

United Nations
Nations UniesInternational Criminal Tribunal
for the former Yugoslavia
Tribunal Pénal International
pour l'ex-Yougoslavie

“OPERATION STORM” (IT-06-90)

GOTOVINA *et al.*

The Prosecutor v. Ante Gotovina, Ivan Čermak & Mladen Markač**ANTE GOTOVINA***Indicted for persecutions, deportation, inhumane acts (forcible transfer), plunder of public or private property, wanton destruction of cities, towns or villages, murder, inhumane acts, cruel treatment*

Commander of the Split Military District of the Croatian Army (HV) from 9 October 1992 to March 1996; overall operational commander of the southern portion of the Krajina region during the military offensive known as "Operation Storm".

IVAN ČERMAK*Indicted for persecutions, deportation, inhumane acts (forcible transfer), plunder of public or private property, wanton destruction of cities, towns or villages, murder, inhumane acts, cruel treatment*

Assistant Minister of Defence in the Croatian Government from 1991-1993; from 5 August 1995, Commander of the Knin Garrison, which encompassed the municipalities of Civljane, Ervenik, Kijevo, Kistanje, Knin, Nadvoda and Orlić; held the rank of Colonel General.

MLADEN MARKAČ*Indicted for persecutions, deportation, inhumane acts (forcible transfer), plunder of public or private property, wanton destruction of cities, towns or villages, murder, inhumane acts, cruel treatment*

Commander of the Special Police of the Ministry of the Interior of the Republic of Croatia from 18 February 1994, which gave him overall authority and responsibility for the operation and functioning of the Special Police; Assistant Minister of Interior; following Operation Storm, held the rank of Colonel General.

Crimes indicted for (examples):

Persecutions, deportation, inhumane acts (forcible transfer), murder, inhumane acts (crimes against humanity).

Plunder of public or private property, wanton destruction of cities, towns or villages or devastation not justified by military necessity, murder, cruel treatment (violations of the laws or customs of war).

Acting individually and/or in concert with others, Gotovina, Čermak, and Markač participated in a joint criminal enterprise (JCE), the common purpose of which was the permanent removal of the Serb population from the Krajina region in Croatia by force, fear or threat of force, persecution, forced displacement, transfer and deportation, appropriation and destruction of property, or other means.

Crimes alleged in the indictment include the following:

- Aiding and abetting the planning, preparation and/or execution of the murder of Krajina Serb civilians and persons taking no part in hostilities, including members of Serb armed forces who had laid down their arms, by various means, including by shooting, burning and/or stabbing them, including in the following municipalities or parts thereof: Donji Lapac, Drniš, Ervenik, Gračac, Kistanje, Knin and Orlić.
- Large scale destruction (including burning) of and substantial damage to villages, homes, outbuildings and barns owned or inhabited by the Krajina Serbs, killing their livestock and spoiling their wells, including in the following municipalities or parts thereof: Benkovac, Civljane, Donji Lapac, Drniš, Ervenik, Gračac, Kistanje, Knin, Lišane Ostrovičke, Lisičić, Lovinac, Nadvoda, Obrovac, Oklaj and Orlić.
- Systematic plunder of property of the Krajina Serbs, including their homes, outbuildings, barns and livestock, including in the following municipalities or parts thereof: Benkovac, Donji Lapac, Drniš, Ervenik, Gračac, Kistanje, Knin, Lišane Ostrovičke, Nadvoda, Obrovac, Oklaj and Orlić.
- Infliction of inhumane acts and cruel treatment on Krajina Serb civilians and persons taking no part in hostilities, including members of Serb forces who had laid down their arms, including their humiliation and/or degradation, by firing upon (including by aerial attack), assaulting, beating, stabbing, threatening and burning them, including in the following municipalities or parts thereof: Benkovac, Donji Lapac, Drniš, Gračac, Kistanje, Knin and Orlić.
- Forcible transfer and/or deportation of members of the Krajina Serb population from the southern portion of the Krajina region to the Socialist Federal Republic of Yugoslavia, Bosnia and Herzegovina and/or other parts of Croatia, by the threat and/or commission of violent and intimidating acts (including the plunder and destruction of property), the effect of which was to displace, transfer or deport the Krajina Serbs from the area and/or to prevent or discourage them from returning to the area, including in the following municipalities or parts thereof: Benkovac, Civljane, Donji Lapac, Drniš, Ervenik, Gračac, Kistanje, Knin, Lišane Ostrovičke, Lisičić, Nadvoda, Obrovac, Oklaj and Orlić.

ANTE GOTOVINA	
Born	12 October 1955 on the island of Pašman, Zadar municipality, Republic of Croatia
Indictment	Initial: 8 June 2001, made public on 26 July 2001; amended: 24 February 2004, made public on 8 March 2004; joinder: 14 July 2006; reduced: 21 February 2007; amended joinder: 12 March 2008
Arrested	7 December 2005, in Spain
Transferred to ICTY	10 December 2005
Initial and further appearances	12 December 2005, pleaded not guilty to all charges; 5 December 2006, pleaded not guilty

IVAN ČERMAK	
Born	19 December 1949 in the municipality of Zagreb, Croatia
Indictment	Initial: 24 February 2004, made public on 8 March 2004; amended: 14 December 2005; joinder: 14 July 2006; reduced: 21 February 2007; amended joinder: 12 March 2008
Surrendered	11 March 2004
Transferred to ICTY	11 March 2004
Initial and further appearances	12 March 2004, pleaded not guilty to all charges; 5 December 2006 (by video link), pleaded not guilty

MLADEN MARKAČ	
Born	8 May 1955 in Đurđevac, Croatia
Indictment	Initial: 24 February 2004, made public on 8 March 2004; amended: 14 December 2005; joinder: 14 July 2006; reduced: 21 February 2007; amended joinder: 12 March 2008
Surrendered	11 March 2004
Transferred to ICTY	11 March 2004
Initial and further appearances	12 March 2004, pleaded not guilty to all charges; 5 December 2006 (by video link), pleaded not guilty

STATISTICS

TRIAL	
Commenced	11 March 2008
Trial Chamber I	Judge Alphons Orie (presiding), Judge Uldis Ķinis, Judge Elisabeth Gwaunza
Counsel for the Prosecution	Alan Tieger, Stefan Waespi
Counsel for the Defence	Luka Mišetić, Gregory Kehoe and Payam Akhavan for Ante Gotovina Steven Kay, Andrew Cayley and Gillian Higgins for Ivan Čermak Goran Mikuličić and Tomislav Kuzmanović for Mladen Markač

RELATED CASES <i>by geographical area</i>
NO RELATED CASES

INDICTMENT AND CHARGES

The initial indictment against Ante Gotovina was confirmed on 8 June 2001. An indictment against Ivan Čermak and Mladen Markač was confirmed on 24 February 2004. On 14 July 2006, the Trial Chamber granted the Prosecution's consolidated motion to amend the indictment and for joinder. All three accused appealed the decision. On 25 October 2006, the Appeals Chamber affirmed the Trial Chamber's decision, making the joinder indictment the operative indictment in the case.

During a Status Conference on 9 February 2007, and followed by a written order on 21 February, the presiding judge ordered the Prosecution to reduce the indictment pursuant to Rule 73*bis*. Subsequently, the Prosecution filed the reduced joinder indictment on 6 March 2007.

On 17 May 2007, the Prosecution filed a motion to amend the indictment in order to provide additional specification in the pleading of the acts of persecution as well as to amend the pleading of Joint Criminal Enterprise (JCE). On 14 February 2008, the Trial Chamber granted the motion, and on 12 March 2008 the Prosecution filed a corrected version of an amended joinder indictment. Prior to the filing on the same day, Judge Orie orally confirmed the amended joinder indictment as the operative indictment in this case.

The amended joinder indictment alleges that, on 4 August 1995, Croatia launched a military offensive known as Operation Storm (or "Oluja"), with the objective of re-taking the Krajina region of the country. On 7 August, the Croatian Government announced that the operation had been successfully completed. Follow-up actions continued until about 15 November 1995.

According to the indictment, Gotovina, Commander of the Split Operative Zone (which in 1993 was re-named the Split Military District) of the Croatian Army (HV), from 9 October 1992 to March 1996, was overall operational commander of the southern portion of the Krajina region during Operation Storm. On

30 May 1994, he was promoted to the rank of Major General. By early August 1995, he had been promoted to the rank of Colonel General. As such, Gotovina possessed effective 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 during Operation Storm.

The indictment further alleges that Ivan Čermak was appointed as Knin Garrison Commander on 5 August 1995, and continued as such until approximately 15 November 1995. At the same time, he was also acting as a representative of the Croatian Government in dealing with members of the international community and media concerning Operation Storm in areas that extended beyond the boundaries of the Garrison command. Čermak, in his combined capacities, participated in various structures of power and responsibility, and possessed effective control over members of Croatian Army units or elements who comprised, were attached to, or operated in the Knin Garrison, and also over civilian police who operated in the Garrison area and areas adjacent to it. The Croatian Army units comprising or operating in the Garrison and adjacent areas included the 4th and 7th HV Brigades, the 1st Croatian Guards Brigade, the 113th Infantry Brigade, 142nd Infantry Brigade, 144th Infantry Brigade, 126th Home Guard Regiment (HGR), the 6th HGR, the 7th HGR, the 134th HGR, and a combined military police company (consisting of units from the 72nd and 73rd Military Police battalions). Members of the Zadar-Knin and Kotar-Knin Police Administrations (including various stations and posts) also operated in the same area as the Garrison.

As Garrison Commander, Čermak was responsible, *inter alia*, for maintaining order; disciplining and supervising the conduct of military personnel; organising duty services in the garrison; and establishing cooperation and coordination between or among the Knin Garrison and area police forces, for the purposes of establishing and maintaining law and order.

According to the indictment, Mladen Markač was appointed Assistant Minister of the Interior on 18 February 1994, and as such also became the Commander of the Special Police of the Ministry of the Interior of the Republic of Croatia, giving him overall authority and responsibility for the operation and functioning of the Special Police. As Commander of the Special Police, Markač possessed effective control over all members of the Special Police who were involved in Operation Storm. He also possessed effective control over all members of the HV rocket and artillery units attached to his forces or subordinated to his command during Operation Storm and the continuing related operations. Following Operation Storm, Markač held the rank of Colonel General.

Gotovina, Čermak, Markač are charged on the basis of individual criminal responsibility (Article 7(1) and 7(3) of the Statute of the Tribunal) with:

- **Persecutions on political, racial and religious grounds, deportation and inhumane acts (forcible transfer)** (crimes against humanity, Article 5),
- **Plunder of public or private property and wanton destruction of cities, towns or villages, or devastation not justified by military necessity** (violations of the laws or customs of war, Article 3).
- **Murder** (violations of the laws or customs of war, crimes against humanity, Articles 3 and 5)
- **Inhumane acts** (crimes against humanity, Article 5)
- **Cruel treatment** (violations of the laws or customs of war, Article 3)

PRE-TRIAL

On 12 March 2004, Čermak and Markač filed separate motions for provisional release. The Trial Chamber denied the motions on 29 April 2004. Čermak and Markač then separately filed their second motions for provisional release on 23 July 2004. The Trial Chamber denied the motions on 14 September 2004.

On 20 September 2004, the two accused filed a joint motion for leave to appeal the Trial Chamber's decision. On 29 September 2004, the Prosecutor filed a response in which the "Prosecutor joined in the accused's motion for leave to appeal the Trial Chamber's decision denying their second motions for provisional release." After the Bench of the Appeals Chamber granted the motion for leave to appeal the

impugned decision on 13 October 2004, the accused filed interlocutory appeals against the Trial Chamber's decision on the second motion for provisional release on 22 and 26 October 2004, respectively.

On 2 December 2004, the Appeals Chamber granted the provisional release of Čermak and Markač.

On 5 December 2006, the accused made further appearances to enter pleas to the new counts in the joinder indictment. Gotovina, Čermak and Markač all pleaded not guilty.

On 26 January 2007, the Trial Chamber suspended the provisional release of the accused and ordered them to be present at a Status Conference in order to discuss Čermak's compliance with his provisional release conditions. After the Conference, Markač was provisionally released again on 10 February 2007 and Čermak's provisional release was reinstated as of 16 February 2007.

On 10 October 2007, the Trial Chamber suspended the provisional release of Čermak and Markač and ordered the two accused to be present at the Status Conference on 26 October 2007. On 27 October 2007, both accused were provisionally released again.

On 28 December 2007, the provisional release of Markač was terminated due to his violation of the conditions of his release, and he returned to the Detention Unit on 30 December 2007.

On 6 February 2008, the Trial Chamber terminated the provisional release of Čermak, who was ordered to return to the Detention Unit on 5 March, six days before the start of the trial.

THE TRIAL

The trial commenced on 11 March 2008.

On 5 March 2009, the Prosecution completed its case-in-chief. On 25 May 2009, a witness re-called by the Prosecution was examined.

The Defence case commenced on 28 May 2009 and was officially rested on 27 January 2010.

RULE 98*bis* DECISION

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

On 3 April 2009, the Trial Chamber issued an oral decision pursuant to Rule 98*bis* and dismissed the motions for acquittal filed by the Defence of Gotovina, Čermak and Markač.