International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Former Yugoslavia since 1991	Case No.	IT-06-90-A
	Date:	18 May 2011
	Original:	English

IN THE APPEALS CHAMBER

Before: **An Appellate Bench to be Assigned**

Registrar: **Mr. John Hocking**

Notice: **18 May 2011**

PROSECUTOR
v.
ANTE GOTOVINA, IVAN ČERMAK AND MLADEN MARKAČ

PUBLIC

NOTICE OF RE-CLASSIFICATION AND RE-FILING OF MLADEN MARKAČ'S NOTICE OF APPEAL

The Office of the Prosecutor:

Mr. Serge Brammertz

Counsel for the Accused:

For Ante Gotovina: Mr. Gregory Kehoe, Mr. Luka S. Mišetić, Mr. Payam Akhavan, and Mr. Guénaël Mettraux

For Mladen Markač: Mr. Goran Mikuličić and Mr. Tomislav Kuzmanović

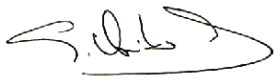
1. On 16 May 2011 the Defence for Mladen Markač filed *Mladen Markač's Notice of Appeal*.

2. Following the observation that the document might contain confidential information, *Mladen Markač's Notice of Appeal* is hereby re-classified as confidential.

3. The Defence hereby files *Mladen Markač's Public Redacted Notice of Appeal*.

Dated: 18 May 2011

Respectfully submitted,



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Counsel for Mladen Markač

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Introduction

1. Following the Judgment ("Judgment") rendered on 15th April 2011 by Trial Chamber I in the case of *Prosecutor v Gotovina et al*, the Defence for Mladen Markač ("Appellant") hereby submit its notice of appeal ("Notice of Appeal"), pursuant to Article 25 of the Statute of the International Criminal Tribunal for the former Yugoslavia ("Statute") and Rule 108 of the Rules of Procedure and Evidence ("Rules").

2. As of the date of filing this Notice of Appeal, the Appellant has not been provided with a translation of the judgement in a copy of his native language, Croatian. On the Appellant's behalf, notice is given that, should further errors of law or fact become apparent on his receiving the translation and providing instructions to counsel, an application for a variation of the grounds of appeal pursuant to Rule 108 of the Rules will be made.

Background

3. The Trial Chamber, in paragraph 2622, found the Appellant guilty of persecution, deportation, murder, and inhumane acts as crimes against humanity, and for plunder of public and private property, wanton destruction, murder, and cruel treatment as violations of the laws or customs of war.

4. The Appellant, in paragraph 2622, was found not guilty on Count 3: Inhumane Acts (forcible transfer) as a crime against humanity.

5. The Trial Chamber, in paragraph 2623, sentenced the Appellant to 18 years' imprisonment.

6. The Appellant requests the Appeals Chamber to reverse the Trial Judgment. The grounds of appeal against the judgment and remedies sought for this request are set out below. In the alternative, the Defence requests the Appeals Chamber to reduce the manifestly excessive sentence imposed on the Appellant by the Trial Chamber.

7. Where this Notice of Appeal refers to an error of law it is one that, individually or cumulatively, invalidates the verdict. Where this Notice of Appeal refers to an error of fact it is one that, individually or cumulatively, occasions a miscarriage of justice.

8. The Appellant adopts all grounds of appeal set forth by Co-Appellant, Ante Gotovina, insofar as they apply to the Appellant.

Grounds of Appeal Relating to Conviction

GROUND ONE: Chamber's Approach to JCE Fundamentally Flawed in Law

9. The Trial Chamber erred in law and fact, in paragraphs 2303-2321 and 2578-2587, in finding that there was a JCE whose membership included the Appellant with the objective of the permanent removal of the Serb population from the Krajina region through the commission of crimes of persecution, deportation and forcible transfer, plunder, and destruction.

In general terms, the result of the Chamber's approach is that the Appellant may be held responsible for every single crime found to have been committed by Croatian forces during the period of the Indictment, without the need to prove any demonstrable link between the Appellant and any given perpetrator, and without any demonstration, much less proof beyond a reasonable doubt, that the crimes were committed in pursuance of the JCE.

10. The Trial Chamber should have first asked itself whether Operation Storm was a legitimate military operation on the part of the Republic of Croatia to regain control of its own territory. If so, the Chamber should only have considered as evidence of the JCE, evidence which could not reasonably be explained as evidence of the planning of a legitimate military operation. The Chamber's failure to adopt the correct approach constitutes an error of law.

11. The errors of law invalidate the Judgement and the errors of fact occasioned a miscarriage of justice.

Sub-Ground 2(A): Existence of JCE I – Physical Elements

12. The Trial Chamber erred in law in paragraphs 2314, 2319-2320, and 2582, in applying an incorrect legal standard to determining and identifying the members of the JCE.

13. Alternatively, the Trial Chamber erred in fact, in paragraphs 2314, 2319-2320, and 2582, in finding that a plurality of persons shared a common criminal purpose and that the Appellant was a member of that JCE.

Sub-Ground 2(B): Existence of Joint Criminal Enterprise (JCE) – Commencement and Conclusion

14. The Trial Chamber erred in law, in paragraph 2315, by applying an incorrect legal standard to determining the commencement date of the alleged JCE. The Trial Chamber erred in simply accepting the Prosecution's submission that the alleged JCE came into being no later than the end of July 1995. The Chamber should have considered the commencement of the alleged JCE in terms of the date of the crystallization of the alleged common criminal purpose. The error of law invalidates the Judgement.

15. Alternatively, the Trial Chamber erred in fact, in paragraph 2315, in determining the inception of the JCE.

Sub-Ground 2(C): Existence of JCE – Existence of a Common Plan

16. The Trial Chamber erred in law by adopting an incorrect approach to the question of whether there existed a common plan permanently to remove the Serbian civilian population from the Krajina by force or the threat of force. Consistent with the beyond a reasonable doubt standard, the Trial Chamber should have first considered whether there was a legitimate plan on the part of the Croatian authorities to recapture their territory and if there was, it should only have concluded that there was a criminal plan, a JCE, existing alongside the legitimate military operation, if there was no other reasonable explanation of the evidence. The Chamber's failure to adopt the correct approach constitutes an error of law.

17. The Trial Chamber further erred in law by assuming that any plan for Serb civilians to leave the Krajina during Operation Storm was necessarily a plan to use criminal means to achieve that objective. Even assuming (that which is strenusouly denied) that there was a plan whose objective was for the Krajina Serb civilians to leave the Krajina during Operation Storm, there is no evidence at the Brioni meeting of a plan to achieve that objective by criminal means. Leaving civilians a corridor to leave the area, and even wanting them to leave (to avoid casualties, or for other

reasons) is neither a crime against humanity nor a war crime, but a humane military objective. In short, even if there was a plan at Brioni for Krajina Serb civilians to leave the area during the conduct of hostilities, there was no evidence that it was a *criminal* plan (paragraphs 1970 – 1995).

18. The Trial Chamber erred in law in failing to find in a reasoned judgment that acts by non-members of the alleged JCE could be attributed to the members of the JCE on the basis that the former were being used by the latter in accordance with the JCE (as this is an error of omission, there are no specific paragraphs of the Judgment to cite).

Sub-Ground 2(D): Proof of JCE – *Mens Rea*

19. The Chamber, in paragraphs 2578-2582, erred in fact in finding that the Prosecution had proved beyond a reasonable doubt that the Appellant possessed the requisite *mens rea* to be convicted of counts 1,2, 4, 5, 6, 7, 8, and 9 of the Indictment and in finding that the Appellant possessed knowledge of certain matters in the absence of proof beyond a reasonable doubt, on a speculative basis, and when other inferences were reasonably open on the evidence.

20. The Trial Chamber failed to establish beyond a reasonable doubt that the Appellant had the requisite *mens rea* for membership in the alleged JCE, and that the Appellant carried out the *actus reus* of the JCE. Indeed, the Trial Chamber founds its conclusion that the Appellant was a member of the JCE principally on the fact that he was simply present at the meeting held in Brioni on 31 July 1995, without any findings regarding his participation in the meeting or as to whether he agreed with what was said at the meeting, and on the basis that he held the rank of Assistant Minister of the Interior during the Indictment period.

Sub-Ground 2(E): Proof of JCE – Trial Chamber Fundamentally Misconstrued Evidence Relating to Brioni Meeting

21. The Trial Chamber's interpretation of the Brioni Meeting, in paragraphs 1970-1995, is patently inaccurate, and constitutes an error of fact. The object of the Brioni Meeting was to plan a legitimate military operation, and the discussions which arose within the meeting addressed the proposed operation, not the alleged JCE. In particular, the Appellant's spoken contribution to the meeting contains no indicia of criminal intent.

22. The Prosecution has not proved beyond a reasonable doubt that attendees at the Brioni Meeting did anything but listen politely to politically charged statements by the President of the Republic of Croatia, Franjo Tudjman. Participants cannot reasonably have been on notice that a JCE was being proposed (if it was), and that mere attendance constituted endorsement of the enterprise's terms.

Sub-Ground 2(F): Proof of JCE – Trial Chamber Fundamentally Misconstrued Evidence Relating to Appellant's actions to prevent crimes

23. The Trial Chamber, in paragraph 2586, committed a similar error of legal interpretation in holding that evidence indicating that the Appellant took steps to prevent the commission of revenge crimes served no purpose other than to demonstrate that the Appellant was put on notice of the possibility of revenge crimes. The Trial Chamber fails to explain why it discounted the *prima facie* reasonable interpretation, of this evidence namely that it showed lack of intent on his part that those crimes be committed (thereby vitiating the finding that he was a member of the JCE and/or, under JCE III, that he willingly took the risk that such crimes would be committed) in favour of a manifestly less reasonable, and more culpable, one. This error was, inter alia, an error of law in relation to the fundamental principle, *in dubio pro reo.*

24. This error of factual and legal interpretation is repeated, in paragraph 2586, in relation to the significance of the Appellant's participation in a meeting on 2 August 1995 at which the Republic of Croatia's Minister of Defence gave instructions regarding the risk of uncontrolled conduct, including torching and looting. Here again the Trial Chamber has turned evidence, which is *prima facie* exculpatory, on its head, holding that its evidentiary value is limited to demonstrating that the Appellant was on notice of the possibility that crimes would be committed during and after Operation Storm.

25. The Trial Chamber's errors of interpretation underpin its erroneous findings that the Appellant had, along with the other members of the alleged JCE, the intent to commit the crimes which constituted the criminal purpose of the alleged JCE, and that the Appellant shared the requisite intent to carry out the alleged JCE. The Tribunal's jurisprudence holds that findings of requisite criminal intent in relation to JCE can arise only where the Prosecution has proved that the existence of the alleged requisite criminal intent is the only reasonable inference on the evidence. The Trial Chamber has committed an error of law in this regard.

26. Further, the Trial Chamber erred in law in paragraph 2583 by applying an incorrect legal test to determine intent on the part of members of the JCE. Application of the proper legal test would have resulted in the conclusion that the Appellant did not have the requisite intent to commit any of the crimes charged.

Sub-Ground 2(G): Proof of JCE – Participation by Appellant in Implementation of JCE

27. The Trial Chamber erred on a question of law, in paragraphs 2582-2587, by failing to provide adequate reasoning for convicting the Appellant as a JCE member when the evidence against the Appellant, taken at its highest and making all assumptions in favour of the Prosecution, clearly showed

that the acts of the Appellant were not such as to participate in any significant way in the implementation of the common objective.

28. The Trial Chamber erred in fact, in paragraphs 2582-2587, by finding that the Appellant had participated in the JCE. The evidence purportedly addressing the nature of the Appellant's alleged assistance was insufficient to establish significant participation for the purposes of JCE.

Sub-Ground 2(H): JCE III –Errors of fact and law

29. the Trial Chamber erred in fact and in law in finding it proved beyond a reasonable doubt that
    a) the crimes of murder, inhumane acts, cruel treatment, plunder, destruction and unlawful detention (on their own or as underlying acts of persecution) were natural and foreseeable consequences of the execution of the JCE; and
    b) the Appellant was aware of the risk that these further crimes might be perpetrated; and
    c) willingly took that risk. (paragraph 2586, Judgment).

Sub-Ground 2(I): Unreasonable Interpretation of the Law on Temporary Takeover

30. In relation to the Republic of Croatia's Law on Temporary Takeover and Administration of Certain Property, the Trial Chamber, in paragraph 2098, erred in law in being unreasonably selective in its treatment of the evidence, and in ignoring significant evidence at odds with its conclusion that the Law on Temporary Takeover was developed and employed to realize the objectives of the alleged JCE. Notably, the Trial Chamber appears to have ignored entirely decisions of the European Court of Human Rights, and standards on return enunciated by the United Nations High Commission for Refugees which the Appellant referred to and

adduced at trial, and which contradict the Trial Chamber's interpretation of the Law on Temporary Takeover.

31. Further, the modes of inception of the Law on Temporary Takeover and Administration of Certain Property, passed as a Decree by the Government of the Republic of Croatia on 31 August 1995, and adopted by Parliament on 20 September 1995, vitiate the Trial Chamber's finding that the Law on Temporary Takeover constituted a central element of the JCE. On the Trial Chamber's reasoning, the Government of the Republic of Croatia and all of the members of Croatian Parliament who voted to adopt the Law on Temporary would have to have participated in the alleged JCE.

Sub-Ground 2(J): Appellant not Involved in Alleged Grubori and Ramljane Cover-Up

32. In relation to the Grubori incident, the Trial Chamber, in paragraphs 2300 and 2581, made a mistake of fact in concluding that the Appellant and/or his immediate subordinate, Željko Sačić, were authorized to undertake and call-off criminal investigations in the hands of the Crime Police.

33. Further, insofar as Exhibit P505 is concerned, the Trial Chamber, in paragraph 2301, committed an error of fact when, without any reasonable explanation, it concluded that the document was drafted by the Ministry of the Interior. The Appellant strenuously contested the authenticity of P505 at trial, and maintains that it is inauthentic, and that there is nothing to indicate it was drafted by the Ministry of the Interior.

34. The evidence plainly established as the only reasonable explanation of the evidence that Sačić was misinformed by his subordinates. In turn, the Appellant was misinformed. The Appellant knew that the competent authorities (Knin Police) had been informed of the Grubori incident. Thereafter, he sought to obtain more information in respect of the incident. The information he received shed no further light on the

situation. The Appellant awaited an investigation by the competent authorities. There was no evidence of a cover-up.

35. With respect to the Ramljane incident, the evidence unequivocally established that the Appellant ordered Special Police Unit Commander Zdravko Janić to investigate what happened. Janić informed him that Special Police units had exchanged fire with terrorists. This was the full extent of information available to the Appellant.

Conclusion:

36. Each of the errors of law set out above individually and collectively invalidates the verdict. Each of the errors of fact identified above individually and collectively occasioned a miscarriage of justice. The errors identified above with respect to JCE caused the Trial Chamber erroneously to find, in paragraph 2622, that the Appellant was guilty under article 7(1) of counts 1, 2, 4, 5, 6, 7, 8, and 9 of the Indictment.

Relief Sought:

37. In light of the errors of law and fact identified above, the Appeals Chamber should apply the correct legal standards in evaluating the existence of a JCE and make its own findings of fact, namely:

d) That there was no JCE whose membership included the Appellant with the objective of the permanent removal of the Serb population from the Krajina region through the commission of crimes of persecution, deportation and forcible transfer, plunder, and destruction.
e) Alternatively, that even if there was a JCE, the Appellant was not a member of it;
f) In the further alternative, that even if there was a JCE, of which the Appellant was a member, he did not know of the crimes being

committed, and/or did not intend to further those crimes and/or by his acts, did not contribute significantly to the furtherance of the JCE and/or (in relation to JCE III) that the risk of further crimes being committed outside the JCE was not reasonably foreseeable to the Appellant and/or he did not willingly take the risk that those crimes would be committed. Accordingly, he is not responsible for any crimes committed pursuant to JCE types I and III, as charged in the Indictment.

g) Having made these findings, the Appellant requests that the Appeals Chamber overturn the convictions rendered against the Appellant on Counts 1,2, 4, 5, 6, 7, 8, and 9 under Article 7(1) of the Statute, and substitute an acquittal on these counts.

GROUND TWO: Special Police did not Destroy Gračac

38. The Chamber committed an error of fact in determining 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. As pointed out in Judge Kinis' partially dissenting opinion, in paragraph 2626, the evidence is insufficient to support the Chamber's conclusion that Gračac was destroyed by the Special Police.

Relief Sought:

39. The Appeals Chamber should reverse the Trial Chamber's finding with respect to the Appellant's responsibility for wanton destruction in Gračac.

GROUND THREE: Special Police did not Engage in Plunder in Gračac

40. The Trial Chamber erred in fact, in paragraph 693, in finding that Special Police engaged in plunder in Gračac on 8 August 1995.

Relief Sought:

41. The Appeals Chamber should reverse the Trial Chamber's finding with respect to the Appellant's Responsibility for plunder in Gračac.

GROUND FOUR: Errors of Law and Fact Relating to Appellant's Responsibility for Shelling During Operation Storm

42. The Trial Chamber erred in law and fact by assessing the reasonableness of the conduct of the Appellant and his subordinates, and their reliance on intelligence reports of SVK and RSK presence in the relevant areas, in light of the Chamber's *present state of knowledge as to events*, with the benefit of hindsight, whereas the correct approach was to assess the reasonableness of their conduct in light of their state of knowledge *at the relevant time*, and in the context of a fast-moving situation, unfolding in the 'fog of war,' where knowledge of events was necessarily piecemeal and incomplete, and by reference to what the state of communications at that time would have permitted the Appellant and others reasonably to know under those circumstances.

43. Further, the Chamber, in paragraph 1745, erred in fact in finding that the Krajina Serb civilian population left because of the shelling, which is alleged to have been indiscriminate between military and civilian objects. This finding rests on the entirely implausible and unsupported premise that, had Croatian Armed Forces' shells hit exclusively military targets, the civilian population would have remained in a war zone, as well as the error of fact of finding that shelling was indiscriminate.

44. The Trial Chamber, in paragraph 1745, erred in law in finding that shelling alone can amount to forcible displacement, and, in paragraph 1746, that shelling can be carried out with "intent to discriminate."

45. The Trial Chamber erred in fact, in paragraphs 253 and 2560, in finding that the Appellant participated in planning artillery attacks in Gračac.

46. The Trial Chamber erred in fact, in paragraphs 1928 and 1451, in finding that no fewer than 150 projectiles fell on Gracac and its immediate vicinity.

47. The Trial Chamber erred in fact, in paragraphs 1932-1934, in finding that Croatian Forces deliberately fired projectiles near civilian objects.

48. The Trial Chamber erred in fact, in paragraph 1935, in finding that Croatian Forces targeted areas devoid of military targets, and treated the town of Gračac itself as a target of artillery fire.

49. The Trial Chamber, in paragraphs 1926-1937 and paragraphs 1455-1548, erred in fact in concluding that at least 2 projectiles landed more than 200 meters from known military targets in Gračac.

50. The Trial Chamber erred in fact, in paragraph 1935, in finding that the shelling of Gračac on 4 and 5 August constituted an indiscriminate attack against Krajina Serbs. There was no finding, and no evidence, of a single civilian death as a result of artillery fired by either the Croatian military forces or the Special Police.

51. The Trial Chamber erred in law, in paragraph 1935, in failing to provide a reasoned opinion of the applicable legal standard to determine unlawfulness of artillery attack.

Relief Sought:

52. The Appeals Chamber should reverse the Trial Chamber's finding with respect to the Appellant's Responsibility for shelling in Gračac.

GROUND FIVE: Special Police did not Destroy Donji Lapac Town

53. The Trial Chamber made a mistake of fact, in finding, in paragraph 625, that Special Police Forces, in particular logistics and communication personnel, were responsible for destruction in Donji Lapac town between 7 and 8 August 1995. According to the evidence of Special Police Unit Commander, Zdravko Janić, he observed HV units engaging in acts of destruction and arson in Donji Lapac town at the time, and reported these acts to Colonel Brajkovic, who assured him that everything would be alright.

54. The Trial Chamber's finding relies principally on the evidence of Witness 82 who, according to the Trial Chamber suffered "lapses of memory and significant inconsistencies" during his testimony. The "sufficient corroboration" that the Trial Chamber found between the sole eye-witness's evidence and other witnesses' evidence, in paragraph 625, was not that the they observed Special Police causing destruction but that Special Police logistics and communication personnel were in town. It has not been proved beyond a reasonable doubt that the Special Police took part in the destruction of Donji Lapac town.

Relief Sought:

55. The Appeals Chamber should reverse the Trial Chamber's finding with respect to the Appellant's responsibility for destruction in Donji Lapac town.

GROUND SIX: Special Police Not Responsible for Scheduled Killing No. 10

56. The Trial Chamber erred in fact in finding, in paragraph 218, that Special Police members were responsible for the killings under Scheduled Killing No. 10. The witness on whose evidence the Trial Chamber's finding relies did not provide an accurate description of Special Police uniforms, and no Special Police were positively identified. There is no reliable evidence to support the finding that Special Police were responsible for the killings.

Relief Sought:

57. The Appeals Chamber should reverse the Trial Chamber's finding in respect of Scheduled Killing No. 10.

GROUND SEVEN: Denial of Right to Fair Trial

58. The Trial Chamber committed errors of law and fact in engaging in unreasonable evaluations of the evidence, to the detriment of the Appellant's right to a fair trial, and in violation of the presumption of innocence standard, set out in paragraph 14.

Sub-Ground 7(A): Denial of right to fair trial on basis of unreasonably flawed interpretation of evidence

59. The Trial Chamber erred in law and fact by conducting a patently flawed analysis of the evidence, to the detriment of the Appellant. Examples of this are to be found *supra* in Sub-grounds 2(F) (Brioni meeting), 2(G), and 2(I).

Sub-Ground 7(B): Denial of right to fair trial on basis of unreasonable refusal to admit evidence

60. The Trial Chamber erred in law, in paragraph 18, in admitting Witness Zdravko Janić's suspect interview, despite the fact that he was not afforded effective assistance of counsel during the interview.[1]

61. [REDACTED]

62. [REDACTED]

Sub-Ground 7(C): Denial of right to fair trial on reversal of burden of proof

63. The Trial Chamber, in paragraphs 1892-1945, erred in law when, rather than requiring the Prosecution to prove beyond a reasonable doubt that there were civilians or civilian objects in relevant areas, it made its findings based on the Appellant's failure to prove that there were military objectives in relevant areas.

Conclusion

64. The Trial Chamber's errors of legal interpretation constitute a violation of the statutorily enshrined presumption of innocence standard, set out in paragraph 14. These errors discount reasonable explanations of the evidence other than the guilt of the Appellant.

Relief Sought:

65. The Appeals Chamber should correct the Trial Chamber's errors of law and fact in respect of this Ground.

[1] See 'Decision on Defence Objections to the Admissibility of Witness 81's Suspect Interview Under Rule 95,' 8 July 2008.

GROUND EIGHT: The Trial Chamber erred in fact and in law in finding that the crime of Deportation as a Crime Against Humanity was committed During the Indictment Period

66. The Trial Chamber erred in fact and in law, in paragraph 1710, in finding that Croatian forces committed deportation as a crime against humanity.

67. The Trial Chamber, in paragraph 1538, erred in law in finding that exhibits P480 and P483 (leaflets purportedly from RSK authorities ordering evacuation) did not emanate from the Serbs, with the clear implication that they were dropped by the Republic of Croatia. It erred further in finding, by implication, that the dropping of such leaflets was not a principal and/or proximate cause for the Krajina Serbs to evacuate the area.

Relief Sought:

68. The Appeals Chamber should reverse the Trial Chamber's finding with respect to the crime of Deportation and, in turn, the Trial Chamber's finding of a JCE which was predicated on this finding

GROUND NINE: Errors relating to Armed Conflict

69. The Trial Chamber erred in fact, in paragrphs 1695-1697, in finding that military operations lasted at least into the middle of September 1995. The Trial Chamber denied admitting relevant evidence on this matter during trial.[2] Furthermore, in reaching its conclusions that an armed conflict continued beyond 8 August 1995, the Trial Chamber considered evidence that is irrelevant and outside the scope of the Indictment. The Trial

[2] See 'Decision on Markač Defence Bar Table Submission,' 16 July 2010.

Chamber erred in basing its conclusions on the fact that an armed conflict existed in Bosnia and Herzegovina between HV and Serbian forces.

70. The Trial Chamber erred in fact, in paragraphs. 1696-1697, 179-183 and 194, in finding that search operations, often referred to as mop-up operations, in the aftermath of Operation Storm were part of combat activities. The searches, also carried out by other than Special Police forces, were a prerogative duty of the Special Police to counter terrorist activities in the newly liberated territory. By moving through difficult terrain the Special Police forces were tasked with uncovering hidden armed former enemy soldiers, mines and/or weapons in order for the regular police to safely establish law and order. Thus, search operations should not be perceived as falling under an armed conflict.

Relief Sought:

71. The Appeals Chamber should correct the Trial Chamber's errors, and find that an armed conflict ceased to exist on or about 8 August 1995.

72. In the alternative, the Appeals Chamber should:
    a) consider the possibility that an armed conflict can end *via facti*;
    b) provide a definition of a general conclusion of peace;
    c) provide a definition of a peace settlement;
    d) and, consider whether there can be a general conclusion of peace or peace settlement without a formal declaration of war.

GROUND TEN: Legality of the JCE I and JCE III Doctrines

73. Notwithstanding a cursory review of the Tribunal's jurisprudence on the subject (see paragraphs 948-954 of the Judgement) the Trial Chamber has

failed to provide reasoned argument in support of its justification of the legality of the JCE Doctrine in the forms relevant to the Indictment (JCE I and JCE III). This constitutes a violation of Article 23(2) of the Statute, and is an error of law.

Relief Sought:

74. The Appeals Chamber should strike down the doctrine of JCE I and/or JCE III on grounds of illegality, and acquit the Appellant on all counts.

GROUND ELEVEN: Chamber Erred in Law in Finding Croatian Forces Responsible for All Criminal Acts Alleged in the Indictment

75. The Chamber erred in law and fact, in paragraph 1710, in finding that members of the Croatian military forces and the Special Police committed more than 40 murders as crimes against humanity and as violations of the laws or customs of war, and acts of inhumane 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, or property owned or inhabited by Krajina Serbs.

76. The Chamber erred in law and fact, in paragraph 1710, in finding 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.

77. The Trial Chamber erred in law and fact, in paragraph 1710, in finding that the above-mentioned crimes constituted underlying acts of persecution, and that Croatian military forces and the Special Police committed unlawful attacks on civilians and civilian objects, as the crime against humanity of persecution.

78. The Trial Chamber further erred in law and fact, in paragraph 1772, in finding that members of the Croatian military forces and the Special Police committed acts of wanton destruction in violation of the laws or customs of war.

Relief Sought:

79. The Appeals Chamber should reverse all of the above-mentioned findings.

Ground of Appeal Relating to Sentence:

GROUND TWELVE: Chamber Erred in Law in Imposing a Manifestly Excessive Sentence

80. The Trial Chamber, in paragraph 2623, erred in law by abusing its discretion in passing a sentence on the Appellant that is in all of the circumstances excessive and disproportionate.

Relief Sought:

81. The Appeals Chamber should correct the Trial Chamber's abuse of its discretion and reverse or, in the alternative, reduce the sentence of the Appellant.

Conclusion:

Overall Relief Sought:

82. The Prosecution has failed to establish beyond a reasonable doubt that the Appellant committed the offences listed in counts 1, 2, and 4 through 9 of the Indictment, pursuant to a JCE.

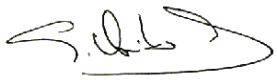
83. Accordingly, the Judgment in this respect should be set aside and verdicts of *not guilty* should be entered in respect of counts 1,2, and 4 through 9 of the Indictment.

84. Further, and in the alternative, if the Appeals Chamber considers that any of the verdicts recorded against the Appellant should stand, the sentence imposed should be reduced because, when sentencing the Trial Chamber committed the errors of fact and law outlined above.

Word Count: 5,240

Dated: 18 May 2011

Respectfully submitted,



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