

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

“DUBROVNIK” (IT-01-42)

# PAVLE STRUGAR



## PAVLE STRUGAR

*Convicted of attacks on civilians; destruction or wilful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science; devastation not justified by military necessity, unlawful attacks on civilian objects*



In October 1991, appointed Commander of the Second Operational Group which was formed by the Yugoslav People's Army (JNA) to conduct the military campaign against the Dubrovnik region of Croatia

- Sentenced to seven and a half years' imprisonment

### *Crimes convicted of (examples):*

**Attacks on civilians; destruction or wilful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science; devastation not justified by military necessity; unlawful attacks on civilian objects (violation of the laws or customs of war)**

- Pavle Strugar had both legal and effective control of the JNA forces who conducted the military action at Dubrovnik, including the shelling of the Old Town. In the course of that attack, civilians were killed and injured, and protected buildings were damaged and destroyed.
- On 6 December 1991, Pavle Strugar had the legal authority and ability to issue orders to all JNA forces involved in the attack on Srđ and the shelling of Dubrovnik, including the Old Town, to ensure that the Old Town was not shelled and that an existing attack ceased.
- He failed to act to stop the attack on 6 December 1991 when he could and should have done so, and afterwards he failed to ensure the perpetrators were punished.

<b>Born</b>	13 July 1933 in Peć, Kosovo
<b>Indictment</b>	Initial: 27 February 2001, made public on 2 October 2001; first amended: 31 March 2003; second amended: 17 October 2003; third amended: 10 December 2003
<b>Surrendered</b>	4 October 2001
<b>Transferred to ICTY</b>	21 October 2001
<b>Initial appearance</b>	25 October 2001, pleaded not guilty to all charges
<b>Trial Chamber Judgement</b>	31 January 2005, sentenced to eight years' imprisonment
<b>Appeals Chamber Judgement</b>	17 July 2008, sentenced to seven and a half years' imprisonment
<b>Sentence served</b>	16 January 2009, granted early release, effective 20 February 2009

## STATISTICS

Trial days	100
Witnesses called by Prosecution	31
Witnesses called by Defence	19
Prosecution Exhibits	292
Defence Exhibits	119

TRIAL	
Commenced	16 December 2003
Closing arguments	8-9 September 2004
Trial Chamber I	Judge Kevin Parker (presiding), Judge Krister Thelin, Judge Christine Van Den Wyngaert
Counsel for the Prosecution	Susan Somers, Philip Weiner
Counsel for the Defence	Goran Rodić, Vladimir Petrović
Judgement	31 January 2005

APPEALS	
Appeals Chamber	Judge Andréia Vaz (presiding), Judge Mohamed Shahabuddeen, Judge Mehmet Güney, Judge Theodor Meron, Judge O-Gon Kwon
Counsel for the Prosecution	Helen Brady, Michelle Jarvis, Xavier Tracol
Counsel for the Defence	Goran Rodić, Vladimir Petrović
Judgement	17 July 2008

RELATED CASES <i>by geographical area</i>	
JOKIĆ (IT-01-42/1) "DUBROVNIK"	
KOVAČEVIĆ (IT-01-42/2) "DUBROVNIK"	
MILOŠEVIĆ (IT-02-54) "KOSOVO, CROATIA AND BOSNIA"	

## INDICTMENT AND CHARGES

The initial indictment against Miodrag Jokić, Pavle Strugar, Milan Zec and Vladimir Kovačević was confirmed on 27 February 2001 and made public on 2 October 2001. The charges against Milan Zec were withdrawn on 30 July 2001. Miodrag Jokić surrendered voluntarily to the Tribunal on 12 November 2001. On 27 August 2003, he pleaded guilty to all charges. On 17 September 2003, the Trial Chamber separated the proceedings against him from those against Pavle Strugar and Vladimir Kovačević. On 18 March 2004, Miodrag Jokić was sentenced to 7 years' imprisonment and on 30 August 2005, his sentence was reaffirmed (see case number IT-01-42/1).

The second amended indictment against Pavle Strugar and Vladimir Kovačević was filed on 17 October 2003. On 26 November 2003, the Trial Chamber ordered the separation of the *Kovačević* case (see case number IT-01-42/2).

The third amended indictment against Pavle Strugar, filed on 10 December 2003, alleged that forces of the Yugoslav Peoples' Army (JNA) under the command of Pavle Strugar, including forces under the command of Miodrag Jokić and Vladimir Kovačević launched an attack against the Dubrovnik region of Croatia from Montenegro, Bosnia and Herzegovina, and from the Adriatic Sea on 1 October 1991. The forces under their command included regular JNA land and naval units, as well as Territorial Defence units from the Republic of Montenegro and the Socialist Republic of Bosnia and Herzegovina, paramilitary units, police and special police units that were subordinated to the JNA.

It was alleged that, between 6 December and 31 December 1991, JNA forces killed two and seriously wounded three civilians in the old town of Dubrovnik through acts of unlawful shelling. Further, during the course of the attacks on Dubrovnik from 23 October 1991 through 6 December 1991, hundreds of shells fired by the JNA forces impacted in the Old Town area of the city. The Old Town of Dubrovnik is a UNESCO World Cultural Heritage Site in its entirety.

An analysis conducted by the Institute for the Protection of Cultural Monuments, in conjunction with UNESCO, found that, of the 824 buildings in the Old Town, 563 (or 68.33 per cent) had been hit by projectiles in 1991 and 1992. Six buildings were completely destroyed by fire. In 1993, the Institute for the Rehabilitation of Dubrovnik, in conjunction with UNESCO, estimated the total cost for restoring public and private buildings; religious buildings; streets, squares, and fountains; and ramparts, gates, and bridges at 9,657,578 US dollars.

According to the indictment, Pavle Strugar was appointed in October 1991 as the Commander of the Second Operational Group which was formed by the JNA to conduct the military campaign against the Dubrovnik region of Croatia.

The operative indictment charged Pavle Strugar on the basis of individual criminal responsibility (Article 7(1) of the Statute of the Tribunal) and superior criminal responsibility (Article 7(3)) with:

- Murder; cruel treatment; attacks on civilians; devastation not justified by military necessity; unlawful attacks on civilian objects; destruction or wilful damage done to institutions dedicated to religion, charity, and education, the arts and sciences, historic monuments and works of art and science (violations of the laws or customs of war, Article 3).

## PRE-TRIAL PROCEEDINGS

Pavle Strugar was provisionally released from 1 December 2001 until 12 December 2003.

## TRIAL

The trial against Pavle Strugar commenced on 16 December 2003. The Prosecution case ended on 18 May 2004 and the Defence case commenced on 28 June 2004 and ended on 23 July 2004. The closing arguments were given on 8 and 9 September 2004.

## TRIAL CHAMBER JUDGEMENT

On 31 January 2005 the Trial Chamber rendered its judgement and found Pavle Strugar guilty of two counts of violations of the laws or customs of war (attacks on civilians and destruction or wilful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science) pursuant to Article 7(3) of the Statute of the Tribunal, and sentenced him to eight years' imprisonment. In the summary, the Trial Chamber made the following findings:

In September 1991, hostilities between the JNA and Croatian forces began in the south coastal area of Croatia. A blockade of Dubrovnik was established from 1 October 1991. It continued into 1992. The JNA forces under Pavle Strugar's command launched combat operations to advance closer on the city of Dubrovnik in particular from 23 to 26 October 1991 and from 9 to 13 November 1991. Both times, the wider city of Dubrovnik in general, and its historic Old Town in particular, were shelled. By 13 November 1991, the JNA effectively held all the territory around the wider city of Dubrovnik, except for Mount Srđ, the dominant topographical feature of Dubrovnik immediately above the Old Town, where there is a fortress from Napoleonic times.

In early December 1991, negotiations were held in an attempt to resolve the problem of the blockade of Dubrovnik. Dubrovnik was but one of several issues, arising out of the conflict in the then Socialist Federal Republic of Yugoslavia (SFRY), with which the highest Croatian and Serbian levels were occupied at the time. A Croatian ministerial delegation, led by Minister Rudolf, and the JNA, represented by Miodrag Jokić, met in Cavtat on 5 December 1991. They were to continue on 6 December 1991.

The Trial Chamber found that the events directly relevant to 6 December 1991 were the subject of a great deal of evidence much of which they felt was inconsistent or conflicting. When rendering the judgement, the Chamber determined where the truth lay. The summary of material events that follows below reflects their findings as to what, in truth, did occur.

Well before sunrise, at around 5:50 a.m. on the morning of 6 December 1991, residents of the Old Town of Dubrovnik awoke to the sound of explosions. An artillery attack had commenced. While initially, the firing was mainly concentrated on the area around Srđ, some shelling occurred on residential areas of Dubrovnik, including the Old Town and the port of the Old Town, virtually from the outset of the attack. However, the focus of the attack came to shift from Srđ to the wider city of Dubrovnik, including the Old Town. The most intense shelling occurred in the morning, between 9:00 a.m. to 9:30 a.m. and about 11:00 a.m. At about 11:15 a.m., a considerable drop in the frequency of the shelling occurred. This lull was not long-lived however, and shelling picked up again to continue though more sporadically. Shelling decreased noticeably a little after 3:00 p.m. and had substantially ceased by a little after 4:30 p.m. The shelling of Dubrovnik, including the Old Town, had continued for over 10 ½ hours on 6 December 1991.

On 6 December 1991, the JNA attempted to capture Srđ. The attempt commenced between 5:00 a.m. and 6:00 a.m. on 6 December 1991, under cover of darkness. It was undertaken by two small infantry units of the 3/472 mtbr of the JNA. Each had close tank support. Fewer than 40 soldiers made the attack. Even so, the defending Croatian forces on Srđ were outnumbered. The JNA infantry and artillery actions that day were overseen and coordinated by the commander of the 3/472 mtbr Vladimir Kovačević, who was located at his observation post on Žarkovica, a small plateau about two kilometres to the southeast of the Old Town, with clear views to the northwest of Dubrovnik, especially the Old Town, and Srđ.

A little before 6:00 a.m., more than half an hour before sunrise, JNA units commenced the mortar and other artillery barrage. At first, the principal target was Srđ. As the two attacking units approached Srđ, they came under defensive fire from Srđ. In time Croatian 82mm mortar and machine-gun fire was commenced from the wider city of Dubrovnik, but not from the Old Town, against the attacking troops. As the JNA troops attacking Srđ came under increasing fire, some JNA artillery fire was targeted at Croatian firing positions in the wider city of Dubrovnik in an attempt to neutralise them.

By about 8:00 a.m., the JNA attacking forces had approached sufficiently close to Srđ to be themselves threatened by the JNA artillery barrage on Srđ. The barrage of Srđ was called off so that the JNA troops could continue to advance. They were, however, still under mortar attack from Croatian positions in the wider city of Dubrovnik as well as defensive fire from Srđ. While there had been some shelling by the JNA of Dubrovnik, including the Old Town, virtually from the commencement of fire by JNA batteries, from

the time of the cessation of the JNA artillery barrage on Srđ, at about 8:00 a.m., the full force of the active JNA mortars and other artillery, including Maljutka rockets or missiles, appears to have been directed at Dubrovnik, including the Old Town. There was no adequate control and direction of the fire of the JNA mortars and other weapons. Fire was not confined to Croatian military targets. Instead, they fired extensively, deliberately and indiscriminately at Dubrovnik, including the Old Town. This continued for many hours, as has been indicated.

The infantry attack on Srđ was the scene of very intense and desperate close combat by both Croatian and JNA forces. There were fatalities and other casualties on both sides. The Croatian defenders withdrew into positions underground in the stone fortress on Srđ and called in Croatian mortar and other fire on the attacking JNA forces surrounding the fortress. Attempts to overcome the Croatian defenders, or to force them to capitulate, were made over many hours, but without success. Eventually, after 2:00 p.m., the exhausted attacking JNA forces called off the attempt to capture Srđ and withdrew with tank support under cover of another JNA mortar barrage on Srđ. The withdrawal was completed by a little after 3:00 p.m. The attempt to capture Srđ had failed. The JNA artillery attack on Dubrovnik, including the Old Town, had continued throughout the attempt to capture Srđ.

A position advanced by the Defence at trial, as indeed it was an explanation of the JNA attack on Srđ and the artillery attack on the Old town offered by the JNA in December 1991, that the attack was undertaken solely on the decision of the Captain Vladimir Kovačević of the 3/472 mtbr, a decision he made impulsively and contrary to superior orders, early in the morning of 6 December 1991. The reason suggested for this remarkable conduct was that during the night of 5 and 6 December, Croatian forces at Srđ had offered provocations by firing at his troops, killing one. He lost his self-control and ordered the attack in an emotional response to the conduct of the Croatian forces.

The Trial Chamber found this entirely false. Late in the afternoon on 5 December 1991, a meeting was held at the forward command post of the 9 VPS at Kupari. The 3/472 mtbr was then under the command of the 9 VPS commanded by Miodrag Jokić. Senior 9 VPS staff officers, including the Chief of Staff Warship-Captain Milan Zec, the commander of the 3/472 mtbr Vladimir Kovačević, and the commanders of other 9 VPS units, were present at the meeting. At the meeting a battle plan to take Srđ the following morning and before 12:00 p.m. was determined. Srđ was the dominant feature and the one remaining position held by Croatian forces on the heights above Dubrovnik. The plan involved the use of mortars and other artillery against military targets, including those in the wider Dubrovnik, as required, to support the assault on Srđ. It involved 9 VPS units other than the 3/472 mtbr. The Trial Chamber established that the attack on Srđ was entirely preplanned and coordinated on 5 December 1991 by 9 VPS staff officers, and was not initiated by Vladimir Kovačević alone, in the early morning of 6 December 1991, in response to provocations that night by the Croatian forces.

On 6 December 1991, repeated protests against the JNA artillery attack on Dubrovnik, especially the Old Town, by Minister Rudolf leading the Croatian ministerial delegation, the European Community Monitoring Mission (ECMM) and the civil authorities of Dubrovnik, were made variously to the 9 VPS, to the accused, and in Belgrade to the Federal Secretary of Defence General Kadijević. These were entirely ineffective to stop the artillery attack.

The Chamber found, however, a protest by the ECMM to General Kadijević led him to telephone Pavle Strugar between 6:00 a.m. and 7:00a.m. Pavle Strugar in turn, at around 7:00 a.m., telephoned Miodrag Jokić. These events, and what passed between Pavle Strugar and Miodrag Jokić at that time and later in the day, are the subject of much controversy in the evidence. The Chamber particularly noted in its finding, however, that at no time during the morning of 6 December 1991 did either the Pavle Strugar or Miodrag Jokić order that the JNA attack to capture Srđ should cease. There were discussions between Miodrag Jokić and Minister Rudolf during the morning in which they agreed on a cease-fire to take effect at 1115 hours. Following this, Pavle Strugar did order a cease-fire. This order only went to some JNA units. In particular there was no order given to the infantry units trying to capture Srđ to cease their attack. As was inevitable, because the JNA attack on Srđ continued and not all JNA artillery units ceased fire, the cease-fire was ineffective and both sides continued firing. No further steps were taken by either the Pavle Strugar or Miodrag Jokić to stop the artillery attack on the Old Town, or any other aspect of the JNA assault.

Instead, Pavle Strugar and Miodrag Jokić flew together to Belgrade in the afternoon. General Kadijević had ordered them to do so that morning, when the ECMM protest reached him. The three met in the afternoon, Pavle Strugar and Miodrag Jokić returning to their commands at about 5:30 p.m. It is apparent that the JNA was in what is colloquially described as "damage control mode" at that stage in respect of

the attack on Dubrovnik, especially the Old Town. The attack had provoked virtually immediate and strong adverse international reaction. Miodrag Jokić was in immediate command of all the JNA forces involved in the attack that day. He was also in communication with the Croatian and international representatives. He was assigned the task of trying to "repair the damage and sort things out". He proposed an enquiry, which was an obvious step in deflecting adverse international opinion. What followed, the Trial Chamber found, evidences the tenor and the effect of the understanding or instructions Miodrag Jokić took from the Belgrade meeting. The next morning, he signed a ceasefire agreement. His immediate actions were to give unqualified assurances, citing the authority of General Kadjević, of a thorough investigation and action to deal with the perpetrators, to Minister Rudolf, the Dubrovnik Crisis Committee and the ECMM. He quickly conducted what the Chamber found was a sham enquiry. He reported briefly to the Federal Secretariat on the steps he took and generally on the action of 6 December 1991, in a way which was quite out of keeping with the facts as revealed by the evidence, so as to put the conduct of the JNA forces in a more favourable light. The next day, a "commission" of three 9 VPS officers visited the Old Town to report on the damage. Miodrag Jokić endorsed their report, which sought to minimise the nature and extent of the damage and deflect responsibility for its cause from the JNA. On the evening of 6 December 1991, he removed one acting battalion commander, Lieutenant-Colonel Jovanović of the 3/5 mtbr, from his post. Strangely, Lieutenant-Colonel Jovanović had only held this acting post for one day. He was returned to his normal duties without any adverse disciplinary or other action. The 3/5 mtbr had no responsibility for the shelling of the Old Town as the Old Town was beyond the range of its mortars. He took no other disciplinary or administrative action to better determine the truth of what had occurred, or to deal with those responsible. The Chamber noted that no further investigative or disciplinary action was taken by his immediate superior, Pavle Strugar, or in turn Pavle Strugar's superior, General Kadjević.

The Trial Chamber found that numerous propositions were advanced as to why the Old Town came to be shelled on 6 December 1991. In particular, in the course of the Defence case the view was pursued that in truth there had been little or no damage to the Old Town. The Chamber, however, was satisfied by the evidence that there was extensive damage and that it extended over substantial areas of the Old Town. One other position for which the Defence contended was that any damage, alternatively some of the damage, to the Old Town was in fact deliberately or accidentally inflicted by the Croatian defending forces or other Croatian interests. However, there is a clear and strong body of evidence, indeed an overwhelming body, that the damage inflicted in and to the Old Town of Dubrovnik on 6 December 1991 was caused by the JNA shelling. Yet a further Defence submission, and one which was somewhat inconsistent with the submissions that have just been considered, was that any damage to the Old Town on 6 December 1991 was a regrettable but unavoidable consequence of artillery fire of the JNA targeted at Croatian military positions in and, in the immediate vicinity of, the Old Town. In part, the JNA forces did target Croatian firing and other military positions, actual or believed, in the wider Dubrovnik, but none of them were in the Old Town. Despite some contrary evidence, these Croatian positions were all too distant from the Old Town to put it in danger of unintended incidental fall of JNA shells targeted at those Croatian positions. The Chamber found that the cause of the established damage to the Old Town was extensive, deliberate and indiscriminate shelling of the Old Town over some 10 ½ hours on 6 December 1991, not only by JNA mortars but also by other JNA weapons such as ZIS and recoilless cannons and Maljutka rockets.

In regards to specific charges, the indictment alleged the murder of two civilians in the course of the attack. In this respect, the Chamber observed that where a town occupied by a civilian population is subjected to a deliberate artillery attack, which results in civilian deaths, these deaths may constitute murder when the perpetrators had knowledge of the probability that the attack would cause deaths. The Chamber was satisfied that the fact, and the cause, of death were established for both civilians. The actual JNA perpetrators deliberately targeted the Old Town knowing it had a civilian population. The elements of murder were established against those perpetrators.

The indictment further alleged an offence of cruel treatment against two victims. Similar allegations relating to a third victim were dismissed in the Chamber's Decision on Rule 98 *bis*. The elements of the crime of cruel treatment were established against the actual JNA perpetrators.

Offences of unlawful attacks on civilians, and on civilian objects, were also charged. On 6 December 1991, the evidence is unequivocal that the Old Town was, as it still is, a living town. Though a protected World Heritage site, it had a substantial resident population of between 7,000 and 8,000. The Chamber found that the Old Town was extensively targeted by JNA artillery and other weapons on 6 December 1991 and that no military firing points or other objectives, real or believed, in the Old Town were targeted by the JNA. In the Chamber's finding, the intent of the perpetrators was to target the civilian population and

civilian objects in the Old Town. The elements of these two crimes were therefore established against the actual JNA perpetrators.

With respect to the crime of devastation not justified by military necessity and the crime of destruction of cultural property, the allegation against Pavle Strugar, following the Rule 98*bis* decision, was that damage or destruction was sustained by 116 specified buildings and structures in the course of the 6 December shelling of the Old Town of Dubrovnik. The Chamber found that of these 116 buildings and structures, it has been established that 52 were damaged, six of them being destroyed, during the 6 December shelling of the Old Town by the JNA. The nature and extent of the damage to these buildings varied. Moreover, while several of the 52 buildings and structures had sustained some degree of damage from earlier shelling in October and November, the Chamber was satisfied that the previously damaged buildings sustained further and significant damage during the 6 December attack. In relation to the charge of devastation, the Chamber found that the Old Town sustained damage on a large scale on 6 December 1991. In relation to the charge of destruction of cultural property, the Old Town of Dubrovnik in its entirety was entered onto the World Heritage List in 1979, so that every building of the Old Town, including its walls, are properly characterised as cultural property. It was also established that there were no military objectives in the immediate vicinity of the 52 buildings and structures destroyed or damaged on 6 December 1991, or in the Old Town, or in its immediate vicinity, so that the destruction or damage of property in the Old Town on 6 December 1991 was not justified by military necessity. The elements of these two crimes were established against the actual JNA perpetrators.

The Chamber accepted the established fact that all the JNA forces involved in the military action at Dubrovnik on 6 December 1991 were components of, or subjugated to, the 9 VPS which was commanded by Miodrag Jokić on 6 December 1991. Further, the 9 VPS was in turn under the operational command of the 2 OG, which was commanded by Pavle Strugar. As their superior commander, Pavle Strugar had both legal and effective control of the JNA forces who conducted the military action at Dubrovnik, including the shelling of the Old Town.

The Trial Chamber found that the evidence did not establish, however, that Pavle Strugar ordered the shelling of the Old Town which occurred on 6 December 1991. What they established was that Pavle Strugar did order the attempt to capture Srđ which was undertaken on 6 December 1991. In particular the Chamber accepted the evidence of Colm Doyle, then in charge of the ECMM monitors in Bosnia and Herzegovina, of a conversation he had with the accused on 6 December 1991, shortly after midday, the effect of which, in the finding of the Chamber, was an admission by Pavle Strugar that he had ordered the attack on Srđ. The actual words of Pavle Strugar could be understood to suggest he ordered the shelling of the Old Town but that was not the finding of the Chamber. Pavle Strugar however, left the detailed planning of the attack on Srđ to the 9 VPS whose forces surrounded Dubrovnik, and this is what occurred late on 5 December 1991.

While the circumstances known to Pavle Strugar, at the time of his order to attack Srđ, can only have alerted him to the possibility that, as had occurred in October and November, his forces would once again ignore orders and resort to deliberate and indiscriminate shelling, especially of the Old Town, it was not established that it was known to Pavle Strugar that at the time of his order, there was a substantial likelihood of this occurring. The Trial Chamber found that it was therefore not proven that Pavle Strugar was guilty of ordering the attack on the Old Town.

The Chamber found that it was not proved that Pavle Strugar aided and abetted the unlawful shelling of the Old Town. In particular, while Pavle Strugar did not take all necessary and reasonable measures to ensure that the shelling ceased, he did issue a cease-fire order to take effect at 11:15 a.m., although this order was not implemented effectively. Further, the necessary mental element for aiding and abetting was not established. The Trial Chamber found that it was proved, therefore, that Pavle Strugar was personally criminally liable for the attack pursuant to Article 7(1) of the Statute.

In regards to Pavle Strugar's responsibility as commander of the 2 OG pursuant to Article 7(3), the Trial Chamber found that on 6 December 1991, Pavle Strugar had the legal authority and the material ability to issue orders to the 3/472 mtbr, and all the other JNA forces involved in the attack on Srđ and the shelling of Dubrovnik, including the Old Town, to ensure that the Old Town was not shelled and that an existing attack ceased. The Trial Chamber found that, from about 7:00 a.m. on 6 December 1991, Pavle Strugar was on notice of the clear and strong risk that already his JNA artillery was repeating its previous conduct and shelling the Old Town. By that time, the risk that this was occurring was so real, and the implications were so serious, that Pavle Strugar should have seen the urgent need to determine whether the JNA artillery was in fact shelling the Old Town, without justification, and if so to ensure the attack on the Old

Town was stopped. He did not do so. In particular, the Trial Chamber found that Pavle Strugar did not give an order to Miodrag Jokić at about 7:00 a.m. on 6 December 1991 to stop the attack on Srđ. The Chamber already found that an order to cease fire with effect from 11:15 a.m. was given to some JNA artillery units, but not all, and the troops trying to capture Srđ were not ordered to cease their attack at 11:15 a.m.

The Trial Chamber also found that the evidence further established that after the attack, Pavle Strugar at all times had full authority to act himself to investigate and take disciplinary or other adverse action against the perpetrators of the attack on the Old Town, and also to require Miodrag Jokić to take more effective measures. Despite this, the Trial Chamber found that Pavle Strugar chose to take no action of any type.

The Chamber was therefore satisfied that the elements required for establishing Pavle Strugar's responsibility under Article 7(3) of the Statute, as the superior commander of the JNA forces who perpetrated the unlawful shelling of the Old Town on 6 December 1991, were proved. He failed to act to stop the attack on 6 December 1991 when he could and should have done so, and afterwards he failed to ensure the perpetrators were punished.

In this case, the Trial Chamber found that elements of each of the six counts in the indictment were established. The Chamber observed, however, that the essential criminal conduct was an artillery attack against the Old Town. In the course of that attack civilians were killed and injured, and protected buildings were damaged and destroyed. It was the view of the Chamber that the essential criminal conduct was directly and comprehensively reflected in counts 3 and 6, and that the interests of justice and of sentencing were fully satisfied if convictions were recorded only for those offences.

In determining sentence, the Trial Chamber, in particular, was conscious of the serious nature of the attack on the Old Town of Dubrovnik, and the consequences for its inhabitants and for the cultural properties damaged or destroyed in the attack. The Chamber emphasised that Pavle Strugar was not sentenced for ordering the attack on the Old Town. His criminal liability arose because he failed to take adequate measures to stop the shelling of the Old Town and because he failed to ensure that those responsible for the attack were disciplined. In these regards, the Trial Chamber found that Pavle Strugar was not the immediate commander of those responsible. They determined that was Miodrag Jokić. Pavle Strugar was Miodrag Jokić's superior, and, they determined, one step further removed. The Chamber took into account that Miodrag Jokić had pleaded guilty to offences arising from his part in the attack on the Old Town and that he was sentenced to 7 years' imprisonment.

The Chamber also took into account, in particular, Pavle Strugar's age and his health, which was deteriorating, and other mitigating factors which were set out in the written judgement.

On 31 January 2005 the Trial Chamber rendered its judgement: Pavle Strugar, on the basis of superior criminal responsibility (Article 7(3) of the Statute), was found guilty of:

- Attacks on civilians (violation of the laws or customs of war, Article 3)
- Destruction or wilful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science (violation of the laws or customs of war, Article 3)

He was acquitted of all the other counts.

Sentence: 8 years' imprisonment.

He was entitled to credit for time spent in detention.

## APPEALS CHAMBER JUDGEMENT

On 2 March 2005, both the Defence and the Prosecution filed their appeals in the case.

On 15 September 2006, the Defence withdrew the appeal "based on extraordinary humanitarian circumstances," namely Pavle Strugar's "poor state of health, old age and family situation". The Prosecution withdrew its appeal citing the same circumstances.

On 20 September 2006, the Appeals Chamber accepted the withdrawal of appeals in this case and declared the proceedings against Pavle Strugar closed.

However, in its confidential motion on 26 March 2007, the Defence requested the appeal proceedings to be re-opened. Subsequently, on 7 June 2007, the Appeals Chamber reversed the previous decision and re-opened both the Defence and the Prosecution appeals.

On 15 April 2008, Pavle Strugar was granted provisional release on compassionate grounds from 17 April until 21 April 2008.

The appeals hearing took place on 23 April 2008.

The Appeals Chamber rendered its judgement on 17 July 2008.

The Chamber upheld the findings of the Trial Chamber that Pavle Strugar understood the nature of the charges against him, the conduct of the court proceedings and the evidence in detail, and could testify and give instructions to his Counsel. Consequently, the Appeals Chamber found that Pavle Strugar, admittedly suffering from a certain number of mental and somatic disorders, was fit to stand trial since he was assisted by qualified Counsel. As a result, the fifth ground of appeal raised by Pavle Strugar was dismissed in its entirety.

As regards as Pavle Strugar's first and third grounds of appeal, the Appeals Chamber dismissed several of Pavle Strugar's arguments concerning the details of combat operations conducted by the JNA in the region of Dubrovnik in October and November 1991 because they were evidently unfounded.

Secondly, as regards the alleged errors in connection with the events of 3 and 5 December 1991, the Appeals Chamber dismissed Pavle Strugar's arguments concerning the conduct of negotiations with the Croatian ministers, the role played by Admiral Jokić in the events of 5 December 1991, the military realities of the JNA and the testimony of Lieutenant-Colonel Jovanović, because they were evidently unfounded. Regarding the order to attack Srđ, the Appeals Chamber found that Pavle Strugar failed to demonstrate that the Trial Chamber's findings were unreasonable. In particular, he failed to demonstrate how the Trial Chamber's failure to clarify the content of the order to attack Srđ affected his conviction or sentence. The Appeals Chamber also found that Pavle Strugar failed to demonstrate that the Trial Chamber's appreciation of the testimonies of Colm Doyle and Colonel Svičević was unreasonable.

Thirdly, considering the alleged errors with respect to the events of 6 December 1991, the Appeals Chamber dismissed Pavle Strugar's arguments concerning the testimony of Frigate Captain Handžijev and the owners of the buildings damaged in the Old Town, because they were evidently unfounded.

Fourthly, with respect to the allegations of errors concerning Pavle Strugar's failure in his duty to prevent the crimes, the Appeals Chamber dismissed the arguments related to the command structure of the 2<sup>nd</sup> OG, because they were evidently unfounded.

Fifthly, concerning the alleged errors in respect of the events of 6 December 1991, the Appeals Chamber dismissed Pavle Strugar's arguments with respect to his material ability to punish the crimes and to the promotions and decorations of persons involved in the shelling of the Old Town because they were evidently unfounded. As regards his failure in his duty to take measures following the events of 6 December 1991, the Appeals Chamber was of the opinion that it was reasonable for the Trial Chamber to find that General Kadjević accepted Admiral Jokić's suggestion to conduct an investigation into the events of 6 December 1991 and that the investigation conducted by Jokić turned out to be a sham. A majority of the Appeals Chamber, with Judges Meron and Kwon dissenting, was also of the opinion that Pavle Strugar knew that this investigation was a sham and that he was not in fact excluded from the process of investigation conducted by Admiral Jokić. Accordingly, this majority found that it was reasonable for the Trial Chamber to find that Pavle Strugar was, at the least, prepared to accept a situation in which he would not become directly involved, leaving all effective investigation, action and decisions concerning disciplinary or other action to his immediate subordinate, Admiral Jokić.

Furthermore, the Appeals Chamber found that the Trial Chamber reasonable held that Pavle Strugar had the material ability to prevent the illegal shelling of the Old Town and to punish his subordinates. Consequently, the Trial Chamber correctly applied the requirement of the existence of a superior-subordinate relationship to the facts of the case. Therefore, the Chamber rejected Pavle Strugar's second ground of appeal.

The Appeals Chamber accepted two grounds of the Prosecution's appeal. It accepted that the Trial Chamber committed an error of law by refusing to enter cumulative convictions for devastation not

justified by military necessity and unlawful attacks on civilian objects in addition to the counts for which it found Pavle Strugar guilty and entered new convictions for those two counts.

The Appeals Chamber also ruled that the Trial Chamber erred in not finding that as of the early hours of 6 December 1991, Pavle Strugar already had reason to know that his subordinates were about to commit crimes during the attack on Mount Srđ overlooking the city of Dubrovnik.

With regard to the sentence, the Appeals Chamber found that the legal errors committed by the Trial Chamber did not affect Pavle Strugar's sentence and that the Trial Chamber had already considered the damage caused during the additional time period by which his criminal responsibility had been extended. However, in consideration of Pavle Strugar's deteriorating health since the delivery of the Trial Judgement in 2005, the Appeals Chamber revised his sentence and imposed a new sentence of seven and a half years' imprisonment.

Judge Mohamed Shahabuddeen appended a separate opinion. Judges Theodor Meron and O-Gon Kwon appended a joint dissenting opinion.

On 16 January 2009, Pavle Strugar was granted early release, effective 20 February 2009.

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