4 February 2004), paras 11, 31; P1150 (Josip Turkalj, witness interview of 11 March 2005), pp. 14-15, 34; Josip Turkalj, T. 13541, 13551.
[2180] P1149 (Josip Turkalj, witness statement, 4 February 2004), paras 45, 47; P1151 (Josip Turkalj, second witness interview of 11 March 2005), pp. 110-115; P1152 (Josip Turkalj, third witness interview of 11 March 2005), pp. 66, 68, 70; Josip Turkalj, T. 13642-13643, 13734-13735, 13737-13738, 13742, 13785-13786.
[2181] P1149 (Josip Turkalj, witness statement, 4 February 2004), para. 47; P1151 (Josip Turkalj, second witness interview of 11 March 2005), pp. 112-113, 115-116; Josip Turkalj, T. 13735-13736, 13738-13740, 13743.
[2182] P1085 (Official Note of an interview with Branko Balunović, 4 December 2001), p. 4.
[2183] D2053 (Mile Serdarević, witness statement, 13 May 2010), p. 1, paras 1-3; Mile Serdarević, T. 28939.
[2184] D2053 (Mile Serdarević, witness statement, 13 May 2010), para. 16; Mile Serdarević, T. 28954.
[2185] D2048 (Jozo Bilobrk, witness statement, 12 May 2010), p.1, para. 1.
[2186] D2048 (Jozo Bilobrk, witness statement, 12 May 2010), paras 20, 25; Jozo Bilobrk, T. 28660-28661, 28749.



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Grubori.[2187] The team for human sanitation included himself and Vrtičević as crime lab technicians, four civilian protection personnel, and explosive experts.[2188] The crime lab technicians and explosive experts had separate vehicles, whilst the civilian protection personnel had a van for transporting dead bodies.[2189] Having received orders to carry out human sanitation in Strmica, Grubori, and Plavno at the same time, their convoy first travelled to Strmica as it was closest.[2190] Considering that to get to Plavno from Strmica they would have had to have passed through Knin, Bilobrk testified that he assumed they left the body they found in Strmica at the Knin cemetery before moving on to Plavno and Grubori.[2191] The vehicle carrying civilian protection led the convoy from Strmica to Grubori as they were familiar with the area.[2192]

2246. The convoy came to a halt alongside ten or so other vehicles before a bridge in the Plavno Valley because they had to wait for someone, but nobody told them who.[2193] Bilobrk testified that, based on documentation shown to him previously by the Čermak Defence, he first saw Čermak that day near this bridge.[2194] The witness emphasized that the documentation shown to him by the Čermak Defence refreshed his memory of this incident.[2195] When questioned on a prior remark that Čermak had suggested to him in front of the Knin police station that weapons should be placed next to the dead bodies, Bilobrk concluded that it was impossible for him to have met Čermak in front of the Knin police station that day.[2196] On the bridge there was a group that included Čermak, approximately ten people in military uniforms, members of the Special Police, around

[2187] D2048 (Jozo Bilobrk, witness statement, 12 May 2010), para. 19; Jozo Bilobrk, T. 28663; D2042 (List of persons recovered upon the sanitation of terrain of the Zadar-Knin Police Administration, 25-30 August 1995); D2043 (Completed KTO 10 forms providing details of persons recovered upon human sanitation of Strmica, Grubori, and Plavno, 27 August 1995); D2045 (List of persons recovered upon the sanitation of terrain of the Zadar-Knin Police Administration, 27 August 1995); D2046 (Completed KTO 10 form providing details of recovery of the body of Stevan Vidović in Plavno, 27 August 1995).
[2188] D2048 (Jozo Bilobrk, witness statement, 12 May 2010), para. 25.
[2189] D2048 (Jozo Bilobrk, witness statement, 12 May 2010), para. 25; Jozo Bilobrk, T. 28731.
[2190] D2048 (Jozo Bilobrk, witness statement, 12 May 2010), paras 15, 19, 21-25; Jozo Bilobrk T. 28672; D2042 (List of persons recovered upon the sanitation of terrain of the Zadar-Knin Police Administration, 25-30 August 1995); D2043 (Completed KTO 10 forms providing details of persons recovered upon human sanitation of Strmica, Grubori, and Plavno, 27 August 1995); D2045 (List of persons recovered upon the sanitation of terrain of the Zadar-Knin Police Administration, 27 August 1995).
[2191] D2048 (Jozo Bilobrk, witness statement, 12 May 2010), para. 28.
[2192] D2048 (Jozo Bilobrk, witness statement, 12 May 2010), para. 30; Jozo Bilobrk, T. 28672-28673.
[2193] D2048 (Jozo Bilobrk, witness statement, 12 May 2010), para. 30; Jozo Bilobrk, T. 28733; D2049 (Photograph of the road and bridge in Plavno Valley where the convoy stopped).
[2194] D2048 (Jozo Bilobrk, witness statement, 12 May 2010), para. 31; Jozo Bilobrk, T. 28661-28662.
[2195] D2048 (Jozo Bilobrk, witness statement, 12 May 2010), para. 29; Jozo Bilobrk, T. 28662, 28672, 28690, 28721.
[2196] D2048 (Jozo Bilobrk, witness statement, 12 May 2010), para. 29; Jozo Bilobrk, T. 28661, 28672.



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five to seven journalists, and other persons in civilian clothes.[2197] Bilobrk had never met Čermak before but recognized him from the media.[2198] Once Bilobrk and his colleagues joined, the group totalled around 25-30 people who were mingling and talking to one another.[2199] Within this group, there were smaller groups of two or three talking amongst themselves.[2200] Bilobrk testified that a couple of minutes after he had joined the group, someone behind him suggested that the first thing that should be done is to "leave" weapons.[2201] At that time, Čermak was standing in front of Bilobrk speaking to journalists around four to six metres away.[2202] Considering his distance from Bilobrk and the fact that Čermak did not react to the suggestion, Bilobrk testified that Čermak could have heard the suggestion but was unsure whether he really did.[2203] As Bilobrk perceived Čermak as a high-level state official at the time, he assumed that had Čermak heard the suggestion he would have intervened as he would not allow such an action to occur in front of journalists.[2204] Bilobrk testified that his initial understanding of what was said was that weapons should be left by the dead bodies to make it look like they had put up resistance.[2205] Considering that he knew there were dead bodies in Grubori, Bilobrk recalled that he reacted by turning to the group and responding that nobody would put weapons if they meant leaving weapons next to the dead bodies as he had a responsibility to record the crime scene as he found it.[2206] Bilobrk testified that if they meant leaving weapons by the dead bodies, they should have done so before he arrived and without his knowledge.[2207] No one responded to what Bilobrk said.[2208] Previously, whilst working in Knin after Operation Storm, Bilobrk had never recorded a situation where weapons had been found next to dead bodies.[2209] On returning from Grubori, Bilobrk testified that he learnt that the actual suggestion had been to leave weapons

[2197] D2048 (Jozo Bilobrk, witness statement, 12 May 2010), para. 31; Jozo Bilobrk, T. 28673, 28741.
[2198] Jozo Bilobrk, T. 28686, 28711.
[2199] D2048 (Jozo Bilobrk, witness statement, 12 May 2010), para. 31; Jozo Bilobrk, T. 28673, 28737.
[2200] Jozo Bilobrk, T. 28675, 28735.
[2201] D2048 (Jozo Bilobrk, witness statement, 12 May 2010), para. 32; Jozo Bilobrk, T. 28673-28675, 28678, 28707, 28734, 28738.
[2202] D2048 (Jozo Bilobrk, witness statement, 12 May 2010), para. 32; Jozo Bilobrk, T. 28683, 28689.
[2203] Jozo Bilobrk, T. 28679, 28685, 28737.
[2204] Jozo Bilobrk, T. 28679-28680
[2205] Jozo Bilobrk, T. 28678, 28760.
[2206] D2048 (Jozo Bilobrk, witness statement, 12 May 2010), para. 32.
[2207] Jozo Bilobrk, T. 28677, 28680-28681.
[2208] Jozo Bilobrk, T. 28682, 28738.
[2209] D2048 (Jozo Bilobrk, witness statement, 12 May 2010), para. 32.



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behind in the cars before entering the crime scene as they did not want to enter the hamlet with long-barrelled weapons.[2210]

2247. The Trial Chamber has received further documentary and testimonial evidence about whether, when, where, and by whom the suggestion to place or leave weapons was made. In light of the relevance of this suggestion, the Trial Chamber will review below the evidence before it on how Bilobrk and Vrtićević described this suggestion in their various statements and interviews.

2248. Bilobrk testified that around August 2009 he was interviewed by Đurica Franjo and some others on behalf of the defence team of one of the Accused.[2211] At this meeting, Bilobrk did not mention the suggestion to leave weapons that he had heard in Grubori.[2212] Following this meeting, Franjo told Bilobrk that should there be any subsequent requests for information regarding the incident in Grubori he should be contacted first.[2213] Bilobrk did not inform Franjo about any of the subsequent interviews.[2214]

2249. On 12 and 14 October 2009, Bilobrk was interviewed by Robert Badžim from the MUP, with the former interview having been jointly conducted with both Bilobrk and Vrtičević present.[2215] On neither occasion did Bilobrk or Vrtičević mention the suggestion to leave weapons that Bilobrk had heard in Grubori as Badžim did not ask about it.[2216] According to Bilobrk, after their first interview, Badžim remarked that Bilobrk was withholding information that could detrimentally affect the defence of the Accused.[2217] Bilobrk then heard from his boss in the directorate of the police that unless there was a further interview with Badžim, Internal Affairs would investigate and that

[2210] Jozo Bilobrk, T. 28756.
[2211] Jozo Bilobrk, T. 28694.
[2212] Jozo Bilobrk, T. 28695.
[2213] Jozo Bilobrk, T. 28700, 28747-28748; P2731 (MUP official note of interview with Jozo Bilobrk and Ivica Vrtičević, conducted by Robert Badžim, 13 October 2009), p. 2; P2732 (MUP official note of interview with Jozo Bilobrk, conducted by Željko Mikulić and Antonio Gerovac, 9 November 2009), p. 4.
[2214] Jozo Bilobrk, T. 28700-28701.
[2215] Jozo Bilobrk, T. 28694; P2730 (MUP official note of interview with Jozo Bilobrk, conducted by Robert Badžim, 20 October 2009), p. 1; P2731 (MUP official note of interview with Jozo Bilobrk and Ivica Vrtičević, conducted by Robert Badžim, 13 October 2009), p. 1; P2734 (MUP official note of interview with Ivica Vrtičević, conducted by Robert Badžim, 19 October 2009), p. 1.
[2216] Jozo Bilobrk, T. 28695, 28698, 28706; P2730 (MUP official note of interview with Jozo Bilobrk, conducted by Robert Badžim, 20 October 2009); P2731 (MUP official note of interview with Jozo Bilobrk and Ivica Vrtičević, conducted by Robert Badžim, 13 October 2009); P2734 (MUP official note of interview with Ivica Vrtičević, conducted by Robert Badžim, 19 October 2009).
[2217] Jozo Bilobrk, T. 28698; P2731 (MUP official note of interview with Jozo Bilobrk and Ivica Vrtičević, conducted by Robert Badžim, 13 October 2009), p. 2.



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proceedings would be launched against him and his colleagues, and that they would be suspended.[2218]

2250. Bilobrk testified that on returning from the field one day, Željko Mikulić and Antonio Gerovac were waiting for him in an office in the Department of General Crime at the Split-Dalmatia Police Administration. The witness had been told by a colleague that there would be some colleagues from Zagreb waiting for him when he returned.[2219] According to Bilobrk, when they met, Mikulić and Gerovac told the witness they were just passing through and wanted to have an informal conversation regarding some details about the Grubori incident. They spoke for around ten minutes or so. Bilobrk testified that they did not take any notes during their meeting.[2220] Similarly, he was not aware of any recording device.[2221] Bilobrk testified that he did not tell Mikulić and Gerovac that the suggestion to leave weapons next to the bodies had been made by Čermak.[2222] According to the witness, Gerovac and Mikulić came with a prepared story. They put questions to him regarding the hierarchy of the MUP and the Croatian Government.[2223] According to Bilobrk, they explained to him that they had received information that Čermak had suggested that weapons should be placed next to the dead bodies.[2224] Bilobrk explained to them that there was a reference made to leaving weapons.[2225] Bilobrk also mentioned that Čermak was there as part of the group at the time but never made such a suggestion to him.[2226] According to the witness, he was not told that Mikulić and Gerovac would compile an official note and did not see a copy until interviewed by members of the Prosecution.[2227]

2251. Bilobrk testified that he gave a further statement to the County Court in Zagreb on 16 February 2010.[2228] According to the record of the interview, Bilobrk told the county court that a suggestion to place weapons next to the dead bodies in Grubori was made by someone in a group which included Čermak and a number of soldiers that approached Bilobrk and Vrtičević on the steps of the Knin Police Administration

[2218] Jozo Bilobrk, T. 28698.
[2219] Jozo Bilobrk, T. 28703, 28722-28723.
[2220] Jozo Bilobrk, T. 28703-28704, 28723.
[2221] Jozo Bilobrk, T. 28724.
[2222] Jozo Bilobrk, T. 28702, 28725-28726.
[2223] Jozo Bilobrk, T. 28702-28704.
[2224] Jozo Bilobrk, T. 28725, 28741-28742.
[2225] Jozo Bilobrk, T. 28704.
[2226] Jozo Bilobrk, T. 28705, 28725.
[2227] Jozo Bilobrk, T. 28724, 28763.



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building.[2229] Bilobrk emphasized that this statement was given to the county court without prior review of any documentation.[2230]

2252. **Željko Mikulić**, a police officer in the Crime Prevention Department of the Zagreb Police Administration,[2231] and **Antonio Gerovac**, a police officer in charge of homicides with the general administration of the MUP,[2232] testified that commencing in September 2009 they were involved in the MUP's investigation into the killing of Serb civilians in Grubori that occurred in August 1995.[2233] During this criminal investigation at least 20-40 interviews were conducted, of which not all of them were conducted by Mikulić and Gerovac together.[2234] The entire roster of interviews was divided amongst several members of the task force.[2235] As part of the investigation, Mikulić and Gerovac testified that they re-interviewed Bilobrk and Vrtičević as following his first interview with Bilobrk and Vrtičević, Badžim compiled only one official note for both interviewees when police practice requires that every interview is done separately and recorded in a separate official note.[2236] In addition, in the introduction to the same official note, Badžim stated that Bilobrk and Vrtičević were withholding specific information regarding the sanitation of the terrain in Grubori in 1995, which might harm the defence of the Accused.[2237] Gerovac added that, on a reading of the official note, members of the criminal investigation believed that the quality of questioning was not good enough and that the questions asked had not been sufficiently answered by Bilobrk and Vrtičević.[2238] Despite carrying out further interviews with Bilobrk and Vrtičević separately, Badžim could not garner any further information from the witnesses regarding the circumstances surrounding the sanitation of Grubori.[2239]

[2228] Jozo Bilobrk, T. 28683; P2729 (Record of interview with Jozo Bilobrk at the County Court in Zagreb, 16 February 2010), p. 1.
[2229] P2729 (Record of interview with Jozo Bilobrk at the County Court in Zagreb, 16 February 2010), p. 3.
[2230] Jozo Bilobrk, T. 28689.
[2231] Željko Mikulić, T. 28768.
[2232] Antonio Gerovac, T. 28847.
[2233] Željko Mikulić, T. 28768, 28801; Antonio Gerovac, T. 28847.
[2234] Željko Mikulić, T. 28842.
[2235] Željko Mikulić, T. 28769, 28842.
[2236] Željko Mikulić, T. 28769; Antonio Gerovac, T. 28848.
[2237] Željko Mikulić, T. 28769-28770, 28774; Antonio Gerovac, T. 28848; P2731 (MUP official note of interview with Jozo Bilobrk and Ivica Vrtičević, conducted by Robert Badžim, 13 October 2009), p. 2; P2732 (MUP official note of interview with Jozo Bilobrk, conducted by Željko Mikulić and Antonio Gerovac, 9 November 2009), p. 1.
[2238] Antonio Gerovac, T. 28848.
[2239] Željko Mikulić, T. 28770.



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2253. Before interviewing Bilobrk and Vrtičević, Mikulić and Nikola Ilijaš also interviewed Franjo on 30 October 2009.[2240] According to Mikulić, as Franjo was in charge of coordinating police activities in the liberated areas on behalf of the MUP at the time, it was necessary to interview him in order to gather any information he may have.[2241] During the interview, Franjo revealed the information that Bilobrk and Vrtičević had previously withheld in their interviews with Badžim: specifically, that Čermak had proposed to alter the crime scene in Grubori by placing weapons next to the dead bodies so that it appeared as if there had been armed resistance.[2242] Franjo confirmed to Mikulić and Ilijaš that he told Bilobrk and Vrtičević that if anybody wished to talk to them about the events in Grubori he should be made aware of it.[2243] At one of the daily Working Group meetings, before their interview with Bilobrk and Vrtičević, Mikulić described to Gerovac an informal conversation he and Ilijaš had with Franjo following their interview with him, where they learned that Bilobrk and Vrtičević had told Franjo of a suggestion by Čermak to leave or place weapons near the dead bodies in Grubori.[2244] However, Franjo asked Mikulić and Ilijaš not to record this in the official note and said that, if asked, he would deny that he ever said it.[2245] For this reason, Mikulić and Ilijaš did not record it when compiling the official note but submitted a written note to their superiors containing this information.[2246]

2254. On 5 November 2009, Mikulić and Gerovac interviewed both Bilobrk and Vrtičević separately in the Split-Dalmatia Police Administration building.[2247] Their primary task was to clarify why Bilobrk and Vrtičević had refused to talk about what they knew regarding the incident in Grubori.[2248] Bilobrk was aware of the formality of the interview, as were his superiors, who had informed both Vrtičević and Bilobrk that

[2240] Željko Mikulić, T. 28775; P2733 (MUP official note of interview with Đurica Franjo, conducted by Željko Mikulić and Nikola Ilijaš, 30 October 2009), p. 1.
[2241] Željko Mikulić, T. 28776.
[2242] Željko Mikulić, T. 28777-28778, 28812, 28815-28816.
[2243] Željko Mikulić, T. 28777; P2731 (MUP official note of interview with Jozo Bilobrk and Ivica Vrtičević, conducted by Robert Badžim, 13 October 2009), p. 2; P2732 (MUP official note of interview with Jozo Bilobrk, conducted by Željko Mikulić and Antonio Gerovac, 9 November 2009), p. 4.
[2244] Željko Mikulić, T. 28778; Antonio Gerovac, T. 28850-28851.
[2245] Željko Mikulić, T. 28778, 28780, 28802-28803; Antonio Gerovac, T. 28850.
[2246] Željko Mikulić, T. 28801-28802.
[2247] Željko Mikulić, T. 28781-28782; Antonio Gerovac, T. 28851; P2732 (MUP official note of interview with Jozo Bilobrk, conducted by Željko Mikulić and Antonio Gerovac, 9 November 2009), p. 1; P2735 (MUP official note of interview with Ivica Vrtičević, conducted by Željko Mikulić and Antonio Gerovac, 9 November 2009), p. 1.
[2248] Željko Mikulić, T. 28775.



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they were going to be interviewed.[2249] According to Gerovac, at a formal interview, the reasons for the interview are initially explained to the interviewee. The interviewee is then interviewed and an official note is produced, which does not qualify as evidence but is seen as an accurate reflection of the content of the interview.[2250] Bilobrk was informed that the topic of the interview would be the killings in Grubori and his knowledge of the incident and subsequent events.[2251] They then explained to Bilobrk that criminal inquiries carried out so far had indicated that he and Vrtičević had not shared the entirety of their knowledge concerning events in Grubori and urged him to tell them everything he knew about it and outline what his role in the events that unfolded was.[2252] They did not specifically ask what information Bilobrk and Vrtičević had previously omitted.[2253] Mikulić testified that they asked Bilobrk, in light of what he had said in his first official note, and without indicating that they had already interviewed Đurica Franjo, to tell them about the knowledge that he had that he thought might be harmful to the Accused.[2254] Mikulić and Gerovac explained to Bilobrk that this was a serious criminal investigation and that Croatian generals were on trial for it and that the purpose of the interview was to establish the truth.[2255] The questions placed were specific as they believed that regarding this particular subject Bilobrk had not been sufficiently questioned.[2256] The question was put to him whether, at that point in time, any high-level official of the MUP or MoD suggested that weapons should be placed or left by the dead bodies in Grubori in order to make it appear as if there had been armed combat.[2257] Bilobrk explained how prior to leaving for Grubori to carry out the sanitation of the area, Čermak, escorted by a number of individuals in uniform, approached Bilobrk and his colleagues who were seated in front of the Knin Police Administration building and suggested that prior to leaving for Grubori the crime scene should be altered by placing guns in such a way as to make it appear like there had been

[2249] Željko Mikulić, T. 28782, 28810-28811.
[2250] Antonio Gerovac, T. 28852.
[2251] Antonio Gerovac, T. 28853.
[2252] Željko Mikulić, T. 28783-28784, 28818, 28822; Antonio Gerovac, T. 28853, 28864-28865; P2732 (MUP official note of interview with Jozo Bilobrk, conducted by Željko Mikulić and Antonio Gerovac, 9 November 2009), p. 1.
[2253] Antonio Gerovac, T. 28866.
[2254] Željko Mikulić, T. 28783-28784.
[2255] Željko Mikulić, T. 28784.
[2256] Antonio Gerovac, T. 28854.
[2257] Željko Mikulić, T. 28794-28795; Antonio Gerovac, T. 28853, 28865; P2732 (MUP official note of interview with Jozo Bilobrk, conducted by Željko Mikulić and Antonio Gerovac, 9 November 2009), p. 1.



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armed resistance.[2258] Bilobrk had responded that he did not wish to work in such a way.[2259] Čermak then left with the group he had arrived with.[2260] Mikulić and Gerovac testified that they did not suggest to Bilobrk that it was Čermak who made the suggestion to leave or place weapons.[2261] Mikulić further testified that towards the end of the interview they asked Bilobrk whether the information that he had provided was the information he had previously relayed to Đurica Franjo, and Bilobrk confirmed this.[2262] Any checks on the veracity of Bilobrk's account of events at Grubori were not performed by Mikulić or Gerovac personally as the head of the task force was responsible for further analysis.[2263] Gerovac testified that they were unable to gain additional information from individuals who may have been present at the time in order to fully clarify whether the encounter with Čermak had occurred as Bilobrk stated.[2264]

2255. As in the interview with Bilobrk, Vrtičević, in his interview, was informed that new information had come to light which indicated that he had not previously provided all the information he had regarding the sanitation of Grubori.[2265] Vrtičević was asked whether any high-level officials suggested that weapons should be placed or left next to the dead bodies in Grubori in order to make it appear as if there had been armed combat, which Vrtičević, at first, categorically denied but then answered that he did not remember and allowed for the possibility.[2266] In comparison to Bilobrk, Vrtičević proved to be more temperamental and evasive during his interview.[2267] As a result, when Mikulić and Gerovac asked about whether there had been a suggestion to place or leave weapons by a high-level state official they suggested some specific names, including Čermak's and Sačić's.[2268] Vrtičević responded that, after such a long time, he

[2258] Željko Mikulić, T. 28784; Antonio Gerovac, T. 28849, 28853-28854; P2732 (MUP official note of interview with Jozo Bilobrk, conducted by Željko Mikulić and Antonio Gerovac, 9 November 2009), pp. 1-2.
[2259] Antonio Gerovac, T. 28849; P2732 (MUP official note of interview with Jozo Bilobrk, conducted by Željko Mikulić and Antonio Gerovac, 9 November 2009), p. 2.
[2260] Antonio Gerovac, T. 28849; P2732 (MUP official note of interview with Jozo Bilobrk, conducted by Željko Mikulić and Antonio Gerovac, 9 November 2009), p. 2.
[2261] Željko Mikulić, T. 28784-28785, 28792, 28821; Antonio Gerovac, T. 28854, 28858, 28865, 28872.
[2262] Željko Mikulić, T. 28787.
[2263] Željko Mikulić, T. 28824-28826.
[2264] Antonio Gerovac, T. 28873.
[2265] Željko Mikulić, T. 28805; P2735 (MUP official note of interview with Ivica Vrtičević, conducted by Željko Mikulić and Antonio Gerovac, 9 November 2009), p. 1.
[2266] Željko Mikulić, T. 28816-28817; Antonio Gerovac, T. 28859; P2735 (MUP official note of interview with Ivica Vrtičević, conducted by Željko Mikulić and Antonio Gerovac, 9 November 2009), pp. 1-2.
[2267] Željko Mikulić, T. 28798, 28800, 28807.
[2268] Željko Mikulić, T. 28800, 28812; Antonio Gerovac, T. 28859, 28867; P2735 (MUP official note of interview with Ivica Vrtičević, conducted by Željko Mikulić and Antonio Gerovac, 9 November 2009), p. 2.



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could not remember exactly.[2269] Mikulić and Gerovac asked Vrtičević to convey what he had already conveyed to Đurica Franjo but he maintained that he was not going to repeat anything he had said previously as it would be harmful to the defence of the Accused.[2270]

2256. The interview with Bilobrk lasted for about an hour, whereas the interview with Vrtičević lasted for half an hour at most.[2271] The interviews were conducted jointly but only Gerovac took handwritten notes.[2272] These notes were not shown to the interviewees.[2273] Following an interview, Mikulić and Gerovac would compile an official note and then assess its accuracy alongside the handwritten notes in order to make sure that it accurately reflected the interview before signing it.[2274] The handwritten notes were then kept for a while before either being stored somewhere or disposed of as there was no legal obligation to keep them.[2275] According to Gerovac, there is no obligation to keep these notes once the official note is completed and having searched for them he did not know where the notes he took that day can now be found.[2276]

2257. The official notes of the interviews with Bilobrk and Vrtičević were not composed until 9 November 2009, four days after the interviews.[2277] Whilst official notes are usually compiled either on the same day of the interview or the day after, this delay was due to a busy schedule of interviews that Mikulić and Gerovac were conducting in Split and Zadar over the days following their interviews with Bilobrk and Vrtičević.[2278] Between the dates when the interviews with Bilobrk and Vrtičević were conducted and the official notes were compiled, Mikulić testified that he and Gerovac carried out a further two to three interviews with other persons.[2279] These additional interviews also concerned the sanitation of victims in Grubori but he could not recall

[2269] Željko Mikulić, T. 28800; P2735 (MUP official note of interview with Ivica Vrtičević, conducted by Željko Mikulić and Antonio Gerovac, 9 November 2009), p. 2.
[2270] Željko Mikulić, T. 28798, 28806.
[2271] Željko Mikulić, T. 28789.
[2272] Željko Mikulić, T. 28787, 28803-28804, 28811; Antonio Gerovac, T. 28855, 28859.
[2273] Željko Mikulić, T. 28805.
[2274] Željko Mikulić, T. 28788, 28793, 28821; Antonio Gerovac, T. 28869.
[2275] Željko Mikulić, T. 28789.
[2276] Antonio Gerovac, T. 28855, 28868-28870.
[2277] Željko Mikulić, T. 28789-28790; P2732 (MUP official note of interview with Jozo Bilobrk, conducted by Željko Mikulić and Antonio Gerovac, 9 November 2009), p. 1; P2735 (MUP official note of interview with Ivica Vrtičević, conducted by Željko Mikulić and Antonio Gerovac, 9 November 2009), p. 1.
[2278] Željko Mikulić, T. 28789-28790; Antonio Gerovac, T. 28856.
[2279] Željko Mikulić, T. 28843.



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whether the suggestion that weapons be left by the bodies was also discussed.[2280] Gerovac testified that he and Mikulić carried out two further interviews but he was not 100 per cent certain about the number of interviews they conducted.[2281] According to Gerovac, questions regarding the suggestion to place weapons next to the bodies were not put to these interviewees as intelligence indicated that they did not have any knowledge of this.[2282]

2258. Not long after the suggestion to leave weapons was made, Čermak approached **Bilobrk** and asked whether he and his colleagues were an on-site investigation team, to which Bilobrk responded that they were the human sanitation team. Čermak said that an on-site investigation should be conducted in Grubori. A disagreement followed as Bilobrk explained to a persistent Čermak that he could not conduct an on-site investigation as the necessary legal conditions for doing so had not been met, he was not equipped to carry out an on-site investigation, and that he had been sent into the field to fulfil a completely different task.[2283] His task was solely one of human sanitation.[2284] The investigative judge had not been informed, the county prosecutor had not been informed, and the personnel necessary to carry out an on-site investigation were not with them.[2285] As far as Bilobrk was concerned, he would only carry out the orders of his superior in the MUP to which Čermak, as a member of the MoD, had no authority, despite Čermak insisting he was the "main person" in Knin. At that moment, Željko Sačić, whom Bilobrk had not yet seen that day, joined the conversation.[2286] Sačić agreed with Bilobrk and explained to Čermak the procedure for conducting an on-site investigation. Čermak relented and he and Sačić told Bilobrk to carry out the part of the job he was sent there to do.[2287]

2259. Following this initial argument with Čermak, the person the group was waiting for seemingly arrived. Bilobrk and Vrtičević then drove to the outskirts of Grubori where the rocky terrain was such that they asked Sačić, since he was the only MUP member they recognized, whether he could give them a lift in his all-terrain vehicle, to which Sačić agreed. Sačić had also offered to give them a lift. Bilobrk and Vrtičević

[2280] Željko Mikulić, T. 28844.
[2281] Antonio Gerovac, T. 28889.
[2282] Antonio Gerovac, T. 28890.
[2283] D2048 (Jozo Bilobrk, witness statement, 12 May 2010), para. 33; Jozo Bilobrk, T. 28707-29710.
[2284] Jozo Bilobrk, T. 28709.
[2285] Jozo Bilobrk, T. 28709-28710.
[2286] D2048 (Jozo Bilobrk, witness statement, 12 May 2010), paras 33-34; Jozo Bilobrk, T. 28710.
[2287] D2048 (Jozo Bilobrk, witness statement, 12 May 2010), para. 34.



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then transferred their equipment to Sačić's vehicle and they drove up to the end of a rocky road to the entrance of Grubori.[2288]

2260. According to Čermak, on 27 August 1995, he headed to Grubori with one or more TV crews, Dondo and Markač.[2289] The testimonies of numerous witnesses indicate that Markač did not go to Grubori. The Trial Chamber accordingly considers that Čermak, during his interviews, made a mistake in this respect. They went there because of the deaths and the public interest, and wanted to see what had happened, show the TV crew, have Markač explain what had happened, and show that they were not hiding anything and were taking action.[2290] Čermak and the others waited for one and a half or two hours at an intersection two to three kilometres outside of Grubori until a column of vehicles with members of the Special Police arrived. Šačić was also present. Čermak said that they then went to Grubori. He stated that the Special Police "entered the area and did their job".[2291] Čermak also saw the crime police there, and that they took photographs and made reports about it.[2292] Čermak saw a cowshed and some houses that were burned – he thought less than 20 – and other houses that were not destroyed. Čermak observed that the bodies in Grubori fit the information he had received prior to coming.[2293]

2261. **Dondo** testified that he did not discuss his report with Čermak prior to departure or during the trip.[2294] Dondo saw and heard that Čermak was reading his report on the way to Grubori.[2295] Čermak and the witness were accompanied by several journalists and TV crews, and some members of the crime police and the civilian defence.[2296] They were also accompanied by Sačić and a few Special Police members.[2297] Dondo found out during this trip that the Special Police had been involved and that their commanders

[2288] D2048 (Jozo Bilobrk, witness statement, 12 May 2010), para. 36; Jozo Bilobrk, T. 28711; P2729 (Record of interview with Jozo Bilobrk at the County Court in Zagreb, 16 February 2010), p. 4.
[2289] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 94, 97, 100-103; P2532 (Accused interview with Ivan Čermak, 7 June 2004), pp. 70, 92, 126-127.
[2290] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 94, 98, 101-104; P2532 (Accused interview with Ivan Čermak, 7 June 2004), pp. 70-71, 92, 124-128.
[2291] P2532 (Accused interview with Ivan Čermak, 7 June 2004), p. 72.
[2292] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 97-99, 102; P2532 (Accused interview with Ivan Čermak, 7 June 2004), pp. 72, 101.
[2293] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 98-99.
[2294] Karolj Dondo, T. 22513-22514, 22518.
[2295] Karolj Dondo, T. 22517-22519.
[2296] D1695 (Karolj Dondo, witness statement, 9 March 2005), para. 31; D1696 (Karolj Dondo, witness statement, 18 August 2009), paras 33, 35-36; Karolj Dondo, T. 22473, 22594-22595.
[2297] D1696 (Karolj Dondo, witness statement, 18 August 2009), para. 35; Karolj Dondo, T. 22473, 22594.



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inspected the scene.[2298] Upon arrival in the village, Čermak spoke with Sačić but Dondo was not present at this conversation.[2299] Dondo did not talk to Sačić. Dondo also testified that he did not receive any instructions or orders to the effect that the incident needed to be covered up.[2300]

2262. **Turkalj** went to Grubori where he also saw Zdravko Janić, Sačić, Čermak, a female television journalist from Split named Nada Šurjak, some members of the civilian police and the HV, some civilians, and Mladen Puček and Damir Cvetko from the Inner Control Department who were also in Markač's Gračac staff.[2301] Turkalj walked around in one part of the hamlet and saw five to six damaged and one burnt house, as well as one male body in his 50s in civilian clothing lying face-down in a meadow with gunshot wounds.[2302] The witness noticed bullet as well as hand grenade damage on two or three houses.[2303] Turkalj stated that it looked like fighting had taken place in Grubori.[2304] The witness also saw one body in a house while passing by.[2305] Sačić said that some people had been killed in Grubori and that the killings had probably been done by members of the Lučko unit as they had been in the area.[2306] An elderly lady explained to the witness, Janić, Sačić, and others that the incident had happened very fast with forces in uniforms passing by and shooting, and led them to the location of the dead body in the meadow.[2307] The elderly lady also mentioned to them that the dead bodies were relatives of hers and stated that there were five or six people killed.[2308] The witness later saw Čermak talking to a journalist.[2309]

[2298] D1696 (Karolj Dondo, witness statement, 18 August 2009), para. 35.
[2299] D1696 (Karolj Dondo, witness statement, 18 August 2009), para. 36.
[2300] Karolj Dondo, T. 22473.
[2301] P1149 (Josip Turkalj, witness statement, 4 February 2004), para. 47; P1151 (Josip Turkalj, witness interview of 11 March 2005), pp. 113, 115-121; P1152 (Josip Turkalj, third witness interview of 11 March 2005), pp. 16-17; Josip Turkalj, T. 13682, 13735-13736, 13738-13740, 13742-13743.
[2302] P1149 (Josip Turkalj, witness statement, 4 February 2004), para. 48; P1151 (Josip Turkalj, second witness interview of 11 March 2005), pp. 122, 123, 127, 130, 135-138; P1152 (Josip Turkalj, third witness interview of 11 March 2005), pp. 8-9; Josip Turkalj, T. 13741.
[2303] P1151 (Josip Turkalj, second witness interview of 11 March 2005), p. 129; Josip Turkalj, T. 13638-13639, 13741.
[2304] Josip Turkalj, T. 13638-13639, 13743.
[2305] P1152 (Josip Turkalj, third witness interview of 11 March 2005), pp. 6-7.
[2306] P1151 (Josip Turkalj, second witness interview of 11 March 2005), pp. 123-124; P1152 (Josip Turkalj, third witness interview of 11 March 2005), pp. 5-6.
[2307] P1149 (Josip Turkalj, witness statement, 4 February 2004), para. 48; P1151 (Josip Turkalj, second witness interview of 11 March 2005), pp. 129-130; P1152 (Josip Turkalj, third witness interview of 11 March 2005), pp. 7-8.
[2308] P1152 (Josip Turkalj, third witness interview of 11 March 2005), pp. 7, 12.
[2309] P1151 (Josip Turkalj, second witness interview of 11 March 2005), p. 130; P1152 (Josip Turkalj, third witness interview of 11 March 2005), pp. 30-31.



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2263. **Jovan Grubor** saw a group of about 25 Croats, both military and civilian, arrive in his village in five cars and a truck on 27 August 1995. Among them was a person addressed by the others as "General", who told the villagers that they came to help bury the dead. He told the villagers to indicate proper graves, but when a uniformed person from the group announced that the corpses should be buried in Knin, the General did not object. Three soldiers ordered the witness to show the dead bodies again, which he did. At Miloš Grubor's house, the soldiers got angry because the witness had covered the body with a blanket the previous day, and threatened the witness with their weapons, saying that he "may very well join Miloš on the floor". The General asked the witness if they had fat, flour, and salt, and whether they lacked anything. He also asked if they were aware of the fact that the Croats had a recognized state, stable currency, and an organized and strong army. This distressed the witness, who said that the HV was trained to kill Serbs, and that he would have to leave his home because there was no life for Serbs and the Orthodox in Croatia. The General asked the witness what had happened to some dead pigs nearby, and the witness answered that he guessed it was the deed of the General's soldiers. Later that day, the Croats put five corpses in body bags and took them away.[2310]

2264. Once on site in Grubori, **Bilobrk** had a further disagreement with Čermak, who wanted the journalists to go with the human sanitation team and film their procedure and record what they found.[2311] Bilobrk refused but Čermak again persisted.[2312] At that moment, Sačić intervened again and explained to Čermak that police procedure was such that journalists could not film the crime scene while the police was doing its job.[2313] In the end, the journalists did not accompany Bilobrk and his colleagues into Grubori.[2314] Bilobrk testified that he did not have any more contact with Čermak that day.[2315] Bilobrk testified that he did not notice Sačić near him when he was inspecting

[2310] P633 (Jovan Grubor, witness statement, 12 May 1997), p. 4.
[2311] D2048 (Jozo Bilobrk, witness statement, 12 May 2010), paras 36-37; Jozo Bilobrk, T. 28711; P2729 (Record of interview with Jozo Bilobrk at the County Court in Zagreb, 16 February 2010), p. 4; P2730 (MUP official note of interview with Jozo Bilobrk, conducted by Robert Badžim, 20 October 2009), p. 2.
[2312] Jozo Bilobrk, T. 28711; P2729 (Record of interview with Jozo Bilobrk at the County Court in Zagreb, 16 February 2010), p. 4.
[2313] D2048 (Jozo Bilobrk, witness statement, 12 May 2010), para. 37; Jozo Bilobrk, T. 28711; P2729 (Record of interview with Jozo Bilobrk at the County Court in Zagreb, 16 February 2010), p. 4; P2730 (MUP official note of interview with Jozo Bilobrk, conducted by Robert Badžim, 20 October 2009), p. 2.
[2314] D2048 (Jozo Bilobrk, witness statement, 12 May 2010), para. 37; Jozo Bilobrk, T. 28711.
[2315] D2048 (Jozo Bilobrk, witness statement, 12 May 2010), para. 37.



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the bodies in Grubori.[2316] Part of Bilobrk's job as a crime technician was to note and examine the dead bodies at a scene and try to make a visual determination as to how they died.[2317] Bilobrk testified that an old lady helped to identify the bodies in Grubori: she knew exactly where each body was located and she gave Bilobrk and his colleagues all the information they required on them.[2318] The old lady wished to bury one of the bodies in Grubori but this was not permitted as the bodies, in accordance with the Instructions on Human Sanitation, were to be taken to the Knin cemetery and buried there.[2319]

2265. According to **Dondo**, Čermak only saw one dead body in the village.[2320] The witness saw the persons from the civilian defence talking to the villagers and collecting information about the deceased, and putting the bodies in plastic bags which were afterwards taken to Knin.[2321] A person wearing a blue suit with "crime police" on his back toured the site and inspected the bodies before they were put in body bags.[2322]

2266. A transcript of HTV video footage includes commentary from Čermak and others while in the village of Grubori, Knin municipality. An unknown contributor stated that safety was continually increasing to daily life in the area liberated by Operation Storm due to the cleansing of renegade groups from the area. Čermak stated to the camera crew:

> We are in the village of Grubor, one of the Chetnik strongholds, which during the operation of cleaning the area, you see, there was fighting between the special units of MUP and the remaining Chetnik groups. There were some ten people who put up resistance. At that point in time, the village was being torched. During the operation itself, three members of the Chetnik groups and two civilians got killed. I came personally to the village of Grubor to see the development of the operation and I brought along the whole crew with me to let the facts be known, to let the truth be

[2316] Jozo Bilobrk, T. 28762; P2732 (MUP official note of interview with Jozo Bilobrk, conducted by Željko Mikulić and Antonio Gerovac, 9 November 2009), p. 3.
[2317] Jozo Bilobrk, T. 28750.
[2318] D2048 (Jozo Bilobrk, witness statement, 12 May 2010), paras 22, 40; P2731 (MUP official note of interview with Jozo Bilobrk and Ivica Vrtičević, conducted by Robert Badžim, 13 October 2009), p. 2; D2043 (Completed KTO 10 forms providing details of persons recovered upon human sanitation of Strmica, Grubori, and Plavno, 27 August 1995), pp. 2-6.
[2319] D2048 (Jozo Bilobrk, witness statement, 12 May 2010), para. 40.
[2320] D1696 (Karolj Dondo, witness statement, 18 August 2009), para. 36.
[2321] D1696 (Karolj Dondo, witness statement, 18 August 2009), para. 33.
[2322] Karolj Dondo, T. 22595.



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> known, and not to have Croatia accused again of a deliberate burning, deliberate killings, etc.[2323]

2267. Nada Šurjak followed these comments by stating that ten elderly persons had been discovered in the hamlet of Grubor, and the HV was offering them medical and humanitarian assistance.[2324]

2268. After the visit to Grubori, **Čelić**, Turkalj, Balunović, Čermak, and Sačić went to Knin to have lunch and to discuss what had happened.[2325] Čelić saw Čermak at some point but did not know how long he remained with the rest of the group.[2326] According to the witness, Sačić did most of the talking and the witness believed that Sačić explained what happened roughly in accordance with what he had dictated to the witness to put in the report.[2327] The witness testified that he, at the time of the incident, had not known what had happened.[2328]

2269. Turkalj and Balunović also testified about this meeting in Knin. **Turkalj** confirmed that he, together with Sačić, Janić, and others, next went to Knin to an HV building around noon, as Sačić wanted to talk to Čermak about the incident.[2329] In Čermak's office or a conference room everyone, including a representative of the Šibenik-Knin Police and the Special Police commander from Rijeka, a man called Dizdar, had coffee.[2330] The witness did not remember Nada Šurjak being present.[2331] Turkalj heard Čermak say to Sačić in an expression of anger something like "well, what have you done there".[2332] The witness then heard Sačić say something like "one should say that there came to [be] some combat activities, and that some civilians got killed".[2333] Turkalj further heard Sačić say something like "the Special Police came across some terrorists there, and in their fighting some civilians got killed".[2334] Sačić or

[2323] P2386 (HTV Video footage including Čermak), p. 1.
[2324] P2386 (HTV Video footage including Čermak), p. 1.
[2325] P762 (Josip Čelić, witness interview of 13-14 January 2005), Part III, pp. 113-115, 118; Josip Čelić, T. 7997-8001, 8003-8005, 8077, 8121, 8126-8132.
[2326] Josip Čelić, T. 8130.
[2327] Josip Čelić, T. 8003-8006, 8126.
[2328] Josip Čelić, T. 7998-7999, 8002, 8126, 8129.
[2329] P1149 (Josip Turkalj, witness statement, 4 February 2004), para. 49; P1152 (Josip Turkalj, third witness interview of 11 March 2005), pp. 11, 14-15, 19; Josip Turkalj, T. 13744.
[2330] P1149 (Josip Turkalj, witness statement, 4 February 2004), para. 49; P1152 (Josip Turkalj, third witness interview of 11 March 2005), pp. 11-12, 15, 19-20, 22-23.
[2331] P1152 (Josip Turkalj, third witness interview of 11 March 2005), pp. 16-17.
[2332] P1152 (Josip Turkalj, third witness interview of 11 March 2005), pp. 20-22.
[2333] P1152 (Josip Turkalj, third witness interview of 11 March 2005), pp. 42-43, 45-47; Josip Turkalj, T. 13637-13638.
[2334] P1152 (Josip Turkalj, third witness interview of 11 March 2005), pp. 45-47; Josip Turkalj, T. 13638, 13744-13745.



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Čermak then suggested that the persons killed should be buried.[2335] The witness testified that after a while he and most of the other people left the room, with only Čermak, Sačić, Janić, and the policeman from Šibenik-Knin remaining.[2336]

2270. **Branko Balunović**, a specialist training instructor in the Lučko Anti-Terrorist Unit of the Special Police,[2337] testified that on 27 August 1995, he visited Čermak's office in Knin, although he was not sure whether this was before or after his visit to Grubori on the same day.[2338] Čelić, Sačić, and Čermak, as well as other high-ranking persons and persons wearing general duty police uniforms attended the meeting.[2339] The witness believed that there was a discussion about the need to carry out a crime scene investigation or sanitation of the terrain.[2340] He also recalled that there was a loud discussion and that Sačić shouted.[2341]

2271. Following the completion of sanitation in Grubori, **Bilobrk** and his colleagues took the one road out of Grubori to go back to Plavno where they carried out another human sanitation that day.[2342] Due to the decomposing nature of the body found in Plavno, Bilobrk concluded that the person was not killed when the other persons in Grubori were killed; in this regard it was similar to the body that was earlier recovered in Strmica that day.[2343] Bilobrk and his colleagues then returned to the Knin cemetery to bury the recovered bodies before going to the Zadar-Knin Police Administration where they submitted the undeveloped films, video tapes, handwritten KTO 10 forms, and the daily report of sanitations performed.[2344] **Ivica Vrtičević**, a crime lab technician

[2335] P1149 (Josip Turkalj, witness statement, 4 February 2004), paras 49-50; P1152 (Josip Turkalj, third witness interview of 11 March 2005), pp. 24, 26; Josip Turkalj, T. 13641-13642.
[2336] P1149 (Josip Turkalj, witness statement, 4 February 2004), para. 50; P1152 (Josip Turkalj, third witness interview of 11 March 2005), pp. 11, 25; Josip Turkalj, T. 13544.
[2337] Branko Balunović, T. 28345, 28404; P2724 (Decision on Appointment of Branko Balunović, 17 May 1995), p. 1.
[2338] Branko Balunović, T. 28379, 28383-28384.
[2339] Branko Balunović, T. 28384, 28426.
[2340] Branko Balunović, T. 28384.
[2341] Branko Balunović, T. 28384, 28426.
[2342] D2048 (Jozo Bilobrk, witness statement, 12 May 2010), paras 28, 41; D2042 (List of persons recovered upon the sanitation of terrain of the Zadar-Knin Police Administration, 25-30 August 1995), p. 3; D2043 (Completed KTO 10 forms providing details of persons recovered upon human sanitation of Strmica, Grubori, and Plavno, 27 August 1995), p. 7; D2045 (List of persons recovered upon the sanitation of terrain of the Zadar-Knin Police Administration, 27 August 1995); D2046 (Completed KTO 10 form providing details of recovery of the body of Stevan Vidović in Plavno, 27 August 1995).
[2343] D2048 (Jozo Bilobrk, witness statement, 12 May 2010), para. 41; D2046 (Completed KTO 10 form providing details of recovery of the body of Stevan Vidović in Plavno, 27 August 1995), p. 4.
[2344] D2048 (Jozo Bilobrk, witness statement, 12 May 2010), para. 43.



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carrying out human sanitation in the area of the Zadar-Knin Police Administration,[2345] testified similarly as Bilobrk about the events of 27 August 1995.[2346]

2272. On 27 August 1995, **Roberts** along with other UN personnel revisited Grubori and found in the afternoon that the Croatian Civilian Defence had removed the body of Miloš Grubor, but that the blood stains and bullet casings were still there.[2347] They noticed that there was no seal around the house indicating investigations were or had been underway.[2348] On this occasion, UN staff also read back to the villagers in Grubori what Čermak had said in the UNTV interview about the Croatian Special Police having been shot at from Grubori on 25 August 1995.[2349] The Grubori villagers reacted in shock, saying only old people remained in Grubori and denied that anybody shot at the Croatian Special Police.[2350] Roberts also testified that on 27 August 1995, the eye witness accounts of the UN and of the Grubori villagers were broadcast on the BBC, followed later by CNN.[2351]

2273. On the same day, **Witness 84** was told by Čedo Romanić and his deputy, Gambiroža, that they and some other men had gone to the area north of Knin, but as they were unfamiliar with the area, had been unable to find the exact location of the dead bodies.[2352] Petro Romassev told the witness that General Čermak had tried to deny the killings, upon which somebody had told him that the bodies were recorded on camera and that there was no use denying it.[2353] Romanić had told the witness that on 27 August 1995 there was a coordination meeting at the garrison in which Čermak was present.[2354] Romanić told him that there had been disagreements as to whether any killings had taken place in Grubori, whether there had been an on-site investigation, and

[2345] D2052 (Ivica Vrtičević, witness statement, 13 May 2010), paras 1-2.
[2346] D2052 (Ivica Vrtičević, witness statement, 13 May 2010), paras 12, 14-22; Ivica Vrtičević, T.28903, 28905-28906, 28908-28909, 28914, 28916, 28918-28921, 28926-28929, 28959, 28961.
[2347] P675 (Alun Roberts, witness statement, 27 August 1997), paras 85, 88; P677 (Alun Roberts, witness statement, 28 February 2007), p. 11; P680 (Alun Roberts, witness statement, 1 July 2008), paras 26-28 32, no. 25; Alun Roberts. T. 6931; P683 (Various photographs of destruction, looting and killing in Knin and in villages taken between 10 August and mid-October 1995), pp. 51-52; P700 (UNCRO photographs of bodies and crime sites in Sector South), p. 16.
[2348] P675 (Alun Roberts, witness statement, 27 August 1997), para. 88.
[2349] P691 (Grubori village report by Alun Roberts, 29 August 1995), paras 14, 20-21.
[2350] P691 (Grubori village report by Alun Roberts, 29 August 1995), para.21.
[2351] P691 (Grubori village report by Alun Roberts, 29 August 1995), para. 25.
[2352] Witness 84, T. 11111, 11146, 11348.
[2353] P2395 (Witness 84, witness statement, 9 March 2002), para. 41; Witness 84, T. 11114-11117, 11151-11152, 11164, 11166-11169
[2354] Witness 84, T. 11116-11117, 11147, 11151, 11164.



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how to proceed.[2355] Čedo Romanić told the witness that he and Buhin had insisted on an investigation into the killings in Grubori and from what the witness was told, he understood it to be someone on a higher level of authority than Čedo Romanić and the coordinators who prevented the police from going to Grubori to conduct the usual on-site investigations.[2356]

2274. The Trial Chamber further received the following evidence in relation to the aftermath of the incidents of 25 through 27 August 1995.

2275. According to **Morić**, the Grubori incident had been recorded and so there was no way to stop the normal police procedure.[2357] Morić testified that while the Zadar-Knin police administration should, under the applicable rules, have sent a report about the event in Grubori to the MUP, Morić did not see such a report.[2358] He also testified that a report of the Zadar-Knin police administration on the on-site investigation into the deaths of those civilians, potentially being grave crimes that mainly concerned the crime police, would have gone to the crime police sector of the MUP, rather than to him.[2359] He further testified that when he received from Cetina a report dated 28 August 1995 mentioning the sanitation of five bodies from Grubori, in Knin municipality, it confirmed to him that the MUP had taken notice of the incident, and would deal with it according to the proper channels under the law.[2360]

2276. **Ive Kardum**, Chief of the crime police department for the Zadar-Knin police administration in 1995,[2361] testified that according to the normal procedure he should have been informed about the Grubori killings at the time, but was not.[2362] Kardum did not know who would send Slavko Raspović to investigate the Grubori killings, because Raspović had been a political leader in the police before the war, was a secretary of the police in the department for minor delinquents, and never conducted an on-site

[2355] P2395 (Witness 84, witness statement, 9 March 2002), para. 41; Witness 84, T. 11116-11117, 11151, 11164-11171.
[2356] P2394 (Witness 84, witness statement, 11 July 2004), para. 7; P2395 (Witness 84, witness statement, 9 March 2002), para. 41; Witness 84, T. 11166-11171.
[2357] D1842 (Joško Morić, witness interview, 17 January 2004), p. 225.
[2358] Joško Morić, T. 25756.
[2359] Joško Morić, T. 25756-25763.
[2360] Joško Morić, T. 25787-25788.
[2361] P2396 (Ive Kardum, witness statement, 3-4 May 2007), p. 1, paras 2-3; P2397 (Ive Kardum, witness statement, 22-23 March 2004), p. 1, paras 1-3, 12, 15, 17; Ive Kardum, T. 9231, 9251-9252, 9398, 9498-9499.
[2362] P2397 (Ive Kardum, witness statement, 22-23 March 2004), para. 51; Ive Kardum, T. 9361, 9363-9364.



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investigation.[2363] Kardum contrasted this to the Gošić and Varivode incidents, which were investigated by an investigative judge.[2364]

2277. **Ivan Galović**, District Public Prosecutor in Zadar since 1990,[2365] testified that in principle the police would report to the State Prosecutor and the Investigative Judge when serious crimes had been discovered.[2366] However, he had never received a report from the police with regard to the killings in Grubori on 25 August 1995.[2367]

2278. **Hussein Al-Alfi**, the UN Civil Affairs Coordinator, later renamed Political and Human Affairs Coordinator, for Sector South in Knin from June 1995 to January 1996,[2368] testified that on 29 August 1995, he confronted Čermak with an incident in the Grubori hamlet, where the HV had reportedly intimidated and killed a number of persons.[2369] At the meeting, Čermak responded by justifying the incident as having happened during an armed clash with SVK soldiers.[2370] Čermak then called his Liaison Officer to the meeting and told him to check what was going on.[2371] On 31 August 1995, Čermak wrote a letter to Al-Alfi, as a follow-up to the 29 August 1995 discussion. In the letter, Čermak stated that in Grubori, eight to ten enemy troops had opened fire on special units of the MUP.[2372] In the ensuing clash, Đuro Karanović, a 45-year-old person from Belgrade, armed with a 7.9-millimetre gun, was killed.[2373] Several barns and houses caught fire as a result of the armed clashes and the use of bazookas. Two unidentified elderly women and two elderly men, Miloš Grubor and Jovo Grubor, died of the fire or of trajectory wounds. Čermak expressed deep regret that civilian casualties occurred during the armed clash and stated that the HV had been strictly instructed to protect civilians. He added that he was confident that had the "renegades"

[2363] Ive Kardum, T. 9360-9361.
[2364] Ive Kardum, T. 9361.
[2365] D1553 (Ivan Galović, witness statement, 18 May 2009), pp. 1-2, 5; Ivan Galović, T. 19666-19669.
[2366] Ivan Galović, T. 19834.
[2367] Ivan Galović, T. 19834; P1061 (Letter from Galović to Croatian Public Prosecutor Office, 22 December 2003), p.1.
[2368] P1160 (Hussein Al-Alfi, witness statement, 5 March 1998), p. 5; Hussein Al-Alfi, T. 13805-13806, 13932-13933.
[2369] P1160 (Hussein Al-Alfi, witness statement, 5 March 1998), pp. 82-83; Hussein Al-Alfi, T. 13826-13827; P1165 (Letter from Ivan Čermak to Hussein Al-Alfi, 31 August 1995); D1214 (UN Sector South report by Hussein Al-Alfi, 1 September 1995), p. 3.
[2370] D1214 (UN Sector South report by Hussein Al-Alfi, 1 September 1995), p. 3; see also P20 (Edward Flynn, witness statement, 29 June 1997), p. 28; P21 (Edward Flynn, witness statement, 26-27 February 2008), para. 27; Edward Flynn, T. 1077-1078, 1092-1093, 1125-1126; P27 (HRAT cumulative daily report, 24-27 August 1995), p. 2; P34 (HRAT daily report, 29 August 1995), p. 1.
[2371] P1160 (Hussein Al-Alfi, witness statement, 5 March 1998), pp. 82-83.
[2372] P1165 (Letter from Ivan Čermak to Hussein Al-Alfi, 31 August 1995).
[2373] P1160 (Hussein Al-Alfi, witness statement, 5 March 1998), p. 83; P1165 (Letter from Ivan Čermak to Hussein Al-Alfi, 31 August 1995); Hussein Al-Alfi, T. 13827.



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decided to surrender the tragedy could have been prevented. Čermak further stated that he personally visited the hamlet the following day and verified that events took the course as described above.[2374]

2279. When interviewed by the Prosecution, Čermak stated that his use of "trajectory wounds" in this report was based on the crime police's finding of bullet wounds.[2375] He added that he wrote his reports, including the one to Al-Alfi, based on information he got from the police.[2376] Čermak stated that "all the information I have was based on the report by the police", which Čermak was shown and identified as the report of the Special Police on what happened on the ground.[2377] Čermak stated that Grubori was an unusual case in that so many people – five – died in a Special Police sweeping operation.[2378]

2280. **Dondo** believed that the Special Police had given an explanation to Čermak about what they had done in Grubori. According to Dondo, the reports which were sent to the UN and the ICRC included "military terms", which Čermak would not have used if he himself had written the reports.[2379] Dondo believed that the information in these reports was consistent with what he had observed in Grubori.[2380]

2281. According to a letter from the ICRC to Čermak on 29 August 1995, six Grubori villagers, while in Knin to register with the Croatian Social Welfare Department on the morning of 25 August 1995, saw 10-20 Croatian soldiers moving in the direction of the hamlet of Grubori. Moments later, they saw houses on fire and immediately went back to their village. Upon entering Grubori the villagers found no soldiers, but the bodies of Miloš (Marko) Grubor, aged 80 and shot dead in his bed, and Jovo (Jovan) Grubor, aged 65 with knife wounds on his neck and on his side behind his house. On 26 August 1995, the villagers also found the following bodies: Milica (Stevo) Grubor, aged 53 and shot dead behind a house, Marija Grubor, aged 90 and burnt in her house, and Đuro (Luka) Karanović, aged 41 and shot dead behind a house. According to the letter, Đuro Karanović had been drafted by the SVK, but surrendered to the HV on 4 August 1995 before later being released and going to his mother's house in Grubori. With regard to

[2374] P1165 (Letter from Ivan Čermak to Hussein Al-Alfi, 31 August 1995).
[2375] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), p. 99.
[2376] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 93-94, 99-101; P2532 (Accused interview with Ivan Čermak, 7 June 2004), pp. 72, 93, 114.
[2377] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 93, 102.
[2378] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 102-103.
[2379] D1696 (Karolj Dondo, witness statement, 18 August 2009), para. 37; Karolj Dondo, T. 22531-22532.



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Jovo Grubor, aged 73, nobody had any indication of his fate.[2381] According to Čermak's response to the ICRC letter dated 30 August 1995, the Special Police forces came across eight to ten enemy soldiers in Grubori who opened fire on them. In the ensuing shooting, one of the soldiers, Đuro Karanović, who was carrying a rifle, was killed. As a result of the fighting, fire was set to some sheds and houses, and two women and two men (Miloš and Jovo Grubor) were killed.[2382]

2282. On 31 August 1995, Ivan Čermak wrote a letter to UNCRO indicating that he had visited Grubori the day after the killings and had convinced himself that the fires in the village and the killings of Miloš and Jovo Grubor, two unidentified women, and Đuro Karanović, who was armed, occurred in the course of combat.[2383]

2283. **Turkalj** testified that upon written order by Markač on 31 August or 1 September 1995, he commanded all the group leaders from the Plavno operation to submit reports as to their activities.[2384] Three of the four group leaders, namely Žinić, Krajina, and Balunović, as well as Čelić, submitted such reports, which the witness then forwarded to Sačić and Markač on 20 September 1995.[2385] The fourth group leader, Frano Drljo, refused to submit a report.[2386] Drljo nevertheless reported verbally to the witness that he had only heard gunshots and that he believed that there was nothing to write a report about.[2387] Turkalj decided not to report this matter to Markač and not to initiate disciplinary proceedings against Drljo, one of the reasons being that Drljo was an exceptional fighter and of much use to the Special Police.[2388] The witness testified that Drljo was a constant problem in terms of lacking discipline and that he had discussed these matters many times with Markač, however, Drljo was not disciplined.[2389] **Žinić** confirmed Turkalj's testimony in this respect and added that after the group leaders and Čelić had received the order to write a report on the events of 25

[2380] Karolj Dondo, 22474-22475, 22534-22537.
[2381] P1221 (Letter from ICRC delegation to Ivan Čermak regarding Grubori events, 29 August 1995), pp. 1-2.
[2382] P1222 (Letter from Ivan Čermak to ICRC regarding Grubori events, 30 August 1995).
[2383] Elisabeth Rehn, T. 6515-6516; P603 (Letter from Ivan Čermak to UNCRO, 31 August 1995), pp. 1-2.
[2384] P1149 (Josip Turkalj, witness statement, 4 February 2004), para. 54; P1152 (Josip Turkalj, third witness interview of 11 March 2005), pp. 83-85; Josip Turkalj, T. 13642.
[2385] P1149 (Josip Turkalj, witness statement, 4 February 2004), paras 54-59; P1152 (Josip Turkalj, third witness interview of 11 March 2005), pp. 84-86, 102; Josip Turkalj, T. 13644-13647; P567 (Letter from Josip Turkalj to the chief of the Special Police Sector, 20 September 1995).
[2386] P1149 (Josip Turkalj, witness statement, 4 February 2004), para. 55; P1152 (Josip Turkalj, third witness interview of 11 March 2005), pp. 84-86.
[2387] Josip Turkalj, T. 13676-13677, 13784.
[2388] Josip Turkalj, T. 13681, 13784.



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August 1995, there was a brief conversation between those present about the events, and he further testified that he probably discussed the events with some of the members of his group.[2390] Žinić's report about the events of 25 August 1995 was in part based on information he received from others.[2391] **Balunović** also confirmed Turkalj's testimony in this respect but added that Čelić told the group leaders to compile reports based on information provided by Željko Sačić.[2392]

2284. **Stjepan Žinić**, a specialist training instructor in the Lučko Anti-Terrorist Unit of the Special Police,[2393] testified that both his reports about 25 August 1995, and the one about the 26 August 1995 operation were drafted in the unit headquarters in Zagreb a few days after the operations.[2394]

2285. **Čelić** submitted one report which was identical to the one dictated to him by Sačić, with the exception that the last sentence reading "[t]he task was completed at 1600 hrs and nobody was injured or wounded" was excluded.[2395] The witness testified that there was no particular reason for this exclusion.[2396] The witness also submitted a second report on the same day which contained one additional paragraph, reading:

> An order was received from the Chief of the Terrorism Department regarding civilians who are encountered in this area and their treatment in accordance with international law. On my part, I issued an order to everybody to treat civilians according to international law, identify them and take them to a safe area.[2397]

2286. Branko Balunović, Stjepan Žinić, and Božo Krajina also submitted two reports each on the same day, with one of them containing language to the same effect as in

[2389] P1149 (Josip Turkalj, witness statement, 4 February 2004), paras 61-63; P1152 (Josip Turkalj, third witness interview of 11 March 2005), p. 53; Josip Turkalj, T. 13545-13546, 13681-13682.
[2390] Stjepan Žinić, T. 28082-28084, 28092-28094, 28096, 28098, 28118-28119, 28141-28142, 28144-28145, 28163; see also P761 (Josip Čelić, witness interview of 25-26 November 2002), Part III, pp. 3-6; P762 (Josip Čelić, witness interview of 13-14 January 2005), Part II, pp. 86, 88-91, 97-98, Part III, pp. 8, 20, 30-31, 34, 36, 46, 144-146, 169, 173-174; Josip Čelić, T. 7958-7962, 7972, 7974, 7982-7983, 8058-8059, 8102; P566 (Order by Josip Turkalj to Josip Čelić and others, 1 September 1995); P772 (Josip Čelić, MUP official note of interview with Josip Čelić, 5 December 2001), p. 4.
[2391] Stjepan Žinić, T. 28095, 28118-28119.
[2392] Branko Balunović, T. 28375-28376, 28388-28390, 28393-28397, 28427-28428, 28437-28438, 28445, 28448-28450.
[2393] Stjepan Žinić, T. 28057-28058; P2717 (Decision on Appointment of Stjepan Žinić, 9 November 1995), p. 1.
[2394] Stjepan Žinić, T. 28083-28084, 28145.
[2395] Josip Čelić, T. 7959-7960; P564 (First typed-up report by Josip Čelić, 25 August 1995), pp. 1-2. See also P563 (Hand-written report by Josip Čelić, 25 August 1995).
[2396] Josip Čelić, T. 7959-7960.
[2397] P762 (Josip Čelić, witness interview of 13-14 January 2005), Part II, pp. 86, 89-92, 97-99, 102, Part III, pp. 36-39, 41-42, 46; Josip Čelić, T. 7960, 7975-7976; P565 (Second typed-up report by Josip Čelić, 25 August 1995).



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Čelić's.[2398] Josip Turkalj's secretary typed up all eight reports.[2399] All the reports were dated 25 August 1995 and the reports of Božo Krajina were explicitly addressed to Josip Čelić.[2400] According to **Čelić**, nobody instructed him to back-date his report.[2401] The Krajina report set out that infantry weapon fire was opened on the group when it entered "the village", without specifying the village, and that the group was not able to see who was shooting. The shooting lasted several minutes whereupon everyone who was in the village was invited to surrender. The persons in the village then opened fire again.[2402] The group returned fire and entered the village. The group did not stay in the village but continued to the final destination. According to the Žinić report, while on the left side of Grubori, the group heard sudden gunfire and several explosions. When Žinić asked about it over the system, he was informed that "they" had encountered "a group of Chetniks". Žinić then ordered his group to go towards the village which they reached after about 15 minutes. At the entrance of the village they met with other members of the unit who told them that some of the "Chetniks" were fleeing to the forest, i.e. Orlovac peak. The group immediately went after them and did therefore not enter the village.[2403] According to the Balunović report, his group was not engaged in any exchange of fire. The report contains two paragraphs with information about what happened in Grubori:

> In continuation of the action two groups under the leadership of instructors Božo Krajina and Franjo Drljo encountered armed resistance from eight to ten enemy soldiers in the village of Plavetno, the hamlet of Grubori, which was to the right of my group's search axis.
>
> Member [sic] of the group commanded by the said instructors returned fire from infantry and anti-armour weapons, which resulted in the arrest of Stevan Karanović, around 35 years old, the killing of Đuro Karanović – both of them were members of the so-called

[2398] Josip Čelić, T. 7964-7965, 7975-7977; P568 (First report by Stjepan Žinić, 25 August 1995); P569 (Second report by Stjepan Žinić, 25 August 1995); P570 (First report by Božo Krajina, 25 August 1995); P571 (Second report by Božo Krajina, 25 August 1995); P572 (First report by Branko Balunović, 25 August 1995); P573 (Second report by Branko Balunović, 25 August 1995).
[2399] Josip Čelić, T. 7961-7963, 7972, 8102.
[2400] Josip Čelić, T. 7959, 7974-7975; P568 (First report by Stjepan Žinić, 25 August 1995); P569 (Second report by Stjepan Žinić, 25 August 1995); P570 (First report by Božo Krajina, 25 August 1995); P571 (Second report by Božo Krajina, 25 August 1995); P572 (First report by Branko Balunović, 25 August 1995); P573 (Second report by Branko Balunović, 25 August 1995).
[2401] Josip Čelić, T. 7959, 7974-7975.
[2402] P570 (First report by Božo Krajina, 25 August 1995); P571 (Second report by Božo Krajina, 25 August 1995).
[2403] P568 (First report by Stjepan Žinić, 25 August 1995); P569 (Second report by Stjepan Žinić, 25 August 1995).



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> Army of Serbian Krajina – and the killing of another two women and two elderly men, whose identity is unknown to me at present.[2404]

2287. On 27 February 1996, **Elisabeth Rehn**, Special Rapporteur of the UN Commission on Human Rights on the situation of human rights in the territory of the former Yugoslavia between 27 September 1995 and early 1998,[2405] wrote a letter to Minister of Foreign Affairs Mate Granić, requesting detailed information about any investigations into the fires and killings in Grubori on 25 August 1995, and providing the licence plate numbers of empty Croatian police vehicles observed at 12:45 p.m. that day by UN staff within two kilometres of Grubori.[2406] Rehn testified that she never received a proper response to her letter.[2407]

2288. **Mate Granić**, Deputy Prime Minister of Croatia (1991-2000) and Minister of Foreign Affairs (1993-2000),[2408] testified that the initial information that he had received about the Grubori incident was that it did not include crimes against civilians but that this was a conflict between either the HV or the police, on the one side, and terrorists, on the other.[2409] This is how it was presented to the public.[2410] When the witness received a letter from Elisabeth Rehn on 27 February 1996 about Grubori, he asked the human rights department in the Ministry of Foreign Affairs to ask for an official report from the MUP.[2411] He informed Rehn as a courtesy about what was in this report although this incident was not within his area of competence.[2412] In his letter to Rehn, dated 26 June 1996, the witness described the five victims as civilians who had been shot by firearms.[2413] Furthermore, he stated:

> Since it was not possible to inform the victims' families about the death because the majority of the Serb population left the Republic of Croatia under the threat or persuaded by the self-proclaimed local civil and military authorities, members of the Civilian

[2404] P572 (First report by Branko Balunović, 25 August 1995), p. 1; P573 (Second report by Branko Balunović, 25 August 1995), p. 1.
[2405] P598 (Elisabeth Rehn, witness statement, 13-14 October 2005), pp. 1-2; P599 (Elisabeth Rehn, witness statement, 21 February 2007), p. 1; Elisabeth Rehn, T. 6494, 6499, 6543, 6562, 6695.
[2406] P598 (Elisabeth Rehn, witness statement, 13-14 October 2005), p. 4; Elisabeth Rehn, T. 6512-6514; P602 (Letter from Elisabeth Rehn to Minister of Foreign Affairs Mate Granić, 27 February 1996), pp. 1-3.
[2407] P598 (Elisabeth Rehn, witness statement, 13-14 October 2005), pp. 4, 8; Elisabeth Rehn, T. 6514-6515.
[2408] D1797 (Mate Granić, witness statement, 12 May 2009), paras 2-3, 6, 8, 13; Mate Granić, T. 24614-24615, 24621-24622.
[2409] Mate Granić, T. 24810, 24941.
[2410] Mate Granić, T. 24810-24811, 24941.
[2411] Mate Granić, T. 24940-24941.
[2412] Mate Granić, T. 24941-24942.



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> Defence of the Ministry of the Interior buried the victims on the graveyard in Knin in accordance with the Geneva conventions and the Graveyards and Burial Regulations.
>
> Regretfully, the investigation of the serious crime has not yielded any results, but efforts are made to identify the perpetrators.[2414]

2289. **Witness CW-4** further testified that it was standard practice to write reports after an operation was completed.[2415] However, he also testified that the reports written by the instructors about the events of 25 August 1995 were false.[2416] The reports were not written on 25 August 1995. They contain lists of persons who participated in the operation, some of which are duplicated and some of which did not participate in the operation.[2417] Witness CW-4 also testified that commanders never issued written orders to subordinates to draw-up reports, and that the written order by Turkalj to write such a report, dated 1 September 1995, was a fabrication.[2418] Witness CW-4 testified that he never met with Markač about reports concerning the events of 25 August 1995.[2419]

2290. On 16 February 1998, Josip Turkalj submitted the report "Wartime record of the Lučko Anti-Terrorist Unit" to the Chief of the Special Police Sector.[2420] According to this report, the Lučko unit had a "combat encounter" with enemy forces upon entering Grubori during a military operation on 25-26 August 1995.[2421] During this combat the enemy group was neutralised and none of the members of the unit were killed or wounded.[2422] **Turkalj** explained that the report did not contain details about the Grubori incident, as it focused on the locations of the unit during the war.[2423]

2291. **Čelić** testified that he was interviewed by the police about the Grubori incident in 2001 and 2004.[2424] At the 2001 interview he stated that his second report was dictated to him by Sačić.[2425] Nobody examined the witness's weapon.[2426] On 14 December 2001,

[2413] P2674 (Letter by Mate Granić to Elisabeth Rehn, 26 June 1996).
[2414] P2674 (Letter by Mate Granić to Elisabeth Rehn, 26 June 1996).
[2415] Witness CW-4, T. 28250.
[2416] Witness CW-4, T. 25253.
[2417] Witness CW-4, T. 28254-28255.
[2418] Witness CW-4, T. 28328.
[2419] Witness CW-4, T. 28334.
[2420] P606 (Wartime record of the Lučko unit, 16 February 1998).
[2421] P606 (Wartime record of the Lučko unit, 16 February 1998), p. 11.
[2422] P606 (Wartime record of the Lučko unit, 16 February 1998), p. 11.
[2423] Josip Turkalj, T. 13658-13660; see P1220 (Order by Markač to Special Police commanders to produce unit combat histories, 13 March 1997), p. 2.
[2424] P761 (Josip Čelić, witness interview of 25-26 November 2002), Part I, pp. 16-17, Part III, p. 7; Josip Čelić, T. 8053-8054, 8078.
[2425] P762 (Josip Čelić, witness interview of 13-14 January 2005), Part III, pp. 192-193.
[2426] P762 (Josip Čelić, witness interview of 13-14 January 2005), Part III, pp. 132-135.



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the chief of the Crime Police Department in the Šibenik-Knin Police Administration reported to the County Public Prosecutor about the progress of the investigation of the death of Miloš Grubor and others. He stated that the police had interviewed, for example, Josip Čelić, Frano Drljo, Božo Krajina, and Nada Šurjak.[2427]

2292. On 18 December 2003, Ivan Galović sent a letter to the Zagreb State Attorney's Office in which he noted that his office had not received a criminal report regarding the killings in Grubori.[2428]

2293. **Janić** testified that he was never questioned about the Grubori incident and had no knowledge of it at the time.[2429] A letter from the Croatian Ministry of Justice of 2004 confirmed that the MoD had never conducted an investigation into the Grubori incident.[2430] According to a "work plan" document put together by the Croatian authorities, in 2001 an investigation was launched into the Grubori incident by the MUP.[2431] According to another MUP document, the investigations into the incident were ongoing in 2004.[2432] The witness added that a few years later, and after his 2004 interview with the Prosecution, he was questioned about the Grubori incident by the MUP.[2433] Janić testified that from what he had learnt since the incident, it was clear that there had been a cover-up of what had occurred in Grubori.[2434]

2294. **Željko Žganjer**, District State Attorney in Šibenik from June 1993 until 15 September 2002,[2435] testified that after the territorial reorganization in 1998, his office received a large number of files from the Zadar District State Attorney's Office.[2436] He added that he started receiving information from Amnesty International and the Croatian Helsinki Committee concerning the events in Grubori and that once he had more concrete evidence concerning Grubori he initiated an investigation into the

[2427] D738 (Letter from the Chief of the Crime Police Department, Šibenik-Knin Police Administration, to the County Public Prosecutor, 14 December 2001), p. 1.
[2428] P1061 (Letter from Ivan Galović, Zadar District Public Prosecutor, to the Republic of Croatia Public Prosecutor's Office).
[2429] P553 (Zdravko Janić, Prosecution interview, 15 March 2005), part III, pp. 52-59.
[2430] P626 (Letter from the Croatian Ministry of Justice to the Croatian office for cooperation with the ICTY, 7 June 2004).
[2431] P622 (MUP work plan, 13 November 2001).
[2432] P624 (MUP letter to the Šibenik County Prosecutor, 1 April 2004).
[2433] P553 (Zdravko Janić, Prosecution interview, 15 March 2005), part III, pp. 77-78; Zdravko Janić, T. 6201-6202; P582 (MUP official note, 28 April 2004).
[2434] P553 (Zdravko Janić, Prosecution interview, 15 March 2005), part III, pp. 102-107.
[2435] P1046 (Željko Žganjer, witness interview of 8 December 2005), Tape 3275-1-A, p. 12, Tape 3275-1-B, p. 1.
[2436] P1048 (Željko Žganjer, witness statement of 5 November 2008), para. 10.



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incident.[2437] Žganjer testified that he did so on 9 March 2001 by sending a letter to the Crime Police Department of the Šibenik-Knin Police Administration in which he wrote that from the material he attached to the letter, it emerged that on 25 August 1995, five or six elderly Serb civilians (Miloš Grubor, Milica aka Mika Grubor, Jovo Grubor, Marija Grubor, Đuro Karanović and Stevan Vidović) were killed and the fate of Jovan Grubor (son of Damjan) is unknown.[2438] Žganjer also wrote that from the material he had at his disposal it followed that the MUP had undertaken the processing of this case and that the relevant state attorney's office would have been notified of the results of the process.[2439] However, he added, that according to his information the Zadar District State Attorney's Office, under which jurisdiction this case fell at the time of the incident, had not been informed of the results of the processing.[2440] On 9 November 2001, Žganjer sent another letter to the Šibenik-Knin Police Administration in which he urged the police to act on his request of 9 March 2001 and additionally to conduct an interview with Čermak.[2441] On 8 February 2002, the Šibenik-Knin Police Administration sent a report concerning the documentation gathered in the investigation into the killings in Grubori to Žganjer who confirmed its receipt.[2442]

2295. Only in 2003, according to Čermak, did he realize that the information from the Special Police regarding an armed clash in Grubori was wrong.[2443] At that point, he told Markač that something was wrong, that people were lying to him, and asked him what happened.[2444] According to Čermak, Markač replied that he did not know, that he had done what he had to do, he had "sent what they gave me", and that it was up to the police to find the truth.[2445] Čermak stated that he told Markač that it was in his interest to find out the truth.[2446]

2296. On the basis of the evidence received, the Trial Chamber establishes the following chronology of events. On 25 August 1995 between 3 and 4:30 p.m., after

[2437] P1048 (Željko Žganjer, witness statement of 5 November 2008), para. 10; Željko Žganjer, T. 11604-11605, 11607.
[2438] P1048 (Željko Žganjer, witness statement of 5 November 2008), para. 10; P1064 (Letter from Žganjer to the Šibenik Police Administration, 21 March 2001), p. 1.
[2439] P1064 (Letter from Žganjer to the Šibenik-Knin Police Administration, 21 March 2001), p. 1.
[2440] P1064 (Letter from Žganjer to the Šibenik-Knin Police Administration, 21 March 2001), p. 2.
[2441] P1048 (Željko Žganjer, witness statement of 5 November 2008), para. 22; P1068 (Letter from Žganjer to the Šibenik-Knin Police Administration, 9 November 2001).
[2442] P1048 (Željko Žganjer, witness statement of 5 November 2008), para. 25; P1054 (Letter from Šibenik-Knin Police Administration to Žganjer).
[2443] P2532 (Accused interview with Ivan Čermak, 7 June 2004), pp. 102-103, 112-113.
[2444] P2532 (Accused interview with Ivan Čermak, 7 June 2004), p. 115.
[2445] P2532 (Accused interview with Ivan Čermak, 7 June 2004), p. 115.



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having visited Grubori, Alun Roberts reported to Karolj Dondo that he had heard shots fired and had seen fires in Grubori. Dondo immediately passed on this information to Čermak. Petro Romassev also informed the Knin police station. Representatives of the Knin police station then unsuccessfully tried to find the hamlet. In the evening of 25 August 1995, Čermak phoned Markač informing him of a shooting incident reported by the UN and asking him to verify this information. Around 5 p.m., the Gračac headquarters informed Željko Sačić of possible casualties during that day's operation. Sačić then spoke to Markač, who confirmed that he had some general information about problems in an area around Knin but stated that there could also have been a misunderstanding and that Sačić should see Čermak on the following day. Later that evening, Sačić also spoke to Zvonko Gambiroža who said that he had heard about arson in a village outside of Knin. The daily report from Markač to Červenko on the Special Police's activities, which was sent early the next morning, did not indicate that anything noteworthy happened in the Plavno area.

2297. In the morning of 26 August 1995, between 9 and 10 a.m., Romassev reported the names of those killed in Grubori on 25 August 1995 to the Knin police station. This information was then passed on to Gambiroža, Romanić, and Buhin. Both Romanić and Buhin contacted Cetina asking that he send an on-site investigation team to Grubori. On his way from Zagreb to Knin, Sačić spoke to Cetina who confirmed that bodies had been found in the Plavno area and that he had been informed by Romanić. At a regular morning meeting between Čermak and representatives of the Knin police station, Čermak was informed about bodies in Grubori. Čermak suggested to "wait and see". Upon Sačič's arrival in Knin, Čermak informed Sačić that the UN was reporting deaths in Grubori and that he should get further information from Romanić. Around 10:15 a.m., Sačić arrived at the Knin police station where he got into an argument with Romanić and Buhin. Romanić and Buhin insisted that there be an on-site investigation and reported that they had already informed Cetina to organise an on-site investigation team. Sačić stated that the bodies should be collected by the civilian protection without an on-site investigation. During the argument, Sačić also phoned Markač and then Jarnjak's office and after a while Morić called Buhin and told him not to get involved in the work of the crime police. Shortly thereafter, Sačić and Romanić went to see Čermak where they repeated their differing positions. Čermak suggested that there should be an

[2446] P2532 (Accused interview with Ivan Čermak, 7 June 2004), p. 115.



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on-site investigation. Around 11:30 a.m., Čermak gave an interview to UNTV where he provided details about the events in Grubori mentioning a clash with terrorists, the capture of one terrorist, and the discovery of a body, likely an HV soldier, with his hands tied behind his back. Around noon, Sačić visited Grubori and subsequently called Markač to report to him. Sačić also called Čermak telling him that there had been a clash with terrorists in Grubori on 25 August 1995 and that he would go there again with the crime police on 27 August 1995. Around 3 p.m. the information received on the Grubori incident was entered into the Knin police station duty log and it was added that there would be an on-site investigation. In the afternoon of 26 August 1995, Markač met with the Lučko unit outside of Ramljane and demanded an urgent explanation from Čelić in relation to the events on 25 and 26 August 1995. Around 5 p.m., Dondo arrived in Grubori. Sačič, while back in the Gračac headquarters, voided the previous day's report from Markač to Červenko. Around 6 p.m., Sačić and Markač again confronted Čelić about his previous day's report. Subsequently, Sačić relayed information to Čelić in Markač's presence and then, in an adjacent room, dictated him a new report saying that there had been a clash with a terrorist group and that the bodies in Grubori should be dealt with by way of human sanitation. Around 8 p.m., Dondo reported to the Knin police station about his visit to Grubori, stating that human sanitation should be conducted.[2447]

2298. On 27 August 1995, between 9 and 9:30 a.m., a civilian protection team and two crime scene technicians gathered at a coffee bar opposite the Knin police station. Čermak and others approached the team and Čermak suggested that weapons should be placed next to the bodies in Grubori.[2448] Bilobrk's team then received the task from the Zadar-Knin Police Administration to clear up bodies in Plavno, Strmica, and Grubori. Around 10 a.m., while waiting outside Grubori, Čermak approached Bilobrk suggesting that he should conduct an on-site investigation. Bilobrk responded that the legal requirements for an on-site investigation were not met and that he had been sent for a different task. Sačić intervened, siding with Bilobrk and Čermak relented. Čermak then suggested that journalists should accompany Bilobrk's team to the bodies and film everything. Bilobrk again opposed this stating that it was against police procedure.

[2447] See also Confidential Appendix C for a further discussion of the evidence received in relation to this paragraph.
[2448] The Trial Chamber also does not exclude that this remark may have been made at a later stage during the day at a location just outside of Grubori.



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Sačić again intervened, siding with Bilobrk, and Čermak again relented. Around 11 a.m., a group of people including Čermak, Sačić, Special Police members, journalists, and others arrived in Grubori, where Sačić briefed Čermak about the details of Čelić's new report before Čermak addressed the journalists. Čermak stated that

> [he was standing] in the village of Grubor, one of the Chetnik strongholds, which during the operation of cleaning the area (…) there was fighting between the special units of MUP and the remaining Chetnik groups. There were some ten people who put up resistance. At that point in time, the village was being torched. During the operation itself, three members of the Chetnik groups and two civilians got killed. I came personally to the village of Grubor to see the development of the operation and I brought along the whole crew with me to let the facts be known, to let the truth be known, and not to have Croatia accused again of a deliberate burning, deliberate killings, etc.

Bilobrk and his colleagues performed human sanitation and subsequently buried the bodies in Knin. After the visit to Grubori, at a gathering in the Knin garrison, Sačić and Čermak further discussed Čelić's new report and Sačić shouted a lot.

2299. Between 29 and 31 August 1995, Čermak informed Al-Alfi, the ICRC, and UNCRO that there had been a clash with terrorists in Grubori on 25 August 1995. On 1 September 1995, Markač ordered the Lučko unit's four group leaders through Turkalj to submit reports about the operation on 25 August 1995. On 20 September 1995, Turkalj submitted the reports, which followed the account in Čelić's report of 26 August 1995, to Sačić. In 1996, Sačić became assistant minister for crime police matters.[2449] In 2001, Žganjer initiated investigations into the Grubori incident which did not result in any judgements to date.

2300. Based on the foregoing, the Trial Chamber finds that on the morning of 26 August 1995, in Romanić's office, Sačić advanced a story about a terrorist clash indifferent as to whether it was true or not and convinced Jarnjak that there should be no on-site investigation in relation to the bodies found in Grubori. Prior to talking to Jarnjak, Sačić had talked to Markač. Subsequently, considering how events unfolded, a senior MUP official involved in crime police matters furthered this by intervening with Cetina that there would be no on-site investigation team coming to Grubori. There exists reasonable doubt about whether it was Markač or Sačić who initiated that there should be no on-site investigation. However, even if Sačić initiated it without Markač's

[2449] See exhibit D2038.



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knowledge, Markač was regularly informed about Sačić's actions, notably also before Sačić spoke to Jarnjak. Sačić then argued his position to Čermak. Despite hearing from Romanić that there should be an on-site investigation and hearing Sačić's strong opposition to any efforts aimed at establishing what had really happened, Čermak furthered Sačić's position by mentioning a terrorist clash in Grubori in his UNTV interview. Čermak's statements to UNTV were a mixture between information received from Romanić, information received from Sačić (especially that contained in exhibit P575) and conflating matters (prisoner, body found with hands tied). Čermak also added details (found body likely being an HV soldier). The Trial Chamber finds that Čermak deliberately added this detail to bolster the suggestion of Serb terrorist activities in the area. The Trial Chamber notes the congruent accounts of Čermak on the one hand (UNTV interview) and Sačić on the other hand (dictated report). However, the Trial Chamber has received insufficient evidence to conclude that Čermak contributed to synchronizing the Special Police reports with his statements in the UNTV interview. Markač then furthered the false story by confronting Čelić with a view to receiving a new report together with Sačić and by forwarding a false report to Červenko on 26 August 1995.

2301. Considering the various pieces of evidence received about the visit to Grubori on 27 August 1995, the Trial Chamber is convinced that Čermak suggested to the sanitation team that weapons be placed next to the bodies. Čermak then unsuccessfully tried to convince Bilobrk that an on-site investigation should be performed. Later, Čermak suggested that journalists film the crime scene. Čermak then gave a media statement in Grubori further advancing the terrorist story. The Trial Chamber gained the impression that Čermak was unaware of the legal requirements of an on-site investigation and that he was primarily concerned with keeping the appearance of an investigation which would confirm the terrorist story. In line with the furthering of the terrorist story in his UNTV interview irrespective of its veracity, Čermak's conduct on 27 August 1995 reflected his motivation to create the impression that things were being investigated and not covered up. In August and September 1995, the terrorist story was further strengthened by renewed reports by the Lučko unit group leaders upon orders from Markač as well as Čermak's statements to the international community confirming Čelić's new report. The Trial Chamber has also considered exhibit P505, a letter of 13 March 1996 allegedly written by Markač. The letter states that Serb terrorists executed



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civilians in Grubori on 25 August 1995. The Markač Defence in challenging P505 argues that this letter was never sent out.[2450] The Trial Chamber allows for this possibility but considers the drafting of such a letter, even if it was not sent out, an expression of the atmosphere of the cover-up. Until 2001, the Grubori incident was not investigated.

2302. In relation to the incident in Ramljane on 26 August 1995, the Special Police used a similar methodology in order to explain the destruction and furthered it by later reports confirming another terrorist clash. Markač knew immediately after the Ramljane search that there had been arson.[2451] Nevertheless, he advanced another terrorist story to cover-up the crimes by sending a report to Červenko that did not correspond with what had happened on the ground and by not pursuing an investigation.

### *6.2.7 Conclusion*

2303. The Trial Chamber recalls the charges with regard to the joint criminal enterprise, as set out in the Indictment and summarized in chapter 6.2.1. Based on the findings made in chapters 6.2.2-6.2.6, and considering its findings on crimes that were committed in the Krajina during the Indictment period, the Trial Chamber will determine whether the elements of a joint criminal enterprise have been proven, starting with a common objective amounting to or involving the commission of one or more crimes provided for in the Statute. It will then determine whether there was a plurality of persons who participated in the realization of the common criminal objective and, if so, it will identify who these persons were, by name, by categories, or by groups. Further, the Trial Chamber will determine which persons or categories of persons, if any, the members used to carry out the crimes within the objective of the joint criminal enterprise.

2304. During the meeting at Brioni on 31 July 1995, attended by Franjo Tuđman and a number of high-ranking military officials, including Šušak, Červenko, Gotovina, and Markač, Tuđman emphasized the importance of leaving the civilians "a way out". He stated:

[2450] T. 29338.
[2451] See also Chapter 4.2.15.



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> But I've said, and we've said it here, that they should be given a way out here … Because it is important that those civilians set out, and then the army will follow them, and when the columns set out, they will have a psychological impact on each other.

Gotovina responded:

> A large number of civilians are already evacuating Knin and heading towards Banja Luka and Belgrade. That means that if we continue this pressure, probably for some time to come, there won't be so many civilians just those who have to stay, who have no possibility of leaving.

2305. The Trial Chamber has carefully considered the minutes of the Brioni meeting in chapter 6.2.2. It here further considers them in light of subsequent events, as found by the Trial Chamber (see in particular chapters 4.4 and 5.8.2(i)). Within days of the discussion at Brioni, Gotovina's words became a reality. Operation Storm was launched in the early morning of 4 August 1995 with artillery attacks on a number of towns and villages in the Krajina, including Knin. As the Trial Chamber has found in chapter chapters 4.4 and 5.8.2(i), in at least some of these attacks the entire towns were treated as targets for the artillery. These attacks therefore constituted unlawful attacks on civilians and civilian objects. As a result, large parts of the civilian population of Knin, Benkovac, Obrovac, and Gračac, amounting to at least 20,000 people, were forcibly displaced from their homes and fled across the border to Bosnia-Herzegovina and Serbia. As the Trial Chamber has found in chapter 4.5 and 5.4.2 this constituted deportation.

2306. A few weeks after Operation Storm, Tuđman spoke at a public gathering in Knin. With regard to the town he stated:

> Up until […] when it has been captured by Turkish Ottoman conquerors and together with them the ones who stayed till yesterday in our Croatian Knin. But today it is Croatian Knin and never again it will go back to what was before, when they spread cancer which has been destroying Croatian national being in the middle of Croatia and didn't allow Croatian people to be truly alone on it's [sic] own, that Croatia becomes capable of being independent and sovereign state. […] They were gone in a few days as if they had never been here, as I said […] They did not even have time to collect their rotten money and dirty underwear.

2307. At the time of Tuđman's speech, Operation Storm was concluded. However, Croatian military forces and Special Police continued to be active in the Krajina, in



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particular with mop-up operations. Furthermore, these forces continued to target the Krajina Serb civilian population. As the Trial Chamber has found in chapters 4 and 5, Croatian military forces and Special Police committed a large number of murders, inhumane acts, cruel treatment, and acts of destruction and plunder against Krajina Serb civilians throughout August and September 1995.

2308. During these months, members of the Croatian political and military leadership were active in imposing discriminatory measures against Serbs, particularly targeting those Serbs who had left and were leaving the Krajina. In chapter 5.8.2(a), the Trial Chamber has found that the imposition of restrictive and discriminatory measures with regard to Krajina Serb property and housing that had been left behind, considered in conjunction with deportation and other crimes against Krajina Serbs, constituted persecution as a crime against humanity. The Trial Chamber has received much evidence with regard to the Croatian policy to place Croats in the homes of Serbs who had left in August and September 1995, and thereby repopulating formerly Serb areas with Croats and at the same time preventing the return of Serbs. This has been reviewed and analyzed in particular in chapter 6.2.3. The issue of repopulating the empty areas in the Krajina with Croats was widely discussed at meetings between Tuđman, Radić, and the military leadership, including Šušak and Červenko. In this respect, the Trial Chamber recalls in particular P463 and P464, reviewed in detail in chapter 6.2.3. Further, Tuđman expressed this idea in various public statements. For example, in a televised address on 26 August 1995 (D1451), Tuđman called upon the Croatian people not to destroy the homes of Serbs who had left as this was now Croatian property.

2309. Some witnesses testified that there were security and safety reasons for preventing the Serb population from returning to the Krajina. The Trial Chamber acknowledges that all measures taken at the time, were taken in the context of an armed conflict that had been ongoing in the territory of the former Yugoslavia for many years and of Croatia having faced an occupation of part of its territory. However, it was the Serb civilian population that was targeted and forced out of the Krajina. The failure by members of the Croatian political and military leadership to make the distinction between the civilian population and the military goes to the very core of this case.

2310. In assessing which crimes were intended and within the purpose of the joint criminal enterprise, the Trial Chamber has considered the evidence reviewed in chapters 6.2.2-6.2.6 and recalls its findings there. It further recalls its findings with regard to



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crimes committed in the Krajina during the Indictment period (see chapters 4 and 5). The Trial Chamber considers the discussions at the Brioni meeting, at which the participants discussed the importance of the Krajina Serbs leaving as a result and part of the imminent attack. Further, it infers from the mass exodus of the Krajina Serb population within days of the launching of Operation Storm and the immediate efforts, on a policy and legislative level, to prevent the population from returning, that members of the Croatian military and political leadership intended to force the Krajina Serbs from their homes. Based on the foregoing, the Trial Chamber finds that the crimes of deportation and forcible transfer were central to the joint criminal enterprise. The acts taken by members of the political and military leadership in this respect aimed to target, and did target Krajina Serbs and were therefore discriminatory. The Trial Chamber therefore finds the objective of the joint criminal enterprise also amounted to the crime of persecution (deportation and forcible transfer).

2311. The minutes of the Brioni meeting show that the participants were aware of the difficult situation for the Krajina Serbs, in particular in Knin, and that they knew that it would not require much effort to force them out. Under these circumstances, members of the Croatian political and military leadership took the decision to treat whole towns as target for the initial artillery attack. Deportation of the Krajina Serb population was to a large extent achieved through the unlawful attacks against civilians and civilian objects in Knin, Benkovac, Obrovac, and Gračac, which the Trial Chamber has found were carried out on discriminatory grounds. Based on the foregoing, the Trial Chamber finds that unlawful attacks against civilians and civilian objects, as the crime against humanity of persecution, were also intended and within the purpose of the joint criminal enterprise.

2312. Immediately following the forcing out of the Krajina Serbs, members of the Croatian political and military leadership took various measures, on a policy and legislative level, aimed at preventing them from returning. This included restrictive and discriminatory measures with respect to the Krajina Serbs' property and housing. These measures aimed at ensuring that the removal of the Krajina Serb population became permanent. The Trial Chamber therefore finds that the joint criminal enterprise also amounted to, or involved, imposition of restrictive and discriminatory measures as the crime against humanity of persecution.



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2313. The Trial Chamber has found in chapters 4.2, 5.5.2, and 5.6.2 that Croatian military forces and Special Police committed acts of destruction and plunder on a large scale in the Krajina during the Indictment period. However, the evidence, in particular the statements made at meetings and in public reviewed in chapters 6.2.2-6.2.5, does not indicate that members of the Croatian political and military leadership intended that property inhabited or owned by Krajina Serbs should be destroyed or plundered. Further, it does not indicate that these acts were initiated or supported by members of the leadership. Rather, the evidence includes several examples of meetings and statements (see for example D409, P470, and D1451), indicating that the leadership, including Tuđman, disapproved of the destruction of property. Based on the foregoing, the Trial Chamber does not find that destruction and plunder were within the purpose of the joint criminal enterprise.

2314. Based on the foregoing, the Trial Chamber finds that members of the Croatian political and military leadership shared the common objective of the permanent removal of the Serb civilian population from the Krajina by force or threat of force, which amounted to and involved persecution (deportation, forcible transfer, unlawful attacks against civilians and civilian objects, and discriminatory and restrictive measures), deportation, and forcible transfer. The purpose of the joint criminal enterprise required that the number of Serbs remaining in the Krajina be reduced to minimum but not that the Serb civilian population be removed in its entirety.

2315. Based on its findings in chapter 6.2.2 with regard to the Brioni meeting and its findings with regard to the unlawful attacks against civilians and civilian objects on 4 and 5 August 1995, the Trial Chamber finds that the joint criminal enterprise came into existence no later than at the end of July 1995. Further, considering its findings in chapters 6.2.3 and 6.2.4 and inferring from the evidence with regard to crimes committed in the Krajina in August and September 1995 (see chapters 4 and 5), the Trial Chamber finds that the joint criminal enterprise continued throughout the Indictment period.

2316. Franjo Tuđman was a leading participant at all important meetings at which matters relating to the joint criminal enterprise were discussed. He ensured that his ideas were transformed into policy and action, through his powerful position as President and Supreme Commander of the armed forces. However, some of his ideas and plans were adapted, out of concern for strong criticism by the international community or because



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their implementation would entail an open disregard for basic legal principles. As demonstrated by numerous statements in public or at meetings, reviewed in particular in chapter 6.2.3, Tuđman intended to repopulate the Krajina with Croats. Considering the discussions at the Brioni meeting and the events that subsequently took place, the Trial Chamber finds that he, for this purpose, intended to remove the Serb civilian population by force, including through the crimes within the purpose of the joint criminal enterprise. Tuđman engaged, recruited, and used parts of the Croatian political and military apparatus to achieve the objective. This included the Croatian military forces, including the HV (and VP) and the Special Police. Based on the foregoing, the Trial Chamber finds that Franjo Tuđman, who was the main political and military leader in Croatia before, during, and after the Indictment period, was a key member of the joint criminal enterprise.

2317. Around him Tuđman gathered a group of political and military officials who worked together with him to achieve the objective. This included Gojko Šušak, the Minister of Defence and a close associate of Tuđman's, and Zvonimir Červenko, the Chief of the HV Main Staff. Šušak and Červenko participated in important meetings with Tuđman at which the objective and its implementation were discussed. This included in particular the Brioni meeting but also later meetings in August and September at which discussions were held considering how military and administrative organisation and deployment of military units could play a part in resolving "Croatia's demographic situation", that is repopulating the Krajina, which had been emptied of Serbs, with Croats. Based on the foregoing, the Trial Chamber finds that Šušak and Červenko were also members of the joint criminal enterprise.

2318. Jure Radić participated in numerous meetings with Tuđman and others at which matters relating to the joint criminal enterprise were discussed. As the Deputy Prime Minister and the Minister for Reconstruction and Development at the time, Radić held an important position and used that position to further Tuđman's ideas of repopulating the Krajina with Croats. He was tasked with organizing programs for the "return" of Croats to the Krajina. These programs would provide Croats with the property and housing of the Krajina Serbs who had left. The evidence does not establish that Radić had any involvement with Operation Storm or military matters. His role and actions became important once the Krajina Serbs had left their homes and Croatia. The Trial Chamber finds that Radić was also a member of the joint criminal enterprise.



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2319. The Trial Chamber finds that, in addition to the persons mentioned above, the members of the joint criminal enterprise included others in the Croatian political and military leadership, namely those participants in the Presidential meetings described in chapters 6.2.2-6.2.4 who were close associates of Tuđman's. The Trial Chamber will deal with the issue of whether the Accused were members of the joint criminal enterprise in chapters 6.3-6.5.

2320. The Trial Chamber finds that high-ranking Croatian military officials, including Tuđman, Šušak, and Červenko used the Croatian military forces and the Special Police to commit the crimes within the objective of the joint criminal enterprise. The Croatian military forces included the HV and VP, but also HVO units which had been subordinated to HV commanders. At the Brioni meeting, Tuđman and high-ranking military officials discussed how the military forces should be used to ensure that not only the SVK but also the Serb civilian population would leave the Krajina. One of the means ultimately used was in itself a crime, namely unlawful attacks against civilians and civilian objects in a number of towns in the Krajina. These attacks were carried out through the artillery of the HV, with units under the Split MD and attached to the Special Police. The Trial Chamber does not find that the MUP forces, with the exception of the Special Police, were used by members of the joint criminal enterprise to commit crimes. The Trial Chamber will therefore not further consider any incidents for which it found that MUP forces, excluding the Special Police, were the perpetrators.

2321. The Trial Chamber finds that the common objective did not amount to, or involve the commission of the crimes of persecution (disappearances, wanton destruction, plunder, murder, inhumane acts, cruel treatment, and unlawful detentions), destruction, plunder, murder, inhumane acts, and cruel treatment. In chapters 6.3-6.5, the Trial Chamber will determine whether the Accused were members of the joint criminal enterprise and, if so, whether they were aware that the aforementioned crimes were a possible consequence of the execution of the joint criminal enterprise, and participated with that awareness.



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## 6.3 Ante Gotovina's liability

### *6.3.1 Introduction*

2322. The Trial Chamber considered in particular paragraphs 17 and 18 of the Indictment in relation to Ante Gotovina's alleged contribution to the JCE. It further considered that parts of these paragraphs overlapped in substance when describing the same alleged conduct. Accordingly, the Trial Chamber has restructured Gotovina's alleged conduct as presented below.

### *6.3.2 Gotovina's command over Split Military District forces and his participation in planning their operational use*

2323. According to the Indictment, Ante Gotovina contributed to the JCE by exercising command and control over units of or attached to the Split MD and participating in planning their operational use during Operation Storm and its aftermath.[2452]

2324. In this respect, the Trial Chamber recalls its findings in Chapters 3.1.1, 3.1.2, 4.4.3, 5.8.2 (i), and 6.2.2, in particular that Gotovina was the commander of the Split MD during the times relevant to the Indictment (3.1.1), that he was among the participants at the Brioni meeting on 31 July 1995 (6.2.2), and that the HV's shelling of several towns on 4 and 5 August 1995 constituted unlawful attacks on civilians and civilian objects (5.8.2 (i)). Based on P1125, reviewed in chapter 4.4.3, the Trial Chamber finds that Gotovina ordered this unlawful attack.

[2452] Indictment para. 17 (a), "establishing, organising, commanding, ordering, directing, facilitating, participating in, supporting, maintaining and/or operating the HV, military police, Special Police, intelligence, security and other forces through which the objectives of the joint criminal enterprise were pursued and implemented and by which various crimes charged in this Joinder Indictment, such as forcible transfer and deportation, plunder and destruction of property, killings and inhumane treatment were committed"; Indictment, para. 18 (a), "from at least July 1995, participating in the planning and preparation of the operational use of the Croatian forces in Operation Storm and the continuing related operations and/or actions until at least 30 September 1995"; Indictment, para. 18 (b), "from at least 4 August to 30 September 1995, exercising command and control over all units, elements and members of the HV that comprised or were attached to the Split Military District, and such other forces as were subordinated to his command and operated and/or were present in the southern portion of the Krajina region, by directing, facilitating, supporting and issuing orders to them during Operation Storm and the continuing related operations and/or actions"; Indictment, para. 18 (c), "until at least 30 September 1995, retaining command and control of the HV that continued to be deployed in the southern portion of the Krajina region within the Split Military District".



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*6.3.3 Creating and supporting discriminatory policies against Serbs*

2325. According to the Indictment, Ante Gotovina contributed to the JCE by creating and/or supporting Croatian policies used as bases or vehicles for various actions against persons of Serb ethnicity.[2453]

2326. As far as Gotovina is concerned, the Trial Chamber has received no, or insufficient, evidence supporting the allegations in paragraph 17 (b) of the Indictment. The Trial Chamber therefore finds that they have not been proven.

*6.3.4 Disseminating information intended to cause the departure of Serbs*

2327. According to the Indictment, Ante Gotovina contributed to the JCE by supporting and/or participating in the dissemination of (false) information and propaganda to Krajina Serbs that was intended to cause them to leave the area.[2454]

2328. As far as Gotovina is concerned, the Trial Chamber has received no, or insufficient, evidence supporting the allegations in paragraph 17 (c) of the Indictment. The Trial Chamber therefore finds that they have not been proven.

*6.3.5 Condoning, minimizing or failing to prevent or punish crimes committed by subordinates against Serbs*

2329. According to the Indictment, Ante Gotovina contributed to the JCE by e.g. condoning, denying, minimizing, concealing, failing to prevent crimes committed by his subordinates against Serbs, and failing to follow up on allegations and/or investigations of crimes.[2455] The Trial Chamber will in turn analyse the evidence of measures

[2453] Indictment para. 17 (b), "initiating, promoting, planning, preparing, participating in, supporting and/or encouraging the development, formulation, dissemination and/or implementation of Croatian political, governmental and/or military policies, programs, plans, decrees, decisions, regulations, strategies or tactics which were used as bases or vehicles for various actions against or to the disadvantage of Serbs, such as depriving them of fundamental human rights, housing, property and/or humanitarian assistance, as part of the joint criminal enterprise".
[2454] Indictment para. 17 (c), "instigating, supporting, encouraging, facilitating and/or participating in the dissemination of information, false information and propaganda to the Krajina Serbs that was intended to cause them to leave the area".
[2455] Indictment para. 17 (d), "promoting, instigating, facilitating, encouraging and/or condoning the perpetration of violent acts against Serbs and the creation of a climate of fear amongst those Serbs who had remained"; Indictment, para. 17 (e), "promoting, instigating, permitting, encouraging and condoning the commission of crimes against Serbs by failing to report and/or investigate crimes or alleged crimes against them, to follow up on such allegations and/or investigations, and/or to punish or discipline subordinates and others in the Croatian authorities and forces over whom they possessed effective control



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Gotovina took in relation to the prevention of crimes, his awareness of crimes allegedly committed by his subordinates, and measures hentook in relation to following up on crimes.

2330. The Trial Chamber first turns to the measures Gotovina took in relation to the prevention of crimes by his subordinates. Gotovina approved an undated plan of political activity measures of OG North, prepared by the Assistant Commander of the Political Activity of OG North, Petar Škorić.[2456] According to the plan, by 4 August 1995 the following was to occur. "Commander" was to familiarize members with proper conduct in occupied settlements and the handling of war booty. Unit Commanders and Assistant Commanders for Political Activity were to familiarize units with the need to prevent the torching and destruction of larger populated areas and towns. "Commander" was also to advise members of units on how to treat civilians and POWs in accordance with the Geneva Convention.[2457]

2331. On 9 August 1995, Gotovina ordered that the 72nd VP Battalion, along with the MUP, protect and monitor the territory, be responsible for any other military and police tasks, and secure the Split MD Forward Command Post and the OG command posts in Otrić and Sajković.[2458] Gotovina also ordered that commanders at any level and the SIS officers in cooperation with VP be responsible for prevention of any behaviour "not in accordance with positive legislation which may result in disruption of the security of the commands, units and individuals", that disciplinary measures be introduced against irresponsible individuals, and that detainees be brought to the 72nd VP Battalion's premises.[2459]

2332. On 10 August 1995, Gotovina issued an order on compliance with military disciplinary measures to OGs Zadar and Šibenik. On the basis of information received

for crimes committed against Serbs"; Indictment, para. 17 (f), "engaging in, encouraging, facilitating or supporting efforts to deny, conceal and/or minimise crimes committed by the Croatian authorities and forces against Serbs, including the provision of false, incomplete or misleading information to international organisations, monitors, investigators and the public"; Indictment, para. 18 (d), "permitting, denying and/or minimizing the ongoing criminal activity, including participating in the reporting of false, incomplete or misleading information regarding crimes committed, while knowing that widespread destruction and plunder of property belonging to Serb civilians and the unlawful killing and inhumane treatment of Krajina Serbs were ongoing"; Indictment, para. 18 (e); "failing to establish and maintain law and order among, and discipline of, his subordinates, and neither preventing nor punishing crimes committed against the Krajina Serbs".

[2456] Vladimir Gojanović, T. 3046-3053; D201 (Plan of political activity measures of OG North, approved by Gotovina, undated).

[2457] D201 (Plan of political activity measures of OG North, approved by Gotovina, undated), p. 2.

[2458] D281 (Gotovina's order on active defence, 9 August 1995), pp. 10, 14.



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from the areas newly occupied by the HV, he ordered that arbitrary movement of HV members in those areas, without the knowledge of the superior commander, be prohibited in order to prevent theft and undisciplined conduct and to save lives. He further ordered the OGs to take all necessary measures to implement military discipline and maintain order in the area of responsibility, to prevent arson and all other illegal acts, and to take resolute measures against anybody who would conduct himself in an undisciplined manner. He also ordered HV members to assist hygiene and sanitation teams in their areas of responsibility.[2460] Pursuant to Gotovina's order of 10 August 1995, Commander Daniel Kotlar issued an implementation order on 12 August 1995.[2461]

2333. **Ljiljana Botteri**, Assistant Commander for Legal Affairs of the Split MD during and after Operation Storm,[2462] testified that Gotovina chaired meetings of the Split MD Command Team attended by Botteri, and other deputies, assistants, and chiefs of departments in which he always raised issues relating to law and order, along with sending out orders reminding all military units to conduct themselves within the rules of international humanitarian law.[2463]

2334. The Trial Chamber now turns to evidence received specifically indicating that Gotovina was aware of alleged crimes being committed by his subordinates. **Alain Forand**, UNCRO Sector South Commander from 8 July 1995 to 10 October 1995,[2464] testified that he met Gotovina on two occasions before the HV attack of 4 August 1995.[2465] At the first meeting, which took place in Zadar before Forand assumed command of Sector South, Gotovina gave a "history lecture" to Forand and his predecessor General Kotil, and expressed his dissatisfaction with the UN, accusing it of bias.[2466] Gotovina denied that his troops were in the Livno valley in Bosnia-

[2459] D281 (Gotovina's order on active defence, 9 August 1995), p. 16.
[2460] D204 (Order on compliance with military disciplinary measures by Gotovina, 10 August 1995), pp. 1-2.
[2461] D205 (Order on carrying out military disciplinary measures by Kotlar, 12 August 1995).
[2462] P1005 (Ljiljana Botteri, witness statement, 20 January 2004), paras 11, 30-31; P1006 (Ljiljana Botteri, witness statement, 8 November 2007), para. 15; P1017 (Report on disciplinary measures and penalties for the third quarter of 1995 signed by Ljiljana Botteri, 10 November 1995), p. 1.
[2463] P1005 (Ljiljana Botteri, witness statement, 20 January 2004), para. 48; P1006 (Ljiljana Botteri, witness statement, 8 November 2007), paras 15, 24.
[2464] P330 (Alain Forand, witness statement, 20 August 1996), pp. 2, 15; P333 (Alain Forand, witness statement, 25 January 2008), para. 2; Alain Forand, T. 4098-4099, 4180, 4186.
[2465] P331 (Alain Forand, witness statement, 29 September 1997), p. 2; D346 (Alain Forand's interview in Globus newspaper, 12 March 2004), pp. 4-5.
[2466] P331 (Alain Forand, witness statement, 29 September 1997), p. 2; Alain Forand, T. 4106, 4183.



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Herzegovina and that they were firing artillery at civilians in the Cetina valley.[2467] Gotovina said that there were Bosnian Croat troops there and that he did not have any troops there. After the meeting, Gotovina's attitude changed and he became friendly, speaking French with Forand.[2468] On 9 July 1995, Forand sent a letter of protest to Gotovina concerning six artillery rounds observed by the UN to have been fired at noon on 5 July 1995 from the HV/HVO controlled Dinara mountains into the area of Cetina in Civljane municipality.[2469] On 12 July 1995, Forand sent another letter of protest to Gotovina, complaining about 42 artillery rounds and six tank rounds which UN staff observed being fired from the HV/HVO controlled Dinara mountains into the Cetina area between 5 and 5:20 a.m. on 9 July 1995.[2470] He wrote that four civilians were injured and four homes were destroyed in an area devoid of any military targets. Also in this letter, Forand referred to previous protests and noted that Gotovina's disregard of the UN Security Council Presidential Statement of 16 June 1995 was a serious cause for concern. Forand urged Gotovina, in the interests of peace, to exercise restraint and patience and wrote that the use of force was not justified.[2471] After this letter was sent there was a period of about two weeks without shelling.[2472] At the second meeting between Forand and Gotovina, which took place on 19 July 1995, Forand complained about the shooting from the Dinara mountains into the Cetina valley to Gotovina, who again denied having anything to do with that.[2473] On 31 July 1995, Forand sent a letter to Gotovina, complaining about HV/HVO positions in Bosansko Grahovo firing artillery at a UN position in Strmica, Knin municipality, in the preceding days.[2474]

2335. On 4 August 1995, after having observed shelling in Knin from the UN compound and after having received information from his units about what was happening in Sector South, Forand sent a letter to Gotovina, requesting an immediate halt to HV shelling of Knin and other areas with civilian populations.[2475] The letter read:

[2467] P331 (Alain Forand, witness statement, 29 September 1997), p. 2; Alain Forand, T. 4107.
[2468] P331 (Alain Forand, witness statement, 29 September 1997), p. 2.
[2469] P333 (Alain Forand, witness statement, 25 January 2008), para. 3; Alain Forand, T. 4106-4107; P334 (Letter of protest from Alain Forand to Ante Gotovina, 9 July 1995).
[2470] P333 (Alain Forand, witness statement, 25 January 2008), para. 3; Alain Forand, T. 4108-4109; P335 (Letter of protest from Alain Forand to Ante Gotovina, 12 July 1995).
[2471] P335 (Letter of protest from Alain Forand to Ante Gotovina, 12 July 1995).
[2472] Alain Forand, T. 4111-4112, 4367.
[2473] P331 (Alain Forand, witness statement, 29 September 1997), pp. 2-3; Alain Forand, T. 4106, 4111; D157 (Special report of the HV forward command post in Zadar, 20 July 1995), pp. 1-2.
[2474] P333 (Alain Forand, witness statement, 25 January 2008), para. 4; P336 (Letter from Alain Forand to Ante Gotovina, 31 July 1995).
[2475] P331 (Alain Forand, witness statement, 29 September 1997), pp. 9-10; Alain Forand, T. 4114-4117, 4455-4458; D346 (Alain Forand's interview in Globus newspaper, 12 March 2004), p. 5.



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> This is to protest in the most vigorous manner the unprovoked artillery attack on Knin and the towns of Drniš, Medak, Bunic, Benkovac and Kistanje. Numerous civilian casualties have been caused as well as extensive material damage. I demand the cessation of these attacks immediately. In my opinion this aggression against unarmed civilians is completely contrary to international humanitarian law and I will document all attacks fully for investigation by international authorities.
>
> I am also protesting the seizing of numerous UN observation posts and the deliberate targeting of others. This is totally unacceptable. I demand you withdraw from the Zone of Separation. It is very clear that it was your forces that attacked the Serbs without provocation.

Forand testified about how he sought to secure the delivery of this letter by means which had proven effective in the past, and that he never received a response to it.[2476] When **Andrew Leslie**, Chief of Staff of UNCRO Sector South in Knin from 1 March to 7 August 1995 and a military officer with extensive experience in artillery,[2477] met Luković, Gotovina's liaison officer, on 7 August 1995, Luković was aware of the letter, of its content, and of its significance, but Leslie did not recall if Luković had told him when he had first seen the letter.[2478]

2336. On 5 August 1995, Forand wrote a letter to Gotovina requesting an urgent meeting with the "military governor of the region" in order to discuss a number of urgent issues such as the restoration of the UN freedom of movement, significant looting and destruction, and the care of the civilian population, including the displaced persons.[2479] In this letter, Forand also informed Gotovina about the difficult situation at the UN compound with over 700 displaced persons and 35 hospital patients sheltered there, and expressed his concern that the HV was not fully under control.[2480] The letter was sent in the same way as the one of 4 August 1995.[2481]

2337. The Trial Chamber received evidence of a meeting of HV commanders at the Knin Fortress on 6 August 1995. At this meeting, Gotovina expressed his anger about the fact that order in Knin town was not restored yet although many Croatian and

[2476] P331 (Alain Forand, witness statement, 29 September 1997), p. 10; Alain Forand, T. 4115-4116, 4122-4123, 4175, 4180-4183, 4459-4461; D346 (Alain Forand's interview in Globus newspaper, 12 March 2004), p. 5.
[2477] Andrew Leslie, T. 1930-1931, 1933-1936, 2099, 2189, 2195-2196; P84 (Report on possible violations of international humanitarian law, signed by Andrew Leslie, 12 August 1995), p. 1.
[2478] Andrew Leslie, T. 1953, 2004, 2099-2100.
[2479] P347 (Letter from Alain Forand to Ante Gotovina, 5 August 1995), p. 2.
[2480] P347 (Letter from Alain Forand to Ante Gotovina, 5 August 1995), pp. 2-3.



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foreign dignitaries were visiting town that day at 5 p.m.[2482] He stated that "the operation" was performed properly, as planned and at the highest level in the military sense, but that after "the operation" it was a "complete chaos", people acting as "spoiled children, relaxed, without any responsibility".[2483] Gotovina stressed that it is not up to the commander to make a town operational after combat, and that other authorities namely the VP, SIS, Political Activity, Health Service, and Logistics were responsible for that. He called the entire situation a "disgrace" and stated that "[b]arbarians and vandals work like that! Those who are paid with war booty! And wage war for war booty". Gotovina said that it was the task of the unit commanders from Sinj to Knin, with the help of the engineers, to get the entire road in order.[2484] Gotovina further said that the VP was in control of Knin and had set up and manned check-points, inspected vehicles, patrolled the town and established cooperation with the civilian authorities and the civilian police, until General Čermak took matters into his own hands.[2485] According to Gotovina, if Čermak was left alone, nothing would be ready by 5 p.m. and the town would be a "chaos". He asked the people present at the meeting whether they realized that the Croatian Prime Minister, the Minister of Transportation, and foreign ambassadors were coming, and if they were aware of the image that would go around the world. He stated that "[t]hey will enter into such a town through which the HV has passed and which is still under its control because the civilian authorities haven't taken over yet". With regard to security, Gotovina stressed that it must be organized and that the VP must obey, being the technical executive, the keeper of the "Rules of the Armed Forces", their implementation and application on the ground. Turning to Political Activity, Gotovina stated that he did not see any posters in the streets nor any flags on major buildings. Someone stated that things were being set up as they spoke. Gotovina responded that they should have been doing their jobs all through the night, and asked somebody what they had been doing since their arrival in Knin.[2486] Ivan Čermak said at the meeting that he "absolutely" agreed with General Gotovina, whom he described as "extremely angry", because they were both tasked to "get this in order".[2487]

[2481] Alain Forand, T. 4122.
[2482] D792 (Video and transcript of a meeting between Gotovina, Čermak, and HV officers), pp. 1-3.
[2483] D792 (Video and transcript of a meeting between Gotovina, Čermak, and HV officers), pp. 1-2.
[2484] D792 (Video and transcript of a meeting between Gotovina, Čermak, and HV officers), p. 2
[2485] D792 (Video and transcript of a meeting between Gotovina, Čermak, and HV officers), pp. 2-3.
[2486] D792 (Video and transcript of a meeting between Gotovina, Čermak, and HV officers), p. 3.
[2487] D792 (Video and transcript of a meeting between Gotovina, Čermak, and HV officers), p. 4.



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2338. On 6 August 1995, **Ivica Luković**, the Chief of the Croatian Department for Cooperation with the UN and EC for Sector South from 1992 and during 1995,[2488] also attended the meeting at the Knin Fortress at which **Karolj Dondo**, HV Liaison Officer with the UN and EC in Sector South in 1995,[2489] was also present.[2490] At the meeting, Gotovina told the commanders to consolidate and re-group their forces. According to Luković, Gotovina was very angry with the behaviour of some of the Croatian soldiers and accused the commanders of not having enough control over their men, which was shameful for the HV. Luković testified that he had seen Gotovina speak like this on previous occasions and that Gotovina was particularly sensitive about the appearance and behaviour of his soldiers.[2491] Gotovina also introduced Čermak at that meeting.[2492]

2339. **Boško Džolić**, Commander of the Joint VP Company in Knin from 5 to 12 August 1995,[2493] testified that on the same day, 6 August 1995, from an elevated position on the Knin Fortress, he saw smoke coming from some villages around Knin.[2494] **Mate Laušić**, chief of the VP administration from 5 March 1992 until 30 December 2002,[2495] testified that he met with Gotovina and Tuđman in Knin on that day (6 August 1995).[2496] Between 4 p.m. and 8 p.m., Laušić, Gotovina, and Tuđman toured the Knin and Drniš area.[2497]

2340. **Forand** had further meetings with Gotovina, who had established his headquarters in Knin, after the war.[2498] One took place at 9:20 a.m. on 8 August 1995 at

[2488] D1687 (Ivica Luković, witness statement, 1 October 2004), p. 1, paras 8, 13, 17; D1688 (Ivica Luković, witness statement, 13 August 2009), p. 1, paras 4, 6; Ivica Luković, T. 22385.
[2489] D1695 (Karolj Dondo, witness statement, 9 March 2005), p. 1, paras 1-2; D1696 (Karolj Dondo, witness statement, 18 August 2009), p. 1, para. 2.
[2490] D1687 (Ivica Luković, witness statement, 1 October 2004), para. 29; D1695 (Karolj Dondo, witness statement, 9 March 2005), para. 8; D1696 (Karolj Dondo, witness statement, 18 August 2009), para. 5.
[2491] D1687 (Ivica Luković, witness statement, 1 October 2004), para. 29.
[2492] D1687 (Ivica Luković, witness statement, 1 October 2004), para. 30.
[2493] P875 (Boško Džolić, witness statement, 18 May 2004), p. 1, paras 3, 4, 20, 21, 53; P876 (Boško Džolić, witness statement, 20 August 2008), p. 1, paras 27, 32, 33; Boško Džolić, T. 8888, 8906, 8916, 8922, 8968, 8987, 8999, 9068; P882 (Report by Major General Mate Laušić on the use of VP units in Operation Storm, 6 August 1995); D786 (Organigram of the 72nd VP Battalion from August to October 1995); D787 (Daily Order of the Joint VP Company in Knin from 5 August to 23 September 1995), pp. 7, 10, 17, 21.
[2494] P875 (Boško Džolić, witness statement, 18 May 2004), para. 29; P876 (Boško Džolić, witness statement, 20 August 2008), para. 9.
[2495] P2159 (Mate Laušić, witness statement, 11 August 2004), p. 1, paras 1, 37-38, 48, 60.
[2496] P2159 (Mate Laušić, witness statement, 11 August 2004), paras 236-237.
[2497] P2159 (Mate Laušić, witness statement, 11 August 2004), para. 239.
[2498] P331 (Alain Forand, witness statement, 29 September 1997), pp. 18, 20; Alain Forand, T. 4504; D346 (Alain Forand's interview in Globus newspaper, 12 March 2004), pp. 4-5.



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the Knin fortress.[2499] Forand testified that at this meeting Gotovina was clearly elated and boasted about the Croatian military success.[2500] Forand complained about his lack of freedom of movement and Gotovina told him that he had to limit UNCRO's freedom of movement to the main roads for their own safety.[2501] Forand also complained about the lack of discipline of Gotovina's troops, the looting and arson taking place in Knin, and the indiscriminate shooting of weapons at all times of day.[2502] Gotovina referred Forand to Čermak for these and all other complaints.[2503] Gotovina said that Čermak would remain in Knin until the civilian authority was established.[2504] Forand did not remember that Gotovina referred to Čermak as the military governor, but did portray an image to Forand that Čermak was in charge of the Knin region.[2505] Regarding internally displaced persons, Gotovina indicated that all former members would be required to give a statement in an effort to identify war criminals, and that all non-war criminals would be registered and then be free to leave or remain as they wished.[2506]

2341. According to a report of 9 August 1995 from Mirko Klarić of the 6th Home Guards Regiment to Gotovina, on 6 August 1995, in the Miočić-Biočić-Kričke area in Drniš municipality, there was an incursion by soldiers and civilians from the direction of Drniš (from the 142nd Home Guard Regiment's area of responsibility), which resulted in raids on houses, torching, destruction, and the capture of combat hardware and other material means.[2507]

[2499] P331 (Alain Forand, witness statement, 29 September 1997), p. 18; P333 (Alain Forand, witness statement, 25 January 2008), para. 7; Alain Forand, T. 4126-4128, 4307, 4504, 4521; P359 (UNCRO Sector South daily situation report, 8:30 p.m., 8 August 1995), pp. 2-3.
[2500] P331 (Alain Forand, witness statement, 29 September 1997), p. 18; D346 (Alain Forand's interview in Globus newspaper, 12 March 2004), p. 5.
[2501] Alain Forand, T. 4307-4308; P331 (Alain Forand, witness statement, 29 September 1997), p. 18; P357 (UNCRO Sector South report, 12 p.m., 8 August 1995), p. 2; P359 (UNCRO Sector South daily situation report, 8:30 p.m., 8 August 1995), p. 3; D346 (Alain Forand's interview in Globus newspaper, 12 March 2004), p. 4.
[2502] P331 (Alain Forand, witness statement, 29 September 1997), p. 18; P333 (Alain Forand, witness statement, 25 January 2008), para. 7; Alain Forand, T. 4127, 4201, 4203, 4505; D346 (Alain Forand's interview in Globus newspaper, 12 March 2004), p. 4.
[2503] P333 (Alain Forand, witness statement, 25 January 2008), para. 7; Alain Forand, T. 4126-4128, 4186, 4198; P357 (UNCRO Sector South report, 12 p.m., 8 August 1995), p. 2; P359 (UNCRO Sector South daily situation report, 8:30 p.m., 8 August 1995), p. 3; D346 (Alain Forand's interview in Globus newspaper, 12 March 2004), p. 4.
[2504] P359 (UNCRO Sector South daily situation report, 8:30 p.m., 8 August 1995), p. 3.
[2505] Alain Forand, T. 4126-4128.
[2506] P359 (UNCRO Sector South daily situation report, 8:30 p.m., 8 August 1995), p. 3.
[2507] P1135 (Report from Mirko Klarić, 9 August 1995), p. 1.



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2342. **Marko Rajčić**, the chief of artillery of the Split MD from April 1993 to June 1996,[2508] testified that officers leading the departments in the MD submitted intelligence reports on the area of Operation Storm to Gotovina, as did the intelligence administration of the Main Staff.[2509] During Operation Storm, Gotovina held regular briefing meetings with the commanders and chiefs from the MD command in the evenings.[2510] The Deputy Commander in charge of political affairs attended these meetings, but the VP were rarely present.[2511] A representative of the SIS officers, who were among HV combat units during the Operation, was present at these meetings and informed Gotovina of the situation on the ground.[2512] Gotovina was not present at the briefing on 8 August 1995, and briefly dropped in during the briefing on 9 August 1995.[2513] Rajčić was in charge of the briefings between 8 and 11 August 1995 at Sajković, as Gotovina had told Rajčić that he needed to be elsewhere, outside of the area.[2514]

2343. On 12 August 1995, Captain Mario Tomasović, of the forward command post in Zadar, issued a warning on behalf of the Assistant Commander for Political Affairs of the Split MD to the assistant commanders for political affairs of the Sajković, Otrić and Vrba OGs, and to the 72nd VP Battalion, with the Commander of the Split MD and the Commander of the Knin Garrison copied for information. Tomasović noted that the irresponsibility and inappropriate acts of individual soldiers, NCOs and officers had brought into question the success of Operation Storm and compromised the HV and Croatia. He further noted that for this reason and following the policy of President Tuđman and the MoD, the continued torching and destruction of facilities and property, killing of livestock, confiscation of property and inappropriate conduct towards remaining civilians, POWs, and peace-keepers in the "liberated territory" had to be immediately prevented.[2515] On 14 August 1995, Captain Vinko Šupe, of the Drniš military post 1108 in the Split MD, issued a similar warning to all assistant commanders for political affairs of the 142nd Home Guard Regiment.[2516] On the same day, Acting

[2508] D1425 (Marko Rajčić, witness statement, 13 February 2009), para. 1; Marko Rajčić, T. 16236, 16275; P2323 (VP official note of Rajčić interview, 11 July 2008), p. 1.
[2509] Marko Rajčić, T. 16459-16460.
[2510] Marko Rajčić, T. 16488, 16504.
[2511] Marko Rajčić, T. 16488, 16504-16505.
[2512] Marko Rajčić, T. 16488-16489, 16495.
[2513] Marko Rajčić, T. 16496.
[2514] Marko Rajčić, T. 16496, 16505.
[2515] P918/D645 (Warning issued by Captain Mario Tomasović, 12 August 1995), pp. 1-2.
[2516] D647 (Warning issued by Captain Vinko Šupe, 14 August 1995), pp. 1-3.



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Commander of the 112th Zadar Brigade Captain Ivan Ivković also issued a similar warning to his subordinate units.[2517]

2344. As reviewed in Chapter 6.2.5, on 17 August 1995, Morić informed Laušić of burning of houses and theft of property in the liberated area occurring on a daily basis. This information was sent to, among others, Gotovina the next day.[2518]

2345. Another meeting between Gotovina and **Forand** took place on 5 September 1995, at 10:15 a.m., at Gotovina's request.[2519] Forand testified that Gotovina was in a very expansive mood, and wanted to show him his new office, which he said would be his for the winter.[2520] Forand's deputy commander and his senior liaison officer Tymchuk were present as well.[2521] Forand asked Gotovina why, as a military man, he did not put an end to the ongoing looting and burning of houses.[2522] Gotovina responded that he could not control some of the things that were going on, and that it was a way for his people (military and civilian) to take revenge for Serb actions in 1991.[2523] Forand testified that it was clear that Gotovina knew who was committing the crimes, but it seemed to him that Gotovina had difficulty controlling the situation. Gotovina did not appear to be happy about what was happening because it led to a negative portrayal of the HV.[2524] Forand testified that Gotovina's main message at this meeting concerned the refugees at the UN compound, as he indicated that Forand was harbouring some war criminals who should be handed over to Croatian authorities.[2525] In addition, the Trial Chamber has considered the documentary evidence P396 (reviewed in Chapter 6.4.6).

[2517] D648 (Warning issued by Captain Ivan Ivković, 14 August 1995), pp. 1-3.
[2518] P877 (Order by Major General Mate Laušić on cooperation with MUP accompanied by a letter from Joško Morić, 18 and 17 August 1995), pp. 1-3.
[2519] P331 (Alain Forand, witness statement, 29 September 1997), pp. 18, 25-26; P333 (Alain Forand, witness statement, 25 January 2008), para. 8; Alain Forand, T. 4168-4169, 4253, 4504; P383 (UNCRO Sector South daily situation report, 9:30 p.m., 5 September 1995), p. 3; P384 (UNCRO Sector South daily situation report, 11:15 a.m., 6 September 1995), p. 4; P407 (Letter from Ante Gotovina to General Zvonimir Červenko, 13 September 1995), p. 1.
[2520] P331 (Alain Forand, witness statement, 29 September 1997), p. 26; P333 (Alain Forand, witness statement, 25 January 2008), para. 8; P383 (UNCRO Sector South daily situation report, 9:30 p.m., 5 September 1995), p. 3; P384 (UNCRO Sector South daily situation report, 11:15 a.m., 6 September 1995), p. 4.
[2521] P331 (Alain Forand, witness statement, 29 September 1997), p. 26; Alain Forand, T. 4168-4169.
[2522] P331 (Alain Forand, witness statement, 29 September 1997), pp. 18-19; P333 (Alain Forand, witness statement, 25 January 2008), para. 8.
[2523] P331 (Alain Forand, witness statement, 29 September 1997), p. 19; P333 (Alain Forand, witness statement, 25 January 2008), para. 8; P383 (UNCRO Sector South daily situation report, 9:30 p.m., 5 September 1995), p. 4.
[2524] P331 (Alain Forand, witness statement, 29 September 1997), p. 19.
[2525] P331 (Alain Forand, witness statement, 29 September 1997), p. 26; P383 (UNCRO Sector South daily situation report, 9:30 p.m., 5 September 1995), pp. 3-4; P384 (UNCRO Sector South daily situation report, 11:15 a.m., 6 September 1995), p. 4.



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2346. **Lennart Leschly**, the Head of the ECMM RC Zagreb from 6 July 1995 and throughout Operation Storm,[2526] testified that in a meeting with Ante Gotovina during the week of 17-23 September 1995, Gotovina criticized the international community, and said that it had no right to what he called the "moral slapping" of Croatia.[2527] The witness testified that Gotovina told him that, "new nations are naturally nationalistic", and that "once Sector East is home" he would possibly become more liberal.[2528] Leschly testified that he also asked Gotovina if he thought that there would have been a need for a state of emergency in order to have avoided the killings, looting, and burnings, to which Gotovina replied "what killings".[2529]

2347. According to a report by the Knin ECMM team dated 20 September 1995, which also recorded this meeting, when asked about the ongoing looting, arson, and harassment, Gotovina replied that the police had to control the situation and that Croatia was a nation which still had a constitution, law, and order.[2530] The report also stated that Gotovina told those present that he did not object to Serbs living in Croatia and that any person committing crimes would be charged but he also said that he regarded it as human nature to hate an enemy who had burned, looted, and expelled one's family.[2531]

2348. **Stig Marker Hansen**, an ECMM monitor in Knin from June to September 1995 and head of ECMM Knin from approximately 5 September to 23 September 1995,[2532] testified that he also attended this meeting on 20 September 1995.[2533] The ECMM presented Gotovina with their observations that uniformed and military personnel were involved in looting.[2534] According to the witness, Gotovina expected civilian authorities

[2526] P888 (Lennart Leschly, witness statement, 6 February 2007), p. 1, para. 9; Lennart Leschly, T. 9150-9152.
[2527] P888 (Lennart Leschly, witness statement, 6 February 2007), para. 43; Lennart Leschly, T. 9162-9163; P893 (RC Zagreb weekly assessment authored by Lennart Leschly, 24 August 1995), p. 2.
[2528] P888 (Lennart Leschly, witness statement, 6 February 2007), paras 43-44; Lennart Leschly, T. 9164-9165, 9219-9221; P893 (RC Zagreb weekly assessment authored by Lennart Leschly, 24 August 1995), p. 2.
[2529] P888 (Lennart Leschly, witness statement, 6 February 2007), para. 43; Lennart Leschly, T. 9161-9164, 9226-9227; P893 (RC Zagreb weekly assessment authored by Lennart Leschly, 24 August 1995), p. 2; P895 (ECMM Knin team report, 20 September 1995), p. 1.
[2530] Lennart Leschly, T. 9166-9167, 9213-9214; P895 (ECMM Knin team report, 20 September 1995), p. 1.
[2531] Lennart Leschly, T. 9167, 9217-9218; P895 (ECMM Knin team report, 20 September 1995), p. 1.
[2532] P1283 (Stig Marker Hansen, witness statement, 18 December 1995) p. 2; P1284 (Stig Marker Hansen, witness statement, 22 August 1997), p. 2; P1285 (Stig Marker Hansen, witness statement, 24 April 2008), para. 3.
[2533] P1284 (Stig Marker Hansen, witness statement, 22 August 1997), p. 4; P1285 (Stig Marker Hansen, witness statement, 24 April 2008), para. 14; Stig Marker Hansen, T. 14928, 15046, 15054-15055.
[2534] P1284 (Stig Marker Hansen, witness statement, 22 August 1997), p. 4; P1285 (Stig Marker Hansen, witness statement, 24 April 2008), para. 14; Stig Marker Hansen, T. 14929.



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to take responsibility and authority for developments following the military operation, and that the military chain of command would not be responsible for activities undertaken by non-military persons.[2535] The witness's report of this meeting did not confirm the language used and answers given by Gotovina as mentioned by Leschly, but did confirm that Gotovina was questioned about killings, burnings, and lootings.[2536]

2349. **Witness 174** testified that he held a one-hour meeting with Ante Gotovina at the general's command post in Knin in October 1995.[2537] Witness 174 testified that during the meeting, Gotovina never disputed that criminal acts had been and were being committed in Sector South, but that Gotovina did not explicitly acknowledge the involvement of the forces under his command in these acts.[2538] Witness 174 testified that Gotovina had stated that the crimes were committed by unprofessional soldiers and could have been committed by "territorial forces".[2539]

2350. **Søren Liborius**, an ECMM Operations Officer and team leader based in Knin from 28 July 1995 until 27 November 1995,[2540] testified that ECMM met with Gotovina on 27 October 1995 in Gotovina's office in Knin.[2541] Gotovina mentioned that "something had occurred during Operation Storm which should not have occurred".[2542] Gotovina stated that the HV NCOs in terms of command and control were not properly functioning and that there was a need to educate them in order to eliminate looting and other undisciplined behaviour of the soldiers.[2543] Liborius noticed a good rapport between Gotovina and the ECMM's head of RC Zagreb, in the sense that it would be

[2535] Stig Marker Hansen, T. 14929, 15095-15096.
[2536] Stig Marker Hansen, T. 15055-15056.
[2537] P1281 (Witness 174, witness statement, 6 November 2008), pp. 3-4; D898 (Witness 174, witness statement, 25 September 2008), pp. 3-4.
[2538] P1281 (Witness 174, witness statement, 6 November 2008), pp. 3-5; D898 (Witness 174, witness statement, 25 September 2008), pp. 7-8.
[2539] P1281 (Witness 174, witness statement, 6 November 2008), pp. 4-5.
[2540] P799 (Søren Liborius, witness statement, 2 November 1995), pp. 1, 3; P800 (Søren Liborius, witness statement, 11 November 1997), p. 2; P801 (Søren Liborius, witness statement, 12 October 2005), p. 2; P803 (Søren Liborius, witness statement, 6 September 2008), para. 6; Søren Liborius, T. 8229; D741 (Diary of Liborius), p. 3.
[2541] P801 (Søren Liborius, witness statement, 12 October 2005), p. 7; P803 (Søren Liborius, witness statement, 6 September 2008), para. 11; Søren Liborius, T. 8341, 8400, 8414; P821 (Extracts of Liborius's notebook), p. 5; P822 (ECMM Knin daily report, 28 October 1995), p. 1; P823 (Parts of Liborius's notebook), p. 1; D744 (Notebook of Liborius, part II), p. 15; D749 (Letters between Croatian liaison officer and ECMM, 22 October 1995), pp. 1-2.
[2542] P800 (Søren Liborius, witness statement, 11 November 1997), p. 3.
[2543] P800 (Søren Liborius, witness statement, 11 November 1997), p. 3; P801 (Søren Liborius, witness statement, 12 October 2005), p. 7; Søren Liborius, T. 8348; P822 (ECMM Knin daily report, 28 October 1995), p. 2; P823 (Parts of Liborius's notebook), p. 4; D744 (Notebook of Liborius, part II), p. 18.



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difficult for Gotovina to just pay lip-service when it came to certain subjects.[2544] According to Liborius, Gotovina said that the Guard units under his command were not responsible for crimes committed by the HV, but that the follow-up HV troops were. Gotovina indicated that these crimes might have been committed partially out of revenge.[2545] When it came to killing, burning, and looting allegedly having been committed by Gotovina's professional troops, Gotovina was silent, and Liborius interpreted this as silent admission of a lack of control.[2546] Liborius testified that he had experienced Gotovina as a very volatile person who was rarely silent.[2547]

2351. When interviewed by the Prosecution, Čermak stated that all the reports he received from the civilian police and the VP about ongoing crimes, were also received by Gotovina, who knew about the crimes happening on the ground, since he had troops on the ground and commanders, SIS, VP, and the political administration at his disposal.[2548] Čermak stated that he met Gotovina a couple of times to point out all the illegal actions carried out by the Croatian military on the ground, and told him it had to stop.[2549] According to Čermak, Gotovina replied that he knew and that they would stop/handle it.[2550] Čermak stated that Gotovina said that the civilian structure, civilian police, and VP should deal with problems "around" Knin, because the military was in Knin itself.[2551] Commenting on Gotovina's references to bad behaviour by the HV made at the meeting at the Knin Fortress on 6 August 1995, Čermark remarked, "One thing is to say, and the other thing is to do something about it. (…) [T]hey were just talking".[2552]

2352. Daily reports for 4-9 August 1995 from the VP duty operations service at the Split MD sent to, *inter alia*, the VP administration, the commander of the Split MD, and the chief of the crime police of the 72nd VP battalion, do not mention any criminal activity or disciplinary infractions apart from traffic accidents, one disciplinary incident

[2544] Søren Liborius, T. 8353, 8355, 8427, 11301.
[2545] P801 (Søren Liborius, witness statement, 12 October 2005), p. 7.
[2546] P801 (Søren Liborius, witness statement, 12 October 2005), p. 7; Søren Liborius, T. 8353-8354, 8420-8422, 8427-8428, 11300.
[2547] P801 (Søren Liborius, witness statement, 12 October 2005), p. 7.
[2548] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 48-49; P2526 (Suspect interview with Ivan Čermak, 17 March 1998), p. 79; P2532 (Accused interview with Ivan Čermak, 7 June 2004), pp. 18-22, 54.
[2549] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 48-50, 59-60; P2532 (Accused interview with Ivan Čermak, 7 June 2004), pp. 13-15, 17-18.
[2550] P2532 (Accused interview with Ivan Čermak, 7 June 2004), pp. 15, 23.
[2551] P2532 (Accused interview with Ivan Čermak, 7 June 2004), pp. 33-35.
[2552] P2532 (Accused interview with Ivan Čermak, 7 June 2004), pp. 24, 33.



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in Šibenik on 4 August 1995, and one criminal incident in Zadar on 8 August 1995.[2553] According to daily and special reports sent by the 72nd VP Battalion between 10 August 1995 and 30 September 1995 to Gotovina, among others, crimes and disciplinary breaches were reported.[2554] While the reports often indicated that there was nothing to report in terms of crimes or disciplinary breaches, they frequently contained detailed descriptions of the safety of military road traffic.[2555] When a crime was mentioned in a report, it consistently indicated that an investigation was ongoing, that charges would be or had been filed against the perpetrators, and whether disciplinary measures had been taken by the perpetrators' superiors.[2556] Many of the reported crimes did not concern criminal behaviour against Serbs but against other Croatian soldiers.[2557]

2353. The Trial Chamber will now turn to the measures Gotovina took in relation to following up on alleged crimes committed by his subordinates. **Rajčić** testified that

[2553] P2246 (Daily report from VP duty operations service at the Split MD, 4 August 1995), pp. 1-5; P2247 (Daily report from VP duty operations service at the Split MD, 5 August 1995), pp. 1-4; P2248 (Daily report from VP duty operations service at the Split MD, 6 August 1995), pp. 1-4; P2249 (Daily report from VP duty operations service at the Split MD, 7 August 1995), pp. 1-4; P2250 (Daily report from VP duty operations service at the Split MD, 8 August 1995), pp. 1-5; P2251 (Daily report from VP duty operations service at the Split MD, 9 August 1995), pp. 1-6.
[2554] P2253 (Daily Report, 10 August 1995); P2254 (Daily Report, 11 August 1995); P2255 (Daily Report, 12 August 1995); P2256 (Daily Report, 13 August 1995); P2257 (Daily Report, 14 August 1995); P2260 (Daily Report, 17 August 1995); P2262 (Daily Report, 18 August 1995); P2264 (Daily Report, 19 August 1995); P2265 (Daily Report, 19 August 1995); P2268 (Daily Report, 21 August 1995); P2270 (Daily Report, 22 August 1995); P2272 (Daily Report, 24 August 1995); P2273 (Daily Report, 25 August 1995); P2274 (Daily Report, 26 August 1995); P2276 (Special Report, 28 August 1995); P2278 (Daily Report, 29 August 1995); P2279 (Daily Report, 30 August 1995); P2281 (Daily Report, 3 September 1995); P2285 (Daily Report, 5 September 1995); P2287 (Daily Report, 8 September 1995); P2288 (Daily Report, 9 September 1995); P2289 (Daily Report, 10 September 1995); P2291 (Daily Report, 11 September 1995); P2293 (Daily Report, 12 September 1995); P2294 (Daily Report, 13 September 1995); P2296 (Daily Report, 15 September 1995); P2300 (Daily Report, 18 September 1995); P2301 (Daily Report, 19 September 1995); P2302 (Daily Report, 20 September 1995); P2308 (Daily Report, 26 September 1995); P2309 (Daily Report, 27 September 1995); P2310 (Daily Report, 28 September 1995); P2311 (Daily Report, 29 September 1995); P2312 (Daily Report, 30 September 1995). For evidence linking military post 2233 to the 72nd VP Battalion, see exhibit P2222 or T. 15301-15302.
[2555] See e.g. P2256, P2258, P2264, or P2270.
[2556] P2253 (Daily Report, 10 August 1995); P2254 (Daily Report, 11 August 1995); P2255 (Daily Report, 12 August 1995); P2256 (Daily Report, 13 August 1995); P2257 (Daily Report, 14 August 1995); P2260 (Daily Report, 17 August 1995); P2262 (Daily Report, 18 August 1995); P2264 (Daily Report, 19 August 1995); P2265 (Daily Report, 19 August 1995); P2268 (Daily Report, 21 August 1995); P2270 (Daily Report, 22 August 1995); P2272 (Daily Report, 24 August 1995); P2273 (Daily Report, 25 August 1995); P2274 (Daily Report, 26 August 1995); P2276 (Special Report, 28 August 1995); P2278 (Daily Report, 29 August 1995); P2279 (Daily Report, 30 August 1995); P2281 (Daily Report, 3 September 1995); P2285 (Daily Report, 5 September 1995); P2287 (Daily Report, 8 September 1995); P2288 (Daily Report, 9 September 1995); P2289 (Daily Report, 10 September 1995); P2291 (Daily Report, 11 September 1995); P2293 (Daily Report, 12 September 1995); P2294 (Daily Report, 13 September 1995); P2296 (Daily Report, 15 September 1995); P2300 (Daily Report, 18 September 1995); P2301 (Daily Report, 19 September 1995); P2302 (Daily Report, 20 September 1995); P2308 (Daily Report, 26 September 1995); P2309 (Daily Report, 27 September 1995); P2310 (Daily Report, 28 September 1995); P2311 (Daily Report, 29 September 1995); P2312 (Daily Report, 30 September 1995).
[2557] See e.g. exhibits P2257, P2262, P2265, P2273, P2276.



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following the meeting of 6 August 1995, Gotovina issued orders and initiated a number of disciplinary proceedings, in keeping with the rules of service of the armed forces, and pronounced measures for the breaches of discipline, including demobilization and demotion.[2558] According to Rajčić, if soldiers refused to stop improper conduct, at the level of the MoD, the VP could respond, whereas within the armed forces, there were standard operative procedures for commanders to use well-behaved troops to prevent misbehaving troops from engaging in improper conduct.[2559]

2354. On 6 August 1995, Gotovina issued an order to OG Šibenik and OG Zadar, including the 72nd VP Battalion, the 306th Logistics Base of the Šibenik section, and the 307th Logistics Base Zadar, according to which all units of OG Šibenik and OG Zadar that took part in offensive operations were to make lists of spoils of war in their possession, for the purpose of controlling and properly processing them.[2560] He ordered further that the 306th Logistics Base of the Šibenik section and 307th Logistics Base Zadar collect livestock and poultry in the "liberated territory", accommodate it at farms or sell it at market price, and make lists of the collected livestock and the sold livestock, including the money accrued from the sale.[2561] Gotovina also ordered that the VP expropriate all the loot found in possession of individuals or units and not accounted for by the 306th Logistics Base of the Šibenik section and 307th Logistics Base Zadar, and store them at a logistics base.[2562] According to an order of 7 August 1995 from Gotovina, a committee was to be formed at the Split MD level for the purpose of registering and recording complete war booty in the Split MD zone of responsibility.[2563]

2355. The Trial Chamber also received evidence indicating that Gotovina commended and praised his subordinates and their conduct in Operation Storm. On 12 August 1995, Gotovina ordered that the units of the HV and their members who were combat active in the area of responsibility of the Split MD would receive written commendations.[2564] Medals were also to be awarded as well as extraordinary promotions to a higher rank pursuant to the Law on Service with the Armed Forces of the Republic of Croatia.[2565]

[2558] Marko Rajčić, T. 16506-16507, 16514.
[2559] Marko Rajčić, T. 16507-16508.
[2560] D643 (Order by Ante Gotovina re war booty, 6 August 1995), pp. 1-3.
[2561] D643 (Order by Ante Gotovina re war booty, 6 August 1995), pp. 1-2.
[2562] D643 (Order by Ante Gotovina re war booty, 6 August 1995), p. 2.
[2563] D981 (Order by Ante Gotovina regarding inventory of spoils of war, 7 August 1995), pp. 1-2.
[2564] P1191 (Gotovina order regarding the granting of awards to Croatian Army units, 12 August 1995), pp. 1, 3.
[2565] P1191 (Gotovina order regarding the granting of awards to Croatian Army units, 12 August 1995), p. 2.



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2356. On 15 August 1995, Gotovina stated in a document addressed to Červenko that military discipline and combat morale were exceptionally high in the units in the preparation, course, and conclusion of combat operations of Operation Kozjak-95 at Split level.[2566] He stated that the 4th, 7th, and 81st Guards Brigade, the 113th infantry brigade, and the 126th Home Guards Regiment deserved special recognition in respect of appropriate command and control.[2567] He more generally stated that command and control was uninterrupted and at the required level and all "Arms, Branches and Services" precisely accomplished their assigned tasks.[2568]

2357. In an order dated 18 August 1995, Gotovina ordered commanders to strictly forbid the return of their units from the front to their home garrisons and "peacetime locations" before an organized collection and storage of weapons had taken place. This order was issued pursuant to an order by the Chief of the HV Main Staff dated 17 August 1995 which resulted from reports indicating that certain units, on their way back from the front, opened fire in inhabited settlements and thus endangered the lives of the civilian population.[2569]

2358. From July to September 1995, Botteri reported that the Split MD ordered 141 warnings, 256 reprimands, twelve confinements to barracks, 680 cases of military detention, and 337 reductions in salary of between 10 and 20 per cent for a period of one to three months.[2570] Botteri's report for that period did not contain entries for proposals to the military court or criminal reports that were submitted. However, a report on the work of the Split MD's Military Disciplinary Court for July to September 1995 signed by the Court Secretary, Lovro Stecca, showed that one junior officer received a sentence of up to 30 days in detention for lack of discipline in carrying out duties and abandoning his unit.[2571] The same report shows the dismissal from duty of one guard found guilty under the category of individuals who had disclosed military

[2566] P2559 (General Gotovina's analysis of Operation Kozjak, 15 August 1995), pp. 1-2, 7-8.
[2567] P2559 (General Gotovina's analysis of Operation Kozjak, 15 August 1995), pp. 5, 8.
[2568] P2559 (General Gotovina's analysis of Operation Kozjak, 15 August 1995), pp. 3-4, 6-8.
[2569] D888 (Order to commanders to forbid the return of units from the battlefield to their home garrisons prior to collection of infantry armament signed by Ante Gotovina, 18 August 1995).
[2570] P1017 (Report on disciplinary measures and penalties for the third quarter of 1995 signed by Ljiljana Botteri, 10 November 1995), p. 5.
[2571] P1017 (Report on disciplinary measures and penalties for the third quarter of 1995 signed by Ljiljana Botteri, 10 November 1995), p. 5; D892 (Report on military disciplinary court for the third quarter signed by Military Disciplinary Court Secretary Lovro Stecca, date unknown), pp. 10-11.



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information, abused a military position, or issued inaccurate reports.[2572] Botteri's report covering the period from July to September 1995 contained no entries for disciplinary actions taken by post code 1080 which consisted of the Split MD Command.[2573] Botteri testified that had Gotovina taken any disciplinary measures against any of his subordinates during this period, those measures would have been recorded under post code 1080.[2574]

2359. **Botteri** testified that the reason there were so many more disciplinary measures taken in the third quarter of 1995 was because there were more reserve soldiers mobilized who were less disciplined.[2575] Botteri explained that she arrived at these conclusions based on written communications that she had with commanders of those units but could not substantiate her conclusions with any examples.[2576] A report submitted by Botteri to the MoD regarding the disciplinary measures imposed within the Split MD for the period between July and September 1995 shows 52 disciplinary measures undertaken against NCOs, 34 against Junior officers, and 45 against Army Officials and employees while 918 measures were undertaken against members of the Guards.[2577] The report on the work of the military disciplinary court within the Split MD for the period of July to September 1995 shows no actions taken against "privates" and two actions taken against a Junior Officer and a Guard respectively.[2578] Botteri testified about specific examples indicating that incidents involving possible criminal conduct, e.g. putting haystacks on fire, were dealt with through disciplinary measures.[2579]

2360. In addition, the Trial Chamber has considered the documentary evidence D879 and P1013 as well as Botteri's comments thereon, reviewed in Chapter 3.1.2.

[2572] D892 (Report on military disciplinary court for the third quarter signed by Military Disciplinary Court Secretary Lovro Stecca, date unknown), pp. 10-11.
[2573] Ljiljana Botteri, T. 10920; P1017 (Report on disciplinary measures and penalties for the third quarter of 1995 signed by Ljiljana Botteri, 10 November 1995), p. 5.
[2574] Ljiljana Botteri, T. 10920.
[2575] Ljiljana Botteri, T. 10999-11000.
[2576] Ljiljana Botteri, T. 10995-10996.
[2577] P1017 (Report on disciplinary measures and penalties for the third quarter of 1995 signed by Ljiljana Botteri, 10 November 1995) p. 5.
[2578] D892 (Report on disciplinary measures and sanctions signed by Ljiljana Botteri, 18 October 1995), p. 10.
[2579] Ljiljana Botteri, T. 10851; P1008 (Disciplinary actions sent to Gotovina by Major General Damir Krstičević for regularity assessment, 8 September 1995), pp. 9-10; P1010 (Letter regarding disciplinary action taken signed by Colonel Danijel Kotlar, 2 September 1995), pp. 1-2; P1011 (Orders of disciplinary action taken against servicemen signed by Major General Damir Krističević, 3 and 10 October 1995) pp. 1, 3.



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2361. On 13 September 1995, Gotovina issued an order to OG West, OG South, and the 72nd VP Battalion, indicating that in light of the setting on fire of houses, the destruction of infrastructure, and other undisciplined conduct in the "newly liberated areas", the commanders of OG West and OG South were responsible for the prevention of such acts in Drvar, Bosnia-Herzegovina, and its neighbouring villages. Gotovina further ordered them to establish an efficient system to identify perpetrators and take disciplinary and other legal measures against them. He also forbade the issuance of any kind of authorization to take away material goods from the area, and assigned the VP to guarantee the implementation of this ban.[2580]

2362. According to documentary evidence, between August and September 1995, Gotovina assessed the regularity of at least 70 disciplinary actions carried out within the Split MD in relation to mostly minor breaches.[2581] The Trial Chamber also received evidence indicating that Gotovina made at least six referrals of cases to the Split MD Disciplinary Court during August and September 1995.[2582] In addition, the Trial Chamber has considered the documentary evidence P2219-P2221, P2224-P2233, P2401, P2555, D809, D1381, D1865-D1866, as well as Milas's comments thereon, reviewed in Chapter 6.2.5.

2363. Based on the evidence received and reproduced above, the Trial Chamber finds that Gotovina received reports from his subordinates, was briefed at regular meetings, was present in Sector South on several occasions during the Indictment period, and was informed by international observers (from July to October 1995) about the occurrence and magnitude of crimes, such as firing artillery at civilians, destruction, looting, and killings, being allegedly committed in the area of the Split MD during Operation Storm and its aftermath. At the same time, the daily reports of the 72nd VP Battalion sent to Gotovina indicated that very few crimes were being processed, and even fewer crimes in relation to Serb victims. In his meetings with internationals, Gotovina also showed some awareness of problems in controlling the commission of crimes, including murders. The Trial Chamber finds that Gotovina realized the discrepancy between the

[2580] D655 (Order by Ante Gotovina re crime prevention in Drvar, Bosnia-Herzegovina, 13 September 1995); see also D656 (Order by Ante Gotovina re crime prevention in Drvar, Bosnia-Herzegovina, 17 September 1995).
[2581] P1016 (Table of disciplinary actions taken by brigade commanders and commanders of independent battalions against members of the Split MD units in August and September 1995).
[2582] P1012 (Table of disciplinary actions taken by Ante Gotovina in August and September 1995).



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VP reports and what was otherwise known to him from other sources and what he must have seen when travelling the area.

2364. The Trial Chamber finds that Gotovina issued a number of orders between 2 and 18 August 1995 (D201, D281, D204, D888) instructing units to prevent crimes. In some instances, Gotovina's orders were preceded by reports of crimes allegedly being committed. The Trial Chamber considers that efficient preventative measures depend, to a high degree, on the stringency of enforcing follow-up measures and will accordingly examine this aspect in light of Gotovina's measures to follow-up on crimes.

2365. While the evidence indicates that Gotovina initiated or approved a number of disciplinary measures against his subordinates during the Indictment period, he was aware of crimes allegedly being committed which required investigating or processing separate from disciplinary proceedings. Gotovina only rarely used his authority over the VP with regard to initiating crime investigations and processing.[2583] At the meeting with Forand on 5 September 1995, Gotovina suggested that he could not control all units and that their behavior was a way to take revenge for events in 1991. Gotovina repeatedly stated that others (Čermak, SIS, VP or Political Affairs) were responsible for upholding law and order while he was commanding troops in Bosnia-Herzegovina. The Gotovina Defence cites the High Command case in support of its contention that Gotovina had the right to assume that others would take care of their tasks. Similarly, the Gotovina Defence invokes the Brđanin Appeals Judgement in arguing that the link between Gotovina as Split MD commander and troops on the ground committing crimes is too tenuous for a JCE conviction. Gotovina had a right to assume that other, more specialized branches under his command would carry out their duties properly. The Trial Chamber considers, however, that this assumption was rebutted when Gotovina became aware that crimes were allegedly being committed and that the specialized branches under his command were not carrying out their duties properly. Since Gotovina bore responsibility over his subordinates,[2584] it was incumbent upon him to take appropriate follow-up action. Recalling Gotovina's position of exercising command and control over all units of or attached to the Split MD,[2585] the Trial Chamber further finds that the link between him as commander and his subordinated

[2583] See Chapter 3.1.2.
[2584] See Chapters 3.1.1 and 3.1.2.
[2585] The Trial Chamber notes the difference between this hierarchical military position and a civilian position as was the case in the Brđanin case.



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soldiers on the ground was not too tenuous to consider his JCE liability. The Trial Chamber considers that faced with a situation where many crimes seemed to have been committed, it was incumbent on Gotovina to adjust his focus and priorities towards ensuring that crimes were followed up. This could have taken the form of contacting relevant people and seeking their assistance, making public statements, or using available capacities temporarily more focused on other tasks. In relation to crimes against Serbs, Gotovina failed to take measures to have subordinates punished for crimes committed. By failing to insist on any follow-up in relation to perpetrators of crimes, Gotovina also failed to prevent future crimes.

2366. Apart from his meetings with Forand in July 1995, the Trial Chamber has not received sufficient evidence in relation to Gotovina's alleged concealment of crimes. In fact, even at the meetings with Forand, Gotovina did not deny or conceal crimes but stated that his troops were not involved. The Trial Chamber has also received insufficient evidence to establish that Gotovina's actions in relation to human sanitation were aimed at concealing crimes as alleged by the Prosecution.[2586]

2367. The Trial Chamber notes the Prosecution's argument that Gotovina must have been aware that crimes would be committed by his subordinates considering that his troops had committed crimes just days before Operation Storm during Operation Summer. The Trial Chamber has received insufficient evidence to determine whether reports on crimes during Operation Summer accurately reflected the reality.

### *6.3.6 Legal findings on Gotovina's liability*

2368. The Trial Chamber will examine whether, in light of the Trial Chamber's factual findings made above, Gotovina should be held liable under any mode of liability charged against him in the Indictment.

2369. The Trial Chamber first turns to JCE. The Trial Chamber recalls its findings in Chapter 6.2.7 that a JCE existed with the objective of the permanent removal of the Serb civilian population from the Krajina by force or threat of force, which amounted to and involved persecution (deportation, forcible transfer, unlawful attacks against

[2586] See P496 (Order by Ante Gotovina to establish a mixed detachment for clear-up operations, 11 August 1995); D204 (Order on compliance with military disciplinary measures by Gotovina, 10 August 1995), pp. 1-2; D1738 (Order, request and reports on sanitation, August-September 1995), pp. 1-14; D1739 (Order by Gotovina, 4 September 1995).



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civilians and civilian objects, and discriminatory and restrictive measures), deportation, and forcible transfer. The Trial Chamber now turns to the question of whether the acts and conduct of Gotovina significantly contributed to the JCE.

2370. The Trial Chamber considered Gotovina's participation in the Brioni meeting (see chapter 6.2.2) in relation to planning and preparing Operation Storm in light of his position as commander of the Split MD. The Trial Chamber recalls its findings in Chapter 5.8.2 (i) that the HV's shelling of Benkovac, Knin, and Obrovac on 4 and 5 August 1995 constituted unlawful attacks on civilians and civilian objects. Furthermore, the Trial Chamber considered that Gotovina ordered the attacks on Benkovac, Knin, and Obrovac.[2587] The Trial Chamber has interpreted Gotovina's order as treating the towns themselves as targets for artillery fire (see Chapter 5.8.2 (i)). The unlawful attacks formed an important element in the execution of the JCE. The Trial Chamber further assessed Gotovina's failures to make a serious effort to prevent and follow-up on crimes reported to have been committed in light of Gotovina's order to unlawfully attack civilians and civilian objects. The Trial Chamber finds that Gotovina's failures had an impact on the general atmosphere towards crimes in the Split MD. As found in Chapter 5.4.2, crimes committed against Krajina Serbs on a number of occasions brought about the deportation of the victims and those who witnessed their commission. For example, following the murders in Kovačić on 5 August 1995 (Scheduled Killing no. 1), Witness 13 left her home and stayed in the UN compound in Knin and later left for Serbia. Considering the above, the Trial Chamber finds that Gotovina's conduct amounted to a significant contribution to the JCE. The Trial Chamber further finds that Gotovina's order to unlawfully attack civilians and civilian objects amounted, in and of itself, to a significant contribution to the JCE. Finally, considering the nature of his conduct and in particular the unlawful attack, the Trial Chamber finds that Gotovina knew that there was a widespread and systematic attack against a civilian population and that his acts were part of that attack.

2371. The Trial Chamber now turns to the question of whether Gotovina shared the objective of the JCE. Having evaluated Gotovina's acts and conduct above and considering Gotovina's participation in and statements at the Brioni meeting, the Trial Chamber finds that Gotovina had the state of mind that the crimes forming part of the objective should be carried out. Considering all of the above, the Trial Chamber

[2587] See Chapter 6.3.2.



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accordingly finds that Gotovina was a member of the JCE. The Trial Chamber finds that Gotovina thus intended that his actions contribute to the JCE.

2372. The Trial Chamber now turns to examining Gotovina's alleged responsibility in relation to the crimes of murder, inhumane acts, and cruel treatment charged in paragraph 42 of the Indictment under the third form of JCE (Counts 1, 6, 7, 8, and 9). In addition, the Trial Chamber will consider Gotovina's alleged responsibility under the third form of JCE in relation to the crimes of plunder, destruction, and unlawful detention as an underlying act of persecution. The Indictment charges these crimes under Counts 1, 4, and 5 as part of the common criminal purpose. However, the Trial Chamber recalls that it has found in Chapter 6.2.7 that the JCE amounted to and involved persecution (deportation, forcible transfer, unlawful attacks against civilians and civilian objects, and discriminatory and restrictive measures), deportation, and forcible transfer. The Trial Chamber has considered several factors in determining whether the crimes of murder, inhumane acts, cruel treatment, plunder, destruction, and unlawful detention (on their own or as underlying acts of persecution) were a natural and foreseeable consequence of the execution of the JCE objective and whether Gotovina was aware that these crimes were a possible consequence of the execution of the objective.

2373. The Trial Chamber has first considered the objective of the JCE, namely the permanent removal of the Serb civilian population from the Krajina by force or threat of force, including by deportation and unlawful attacks on civilians and civilian objects. In furtherance of this objective, at the outset of Operation Storm, Gotovina ordered his subordinates to engage in unlawful attacks against civilians and civilian objects in Benkovac, Knin, and Obrovac. By ordering an unlawful attack on civilians and civilian objects, Gotovina signalled his attitude towards crimes and towards Serbs to his subordinates. Furthermore, the JCE envisioned the large scale deportation of the Krajina Serb population of the former RSK area, with only a few Serbs remaining. Creating a situation in which few Serbs remained in the former RSK area would greatly increase the opportunity for members of Croatian military forces and Special Police to commit crimes against the property of Krajina Serbs. In this respect, the Trial Chamber recalls Gotovina's statement to Forand about troops taking revenge for events in 1991, which indicates Gotovina's awareness of ethnic tensions that could lead to crimes. The Trial Chamber further considers that the context of ethnic tensions, based in part on the past



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commission of violent crimes in the former RSK area,[2588] was common knowledge to those present in Croatia at the time and that Gotovina was aware of this context at the outset of Operation Storm.

2374. The Trial Chamber also recalls Gotovina's presence at a meeting on 2 August 1995, in which the Minister of Defence Šušak gave instructions regarding the risk of uncontrolled conduct, including torching and looting.[2589] This put Gotovina on further notice of the possibility of the commission of crimes during and following Operation Storm. Gotovina's failure to adequately address the commission of crimes also shows his reckless attitude towards crimes falling outside of the common purpose. In relation to unlawful detentions, the Trial Chamber considers that this crime often constitutes a first step in the process of a deportation. Since Gotovina was familiar with the objective of the JCE, attended the 2 August 1995 meeting, and was aware of feelings of revenge amongst his troops, the Trial Chamber finds that he had the awareness that crimes such as destruction, plunder, murder, inhumane acts, cruel treatment, and unlawful detentions (on their own or as underlying acts of persecution) were possible consequences of the execution of the JCE. Gotovina nevertheless contributed to the JCE, reconciling himself with the possibility that these crimes could be committed. Thus, Gotovina knowingly took the risk that these crimes would be committed. The Trial Chamber further finds that the crimes of destruction, plunder, murder, inhumane acts, cruel treatment, and unlawful detentions (on their own or as underlying acts of persecution) were a natural and foreseeable consequence of the JCE's implementation.

2375. On the basis of all of the above findings and considerations, the Trial Chamber finds that Gotovina is liable pursuant to the mode of liability of JCE. Consequently, it is not necessary for the Trial Chamber to make findings on the other modes of liability alleged in the Indictment.

[2588] See chapter 5.1.2.
[2589] See the evidence of D409 reviewed in Chapter 6.2.2.



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## 6.4 Ivan Čermak's liability

### *6.4.1 Introduction*

2376. The Trial Chamber considered in particular paragraphs 17 and 19 of the Indictment in relation to Ivan Čermak's alleged contribution to the JCE. It further considered that parts of these paragraphs overlapped in substance when describing the same alleged conduct. Accordingly, the Trial Chamber has restructured Čermak's alleged conduct as presented below.

### *6.4.2 Čermak's control over and use of various forces*

2377. According to the Indictment, Ivan Čermak contributed to the JCE by issuing orders and directions concerning the administration and operation of the Knin Garrison, and directing, facilitating, supporting and issuing orders to elements and/or members of the HV and the MUP, including the VP and civilian police.[2590] The Trial Chamber recalls its findings in chapter 3.2. The Trial Chamber will first consider some general evidence regarding Čermak's authority, and then in turn examine evidence pertaining specifically to Čermak's authority over HV, VP and civilian police.

2378. As for general evidence regarding Čermak's authority, Čermak stated when interviewed by the Prosecution that he did not have the power to issue orders to Gotovina or to his units.[2591] He further stated that General Krstičević did not have authority over him, nor did he have authority over Krstičević or his units.[2592] In general, according to Čermak, he did not have any kind of authority over the HV, VP, or civilian

[2590] Indictment, para. 17 (a), "establishing, organising, commanding, ordering, directing, facilitating, participating in, supporting, maintaining and/or operating the HV, military police, Special Police, intelligence, security and other forces through which the objectives of the joint criminal enterprise were pursued and implemented and by which various crimes charged in this Joinder Indictment, such as forcible transfer and deportation, plunder and destruction of property, killings and inhumane treatment were committed." Indictment, para. 19 (a), "issuing orders and directions concerning the administration and operation of the Knin Garrison." Indictment, para. 19 (b), "directing, facilitating, supporting and issuing orders to elements and/or members of the HV and RH MUP, including the military police and civilian police." See also Indictment, para. 7. The Trial Chamber has received no evidence supporting the Prosecution's allegations in paragraph 17 (a) of the Indictment with regard to Čermak's authority over "Special Police, intelligence, security and other forces", and will therefore not further consider these allegations.
[2591] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), p. 115; P2526 (Suspect interview with Ivan Čermak, 17 March 1998), p. 30; P2707 (Additional portions of suspect interview with Ivan Čermak, 17 March 1998), p. 9.
[2592] P2526 (Suspect interview with Ivan Čermak, 17 March 1998), p. 38.



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police.[2593] Čermak stated that the military hierarchy, and his own functions in Knin, had no connection to the civilian police.[2594] However, Čermak stated that he had good cooperation with the civilian police.[2595]

2379. **Zdenko Rinčić**, the Croatian Assistant Minister of Economy for the manufacturing industry of ammunition, grenade, and machine gun production from 1993 to 1996,[2596] testified, based on his experiences in 1992 and 1993 in Zadar and his first-hand experience in Knin with Čermak, that Čermak could not command the civilian police, who were subordinate to the Minister of the Interior Jarnjak, nor the VP, who were subordinate to General Laušić and Minister of Defence Šušak.[2597] Čermak could only ask the civilian or military police to do things.[2598] According to Rinčić, if Čermak had issued orders to the civilian or military police, they would have been without effect.[2599] On three or four occasions, Rinčić called the duty service of the VP and requested military personnel to provide security for repair work out in the field.[2600] The commander of the VP would then decide whether or not to approve such assistance.[2601] Rinčić's requests for security were granted in all cases, although he sometimes had to wait one or two days before receiving either civilian or military police officers as security personnel.[2602]

2380. **Ivo Cipci**, Chief of the Split-Dalmatia Police Administration from 1993 to 1997,[2603] testified that a Garrison Commander, both legally and practically, had no authority over combat units or military or civilian police deployed in his area.[2604] Accordingly, the witness testified that during the four years of war when he functioned as Chief of the Split-Dalmatia Police Administration, he never had any official meetings with the Split Garrison Commander, even though he had regular meetings with all

[2593] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 12, 14, 24, 46, 48, 110, 112-113, 115, 157, 164, 171; P2526 (Suspect interview with Ivan Čermak, 17 March 1998), pp. 27, 47, 73, 96; P2532 (Accused interview with Ivan Čermak, 7 June 2004), pp. 35-37, 40, 60-61.
[2594] P2526 (Suspect interview with Ivan Čermak, 17 March 1998), p. 21.
[2595] P2526 (Suspect interview with Ivan Čermak, 17 March 1998), p. 22.
[2596] D1680 (Zdenko Rinčić, witness statement, 16 May 2009), p. 1, paras 1, 3-5; Zdenko Rinčić, T. 22341.
[2597] D1680 (Zdenko Rinčić, witness statement, 16 May 2009), para. 21; Zdenko Rinčić, T. 22327-22329, 22331, 22333.
[2598] D1680 (Zdenko Rinčić, witness statement, 16 May 2009), para. 21; Zdenko Rinčić, T. 22328-22329.
[2599] Zdenko Rinčić, T. 22332-22334.
[2600] Zdenko Rinčić, T. 22301-22303, 22333-22335, 22359, 22364; D1684 (Information on post and telephone messages received and other important events, 12-18 August 1995), pp. 2-3.
[2601] Zdenko Rinčić, T. 22333.
[2602] Zdenko Rinčić, T. 22335-22336, 22365.
[2603] D1723 (Ivo Cipci, witness statement, 12 June 2009), para. 1; Ivo Cipci, T. 23147.
[2604] Ivo Cipci, T. 23072, 23075-23076, 23093-23094.



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military commanders.[2605] The witness testified that Čermak's duty was to establish quality cooperation with the civilian authorities and the civilian police.[2606] Čermak had no authority over the civilian police or the military command and the army.[2607] The witness testified that if Čermak issued anything that might seem to be orders to the Knin Police Administration, these must have been notifications.[2608] Further evidence in support of Čermak's lack of authority over HV, VP and civilian police was received from **Pašić**,[2609] and **Luković**.[2610]

2381. **Jack Deverell**, a retired General of the British Army, former garrison commander, and expert in military operational command,[2611] testified that it is highly unlikely, if not inconceivable, that a senior commander with operational responsibilities will not receive operational orders from superior headquarters, or be reflected in a communications plan.[2612] Deverell noted that Čermak received very little information through the military, VP, and police chains of command.[2613] In some cases, Čermak was not included in operational orders and plans, despite their bearing on the Knin garrison area or the inclusion of other garrison commands.[2614] In other instances Čermak was sent an information copy, rather than an action copy that requires the recipient to act.[2615] Deverell considered that this demonstrated both that Čermak was neither more nor less important than other garrison commanders, despite his rank and position; and the lack of importance of the Knin Garrison in the overall responsibilities of the Split MD.[2616] Deverell concluded that Čermak was rarely taken into account by other commanders, and that there was a substantial mismatch between his actual authority and responsibility, and the authority and responsibility that others perceived he had.[2617]

2382. **Franjo Feldi**, a retired Colonel General of the Croatian Army and expert in the system of government, defence, the armed forces of Croatia and the system of

[2605] Ivo Cipci, T. 23072, 23076-23077, 23167.
[2606] Ivo Cipci, T. 23094-23095, 23196.
[2607] D1723 (Ivo Cipci, witness statement, 12 June 2009), paras 18, 27-28; Ivo Cipci, T. 23073, 23095-23097, 23184, 23211-23212.
[2608] D1723 (Ivo Cipci, witness statement, 12 June 2009), para. 28; Ivo Cipci, T. 23095-23096.
[2609] D1706 (Petar Pašić, witness statement, 3 March 2002), p. 5; D1707 (Petar Pašić, witness statement, 23 April 2009), paras 25-26; Petar Pašić, T. 22865, 22891-22893.
[2610] D1688 (Ivica Luković, witness statement, 13 August 2009), para. 40.
[2611] D1784 (Expert Report of General Jack Deverell, 16 September 2009), pp. 4-5; Jack Deverell, T. 24133, 24138-24142, 24146-24148, 24150, 24188-24189.
[2612] D1784 (Expert Report of General Jack Deverell, 16 September 2009), p. 38.
[2613] D1784 (Expert Report of General Jack Deverell, 16 September 2009), pp. 42, 44, 47.
[2614] D1784 (Expert Report of General Jack Deverell, 16 September 2009), pp. 36, 38-39, 42, 47.
[2615] D1784 (Expert Report of General Jack Deverell, 16 September 2009), pp. 38-39, 42.
[2616] D1784 (Expert Report of General Jack Deverell, 16 September 2009), pp. 39, 44, 48.



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garrisons,[2618] testified that Čermak's orders to both civilian police and VP were for information only.[2619] Feldi further testified that these orders did not mention a subordinate's duty to inform on implementation, they were not addressed in the usual way, they were written *ad hoc*, Čermak received no feedback information on implementation and reports of the MP units to their superior commands did not mention orders by Čermak. Feldi concluded they were notifications that did not require implementation.[2620]

2383. **Karolj Dondo**, HV Liaison Officer with the UN and EC in Sector South in 1995,[2621] testified that the individuals who received Čermak's orders ignored them, although he added that he or the other liaison officers did not verify this and that some persons who received the orders might have decided to act on the information in them.[2622] For this reason, such orders were issued once or twice, but, after approximately ten days, were from then on formulated as letters.[2623] At the time when Čermak was issuing these orders, Dondo did not know that Čermak did not have the authority required to issue such orders.[2624] **Kovačević** testified that Červenko, during one of their regular conversations in August 1995, told him that Čermak did not know what his authorities as garrison commander were.[2625] **Feldi** testified that he met Čermak in Knin in early Autumn 1995 and explained the role of a garrison commander to him as Čermak seemed to believe he had greater authority as garrison commander due to the position of Colonel General which he held prior to retirement.[2626] The Trial Chamber will further consider the general evidence on Čermak's authority while examining evidence pertaining specifically to Čermak's authority over HV, VP and civilian police.

2384. The Trial Chamber now turns to evidence specifically dealing with Čermak's position of authority within the HV, including his authority over HV units. **Feldi** testified that as of 5 August 1995 Čermak's immediate superior was the commander of

[2617] D1784 (Expert Report of General Jack Deverell, 16 September 2009), p. 44.
[2618] D1673 (Expert Report of Franjo Feldi, July 2009), pp. 2-6; D1674 (Franjo Feldi, witness statement, 16 July 2003), pp. 1-10.
[2619] D1673 (Expert Report of Franjo Feldi, July 2009), para. 1.5.45; Franjo Feldi, T. 21987-21990.
[2620] Franjo Feldi, T. 21989-21990.
[2621] D1695 (Karolj Dondo, witness statement, 9 March 2005), p. 1, paras 1-2; D1696 (Karolj Dondo, witness statement, 18 August 2009), p. 1, para. 2.
[2622] Karolj Dondo, T. 22544, 22560, 22580, 22596-22598.
[2623] Karolj Dondo, T. 22544, 22561-22562, 22580-22581, 22596.
[2624] Karolj Dondo, T. 22562-22563, 22580.
[2625] Pero Kovačević, T. 22128-22129.
[2626] D1674 (Franjo Feldi, witness statement, 16 July 2003), p. 10.



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the Split MD and he was not subordinated to the President or General Červenko.[2627] In an order dated 17 August 1995 and addressed to the Zadar, Šibenik, Split, Sinj, Benkovac and Knin Garrison Headquaters, Gotovina ordered the immediate compilation of protocols regarding the state of buildings that the units were leaving including an inventory list, in the presence of the owners or their agent, a representative of the unit and a representative of the garrison headquarters.[2628] On 5 September 1995, Čermak sent a consent request to Gotovina regarding a purchase of prosciutto-ham for the occasion of the visit of the European Community and other delegations to Knin Garrison.[2629] Čermak stated that the Knin Garrison Headquarters was subordinated to the Split MD and the Main Staff of the MoD.[2630] In the military hierarchy, Čermak's superiors were Červenko and Gotovina.[2631] Čermak stated that there was no hand-over of responsibilities from Gotovina to him.[2632] Following an untranscribed remark from his lawyer, Čermak stated that Gotovina and he neither had any overlap in tasks, nor any problems in this regard.[2633]

2385. The Trial Chamber received into evidence several orders pertaining to the assignment of military personnel to the Knin garrison. On 9 August 1995, Čermak ordered the Commander of the 113th Šibenik Brigade to temporarily transfer one of their members to the Knin Garrison in order to assist with coordination of supply and technical maintenance at the Knin Garrison Headquarters.[2634] Also on 9 August 1995, Čermak ordered that the commander of the 306th Split Logistics Base Šibenik Sector, Željko Jonjić, be temporarily assigned to the Knin Garrison.[2635] Čermak further ordered the Logistics Base Šibenik Sector commander to issue an order appointing Jonjić. Čermak's order was also copied to Gotovina.[2636] On 11 August 1995, Čermak ordered

[2627] Franjo Feldi, T. 21811, 21816. See also P2159 (Mate Laušić, witness statement, 11 August 2004), para. 243.
[2628] D1032 (Order issued by Ante Gotovina regarding Demobilization of Buildings, 17 August 1995), pp. 1-2.
[2629] D1016 (Request for Approval of Purchase of Prosciutto Ham, 5 September 1995), pp. 1-6.
[2630] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 135, 146-147.
[2631] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), p. 27; P2526 (Suspect interview with Ivan Čermak, 17 March 1998), pp. 15-16, 30; P2707 (Additional portions of suspect interview with Ivan Čermak, 17 March 1998), pp. 3-4.
[2632] P2526 (Suspect interview with Ivan Čermak, 17 March 1998), pp. 101-102; P2532 (Accused interview with Ivan Čermak, 7 June 2004), pp. 26, 34-35.
[2633] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 26, 60, 115-116.
[2634] D1023 (Order issued by General Čermak for Transfer of Marin Frkić to Knin Garrison, 9 August 1995), p. 1. See also P2525 (Suspect interview with Ivan Čermak, 13 March 2001), p. 164.
[2635] D759 (Order by Čermak, 9 August 1995), p. 1. See also D1115 (Order by Čermak to temporarily assign a cashier of the 306th Split logistics base to the Knin garrison, 26 August 1995).
[2636] D759 (Order by Čermak, 9 August 1995), p. 1.



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that seven persons from the 142nd Home Guard Regiment be temporarily assigned to the Knin Garrison.[2637] The order was copied to the Commander of the 142nd Home Guard Regiment.[2638] According to Čermak, the purpose of the order was for these persons to be able to regulate their status, with the authorization of their command.[2639] On 12 August 1995, Commander Major Ivan Pavić issued an order temporarily replacing Jonjić at the 306th Split Logistics Base, and noting that Jonjić had by his own will left his duty to make himself available to the Knin Garrison commander, whose order of 9 August 1995 had seriously disrupted the system of command in the 306th Split Logistics Base. Gotovina was copied on the order.[2640] On 16 August 1995, Čermak wrote back, indicating that Jonjić was assigned to the Knin garrison on Čermak's order and by agreement with Gotovina, and that if needed by Gotovina he would return to his position at the 306th Split Logistics Base.[2641] In an order dated 18 August 1995, Gotovina responded to a request from the Knin Garrison by placing 30 soldiers from the OG West at the disposal of the Knin Garrison for five days in order to ensure the completion of work on the Knin-Gračac railway line.[2642] On 21 August 1995, Čermak requested from Gotovina that 65 conscripts from Knin be placed under the command of the Knin Garrison Commander, for the operative requirements of the Knin Garrison and to get the city back to normal.[2643] On 22 August 1995, Gotovina ordered the Commander of the 142nd Home Guard Regiment, pursuant to a request by Čermak and for the purpose of normalizing life in Knin, to resubordinate a part of the 142nd Home Guard Regiment to the Commander of the Knin Command Post. The order was copied to the Commander of the Knin Command Post.[2644]

2386. The Trial Chamber received further evidence, in particular from **Emin Teskeredžić**, a leader of an explosives-removal team operating in and around Knin between 6 August and 30 October 1995,[2645] regarding the assignment of de-mining

[2637] D761 (Order by Čermak, 11 August 1995). See also D1784 (Expert Report of General Jack Deverell, 16 September 2009), pp. 40-41; Jack Deverell, T. 24346-24347.
[2638] D761 (Order by Čermak, 11 August 1995), p. 2.
[2639] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 163-164.
[2640] D758 (Order by Ivan Pavić, 12 August 1995).
[2641] D760 (Letter by Čermak to Ivan Pavić, 16 August 1995), p. 1.
[2642] D1029 (Order issued by Ante Gotovina regarding Provison of Soldiers for Necessary Work in Knin, 18 August 1995), p. 1.
[2643] D762 (Request from Čermak, 21 August 1995). See also D1784 (Expert Report of General Jack Deverell, 16 September 2009), pp. 40-41; Jack Deverell, T. 24347.
[2644] D764 (Order by Gotovina, 22 August 1995).
[2645] D1732 (Emin Teskeredžić, witness statement, 26 May 2009), p. 1, paras 1-4, 6, 11, 13, 19; Emin Teskeredžić, T. 23242-23243, 23260, 23263-23264, 23274-23275; D1027 (Request by Čermak for Teskeredžić to be relieved of his employment, 19 August 1995).



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personnel to the Knin garrison. Between 15 and 19 August 1995, Čermak issued four requests to the Human Resources Department of the 1st Guards Corps in Zagreb, asking for the temporary transfer of certain members of the 1st Guards Corps to the Knin Garrison for de-mining purposes.[2646] On 19 August 1995, Čermak requested the mobilization of Teskeredžić, Domančić and Tomšić, from the Mobilization Administration of the MoD, and specifically requested that the mobilization be backdated to the day of their arrival in Knin.[2647] On 22 August 1995, Čermak requested from the commander of the first Croatian Guards Corps the temporary transfer of a number of individuals to the Knin Garrison to assist Teskeredžić with the removal of explosive devices, including Vuk, Plemenčić and Perković who were already engaged in this work.[2648] On 6 September 1995, Gotovina wrote to Čermak informing him that the Minister of Defence had denied his request for the mobilization of Teskeredžić, Domančić, and Tomšić.[2649] On 11 September 1995, Čermak wrote to the Minister of Defence, Gojko Šušak, with a request for the mobilization of Teskeredžić, Domančić, Tomšić, Maljur, and Marguš.[2650] This request was granted by Marijan Sabol, mobilizing Teskeredžić, Domančić, Tomšić, and Maljur on 18 September 1995.[2651] On 20 September 1995, Gotovina issued a further order to mobilize Teskeredžić, Domančić, Tomšić, Maljur, and Marguš to report to the Knin Garrison.[2652]

2387. In addition to Teskeredžić's team, the Engineering Unit of the Split MD, whose chief was Jeričević, and the 40th Engineering Battalion, commanded by Čikara, were engaged in explosives removal at the time.[2653] Teskeredžić and his team worked closely

[2646] D1024 (Request for Transfer of Zvonko Perković to Knin Garrison, 15 August 1995), p. 1; D1025 (Request for Transfer of Tibor Halas to Knin Garrison, 19 August 1995), p. 1; D1116 (Request for Transfer of Mladen Plemenčić to Knin Garrison, 15 August 1995), p. 1; D1117 (Request for Transfer of Andelko Vuk to Knin Garrison, 15 August 1995), p. 1.
[2647] D1732 (Emin Teskeredžić, witness statement, 26 May 2009), para. 19; Emin Teskeredžić, T. 23243-23244, 23264, 23272; D1026 (Request by Čermak for the mobilization of Teskeredžić, Domančić and Tomšić, 19 August 1995). See also Emin Teskeredžić, T. 23242-23243; D1027 (Request by Čermak for Teskeredžić to be relieved of his employment, 19 August 1995).
[2648] Emin Teskeredžić, T. 23242, 23254-23255, 23269-23270; D765 (Request by Čermak for the transfer of conscripts, 22 August 1995).
[2649] D1028 (Letter by Gotovina regarding the mobilization of conscripts for the Knin garrison).
[2650] D1732 (Emin Teskeredžić, witness statement, 26 May 2009), para. 19; Emin Teskeredžić, T. 23244-23245; D1733 (Request by Čermak to Šušak to mobilize Emin Teskeredžić and his team, 11 September 1995).
[2651] D1732 (Emin Teskeredžić, witness statement, 26 May 2009), para. 19; Emin Teskeredžić, T. 23246, 23264; D1734 (Order by Marijan Sabol for the mobilization of Emin Teskeredžić and others, 18 September 1995), pp. 1-2.
[2652] Emin Teskeredžić, T. 23247-23248, 23264; D767 (Order by Gotovina, 20 September 1995), pp. 1-2. See also P2525 (Suspect interview with Ivan Čermak, 13 March 2001), p. 186.
[2653] D1732 (Emin Teskeredžić, witness statement, 26 May 2009), paras 12, 16.



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with them.[2654] On 11 August 1995, Čermak ordered pyrotechnical inspections in a number of military apartments, assigning responsibilities to various persons including Darko Grgić and the commander of the 40th Engineering Battalion, and requiring a final report from Jonjić.[2655] The order was copied to Jonjić and Grgić, and to the personal attention of the commander of the 40th Engineering Battalion.[2656] Teskeredžić testified that Čikara briefed him on the task and that Teskeredžić and his team assisted the officers of the Engineers Battalion to carry out inspections listed in the order.[2657] He and his team were not, however, obliged to carry out these inspections and did so merely by way of assistance.[2658] On 12 August 1995, Čermak ordered Anđelko Vuk, Marin Frkić, Marko Gojević, and Emir Teskeredžić to clear the military depot and the terrain in the village of Plavno in Knin municipality.[2659] On the same day, they removed the weapons and ammunition from that warehouse.[2660] On 19 and 22 September 1995 Teskeredžić and others removed explosives from the Vitorog relay centre.[2661] Teskeredžić sent a report on the de-mining of the Vitorog relay centre to Čermak, at the request of Jeričević.[2662] Teskeredžić prepared another detailed report about the work of his team from 6 August to 22 September 1995 and sent it to Čermak.[2663]

2388. The Trial Chamber also received relevant evidence through the exchange of communications between Čermak and the UN regarding complaints about HV behaviour towards UN property or personnel. On 11 August 1995, **Alain Forand**,

[2654] D1732 (Emin Teskeredžić, witness statement, 26 May 2009), para. 12.
[2655] D1732 (Emin Teskeredžić, witness statement, 26 May 2009), para. 15; Emin Teskeredžić, T. 23280; D1030 (Report by Teskeredžić on work of the de-mining team, 22 September 1995), p. 2; D1048 (Order by Čermak for inspection and cleaning of military apartments, 11 August 1995).
[2656] D1048 (Order by Čermak for inspection and cleaning of military apartments, 11 August 1995), p. 2.
[2657] D1732 (Emin Teskeredžić, witness statement, 26 May 2009), para. 15; Emin Teskeredžić, T. 23280-23282; D1030 (Report by Teskeredžić on work of the de-mining team, 22 September 1995), p. 2.
[2658] Emin Teskeredžić, T. 23281-23282.
[2659] D1732 (Emin Teskeredžić, witness statement, 26 May 2009), para. 14; Emin Teskeredžić, T. 23250-23251, 23265; D763 (Order by Čermak for clearing terrain and military depot in Plavno village, 12 August 1995).
[2660] D1732 (Emin Teskeredžić, witness statement, 26 May 2009), para. 14; Emin Teskeredžić, T. 23249-23251; D1020 (Report by Frkić on clearing of military depot); D1030 (Report by Teskeredžić on work of the de-mining team, 22 September 1995), p. 2.
[2661] Emin Teskeredžić, T. 23249; D1030 (Report by Teskeredžić on work of the de-mining team, 22 September 1995), p. 2; D1031 (Report by Teskeredžić on the clearing of explosives at the Vitorog relay junction, 22 September 1995).
[2662] D1732 (Emin Teskeredžić, witness statement, 26 May 2009), para. 16; Emin Teskeredžić, T. 23255, 23271; D1031 (Report by Teskeredžić on the clearing of explosives at the Vitorog relay junction, 22 September 1995). See also D1118 (Demining report by Teskeredžić, 22 September 1995).
[2663] D1732 (Emin Teskeredžić, witness statement, 26 May 2009), para. 17; Emin Teskeredžić, T. 23248-23249, 23271; D1030 (Report by Teskeredžić on work of the de-mining team, 22 September 1995).



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UNCRO Sector South Commander from 8 July 1995 to 10 October 1995,[2664] wrote to Čermak complaining about the HV and Croatian civilian police denying UN staff access to the UN camp at Civljane at 12:20 p.m. that day, and asking him to evict the occupants.[2665] Also on 11 August 1995, Čermak wrote to Forand concerning the entry of HV troops in the UN camp at Civljane, informing him that he had ordered the HV to withdraw from the camp and that the camp was free.[2666] On 12 August 1995, Forand reported that the Kenyan battalion had reoccupied the camp at Civljane.[2667] However, the Kenyan battalion reported to Forand that the HV remained in the camp.[2668] On 14 August 1995, Forand sent a letter to Čermak complaining to him that despite assurances that the HV troops had left the camp, the 113th HV Brigade was still at the camp and that he could not accept how these soldiers a few minutes away from Knin did not obey Čermak's orders.[2669] On 15 August 1995, Čermak sent another letter to Forand informing him that as of 14 August 1995 there were no HV troops at the UN camp in Civljane and that his officers had met there with a Kenyan UNCRO commander who had stated that the problem was solved.[2670] **Dondo** testified that because of the two letters of protests from Forand he and Bačić went to Civljane. In front of the UN camp, they found an HV tank which had broken down. The HV had withdrawn. The UN commander informed them that they had no problems with the HV. They then drafted a letter in the name of Čermak and sent it to Forand.[2671]

2389. On 16 September 1995, Čermak wrote to UNCRO and the UNMO command in Knin, expressing his regrets over threats issued against military observers as mentioned in a letter of Forand dated 14 September 1995.[2672] Čermak wrote that he had ordered an investigation on the basis of the licence plate number he had received from UNMO and/or UNCRO, and had been informed that the vehicle belonged to a unit that had been passing through the area 15 kilometres south of Knin where the threats had occurred. He

[2664] P330 (Alain Forand, witness statement, 20 August 1996), pp. 2, 15; P333 (Alain Forand, witness statement, 25 January 2008), para. 2; Alain Forand, T. 4098-4099, 4180, 4186.
[2665] P363 (UNCRO Sector South daily situation report, 8:30 p.m., 11 August 1995), p. 6.
[2666] P331 (Alain Forand, witness statement, 29 September 1997), p. 21; D616 (Letter from Ivan Čermak to Alain Forand re Civljane UN camp, 11 August 1995).
[2667] P364 (UNCRO Sector South daily situation report, 8:30 p.m., 12 August 1995), p. 2.
[2668] Alain Forand, T. 4246-4247.
[2669] D308 (Letter from Alain Forand to Ivan Čermak re UN camp in Civljane, 14 August 1995).
[2670] D617 (Letter from Ivan Čermak to Alain Forand re Civljane UN camp, 15 August 1995).
[2671] D1696 (Karolj Dondo, witness statement, 18 August 2009), para. 22.
[2672] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), p. 173; P2520 (Letter from Čermak to UNCRO and UNMO, 16 September 1995).



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added that he had submitted a request to the competent commander to launch an investigation and take disciplinary measures against the perpetrators.[2673]

2390. Finally, the Trial Chamber received further relevant evidence in the form of requests sent by Čermak to the MoD. On 11 August 1995, Čermak wrote to the Chief of the MoD Transport and Technical Administration, requesting that various vehicles be delivered to the Knin garrison.[2674] On 25 August 1995, Čermak wrote to the MoD Housing Commission, requesting that it issue a temporary decision on the allocation of certain apartments in Knin for the needs of the Knin garrison command.[2675]

2391. The Trial Chamber finds, based on the evidence above, that Čermak was formally within the HV hierarchy and that Gotovina was his superior. The evidence indicates that up until at least 11 August 1995, Čermak issued orders to members of the HV, including for the purpose of subordinating HV soldiers to himself. However, there is limited evidence showing that these orders were effective. Čermak ordered that Jonjić be assigned to the Knin garrison, and evidence reviewed in chapter 6.4.3 below indicates that Jonjić actually came to work for Čermak at the Knin garrison. However, the evidence on the assignment of Jonjić also shows the involvement of Gotovina in the appointment, and the objection of Pavić against Jonjić joining the Knin garrison. As for Čermak's other orders assigning HV personnel to his command, there is insufficient evidence that these persons joined his command and, if so, that they did it pursuant to his orders. Čermak's order D1048 on the other hand appears to have had some effect, since it assigned pyrotechnical responsibilities to the commander of the 40th Engineering Battalion, and Teskeredžić testified that the 40th Engineering Battalion was commanded by Čikara who briefed him on the task. However, the order concerned pyrotechnical inspections in military apartments falling within Čermak's normalization tasks (see chapter 6.4.6). After 11 August 1995, the evidence shows that Čermak issued requests for subordination rather than orders, and that Gotovina was the one ordering the resubordination of HV units. Similarly, Čermak's request for the mobilization of Teskeredžić and his team was denied by the Minister of Defence, and eventually ordered by Marijan Sabol and Gotovina. The remaining evidence suggesting that Čermak could order HV units comes from what he wrote in his correspondence with

[2673] P2520 (Letter from Čermak to UNCRO and UNMO, 16 September 1995).
[2674] D769 (Request by Čermak, 11 August 1995).
[2675] D1053 (Request by Čermak to MoD Housing Commission, 25 August 1995). See also D1053 (Letter from Čermak to MoD Housing Commission, 20 September 1995).



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Forand, but there is little evidence that he actually issued such orders and that such orders, if issued, were effective. Consequently, the Trial Chamber finds that there is insufficient evidence to sustain the allegations that Čermak had effective control over HV units outside of his own subordinates at the garrison. The Trial Chamber will further examine Čermak's authority over persons assigned to the Knin garrison in chapter 6.4.3 below.

2392. The Trial Chamber now turns to examine evidence relevant both to Čermak's authority over the VP and over the civilian police. There is relevant evidence in chapter 6.4.7 below (Čermak's order P53/P513). For another order issued by Čermak and sent to both civilian police and VP, see P509 which will be discussed below with regard to Čermak's authority over civilian police. The Trial Chamber will first examine evidence pertaining to Čermak's orders regarding stolen UN property. According to a UN memorandum dated 8 August 1995, it was discovered that day that "HVO" had taken three UN vehicles from a garage.[2676] On 9 August 1995, Čermak issued an order for a team of VP and Knin police station personnel to be set up with the task of finding three vehicles stolen from UNCRO.[2677] The order was copied to the commander of the Knin VP and the commander of the Knin police station.[2678] The Trial Chamber has considered in this regard the evidence reviewed in paragraph 2 of Confidential Appendix C.

2393. On 11 August 1995, **Forand** sent Čermak a letter complaining about the theft by the HV of UN engineering equipment valued at one million US dollars, as well as several UN vehicles, and asking for their return.[2679] On 12 August 1995, Čermak issued an order that teams of MUP members from the Knin police station and the Knin VP be formed with the task of finding and returning stolen UNCRO vehicles and equipment. The order specified that the commanders of the Knin police station and the Knin VP were personally answerable to Čermak for carrying out this order and that, once carried out, the result of the order be reported to Čermak immediately.[2680] The Trial Chamber has considered in this regard the evidence reviewed in paragraph 3 of Confidential

[2676] D302 (UNPF interoffice memorandum, 8 August 1995).
[2677] Alain Forand, T. 4229; D303 (Order by Ivan Čermak re stolen UN vehicles, 9 August 1995).
[2678] D303 (Order by Ivan Čermak re stolen UN vehicles, 9 August 1995).
[2679] Alain Forand, T. 4137-4138; P391 (Letter from Alain Forand to Ivan Čermak re theft of UN equipment, 11 August 1995), pp. 1-2. See also P331 (Alain Forand, witness statement, 29 September 1997), p. 21; Alain Forand, T. 4145; P363 (UNCRO Sector South daily situation report, 8:30 p.m., 11 August 1995), p. 5.
[2680] D503 (Order by Ivan Čermak on teams to find stolen UNCRO goods, 12 August 1995).



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Appendix C. On 13 August 1995, police commander Miloš Mihić sent a letter to several police administrations and the Knin VP regarding the theft of a number of UNCRO vehicles by members of the HV and asked the addressees to check for these vehicles, take them, and then inform the Knin police administration.[2681]

2394. On 12 August 1995, Čermak sent a report to the MD command chief of staff indicating that Forand had informed him on several occasions that HV members had stolen UN vehicles and engineering equipment and repainted some of the vehicles in green. Čermak wrote that he had made several attempts with the civilian and military police in Knin to find and return the UN property, but that as there were no results he was requesting the chief of staff to inform HV unit commanders in the Split MD command of the need to return the equipment and prevent similar incidents in the future.[2682]

2395. On 13 August 1995, in response to Čermak's report of 12 August 1995, Gotovina issued an order to various HV commanders or units to immediately hand over vehicles stolen by HV members from the UNCRO Kenyan Battalion to the Commander of the Knin MD, to prevent any behaviour in their units damaging to the interests of the HV and Croatia, and to apply the strictest disciplinary and other legal measures in the implementation of the order.[2683] On 13 August 1995, one of those commanders, Colonel Ante Kotromanović of the OG Sajković, transmitted Gotovina's order to his subordinate units.[2684]

2396. According to UN documentary evidence, a meeting between Čermak and UN personnel on 18 or 19 August 1995 produced a promise that Čermak would immediately follow up on information provided by the UN on the location of stolen UN heavy engineering equipment.[2685] On 19 August 1995, Forand sent three further letters to Čermak concerning theft of valuable UN equipment by the HV.[2686] To Forand's

[2681] D500 (Request regarding stolen UNCRO vehicles and information on Land cruiser signed by Miloš Mihić, 13 August 1995); D502 (Request regarding stolen UNCRO vehicles signed by Miloš Mihić, 13 August 1995).
[2682] Alain Forand, T. 4230-4231; D304 (Report by Ivan Čermak re stolen UN property, 12 August 1995).
[2683] Alain Forand, T. 4232; D305 (Order by Ante Gotovina re stolen UN vehicles, 13 August 1995), pp. 1-2.
[2684] Alain Forand, T. 4233; D306 (Order by Colonel Ante Kotromanović re stolen UN vehicles, 13 August 1995), pp. 1-2.
[2685] P372 (UNCRO Sector South daily situation report, 8:30 p.m., 19 August 1995), p. 2.
[2686] Alain Forand, T. 4138-4139; P392 (Letter from Alain Forand to Ivan Čermak re theft of UN equipment, 19 August 1995); P393 (Letter from Alain Forand to Ivan Čermak re theft of UN equipment, 19 August 1995), pp. 1-2; P394 (Letter from Alain Forand to Ivan Čermak re theft of UN equipment, 19 August 1995), pp. 1-2.



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recollection, none of his requests concerning these thefts were fulfilled and the equipment was never returned.[2687] On 20 August 1995, **Dondo** and other HV liaison officers reported to the MoD that Alain Forand and Čermak corresponded regularly and that the main subject of this correspondence was the appropriation of UN property.[2688] Dondo testified that his office and Čermak could only forward UN complaints about stolen UN property and restriction of movement for UN personnel to the HV.[2689] When Čermak told Dondo's office to write a request for the return of stolen UN vehicles, the office formulated it as an order.[2690] Dondo testified that the order to return the vehicles was acted upon only when the command of the operational zone issued an order to this effect as well.[2691]

2397. On 26 August 1995, when Forand realized that Čermak could not assist him with solving the question of the taking of UN equipment by HV soldiers, Forand wrote to Gotovina instead, mentioning that Čermak's authority was limited in certain areas.[2692] At a meeting on 29 August 1995, Čermak stated that he felt embarrassed that the UN vehicles had still not been returned and that he would reissue his orders regarding that.[2693] On 11 November 1995, Gotovina issued an order to the Commander of the 4th Guards Brigade to immediately return UNCRO vehicles stolen by members of his unit.[2694]

2398. When the Prosecution, during an interview, showed Čermak two orders of his for joint VP/police teams to be set up to find stolen UNCRO equipment and vehicles, he explained that they were bluffs, motivated by his shame that the vehicles had been stolen, which did not work due to his lack of authority.[2695] Čermak stated that he received information from Forand, and maybe Al-Alfi too, about the theft of UN vehicles, which he forwarded to VP, who worked on the case.[2696]

[2687] Alain Forand, T. 4138, 4230.
[2688] Karolj Dondo, T. 22458; D1703 (Letter from HV liaison officers to Ministry of Defence, 20 August 1995).
[2689] D1696 (Karolj Dondo, witness statement, 18 August 2009), para. 24.
[2690] D1696 (Karolj Dondo, witness statement, 18 August 2009), para. 18; Karolj Dondo, T. 22580.
[2691] Karolj Dondo, T. 22545.
[2692] P375 (Letter from Alain Forand to Ante Gotovina re certain actions by HV soldiers, 26 August 1995), pp. 2-3. See also D150 (Letter from Alain Forand to Ante Gotovina, 26 August 1995).
[2693] Alain Forand, T. 4240; P408 (UNCRO Sector South report, 5:30 p.m., 29 August 1995), p. 2; P409 (Minutes of meeting between Ivan Čermak, Hussein Al-Alfi, and Alain Forand on 29 August 1995 in Knin), p. 2.
[2694] D307 (Order by Ante Gotovina re stolen UN vehicles, 11 November 1995).
[2695] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 171-172. See also Jack Deverell, T. 24180-24184, 24352-24355.
[2696] P2526 (Suspect interview with Ivan Čermak, 17 March 1998), pp. 83-84.



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2399. The Trial Chamber will further consider these orders in the following sections, respectively dealing with Čermak's powers over the VP and the civilian police.

2400. The Trial Chamber now turns to Čermak's authority specifically over the VP. The Trial Chamber has considered relevant evidence from Laušić and P880, reviewed in chapter 3.1.2. On 3 December 1994, Mate Laušić issued an order according to which the Commander of the 72nd VP Battalion was to be subordinated to the commander of the Split MD, whereas in matters of daily-operative command, platoon and company commanders who were outside the command headquarters of the 72nd VP Battalion were to be subordinated to the commanders of the HV garrisons or to the most senior HV commander in their area of responsibility.[2697] Further according to the order, VP unit commanders in all areas of responsibility were obliged to attend all briefings and coordination meetings of the commands to which they were subordinated in matters of daily-operative command, as well as report to them.[2698] **Mate Laušić**, chief of the VP administration from 5 March 1992 until 30 December 2002,[2699] testified that the Knin VP company was subordinated to the highest military commander in its area of responsibility, being Knin town and surroundings, namely Čermak.[2700] Laušić testified that he was not aware to whom the Knin VP company reported.[2701] However, he assumed that the Knin VP company did not send its daily reports to the forward command post of the Split MD, as its activities reached the Split MD via the 72nd VP battalion's daily reports, but rather to the Knin garrison commander, as the highest ranking military commander in the zone of responsibility, and the chief of the police station in Knin.[2702] The highest ranking military commander by function in Knin was not General Čermak.[2703]

2401. **Boško Džolić**, a former Company Commander of the 72nd VP Battalion who was the Commander of the Joint VP Company in Knin from 5 to 12 August 1995,[2704]

[2697] D1280 (Order by Mate Laušić regarding areas of responsibility of VP units, 3 December 1994), pp. 1, 4, 7. See also D1281 (Report on the work of the VP for 1994, dated January 1995), p. 3.
[2698] D1280 (Order by Mate Laušić regarding areas of responsibility of VP units, 3 December 1994), p. 5.
[2699] P2159 (Mate Laušić, witness statement, 11 August 2004), p. 1, paras 1, 37-38, 48, 60.
[2700] P2159 (Mate Laušić, witness statement, 11 August 2004), paras 194-195.
[2701] Mate Laušić, T. 15637.
[2702] Mate Laušić, T. 15644-15645.
[2703] Mate Laušić, T. 15646.
[2704] P875 (Boško Džolić, witness statement, 18 May 2004), p. 1, paras 3, 4, 20, 21, 53; P876 (Boško Džolić, witness statement, 20 August 2008), p. 1, paras 27, 32, 33; Boško Džolić, T. 8888, 8906, 8916, 8922, 8968, 8987, 8999, 9068; P882 (Report by Major General Mate Laušić on the use of VP units in Operation Storm, 6 August 1995); D786 (Organigram of the 72nd VP Battalion from August to October



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testified that on 7 August 1995, Mihael Budimir introduced Čermak to him as a General and Garrison Commander for Knin.[2705] He was informed by Budimir that Čermak was responsible for the town, and was told to be at Čermak's disposal in case he needed anything and to help him in any way he wanted. According to Džolić's 2004 witness statement, he understood this to mean that he was still under the command of Budimir, but that he was also under the command of Čermak, any order of whom he was to obey.[2706] However, in court, Džolić testified that his 2004 witness statement was incorrect insofar as it suggested that Čermak had the authority to order him, as he did not in fact have the authority to do so, particularly in relation to orders pertaining to the investigation of crimes.[2707]

2402. Džolić testified that he was invited to Čermak's office in the HV "Dom" Building in Knin for a conversation, because he was subordinated to him in his daily tasks, on three occasions.[2708] The first time was on 8 August 1995, when Čermak told Džolić that he was informed by the International Red Cross that their missing truck had been stolen by the HV. Džolić testified that he informed the Crime VP, and that some eight hours later the truck was found near an artillery position in an area controlled by the HV, and subsequently returned.[2709] The next time was on 9 August 1995, when Čermak told Džolić about the burning of houses and asked him to visit the reserve units that were located outside Knin and tell the commanders that the burning of houses was not to be tolerated and to take action against the perpetrators.[2710] Džolić testified that a VP patrol went to several locations and found some burning houses and structures.[2711] The VP patrol reported to Džolić that they did not find any of the perpetrators, but that there was a detachment of the 142nd Brigade about 500 metres from the burning houses at one location.[2712] At Čermak's request, Džolić went to two Battalions of the 142nd Brigade located on the outskirts of Drniš – one near Drniš itself and the other in a

1995); D787 (Daily Order of the Joint VP Company in Knin from 5 August to 23 September 1995), pp. 7, 10, 17, 21.
[2705] P875 (Boško Džolić, witness statement, 18 May 2004), para. 37; P876 (Boško Džolić, witness statement, 20 August 2008), para. 15.
[2706] P875 (Boško Džolić, witness statement, 18 May 2004), para. 37.
[2707] Boško Džolić, T. 8929, 9017, 9036-9037.
[2708] P875 (Boško Džolić, witness statement, 18 May 2004), paras 21, 44-45, 47; Boško Džolić, T. 8953.
[2709] P875 (Boško Džolić, witness statement, 18 May 2004), para. 44; P876 (Boško Džolić, witness statement, 20 August 2008), para. 17.
[2710] P875 (Boško Džolić, witness statement, 18 May 2004), para. 45; P876 (Boško Džolić, witness statement, 20 August 2008), para. 18; Boško Džolić, T. 8929.
[2711] P876 (Boško Džolić, witness statement, 20 August 2008), para. 18; Boško Džolić, T. 8929.
[2712] P876 (Boško Džolić, witness statement, 20 August 2008), para. 18.



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warehouse towards Oklaj – and spoke to their most senior persons, but both denied that their men were responsible for the burning of houses.[2713] Džolić stated that he verbally reported back to Čermak, who made no particular comments.[2714] Lastly, on 9 or 10 August 1995, Čermak asked Džolić to provide security for a civilian factory, but Džolić told Čermak that he did not have the men available to carry out the task and suggested that it should be delegated to the civilian police as it was not a VP task.[2715] He also told Čermak that the Civilian Police was not doing its job and was not turning up for its night shifts and to provide security for several civilian facilities including a Red Cross warehouse. After the meeting, Džolić went to the civilian police to tell that it was their responsibility to guard civilian facilities, but the most senior policemen who was present responded that they were not aware that it was their responsibility.[2716] According to Džolić, there were other instances, which he could not remember, in which he did not carry out a task that Čermak gave him.[2717]

2403. **Ivan Jurić**, a Major in the VP Administration in August 1995 who was sent by General Laušić to coordinate the work of the 72nd and 73rd VP Battalions and the military and civilian police in the former Sector South between 3 and 13 August 1995,[2718] testified that he remembered having attended one or two meetings organized by Čermak.[2719] Representatives of the civilian police, the VP, and possibly members of some international organizations were present at these meetings.[2720] Jurić specified that Čermak was not his immediate superior and that he did not think that Čermak played any major role in relation to the VP.[2721] As the Knin Garrison Commander, Čermak had the right to issue tasks to the VP in relation to the implementation of security issues, provided the tasks fell within the scope and responsibilities of the VP and were in accordance with the Rules on the Work and Organisation of the VP, however Jurić noted that Čermak did not have any operative authority over VP units deployed in Knin.[2722] Had Čermak issued an order beyond the duties of the VP, resources would

[2713] P875 (Boško Džolić, witness statement, 18 May 2004), para. 45; P876 (Boško Džolić, witness statement, 20 August 2008), paras 18, 20; Boško Džolić, T. 8929.
[2714] P875 (Boško Džolić, witness statement, 18 May 2004), para. 46; P876 (Boško Džolić, witness statement, 20 August 2008), para. 20.
[2715] P875 (Boško Džolić, witness statement, 18 May 2004), para. 47; Boško Džolić, T. 9114-9115.
[2716] P875 (Boško Džolić, witness statement, 18 May 2004), para. 47.
[2717] Boško Džolić, T. 9114-9115.
[2718] Ivan Jurić, T. 27407, 27412-27417, 27426-27428, 27481, 27534.
[2719] Ivan Jurić, T. 27430, 27457.
[2720] Ivan Jurić, T. 27430-27431.
[2721] Ivan Jurić, T. 27457-27458, 27528.
[2722] Ivan Jurić, T. 27457-27459, 27461, 27463, 27485, 27521, 27526, 27529-27532.



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have dictated whether or not the VP would have complied.[2723] Jurić testified that Čermak never issued any order to him.[2724]

2404. **Pero Kovačević**, a former HV Brigadier and Ministry of Defence official and expert in the primary and secondary Croatian legislation in the area of defence,[2725] testified that in 1993 the rules for the VP were amended to remove the VP from the authority of local military commanders and place it directly under the Ministry of Defence so that it would be more independent and not part of the military forces.[2726] As such, the VP could not be subordinated to the Garrison Command.[2727] In keeping with this, Article 9 of the Rules Governing the Structure and Operation of the VP, which provided for the subordination of the VP to the MD while performing regular policing duties, needed to be clarified, in the sense that the regular policing duties that were being subordinated had to be specified in the subordination order, which also had to state "I hereby subordinate", or else it would be incomplete and ineffective, a mistake that General Laušić made in some of his orders such as when he subordinated VP units to the most senior commander, a position that did not exist.[2728] As a consequence of the separation of the VP from the rest of the armed forces, General Laušić was not part of the Operative Command of the HV because of his position as head of the VP.[2729]

2405. **Deverell** confirmed that the VP was subordinated to the MoD.[2730] VP units were subordinated to the VP Administration, and had only cooperation and coordination relationships with operational formations and units.[2731] The only formal link between the VP and Garrison Headquarters was through the Headquarters of the MD, which also had a cooperation and coordination relationship with VP units.[2732] Deverell testified that the fact that an order dated 17 August 1995 on the rotation of VP forces in Knin was addressed to neither the Knin Garrison Headquarters, nor to Čermak, demonstrated that

[2723] Ivan Jurić, T. 27529-27530.
[2724] Ivan Jurić, T. 27527-27529.
[2725] D1676 (Expert Report of Pero Kovačević), paras 0.1.3-0.1.4, 0.1.7, 0.1.11, 0.2.2.
[2726] Pero Kovačević, T. 22042-22043, 22090-22091, 22132; D1676 (Expert Report of Pero Kovačević), para. 5.3.10.
[2727] Pero Kovačević, T. 22111; D1676 (Expert Report of Pero Kovačević), para. 5.4.9.
[2728] Pero Kovačević, T. 22085-22087, 22090-22091; D1676 (Expert Report of Pero Kovačević), paras 5.2.11, 5.4.1-5.4.2, 5.4.4-5.4.6.
[2729] Pero Kovačević, T. 22132.
[2730] D1784 (Expert Report of General Jack Deverell, 16 September 2009), pp. 19-20, 44; P2658 (Subordination diagram of the VP and HV).
[2731] D1784 (Expert Report of General Jack Deverell, 16 September 2009), p. 20; P2658 (Subordination diagram of the VP and HV).
[2732] D1784 (Expert Report of General Jack Deverell, 16 September 2009), p. 20; Jack Deverell, T. 24359, 24362-24364, 24367; P2658 (Subordination diagram of the VP and HV).



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Čermak had no authority over or responsibility for the units mentioned in that order.[2733] If Čermak had any responsibility or authority over these units, he would need to know when the rotation was taking place, as it would affect the capacity of a unit to conduct their operations.[2734] Deverell testified that on 14 August 1995, Major General Laušić issued an order subordinating the commanders of platoons and companies of the Knin VP to the commander of the Split MD, not to Čermak, because Čermak was not the most senior operational HV commander in the Knin zone of responsibility.[2735] Deverell testified that Čermak was substantially isolated from the VP chain of command and chain of information.[2736]

2406. **Feldi** testified that the VP were subordinate to the VP Administration pursuant to the Rules Governing the Structure and Operation of the VP of 19 February 1994 and were never subordinated to the Knin garrison command by virtue of any orders.[2737] Feldi based this opinion on certain orders in which the employment of VP units for performing assignments was ordered by the Chief of the VP Administration, in accordance with Article 10 of these rules, with no reference to Article 9, and an order requiring the compulsory delivery of daily reports which was communicated to VP in the field but not MD commanders or garrison commanders.[2738] Feldi testified that Article 9 of these rules required an implementing order.[2739] Feldi testified that the VP were duty bound to regulate the application and interpretation of Article 9 and the VP Administration would determine the time and circumstances in which the HV commanders would be given powers to carry out certain tasks.[2740]

2407. Feldi testified that a garrison commander had no control over the VP as they were subordinate to the MoD.[2741] He further testified that Čermak had a relationship with the VP which involved cooperation and coordination without command, control and reporting.[2742] A garrison commander's authority was limited to arranging a procedure for the VP to intervene in circumstances of unrest and occasional

[2733] Jack Deverell, T. 24177-24178.
[2734] Jack Deverell, T. 24178.
[2735] D1784 (Expert Report of General Jack Deverell, 16 September 2009), p. 46.
[2736] D1784 (Expert Report of General Jack Deverell, 16 September 2009), p. 47.
[2737] D1673 (Expert Report of Franjo Feldi, July 2009), paras 1.5.16, 1.5.50; Franjo Feldi, T. 21971-21972.
[2738] D1673 (Expert Report of Franjo Feldi, July 2009), paras 1.5.22-1.5.25.
[2739] Franjo Feldi, T. 21978-21981.
[2740] Franjo Feldi, T. 21978-21979.
[2741] D1674 (Franjo Feldi, witness statement, 16 July 2003), p. 9.
[2742] D1674 (Franjo Feldi, witness statement, 16 July 2003), p. 9; D1673 (Expert Report of Franjo Feldi, July 2009), paras 3.2.1-3.2.2.



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employment of patrols to supervise military personnel in public places.[2743] Feldi testified that coordination meetings between HV commanders, which VP unit commanders also attended, were held to prepare for certain tasks and to report to superior commanders on the tasks carried out.[2744] Feldi testified that the Knin VP were immediately subordinate to the commander of the 72nd VP Battalion and were established prior to the setting up of the Knin garrison, which Feldi relied on to support his conclusion.[2745] Feldi relied on the Annual Report on the work of the 72nd VP Battalion to confirm that they were under the exclusive command of their superior commanders in the VP, with a mere relationship of cooperation with HV units.[2746] Feldi concluded from the absence of orders issued by Čermak, in the report, that they were given for information purposes only.[2747] Feldi testified that garrison and MD commanders should have VP units to maintain control and order among soldiers, but Čermak complained to Feldi that in practice he was unable to establish order and he had no VP to maintain order.[2748] According to a joint stipulation by the Prosecution and the Čermak Defence, a number of Split MD Daily Reports of the 72nd VP Battalion Duty Service were not addressed to the Knin Garrison while they were addressed to, among others, the Commander of the Split Garrison.[2749]

2408. The Trial Chamber received relevant evidence regarding Čermak's role in the provision of security by VP. **Dondo** testified that Čermak's order of 8 August 1995 on the inspection of UN helicopters (P512, which is reviewed in chapter 6.4.7 below)

[2743] D1673 (Expert Report of Franjo Feldi, July 2009), para. 2.3.15.
[2744] Franjo Feldi, T. 21942-21943.
[2745] D1673 (Expert Report of Franjo Feldi, July 2009), pp. 24-25, para. 3.2.4.
[2746] D1673 (Expert Report of Franjo Feldi, July 2009), para. 3.2.5.
[2747] D1673 (Expert Report of Franjo Feldi, July 2009), para. 3.2.6.
[2748] D1674 (Franjo Feldi, witness statement, 16 July 2003), pp. 9-10.
[2749] Joint Stipulation by the Prosecution and the Čermak Defence concerning Documents Adduced during the Testimony of Reynaud Theunens, 15 December 2008; Corrigendum to Joint Stipukation by the Prosecution and the Čermak Defence concerning Documents Adduced during the Testimony of Reynaud Theunens, 15 December 2008; D1068 (Daily Report of the 72nd VP Battalion, 31 August 1995); D1069 (Daily Report of the 72nd VP Battalion, 2 September 1995); D1070 (Daily Report of the 72nd VP Battalion, 6 September 1995); D1332 (Daily Report of the 72nd VP Battalion, 7 October 1995); D1333 (Daily Report of the 72nd VP Battalion, 24 October 1995); D1334 (Daily Report of the 72nd VP Battalion, 14 November 1995); D1335 (Daily Report of the 72nd VP Battalion, 1 October 1995); D1336 (Daily Report of the 72nd VP Battalion, 12 October 1995); D1337 (Daily Report of the 72nd VP Battalion, 21 October 1995); D1338 (Daily Report of the 72nd VP Battalion, 28 October 1995); D1339 (Daily Report of the 72nd VP Battalion, 29 October 1995); D1340 (Daily Report of the 72nd VP Battalion, 2 November 1995); D1341 (Daily Report of the 72nd VP Battalion, 16 August 1995); D1342 (Daily Report of the 72nd VP Battalion, 8 October 1995); D1343 (Daily Report of the 72nd VP Battalion, 22 October 1995). See also Reynaud Theunens, T. 13274-13291; Ivan Čermak's Motion to Admit Documents into Evidence, 20 January 2009, pp. 2-3.



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related to matters which his office brought to the attention of Čermak.[2750] The inspections were carried out by the VP.[2751] There were 10-15 flights inspected.[2752] According to Dondo, these inspections were arranged between the UN, the liaison officers, and the VP.[2753] According to the Knin VP Duty Service log book, from 15 August 1995 to 28 September 1995, the VP provided on several occasions security patrols for the protection of UN helicopters.[2754] On two of these occasions, 1 and 2 September 1995, the log book indicated that inspections of the helicopters were requested, and were to be carried out with a liaison officer present.[2755] **Džolić** testified that he did not implement the order by Čermak to carry out inspections of UNCRO helicopters before each flight, and testified that the VP only provided security when the helicopters were taking off and landing.[2756] **Ivica Luković**, the Chief of the Croatian Department for Cooperation with the UN and EC for Sector South from 1992 and during 1995,[2757] testified that pursuant to an agreement between the UN and Croatia, UN helicopters leaving the UN camp were checked before takeoff to prevent persons who had committed crimes from leaving the camp.[2758] The Trial Chamber has also considered relevant evidence from John Hill, reviewed in chapter 4.3.9 (Predrag Šare).

2409. On 8 August 1995, Čermak issued an order to control all entrances to the UNCRO barracks and particularly check refugees leaving the barracks, not allowing them to leave without adequate authorization. The order was copied to the VP.[2759] The Trial Chamber notes that chapter 4.5.4 contains relevant evidence in this regard. On 11 August 1995, the 72nd VP battalion duty officer was informed about an order by General Čermak that members of UNCRO have complete freedom of movement.[2760] On 22 August 1995, Colonel Damir Kozić issued an order for the Commander of the 72nd VP Battalion to organize the hand-over of protection of Čermak from the 66th VP

[2750] D1696 (Karolj Dondo, witness statement, 18 August 2009), para. 20; Karolj Dondo, T. 22586.
[2751] D1696 (Karolj Dondo, witness statement, 18 August 2009), para. 20; Karolj Dondo, T. 22586-22587.
[2752] D1696 (Karolj Dondo, witness statement, 18 August 2009), para. 20; Karolj Dondo, T. 22587.
[2753] Karolj Dondo, T. 22587.
[2754] P886 (Duty Log of the Joint VP Company in Knin from 11 August to 11 November 1995), entries between 15 August 1995 and 28 September 1995.
[2755] P886 (Duty Log of the Joint VP Company in Knin from 11 August to 11 November 1995), entries of 1 and 2 September 1995.
[2756] Boško Džolić, T. 9132-9133.
[2757] D1687 (Ivica Luković, witness statement, 1 October 2004), p. 1, paras 8, 13, 17; D1688 (Ivica Luković, witness statement, 13 August 2009), p. 1, paras 4, 6; Ivica Luković, T. 22385.
[2758] D1688 (Ivica Luković, witness statement, 13 August 2009), paras 30, 34.
[2759] D788 (Order by Commander Colonel General Ivan Čermak on controlling the UNCRO barracks entrances, 8 August 1995).
[2760] P973 (Logbook 4th company, 72nd VP battalion, 4-11 August 1995), pp. 1, 11-12.



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Battalion forces to the Knin 7th VP company. The order was addressed to the 72nd Split VP Battalion for action, and to Čermak for information.[2761]

2410. Finally, the Trial Chamber received relevant evidence in the form of correspondence between ECMM and Čermak regarding a complaint about HV behaviour. On 31 August 1995, Phillippe Augarde of the ECMM Knin wrote to Čermak informing him that on 26 August 1995, an ECMM team had come to Orlić in order to carry out an inspection of a house that was set on fire.[2762] One of the Croatian soldiers there had cocked his gun and threatened one of the ECMM members. In the letter, Augarde protested strongly against this act.[2763] On 8 September 1995, Čermak responded to the letter, explaining that he had received it only on 6 September 1995. Čermak expressed regret for "the impermissible behaviour by a person in the uniform of a Croatian soldier". Čermak added that he had issued an order to the VP to investigate the case and make every attempt to discover the perpetrator.[2764]

2411. The Trial Chamber considers that the evidence regarding the authority of Čermak over the VP is not clear. Several witnesses contradicted or appeared to contradict themselves. The applicable Croatian legal framework indicates that a garrison commander had some limited authority over VP in his area of responsibility, although they were not subordinated to him. In keeping with its considerations in chapter 3.2, the Trial Chamber will focus on evidence reflecting the effectiveness of powers exercised by Čermak over the VP. The Trial Chamber notes in this regard that Čermak invited Džolić to his office on several occasions, and that Džolić came to see Čermak. According to Džolić, he carried out some of Čermak's requests, including a request to take action vis-a-vis military units stationed outside Knin near some houses reported to be burning, but also declined to carry out others. Čermak's order P512 ordered VP to inspect UNCRO helicopters before each flight, and the evidence of Dondo and VP duty log P886 shows, notwithstanding Džolić's denial, that VP did indeed carry out inspections. The evidence, in particular that of Luković and Hill, also provides a reasonable interpretation of the evidence according to which the inspections may have been carried out pursuant to an agreement between the UN and Croatian interlocutors

[2761] D770 (Order by Damir Kozić, 22 August 1995). See also D790.
[2762] Karolj Dondo, T. 22459-22460; D1704 (Letter from Philippe Augarde to Ivan Čermak about burning incident in Orlić, 31 August 1995).
[2763] D1704 (Letter from Philippe Augarde to Ivan Čermak about burning incident in Orlić, 31 August 1995).



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rather than pursuant to Čermak's order. Nevertheless, the evidence shows that Čermak worked with the VP on the matter. As for Čermak's orders pertaining to stolen UN equipment, the evidence does not establish that the VP regarded them as orders or acted upon them. The same is true for Čermak's orders P509 and P53/P513 (see chapter 6.4.7). As for Čermak's letter P1147 to Augarde, the evidence does not establish that Čermak actually issued an order to the VP to investigate, or, if he did, that the VP considered that to be an order that was binding on them and which they implemented. On the basis of these considerations and the evidence above, the Trial Chamber finds that Čermak did not, despite how he represented himself in that regard, have the authority to order VP to any extent relevant to the Indictment. However, the Trial Chamber finds that he did have a working relationship with the VP in the area of Knin and could issue requests and provide information to them. The Trial Chamber will further consider how Čermak used this working relationship in chapter 6.4.7 below.

2412. The Trial Chamber now turns to Čermak's authority specifically over the civilian police. **Joško Morić**, who in 1995 was Assistant Minister of the Interior in charge of regular police,[2765] testified that he could not legally address his problems to Čermak.[2766] Čermak, who was not within the police structure, did not have authority over the police, who were under no obligation to report to him, and would only carry out his requests if it fit within their duties and responsibilities.[2767] Tomurad suggested to Morić on 28 August 1995 that it would be a good idea for police representatives to be present at meetings that Čermak held with representatives of international organizations, so that the police could be informed about all agreements and conclusions reached.[2768]

2413. **Ivica Cetina**, the Chief of the Zadar-Knin Police Administration throughout 1995,[2769] testified that at none of the meetings Cetina attended at the time was it

[2764] P1147 (Letter from Ivan Čermak to Philippe Augarde about burning incident in Orlić, 8 September 1995).
[2765] D1841 (Joško Morić, witness statement, 15 May 2009), p. 1, paras 1-2; D1842 (Joško Morić, witness interview, 17 January 2004), pp. 1-10, 13, 25, 110, 119; Joško Morić, T. 25502-25505, 25508-25511, 25514-25515, 25523, 25528, 25640, 25785, 25806, 25842, 25926-25927.
[2766] D1842 (Joško Morić, witness interview, 17 January 2004), p. 201.
[2767] D1841 (Joško Morić, witness statement, 15 May 2009), para. 9; D1842 (Joško Morić, witness interview, 17 January 2004), pp. 191-196; Joško Morić, T. 25622, 25624-25629, 25631, 25933-25934, 25942-25945, 25949-25950.
[2768] Joško Morić, T. 25623-25624, 25629-25631; D589 (Letter by Marijan Tomurad to Joško Morić with regard to looting by individuals in HV uniforms, 28 August 1995), pp. 2-3. See also D1776 (Expert Report of Christopher Albiston, August 2009), paras 3.33, 3.48; Christopher Albiston, T. 23782, 23784, 23901-23903.
[2769] D1743 (Ivica Cetina, witness statement, 26 August 2009), p. 1; D1745 (Ivica Cetina, witness statement, 26 February 2002), pp. 3-4; Ivica Cetina, T. 23396, 23486, 23517.



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suggested that Čermak was responsible for dealing with the crimes in the area.[2770] Cetina did not have an obligation to report back to Čermak whether something was done in response to a request of his, nor was such a response expected, and Cetina would only do so if Čermak specifically requested him to.[2771] Cetina did not consider Čermak's forwarding of an ICRC letter an order or a command, but only a request (see chapter 6.4.7 for a review of the ICRC letters).[2772] Čermak was not involved, officially or otherwise, in the procedures which followed in relation to the cases mentioned in the letter.[2773] Although Cetina did not have an obligation to report back to Čermak, he did send Čermak a follow-up letter to inform him, in response to a request for information by the ICRC.[2774] In Cetina's assessment, Čermak's orders of 8, 9 and 15 August 1995 did not constitute and would not have been understood by the Knin Police Station and Mihić as orders to them, but were only sent to the police for their information, for instance with regard to the movements of UNCRO staff and civilians.[2775] Thus, Čermak's order of 9 August 1995 did not create an obligation for Mihić to report back to Čermak about what had been undertaken on the basis of the order.[2776] According to Cetina, Čermak's order of 12 August 1995 did not put the police under an obligation and whoever drafted it was unfamiliar with the law governing the police, as the police were only obligated to inform the State Public Prosecutor's Office and did not have the authority to report about their work to Čermak.[2777] The police may have acted on the basis of the information contained in Čermak's orders in accordance with the law, but not because of Čermak's order.[2778] On 11 October 1995, Cetina informed Čermak of an investigation into the murder of three persons in Bijelina, although Čermak did not have any official role in the investigation procedure into the incident.[2779] The Trial Chamber has further considered the evidence reviewed in paragraph 4 of Confidential Appendix C.

[2770] Ivica Cetina, T. 23624.
[2771] Ivica Cetina, T. 23547, 23550, 23559-23560, 23616, 23619, 23622.
[2772] Ivica Cetina, T. 23611-23612, 23616.
[2773] Ivica Cetina, T. 23616.
[2774] D1745 (Ivica Cetina, witness statement, 26 February 2002), p. 8; Ivica Cetina, T. 23612, 23616.
[2775] D1743 (Ivica Cetina, witness statement, 26 August 2009), paras 10, 12, 14; Ivica Cetina, T. 23532, 23537-23539.
[2776] D1743 (Ivica Cetina, witness statement, 26 August 2009), para. 12.
[2777] D1743 (Ivica Cetina, witness statement, 26 August 2009), para. 13.
[2778] D1743 (Ivica Cetina, witness statement, 26 August 2009), para. 12; Ivica Cetina, T. 23618.
[2779] Ivica Cetina, T. 23551, 23619, 23621-23622.



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2414. **Stjepan Buhin**, a MUP employee in 1995 and stationed in Knin between 6 August and the beginning of September 1995,[2780] testified that Čermak was in charge of coordination between the civilian authorities and the civilian police, on the one hand, and the HV, on the other, and his task was to assist in every activity geared towards restoring normal life in Knin.[2781] According to Buhin, Čermak did not command the civilian police.[2782] Buhin also stated that "everyone", including the civilian authorities, had to report to Čermak.[2783] **Witness 84**, a police officer in Knin,[2784] testified that he never met with or took orders from Čermak.[2785]

2415. The Trial Chamber received in evidence orders or decisions by Čermak that were issued to the MUP or civilian police. Čermak issued a decision on 10 August 1995, which was sent to the MUP commander and the Headquarters Administration of the Ministry of Defence HV, in which he decided that the MUP should hand over the former Hotel Spas to the Headquarters Administration of the Ministry of Defence HV for the accommodation of the Knin Garrison Command and other users.[2786] On 11 October 1995, Čermak issued an order to the Knin police station and the Commission of the Government of Croatia for Knin municipality that the civilian police officers in the Knin police station be immediately transferred to the old grammar school building in Knin.[2787]

2416. The Trial Chamber also received relevant evidence regarding damage caused to the habitation of members of international organizations. According to **Forand**, on 6 August 1995, at approximately 4 p.m., John Hill reported that he had seen looting and extensive damage in Knin and that Forand's apartment had been vandalized and that the majority of the objects from it had been stolen.[2788] On 9 August 1995, Forand wrote a letter to Čermak informing him that on the previous day his personnel had returned to their apartments in Knin, finding that someone had broken into them again and taken

[2780] P963 (Stjepan Buhin, witness statement, 9 March 2002), pp. 1-5; Stjepan Buhin, 10017, 10037, 10058-10059.
[2781] Stjepan Buhin, T. 9977, 10044, 10049-10050, 10143.
[2782] Stjepan Buhin, T. 9977, 10050.
[2783] P963 (Stjepan Buhin, witness statement, 9 March 2002), pp. 6-7.
[2784] P1035 (Witness 84, pseudonym sheet); P2393 (Witness 84, witness statement, 20 November 2007), p. 1; P2394 (Witness 84, witness statement, 11 July 2004), p. 1; P2395 (Witness 84, witness statement 9 March 2002), pp. 1-3; Witness 84, T. 11061, 11073, 11094, 11101, 11358, 11360.
[2785] P2395 (Witness 84, witness statement, 9 March 2002), paras 28, 33; Witness 84, T. 11141-11142, 11424.
[2786] D501 (Decision on accommodation of Knin Garrison Command signed by Ivan Čermak, 10 August 1995).
[2787] D504 (Order on transfer police officers Knin police station signed by Ivan Čermak, 11 October 1995).



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additional belongings from them.[2789] Forand accepted Čermak's offer to have his apartment repaired.[2790] **Hussein Al-Alfi**, the UN Civil Affairs Coordinator, later renamed Political and Human Affairs Coordinator, for Sector South in Knin from June 1995 to January 1996,[2791] visited on 9 or 10 August 1995 his own house in Knin and found that it had not been broken into.[2792] General Forand's house, which was across the street, had been looted.[2793] Al-Alfi then asked Čermak to protect his house, but Čermak advised the witness to go and get his things from the house instead.[2794] When interviewed by the Prosecution, Čermak recalled meeting with Al-Alfi about looting and destruction of homes in Knin, including homes in which UN and ECMM officers lodged, and that there were problems with Al-Alfi's house.[2795] Čermak stated that he immediately informed the police station and the police administration. Čermak also stated that he sent his people to help repair the damage.[2796]

2417. Čermak stated that civilian police and VP were the ones charged with security, including the protection of civilians and property, and he did not carry out such work.[2797] Čermak stated that his office told UNCIVPOL that they did not have jurisdiction, and sent them to the police.[2798] Consequently, seven days after Čermak arrived in Knin UNCIVPOL began cooperating – and set up a joint team – with the civilian police.[2799] After that, according to Čermak, UNCIVPOL no longer went through his office.[2800]

[2788] Alain Forand, T. 4129-4130, 4535-4536.
[2789] Alain Forand, T. 4144, 4150, 4221; P389 (Letter from Alain Forand to Ivan Čermak re various issues of importance, 9 August 1995).
[2790] P389 (Letter from Alain Forand to Ivan Čermak re various issues of importance, 9 August 1995), pp. 1-2.
[2791] P1160 (Hussein Al-Alfi, witness statement, 5 March 1998), p. 5; Hussein Al-Alfi, T. 13805-13806, 13932-13933.
[2792] P1160 (Hussein Al-Alfi, witness statement, 5 March 1998), pp. 91-92.
[2793] P1160 (Hussein Al-Alfi, witness statement, 5 March 1998), p. 92.
[2794] P1160 (Hussein Al-Alfi, witness statement, 5 March 1998), p. 92; Hussein Al-Alfi, T. 13863.
[2795] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), p. 44; P2526 (Suspect interview with Ivan Čermak, 17 March 1998), p. 46; P2707 (Additional portions of suspect interview with Ivan Čermak, 17 March 1998), p. 13.
[2796] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), p. 44; P2526 (Suspect interview with Ivan Čermak, 17 March 1998), p. 46.
[2797] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), p. 45; P2526 (Suspect interview with Ivan Čermak, 17 March 1998), pp. 97-98; P2532 (Accused interview with Ivan Čermak, 7 June 2004), pp. 49-50.
[2798] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 63-65.
[2799] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 24, 45, 60, 63, 65, 89; P2526 (Suspect interview with Ivan Čermak, 17 March 1998), pp. 41, 78.
[2800] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 63, 65.



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2418. **Christopher Albiston**, an independent consultant specializing in policing, security and intelligence and an expert in conflict and post-conflict policing,[2801] testified that neither garrison commanders generally, nor Čermak specifically, had any statutory authority to exercise any form of command or control over the civilian police.[2802] Albiston concluded that Čermak was not a superior of the civilian police due to: (a) the legal position of the garrison commander and his authority; (b) his exclusion from all aspects of the line of command and operational administration of the MUP; (c) the picture presented by numerous documents in relation to specific problems and incidents; and (d) the clear and consistent attitudes of the civilian police chiefs and coordinators.[2803] Albiston also testified that Čermak had neither the knowledge nor the experience of how to command the civilian police.[2804]

2419. Albiston further testified that Čermak did not have *de facto* authority to direct or issue orders to the civilian police.[2805] If Čermak had had any genuine *de facto* command over the police during this period, Albiston would have expected to see a significant volume of orders, instructions and requirements for reports as to what exactly was being done.[2806] Albiston testified that there were seven documents issued by Čermak which could be described as "orders", four of which were also addressed to the VP.[2807] Two of these, issued on 9 and 12 August 1995, which related to the theft of UNCRO vehicles were intended to be, and to be understood to be, orders.[2808] Nevertheless, Albiston testified that it was difficult to sustain the argument that these two documents were orders because of their style, addressees, and lack of guidance on how the order should be carried out.[2809]

2420. Albiston testified that the relationship between Čermak and the civilian police was one of cooperation, and that Čermak had a liaison role between Croatian

[2801] D1776 (Expert Report of Christopher Albiston, August 2009), pp. 53-59; Christopher Albiston, T. 23754, 23758-23762.
[2802] D1776 (Expert Report of Christopher Albiston, August 2009), paras 3.1-3.11; Christopher Albiston, T. 23768-23769, 23798, 23876-23877, 23909, 24005, 24017; D1781 (Decree on Internal Organization and Operation of the Ministry of the Interior of the Republic of Croatia, 23 February 1995).
[2803] D1776 (Expert Report of Christopher Albiston, August 2009), para. 3.49.
[2804] D1776 (Expert Report of Christopher Albiston, August 2009), paras 2.3, 3.118.
[2805] D1776 (Expert Report of Christopher Albiston, August 2009), paras 2.1, 3.37, 3.84, 3.87, 3.95; Christopher Albiston, T. 23949-23950, 23956-23958, 23967-23969, 23971, 23990.
[2806] Christopher Albiston, T. 24080.
[2807] D1776 (Expert Report of Christopher Albiston, August 2009), paras 3.43, 3.87, 3.89, Christopher Albiston, T. 23951, 23954, 23987, 24077, 24080.
[2808] D1776 (Expert Report of Christopher Albiston, August 2009), paras 3.87-3.89; Christopher Albiston, T. 23971-23972.



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authorities, and the international community and the press.[2810] This was reflected in the regular, often daily, meetings held by Čermak at the Knin Garrison, which civilian police representatives attended.[2811] Albiston testified that if a matter was raised by a member of the international community at one of these meetings which required a response from the civilian police, Čermak gave the impression that he had authority to deal with it, regardless of whether he had such authority over the civilian police in fact.[2812] This was the response Albiston would expect from someone performing such an international liaison role.[2813] Even though Čermak may have had no authority over the civilian police, he may nevertheless have been able to influence the conduct of the civilian police due to his central and liaison position, charisma or authority that accompanies the rank of Colonel General, and the fact that he was a source of information in relation to certain matters concerning the civilian police.[2814]

2421. **Feldi** concluded that the orders in relation to the location of UNCRO vehicles and equipment, and freedom of movement of UN forces sent by Čermak to the Kotar-Knin police were to provide information and the civilian police considered them as such.[2815]

2422. The Trial Chamber now turns to Čermak's actions concerning the freedom of movement of civilians (for Čermak's order P53/P513, see chapter 6.4.7), which are also relevant to his authority over civilian police. Čermak stated that in the first days after Operation Storm he authorized a pass system to allow Serbs to move freely inside and out of Knin, and that in the beginning his office stamped and issued such passes that also functioned as IDs.[2816] Čermak explained that there were a lot of locals in and around Knin who had no Croatian documents, whereas the municipality did not work

[2809] D1776 (Expert Report of Christopher Albiston, August 2009), paras 3.88-3.89, Christopher Albiston, T. 23833-23836, 23971-23972, 23977.
[2810] D1776 (Expert Report of Christopher Albiston, August 2009), paras 3.13, 3.37; Christopher Albiston, T. 23879-23884, 23923. See also D1673 (Expert Report of Franjo Feldi, July 2009), pp. 13, 16, 19, paras 2.3.16, 3.3.1.
[2811] D1776 (Expert Report of Christopher Albiston, August 2009), paras 3.13, 3.41; D1777 (Christopher Albiston, expert report corrigenda, October 2009), corrections 1, 3; Christopher Albiston, T. 23784, 23915, 23917. See also D1673 (Expert Report of Franjo Feldi, July 2009), pp. 13, 16, 19, paras 3.3.1-3.3.2.
[2812] Christopher Albiston, T. 23903-23907, 23913, 23971-23973.
[2813] Christopher Albiston, T. 23905-23906, 23910.
[2814] Christopher Albiston, T. 23909-23913, 23918-23921, 23926.
[2815] D1673 (Expert Report of Franjo Feldi, July 2009), para. 3.3.5. See also Pero Kovačević, T. 22116-22119, 22126; D1676 (Expert Report of Pero Kovačević), paras 2.6.3, 3.4.31-3.4.32.
[2816] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), p. 122; P2526 (Suspect interview with Ivan Čermak, 17 March 1998), p. 86; P2532 (Accused interview with Ivan Čermak, 7 June 2004), pp. 132-137.



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and the garrison could not issue certificates of citizenship.[2817] Čermak's intention was to help and protect these Serbs.[2818] He stated that the passes were helpful to many Serbs.[2819] Later, according to Čermak, civilian authorities began to work and then people obtained normal identification documents.[2820] **Rinčić** testified that he had blank unsigned passes, which bore the Knin Garrison stamp and which he and others signed on Čermak's behalf and then gave to persons who did not have personal documents in Knin and the surrounding area.[2821] **Dondo** testified that Čermak issued some passes and permits to be used at check-points, in order to protect some people who had lost their documents.[2822]

2423. **Witness 86** testified that Croatian citizens with a Croatian identity card could move around in Croatia without difficulty.[2823] He testified that persons who had resided in the temporarily occupied area and had not resolved their status were not allowed to leave, but had to report to the police station and ask for Croatian documents. Awaiting the official documents, such persons received temporary documents to prove their identity with which they could move freely through Croatia.[2824] Initially, it took two or three days for a Croatian citizen or a citizen with a Serbian ethnic background to receive documents in Knin, because they were issued in Zadar; later, it took fifteen minutes, as the documents were issued in Knin.[2825] Individuals who did not have documents, because they had lived in areas under Serb occupation during the war, had lived outside Croatia, or had lived within the RSK, received passes, with a letter and a serial number, from a number of persons, including Ivo Cipci, Petar Pašić, and Marko Gojević, who got the passes from Čermak's office.[2826] According to Witness 86, there was also a great

[2817] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), p. 122; P2532 (Accused interview with Ivan Čermak, 7 June 2004), p. 133.
[2818] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), p. 122; P2532 (Accused interview with Ivan Čermak, 7 June 2004), pp. 133, 136.
[2819] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), p. 123; P2532 (Accused interview with Ivan Čermak, 7 June 2004), p. 134. But see also P2525 (Suspect interview with Ivan Čermak, 13 March 2001), p. 122; P2532 (Accused interview with Ivan Čermak, 7 June 2004), pp. 134-136.
[2820] P2526 (Suspect interview with Ivan Čermak, 17 March 1998), p. 87.
[2821] D1680 (Zdenko Rinčić, witness statement, 16 May 2009), para. 24; D1681 (Permit to enter the Knin MD, bearing signature of Ivan Čermak, 11 August 1995).
[2822] D1695 (Karolj Dondo, witness statement, 9 March 2005), para. 20.
[2823] Witness 86, T. 5666.
[2824] Witness 86, T. 5668-5670.
[2825] Witness 86, T. 5670-5672, 5809.
[2826] Witness 86, T. 5643-5644, 5646-5648, 5650, 5654, 5666, 5807; D488 (Request Split bank with regard to passes for free movement, 7 August 1995); D489 (Certificate of confirmation signed by Petar Pašić and Ivan Čermak, 9 August 1995); D490 (Certificate for passes signed by Marko Gojević, 9 August 1995); D491 (List of persons with issued passes signed by Petar Pašić, 11 August 1995); D492 (List of persons



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pressure stemming from citizens and displaced persons who wished to visit Knin and the other liberated territory.[2827]

2424. **Cipci** testified that Čermak was not authorized to issue entry passes for Knin to civilians, but only to military personnel and civilian HV staff.[2828] However, between 6 and 15 August 1995, Cipci had an informal meeting with Čermak in the latter's office where Cipci was shown entry passes that Čermak had printed. This lead Cipci to tell Čermak that only chiefs of police administrations could issue passes for civilians, and that anyone who tried to enter his area of responsibility with one of Čermak's passes would be expelled.[2829] Cipci testified that he denied international observers carrying passes issued by Čermak permission to pass through his administration and sent them back to Knin.[2830] On 15 August 1995, Cipci wrote to the Operational Staff of Operation Return, inquiring into the validity of entry passes issued by Čermak, and was subsequently notified that Čermak's passes were only valid for military personnel.[2831] Somebody wrote a handwritten note on both Cipci's request and his letter that Čermak would issue an order on the annulment of the passes for civilians.[2832] Cipci testified that Čermak subsequently stopped issuing passes to civilians and changed his passes to indicate that they were only valid for military personnel and civilians serving in the HV.[2833] This evidence was corroborated by **Morić**.[2834]

2425. **Petar Pašić**, a Croatian Serb and the Croatian Government Commissioner for Knin from January 1992 to April 1996,[2835] testified that as Government Commissioner, he provided accommodation to people who expressed a desire to settle in Knin and to

with issued passes marked 'L' signed by Petar Pašić, 14 August 1995); D493 (Lists of persons with issued passes marked 'L' and 'P' signed by Petar Pašić, 14 August 1995).

[2827] Witness 86, T. 5667; D496 (Request on visits and admission of civilians to the liberated areas signed by Ivo Cipci, 15 August 1995).

[2828] D1723 (Ivo Cipci, witness statement, 12 June 2009), para. 23; Ivo Cipci, T. 23067, 23087, 23170-23171, 23182.

[2829] D1723 (Ivo Cipci, witness statement, 12 June 2009), para. 23; Ivo Cipci, T. 23080, 23085, 23172, 23174-23175, 23177.

[2830] D1723 (Ivo Cipci, witness statement, 12 June 2009), para. 23; Ivo Cipci, T. 23080-23081, 23173, 23177-23178.

[2831] D1723 (Ivo Cipci, witness statement, 12 June 2009), para. 24; Ivo Cipci, T. 23085-23086, 23171; D494 (Letter about validity passes signed by Ivo Cipci, 15 August 1995), p. 1.

[2832] D494 (Letter about validity passes signed by Ivo Cipci, 15 August 1995), p. 2; D496 (Request on visits and admission of civilians to the liberated areas signed by Ivo Cipci, 15 August 1995).

[2833] D1723 (Ivo Cipci, witness statement, 12 June 2009), para. 24; Ivo Cipci, T. 23171-23172.

[2834] Joško Morić, T. 25877-25878, 25880-25882, 25885, 25933.

[2835] D1706 (Petar Pašić, witness statement, 3 March 2002), pp. 1-2; D1707 (Petar Pašić, witness statement, 23 April 2009), paras 2, 4, 13, 15, 32; D1709 (Petar Pašić, supplemental information sheet, 6 October 2009), para. 10; Petar Pašić, T. 22740, 22778, 22844, 22847, 22858, 23026, 23053.



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Croats who had been expelled in 1990 and 1991 and were accommodated in hotels.[2836] The government recommended that those living in hotels be accommodated first.[2837] The Housing Commission, within the commissioner's office, which consisted of representatives of several Ministries, an officer of the Government Commission for Knin, and an officer of the Croatian Red Cross, was responsible for deciding on the requests to settle in Knin and on the allocation of apartments for temporary accommodation.[2838] Jure Radić, the Minister of Reconstruction, instructed Pašić to house the returning Croats in Knin and the surrounding villages, and sent him applications from people wishing to move to Knin from elsewhere in Croatia, and outside Croatia, who did not have permanent accommodation in Knin.[2839] According to Pašić, Čermak was not involved in the work of the Housing Commission and if Čermak received requests for housing, he would refer them to Pašić.[2840] Entry passes granting permission to enter the area of the Knin Garrison were signed by Čermak and the details were filled in by, among others, Pašić who would stamp the pass with the Government trustee seal; he gave some of the passes to Croats who were accommodated in hotels.[2841] According to Pašić, the passes were used as a means to prevent a rushed, disorganized entry to the area, so as to prevent looting and arson, and to gain information on who was moving in and out of the area.[2842] The Trial Chamber has also considered evidence from Zdenko Rinčić, reviewed in chapter 6.2.4.

2426. The Trial Chamber also received relevant evidence in the form of orders regarding the free movement of civilians. On 15 August 1995, Čermak issued an order, which was sent to the Knin police station and the Knin VP, that from that date, civilians would be allowed unhindered entry into the town of Knin without passes at all VP and civilian police check-points. The order noted the establishment of security in the town of Knin and the large number of requests by the civilian population to enter the

[2836] Petar Pašić, T. 23025, 23051
[2837] Petar Pašić, T. 23051.
[2838] D1707 (Petar Pašić, witness statement, 23 April 2009), para. 31; Petar Pašić, T. 22770, 22916, 22930, 22994, 23019.
[2839] D1706 (Petar Pašić, witness statement, 3 March 2002), p. 8; D1707 (Petar Pašić, witness statement, 23 April 2009), para. 31; Petar Pašić, T. 22914-22917, 22930.
[2840] D1707 (Petar Pašić, witness statement, 23 April 2009), para. 31; Petar Pašić, T. 22917; P2647 (Applications for accommodation signed by Mr. Čermak, sent to Petar Pašić, date range 25 August - 4 October 1995).
[2841] D1706 (Petar Pašić, witness statement, 3 March 2002), p. 5; D1707 (Petar Pašić, witness statement, 23 April 2009), para. 20; Petar Pašić, T. 22907-22908.
[2842] D1706 (Petar Pašić, witness statement, 3 March 2002), p. 5; D1707 (Petar Pašić, witness statement, 23 April 2009), para. 20; D1708 (Petar Pašić, supplemental information sheet, 6 October 2009), para. 6.



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town.[2843] When shown his order by the Prosecution, Čermak explained that before that date locals and delegations were not allowed access to Knin, that there were a lot of complaints about free access for civilians, and that he thought there should be free access to Knin without any need for special passes.[2844] The Trial Chamber has considered in this regard the evidence reviewed in paragraph 5 of Confidential Appendix C.

2427. **Albiston** testified that the MUP was responsible for dealing with the movement of civilians, including EU monitors, UNCIVPOL and UNCRO members, although there seemed to be some initial confusion over who held this authority.[2845] The way the MUP dealt with civilian passes issued by Čermak demonstrated both that the MUP considered that Čermak had no authority over the movement of civilians, and that the chain of command to which the civilian police responded was that emanating from the MUP, and not from Čermak.[2846] **Feldi** testified that the MUP was the only body with the legal authority to restrict the movement of the civilian population. Čermak did not have the legal authority to issue passes for the return of displaced population directly to the civilian population but rather gave the passes to Petar Pašić, Commissioner of the Government of the Republic of Croatia, who distributed them.[2847]

2428. The Trial Chamber also received relevant evidence regarding Čermak's reaction to a theft incident in the village of Oton Bender. **Pašić** testified that Čermak organized the delivery of a generator to Oton Bender when Pašić took him to visit the village.[2848] Pašić and Čermak also spoke to the scared villagers in order to encourage them to trust the Croatian authorities and convince them they would receive as much aid as possible.[2849] Pašić further testified that between 4 and 5 p.m. on 19 October 1995, in Oton Bender, his uncle, Luka Pašić, realized that his sheep were missing, after which, around 6 p.m., Pašić arrived at the police station with his uncle to report the crime and,

[2843] P509 (Order on entry civilians into Knin by Ivan Čermak, 15 August 1995).
[2844] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 170-171.
[2845] D1776 (Expert Report of Christopher Albiston, August 2009), paras 3.52, 3.55; Christopher Albiston, T. 23804-23805, 23815, 23817, 23992, 23999-24000, 24095-24096.
[2846] D1776 (Expert Report of Christopher Albiston, August 2009), paras 3.50-3.55; Christopher Albiston, T. 23803-23818, 23991-23993, 24000, 24002, 24099.
[2847] D1673 (Expert Report of Franjo Feldi, July 2009), para. 3.3.6.
[2848] D1707 (Petar Pašić, witness statement, 23 April 2009), para. 30; Petar Pašić, T. 22895, 23040, 23046.
[2849] Petar Pašić, T. 22895.



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while his uncle spoke to the police, Pašić also reported the theft to Čermak.[2850] The following day, his uncle told him that TV sets had been stolen, but they did not report that theft to the police.[2851] Pašić spoke with Čermak about the stolen TV sets on the same day he learned about the theft.[2852] According to a police report dated 21 October 1995, the sheep were found in the possession of Fedi Bunardžija (an employee of the Split-Dalmatia Police Administration Traffic Police who had been suspended from service in April 1995 and was also suspected of the theft of 66 sheep in Kistanje) and Tomislav Dugeč (an employee of the Split-Dalmatia Police Administration), who were arrested together with Ante Zoraja (an employee of the "Promet JP" in Split) on 20 October 1995 on suspicion of the theft and handed to the Investigating Magistrate of the Zadar County Court on 21 October 1995.[2853]

2429. Čermak stated that in October, he went with his logistics staff and Pašić to the Serb village of Bender, and provided the villagers with humanitarian aid, a couple of televisions and a generator to supply the village with electricity.[2854] Čermak stated that as soon as he returned to his office, someone reported to him that four people had come by truck to the village and taken away sheep and the televisions that Čermak had given to the villagers.[2855] Čermak stated that he got very mad, and called the commander of the civilian police, Gambiroža, and two or three hours later the perpetrators were captured.[2856] According to Čermak, they consisted of one policeman who was immediately suspended, one policeman who had been suspended a couple of months before, and two civilians, all of whom were handed over to the judicial authorities.[2857]

2430. **Cetina** testified that about a month after Operation Storm, Čermak called him and stated that, in a village where Čermak had organized an electricity generator, two men in a vehicle had stolen sheep and cattle, and that Cetina should do something immediately to punish the perpetrators. Cetina immediately notified the local police

[2850] Petar Pašić, T. 22895-22898, 22903-22905, 22924-22927; P2645 (Zadar-Knin Police Report in relation to theft against Luka Pašić, 21 October 1995), p. 2; P2646 (Zadar-Knin Police Report in relation to theft against Luka Pašić, 20 October 1995), p. 2. See also Christopher Albiston, T. 23791.
[2851] Petar Pašić, T. 22926-22927.
[2852] Petar Pašić, T. 22926.
[2853] P2645 (Zadar-Knin Police Report in relation to theft against Luka Pašić, 21 October 1995), pp. 2-3.
[2854] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), p. 18; P2526 (Suspect interview with Ivan Čermak, 17 March 1998), p. 82.
[2855] P2526 (Suspect interview with Ivan Čermak, 17 March 1998), p. 82.
[2856] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 45, 179; P2526 (Suspect interview with Ivan Čermak, 17 March 1998), p. 82.
[2857] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), p. 179; P2526 (Suspect interview with Ivan Čermak, 17 March 1998), p. 82.



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commanders and the police stopped the vehicle near Sinj, and the sheep and cattle were returned to the villagers.[2858] Čermak had not called Cetina to report criminal incidents or other matters before and did not call Cetina in relation to later incidents.[2859]

2431. The Trial Chamber finds, based on the evidence above, that Čermak did not have any *de jure* authority over the civilian police.[2860] As for *de facto* authority, the Trial Chamber notes that Croatian civilian police witnesses generally testified that they considered Čermak's orders and other communications as mere information or notification. Parts of the testimony of a protected witness whose evidence is reviewed in paragraphs 2-6 of Confidential Appendix C indicate that Čermak may have had a greater *de facto* authority over the civilian police. However, having observed the demeanour of the protected witness in court, and considering the contradictions in his or her evidence and the weight of contrary evidence from other witnesses, the Trial Chamber will not rely on these aspects of his or her testimony, without corroboration, for any broader findings on Čermak's *de facto* authority over the civilian police.

2432. As for Čermak's specific orders addressed to the civilian police, the Trial Chamber considers that the evidence reviewed in paragraph 5 of Confidential Appendix C shows that a protected witness implemented Čermak's order P509 on freedom of movement of civilians in Knin. Taken together with the evidence discussed in the preceding paragraph, this evidence shows that the protected witness did recognize a certain authority in Čermak. The evidence does not establish that civilian police regarded Čermak's order P512 (see chapter 6.4.7) as an order that was binding on them, or that they implemented it. As for Čermak's order P53/P513 (see chapter 6.4.7), ordering among other things that UNCRO vehicles delivering food and equipment for UNCRO needs should be allowed to move, the Trial Chamber notes the contradictory statements of Čermak, when interviewed by the Prosecution, as to the effectiveness of his order, stating in particular, in 1998, that its effect was that all members of international organizations began to move freely in the area and, in 2001, that his order only went to Forand and to Gotovina who issued an order of his own. The Trial Chamber also notes Morić's order D499, dated 17 August 1995, ordering the chiefs of the police administrations not to restrict the movement of UNCRO, among other

[2858] D1745 (Ivica Cetina, witness statement, 26 February 2002), p. 7; Ivica Cetina, T. 23550.
[2859] D1745 (Ivica Cetina, witness statement, 26 February 2002), p. 7.
[2860] The Trial Chamber notes that the Prosecution Final Brief, at pp. 127-132, only alleges that Čermak had *de facto* authority over the MUP.



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organizations (see chapter 6.4.7). The Trial Chamber considers that this evidence, taken together, does not establish that the civilian police regarded P53/P513 as an order that was binding on them, or that they implemented it. The evidence furthermore does not establish that the civilian police regarded Čermak's orders D303 and D503 as orders that were binding on them, or that they implemented them.

2433. As for the incident in Oton Bender, the evidence of Pašić indicates that it was reported to the police at two different times, once by Pašić's uncle (the sheep) and once by Čermak (the televisions). However, differences in the stories of Pašić, Čermak and Cetina along with some imprecisions in the evidence make it difficult to draw any firm conclusions in that regard. In any event, the evidence of Cetina shows that Čermak reported a theft of sheep and cattle to Cetina, who immediately notified the police, and that the police took swift action. The evidence does not establish that Cetina acted swiftly because he understood Čermak's notification as an order that he or the police in general had to carry out. Considering also the specific circumstances of the incident, notably the personal relationship between the victim and Pašić, it is difficult to draw from it any general conclusions regarding Čermak's authority over the police. The evidence reviewed in chapter 6.4.7 contains various indications of Čermak representing authority over the civilian police, but with little evidence of any effectiveness of that authority.

2434. The Trial Chamber finds, based on the above evidence and considerations,[2861] that Čermak had a discernible influence over civilian police within the Indictment area. The evidence does not establish that this influence was pervasive or constant. The Trial Chamber will further consider how Čermak used his influence over the civilian police in chapter 6.4.7.

### *6.4.3 Failure to prevent or punish crimes*

2435. According to the Indictment, Ivan Čermak contributed to the JCE by failing to establish and maintain law and order among, and discipline of, his subordinates, and neither preventing nor punishing crimes committed against the Krajina Serbs.[2862] The

[2861] The Prosecution relies on P1290 (Survey report by Marker Hansen, 20 September 1995), p. 14, but the Trial Chamber considers it to be unsourced hearsay that does not warrant further consideration here.
[2862] Indictment, para. 17 (e), "promoting, instigating, permitting, encouraging and condoning the commission of crimes against Serbs by failing to report and/or investigate crimes or alleged crimes



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Trial Chamber recalls its findings in chapters 3.2 and 6.4.2, which also contain evidence relevant for the present chapter. The Trial Chamber will consider in turn evidence relevant to the existence and identity of subordinates of Čermak, whether they committed any crimes charged in the Indictment, and whether Čermak possessed any relevant disciplinary powers.

2436. The Trial Chamber first considers the evidence relevant to the existence and identity of subordinates of Čermak. When interviewed by the Prosecution, Čermak stated that his deputy was Marko Gojević, who was already in Knin when he arrived.[2863] Čermak stated that he had about 20 people at his garrison, in addition to 10-12 people from the Šibenik logistics base.[2864] His staff included a few liaison officers, logistics officer Colonel Grinjčić, the commander of the logistics base in Šibenik Major Jonjić, the assistant for economic affairs Colonel Rinčić, as well as Colonel Teskeredžić and his team of 10-15 de-miners.[2865] Čermak specified that his liaison officers were attached to the Office of Liaison Officers of the MoD.[2866] The main person in charge of liaison was Dondo, whom Čermak met for the first time in Knin.[2867] Čermak stated that his staff drafted documents for him, which he read, authorized, and signed.[2868] Some days later two SIS officers, Zečić and Manić/Mamić, came to the garrison from Split.[2869] They were not under Čermak's command.[2870] Čermak stated that he considered himself responsible as a military commander for his staff, and that he could take disciplinary measures against them, and them alone.[2871]

against them, to follow up on such allegations and/or investigations, and/or to punish or discipline subordinates and others in the Croatian authorities and forces over whom they possessed effective control for crimes committed against Serbs." Indictment, para. 19 (d), "failing to establish and maintain law and order among, and discipline of, his subordinates, and neither preventing nor punishing crimes committed against the Krajina Serbs."

[2863] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 19, 70, 135; P2526 (Suspect interview with Ivan Čermak, 17 March 1998), pp. 11, 14, 108.

[2864] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 17, 28, 34, 39, 47, 50, 112, 139.

[2865] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 10, 16, 19-20, 26, 39, 64, 124, 158; P2526 (Suspect interview with Ivan Čermak, 17 March 1998), pp. 14-15; P2707 (Additional portions of suspect interview with Ivan Čermak, 17 March 1998), pp. 14-15.

[2866] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 64, 66-67, 124.

[2867] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 19-20, 66-67.

[2868] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 70, 121.

[2869] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), p. 20; P2526 (Suspect interview with Ivan Čermak, 17 March 1998), p. 15; P2707 (Additional portions of suspect interview with Ivan Čermak, 17 March 1998), p. 3.

[2870] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), p. 20.

[2871] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 28, 47, 127, 131, 138-139.



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2437. **Karolj Dondo**, HV Liaison Officer with the UN and EC in Sector South in 1995,[2872] testified that around 6 August 1995, Čermak had only about five or six staff members attached to him.[2873] Two of them were his personal security team and were from the HV.[2874] The Knin Garrison Command had two official vehicles which often broke down.[2875] Dondo testified that on one occasion he heard Čermak complaining on the phone with either Tuđman or Šarinić about his limited resources.[2876] Dondo testified that the MoD Office for Liaison with the UN and EC was directly subordinate to the MoD in Zagreb.[2877] The HV Liaison Office submitted daily written reports to the MoD, via "the command" in Zadar.[2878] The office was therefore not subordinate to Gotovina or Čermak.[2879] The office acted as an intermediary for meetings between the HV, on the one hand, and the UN or EC, on the other, and sometimes escorted the UN when they were travelling in the field.[2880] The head of the HV Liaison Office was Ivica Luković.[2881] In the afternoon of 6 August 1995, Dondo and Luković met with Čermak in Knin.[2882] Čermak said that he needed people like them.[2883] Čermak did not inform them what role he had and nobody told them that they would be subordinates to Čermak.[2884] Čermak stated that he wanted to achieve good cooperation and regular contact with UN representatives, and that this was one of his tasks.[2885] Čermak did not

[2872] D1695 (Karolj Dondo, witness statement, 9 March 2005), p. 1, paras 1-2; D1696 (Karolj Dondo, witness statement, 18 August 2009), p. 1, para. 2.
[2873] D1695 (Karolj Dondo, witness statement, 9 March 2005), paras 12-13; D1696 (Karolj Dondo, witness statement, 18 August 2009), para. 8.
[2874] D1695 (Karolj Dondo, witness statement, 9 March 2005), para. 13; D1696 (Karolj Dondo, witness statement, 18 August 2009), para. 8.
[2875] D1696 (Karolj Dondo, witness statement, 18 August 2009), para. 8.
[2876] D1695 (Karolj Dondo, witness statement, 9 March 2005), para. 16.
[2877] D1695 (Karolj Dondo, witness statement, 9 March 2005), para. 2; D1696 (Karolj Dondo, witness statement, 18 August 2009), paras 2-3.
[2878] D1695 (Karolj Dondo, witness statement, 9 March 2005), paras 3, 14; Karolj Dondo, T. 22458, 22464, 22600-22601. See D1703 (Letter from HV liaison officers to Ministry of Defence, 20 August 1995).
[2879] D1695 (Karolj Dondo, witness statement, 9 March 2005), para. 6; D1696 (Karolj Dondo, witness statement, 18 August 2009), para. 9.
[2880] D1695 (Karolj Dondo, witness statement, 9 March 2005), paras 2-3; D1696 (Karolj Dondo, witness statement, 18 August 2009), paras 3, 9; Karolj Dondo, T. 22482.
[2881] D1695 (Karolj Dondo, witness statement, 9 March 2005), paras 1, 4; D1696 (Karolj Dondo, witness statement, 18 August 2009), para. 2; Karolj Dondo, T. 22601.
[2882] D1695 (Karolj Dondo, witness statement, 9 March 2005), paras 9-10; D1696 (Karolj Dondo, witness statement, 18 August 2009), para. 5.
[2883] D1695 (Karolj Dondo, witness statement, 9 March 2005), para. 10; D1696 (Karolj Dondo, witness statement, 18 August 2009), para. 5.
[2884] D1695 (Karolj Dondo, witness statement, 9 March 2005), para. 10.
[2885] D1696 (Karolj Dondo, witness statement, 18 August 2009), para. 5; Karolj Dondo, T. 22579-22580.



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give them any specific tasks. Dondo's understanding was that he still worked for the MoD, but was now supporting Čermak and assisting him with contacts with the UN.[2886]

2438. **Emin Teskeredžić**, a leader of an explosives-removal team operating in and around Knin between 6 August and 30 October 1995,[2887] testified that he met Čermak for the first time in 1991 when they worked together on the procurement of equipment.[2888] On 5 August 1995, upon hearing about Operation Storm in the media and learning of Čermak's appointment as Commander of the Knin Garrison through his friends in the army, Teskeredžić telephoned Čermak and told him that he wanted to go to Knin with his former army unit to assist with the removal of explosives.[2889] Čermak, who was still in Zagreb, agreed.[2890] Teskeredžić contacted the members of his former army unit, including Maljur, Vuk, Tomšić and Domančić, and made arrangements to meet them in Knin.[2891] Teskeredžić testified that he worked collaboratively with Čermak and was not subordinate to him.[2892] Teskeredžić further testified that in theory, Čermak could have disciplined him, but given that Teskeredžić was a volunteer, he had more latitude than if he had been mobilized as part of the military establishment.[2893] Of the people who worked for the Knin Garrison, Teskeredžić recalled Zeljko Jonjić, who was responsible for logistics, and Marko Gojević, who was Čermak's deputy.[2894] **Zdenko Rinčić**, the Croatian Assistant Minister of Economy for the manufacturing industry of ammunition, grenade, and machine gun production from 1993 to 1996,[2895] testified that although he had a civilian status, he sought to make the impression that he was an assistant or deputy to Čermak, which made him feel safer.[2896] Rinčić testified

[2886] D1695 (Karolj Dondo, witness statement, 9 March 2005), para. 10.
[2887] D1732 (Emin Teskeredžić, witness statement, 26 May 2009), p. 1, paras 1-4, 6, 11, 13, 19; Emin Teskeredžić, T. 23242-23243, 23260, 23263-23264, 23274-23275; D1027 (Request by Čermak for Teskeredžić to be relieved of his employment, 19 August 1995).
[2888] D1732 (Emin Teskeredžić, witness statement, 26 May 2009), para. 3.
[2889] D1732 (Emin Teskeredžić, witness statement, 26 May 2009), paras 4, 11; Emin Teskeredžić, T. 23241, 23261-23263.
[2890] D1732 (Emin Teskeredžić, witness statement, 26 May 2009), para. 4; Emin Teskeredžić, T. 23241.
[2891] D1732 (Emin Teskeredžić, witness statement, 26 May 2009), para. 5; Emin Teskeredžić, T. 23241-23242, 23244, 23261, 23263, 23265.
[2892] D1732 (Emin Teskeredžić, witness statement, 26 May 2009), para. 9; Emin Teskeredžić, T. 23272-23273.
[2893] Emin Teskeredžić, T. 23265, 23272, 23285.
[2894] D1732 (Emin Teskeredžić, witness statement, 26 May 2009), para. 7; Emin Teskeredžić, T. 23277.
[2895] D1680 (Zdenko Rinčić, witness statement, 16 May 2009), p. 1, paras 1, 3-5; Zdenko Rinčić, T. 22341.
[2896] Zdenko Rinčić, T. 22338.



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that Marko Gojević was Čermak's deputy and Mr Jonjić was also a subordinate of Čermak.[2897]

2439. According to a proposal for demobilization by Gotovina, dated 15 August 1995, the numerical strength of the Knin Garrison was one person as "active personnel" and three reserve conscripts.[2898] According to a request for reassignment by Čermak to the Split MD of 19 August 1995, 25 military conscripts from the 6th Home Guard Regiment Drniš had been temporarily redeployed to perform security tasks as of 11 August 1995 under the command of the Knin Garrison.[2899] According to MoD documentary evidence, on 31 August 1995 the status of the Knin garrison was a total of ten persons, and on 26 September 1995 it was a total of four persons.[2900] On 20 September 1995, Čermak wrote to the MoD Housing Commission in order to obtain temporary decisions on the accomodation of six Knin garrison officers and their families.[2901]

2440. **Jack Deverell**, a retired General of the British Army, former garrison commander, and expert in military operational command,[2902] testified that there were units and formations stationed within the Knin Garrison that made use of Garrison facilities, but were not directly subordinated to the Garrison Headquarters.[2903] Deverell acknowledged that an order from Gotovina subordinating the 3rd Company of the 3rd Battalion of the 142nd Home Guard Regiment, consisting of 147 members, to the Knin Garrison on 22 August 1995, meant Čermak had the authority to task these soldiers, and that they were his subordinates for all purposes other than administrative ones.[2904] Deverell testified that Article 52 of the Service Regulations of the Croatian Armed Forces should not be interpreted to mean that a unit simply transiting through a garrison's area of responsibility was automatically subordinated to the Garrison

[2897] Zdenko Rinčić, T. 22314-22315. See also D775 (Report by Željko Jonjić on the work of logistics in the Knin garrison), pp. 1, 3.
[2898] D611 (Proposal by Ante Gotovina to the HV Main Staff for a demobilization plan for the Split MD, 15 August 1995), pp. 5-6.
[2899] D766 (Request by Čermak, 19 August 1995), p. 1.
[2900] D33 (Excerpt of order by Chief of the HV Main Staff General Janko Bobetko, 16 February 1993, and reports on number of personnel for Knin Garrison, 31 August and 26 September 1995), pp. 5-8.
[2901] D1053 (Letter from Čermak to MoD Housing Commission, 20 September 1995).
[2902] D1784 (Expert Report of General Jack Deverell, 16 September 2009), pp. 4-5; Jack Deverell, T. 24133, 24138-24142, 24146-24148, 24150, 24188-24189.
[2903] D1784 (Expert Report of General Jack Deverell, 16 September 2009), p. 19.
[2904] Jack Deverell, T. 24347-24348; D764 (Order of Gotovina, 22 August 1995), p. 1.



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Headquarters for the period that it was inside this area.[2905] Such an interpretation would undermine the principles of unity of command and subordination, and would result in a garrison commander being held responsible for the actions of individuals over whom he had no tasking authority, nor any influence over standards of training and discipline.[2906] Deverell testified that the authority and responsibility of garrison commanders in the HV was deliberately constrained, irrespective of the rank of the commander, in order to protect the principle and practice of unity of command, whilst giving sufficient authority to maintain good order and military discipline within the garrison.[2907] The reference to subordination in Article 52 should therefore be interpreted to mean that the garrison commander could expect that units in the garrison would obey instructions relating to the use of garrison facilities.[2908] The small number of staff comprising the Knin Garrison Headquarters during Čermak's tenure, meant that the headquarters were supporting a commander with very limited tasks, authority and responsibility.[2909] It also meant that the headquarters would have been incapable of maintaining a 24 hour presence, or exercising command and control over the operational HV forces.[2910] Deverell testified that he did not see any orders from Čermak to any of the units referred to in paragraph seven of the Indictment, nor any reports from these units to Čermak.[2911] Deverell further testified that he did not see evidence indicating that these units were part of, or attached to, the Knin Garrison.[2912]

2441. **Franjo Feldi**, a retired Colonel General of the Croatian Army and expert in the system of government, defence, the armed forces of Croatia and the system of garrisons,[2913] testified that the main task of garrisons was to service the Croatian Army units in the garrison as well as those units that passed through the garrison territory by

[2905] D1784 (Expert Report of General Jack Deverell, 16 September 2009), p. 24; Jack Deverell, T. 24153, 24298-24299, 24301.
[2906] D1784 (Expert Report of General Jack Deverell, 16 September 2009), p. 24; Jack Deverell, T. 24153, 24161, 24298-24299.
[2907] D1784 (Expert Report of General Jack Deverell, 16 September 2009), pp. 24, 27.
[2908] Jack Deverell, T. 24153.
[2909] D1784 (Expert Report of General Jack Deverell, 16 September 2009), pp. 28-30; Jack Deverell, T. 24157.
[2910] D1784 (Expert Report of General Jack Deverell, 16 September 2009), pp. 29-30; Jack Deverell, T. 24157-24160.
[2911] Jack Deverell, T. 24160.
[2912] Jack Deverell, T. 24160-24161.
[2913] D1673 (Expert Report of Franjo Feldi, July 2009), pp. 2-6; D1674 (Franjo Feldi, witness statement, 16 July 2003), pp. 1-10.



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providing safe passage through the area.[2914] However, the garrison commander had no authority to issue orders to these Army units.[2915] A garrison commander did have the authority to issue disciplinary measures to HV soldiers who were not subordinated to him by passing the disciplinary measure to the offender's superior officer.[2916] Feldi testified that Čermak did not have subordinate HV units to which he could issue orders for engagement in assisting him with solving the town's problems.[2917] The HV units in Knin were there in passing, in operational reserve of the district commander, and could not be in direct communication with the garrison commander.[2918] **Ivica Luković**, the Chief of the Croatian Department for Cooperation with the UN and EC for Sector South from 1992 and during 1995,[2919] testified that as Garrison Commander Čermak could command only his employees at the Knin Garrison Command.[2920]

2442. The Trial Chamber now turns to evidence relevant to the commission by subordinates of Čermak of crimes charged in the Indictment. **Witness 84**, a police officer in Knin,[2921] testified that several days after Operation Storm an anonymous person called the Knin police station and said that someone was breaking into the bank in Knin.[2922] When the witness arrived at the bank he saw two soldiers, one of whom carried a pair of large bolt cutters and with which the witness saw him cut the chain which had been put on the door the previous day.[2923] The witness knew one of the soldiers who the witness said was the Colonel and the Chief of Logistics in Šibenik prior to Operation Storm.[2924] The witness asked the soldier not to break into the bank upon which the soldier replied "go away, we are just taking some furniture for Mr. Čermak".[2925] The witness stated that the soldiers did not have anything in writing that

[2914] D1673 (Expert Report of Franjo Feldi, July 2009), paras 2.3.6; D1674 (Franjo Feldi, witness statement, 16 July 2003), p. 9.
[2915] D1673 (Expert Report of Franjo Feldi, July 2009), paras 2.3.3, 2.3.7, 2.3.11-2.3.12; D1674 (Franjo Feldi, witness statement, 16 July 2003), p. 9.
[2916] D1673 (Expert Report of Franjo Feldi, July 2009), para. 2.3.5.
[2917] D1673 (Expert Report of Franjo Feldi, July 2009), para. 3.4.5; Franjo Feldi, T. 21823.
[2918] Franjo Feldi, T. 21821-21822.
[2919] D1687 (Ivica Luković, witness statement, 1 October 2004), p. 1, paras 8, 13, 17; D1688 (Ivica Luković, witness statement, 13 August 2009), p. 1, paras 4, 6; Ivica Luković, T. 22385.
[2920] D1688 (Ivica Luković, witness statement, 13 August 2009), paras 19, 40.
[2921] P1035 (Witness 84, pseudonym sheet); P2393 (Witness 84, witness statement, 20 November 2007), p. 1; P2394 (Witness 84, witness statement, 11 July 2004), p. 1; P2395 (Witness 84, witness statement 9 March 2002), pp. 1-3; Witness 84, T. 11061, 11073, 11094, 11101, 11358, 11360.
[2922] P2395 (Witness 84, witness statement, 9 March 2002), para. 18.
[2923] P2395 (Witness 84, witness statement, 9 March 2002), para. 18; Witness 84, T. 11075-11076.
[2924] P2395 (Witness 84, witness statement, 9 March 2002), para. 18.
[2925] P2395 (Witness 84, witness statement, 9 March 2002), para. 19; Witness 84, T. 11077-11078.



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said that General Čermak had authorized them to collect furniture from the bank.[2926] The witness radioed his duty officer and told him to call the VP and instruct them to send a patrol to the bank.[2927] The duty officer told the witness to leave the bank.[2928] The witness left the bank and did not know whether the VP sent a patrol to the bank.[2929] **Vladimir Gojanović**, a former HV soldier,[2930] testified that a member of the 142nd Home Guard Brigade told him that equipment and machinery from the factory in Kistanje was taken by a group of men working under the orders of General Čermak.[2931]

2443. The Trial Chamber finally turns to evidence regarding Čermak's disciplinary powers over his subordinates and others. The Trial Chamber has considered in this regard evidence from Liljana Botteri and the Code of Military Discipline P1007, reviewed in chapter 3.1.2. **Deverell** testified that in Croatia, minor violations of military discipline included disobeying administrative instructions such as failing to observe traffic regulations, or behavioural offences including creating a disturbance or excessive drinking.[2932] Major violations included murder, looting and burning, or serious examples of undisciplined behaviour, such as threatening a senior officer or refusing to carry out an order during combat operations.[2933] Garrison Commanders in Croatia were responsible for the investigation of minor violations committed by those directly subordinated to them.[2934] They also had the authority to impose disciplinary measures on soldiers from units not directly subordinated to them, who were accused of minor violations relating to the use of, and behaviour within, garrison facilities.[2935] Soldiers belonging to other units who made use of garrison facilities were expected to obey instructions and directions given by garrison commanders relating to good order within

[2926] P2395 (Witness 84, witness statement, 9 March 2002), para. 19; Witness 84, T. 11076-11077.
[2927] P2395 (Witness 84, witness statement, 9 March 2002), para. 19; Witness 84, T. 11077-11078.
[2928] P2395 (Witness 84, witness statement, 9 March 2002), para. 19.
[2929] P2395 (Witness 84, witness statement, 9 March 2002), para. 19; Witness 84, T. 11077-11078.
[2930] P194 (Vladimir Gojanović, witness statement, 20 January 2005), paras 2-3; Vladimir Gojanović, T. 2973, 2983, 2987, 3010-3011, 3015, 3018-3019, 3039, 3119, 3121-3122, 3131-3133, 3138; C2 (Gojanović's military record), pp. 1, 3-4, 19; P198 (Further record of Gojanović's military service), pp. 1-2; P200 (Letter of Daniel Kotlar terminating the mobilization of Vladimir Gojanović, 30 August 1995), p. 1.
[2931] P194 (Vladimir Gojanović, witness statement, 20 January 2005), para. 13; P196 (Vladimir Gojanović, supplemental information sheet, 14 May 2008), para. 1(vi); Vladimir Gojanović, T. 3087-3097.
[2932] D1784 (Expert Report of General Jack Deverell, 16 September 2009), p. 32; Jack Deverell, T. 24302, 24435.
[2933] D1784 (Expert Report of General Jack Deverell, 16 September 2009), p. 32; Jack Deverell, T. 24302.
[2934] D1784 (Expert Report of General Jack Deverell, 16 September 2009), pp. 24, 38; Jack Deverell, T. 24304-24312.
[2935] D1784 (Expert Report of General Jack Deverell, 16 September 2009), pp. 19, 22-24, 34; Jack Deverell, T. 24304-24312.



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the garrison, such as regulations for the use of facilities, traffic control, speed limits and opening hours.[2936]

2444. In the case of major violations that do not also constitute a crime, committed by officers and non-commissioned officers up to the rank of Brigadier, the Split MD Commander had the responsibility and authority to decide whether to bring charges before a military disciplinary court.[2937] Deverell testified that murder, looting, burning and rape constituted both criminal offences and major violations of military discipline, and as such they were matters for the civilian police.[2938] According to Deverell, the punishments available to military commanders for violations of the Code of Military Discipline were both inappropriate and inadequate for serious offences such as murder, looting, burning and rape.[2939] A garrison commander was not authorized to initiate an investigation into the conduct of individuals who were not his direct subordinates.[2940] Čermak's authority to investigate major violations of military discipline was constrained by his appointment as garrison commander, and was not related to his rank.[2941] In contrast, his powers of punishment were determined by his rank, and he was authorized to award a range of punishments ranging from a caution to 30 or 60 days of detention.[2942]

2445. **Pero Kovačević**, a former HV Brigadier and Ministry of Defence official and expert in the primary and secondary Croatian legislation in the area of defence,[2943] testified in his expert report that there were two types of breaches of discipline: (1) minor disciplinary offences and (2) major disciplinary violations, the first of which lead to disciplinary measures and the second to disciplinary sentences.[2944] Superior officers, including the MD Commander and more senior commanders, were to decide on disciplinary liability and pronounce disciplinary measures for their subordinates even

[2936] D1784 (Expert Report of General Jack Deverell, 16 September 2009), pp. 15, 19, 23-24, 41; Jack Deverell, T. 24153-24154, 24309-24310.
[2937] D1784 (Expert Report of General Jack Deverell, 16 September 2009), p. 32.
[2938] D1784 (Expert Report of General Jack Deverell, 16 September 2009), p. 33; Jack Deverell, T. 24263-24264, 24302, 24306-24307, 24321-24322, 24327-24328.
[2939] D1784 (Expert Report of General Jack Deverell, 16 September 2009), p. 33; Jack Deverell, T. 24263-24264.
[2940] D1784 (Expert Report of General Jack Deverell, 16 September 2009), pp. 33-34; Jack Deverell, T. 24322-24323, 24326.
[2941] D1784 (Expert Report of General Jack Deverell, 16 September 2009), pp. 34, 38; Jack Deverell, T. 24322-24323.
[2942] D1784 (Expert Report of General Jack Deverell, 16 September 2009), pp. 34, 38; Jack Deverell, T. 24315-24318, 24320.
[2943] D1676 (Expert Report of Pero Kovačević), paras 0.1.3-0.1.4, 0.1.7, 0.1.11, 0.2.2.
[2944] D1676 (Expert Report of Pero Kovačević), paras 3.2.4-3.2.7.



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when the offence was committed in a previous unit or institution.[2945] Commanders of units, institutions, and garrisons could issue disciplinary measures to offenders who were not members of their organic unit, if such measures were required for the maintenance of order and discipline, or could forward the matter to the offender's superior officer.[2946] For a garrison commander to issue disciplinary measures to perpetrators who were not from his organic unit, the following conditions had to be fulfilled: (i) a concrete knowledge that a minor offence of discipline was committed; (ii) knowledge of the name of the perpetrator and his unit; (iii) knowledge that the perpetrator's superior officer did not respond or responded indolently to issuing disciplinary measures; (iv) that the minor offence of discipline was committed in the garrison area and required the prompt sanctioning of the perpetrator.[2947] The Chief of the Main Staff and the Commander of the MD could bring disciplinary charges against military civil servants and civilian employees, as well as officers, before a military disciplinary court.[2948] HV soldiers, including mobilized commissioned officers and NCOs, remained subject to disciplinary proceedings for violations even after termination of their service.[2949] However, mobilized persons could only be disciplined for minor violations of discipline, not offences or major violations of discipline, and as such could not be brought before military courts. If a mobilized person committed a major violation of discipline, he would be demobilized.[2950] Supervision of the disciplinary proceedings was in the hands of the head of the MD and the Chief of the Main Staff for their respective areas of responsibility.[2951] The Code of Military Discipline was *lex specialis* to the Service Regulations of the Armed Forces in the area of military discipline; as a result, the provisions of the Code of Military Discipline annulled the generic and basic provisions of Articles 52 and 54 of the Service Regulation of the Armed forces.[2952] When interviewed by the Prosecution, Čermak stated that Article 26 of the HV Code of Military Discipline of 25 April 1992 did not describe his position.[2953]

[2945] D1676 (Expert Report of Pero Kovačević), paras 3.2.37-3.2.39, 3.2.43.
[2946] D1676 (Expert Report of Pero Kovačević), paras 3.2.48-3.2.49, 3.2.63.
[2947] D1676 (Expert Report of Pero Kovačević), paras 3.2.63-3.2.65.
[2948] D1676 (Expert Report of Pero Kovačević), para. 3.2.105.
[2949] D1676 (Expert Report of Pero Kovačević), para. 3.2.8; Pero Kovačević, T. 22040-22041.
[2950] Pero Kovačević, T. 22041-22042.
[2951] D1676 (Expert Report of Pero Kovačević), para. 3.2.140.
[2952] D1676 (Expert Report of Pero Kovačević), paras 3.2.67, 6.3.1-6.3.2.
[2953] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 129-131, 138; P2532 (Accused interview with Ivan Čermak, 7 June 2004), pp. 58-59.



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2446. According to Kovačević, the provisions of Article 54 of the Service Regulation of the Armed Forces gave the Garrison Commander responsibility during peacetime to regulate work, order, and discipline for the members of the armed forces who were accommodated in the barracks or camps in the garrison area.[2954] The provision applied only in peacetime, not in a time of war or when a state of direct threat to Croatia had been proclaimed, during which time the units were not in a peacetime roster, but in a war roster and carried out combat tasks and performed war operations.[2955] In this respect, Kovačević referenced the order for an active defence Kozjak-95 of 9 August 1995.[2956]

2447. **Christopher Albiston**, an independent consultant specializing in policing, security and intelligence and an expert in conflict and post-conflict policing,[2957] testified that Čermak, as garrison commander, and his team of soldiers and civilians, totalling ten, had neither the statutory authority nor the resources to investigate complaints of crimes or to initiate, conduct, direct or supervise criminal investigations.[2958] The only responsibilities he possessed in relation to the investigation of crimes were those that derived from his position as a citizen and a state official, namely the duty to report crimes.[2959] According to Albiston, Čermak was discharging these duties, and receiving and passing on information concerning crimes as part of his liaison role between different agencies present in Knin at the time.[2960] Čermak's liaison and point of contact function was entirely different from the concept of responsibility for investigating, or directing the investigation of, crimes.[2961] The responsibility for the prevention of civilian crime lay with the MUP.[2962] Čermak had no statutory duty or authority to

[2954] D1676 (Expert Report of Pero Kovačević), para. 3.2.68, 6.3.3.
[2955] D1676 (Expert Report of Pero Kovačević), para. 3.2.68, 6.3.4-6.3.5.
[2956] D1676 (Expert Report of Pero Kovačević), para. 6.3.5.
[2957] D1776 (Expert Report of Christopher Albiston, August 2009), pp. 53-59; Christopher Albiston, T. 23754, 23758-23762.
[2958] D1776 (Expert Report of Christopher Albiston, August 2009), paras 2.3, 2.7, 3.56, 3.69, 3.70, 3.83; Christopher Albiston, T. 23767, 23818-23819, 24017, 24019.
[2959] D1776 (Expert Report of Christopher Albiston, August 2009), paras 3.58, 3.70; D1780 (Revised version of the basic criminal law of the Republic of Croatia, 22 March 1993), Articles 175-176; Christopher Albiston, T. 23824, 24003.
[2960] D1776 (Expert Report of Christopher Albiston, August 2009), para. 3.71; D1777 (Christopher Albiston, expert report corrigenda, October 2009), correction 5; Christopher Albiston, T. 23821-23825, 23940-23941, 24018-24020.
[2961] D1776 (Expert Report of Christopher Albiston, August 2009), paras 3.70, 3.84.
[2962] D1776 (Expert Report of Christopher Albiston, August 2009), paras 3.73-3.75, 3.82; Christopher Albiston, T. 23828-23829, 23831, 24033-24034, 24037, 24102.



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prevent crime, or any operational role or command in the prevention of crime.[2963] As such, any failure to prevent crime through the more effective deployment of police resources could not reasonably be attributed to him.[2964] Albiston testified that Čermak, as garrison commander, had no legal authority to punish criminal behaviour, including that of the civilian police.[2965] Čermak did not have the means at his disposal to prevent or punish crimes that took place during his term as garrison commander.[2966]

2448. On the basis of the evidence reviewed above, the Trial Chamber finds that Čermak had a varying number of subordinates at the Knin garrison. The evidence is unclear as to the identity of some of those subordinates. With regard to certain identifiable persons, the evidence is unclear as to whether they were Čermak's subordinates. The Trial Chamber further finds that Čermak had disciplinary authority over his subordinates. The evidence, notably D766 and D1029, further indicates that other persons were attached to the garrison at times. The extent of Čermak's disciplinary powers over the latter persons is less clear. The Trial Chamber has received little evidence indicating that subordinates of Čermak, or anyone otherwise temporarily attached to the garrison, committed any crimes charged in the Indictment. A reasonable interpretation of the uncorroborated evidence of Witness 84 according to which a person described as a soldier was breaking into a bank and explaining that he was just taking some furniture for Čermak, is that the person was using the name of Čermak to further his criminal activities for personal gain, and that he may well not have been a subordinate of Čermak. Even if he was, there is no evidence that Čermak intended the act, should have known about it or learned about it at any time before or after the act. Nor can the Trial Chamber rely on the uncorroborated hearsay evidence of Gojanović that a member of the 142nd Home Guard Brigade told him that equipment and machinery from a factory in Kistanje was taken by some men working for Čermak. The Trial Chamber recalls in this regard its statement in chapter 2 regarding the reliability of Gojanović's evidence. As for any powers Čermak may have had to initiate disciplinary proceedings against other persons by providing information to the competent

[2963] D1776 (Expert Report of Christopher Albiston, August 2009), para. 3.82; Christopher Albiston, T. 23829-23830, 24037; D1780 (Revised version of the basic criminal law of the Republic of Croatia, 22 March 1993); D1781 (Decree on Internal Organization and Operation of the Ministry of the Interior of the Republic of Croatia, 23 February 1995).
[2964] D1776 (Expert Report of Christopher Albiston, August 2009), para. 3.82.
[2965] D1776 (Expert Report of Christopher Albiston, August 2009), paras 3.83-3.85; Christopher Albiston, T. 23830-23832.



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commander, there is no evidence that Čermak knew of any specific individuals committing acts falling within such disciplinary powers. In light of the preceding considerations, there is no need for the Trial Chamber to further consider who among the persons working for Čermak could be considered his subordinates, nor what precise powers he had to discipline or inititate disciplinary proceedings against those or other persons. In conclusion, the Trial Chamber finds that the allegations in paragraph 17 (e) of the Indictment have not been proven with regard to Čermak. In chapter 6.4.7, the Trial Chamber will further consider the acts and omissions of Čermak regarding crimes committed.

### *6.4.4 Disseminating information intended to cause the departure of Serbs*

2449. According to the Indictment, Ivan Čermak contributed to the JCE by supporting and/or participating in the dissemination of (false) information and propaganda to Krajina Serbs that was intended to cause them to leave the area.[2967]

2450. As far as Čermak is concerned, the Trial Chamber has received no, or insufficient, evidence supporting the allegations in paragraph 17 (c) of the Indictment. The Trial Chamber therefore finds that they have not been proven.

### *6.4.5 Furthering violence against Serbs and a climate of fear among Serbs*

2451. According to the Indictment, Ivan Čermak contributed to the JCE by futhering the perpetration of violent acts against Serbs, and the creation of a climate of fear among Serbs.[2968] There is relevant evidence in chapters 4.5.4, 6.4.2 (Oton Bender incident, passes issued to Serbs), and 6.4.7.

2452. **Karolj Dondo**, HV Liaison Officer with the UN and EC in Sector South in 1995,[2969] testified that he was present as a liaison officer and/or interpreter at a meeting

[2966] D1776 (Expert Report of Christopher Albiston, August 2009), para. 2.3; Christopher Albiston, T. 24017.
[2967] Indictment, para. 17 (c), "instigating, supporting, encouraging, facilitating and/or participating in the dissemination of information, false information and propaganda to the Krajina Serbs that was intended to cause them to leave the area."
[2968] Indictment, para. 17 (d), "promoting, instigating, facilitating, encouraging and/or condoning the perpetration of violent acts against Serbs and the creation of a climate of fear amongst those Serbs who had remained."
[2969] D1695 (Karolj Dondo, witness statement, 9 March 2005), p. 1, paras 1-2; D1696 (Karolj Dondo, witness statement, 18 August 2009), p. 1, para. 2.



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on 29 August 1995 between Alain Forand, Hussein Al-Alfi and Čermak. One of the topics at the meeting was the handing over of surrendering Serb soldiers to the Croatian authorities. It was agreed at the meeting that the UNCRO Sector South command would inform the Croatian authorities of such instances and hand the soldiers over to the Croatian civilian police. The UN and the ICRC would then be allowed to inspect the condition of the Serbian soldiers and follow-up on what happened to them. Čermak agreed and said that during the hand-over the soldiers would not be harmed.[2970] Dondo testified that the agreed procedure was followed in practice.[2971] According to UNMO documentary evidence, in the morning of 29 August 1995, Croatian police detained nine former SVK soldiers in the presence of UNMO in Mušića Stanovi in Knin municipality.[2972] Back in Knin, Dondo told UNMO that the nine were under the personal protection of General Čermak.[2973] At 5 p.m. on the same day, UNMO returned to Mušića Stanovi, where they met one of the nine, Milan Todorović, who told them that Čermak had assured the nine in front of TV cameras that they would be released if everything was O.K. and that they would be able to live in Croatia as free and equal citizens. Čermak had then given him a safe passage card, after which Todorović had returned to the village by foot.[2974] Between 11 a.m. and 1:30 p.m. on 7 September 1995, UNMO and Croatian Army Liaison Officer Colonel Krešimir Dragić visited Mušića Stanovi to confirm the presence of former SVK soldiers, but found none.[2975]

2453. Dondo testified that on one occasion he and some UN monitors visited a Serb who lived near the border.[2976] At his house, the group met the Serb and four persons dressed in Croatian military uniforms without insignia who had just slaughtered two or three sheep. The witness believed that the four persons were about to loot items from the house. He told them to stop what they were doing and leave some money for the Serb, as compensation for the sheep they had slaughtered. The men then made themselves ready to leave. The witness learned that the men had not left any money. He also visited the Serb's father who lived in the stable. When the witness returned to Knin,

[2970] D1696 (Karolj Dondo, witness statement, 18 August 2009), para. 38.
[2971] D1696 (Karolj Dondo, witness statement, 18 August 2009), para. 38; D1701 (Letter from Ivan Čermak to Alain Forand regarding the surrender of a Serb soldier at the KENBAT camp, 5 September 1995); D1702 (Letter from Alain Forand to Ivan Čermak regarding the surrender of a Serb soldier at the KENBAT camp, 5 September 1995).
[2972] P131 (UNMO Sector South daily situation report, 9 p.m., 28 August 1995), pp. 1, 9-10.
[2973] P131 (UNMO Sector South daily situation report, 9 p.m., 28 August 1995), p. 10. See also P1286 (ECMM daily monitoring activity report, 5 September 1995), p. 2.
[2974] P131 (UNMO Sector South daily situation report, 9 p.m., 28 August 1995), p. 11.
[2975] P144 (UNMO Sector South daily situation report, 8 p.m., 7 September 1995), pp. 6-7.



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he reported the incident to the civilian police and he informed Čermak. Čermak arranged for the father to be transported to the Knin hospital a day or two later.[2977]

2454. The relevant evidence does not support the allegations in paragraph 17 (d) of the Indictment with regard to Čermak. The Trial Chamber therefore finds that they have not been proven.

### *6.4.6 Creating and supporting discriminatory policies against Serbs*

2455. According to the Indictment, Ivan Čermak contributed to the JCE by creating and/or supporting Croatian policies used as bases or vehicles for various actions against persons of Serb ethnicity.[2978] The Trial Chamber will examine the evidence relevant to Čermak's role in normalizing life in and around Knin and how that fits into such alleged Croatian policies. There is also relevant evidence in chapter 4.5.4.

2456. The Trial Chamber first turns to the evidence relevant to Čermak's role in normalizing life in and around Knin. When interviewed by the Prosecution, Čermak stated that he arrived in Knin on 6 August 1995, where there were dead bodies, lots of dead livestock, one or two houses burning in the centre of Knin, some burned-down houses, broken glass and lots of garbage.[2979] There was no water or electricity, including in the hospital.[2980] Čermak stated that he and others immediately started working on the hygiene and sanitation situation.[2981] Čermak visited the hospital on the first or second day, where there were Serbs who had lacked medical assistance during Operation Storm, and while he did not go to the hospital morgue, he stated that it contained dead

[2976] D1695 (Karolj Dondo, witness statement, 9 March 2005), paras 21-22.
[2977] D1695 (Karolj Dondo, witness statement, 9 March 2005), para. 22.
[2978] Indictment, para. 17 (b), "initiating, promoting, planning, preparing, participating in, supporting and/or encouraging the development, formulation, dissemination and/or implementation of Croatian political, governmental and/or military policies, programs, plans, decrees, decisions, regulations, strategies or tactics which were used as bases or vehicles for various actions against or to the disadvantage of Serbs, such as depriving them of fundamental human rights, housing, property and/or humanitarian assistance, as part of the joint criminal enterprise."
[2979] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 8, 10, 15, 18, 39, 43, 70, 162; P2526 (Suspect interview with Ivan Čermak, 17 March 1998), pp. 7-8, 13, 47, 87, 101; P2532 (Accused interview with Ivan Čermak, 7 June 2004), pp. 3-5.
[2980] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 8, 86; P2526 (Suspect interview with Ivan Čermak, 17 March 1998), p. 13; D37 (Slobodna Dalmacija interview with Ivan Čermak, 10 August 1995), p. 1; D38 (Večernji list interview with Ivan Čermak, 11 August 1995), p. 2.
[2981] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 10, 15; P2526 (Suspect interview with Ivan Čermak, 17 March 1998), p. 13.



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bodies that stank.[2982] Čermak and others made the hospital work again within 24 hours with the help of generators, cleaning, and disinfecting the entire hospital, and organizing the washing and laundry.[2983] In town, they removed old food and dead livestock, and buried the latter.[2984] Čermak stated that his logistics and construction staff analyzed the situation in Knin, and found that shells had caused damage, particularly to army positions, but also the communal facilities including the waterworks.[2985] Čermak further stated that his own office had taken a direct hit through the roof and through the courtyard.[2986] He stated that there were some but not many damaged civilian houses.[2987] The Trial Chamber has also considered video exhibit D792, reviewed in chapter 6.3.5.

2457. **Goran Dodig**, Head of the Office for Interethnic Relations of the Croatian Government from 6 April 1995 to 5 March 1998,[2988] met Čermak in Knin around 7 August 1995.[2989] Valentić had asked Dodig to work with Čermak. Čermak told him that he had come to Knin to help establish civilian authority so that normal life could be restored to the town as soon and as well as possible. According to the witness, Čermak stated that he lacked people and it was hard for him to take care of so many issues in Knin, including problems with water, electricity, garbage, and communication.[2990] Čermak then asked the witness to go to the UN compound approximately 800 metres outside of Knin, which had been converted into a reception centre for refugees, as there were reportedly a number of sick and wounded people there.[2991] The witness testified that Čermak wanted him, as a person with a medical background, to examine the sick and wounded and do everything he could to help them.[2992] The witness testified that all the people in Čermak's busy office wore uniforms as it was a time of war and therefore even civilians were wearing uniforms.[2993] According to the witness, the activities

[2982] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 16-17, 86; D37 (Slobodna Dalmacija interview with Ivan Čermak, 10 August 1995), p. 1; D38 (Večernji list interview with Ivan Čermak, 11 August 1995), p. 2.
[2983] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 6, 15-17; P2526 (Suspect interview with Ivan Čermak, 17 March 1998), p. 13; D37 (Slobodna Dalmacija interview with Ivan Čermak, 10 August 1995), pp. 1-2; D38 (Večernji list interview with Ivan Čermak, 11 August 1995), p. 2.
[2984] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), p. 15.
[2985] P2526 (Suspect interview with Ivan Čermak, 17 March 1998), pp. 110-111.
[2986] P2526 (Suspect interview with Ivan Čermak, 17 March 1998), p. 110.
[2987] P2526 (Suspect interview with Ivan Čermak, 17 March 1998), p. 111.
[2988] D1705 (Goran Dodig, witness statement, 16 May 2009), pp. 1-3, 14; Goran Dodig, T. 22628.
[2989] D1705 (Goran Dodig, witness statement, 16 May 2009), p. 5; Goran Dodig, T. 22643.
[2990] D1705 (Goran Dodig, witness statement, 16 May 2009), p. 5.
[2991] D1705 (Goran Dodig, witness statement, 16 May 2009), pp. 5-6, 9; Goran Dodig, T. 22650, 22653.
[2992] D1705 (Goran Dodig, witness statement, 16 May 2009), pp. 2, 6.
[2993] D1705 (Goran Dodig, witness statement, 16 May 2009), pp. 6, 11.



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carried out by these persons, who were for instance asking Čermak whom to contact to restore power and water, were not military.[2994]

2458. **Borislav Škegro**, Deputy Prime Minister of the Republic of Croatia for the Economy from April 1993 until 2000,[2995] testified that Čermak was mainly tasked with the normalization of life in Knin, which included providing electric power, water, garbage disposal, reactivating local offices of social institutions, and activating companies and services, and was thus also occupied with civilian logistics within the army.[2996] According to Škegro, Čermak's role was by definition transitional, since he was to establish civilian authorities in an area which had not been under government control for five years.[2997] The Croatian government aimed at restoring normal life and establishing authority as soon as possible.[2998] According to Škegro, normalization of life in Knin was aimed at getting the whole system functioning for the benefit of the town and the Croatian economy.[2999]

2459. When interviewed by the Prosecution, Čermak stated that within about two days of his arrival, his office had been set up in the centre of Knin, in the former command of the SVK.[3000] Čermak stated that 99 per cent of his time was spent in his office.[3001] Čermak brought in Brigadier Vukina, who within a few days organized a public kitchen, both for military persons and civilians.[3002] On 8 August 1995, Čermak sent a letter to Forand asking him to assist in collecting abandoned or damaged vehicles and other equipment in Knin and temporarily storing them near the UN compound, in order to open up the roads and restore traffic in Knin.[3003] In a further letter of 8 August 1995, Čermak requested Forand's assistance in repairing the water works in Knin, with the

[2994] D1705 (Goran Dodig, witness statement, 16 May 2009), p. 6.
[2995] D1679 (Borislav Škegro, witness statement, 21 April 2009), p. 1, paras 1-2; Borislav Škegro, T. 22219.
[2996] D1679 (Borislav Škegro, witness statement, 21 April 2009), paras 5, 9.
[2997] Borislav Škegro, T. 22254-22255.
[2998] D1679 (Borislav Škegro, witness statement, 21 April 2009), para. 16; Borislav Škegro, T. 22253.
[2999] D1679 (Borislav Škegro, witness statement, 21 April 2009), paras 8-9; Borislav Škegro, T. 22204-22205, 22207.
[3000] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), p. 10; P2526 (Suspect interview with Ivan Čermak, 17 March 1998), pp. 13-14, 110; P2532 (Accused interview with Ivan Čermak, 7 June 2004), pp. 3-4.
[3001] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), p. 57; P2526 (Suspect interview with Ivan Čermak, 17 March 1998), p. 102.
[3002] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 7, 17-18, 161, 181; P2526 (Suspect interview with Ivan Čermak, 17 March 1998), p. 14; P2532 (Accused interview with Ivan Čermak, 7 June 2004), p. 135.
[3003] D299 (Letter from Ivan Čermak to Alain Forand re clearing of roads in Knin, 8 August 1995).



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aim of normalizing life and for the return of refugees.[3004] On 9 August 1995, Čermak requested that Forand provide a helicopter to identify damage in the power grid so that it could be repaired.[3005] Also on 9 August 1995, Čermak requested that Forand provide an excavator with an operator to help clear the area around Knin hospital so as to allow the hospital to resume its work.[3006] On 10 August 1995, Čermak approved for the MoD headquarters administration to remove stock, equipment, and items from buildings in the town, for the purpose of feeding the civilian public and "other activities" of the MoD headquarters administration.[3007] Čermak explained that this was necessary to organize the kitchen.[3008] He explained that "other activities" referred to things such as laundry rooms and kitchens.[3009] Čermak further explained that the equipment was to be borrowed, not stolen, and that the MoD headquarters administration was supposed to provide him with a list of the items taken.[3010] He added that he was sure the lists were received in the garrison headquarters.[3011] Čermak also stated that he and others immediately started fixing electrical and water supply installations, and that after one to two weeks, with the help of Forand, they re-established water and electricity.[3012] Čermak stated that he cooperated with Gotovina in logistical matters, and recalled, with some hesitation at first, that Gotovina provided military people and hundreds of trucks to help Čermak clear up Knin from rubbish and such.[3013]

2460. **Witness 86** testified that until Ivan Čermak was replaced by Marko Gojević and left Knin in mid-September 1995, civilian police attended meetings almost daily, between 10 and 11 a.m., that were held at the initiative of Ivan Čermak, in the former

[3004] Alain Forand, T. 4218-4219; D298 (Letter from Ivan Čermak to Alain Forand re water works in Knin, 8 August 1995).
[3005] D1270 (Letter from Ivan Čermak to Alain Forand re power grid, 9 August 1995).
[3006] D1271 (Letter from Ivan Čermak to Alain Forand re Knin hospital, 9 August 1995).
[3007] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 180-182; P2523 (Approval issued by Čermak, 10 August 1995).
[3008] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 181-183; P2523 (Approval issued by Čermak, 10 August 1995), para. 3.
[3009] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), p. 182; P2523 (Approval issued by Čermak, 10 August 1995), para. 1.
[3010] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 181-183; P2523 (Approval issued by Čermak, 10 August 1995), para. 3.
[3011] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), p. 182.
[3012] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 7, 10, 15, 17; D37 (Slobodna Dalmacija interview with Ivan Čermak, 10 August 1995), p. 2.
[3013] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), p. 116; P2526 (Suspect interview with Ivan Čermak, 17 March 1998), pp. 16-17, 103; P2532 (Accused interview with Ivan Čermak, 7 June 2004), p. 14; P2707 (Additional portions of suspect interview with Ivan Čermak, 17 March 1998), p. 4.



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JNA building where Čermak had his office.[3014] Among the people usually attending the meetings were Petar Pašić, Zdenko Rinčić, Kornelije Brkić, and a representative of the VP.[3015] During the meetings, the participants discussed the general situation in Knin, police activities (including check-points), communal affairs, such as electricity and water supplies, infrastructure, sanitation of the area, including the search and removal of corpses, the removal of dead and live animals, the removal of explosives, and the removal of garbage and food remnants.[3016] In his written Rule 92 *ter* statement, the witness stated that Brkić submitted detailed reports at the meetings to Čermak, including information on whether the body had died by violent means.[3017] However, in Court, the witness testified that at the meetings, Brkić read notes from his notebook and generally informed those present about the clearing up of human remains, but did not submit written reports and did not provide details on individual incidents.[3018] The witness did not follow Brkić's technical details and testified that those attending the meetings were more concerned with the clearing of animal carcasses, which could pollute the water.[3019]

2461. **Boško Džolić**, a former Company Commander of the 72nd VP Battalion who was the Commander of the Joint VP Company in Knin from 5 to 12 August 1995,[3020] testified that on 9, 10 and 11 August 1995, he attended three briefings that were held daily around 10 a.m. at Čermak's office in the HV Dom.[3021] During these briefings, the progress towards getting Knin town back to normality was discussed.[3022] The briefings were chaired by Čermak and attended by ten to twenty people, all of whom were interested in the functioning of town, including the Civilian Police commander, Smiljan Reljić, Major Ivan Jurić and some town officials and civilians from Čermak's team who

[3014] P487 (Witness 86, witness statement, 19 September 2001), paras 38, 45, 65; Witness 86, T. 5545, 5547-5549. See also P503 (Notebook of Zvonko Gambiroža, 12 August 1995-21 September 1995).
[3015] P487 (Witness 86, witness statement, 19 September 2001), para. 45; Witness 86, T. 5546-5550, 5552, 5701-5703.
[3016] P487 (Witness 86, witness statement, 19 September 2001), para. 45; P489 (Witness 86, witness statement, 23 November 2007), para. 8; Witness 86, T. 5547-5548, 5554-5557, 5815.
[3017] P487 (Witness 86, witness statement, 19 September 2001), para. 45; P489 (Witness 86, witness statement, 23 November 2007), paras 7, 20.
[3018] Witness 86, T. 5551-5552, 5703-5704, 5831-5832.
[3019] Witness 86, T. 5703-5704, 5831-5832.
[3020] P875 (Boško Džolić, witness statement, 18 May 2004), p. 1, paras 3, 4, 20, 21, 53; P876 (Boško Džolić, witness statement, 20 August 2008), p. 1, paras 27, 32, 33; Boško Džolić, T. 8888, 8906, 8916, 8922, 8968, 8987, 8999, 9068; P882 (Report by Major General Mate Laušić on the use of VP units in Operation Storm, 6 August 1995); D786 (Organigram of the 72nd VP Battalion from August to October 1995); D787 (Daily Order of the Joint VP Company in Knin from 5 August to 23 September 1995), pp. 7, 10, 17, 21.
[3021] P875 (Boško Džolić, witness statement, 18 May 2004), paras 48, 51-52; Boško Džolić, T. 9015.



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were responsible for re-establishing things like water and electricity.[3023] According to Džolić, Čermak coordinated between the various people and interests in trying to get Knin town functioning.[3024] Džolić testified that crimes such as burning and looting were not discussed at the briefings.[3025] Further corroboration of Čermak's normalization activities and related meetings was received from **Luković**,[3026] and **Teskeredžić**.[3027]

2462. **Petar Pašić**, a Croatian Serb and the Croatian Government Commissioner for Knin from January 1992 to April 1996,[3028] testified that Čermak's role was to assist the civil authorities in organizing the return of people and creating normal living conditions for people in Knin.[3029] Pašić's first meeting with Čermak was held to establish the protection of property and facilitate an organized returned of Croats who were living in hotels in Šibenik and Primošten. Čermak collaborated with Pašić and treated him with respect.[3030] According to Pašić, after Operation Storm, the majority of people who had stayed or returned to Knin were either unable to stay in their homes or to cook meals there.[3031] To assist those in need, Čermak organized a soup kitchen at the Knin Garrison Command.[3032] Čermak and Pašić did not distinguish between Croats, Muslims, or Serbs in distributing food to the needy.[3033] Pašić asked Čermak for help because his office was unprepared and understaffed to carry out its tasks following the liberation of Knin.[3034] Čermak used his position, reputation, and connections in Zagreb to assist Pašić to fulfil his tasks, for instance by bringing electricity and water services to Knin and establishing bus lines.[3035] Pašić did not receive orders from Čermak and was not bound to implement

[3022] P875 (Boško Džolić, witness statement, 18 May 2004), paras 48, 51-52.
[3023] P875 (Boško Džolić, witness statement, 18 May 2004), para. 48; Boško Džolić, T. 9015-9016.
[3024] Boško Džolić, T. 9015-9017.
[3025] P875 (Boško Džolić, witness statement, 18 May 2004), paras 48, 51-52; Boško Džolić, T. 9017.
[3026] D1687 (Ivica Luković, witness statement, 1 October 2004), paras 34, 38, 40; D1688 (Ivica Luković, witness statement, 13 August 2009), paras 15, 20, 24; Ivica Luković, T. 22382, 22384-22385, 22395.
[3027] D1732 (Emin Teskeredžić, witness statement, 26 May 2009), paras 7-8; Emin Teskeredžić, T. 23273.
[3028] D1706 (Petar Pašić, witness statement, 3 March 2002), pp. 1-2; D1707 (Petar Pašić, witness statement, 23 April 2009), paras 2, 4, 13, 15, 32; D1709 (Petar Pašić, supplemental information sheet, 6 October 2009), para. 10; Petar Pašić, T. 22740, 22778, 22844, 22847, 22858, 23026, 23053.
[3029] D1706 (Petar Pašić, witness statement, 3 March 2002), p. 4; D1707 (Petar Pašić, witness statement, 23 April 2009), para. 19; Petar Pašić, T. 23024-23025.
[3030] D1707 (Petar Pašić, witness statement, 23 April 2009), para. 20.
[3031] Petar Pašić, T. 22861.
[3032] D1706 (Petar Pašić, witness statement, 3 March 2002), p. 4; D1707 (Petar Pašić, witness statement, 23 April 2009), paras 19, 23; Petar Pašić, T. 22861, 23043-23044.
[3033] D1707 (Petar Pašić, witness statement, 23 April 2009), para. 19; Petar Pašić, T. 22862.
[3034] D1707 (Petar Pašić, witness statement, 23 April 2009), para. 8; Petar Pašić, T. 22860, 23026-23027, 23040.
[3035] D1707 (Petar Pašić, witness statement, 23 April 2009), paras 19, 23; Petar Pašić, T. 23026, 23040, 23042.



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Čermak's decisions.[3036] Čermak brought in a public utility team, through his connections, who cleaned the streets of Knin around the clock clearing the town of any debris.[3037]

2463. When interviewed by the Prosecution, Čermak stated that he supported and cooperated a lot with Pašić, who was responsible for establishing a civilian structure in Knin, such as the town administration, but lacked resources, so Čermak's help was needed to speed up the re-establishment of water and electricity in Knin.[3038] Already on the day after his arrival in Knin, Čermak told Pašić that he had come to provide logistical support and to help with anything Pašić needed.[3039] Čermak also wanted to get an overview of the situation in Knin, and see what the town needed.[3040] Čermak further stated that he had a very good relationship with Pašić, who worked hard and would have achieved more, and achieved it earlier, if he had had support from "the authorities".[3041] Neither Čermak nor Pašić had authority to give orders to the other.[3042] According to Čermak, the superior of Pašić was the Župan, and the superior of the Župan was the government.[3043] The Župan was in Zadar and exercising his authority by the time Čermak came to Knin.[3044] Čermak stated that he was in contact a couple of times with the Župan, and that he came to visit Knin, and assisted with the infrastructure, electricity and clearing up the area.[3045] In general, Čermak had contact with heads of counties to get their help with utilities and civilian issues.[3046]

2464. During his time as Commander of the Knin garrison, Čermak issued various orders reflecting his role in normalizing life in Knin. These orders dealt with logistical matters such as the transfer of technical, transport, supplies and building services from the Šibenik Logistics Base to Knin; military estates and storage facilities; the return of

[3036] Petar Pašić, T. 22862-22865, 23027.
[3037] D1707 (Petar Pašić, witness statement, 23 April 2009), para. 23; Petar Pašić, T. 23042.
[3038] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 5-6, 12-13, 39-42; P2526 (Suspect interview with Ivan Čermak, 17 March 1998), pp. 15-16, 39; D38 (Večernji list interview with Ivan Čermak, 11 August 1995), p. 1.
[3039] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 39-41.
[3040] P2532 (Accused interview with Ivan Čermak, 7 June 2004), pp. 38-39.
[3041] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 40-41.
[3042] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), p. 41. See Ivan Čermak's Response to Prosecution's Motion for the Admission into Evidence of the Statements of the Accused Ivan Čermak and Mladen Markač and Further Submissions by the Prosecutor thereon, 27 February 2009, Annex A, footnote 1.
[3043] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 41-42.
[3044] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 42-43.
[3045] P2526 (Suspect interview with Ivan Čermak, 17 March 1998), p. 25; P2707 (Additional portions of suspect interview with Ivan Čermak, 17 March 1998), p. 5.
[3046] P2526 (Suspect interview with Ivan Čermak, 17 March 1998), p. 26.



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business premises no longer needed by the HV; the protection of TV equipment of the Knin Studio from theft; the recommencement of banking operations and the production process in Knin; the provision of an ambulance and a driver for the Knin hospital; and petrol stations and the provision of fuel for the military and the civilian population of Knin.[3047] When shown his order, dated 10 August 1995, for a Knin petrol station owned by INA to work 24 hours a day, Čermak stated that INA was a nationalized company and that there was a need for the petrol station to work around the clock in order to provide fuel for civilians and members of the Croatian military.[3048] The Trial Chamber received further documentary evidence reflecting Čermak's role in normalizing life in Knin.[3049]

2465. **Emin Teskeredžić**, a leader of an explosives-removal team operating in and around Knin between 6 August and 30 October 1995,[3050] arrived in Knin on 6 August 1995 and found Čermak in one of the offices on the first floor of the building of the Knin Garrison.[3051] Čermak told Teskeredžić that he had come to Knin to establish normal living conditions in the city.[3052] Teskeredžić and his team, the members of

[3047] D1017 (Order issued by General Čermak regarding Relocation of Services from Šibenik Rear Base to Knin, 8 August 1995), p. 1; D1019 (Order issued by General Čermak regarding Working Hours of Gas Station at Slavko Rodić, 10 August 1995), p. 1; D1021 (Request to General Čermak from Knin Medical Centre, 13 August 1995), p. 1; D1022 (Order issued by General Čermak regarding ambulance and driver in Knin, 30 August 1995), p. 1; D1035 (Order issued by General Čermak regarding military estates in Knin, 10 August 1995), p. 1; D1037 (Order issued by General Čermak regarding the production process of Kningips, 14 August 1995), p. 1; D1040 (Order issued by General Čermak regarding return of business premises, 27 September 1995), pp. 1-2; D1120 (Order issued by General Čermak regarding banking operations in Knin, 11 August 1995), p. 1; D1121 (Order issued by General Čermak regarding the production process of Agroprerada, 14 August 1995), p. 1; D1125 (Order issued by General Čermak regarding working hours of Knin gas station, 10 August 1995), p. 1; D1126 (Order issued by General Čermak regarding TV equipment from Knin Studio, 11 August 1995), pp. 1-2; D1127 (Order issued by General Čermak regarding warehouse in Drniš, 14 August 1995), p. 1.
[3048] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), p. 149.
[3049] D775 (Report by Željko Jonjić on the work of logistics in the Knin garrison); D1015 (Report by Željko Jonjić, Assistant Commander for Logistics at Knin Garrison Headquarters, 29 September 1995), pp. 1-4; D1018 (Order by Čermak concerning logistics, 9 August 1995); D1038 (Request from Jadrantrans to Čermak, 15 August 1995); D1039 (Request by Brigadier Josip Vukina for allocation of business space, 24 August 1995); D1122 (Application to start a business in Knin, 15 August 1995); D1123 (Application to Čermak to start a business in Knin, 30 August 1995); D1124 (Request for allocation of commercial premises in Knin, 4 September 1995); D1272 (Decision by Čermak regarding the opening of shops, 10 August 1995); D1721 (Application by Čermak for power generator to Zadar/Knin County c/o Kumana, 8 August 1995).
[3050] D1732 (Emin Teskeredžić, witness statement, 26 May 2009), p. 1, paras 1-4, 6, 11, 13, 19; Emin Teskeredžić, T. 23242-23243, 23260, 23263-23264, 23274-23275; D1027 (Request by Čermak for Teskeredžić to be relieved of his employment, 19 August 1995).
[3051] D1732 (Emin Teskeredžić, witness statement, 26 May 2009), paras 6-7, 19; Emin Teskeredžić, T. 23261, 23264.
[3052] D1732 (Emin Teskeredžić, witness statement, 26 May 2009), para. 7.



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which arrived over the next few days, informed Čermak of their intended work.[3053] Čermak accepted their proposal and offered logistics support. Teskeredžić and Čermak held discussions about the work to be undertaken.[3054] Teskeredžić and his team responded to requests for assistance, and used to go to the field and perform all of the tasks Čermak requested of them.[3055] Requests also came from other parties, such as people returning to their homes, representatives of electricity supply companies, or military personnel who asked Teskeredžić and his team to accompany them to check railways lines or inspect military depots that they were taking over.[3056] People who wanted to move into military apartments, often people who had been forced out of Banja Luka in Bosnia-Herzegovina, would request Teskeredžić and his team to inspect the apartments.[3057] Teskeredžić's tasks ranged from emptying facilities containing explosives to mine testing railway lines, electrical facilities and areas around private homes.[3058] When interviewed by the Prosecution, Čermak corroborated the evidence of Teskeredžić.[3059]

2466. On 9 August 1995, Teskeredžić and others inspected the Krčić trout farm in Knin, and found it to be partly ransacked and devastated, with much of the equipment smashed.[3060] In a report dated 10 August 1995, Teskeredžić informed Čermak of the alarming condition of the fish farm, the urgent work they undertook, and the measures that he proposed should be taken.[3061] One measure that Teskeredžić suggested to Čermak was to engage VP to protect the fish farm, but Teskeredžić testified that they

[3053] D1732 (Emin Teskeredžić, witness statement, 26 May 2009), para. 9; Emin Teskeredžić, T. 23241-23242; D1026 (Request by Čermak for the mobilization of Teskeredžić, Domančić and Tomšić, 19 August 1995).
[3054] D1732 (Emin Teskeredžić, witness statement, 26 May 2009), para. 9.
[3055] D1732 (Emin Teskeredžić, witness statement, 26 May 2009), paras 8-9; Emin Teskeredžić, T. 23282.
[3056] Emin Teskeredžić, T. 23264-23265, 23277-23278; D1030 (Report by Teskeredžić on work of the de-mining team, 22 September 1995).
[3057] Emin Teskeredžić, T. 23279-23280.
[3058] D1732 (Emin Teskeredžić, witness statement, 26 May 2009), para. 17; Emin Teskeredžić, T. 23242, 23249, 23265; D1030 (Report by Teskeredžić on work of the de-mining team, 22 September 1995).
[3059] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 16, 18, 53, 158; P2526 (Suspect interview with Ivan Čermak, 17 March 1998), p. 15. See also D37 (Slobodna Dalmacija interview with Ivan Čermak, 10 August 1995), p. 2; D38 (Večernji list interview with Ivan Čermak, 11 August 1995), p. 3; D1735 (Proposal by Ivan Čermak for the commendation of Emin Teskeredžić and his team, 18 September 1995).
[3060] D1732 (Emin Teskeredžić, witness statement, 26 May 2009), para. 13; D1030 (Report by Teskeredžić on work of the de-mining team, 22 September 1995), p. 1; D1033 (Report by Teskeredžić regarding fish farm in Knin, 10 August 1995), p. 1.
[3061] D1732 (Emin Teskeredžić, witness statement, 26 May 2009), para. 13; Emin Teskeredžić, T. 23255-23256, 23271; D1033 (Report by Teskeredžić regarding fish farm in Knin, 10 August 1995).



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never came.[3062] On 10 August 1995, Čermak ordered the provisional assignment of Drago Marguš and Zvonko Modrušan to the Knin fish farm to assist Teskeredžić with restoring the facility and organizing its operation.[3063] According to Teskeredžić, this was a formality, as both Marguš and Modrušan were already assisting Teskeredžić with his work at the fish farm.[3064]

2467. **Nadan Vidošević**, the Croatian Minister of Economy from 12 October 1993 to 18 September 1995,[3065] approved the transfer of his deputy Zdenko Rinčić to Knin after the conclusion of Operation Storm.[3066] Rinčić was responsible for coordinating institutions that would help establish normal conditions of life and economic recovery in the region.[3067] Rinčić was instructed to put himself at the disposal of Čermak in order to fulfil tasks more easily.[3068] Vidošević considered Rinčić and Čermak's work to be a joint task, but regarded Rinčić's duties as strictly civilian.[3069] Rinčić informed the witness by telephone about his work and his collaboration with Čermak and Peter Pašić, the Republic of Croatia's Government Commissioner for Knin, on the re-establishment of utility infrastructures in Knin, which satisfied the witness with regard to Čermak's performance.[3070] Vidošević believed Rinčić reported from Knin, but knew Rinčić was active in a wider area.[3071] The witness updated ministers and others attending a government session on 7 September 1995 at the fortress in Knin about the economic situation since Operation Storm and plans for a swift economic recovery in the region. Vidošević based this report on information received from Rinčić prior to the session.[3072]

2468. **Zdenko Rinčić**, the Croatian Assistant Minister of Economy for the manufacturing industry of ammunition, grenade, and machine gun production from

[3062] Emin Teskeredžić, T. 23273-23274; D1033 (Report by Teskeredžić regarding fish farm in Knin, 10 August 1995), p. 2.
[3063] D1732 (Emin Teskeredžić, witness statement, 26 May 2009), para. 13; Emin Teskeredžić, T. 23266; D149 (Order by Čermak assigning Drago Marguš to Knin fish farm, 10 August 1995); D1119 (Order by Čermak assigning Zvonko Modrušan to Knin fish farm, 10 August 1995). See also D1034 (Order by Čermak assigning Zdenko Roman to Knin fish farm, 10 August 1995).
[3064] Emin Teskeredžić, T. 23266-23268, 23274.
[3065] D1775 (Nadan Vidošević, witness statement, 4 May 2009), p. 1, paras 1-2, 12.
[3066] D1775 (Nadan Vidošević, witness statement, 4 May 2009), para. 5; Nadan Vidošević, T. 23739-23740.
[3067] D1775 (Nadan Vidošević, witness statement, 4 May 2009), para. 5; Nadan Vidošević, T. 23739-23740.
[3068] Nadan Vidošević, T. 23741.
[3069] D1775 (Nadan Vidošević, witness statement, 4 May 2009), para. 10; Nadan Vidošević, T. 23739-23742.
[3070] D1775 (Nadan Vidošević, witness statement, 4 May 2009), paras 6, 8-10; Nadan Vidošević, T. 23737, 23740-23744.
[3071] Nadan Vidošević, T. 23740.
[3072] D1775 (Nadan Vidošević, witness statement, 4 May 2009), para. 11.



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1993 to 1996,[3073] wanted to help Čermak re-establish normal living conditions and, on 7 August 1995, called Minister Vidošević and proposed to open a branch office of the Ministry of Economy in Knin.[3074] Vidošević approved the proposal; decided to send Rinčić to Knin as coordinator for the economy; and sent Rinčić office equipment, two officers, and a secretary.[3075] Rinčić testified that on 6 August 1995, there was no electricity or water supply in Knin; the telephone exchange was out of order; and the railway line between Slunj and Knin was in a bad state and in need of repair.[3076] There was garbage on the streets, and, because of the heat, a smell of rotting food in fridges and dead livestock.[3077] There were more than 3,000 abandoned apartments listed in Knin, many of which were without electricity or water and in a state of disarray.[3078] Čermak organized the inspection, repair, and electricity and water reconnection of the apartments, as well as the cleaning up of apartments and streets, so that people could move in as soon as possible.[3079] Rinčić's initial priority was to obtain electricity generators and engineering equipment.[3080] Rinčić obtained resources from the Ministry of Economy and collaborated with Croatian state enterprises in obtaining electricity generators, re-connecting the water supply and clearing the forests in order to clear the road for traffic.[3081] According to Rinčić, Čermak was well-respected and everybody came to Čermak for help on all matters in Knin.[3082] When Čermak asked the directors of firms in Zadar, Šibenik, Split, Zagreb, or Rijeka for help, they were willing to assist.[3083] For this reason, Rinčić signed several requests to companies on Čermak's behalf, rather than in his own name.[3084] Rinčić testified that whenever he needed something done quickly, using Čermak's name would lead to receiving the requested assistance within the shortest possible time.[3085] If he had signed such requests in his own name as Assistant Minister of Economy, people would have referred him to the Ministry in

[3073] D1680 (Zdenko Rinčić, witness statement, 16 May 2009), p. 1, paras 1, 3-5; Zdenko Rinčić, T. 22341.
[3074] D1680 (Zdenko Rinčić, witness statement, 16 May 2009), para. 14.
[3075] D1680 (Zdenko Rinčić, witness statement, 16 May 2009), para. 14; Zdenko Rinčić, T. 22336-22337.
[3076] D1680 (Zdenko Rinčić, witness statement, 16 May 2009), paras 10, 14-15, 28; Zdenko Rinčić, T. 22296-22298, 22363; D1683 (Report on the situation in the Knin power plant, Zdenko Rinčić, 8 August – 27 August 1995).
[3077] D1680 (Zdenko Rinčić, witness statement, 16 May 2009), paras 10, 28; Zdenko Rinčić, T. 22362, 22367-22368.
[3078] D1680 (Zdenko Rinčić, witness statement, 16 May 2009), para. 28.
[3079] D1680 (Zdenko Rinčić, witness statement, 16 May 2009), para. 28; Zdenko Rinčić, T. 22362.
[3080] D1680 (Zdenko Rinčić, witness statement, 16 May 2009), para. 15.
[3081] D1680 (Zdenko Rinčić, witness statement, 16 May 2009), paras 15-16.
[3082] D1680 (Zdenko Rinčić, witness statement, 16 May 2009), para. 16; Zdenko Rinčić, T. 22337.
[3083] D1680 (Zdenko Rinčić, witness statement, 16 May 2009), para. 17.
[3084] D1680 (Zdenko Rinčić, witness statement, 16 May 2009), paras 17-18; D1682 (Request for payment of four tires, bearing signature of Ivan Čermak, 16 August 1995); Zdenko Rinčić, T. 22337.



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Zagreb, after which he would have had to send written requests to the Ministry and wait for the Ministry's approval, which would have taken longer.[3086] According to Rinčić, Čermak set up a soup kitchen in Knin, and Čermak and Rinčić organized the delivery of food to the old people in the neighbouring villages in coordination with the Red Cross.[3087]

2469. Rinčić reported on all of his activities in Knin to Vidošević, who visited Knin three or four times.[3088] Rinčić's duties included the consolidation of industrial facilities and factories and the establishment of the utilities infrastructure in Knin.[3089] Two or three days after Rinčić arrived in Knin, he visited the TVIK factory, and saw that more than 800 machines were in working order.[3090] At Čermak's request, Rinčić compiled a list of factories in Knin and asked representatives of the civilian and military police to protect the factories in Knin and prevent the theft of machines.[3091] Rinčić met with representatives of the Croatian Privatization fund and briefed them on the condition of the factories in Knin.[3092] According to Rinčić, the Serbs who remained in Knin and the Croats who returned to live in Knin were employed through the Knin employment agency and worked in the factories. Rinčić often went to the UN camp with Čermak, where they tried to persuade the qualified workers who had previously worked in the factories to leave the UN camp, return to their old jobs and live in Knin. By mid-September 1995, more than 300 people were working in TVIK factory.[3093] When interviewed by the Prosecution, Čermak stated that once his initial tasks were done, his priorities changed to looking after the fish farm, other farm structures, and industrial facilities.[3094] According to Čermak, 100-150 civilian police were protecting such structures in Knin.[3095] The Trial Chamber has also considered Presidential transcript P463, reviewed in chapter 6.2.3, and P2673 and P461.

[3085] D1680 (Zdenko Rinčić, witness statement, 16 May 2009), para. 18; Zdenko Rinčić, T. 22337.
[3086] D1680 (Zdenko Rinčić, witness statement, 16 May 2009), para. 18; Zdenko Rinčić, T. 22337.
[3087] D1680 (Zdenko Rinčić, witness statement, 16 May 2009), para. 30.
[3088] D1680 (Zdenko Rinčić, witness statement, 16 May 2009), para. 31.
[3089] D1680 (Zdenko Rinčić, witness statement, 16 May 2009), paras 15, 25-26.
[3090] D1680 (Zdenko Rinčić, witness statement, 16 May 2009), para. 25; Zdenko Rinčić, T. 22339, 22344.
[3091] D1680 (Zdenko Rinčić, witness statement, 16 May 2009), para. 25; D1036 (Report by Rinčić on revival of economic objects in Knin municipality).
[3092] D1680 (Zdenko Rinčić, witness statement, 16 May 2009), paras 25-26.
[3093] D1680 (Zdenko Rinčić, witness statement, 16 May 2009), para. 27.
[3094] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), p. 16.
[3095] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), p. 16; P2526 (Suspect interview with Ivan Čermak, 17 March 1998), p. 22.



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2470. On the basis of the evidence above, the Trial Chamber finds that the activities of Čermak included cleaning up Knin, improving hygienic conditions, providing a public soup kitchen, making the hospital operational, reconnecting water and electricity to the town, reactivating public services, improving transportation conditions, restoring factories and other businesses, and de-mining Knin and its surroundings. The evidence, in particular that of Rinčić and Vidošević, indicates that a primary goal of Čermak's activities was the economic revival of the Knin area. Presidential transcript P463 could be interpreted to suggest that Čermak's role as envisaged by President Tuđman was linked to the goal of populating the Krajina with Croats rather than Serbs. However, the relevant parts of P463 record a conversation between Jure Radić and President Tuđman at which Čermak was not present and during which his name was only mentioned in passing. Neither P463, nor transcripts P2673 and P461 on which the Prosecution relies, establishes that Čermak was aware of that being the goal of, or included in, his normalization activities or that he intentionally participated in the realization of such a goal. The Trial Chamber considered in this regard that Čermak must have known that most Serbs had left Knin. The Trial Chamber therefore finds that the allegations in paragraph 17 (b) of the Indictment have not been proven with regard to Čermak. The Trial Chamber further considers Čermak's role with regard to sanitation of human bodies below, and in chapter 6.2.6.

### *6.4.7 Disseminating false information regarding crimes*

2471. According to the Indictment, Ivan Čermak contributed to the JCE by permitting, denying, concealing or minimising crimes committed by Croatian authorities and forces against Serbs, and providing false assurances to the international community that action to stop the crimes was being and/or would be taken.[3096] The Trial Chamber will examine in turn Čermak's actions and interactions with representatives of international organizations on the topic of crimes, his actions and interactions with representatives of

[3096] Indictment, para. 17 (f), "engaging in, encouraging, facilitating or supporting efforts to deny, conceal and/or minimise crimes committed by the Croatian authorities and forces against Serbs, including the provision of false, incomplete or misleading information to international organisations, monitors, investigators and the public." Indictment, para. 19 (c), "permitting, denying and/or minimising the ongoing criminal activity, including participating in the reporting of false, incomplete or misleading information regarding crimes committed, while knowing that widespread destruction and plunder of property belonging to Serb civilians and the unlawful killing and inhumane treatment of Krajina Serbs were ongoing." Indictment, para. 19 (e), "providing false assurances to the international community that action to stop the crimes was being and/or would be taken."



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international organizations on the topic of movement restrictions, and finally his role in the sanitation of human bodies. There is also relevant evidence in chapter 6.2.6.

2472. The Trial Chamber first turns to Čermak's interactions with representatives of international organizations on the topic of crimes. The Trial Chamber will begin by examining the evidence that can be clearly dated, before turning to more general evidence on the topic.

2473. **Alain Forand**, UNCRO Sector South Commander from 8 July 1995 to 10 October 1995,[3097] alerted Čermak, at a meeting on 8 August 1995, to UN reports of organized looting on the road between Knin and Drniš, the loading of livestock into trucks, the packing up of "complete contents" of houses under the supervision of the civilian police.[3098] According to documentary evidence, Čermak, who did not rule out incidents of looting by HV, responded that this was possible due to the large scale of the operation, but also that abandoned livestock was being collected under veterinarian supervision in order to save it.[3099] On 9 August 1995, Akashi wrote to Annan that the military situation in Sector South had begun to stabilize and that UNCRO in Sector South reported that the HV had started to withdraw from Knin, having been replaced by military and civilian police.[3100] Čermak added that those wishing to return to their home would have their livestock returned, that replacements would be found for destroyed houses, and that the Croatian authorities were making a sincere and serious effort to treat people fairly.[3101] **Hussein Al-Alfi**, the UN Civil Affairs Coordinator, later renamed Political and Human Affairs Coordinator, for Sector South in Knin from June 1995 to January 1996,[3102] first met Čermak on 8 or 9 August 1995, with General Forand.[3103] At this meeting, Al-Alfi and General Forand told Čermak to do something to stop the burning and looting in Knin.[3104] Al-Alfi testified, somewhat ambiguously, that Čermak

[3097] P330 (Alain Forand, witness statement, 20 August 1996), pp. 2, 15; P333 (Alain Forand, witness statement, 25 January 2008), para. 2; Alain Forand, T. 4098-4099, 4180, 4186.
[3098] Alain Forand, T. 4128-4129; P359 (UNCRO Sector South daily situation report, 8:30 p.m., 8 August 1995), p. 3.
[3099] P359 (UNCRO Sector South daily situation report, 8:30 p.m., 8 August 1995), p. 3; D619 (Letter from Yasushi Akashi to Kofi Annan, 9 August 1995), p. 2.
[3100] D619 (Letter from Yasushi Akashi to Kofi Annan, 9 August 1995), p. 1.
[3101] P359 (UNCRO Sector South daily situation report, 8:30 p.m., 8 August 1995), pp. 3-4; D619 (Letter from Yasushi Akashi to Kofi Annan, 9 August 1995), p. 2.
[3102] P1160 (Hussein Al-Alfi, witness statement, 5 March 1998), p. 5; Hussein Al-Alfi, T. 13805-13806, 13932-13933.
[3103] P1160 (Hussein Al-Alfi, witness statement, 5 March 1998), pp. 48-50, 55; Hussein Al-Alfi, T. 13811, 13836.
[3104] P1160 (Hussein Al-Alfi, witness statement, 5 March 1998), pp. 55-56; Hussein Al-Alfi, T.13811-13812.



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responded that he did not know about the events, or that he would make sure that nothing would happen.[3105]

2474. **Søren Liborius**, an ECMM Operations Officer and team leader based in Knin from 28 July 1995 until 27 November 1995,[3106] stated that the head of the ECMM RC Knin, Philippe Augarde, met with Čermak on 8 August 1995, where Čermak apologized for the lootings and promised that freedom of movement would be extended as quickly as possible.[3107]

2475. According to UN documentary evidence, on 8 August 1995, Čermak stated that 61 deceased persons had been found, 90 per cent of them military, and buried in cemeteries, and that 8-11 more bodies had been found that day.[3108] According to an ECMM report, at a meeting on 10 August 1995, the ECMM head of mission raised the issue of burning houses in the area with Čermak, who explained that that his forces were "cleaning" areas where Serb armed groups remained.[3109] Čermak also said that the military authorities had received strict orders to prevent burning and looting and that a special police unit had been sent to the affected areas to carry out an investigation.[3110]

2476. On 11 August 1995, **Forand** sent a letter to Čermak in which he recalled that at a meeting with him on the previous day, Forand had brought UN information concerning widespread and systematic looting and destruction of crops, property, and livestock to Čermak's attention and that since that meeting Forand had received additional reports of such destruction in the area between Knin and Pakovo Selo and along the former zone of separation.[3111] Forand reminded Čermak of the latter's statement concerning his honest effort to control the situation, and protested against the criminal activities,

[3105] Hussein Al-Alfi, T. 13812.
[3106] P799 (Søren Liborius, witness statement, 2 November 1995), pp. 1, 3; P800 (Søren Liborius, witness statement, 11 November 1997), p. 2; P801 (Søren Liborius, witness statement, 12 October 2005), p. 2; P803 (Søren Liborius, witness statement, 6 September 2008), para. 6; Søren Liborius, T. 8229; D741 (Diary of Liborius), p. 3.
[3107] P801 (Søren Liborius, witness statement, 12 October 2005), p. 4; P806 (ECMM Knin daily report, 8 August 1995), pp. 1, 3.
[3108] D619 (Letter from Yasushi Akashi to Kofi Annan, 9 August 1995), p. 1; D1208 (UN Sector South report, by Hussein Al-Alfi, 8 August 1995), para. 4.
[3109] P829 (ECMM special report, 14 September 1995), p. 7.
[3110] P829 (ECMM special report, 14 September 1995), p. 8.
[3111] P331 (Alain Forand, witness statement, 29 September 1997), p. 20; Alain Forand, T. 4145; P363 (UNCRO Sector South daily situation report, 8:30 p.m., 11 August 1995), pp. 2, 5.



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requesting that Čermak increase his efforts to prevent the organized destruction and theft of property.[3112]

2477. **Edward Flynn**, a Human Rights Officer with the Office of the UNHCHR and the leader of one of the HRATs in the former Sector South from 7 August to mid-September 1995,[3113] Al-Alfi and others were present at a meeting on 12 August 1995 between Forand and Čermak, at which Čermak acknowledged that buildings were burning, said that it had no official sanction, and indicated that the authorities were taking measures to stop it.[3114] In the afternoon of 18 August 1995, in a meeting between Al-Alfi, Flynn, Tymchuk, Alun Roberts and Čermak, Al-Alfi noted the UN's concern about the continuing reports of arson of houses and farms and looting to Čermak, who expressed his unhappiness that these problems were still on-going, and promised tough action against the perpetrators, some of who, he added, might be civilians seeking revenge and taking advantage of the lifting of restrictions on their movement in the area.[3115]

2478. **William Hayden**, a researcher for the IHF who was on mission in the Krajina between 15 and 20 August 1995,[3116] testified that he met Ivan Čermak, for less than 30 minutes on 19 August 1995 at the Croatian military headquarters in Knin.[3117] The purpose of the meeting was to question Čermak about the military operations and possible violations which had come to the attention of Hayden's team.[3118] At the meeting they discussed arson, looting, and summary executions of civilians.[3119] When Hayden asked Čermak about four bodies that had been found in Zagrović on 16 August 1995, Čermak responded that there were probably 200 or 300 bodies with bullets in their heads in the hills, but he would not further elaborate on his remarks, summary

[3112] P331 (Alain Forand, witness statement, 29 September 1997), p. 21; Alain Forand, T. 4145; P363 (UNCRO Sector South daily situation report, 8:30 p.m., 11 August 1995), p. 5.
[3113] P20 (Edward Flynn, witness statement, 29 June 1997), pp. 1-2, 6, 13, 23; P21 (Edward Flynn, witness statement, 26-27 February 2008), p. 1, paras 3-4, 36; Edward Flynn, T. 1044, 1270, 1291-1292, 1312, 1325.
[3114] P20 (Edward Flynn, witness statement, 29 June 1997), pp. 17, 22; P21 (Edward Flynn, witness statement, 26-27 February 2008), para. 10; Edward Flynn, T. 1090-1091; P32 (HRAT daily report, 12 August 1995), p. 1.
[3115] D56 (Report from H. Al-Alfi on meetings with Croatian officials, 18 August 1995), pp. 1, 3.
[3116] P986 (William Hayden, witness statement, 15 May 1996), para. 1; P987 (William Hayden, witness statement, 15 March 2004), paras 1-3.
[3117] P987 (William Hayden, witness statement, 15 March 2004), paras 9, 12-13, 26; William Hayden, T. 10657-10659, 10677; P988 (IHF report from a fact-finding mission to the Krajina, 25 August 1995), para. 5.2.
[3118] P987 (William Hayden, witness statement, 15 March 2004), para. 26.
[3119] P987 (William Hayden, witness statement, 15 March 2004), para. 26; William Hayden, T. 10664-10665.



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executions, or who could be responsible.[3120] According to an IHF report dated 25 August 1995, detailing an IHF mission of 17 August 1995 to 19 August 1995, Čermak also stated during the meeting that there were 120 casualties, 108 of which were SVK soldiers and the rest civilian victims of the shelling in Knin.[3121] Hayden stated that, when asked, Čermak admitted that burning and looting were happening and informed him that the military had five suspects under surveillance but did not indicate if anyone had been taken into custody.[3122] Hayden followed this up with the Croatian civilian police chief in a meeting on 19 August 1995, who indicated that he knew nothing of the five suspects under surveillance.[3123] The IHF report documented that on 19 August 1995 Čermak provided the mission with four lists which, according to him, contained information on the bodies allegedly buried at Knin cemetery.[3124] After the mission left the cemetery, it was discovered that this was not the case and that the lists were in fact casualty and burial lists for civilians and military whose bodies had been found in different locations and buried in Knin, Zadar, Gračac, and Korenica.[3125] Čermak had told the mission that there were 86 bodies buried in the grave in Knin, 84 being military and two being civilian.[3126] However, according to the lists he had provided to them, there were a total of 41 civilians and 62 military buried in the Knin grave. The total number of buried people in the four locations was 104 civilians and 120 military.[3127]

2479. According to documentary evidence, at a meeting on 24 August 1995, Al-Alfi asked Čermak for a list of people who were dead or injured during the recent fighting in the area, which Čermak promised to provide later that afternoon.[3128] **Forand** and his colleague then reminded Čermak of the continued burning and looting of homes in the

[3120] P987 (William Hayden, witness statement, 15 March 2004), para. 26; P988 (IHF report from a fact-finding mission to the Krajina, 25 August 1995), paras 3.5, 5.2.2.
[3121] William Hayden, T. 10662; P988 (IHF report from a fact-finding mission to the Krajina, 25 August 1995), para. 5.2.1.
[3122] P987 (William Hayden, witness statement, 15 March 2004), paras 20, 27; William Hayden, T. 10645, 10655; P988 (IHF report from a fact-finding mission to the Krajina, 25 August 1995), para. 5.2.3.
[3123] P987 (William Hayden, witness statement, 15 March 2004), para. 28; P988 (IHF report from a fact-finding mission to the Krajina, 25 August 1995), para. 5.3.5.
[3124] William Hayden, T. 10599, 10660-10661; P988 (IHF report from a fact-finding mission to the Krajina, 25 August 1995), p. 2, para. 3.1.
[3125] William Hayden, T. 10599; P988 (IHF report from a fact-finding mission to the Krajina, 25 August 1995), para. 3.1.
[3126] P988 (IHF report from a fact-finding mission to the Krajina, 25 August 1995), paras 3.3, 4.3.
[3127] P988 (IHF report from a fact-finding mission to the Krajina, 25 August 1995), para. 3.3.
[3128] P374 (UNCRO Sector South daily situation report, 8:30 p.m., 24 August 1995), p. 3; D151 (Summary of Meeting with Ivan Čermak, 24 August 1995).



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Sector South area and asked him to stop such acts.[3129] Čermak's initial response was that these were acts of bandits wearing army uniforms, but then he admitted that his area of responsibility was vast and difficult to control and regretted these acts which were contrary to the policy of the Croatian government.[3130] Also on 24 August 1995, Al-Alfi reported that Alain Forand and himself had met on the same day with Čermak, and asked him to put an end to the burning of houses and looting in the Knin area.[3131] Čermak attributed these acts to civilians taking revenge, persons wearing HV uniforms, and the Croatian army clearing the terrain for rebels, and stated that he expected such acts to continue but that he had issued orders to civilian and military personnel to stop them.[3132]

2480. On 25 August 1995 at 3:15 p.m., **Liborius** met with Čermak and informed him of the maltreatment of Dušan Drpa by three HV soldiers on 22 August 1995 in Knin.[3133] Čermak promised to take measures against the perpetrators.[3134] Liborius later followed up but received no answers.[3135]

2481. On 29 August 1995, between approximately 12:30-1 and 2:30 p.m., **Forand**, Al-Alfi, and Flynn met Čermak.[3136] They told Čermak that a stronger police presence was necessary in outlying areas, and Flynn heard Čermak say, through an interpreter, that he would on the same day give an order to that effect to Knin Chief of Police Čedo Romanić.[3137]

[3129] Alain Forand, T. 4145-4148; P374 (UNCRO Sector South daily situation report, 8:30 p.m., 24 August 1995), p. 3.
[3130] P331 (Alain Forand, witness statement, 29 September 1997), p. 25; Alain Forand, T. 4145-4148, 4227-4228; P374 (UNCRO Sector South daily situation report, 8:30 p.m., 24 August 1995), p. 3.
[3131] D151 (Summary of Meeting with Ivan Čermak, 24 August 1995), p. 1, para. 5.
[3132] D151 (Summary of Meeting with Ivan Čermak, 24 August 1995), para. 5.
[3133] Søren Liborius, T. 8298; P814 (ECMM Knin daily report, 25 August 1995), p. 1; D741 (Diary of Liborius), p. 17; D757 (Letter from Liborius to Čermak, 24 August 1995).
[3134] P801 (Søren Liborius, witness statement, 12 October 2005), p. 9; P803 (Søren Liborius, witness statement, 6 September 2008), para. 25; P814 (ECMM Knin daily report, 25 August 1995), p. 1; D741 (Diary of Liborius), p. 17.
[3135] Søren Liborius, T. 8298.
[3136] Alain Forand, T. 4149-4152; P378 (UNCRO Sector South daily situation report, 8:30 p.m., 29 August 1995), p. 2; P381 (UNCRO Sector South daily situation report, 1 September 1995, with attached letters), p. 1; P408 (UNCRO Sector South report, 5:30 p.m., 29 August 1995), pp. 1-2; P409 (Minutes of meeting between Ivan Čermak, Hussein Al-Alfi, and Alain Forand on 29 August 1995 in Knin), pp. 1-3; D1106 (Various letters from Ivan Čermak to Alain Forand), p. 12.
[3137] P20 (Edward Flynn, witness statement, 29 June 1997), pp. 9, 12; P21 (Edward Flynn, witness statement, 26-27 February 2008), para. 27; Edward Flynn, T. 1095-1096, 1165-1166, 1180, 1184, 1200-1201, 1226, 1357; P34 (HRAT daily report, 29 August 1995), pp. 1-2; P408 (UNCRO Sector South report, 5:30 p.m., 29 August 1995), pp. 1-2.



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2482. On 3 September 1995, Forand reported that despite the official statements of the Croatian government urging Serbs to remain in their villages, the Military Governor of Knin was either unable or unwilling to put an end to the widespread and systematic destruction of their means of subsistence.[3138] A letter of 3 September 1995, in Čermak's name, expressed astonishment at Forand's statement that the human rights abuse within his area of responsibility continued, and cautioned Forand to avoid insinuation without proof.[3139] The letter stressed that all staff of international organizations including UNCRO had free movement in the entire Sector South in accordance with an agreement with Croatia and Čermak's order of 15 August 1995, and that "we" had ordered the investigation of reported incidents in which UNCRO staff were stopped without authorization.[3140] Forand testified that this letter was different in style from other letters he received from Čermak and that he was surprised by it.[3141] According to **Ivica Luković**, the Chief of the Croatian Department for Cooperation with the UN and EC for Sector South from 1992 and during 1995,[3142] his office sent the letter, signed on Čermak's behalf by Gojević, to the UN representatives.[3143] **Karolj Dondo**, HV Liaison Officer with the UN and EC in Sector South in 1995,[3144] testified that he drafted the letter which was signed by Gojević.[3145] Dondo had received a handwritten version of the letter, which had to be typed up and sent to the UN.[3146] When interviewed by the Prosecution, Čermak stated that Forand had sent him a letter saying that poor old people were driven out their homes and that this was ethnic cleansing, but Čermak responded that it was not, that he had no information about that, and that Forand should stop

[3138] P404 (UNCRO Sector South report, 3:15 p.m., 3 September 1995), pp. 1-2.
[3139] P331 (Alain Forand, witness statement, 29 September 1997), pp. 21-22; P382 (UNCRO Sector South report, 4 September 1995), pp. 2, 5; P404 (UNCRO Sector South report, 3:15 p.m., 3 September 1995), p. 3; D145 (Letter from Ivan Čermak to Forand, 3 September 1995); D309 (Letter from Ivan Čermak to Forand, 3 September 1995).
[3140] P331 (Alain Forand, witness statement, 29 September 1997), p. 22; P382 (UNCRO Sector South report, 4 September 1995), p. 5; P404 (UNCRO Sector South report, 3:15 p.m., 3 September 1995), p. 3; D145 (Letter from Ivan Čermak to Forand, 3 September 1995); D309 (Letter from Ivan Čermak to Forand, 3 September 1995). See also P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 123-124.
[3141] Alain Forand, T. 4252-4258.
[3142] D1687 (Ivica Luković, witness statement, 1 October 2004), p. 1, paras 8, 13, 17; D1688 (Ivica Luković, witness statement, 13 August 2009), p. 1, paras 4, 6; Ivica Luković, T. 22385.
[3143] D1688 (Ivica Luković, witness statement, 13 August 2009), para. 38.
[3144] D1695 (Karolj Dondo, witness statement, 9 March 2005), p. 1, paras 1-2; D1696 (Karolj Dondo, witness statement, 18 August 2009), p. 1, para. 2.
[3145] D1696 (Karolj Dondo, witness statement, 18 August 2009), para. 27.
[3146] D1696 (Karolj Dondo, witness statement, 18 August 2009), para. 27; D1700 (Handwritten draft letter, undated).



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making such insinuations.[3147] Instead, Čermak stated that he suggested that they form a joint commission to investigate it, but Forand was offended, so it ended there.[3148] **Maria Teresa Mauro**, a UN civil affairs officer and HRAT member in the former Sector South based in Knin from March to December 1995,[3149] testified that on 4 September 1995, when HRAT was on patrol in the Plavno area, HRAT observed instances of arson, which they immediately reported to an official in Čermak's office, since Čermak was out of town.[3150] HRAT provided him with the specific coordinates of the location of this arson incident, and he assured them that the matter would be looked into.[3151] In a letter of 4 September 1995, Forand wrote back to Čermak assuring him that proof would be sent to him.[3152] In this letter, Forand informed Čermak about the latest incident of houses burning, in Cvijanovići in Knin municipality at 1:45 p.m. on that day, in the immediate vicinity of HV soldiers of the 4th (Split) Brigade.[3153] Forand added that the villagers had informed UN staff that on 3 September 1995 soldiers had come to the village, taken 30 sheep, and shot other sheep dead.[3154]

2483. In a letter of 5 September 1995, Forand protested to Čermak in relation to the murder of Sava Babić, 82 years old, outside her looted home in the hamlet of Babići, Ervenik municipality.[3155] On 7 September 1995, Forand sent a letter to Čermak, copying Gotovina, in which he wrote that despite UN officials' efforts to encourage Čermak to end the human rights violations committed in his area of responsibility in the aftermath of Operation Storm, the burning, the looting, and pillaging continued.[3156] Forand added that he could not understand why, in light of the statements of the Croatian government urging Serbs to remain in the villages, Čermak was unable to put an end to widespread

[3147] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 57, 60. See also P1144 (Minutes of a conversation between Tuđman and Čermak at the Presidential Palace, 23 March 1999), p. 4.
[3148] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 30, 57. See also P1144 (Minutes of a conversation between Tuđman and Čermak at the Presidential Palace, 23 March 1999), p. 4.
[3149] P1098 (Maria Teresa Mauro, witness statement, 3 March 2000), pp. 1-2; P1099 (Maria Teresa Mauro, witness statement, 6 February 2008), p. 1, paras 1, 7-9, 11-12; Maria Teresa Mauro, T. 11998, 12000, 12024, 12075-12076.
[3150] P1099 (Maria Teresa Mauro, witness statement, 6 February 2008), para. 6; Maria Teresa Mauro, T. 12009-12012, 12030-12033, 12055.
[3151] P1099 (Maria Teresa Mauro, witness statement, 6 February 2008), para. 6.
[3152] P331 (Alain Forand, witness statement, 29 September 1997), p. 21; Alain Forand, T. 4163-4164; P382 (UNCRO Sector South report, 4 September 1995), pp. 2-3.
[3153] P382 (UNCRO Sector South report, 4 September 1995), pp. 3-4.
[3154] P382 (UNCRO Sector South report, 4 September 1995), p. 4.
[3155] P331 (Alain Forand, witness statement, 29 September 1997), p. 21; P383 (UNCRO Sector South daily situation report, 9:30 p.m., 5 September 1995), p. 3; P384 (UNCRO Sector South daily situation report, 11:15 a.m., 6 September 1995), p. 3; P396 (Letter from Alain Forand to Ivan Čermak, copied to Ante Gotovina, 7 September 1995), pp. 1-2.



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and systematic destruction.[3157] In the letter, Forand listed specific recent incidents of murder, burning, and looting by HV soldiers and others in Sector South, as reported by international observers.[3158] These included the burning of houses in Cvijanovići by 4th (Split) Brigade soldiers; the murder of Sava Babić; the shooting dead of an elderly woman in Mala Polača, Knin municipality on 29 August 1995; the observation made by a UN human rights team of six HV soldiers walking away from Borović hamlet in the Golubić area on 29 August 1995 while three houses behind them started to burn; the burning of houses in among others Golubić, Bogatnik and Bilišane, observed by an HRAT travelling on the road between Gračac and Obrovac on 30 August 1995; loading of property including washing machines and sinks onto civilian trucks by HV soldiers in Bogatnik and Bilišane on 30 August 1995; the emergence of HV soldiers from a house that was just beginning to smoke in the area of Bilišane on 1 September 1995 seen by an ECMM team; the looting of property by HV soldiers in Mala Polača on 4 September 1995; the harassment of the villagers in Biovičino Selo and Ivoševci in Kistanje municipality by Croatian civilians and HV soldiers on 5 September 1995; and the looting and shooting of livestock in those villages.[3159] Forand wrote to Čermak that these incidents were illustrative of the magnitude of the human rights abuses committed in Čermak's area of responsibility and that they were not insinuations.[3160] Forand never received a response from anyone to this letter.[3161]

2484. Speaking to the media around early September 1995, Čermak stated that it was necessary to urgently prevent recent forcible entries into civilian, company and HV apartments, and that police action was underway. He also stated that it was necessary to urgently prevent the still ongoing looting and burning of houses. According to a reporter, Čermak described these acts as a shame on Croatia and its military.[3162] An ECMM report recorded that on 7 September 1995 Croatian media reported that Čermak had launched a campaign to stop the illegal moving into empty flats, looting and arson,

[3156] P331 (Alain Forand, witness statement, 29 September 1997), p. 21; Alain Forand, T. 4172-4175; P396 (Letter from Alain Forand to Ivan Čermak, copied to Ante Gotovina, 7 September 1995), p. 1.
[3157] P396 (Letter from Alain Forand to Ivan Čermak, copied to Ante Gotovina, 7 September 1995), p. 1.
[3158] P331 (Alain Forand, witness statement, 29 September 1997), p. 21; P396 (Letter from Alain Forand to Ivan Čermak, copied to Ante Gotovina, 7 September 1995), p. 2.
[3159] P396 (Letter from Alain Forand to Ivan Čermak, copied to Ante Gotovina, 7 September 1995), p. 2.
[3160] P396 (Letter from Alain Forand to Ivan Čermak, copied to Ante Gotovina, 7 September 1995), p. 3.
[3161] Alain Forand, T. 4175.
[3162] D731 (HRT video reporting on a ministerial visit to Knin), pp. 1-2.



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which, according to Čermak, unfortunately was most often done by HV members.[3163] When interviewed by the Prosecution, Čermak stated that high-ranking officers of the MD illegally occupied apartments in Knin, that private apartments were also taken illegally, and that "Croatian Army" would be written on the door.[3164] On 8 September 1995, the police wrote to Čermak, complaining about HV illegally occupying apartments owned by the MUP and destined to house civilian police, which Čermak stated he passed on to the Housing Commission of the MoD.[3165] Čermak further stated that there were many destroyed military flats with destroyed doors, which were checked by de-miners and fixed by Čermak's men.[3166]

2485. At a meeting on 7 September 1995, **Al-Alfi** raised with Čermak the question of continuing looting and burning of houses, and asked for the results of investigations regarding recent specific murders.[3167] According to minutes of the meeting, Čermak stated that they were conducting investigations into the murder of an elderly woman.[3168] **Flynn** was informed by Al-Alfi and other colleagues that Čermak had said at this meeting that strict orders had been issued to arrest those who commit such crimes, which he had recently described on Croatian television as a shame upon Croatia, and that one such group was in custody, awaiting trial.[3169] According to documentary evidence, Čermak agreed to give his instructions for more joint patrolling between UNCIVPOL and the Croatian police, particularly in remote villages.[3170] **Al-Alfi** testified that after 8 September 1995, there were a few minor cases of such joint patrolling.[3171]

2486. On 12 September 1995, **Flynn** attended a meeting at which he and his colleagues reported recent killings, burnings and looting to Čermak, who said he could not deny

[3163] P829 (ECMM special report, 14 September 1995), p. 8; P946 (ECMM daily report, 7 September 1995), p. 1.
[3164] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 155-156.
[3165] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 153, 155-156; P514 (Letter from police to Čermak, 8 September 1995).
[3166] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), p. 153; D37 (Slobodna Dalmacija interview with Ivan Čermak, 10 August 1995), p. 2. See also D1049 (Order by Čermak to secure military flats in Knin, 16 August 1995).
[3167] P38/P1164 (Weekly report from Hussein Al-Alfi, 2-8 September 1995), p. 3.
[3168] D618 (Minutes of the meeting between Ivan Čermak, Forand, and others on 7 September 1995), pp. 1-2.
[3169] P21 (Edward Flynn, witness statement, 26-27 February 2008), para. 32; Edward Flynn, T. 1100-1103; P37 (HRAT daily report, 7 September 1995), p. 1; P38/P1164 (Weekly report from Hussein Al-Alfi, 2-8 September 1995), p. 3; D618 (Minutes of the meeting between Ivan Čermak, Forand, and others on 7 September 1995), p. 3.
[3170] P38/P1164 (Weekly report from Hussein Al-Alfi, 2-8 September 1995), p. 3; D618 (Minutes of the meeting between Ivan Čermak, Forand, and others on 7 September 1995), p. 3.
[3171] Hussein Al-Alfi, T. 13825.



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that there was serious lawlessness in the sector, that he had requested civilian and military police reinforcements from Zagreb, and who requested the participants to inform him immediately of observations of lawlessness so that he could instruct the civilian police to investigate.[3172] On 19 September 1995, Čermak forwarded a memo about the theft of Croatian assets in the recently liberated area from the Vrelo Une factory in Donji Srb, in Donji Lapac municipality, to the Police Administration in Knin, because the Knin Garrison was not authorized to deal with that problem or similar problems.[3173]

2487. On 18 September 1995, Čermak received a report from the ICRC containing information on several killing, rape and burning incidents, urging him to take all necessary measures to stabilise the situation in the area and implement security measures for the population.[3174] According to **Ivo Cipci**, Chief of the Split-Dalmatia Police Administration from 1993 to 1997,[3175] Čermak orally requested information from the police, because he could only gather such information through them.[3176] On 27 September 1995, the police sent a letter to Čermak, informing him of measures taken by the crime police with regard to a rape committed in Knin on 8 September 1995.[3177] On 10 October 1995, Ivica Cetina reported the results of investigations into several incidents of violence and killing, conducted in response to an ICRC request for information.[3178] The communication from Cetina also stated that a thorough criminal investigation was being conducted into all the murders with the object of identifying the perpetrators.[3179] On 11 October 1995, Cetina reported information to Čermak regarding the killing of three persons in Bijelina hamlet in Benkovac municipality.[3180] Cipci testified that Čermak wanted to be informed about incidents in the area to be able to

[3172] P20 (Edward Flynn, witness statement, 29 June 1997), p. 10; P21 (Edward Flynn, witness statement, 26-27 February 2008), para. 35; Edward Flynn, T. 1104-1106, 1226; P39 (HRAT daily report, 12-13 September 1995), p. 2.
[3173] D505 (Letter regarding memo on theft of Croatian assets in Srb signed by Ivan Čermak, 19 September 1995). The Trial Chamber has relied on the BCS original in respect of the letter's date. See also P2525 (Suspect interview with Ivan Čermak, 13 March 2001), p. 160; D1041 (letter to Čermak, 15 September 1995); D1776 (Expert Report of Christopher Albiston, August 2009), para. 3.95; Christopher Albiston, T. 23825, 23839, 24024-24025, 24028.
[3174] D1729 (Letter from Carmen Burger to Čermak as a follow-up to meeting, 18 September 1995), pp. 1-3.
[3175] D1723 (Ivo Cipci, witness statement, 12 June 2009), para. 1; Ivo Cipci, T. 23147.
[3176] Ivo Cipci, T. 23200.
[3177] D487 (Letter from the police to Čermak, 27 September 1995).
[3178] P2649 (Correspondence from Ivica Cetina to Ivan Čermak, 10 October 1995). See also D1745 (Ivica Cetina, witness statement, 26 February 2002), p. 8; Ivica Cetina, T. 23612, 23616.
[3179] P2649 (Correspondence from Ivica Cetina to Ivan Čermak, 10 October 1995), p. 2.



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inform international organizations, who addressed their questions about events to him.[3181] Cipci testified that the communications between the ICRC and Čermak showed that Čermak received inquiries from international organizations whereupon he would request information from the relevant Croatian authorities and forward this to the organization in question.[3182] According to a letter from Čermak to the ICRC dated 11 October 1995, the civil and military police services launched comprehensive operations to uncover and punish the perpetrators of criminal acts against the civilian population that remained in the territories liberated during Operation Storm. Čermak wrote that the acts mentioned by the ICRC were perpetrated by "criminals who, dressed in camouflage uniforms, cast suspicions on the honesty of the Croatian soldier and the correct policies of the Republic of Croatia". Čermak further wrote that the cases mentioned by the ICRC were being investigated by police authorities, and requested further information regarding the murder case of Mila Balić (1919).[3183] On 21 October 1995, the ICRC wrote to Čermak, upon his request, providing information on the death of Mile Balić (1919) in Riđane, Orlić municipality.[3184] Čermak forwarded a letter from the ICRC to Cetina, in which the ICRC thanked Čermak for his personal intervention with regard to incidents of which the ICRC had previously informed him, but expressed concern for the security situation in Čermak's area of responsibility and noted a number of serious incidents reported to ICRC personnel during visits to villages.[3185]

2488. According to **Liborius**, on 19 October 1995, Čermak stated that 700 policemen had been charged and policemen and HV members had been dismissed.[3186] Čermak also stated that the burning of Kistanje during and after Operations Storm was done by Home Guards and reserve personnel, simple people who were acting individually and out of revenge.[3187]

[3180] Ivo Cipci, T. 23202-23203; P2650 (Report addressed to Ivan Čermak, 11 October 1995). See also Ivica Cetina, T. 23551, 23619, 23621-23622.
[3181] Ivo Cipci, T. 23200-23201, 23203.
[3182] Ivo Cipci, T. 23225-23226.
[3183] P1223 (Letter from Ivan Čermak to ICRC concerning investigations of crimes, 11 October 1995).
[3184] P2528 (Letter from Carmen Burger to Ivan Čermak regarding the death of Mile Balić, 21 October 1995).
[3185] Ivica Cetina, T. 23611; D1756 (ICRC letter to Ivan Čermak, 7 September 1995 (sic.)). See also Ivica Cetina, T. 23611-23612, 23616.
[3186] P803 (Søren Liborius, witness statement, 6 September 2008), paras 26-27; P821 (Extracts of Liborius's notebook), p. 1; D743 (Notebook of Liborius, part I), p. 136.
[3187] P803 (Søren Liborius, witness statement, 6 September 2008), para. 29; Søren Liborius, T. 8359-8360; P821 (Extracts of Liborius's notebook), p. 2; D743 (Notebook of Liborius, part I), p. 137.



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2489. The Trial Chamber now turns to more general evidence relevant to Čermak's interactions with representatives of international organizations on the topic of crimes. Several days after 5 August 1995, UNMOs were allowed to travel outside the UN compound and **Luković** began to receive reports that the UNMOs found dead bodies in the areas of Šibenik, Drniš, Zadar, and Benkovac.[3188] Luković initially had an UNMO with a radio in his office to enable contact with the UN at all times, and some of the UNMO patrols had a Croatian liaison officer accompanying them in the field.[3189] If UNMO, ICRC, or ECMM representatives reported crimes such as the killing of elderly civilians, destruction of houses or looting, then Luković would pass those reports on to his superiors in Zagreb and contact the civilian police or the civilian representative for the Croatian Government, Petar Pašić.[3190] According to Luković, Pašić did not have the support of the civilian authorities and was dependent on the assistance of Čermak for everything.[3191] Similarly, if Luković or one of his liaison officers observed HV members committing a crime, he would inform the civilian police and include it in the daily report sent to Zagreb.[3192] Luković considered that he should report such matters to the civilian police, because on the third day after Operation Storm, he heard Ivan Jarnjak say on Croatian Television that the former occupied areas of Croatia had been reintegrated into the constitutional and legal order of Croatia, which to Luković meant that the civilian authorities had been re-established.[3193] During his first few days in Knin, Luković did not report to the MoD, but he returned to Zadar every few days and prepared his reports for the MoD.[3194] Thereafter, Luković or his deputy would forward a report of most of the incidents that had occurred in the Knin area to Zadar every few days, and the Zadar office would forward the report to Zagreb.[3195] The Zadar office sent reports to Zagreb on a daily basis, based on reports by other liaison officers in Luković's area of responsibility.[3196]

[3188] D1687 (Ivica Luković, witness statement, 1 October 2004), para. 40.
[3189] D1687 (Ivica Luković, witness statement, 1 October 2004), para. 40; D1688 (Ivica Luković, witness statement, 13 August 2009), para. 16; Ivica Luković, T. 22390.
[3190] D1687 (Ivica Luković, witness statement, 1 October 2004), paras 40, 43, 48; D1688 (Ivica Luković, witness statement, 13 August 2009), paras 33, 37.
[3191] D1688 (Ivica Luković, witness statement, 13 August 2009), para. 23.
[3192] Ivica Luković, T. 22402-22404, 22406.
[3193] D1688 (Ivica Luković, witness statement, 13 August 2009), para. 28; Ivica Luković, T. 22403-22405.
[3194] D1687 (Ivica Luković, witness statement, 1 October 2004), para. 46.
[3195] D1687 (Ivica Luković, witness statement, 1 October 2004), para. 56; D1688 (Ivica Luković, witness statement, 13 August 2009), paras 15-16, 41.
[3196] D1687 (Ivica Luković, witness statement, 1 October 2004), para. 56.



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2490. Protests from the UN were recorded on a particular form and were mostly sent to Zagreb also.[3197] General Forand and the Chief UNMO sent many complaints about Croatian military personnel setting fire to houses and looting them.[3198] On one occasion, Luković sent four VP and one of his liaison officers to a particular shooting incident together with a UN patrol.[3199] Luković would pass on to Čermak information on possible crimes received from the UN that was addressed to Čermak, who then would pass that information on to the civilian police.[3200] Luković reported to Čermak verbally, as there was no time to write reports.[3201] On at least one occasion, Čermak informed the civilian and military police of the information he received from Luković on dead bodies, and directed them to go to the hamlet and see what the situation was.[3202] If the Internationals asked Luković to report back to them, he would ask Čermak what had been done and report back to the UN or other international organization.[3203] Čermak also contacted the Chiefs of Police Administrations on a regular basis to try and prevent crimes being committed. Luković discussed the cases of killings in Varivode with Čermak.[3204] Approximately two weeks after the liberation of Knin, a working telephone was installed in General Čermak's office.[3205] Luković used that phone for daily communications with UN representatives, who also had the number to call that phone.[3206] Luković's office arranged Čermak's meetings with General Forand and the UN representatives; if the latter wanted to set up a meeting, they would come to Luković's office or phone Luković to arrange the meeting.[3207] Čermak had regular coordination meetings at the Knin Garrison Command where information on crimes was passed on; these meetings were attended by many different bodies and organizations working in Knin, including Petar Pašić, civilian representatives from Šibenik, Split Zadar, and from the Knin Hospital, as well as foreign representatives.[3208] Luković

[3197] D1687 (Ivica Luković, witness statement, 1 October 2004), para. 56.
[3198] D1687 (Ivica Luković, witness statement, 1 October 2004), para. 45.
[3199] D1687 (Ivica Luković, witness statement, 1 October 2004), para. 40.
[3200] D1688 (Ivica Luković, witness statement, 13 August 2009), paras 37, 41.
[3201] D1687 (Ivica Luković, witness statement, 1 October 2004), para. 44.
[3202] D1687 (Ivica Luković, witness statement, 1 October 2004), para. 43; D1688 (Ivica Luković, witness statement, 13 August 2009), para. 40.
[3203] D1687 (Ivica Luković, witness statement, 1 October 2004), para. 43.
[3204] D1687 (Ivica Luković, witness statement, 1 October 2004), para. 54.
[3205] D1687 (Ivica Luković, witness statement, 1 October 2004), para. 47; Ivica Luković, T. 22411.
[3206] Ivica Luković, T. 22411-22412.
[3207] D1688 (Ivica Luković, witness statement, 13 August 2009), para. 29; Ivica Luković, T. 22411-22412.
[3208] D1687 (Ivica Luković, witness statement, 1 October 2004), para. 49; D1688 (Ivica Luković, witness statement, 13 August 2009), para. 42.



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would send one of his liaison officers, Karolj Dondo or Stanko Bačić, to those meetings.[3209]

2491. **Petar Pašić**, a Croatian Serb and the Croatian Government Commissioner for Knin from January 1992 to April 1996,[3210] attended daily meetings with Čermak in his office attended by Pašić's assistants; Čedo Romanič, the police chief; Miloš Mihić; Marko Gojevič, Čermak's deputy; and occasionally Colonel Marin Frkič, assistant for Logistics, but not by Gotovina, his deputy Ademi, or any of their subordinates, nor by the VP.[3211] Marinko Čavka, Željko Jonjić, Zdenko Rinčić, Croatian Red Cross workers, the director of the Centre for Social Welfare, reporters, and a representative from the public utility enterprise were sometimes present at these meetings.[3212] The usual items on the agenda included the situation of Knin's power supply, how to deal with the Serbs living in the UN compound, and security issues.[3213] Pašić testified that Čermak was outraged by the looting, killings, and destruction and would discuss these cases based on information he and Pašić received from internationals.[3214] Čermak would often ask what was being done to handle these security problems and demanded that the perpetrators be punished.[3215] Gambiroža would often respond that there were not enough policemen in Knin. On one occasion Čermak said that if he had the authority, he would hang any Croatian soldier or policeman caught committing one of those crimes in the square as a warning to others.[3216] In order to put an end to such acts, Pašić and others asked that the entrance and exits to the liberated areas, including to Knin, be controlled at check-points.[3217]

2492. **Zdenko Rinčić**, the Croatian Assistant Minister of Economy for the manufacturing industry of ammunition, grenade, and machine gun production from

[3209] D1687 (Ivica Luković, witness statement, 1 October 2004), para. 49.
[3210] D1706 (Petar Pašić, witness statement, 3 March 2002), pp. 1-2; D1707 (Petar Pašić, witness statement, 23 April 2009), paras 2, 4, 13, 15, 32; D1709 (Petar Pašić, supplemental information sheet, 6 October 2009), para. 10; Petar Pašić, T. 22740, 22778, 22844, 22847, 22858, 23026, 23053.
[3211] D1706 (Petar Pašić, witness statement, 3 March 2002), pp. 4-6; D1707 (Petar Pašić, witness statement, 23 April 2009), paras 21-22, 25; Petar Pašić, T. 22748-22749, 22764, 22859, 22885-22886, 22891.
[3212] D1706 (Petar Pašić, witness statement, 3 March 2002), pp. 5-6; D1707 (Petar Pašić, witness statement, 23 April 2009), para. 22.
[3213] D1706 (Petar Pašić, witness statement, 3 March 2002), p. 4.
[3214] D1706 (Petar Pašić, witness statement, 3 March 2002), pp. 4-5; D1707 (Petar Pašić, witness statement, 23 April 2009), para. 25; D1709 (Petar Pašić, supplemental information sheet, 6 October 2009), para. 5; Petar Pašić, T. 22892.
[3215] D1706 (Petar Pašić, witness statement, 3 March 2002), pp. 4-5; D1707 (Petar Pašić, witness statement, 23 April 2009), para. 25.
[3216] D1706 (Petar Pašić, witness statement, 3 March 2002), p. 5.
[3217] Petar Pašić, T. 22749.



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1993 to 1996,[3218] testified that he attended morning meetings in Čermak's office and that these meetings were also attended by Petar Pašić and Ivan Barišić, the chief officer for the Knin economy, sometimes by Dr. Brkić, as well as occasionally by Romanić, the chief of the civilian police, and by the chief of the VP.[3219] According to Rinčić, these meetings were coordination meetings related to the organization of civilian work.[3220] In the initial period following Operation Storm, Čermak would ask the chiefs of the civilian and military police to protect the abandoned apartments, shops, and other facilities in Knin and prevent attempted looting.[3221] Initially, the chiefs of civilian and military police did not provide much information about what was actually happening in Knin and Rinčić stated that he and Čermak were not aware of the events in and around Knin.[3222] Matters such as the burning of houses were not mentioned at the meetings of 7, 8, and 9 August 1995.[3223] Rinčić and Čermak later became aware that several houses had been burned and that there had been instances of unlawful actions.[3224] After a number of days, probably around 11 August 1995, Čermak started receiving letters of protest from UN and ECMM personnel about arson and looting.[3225] According to Rinčić, the first time Čermak learned about these developments, Čermak became very angry.[3226] Rinčić also testified that some of the reports they received reflected actual events whereas others were exaggerated and that the international monitors wrote reports about crimes in the field on the basis of information provided to them without checking the facts, as it was dangerous to check the situation on the ground.[3227] The monitors also wrote reports on the damage caused by incidents during Operation Storm as though the damage had been caused after the operation. On one occasion, Rinčić accompanied ECMM monitors to the Knin-Gips factory in Kosovo Polje, because the monitors had said that they had seen arson and looting there. According to Rinčić, at the factory, the monitors were reassured that nothing had happened.[3228]

[3218] D1680 (Zdenko Rinčić, witness statement, 16 May 2009), p. 1, paras 1, 3-5; Zdenko Rinčić, T. 22341.
[3219] D1680 (Zdenko Rinčić, witness statement, 16 May 2009), paras 19-20; Zdenko Rinčić, T. 22312.
[3220] D1680 (Zdenko Rinčić, witness statement, 16 May 2009), para. 19; Zdenko Rinčić, T. 22312.
[3221] D1680 (Zdenko Rinčić, witness statement, 16 May 2009), para. 20.
[3222] D1680 (Zdenko Rinčić, witness statement, 16 May 2009), para. 20; Zdenko Rinčić, T. 22310-22311, 22318-22319, 22331.
[3223] Zdenko Rinčić, T. 22331.
[3224] Zdenko Rinčić, T. 22310-22311.
[3225] D1680 (Zdenko Rinčić, witness statement, 16 May 2009), paras 20, 23; Zdenko Rinčić, T. 22312-22313, 22330-22331.
[3226] Zdenko Rinčić, T. 22319.
[3227] D1680 (Zdenko Rinčić, witness statement, 16 May 2009), para. 23; Zdenko Rinčić, T. 22311.
[3228] D1680 (Zdenko Rinčić, witness statement, 16 May 2009), para. 23.



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2493. Rinčić testified that on the day Čermak received a letter from General Forand, Čermak asked the commander of the civilian police to do everything the police could to stop the burning of houses and other ill deeds, including killing, and make sure such things did not happen again.[3229] According to Rinčić, Čermak asked the commander of the civilian police for follow-up in the form of a request, not an order.[3230] When Čermak received letters from the UN about arson and looting, he would brief his assistants about such letters at meetings and would forward the information to the chiefs of the civilian and military police at meetings, asking them to check the information and to undertake urgent action remedying the situation and curbing such activities.[3231] The chiefs of the civilian and military police would reply that they were aware of the incidents; that everything was all right and under control; and that they were doing their job.[3232]

2494. When interviewed by the Prosecution, Čermak stated that, travelling on the main road between Knin, Drniš, and Šibenik sometime after Operation Storm, he saw burned hamlets and villages.[3233] Čermak stated that he and his liaison officers had frequent meetings, especially in the beginning, with representatives of international organizations, which included Forand, Al-Alfi, "Carmen" of the Red Cross, and European Union personnel.[3234] They would talk about issues such as freedom of movement, the situation on the ground, and access to "the camp where people were being held".[3235] Čermak stated that over a long period of time he learned about specific crimes committed after Operation Storm, including murder, arson, and looting, from international organizations including UNCIVPOL and the ICRC.[3236] Čermak told them that he would try to stop the looting and burning.[3237] He also learned about such crimes from the Croatian civilian police.[3238] For instance, he learned from the police that Kistanje had completely burned down.[3239] He stated that such crimes were a constant

[3229] Zdenko Rinčić, T. 22313, 22329-22331, 22366-22367.
[3230] Zdenko Rinčić, T. 22329.
[3231] D1680 (Zdenko Rinčić, witness statement, 16 May 2009), para. 20; Zdenko Rinčić, T. 22312-22313.
[3232] D1680 (Zdenko Rinčić, witness statement, 16 May 2009), para. 20.
[3233] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 57-58.
[3234] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 18, 23, 30-31, 63-64, 177; P2526 (Suspect interview with Ivan Čermak, 17 March 1998), pp. 17-18; P2355 (Nacional interview with Ivan Čermak, 29 October 1997), p. 6.
[3235] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), p. 31.
[3236] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 23, 44, 56-57, 61; P2526 (Suspect interview with Ivan Čermak, 17 March 1998), pp. 40-41, 70, 72.
[3237] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), p. 50.
[3238] P2526 (Suspect interview with Ivan Čermak, 17 March 1998), pp. 41, 45, 70; P2707 (Additional portions of suspect interview with Ivan Čermak, 17 March 1998), p. 17.
[3239] P2526 (Suspect interview with Ivan Čermak, 17 March 1998), pp. 76-77.



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problem and that he learned about them on a regular basis.[3240] The incidents were numerous and occurred in a wide area.[3241] In many or most cases, the information received from international organizations was correct.[3242] According to Čermak, sometimes he would get the information from international organizations before getting it from his civilian police.[3243] He made statements to the media and answered requests of international organizations and the Red Cross on the basis of reports that he got from the police.[3244] The media were always in front of his office, wanting information.[3245] He stated that according to police reports, 32, 36, or 38 dead people were discovered in the area around Knin after Operation Storm.[3246] According to Čermak, the police conducted a criminal investigation into all of these cases, and 21 of them were actually solved while he was there.[3247] He added that there were some robberies and one rape in Knin.[3248] He stated that he was not responsible for investigations, nor did he deal with them.[3249] When shown a warning issued on 12 August 1995 by Captain Mario Tomašević, Čermak stated that he remembered receiving it at the time, agreed with the entire text and wished that there had been more alerts and orders.[3250]

2495. Čermak stated that there were two distinct periods with regard to destruction, one being the first week as a result of military operations as the Croatian military passed through, and the other following that, when the destruction was lesser.[3251] He stated that it was mainly the villages and hamlets that were destroyed, while bigger villages and towns (where 80-90 per cent of the people lived), such as Benkovac, Drniš and Obrovac, were not destroyed.[3252] He stated that from the very first day he did not conceal that these crimes were happening, and in fact spoke publicly about it, including

[3240] P2526 (Suspect interview with Ivan Čermak, 17 March 1998), pp. 74-75.
[3241] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), p. 61.
[3242] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 57, 60.
[3243] P2526 (Suspect interview with Ivan Čermak, 17 March 1998), p. 70; P2707 (Additional portions of suspect interview with Ivan Čermak, 17 March 1998), p. 17.
[3244] P2526 (Suspect interview with Ivan Čermak, 17 March 1998), pp. 45, 48-49.
[3245] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 18, 31-32.
[3246] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), p. 22; P2526 (Suspect interview with Ivan Čermak, 17 March 1998), pp. 45-46, 48.
[3247] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), p. 22; P2526 (Suspect interview with Ivan Čermak, 17 March 1998), pp. 46, 48.
[3248] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), p. 57; P2526 (Suspect interview with Ivan Čermak, 17 March 1998), p. 48; P2707 (Additional portions of suspect interview with Ivan Čermak, 17 March 1998), p. 13.
[3249] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 89, 92, 104; P2526 (Suspect interview with Ivan Čermak, 17 March 1998), p. 48.
[3250] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), p. 140. See P918/D645 (Warning issued by Captain Mario Tomasović, 12 August 1995), reviewed in chapter 6.3.5.
[3251] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 25, 43.



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at press conferences, and said that the perpetrators should be sanctioned.[3253] However, he stated that while one of the international organizations reported that 22,000 houses had burned down, during and after Operation Storm, the Croatian police and civilian authorities gave him information indicating that it was rather 3,000 houses.[3254] The information Čermak received about destruction included civilian homes.[3255] Čermak stated that by the time he left Knin, the general situation had improved. He explained this by tensions dying down, but also due to better control.[3256]

2496. According to Čermak, the perpetrators included former inhabitants returning and looking for revenge, civilians wearing military uniform, Home Guards and Croatian military.[3257] He stated that representatives of international organizations informed him about crimes committed by persons in military uniform, which occasionally included information about trucks and their licence plate numbers, which Čermak forwarded to the VP or civilian police.[3258] However, he stated that in all cases, it was done by individual soldiers, or small groups.[3259] According to Čermak, the reports that he received from the civilian police and VP showed that they made all possible efforts to stop these crimes, find the perpetrators and get them before a court to be tried.[3260] For instance, Čermak stated that a commander of the VP reported to him that 15 or 17 Croatian soldiers had been brought before a military court.[3261]

2497. Čermak stated that he received many letters from Forand complaining about crimes such as destruction or arson.[3262] Čermak further stated that he requested Forand to inform him when his people gave him reports of crimes.[3263] In general, according to

[3252] P2526 (Suspect interview with Ivan Čermak, 17 March 1998), pp. 42, 69-70, 76.
[3253] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), p. 25; P2526 (Suspect interview with Ivan Čermak, 17 March 1998), pp. 40-41, 43, 70.
[3254] P2526 (Suspect interview with Ivan Čermak, 17 March 1998), pp. 69, 91-92.
[3255] P2526 (Suspect interview with Ivan Čermak, 17 March 1998), p. 70.
[3256] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), p. 25.
[3257] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 22-24, 45, 48-49, 61, 177; P2526 (Suspect interview with Ivan Čermak, 17 March 1998), pp. 41-42, 45, 71; P2355 (Nacional interview with Ivan Čermak, 29 October 1997), pp. 5-6.
[3258] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 23-24, 51, 64; P2526 (Suspect interview with Ivan Čermak, 17 March 1998), pp. 71, 107; P2707 (Additional portions of suspect interview with Ivan Čermak, 17 March 1998), pp. 17-18.
[3259] P2526 (Suspect interview with Ivan Čermak, 17 March 1998), pp. 72, 76; P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 25, 48, 61.
[3260] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 15, 22; P2526 (Suspect interview with Ivan Čermak, 17 March 1998), pp. 41-43, 45, 71, 74, 78, 80-81, 95, 109.
[3261] P2526 (Suspect interview with Ivan Čermak, 17 March 1998), pp. 41, 71, 81-82.
[3262] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 57, 90, 92; P2526 (Suspect interview with Ivan Čermak, 17 March 1998), pp. 71-72.
[3263] P2526 (Suspect interview with Ivan Čermak, 17 March 1998), p. 71.



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Čermak, he requested his contacts in international organizations that they immediately inform him – or the Croatian police – if they observed such crimes.[3264] When they informed him so, he told them that he would talk to the police.[3265] Čermak stated that he would submit this information to the VP or civilian police, who would investigate and process the crimes.[3266] Depending on where it happened, he would contact the Police Department in Knin, or the one in Zadar.[3267] He stated that he, Marko Gojević, or the liaison officers would also ask the commanders of the VP (Jurić) or civilian police (first Romanić, later Gambiroža) to keep him informed of the follow-up done, so that he could inform the international community.[3268] He stated that these commanders reported back to whomever had sent them the initial request for information, and that Čermak then informed the international community.[3269] For instance, Čermak stated that people from international organizations requested information about the killing of civilians in Varivode, Kistanje municipality, on 28 September 1995, and that he received a report on the case from the police department in Zadar, on the basis of which he answered the request.[3270] He further stated that the police handled the case properly, found the perpetrators, and handed them over to the justice system.[3271] However, Čermak stated that the police had very limited resources to prevent crimes from happening.[3272]

2498. In 1998, Čermak stated that he knew Gotovina really wanted the crimes to stop because he was angry.[3273] In 2004, he stated that he was far more upset about it than Gotovina.[3274] Čermak stated that he appealed to the civilian police and the VP to stop the crimes on the ground.[3275] According to Čermak, they answered that they would take

[3264] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 24, 50; P2526 (Suspect interview with Ivan Čermak, 17 March 1998), p. 107.
[3265] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 59-60.
[3266] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 45-46, 51, 56, 61, 64, 89-90, 92, 177, 180; P2526 (Suspect interview with Ivan Čermak, 17 March 1998), pp. 41, 70, 72; P2355 (Nacional interview with Ivan Čermak, 29 October 1997), p. 6.
[3267] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), p. 46.
[3268] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 45-46, 56, 90; P2526 (Suspect interview with Ivan Čermak, 17 March 1998), pp. 49, 51, 72-73; P2532 (Accused interview with Ivan Čermak, 7 June 2004), p. 94.
[3269] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 23, 46, 51, 56-57, 64, 90; P2526 (Suspect interview with Ivan Čermak, 17 March 1998), p. 73.
[3270] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 90-91.
[3271] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 90-91, 103.
[3272] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), p. 22; P2526 (Suspect interview with Ivan Čermak, 17 March 1998), p. 50.
[3273] P2526 (Suspect interview with Ivan Čermak, 17 March 1998), p. 78.
[3274] P2532 (Accused interview with Ivan Čermak, 7 June 2004), pp. 17-23.
[3275] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 49-50, 59; P2532 (Accused interview with Ivan Čermak, 7 June 2004), p. 59.



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action.[3276] Čermak added that appealing to others was all he could do, and that the international community realized this.[3277] He stated that anyone from the international community knew exactly what his role was.[3278] He also added that he was morally troubled that he had to keep informing the international community that nothing had been done about it yet.[3279] Yet, Čermak stated that he did not get the impression that his appeals, which were oral, were being ignored.[3280] Čermak stated that while he was in Knin, he had several meetings and talks with the Minister of Internal Affairs Ivan Jarnjak, about reinforcing the civilian police and the actions they should take in the field regarding all the incidents of arson and looting, etc.[3281] Čermak stated that Jarnjak always showed willingness to do something about it.[3282] He further stated that he knew from Jarnjak's press conferences that he suspended 250-300 policemen and had them subjected to criminal proceedings for crimes committed in the Krajina while Čermak was there.[3283] The Trial Chamber has also considered further evidence from the Čermak interviews regarding the reaction of Croatian authorities to crimes, reviewed in chapter 6.2.3.

2499. Čermak stated that neither President Tuđman nor anyone else ever told him what to say to the media, and that when speaking to the media he tried not to hide anything, to speak the truth, and to defend the interests of Croatia.[3284] Čermak stated that he repeatedly criticized the situation in the media and described it as a shame for Croatia and its military.[3285] In "Slobodna Dalmacija", he said that some members of the Croatian military were to blame for this, as were some military commanders who ought to check the military on the ground.[3286] According to Čermak, two days later there was

[3276] P2532 (Accused interview with Ivan Čermak, 7 June 2004), pp. 59-60.
[3277] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 50, 59-60.
[3278] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), p. 60; P2532 (Accused interview with Ivan Čermak, 7 June 2004), p. 9. The Trial Chamber notes that this is not quite consistent with other evidence.
[3279] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), p. 59.
[3280] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), p. 180.
[3281] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 49, 59, 179-180; P2526 (Suspect interview with Ivan Čermak, 17 March 1998), pp. 21-22; P2532 (Accused interview with Ivan Čermak, 7 June 2004), pp. 14-19, 95-97.
[3282] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), p. 180.
[3283] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 178-179; P2526 (Suspect interview with Ivan Čermak, 17 March 1998), pp. 41, 43, 81-82.
[3284] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 32-33.
[3285] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 21, 45, 49, 177; P2526 (Suspect interview with Ivan Čermak, 17 March 1998), pp. 40, 113-114; P2532 (Accused interview with Ivan Čermak, 7 June 2004), pp. 48, 97; P2355 (Nacional interview with Ivan Čermak, 29 October 1997), p. 6.
[3286] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), p. 21; D59 (Slobodna Dalmacija interview with Ivan Čermak, 7 September 1995).



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an article in the newspaper which quoted General Tolj as saying that it was not the military on the ground but rather civilians dressed in military uniforms who were looting and burning.[3287] Čermak stated that this was not true, and that he called up Tolj in Zagreb, and told him that he did not know the situation on the ground, and that one should not hide what there was no need to hide and which was obvious.[3288] According to Čermak, Tolj said, "Well, don't be upset with me, you know that */inaudible/* there are people higher up".[3289] Čermak also confirmed that on 29 October 1997, "Nacional" published an interview with him.[3290] On 5 November 1997, "Nacional" published an interview with Červenko purportedly responding to Čermak, but according to Čermak Červenko stated to him and in the media that the article was a falsification.[3291]

2500. **Dondo** testified that Čermak forwarded complaints from the UN about crimes to the civilian police, which was in charge of investigating and reporting back to the UN.[3292] According to Dondo, Čermak assisted the civilian police with this reporting since the police did not have any liaison officers.[3293] He requested the civilian police to comment on the complaints and responded to the UN accordingly.[3294] When he received answers he forwarded them to the liaison office who forwarded them to the UN.[3295] He also forwarded complaints to the VP and the Special Police.[3296]

2501. Dondo testified that Čermak held meetings almost every morning with representatives of the civilian authorities, the civilian police, and the VP, although representatives from all the mentioned branches were not present at every meeting.[3297] The different tasks for the day and the following days were coordinated at the meetings.[3298] At the meetings, Čermak communicated information on incidents such as

[3287] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), p. 21.
[3288] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 21, 24.
[3289] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), p. 21.
[3290] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 177-178; P2526 (Suspect interview with Ivan Čermak, 17 March 1998), pp. 113-114; P2355 (Nacional interview with Ivan Čermak, 29 October 1997).
[3291] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), p. 178; P2526 (Suspect interview with Ivan Čermak, 17 March 1998), pp. 114-115; P2527 (Nacional interview with Zvonimir Červenko, 5 November 1997); D1306 (Červenko's denial of having given Nacional interview, 6 November 1997).
[3292] D1696 (Karolj Dondo, witness statement, 18 August 2009), paras 17, 25; Karolj Dondo, T. 22561, 22582.
[3293] D1695 (Karolj Dondo, witness statement, 9 March 2005), para. 17.
[3294] D1696 (Karolj Dondo, witness statement, 18 August 2009), para. 25.
[3295] Karolj Dondo, T. 22561.
[3296] D1695 (Karolj Dondo, witness statement, 9 March 2005), para. 19; Karolj Dondo, T. 22561.
[3297] D1695 (Karolj Dondo, witness statement, 9 March 2005), paras 14-15; D1696 (Karolj Dondo, witness statement, 18 August 2009), para. 7; Karolj Dondo, T. 22549, 22602.
[3298] D1696 (Karolj Dondo, witness statement, 18 August 2009), para. 7; Karolj Dondo, T. 22602.



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looting, burning, and restriction of movement that he had obtained from the UN, to the civilian and military police representatives.[3299] Dondo testified that he was present at a meeting during which the military and civilian police were told that every crime that occurred after the liberation of the territory had to be reported to Čermak, since he would be receiving a lot of questions from the UN and would have to be ready to answer them.[3300]

2502. Dondo testified that his office would pass on all protests from the international community to Čermak. As Čermak was one of the persons dealing with the UN, most reports were directed to him.[3301] Dondo testified that looting and burning was regularly reported to Čermak.[3302] Dondo testified that in late September or early October 1995 he forwarded reports to Čermak which related to the Varivode incident. These reports were forwarded to the civilian police as well.[3303] Dondo recalled that after one meeting with Al-Alfi, during which Čermak had been asked questions about looting and the restriction of movements of UN patrols, Čermak called Jarnjak and asked why these things happened and said that there should be no restriction of movement for the UN.[3304]

2503. **Pašić** testified that he and Čermak attended meetings with internationals, who would bring up the crimes being committed, and request more police action including more check-points to prevent outsiders, as well as police patrols, from entering the villages, to which Čermak would respond that there were just not enough men.[3305] According to Pašić, ECMM had requested in August or September 1995 that civilian police patrols be stopped at the check-points protecting the villages where Serbs had remained because the Serbs did not trust the patrols. He further testified that ECMM wished to replace the police in protecting the Serb villages, however, after the Croatian police stopped patrolling ECMM did not protect the villages.[3306]

[3299] D1696 (Karolj Dondo, witness statement, 18 August 2009), para. 7.
[3300] Karolj Dondo, T. 22559.
[3301] D1695 (Karolj Dondo, witness statement, 9 March 2005), para. 15.
[3302] D1695 (Karolj Dondo, witness statement, 9 March 2005), para. 17; Karolj Dondo, T. 22582.
[3303] D1695 (Karolj Dondo, witness statement, 9 March 2005), para. 32.
[3304] D1695 (Karolj Dondo, witness statement, 9 March 2005), para. 16.
[3305] D1706 (Petar Pašić, witness statement, 3 March 2002), p. 5; D1707 (Petar Pašić, witness statement, 23 April 2009), paras 24-25.
[3306] D1706 (Petar Pašić, witness statement, 3 March 2002), p. 5; D1707 (Petar Pašić, witness statement, 23 April 2009), para. 27; D1709 (Petar Pašić, supplemental information sheet, 6 October 2009), para. 5; Petar Pašić, T. 22931-22933.



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2504. **Ivica Cetina**, the Chief of the Zadar-Knin Police Administration throughout 1995,[3307] testified that he attended four or five meetings with Čermak and Franjo Đurica in Čermak's office in Knin, the first of which was several days after the start of Operation Storm.[3308] At these meetings, they exchanged information about events and problems in Knin, including criminal acts, the supply of electricity and water, and the problems encountered by Cetina's men who were policing the area.[3309] When the crimes committed were discussed, Čermak expressed dissatisfaction with the incidents.[3310] About 15 days after Operation Storm, at a meeting, Čermak told those present that he was meeting with UNCRO representatives, who had been sending him protest letters about crimes.[3311] Čermak passed the information from the UNCRO representatives on to those present at the meeting and provided reports from the ICRC of crimes committed to Cetina or the police department Chiefs.[3312] As the police was interested in receiving information about crimes from UNCRO and UNCIVPOL, Cetina considered that a police representative should be present at Čermak's meetings with them.[3313]

2505. During meetings in August and September 1995, **Al-Alfi** repeatedly informed Čermak of looting and burning taking place in Sector South, of the HV's participation in these acts, and of specific cases of murder in the area.[3314] Al-Alfi asked Čermak to stop the looting and burning.[3315] Čermak often answered that he was not aware of what had happened, or asked Al-Alfi not to bring him general complaints, but to inform him of specific instances.[3316] Initially, Čermak also stated that Serbs were setting fire to their

[3307] D1743 (Ivica Cetina, witness statement, 26 August 2009), p. 1; D1745 (Ivica Cetina, witness statement, 26 February 2002), pp. 3-4; Ivica Cetina, T. 23396, 23486, 23517.
[3308] D1743 (Ivica Cetina, witness statement, 26 August 2009), para. 4; D1744 (Ivica Cetina, witness statement, 26 October 2009), p. 2; D1745 (Ivica Cetina, witness statement, 26 February 2002), pp. 6-7, 14.
[3309] D1743 (Ivica Cetina, witness statement, 26 August 2009), para. 4; D1744 (Ivica Cetina, witness statement, 26 October 2009), p. 2; D1745 (Ivica Cetina, witness statement, 26 February 2002), pp. 7, 14; Ivica Cetina, T. 23509-23510.
[3310] D1745 (Ivica Cetina, witness statement, 26 February 2002), pp. 7, 15.
[3311] D1743 (Ivica Cetina, witness statement, 26 August 2009), para. 5; D1744 (Ivica Cetina, witness statement, 26 October 2009), p. 2.
[3312] D1743 (Ivica Cetina, witness statement, 26 August 2009), para. 5; Ivica Cetina, T. 23456.
[3313] Ivica Cetina, T. 23426-23427.
[3314] P1160 (Hussein Al-Alfi, witness statement, 5 March 1998), pp. 55-56, 58, 62, 65-66, 70, 74, 80, 82; Hussein Al-Alfi, T. 13823-13824, 13860-13863, 13951-13952; P1163 (UN Sector South report, by Hussein Al-Alfi, 24 August 1995), p. 3; P38/P1164 (UN Sector South report, by Hussein Al-Alfi, 8 September 1995), p. 3; D1214 (UN Sector South report, by Hussein Al-Alfi, 1 September 1995), pp. 1-3.
[3315] P1160 (Hussein Al-Alfi, witness statement, 5 March 1998), pp. 55-56, 74, 82; Hussein Al-Alfi, T. 13811-13812.
[3316] P1160 (Hussein Al-Alfi, witness statement, 5 March 1998), pp. 62, 75, 80, 82; Hussein Al-Alfi, T. 13812.



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own houses before fleeing.[3317] Other times, Čermak said that a small number of persons, who were not regular HV members, were acting out of revenge.[3318] Čermak also denied that HV members were involved, and suggested that the perpetrators may be non-members wearing HV uniforms.[3319] Al-Alfi then asked Čermak how those persons would have acquired HV uniforms. According to Al-Alfi, Čermak then implicitly acknowledged that there was some HV involvement.[3320] Čermak also repeatedly stated, while banging his fists on the table, that he was in control and that he would not accept people doing wrong in the area under his control.[3321] On some occasions, Čermak provided assurances that he would check on and deal with matters.[3322] Based on Čermak's responses, Al-Alfi believed that Čermak was informed of everything that happened in his area of command.[3323] When Al-Alfi complained of a specific incident of abuse in a specific hamlet, Čermak telephoned his staff and the witness heard him mention the areas he had complained of, which Al-Alfi took to mean that Čermak was ordering his subordinates to check out the situation.[3324] UN staff later reported to Al-Alfi that the looting or burning had stopped in those areas.[3325] The UN military reported to Al-Alfi that the Croatian military units involved in Operation Storm were battalions from Southern Croatia and Split, which included persons who had left the area in 1991.[3326] According to Al-Alfi, Čermak played a part in replacing the Southern Croatian military battalions with other battalions, including ones from Zagreb.[3327] Towards the end of August, Čermak told the witness that he was happy the battalions were being replaced, because some HV soldiers were from the same area and were acting in revenge.[3328]

[3317] P1160 (Hussein Al-Alfi, witness statement, 5 March 1998), p. 80.
[3318] P1160 (Hussein Al-Alfi, witness statement, 5 March 1998), pp. 56, 80.
[3319] P1160 (Hussein Al-Alfi, witness statement, 5 March 1998), pp. 56, 80.
[3320] P1160 (Hussein Al-Alfi, witness statement, 5 March 1998), p. 80.
[3321] P1160 (Hussein Al-Alfi, witness statement, 5 March 1998), pp. 80-81, 83.
[3322] P1160 (Hussein Al-Alfi, witness statement, 5 March 1998), pp. 60-61, 66, 85-86; Hussein Al-Alfi, T. 13812-13813, 13820.
[3323] P1160 (Hussein Al-Alfi, witness statement, 5 March 1998), pp. 83-86.
[3324] P1160 (Hussein Al-Alfi, witness statement, 5 March 1998), pp. 57, 60, 63, 81-83; Hussein Al-Alfi, T. 13812-13813, 13821.
[3325] P1160 (Hussein Al-Alfi, witness statement, 5 March 1998), pp. 63, 75; Hussein Al-Alfi, T. 13821.
[3326] P1160 (Hussein Al-Alfi, witness statement, 5 March 1998), pp. 37, 75.
[3327] P1160 (Hussein Al-Alfi, witness statement, 5 March 1998), pp. 75-76, 87.
[3328] P1160 (Hussein Al-Alfi, witness statement, 5 March 1998), pp. 75-76.



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2506. From the end of the war until he left Sector South, **Forand** had about 15 meetings with Čermak at either his or Čermak's headquarters.[3329] At all of these meetings, Al-Alfi, and/or somebody else from Civil Affairs, accompanied Forand.[3330] Lieutenant-Colonel Tymchuk, Forand's senior liaison officer, was also almost always present.[3331] Forand stated that Al-Alfi made a report on each of the meetings they had with Čermak and Gotovina.[3332] Forand stated that there was no set agenda for the meetings with the Croatian authorities. The meetings were requested by either Čermak or the UN.[3333] Forand testified that the meetings were cordial and that Čermak's door was always open to him.[3334] There were also meetings between Čermak and Al-Alfi which Forand would not attend.[3335] At all meetings with Čermak there was an interpreter.[3336] Forand testified that whenever he discussed an issue with Čermak, the latter never told him that he was not responsible for that issue.[3337] Forand testified that whenever he would bring a matter to Čermak, he always indicated that he would deal with it, whether it concerned Knin or some other place.[3338] Forand made it clear to Čermak that he was the person he expected action from.[3339] Forand testified that he made numerous verbal and written protests to Čermak about soldiers looting, houses burning, and innocent civilians being killed.[3340] Forand testified that he sent many letters highlighting looting, burning of houses, and killing of civilians to Gotovina and Čermak in the hope that the two could use their influence to stop those incidents.[3341] When Forand mentioned problems concerning looting and burning of houses to Čermak either verbally or in writing, he never received an adequate answer.[3342] Čermak initially said that it was not Croats but rather "Chetnik terrorists" who were carrying out such

[3329] P331 (Alain Forand, witness statement, 29 September 1997), p. 22; P333 (Alain Forand, witness statement, 25 January 2008), para. 13; Alain Forand, T. 4257.
[3330] P331 (Alain Forand, witness statement, 29 September 1997), pp. 7, 22; P333 (Alain Forand, witness statement, 25 January 2008), para. 13; Alain Forand, T. 4123, 4146-4147.
[3331] P331 (Alain Forand, witness statement, 29 September 1997), p. 22; P333 (Alain Forand, witness statement, 25 January 2008), para. 13; Alain Forand, T. 4135.
[3332] P331 (Alain Forand, witness statement, 29 September 1997), p. 22; Alain Forand, T. 4146-4147.
[3333] P331 (Alain Forand, witness statement, 29 September 1997), p. 23.
[3334] Alain Forand, T. 4236, 4254, 4256, 4538-4539.
[3335] P331 (Alain Forand, witness statement, 29 September 1997), p. 22.
[3336] Alain Forand, T. 4179-4180.
[3337] Alain Forand, T. 4125.
[3338] Alain Forand, T. 4186, 4236.
[3339] Alain Forand, T. 4125-4126.
[3340] P331 (Alain Forand, witness statement, 29 September 1997), p. 15; P333 (Alain Forand, witness statement, 25 January 2008), para. 13.
[3341] Alain Forand, T. 4118-4119.
[3342] P331 (Alain Forand, witness statement, 29 September 1997), p. 19; Alain Forand, T. 4248, 4251.



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acts in order to put the blame on the Croats.[3343] Forand stated that on the basis of all the letters he had sent to Čermak he was fully aware that criminal actions were taking place.[3344] Forand stated that Čermak had received all of the letters he sent him as they were delivered to him by one of Forand's officers.[3345] Forand never received an official response to those letters.[3346] Often, a copy of Forand's correspondence would be addressed to Gotovina as well.[3347] Forand stated that to his knowledge no specific action was taken by Gotovina or Čermak in order to stop the human rights violations.[3348] He added that Čermak sometimes assured him that he would issue orders for this purpose but Forand never saw any result of that.[3349]

2507. **Mauro** testified that on a few occasions when Čermak was in the UN compound, including once in early August 1995, she informed him about the situation of the people who had remained in Sector South and about the arson, looting and harassment.[3350] On these occasions, and when others reported to him, he seemed to be very cooperative, always assuring that the matter would be looked into, and stating that he wanted to be informed of any criminal activities that might take place.[3351] Her meetings with Čermak were informal, never longer than a few minutes and would always be in the UN compound, in the presence of others, and conducted through a UN interpreter.[3352] **Eric Hendriks**, an ECMM monitor in Knin from 21 July 1995 until 30 October 1995,[3353] testified that in relation to looting Čermak said that "this has to stop, and I'll do my best to stop it".[3354] Hendriks testified that when ECMM was introduced to Čermak he presented himself as being responsible for law and order "throughout the area".[3355] Čermak was at least twice informed by Hendriks about crimes and said that "it wasn't

[3343] P331 (Alain Forand, witness statement, 29 September 1997), pp. 15, 17-19; Alain Forand, T. 4248, 4251, 4256; D346 (Alain Forand's interview in Globus newspaper, 12 March 2004), pp. 2-3.
[3344] P331 (Alain Forand, witness statement, 29 September 1997), p. 20; Alain Forand, T. 4142.
[3345] P331 (Alain Forand, witness statement, 29 September 1997), p. 22.
[3346] P331 (Alain Forand, witness statement, 29 September 1997), p. 20.
[3347] P333 (Alain Forand, witness statement, 25 January 2008), para. 13.
[3348] P331 (Alain Forand, witness statement, 29 September 1997), p. 27; Alain Forand, T. 4236.
[3349] P331 (Alain Forand, witness statement, 29 September 1997), p. 27; Alain Forand, T. 4148.
[3350] P1098 (Maria Teresa Mauro, witness statement, 3 March 2000), p. 3; P1099 (Maria Teresa Mauro, witness statement, 6 February 2008), para. 5; Maria Teresa Mauro, T. 12008, 12029, 12037, 12045-12046.
[3351] P1099 (Maria Teresa Mauro, witness statement, 6 February 2008), para. 5; Maria Teresa Mauro, T. 12039-12040.
[3352] Maria Teresa Mauro, T. 12014-12015, 12037-12039, 12097, 12100.
[3353] P931 (Eric Hendriks, witness statement, 4 April 2008), para. 3; D820 (Eric Hendriks, witness statement, 18 April 1996), pp. 1-2; Eric Hendriks, T. 9734-9735, 9755-9756.
[3354] Eric Hendriks, T. 9732.
[3355] Eric Hendriks, T. 9803.



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good" and that he would try to do something about it.[3356] The crimes did not stop. Sometimes Čermak said that the police had to be notified about the crimes.[3357] **Stig Marker Hansen**, an ECMM monitor in Knin from June to September 1995 and head of ECMM Knin from approximately 5 September to 23 September 1995,[3358] testified that ECMM monitors told Čermak repeatedly about the lack of law and order, including the looting, burning, and harassment of Serbs and Čermak would assure them that he would take care of it, and condemned the looting and burning, which however continued to occur.[3359] The witness had the impression that Čermak had extremely few resources such as vehicles and personnel at his disposal and was overwhelmed by claims for his time and resources.[3360] **Liborius** often met with Čermak in Čermak's office in Knin, protesting about restrictions of movement and crimes that had been reported to Liborius.[3361] Čermak would often respond that he had no time or would not respond at all.[3362]

2508. According to the minutes of a conversation between Tuđman and Čermak held on 23 March 1999 at the Presidential Palace, Čermak told Tuđman that he remained a member of the HDZ and would never turn against Tuđman by financially supporting opposing campaigns or politicians.[3363] Čermak further stated that he had been visited by two investigators from The Hague, who told him he was suspected of war crimes.[3364] Čermak stated that he had told the investigators that the Croatian authorities had established that there were 32 cases of killing in the whole Knin area, and in 21 of those cases, including the Varivode case, the perpetrators were identified.[3365] Čermak had further told the investigators that he had cooperated closely with UNCIVPOL and UNCRO, until General Forand had accused the Croatian army and police of ethnic

[3356] Eric Hendriks, T. 9708.
[3357] Eric Hendriks, T. 9709.
[3358] P1283 (Stig Marker Hansen, witness statement, 18 December 1995) p. 2; P1284 (Stig Marker Hansen, witness statement, 22 August 1997), p. 2; P1285 (Stig Marker Hansen, witness statement, 24 April 2008), para. 3.
[3359] P1285 (Stig Marker Hansen, witness statement, 24 April 2008), paras 16-17; Stig Marker Hansen, T. 14966-14967, 14983, 15098.
[3360] Stig Marker Hansen, T. 14960-14961, 15097.
[3361] P801 (Søren Liborius, witness statement, 12 October 2005), p. 9; P803 (Søren Liborius, witness statement, 6 September 2008), para. 26.
[3362] P801 (Søren Liborius, witness statement, 12 October 2005), p. 9.
[3363] P1144 (Minutes of a conversation between Tuđman and Čermak at the Presidential Palace, 23 March 1999), pp. 2, 11.
[3364] P1144 (Minutes of a conversation between Tuđman and Čermak at the Presidential Palace, 23 March 1999), p. 3.
[3365] P1144 (Minutes of a conversation between Tuđman and Čermak at the Presidential Palace, 23 March 1999), pp. 4, 8.



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cleansing.[3366] Čermak had responded to Forand that he was willing to discuss, investigate, and process every single case, but that Forand should stop putting forward insinuations and false stories.[3367] Čermak further stated to Tuđman that neither he, Norac, nor Gotovina had ordered any killing and that nobody could have prevented the incidents in the field where there were fighters who had been on the frontline for three to four years, who had lost their houses and their ancestors' land, who were damaged by the "Vietnam" syndrome, and who in that state, were killing.[3368]

2509. The Trial Chamber recalls its finding in chapter 6.2.6, which shows that Čermak knowingly denied that crimes had taken place in Grubori on 25 August 1995. The Trial Chamber considers that the evidence reviewed in the present chapter does not provide further examples of Čermak having denied that crimes took place. The evidence indicating that he denied HV perpetration of crimes comes from Forand and Al-Alfi. It is vaguely dated, but suggests that such denials may not have continued throughout the period of Čermak's stay in Knin. There is little support, in the chronological and more specific evidence, for Čermak denying that HV soldiers could have committed or did commit crimes. There is also documentary evidence indicating that Čermak did not, or at least not consistently, deny HV involvement, for instance in D619 and D731. The letter D309, dated 3 September 1995, suggests strong denial by Čermak, but the Trial Chamber is not convinced that it was dictated, written or approved by Čermak.[3369] The Trial Chamber notes in this regard that after receiving in early September 1995 specific information of crimes that had been committed, Čermak forwarded such information to the police and publicly condemned the commission of crimes. In conclusion, the Trial Chamber finds that the evidence is insufficient to sustain the allegations that Čermak minimised the crimes committed against Serbs. The Trial Chamber further finds that Čermak did not, with the exception of the Grubori incident, deny or conceal Croatian crimes against Serbs.

[3366] P1144 (Minutes of a conversation between Tuđman and Čermak at the Presidential Palace, 23 March 1999), p. 4.
[3367] P1144 (Minutes of a conversation between Tuđman and Čermak at the Presidential Palace, 23 March 1999), p. 4.
[3368] P1144 (Minutes of a conversation between Tuđman and Čermak at the Presidential Palace, 23 March 1999), pp. 7-8.
[3369] It is in Čermak's name, and at P114, p. 4, and P2525, p. 57, Čermak arguably attributes the letter to himself. However, the letter is not signed, and is not written in the same style as other letters of his, as recognized by Forand. See also the evidence of Luković and Dondo regarding the letter, and the evidence of Mauro who was told that Čermak was out of town on the day after the date of the letter.



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2510. As for the allegation that Čermak provided false assurances to the international community that action to stop the crimes was being and/or would be taken, the evidence shows that he promised action against crimes, giving the international community in Knin the impression, at least at first, that action would be taken and that his powers were far greater than as described in his interviews to the Prosecution. The Trial Chamber recalls in this regard the evidence on the impressions of the international community reviewed in chapter 3.2. Čermak thereby created an impression that action was being taken. The evidence also shows that his words were not matched with actual and effective measures taken against crime. However, the evidence shows that he took some measures to pass information regarding specific crimes on to law enforcement authorities. Considering these findings, as well as those made in chapters 3.2, 6.4.2, and 6.4.6, the Trial Chamber finds that the evidence does not provide a sufficient basis to conclude that Čermak was in charge of and had legal authority for maintaining law and order, notwithstanding what he may have represented to members of international organizations or how they might have understood it. The evidence further shows that Čermak sometimes provided to the international community overly positive assessments of the efforts to be undertaken or results achieved by the competent authorities with regard to preventing and punishing crime. The Trial Chamber recalls in this regard its findings in chapter 6.2.5. On the basis of the preceding findings and considerations, the Trial Chamber finds that Čermak provided misleading assurances to the international community that action to stop the crimes was being and/or would be taken. However, the evidence does not show that Čermak deliberately provided false assurances. The Trial Chamber further finds that the evidence does not show, with the above-mentioned exception of the Grubori incident, that Čermak provided false, incomplete or misleading information to the international community, at least not intentionally so. Nor does the evidence support the allegation that Čermak permitted the crimes to take place. The Trial Chamber will further consider the allegations in paragraphs 17 (f), 19 (c) and 19 (e) below.

2511. The Trial Chamber now turns to Čermak's interactions with representatives of international organizations on the topic of movement restrictions. On 3 August 1995, Morić ordered a number of police administrations, including the one in Zadar-Knin, that journalists, foreign statesmen "and so on", could enter the "liberated territory" through the joint VP-civilian police check-points only upon producing a pass signed jointly by



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General Tolj and Colonel Rebić.[3370] **Mikhail Ermolaev**, Deputy Senior UN Military Observer of Sector South from July 1995 to October 1995,[3371] testified that at least until and including 6 August 1995 UNMO did not as a rule enjoy freedom of movement.[3372] On 6 August 1995, from 2-3:30 p.m., Brigadier Budimir Pleština, the chief of the UN and EC office of the MoD, met with Colonel Pettis, the Chief of Staff of the UNCRO in Zagreb.[3373] Pleština informed Pettis that he denied the UNCRO request for freedom of movement in Sector South.[3374] On 6 or 7 August 1995, HV liaison officers in Knin met with Forand and explained to him that there was complete UNCRO freedom of movement regarding the supply of units in the field, and that there was no need for UNCRO patrols and observations because UNCRO might receive a new mandate.[3375]

2512. **Yasushi Akashi**, Special Representative of the Secretary-General to the former Yugoslavia and Chief of UNPROFOR/UNCRO from January 1994 to October 1995,[3376] testified that, during his visit to Knin on 7 August 1995, he met with General Čermak.[3377] According to UN documentary evidence, Čermak gave Akashi the assurance that the agreement between the UN and Croatia on freedom of movement for international organizations would be respected, and that UN troops and observers would have freedom of movement contingent upon the security situation in a given area.[3378] According to Banbury's notes of the meeting on 7 August 1995, Čermak stated that he would speak with Gotovina to see what areas were safe for free movement, that from the following day they should be able to move in most of his area of responsibility

[3370] P493 (Order by Joško Morić to chiefs of police administrations on the cooperation with the VP, 3 August 1995). See also D982 (Report by Petar Skorić on problems following the liberation of occupied areas, 10 August 1995), pp. 3-4.
[3371] P94 (Mikhail Ermolaev, witness statement, 14 may 2002), pp. 1-2; P95 (Mikhail Ermolaev, witness statement, 2 December 2007), p. 1; Mikhail Ermolaev, T. 2285, 2371.
[3372] P94 (Mikhail Ermolaev, witness statement, 14 may 2002), p. 5; Mikhail Ermolaev, T. 2293, 2404-2408, 2432-2436, 2448-2449; P108 (UNMO Sector South update situation report, 4 p.m., 6 August 1995), p. 1; P109 (UNMO Sector South daily situation report, 8:30 p.m., 6 August 1995), pp. 1-7, 9; P110 (UNMO Sector South update situation report, noon, 7 August 1995); P111 (UNMO Sector South daily situation report, 8 p.m., 7 August 1995), pp. 12-3, 5-6, 8-9; D154 (UNMO Sector South daily situation report, 6 a.m., 4 July 1995), pp. 6-7, 21.
[3373] Alain Forand, T. 4300, 4320-4321; D318 (Minutes of a meeting between Brigadier Budimir Pleština and Colonel Pettis, 6 August 1995), pp. 1-2.
[3374] Alain Forand, T. 4300-4301; D318 (Minutes of a meeting between Brigadier Budimir Pleština and Colonel Pettis, 6 August 1995), p. 2.
[3375] D319 (Daily report by Brigadier Budimir Pleština, 7 August 1995), p. 1.
[3376] D1646 (Yasushi Akashi, witness statement, 20 July 2009), para. 1; Yasushi Akashi, T. 21621.
[3377] Yasushi Akashi, T. 21721-21724; D29 (Cable from Akashi to Annan regarding his trip to Knin, 7 August 1995), para. 4.
[3378] D29 (Cable from Akashi to Annan regarding his trip to Knin, 7 August 1995), para. 4; D1666 (Cable from Akashi to Annan entitled "report pursuant to resolution 1009", 22 August 1995), para. 10; D1667 (Notes of Anthony Banbury, undated), pp. 33-34, 40-41.



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including Knin town, and that if they had any problems they should see him personally.[3379] According to the notes, Čermak further stated that orders had been issued to the HV to withdraw from Knin and other towns and that no one was to enter Knin except with his permission.[3380] On 7 August 1995, Akashi announced at a press conference with Čermak that Čermak had agreed that UN staff would be free to move in Knin and its surroundings as of 8 August 1995, and in other areas as of 9 August 1995, depending on the situation in the field.[3381] The Trial Chamber has also considered the agreement between Akashi and Šarinić (D28), reviewed in chapter 4.5.4.

2513. **Luković** testified that on 7 August 1995 he attended the meeting with Akashi in the UN camp, which dealt with the implementation of the Agreement between Croatia and UNCRO in the Knin area with regard to the freedom of movement of UN representatives and the refugees in the camp.[3382] According to Luković, immediately following Operation Storm, freedom of movement was denied to UN personnel in Knin for the personnel's own security, as there was a real concern for mines and left-over enemy groups in the entire Sector South area.[3383]

2514. **Forand** testified that he met with Čermak at 6 p.m. on 7 August 1995.[3384] Čermak told Forand that his area of responsibility was the entire UN Sector South and that his job was to administer and revitalize the newly conquered areas, restoring normal life for all ethnic groups as soon as possible.[3385] Čermak said that police patrols would be conducted throughout the night and that the Puma brigade would leave the area soon, and Balfour reported that they began leaving Knin while the meeting was still taking place.[3386] At the meeting of 7 August 1995, Forand informed Čermak that he felt like a prisoner at the UN compound and Čermak promised that they would be free to move as soon as the area was cleared of "Chetniks" and that their presence was the reason why

[3379] D1667 (Notes of Anthony Banbury, undated), p. 41.
[3380] D1667 (Notes of Anthony Banbury, undated), p. 42.
[3381] Mikhail Ermolaev, T. 2332-2335, 2387; P111 (UNMO Sector South daily situation report, 8 p.m. 7 August 1995), p. 1; D146 (Video reportage and transcript of press conference between Yasushi Akashi and Ivan Čermak, 7 August 1995), p. 1.
[3382] D1688 (Ivica Luković, witness statement, 13 August 2009), para. 30.
[3383] D1688 (Ivica Luković, witness statement, 13 August 2009), paras 32-33.
[3384] P331 (Alain Forand, witness statement, 29 September 1997), pp. 16-17; Alain Forand, T. 4123-4124; P356 (UNCRO Sector South situation report, 7:30 a.m., 8 August 1995), pp. 2-3.
[3385] P330 (Alain Forand, witness statement, 20 August 1996), p. 10; Alain Forand, T. 4206, 4215-4216, 4221; P388 (Letter from Ivan Čermak to Alain Forand re refugees, 8 August 1995); D298 (Letter from Ivan Čermak to Alain Forand re water works in Knin, 8 August 1995); D299 (Letter from Ivan Čermak to Alain Forand re clearing roads in Knin, 8 August 1995).
[3386] P356 (UNCRO Sector South situation report, 7:30 a.m., 8 August 1995), p. 3.



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the UN heard shooting and saw burning houses.[3387] Forand did not believe that there were any "Chetniks" left in the area, because it was swarming with Croatian military.[3388] Also at the meeting of 7 August 1995, Forand and Čermak agreed that there was no longer any need to man the observation posts and that patrolling from that moment on would be done by ECMM, UNCIVPOL, HRATs, and UNMOs.[3389]

2515. **Alun Roberts**, Press and Information Officer for UN Sector South in Knin from mid-September 1993 until about mid-October 1995,[3390] testified that at a press conference with Akashi and Čermak in the late morning of 7 August 1995, Forand complained that the UN could not leave the camp for the past four days and had therefore been unable to monitor the human rights situation.[3391] Roberts was present at the meeting on 7 August 1995 at 6 p.m. in Čermak's office.[3392] At this meeting, Čermak guaranteed that the UN would have freedom of movement from the morning of 8 August 1995, which at the outset would be restricted for security reasons to the main road of Knin, the side roads off it, and the centre of the town.[3393] The UN would receive a gradually broader scope of movement finally relating to the entire Sector South.[3394] Roberts also recalled that at the time he was also told that the Croatian military would provide maps indicating where the UN could and could not go.[3395]

2516. Čermak's statement regarding freedom of movement at the 7 August 1995 meeting was further corroborated by **Ermolaev**,[3396] and **Al-Alfi**.[3397] According to **Al-**

[3387] P331 (Alain Forand, witness statement, 29 September 1997), pp. 17-18; P356 (UNCRO Sector South situation report, 7:30 a.m., 8 August 1995), p. 3; P357 (UNCRO Sector South report, 12 p.m., 8 August 1995), p. 1.
[3388] P331 (Alain Forand, witness statement, 29 September 1997), p. 17.
[3389] P356 (UNCRO Sector South situation report, 7:30 a.m., 8 August 1995), p. 3; P357 (UNCRO Sector South report, 12 p.m., 8 August 1995), p. 1.
[3390] P675 (Alun Roberts, witness statement, 27 August 1997), p. 1, para. 1; P676 (Alun Roberts, witness statement, 31 July 1998), p. 1; P677 (Alun Roberts, witness statement, 28 February 2007), pp. 1-2; P678 (Alun Roberts, witness statement, 7 February 2008), p. 1, paras 3-4, 6; P680 (Alun Roberts, witness statement, 1 July 2008), p. 1.
[3391] P675 (Alun Roberts, witness statement, 27 August 1997), paras 24, 26; Alun Roberts, T. 6877, 6879.
[3392] P675 (Alun Roberts, witness statement, 27 August 1997), paras 18, 20-21; P677 (Alun Roberts, witness statement, 28 February 2007), p. 7; P678 (Alun Roberts, witness statement, 7 February 2008), para. 23; Alun Roberts, T. 6876-6879, 6880-6887, 6902, 7121.
[3393] P675 (Alun Roberts, witness statement, 27 August 1997), paras 9, 20, 23; P676 (Alun Roberts, witness statement, 31 July 1998), p. 4; P677 (Alun Roberts, witness statement, 28 February 2007), p. 7; P678 (Alun Roberts, witness statement, 7 February 2008), para. 23; Alun Roberts, T. 6876, 6884-6887, 6891-6893; P702 (Report from Alun Roberts to UN Chief Spokesperson Phillip Arnold on looting, 9 August 1995), para. 2; P712 (Report and interview with Alun Roberts on UN radio, 1 September 1995).
[3394] P678 (Alun Roberts, witness statement, 7 February 2008), para. 23.
[3395] Alun Roberts, T. 6894; P686 (The Independent, 4 September 1995), p. 2.
[3396] P94 (Mikhail Ermolaev, witness statement, 14 may 2002), p. 5; P95 (Mikhail Ermolaev, witness statement, 2 December 2007), para. 15; Mikhail Ermolaev, T. 2290-2292, 2343-2345, 2383; P111 (UNMO Sector South daily situation report, 8 p.m. 7 August 1995), pp. 1, 7-8.



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**Alfi**, the freedom of movement of UN staff was initially limited to the main roads around Knin and Drniš, but gradually increased from 8 August 1995.[3398]

2517. The Croatian army stopped the UNMO and UNCIVPOL morning patrols of 8 August 1995 at a check-point on the bridge at the entrance to Knin.[3399] On 8 August 1995, at 1 p.m., Čermak came to the UN compound and met with **Forand**.[3400] Čermak, who appeared busy to Forand, indicated that as soon as he returned to his headquarters he would give orders allowing the UN to move freely within Knin and to Drniš.[3401] On 8 August 1995, Čermak wrote a letter, copying Gotovina, informing Forand that as of 1 p.m. that day all elements of UNCRO had the permission to move freely in the Knin and Drniš areas, but cautioning them to stay on the main roads.[3402] Forand stated that they remained restricted to the towns of Knin and Drniš.[3403] On 8 August 1995, from 1 p.m., there were UN patrols on the Knin main road and side streets, for the first time since 4 August 1995.[3404]

2518. On 8 August 1995, Čermak issued an order, in accordance with an agreement between the Croatian Government and UNCRO, to allow as of 3 p.m. on 8 August all UNCRO elements with clearly displayed insignia to move freely in the areas of Knin and Drniš, and advise them to use the main roads only, or it would be at their own risk. The order was copied to the Knin VP and Knin police station.[3405]

2519. On 8 August 1995, Čermak issued an order which was sent to the VP and the Knin police station, that the VP inspect UNCRO helicopters before each flight; that the unhindered movement of humanitarian convoys be ensured and that such convoys be

[3397] P1160 (Hussein Al-Alfi, witness statement, 5 March 1998), pp. 46-47; P1161 (UN Sector South report, by Hussein Al-Alfi, 8 August 1995), p. 2.
[3398] P1160 (Hussein Al-Alfi, witness statement, 5 March 1998), pp. 46-47; Hussein Al-Alfi, T. 13810; P1162 (UN Sector South report, by Hussein Al-Alfi, 18 August 1995), p. 2.
[3399] Alun Roberts, T. 7046; P702 (Report from Alun Roberts to UN Chief Spokesperson Phillip Arnold on looting, 9 August 1995), para. 2.
[3400] Alain Forand, T. 4128; P359 (UNCRO Sector South daily situation report, 8:30 p.m., 8 August 1995), p. 3.
[3401] Alain Forand, T. 4133-4134, 4308; P359 (UNCRO Sector South daily situation report, 8:30 p.m., 8 August 1995), p. 3.
[3402] P331 (Alain Forand, witness statement, 29 September 1997), p. 17; Alain Forand, T. 4133-4134, 4525; P405 (Letter from Ivan Čermak re permission of movement, 8 August 1995).
[3403] P331 (Alain Forand, witness statement, 29 September 1997), p. 17; P359 (UNCRO Sector South daily situation report, 8:30 p.m., 8 August 1995), pp. 2, 5-6; P361 (UNCRO Sector South daily situation report, 8:30 p.m., 9 August 1995), p. 2.
[3404] P675 (Alun Roberts, witness statement, 27 August 1997), paras 22-24; P676 (Alun Roberts, witness statement, 31 July 1998), p. 4; P678 (Alun Roberts, witness statement, 7 February 2008), paras 31, 33; Alun Roberts, T. 6832, 6896; P702 (Report from Alun Roberts to UN Chief Spokesperson Phillip Arnold on looting, 9 August 1995), introduction, paras 1-2, 5-6.
[3405] P53/P513 (Order by Ivan Čermak regarding UNCRO freedom of movement, 8 August 1995).



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inspected; and that UNCRO vehicles delivering food and equipment for UNCRO needs should be inspected and should be allowed to move.[3406] The Trial Chamber has considered in this regard the evidence reviewed in paragraph 6 of Confidential Appendix C.

2520. When interviewed by the Prosecution, Čermak stated that he or his office never imposed any restrictions on movement on anyone.[3407] Čermak stated that he did not know why the movement of international organizations was restricted in the Krajina in the first few days after Operation Storm.[3408] He stated that as soon as he learned from international organizations that they were under movement restrictions, he called Šarinić who told him about his agreement with Akashi and that Čermak must immediately make sure that all organizations had full access to all of the Krajina.[3409] Consequently, Čermak immediately issued an order to give "full" freedom of movement for all international organizations in the area of Knin and Drniš.[3410] In 1998, Čermak authenticated his signature on the document, stated that he sent it to Forand and Gotovina (as the commander of the region), and that its effect was that all members of international organizations began to move freely in the area.[3411] Čermak stated that he informed Gotovina about the talk with Šarinić, and told him that if there were any problems he would see him about it since Gotovina was in charge of the area and all the check-points.[3412] Čermak stated that he thought he had the authority to issue such an order because he was responsible for cooperation with international organizations, and that Gotovina agreed.[3413] In 2001, Čermak stated that his order went beyond his authority.[3414] Čermak stated that he issued his order to speed up the free movement of

[3406] P512 (Order by Ivan Čermak on freedom of movement of UNCRO vehicles and humanitarian convoys, 8 August 1995).
[3407] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 114, 167; P2526 (Suspect interview with Ivan Čermak, 17 March 1998), p. 53.
[3408] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), p. 107; P2526 (Suspect interview with Ivan Čermak, 17 March 1998), pp. 52-53, 64-65. The Trial Chamber notes that this is not quite consistent with other evidence.
[3409] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 106-109, 112, 114; P2526 (Suspect interview with Ivan Čermak, 17 March 1998), pp. 53-56, 61-62.
[3410] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 107-109, 112, 114, 123; P2526 (Suspect interview with Ivan Čermak, 17 March 1998), pp. 43, 52-56, 58-59, 61-62; P2707 (Additional portions of suspect interview with Ivan Čermak, 17 March 1998), pp. 15-16.
[3411] P2526 (Suspect interview with Ivan Čermak, 17 March 1998), pp. 55-59; P2707 (Additional portions of suspect interview with Ivan Čermak, 17 March 1998), pp. 15-16.
[3412] P2526 (Suspect interview with Ivan Čermak, 17 March 1998), pp. 54-56, 62.
[3413] P2526 (Suspect interview with Ivan Čermak, 17 March 1998), pp. 55-57, 62-64; P2707 (Additional portions of suspect interview with Ivan Čermak, 17 March 1998), p. 16.
[3414] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 108, 111-112.



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the international organizations.[3415] He further stated that because the order was supposed to go all the way down to the lowest levels of the HV, for which he did not have responsibility, his order only went to Forand and to Gotovina, who quickly issued an order of his own, and had it passed on to all the units.[3416] Čermak stated that he spoke with Gotovina, who agreed that freedom of movement should be allowed and that Čermak's order did not mean anything.[3417]

2521. **Dondo** testified that Čermak was not authorized to decide on whether UNCRO members could move around Knin and Drniš.[3418] Neither did Čermak have the knowledge necessary to make such decisions.[3419] Dondo testified that he had drafted Čermak's order of 8 August 1995 on the permission of movements of UNCRO members and that his office had come up with the idea of drafting it as an order since it was important to assist UNCRO and in the belief that Čermak could issue such orders.[3420] This was not discussed with Čermak but simply decided by Dondo's office.[3421] The witness also testified that Čermak dictated the letter to him, except the last paragraph.[3422] The order of 8 August 1995 was sent to the military and the civilian police.[3423]

2522. On 9 August 1995, **Forand** had a meeting with Čermak at which they discussed freedom of movement, basic services, and refugees.[3424] Forand mentioned to Čermak that the restrictions of movement remained, particularly in the Knin area.[3425] Forand reported that Čermak was not prepared to make any progress on this issue. Forand also reported that the evidence of methodical and continuous destruction observed by UNCRO staff whenever allowed to move freely was likely the real reason for the restrictions of movement.[3426] According to an UNCRO report of 9 August 1995,

[3415] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), p. 110.
[3416] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 109-113, 115.
[3417] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 110-111.
[3418] D1696 (Karolj Dondo, witness statement, 18 August 2009), para. 17. See also Karolj Dondo, T. 22545; D1697 (Letter from S.P. Tymchuk to HV Liaison Officer about HV escort, 12 August 1995); D1699 (Approval by Rahim Ademi for entry of two HV officers into the area of Velika Promina, 13 August 1995).
[3419] D1696 (Karolj Dondo, witness statement, 18 August 2009), para. 17.
[3420] D1696 (Karolj Dondo, witness statement, 18 August 2009), para. 18; Karolj Dondo, T. 22543, 22580.
[3421] Karolj Dondo, T. 22543.
[3422] Karolj Dondo, T. 22542, 22544.
[3423] D1696 (Karolj Dondo, witness statement, 18 August 2009), para. 19.
[3424] Alain Forand, T. 4134-4135; P361 (UNCRO Sector South daily situation report, 8:30 p.m., 9 August 1995), p. 2.
[3425] Alain Forand, T. 4135; P361 (UNCRO Sector South daily situation report, 8:30 p.m., 9 August 1995), p. 2.
[3426] P361 (UNCRO Sector South daily situation report, 8:30 p.m., 9 August 1995), p. 2.



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Čermak claimed total control of the Sector South area, however, HV units in the area of responsibility of Canadian Battalion 1, in particular in the Benkovac area, denied Čermak's authority.[3427]

2523. **Roland Dangerfield**, a British army sector liaison officer stationed in Knin in August 1995,[3428] testified that he received information, most likely from Lieutenant-Colonel Tymchuk, that on 10 August 1995, UN personnel met with Ivan Čermak requesting complete freedom of movement throughout Sector South, and that Čermak had said that he was unable to authorize this, adding that it had to come from his superior.[3429] Also on 10 August 1995, Čermak met with Al-Alfi, the Head of Political and Humanitarian Affairs Paavo Pitkanen, and the Sector Commander, and responded positively to a demand for freedom of movement for UNCRO, indicating that he expected to have an approval for UNCRO freedom of movement by 5:30 p.m. on the same day.[3430] On the same day, HRAT reported that following a meeting with Knin Chief of Police Čedo Romanić it was informed that freedom of movement had been extended and was guaranteed on the main roads in the Obrovac, Benkovac, and the Plitvice area.[3431]

2524. On 11 August 1995, Čermak sent a letter to **Forand** informing him that, pursuant to the "Akashi agreement" between Croatia and UNCRO, as of noon on that day he allowed full freedom of movement to the UN members mentioned therein, and freedom of movement to UNCRO for the purpose of supplying itself with food, drinks, and fuel.[3432] Forand testified that he interpreted the letter as a pass for free movement, albeit narrower than stipulated in the "Akashi agreement", and issued it to all his units.[3433] In 1998, when interviewed by the Prosecution, Čermak confirmed that he had signed the letter to Forand, stated that it was an order, and that its effect was that all international organizations were allowed to move around.[3434] He further stated that the military,

[3427] Alain Forand, T. 4226-4227; P361 (UNCRO Sector South daily situation report, 8:30 p.m., 9 August 1995), p. 2.
[3428] P695 (Roland Dangerfield, witness statement, 21 December 1995), paras 1-2; Roland Dangerfield, T. 7132.
[3429] P695 (Roland Dangerfield, witness statement, 21 December 1995), para. 12; Roland Dangerfield, T. 7260-7262.
[3430] D1209 (UN Sector South report, by Hussein Al-Alfi, 10 August 1995), pp. 1-2.
[3431] P21 (Edward Flynn, witness statement, 26-27 February 2008), para. 8; P31 (HRAT daily report, 10 August 1995), pp. 1-2.
[3432] Alain Forand, T. 4136, 4317-4319; P390 (Letter from Ivan Čermak to Alain Forand allowing UN freedom of movement, 11 August 1995). See also P41 (HRAT daily report, 11 August 1995), pp. 2, 4-5.
[3433] Alain Forand, T. 4317-4319.
[3434] P2526 (Suspect interview with Ivan Čermak, 17 March 1998), pp. 57-58, 60.



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special police and police had to obey this order.[3435] In 2001, Čermak stated that liaison officers wrote the letter to Forand, he signed it without thinking about it, and sent it off.[3436] **Dondo** testified that Čermak issued the letter, although the decision to allow freedom of movement was made by the command of the Split MD since Čermak did not have the power to decide this.[3437] According to Dondo, Čermak told him to write the order down and he would settle it with Gotovina.[3438]

2525. Čermak stated that afterwards internationals would sometimes complain about being stopped at a check-point in former Sector South to a liaison officer in Čermak's office, who would inform Čermak.[3439] Čermak or someone else would immediately phone commanders of the civilian police or VP, telling them that they should allow freedom of movement, and they would then phone the check-point to let the people pass.[3440] Čermak stated that he informed his superiors about these incidents, but that – except perhaps in the beginning – they were minor problems that were immediately resolved.[3441]

2526. By 11 August 1995, **Al-Alfi** reported that freedom of movement, at least on the main streets, was generally accorded to UNCRO components throughout Sector South, although some difficulties were experienced from time to time.[3442] UN Civil Affairs Officers, UNMOs, and UNCIVPOL were given copies of a letter from Čermak promising them freedom of movement for keeping in their vehicles, but the Croatian military still stopped UN staff from entering certain areas.[3443] Whenever Al-Alfi complained to Čermak about a particular incident of UN staff being stopped, they would be let through a few days later.[3444] **Witness 136**, a Serb field interpreter for UNCIVPOL and UNCRO,[3445] testified that a couple of days after 9 August 1995, the UN interpreters received a permit from Ivan Čermak allowing them to move around within the

[3435] P2526 (Suspect interview with Ivan Čermak, 17 March 1998), p. 58.
[3436] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 112-113.
[3437] D1696 (Karolj Dondo, witness statement, 18 August 2009), para. 23; Karolj Dondo, T. 22551-22552, 22556.
[3438] Karolj Dondo, T. 22556.
[3439] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 55, 123; P2526 (Suspect interview with Ivan Čermak, 17 March 1998), pp. 60, 67-68.
[3440] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 55-56, 123; P2526 (Suspect interview with Ivan Čermak, 17 March 1998), pp. 60, 67-69.
[3441] P2526 (Suspect interview with Ivan Čermak, 17 March 1998), pp. 60, 68.
[3442] P1162 (UN Sector South report, by Hussein Al-Alfi, 18 August 1995), p. 2.
[3443] P1160 (Hussein Al-Alfi, witness statement, 5 March 1998), p. 48; P1164 (UN Sector South report, by Hussein Al-Alfi, 8 September 1995), p. 5.
[3444] P1160 (Hussein Al-Alfi, witness statement, 5 March 1998), p. 48.



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boundaries of Knin town only.[3446] The Trial Chamber has also considered evidence from Berikoff regarding the effectiveness of Čermak's letters for overcoming movement restrictions, reviewed in chapter 4.2.1.

2527. On 12 August 1995, **Forand** met with Pleština, who pledged that the UN would receive full freedom of movement, but indicated that the other matters raised at the meeting (looting, theft of equipment, obtaining lists of Serbs killed and wounded, visits to detention centres) were outside his competence.[3447] According to an ECMM assessment of 13 August 1995, outside of Knin fewer police appeared to have heard of Čermak, and fewer still were inclined to follow his written "clearances".[3448]

2528. Ivo Cipci informed the Operative Action Return Staff of the MUP on 16 August 1995 that members of the ECMM, who were present in the area of Vrlika, were taken into custody to conduct an interview, because they disregarded the order of the police officers at the Pekač check-point to turn back and obtain a permit for movement in the area and because and they were going in the direction of Cetina, which was not a safe area. They did not have a permit for movement in that area, but claimed that they had been informed by another ECMM team that they had a certificate from Čermak allowing free movement in Croatia.[3449] They were escorted to the check-point in Potravlje to leave the area for which written permission was needed.[3450]

2529. **Marker Hansen** testified that on 16 August 1995, ECMM was restricted from moving through the town of Vrlika.[3451] The witness immediately visited Čermak, to whom the ECMM had complained about this particular check-point two days earlier and been promised freedom of movement, in his office, and complained about this restriction of movement.[3452] Čermak immediately phoned the MUP. He asked them to contact the civilian police in Split to establish coordination so that such incidents would

[3445] P2 (Witness 136, witness statement, 4 July 1996), pp. 1-2; Witness 136, T. 620, 622, 641, 726, 765, 768, 780-782.
[3446] Witness 136, T. 761-765.
[3447] Alain Forand, T. 4320-4322; P364 (UNCRO Sector South daily situation report, 8:30 p.m., 12 August 1995), pp. 2-3. See also D1211 (UN Sector South report, by Hussein Al-Alfi, 12 August 1995), p. 3.
[3448] P935 (ECMM weekly assessment, 13 August 1995), p. 1.
[3449] D497 (Submission of order on freedom of movement and report written by Ivo Cipci, 16 August 1995); D498 (Information on ECMM in the area Vrlika written by Ivo Cipci, 16 August 1995).
[3450] D497 (Submission of order on freedom of movement and report written by Ivo Cipci, 16 August 1995).
[3451] P1284 (Stig Marker Hansen, witness statement, 22 August 1997), p. 3; P1292 (Stig Marker Hansen, personal diary), pp. 13-14; P2153 (ECMM daily report, 17 August 1995), p. 1.



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not occur in the future and asked them to guarantee ECMM and international organizations freedom of movement. On 17 August 1995 restrictions of movement came to an end.[3453] Čermak told the witness that the officer responsible would be punished and if ECMM was stopped again they could call him or the "Ministry" directly.[3454] This evidence was corroborated by **Hendriks**.[3455]

2530. On 17 August 1995, Joško Morić ordered the chiefs of the police administrations not to restrict the movement of EUMM, UNCIVPOL, or UNCRO, because, in accordance with the assessment of the chiefs of the police administrations on the general security situation in the liberated areas, there was no longer any need. According to the order, the movement of UNHCR convoys had to be be announced in advance and the police check-points at the former lines of separation had to remain in place to check vehicles leaving the former sectors.[3456]

2531. On 21 August 1995, General Červenko issued an order to the commander of the Knin garrison and others to provide information regarding the location of remaining enemy groups in view of search and mop-up operations.[3457] When interviewed by the Prosecution, Markač stated that after 21 August 1995, he would also communicate and send reports to Čermak, as Červenko had included Čermak in the list of recipients.[3458] Markač stated that Čermak should be informed because he needed to inform the international community so as not to jeopardize the representatives' security.[3459] On 25 August 1995, Čermak responded to Červenko that the Knin garrison was in constant coordination with the Split MD command, and that it would be repetitive for him to submit the same reports.[3460] When interviewed by the Prosecution, Čermak stated that on 20 or 21 August 1995, Markač met with Čermak in Knin to discuss a plan to mop up

[3452] P1284 (Stig Marker Hansen, witness statement, 22 August 1997), p. 3; P1285 (Stig Marker Hansen, witness statement, 24 April 2008), para. 27; P1292 (Stig Marker Hansen, personal diary), p. 14; P2153 (ECMM daily report, 17 August 1995), p. 1.
[3453] P1284 (Stig Marker Hansen, witness statement, 22 August 1997), p. 3; P1285 (Stig Marker Hansen, witness statement, 24 April 2008), para. 27; Stig Marker Hansen, T. 14967-14969; P1292 (Stig Marker Hansen, personal diary), p. 14; P2153 (ECMM daily report, 17 August 1995), p. 1.
[3454] Stig Marker Hansen, T. 14967-14969; P1292 (Stig Marker Hansen, personal diary), p. 14.
[3455] P931 (Eric Hendriks, witness statement, 4 April 2008), para. 26; Eric Hendriks, T. 9718-9719, 9723-9725; P937 (ECMM weekly assessment, 20 August 1995), p. 1; P957 (ECMM daily report, 17 August 1995), p. 1. See also P511 (Daily report of ECMM Team N2, 18 August 1995); D92 (UNMO Sector South daily situation report, 7 p.m., 18 August 1995), p. 4.
[3456] D499 (Order on freedom of movement signed by Joško Morić, 17 August 1995).
[3457] D561 (Order by General Červenko, 21 August 1995).
[3458] P2531 (Accused interview with Mladen Markač, 8 June 2004), pp. 31-33.
[3459] P2531 (Accused interview with Mladen Markač, 8 June 2004), p. 33.
[3460] P1219 (Response by Čermak to order by General Červenko, 25 August 1995).



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the Plavno region.[3461] Čermak stated that Marko Gojević and possibly Šačić were present.[3462] According to Čermak, Markač laid down a map and showed the area that they would mop up.[3463] Markač asked Čermak whether, when they would mop up the Dinara area, they could use two rooms in Čermak's building for the purpose of operating the communication system for the operation.[3464] Čermak's liaison officers then got the maps indicating where the operations would be carried out, and gave them to the international community.[3465]

2532. At a meeting on 29 August 1995, Čermak informed **Forand** that starting on 31 August 1995, UNCRO movement would be restricted in certain areas due to major cleaning operations to be conducted by the HV.[3466] On 30 August 1995, UN headquarters in the former Sector South received a letter from Čermak stating that on the following day a two-day operation would start to clean out enemy troops in the area north-east of Knin, which would be blocked for UN personnel.[3467] On 30 August 1995, Forand wrote a letter to Čermak protesting the possible restrictions of movement, preventing UNCRO from completing its monitoring tasks.[3468] Čermak responded in a letter dated 30 August 1995 informing Forand that it had not been his intention to restrict UNCRO freedom of movement, but the intention of Čermak and others had rather been to ensure the safety of international staff.[3469] On 31 August 1995, the operation began.[3470] On the same day, Forand reported that the restrictions on movement of UN and ECMM personnel were tightening again. He added that the newest reason given for these restrictions was the fight against Serb terrorists, but that the restrictions covered areas where there had been recent press coverage of atrocities or

[3461] P2532 (Accused interview with Ivan Čermak, 7 June 2004), pp. 77-78.
[3462] P2532 (Accused interview with Ivan Čermak, 7 June 2004), pp. 78-79.
[3463] P2532 (Accused interview with Ivan Čermak, 7 June 2004), pp. 78-80, 83.
[3464] P2532 (Accused interview with Ivan Čermak, 7 June 2004), pp. 80-81, 83-84, 119.
[3465] P2532 (Accused interview with Ivan Čermak, 7 June 2004), pp. 86-87.
[3466] Alain Forand, T. 4155; P379 (UNCRO Sector South daily situation report, 8:30 p.m., 30 August 1995), p. 2; P380 (UNCRO Sector South daily situation report, 8:30 p.m., 31 August 1995), p. 2; P408 (UNCRO Sector South report, 5:30 p.m., 29 August 1995), p. 2; P409 (Minutes of meeting between Ivan Čermak, Hussein Al-Alfi, and Alain Forand on 29 August 1995 in Knin), p. 3; D631 (HRAT daily report, 29 August 1995), p. 3.
[3467] P94 (Mikhail Ermolaev, witness statement, 14 may 2002), p. 7; Mikhail Ermolaev, T. 2345-2346; P134 (UNMO Sector South report, 11 a.m., 31 August 1995); P135 (UNMO Sector South daily situation report, 31 August 1995), p. 7.
[3468] Alain Forand, T. 4154-4155; P410 (Letter from Alain Forand to Ivan Čermak re restriction of movement, 30 August 1995).
[3469] Alain Forand, T. 4156; P411 (Letter from Ivan Čermak to Alain Forand re restriction of movement, 30 August 1995).
[3470] P134 (UNMO Sector South report, 11 a.m., 31 August 1995); P135 (UNMO Sector South daily situation report, 31 August 1995), pp. 1-2.



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which had recently burned.[3471] In a letter dated 31 August 1995, Forand wrote to Čermak that an HRAT had informed him that it had observed heavy smoke rising from the forest in an area around Otrić in Gračac municipality, where UN movement was restricted by Croatian authorities. According to the letter, the HRAT also observed five houses burning near Gračac. Forand wrote that he did not understand how Čermak's subordinates could control the movement so effectively yet could not stop the burning of houses and the displacement of people.[3472] In a radio broadcast of 1 September 1995, Alun Roberts said that the UN was concerned as special police and the military apparently carried out this operation in an area where the UN had witnessed arson being carried out for about the last week and had either found the bodies of dead elderly people or could confirm reports that elderly had been killed.[3473] In a letter of 1 September 1995, Forand complained to Čermak about restrictions of movement of UNMOs, UNCIVPOL, and UNHCR staff in various locations.[3474] The Trial Chamber has also considered evidence from Hendriks and Liborius, reviewed in chapter 4.2.12 (Cičevac and Kaštel Žegarski), regarding the use of Čermak's name to overcome movement restrictions.

2533. Robert Fisk reported on 4 September 1995 that every time they stopped their car on his tours with a HRAT between Knin and Strmica in Knin municipality, uniformed persons would arrive in Croatian police cars or civilian cars, stop and either watch them or inquire as to the purpose of their visit.[3475] The same happened during his visits to Kistanje or Đevrske in Kistanje municipality on which **Roberts** accompanied him.[3476] On 6 September 1995, VP stopped Roberts and a member of HRAT, who were coming from the direction of Donji Lapac, at the Otrić junction in Gračac municipality and accused them of coming from a "UN prohibited area". They requested the Croatian ID from the UN interpreter, and when he was unable to produce one as he was still waiting for his application for Croatian citizenship to be processed, which proved to be difficult, they threatened to arrest him when they met him the next time without documents. When then shown a copy of the agreement between Akashi and Šarinić, the VP said

[3471] Alain Forand, T. 4157-4158; P380 (UNCRO Sector South daily situation report, 8:30 p.m., 31 August 1995), pp. 1-2.
[3472] Alain Forand, T. 4158-4159; D144 (Letter from Alain Forand to Ivan Čermak, 31 August 1995).
[3473] P712 (Report and interview with Alun Roberts on UN radio, 1 September 1995).
[3474] P381 (UNCRO Sector South daily situation report, 1 September 1995, with attached letters), pp. 2-3.
[3475] P686 (The Independent, 4 September 1995), p. 1.
[3476] Alun Roberts, T. 6840; P686 (The Independent, 4 September 1995), p. 1.



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they were unaware of it and refused to honour it unless ordered to do so by their superiors.[3477]

2534. According to the minutes of a meeting on 7 September 1995, Blahna, Forand's deputy, asked why the HV was stopping UN vehicles entering and exiting the UN compound, and Čermak promised that it would cease to happen.[3478] In a letter of 8 September 1995, Blahna, signing as acting commander of UNCRO Sector South, complained to Čermak about continuing restrictions of movement imposed on UNCRO by Croatian police outside the main gate of the UN compound.[3479] In a letter of 9 September 1995, Forand complained to Čermak about an incident on 6 September 1995 in which HV soldiers restricted the movement of UNMOs.[3480] In a letter of 10 September 1995, Čermak responded to reports of restrictions of movement on UN staff and noted that they had been stopped in areas where security considerations impeded access.[3481]

2535. On 13 September 1995, Gotovina requested Čermak not to issue any authorization for movements of members of "international military and political organizations and humanitarian organizations, like the EC, UNMO and others" in the direction of the Srb-Una railway station and the Bosansko Grahovo-Glamoč-Kupreš area "since these areas remain war zones until further notice".[3482] When the Prosecution showed this request to Čermak, he stated that his office had told international organizations that they could go to Srb, in Donji Lapac municipality, and that when the organizations asked to go there they referred them to Gotovina.[3483] At 10 a.m. on 7 October 1995, UNMO Knin was stopped by VP and not allowed to proceed despite the authorization of Čermak because the area was a war zone and therefore an authorization by General Gotovina was necessary.[3484]

2536. Finally, the Trial Chamber received from several witnesses an overview over the movement restrictions in place within the Indictment area and period. **Ermolaev**

[3477] P710 (HRAT report Donji Lapac and Otrić, 6 September 1995).
[3478] D618 (Minutes of the meeting between Ivan Čermak, Forand, and others on 7 September 1995), pp. 1, 4.
[3479] P386 (UNCRO Sector South daily situation report, 8:30 p.m., 9 September 1995), pp. 2, 4.
[3480] P386 (UNCRO Sector South daily situation report, 8:30 p.m., 9 September 1995), pp. 2, 5.
[3481] P397 (Letter from Ivan Čermak to Alain Forand, 10 September 1995).
[3482] D818 (Request to Ivan Čermak by Ante Gotovina, 13 September 1995).
[3483] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), p. 119.
[3484] P167 (UNMO Sector South daily situation report, 8 p.m., 7 October 1995), p. 4.



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testified that by 10 August 1995, UNMO were patrolling the region.[3485] However, the restrictions on their freedom of movement eased only gradually, so that only by September did UNMO have enough information to be able to assess the situation on the ground.[3486] HV or police commanders sometimes restricted the freedom of movement of UNMO in a certain area.[3487] Until and including approximately the first week of October 1995, UNMO regularly reported restrictions of movement imposed on them by agents of the Croatian authorities.[3488] There were check-points manned by Croatian police, VP or soldiers in all towns and major road junctions where civilians had to present ID cards.[3489] By 10 or at least 18 August 1995, all check-points in the Knin area were manned by Croatian police.[3490] Moreover, it was very risky to access the Krajina

[3485] Mikhail Ermolaev, T. 2292, 2354; P114 (UNMO Sector South daily situation report, 8 p.m., 10 August 1995), p. 2.
[3486] Mikhail Ermolaev, T. 2292-2293, 2355.
[3487] Mikhail Ermolaev, T. 2356-2358, 2366; D148 (UNCIVPOL weekly report, 9:30 a.m., 18 September 1995), p. 2.
[3488] P112 (UNMO Sector South daily situation report, 8 p.m., 8 August 1995), pp. 1, 3-4, 6-7; P113 (UNMO Sector South update situation report, 0:20 a.m., 10 August 1995); P114 (UNMO Sector South daily situation report, 8 p.m., 10 August 1995), pp. 3-5, 7-8; P115 (UNMO Sector South update situation report, 3:10 p.m., 10 August 1995); P116 (UNMO Sector South daily situation report, 7 p.m., 11 August 1995), pp. 2-4; P117 (UNMO Sector South daily situation report, 7 p.m., 12 August 1995), pp. 3-4; P118 (UNMO Sector South daily situation report, 8 p.m., 13 August 1995), p. 1; P119 (UNMO Sector South daily situation report, 9 p.m., 14 August 1995), pp. 4, 6-7; P121 (UNMO Sector South daily situation report, 7 p.m., 16 August 1995), pp. 4-6; P123 (UNMO Sector South daily situation report, 7 p.m., 19 August 1995), pp. 5-6; P124 (UNMO Sector South daily situation report, 7 p.m., 20 August 1995), p. 5; P126 (UNMO Sector South daily situation report, 7 p.m., 24 August 1995), pp. 4-6; P127 (UNMO Sector South daily situation report, 7 p.m., 25 August 1995), p. 5; P128 (UNMO Sector South daily situation report, 8 p.m., 26 August 1995), pp. 6-7; P129 (UNMO Sector South daily situation report, 7 p.m., 27 August 1995), pp. 2-4; P130 (UNMO Sector South daily situation report, 8 p.m., 28 August 1995), p. 9; P135 (UNMO Sector South daily situation report, 31 August 1995), pp. 3-4, 7-8; P138 (UNMO Sector South daily situation report, 8 p.m., 2 September 1995), p. 6; P142 (UNMO Sector South daily situation report, 8 p.m., 5 September 1995), pp. 6-7; P143 (UNMO Sector South daily situation report, 8 p.m., 6 September 1995), p. 4; P144 (UNMO Sector South daily situation report, 8 p.m., 7 September 1995), p. 7; P145 (UNMO Sector South daily situation report, 8 p.m., 9 September 1995), p. 6; P146 (UNMO Sector South daily situation report, 8 p.m., 10 September 1995), p. 3; P147 (UNMO Sector South daily situation report, 8 p.m., 11 September 1995), pp. 3-4; P148 (UNMO Sector South daily situation report, 8 p.m., 12 September 1995), pp. 8-9; P151 (UNMO Sector South daily situation report, 8 p.m., 16 September 1995), p. 8; P152 (UNMO Sector South daily situation report, 8 p.m., 17 September 1995), p. 3; P154 (UNMO Sector South daily situation report, 8 p.m., 19 September 1995), pp. 5-6; P156 (UNMO Sector South daily situation report, 8 p.m., 23 September 1995), p. 5; P157 (UNMO Sector South daily situation report, 8 p.m., 25 September 1995), pp. 4-5; P158 (UNMO Sector South daily situation report, 8 p.m., 26 September 1995), pp. 7-8; P159 (UNMO Sector South daily situation report, 8 p.m., 29 September 1995), p. 5; P160 (UNMO Sector South daily situation report, 8:30 p.m., 30 September 1995), pp. 3, 5; P165 (UNMO Sector South daily situation report, 8 p.m., 4 October 1995), p. 4; P166 (UNMO Sector South daily situation report, 8 p.m., 5 October 1995), p. 6; P167 (UNMO Sector South daily situation report, 8 p.m., 7 October 1995), p. 4; P168 (UNMO Sector South daily situation report, 8 p.m., 9 October 1995), pp. 2-3; P169 (UNMO Sector South daily situation report, 8 p.m., 20 October 1995), pp. 3-4; P170 (UNMO Sector South daily situation report, 8 p.m., 31 October 1995), pp. 2-3.
[3489] P94 (Mikhail Ermolaev, witness statement, 14 may 2002), p. 7; P136 (UNMO Sector South daily situation report, 8 p.m., 1 September 1995), p. 1.
[3490] Mikhail Ermolaev, T. 2358-2362.



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by secondary roads if one did not have a map of the mine fields.[3491] Ermolaev testified that in September 1995 UNCIVPOL began conducting joint patrols with the Croatian police.[3492] **Roberts** testified that the freedom of movement of the UN increased over time.[3493] However, according to Roberts, the Croatian military or police often restricted the UN in their full freedom of movement and sometimes monitored them.[3494] According to Roberts, Croatian military and special police also restricted the movements of some journalists when they went to sensitive places to report. However, Roberts reported that the journalists were moving around more freely over time, especially when in the company of the UN.[3495] **Forand** testified that restrictions on UN movement remained in Sector South until the end of August, early September 1995.[3496] It seemed to Forand that the authority of Čermak was limited to Knin because outside Knin, persons of various organizations would stop and deny his staff passage, even though Čermak had provided Forand with an official paper dated 11 August 1995 that was supposed to provide unhindered passage throughout Sector South.[3497]

2537. The Trial Chamber also received some general evidence regarding international observers who tried to use the name, phone number or letter of Čermak to overcome movement restrictions on the ground. The Trial Chamber received such evidence from several ECMM witnesses. **Marker Hansen** was told by local police that his movement was restricted because of concerns for his personal safety, and that if Čermak guaranteed his freedom of movement he should carry a letter from him to that effect.[3498] The witness testified that restrictions of movement were sometimes lifted after a phone call to Čermak, including on three to five occasions after 16 August 1995.[3499] **Hendriks** testified that it happened several times that ECMM was detained at a check-point and was let through after it had called, or threatened to call, Čermak.[3500] **Liborius** testified that Čermak personally gave his phone number to Liborius, so that ECMM could call

[3491] P94 (Mikhail Ermolaev, witness statement, 14 may 2002), p. 9; Mikhail Ermolaev, T. 2345; P126 (UNMO Sector South daily situation report, 7 p.m., 24 August 1995), pp. 3-4.
[3492] Mikhail Ermolaev, T. 2394, 2503.
[3493] Alun Roberts, T. 6831.
[3494] P678 (Alun Roberts, witness statement, 7 February 2008), para. 23; Alun Roberts, T. 6882.
[3495] Alun Roberts, T. 7124.
[3496] P331 (Alain Forand, witness statement, 29 September 1997), pp. 17-18; Alain Forand, T. 4136-4137, 4317; P363 (UNCRO Sector South daily situation report, 8:30 p.m., 11 August 1995), p. 2.
[3497] P331 (Alain Forand, witness statement, 29 September 1997), pp. 15-18; Alain Forand, T. 4226-4227; P390 (Letter from Ivan Čermak to Alain Forand allowing UN freedom of movement, 11 August 1995).
[3498] P1284 (Stig Marker Hansen, witness statement, 22 August 1997), p. 3.
[3499] Stig Marker Hansen, T. 14926; P1294 (ECMM daily report, 15 September 1995), p. 1.
[3500] Eric Hendriks, T. 9712-9714, 9716.



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him if they encountered problems with freedom of movement.[3501] Liborius made use of this option frequently, which always helped resolve any problem.[3502] Sometimes, in particular towards the end of August 1995, the mere threat of calling Čermak would resolve problems with freedom of movement.[3503] The check-points were manned by both military and civilian police, but Čermak's intervention would resolve problems with both institutions.[3504] The freedom-of-movement-cards the ECMM were using were not issued by Čermak but by Zagreb authorities.[3505]

2538. Other international observers reported having less success with Čermak's letter. **Philip Berikoff**, UN Military Information Officer for UN Sector South who was based in Knin between 21 July and 5 September 1995,[3506] testified that he had a letter from Ivan Čermak to Alain Forand confirming freedom of movement for UN personnel in UN Sector South.[3507] However, he testified that it was not of much help in obtaining free movement on the ground.[3508] Berikoff ran into Major Ivan Jurić, who was sometimes dressed in military police uniform and sometimes in a grey cover-all uniform, repeatedly and in various locations.[3509] Berikoff saw how HV, VP and persons wearing grey cover-all uniforms all over Sector South promptly obeyed Jurić's orders.[3510] Berikoff testified that on numerous occasions, he was stopped at check-points where the name of Čermak would be recognized, but not his authority, and that

[3501] P802 (Søren Liborius, witness statement, 20 June 2008), para. 34; Søren Liborius, T. 8279-8280, 8633-8634, 8661.
[3502] P801 (Søren Liborius, witness statement, 12 October 2005), pp. 8, 12; P803 (Søren Liborius, witness statement, 6 September 2008), paras 31-32; Søren Liborius, T. 8280, 8633-8634, 8659, 8661, 8664-8665, 11226; P809 (ECMM Knin daily report, 18 August 1995), pp. 1-2.
[3503] P801 (Søren Liborius, witness statement, 12 October 2005), pp. 6, 12; P802 (Søren Liborius, witness statement, 20 June 2008), para. 34; P818 (ECMM Knin daily report, 1 September 1995), pp. 1-2; D741 (Diary of Liborius), pp. 21-22.
[3504] P800 (Søren Liborius, witness statement, 11 November 1997), p. 5; P802 (Søren Liborius, witness statement, 20 June 2008), para. 37; P854 (Video of villages in Sector South with commentary by Liborius, 17-20 May 1997), pp. 3-8; Søren Liborius, T. 8280-8281, 8357, 8633-8634.
[3505] Søren Liborius, T. 8663.
[3506] P739 (Philip Berikoff, witness statement, 24 August 1996), pp. 1-2; P740 (Philip Berikoff, witness statement, 21 May 1997), p. 1, paras 1-2; P741 (Philip Berikoff, witness statement, 11 December 2007), p. 1; D284 (Philip Berikoff, witness statement, 26-27 May 1997), pp. 1-2, 45; Philip Berikoff, T. 7589, 7655-7656, 7734-7735, 7759-7760, 7768, 7776, 7813, 7823; P748 (Berikoff's daily journal, 17 July – 6 September 1995), pp. 2, 16.
[3507] P739 (Philip Berikoff, witness statement, 24 August 1996), p. 2; D284 (Philip Berikoff, witness statement, 26-27 May 1997), pp. 2-3, 39; Philip Berikoff, T. 7788-7789, 7791.
[3508] P739 (Philip Berikoff, witness statement, 24 August 1996), p. 2; Philip Berikoff, T. 7791-7792.
[3509] P739 (Philip Berikoff, witness statement, 24 August 1996), p. 2; D284 (Philip Berikoff, witness statement, 26-27 May 1997), pp. 29-31; D735 (Philip Berikoff, witness statement, 30 August 2008), p. 2; Philip Berikoff, T. 7590, 7602-7603, 7613, 7791, 7807, 7827, 7835, 7838, 7860.
[3510] P739 (Philip Berikoff, witness statement, 24 August 1996), p. 2; P741 (Philip Berikoff, witness statement, 11 December 2007), para. 10; D284 (Philip Berikoff, witness statement, 26-27 May 1997), p.



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the name of Jurić seemed to be more recognized.[3511] Based on how people reacted to Jurić's name and presence, the superior vehicle he drove, his presence in many places and the fact that Jurić once told him that he would go set up an organization somewhere, Berikoff gained the impression that Jurić had more authority than his rank of Major would indicate.[3512] **Dangerfield** testified that a letter signed by Čermak granting freedom of movement throughout Sector South did not appear to be of much value, because in some cases it enabled him to pass check-points, while in others, it did not.[3513] The check-points were manned by HV soldiers, VP, and civil police.[3514] The Trial Chamber has also considered relevant evidence from Cipci, reviewed in chapter 6.4.2.

2539. The evidence indicates that the agreement between Akashi and Šarinić of 6 August 1995 (D28) was only partially implemented by the Croatian authorities and only partially observed on the ground. The Trial Chamber notes in this regard that pursuant to the plain English meaning of provision 5 of the agreement, the assessment of whether the security situation allowed for surveillance by international monitors was essentially left to the local UNCRO commanders. Despite this, the evidence provides no indication that they were allowed to exercise their competence. The evidence shows that Čermak attempted to grant more freedom of movement for UNCRO on 8 August 1995, but that this was not effective. The evidence indicates that on 9 and 10 August 1995 Čermak was waiting for a higher authority to approve full freedom of movement for UNCRO. On 11 August 1995, Čermak wrote to Forand, indicating that he granted a greater, though not complete, freedom of movement pursuant to the agreement between Akashi and Šarinić. The evidence shows that intermittent restrictions on movement continued nonetheless. The evidence also indicates that persons other than Čermak were dealing with and/or were competent for matters relating to freedom of movement, including General Tolj, Colonel Rebić, Chief of the UN and EC office of the MoD Brigadier Budimir Pleština, Police Chief Čedo Romanić, Chief of Police Administration Ivo Cipci, and Assistant Minister of the Interior Joško Morić. When Čermak was confronted on 17 August 1995 with a complaint regarding a restriction of movement for ECMM, he

29; D735 (Philip Berikoff, witness statement, 30 August 2008), p. 2; Philip Berikoff, T. 7590, 7791, 7807, 7827, 7835, 7838.
[3511] D284 (Philip Berikoff, witness statement, 26-27 May 1997), p. 29; Philip Berikoff, T. 7787, 7789, 7802, 7860.
[3512] P739 (Philip Berikoff, witness statement, 24 August 1996), p. 2; D284 (Philip Berikoff, witness statement, 26-27 May 1997), pp. 19, 29.
[3513] Roland Dangerfield, T. 7257, 7261-7262.
[3514] Roland Dangerfield, T. 7262.



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called the MUP to solve the problem, and the evidence indicates that the problem was solved. In late August 1995, following search and mop-up operations ordered by General Červenko, Čermak announced new movement restrictions to Forand due to such operations. The international observers who tried to use the name, phone number or letter of Čermak to overcome movement restrictions on the ground had diverse experiences as to how effective that proved to be. The Trial Chamber has considered Čermak's more or less contradictory statements regarding the meaning and effect of his orders regarding free movement between the 1998 and the 2001 interviews conducted by the Prosecution. The Trial Chamber considers that a reasonable interpretation of these contradictions is that between 1998 and 2001 Čermak realized that it was not in his interest to overstate the significance of his orders, without that necessarily being indicative of any kind of guilt. On the basis of these considerations and of the evidence above, the Trial Chamber finds that Čermak's influence over the freedom of movement of international observers was limited and that he exercised this limited influence in favour of greater rather than lesser freedom of movement.

2540. The Prosecution alleged a correlation between crimes on the ground and movement restrictions in a number of incidents.[3515] In the instances where the Trial Chamber did not make a positive finding on the alleged crime, it did not further consider the alleged corresponding restriction on movement. With regard to the instances where the Trial Chamber made a positive finding on the crime, the Trial Chamber has carefully considered the evidence cited by the Prosecution on the alleged restrictions of movement corresponding to a crime. The Trial Chamber finds that the evidence is insufficient to establish a clear link between the crimes perpetrated and the restrictions of movement imposed. The Trial Chamber further considers that concealment of crimes is not the only reasonable interpretation of the general evidence regarding movement restrictions, regardless of whether such restrictions were in conformity with the Akashi-Šarinić agreement. Considering also that Čermak attempted to lift movement restrictions rather than impose them, the Trial Chamber finds that it has not been proven that Čermak tried to conceal crimes through movement restrictions. The Trial Chamber will further consider the allegations in paragraphs 17 (f), 19 (c) and 19 (e) below.

[3515] Prosecution Final Brief, p. 148.



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2541. The Trial Chamber finally turns to the evidence regarding Čermak's role in the sanitation of human bodies. According to a report by Čemerin, Dr. Brkić called at 7:17 p.m. on 5 August 1995 announcing that he and his men were going first, in accordance with an agreement with Vice-President Kostović.[3516] When interviewed by the Prosecution, Čermak stated that on the day he arrived in Knin, he found Brigadier Brkić there whom he asked to set up a hygiene and sanitation team, and Brkić set it up and headed it.[3517] According to Čermak, Brkić was responsible for the collection and disposal of bodies.[3518] According to an order dated 5 August 1995, Čermak ordered that a Field Hygiene and Sanitary Measures Staff, led by Kornelije Brkić, be organized under the command of the Knin Garrison.[3519] Čermak stated that he had issued the order in Knin, but prompted by his attorney he stated that the date on the order was wrong as he was still in Zagreb on that day, and that the correct date was 6 or 7 August 1995.[3520] Čermak also stated that the order had been written by a liaison officer, signed by Čermak, and stamped with the original stamp of the Knin garrison.[3521] According to Čermak, they found bodies in the area of Knin.[3522] According to Čermak, when they found a body, they would not leave until the police arrived and did their criminal investigation.[3523] Čermak stated that Brkić, in cooperation with the criminal police, identified dead bodies and that Čermak and others provided lists of them to UNCRO and the ICRC.[3524] He further stated that the police photographed, numbered and took fingerprints of the bodies that they could not identify, and provided this data to the ICRC and UNCIVPOL, as well as other organizations that showed interest.[3525] They told the ICRC to get in touch with the police for anything else.[3526] Brkić's team handled

[3516] D603 (Report by Čemerin to the Deputy Minister, 8 August 1995), pp. 1-2, 7.
[3517] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 70-74, 76, 84; P2526 (Suspect interview with Ivan Čermak, 17 March 1998), p. 111.
[3518] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), p. 104.
[3519] P506 (Order by Ivan Čermak to organize a Field Hygiene and Sanitary Measures Staff, 5 August 1995).
[3520] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 69-71. See also D1737 (Branko Sruk, witness statement, 7 October 2009), paras 4, 9; Branko Sruk, T. 23304-23305, 23309, 23334-23336.
[3521] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 69-70, 73.
[3522] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 84-85; D38 (Večernji list interview with Ivan Čermak, 11 August 1995), p. 3.
[3523] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), p. 83.
[3524] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 15, 77, 80-84; P2526 (Suspect interview with Ivan Čermak, 17 March 1998), p. 111.
[3525] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 15, 83; P2526 (Suspect interview with Ivan Čermak, 17 March 1998), pp. 111-112.
[3526] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), p. 83.



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their burial at Knin cemetery.[3527] Čermak stated that he went once to Knin cemetery to check reports on a mass grave, and found that the bodies were buried with individual crosses.[3528] Čermak explained that graves marked with a number and 'NN' belonged to people who had not had identification documents on them.[3529] Čermak stated that he had received a report on the work Brkić had completed between 5 and 12 August 1995.[3530] According to Čermak, Brkić reported to him and to the MoD.[3531] Čermak stated that hygiene and sanitation measures were also carried out by the Civilian Defence and the Veterinary service, and that they and Brkić's team helped each other.[3532] According to Čermak, Brkić's team functioned for approximately two weeks to one month, before the police took over.[3533] During August 1995, Čermak issued further orders with regard to hygiene and sanitation measures.[3534]

2542. On 8 August 1995, Čemerin reported that the coordinator of clearance in Knin, Damir Čičko, had asked for the activities of Brkić to be restricted, and noted that until Čičko's arrival the burials organized by the Zadar-Knin police administration and by agreement with Dr Brkić were in a common grave.[3535] On 11 August 1995, at 5:10 p.m., the Knin VP Duty Service received a request from "Mosor 91" in Golubić for removal of bodies and medical services.[3536] The shift leader informed the Knin garrison, but could not get a doctor on the phone.[3537]

2543. On 12 August 1995, the Chief of the Health Administration, Brkić, wrote to the Chief of the Civil protection, Čemerin, stating that upon his arrival in Knin on 5 August 1995 he had observed partially removed enemy soldiers' cadavers in Knin, an excavator

[3527] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 15, 77, 84-85, 105.
[3528] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 78-79; P2572 (Results of inspection of human sanitation, misconduct in the areas of Benkovac and Obrovac, attached article of UNCRO claims that human bodies were buried illegally, attached lists of 252 corpses, 20 August 1995), p. 5.
[3529] P2526 (Suspect interview with Ivan Čermak, 17 March 1998), p. 112.
[3530] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 71-74; D30 (Report by Kornelije Brkić to Ivan Čermak on hygiene and sanitation measures, 12 August 1995).
[3531] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 73, 76. See also D1057 (Report from Brkić to Čermak); D1059 (Report from Brkić to Čermak, 12 August 1995); D1060 (Various documents relating to sanitation).
[3532] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 74, 154.
[3533] P2525 (Suspect interview with Ivan Čermak, 13 March 2001), pp. 104-105.
[3534] D609 (Order by Ivan Čermak with regard to locations for disposing refuse, 10 August 1995); D610 (Order by Ivan Čermak with regard to animal hygiene and sanitation measures, 10 August 1995).
[3535] D603 (Report by Čemerin to the Deputy Minister, 8 August 1995), pp. 1, 5-7.
[3536] P886 (Duty Log of the Joint VP Company in Knin from 11 August to 11 November 1995), entry of 11 August 1995.
[3537] P886 (Duty Log of the Joint VP Company in Knin from 11 August to 11 November 1995), entry of 11 August 1995.



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which had dug a large hole with several cadavers in it, as well as several more cadavers around the cemetery.[3538] Brkić wrote in his letter that, after he gave orders to Ivan Jelić, an engineer, to treat the cadavers according to the Geneva Conventions, in the morning of 7 August 1995 he found that the hole in the cemetery had been filled. He asked who had done that but received no answer. He remained in the cemetery, and his team, together with the Civil protection, reburied the corpses individually, in accordance with the rules on hygiene and sanitation measures.[3539] On 12 August 1995 the Chief of the Police Administration Zadar-Knin, Cetina, wrote to the headquarters of Operation Povratak. He reported that, pursuant to Brkić's orders, an exhumation had been conducted in the town cemetery in Knin on 11 August 1995, in order to give a proper burial to bodies that had been temporarily buried contrary to the regulations of international law.[3540] Sruk testified that he had not seen Brkić in Knin before 7 August 1995, that he came across him on several occasions, but that he never cooperated with or saw any report from him.[3541] **Normand Boucher**, UNCIVPOL's Sector South Chief from 30 April 1995 until 22 August 1995,[3542] received on one occasion permission from Čedo Romanić to enter the cemetery, after Čermak had forwarded Boucher's request to Romanić, but the military blocked his access.[3543]

2544. **Branko Sruk**, Chief of the Health Department in Operation Group Sinj from the end of 1994 and in Operation Group North from at least August 1995,[3544] testified that at least the first two days following Operation Storm Čermak did not have any authority over sanitation, and he based this on the fact that nobody mentioned him concerning this matter.[3545] Čermak apparently did not know that Sruk was subordinated to the

[3538] D1737 (Branko Sruk, witness statement, 7 October 2009), paras 8, 10, 13; Branko Sruk, T. 23314-23315, 23321, 23331-23334; P2653 (Report by Kornelije Brkić to Damir Čermerin on hygiene and sanitation measures, 12 August 1995), pp. 1-2.
[3539] P2653 (Report by Kornelije Brkić to Damir Čermerin on hygiene and sanitation measures, 12 August 1995), p. 2.
[3540] P2652 (Letter from the Chief of the Police Administration Zadar-Knin, 12 August 1995), p. 1.
[3541] D1737 (Branko Sruk, witness statement, 7 October 2009), paras 8, 10, 13; Branko Sruk, T. 23314. 23334.
[3542] P1176 (Normand Boucher, witness statement, 20 February 1996), paras 1, 13; P1177 (Normand Boucher, witness statement, 12 November 1999), paras 5, 81; P1178 (Normand Boucher, witness statement, 24 November 2008), para. 51; D1217 (Normand Boucher, witness statement, 17 December 2008), para. 27; Normand Boucher, T. 14036, 14063-14064.
[3543] Normand Boucher, T. 13990, 14052, 14075-14077; P1180 (Letter from Boucher to Čermak regarding cemetery access, 11 August 1995); P1181 (Letter from Čermak to Boucher regarding cemetery access, 13 August 1995).
[3544] D1737 (Branko Sruk, witness statement, 7 October 2009), p. 1, paras 1-2; Branko Sruk, T. 23300, 23309.
[3545] D1737 (Branko Sruk, witness statement, 7 October 2009), paras 11-16; Branko Sruk, T. 23333, 23347, 23350.



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Commander of Operation Group North and in his line of profession to the Chief of the Health Care Department in the Split MD, as Čermak purported to issue an order to Sruk and two of his team members, Radović and Soldić.[3546] Sruk testified that Čermak could not issue orders to sanitation personnel because the command line was totally different.[3547] Sruk further testified that the reports of Brkić to (among others) Čermak did not reflect the truth and were not in accordance with the chain of command, as the sanitation was carried out by the civilian protection or the mixed teams, garrison commanders were not in the same command line as unit commanders, and Brkić had no authority or subordinated employees.[3548] Sruk was told that there was a conflict between Brkić and Cicko, who was in charge of coordinating the sanitation operation from 8 or 9 August 1995 and Brkić was removed from his duty on 13 or 14 August 1995, while still in Knin.[3549] **Zdravko Židovec**, the Assistant Minister for Information, Analysis and Fire and Civilian Protection throughout 1995 and a member of the Command Staff of Operation Return,[3550] testified that the only contact between the Civilian Protection and the military was a regular meeting with Ivan Čermak and various services in Knin to discuss such topics as clearing the terrain of munitions and dealing with spoiled meat left in the area.[3551] The Trial Chamber has also considered evidence from Witness 86 regarding Brkić, reviewed in chapter 6.4.6.

2545. The evidence above indicates that Čermak was involved with sanitation in and around Knin, including the sanitation of human remains. As for the latter type of sanitation, he worked with Kornelije Brkić, a man who arrived in Knin and may have begun his burial work before Čermak met him and issued his order dated 5 August 1995. Considering the Trial Chamber's finding in chapter 3.2 on the date of arrival of Čermak in Knin, this order must have been back-dated. The evidence further indicates that the role of Kornelije Brkić was not recognized by the authorities competent in terms of sanitation. In any event, the evidence does not establish that either Brkić or Čermak used human sanitation as a means to conceal crimes. Consequently, the Trial Chamber

[3546] D1737 (Branko Sruk, witness statement, 7 October 2009), paras 2, 8-9; Branko Sruk, T. 23309, 23311, 23334-23336, 23340-23341, 23347, 23350.
[3547] Branko Sruk, T. 23347-23349.
[3548] D1737 (Branko Sruk, witness statement, 7 October 2009), paras 11-16; Branko Sruk, T. 23344, 23347, 23350, 23369-23370.
[3549] Branko Sruk, T. 23337-23339, 23344-23346.
[3550] D1570 (Zdravko Židovec, witness statement, 15 June 2007), paras 6, 8; Zdravko Židovec, T. 19921.
[3551] D1570 (Zdravko Židovec, witness statement, 15 June 2007), para. 20.



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finds that it has not been proven that Čermak tried to conceal crimes through human sanitation.

2546. In conclusion, the Trial Chamber finds that the allegations in paragraphs 17 (f), 19 (c) and 19 (e) have not been proven, with the exception of Čermak providing misleading assurances to the international community that action to stop the crimes was being and/or would be taken, and his denial and concealment of the crimes committed in Grubori on 25 August 1995.

### *6.4.8 Legal findings on Čermak's liability*

2547. The Trial Chamber will examine whether, in light of its factual findings above, Čermak should be held liable under any mode of liability charged against him in the Indictment. The Trial Chamber notes that the Prosecution dropped ordering and planning liability for Čermak.[3552] It further dropped the following underlying acts of persecution against Čermak, under the modes of liability of instigation, aiding and abetting and superior responsibility: shelling of civilians as an inhumane act; murder; unlawful attacks on civilians and civilian objects; unlawful detentions; and disappearances.[3553]

2548. The Trial Chamber first turns to JCE. The Trial Chamber recalls its finding in chapter 6.2.7 with regard to the existence of a JCE. Considering its findings made above as well as in chapters 4.5.4 and 6.2.6, the Trial Chamber must find whether Čermak's misleading assurances to the international community that action to stop the crimes was being and/or would be taken, and his denial and concealment of the crimes committed in Grubori on 25 August 1995, constitute a significant contribution to the JCE. Considering its finding on the objective of the JCE, being the permanent removal of the Serb civilian population from the Krajina by force or threat of force, the Trial Chamber finds that Čermak's misleading assurances were not of a magnitude and nature to constitute contributions to the JCE. With regard to Čermak's denial and concealment of the crimes committed in Grubori, the Trial Chamber finds, considering the finding on the JCE objective and the nature of Čermak's acts, that they did not constitute a significant contribution to the JCE. The Trial Chamber therefore does not need to

[3552] Prosecution's Final Brief, footnote 858 (p. 103).
[3553] Prosecution's Final Brief, footnote 859 (p. 103); T. 29129.



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address whether they could have constituted any kind of contribution. Considering also Čermak's absence from the Brioni meeting and lack of involvement in the preparation of Operation Storm as well as the lack of evidence that Čermak intended the departure of Krajina Serbs, the Trial Chamber finds that it has not been proven beyond a reasonable doubt that Čermak had the state of mind that the crimes forming part of the objective should be carried out. Finally, the Trial Chamber finds that it has not been proven that Čermak was a member of the JCE. The Trial Chamber therefore finds that Čermak is not liable pursuant to the mode of liability of JCE.

2549. The Trial Chamber now turns to superior responsibility. Considering the factual findings made by the Trial Chamber in chapters 6.2.6 and 6.4.3 above, the Trial Chamber finds that it has not been proven beyond a reasonable doubt that Čermak knew or had reason to know that any of his subordinates, or any others working at the Knin garrison, were about to commit a crime or had done so. Consequently, it has also not been proven that Čermak failed to take any necessary and reasonable measures to prevent or punish any criminal conduct. The Trial Chamber therefore finds that Čermak is not liable pursuant to the mode of liability of superior responsibility.

2550. The Trial Chamber now turns to commission, instigation, and aiding and abetting. Considering the factual findings made by the Trial Chamber in chapter 6.2.6 and in particular that Čermak learned about the crimes in Grubori after they had been committed, the Trial Chamber finds that it has not been proven beyond a reasonable doubt that Čermak committed or instigated the crimes in Grubori. Aiding and abetting may occur after the principal crime has been perpetrated. The Chamber has not received evidence which allows for the conclusion that Čermak's *ex post facto* conduct had a substantial effect on the perpetration of the killings. Considering also the absence of any evidence of Čermak knowing that his acts and omissions assisted in the commission of the crimes in Grubori, the Trial Chamber finds that it has not been proven beyond a reasonable doubt that Čermak aided and abetted the crimes in Grubori.[3554] Finally, the Trial Chamber finds that it has not been proven beyond a reasonable doubt that Čermak committed, instigated, or aided and abetted any other crimes charged in the Indictment.

[3554] Many domestic legal systems have adopted legislation to punish the conduct of an accessory after the fact, consisting of hindering the discovery of the offence or thwarting its investigation or prosecution. However, the Indictment cannot be construed to charge liability on such a basis. Furthermore, no such crime fall within the scope of articles 2-5 and 7 (1) of the Statute of the Tribunal, and the Tribunal is therefore not vested with jurisdiction over it.



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2551. In conclusion, the Trial Chamber will acquit Čermak of all charges against him in the Indictment.



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## 6.5 Mladen Markač's liability

### *6.5.1 Introduction*

2552. The Trial Chamber considered in particular paragraphs 17 and 20 of the Indictment in relation to Mladen Markač's alleged contribution to the JCE. It further considered that parts of these paragraphs overlapped in substance when describing the same alleged conduct. Accordingly, the Trial Chamber has restructured Markač's alleged conduct as presented below.

### *6.5.2 Markač's command of the Special Police*

2553. According to the Indictment, Mladen Markač contributed to the JCE by participating in the planning and preparation of the operational use of the Special Police and attached HV artillery units for Operation Storm and the continuing related operations and/or actions in the region, and by commanding and ordering the Special Police and attached HV artillery units throughout Operation Storm and the related operations.[3555]

2554. The Trial Chamber recalls its findings in chapter 3.3, and the evidence reviewed therein. The Trial Chamber recalls in particular its finding that during the Indictment period, Markač was Assistant Minister of Interior in charge of Special Police matters and the Operation Commander of the Collective Special Police Forces, which he commanded during Operation Storm and throughout the Indictment period. By virtue of his position, Markač also commanded the Collective Special Police Forces artillery assets, including part of the TS-5 HV artillery group which had been subordinated to the Collective Forces Staff for Operation Storm. The Trial Chamber also reviewed ample evidence confirming that Markač issued orders to the Collective Special Police Forces during Operation Storm and the related search operations carried out in its aftermath.

[3555] Indictment, para. 17 (a): establishing, organising, commanding, ordering, directing, facilitating, participating in, supporting, maintaining and/or operating the HV, military police, Special Police, intelligence, security and other forces through which the objectives of the joint criminal enterprise were pursued and implemented and by which various crimes charged in this Joinder Indictment, such as forcible transfer and deportation, plunder and destruction of property, killings and inhumane treatment were committed; Indictment, para. 20 (a): participating in the planning and preparation of the operational use of the Special Police and attached HV rocket and artillery units in Operation Storm and the continuing related operations and/or actions in the region, from at least July 1995 to early August 1995; Indictment, para. 20 (b): ordering the Special Police and attached HV rocket and artillery units in Operation Storm to carry out the operation, from at least July 1995 to approximately 9 August 1995; Indictment, para. 20 (c):



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2555. According to an analysis of the Collective Special Police Forces' participation in Operation Storm, at 5:15 a.m. on 4 August 1995, the Chief of Artillery, acting upon the orders of Markač, ordered an artillery and rocket attack on previously determined targets at the enemy defence line, as well as on targets in depth.[3556] With regard to artillery, the Trial Chamber also considered the evidence from Marko Rajčić reviewed in chapter 3.1.1.

2556. The Trial Chamber has also reviewed evidence, consisting of a number of reports issued between 21 August 1995 and 9 October 1995, confirming that Markač planned, directed and coordinated the activities of the Special Police during the search operations conducted in the aftermath of Operation Storm.[3557]

2557. According to a number of witnesses, prior to the beginning of Operation Storm Markač briefed the commanders on the importance of respecting the laws of war, on how to deal with POWs, civilians and civilian property, and placed special emphasis on the need not to open fire on UNPROFOR's bases.[3558] The instructions were to report civilians to the Collective Forces Staff, which in turn was to hand them over to the civilian police or civilian authorities.[3559] Booklets containing the Geneva Conventions were also distributed.[3560]

2558. With regard to Markač's instructions to his subordinates on the respect of the laws of war, the Trial Chamber also considered the evidence from Josip Turkalj reviewed in chapter 4.4.5 and Željko Sačić, reviewed in chapter 4.2.7.

ordering the Special Police to carry out continuing related operations and/or actions in the region from at least 10 August 1995 to 30 September 1995.

[3556] P614 (Analysis of the Special Police's participation in Operation Storm, 26 November 2001), p. 6.

[3557] See for instance D2109 (Reports from Sačić to Markač and from Markač to the Chief of Staff of the HV on the completion of tasks for 21 August 1995, both dated 21 August 1995); D2114 (Report from Markač to the Chief of Staff of the HV on activities performed on 1 September 1995); D2115 (Report from Markač to the Chief of Staff of the HV on activities performed on 2 September 1995), p. 1; D2131 (Report on planned activities for the Collective Special Police Forces on 22 September 1995, 21 September 1995); D2134 (Report from Markač to the Chief of Staff of the HV on activities performed on 22 September 1995, 23 September 1995), p. 1; D2145 (Report from Markač to the Chief of Staff of the HV on activities performed on 9 October 1995, 9 October 1995), p. 1.

[3558] D1893 (Dražen Vitez, witness statement, 12 May 2009), para. 2; Dražen Vitez, T. 25974, 26068-26069; P552 (Zdravko Janić, witness statement, 14 January 2004), para. 32; Zdravko Janić, T. 6264; D533 (ICRC illustrated booklet); D1910 (Ivan Herman, witness statement, 18 May 2009), para. 5; Ivan Herman, T. 26441; D1830 (Davorin Pavlović, witness statement, 11 May 2009), paras 10-11; Davorin Pavlović, T. 25240-25241, 25247-25249, 25252-25253, 25275-25276, 25283-25286, 25293, 25314.

[3559] D1893 (Dražen Vitez, witness statement, 12 May 2009), para. 3.

[3560] P552 (Zdravko Janić, witness statement, 14 January 2004), para. 32; Zdravko Janić, T. 6264; D533 (ICRC illustrated booklet).



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2559. In addition to the evidence above, the Trial Chamber has reviewed and made findings on evidence relevant to Markač's alleged criminal responsibility elsewhere in the Judgement. Specifically, with regard to the Special Police's role in the unlawful attack against civilians and civilian objects in Gračac, the Trial Chamber recalls the evidence and findings in chapter 4.4.5. With regard to Markač's participation in the Brioni meeting, the Trial Chamber recalls the evidence and findings in chapter 6.2.2.

2560. Based on the foregoing, the Trial Chamber finds that Markač participated in the planning and preparation of the operational use of the Collective Special Police Forces and attached HV rocket and artillery units in Operation Storm, and that he also participated in the planning and preparation of the operations carried out in its aftermath.

2561. The Trial Chamber also finds that Markač ordered and commanded the Collective Special Police Forces and the attached HV artillery units throughout Operation Storm. Considering that the Trial Chamber found in chapter 4.4.5 that these forces carried out the shelling of Gračac on 5 August 1995, the Trial Chamber finds that Markač also ordered the shelling of Gračac. Further, considering the reports on search operations reviewed in chapter 3.3, the Trial Chamber finds that Markač ordered and commanded the Special Police during the search operations carried out in the aftermath of Operation Storm and throughout the Indictment period.

### *6.5.3 Creating and supporting discriminatory policies against Serbs*

2562. According to the Indictment, Mladen Markač contributed to the JCE by creating and/or supporting Croatian policies used as bases or vehicles for various actions against persons of Serb ethnicity.[3561]

2563. As far as Markač is concerned, the Trial Chamber has received no, or insufficient, evidence supporting the allegations in paragraph 17 (b) of the Indictment. The Trial Chamber therefore finds that they have not been proven.

[3561] Indictment, para. 17 (b): initiating, promoting, planning, preparing, participating in, supporting and/or encouraging the development, formulation, dissemination and/or implementation of Croatian political, governmental and/or military policies, programs, plans, decrees, decisions, regulations, strategies or tactics which were used as bases or vehicles for various actions against or to the



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*6.5.4 Disseminating information intended to cause the departure of Serbs*

2564. According to the Indictment, Mladen Markač contributed to the JCE by supporting and/or participating in the dissemination of (false) information and propaganda to Krajina Serbs that was intended to cause them to leave the area.[3562]

2565. As far as Markač is concerned, the Trial Chamber has received no, or insufficient, evidence supporting the allegations in paragraph 17 (c) of the Indictment. The Trial Chamber therefore finds that they have not been proven.

*6.5.5 Condoning, minimizing or failing to prevent or punish crimes committed by subordinates against Serbs*

2566. According to the Indictment, Mladen Markač contributed to the JCE by encouraging or condoning the commission of crimes against Serbs, by engaging in, encouraging, facilitating and supporting efforts to conceal and minimize these crimes and failing to report them to the competent authorities, and by failing to prevent the perpetration of crimes by his subordinates or to punish their commission.[3563]

2567. When interviewed by the Prosecution, Markač stated that in picking people for operations, he and the Minister of the Interior paid particular attention to include units

disadvantage of Serbs, such as depriving them of fundamental human rights, housing, property and/or humanitarian assistance, as part of the joint criminal enterprise.

[3562] Indictment, para. 17 (c): instigating, supporting, encouraging, facilitating and/or participating in the dissemination of information, false information and propaganda to the Krajina Serbs that was intended to cause them to leave the area.

[3563] Indictment, para. 17 (d): promoting, instigating, facilitating, encouraging and/or condoning the perpetration of violent acts against Serbs and the creation of a climate of fear amongst those Serbs who had remained; Indictment, para. 17 (e) promoting, instigating, permitting, encouraging and condoning the commission of crimes against Serbs by failing to report and/or investigate crimes or alleged crimes against them, to follow up on such allegations and/or investigations, and/or to punish or discipline subordinates and others in the Croatian authorities and forces over whom they possessed effective control for crimes committed against Serbs; Indictment, para. 17 (f) engaging in, encouraging, facilitating or supporting efforts to deny, conceal and/or minimise crimes committed by the Croatian authorities and forces against Serbs, including the provision of false, incomplete or misleading information to international organisations, monitors, investigators and the public; Indictment, para. 20 (d) permitting, denying and/or minimizing the ongoing criminal activity, including participating in the reporting of false, incomplete or misleading information regarding crimes committed, while knowing that widespread destruction and plunder of property belonging to Serb civilians and the unlawful killing and inhumane treatment of Krajina Serbs were ongoing; Indictment, para. 20 (e) failing to establish and maintain law and order among, and discipline of, his subordinates, and neither preventing nor punishing crimes committed by them against the Krajina Serbs.



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that were not from the area to be searched, so as to avoid sentiments of revenge against people the forces might know and to avoid possible conflicts.[3564]

2568. The Trial Chamber has also considered evidence from Janić, reviewed in chapter 4.4.7, with regard to Markač's knowledge of the crimes committed in Donji Lapac.

2569. The Trial Chamber recalls the majority finding in chapter 4.2.7 (Gračac town) that the Special Police participated in the destruction of a substantial part of Gračac between the afternoon of 5 August 1995 and 10:30 a.m. on 6 August 1995. The Trial Chamber also recalls its finding that the Special Police participated in the plunder of Serb property in Gračac on 8 August 1995. It further recalls its finding in chapter 4.2.4 (Donji Lapac town) that the Special Police destroyed a substantial part of Donji Lapac between the late afternoon of 7 August and 8 August 1995. In this regard, it also recalls its findings in the same chapters that on 5 August 1995 Markač entered Gračac, where he stayed until the morning of 6 August 1995, and that in the early afternoon on 7 August 1995 he entered Donji Lapac with his troops. The Trial Chamber further recalls its finding in chapter 6.2.6 that, in relation to the Grubori and Ramljane incidents, Markač advanced false terrorist stories to cover up the crimes by sending false reports to Červenko, and did not pursue any investigations into the incidents.

2570. The Trial Chamber also recalls its finding in chapter 3.3 that, if Markač received information concerning crimes allegedly committed by members of the Special Police, he was duty-bound to forward the information to the criminal police for further investigation, and that he could request the suspension of a Special Police member from his duty. The Trial Chamber further recalls its finding in chapter 3.3 that Markač, during search operations, was regularly informed by his subordinates of the developments in the field.

2571. With regard to Gračac, considering that Markač was present in town at the same time that Special Police participated in the destruction of a substantial part of the town, the Trial Chamber finds that the only reasonable inference is that Markač must have known about it, and therefore finds that Markač knew that his subordinates torched or otherwise destroyed houses in Gračac between 5 and 6 August 1995.

2572. The parties have not pointed to, nor has the Trial Chamber found, any evidence indicating that Markač took any step, while in Gračac or at later stages, to stop the

[3564] P2531 (Accused interview with Mladen Markač, 8 June 2004), pp. 58-59.



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destruction or the plunder, to identify who amongst his subordinates were responsible for these crimes, or to punish or report the crimes. Exhibit P614, a detailed hour-by-hour analysis of the Special Police's participation in Operation Storm, contains no mention of any activity on 6 August 1995 aimed at identifying the perpetrators of such actions or preventing the commission of further crimes. In addition, less than two days after the Gračac events, members of the Collective Special Police Forces again burned, destroyed and looted Krajina Serb property in Donji Lapac. On this basis, and considering Markač's position and powers, the Trial Chamber finds that Markač took no steps to prevent, and failed to report and punish the crimes committed by his subordinates in Gračac on 5 and 6 August 1995.

2573. With regard to Donji Lapac, the evidence does not establish that Markač was present in town when his subordinates committed crimes. However, the Trial Chamber has considered its finding that Markač knew that his subordinates had committed crimes in Gračac on 5 and 6 August 1995, and was therefore alerted to the possibility that his subordinates could commit crimes again. Secondly, it considered the scope of the destruction of Donji Lapac, which did not affect just a limited number of buildings, but rather a substantial part of the town. Thirdly, the Trial Chamber considered the evidence of Sačić who, albeit with some hesitation, testified that someone told him on 9 August 1995 that Donji Lapac was burning.[3565] As found in chapter 3.3, Markač was the Operation Commander, and as such was kept regularly informed by his subordinates, including Sačić, of the developments on the ground. The evidence of Repinć indicates that possible problems on the ground were of particular interest to Markač, as he was duty bound to include emerging problems in his daily reports to Červenko.[3566] The Trial Chamber considers that the only reasonable inference is that Markač learnt about the destruction and plunder in Donji Lapac in the days immediately following the commission of the crimes. Consequently, the Trial Chamber finds that Markač knew that destruction and plunder were perpetrated in Donji Lapac while his troops were in town or in the outskirts of town.[3567]

[3565] See chapter 4.2.4 (Donji Lapac town).
[3566] See chapter 3.3.
[3567] The Trial Chamber has also considered Janić's report to Sačić of early October 1995 (D556), which contained information on the burning of Donji Lapac on 7 August 1995. However, because the report is dated after the Indictment period, it does not establish that Markac gained this information during the Indictment period.



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2574. Nevertheless, and notwithstanding the involvement of Special Police members in the commission of the same type of crimes in Gračac on 5 and 6 August 1995, the Trial Chamber has not found any evidence, nor did the parties point to any, showing that Markač took action or made any effort to ascertain if any of his subordinates were also responsible for the crimes committed in Donji Lapac between 7 and 8 August 1995. On the contrary, as reviewed in chapter 4.2.4 (Donji Lapac town), Sačić testified that, to his knowledge, the burning of Donji Lapac was not investigated. On this basis, the Trial Chamber finds that Markač failed to take any measure to ascertain if any of his subordinates were involved in the commission of the crimes, and to take any other step to prevent the commission of similar crimes in the future.

2575. With regard to the murders committed by members of the Special Police on 7 August 1995 in Oraovac, in Donji Lapac municipality, the Trial Chamber recalls the evidence and findings in chapter 4.1.4 (Marko Ilić and others – Schedule no. 10).

2576. With regard to Markač's role in relation to the crimes committed in Grubori and Ramljane on 25 and 26 August 1995 respectively, the Trial Chamber recalls the evidence and findings in chapter 6.2.6.

2577. The Trial Chamber has considered the evidence that Markač gave instructions prior to the beginning of Operation Storm concerning the need to respect the laws of war and to treat civilians fairly. The Trial Chamber has also considered exhibit D530, according to which on 3 October 1995 Markač ordered the investigation of a suspected arson attack on a civilian home in Podkokirna, Gračac municipality, possibly committed on 17 September 1995 by members of the Special Police. However, in light of its findings on Markač's role in relation to the crimes committed by Special Police members in Gračac, Donji Lapac, Grubori and Ramljane, a general instruction to respect the law and an isolated order to investigate a suspected arson possibly committed by Special Police members do not play a determining role in assessing Markač's alleged criminal responsibility.

### *6.5.6 Legal findings on Markač's liability*

2578. The Trial Chamber will examine whether, in light of the Trial Chamber's factual findings made above, Markač should be held liable under any mode of liability charged against him in the Indictment. The Trial Chamber notes that the Prosecution dropped the



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charges of cruel treatment and inhumane acts for Markač for all modes of liability except for commission, including JCE.[3568] The Prosecution also dropped the following underlying acts of persecution against Markač, under the modes of liability of ordering, planning, instigating, aiding and abetting and superior responsibility: inhumane acts and cruel treatment other than by shelling of civilians; imposition of restrictive and discriminatory measures, including the imposition of discriminatory laws; discriminatory expropriation of property; unlawful detentions; and disappearances.[3569]

2579. The Trial Chamber first turns to JCE. The Trial Chamber recalls its findings in Chapter 6.2.7 that a JCE existed with the objective of the permanent removal of the Serb civilian population from the Krajina by force or threat of force, which amounted to and involved persecution (deportation, forcible transfer, unlawful attacks against civilians and civilian objects, and discriminatory and restrictive measures), deportation, and forcible transfer. The Trial Chamber now turns to the question of whether the acts and conduct of Markač significantly contributed to the JCE.

2580. The Trial Chamber considered Markač's participation in the Brioni meeting (see chapter 6.2.2), in relation to planning and preparing Operation Storm. It did so in light of Markač's position as Assistant Minister of Interior in charge of Special Police matters and the Operation Commander of the Collective Special Police Forces. The Trial Chamber recalls its finding in chapter 5.8.2 (i) that the HV's shelling of Gračac on 4 and 5 August 1995 constituted an unlawful attack on civilians and civilian objects. Furthermore, the Trial Chamber considered that Markač ordered and commanded the HV artillery units attached to the Collective Special Police Forces throughout Operation Storm and that he ordered the shelling of Gračac (see chapter 6.5.2). With regard to the unlawful attack against civilians and civilian objects in Gračac, the Trial Chamber also recalls its findings in chapter 5.4.2 that it brought about the forcible displacement of persons from this town on 4 and 5 August 1995.

2581. The Trial Chamber recalls its finding above that Markač took no steps to prevent, and failed to report and punish, the crimes committed by his subordinates in Gračac on 5 and 6 August 1995. The Trial Chamber finds that, by virtue of his position and powers, either personally or through his commanders, Markač could have taken appropriate measures to address his subordinates' crimes as they were being committed.

[3568] Prosecution's Final Brief, 16 July 2010, footnote 1404 (p. 157).
[3569] Prosecution's Final Brief, 16 July 2010, footnote 1403 (p. 157); T. 29184.



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He could also have ordered an investigation which could have resulted in the suspension of Special Police members and their referral to the criminal police for further investigation. In all likelihood, such measures would have had a deterrent effect on the commission of further crimes. They could have resulted in the removal of undisciplined and criminal elements from the operation, and an investigation would have given a clear signal that crimes committed against Krajina Serbs would not go uninvestigated or unpunished. By failing to do so, Markač created a climate of impunity which encouraged the commission of further crimes against Krajina Serbs. On 7 August 1995, only one day after the incidents in Gračac, members of the Special Police en route to Donji Lapac murdered four Serb civilians in the village of Oraovac, in Donji Lapac municipality.[3570] Between 7 and 8 August 1995, members of the Special Police took part in the burning of Krajina Serb property in Donji Lapac town. Also on this latter occasion, there was no effort to identify and punish the perpetrators of the crimes. In this climate of impunity, members of the Special Police continued to commit crimes. On 25 and 26 August 1995, members of the Lučko Unit committed several murders and burned property in the villages of Grubori and Ramljane. As found in chapter 5.4.2, crimes committed against Krajina Serbs on a number of occasions brought about the deportation of the victims and those who witnessed their commission. For example, following the murders and destruction of property in Grubori, on 28 August 1995, Jovan Grubor left his home in the hamlet and stayed in a sports hall in Knin, and on 16 September 1995 he left for Belgrade.[3571]

2582. Considering the above, the Trial Chamber finds that Markač's conduct amounted to a significant contribution to the JCE. The Trial Chamber further finds that the unlawful attack against civilians and civilian objects in Gračac amounted, in and of itself, to a significant contribution to the JCE. Finally, considering the nature of his conduct and in particular the unlawful attack, the Trial Chamber finds that Markač knew that there was a widespread and systematic attack against a civilian population and that his acts were part of that attack.

2583. The Trial Chamber now turns to determining whether Markač shared the objective of the JCE, and whether with his acts and omissions Markač intended to contribute to it. Markač participated in the Brioni meeting and took active part in the

[3570] See chapter 4.1.4 (Marko Ilić and others – Schedule no. 10).
[3571] See chapter 4.5.3 (Knin municipality).



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planning of Operation Storm. Following Červenko's order of 29 July 1995 (D543), according to which the Special Police had to work in constant coordination with the Split MD, on 3 August 1995 Markač, Sačić and Turkalj met with Gotovina and Rajčić in Zadar, where pursuant to an order of the HV Main Staff, Gotovina ordered the subordination of some of the HV artillery assets to the Special Police for operational purposes.[3572] Notably, by this time Gotovina and Rajčić had already issued the orders dated 2 August 1995 (P1125 and D970, respectively) to put towns, including Gračac, under fire. The Trial Chamber found in Chapter 5.8.2. (i) that these were orders to treat whole towns, including Gračac, as targets when firing artillery projectiles during Operation Storm. Considering that the purpose of the 3 August 1995 meeting in Zadar was the coordination of artillery, the Trial Chamber considers that the only reasonable interpretation of the evidence is that Markač, at the meeting, was aware of the nature of the planned artillery operations. On this basis, the Trial Chamber finds that Markač was aware, when he ordered the artillery attack on Gračac, that it constituted an unlawful attack against civilians and civilian objects. It thus shows his intent to contribute to the JCE objective. In light of this finding, the Trial Chamber finds that Markač's omissions in relation to the crimes committed by the Special Police in both Gračac and Donji Lapac, as well as through his active role in covering up the crimes committed in Grubori and Ramljane, were also aimed at contributing to this objective. On this basis, the Trial Chamber finds that Markač had the state of mind that the crimes forming part of the objective should be carried out. Considering all of the above, the Trial Chamber accordingly finds that Markač was a member of the JCE. The Trial Chamber finds that Markač thus intended that his actions contribute to the JCE.

2584. The Trial Chamber now turns to examining Markač's alleged responsibility in relation to the crimes of murder, inhumane acts, and cruel treatment charged in paragraph 42 of the Indictment under the third form of JCE (Counts 1, 6, 7, 8, and 9). In addition, the Trial Chamber will consider Markač's alleged responsibility under the third form of JCE in relation to the crimes of plunder and destruction and unlawful detention as an underlying act of persecution. The Indictment charged these crimes under Counts 1, 4, and 5 as part of the common criminal purpose. However, the Trial Chamber recalls that it has found in Chapter 6.2.7 that the JCE amounted to and involved persecution (deportation, forcible transfer, unlawful attacks against civilians

[3572] See chapter 3.1.1.



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and civilian objects, and discriminatory and restrictive measures), deportation, and forcible transfer. The Trial Chamber has considered several factors in determining whether the crimes of murder, inhumane acts, cruel treatment, plunder, destruction, and unlawful detention (on their own or as underlying acts of persecution) were a natural and foreseeable consequence of the execution of the JCE and whether Markač was aware that these crimes were a possible consequence of the execution of the JCE.

2585. The Trial Chamber has first considered the objective of the JCE, namely the permanent removal of the Serb civilian population from the Krajina by force or threat of force, including by deportation and unlawful attacks on civilians and civilian objects. In furtherance of this objective, at the outset of Operation Storm, Markač ordered his subordinates to engage in unlawful attacks against civilians and civilian objects in Gračac. Furthermore, the JCE envisioned the large scale deportation of the Krajina Serb population of the former RSK area, with only a few Serbs remaining. Creating a situation in which few Serbs remained in the former RSK area would greatly increase the opportunity for members of Croatian military forces and Special Police to commit crimes against the property of Krajina Serbs. In this respect, the Trial Chamber has further considered the context of this deportation, namely the ethnic tensions, based in part on the past commission of violent crimes in the former RSK area.[3573] Since this context was common knowledge to those present in Croatia at the time, the Trial Chamber considers that Markač was aware of this context at the outset of Operation Storm.

2586. The Trial Chamber also recalls Markač's presence at a meeting on 2 August 1995, in which the Minister of Defence Šušak gave instructions regarding the risk of uncontrolled conduct, including torching and looting.[3574] This put Markač on further notice of the possibility of the commission of crimes during and following Operation Storm. The Trial Chamber has further considered the evidence from the Markač interviews that, in choosing people for operations, he and the Minister of the Interior paid particular attention to include units that were not from the area where the operation was to be carried out, so as to avoid sentiments of revenge against people the forces might know and to avoid possible conflicts. In the Trial Chamber's view, this evidence shows that Markač was aware of the possibility that members of the Croatian military

[3573] See chapter 5.1.2.
[3574] See the evidence of D409 reviewed in Chapter 6.2.2.



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forces and Special Police would perpetrate acts of revenge. Since Markač was familiar with the objective of the JCE, attended the 2 August 1995 meeting, and was aware of feelings of revenge amongst his troops, the Trial Chamber finds that he had the awareness that crimes such as destruction, plunder, murder, inhumane acts, cruel treatment, and unlawful detentions (on their own or as underlying acts of persecution) were possible consequences of the execution of the JCE. Markač nevertheless contributed to the JCE, thus favouring the creation of an environment conducive to the commission of crimes and reconciling himself with the possibility that the above mentioned crimes could be committed. Thus, Markač knowingly took the risk that these crimes would be committed. In addition, the Trial Chamber considers that Markač's conduct with regard to the crimes committed in Grubori shows a certain acceptance of such a consequence of the JCE. The Trial Chamber recalls its finding in chapter 6.3.6 that the crimes of destruction, plunder, murder, inhumane acts, cruel treatment, and unlawful detentions (on their own or as underlying acts of persecution) were a natural and foreseeable consequence of the JCE's implementation.

2587. On the basis of all of the above findings and considerations, the Trial Chamber finds that Markač is liable pursuant to the mode of liability of JCE. Consequently, it is not necessary for the Trial Chamber to make findings on the other modes of liability alleged in the Indictment.



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### 7. Cumulative convictions

2588. The Chamber has found Ante Gotovina and Mladen Markač responsible for persecution, deportation, murder, and inhumane acts as crimes against humanity (Article 5 of the Statute) and for plunder of public and private property, wanton destruction, murder, and cruel treatment as violations of the laws or customs of war (Article 3 of the Statute).

2589. The acts underlying the findings of persecution as a crime against humanity include the acts underlying the findings of murder, deportation, and inhumane acts as crimes against humanity. However, it is permissible to enter cumulative convictions under different statutory provisions to punish the same criminal conduct only if "each statutory provision involved has a materially distinct element not contained in the other", and an element is materially distinct "if it requires proof of a fact not required by the other statutory provision".[3575] For this purpose, the elements include the general elements and jurisdictional requirements.[3576] When this test is not met, the conviction on the more specific provision will be entered.[3577] The more specific offence subsumes the less specific one because the commission of the former necessarily entails the commission of the latter.[3578]

2590. Persecution as a crime against humanity has a materially distinct element from murder as a crime against humanity in that persecution requires proof that an act or omission discriminates in fact, and proof that the act or omission was committed with specific intent to discriminate. Conversely, murder requires proof that the accused intentionally caused the death of one or more persons which is not required by persecution.[3579] As a result, a cumulative conviction for persecution and murder is permissible. The same reasoning applies to the crimes of deportation and inhumane acts.

2591. With regard to the permissibility of cumulative convictions for crimes against humanity (Article 5) and violations of the laws or customs of war (Article 3), the two

[3575] *Čelebiči* Appeal Judgement, para. 412; *Jelisić* Appeal Judgement, para. 78; *Kupreškić et al.* Appeal Judgement, para. 387; *Kunarac et al.* Appeal Judgement, paras 168, 173; *Krstić* Appeal Judgement, para. 218; *Stakić* Appeal Judgement, para. 355; *Naletilić and Martinović* Appeal Judgement, para. 584; *Galić* Appeal Judgement, para. 163; *Dragomir Milošević* Appeal Judgement, para. 39.
[3576] *Kunarac et al.* Appeal Judgement, para. 177; *Stakić* Appeal Judgement, para. 356.
[3577] *Čelebiči* Appeal Judgement, para. 413; *Jelisić* Appeal Judgement, para. 79; *Kupreškić et al.* Appeal Judgement, para. 387; *Kunarac et al.* Appeal Judgement, para. 168; *Krstić* Appeal Judgement, *para. 218; Stakić* Appeal Judgement, para. 355; *Galić* Appeal Judgement, para. 163.
[3578] *Krstić* Appeal Judgement, para. 218; *Galić* Appeal Judgement, para. 163.
[3579] *Kordić and Čerkez* Appeal Judgement, paras 1041.



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categories of crimes require proof of distinct elements. While crimes under Article 3 require proof of a close link between the acts of the accused and the armed conflict, crimes under Article 5 require proof of a widespread and systematic attack against a civilian population.[3580] Therefore, a conviction for crimes under both Articles 3 and 5 of the Statute, with regard to the same criminal conduct, is permissible.

[3580] *Galić* Appeal Judgement, para. 165



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## 8. Sentencing

### 8.1 Law on sentencing

2592. The relevant provisions of the Tribunal's Statute and Rules are:

*Article 24 of the Statute*

*Penalties*

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*

*Penalties*

(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 cooperation 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.



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2593. The following factors have to be taken into consideration when imposing a sentence: (i) the gravity of the offences or the totality of the culpable conduct; (ii) the individual circumstances of the convicted person, including mitigating circumstances; (iii) the general practice regarding prison sentences in the courts of the former Yugoslavia; (iv) the credit to be given for the period in detention, if any, pending surrender to the Tribunal or pending trial or appeal; and (v) 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.[3581] The last factor is not applicable in this case.

### 8.2 Purpose of sentencing

2594. The case law of the Tribunal indicates that the two primary purposes of sentencing are retribution and deterrence.[3582]

2595. As a form of retribution, the sentence expresses society's condemnation of the criminal act and of the person who committed it.[3583] To fulfil the objective of retribution, the Trial Chamber must therefore impose a sentence which properly reflects the personal culpability of the wrongdoer.[3584] The Trial Chamber considers that this purpose is reflected in the obligation that the Trial Chamber has to take into account the gravity of the offences or the totality of the culpable conduct.[3585]

2596. Both special and general deterrence are important purposes of sentencing in criminal law.[3586] The rationale of special deterrence is to dissuade the wrongdoer from recidivism in the future, whereas general deterrence aims at discouraging others from committing similar crimes.[3587] In the present case, and considering the circumstances in which the crimes were committed, the Trial Chamber considers that the risk that Ante Gotovina and Mladen Markač would commit the same kinds of crime in the future is small, which considerably reduces the relevance of special deterrence.

[3581] *Blaškić* Appeal Judgement, para. 679; *Hadžihasanović and Kubura* Appeal Judgement, para. 301; *Martić* Appeal Judgement, para. 325; *Krajišnik* Appeal Judgement, para. 733; *Dragomir Milošević* Appeal Judgement, para. 296.
[3582] *Aleksovski* Appeal Judgement, para. 185; *Čelebići* Appeal Judgement, para. 806; *Stakić* Appeal Judgement, para. 402; *Krajišnik* Appeal Judgement, paras 775, 803.
[3583] *Jokić* Trial Sentencing Judgement, para. 31; *Mrđa* Sentencing Judgement, para. 14; *Milutinović et al.* Trial Judgement, volume 3, para. 1145.
[3584] *Kordić and Čerkez* Appeal Judgement, para. 1075.
[3585] See *Haradinaj et al.* Trial Judgement, para. 485.
[3586] *Kordić and Čerkez* Appeal Judgement, para. 1076.
[3587] *Kordić and Čerkez* Appeal Judgement, paras 1077-1078; *Dragan Nikolić* Appeal Sentencing Judgement, para. 45; *Krajišnik* Appeal Judgement, paras 776, 805.



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2597. As far as general deterrence is concerned, persons who believe themselves to be beyond the reach of international criminal law must be warned that they have to abide by the norms underpinned by substantive criminal law or face prosecution and, if convicted, sanctions.[3588] The Trial Chamber considers that an appropriate sentence for the Accused in this case essentially contributes to achieving a general deterrent effect.

2598. Rehabilitation is also considered to be a relevant, though less important, purpose of sentencing.[3589]

## 8.3 Sentencing factors

### *8.3.1 Gravity of the offences and the totality of the culpable conduct*

2599. The gravity of the offences is the primary consideration in imposing a sentence.[3590] The Trial Chamber finds that in this case it is appropriate to consider the gravity of the offences that the Accused has committed together with other aggravating circumstances, since a separate examination of these aspects would be an artificial exercise.[3591] By taking this approach, the Trial Chamber avoids the pitfall that a specific factor will be counted twice for sentencing purposes, which is impermissible according to the Appeals Chamber.[3592] Determining the gravity of the crime to impose an appropriate sentence requires consideration of the particular circumstances of the case, as well as the form and degree of the participation of the convicted person in the crime.[3593] Aggravating circumstances must be directly related to the charged offence.[3594] A Trial Chamber has the discretion to find that direct responsibility, under Article 7 (1)

[3588] *Kordić and Čerkez* Appeal Judgement, para. 1078.
[3589] *Čelebići* Appeal Judgement, para. 806; *Kordić and Čerkez* Appeal Judgement, para. 1079; *Stakić* Appeal Judgement, para. 402; *Hadžihasanović and Kubura* Appeal Judgement, paras 325, 328; *Krajišnik* Appeal Judgement, para. 806.
[3590] *Aleksovski* Appeal Judgement, para. 182; *Čelebići* Appeal Judgement, para. 731; *Kupreškić et al.* Appeal Judgement, para. 442; *Blaškić* Appeal Judgement, para. 683; *Momir Nikolić* Appeal Sentencing Judgement, para. 11; *Galić* Appeal Judgement, para. 442; *Mrkšić* Appeal Judgement, para. 375; *Krajišnik* Appeal Judgement, para. 774.
[3591] See *Krajišnik* Appeal Judgement, para. 787.
[3592] *Deronjić* Appeal Sentencing Judgement, paras 106-107; *Limaj* Appeal Judgement, para. 143; *Krajišnik* Appeal Judgement, para. 787; *Dragomir Milošević* Appeal Judgement, para. 309.
[3593] *Aleksovski* Appeal Judgement, para. 182; *Furundžija* Appeal Judgement, para. 249; *Čelebići* Appeal Judgement, para. 731; *Jelisić* Appeal Judgement, para. 101; *Blaškić* Appeal Judgement, para. 683; *Kordić and Čerkez* Appeal Judgement, para. 1061; *Dragan Nikolić* Appeal Sentencing Judgement, para. 18; *Babić* Appeal Sentencing Judgement, para. 39; *Galić* Appeal Judgement, para. 409.
[3594] *Stakić* Trial Judgement, para 911; *Đorđević* Trial Judgement, para. 2218.



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of the Statute, is aggravated by the abuse of a perpetrator's position of authority.[3595] In assessing the gravity of the offence the overall impact of the crimes upon the victims and their families may be considered.[3596] Only factors which have been proven beyond a reasonable doubt will be taken into consideration as aggravating circumstances.[3597]

2600. First and foremost, the Trial Chamber considers that Ante Gotovina and Mladen Markač were found responsible for their participation in a joint criminal enterprise. Its objective was the permanent removal of the Serb civilian population from the Krajina by force or threat of force, which amounted to and involved persecution (deportation, unlawful attacks against civilians and civilian objects and discriminatory and restrictive measures), deportation and forcible transfer. Gotovina and Markač were thereby found responsible for a large number of crimes that occurred in a wide geographical area and during a period of approximately two months. This is set out in detail in chapters 4, 5, 6.3, and 6.5. The crimes include persecution, deportation, plunder, wanton destruction, inhumane acts, cruel treatment, and murder. Without being able to retell each of the countless individual stories of suffering and loss inflicted by these crimes, the Trial Chamber leaves it at the exemplary mentioning of the following. It recalls the great number of dead for which criminal responsibility under this Indictment could be established. It notes that through the acts of wanton destruction some settlements were almost entirely destroyed as was the case with, for instance, Kistanje, thereby destroying what was home for so many and making it practically impossible for them to return. Thousands were forced from what was their home, condemning most of them to live the uncertain lives of refugees who have to rebuild their lives abroad, and depriving them of their property through comprehensive wanton destruction and looting.

2601. As described in chapters 6.3 and 6.5 above, both Ante Gotovina and Mladen Markač as members of the JCE intended these crimes or were aware that these crimes would occur as a natural and foreseeable consequence of implementing the JCE's purpose. Both were found to have significantly contributed to the JCE.

[3595] *Aleksovski* Appeal Judgement, para. 183; *Čelebići* Appeal Judgement, para. 745; *Kupreškić et al.* Appeal Judgement, para. 451; *Blaškić* Appeal Judgement, paras 90-91; *Naletilić and Martinović* Appeal Judgement, para. 613; *Hadžihasanović and Kubura* Appeal Judgement, para. 320; *Strugar* Appeal Judgement, para. 353; *Dragomir Milošević* Appeal Judgement, para. 302.
[3596] *Krajišnik* Appeal Judgement, para. 779; *Mrkšić* Appeal Judgement, para. 409; *Dragomir Milošević* Appeal Judgement, para. 323.
[3597] *Čelebići* Appeal Judgement, para. 763.



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2602. Consequently, the Trial Chamber considers that Ante Gotovina and Mladen Markač participated to a significant degree in the crimes, which constitutes an important factor when assessing the totality of their conduct. The fact that neither of them acted as principal perpetrator does not reduce their responsibility in any way.

2603. The Trial Chamber considers further the vulnerability of the murder victims,[3598] who to a great extent consisted of those too frail to flee the advance of the HV, including the elderly and some disabled (see chapter 4.1). The Trial Chamber considers that this circumstance renders the murders particularly cowardly and blameworthy acts, for which the Accused are held responsible as a natural and foreseeable consequence of implementing the JCE's objective. In this regard, the Trial Chamber considers in particular that Gotovina commented at the Brioni meeting that a large number of civilians were already evacuating Knin, which meant that if Croatian forces continued to exert pressure, the only civilians left would be those who had no possibility of leaving. The Trial Chamber finds that the vulnerability of the victims must therefore weigh in aggravation of the Accused's sentence.

2604. Ante Gotovina held a high-ranking position in the military command structure. As found in chapter 3, he held the rank of Colonel General in the HV and was the Commander of the Split MD from late 1992 and at all times relevant to the Indictment. Holding this position, Ante Gotovina was bestowed with a great responsibility to ensure that the troops under his command abide by international humanitarian law. However, rather than fulfilling these duties, Ante Gotovina abused his position by contributing to the JCE in several ways, as further outlined in chapter 6.3. Consequently, the Trial Chamber considers this abuse of his position of authority as an aggravating factor.

2605. As set out in chapter 3.3, Mladen Markač held during the Indictment period a high-ranking position as Assistant Minister of the Interior administering the Special Police and as Operation Commander of the Collective Special Police Forces which he commanded during Operation Storm and during the clearing and search operations which followed. Mladen Markač did not fulfil the responsibility attached to his position to uphold the standards of international humanitarian law, but he abused it by contributing to the JCE in several ways, as further detailed above in chapter 6.5. This outweighs some witnesses' evidence on efforts by Markač that aimed at ensuring that

[3598] See *Blaškić* Appeal Judgement, paras 683, 686; *Deronjić* Appeal Sentencing Judgement, para. 124; *Krajišnik* Appeal Judgement, para. 779.



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his subordinates adhered to national and international laws of war.[3599] Consequently, the Trial Chamber considers this abuse of his position as an aggravating factor.

### *8.3.2 Individual circumstances of Ante Gotovina and Mladen Markač*

2606. The acknowledgement and application of mitigating circumstances does not diminish the gravity of the crime.[3600] Such factors only need to be proven by the balance of probabilities.[3601] The only mitigating factor specifically mentioned in the Rules is the "substantial cooperation with the Prosecutor by the convicted person before or after conviction".[3602] Other mitigating factors include: voluntary surrender;[3603] good character, including no prior criminal record;[3604] comportment in detention;[3605] personal and family circumstances;[3606] and age.[3607] Voluntary surrender constitutes a mitigating factor since it presents considerable benefits to the international community and because it may encourage other accused persons to surrender in the future.[3608] Good behaviour in detention has been considered in mitigation although it does not weigh significantly in favour of mitigation.[3609]

2607. The Gotovina Defence did not raise any argument regarding mitigating factors including any personal circumstances, even after the Trial Chamber referred it to the opportunity to make submissions on sentencing during its closing arguments, should it wish to do so.[3610] Nevertheless, the Trial Chamber will examine information before it to determine whether mitigating circumstances exist. At the same time, the Trial Chamber

[3599] Markač Defence Final Brief, para. 661
[3600] *Erdemović* Sentencing Judgement, para. 46; *Bralo* Sentencing Judgement, para. 42; *Zelenović* Trial Sentencing Judgement, para. 44.
[3601] *Blaškić* Appeal Judgement, para. 697; *Krajišnik* Appeal Judgement, para. 816.
[3602] Rule 101 (B) (ii).
[3603] *Blaškić* Appeal Judgement, para. 696; *Babić* Appeal Sentencing Judgement, para. 43; *Hadžihasanović and Kubura* Appeal Judgement, para. 325; *Martić* Appeal Judgement, para. 341.
[3604] *Kupreškić et al.* Appeal Judgement, para. 459; *Blaškić* Appeal Judgement, para. 696; *Kordić and Čerkez* Appeal Judgement, para. 1090; *Babić* Appeal Sentencing Judgement, para. 43; *Hadžihasanović and Kubura* Appeal Judgement, para. 325; *Krajišnik* Appeal Judgement, para. 816.
[3605] *Blaškić* Appeal Judgement, paras 696, 728; *Kordić and Čerkez* Appeal Judgement, para. 1091; *Babić* Appeal Sentencing Judgement, para. 43; *Simić et al.* Appeal Judgement, para. 266; *Hadžihasanović and Kubura* Appeal Judgement, para. 325; *Krajišnik* Appeal Judgement, para. 816.
[3606] *Kunarac et al.* Appeal Judgement, paras 362 and 408; *Blaškić* Appeal Judgement, para. 696; *Kordić and Čerkez* Appeal Judgement, para. 1091; *Babić* Appeal Sentencing Judgement, para. 43; *Simić et al.* Appeal Judgement, para. 266; *Hadžihasanović and Kubura.* Appeal Judgement, para. 325; *Krajišnik* Appeal Judgement, para. 816.
[3607] *Blaškić* Appeal Judgement, para. 696; *Babić* Appeal Sentencing Judgement, para. 43; *Simić et al.* Appeal Judgement, para. 266; *Krajišnik* Appeal Judgement, para. 816.
[3608] *Naletilić and Martinović* Appeal Judgement, para. 600.
[3609] *Momir Nikolić* Sentencing Judgement, para. 168; *Deronjić* Sentencing Judgement, para. 273.



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recalls the duty of the Defence to raise facts that establish mitigating factors at trial stage that it wishes to be considered.[3611] The Trial Chamber notes one witness's statement that he was favourably impressed with Ante Gotovina after having met him on many occasions, that Gotovina was professional in his demeanour, and that he was well respected by his soldiers.[3612] Even taken on a balance of probabilities, this evidence is insufficient for the Trial Chamber to assess whether the Accused has good character which could be taken into consideration as a mitigating factor.

2608. On a balance of probabilities, the Trial Chamber notes that nothing has come to its attention to the contrary that Ante Gotovina behaved well, both in the courtroom and in detention.[3613] It considers this fact in mitigation of his sentence, albeit to a limited extent only.

2609. The Trial Chamber will now turn to the arguments which were raised by the Markač Defence regarding mitigating factors including any personal circumstances.[3614]

2610. Mladen Markač voluntarily surrendered to the Tribunal and was transferred to the seat of the Tribunal on 11 March 2004.[3615] The Markač Defence also submitted that Mladen Markač's medical files demonstrate that he is not in good health and that his health has been deteriorating over the years.[3616] On a balance of probabilities, the Trial Chamber considers these factors in mitigation of his sentence.[3617] With regard to Mladen Markač's behaviour in detention, the Trial Chamber considers one instance where Mladen Markač breached the conditions of provisional release in December 2007.[3618] Other than that, and on a balance of probabilities, the Trial Chamber notes that nothing has come to its attention to the contrary that he behaved well, both in the

[3610] Gotovina Defence Final Brief, para. 1094; T. 29021-29022.
[3611] *Kvočka* Appeal Judgement, para. 674; *Muhimana* Appeal Judgement, para. 231; *Karera* Appeal Judgement, para. 388; *Bikindi* Appeal Judgement, para. 165.
[3612] T. 20077-20078; D1578, para. 4.
[3613] In this respect, the Trial Chamber finds that it was understandable that Ante Gotovina did not appear in the courtroom in one instance in protest against the arrests of members of his Defence team and the search of his Defence team's premises by the Croatian authorities in December 2009 (see T. 26003-26004).
[3614] Markač Defence Final Brief, paras 284, 301-329; see also T. 29021-29022.
[3615] *Prosecutor v. Ivan Čermak and Mladen Markač*, Case no. IT-03-73-I, Scheduling Order for Initial Appearance, 11 March 2004; Mladen Markač's Motion for Provisional Release, 12 March 2004, para. 7.
[3616] D2171; Markač Defence Final Brief, paras 317-318.
[3617] See *Strugar* Appeal Judgement, para. 392.
[3618] Order for the Arrest and Transfer of the Accused Mladen Markač from Provisional Release, 28 December 2007.



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courtroom and in detention.[3619] In sum, the Trial Chamber does not find that Mladen Markač's comportment in the courtroom and in detention amounts to a mitigating circumstance. The Markač Defence has pointed to testimonies by several witnesses, as evidence of Mladen Markač's good character, *inter alia* lending assistance to "victims".[3620] Even taken on a balance of probabilities, this evidence is not sufficient for the Trial Chamber to assess whether Mladen Markač has a good character which it could consider as a mitigating factor.

### *8.3.3 General practice regarding the prison sentences in the courts of the former Yugoslavia*

2611. The Trial Chamber is required to consider "the general practice regarding prison sentences in the courts of the former Yugoslavia" in determining the appropriate penalty. This does not mean that the Trial Chamber is obliged to conform to that practice.[3621] The Tribunal may impose a sentence in excess of that which would be applicable under the relevant law in the former Yugoslavia, and the Appeals Chamber has held that this sentencing practice does not violate the principle of *nulla poena sine lege* because a defendant would have been aware that the crimes for which he or she is indicted constitute serious violations of international humanitarian law, punishable by the most severe of penalties.[3622] Moreover, the Trial Chamber may diverge from the sentencing practice of the former Yugoslavia if this practice is inadequate in light of international law.[3623]

2612. Article 24 (1) of the Statute and Rule 101 (B) (iii) of the Rules refer to actual practice in courts of the former Yugoslavia. It is however settled practice within the

[3619] In this regard, the Trial Chamber finds that it was understandable that Mladen Markač did not appear in the courtroom in one instance in protest against the arrests of members of the Gotovina Defence team and the search of the Gotovina Defence's premises by the Croatian authorities in December 2009 (see T. 26003-26004).
[3620] Markač Defence Final Brief, paras 313-316.
[3621] *Tadić* Appeal Sentencing Judgement, para. 21; *Čelebići* Appeal Judgement, paras 813, 816 and 820; *Jelisić* Appeal Judgement, para. 117; *Kupreškić et al.* Appeal Judgement, para. 418; *Kunarac et al.* Appeal Judgement, paras 347-349; *Krstić* Appeal Judgement, para. 260; *Blaškić* Appeal Judgement, paras 681-682; *Kordić and Čerkez* Appeal Judgement, para. 1085; *Dragan Nikolić* Appeal Sentencing Judgement, paras 17, 69; *Jokić* Appeal Sentencing Judgement, para. 38; *Galić* Appeal Judgement, para. 398; *Hadžihasanović and Kubura* Appeal Judgement, paras 335, 346; *Krajišnik* Appeal Judgement, paras 749, 811; *Boškoski and Tarčulovski* Appeal Judgement, para. 212.
[3622] *Tadić* Appeal Sentencing Judgement, para. 21; *Čelebići* Appeal Judgement, para. 817; *Krstić* Appeal Judgement, para. 262; *Blaškić* Appeal Judgement, para. 681; *Stakić* Appeal Judgement, para. 398; *Simić et al.* Appeal Judgement, para. 264; *Krajišnik* Appeal Judgement, para. 750.
[3623] *Kunarac et al.* Appeal Judgement, para. 377.



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Tribunal that the sources to be consulted pursuant to these provisions are not limited to case law from the former Yugoslavia, but also include statutory provisions in force in the former Yugoslavia at the time of the commission of the crimes in question.[3624] Under Croatia's Revised Version of the Basic Criminal Law of the Republic of Croatia (1993) ("Criminal Code") in force during the Indictment period, war crimes were punishable by between 5 and 20 years of imprisonment.[3625] According to the Criminal Code, cruel treatment of the wounded, sick or prisoners of war was punishable by between six months and five years of imprisonment.[3626] Further, under the Criminal Code, unlawful appropriation of items from the dead or wounded on a battlefield was punishable by between one and five years of imprisonment.[3627]

2613. The Trial Chamber has taken these factors relating to sentencing practices in the former Yugoslavia into consideration in making its determination of the sentence in this case.

#### *8.3.4 Credit for the time served in custody*

2614. According to Rule 101 (C) credit shall be given to the convicted person for the period during which the convicted person was detained pending surrender to the Tribunal or pending trial. Ante Gotovina has been detained since his arrest on 7 December 2005. Mladen Markač has been detained since his voluntary surrender and transfer to the seat of the Tribunal on 11 March 2004, although he was provisionally released on a number of occasions.

2615. Ante Gotovina and Mladen Markač are therefore entitled to credit for the time spent in detention, which as of the date of this judgement amounts to 1956 days for Ante Gotovina and 1477 days for Mladen Markač.

### 8.4 Determination of sentences

2616. The Prosecution has recommended that Ante Gotovina be sentenced to 27 years of imprisonment, and that Mladen Markač be sentenced to 23 years of imprisonment.[3628]

[3624] *Dragan Nikolić* Appeal Sentencing Judgement, para. 85.
[3625] Articles 120-122 of the Criminal Code.
[3626] Article 128 of the Criminal Code.
[3627] Article 125 of the Criminal Code.
[3628] Prosecution Final Brief, para. 705.



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2617. The Trial Chamber has considered all the circumstances referred to above and finds that the appropriate sentence with regard to Ante Gotovina is a single sentence of 24 years of imprisonment. As mentioned above, Ante Gotovina is entitled to credit for the time spent in detention, which as of the date of this judgement amounts to 1956 days.

2618. The Trial Chamber further finds that the appropriate sentence with regard to Mladen Markač is a single sentence of 18 years of imprisonment. As mentioned above, Mladen Markač is entitled to credit for the time spent in detention, which as of the date of this judgement amounts to 1477 days.



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## 9. Disposition

2619. The Trial Chamber finds Ante Gotovina **GUILTY** of the following charges in the Indictment:

Count 1: Persecution as a crime against humanity;

Count 2: Deportation as a crime against humanity;

Count 4: Plunder of public and private property as a violation of the laws or customs of war;

Count 5: Wanton destruction as a violation of the laws or customs of war;

Count 6: Murder as a crime against humanity;

Count 7: Murder as a violation of the laws or customs of war;

Count 8: Inhumane acts as a crime against humanity;

Count 9: Cruel treatment as a violation of the laws or customs of war;

The Trial Chamber finds Ante Gotovina **NOT GUILTY** on Count 3 (inhumane acts (forcible transfer) as a crime against humanity) of the Indictment.

2620. The Trial Chamber hereby sentences Ante Gotovina to a single sentence of 24 years of imprisonment. Pursuant to Rule 101 (C) of the Rules, he is entitled to credit for the time spent in detention, which as of the date of this judgement amounts to 1956 days. Pursuant to Rule 103 (C) of the Rules, Ante Gotovina shall remain in the custody of the Tribunal pending the finalization of arrangements for his transfer to the State where he shall serve his sentence.

2621. The Trial Chamber finds Ivan Čermak **NOT GUILTY** on all Counts in the Indictment. Pursuant to Rule 99 (A) of the Rules, the Trial Chamber orders that Ivan Čermak be immediately released from the United Nations Detention Unit, subject to the necessary logistical arrangements to be made by the Registrar.

2622. The Trial Chamber finds Mladen Markač **GUILTY** of the following charges in the Indictment:

Count 1: Persecution as a crime against humanity;

Count 2: Deportation as a crime against humanity;



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Count 4: Plunder of public and private property as a violation of the laws or customs of war;

Count 5: Wanton destruction as a violation of the laws or customs of war;

Count 6: Murder as a crime against humanity;

Count 7: Murder as a violation of the laws or customs of war;

Count 8: Inhumane acts as a crime against humanity;

Count 9: Cruel treatment as a violation of the laws or customs of war;

The Trial Chamber finds Mladen Markač **NOT GUILTY** on Count 3 (inhumane acts (forcible transfer) as a crime against humanity) of the Indictment.

2623. The Chamber hereby sentences Mladen Markač to a single sentence of 18 years of imprisonment. Pursuant to Rule 101 (C) of the Rules, he is entitled to credit for the time spent in detention, which as of the date of this judgement amounts to 1477 days. Pursuant to Rule 103 (C) of the Rules, Mladen Markač shall remain in the custody of the Tribunal pending the finalization 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 fifteenth day of April 2011
At The Hague,
The Netherlands

| **Judge Elizabeth Gwaunza** | **Judge Alphons Orie**<br>**Presiding** | **Judge Uldis Ķinis** |
|---|---|---|



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## 10. Partly dissenting opinion of Judge Uldis Ķinis

2624. In this Judgement, in chapter 4.1.15 Stevo Berić and others (Schedule no. 7), the majority of the Trial Chamber found that the three armed men, one of whom killed Milica Šare, Stevo Berić, Janja Berić, Đurđija Berić, Krste Šare, Miloš Ćosić, and Jandrija Šare and wounded Witness 67, were members of the Croatian military forces. Further, in chapter 4.2.7 Gračac town, the majority of the Trial Chamber found that sometime between the afternoon of 5 August and 10:30 a.m. on 6 August 1995, there was a substantial increase in the number of buildings in Gračac which were burnt or on fire. The majority further found that members of the Special Police were involved in the destruction of a substantial part of Gračac between the afternoon of 5 August 1995 and 10:30 a.m. on 6 August 1995.

2625. I respectfully disagree with the majority's finding that the three men who arrived in Uzdolje in a white civilian car, including the man who shot and killed Milica Šare, Stevo Berić, Janja Berić, Đurđija Berić, Krste Šare, Miloš Ćosić, and Jandrija Šare and wounded Witness 67, were members of the Croatian military forces. The reasons I cannot join the majority are the following. I am particularly concerned that Witness 3 and Witness 67 gave different descriptions of the three men who arrived in Uzdolje on 6 August 1995. Witness 3 testified that, while two of the three men wore camouflage uniforms, the third one was wearing a black t-shirt with a black ribbon which read: “for the fatherland – ready”, had a black handkerchief around his neck and wore camouflage pants. Witness 67 testified that all of the three men wore olive green camouflage uniform trousers, sky blue shirts and dark-blue caps with checkerboard emblems, similar to the ones used by railroad employees. In addition, while Witness 3 testified that the man in a black t-shirt had long black hair, according to Witness 67 the three men all had short hair. In my opinion, because of these discrepancies in the descriptions, it is not possible to establish the men’s appearance with sufficient certainty. What is more, both testimonies contain details which in my opinion are incompatible with a finding that the men were members of the Croatian military forces, such as the railroad employee-type caps or sky blue shirts described by Witness 67 or the long black hair of one of the men described by Witness 3. In addition, one of the three men asked Witness 3 if she knew an individual named Tomson, who he characterized as a feared person who sang Ustasha songs and as the brother of the man with long black hair. Based on this interaction, and on the doubts I have already expressed on the three men’s



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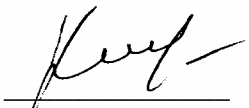
appearance, I cannot exclude that they were members of some local criminal gang. In sum, I consider that the aforementioned evidence casts reasonable doubt on the conclusion that the person who killed the persons mentioned above was a member of the Croatian military forces.

2626. I respectfully disagree with the majority's finding that members of the Special Police were involved in the destruction of a substantial part of Gračac between the afternoon of 5 August 1995 and 10:30 a.m. on 6 August 1995. There are two reasons why I cannot join the majority in this finding. The first reason is that I am not convinced that a substantial part of Gračac was destroyed during that period of time. The majority takes as a starting point the evidence on destruction in Gračac in the afternoon of 5 August 1995, all of which comes from Special Police witnesses who may have had a tendency to minimize the amount of destruction. When making findings on the shelling of Gračac, the Trial Chamber gave little weight to the evidence of Janić and Vurnek, noting the lack of information as to where and how thoroughly they looked for artillery damage in Gračac in chapter 4.4.5. I therefore have difficulties following the majority's choice to rely on their evidence when considering non-artillery destruction in Gračac. The key piece of evidence from which the majority then concludes that there was a substantial increase in the number of burned or burning buildings in Gračac between the afternoon of 5 August and 10:30 a.m. on 6 August 1995 is UNMO report P109. This report contains a brief and sweeping statement according to which five houses in Gračac had been completely destroyed, and the remainder partially destroyed. UNMO undoubtedly had a lesser tendency to minimize the amount of destruction than the Special Police witnesses. The second reason why I cannot join the majority is that it finds that Special Police were involved despite the absence of direct perpetrator evidence. In fact, the evidence indicates that other groups of people were present in Gračac on 5 or 6 August, including VP, civilian police, HV and civilians. For these reasons, I consider that there is insufficient evidence on the circumstances under which or by whom some buildings in Gračac were set on fire between 5 and 6 August 1995.

Done in English and French, the English text being authoritative.

Dated this fifteenth day of April 2011
At The Hague,
The Netherlands



**Judge Uldis Ķinis**



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## Appendices

A. Procedural history

2627. *Indictment.* On 31 May 2001, the Prosecution filed an indictment against Ante Gotovina.[3629] On 8 June 2001, the Reviewing Judge confirmed the indictment against Ante Gotovina.[3630] On 19 December 2003, the Prosecution filed an amended indictment against Ante Gotovina.[3631] On 24 February 2004, the Reviewing Judge granted the Prosecution leave to amend the original indictment by replacing it with the amended indictment, and confirmed the latter, considering that it, *inter alia*, added one municipality in which plunder allegedly occurred and specified the participants in the alleged JCE and their common purpose.[3632]

2628. On 19 February 2004, the Prosecution filed an indictment against Ivan Čermak and Mladen Markač.[3633] On 24 February 2004, the Reviewing Judge confirmed the indictment against Ivan Čermak and Mladen Markač.[3634] On 8 March 2005, Trial Chamber II ordered the Prosecution to amend the indictment in order to cure certain defects.[3635] On 19 October 2005, Trial Chamber II granted the Prosecution leave to amend the indictment; the amendments included changes beyond the changes ordered by the Trial Chamber, such as an extended temporal scope, the addition of two new counts, and the addition of two killing incidents in the schedule to the indictment.[3636] Trial Chamber II also ordered the Prosecution to make two other changes.[3637] On 9 December 2005, Trial Chamber II granted the Prosecution leave to make additional

[3629] *Prosecutor v. Ante Gotovina*, Case no. IT-01-45-I, Indictment, 31 May 2001.
[3630] *Prosecutor v. Ante Gotovina*, Case no. IT-01-45-I, Transmission of an Indictment for Confirmation, 31 May 2001; Order on Review of the Indictment pursuant to Article 19 of the Statute, 8 June 2001.
[3631] *Prosecutor v. Ante Gotovina*, Case no. IT-01-45-I, Transmission of an Amended Indictment under Seal for Confirmation, 19 December 2003; Motion for Issue of Amended Indictment under Seal of Confidentiality, 19 December 2003.
[3632] *Prosecutor v. Ante Gotovina*, Case no. IT-01-45-I, Amended Indictment, 19 February 2004; Decision on Leave to Amend Indictment and on Confirmation of Amended Indictment and Order for Non Disclosure, 24 February 2004.
[3633] *Prosecutor v. Ivan Čermak and Mladen Markač*, Case no. IT-03-73-I, Indictment, 19 February 2004.
[3634] *Prosecutor v. Ivan Čermak and Mladen Markač*, Case no. IT-03-73-I, Amendment to the Motion for Issuance of an Indictment under Seal of Confidentiality and for Orders for Surrender and the Transmission of Arrest Warrants and Orders of Surrender, 19 February 2004; Decision on Review of Indictment and Order for Non Disclosure, 24 February 2004; *Prosecutor v. Ivan Čermak and Mladen Markač*, Case no. IT-03-73-PT, Order Lifting the Seal on the Indictment, the Decision on Review of Indictment and Order for Non Disclosure, and Warrants of Arrest, 8 March 2004.
[3635] *Prosecutor v. Ivan Čermak and Mladen Markač*, Case no. IT-03-73-PT, Decision on Ivan Čermak's and Mladen Markač's Motions on Form of Indictment, 8 March 2005.
[3636] *Prosecutor v. Ivan Čermak and Mladen Markač*, Case no. IT-03-73-PT, Prosecution Motion to Amend the Indictment, 6 May 2005; Amended Indictment, 6 May 2005; Decision on Prosecution Motion Seeking Leave to Amend the Indictment, 19 October 2005.



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changes to the indictment, considering that the amendment was in accordance with the decision of 19 October 2005.[3638] On 15 December 2005, the Prosecution filed an amended indictment against Ivan Čermak and Mladen Markač.[3639]

2629. After the arrest and transfer of Ante Gotovina in December 2005, the Prosecution filed a motion on 20 February 2006 to further amend the indictments against Ante Gotovina and against Ivan Čermak and Mladen Markač, and requested that the two cases be joined.[3640] On 14 July 2006, Trial Chamber II granted the Prosecution's motion in part, including adding two counts, adding a new mode of liability to two other counts, and extending the temporal scope of the *Gotovina* indictment, and allowed the joinder of the cases.[3641] On 17 July 2006, the Registrar assigned case number IT-06-90-PT to the joined case of Ante Gotovina, Ivan Čermak, and Mladen Markač.[3642] The Prosecution filed a joinder indictment on 24 July 2006.[3643] On 25 October 2006, the Appeals Chamber dismissed the appeals of Ante Gotovina, Ivan Čermak, and Mladen Markač against the decision of Trial Chamber II to amend and join the indictments.[3644]

2630. On 13 December 2006, the Chamber invited the Prosecution to propose means of reducing the scope of the joinder indictment by at least one third by reducing the number of counts and/or crime sites or incidents comprised in one or more of the charges in the joinder indictment.[3645] On 22 January 2007, the Prosecution declined the Chamber's invitation, but indicated that if the Chamber nevertheless ordered a reduction of the Prosecution's case, then the Prosecution would comply with this order by

[3637] *Prosecutor v. Ivan Čermak and Mladen Markač,* Case no. IT-03-73-PT, Decision on Prosecution Motion Seeking Leave to Amend the Indictment, 19 October 2005, paras 15-20, 23-30, 56.
[3638] *Prosecutor v. Ivan Čermak and Mladen Markač*, Case no. IT-03-73-PT, Decision on the Prosecution's Motion for Modification of the Trial Chamber's Decision Issued on 19 October 2005, 9 December 2005.
[3639] *Prosecutor v. Ivan Čermak and Mladen Markač*, Case no. IT-03-73-PT, Prosecution's Notice of Filing Amended Indictment, 15 December 2005; Amended Indictment, 15 December 2005.
[3640] *Prosecutor v. Ante Gotovina*, Case no. IT-01-45-PT and *Prosecutor v. Ivan Čermak and Mladen Markač*, Case no. IT-03-73-PT, Prosecution's Consolidated Motion to Amend the Indictment and for Joinder, 20 February 2006; Joinder Indictment, 20 February 2006.
[3641] *Prosecutor v. Ante Gotovina*, Case no. IT-01-45-PT and *Prosecutor v. Ivan Čermak and Mladen Markač*, Case no. IT-03-73-PT, Decision on Prosecution's Consolidated Motion to Amend the Indictment and for Joinder, 14 July 2006; Decision on Prosecution's Consolidated Motion to Amend the Indictment and for Joinder, 17 July 2006.
[3642] *Prosecutor v. Ante Gotovina et al.*, Case no. IT-06-90-PT, Certificate, 17 July 2006.
[3643] *Prosecutor v. Ante Gotovina et al.*, Case no. IT-06-90-PT, Prosecution's Notice of Filing Joinder Indictment, 24 July 2006; Joinder Indictment, 24 July 2006.
[3644] *Prosecutor v. Ante Gotovina*, Case no. IT-01-45-AR73.1 and *Prosecutor v. Ivan Čermak and Mladen Markač*, Case nos IT-03-73-AR73.1, IT-03-73-AR73.2, Decision on Interlocutory Appeals against the Trial Chamber's Decision to Amend the Indictment and for Joinder, 25 October 2006.
[3645] *Prosecutor v. Ante Gotovina et al.*, Case no. IT-06-90-PT, Request to the Prosecution pursuant to Rule 73 *bis* (D) to Reduce the Scope of Its Case, 13 December 2006.



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excluding from the scope of the joinder indictment the municipalities Kijevo, Lovinac, Polača, Smilčić, Titova Korenica, and Udbina as well as crimes committed in the months of October and November 1995.[3646] At the status conference of 9 February 2007, the Chamber ordered the Prosecution to reduce the scope of the joinder indictment as proposed.[3647] This oral order was affirmed in writing on 21 February 2007.[3648] On 6 March 2007, the Prosecution filed a reduced joinder indictment.[3649]

2631. On 19 March 2007, the Chamber identified certain defects in the joinder indictment and ordered the Prosecution to submit clarifications thereon.[3650] On 28 March 2007, the Prosecution clarified the geographic scope of the alleged JCE, the relationship between paragraphs 4 and 19 of the indictment, the position of Ante Gotovina in relation to the position of Ivan Čermak, the identity of certain alleged killing victims, and provided additional details regarding mass graves.[3651] On 17 May 2007, the Prosecution sought leave to amend the pleading of JCE in light of the *Brđanin* Appeals Judgement and to provide additional specification in the pleading of the acts of persecution charged under Count 1.[3652] Further, the Prosecution filed a clarification of the indictment in which it provided additional particulars concerning key military or political figures who were members or principal perpetrators of the alleged JCE to comply with the decision of the Chamber of 19 March 2007.[3653] On 14 February 2008, the Chamber granted the Prosecution leave to amend the joinder indictment as proposed.[3654] On 12 March 2008, the Prosecution filed a corrected amended joinder indictment.[3655]

[3646] *Prosecutor v. Ante Gotovina et al.*, Case no. IT-06-90-PT, Prosecution's Response to Trial Chamber's Request pursuant to Rule 73 *bis* (D), 22 January 2007.
[3647] T. 58-59.
[3648] *Prosecutor v. Ante Gotovina et al.*, Case no. IT-06-90-PT, Order pursuant to Rule 73 *bis* (D) to Reduce the Indictment, 21 February 2007.
[3649] *Prosecutor v. Ante Gotovina et al.*, Case no. IT-06-90-PT, Submission of Reduced Indictment Pursuant to Rule 73 *bis*, 6 March 2007; Joinder Indictment, 6 March 2007.
[3650] *Prosecutor v. Ante Gotovina et al.*, Case no. IT-06-90-PT, Decision on Ante Gotovina's Preliminary Motions Alleging Defects in the Form of the Joinder Indictment, 19 March 2007.
[3651] *Prosecutor v. Ante Gotovina et al.*, Case no. IT-06-90-PT, Clarification of Indictment, 28 March 2007.
[3652] *Prosecutor v. Ante Gotovina et al.*, Case no. IT-06-90-PT, Motion to Amend the Indictment, 17 May 2007; Amended Joinder Indictment, 17 May 2007.
[3653] *Prosecutor v. Ante Gotovina et al.*, Case no. IT-06-90-PT, Clarification of Indictment, 17 May 2007.
[3654] *Prosecutor v. Ante Gotovina et al.*, Case no. IT-06-90-PT, Decision on Ante Gotovina's Motion pursuant to Rule 73 Requesting Pre-Trial Chamber to Strike Parts of Prosecution Pre-Trial Brief Constituting Effective Amendment of the Joinder Indictment, and on Prosecution's Motion to Amend the Indictment, 14 February 2008.
[3655] *Prosecutor v. Ante Gotovina et al.*, Case no. IT-06-90-PT, Prosecution's Notice of Filing of Amended Joinder Indictment, 21 February 2008, paras 2-3; Corrigendum to Prosecution's Notice of Filing of



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2632. The Prosecution informed the Chamber on 21 February 2008 that it did not intend to lead witness evidence on killings 5 and 6 in the schedule to the amended joinder indictment, and notified the Chamber of information that it had uncovered relating to the personal details of victims listed in that schedule.[3656]

2633. On 7 May 2008, the Trial Chamber denied a motion of the Gotovina Defence to dismiss Counts 6 and 7 of the amended joinder indictment.[3657]

2634. *Prosecution's further clarification of identity of victims.* On 17 July 2008, the Prosecution filed an amendment to Schedule 2 to the Indictment, containing a list of known alleged killing victims and their basic identifying information.[3658] On 24 July 2008, all three Defence teams filed a joint motion to strike the Further Clarification.[3659] On 9 October 2008, the Trial Chamber denied the motion, finding that the Further Clarification did not constitute an amendment to the Indictment nor prejudiced the Accused.[3660] In the event that the Further Clarification triggered a need for specific and substantial further investigations that went beyond the review of disclosed evidentiary materials, the Trial Chamber clarified that the Defence may address it to resolve any such issue.[3661] On 26 January 2009, the Appeals Chamber issued its decision on a joint Defence appeal against the Trial Chamber's decision, finding that the Trial Chamber committed an error of law.[3662] It granted the appeal and remanded the matter back to the Trial Chamber to assess the Prosecution's diligence in notifying the information of the additional 189 alleged killing victims, and to assess any potential prejudice caused to the Defence by the Further Clarification.[3663]

2635. On 2 March 2009, the Trial Chamber in its second decision on the motion denied the request to strike the Further Clarification as this would not have an impact on

Amended Joinder Indictment, 22 February 2008; Corrected Corrigendum to Prosecution's Notice of Filing of Amended Joinder Indictment, 12 March 2008; Amended Joinder Indictment, 12 March 2008.
[3656] *Prosecutor v. Ante Gotovina et al.*, Case no. IT-06-90-PT, Prosecution's Notice of Filing of Amended Joinder Indictment, 21 February 2008, paras 2-3; Corrigendum to Prosecution's Notice of Filing of Amended Joinder Indictment, 22 February 2008; Corrected Corrigendum to Prosecution's Notice of Filing of Amended Joinder Indictment, 12 March 2008.
[3657] Decision on the Gotovina Defence's Motion to Dismiss Counts 6 and 7 of the Indictment, 7 May 2008.
[3658] Prosecution's Further Clarification of Identity of Victims, 17 July 2008, Appendix C.
[3659] Joint Defence Motion to Strike the Prosecution's Further Clarification of Identity of Victims, 24 July 2008.
[3660] Decision on Joint Defence Motion to Strike the Prosecution's Further Clarification of Identity of Victims, 9 October 2008, paras 12-13, 15.
[3661] Ibid., para. 14.
[3662] Decision on Joint Defence Interlocutory Appeal Against Trial Chamber's Decision on Joint Defence Motion to Strike the Prosecution's Further Clarification of Identity of Victims, 26 January 2009, para. 19.



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the overall scope of the Indictment.[3664] The Trial Chamber found that the Prosecution belatedly notified the Defence that many of the 189 newly identified victims listed in the Further Clarification were indeed alleged victims of the crimes charged in the Indictment.[3665] Consequently, it granted the Defence an opportunity to address the Trial Chamber should it want to request additional time for further preparations, investigations and recalling witnesses.[3666] On 7 May 2009, the Appeals Chamber dismissed an appeal against the Trial Chamber's second decision, finding that the Trial Chamber complied with the Appeals Chamber's first decision.[3667]

2636. *Arrest, transfer, and initial appearance.* On 8 June 2001, upon confirmation of the indictment against Gotovina, Judge Fouad Riad, directed a Warrant of Arrest and an Order for Surrender towards the authorities of Croatia.[3668] The Tribunal directed warrants of arrest and orders for surrender in relation to Gotovina to the government of France, the International Stabilisation Force, the competent authorities of any member state of the UN, and Switzerland.[3669] On 24 February 2004, and in light of the amended indictment against Ante Gotovina confirmed on the same day, the Tribunal directed warrants of arrest and orders for surrender to the authorities of Croatia and the authorities of any member state of the UN.[3670] Ante Gotovina was arrested in Tenerife, Spain, on 7 December 2005 and transferred to the seat of the Tribunal on 10 December 2005.[3671]

[3663] Ibid., paras 20-21, 23.
[3664] Second Decision on Joint Defence Motion to Strike the Prosecution's Further Clarification of Identity of Victims, 2 March 2009, para.7.
[3665] Ibid., paras 6-7.
[3666] Ibid., paras 7-9.
[3667] *Prosecutor v. Gotovina et al.*, Case no. IT-06-90-AR73.4, Decision on Joint Appeal against Second Decision on Joint Defence Motion to Strike the Prosecution's Further Clarification of Identity of Victims, 27 March 2009, paras 12, 14. For further litigation in relation to this matter, *see Prosecutor v. Gotovina et al.*, Case no. IT-06-90-AR73.3, Decision on Joint Request of Ante Gotovina and Mladen Markač for a Writ of Mandamus, 27 March 2009, para. 6.
[3668] *Prosecutor v. Ante Gotovina*, Case no. IT-01-45-I, Warrant of Arrest, Order for Surrender, 8 June 2001; Order for Transmission of Warrant of Arrest and Order for Surrender, 8 June 2001.
[3669] *Prosecutor v. Ante Gotovina*, Case no. IT-01-45-I, Warrant of Arrest and Order for Surrender, 25 October 2001; Warrant of Arrest, Order for Surrender, 12 August 2002; Order on Issuance of Warrant for Arrest, 12 August 2002; Motion for Issue of Warrants of Arrest and Orders for Surrender and for Orders Regarding their Transmission with Annex A and Annex B, 10 December 2003.
[3670] *Prosecutor v. Ante Gotovina*, Case no. IT-01-45-I, Warrant of Arrest and Order for Surrender to the Authorities of the Republic of Croatia, 24 February 2004; Warrant of Arrest and Order for Surrender to the Authorities of any Member State of the Untied Nations, 24 February 2004.
[3671] *Prosecutor v. Ante Gotovina*, Case no. IT-01-45-I, Order Designating Judge for Initial Appearance, 12 December 2005; Public Transcript of Hearing, 12 December 2005, T. 3.



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2637. The initial appearance of Ante Gotovina was held before Judge Carmel Agius, on 12 December 2005.[3672] Ante Gotovina pleaded not guilty to the charges.[3673]

2638. Upon confirmation of the indictment of 19 February 2004 against Ivan Čermak and Mladen Markač on 24 February 2004, Judge Kevin Parker directed Warrants of Arrest and Orders for Surrender for Ivan Čermak and Mladen Markač towards the authorities of Croatia and the authorities of any member state of the UN.[3674] Ivan Čermak and Mladen Markač voluntarily surrendered to the Tribunal and were transferred to the seat of the Tribunal on 11 March 2004.[3675] On 12 March 2004, the initial appearance of Ivan Čermak and Mladen Markač was held before Judge Carmel Agius.[3676] Ivan Čermak and Mladen Markač pleaded not guilty to the charges.[3677]

2639. In its decision of 19 October 2005, Trial Chamber II found that the addition of Count 6 and Count 9 to the indictment against Ivan Čermak and Mladen Markač constituted "new charges" within the meaning of Rule 50(B) of the Rules of Procedure and Evidence ("Rules").[3678] The new charges were included in the joinder indictment filed on 24 July 2006.[3679] On 14 July 2006, Trial Chamber II found in its decision on the joinder that the joinder indictment included new charges against Ante Gotovina by the addition of Count 6 and Count 9 and by the amendment of Count 7 and Count 8.[3680] After the Appeals Chamber had dismissed the appeal of the Accused against the decision of Trial Chamber II of 14 July 2006 the Accused were given the opportunity to

[3672] *Prosecutor v. Ante Gotovina*, Case no. IT-01-45-I, Order Designating Judge for Initial Appearance, 12 December 2005; Scheduling Order for Initial Appearance, 12 December 2005.
[3673] *Prosecutor v. Ante Gotovina*, Case no. IT-01-45-I, Public Transcript of Hearing, 12 December 2005, T. 29-32.
[3674] *Prosecutor v. Ivan Čermak and Mladen Markač*, Case no. IT-03-73-I, Warrants of Arrest, Orders for Surrender, 24 February 2004; Order Lifting the Seal on the Indictment, the Decision on Review of Indictment and Order for Non Disclosure, and Warrants of Arrest, 8 March 2004.
[3675] *Prosecutor v. Ivan Čermak and Mladen Markač*, Case no. IT-03-73-I, Scheduling Order for Initial Appearance, 11 March 2004; Ivan Čermak's Motion for Provisional Release, 12 March 2004, para. 4; Mladen Markač's Motion for Provisional Release, 12 March 2004, para. 7.
[3676] *Prosecutor v. Ivan Čermak and Mladen Markač*, Case no. IT-03-73-I, Scheduling Order for Initial Appearance, 11 March 2004.
[3677] *Prosecutor v. Ivan Čermak and Mladen Markač*, Case no. IT-03-73-I, Public Transcript of Hearing, 12 March 2004, T. 13-19.
[3678] *Prosecutor v. Ivan Čermak and Mladen Markač*, Case no. IT-03-73-PT, Decision on Prosecution Motion seeking Leave to Amend the Indictment, 19 October 2005.
[3679] *Prosecutor v. Ante Gotovina et al.*, Case no. IT-06-90-PT, Joinder Indictment, 24 July 2006.
[3680] *Prosecutor v. Ivan Čermak and Mladen Markač*, Case no. IT-03-73-PT and *Prosecutor v. Ante Gotovina*, Case no. IT-01-45-PT, Decision on Prosecution's Consolidated Motion to Amend the Indictment and for Joinder, 14 July 2006.



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enter a plea on the new charges on 5 December 2006.[3681] Ivan Čermak and Mladen Markač entered the plea by way of video-conference link.[3682] Each Accused pleaded not guilty to the new charges.[3683]

2640. *Assignment of case to Trial Chamber I.* On 22 November 2006, the President of the Tribunal assigned the case of *Prosecutor versus Gotovina et al.*, Case No. IT-06-90-PT, to Trial Chamber I.[3684] On 24 November 2006, the Presiding Judge of Trial Chamber I, Judge Alphons Orie, ordered that the Chamber, for the purposes of pre-trial proceedings in that case, would be composed of Judge Alphons Orie, Judge Christine van den Wyngaert, and Judge Bakone Justice Moloto and designated Judge Moloto as the Pre-Trial Judge.[3685] On 11 December 2007, the Presiding Judge of Trial Chamber I, Judge Orie, designated himself as the Pre-Trial Judge.[3686]

2641. On 3 March 2008, the President of the Tribunal assigned *ad litem* Judges, Judge Uldis Ķinis and Judge Elizabeth Gwaunza, to Trial Chamber I for the case of the *Prosecutor versus Gotovina et al*.[3687] On 4 March 2008 the Presiding Judge of Trial Chamber I, Judge Alphons Orie, ordered that Trial Chamber I for the purpose of that case would be composed of Judge Alphons Orie, Judge Uldis Ķinis, and Judge Elizabeth Gwaunza.[3688]

2642. *Appointment of counsel.* Ante Gotovina authorized Mr Luka Mišetić, Mr Gregory Kehoe, and Mr Payam Akhavan to represent him before the Tribunal on 14 December 2005, 28 March 2006, and 28 August 2006, respectively, and they were admitted by the Deputy Registrar on 17 March 2006, 7 April 2006, and 4 September 2006, respectively.[3689]

[3681] *Prosecutor v. Ivan Čermak and Mladen Markač* and *Prosecutor v. Ante Gotovina,* Case nos IT-03-73-AR73.1, IT-03-73-AR73.2, IT-01-45-AR73.1, Decision on Interlocutory Appeals against the Trial Chamber's Decision to Amend the Indictment and for Joinder, 25 October 2006.
[3682] Decision on Accused Mladen Markač's and Ivan Čermak's Joint Motion to Enter a Plea by Way of Video-Link, and Scheduling Order, 29 November 2006.
[3683] Decision on Accused Mladen Markač's and Ivan Čermak's Joint Motion to Enter a Plea by Way of Video-Link, and Scheduling Order, 29 November 2006; T. 21-23.
[3684] Order Reassigning a Case to a Trial Chamber, 22 November 2006.
[3685] Order Regarding Composition of Trial Chamber and Designating a Pre-Trial Judge, 24 November 2006.
[3686] Order Designating a Pre-Trial Judge, 11 December 2007.
[3687] Order Assigning *Ad Litem* Judges to a Case Before a Trial Chamber, 3 March 2008.
[3688] Order Composing a Trial Bench, 4 March 2008.
[3689] *Prosecutor v. Ante Gotovina*, Case no. IT-01-45-PT, Decision, 17 March 2006; Decision, 7 April 2006; Power of Attorney signed by Ante Gotovina on 28 August 2006, 4 September 2006; Decision, 4 September 2006.



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2643. Upon an order of 25 June 2007, the Registrar on 9 July 2007 disclosed the reasoning behind the decision to admit Mr Gregory Kehoe.[3690] Upon an order of 25 July 2007, the Prosecution on 3 October 2007 submitted information to the Chamber about Mr Gregory Kehoe's alleged conflict of interest.[3691] On 29 November 2007, the Chamber denied a joint request of the Čermak and Markač Defence and affirmed the decision of the Deputy Registrar of 7 April 2006 to admit Mr Gregory Kehoe; the Chamber further declared all other motions in respect of that matter moot.[3692]

2644. On 25 October 2006, the Appeals Chamber noted that Mr Čedo Prodanović and Ms Jadranka Sloković could face conflicts of interests in representing Ivan Čermak, because they, at the time of the decision, also represented Rahim Ademi, the Chief of Staff of Ante Gotovina and second in command during Operation Storm, in the pending trial against Ademi in Croatia.[3693] On 5 April 2007, the majority of the Chamber ordered that Mr Čedo Prodanović and Ms Jadranka Sloković withdraw as Čermak's Defence counsel when a new Defence team is able to certify that it can take over Čermak's Defence.[3694] On 18 April 2007, Judge Alphons Orie filed a dissenting opinion stating that he, under certain conditions, would allow Mr Čedo Prodanović and Ms Jadranka Sloković to continue representing Ivan Čermak in this case.[3695] On 29 June 2007, the Appeals Chamber dismissed the appeal against the decision of 5 April 2007 in its entirety.[3696]

[3690] Order to the Registrar Regarding Gregory Kehoe's Appointment as Defence Counsel for Ante Gotovina, 25 June 2007; Registry Submission Regarding Gregory Kehoe's Appointment as Defence Counsel for Ante Gotovina, 9 July 2007; Corrigendum to Registry Submission Regarding Gregory Kehoe's Appointment as Defence Counsel for Ante Gotovina, 13 July 2007.
[3691] Order to the Prosecution Concerning the Alleged Conflict of Interest of Attorney Gregory Kehoe, 25 July 2007; Decision on Defendant Ante Gotovina's Motion for Clarification of the Trial Chamber's Order to the Prosecution Concerning the Alleged Conflict of Interest of Attorney Gregory Kehoe, and Motion to Suspend the Time Limits of Rule 73 (C), 31 July 2007; Decision on Motion for Clarification, Reconsideration or Certification to Appeal, 18 September 2007; Decision on Defendant Ante Gotovina's Request for Certification to Appeal the Trial Chamber's Order of 25 July 2007 to the Prosecution Concerning the Alleged Conflict of Interest of Attorney Gregory Kehoe, 18 September 2007.
[3692] Decision on Ivan Čermak's and Mladen Markač's Joint Motion to Resolve Conflict of Interest Regarding Attorney Gregory Kehoe, 29 November 2007.
[3693] *Prosecutor v. Ante Gotovina* and *Prosecutor v. Ivan Čermak and Mladen Markač*, Case nos IT-01-45-AR73.1, IT-03-73-AR73.1, IT-03-73-AR73.2, Decision on Interlocutory Appeals against the Trial Chamber's Decision to Amend the Indictment and for Joinder, 25 October 2006, paras 23-39.
[3694] Decision on Conflict of Interest of Attorneys Čedo Prodanović and Jadranka Sloković, 5 April 2007.
[3695] Judge Orie's Dissenting Opinion on Decision on Conflict of Interest of Attorneys Čedo Prodanović and Jadranka Sloković of 5 April 2007, 18 April 2007.
[3696] *Prosecutor v. Gotovina et al.*, Case no. IT-06-90-AR73.2, Decision on Ivan Čermak's Interlocutory Appeal against Trial Chamber's Decision on Conflict of Interest of Attorneys Čedo Prodanović and Jadranka Sloković, 29 June 2007.



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2645. On 6 September 2007, Ivan Čermak executed a power of attorney authorizing Mr Steven Kay, QC, to act on his behalf in the proceedings.[3697] On 19 September 2007, Ivan Čermak informed the Chamber and the Office of Legal Aid and Detention that he had selected Mr Steven Kay as new lead counsel and Mr Andrew Cayley as co-counsel.[3698] On 28 September 2007, the Deputy Registrar admitted Mr Steven Kay to represent Ivan Čermak and revoked former counsels' status as legal representatives.[3699]

2646. During the status conference of 26 October 2007, the Pre-Trial Judge informed the parties that in Judge Alphons Orie's opinion his cooperation and association with Mr Steven Kay as co-counsel during the trial of Duško Tadić before the Tribunal was completely unrelated to the present case and so remote in time as to cause him no concern about his ability to perform his duties in a subjectively and objectively impartial manner.[3700] The Defence indicated that they, at that time, did not see a problem in that regard, and the Prosecution did not provide any comment with regard to this matter.[3701]

2647. On 13 November 2007, the Deputy Registrar admitted Mr Andrew Cayley to represent Ivan Čermak before the Tribunal.[3702] On 10 March 2008 the Registrar admitted Ms Gillian Higgins to represent Ivan Čermak before the Tribunal.[3703] On 2 July 2010, after Ivan Čermak had formally revoked Andrew Cayley's power of attorney since the latter had taken up a new position, the Registrar decided to withdraw Andrew Cayley's admission as counsel for Ivan Čermak in the present case.[3704]

2648. Mr Goran Mikuličić represented Mladen Markač during the initial appearance of 12 March 2004.[3705] Further, Mladen Markač authorized Mr Miroslav Šeparović to represent him as his counsel.[3706]

2649. On 25 October 2006, the Appeals Chamber decided that the testimony of Mr Miroslav Šeparović, former Minister of Justice of Croatia during the relevant time

[3697] Decision, 28 September 2007, p. 2.
[3698] T. 271-272.
[3699] Decision, 28 September 2007; T. 272.
[3700] T. 272.
[3701] T. 273-274.
[3702] Decision, 13 November 2007.
[3703] Decision, 10 March 2008.
[3704] Decision by the Registrar, 2 July 2010.
[3705] *Prosecutor v. Ivan Čermak and Mladen Markač*, Case no. IT-03-73-I, Public Transcript of Hearing, 12 March 2004, T. 2-3, 23-24; Power of Attorney signed by Mladen Markač on 10 March 2004, 17 March 2004; Letter of Goran Mikuličić of 12 March 2004, 17 March 2004.



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period, could be relevant and necessary for the defence of Ivan Čermak and Mladen Markač and that Mr Miroslav Šeparović thus faced a conflict of interests in representing Mladen Markač.[3707] On 27 February 2007, the Chamber found that there was a conflict of interest with regard to the representation of Mladen Markač by attorney Mr Miroslav Šeparović and warned Mr Miroslav Šeparović that by persisting in representing Mladen Markač in spite of the repeated notices given to him by the decisions of 14 July 2006, 25 October 2006, and 12 January 2007 he would jeopardise the interests of his client and fail to meet the standard of professional ethics in the performance of his duties before the Tribunal.[3708] The Chamber afforded Mr Miroslav Šeparović the opportunity to be heard on 28 February 2007 to show cause why the Chamber should not determine that his behaviour amounted to misconduct under Rule 46 of the Rules and why it should not proceed against him thereunder.[3709] On 6 March 2007, the Chamber confirmed its decision of 27 February 2007 and refused Mr Miroslav Šeparović audience before the Chamber, determining that he no longer was eligible to represent Mladen Markač in this case before the Tribunal.[3710] On 4 May 2007, the Appeals Chamber dismissed the interlocutory appeal against that decision and the Deputy Registrar revoked Miroslav Šeparović's admission as counsel for Mladen Markač before the Tribunal in Case no. IT-06-90 on 10 May 2007.[3711]

2650. While his appointment by the Registrar was still pending, the new counsel of Mladen Markač, Mr Tomislav Kuzmanović, was granted permission to attend the status

[3706] *Prosecutor v. Ivan Čermak and Mladen Markač*, Case no. IT-03-73-PT, Power of Attorney signed by Mladen Markač on 11 March 2004, 2 April 2004.
[3707] *Prosecutor v. Ante Gotovina* and *Prosecutor v. Ivan Čermak and Mladen Markač*, Case nos IT-01-45-AR73.1, IT-03-73-AR73.1, IT-03-73-AR73.2, Decision on Interlocutory Appeals against the Trial Chamber's Decision to Amend the Indictment and for Joinder, 25 October 2006, paras 23-39; Decision on Appellant Mladen Markač's Motion for Clarification, 12 January 2007.
[3708] Decision on Conflict of Interest of Attorney Miroslav Šeparović, 27 February 2007.
[3709] Decision on Conflict of Interest of Attorney Miroslav Šeparović, 27 February 2007.
[3710] Decision on Finding of Misconduct of Attorney Miroslav Šeparović, 6 March 2007; Corrigendum to Decision on Conflict of Interest of Attorney Miroslav Šeparović and Decision on Finding of Misconduct of Attorney Miroslav Šeparović, 12 March 2007.
[3711] *Prosecutor v. Gotovina et al.*, Case no. IT-06-90-PT, Decision on Request for Certification to File Interlocutory Appeal against Trial Chamber's Decision on Conflict of Interest of Attorney Miroslav Šeparović and on Request for Certification to File Interlocutory Appeal against Trial Chamber's Decision on Finding of Misconduct of Attorney Miroslav Šeparović, 13 March 2007; *Prosecutor v. Gotovina et al.*, Case no. IT-06-90-PT, Decision Suspending Execution of the Trial Chamber's Decision of 6 March 2007, 26 March 2007; *Prosecutor v. Gotovina et al.*, Case no. IT-06-90-AR73.1, Decision on Miroslav Šeparović's Interlocutory Appeal against Trial Chamber's Decisions on Conflict of Interest and Finding of Misconduct, 4 May 2007; *Prosecutor v. Gotovina et al.*, Case no. IT-06-90-PT, Decision, 10 May 2007.



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conference of 26 October 2007.[3712] Mr Goran Mikuličić informed the Pre-Trial Judge that the Markač Defence had requested the Registry to allow Mr Miroslav Šeparović to participate in that team as an investigator, but that they had received a negative answer and that he was accordingly not to be employed as an investigator nor would he have a formal or informal role in the Markač Defence team.[3713] On 6 November 2007, the Deputy Registrar admitted Tomislav Kuzmanović to represent Mladen Markač before the Tribunal.[3714]

2651. On 18 October 2006, the Chamber denied the requests of Croatia and Ante Gotovina for Croatia to appear as *amicus curiae* in the current case.[3715] The Appeals Chamber denied the request of Croatia for review of that decision.[3716]

2652. *Detention and provisional release.* On 12 December 2005, the Presiding Judge of Trial Chamber II ordered the detention on remand of Ante Gotovina at the UN Detention Unit in The Hague.[3717] On 28 November 2007, the Chamber denied a motion of the Gotovina Defence for provisional release.[3718] On 17 January 2008, the Appeals Chamber denied both the appeal of the Gotovina Defence of 5 December 2007 and the request of Croatia to review that decision of 5 December 2007.[3719]

2653. On 12 March 2004, Trial Chamber II ordered the detention on remand of Ivan Čermak and Mladen Markač at the UN Detention Unit in The Hague.[3720] On 29 April 2004, Trial Chamber II denied motions for provisional release of Ivan Čermak and Mladen Markač.[3721] On 14 September 2004, Trial Chamber II denied the second set of

[3712] T. 216-217, 229, 280; Order Concerning New Counsel for Accused Markač and Accused Čermak, 25 July 2007.
[3713] T. 281-283.
[3714] Decision, 6 November 2007.
[3715] Decision on Requests of Republic of Croatia to Appear as *Amicus Curiae*, 18 October 2006.
[3716] *Prosecutor v. Gotovina et al.*, Case no. IT-06-90-AR108*bis*, Decision on Prosecution's Motion to Strike Request for Review under Rule 108 *bis*, 13 December 2006; Corrigendum to Decision on Prosecution's Motion to Strike Request for Review under Rule 108 *bis*, 12 January 2007.
[3717] *Prosecutor v. Ante Gotovina*, Case no. IT-01-45-I, Order for Detention on Remand, 12 December 2005.
[3718] Decision on Defendant Ante Gotovina's Motion for Provisional Release and on Defendant Ante Gotovina's Motion to Strike Appendices 11, 12, 13, 14, 15, 16, 17, 18 from the Prosecution's Response Opposing Gotovina's Motion for Provisional Release, 28 November 2007.
[3719] *Prosecutor v. Ante Gotovina et al.*, Case no. IT-06-90-AR65.1, Decision on Ante Gotovina's Appeal against Denial of Provisional Release, 17 January 2008; *Prosecutor v. Ante Gotovina et al.*, Case no. IT-06-90-AR108*bis*.2, Decision on Croatia's Request for Review of the Trial Chamber's Decision on Provisional Release, 17 January 2008.
[3720] *Prosecutor v. Ivan Čermak and Mladen Markač*, Case no. IT-03-73-I, Order for Detention on Remand, 12 March 2004.
[3721] *Prosecutor v. Ivan Čermak and Mladen Markač*, Case no. IT-03-73-I, Decision on Ivan Čermak's and Mladen Markač's Motions for Provisional Release, 29 April 2004.



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motions for provisional release of Ivan Čermak and Mladen Markač.[3722] On 2 December 2004, the Appeals Chamber granted the appeals of Ivan Čermak and Mladen Markač and ordered that Ivan Čermak and Mladen Markač be provisionally released under certain conditions, such as to remain within the confines of their residences in Croatia and not to have contact with each other or with any other accused before the Tribunal.[3723]

2654. Trial Chamber II and the Chamber modified the terms of the provisional release of Ivan Čermak several times.[3724] On 17 January 2007, the Chamber ordered the Čermak Defence to respond to the submission of the Registry on the provisional release of Ivan Čermak of 12 January 2007 indicating that according to Croatian media reports Ivan Čermak had been present at three events in Zagreb, and invited Croatia to provide additional information on the compliance, with which Ivan Čermak and Croatia complied on 23 January 2007 and 29 January 2007, respectively.[3725] As of 8 February 2007, the Chamber suspended the provisional release of Ivan Čermak in view of the status conference of 9 February 2007 and to further discuss his compliance with the conditions of the provisional release.[3726] On 15 February 2007, the Chamber decided to reinstate the provisional release of Ivan Čermak as of 16 February 2007.[3727] On 10 October 2007, the Chamber suspended the provisional release of Ivan Čermak in view

[3722] *Prosecutor v. Ivan Čermak and Mladen Markač*, Case no. IT-03-73-PT, Decision on Ivan Čermak's and Mladen Markač's Second Motions for Provisional Release, 14 September 2004.
[3723] *Prosecutor v. Ivan Čermak and Mladen Markač*, Case no. IT-03-73-AR65.1, Decision on Joint Motion for Leave to Appeal Decision on Provisional Release, 13 October 2004; Decision on Interlocutory Appeal against Trial Chamber's Decision Denying Provisional Release, 2 December 2004.
[3724] Decision on Ivan Čermak Motion for Temporary Modification of the Conditions of the Appeals Chamber Decision on Provisional Release, 23 June 2006; Decision on Ivan Čermak's Motion for Amending the Conditions of the Appeals Chamber Decision on Provisional Release, 11 July 2005; *Prosecutor v. Ante Gotovina et al.*, Case no. IT-06-90-PT, Decision on Ivan Čermak's Motion for Temporary Variation of the Clarified Conditions of Provisional Release, 26 July 2007; Decision on Ivan Čermak's Motion for Modification of the Clarified Conditions of Provisional Release, 22 January 2008; Chamber's Decision on Čermak's Motion to Amend the Terms and Conditions of his Provisional Release, 5 August 2010; Chamber's Decision on Čermak's Motion to Amend the Terms and Conditions of his Provisional Release" of 5 August 2010, 26 August 2010.
[3725] Submission of the Registrar pursuant to Rule 33 (B) on the Provisional Release of Ivan Čermak, 12 January 2007; Request to the Parties and the Government of Croatia Concerning Submission of the Registrar pursuant to Rule 33 (B) on the Provisional Release of Ivan Čermak, 17 January 2007; Ivan Čermak's Response to the Request Concerning Submission of the Registrar pursuant to Rule 33(B) on the Provisional Release of Ivan Čermak, 23 January 2007; Correspondence from Republic of Croatia pursuant to Trial Chamber Request of 17 January 2007, 29 January 2007; Submission of the Registrar pursuant to Rule 33(B) Regarding the Government of Croatia's Response of 23 January 2007, 29 January 2007.
[3726] Order Suspending Provisional Release, 26 January 2007.
[3727] Decision to Reinstate the Provisional Release of Ivan Čermak, 15 February 2007.



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of the status conference of 26 October 2007 and reinstated the provisional release as of 27 October 2007.[3728]

2655. On 6 February 2008, while scheduling the start of the trial, the Chamber terminated the provisional release of Ivan Čermak as of 5 March 2008.[3729] The Trial Chamber granted Ivan Čermak's requests for provisional release for a period between July and August 2008 and for a period between December and January 2009.[3730] The Trial Chamber denied requests by the Čermak Defence for provisional release on several occasions.[3731] On 14 July 2009, the Trial Chamber again denied a motion by the Čermak Defence for provisional release, finding that although the requirements of Rule 65 (B) of the Rules had been met, the Defence had failed to establish a sufficiently compelling humanitarian ground to tip the balance in favour of provisional release in the post-Rule 98 *bis* stage of the proceedings.[3732] On 20 July 2009, the Čermak Defence filed an interlocutory appeal and on 3 August 2009, the Appeals Chamber granted the appeal in part.[3733] The Appeals Chamber reversed the Trial Chamber's decision and granted provisional release for Ivan Čermak for a period in August 2009.[3734] The Trial Chamber granted Ivan Čermak's requests for provisional release for a period between December 2009 and January 2010, for a period between March and April 2010, for a period between July and August 2010, for a period between December 2010 and January 2011, and for a period in February 2011.[3735]

[3728] Scheduling Order and Incorporated Order Suspending Provisional Release, 10 October 2007; Order Reinstating Provisional Release, 26 October 2007.
[3729] Order Scheduling Start of Trial and Terminating Provisional Release, 6 February 2008.
[3730] Decision on Ivan Čermak's Motion for Provisional Release, 18 July 2008; Order to Lift the Confidential Status of the Decision on Ivan Čermak's Motion for Provisional Release, 1 August 2008; Decision on Ivan Čermak's Motion for Provisional Release, 2 December 2008; T. 20682.
[3731] Decision on Motion for Provisional Release of Ivan Čermak, 14 March 2008; Decision on Motion for Provisional Release of Ivan Čermak, 27 February 2009.
[3732] Order Issuing a Public Redacted Version of the Confidential "Decision on Motion for Provisional Release of Ivan Čermak" of 14 July 2009, 27 August 2009 (with public redacted version attached), Annex, paras 9-11.
[3733] *Prosecutor v. Ante Gotovina et al.*, Case no. IT-06-90-AR65.3, Ivan Čermak's Interlocutory Appeal against Decision on Motion for Provisional Release of 14 July 2009, 20 July 2009; Prosecution Response to Ivan Čermak's Interlocutory Appeal against Decision on Motion for Provisional Release of 14 July 2009, 21 July 2009; Order Issuing a Public Redacted Version of the "Decision on Ivan Čermak's Appeal against Decision on his Motion for Provisional Release" issued 3 August 2009, 4 August 2009 (with public redacted version attached), Annex, para. 18.
[3734] *Prosecutor v. Ante Gotovina et al.*, Case no. IT-06-90-AR65.3, Order Issuing a Public Redacted Version of the "Decision on Ivan Čermak's Appeal against Decision on his Motion for Provisional Release" issued 3 August 2009, 4 August 2009 (with public redacted version attached), Annex, paras 19-20.
[3735] Order Issuing a Public Redacted Version of the Confidential "Decision on Motion for Provisional Release of Ivan Čermak" of 14 December 2009, 14 January 2010 (with public redacted version attached); Order Issuing a Public Redacted Version of the Confidential "Decision on Ivan Čermak's Motion for



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2656. Trial Chamber II and the Chamber varied the terms of the provisional release of Mladen Markač several times.[3736] As of 8 February 2007, the Chamber suspended the provisional release of Mladen Markač in view of the status conference of 9 February 2007 and reinstated the provisional release as of 10 February 2007.[3737] On 10 October 2007, the Chamber suspended the provisional release of Mladen Markač in view of the status conference of 26 October 2007 and reinstated the provisional release as of 27 October 2007.[3738] On 28 December 2007, the Duty Judge terminated the provisional release of Mladen Markač because he was in breach of the conditions of his provisional release, and ordered his arrest and transfer to the Tribunal.[3739]

2657. *Preliminary motions.* Besides deciding on various preliminary motions relating to the indictment as mentioned above, on 19 March 2007 the Chamber further dismissed (parts of) the preliminary motion of the Gotovina Defence of 28 April 2006, the Preliminary Motion Challenging Jurisdiction of the Gotovina Defence of 18 January 2007, and the Preliminary Motion regarding Jurisdiction of the Čermak and Markač Defence of 18 January 2007.[3740] On 6 June 2007, the Appeals Chamber dismissed the interlocutory appeal of the Gotovina Defence against the Chamber's Decision on Several Motions Challenging Jurisdiction of 19 March 2007.[3741]

Provisional Release Pursuant to Rules 54 and 65" of 24 March 2010, 26 April 2010 (with public redacted version attached); Order Issuing a Public Redacted Version of the Confidential "Decision on Ivan Čermak's Motion for Provisional Release Pursuant to Rules 54 and 65" of 9 July 2010, 26 August 2010 (with public redacted version attached); Order Issuing a Public Redacted Version of the Confidential "Decision on Ivan Čermak's Motion for Provisional Release Pursuant to Rules 54 and 65" of 10 December 2010, 28 January 2011 (with public redacted version attached); Order Issuing a Public Redacted Version of the Confidential "Decision on Ivan Čermak's Motion for Provisional Release Pursuant to Rules 54 and 65" of 10 February 2011, 17 March 2011 (with public redacted version attached).

[3736] *Prosecutor v. Ivan Čermak and Mladen Markač*, Case no. IT-03-73-PT, Order on Mladen Markač Urgent Application for Variation of Conditions of Provisional Release, 13 July 2005; *Prosecutor v. Ante Gotovina et al.*, Case no. IT-06-90-PT, Decision on Defendant Mladen Markač's Motion for Clarification of the Conditions Attached to his Provisional Release, 12 July 2007; Order on Mladen Markač Urgent Application for Variation of Conditions of Provisional Release, 13 July 2005; Decision on Accused Mladen Markač Application for Variation of Conditions of Provisional Release, 14 July 2006.

[3737] Order Suspending Provisional Release, 26 January 2007; Order of Provisional Release for Mladen Markač, 9 February 2007.

[3738] Scheduling Order and Incorporated Order Suspending Provisional Release, 10 October 2007; Order Reinstating Provisional Release, 26 October 2007.

[3739] Order for the Arrest and Transfer of the Accused Mladen Markač from Provisional Release, 28 December 2007.

[3740] *Prosecutor v. Gotovina et al.*, Case no. IT-06-90-PT, Decision on Several Motions Challenging Jurisdiction, 19 March 2007.

[3741] *Prosecutor v. Gotovina et al.*, Case no. IT-06-90-AR72.1, Decision on Ante Gotovina's Interlocutory Appeal Against Decision on Several Motions Challenging Jurisdiction, 6 June 2007.



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2658. *Pre-trial briefs.* The Prosecution filed its pre-trial brief on 16 March 2007 and submitted a public version of the pre-trial brief on 23 March 2007.[3742] Ante Gotovina, Ivan Čermak, and Mladen Markač each filed a pre-trial brief on 5 April 2007.[3743]

2659. On 14 February 2008, the Chamber denied the request of the Gotovina Defence of 26 March 2007 in which the Gotovina Defence argued that parts of the Prosecution's pre-trial brief should be stricken, because they constituted an effective amendment of the Indictment.[3744] On 10 April 2008, the Trial Chamber denied the request of the Gotovina Defence of 21 February 2008 for a certificate to appeal that decision.[3745]

2660. *Commencement of trial.* On 17 January 2007, the Pre-Trial Judge initially scheduled the Pre-Trial Conference for 27 April 2007 and the start of the trial for 7 May 2007. After the decision of the Chamber of 6 March 2007, the Pre-Trial Judge granted the request of Mladen Markač to postpone the beginning of the trial in order to enable him to engage new counsel and to grant that counsel enough time to prepare for the trial.[3746] On 6 February 2008, the Chamber set the date for the Pre-Trial Conference for 10 March 2008 and for the start of trial for 11 March 2008.[3747] On 10 March 2008, the Pre-Trial Conference was held.[3748] On 11 March 2008, the Trial Chamber heard the opening statement of the Prosecution.[3749] On 12 March 2008, the Trial Chamber heard the opening statement of the Gotovina Defence.[3750] The Čermak and Markač Defence refrained from making an opening statement at that time.[3751] On 13 March 2008, the

[3742] *Prosecutor v. Gotovina et al.*, Case no. IT-06-90-PT, Prosecution's Pre-Trial Brief, 16 March 2007; Submission of Public Version of Prosecution Pre-Trial Brief, 23 March 2007.
[3743] *Prosecutor v. Gotovina et al.*, Case no. IT-06-90-PT, Pre-Trial Brief of General Ante Gotovina, 5 April 2007; Pre-Trial Brief of Ivan Čermak, 5 April 2007; Mladen Markač's Pre-Trial Brief Pursuant to Rule 65*ter* (F), 5 April 2007.
[3744] *Prosecutor v. Gotovina et al.*, Case no. IT-06-90-PT, Decision on Ante Gotovina's Motion pursuant to Rule 73 Requesting Pre-Trial Chamber to Strike Parts of Prosecution Pre-Trial Brief Constituting Effective Amendment of the Joinder Indictment, and on Prosecution's Motion to Amend the Indictment, 14 February 2008.
[3745] Decision on Ante Gotovina's Request for Certification to Appeal the Decision on Rule 73 Motion to Strike Parts of Pre-Trial Brief, 10 April 2008.
[3746] *Prosecutor v. Gotovina et al.*, Case no. IT-06-90-PT, Scheduling Order, 17 January 2007; Decision on Finding of Misconduct of Attorney Miroslav Šeparović, 6 March 2007; Corrigendum to Decision on Conflict of Interest of Attorney Miroslav Šeparović and Decision on Finding of Misconduct of Attorney Miroslav Šeparović, 12 March 2007; Scheduling Order, 20 March 2007; Accused Mladen Markač's Submission Re Trial Chamber's Decision from 6 March 2007, 30 March 2007; T. 209-210; Order Postponing Start of Trial, 19 April 2007.
[3747] *Prosecutor v. Gotovina et al.*, Case no. IT-06-90-PT, Order Scheduling Start of Trial and Terminating Provisional Release, 6 February 2008.
[3748] T. 402-413.
[3749] T. 409, 416-509.
[3750] T. 409, 512-614.
[3751] T. 409.



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Prosecution started the presentation of its evidence.[3752] The Prosecution requested and was granted 209.5 hours to present its case.[3753]

2661. *End of the Prosecution's case and Rule 98 bis decision.* On 6 February 2009, after having confirmed that the Defence intended to make submissions pursuant to Rule 98 *bis* of the Rules, the Chamber ordered that such submissions should be made orally and should commence on the tenth working day after the close of the Prosecution's case.[3754] On 5 March 2009, the Prosecution's case materially concluded.[3755] From 19 until 25 March 2009, the Chamber heard submissions pursuant to Rule 98 *bis* of the Rules.[3756] On 3 April 2009, the Chamber found that, under the Rule 98 *bis* standard of review, sufficient evidence had been produced to sustain all counts of the indictment for each of the accused under one mode of liability.[3757]

2662. *Recalling of Witness Marko Rajčić.* From 18 to 23 February 2009, Witness Marko Rajčić, chief of the HV artillery in the Split MD during Operation Storm, testified for the Prosecution. On 24 April 2009, the Trial Chamber granted a Prosecution request to recall Mr Rajčić in order to allow the parties to examine him on the Jagoda Target List (D1447), the TS-4 War Diary (P2533), and on any other information disclosed to the parties subsequent to the completion of Mr Rajčić's initial testimony.[3758] On 22 May 2009, the Trial Chamber instructed the Gotovina Defence to remove Mr Rajčić from its Rule 65 *ter* witness list, holding that "the appropriate way for the Gotovina Defence to elicit further evidence from this witness is not by adding him to its witness list, but rather upon cross-examination during his reappearance before the Chamber scheduled for 25 May 2009, and, if necessary, through a subsequent request to recall him".[3759] On 25 May 2009, Mr Rajčić reappeared and gave further testimony.

2663. *Defence's Rule 65 ter submissions and Rule 73 ter pre-defence conference.* On 4 May 2009, the Gotovina, Čermak, and Markač Defence filed their submissions pursuant

[3752] T. 409-410, 616-729.
[3753] T. 404.
[3754] Scheduling Order, 6 February 2009, p. 2; T. 14459, 15109-15110.
[3755] T. 17210; Closing Order and Amended Scheduling Order, 23 March 2009, p. 2.
[3756] T. 17218-17591.
[3757] T. 17621.
[3758] Decision on Prosecution Motion to Recall Marko Rajčić, 24 April 2009.
[3759] Decision on Prosecution's Urgent Motion to Strike Marko Rajčić from the Gotovina Defence Rule 65 *ter* Witness List and Urgent Motion for Disclosure, 22 May 2009, paras 5, 7.



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to Rule 65 *ter* (G) of the Rules.[3760] On 27 May 2009, a pre-defence conference was held. On that day, the Trial Chamber, after hearing the three Defence teams, issued a decision pursuant to Rule 73 *ter* (C) and (E) of the Rules, reducing the Gotovina Defence case from the requested 100 hours to 90 hours, the Čermak Defence case from the requested 49.5 hours to 45 hours, and the Markač Defence case from the requested 97.5 hours to 75 hours.[3761] In their submissions, the Čermak Defence and Markač Defence flagged that their scheduling as envisaged in their respective Rule 65 *ter* filings may be subject to change, as they anticipated the calling of additional witnesses at a later stage in the proceedings upon settling preliminary matters.[3762]

2664. *Further opening statements and Defence cases.* The Čermak Defence held its opening statement on 28 May 2009, followed by the Markač Defence's opening statement on 29 May 2009. The scheduling of the opening statements was an issue of litigation.[3763] The Trial Chamber had ordered this scheduling so that it would have an overview of all three defence cases immediately after the pre-defence conference, so as to better monitor possible overlaps between the cases.[3764] The Gotovina Defence case started on 2 June 2009, the Čermak Defence case on 22 September 2009, followed by the Markač Defence case, which started on 16 November 2009, and concluded on 27 January 2010, with only certain bar table submissions remaining outstanding.[3765]

2665. *Chamber witnesses.* On 14 December 2009, the Trial Chamber informed the parties that it was considering calling Chamber witnesses pursuant to Rule 98 of the Rules.[3766] On 20 January 2010, the Trial Chamber announced its decision to call seven Chamber witnesses.[3767] On 27 January 2010, the Trial Chamber informed the parties of its inclination to focus its examinations-in-chief of the Chamber witnesses on very specific matters, and that they should focus their cross-examinations accordingly.[3768] On 12 February 2010, the Trial Chamber informed the parties through an informal communication that, aside from credibility matters, cross-examinations would be

[3760] Defendant Ante Gotovina's Submission Pursuant to Rule 65 *ter* (G), 4 May 2009; Ivan Čermak's Submission Pursuant to Rule 65 *ter* (G), 4 May 2009; Defendant Mladen Markač's Submission Pursuant to Rule 65 *ter* (G), 4 May 2009.
[3761] T. 17728-17737.
[3762] T. 17732-17733, 17735-17736.
[3763] T. 17739-17740.
[3764] T. 17739.
[3765] T. 17864, 21803, 24509, 27113-27114.
[3766] T. 26248.
[3767] T. 27033-27034.
[3768] T. 27106.



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restricted to the topics dealt with during the examinations-in-chief. The Trial Chamber took this decision having considered Rule 90 (H) (i) of the Rules and in light of the fact that none of the parties had called any of the Chamber witnesses during their cases-in-chief. This was put on the record on 24 February 2010.[3769] The seven Chamber witnesses testified between 24 February 2010 and 22 April 2010.

2666. *Reopening of the Prosecution's case.* On 21 April 2010, the Trial Chamber granted a motion of the Prosecution to reopen its case in order to hear the evidence of three witnesses and suspended the 31 May 2010 deadline for filing final briefs.[3770] On 10 May 2010, the Trial Chamber granted certification to the Čermak and the Markač Defence to appeal the decision with regard to the reopening.[3771] On 21 May 2010, the Trial Chamber denied a motion of the Gotovina Defence to reinstate the 31 May 2010 deadline for filing final briefs.[3772] The Trial Chamber heard the three Prosecution witnesses on 2 and 3 June 2010, followed by two Defence witnesses on 10 June 2010.[3773] On 11 June 2010, the Trial Chamber closed the evidentiary phase of the trial.[3774] On 1 July 2010, the Appeals Chamber dismissed the appeals of the Čermak Defence and the Markač Defence.[3775]

2667. *Motions for restraining orders.* On 23 July 2009, the Trial Chamber denied a Gotovina Defence request for a restraining order directed to Croatia to cease all criminal proceedings and prosecutions that emanated from acts related to the Gotovina Defence's fulfilment of its function before the Tribunal, including those against a possible witness for the Gotovina Defence and against Mr Ivanović, a member of the Gotovina Defence.[3776] The Chamber held that the Gotovina Defence had not demonstrated the exceptional circumstances necessary to justify the requested intervention in the Croatian proceedings under the Tribunal's Rules of Procedure and Evidence, considering among

[3769] T. 27119-27120.
[3770] Decision on Prosecution's Motion to Reopen Its Case, 21 April 2010; T. 28047, 28632; Order Lifting Confidentiality of the Decision on Prosecution's Motion to Reopen Its Case, 16 June 2010.
[3771] Decision on Čermak and Markač Defence Requests for Certification to Appeal the Trial Chamber Decision of 21 April 2010 to Reopen the Prosecution's Case, 10 May 2010.
[3772] Decision on Gotovina Defence's Objection to the Suspension of Deadlines for the Final Briefs and Motion to Reinstate, 21 May 2010.
[3773] Order Scheduling a Hearing, 14 May 2010; T. 28653-28964.
[3774] T. 29007.
[3775] *Prosecutor v. Ante Gotovina et al.*, Case no. IT-06-90-AR73.6, Decision on Ivan Čermak and Mladen Markač Interlocutory Appeals against Trial Chamber's Decision to Reopen the Prosecution Case, 1 July 2010.
[3776] Decision on Defendant Ante Gotovina's Motion for a Restraining Order against the Republic of Croatia, 23 July 2009.



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other things that Mr Ivanović had not invoked functional immunity in the Croatian proceedings.[3777]

2668. On 29 September 2009, the Gotovina Defence submitted that the Croatian court had denied a motion seeking to discontinue proceedings on the basis of functional immunity, and again requested a restraining order directed to Croatia to cease the criminal proceedings against Mr Ivanović.[3778] Following searches and seizures of possessions of members of the Gotovina Defence (including Mr Ivanović) undertaken by Croatia, the Gotovina Defence on 10 December 2009 further requested temporary and permanent restraining orders directed to Croatia, firstly, to cease and desist from all actions against Mr Ivanović; secondly, to stop all searches of records and computers in its custody which were seized from Gotovina Defence offices or members; and, thirdly, to desist from any future searches against Gotovina Defence offices or members.[3779] On the same day, the Markač Defence requested a temporary and a permanent restraining order to Croatia to cease and desist from any future actions against its own members and offices.[3780] On 11 December 2009, the Chamber issued an interim order to Croatia to stop, until further notice, all inspections of the contents of the objects which it had seized from the Gotovina Defence, from its present or former members, or from their relatives.[3781] On 18 December 2009, the Chamber denied the remaining requests for temporary restraining orders.[3782] On 4 and on 26 January 2010 respectively, the Gotovina and the Markač Defence requested further restraining orders, precluding Croatia from taking investigative steps against the Defence without a prior order of the Chamber.[3783]

2669. On 12 March 2010, the Trial Chamber lifted its interim order of 11 December 2009 and issued its decision on the requests for permanent restraining orders.[3784] The Trial Chamber ordered Croatia to desist from inspection of the contents of the materials

[3777] Ibid., paras 17-21.
[3778] Defendant Ante Gotovina's Renewed Motion for a Restraining Order against the Republic of Croatia pursuant to Rule 54, 29 September 2009.
[3779] T. 26023-26024, 26028-26030.
[3780] T. 26024.
[3781] T. 26160-26161.
[3782] Decision on Requests for Temporary Restraining Orders Directed to the Republic of Croatia and Reasons for the Chamber's Order of 11 December 2009, 18 December 2009.
[3783] Defendant Ante Gotovina's Response to the Trial Chamber's Invitation of 18 December 2009, 4 January 2010; Defendant Mladen Markač's Joinder and Supplement to Defendant Ante Gotovina's Additional Submission in Response to the Trial Chamber's Invitation of 18 December 2009, 26 January 2010.



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it had seized; it further ordered the Gotovina Defence and Croatia to communicate with a view to reaching an agreement on whether those materials were protected under the Tribunal's Statute and Rules of Procedure and Evidence, as lawyer-client communications or as internal documents prepared by a party.[3785] The Trial Chamber further ordered the Gotovina Defence, in case it could not reach such an agreement with Croatia, to contact the President of the Tribunal with a view to seeking a determination of the matter by an independent body.[3786] The Trial Chamber denied the requests for permanent restraining orders precluding Croatia from taking investigative steps against any member and/or office of the Gotovina or Markač Defence without a prior order of the Trial Chamber, holding that neither Defence had provided a sufficient factual basis demonstrating the likelihood of such future investigative steps against their offices or members.[3787]

2670. The Trial Chamber also denied the requests for a permanent restraining order directed to Croatia to cease investigations and criminal proceedings against two Gotovina Defence members (including Mr Ivanović).[3788] The Trial Chamber held that under Article 30 (4) of the Statute defence members do not enjoy personal or functional immunity from legal process, but that a State may not exercise its jurisdiction by improperly subjecting defence members to legal process, with regard to acts that fall within the defence's fulfilment of its official function before the Tribunal, with the intended or foreseeable result of substantially impeding or hindering the performance by defence members of their functions.[3789] The Trial Chamber concluded that the Gotovina Defence had not demonstrated the existence of the exceptional circumstances required to justify the requested significant intervention in the Croatian proceedings under Rule 54 of the Rules; it considered among other things that the Trial Chamber could not establish that the ongoing investigations and criminal proceedings impeded or hindered the Gotovina Defence in the fulfilment of its tasks to such an extent that it would result in the infringement of Mr Gotovina's right to a fair trial.[3790]

[3784] Decision on Requests for Permanent Restraining Orders Directed to the Republic of Croatia, 12 March 2010, in particular para. 77 (3).
[3785] Ibid., paras 40-42, 77 (4).
[3786] Ibid., paras 43-44, 77 (4).
[3787] Ibid., paras 46, 77 (7).
[3788] Ibid., para. 77 (8).
[3789] Ibid., para. 61.
[3790] Ibid., paras 71-76.



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2671. At the same time, the Trial Chamber noted that the submissions before it had raised serious concerns with regard to the confidence with which Defence members will conduct themselves when performing acts in Croatia that fall within the Defence's fulfilment of their official functions before the Tribunal.[3791] Considering that the apparent absence of a legal instrument which provides functional immunity for members of the Defence of an accused before the Tribunal concerned the Tribunal as a whole, the Trial Chamber notified the President of the Tribunal of this matter.[3792] On 21 April 2010, the Trial Chamber granted a Gotovina Defence request for certification to appeal the Trial Chamber's decision of 12 March 2010 and suspended the deadlines it had set in relation to the orders issued in that decision pending a final resolution by the Appeals Chamber.[3793] On 14 February 2011, the Appeals Chamber granted the appeal in part, and ordered the Trial Chamber to issue an order pursuant to Rule 54 of the Rules to Croatia in which it will require Croatia to: (1) cease all criminal proceedings against members of the Gotovina Defence for acts performed in the fulfilment of their official function before the Tribunal; (2) cease and desist from all current and future investigative activities against members of the Gotovina Defence for acts performed in the fulfilment of their official function before the Tribunal, including searches of their persons or premises; and (3) return, as soon as practicable, all material seized from members of the Gotovina Defence, including but not limited to documents, computers, CD-ROMs and diskettes.[3794] On 18 February 2011, the Trial Chamber complied with the Appeals Chamber's ruling and issued the requested order.[3795]

2672. *The Prosecution's Rule 54 bis request for an order directing the Government of the Republic of Croatia to produce documents or information.* The Prosecution indicated at the status conference of 6 July 2007 that it for a while had been trying to obtain documents from archival resources that bear on certain expert reports and announced that it would still try to obtain them, but that it might ask the court to assist if a few further steps proved to be unsuccessful.[3796] At the status conference of 26 October

[3791] Ibid., para. 76.
[3792] Ibid.; Memo to the President of the Tribunal "Notification of Trial Chamber Decision on Requests for Permanent Restraining Orders Directed to the Republic of Croatia of 12 March 2010", 17 March 2010.
[3793] Decision on Defence Request for Certification to Appeal the Trial Chamber Decision of 12 March 2010, 21 April 2010.
[3794] *Prosecutor v. Ante Gotovina et al.*, Case no. IT-06-90-AR73.5, Decision on Gotovina Defence Appeal against 12 March 2010 Decision on Requests for Permanent Restraining Orders Directed to the Republic of Croatia, 14 February 2011, para. 71.
[3795] Order directed to the Republic of Croatia, 18 February 2011.
[3796] T. 247-250.



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2007 the Prosecution informed the Chamber that it would submit the export report of Reynaud Theunens, notwithstanding the efforts to obtain the documentation related to artillery, and that it would no longer link submitting the expert report of Harry Konings to obtaining the documents.[3797]

2673. On 13 June 2008, the Prosecution filed an application for an order pursuant to Rule 54 *bis* of the Rules requesting the Trial Chamber to issue an order requiring the Republic of Croatia to provide certain artillery and special police documents.[3798] On 16 September 2008, the Trial Chamber deferred its decision on the application and ordered the Republic of Croatia to intensify and broaden its investigation into the whereabouts of the requested documents, to provide the Prosecution with all the requested documents it might find during the investigation, and to provide the Trial Chamber and the Prosecution with a detailed report specifying the efforts taken by the Republic of Croatia to obtain the requested documents, including, as annexes, the documents that substantiated those efforts.[3799] Between October 2008 and October 2010, the Republic of Croatia submitted several reports, a number of the sought documents, mostly relating to the special police, and documents indicating the investigative steps taken by Croatia with regard to the alleged missing documents.[3800] The reports contained *inter alia* a large number of official notes of interviews conducted in the course of the investigation and analyses of the existence and whereabouts of individual documents.[3801]

2674. On 12 January 2009, the Trial Chamber orally invited the parties to make submissions indicating what, after receiving the reports and accompanying

[3797] T. 324-328, 330-331.
[3798] Prosecution's Application for an Order pursuant to Rule 54 *bis* Directing the Government of the Republic of Croatia to Produce Documents or Information, 13 June 2008.
[3799] Order in relation to the Prosecution's Application for an Order pursuant to Rule 54 *bis*, 16 September 2008.
[3800] Submission by State of 20 October 2008, 20 October 2008; Order to Change Status of Four Filings, 5 December 2008, Appendix A (containing Submission by State of 20 October 2008, excluding appendices); Submission by State of 28 November 2008, 5 December 2008; Submission by State of 6 November 2008, 7 November 2008; Submission by State of 20 November 2008, 27 November 2008; Submission by State of 10 December 2008, 8 January 2009; Submission by State of 9 January 2009, 22 January 2009; Submission by State of 29 January 2009, 9 February 2009; Submission by State of 23 February 2009, 25 February 2009; Submission by State of 29 April 2009, 5 May 2009; Submission by State of 25 September 2009, 29 September 2009; Submission by State of 9 November 2009, 9 December 2009; Submission by State of 7 December 2009, 18 January 2010; Submission by State of 12 February 2010, 19 February 2010; Submission by State of 22 February 2010, 26 February 2010; Submission by State of 4 March 2010, 9 March 2010; Submission by State of 12 April 2010, 16 April 2010; Submission by State of 10 May 2010, 8 June 2010; Submission by State (undated), 15 June 2010; Submission by State of 23 July 2010, 21 September 2010; Submission by State of 11 October 2010, 21 October 2010.
[3801] Ibid.



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documentation from Croatia, in their view, remained of the application.[3802] On 19 January 2009, the Prosecution filed a submission in response to that invitation.[3803] On 19 January 2009, the Gotovina Defence, joined by the Markač Defence, filed a submission in response to that invitation.[3804] On 22 January 2009, the Gotovina Defence requested leave to reply to the Prosecution's submission and on 23 January 2009 the Prosecution filed a request for leave to reply to the submission of the Defence.[3805]

2675. On 2 March 2009, the Prosecution filed a notice of points of understanding between Croatia and the Prosecution indicating that the Republic of Croatia and the Prosecution had reached a common understanding that 23 of the requested artillery documents were created and were missing and that the Republic of Croatia would give priority to those documents in the investigation.[3806]

2676. On 4 June 2009, in a letter dated 2 June 2009, Croatia requested that the Trial Chamber decide the application.[3807] Upon an invitation by the Trial Chamber, the Prosecution responded on 19 June 2009, requesting the Trial Chamber to reject Croatia's claims concerning the non-existence of artillery documents and to conclude that most of these documents existed.[3808]

2677. Representatives of the Republic of Croatia, the Prosecution, and the Defence were given the opportunity to further elaborate on their respective positions concerning the sought artillery documents at a hearing on 16 December 2009, and at working meetings on 22 and 28 January and 4 and 5 February 2010.[3809] On 1 April 2010, the

[3802] T. 14123-14124.
[3803] Prosecution's Submission in relation to Croatia's Reports pursuant to the Chamber's Rule 54 *bis* Order, 19 January 2009.
[3804] Defendant Ante Gotovina's Submission pursuant to the Trial Chamber's Invitation of 12 January 2009, 19 January 2009; Defendant Mladen Markač's Joinder to Ante Gotovina's Submission pursuant to the Trial Chamber's Invitation of 12 January 2009, 20 January 2009.
[3805] Defendant Ante Gotovina's Request to Reply to the Prosecution's Submission in relation to Croatia's Reports pursuant to the Chamber's Rule 54 *bis* Order, 22 January 2009; Prosecution's Additional Request for Leave to Reply to Gotovina's Submissions on Croatia's Request for Protective Measures over Material Provided pursuant to Rule 54 *bis* [sic], 23 January 2009.
[3806] Prosecution's Notice of Points of Understanding between Croatia and the Prosecution, 2 March 2009; Notice of Filing of More Legible Version of Appendix A to Prosecution's Notice of Points of Understanding between Croatia and the Prosecution, 9 March 2009.
[3807] Submission by Croatia, 4 June 2009.
[3808] T. 18526-18527; Prosecution's Response to Croatia's 2 June 2009 Request, 19 June 2009. On 15 June 2009, the Chamber granted a request for a one-day extension for filing the Prosecution's response and informed the parties thereof through an informal communication.
[3809] Order Scheduling a Hearing, 26 November 2009; Letter of SLO of Trial Chamber I, 4 December 2009; Letter by Croatia, 14 December 2009; T. 26345-26421; Letters of SLO of Trial Chamber I, 22 and 24 December 2009; Order Scheduling a Preparatory Meeting, 13 January 2010; Letter by Croatia, 21 January 2010; Letter by Croatia, 27 January 2010; Letter by Croatia, 3 February 2010.



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Gotovina Defence requested that the Trial Chamber issue a decision on, *inter alia*, the Prosecution's application for an order pursuant to Rule 54 *bis* by 30 April 2010. On 22 April 2010, the Trial Chamber denied this request.[3810] On 11 June 2010, and following a request by the Gotovina Defence, the Trial Chamber clarified its correspondence with the Republic of Croatia of 11 September 2009. It particularly pointed out that the 16 September 2008 order that *inter alia* ordered the Republic of Croatia to intensify and broaden the investigation and report the results of the investigation to the Trial Chamber and the Prosecution, remained in force.[3811] On 26 July 2010, the Trial Chamber denied the Prosecution's application for an order pursuant to Rule 54 *bis* directing the Republic of Croatia to provide certain documents.[3812] This decision *inter alia* also denied the requests to reply of 22 and 23 January 2009.[3813] The Prosecution did not request certification to appeal the Trial Chamber's decision.

2678. *Decision on motion for non-disclosure order directed to Prosecutor Serge Brammertz.* On 22 October 2009, the Trial Chamber was seised of a Gotovina Defence request for an order barring Prosecutor Serge Brammertz from making any public assessments of Croatia's cooperation in the search for artillery documents, and precluding him from disclosing to the public, including the UN Security Council and the European Union, any information relating to the Prosecutor's application under Rule 54 *bis* of the Rules.[3814] On 1 December 2009, the Trial Chamber denied the motion, finding that the Gotovina Defence had failed to demonstrate that the Prosecutor had violated Tribunal law, and failed to show that the Prosecutor's reporting had infringed the equality of arms between the Prosecution and the Defence.[3815] On 20 January 2010,

[3810] T. 28634–28635; Defendant Ante Gotovina's Motion Requesting the Trial Chamber to Issue Decisions on Certain Motions by No Later than 30 April 2010, 1 April 2010; Prosecution's Response to Defendant Ante Gotovina's Motion Requesting the Trial Chamber to Issue Decisions on Certain Motions by No Later than 30 April 2010, 15 April 2010; Croatia's Response to the Motion by Ante Gotovina's Defence Team of 1 April 2010, 16 April 2010.
[3811] T. 28981-28983; Defendant Ante Gotovina's Request for Clarification of the Trial Chamber's Correspondence with Croatia Dated 11 September 2009, 13 October 2009.
[3812] Decision on Prosecution's Application for an Order pursuant to Rule 54 *bis* Directing the Government of the Republic of Croatia to Produce Documents or Information, 26 July 2010. See paras 1-11 for further details on the procedural history relating to the Prosecution's Rule 54 *bis* application.
[3813] Ibid., para. 129.
[3814] Decision on Motion for Non-Disclosure Order Directed to Prosecutor Serge Brammertz, 1 December 2009, para. 1.
[3815] Ibid., paras 8-10.



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the Trial Chamber denied a Gotovina Defence request for certification to appeal the decision.[3816]

2679. *Decision on Prosecution's motion to request artillery documents from the Gotovina Defence*. On 3 April 2009, the Trial Chamber denied the Prosecution's motion which requested that the Trial Chamber order the Gotovina Defence to produce any documents in its possession obtained from sources other than the Prosecution which fell within the Prosecution's Rule 54 *bis* request for artillery documents; and in the alternative, if there was a dispute about which documents fell within the request, the motion had requested that the Trial Chamber review these documents *in camera* to make such determination and order production accordingly.[3817]

2680. *Gotovina Defence's Rule 54 bis request for documents from the European Monitoring Mission ("EUMM").* On 28 December 2007, the Gotovina Defence filed an application pursuant to Rule 54 *bis* of the Rules requesting the Trial Chamber to issue an order compelling access to the archives of the EUMM.[3818] On 28 February 2008, the Trial Chamber granted the request.[3819] On 20 and 23 March 2009, the Gotovina Defence informed the Trial Chamber that 80 documents that it was seeking were missing from the EUMM's archives, requested the Trial Chamber to order the EU to further investigate the whereabouts of the missing documents, to provide found documents, and to compile a report listing the efforts undertaken in that regard.[3820] Upon further litigation, disclosure of certain documents by the Prosecution, and invitations by the Trial Chamber,[3821] on 25 August 2009 the Trial Chamber invited the Gotovina Defence

[3816] Decision on Gotovina Defence Request for Certification to Appeal the Trial Chamber's Decision on Motion for Non-Disclosure Order Directed to Prosecutor Serge Brammertz, 20 January 2010.
[3817] Decision on Prosecution's Motion Seeking the Production of Documents Obtained by the Gotovina Defence, 3 April 2009, para. 19; T. 17623-17624.
[3818] Defendant Ante Gotovina's Motion to Compel Access to EUMM Archives, 28 December 2007; T. 17624-17626.
[3819] Order Compelling Access to the Archives of the European Union Monitoring Mission, 28 February 2008; T. 17624-17626.
[3820] Defendant Ante Gotovina's Motion to Enforce the Trial Chamber's Previous Rule 54 *bis* Order Compelling Access to Archives of the European Union Monitoring Mission, 20 March 2009, paras 6, 21, and Appendix A; Corrigendum to Defendant Ante Gotovina's Motion to Enforce the Trial Chamber's Previous Rule 54 *bis* Order Compelling Access to Archives of the European Union Monitoring Mission, 23 March 2009 ("23 March 2009 Corrigendum"), paras 2, 4, and Appendix A.
[3821] Notification of Motion and Invitation to Respond, 3 April 2009; Letter from the Secretary-General of the Council of the European Union, 17 April 2009; Gotovina Defence Request to Reply to European Union Response to Defendant Ante Gotovina's Motion to Enforce the Trial Chamber's Previous Rule 54 *bis* Order Compelling Access to Archives of the EUMM, 20 April 2009 (a public version of this submission was filed on 22 April 2010, see Notice of Public Status of Filing of Gotovina Defence Request to Reply to European Union Response to Defendant Ante Gotovina's Motion to Enforce the Trial Chamber's Previous Rule 54 bis Order Compelling Access to Archives of the EUMM, 22 April 2010);



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to submit a list of documents still outstanding and to provide further information regarding their existence.[3822] On 10 November 2009, the Trial Chamber noted in court that it had not yet received the clarification sought on 25 August 2009.[3823] On the same day, the Gotovina Defence stated that it was only still seeking the EUMM "R[egional] C[entre] Knin log-book" for the period from 4 August 1995 to 15 August 1995.[3824]

2681. On 16 December 2009, the Trial Chamber invited the EU to intensify its search for the "RC Knin log-book" and, by 30 December 2009, to either provide it to the Gotovina Defence or, in case it could not be located, to provide the Trial Chamber with an overview of all efforts undertaken to find it.[3825] The EU did not respond in time, and on 12 January 2010 the Gotovina Defence requested the Trial Chamber to urgently take all measures available to compel the production of the "RC Knin log-book", and to compel the EU to provide an overview of all efforts undertaken to find the document.[3826] On 19 January 2010, the Secretary-General of the Council of the EU responded that, in spite of all the efforts undertaken, the "RC Knin log-book" could not be found.[3827] On 20 January 2010, the Gotovina Defence orally requested the Trial Chamber to urgently take further action on the matter.[3828] On 3 February 2010, the Trial Chamber urgently invited the EU to provide the Trial Chamber, within 14 days, with an overview of all efforts undertaken in its search for the "RC Knin log-book".[3829] On 18 February 2010, the Secretary-General of the Council of the EU informed the Trial Chamber that:

> [n]one of the documents found could be identified […] as a[n] 'RC Knin Log Book' or an 'RC Knin Log Report'. No cross references were found which would indicate that these

Gotovina Defence Reply to European Union's Response to Defendant Ante Gotovina's Motion to Enforce the Trial Chamber's Previous Rule 54 *bis* Order Compelling Access to Archives of the EUMM, 23 April 2009; Letter from the Secretary-General of the Council of the European Union, 26 May 2009; Invitation to the European Union and to the Gotovina Defence, 19 June 2009; Prosecution Disclosure of Documentation Currently Sought by the Gotovina Defence from the European Union, 19 June 2009; Prosecution's Submission in Relation to the Trial Chamber's Invitation to the European Union and to the Gotovina Defence, 22 June 2009; Gotovina Defence Submission in Response to the Trial Chamber's Invitation to the European Union and the Gotovina Defence, 24 June 2009; Letter from the Secretary-General of the Council of the European Union, 13 August 2009.

[3822] T. 20884-20885.

[3823] T. 24459.

[3824] T. 24459; 23 March 2009 Corrigendum, Appendix A, p. 8.

[3825] Invitation to the European Union, 16 December 2009, p. 3.

[3826] Gotovina Defence Motion to Compel Production of Document from the European Union Pursuant to Rule 54 *bis*, 12 January 2010, para. 3.

[3827] Letter from the Secretary-General of the Council of the European Union, 19 January 2010.

[3828] T. 27054-27055.

[3829] Urgent Invitation to the European Union, 3 February 2010, p. 3.



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documents have been created or that they were transmitted to the Secretariat of the Council upon termination of the EUMM mission.[3830]

2682. On 22 February 2010, the Gotovina Defence requested the Trial Chamber to order the EU to step up its efforts to locate the "RC Knin log-book" and listed a number of activities which the EU should carry out.[3831] On 4 March 2010, the Prosecution responded and took no position on the matter.[3832] On 3 June 2010, the Trial Chamber denied the Gotovina Further Request, stating that, in light of the circumstances examined in the decision, it would take no further action on this matter.[3833] On 10 June 2010 the Gotovina Defence impugned this decision directly before the Appeals Chamber.[3834] On 6 July 2010, the Appeals Chamber dismissed the Gotovina Defence's appeal without considering its merit, stating that the Gotovina Defence was not entitled to appeal the impugned decision as of right, and that if the Gotovina Defence wished to impugn it, the correct procedural avenue was to seek certification pursuant to Rule 73 (B) of the Rules.[3835] The Gotovina Defence did not request certification to appeal.

2683. *Contempt case*. On 1 June 2007, the Chamber issued an order pursuant to Rule 77(C)(i) of the Rules to investigate the fact that the content of the clarification of the indictment was broadcast in the evening "Dnevnik" television program by Croatia's "HRTV" on 28 May 2007, while the confidentiality of that clarification was only lifted on 31 May 2007.[3836] On 12 July 2007, the Chamber dismissed the motion of the Gotovina Defence to appoint an *amicus curiae* prosecutor pursuant to Rule 77(C)(ii) of the Rules.[3837] On 22 May 2008, the Prosecution reported that, in the circumstances of

[3830] Letter from the Secretary-General of the Council of the European Union, 18 February 2010.
[3831] Gotovina Defence Response to European Union Submission of 18 February 2010, 22 February 2010, pp. 5-6.
[3832] Prosecution's Submission Regarding the Gotovina Defence's Response to the European Union Submission of 18 February 2010, 4 March 2010, p. 1.
[3833] Decision on the Gotovina Defence's Request to Order the European Union to Carry Out Further Investigations on the Whereabouts of the "RC Knin Log-book", 3 June 2010.
[3834] *Prosecutor v. Ante Gotovina et al.*, Case no. IT-06-90-AR54bis.1, Gotovina Defence Appeal Against the Trial Chamber's 3 June 2010 Decision, 10 June 2010.
[3835] *Prosecutor v. Ante Gotovina et al.*, Case no. IT-06-90-AR54bis.1, Decision on Prosecution Motion to Strike, Gotovina Defence's Appeal Pursuant to Rule 54 *bis*, and General Secretariat of the Council of the European Union's Motion for Extension of Time, 6 July 2010, paras 9-12.
[3836] *Prosecutor v. Gotovina et al.*, Case no. IT-06-90-PT, Decision on Defendant Ante Gotovina's Emergency Motion to Lift Confidentiality of Prosecution's Clarification of Indictment filed 17 May 2007, 31 May 2007; Order to the Prosecutor under Rule 77, 1 June 2007.
[3837] *Prosecutor v. Gotovina et al.*, Case no. IT-06-90-PT, Decision on Defendant Ante Gotovina's Motion for Appointment of *Amicus Curiae* Prosecutor for Rule 77 Investigation, 12 July 2007.



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the case, it decided to exercise its discretion and declined to file an indictment for confirmation.[3838]

2684. *Final briefs and closing arguments.* On 26 March 2010, the Trial Chamber asked the parties to be ready to submit their final briefs on 31 May 2010, and outlined information that it would find helpful if the parties were to include it in their final briefs.[3839] On 22 April 2010, the Trial Chamber denied a request by the Gotovina Defence and the Markač Defence that the Trial Chamber clarify its statement and instruct the Prosecution not to include certain new specified allegations in its final brief.[3840] The Trial Chamber set the deadline for filing the final briefs to 16 July 2010.[3841] The parties filed their final briefs on that day.[3842] Following litigation by the parties, the Trial Chamber had set the word limit for the final briefs of each of the parties at 90,000 words.[3843] The Trial Chamber denied a request by the Čermak Defence to be granted an opportunity to address the Trial Chamber orally regarding sentencing, should the Trial Chamber find Čermak guilty of any of the charges, and noted an objection of the Markač Defence to the Tribunal's practice of a combined guilt and sentencing phase.[3844] The Trial Chamber further noted that the Gotovina Defence chose not to make any submissions on sentencing in its final brief.[3845] In light of the foregoing, the Chamber referred the Defence to the opportunity to make any (further) submissions on sentencing during their closing arguments, should they wish to do so.[3846] The parties submitted their closing arguments on 30 August through 1 September 2010.[3847]

2685. On 30 August 2010, the Gotovina Defence requested that the Trial Chamber first deliver its judgement orally, with the written judgement to follow, in case the Trial Chamber concluded during deliberations that its judgement should result in the

[3838] Prosecutor's Rule 77 Contempt Report, 22 May 2008.
[3839] T. 28047-28048.
[3840] T. 28632-28633.
[3841] Scheduling Order, 16 June 2010, p. 4.
[3842] Scheduling Order, 16 June 2010, p. 4; Gotovina Defence Final Brief, 16 July 2010 (public version 27 July 2010); Čermak Defence Final Brief, 16 July 2010 (public version 13 September 2010); Markač Defence Final Brief, 16 July 2010 (public version 8 September 2010); Prosecution Final Brief, 16 July 2010 (public version 3 August 2010).
[3843] Scheduling Order, 16 June 2010.
[3844] T. 29021.
[3845] T. 29021.
[3846] T. 29021-29022.
[3847] Scheduling Order, 16 June 2010, p. 4; Scheduling Order, 7 July 2010; T. T. 29020-29457.



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immediate release of Ante Gotovina.[3848] On 1 September 2010, the Trial Chamber announced that it was aware of this pending motion, and that from what would follow, it would become clear whether or not the Trial Chamber had granted the motion.[3849]

[3848] Ante Gotovina's Motion pursuant to Rule 98 (C) *ter*, 30 August 2010, paras 1, 6.
[3849] T. 29457.



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## B. Table of cases* with abbreviations

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